

# DISTRICT COURTS ACT AND OTHER ACTS AMENDMENT ACT

No. 40 of 1989

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**Queensland**



**ANNO TRICESIMO OCTAVO**

**ELIZABETHAE SECUNDAE REGINAE**

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**No. 40 of 1989**

**An Act to amend the District Courts Act 1967-1988, the Magistrates Courts Act 1921-1988 and the Small Claims Tribunals Act 1973-1987 and the Property Law Act 1974-1986, each in certain particulars**

[ASSENTED TO 5TH MAY, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

#### PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *District Courts Act and Other Acts Amendment Act 1989*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a day appointed by Proclamation.

The date so appointed is in this Act referred to as the commencement of this Act.

#### PART II—AMENDMENT OF DISTRICT COURTS ACT 1967-1988

**3. Citation.** (1) In this Part, the *District Courts Act 1967-1988* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *District Courts Act 1967-1989*.

**4. Amendment of s. 2. Parts of Act.** Section 2 of the Principal Act is amended by—

(a) omitting the expression “(ss. 88-91)” and substituting the expression “(s. 91)”;

(b) omitting the expression “(ss. 101-108)” and substituting the expression “(ss. 101-109)”.

**5. Repeal of and new s. 59.** The Principal Act is amended by repealing section 59 and substituting the following section:—

**“59. Exception from criminal jurisdiction.** (1) Subject to subsection (2), a District Court shall not have jurisdiction to try a person charged with any indictable offence in respect of which the maximum term of imprisonment which may be imposed exceeds 14 years.

(2) A District Court shall have jurisdiction to try a person charged with committing or counselling or procuring the commission of any offence defined in sections 208, 213, 215, 216, 219, 222, 229B, 315, 316, 317, 337, 347, 398, 409, 411, 412, 419, 461 and 469 of *The Criminal Code* including any such offence in respect of which one or more than one circumstance of aggravation provided for under that code is alleged to exist, whether or not the maximum term of imprisonment which may be imposed in respect thereof exceeds 14 years.”

**6. Repeal of ss. 66 to 69 and new ss. 66 to 68.** The Principal Act is amended by repealing sections 66, 67, 68 and 69 and substituting the following sections:—

**“66. District Courts’ civil jurisdiction.** (1) A District Court shall have jurisdiction to hear and determine—

(a) all personal actions, where the amount, value or damage sought to be recovered does not exceed the monetary limit including—

(i) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated;

(ii) any claim for detention of chattels;

(iii) any claim for rent or mesne profits;

(iv) any claim for any debt, damages or compensation arising under any Act;

and

(b) actions and matters—

(i) for enforcing by delivery of possession any mortgage, encumbrance, charge or lien, where the amount owing in respect thereof does not exceed the monetary limit;

(ii) for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the monetary limit;

(iii) for specific performance of an agreement for the sale or other disposition of land or an interest in land or of any other property, where the value of the land or interest or property does not exceed the monetary limit; or in lieu of or in addition to specific performance, damages not exceeding the monetary limit;

(iv) for rectifying, delivering up or cancelling any agreement, where the amount in dispute or the value of the property affected does not exceed the monetary limit;

(v) for a declaration of partnership or dissolution or winding up of, or otherwise relating to, any partnership, where the property of the partnership does not exceed in amount or value the monetary limit;

(vi) for the sale or partition or division of property pursuant to section 38 or 41 of the *Property Law*

*Act 1974-1989*, where the property does not exceed in amount or value the monetary limit;

- (vii) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the monetary limit;
- (viii) for the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the monetary limit;
- (ix) relating to the custody, maintenance or advancement of an infant including the appointment of a guardian to the property or person of an infant but not so as to authorize any order under this provision affecting assets or property of an infant exceeding in amount or value the monetary limit;
- (x) for family provision pursuant to sections 40 to 43 (both inclusive) of the *Succession Act 1981-1987*, but so that any provision resulting from an order made by the Court shall not exceed in amount or value the monetary limit;
- (xi) to recover possession of any land, where the value of the land does not exceed the monetary limit;
- (xii) to restrain, whether by injunction or otherwise, any actual, threatened or apprehended trespass or nuisance to land, where the value of that land does not exceed the monetary limit; or, in lieu of or in addition to such an injunction, damages not exceeding the monetary limit;
- (xiii) for the determination of any question of construction arising under a deed, will or other written instrument, and for a declaration of the rights of the persons interested where the sum or the property in respect of which the declaration is sought does not exceed in amount or value the monetary limit;
- (xiv) for the appointment under section 104 of the *Public Trustee Act 1978-1988* of the Public Trustee as administrator of any unclaimed property, where the gross value of the property does not exceed in amount or value the monetary limit.

(2) In this section the expression "monetary limit" means \$200 000.

(3) For the purpose of determining whether or not a District Court has jurisdiction under this Part—

- (a) in the case of proceedings falling within paragraph (ii) of subsection (1) (a) of this section, the amount claimed for detention of goods is the amount claimed

for the value of the goods together with the amount, if any, claimed for damages for the detention of the goods;

(b) in the case of proceedings falling within paragraphs (iii), (xi) or (xii) of subsection (1) (b) of this section, the value of land shall be the most recent valuation, current at the time of instituting the proceedings, made by the Valuer-General under the *Valuation of Land Act 1944-1987*, or, if there is no such valuation in respect of the land, the current market value at that time of the land exclusive of improvements thereto;

(c) in any case where it is necessary to determine whether the monetary limit is exceeded no account shall be taken of any amount awarded or liable to be awarded in the action by way of interest on any amount.

(4) Where any question arises as to the amount or value for the purpose of jurisdiction under this Part the decision of the District Court or Judge thereof shall be conclusive as to that matter.

**67. Powers of District Court.** (1) Subject to this Act and to the Rules of Court, a District Court and any Judge thereof has, for the purposes of exercising the jurisdiction conferred by this Part, all the powers and authorities of the Supreme Court and any Judge thereof, and may in any proceeding in like manner and to like extent—

(a) grant such relief or remedy;

(b) make any order, including an order for attachment or committal in consequence of disobedience to an order;

and

(c) give effect to every ground of defence or matter of set-off whether equitable or legal,

as may and ought to be done in like cases by a Judge of the Supreme Court.

(2) Without affecting the generality of subsection (1), a District Court and any Judge thereof shall, in any proceedings in which jurisdiction is conferred under this Part, have power to grant relief—

(a) by way of a declaration of rights of the parties;

(b) by way of injunction, whether interim, interlocutory or final, in the proceedings;

(c) by staying the proceedings or part thereof;

(d) by appointing a receiver including an interim receiver.

(3) Subject to this Act and the Rules of Court, the practice and procedure of a District Court or a Judge thereof—

- (a) in exercising the jurisdiction conferred by this Part; and
- (b) in enforcing any judgment or order made in the exercise of that jurisdiction,

shall so far as practicable be the same as the practice and procedure of the Supreme Court or a Judge thereof in like matters.

(4) Without affecting the generality of subsection (3), the appropriate officer of the District Court shall, in addition to any duties otherwise imposed on him, discharge—

- (a) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances;
- (b) any duty imposed on him by any order of the Court.

(5) For the purposes of subsection (4) the appropriate officer of the District Court shall have the powers of the relevant officer of the Supreme Court.

**68. Relief against proceedings to recover land.** In relation to proceedings instituted or threatened to be instituted pursuant to paragraph (xi) of section 66 (1) (b), the District Court or a Judge thereof may exercise all or any of the powers and authorities of the Supreme Court or a Judge thereof under sections 124, 125 and 127 of the *Property Law Act 1974-1989*.”

**7. Amendment of s. 75. When a jury may be summoned.** Section 75 of the Principal Act is amended by—

(a) in paragraph (a) omitting the expression “\$5000” and substituting the expression “\$10 000”;

(b) in paragraph (b) omitting the expression “\$5000” and substituting the expression “\$10 000”;

(c) omitting paragraph (d) and inserting after paragraph (b) the following words:—

- “(c) in proceedings in interpleader in which the amount claimed or the value of the goods in question exceeds \$10 000;
- (d) in an action or matter which before the commencement of the *District Courts Act and Other Acts Amendment Act 1989* might have been commenced only in the Supreme Court unless the parties agreed to it being heard and determined in another jurisdiction.”



**8. Repeal of and new ss. 77 and 78.** The Principal Act is amended by repealing sections 77 and 78 and substituting the following sections:—

**“77. Removal of proceedings from Supreme Court to District Court.** (1) If proceedings are pending in the Supreme Court that in the absence of a memorandum signed under section 73—

(a) might have been brought in a District Court within its jurisdiction under this Part;

or

(b) in a case where an Act amending the jurisdiction of District Courts comes into operation while the proceedings are pending in the Supreme Court, might have been brought in a District Court within its jurisdiction under this Part if the Act had come into operation before the proceedings were brought in the Supreme Court,

a party to the proceedings may at any time apply to the Supreme Court or a Judge thereof for an order remitting the proceedings to a District Court, or the Supreme Court or a Judge thereof may of its or his own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

If the Supreme Court or a Judge thereof makes an order under this subsection on its or his own motion, the Registrar shall give notice of the order to the party in question and in accordance with the Rules of the Supreme Court.

(2) In a hearing conducted pursuant to subsection (1), unless it is shown to the satisfaction of the Supreme Court or the Judge—

(a) that unnecessary delay would be caused by a trial in a District Court;

or

(b) that either by reason of the probable cost of trial in a District Court, or by reason of the questions of law involved in the proceedings, or because there is reason to believe that a fair trial cannot be had in a District Court, the case ought to be tried in the Supreme Court,

it or he may order the proceedings pending in the Supreme Court to be remitted to a District Court.

(3) Where the Supreme Court or a Judge thereof makes an order under subsection (2) remitting proceedings to a District Court, the Registrar of the Supreme Court shall transmit to the Registrar of that District Court a copy of the order and a copy of the writ, pleadings or other documents filed by the parties in the Registry of the Supreme Court in relation to the proceedings.

(4) Proceedings remitted to a District Court shall be heard and determined and judgement therein shall be entered as if the proceedings had been commenced in that District Court.

(5) The costs of the parties in respect of proceedings remitted to a District Court by an order made under subsection (2)—

(a) incurred subsequently to the order shall be allowed according to the scale prescribed in District Courts;

(b) incurred before the order—

(i) in the case of proceedings referred to in paragraph (a) of subsection (1) shall be in the discretion of the Supreme Court or a Judge thereof;

and

(ii) in the case of proceedings referred to in paragraph (b) of subsection (1) shall be allowed according to the scale prescribed in the Supreme Court.

(6) A reference in paragraph (b) of subsection (1) to an Act amending the jurisdiction of District Courts includes the *District Courts Act and Other Acts Amendment Act 1989*.

**78. Removal of proceedings from a District Court to a Magistrates Court.** (1) If proceedings are pending in a District Court within its jurisdiction under this Part that without the consent of all parties—

(a) might have been brought in a Magistrates Court;  
or

(b) in a case where an Act amending the jurisdiction of Magistrates Courts comes into operation while the proceedings are pending in the District Court, might have been brought in a Magistrates Court if the Act had come into operation before the proceedings were brought in the District Court,

a party to the proceedings may at any time apply to the District Court or a Judge thereof for an order remitting the proceedings to a Magistrates Court, or the District Court or a Judge thereof may of its or his own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

If a District Court or a Judge thereof makes an order under this subsection on its or his own motion, the Registrar shall give notice of the order to the party in question and in accordance with the Rules of Court.

(2) In a hearing conducted pursuant to subsection (1), unless it is shown to the satisfaction of the District Court or the Judge—

(a) that unnecessary delay would be caused by a trial in a Magistrates Court;

or

(b) that either by reason of the probable cost of trial in a Magistrates Court, or by reason of the questions of law involved in the proceedings, or because there is reason to believe that a fair trial cannot be had

in a Magistrates Court, the case ought to be tried in the District Court,

it or he may order the proceedings pending in the District Court to be remitted to a Magistrates Court.

(3) Where a District Court or a Judge thereof makes an order under subsection (2) remitting proceedings to a Magistrates Court, the Registrar of that District Court shall transmit to the registrar of the Magistrates Court to which the proceedings are remitted a copy of the order and a copy of the plaint, pleadings or other documents filed by the parties in the Registry of the District Court in relation to the proceedings.

(4) Proceedings remitted to a Magistrates Court shall be heard and determined and judgement therein shall be entered as if the proceedings had been commenced in that Magistrates Court.

(5) The costs of the parties in respect of proceedings remitted to a Magistrates Court by an order made under subsection (2)—

(a) incurred subsequently to the order shall be allowed according to the scale prescribed in Magistrates Courts;

(b) incurred before the order—

(i) in the case of proceedings referred to in paragraph (a) of subsection (1) shall be in the discretion of the District Court or a Judge thereof;

and

(ii) in the case of proceedings referred to in paragraph (b) of subsection (1) shall be allowed according to the scale prescribed in the District Courts.

(6) A reference in paragraph (b) of subsection (1) to an Act amending the jurisdiction of Magistrates Courts includes the *District Courts Act and Other Acts Amendment Act 1989*.”.

**9. Amendment of s. 79. Plaintiff’s right to transfer action of contract or tort from Magistrates Court so as to increase his claim.** Section 79 of the Principal Act is amended by—

(a) omitting from the note appearing in and at the beginning of the section the words “of contract or tort from Magistrates Court so as to increase his claim” and substituting the words “from Magistrates Court to District Court”;

(b) omitting the words “founded on contract or tort wherein the plaintiff claims damages”;

(c) omitting all words from and including “the amount recoverable” to and including “Magistrates Court” and substituting the words “that the relief or remedy sought (which would be available if the action were transferred to the District Court) is not available in the Magistrates Court”.

**10. Amendment of s. 80. Transfer of certain actions of contract or tort from Magistrates Court at defendant's instance.** Section 80 of the Principal Act is amended by—

(a) omitting from the note appearing in and at the beginning of the section the words “**of contract or tort from Magistrates Court**” and substituting the words “**from Magistrates Court to District Court**”;

(b) omitting the words “founded on contract or tort” and substituting the words “wherein the relief or remedy sought is one which would also be available if the action were transferred to a District Court”.

**11. Repeal of s. 82. How provisions to be read.** The Principal Act is amended by repealing section 82.

**12. Amendment of s. 83.** Section 83 of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the note appearing in and at the beginning of the subsection and substituting the note “**Plaintiff's right to transfer action from District Court to Supreme Court**”;

(ii) omitting the words “founded on contract or tort wherein the plaintiff claims damages”;

(iii) omitting all words from and including the words “the amount recoverable” to and including the words “District Court” and substituting the words “that the relief or remedy sought is not available in the District Court”;

(b) in subsection (2)—

(i) omitting from the note appearing in and at the beginning of the subsection the words “**of contract or tort from District Court**” and substituting the words “**from District Court to Supreme Court**”;

(ii) omitting the words “founded on contract or tort”.

**13. Repeal of ss. 88 to 90.** The Principal Act is amended by repealing sections 88, 89 and 90.

**14. Amendment of s. 92. Appeal to the Supreme Court in certain cases.** Section 92 of the Principal Act is amended by—

(a) in subsection (1)—

(i) in paragraph (a) omitting the expression “\$5000” and substituting the expression “\$10 000”;

(ii) omitting paragraphs (b) and (d) and inserting after paragraph (a) the following words:—

“(b) in an action for the recovery of possession of land of which the value exceeds \$10 000;

(c) in proceedings in interpleader in which the amount claimed or the value of the goods in question exceeds \$10 000;

(d) in an action or matter which before the commencement of the *District Courts Act and Other Acts Amendment Act 1989* might have been commenced only in the Supreme Court unless the parties agreed to it being heard and determined in another jurisdiction,”;

(b) in subsection (3)—

(i) in paragraph (a) omitting the expression “\$10 000” and substituting the expression “\$20 000”;

(ii) omitting the word “and” where it occurs between paragraphs (a) and (b);

(iii) redesignating paragraph (b) as paragraph (c);

(iv) inserting after paragraph (a) the following words:—

“(b) where the action or matter is one which before the commencement of the *District Courts Act and Other Acts Amendment Act 1989* might have been commenced only in the Supreme Court unless the parties agreed to it being heard and determined in another jurisdiction;  
and”.

**15. Amendment of s. 105. Contempt of Court.** Section 105 of the Principal Act is amended, in subsection (4), by—

(a) omitting the word “three” where it twice occurs and substituting the expression “12”;

(b) omitting the words “Three hundred dollars” and substituting the words “84 penalty units”.

**16. Repeal of s. 108 and new s. 108 and 109.** The Principal Act is amended by repealing section 108 and substituting the following sections:—

“**108. Tabling of Proclamations, Orders in Council and Rules of Court.** Section 28A of the *Acts Interpretation Act 1954-1988* (which requires regulations to be published in the Gazette and laid before the Legislative Assembly as prescribed therein) applies in relation to Proclamations, Orders in Council and Rules of Court made under this Act as if the Proclamations, Orders in Council and Rules of Court were regulations.

**109. Judicial notice.** All courts shall take judicial notice of every Rule of Court made under this Act and of the date on which every such Rule of Court came into operation.

This section shall not be construed so as to limit the effect of section 43 of the *Evidence Act 1977-1989*."

**PART III—AMENDMENT OF MAGISTRATES  
COURTS ACT 1921-1988**

**17. Citation.** (1) In this Part, the *Magistrates Courts Act 1921-1988* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Magistrates Courts Act 1921-1989*.

**18. Amendment of s. 2. Interpretation.** Section 2 of the Principal Act is amended in the definition "Action for a small debt" by omitting the expression "\$1500" and substituting the expression "\$5000".

**19. Amendment of s. 4.** Section 4 of the Principal Act is amended by omitting the expression "\$5000" wherever it occurs and substituting the expression "\$20 000".

**20. Amendment of s. 7A. Actions for small debts.** Section 7A of the Principal Act is amended, in subsection (1), by omitting the expression "\$1500" and substituting the expression "\$5000".

**21. Amendment of s. 10.** Section 10 of the Principal Act is amended, in subsection (1), by omitting the expression "\$300" and substituting the expression "\$1200".

**22. Amendment of s. 11.** Section 11 of the Principal Act is amended, in subsection (3), by—

(a) omitting the expression "\$600" wherever it occurs and substituting the expression "\$2400";

(b) omitting the expression "\$400" and substituting the expression "\$1600".

**23. Amendment of s. 14.** Section 14 of the Principal Act is amended by omitting subsection (2) and substituting the following words—

“(2) Section 28A of the *Acts Interpretation Act 1954-1988* (which requires regulations to be published in the Gazette and laid before the Legislative Assembly as prescribed therein) applies in relation to Orders in Council made under this Act as if the Orders in Council were regulations.”

**PART IV—AMENDMENT OF SMALL CLAIMS TRIBUNALS  
ACT 1973-1989**

**24. Citation.** (1) In this Part, the *Small Claims Tribunals Act 1973-1989* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Small Claims Tribunals Act 1973-1989*.

**25. Amendment of s. 4. Interpretation.** Section 4 of the Principal Act is amended by—

(a) in the definition “claimant”, inserting after paragraph (d) the following paragraph:—

“(e) in relation to a claim for payment of money for damage to property caused by or arising out of the use of a vehicle, a person incurring loss due to the damage;”;

(b) in the definition “prescribed amount”, omitting the expression “\$1500” and substituting the expression “\$5000”;

(c) in the definition “small claim”—

(i) omitting the word “or” where it occurs between paragraph (a) and (b);

(ii) inserting after paragraph (b) the following words:—

“or

(c) a claim for payment of money of a value not exceeding the prescribed amount for damage to property caused by or arising out of the use of a vehicle;”.

**26. Amendment of s. 15. Registrars.** Section 15 of the Principal Act is amended by—

(a) in subsection (1), adding at the end thereof the following words:—

“Each assistant clerk, deputy clerk or deputy registrar of such a Magistrates Court may at any time perform the duties of a registrar.”;

(b) in subsection (2)—

(i) inserting after the words “and such” the words “deputy registrars and”;

(ii) omitting the words “Act 1922-1976” and substituting the words “*Management and Employment Act 1988*”;

(iii) adding at the end thereof the following words:—

“A deputy registrar appointed pursuant to this subsection may at any time perform the duties of the registrar appointed pursuant to this subsection.”.

**27. Amendment of s. 16. Extent of Jurisdiction.** Section 16 of the Principal Act is amended, in subsection (2), by omitting the words “or (d)” and substituting the words “, (d) or (e)”.

**28. Amendment of s. 18. Proceedings of tribunals final.** Section 18 of the Principal Act is amended, in subsection (2), by omitting the words “specified in section 17 (3)” and substituting the words “such as is defined in paragraph (b) or (c) of the definition “small claim” in section 4”.

**29. Amendment of s. 23A. Examination of person required by order to pay money.** Section 23A of the Principal Act is amended, in subsection (3), by inserting at the end of paragraph (f) after the words “pay money” the following expression and words:—

“;

- (g) the provisions of section 33 (other than paragraph (a) of subsection (2)), 38 and 39 apply with respect to an examination taken pursuant to this section as if it were the taking of a proceeding by a Small Claims Tribunal in relation to a claim duly referred to it;
- (h) if a person required to attend an examination attends an examination and without lawful excuse—

(A) refuses to be sworn;

or

- (B) refuses to disclose whether any and what debts are owing to the person required by an order of the Small Claims Tribunal to pay money and whether that person has any and what property or means of satisfying the order,

he may be summarily convicted by the referee of contempt and subsections (2), (3) and (4) of section 38 shall apply as if he had been convicted under subsection (1) of that section and as if the examination were the taking of a proceeding by a Small Claims Tribunal in relation to a claim duly referred to it”.

**30. Repeal of and new s. 35. No costs allowable.** The Principal Act is amended by repealing section 35 and substituting the following section:—

“**35. Costs.** (1) Subject to subsection (2), costs shall not be allowed to or against any party to a proceeding before a Small Claims Tribunal.

(2) Where a Small Claims Tribunal makes an order against the respondent with respect to the issue in dispute in a claim referred to it, it may order the respondent to pay to the claimant the amount of any prescribed fee paid by the claimant on filing his claim.”.

#### PART V—AMENDMENT OF PROPERTY LAW ACT 1974-1986

**31. Citation.** (1) In this Part the *Property Law Act 1974-1986* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Property Law Act 1974-1989*.

**32. Amendment of s. 41. Sale or division of chattels.** Section 41 of the Principal Act is amended by omitting subsection (3).



**33. Amendment of s. 42. Powers of the Court.** Section 42 of the Principal Act is amended, in paragraph (b), by omitting the words “where the Court is the Supreme Court,”.

**34. Repeal of s. 108. Recovery of possession where half-year’s rent is due.** The Principal Act is amended by repealing section 108.

**35. Amendment of s. 147. Arrears of rent.** Section 147 of the Principal Act is amended, in subsection (5), by omitting the expression “\$5 000” and inserting the expression “\$20 000”.