

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT ACT 1987 No. 281

NEW SOUTH WALES



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LOCAL COURTS (CIVIL CLAIMS) AMENDMENT ACT 1987 No. 281

NEW SOUTH WALES



Act No. 281, 1987

An Act to amend the Local Courts (Civil Claims) Act 1970 to increase the maximum amount for which a civil action may be commenced in a Local Court and with respect to the civil procedures of Local Courts. [Assented to 16 December 1987]

See also District Court (Civil Claims) Amendment Act 1987.

Local Courts (Civil Claims) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Courts (Civil Claims) Amendment Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendment of Act No. 11, 1970

3. The Local Courts (Civil Claims) Act 1970 is amended as set out in Schedules 1-4.

Savings and transitional provisions

4. (1) The rules under the Local Courts (Civil Claims) Act 1970 may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subsection (1) may, if the rules so provide, take effect as from the date of commencement of a provision of this Act or a later day.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION

(Sec. 3)

(1) Section 4 (**Definitions**)—

Section 4 (1)—

Omit the definition of “admitted set-off”.

(2) Section 12 (**Limits of jurisdiction**)—

(a) Section 12 (1)—

Omit “\$5,000”, insert instead “\$10,000”.

(b) Section 12 (2)-(4)—

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SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION—
continued

After section 12 (1), insert:

(2) Notwithstanding subsection (1), but otherwise subject to this Part, a court shall have jurisdiction to hear and determine actions for damages arising out of the use of a motor vehicle within the meaning of the Transport Accidents Compensation Act 1987 (other than damages in respect of the death of or bodily injury, within the meaning of that Act, to a person) in which the amount claimed is not more than \$20,000.

(3) If the amount claimed in an action includes interest (being interest which the court could, under section 39A (1), order to be included in the amount for which it could give judgment), that interest shall be disregarded for the purposes of—

- (a) determining whether the maximum amount for which the action is authorised by this Act to be brought has been exceeded or not; and
- (b) determining whether or not the court has jurisdiction to hear and determine the action.

(4) If—

- (a) an amendment to subsection (1) or (2) which is enacted after, or was enacted before, the commencement of Schedule 1 to the Local Courts (Civil Claims) Amendment Act 1987 has or had the effect of increasing an amount specified in either of those subsections; and
- (b) an action in which an amount of money is claimed is pending in a court at the time when the amendment has effect or, as the case may be, an action in which an amount of money is claimed was pending in a court at the time when the amendment had effect and has not been finally determined,

the court may, on the application of a plaintiff, make an order altering the amount specified in the claim to an amount not exceeding that specified in subsection (1) or (2) (whichever applies to the action) as in force immediately after the amendment has or had effect.

(c) Section 12 (7)—

After section 12 (6), insert:

(7) In subsection (1), “admitted set-off”, in relation to an action, means set-off admitted by the plaintiff in the document by the filing of which the action is commenced.

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SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION—
continued

(3) Section 13 (Actions not to be split or divided)—

Section 13 (3)—

Omit “\$5,000”, insert instead “the amount for which an action on that claim may be brought in a court”.

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES

(Sec. 3)

(1) Section 4 (Definitions)—

(a) Section 4 (1)—

After the definition of “court”, insert:

“cross-claim” includes cross-action and set-off;

(b) Section 4 (3)—

Omit the subsection, insert instead:

(3) A reference in this Act to—

(a) the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under any provision of the rules prescribed for the purposes of this paragraph; and

(b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with any provision of a rule so prescribed.

(2) Section 7A—

After section 7, insert:

Seals of courts

7A. (1) Each court shall have a seal.

(2) Any document required by or under this or any other Act or law to be sealed or stamped with the seal of a court shall be so sealed or stamped.

(3) Section 11 (Appearance of parties)—

Section 11 (6)—

Omit “plaint, summons”, insert instead “statement of claim”.

(4) Section 13 (Actions not to be split or divided)—

(a) Section 13 (1), (2)—

Omit the subsections, insert instead:

(1) In this section—

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

“cross-claim” means a cross-claim which a defendant is entitled to bring under section 15.

(2) Where a person splits or divides any cause of action against another person so as to bring an action or a cross-claim in a court for part of the amount for which an action or cross-claim may be brought on that cause, and judgment is given or entered up, or a final order is made, on that action or cross-claim, that other person is entitled to judgment in any other action or cross-claim brought or pleaded on that cause (whether brought in a Local Court or brought or pleaded in any other court).

(b) Section 13 (3)—

Omit “on, or plead a defence by way of set-off”, insert instead “or a cross-claim on”.

(c) Section 13 (3)—

Omit “were an action for the recovery of, and each of those set-offs were a set-off claiming”, insert instead “and cross-claims were an action or cross-claim for the recovery of”.

(5) Section 14 (**Abandonment**)—

(a) Section 14—

Omit “a plaint may be filed”, insert instead “an action may be brought on that cause”.

(b) Section 14—

Omit “on the plaint”, insert instead “in the document by the filing of which the action is commenced”.

(c) Section 14 (a)—

Omit “a plaint may be so filed”, insert instead “an action may be so brought”.

(d) Section 14 (b)—

Omit “upon the plaint”, insert instead “in the action”.

(6) Section 15 (**Cross-claim**)—

(a) Section 15 (1), (2)—

Omit the subsections, insert instead:

(1) The defendant, or one of two or more defendants, in an action in a court may, subject to and in accordance with the rules, bring a cross-claim against the plaintiff, or one of two or more plaintiffs, if the amount claimed in the cross-claim does not exceed the amount for which an action may be brought under this Act on the cause of action on which the cross-claim is brought.

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

- (b) Section 15 (3)—
 Omit the subsection, insert instead:
 (3) If a defendant has a cause of action against a plaintiff for more than the amount for which an action may be brought under this Act on that cause of action, the defendant may, where the defendant brings a cross-claim on that cause of action, abandon the excess.
- (c) Section 15 (4)—
 Omit “set-off” where firstly occurring, insert instead “cross-claim”.
- (d) Section 15 (4) (a)—
 Omit “a plaint may be filed”, insert instead “an action may be brought on the defendant’s cause of action”.
- (e) Section 15 (4) (b)—
 Omit “set-off” where firstly occurring, insert instead “cross-claim”.
- (f) Section 15 (4) (b)—
 Omit “the cause of action in respect of which the defendant pleaded the defence by way of set-off”, insert instead “the defendant’s cause of action”.
- (g) Section 15 (5), (6)—
 Omit the subsections.
- (h) Section 15 (7)—
 Omit “defence pleaded by the defendant by way of set-off”, insert instead “cross-claim”.
- (i) Section 15 (7) (b)—
 Omit “set-off”, insert instead “cross-claim”.
- (j) Section 15 (10)—
 Omit the subsection.
- (7) Section 16—
 Omit the section, insert instead:
Where action may be brought
 16. (1) Every court, wherever situated, shall have jurisdiction in accordance with this Act.
 (2) Subject to and in accordance with the rules, an action commenced in a court for a district may, on the application of a defendant, be transferred to, and heard and determined in, a court for another district.

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

(3) This section and any rules made for the purposes of this section have effect subject to the provisions of any other Act conferring jurisdiction on courts.

(8) **Section 17 (Jurisdiction where defendant is out of the State)—**

Section 17 (1)—

Omit “by section 25A, 27, 28 or 40”, insert instead “by or under this Act”.

(9) **Section 18 (Change of venue)—**

(a) Section 18 (1)—

After “may” insert “, subject to and in accordance with the rules,”.

(b) Section 18 (1A)–(3)—

Omit the subsections.

(10) **Section 21 (Minors)—**

Omit the section.

(11) **Section 21B (Removal of proceedings into District Court)—**

(a) Section 21B (1)—

Omit the subsection, insert instead:

(1) If an action is pending in a court, the District Court may, on application by a party to the action, order that the action, including any cross-claim brought in relation to the action, be removed into the District Court sitting at such proclaimed place as the District Court may specify in the order.

(b) Section 21B (2)—

Omit “(8)”, insert instead “(6)”.

(c) Section 21B (4)—

Omit “(7)”, insert instead “(5)”.

(d) Section 21B (4)—

Omit “, or in the proceedings in relation to the set-off,”.

(e) Section 21B (5)—

Omit “commenced”, insert instead “pending”.

(12) **Section 21C (Stay of proceedings in Local Court)—**

(a) Section 21C (1)—

Omit “of proceedings in relation to a set-off or of both,”.

(b) Section 21C (1)—

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continued

Omit “or of the proceedings, if any, in relation to the set-off”.

(13) Section 21D (Place of application for removal or stay)—**(a) Section 21D (1)—**

Omit “in a court, of proceedings in a court in relation to a set-off or of both”.

(b) Section 21D (1)—

Omit “or proceedings” where secondly occurring.

(14) Section 21E—

Omit the section, insert instead:

Proceedings after removal

21E. (1) Where an order under section 21B (1) for removal into the District Court of an action in a court takes effect, the action ceases to be an action in the court, but proceedings in the action continue, in accordance with rules made under the District Court Act 1973, in the District Court as if the action had been duly commenced, and any cross-claim brought in relation to the action had been duly pleaded, in the District Court at the proclaimed place specified in the order on the date on which the action was commenced, or the cross-claim was brought, as the case may be, in the court.

(2) Where any proceedings continue in the District Court as referred to in subsection (1), any abandonment made in accordance with section 14 or 15 has no further force or effect except to the extent that the amount originally claimed in the action, or in any cross-claim brought in relation to the action, before any abandonment exceeded the appropriate amount specified in section 44 (1) (a), (aa) or (b) of the District Court Act 1973, as the case may be.

(3) Where an order under section 21B (1) for removal into the District Court of an action in a court takes effect, any admission made in accordance with the rules for the purposes of the action, including the purposes of any cross-claim brought in relation to the action, shall, if it could have been made in accordance with the rules made under the District Court Act 1973, be treated as an admission made under those rules.

(4) Subsection (1) has effect subject to—

(a) the District Court Act 1973 and the rules made under that Act; and

(b) any order of the District Court as to procedure.

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

(5) An order made by a court in an action removed into the District Court under section 21B (1) may be set aside or varied, and is subject to appeal, as if made by the District Court.

(6) Costs payable under an order of the District Court in respect of any step in an action removed into the District Court under section 21B (1) shall be limited as may be prescribed in the rules.

(15) Section 21F (Removal of proceedings from District Court)—

(a) Section 21F (1), (2)—

Omit the subsections, insert instead:

(1) Where an action is pending in the District Court and the District Court is satisfied that the action could properly have been commenced as an action in a court, and that any cross-claim pleaded in relation to the action could properly have been brought as a cross-claim in a court, the District Court may, on application by a party to the action or of its own motion, order that the action, including any cross-claim pleaded in relation to the action, be removed into a court for such district as the District Court shall specify in the order.

(2) The District Court shall not make an order under subsection (1) in respect of an action unless it is satisfied that—

(a) the document by the filing of which the action was commenced has been served on the defendant; and

(b) any cross-claim pleaded in relation to the action has been served on the plaintiff.

(b) Section 21F (4)—

Omit “(7)”, insert instead “(4)”.

(c) Section 21F (4)—

Omit “, or in the proceedings in relation to the cross-claim,”.

(d) Section 21F (5)—

Omit “, and in any proceedings in relation to the cross-claim,”.

(16) Section 21G—

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continued

Omit the section, insert instead:

Proceedings after removal

21G. (1) Where an order under section 21F (1) for removal into a court of an action in the District Court takes effect, the action ceases to be an action in the District Court but proceedings in the action continue in the court as if the action had been duly commenced, and any cross-claim pleaded in relation to the action had been duly brought, in a court for the district specified in the order on the date on which the action was commenced, or the cross-claim was pleaded, as the case may be, in the District Court.

(2) Where an order under section 21F (1) for removal into a court of an action takes effect, any admission made in accordance with the rules made under the District Court Act 1973 for the purposes of the action, including the purposes of any cross-claim pleaded in relation to the action, shall, if it could have been made under the rules, be treated as an admission made under the rules in the action in that court.

(3) Subsection (1) has effect subject to this Act and the rules.

(4) An order made by the District Court in an action removed into a court under section 21F (1) may be set aside or varied, and is subject to appeal, as if made by the court.

(5) No costs shall be payable under an order of the District Court in respect of any step in an action removed into a court under section 21F (1).

(6) In respect of an action removed into a court under section 21F (1), the court may order that such costs as may be prescribed be payable in respect of the order of removal, the copies of the order and any step taken in the action before the order of removal takes effect.

(17) Part IV, Divisions 1–3A—

Omit the Divisions, insert instead:

Division 1—Commencement of actions**Manner of commencement of actions**

22. An action in a court, and any proceedings ancillary to an action, shall be commenced in the manner prescribed by the rules.

Division 2—Defences**Right to defend action**

23. A person against whom an action in a court has been commenced may defend the action and any proceedings ancillary to the action as prescribed by the rules.

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

(18) Sections 26–28—

Omit the sections.

(19) Section 30 (**Judgment may be set aside**)—

Omit the section.

(20) Part IV, Division 5—

Omit the Division, insert instead:

Division 5—Costs

Interpretation

33. In this Division, a reference to costs is a reference to costs payable between party and party, including disbursements.

Costs to be in discretion of court

34. (1) Subject to this Act and the rules, and subject to any other Act—

- (a) costs in or in relation to an action shall be in the discretion of a court;
- (b) a court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to an action; and
- (c) a court has full power to determine the amount of costs to be paid in or in relation to an action, or to direct how that amount is to be determined.

(2) The rules may provide that the amount of any costs in relation to the commencement of an action, the entry of default judgment, the giving of judgment in undefended actions and any process for the enforcement of a judgment shall be determined in accordance with scales prescribed in the rules.

(3) The rules may provide that the amount of any costs in relation to a contested action shall be determined in accordance with scales prescribed in the rules unless the Magistrate before whom the action is heard (or, in the case of an action determined under section 15 (1) of the Arbitration (Civil Actions) Act 1983, a Magistrate on the application of a party) certifies that in the special circumstances applying to the action the amount of the costs should not be so determined.

(4) Any scales prescribed as referred to in subsection (2) or (3) may be varied by a determination made under section 20J (2) (c) of the Legal Practitioners Act 1898.

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

Costs to form part of judgment debt

35. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

(21) Section 39—

Omit the section, insert instead:

Interest on judgment debt

39. (1) Unless a court orders in any particular case that interest be not payable, interest shall, subject to subsection (3), be payable on so much of the amount of a judgment debt as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of a judgment debt shall—

- (a) subject to subsection (3), be calculated as from the date when the judgment debt came into being or from such later date as a court in any particular case fixes;
- (b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act 1970; and
- (c) form part of the judgment debt, but not so as to require the payment of interest upon interest.

(3) Where—

- (a) the amount of a judgment debt (excluding the amount of any costs remaining to be ascertained) is paid in full within 21 days after the judgment debt becomes payable; or
- (b) any amount of costs is paid in full within 21 days after that amount is ascertained,

interest shall, unless a court otherwise orders in any particular case, not be payable on the amount so paid.

(22) Section 39B (**Entering up of judgment for interest**)—

Omit the section.

(23) Part V, Division 1 (**Payment by instalments**)—

Omit the Division.

(24) Section 41 (**Summons for examination of judgment debtor**)—

(a) Section 41 (2) (c)—

Omit “books, deeds, papers and writings”, insert instead “documents or things”.

(b) Section 41 (2) (c)—

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

After “judgment debtor” where secondly occurring, insert “which tend to show the judgment debtor’s true financial circumstances”.

(c) Section 41 (3)—

Omit “book, deed, paper or document”, insert instead “document or thing”.

(25) Section 42 (**Failure to attend in answer to examination summons**)—

(a) Section 42 (1)—

Omit the subsection, insert instead:

(1) If, at the time set down (whether originally or on an adjournment) for the examination of a judgment debtor before a registrar—

(a) the judgment debtor fails to attend before the registrar;

(b) the registrar has no information which satisfies the registrar that the judgment debt has been paid; and

(c) there is due proof of service of the examination summons on the judgment debtor (or, if the examination has been adjourned, of service on the judgment debtor of notice of the time and place fixed for the examination),

the registrar shall, as soon as practicable, report in writing to the court of which he or she is registrar that the judgment debtor has failed so to attend.

(b) Section 42 (4)—

After “days” insert “, and not later than 3 months,”.

(c) Section 42 (4A)—

After section 42 (4), insert:

(4A) If a judgment creditor fails to make an application under subsection (4) within the time limited by that subsection, the court may, on satisfactory explanation by the judgment creditor as to the reasons for the failure, and if it thinks fit, direct the registrar to issue a warrant for the apprehension of the judgment debtor.

(26) Section 43A (**Examination notice**)—

Section 43A (3)—

Omit “, pursuant to section 33 (1),”.

(27) Section 44 (**Examination of judgment debtor**)—

(a) Section 44 (1)—

Omit “section 42 (4)”, insert instead “section 42”.

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

- (b) Section 44 (2), (3)—
Omit the subsections.
- (28) Section 46 (**Offences where judgment debtor attends for examination**)—
Section 46 (c)—
Omit “books, deeds, papers or writings”, insert instead
“documents or things”.
- (29) Section 48 (**Continuous operation of garnishee order**)—
Section 48 (1)—
Omit “under section 40”, insert instead “in accordance with the
rules providing for a judgment debt to be paid by instalments”.
- (30) Section 52 (**Procedure where garnishee order not complied with**)—
Section 52 (5)—
Omit “filed a plaint and summons to commence”, insert instead
“commenced”.
- (31) Section 53 (**Garnishee may pay by instalments**)—
Omit the section.
- (32) Section 63 (**Enforcement where judgment given on action and cross-
claim**)—
(a) Section 63—
Omit “defence by way of set-off is pleaded in”, insert instead
“cross-claim is brought in relation to”.
(b) Section 63—
Omit “the set-off”, insert instead “the cross-claim”.
- (33) Section 64A (**Limitation on enforcement**)—
Section 64A (1)—
Omit “40 (1),”.
- (34) Section 66 (**Claim by third party to property seized by bailiff under writ
of execution**)—
Section 66 (3A), (3B)—
After section 66 (3), insert:
(3A) Subject to and in accordance with the rules, where a claim
is made to any property under subsection (1) (b) and the claimant
has not paid any amount, or given any security, to the bailiff
under subsection (1) (d), the bailiff may—
(a) apply for relief by way of interpleader under section 65 in
respect of the property; and

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continued

- (b) postpone the sale of the property pending hearing by the court of the application for relief.

(3B) Upon the hearing of an application referred to in subsection (3A), the court shall adjudicate on the claim to the property the subject of the application and shall make such order between the parties in respect of that property, and of the costs of the proceedings on the application, as may to it seem fit.

(35) **Section 67 (Registrar to issue summons and record commencement of interpleader action)—**

(a) **Section 67 (1)—**

After “section 65”, insert “, other than an application referred to in section 66 (3A)”.

(b) **Section 67 (3)—**

Omit “enter an interpleader plaintiff”, insert instead “record the commencement of an interpleader action”.

(c) **Section 67 (3)—**

Omit “thereon”.

(36) **Section 69A—**

Before section 70, insert:

Matters ancillary to hearing

69A. (1) The rules may make provision for or with respect to—

- (a) empowering a party to an action to give another party a notice requiring that other party to do any one or more of the following things:

- (i) to produce documents at the hearing of the action;
- (ii) to attend for a medical examination;
- (iii) to make admissions for the purposes of the action;

- (b) the manner of compliance with such a requirement; and

- (c) empowering a court to make such orders as may be prescribed in the event of failure to comply with such a requirement.

(2) Without limiting the generality of subsection (1), the rules may make provision for or with respect to empowering a court to order that a party—

- (a) produce documents at the hearing of any action;
- (b) attend for a medical examination;
- (c) make admissions for the purposes of any action; or

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

- (d) give further particulars of any action commenced, grounds of defence filed or cross-claim brought by the party, and empowering the court to make such further order as may be prescribed in the event of the failure of a party to comply with an order made under rules made for the purposes of this subsection.
- (37) Section 71 (**Arbitration award may be entered up as a judgment**)—
 Section 71 (b)—
 Omit “plaint commencing the action was filed”, insert instead “hearing of the action is pending”.
- (38) Section 72 (**Witnesses**)—
 (a) Section 72 (1)—
 Omit “books, deeds, papers and writings”, insert instead “documents or things”.
 (b) Section 72 (2), (3), (6)—
 Omit “book, deed, paper or writing” wherever occurring, insert instead “document or thing”.
- (39) Section 74 (**Proceedings may not be removed**)—
 Omit “a plaint filed in a court or of any order or proceedings thereon”, insert instead “an action commenced in a court”.
- (40) Section 84 (**Rules**)—
 (a) Section 84 (1) (f)—
 Omit “or required to attend in accordance with examination summonses”.
 (b) Section 84 (1) (k)—
 Omit “guardians ad litem or next friends”, insert instead “tutors”.
 (c) Section 84 (1) (k)—
 Omit “incapacity”, insert instead “disability”.
 (d) Section 84 (1) (1)—
 Omit “summons, plaint, notice of defence or other”.
 (e) Section 84 (1) (m)—
 Omit “defendants”, insert instead “parties”.
 (f) Section 84 (1) (n)-(w)—
 Omit section 84 (1) (n), insert instead:
 (n) the practice and procedure in relation to cross-claims;

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continued

- (o) the hearing of proceedings, including the procedure to be followed and the orders to be made when a party fails to attend when proceedings are called on for hearing;
 - (p) the transfer of an action, on the application of a defendant, from a court for a district to a court for another district;
 - (q) empowering a court to dispense with the rules of evidence for proving any matter that is not genuinely in dispute in any proceedings and to dispense with such rules of evidence as might cause expense or delay in proceedings if those rules were applied in specified circumstances;
 - (r) prescribing the circumstances in which judgments and orders may be set aside;
 - (s) providing for judgments by confession, agreement or consent, and providing for orders for judgment and default judgments and the circumstances in which those judgments and orders may be given, entered or made;
 - (t) prescribing matters relating to claims for, payment of, and entering up of judgment for, interest on money (including debts, damages and the value of goods) recovered or sought to be recovered in proceedings before a court;
 - (u) providing for any matters relating to the costs of proceedings;
 - (v) providing for the manner of payment of a judgment debt and prescribing the practice and procedure to be followed in relation to orders and agreements for varying the manner of payment of any such debt;
 - (w) all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or any other Act pursuant to which rules made under this Act apply.
- (g) Section 84 (1A) (1)—
Omit “under section 30 (3)”, insert instead “for costs in respect of an application to set aside a judgment or order”.

SCHEDULE 3—AMENDMENTS RELATING TO PENALTIES

(Sec. 3)

- (1) Section 46 (**Offences where judgment debtor attends for examination**)—
Omit “\$100”, insert instead “10 penalty units”.

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SCHEDULE 3—AMENDMENTS RELATING TO PENALTIES—
continued

(2) Section 76 (**Contempt of court**)—

Omit “\$100”, insert instead “10 penalty units”.

(3) Section 79 (**Obstructing bailiffs**)—

Omit “\$200”, insert instead “10 penalty units”.

SCHEDULE 4—AMENDMENTS BY WAY OF STATUTE LAW REVISION

(Sec. 3)

(1) Section 4 (**Definitions**)—

Section 4 (4)—

After section 4 (3), insert:

(4) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2) Section 5 (**Saving of jurisdiction**)—

Section 5 (2)—

Omit “Subject to section 3, where”, insert instead “Where”.

(3) Section 8 (**Registrar**)—

(a) Section 8 (4)—

Omit “shall have and may exercise”, insert instead “has”.

(b) Section 8 (4)—

Omit “powers, authorities, duties and”.

(4) Section 9 (**Bailiffs**)—

(a) Section 9 (2)—

Omit “and perform the powers, authorities, duties and”, insert instead “the”.

(b) Section 9 (3) (a)—

Omit “or perform any of the powers, authorities, duties or”, insert instead “any of the”.

(c) Section 9 (3) (a)—

Omit “powers, authorities, duties or” where secondly occurring.

(d) Section 9 (3) (a)—

Omit “or perform” where secondly occurring.

(e) Section 9 (3) (b) (i)—

Omit “or perform the powers, authorities, duties or”, insert instead “the”.

(f) Section 9 (3) (b) (i), (ii)—

Omit “and perform those powers, authorities, duties and” wherever occurring, insert instead “those”.

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 4—AMENDMENTS BY WAY OF STATUTE LAW REVISION—
continued

(5) Section 17 (**Jurisdiction where defendant is out of the State**)—

Section 17 (1)—

Omit “powers”, insert instead “functions”.

(6) Section 77 (**Proceedings after abolition of court**)—

Section 77 (4)—

Omit “, exercise or perform any of the jurisdiction, powers, authorities, duties”,
insert instead “or exercise any of the jurisdiction”.

(7) Section 79 (**Obstructing bailiffs**)—

Omit “his powers, authorities, duties or”, insert instead “the bailiff’s”.

(8) Section 84 (**Rules**)—

Section 84 (1) (c)—

Omit “powers and duties”, insert instead “functions”.

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The District Court (Civil Claims) Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are to amend the Local Courts (Civil Claims) Act 1970—

- (a) to increase from \$5,000 to—
 - (i) \$10,000 in cases other than motor vehicle property damage cases; and
 - (ii) \$20,000 in motor vehicle property damage cases, the maximum amount for which a civil action may be commenced in a Local Court (Schedule 1);
- (b) to modernise procedures applying to civil actions in Local Courts, bringing them more into line with the more efficient procedures in the District Court (Schedule 2);
- (c) to increase penalties for certain offences under that Act (Schedule 3); and
- (d) by way of statute law revision (Schedule 4).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedules of amendments to the Principal Act.

Clause 4 enables rules to be made under the Principal Act of a savings or transitional nature consequent on the enactment of the proposed Act.

SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION

The matters dealt with in Schedule 1 are:

Local Courts (Civil Claims) Amendment 1987

Maximum amount for civil actions

The Bill increases from \$5,000 to \$10,000, in cases other than motor vehicle property damage cases, and to \$20,000, in motor vehicle property damage cases, the maximum amount for which a civil action can be commenced in a Local Court. (Schedule 1 (2) (a) and (b) and (3)).

Effect on maximum amount of claims for interest

The Bill provides that an amount claimed in a civil action for interest, being interest which a Local Court could order to be included in a judgment, is to be disregarded in determining the maximum amount for which a claim can be commenced in a Local Court. (Schedule 1 (2) (b)).

Consequential amendments

Schedule 1 (1) and (2) (c) make amendments consequential on the other amendments made in this Schedule.

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES

The matters dealt with in Schedule 2 are:

Seals of Local Courts

The Bill requires each Local Court to have a seal which is to be applied to documents required to be sealed under the Principal Act or any other law. (Schedule 2 (2)—proposed section 7A). The provision conforms to section 8 (3) of the District Court Act 1973.

Commencement of civil action by plaint or summons

The Bill removes the requirement that civil actions in Local Courts be commenced by plaint or summons. It provides for those actions to be commenced by statement of claim and otherwise dealt with and defended in accordance with the rules made under the Principal Act. (Schedule 2 (3), (5), (6) (d), (17), (30), (35) (b), (c), (37), (39) and (40) (d)). Of the provisions to be inserted by the Bill, proposed sections 22 and 23 conform to sections 53 and 56 of the District Court Act 1973.

Cross-actions and set-offs

The Bill enables a cross-action, as well as a set-off, to be brought in a Local Court. These actions are referred to in the Bill as "cross-claims". The Bill also removes the restriction that one of several defendants cannot bring a cross-action unless all the defendants bring it. (Schedule 2 (1) (a), (4), (6) (a)–(c), (e)–(j), (11) (a)–(d), (12)–(16), (32) and (40) (f)).

Change of venue

The Bill removes from the Principal Act the detailed provisions relating to the circumstances in which an action, on the application of a defendant, may be removed from a Local Court to a Local Court for another district and empowers the making of rules to regulate the procedure. (Schedule 2 (7)).

The Bill also removes from the Principal Act the detailed provisions relating to the circumstances in which a Local Court may order a change of venue where it is satisfied that a pending action or proceeding could be more conveniently or fairly tried by another Local Court and empowers the making of rules to regulate the procedure. (Schedule 2 (9)).

Local Courts (Civil Claims) Amendment 1987

Removal of proceedings into District Court

The Bill amends section 21B (Removal of proceedings into District Court) of the Principal Act to provide that where the District Court makes an order for the removal to it of an action pending in a Local Court, the registrar of the Local Court in which the action is pending is to deliver the relevant records to the District Court. At present, the obligation to deliver the records is imposed on the registrar of the Local Court in which the action was commenced. (Schedule 2 (11) (e)).

Actions by minors for recovery of wages

The Bill omits section 21 (Minors) from the Principal Act. The section, which has never been availed of, enabled minors to sue for wages as if they were of full capacity. The corresponding provision in section 45 of the District Court Act 1973 was omitted in 1984. (Schedule 2 (10)).

Non-suit

The Bill omits section 26 (Procedure where a party does not appear) thereby removing from the Principal Act the detailed provisions relating to the circumstances in which a Local Court can non-suit a plaintiff who does not appear on the hearing of an action and empowers the making of rules to regulate the procedure. (Schedule 2 (18), (40) (f)).

Entering of judgments

The Bill omits section 27 (Default judgment) and section 28 (Judgment by confession or agreement) from the Principal Act and empowers the making of rules to regulate these procedures. (Schedule 2 (1) (b), (8), (18) and (40) (f)).

Setting aside of judgments

The Bill omits section 30 (Judgment may be set aside) from the Principal Act and empowers the making of rules to regulate this procedure. (Schedule 2 (19) and (40) (f) and (g)).

Costs

The Bill provides that costs payable as between the parties to an action are to be in the discretion of a Local Court and that scales of costs may be prescribed in the rules. (Schedule 2 (20), (26) and (40) (f)). Of the provisions to be inserted by the Bill, proposed sections 33, 34 and 35 conform to sections 148A, 148B (1) and 148D of the District Court Act 1973.

Interest on judgment debts

The Bill gives a Local Court a discretion to order that interest not be payable on a judgment debt. It also provides that, unless a Local Court otherwise orders, interest is not payable on a judgment debt if the judgment is paid within 21 days after judgment. (Schedule 2 (21)). These provisions are contained in proposed section 39 which conforms to section 85 of the District Court Act 1973.

Judgment in respect of a claim for interest

The Bill omits section 39B (Entering up of judgment for interest) from the Principal Act and empowers the making of rules to provide for the entering up of judgment for interest. (Schedule 2 (22) and (40) (f)).

Local Courts (Civil Claims) Amendment 1987

Payment of judgment debt by instalments

The Bill omits section 40 (Payment by instalments) from the Principal Act and empowers the making of rules to regulate the payment of a judgment debt by instalments. (Schedule 2 (23), (29), (33) and (40) (f)).

Summons for examination of judgment debtor

The Bill amends section 42 (Failure to attend in answer to examination summons) of the Principal Act—

- (a) to remove the requirement that conduct money must be tendered to a judgment debtor in connection with the service of an examination summons;
- (b) to impose a time limit of 3 months on the issue, at the request of a judgment creditor, of a warrant for the apprehension of a judgment debtor; and
- (c) to enable the 3-month time limit to be extended in appropriate circumstances. (Schedule 2 (25), (27), (28) and (40) (a)).

Payment by garnishee by instalments

The Bill omits section 53 (Garnishee may pay by instalments) from the Principal Act. The section has never been availed of. (Schedule 2 (31)).

Relief by way of interpleader

The Bill amends section 66 (Claim by third party to property seized by bailiff under writ of execution) to improve the interpleader provisions of the Principal Act by enabling a dispute as to the ownership of goods taken in execution to be brought before a Local Court without requiring the claimant to give security for the value of the goods in every case. (Schedule 2 (34) and (35)(a)).

Matters ancillary to hearing

The Bill empowers the making of rules that will enable a Local Court to order a party to provide further and better particulars of the party's claim or defence and that will make provision for or with respect to other matters ancillary to a hearing. (Schedule 2 (36)).

References to documents

The Bill replaces various references in the Principal Act to a "book, deed, paper or writing" with references to a "document or thing". (Schedule 2 (24), (28) and (38)). The substituted words conform to those used in the District Court Act 1973 (see, for example, sections 64 (1) (b) and 91 (2) (c)).

Rules

The Bill extends the rule-making powers under the Principal Act in numerous areas to enable the regulation of civil procedures in Local Courts to be brought, as far as practicable, into conformity with the regulation of civil procedures in other courts exercising civil jurisdiction. (Schedule 2 (40)).

SCHEDULE 3—AMENDMENTS RELATING TO PENALTIES

Schedule 3 to the Bill increases the penalties for certain offences under the Principal Act. The increased penalties are expressed in terms of penalty units. Under section 56 of the Interpretation Act 1987 the value of a penalty unit is currently \$100.

Local Courts (Civil Claims) Amendment 1987

Schedule 3 (1) amends section 46 of the Principal Act to increase the penalty for offences committed by a judgment debtor on attending an examination by a judgment creditor from \$100 to 10 penalty units.

Schedule 3 (2) amends section 76 of the Principal Act to increase the penalty for the offence of contempt in the face of a Local Court or registrar from \$100 to 10 penalty units.

Schedule 3 (3) amends section 79 of the Principal Act to increase the penalty for the offence of obstructing a bailiff from \$200 to 10 penalty units.

SCHEDULE 4—AMENDMENTS BY WAY OF STATUTE LAW REVISION

Schedule 4 (2) omits an obsolete reference.

The other items in Schedule 4 abbreviate references to the exercise of powers, authorities, duties and functions and the performance of duties.

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 11, 1970
4. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES

SCHEDULE 3—AMENDMENTS RELATING TO PENALTIES

SCHEDULE 4—AMENDMENTS BY WAY OF STATUTE LAW REVISION

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Local Courts (Civil Claims) Act 1970 to increase the maximum amount for which a civil action may be commenced in a Local Court and with respect to the civil procedures of Local Courts.

See also District Court (Civil Claims) Amendment Bill 1987.

Local Courts (Civil Claims) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Courts (Civil Claims) Amendment Act 1987.

5 Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendment of Act No. 11, 1970

3. The Local Courts (Civil Claims) Act 1970 is amended as set out in
10 Schedules 1-4.

Savings and transitional provisions

4. (1) The rules under the Local Courts (Civil Claims) Act 1970 may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

15 (2) A provision referred to in subsection (1) may, if the rules so provide, take effect as from the date of commencement of a provision of this Act or a later day.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the
20 Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- 25 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION

(Sec. 3)

(1) Section 4 (**Definitions**)—

30 Section 4 (1)—
 Omit the definition of “admitted set-off”.

(2) Section 12 (**Limits of jurisdiction**)—

- (a) Section 12 (1)—
 Omit “\$5,000”, insert instead “\$10,000”.
- 35 (b) Section 12 (2)-(4)—

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION—
continued

After section 12 (1), insert:

(2) Notwithstanding subsection (1), but otherwise subject to this Part, a court shall have jurisdiction to hear and determine actions for damages arising out of the use of a motor vehicle within the meaning of the Transport Accidents Compensation Act 1987 (other than damages in respect of the death of or bodily injury, within the meaning of that Act, to a person) in which the amount claimed is not more than \$20,000.

(3) If the amount claimed in an action includes interest (being interest which the court could, under section 39A (1), order to be included in the amount for which it could give judgment), that interest shall be disregarded for the purposes of—

(a) determining whether the maximum amount for which the action is authorised by this Act to be brought has been exceeded or not; and

(b) determining whether or not the court has jurisdiction to hear and determine the action.

(4) If—

(a) an amendment to subsection (1) or (2) which is enacted after, or was enacted before, the commencement of Schedule 1 to the Local Courts (Civil Claims) Amendment Act 1987 has or had the effect of increasing an amount specified in either of those subsections; and

(b) an action in which an amount of money is claimed is pending in a court at the time when the amendment has effect or, as the case may be, an action in which an amount of money is claimed was pending in a court at the time when the amendment had effect and has not been finally determined,

the court may, on the application of a plaintiff, make an order altering the amount specified in the claim to an amount not exceeding that specified in subsection (1) or (2) (whichever applies to the action) as in force immediately after the amendment has or had effect.

(c) Section 12 (7)—

After section 12 (6), insert:

(7) In subsection (1), “admitted set-off”, in relation to an action, means set-off admitted by the plaintiff in the document by the filing of which the action is commenced.

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO JURISDICTION—
continued

(3) Section 13 (Actions not to be split or divided)—

Section 13 (3)—

Omit “\$5,000”, insert instead “the amount for which an action on that claim may be brought in a court”.

5 SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES

(Sec. 3)

(1) Section 4 (Definitions)—

(a) Section 4 (1)—

After the definition of “court”, insert:

10 “cross-claim” includes cross-action and set-off;

(b) Section 4 (3)—

Omit the subsection, insert instead:

(3) A reference in this Act to—

15 (a) the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under any provision of the rules prescribed for the purposes of this paragraph; and

20 (b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with any provision of a rule so prescribed.

(2) Section 7A—

After section 7, insert:

Seals of courts

7A. (1) Each court shall have a seal.

25 (2) Any document required by or under this or any other Act or law to be sealed or stamped with the seal of a court shall be so sealed or stamped.

(3) Section 11 (Appearance of parties)—

Section 11 (6)—

30 Omit “plaint, summons”, insert instead “statement of claim”.

(4) Section 13 (Actions not to be split or divided)—

(a) Section 13 (1), (2)—

Omit the subsections, insert instead:

(1) In this section—

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

“cross-claim” means a cross-claim which a defendant is entitled to bring under section 15.

5 (2) Where a person splits or divides any cause of action against another person so as to bring an action or a cross-claim in a court for part of the amount for which an action or cross-claim may be brought on that cause, and judgment is given or entered up, or a final order is made, on that action or cross-claim, that other person is entitled to judgment in any other action or cross-claim brought or pleaded on that cause (whether brought in a Local Court or brought or pleaded in any other court).

(b) Section 13 (3)—

Omit “on, or plead a defence by way of set-off,” insert instead “or a cross-claim on”.

(c) Section 13 (3)—

15 Omit “were an action for the recovery of, and each of those set-offs were a set-off claiming,” insert instead “and cross-claims were an action or cross-claim for the recovery of”.

(5) Section 14 (**Abandonment**)—

(a) Section 14—

20 Omit “a claim may be filed”, insert instead “an action may be brought on that cause”.

(b) Section 14—

Omit “on the claim”, insert instead “in the document by the filing of which the action is commenced”.

25 (c) Section 14 (a)—

Omit “a claim may be so filed”, insert instead “an action may be so brought”.

(d) Section 14 (b)—

Omit “upon the claim”, insert instead “in the action”.

30 (6) Section 15 (**Cross-claim**)—

(a) Section 15 (1), (2)—

Omit the subsections, insert instead:

35 (1) The defendant, or one of two or more defendants, in an action in a court may, subject to and in accordance with the rules, bring a cross-claim against the plaintiff, or one of two or more plaintiffs, if the amount claimed in the cross-claim does not exceed the amount for which an action may be brought under this Act on the cause of action on which the cross-claim is brought.

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

(b) Section 15 (3)—

Omit the subsection, insert instead:

5 (3) If a defendant has a cause of action against a plaintiff for more than the amount for which an action may be brought under this Act on that cause of action, the defendant may, where the defendant brings a cross-claim on that cause of action, abandon the excess.

(c) Section 15 (4)—

Omit “set-off” where firstly occurring, insert instead “cross-claim”.

10 (d) Section 15 (4) (a)—

Omit “a plaint may be filed”, insert instead “an action may be brought on the defendant’s cause of action”.

(e) Section 15 (4) (b)—

Omit “set-off” where firstly occurring, insert instead “cross-claim”.

15 (f) Section 15 (4) (b)—

Omit “the cause of action in respect of which the defendant pleaded the defence by way of set-off”, insert instead “the defendant’s cause of action”.

(g) Section 15 (5), (6)—

20 Omit the subsections.

(h) Section 15 (7)—

Omit “defence pleaded by the defendant by way of set-off”, insert instead “cross-claim”.

(i) Section 15 (7) (b)—

25 Omit “set-off”, insert instead “cross-claim”.

(j) Section 15 (10)—

Omit the subsection.

(7) Section 16—

Omit the section, insert instead:

30 **Where action may be brought**

16. (1) Every court, wherever situated, shall have jurisdiction in accordance with this Act.

35 (2) Subject to and in accordance with the rules, an action commenced in a court for a district may, on the application of a defendant, be transferred to, and heard and determined in, a court for another district.

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

(3) This section and any rules made for the purposes of this section have effect subject to the provisions of any other Act conferring jurisdiction on courts.

(8) Section 17 (**Jurisdiction where defendant is out of the State**)—

5 Section 17 (1)—

Omit “by section 25A, 27, 28 or 40”, insert instead “by or under this Act”.

(9) Section 18 (**Change of venue**)—

(a) Section 18 (1)—

10 After “may” insert “, subject to and in accordance with the rules,”.

(b) Section 18 (1A)–(3)—

Omit the subsections.

(10) Section 21 (**Minors**)—

15 Omit the section.

(11) Section 21B (**Removal of proceedings into District Court**)—

(a) Section 21B (1)—

Omit the subsection, insert instead:

20 (1) If an action is pending in a court, the District Court may, on application by a party to the action, order that the action, including any cross-claim brought in relation to the action, be removed into the District Court sitting at such proclaimed place as the District Court may specify in the order.

(b) Section 21B (2)—

25 Omit “(8)”, insert instead “(6)”.

(c) Section 21B (4)—

Omit “(7)”, insert instead “(5)”.

(d) Section 21B (4)—

Omit “, or in the proceedings in relation to the set-off,”.

30 (e) Section 21B (5)—

Omit “commenced”, insert instead “pending”.

(12) Section 21C (**Stay of proceedings in Local Court**)—

(a) Section 21C (1)—

Omit “of proceedings in relation to a set-off or of both,”.

35 (b) Section 21C (1)—

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

Omit “or of the proceedings, if any, in relation to the set-off”.

(13) Section 21D (Place of application for removal or stay)—

(a) Section 21D (1)—

Omit “in a court, of proceedings in a court in relation to a set-off or of both”.

(b) Section 21D (1)—

Omit “or proceedings” where secondly occurring.

(14) Section 21E—

Omit the section, insert instead:

Proceedings after removal

21E. (1) Where an order under section 21B (1) for removal into the District Court of an action in a court takes effect, the action ceases to be an action in the court, but proceedings in the action continue, in accordance with rules made under the District Court Act 1973, in the District Court as if the action had been duly commenced, and any cross-claim brought in relation to the action had been duly pleaded, in the District Court at the proclaimed place specified in the order on the date on which the action was commenced, or the cross-claim was brought, as the case may be, in the court.

(2) Where any proceedings continue in the District Court as referred to in subsection (1), any abandonment made in accordance with section 14 or 15 has no further force or effect except to the extent that the amount originally claimed in the action, or in any cross-claim brought in relation to the action, before any abandonment exceeded the appropriate amount specified in section 44 (1) (a), (aa) or (b) of the District Court Act 1973, as the case may be.

(3) Where an order under section 21B (1) for removal into the District Court of an action in a court takes effect, any admission made in accordance with the rules for the purposes of the action, including the purposes of any cross-claim brought in relation to the action, shall, if it could have been made in accordance with the rules made under the District Court Act 1973, be treated as an admission made under those rules.

(4) Subsection (1) has effect subject to—

(a) the District Court Act 1973 and the rules made under that Act; and

(b) any order of the District Court as to procedure.

Local Courts (Civil Claims) Amendment 1987

SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

(5) An order made by a court in an action removed into the District Court under section 21B (1) may be set aside or varied, and is subject to appeal, as if made by the District Court.

5 (6) Costs payable under an order of the District Court in respect of any step in an action removed into the District Court under section 21B (1) shall be limited as may be prescribed in the rules.

(15) Section 21F (Removal of proceedings from District Court)—

(a) Section 21F (1), (2)—

10 Omit the subsections, insert instead:

15 (1) Where an action is pending in the District Court and the District Court is satisfied that the action could properly have been commenced as an action in a court, and that any cross-claim pleaded in relation to the action could properly have been brought as a cross-claim in a court, the District Court may, on application by a party to the action or of its own motion, order that the action, including any cross-claim pleaded in relation to the action, be removed into a court for such district as the District Court shall specify in the order.

20 (2) The District Court shall not make an order under subsection (1) in respect of an action unless it is satisfied that—

(a) the document by the filing of which the action was commenced has been served on the defendant; and

25 (b) any cross-claim pleaded in relation to the action has been served on the plaintiff.

(b) Section 21F (4)—

Omit “(7)”, insert instead “(4)”.

(c) Section 21F (4)—

Omit “, or in the proceedings in relation to the cross-claim,”.

30 (d) Section 21F (5)—

Omit “, and in any proceedings in relation to the cross-claim,”.

(16) Section 21G—

*Local Courts (Civil Claims) Amendment 1987***SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—**
continued

Omit the section, insert instead:

Proceedings after removal

21G. (1) Where an order under section 21F (1) for removal into a court of an action in the District Court takes effect, the action ceases to be an action in the District Court but proceedings in the action continue in the court as if the action had been duly commenced, and any cross-claim pleaded in relation to the action had been duly brought, in a court for the district specified in the order on the date on which the action was commenced, or the cross-claim was pleaded, as the case may be, in the District Court.

(2) Where an order under section 21F (1) for removal into a court of an action takes effect, any admission made in accordance with the rules made under the District Court Act 1973 for the purposes of the action, including the purposes of any cross-claim pleaded in relation to the action, shall, if it could have been made under the rules, be treated as an admission made under the rules in the action in that court.

(3) Subsection (1) has effect subject to this Act and the rules.

(4) An order made by the District Court in an action removed into a court under section 21F (1) may be set aside or varied, and is subject to appeal, as if made by the court.

(5) No costs shall be payable under an order of the District Court in respect of any step in an action removed into a court under section 21F (1).

(6) In respect of an action removed into a court under section 21F (1), the court may order that such costs as may be prescribed be payable in respect of the order of removal, the copies of the order and any step taken in the action before the order of removal takes effect.

(17) Part IV, Divisions 1–3A—

Omit the Divisions, insert instead:

Division 1—Commencement of actions**Manner of commencement of actions**

22. An action in a court, and any proceedings ancillary to an action, shall be commenced in the manner prescribed by the rules.

Division 2—Defences**Right to defend action**

23. A person against whom an action in a court has been commenced may defend the action and any proceedings ancillary to the action as prescribed by the rules.

*Local Courts (Civil Claims) Amendment 1987***SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—**
continued

(18) Sections 26–28—

Omit the sections.

(19) Section 30 (**Judgment may be set aside**)—

Omit the section.

5 (20) Part IV, Division 5—

Omit the Division, insert instead:

Division 5—Costs

Interpretation

10 33. In this Division, a reference to costs is a reference to costs payable between party and party, including disbursements.

Costs to be in discretion of court

34. (1) Subject to this Act and the rules, and subject to any other Act—

15 (a) costs in or in relation to an action shall be in the discretion of a court;

(b) a court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to an action; and

20 (c) a court has full power to determine the amount of costs to be paid in or in relation to an action, or to direct how that amount is to be determined.

25 (2) The rules may provide that the amount of any costs in relation to the commencement of an action, the entry of default judgment, the giving of judgment in undefended actions and any process for the enforcement of a judgment shall be determined in accordance with scales prescribed in the rules.

30 (3) The rules may provide that the amount of any costs in relation to a contested action shall be determined in accordance with scales prescribed in the rules unless the Magistrate before whom the action is heard (or, in the case of an action determined under section 15 (1) of the Arbitration (Civil Actions) Act 1983, a Magistrate on the application of a party) certifies that in the special circumstances applying to the action the amount of the costs should not be so determined.

35 (4) Any scales prescribed as referred to in subsection (2) or (3) may be varied by a determination made under section 20J (2) (c) of the Legal Practitioners Act 1898.

*Local Courts (Civil Claims) Amendment 1987***SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—**
*continued***Costs to form part of judgment debt**

35. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

(21) Section 39—

Omit the section, insert instead:

Interest on judgment debt

39. (1) Unless a court orders in any particular case that interest be not payable, interest shall, subject to subsection (3), be payable on so much of the amount of a judgment debt as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of a judgment debt shall—

(a) subject to subsection (3), be calculated as from the date when the judgment debt came into being or from such later date as a court in any particular case fixes;

(b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act 1970; and

(c) form part of the judgment debt, but not so as to require the payment of interest upon interest.

(3) Where—

(a) the amount of a judgment debt (excluding the amount of any costs remaining to be ascertained) is paid in full within 21 days after the judgment debt becomes payable; or

(b) any amount of costs is paid in full within 21 days after that amount is ascertained,

interest shall, unless a court otherwise orders in any particular case, not be payable on the amount so paid.

(22) Section 39B (Entering up of judgment for interest)—

Omit the section.

(23) Part V, Division 1 (Payment by instalments)—

Omit the Division.

(24) Section 41 (Summons for examination of judgment debtor)—

(a) Section 41 (2) (c)—

Omit “books, deeds, papers and writings”, insert instead “documents or things”.

(b) Section 41 (2) (c)—

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SCHEDULE 2—AMENDMENTS RELATING TO PROCEDURES—
continued

After “judgment debtor” where secondly occurring, insert “which tend to show the judgment debtor’s true financial circumstances”.

(c) Section 41 (3)—

5 Omit “book, deed, paper or document”, insert instead “document or thing”.

(25) Section 42 (**Failure to attend in answer to examination summons**)—

(a) Section 42 (1)—

Omit the subsection, insert instead:

10 (1) If, at the time set down (whether originally or on an adjournment) for the examination of a judgment debtor before a registrar—

(a) the judgment debtor fails to attend before the registrar;

(b) the registrar has no information which satisfies the registrar that the judgment debt has been paid; and

15 (c) there is due proof of service of the examination summons on the judgment debtor (or, if the examination has been adjourned, of service on the judgment debtor of notice of the time and place fixed for the examination),

20 the registrar shall, as soon as practicable, report in writing to the court of which he or she is registrar that the judgment debtor has failed so to attend.

(b) Section 42 (4)—

After “days” insert “, and not later than 3 months,”.

(c) Section 42 (4A)—

25 After section 42 (4), insert:

(4A) If a judgment creditor fails to make an application under subsection (4) within the time limited by that subsection, the court may, on satisfactory explanation by the judgment creditor as to the reasons for the failure, and if it thinks fit, direct the registrar to issue a warrant for the apprehension of the judgment debtor.

30

(26) Section 43A (**Examination notice**)—

Section 43A (3)—

Omit “, pursuant to section 33 (1),”.

(27) Section 44 (**Examination of judgment debtor**)—

35 (a) Section 44 (1)—

Omit “section 42 (4)”, insert instead “section 42”.

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continued

(b) Section 44 (2), (3)—

Omit the subsections.

(28) Section 46 (**Offences where judgment debtor attends for examination**)—

Section 46 (c)—

5 Omit “books, deeds, papers or writings”, insert instead
“documents or things”.

(29) Section 48 (**Continuous operation of garnishee order**)—

Section 48 (1)—

10 Omit “under section 40”, insert instead “in accordance with the
rules providing for a judgment debt to be paid by instalments”.

(30) Section 52 (**Procedure where garnishee order not complied with**)—

Section 52 (5)—

Omit “filed a plaint and summons to commence”, insert instead
“commenced”.

15 (31) Section 53 (**Garnishee may pay by instalments**)—

Omit the section.

(32) Section 63 (**Enforcement where judgment given on action and cross-
claim**)—

(a) Section 63—

20 Omit “defence by way of set-off is pleaded in”, insert instead
“cross-claim is brought in relation to”.

(b) Section 63—

Omit “the set-off”, insert instead “the cross-claim”.

(33) Section 64A (**Limitation on enforcement**)—

25 Section 64A (1)—

Omit “40 (1),”.

(34) Section 66 (**Claim by third party to property seized by bailiff under writ
of execution**)—

Section 66 (3A), (3B)—

30 After section 66 (3), insert:

(3A) Subject to and in accordance with the rules, where a claim
is made to any property under subsection (1) (b) and the claimant
has not paid any amount, or given any security, to the bailiff
under subsection (1) (d), the bailiff may—

35 (a) apply for relief by way of interpleader under section 65 in
respect of the property; and

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continued

(b) postpone the sale of the property pending hearing by the court of the application for relief.

5 (3B) Upon the hearing of an application referred to in subsection (3A), the court shall adjudicate on the claim to the property the subject of the application and shall make such order between the parties in respect of that property, and of the costs of the proceedings on the application, as may to it seem fit.

(35) **Section 67 (Registrar to issue summons and record commencement of interpleader action)—**

10 (a) Section 67 (1)—

After “section 65”, insert “, other than an application referred to in section 66 (3A)”.

(b) Section 67 (3)—

15 Omit “enter an interpleader complaint”, insert instead “record the commencement of an interpleader action”.

(c) Section 67 (3)—

Omit “thereon”.

(36) **Section 69A—**

Before section 70, insert:

20 **Matters ancillary to hearing**

69A. (1) The rules may make provision for or with respect to—

(a) empowering a party to an action to give another party a notice requiring that other party to do any one or more of the following things:

25 (i) to produce documents at the hearing of the action;

(ii) to attend for a medical examination;

(iii) to make admissions for the purposes of the action;

(b) the manner of compliance with such a requirement; and

30 (c) empowering a court to make such orders as may be prescribed in the event of failure to comply with such a requirement.

(2) Without limiting the generality of subsection (1), the rules may make provision for or with respect to empowering a court to order that a party—

35 (a) produce documents at the hearing of any action;

(b) attend for a medical examination;

(c) make admissions for the purposes of any action; or

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continued

(d) give further particulars of any action commenced, grounds of defence filed or cross-claim brought by the party, and empowering the court to make such further order as may be prescribed in the event of the failure of a party to comply with an order made under rules made for the purposes of this subsection.

(37) Section 71 (**Arbitration award may be entered up as a judgment**)—

Section 71 (b)—

Omit “plaint commencing the action was filed”, insert instead “hearing of the action is pending”.

(38) Section 72 (**Witnesses**)—

(a) Section 72 (1)—

Omit “books, deeds, papers and writings”, insert instead “documents or things”.

(b) Section 72 (2), (3), (6)—

Omit “book, deed, paper or writing” wherever occurring, insert instead “document or thing”.

(39) Section 74 (**Proceedings may not be removed**)—

Omit “a plaint filed in a court or of any order or proceedings thereon”, insert instead “an action commenced in a court”.

(40) Section 84 (**Rules**)—

(a) Section 84 (1) (f)—

Omit “or required to attend in accordance with examination summonses”.

(b) Section 84 (1) (k)—

Omit “guardians ad litem or next friends”, insert instead “tutors”.

(c) Section 84 (1) (k)—

Omit “incapacity”, insert instead “disability”.

(d) Section 84 (1) (1)—

Omit “summons, plaint, notice of defence or other”.

(e) Section 84 (1) (m)—

Omit “defendants”, insert instead “parties”.

(f) Section 84 (1) (n)–(w)—

Omit section 84 (1) (n), insert instead:

(n) the practice and procedure in relation to cross-claims;

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continued

- (o) the hearing of proceedings, including the procedure to be followed and the orders to be made when a party fails to attend when proceedings are called on for hearing;
- 5 (p) the transfer of an action, on the application of a defendant, from a court for a district to a court for another district;
- (q) empowering a court to dispense with the rules of evidence for proving any matter that is not genuinely in dispute in any proceedings and to dispense with such rules of evidence as might cause expense or delay in proceedings if those rules were applied in specified circumstances;
- 10 (r) prescribing the circumstances in which judgments and orders may be set aside;
- (s) providing for judgments by confession, agreement or consent, and providing for orders for judgment and default judgments and the circumstances in which those judgments and orders may be given, entered or made;
- 15 (t) prescribing matters relating to claims for, payment of, and entering up of judgment for, interest on money (including debts, damages and the value of goods) recovered or sought to be recovered in proceedings before a court;
- 20 (u) providing for any matters relating to the costs of proceedings;
- (v) providing for the manner of payment of a judgment debt and prescribing the practice and procedure to be followed in relation to orders and agreements for varying the manner of payment of any such debt;
- 25 (w) all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or any other Act pursuant to which rules made under this Act apply.
- 30 (g) Section 84 (1A) (1)—
Omit “under section 30 (3)”, insert instead “for costs in respect of an application to set aside a judgment or order”.

35 SCHEDULE 3—AMENDMENTS RELATING TO PENALTIES

(Sec. 3)

- (1) Section 46 (**Offences where judgment debtor attends for examination**)—
Omit “\$100”, insert instead “10 penalty units”.

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SCHEDULE 3—AMENDMENTS RELATING TO PENALTIES—
continued

(2) Section 76 (**Contempt of court**)—

Omit “\$100”, insert instead “10 penalty units”.

(3) Section 79 (**Obstructing bailiffs**)—

Omit “\$200”, insert instead “10 penalty units”.

5 **SCHEDULE 4—AMENDMENTS BY WAY OF STATUTE LAW REVISION**

(Sec. 3)

(1) Section 4 (**Definitions**)—

Section 4 (4)—

After section 4 (3), insert:

10 (4) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

15 (2) Section 5 (**Saving of jurisdiction**)—

Section 5 (2)—

Omit “Subject to section 3, where”, insert instead “Where”.

(3) Section 8 (**Registrar**)—

(a) Section 8 (4)—

20 Omit “shall have and may exercise”, insert instead “has”.

(b) Section 8 (4)—

Omit “powers, authorities, duties and”.

(4) Section 9 (**Bailiffs**)—

(a) Section 9 (2)—

25 Omit “and perform the powers, authorities, duties and”, insert instead “the”.

(b) Section 9 (3) (a)—

Omit “or perform any of the powers, authorities, duties or”, insert instead “any of the”.

(c) Section 9 (3) (a)—

30 Omit “powers, authorities, duties or” where secondly occurring.

(d) Section 9 (3) (a)—

Omit “or perform” where secondly occurring.

(e) Section 9 (3) (b) (i)—

Omit “or perform the powers, authorities, duties or”, insert instead “the”.

35 (f) Section 9 (3) (b) (i), (ii)—

Omit “and perform those powers, authorities, duties and” wherever occurring, insert instead “those”.

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SCHEDULE 4—AMENDMENTS BY WAY OF STATUTE LAW REVISION—
continued

- (5) Section 17 (**Jurisdiction where defendant is out of the State**)—
 - Section 17 (1)—
 - Omit “powers”, insert instead “functions”.
- 5 (6) Section 77 (**Proceedings after abolition of court**)—
 - Section 77 (4)—
 - Omit “, exercise or perform any of the jurisdiction, powers, authorities, duties”, insert instead “or exercise any of the jurisdiction”.
- (7) Section 79 (**Obstructing bailiffs**)—
 - Omit “his powers, authorities, duties or”, insert instead “the bailiff’s”.
- 10 (8) Section 84 (**Rules**)—
 - Section 84 (1) (c)—
 - Omit “powers and duties”, insert instead “functions”.

