

LOCAL COURTS AMENDMENT ACT (No. 2) 1987

No. 93 of 1987

TABLE OF PROVISIONS

1. Short title.
2. Commencement.
3. Principal Act.
4. Amendment of section 7 of Principal Act (Interpretation).
5. Amendment of section 29 of Principal Act (Duties of bailiff, &c.).
6. Substitution of section 48 of Principal Act.
48—Payments into court.
7. Insertion in Principal Act of new section 48A.
48A—Provisions relating to money paid into court under an order.
8. Insertion in Principal Act of new sections 147A, 147B, 147C, 147D, and 147E.
147A—Suitors' funds in a court to vest in registrar.
147B—Liability of Consolidated Fund for default of registrars.
147C—Banking and investment of suitors' funds.
147D—Validation of acts pursuant to rules of practice.
147E—Remittance by post.
9. Amendment of Schedule V to Principal Act (RULES OF PRACTICE).
10. Amendment of Schedule VI to Principal Act (FORMS).



LOCAL COURTS AMENDMENT ACT (No. 2) 1987

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AN ACT to amend the Local Courts Act 1896.

[Royal Assent 8 December 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Local Courts Amendment Act (No. 2) 1987*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Local Courts Act 1896** is referred to as the *Principal Act*. Principal Act.

* 60 Vict. No. 48. For this Act, as amended as at 1st July 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 99 of 1982, Nos. 47 and 79 of 1983, No. 29 of 1984, Nos. 13 and 103 of 1985, and Nos 45 and 46 of 1987.

Amendment of
section 7 of
Principal Act
(Interpretation).

4—Section 7 of the Principal Act is amended by inserting the following definition after the definition of “court”:

“funds in court”, in relation to a court, means the funds that, pursuant to section 147A, vest in the registrar of the court;

Amendment of
section 29 of
Principal Act
(Duties of bailiff,
&c.).

5—Section 29 (3) of the Principal Act is amended by inserting “or under any other provision of this Act” after “practice”.

Substitution of
section 48 of
Principal Act.

6—Section 48 of the Principal Act is repealed and the following section is inserted:—

Payments into
court.

48—(1) A party to an action brought under this Act may, in accordance with the rules of practice, pay a sum of money into court, being—

(a) in the case of a payment by the defendant, a sum of money in satisfaction of the claim of the plaintiff or the counter-claim of any other party or, where several causes of action are joined in one action, in satisfaction of one or more of the causes of action; or

(b) in the case of a payment by a party other than the defendant, a sum of money in satisfaction of the claim or counter-claim of another party,

whether with or without costs and whether with or without a denial of liability.

(2) After a party has paid into court any sum pursuant to subsection (1) in respect of a claim or counterclaim, he may, without leave, deliver to the party in whose favour that sum has been paid into court a notice increasing the amount of that sum.

(3) Unless the contrary is stated in the notice of payment into court prescribed by the rules of practice, payment into court of a sum of money under subsection (1) shall be taken to be an admission by the person paying in the sum of the claim or counter-claim in respect of which the payment is made.

(4) Where a defence sets up tender before the action, the defendant shall pay into court the sum of money alleged to have been tendered by him.

(5) A party may, as provided in the rules of practice, accept the whole or part of a sum of money paid into court by another party under this section in satisfaction of the claim or counter-claim, or in satisfaction of the cause or causes of action, to which the sum relates.

(6) Where a party accepts, as provided by the rules of practice, a sum of money paid into court under this section, that sum shall, subject to subsection (7), be paid to that party, together with the interest (if any) earned on that sum since the payment of that sum into court.

(7) Where a sum of money is paid into court under this section in respect of a claim or counter-claim made by or on behalf of a person under disability, the acceptance of the payment into court by or on behalf of that person is not valid without the prior approval of the court or a commissioner.

(8) Where a party accepts, as provided by the rules of practice, a sum of money paid into court under this section in respect of a claim or counter-claim—

(a) that claim or counter-claim abates; and

(b) that party may, after 7 days after the payment out of that sum, without any further order of the court, tax his costs on the claim or counter-claim incurred up to and including the time of the payment of that sum into court, if costs are payable within the terms of the payment into court.

(9) A party in an action for defamation who takes money out of court may apply by summons to the court or a commissioner for leave to make in open court a statement in terms approved by the court or a commissioner.

7—After section 48 of the Principal Act, the following section is inserted:—

Insertion in
Principal Act of
new section 48A.

48A—(1) Where a person pays money into court under an order of the court or a commissioner, he shall forthwith give notice of that payment to such parties and in such manner as is specified in the order.

Provisions
relating to
money paid into
court under an
order.

(2) Money paid into court under an order of the court or a commissioner shall not be paid out of court, except in pursuance of an order of the court or a commissioner.

8—After section 147 of the Principal Act, the following sections are inserted:—

Insertion in
Principal Act of
new sections
147A, 147B,
147C, 147D, and
147E.

Suitors' funds in a court to vest in registrar.

147A—All funds transferred to, paid into, or deposited in, a court to the credit of an action or account vest in the registrar on behalf of the court and shall be dealt with by him in accordance with this Act and the rules of practice and any order made by a court or commissioner.

Liability of Consolidated Fund for default of registrars.

147B—(1) If the Minister certifies in writing to the Treasurer that a registrar—

(a) has failed to pay any money that is part of the funds in court and that is, by law or by an order made by the court or a commissioner, required to be paid by the registrar; or

(b) has been guilty of a default in relation to any such money,

the Treasurer shall pay to such persons as are specified by the Minister in his certificate such amounts as are specified in that certificate as being required for the purpose of paying the money so required to be paid, or of making good the default, as the case may be.

(2) Any amount payable pursuant to a certificate under subsection (1) is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this subsection.

Banking and investment of suitors' funds.

147C—(1) As soon as practicable after any money has been transferred to, paid into, or deposited in, a court, the registrar shall, subject to any provision in the rules of practice, invest that money by deposit at interest in the Treasury.

(2) The interest or other income arising from a deposit under subsection (1) shall be dealt with as prescribed by the rules of practice.

Validation of acts pursuant to rules of practice.

147D—All acts done by a registrar pursuant to the rules of practice that relate to the funds in court are as valid and effectual as if they had been done pursuant to an order made by a court or commissioner.

147E—Where a registrar is authorized by this Act to make a payment of money to a person (being a payment to which that person is entitled and for which he has made a request) by transmitting to him by a post crossed cheque or other instrument intended to enable him to obtain payment of the sum expressed in the cheque or other instrument, the posting of a letter containing a cheque or other instrument and addressed to the person entitled to it at the address given by him in his request shall, in relation to the liability of the registrar and of the Consolidated Fund respectively, be equivalent to the delivery of the cheque or other instrument to the person himself.

Remittance by post.

9—Schedule V to the Principal Act is amended as follows:—

Amendment of Schedule V to Principal Act (RULES OF PRACTICE).

(a) by renumbering rule 1 as rule 1A;

(b) by inserting before rule 1A, as renumbered by paragraph (a), the following rule:—

1—In these rules, unless the contrary intention appears—

“common fund” means a common fund referred to in rule 40C;

“half-year” means a half-year ending on a day specified in rule 40D (1);

“money in court” means any sum of money paid into a court or placed to the credit of an action or account in a court, and includes interest on money lodged in a court and invested under any Act or these rules.

(c) by omitting paragraph (b) of rule 23 (2) and substituting the following paragraph:—

(b) “If you admit part only of the claim, unless judgment has been entered against you, you may, by paying into the Registrar’s Office the amount so admitted, whether with or without costs,”;

(d) by omitting from rule 23 “, and, in the case of the words referred to in paragraph (e) shall be coloured red”;

(e) by rescinding rules 39 and 40 and substituting the following rules:—

39—(1) A payment into court under section 48 shall be—

- (a) made at any time before the hearing of the action to which the payment relates; and
- (b) accompanied by the costs, according to the appropriate scale, on the amount of the payment where that amount is paid into court with costs.

(2) Where a party makes a payment into court under section 48 (1), he shall, within 24 hours after the time of the payment, deliver to the party in whose favour the payment is made a notice of payment into court.

(3) A notice of payment into court for the purposes of subrule (2) shall be in accordance with Form 8 in Schedule VI.

(4) A party who has delivered a notice of payment into court under subrule (2) may, by leave of the court or the appropriate commissioner, amend or withdraw the notice.

(5) Where, pursuant to subrule (4), a party amends or withdraws a notice of payment into court, that party shall, as the case requires, deliver a copy of the amended notice to the other party or advise him, in writing, of the withdrawal.

(6) For the purposes of section 48 (5), the acceptance by a party of a sum paid into court under section 48 by another party shall be made by serving on that other party a notice of acceptance in accordance with Form 9 in Schedule VI—

(a) within 14 days of the receipt by the first-mentioned party of—

- (i) a notice under subrule (2), in the case of a payment into court under section 48 (1); or
- (ii) a notice under section 48 (2), in the case of the increase of a payment into court under section 48 (1); or

(b) before the hearing of the relevant action, whichever is the earlier.

40—(1) Where the whole of a sum of money paid into court is not accepted as provided by rule 39 (6), the money remaining in court shall not be paid out—

- (a) unless a memorandum consenting to the payment out of court has been signed by every party to the action and has been lodged with the registrar; or
- (b) except in pursuance of an order of the court or a commissioner.

(2) An order under subrule (1) (b) may be made at any time before, at, or after trial.

40A—Where, in an action, after money is paid into court under section 48 in respect of a claim or counter-claim—

- (a) the party on whom notice of payment into court is served pursuant to rule 39 (2) does not, as provided by rule 39 (6), accept that money, or, being a person under disability, that party's acceptance of that money is not approved by the court or a commissioner under section 48 (7); and
- (b) judgment is given for that party in the action, the interest (if any) earned on that money since its payment into court belongs to the party by whom that money was paid into court, but may be used to satisfy the judgment.

40B—Except in an action to which a defence of tender before action is pleaded or in which a plea under the *Defamation Act 1957* has been filed—

- (a) no statement of the fact that money has been paid into court under section 48 shall be inserted in the pleadings; and
- (b) no communication of that fact shall, at the hearing of an action, be made to the commissioner or jury until all questions of liability and of the amount of debt or damages have been decided.

40C—The money in court shall form a common fund that shall be invested as provided in section 147C (1).

40D—(1) Subject to subrule (3), the registrar of a court shall, at the close of every half-year ending on 30th June or 31st December, credit interest at the prescribed rate per annum to each of the accounts kept in the court to which money forming part of its common fund was standing at the close of that half-year.

(2) For the purposes of subrule (1), “prescribed rate per annum”, in relation to a half-year referred to in that subrule, means the rate of interest per annum fixed by the Registrar of the Supreme Court, pursuant to rule 6 of Order 25 of Part I of the *Rules of the Supreme Court 1965*, in relation to the same half-year.

(3) Notwithstanding subrule (1), interest shall not in any case be computed on fractions of \$2.

(4) Subject to subrule (5), interest on money forming part of a common fund shall accrue by calendar months and shall not be computed for any less period than one month, unless the court in respect of which that common fund is formed, a commissioner, or the registrar of that court otherwise directs.

(5) For the purposes of subrule (4), interest—

(a) shall be computed on and from a day to be fixed by the registrar in the month next succeeding that in which the money is paid into the common fund; and

(b) shall cease on the corresponding day of the last month preceding the day of the withdrawal of the money from the common fund.

(6) Where payment of interest into a common fund is by cheque, the proceeds of such a cheque shall not be deemed to form part of the common fund, until the cheque has been credited in the books of the bank into which it has been paid by the registrar of the appropriate court for the purposes of its collection.

(7) Subject to subrule (8), where money that has been invested as part of a common fund is paid out of court before the close of a half-year, interest that is deemed to have accrued and has not been credited to the account to which the money is standing shall be computed at the rate last previously fixed under subrule (1).

(8) There shall, if the registrar of the appropriate court considers it necessary, be deducted from the amount of the interest payable on money pursuant to subrule (7) a sum at such rate not exceeding 0.5 per cent per annum as the registrar determines.

40E—(1) Interest earned by a common fund and not credited to accounts to which money forming part of the common fund was standing during any half-year shall be carried to a reserve fund (in this rule referred to as “the reserve fund”).

(2) The reserve fund shall be treated as part of the appropriate common fund and may, with the approval of the court in respect of which that common fund is formed or a commissioner, be used by the registrar of that court—

(a) in making good the deficiencies (if any) in the funds in court;

(b) in making good the amount (if any) by which the amount of interest to be credited to the accounts forming part of the common fund during any half-year exceeds the amount of interest earned for that half-year; or

(c) to defray any sundry expenses incurred in administering the funds in court.

(3) Interest in the reserve fund that is not used for the purposes of subrule (2)—

(a) shall be invested as part of the appropriate common fund; and

(b) shall not be treated as unclaimed money.

(f) by rescinding rule 45.

10—Schedule VI to the Principal Act is amended as follows:—

Amendment of
Schedule VI to
Principal Act
(FORMS).

(a) by omitting from Form 3 the passage beginning with “IF YOU ADMIT” and ending with “SUMMONS,” and substituting “IF YOU ADMIT PART ONLY OF THE CLAIM, UNLESS JUDGMENT HAS BEEN ENTERED AGAINST YOU, YOU MAY, BY PAYING INTO THE REGISTRAR’S OFFICE THE AMOUNT SO ADMITTED, WHETHER WITH OR WITHOUT COSTS,”;

(b) by omitting Forms 8 and 9 and substituting the following forms:—

8.—NOTICE OF PAYMENT INTO COURT

No. of Plaintiff.

In the [title of court as in Form 1].

Between A. B., Plaintiff,

and

C. D., Defendant.

Take notice that the has paid into court \$..... (inclusive of costs) (with a denial of liability) (with an admission of liability), and says that that sum is enough to satisfy the 's claim [or the 's claim for, &c.]

Dated this day of 19 ..

.....
Party

9.—NOTICE OF ACCEPTANCE OF SUM PAID INTO COURT

No. of Plaintiff.

In the [title of court as in Form 1].

Between A. B., Plaintiff,

and

C. D., Defendant.

Take notice that accepts the sum of \$... paid by you into court in satisfaction of the claim in respect of which it is paid in.

Dated this day of 19 ..

.....
Party