

**COURTS OF PETTY SESSIONS
(CIVIL CLAIMS) AMENDMENT ACT.**

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 106, 1975.

An Act to extend the civil jurisdiction of courts of petty sessions; to provide an expedited procedure by way of special summons where a plaintiff's claim is disputed by the defendant only as to the amount claimed; to make further provisions with respect to the enforcement of judgments on civil claims given or entered up in courts of petty sessions; for these and other purposes to amend the Courts of Petty Sessions (Civil Claims) Act, 1970. [Assented to, 23rd December, 1975.]

BE

Courts of Petty Sessions (Civil Claims) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by No. 106, 1975 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Courts of Petty Sessions Short title. (Civil Claims) Amendment Act, 1975".

2. (1) This section and sections 1, 4 and 5 shall Commence- commence on the date of assent to this Act. ment.

(2) Section 3 shall, in its application to each item of Schedule 1, except item (35), commence on the day on which that item commences.

(3) The several items of Schedule 1, except item (35), shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Section 3, in its application to Schedule 1 (35), and Schedule 1 (35) shall be deemed to have commenced on 1st January, 1972.

3. The Courts of Petty Sessions (Civil Claims) Act, 1970, Amendment is amended in the manner set forth in Schedule 1. of Act No. 11, 1970.

4. Subject to section 5, any action or other proceeding in Savings. a court or before the registrar of a court under the Courts of Petty Sessions (Civil Claims) Act, 1970, as in force at any time before the commencement of an item of Schedule 1 (except proceedings under section 42 or 43 of that Act) and not completed when that item commences may be continued and completed, and a judgment or order in that action or proceeding may be given, entered up or made, as if that item had not been enacted.

5.

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106, 1975
Transitional
provisions.

5. (1) Section 42 of the Courts of Petty Sessions (Civil Claims) Act, 1970, as inserted by Schedule 1 (67), applies to and in respect of a judgment debtor in respect of whom an examination summons has been filed before the commencement of section 42 of that Act, as so inserted, as well as to a judgment debtor in respect of whom such a summons is filed after that commencement.

(2) Upon the date of commencement of section 42 of the Courts of Petty Sessions (Civil Claims) Act, 1970, as inserted by Schedule 1 (67)—

(a) where a penalty has been imposed on a judgment debtor pursuant to section 42 (1) of that Act, as in force at any time before that date, and—

(i) that penalty has not been wholly paid; and

(ii) if a warrant under section 43 (1) of that Act, as in force at any time before that date, has been issued by reason of the failure of the judgment debtor to pay that penalty, the judgment debtor has not been apprehended or imprisoned pursuant to that warrant,

the registrar of the court by which the penalty was imposed or by whom the warrant was issued shall be deemed to have been, on that date, authorised pursuant to section 42 (2) (a) of the Courts of Petty Sessions (Civil Claims) Act, 1970, as inserted by Schedule 1 (67), by the court of which he is the registrar to issue a warrant for the apprehension of the judgment debtor;

(b) any judgment debtor imprisoned pursuant to a warrant, referred to in paragraph (a) (ii), shall be forthwith discharged from the custody in which he is held by reason only of the warrant;

(c)

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- (c) any such warrant as is referred to in paragraph (a) (ii), whether executed or not, shall be deemed to be cancelled; and
- (d) any penalty imposed pursuant to section 42 (1) (a) of the Courts of Petty Sessions (Civil Claims) Act, 1970, as in force at any time before that date, shall be deemed to have been remitted to the extent that it was unpaid at that date.

SCHEDULE 1.

Sec. 3.

AMENDMENT OF COURTS OF PETTY SESSIONS (CIVIL CLAIMS)
ACT, 1970.

(1) Section 2—

After the matter relating to Part IV, Division 2,
insert :—

DIVISION 2A.—*Special Summons*—s. 23A.

(2) Section 2—

After the matter relating to Part IV, Division 3,
insert :—

DIVISION 3A.—*Order for Judgment*—s. 25A.

(3) Section 4 (1), definition of “admitted set-off”—

After “pleads a”, insert “defence by way of”.

(4)

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106, 1975 (4) Section 7—

Omit “a District Court”, insert instead “the District Court”.

(5) Section 10 (2)—

Omit “delivered to or left at the usual place of abode of”, insert instead “served on”.

(6) Section 11 (1), (1A), (1B)—

Omit section 11 (1), insert instead :—

(1) A party to an action or other proceeding under this Act may appear—

(a) in person;

(b) by his spouse or employee authorised by him in writing in that behalf; or

(c) by a barrister or attorney retained by or on behalf of that party or by an attorney employed (as an agent or otherwise) by an attorney so retained.

(1A) The reference in subsection (1) (b) to an employee of a party includes, where the party is a body corporate or other body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person, a reference to an officer (including a director or any person having, whether alone or with others, powers of management, direction or control of that body) of that body authorised in writing by that body to appear on its behalf for the purposes of this Act.

(1B)

Courts of Petty Sessions (Civil Claims) Amendment.

(1B) Any authority referred to in subsection No. 106, 1975
(1A) may be given for the purposes only of the
action or other proceeding specified in the authority,
or the purposes of all actions or other proceedings
brought, or to be brought, under this Act.

(7) Section 11 (6)—

After “given” wherever occurring, insert “, served”.

(8) Section 12 (1)—

Omit “five hundred dollars”, insert instead “\$2,000”.

(9) Section 12 (2)—

Omit “two hundred and fifty dollars”, insert instead
“\$1,250”.

(10) Section 12 (2)—

After “give”, insert “to the registrar”.

(11) Section 12 (2)—

After “proclaimed place”, insert “, as defined in
section 4 (1) of the District Court Act, 1973,”.

(12) Section 12 (2) (a)—

Omit “is resident or carries on his business”, insert
instead “has his place of abode, business or
employment”.

(13) Section 13 (1)—

After “means a”, insert “defence by way of”.

(14)

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106, 1975 (14) Section 13 (2) (b)—

After “plead a”, insert “defence by way of”.

(15) Section 13 (3)—

Omit “five hundred dollars”, insert instead “\$2,000”.

(16) Section 13 (3)—

After “plead”, insert “a defence”.

(17) Section 15 (1)—

Omit “by way of set-off” where firstly occurring,
insert instead “a defence by way of set-off of”.

(18) Section 15 (1)—

Omit “five hundred dollars”, insert instead “\$2,000”.

(19) Section 15 (2)—

Omit “plead a set-off unless he has given the prescribed notice of set-off in accordance with the rules”, insert instead “plead a defence by way of set-off unless he has filed with the registrar the prescribed notice of set-off in accordance with the rules and—

(a) where the action was commenced by filing a special summons, has included that prescribed notice in the notice of defence filed under section 23A (2) (a) or (c);
or

(b) where the action was commenced by filing a default summons, has included that prescribed notice in the notice of defence filed under section 25 (1)”.

(20)

Courts of Petty Sessions (Civil Claims) Amendment.

(20) Section 15 (3)—

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Omit “claims an amount arising out of that cause of action by way of set-off”, insert instead “pleads a defence by way of set-off arising out of that cause of action”.

(21) Section 15 (4) (b)—

After “pleaded the”, insert “defence by way of”.

(22) Section 15 (5)—

Omit “plea of set-off shall not be made”, insert instead “defence shall not be pleaded by way of set-off”.

(23) Section 15 (6)—

After “pleaded”, insert “as a defence”.

(24) Section 15 (6)—

Omit “five hundred dollars”, insert instead “\$2,000”.

(25) Section 15 (7)—

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

(26) Section 15 (8)—

Omit “claim”, insert instead “defence”.

(27)

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No. 106, 1975 (27) Section 15 (8)—

Omit “set-off” where secondly occurring, insert instead “defence”.

(28) Section 15 (8)—

Omit “in the plea exceeds two hundred and fifty dollars”, insert instead “by way of set-off exceeds \$1,250”.

(29) Section 15 (9)—

Omit “plea”, insert instead “defence”.

(30) Section 15 (9)—

Omit “claim pleaded”, insert instead “amount claimed by way of set-off”.

(31) Section 15 (10)—

After section 15 (9), insert :—

(10) A defence by way of set-off pleaded under this section does not, except as provided in section 23A (4), constitute an admission of the plaintiff’s claim.

(32) Section 16 (2) (a)—

Omit “has his place of abode or business”, insert instead “had, at the time the cause of action arose, his place of abode, business or employment or has, at the time the action is commenced, his place of abode, business or employment”.

(33)

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(33) Section 16 (2)—

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After “given”, insert “to the registrar”.

(34) Section 16 (2)—

After “action” where thirdly occurring, insert “(whether or not, in the case of an action commenced by the filing of a special summons, in the manner referred to in section 23A (2) (b) or (c))”.

(35) Section 17 (1)—

After “Act”, insert “and a registrar may exercise the powers conferred on him by section 27 or 28”.

(36) Section 23—

After “default summons”, insert “or a special summons”.

(37) Part IV, Division 2A—

After Division 2, insert :—

DIVISION 2A.—*Special Summons.*

23A. (1) A special summons, instead of an ^{Special} ordinary summons, may be filed commencing an ^{summons.} action at the court at which the summons is filed.

(2) The defendant may, at any time before judgment is given against him on a special summons, file with the registrar notice of defence to the action specifying that—

(a) he intends to defend the action;

(b)

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- (b) he intends to defend the action only as to the amount claimed by the plaintiff; or
- (c) he intends to defend the action only as to the amount claimed by the plaintiff and by way of set-off or only by way of set-off.

(3) The registrar shall forthwith serve on the plaintiff a copy of any notice of defence filed by the defendant and list the action for hearing.

(4) Where a notice of defence filed by the defendant specifies that he intends to defend the action as referred to in subsection (2) (b) or (c) he shall, unless the court hearing the action otherwise orders under subsection (5), be deemed, for the purposes only of the action, to have admitted liability for the plaintiff's claim and the action shall go to trial, where the notice of defence filed by the defendant specifies that he intends to defend the action—

- (a) as referred to in subsection (2) (b)—only as to the assessment of the amount to be recovered by the plaintiff; or
- (b) as referred to in subsection (2) (c)—only as to the assessment of the amount to be recovered by the plaintiff and as to the set-off claimed by the defendant.

(5) Where the defendant has filed a notice of defence stating that he intends to defend the action as referred to in subsection (2) (b) or (c), the court before which the action is heard may order that the defendant be permitted to defend the action on any ground and may, by the same or a subsequent order, make such order as to the costs of any party arising from the defendant being permitted so to defend the action or from any adjournment of the hearing of the action.

(38)

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(38) Section 25 (2)—

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Omit “notify the plaintiff that notice of defence has been so filed”, insert instead “serve on the plaintiff a copy of any notice of defence filed by the defendant”.

(39) Part IV, Division 3A—

After Division 3, insert :—

DIVISION 3A.—*Order for Judgment.*

25A. (1) Where—

Order for
judgment.

- (a) in an action commenced by the filing of a special summons—
- (i) the defendant has not filed a notice of defence under section 23A (2); and
 - (ii) judgment has not been given or entered up in the action;
- (b) in such an action, the plaintiff has not been served with a notice under section 28 (4) (a) relating to the whole of the amount of the claim of the plaintiff;
- (c) in such an action, the plaintiff has been served with a notice under section 28 (4) (a) relating to part only of the amount of the claim of the plaintiff and has, in respect of the defendant’s confession, filed a notice referred to in section 28 (5) (b); or
- (d) in such an action, an agreement has not been filed with the registrar under section 28 (6),

the

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the plaintiff may, not earlier than twenty-eight days or later than twelve months after service on the defendant of the special summons, and on filing an affidavit of service of the special summons on the defendant, have an order, to be called an order for judgment, made by the registrar against the defendant.

(2) Subject to subsection (4), where an order for judgment is made in an action against a defendant—

- (a) the defendant shall be deemed, for the purposes only of the action, to have admitted liability for the plaintiff's claim;
- (b) the action shall, on a date listed by the registrar for the trial of the action, go to trial only as to the assessment of the amount to be recovered by the plaintiff; and
- (c) the registrar shall, at least fourteen days before the first date for which the action is listed for trial, cause to be served on the plaintiff and the defendant notice of the order for judgment specifying that date.

(3) An order for judgment—

- (a) may be set aside, on terms, by order of the court at any time before judgment is given; and
- (b) shall, without order, be set aside on the filing of a notice of defence under section 23A (2), on the service on the plaintiff of a notice under section 28 (4) (a) relating to the whole of the amount of the claim of the plaintiff or on the filing of an agreement under section 28 (6) relating to the claim of the plaintiff;

(c)

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(c) where—

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- (i) the plaintiff has been served with a notice under section 28 (4) (a) relating to part only of the amount of the claim of the plaintiff, whether before or after the order for judgment was made;
- (ii) the prescribed time, referred to in section 28 (5) (b), expires, after the making of an order for judgment, without the plaintiff having filed a notice referred to in section 28 (5) (b) in respect of the defendant's confession,

shall, without order, be set aside on the expiration of that prescribed time; and

(d) where—

- (i) the plaintiff has been served with a notice under section 28 (4) (a) relating to part only of the amount of the claim of the plaintiff, whether before or after the order for judgment was made; and
- (ii) the prescribed time, referred to in section 28 (5) (b), within which the plaintiff may file a notice referred to in section 28 (5) (b) in respect of the defendant's confession has not expired,

shall, without order, be stayed until the expiration of that prescribed time or until the plaintiff files a notice referred to in section 28 (5) (b) in respect of the defendant's confession, whichever first occurs, and no longer.

(4)

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(4) Subsection (2) shall—

- (a) on the setting aside of an order for judgment in accordance with subsection (3) (a), (b) or (c), cease to have any operation upon or in respect of the action in which the order for judgment was made; and
- (b) on the staying of an order for judgment in accordance with subsection (3) (d), not have any operation upon or in respect of the action in which the order for judgment was made for the period of the stay.

(5) Where an order for judgment is set aside or stayed, the court may, at the same time or subsequently, make such orders as it thinks fit as to the continuance of the action and as to the costs incurred by any party by the making or setting aside or staying of the order for judgment or by any adjournment of the hearing of the action.

(6) Where an order for judgment is in force and the action in respect of which it is in force is of a class prescribed for the purposes of this subsection—

- (a) the plaintiff, notwithstanding section 11, is not, except where the action to which the order for judgment relates is adjourned under paragraph (d), entitled to appear at the trial of the action only as to the assessment of the amount to be recovered by him where that trial follows an order for judgment and is listed as referred to in subsection (2) (b); and

(b)

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- (b) the plaintiff may, before the first date for ^{No. 106, 1975} which the action is listed for hearing, file an affidavit setting forth evidence substantiating the amount of his claim,

and, where the plaintiff so files such an affidavit, the court may—

- (c) proceed to trial and judgment as to the assessment of the amount to be recovered by the plaintiff on the evidence contained in that affidavit; or
- (d) adjourn that trial so that the plaintiff may, on the adjourned trial or on any subsequent adjournment of the trial, adduce that evidence, or such part of it as the court requires, otherwise than by affidavit, and on any such adjournment proceed to trial and judgment as to the assessment of the amount to be recovered by the plaintiff on the evidence before it, whether on affidavit or otherwise.

(7) Where the court adjourns a trial as referred to in subsection (6) (d), the registrar shall cause to be served on the plaintiff notice of the time and place fixed for the resumption of the adjourned trial.

(8) Notwithstanding section 11, the defendant is not entitled to appear at the trial of an action only as to the assessment of the amount to be recovered by the plaintiff where that trial follows an order for judgment and is listed as referred to in subsection (2) (b).

(9) Judgment on the trial of an action as referred to in subsection (6) (c) or (d) shall be as valid as if both parties had appeared at the trial.

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No. 106, 1975 (40) Section 26 (1)—

Omit "If at the time", insert instead "Except as provided in subsections (1A), (1B) and (1C), if at the time".

(41) Section 26 (1A), (1B), (1C)—

After section 26 (1), insert :—

(1A) If at the time set down (whether originally or on an adjournment) for the hearing in a court of an action in respect of which a judgment is not in force under section 28, the plaintiff does not, but the defendant does, appear, the court, where the defendant has, in accordance with section 15 (2), filed a prescribed notice of set-off—

(a) may, upon due proof of service of that notice on the plaintiff, proceed to the trial of the set-off claimed by the defendant and—

(i) except as provided in subparagraph (ii), non-suit the plaintiff in the action commenced by him; or

(ii) where the set-off claimed by the defendant arose out of the same subject-matter as the claim of the plaintiff in the action commenced by him, give judgment for the defendant in that action,

and may order the plaintiff to pay such amount as it thinks fit for the reasonable expenses of the defendant; or

(b)

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- (b) may adjourn the hearing and assess such amount as it thinks fit for the reasonable expenses of the defendant. ^{No. 106, 1975}

(1B) If—

- (a) at the time set down (whether originally or on an adjournment) for the hearing in a court of an action in respect of which a judgment is not in force under section 28, the plaintiff does not appear;
- (b) the action is an action only as to the assessment of the amount to be recovered by the plaintiff on a trial that follows an order for judgment and that is listed as referred to in section 25A (2) (b);
- (c) the registrar has endorsed on a document purporting to be a copy of the notice referred to in section 25A (2) (c) a statement that the notice so referred to was duly served as provided by section 25A (2) (c); and
- (d) the action is not a class prescribed for the purposes of section 25A (6),

the court—

- (e) may set aside the order for judgment and non-suit the plaintiff in the original action brought by him; or
- (f) may adjourn the trial as to the assessment of the amount to be recovered by the plaintiff.

(1c)

Courts of Petty Sessions (Civil Claims) Amendment.

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(1C) If at the time set down (whether originally or on an adjournment) for the resumption of a trial following an adjournment under section 25A (6) (d) or any subsequent adjournment—

(a) the plaintiff does not appear; and

(b) a judgment is not in force under section 28 in respect of the original action brought by the plaintiff,

the court—

(c) may set aside the order for judgment in respect of that action and non-suit the plaintiff in that action; or

(d) may adjourn the trial as to the assessment of the amount to be recovered by the plaintiff.

(42) Section 26 (2A)—

After section 26 (2), insert :—

(2A) Judgment on the trial of a set-off as referred to in subsection (1A) (a) shall be as valid as if it were the trial of an action that had been duly commenced and as if both parties had appeared at the trial.

(43) Section 26 (3)—

Omit “one of this section”, insert instead “(1), (1A), (1B) or (1C)”.

(44)

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(44) Section 26 (4)—

No. 106, 1975

Omit “subparagraph (ii) of paragraph (a), or subparagraph (ii) of paragraph (b), of subsection one of this section”, insert instead “subsection (1) (a) (ii), (1) (b) (ii) or (1A) (b)”.

(45) Section 27 (1)—

Omit “subsection two of this section”, insert instead “subsections (2) and (2A)”.

(46) Section 27 (2A)—

After section 27 (2), insert :—

(2A) The registrar shall not enter up a judgment under subsection (1) if the plaintiff has been served with a notice under section 28 (5) (a) unless—

- (a) the prescribed time, referred to in section 28 (5) (b), within which the plaintiff may file a notice referred to in section 28 (5) (b) in respect of the defendant’s confession, has expired; or
- (b) the plaintiff has filed a notice referred to in paragraph (a).

(47) Section 28 (1)—

After “summons”, insert “or a special summons”.

(48) Section 28 (2)—

After “ordinary summons”, insert “, a special summons”.

(49)

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106,1975 (49) Section 28 (4) (a)—

Omit “give or send by post to”, insert instead “serve on”.

(50) Section 28 (5) (a)—

Omit “gives or sends by post to”, insert instead “serves on”.

(51) Section 32 (3)—

Omit “a District Court”, insert instead “the District Court”.

(52) Section 33 (1)—

Omit the subsection, insert instead :—

(1) Notwithstanding any other provision of this Act except subsection (2) and section 27 (3), where judgment is given or entered up for the plaintiff or a party in accordance with section 15 (7) (a), there shall be added to the judgment debt—

(a) such amount, if any, as may be prescribed as costs for the filing, issuing and serving of any document filed, issued or served in connection with the action or proceeding in which the judgment was given or entered up; and

(b) the amount of any expenses referred to in section 42 (1) (b) paid by that party to the judgment debtor or to a person to whom the provisions of Division 2 of Part V apply by virtue of section 45,

and any such amount shall form part of the judgment debt and may be enforced accordingly.

(53)

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(53) Section 33 (2)—

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Omit “for the serving of any document or for the enforcement of any judgment”.

(54) Section 34 (a)—

Omit “or an ordinary summons”, insert instead “, an ordinary summons or a special summons”.

(55) Section 35—

Omit the section, insert instead :—

35. Where—

- (a) in an action commenced by the filing of a default summons or a special summons, the defendant files a notice of defence; or
- (b) the defendant defends an action commenced by the filing of an ordinary summons,

Professional
costs in
defended
actions.

the court may in its judgment order the payment of such amount as may be specified in the judgment by one party to the other for or towards the reasonable professional costs incurred by that other party in having a barrister or attorney (being a barrister or attorney retained by or on behalf of that other party or being an attorney employed (as an agent or otherwise) by an attorney so retained) acting on behalf of that other party.

(56)

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106, 1975 (56) Section 36A—

After section 36, insert :—

Professional
costs of
enforcing
judgments.

36A. (1) Where—

(a) any prescribed document relating to any proceedings under Part V for the enforcement of the judgment debt is filed with the registrar of a court; and

(b) that document specifies the name of an attorney acting on behalf of the judgment creditor,

there shall be added to the judgment debt an amount, calculated in accordance with the prescribed scale, for professional costs, and any such amount shall form part of the judgment debt and may be enforced accordingly.

(2) Notwithstanding subsection (1), if the registrar is satisfied that any costs referred to in subsection (1) were in his opinion incurred improperly or by reason of the negligence of the judgment creditor, the registrar may direct that the costs so incurred shall not form part of the judgment debt and any such direction shall have effect accordingly.

(57) Section 37—

Omit “twenty-seven, subsection eleven of section twenty-eight, or section thirty-four or thirty-five, of this Act”, insert instead “27 (1), 28 (11), 34, 35 or 36A (1)”.

(58) Section 40 (4)—

Omit “give or send by post to”, insert instead “serve on”.

(59)

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(59) Section 40 (5)—

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Omit “given or sent to”, insert instead “served on”.

(60) Section 40 (6)—

Omit “give or send by post to”, insert instead “serve on”.

(61) Section 41 (1)—

After “abode”, insert “, business or employment”.

(62) Section 41 (2) (a)—

Omit “returnable at”, insert instead “returnable before the registrar of”.

(63) Section 41 (2) (a)—

Omit “fixed by that registrar”, insert instead “so determined”.

(64) Section 41 (2) (b)—

Omit “and at that court”, insert instead “before the registrar of the court specified in the summons”;

(65) Section 41 (2) (b)—

Omit “the registrar or by the registrar of that court”, insert instead “that registrar or by that registrar”.

(66) Section 41 (4)—

Omit “of the court at which”, insert instead “before whom”.

(67)

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106,1975 (67) Section 42—

Omit the section, insert instead :—

Failure to
attend in
answer to
examination
summons.

42. (1) If at the time set down (whether originally or on an adjournment) for the examination of the judgment debtor before a registrar he fails to attend before that registrar and that registrar has no information satisfying him that the judgment debt has been paid, that registrar shall—

- (a) upon due proof of service of the examination summons on the judgment debtor, or, where the examination has been adjourned, of service on the judgment debtor of notice of the time and place fixed for the examination; and
- (b) upon due proof of tender to the judgment debtor of the reasonable expenses of attending in answer to the summons,

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

(2) After the report is made to it, and without further inquiry, the court may—

- (a) authorise the registrar to issue a warrant for the apprehension of the judgment debtor; or
- (b) adjourn the examination proceedings and order that the judgment debtor attend before the registrar at that court on a date and at a time specified in the order,

and

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and the registrar shall forthwith serve on the judgment debtor a notice informing him of any action taken by the court under this subsection. No. 106, 1975

(3) A warrant shall not be issued under this section until after the expiration of fourteen days after the court authorised its issue.

(4) If before an application is made under this subsection the judgment debtor has not attended, by arrangement with the registrar, to be examined as to the matters referred to in section 41 (2) (b), the registrar, on the application of the judgment creditor verified by his affidavit or in such other manner as may be prescribed and made not earlier than fourteen days after the court authorised the issue of a warrant in respect of the judgment debtor, may issue his warrant for the apprehension of the judgment debtor.

(5) The warrant shall—

- (a) be under the hand of the registrar;
- (b) name or otherwise describe the judgment debtor whose apprehension is required by the warrant;
- (c) state shortly the reason for its issue;
- (d) contain an order, addressed to all bailiffs, requiring the apprehension of the judgment debtor if he is within New South Wales and directing that he be brought before the registrar of the nearest convenient court to the place at which he is apprehended to be examined as to the matters referred to in section 41 (2) (b); and
- (e)

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(e) subject to subsection (7), continue in force until—

- (i) the registrar endorses on the warrant that the warrant is revoked by order of any court or of the registrar of the court at which it was issued;
- (ii) it is endorsed by the registrar in accordance with subsection (6);
or
- (iii) it expires in accordance with the rules.

(6) A registrar who examines a judgment debtor in respect of whom a warrant is in force under this section as to the matters referred to in section 41 (2) (b) shall, as soon as practicable after doing so, endorse on the warrant that the warrant is revoked.

(7) A registrar who adjourns the examination under an examination summons of a judgment debtor in respect of whom a warrant is in force under this section shall, as soon as practicable after doing so, endorse on the warrant that the warrant is suspended until the time fixed for the examination of the judgment debtor on the day to which the examination of the judgment debtor has been adjourned, and where the warrant is so endorsed it shall not be in force during the period of its suspension but on the expiration of that period shall, subject to subsection (6), be in force, except as may be otherwise provided by the rules.

(8) Any bailiff may execute the warrant and any member of the police force shall, if called upon by a bailiff to do so, aid and assist in the execution of the warrant.

Courts of Petty Sessions (Civil Claims) Amendment.

(68) Section 43—

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Omit the section.

(69) Before section 44, insert :—

43A. (1) Unless the registrar of the court in which a judgment is given or entered up has information satisfying him that the judgment debt has been paid, that registrar may, on the application of the judgment creditor, serve on the judgment debtor a notice calling upon him to furnish, within such period, not being less than fourteen days, as may be specified in the notice, to the judgment creditor answers to the questions contained in the notice relating to the matters referred to in section 41 (2) (b). Examination notice.

(2) Notwithstanding subsection (1), while enforcement of a judgment is stayed, the registrar shall not serve on the judgment debtor a notice referred to in subsection (1) relating to the judgment debt under that judgment.

(3) Where—

- (a) a notice referred to in subsection (1) has been served on a judgment debtor;
- (b) the judgment debtor has, within the period specified in the notice, furnished to the judgment creditor answers to the questions contained in the notice;
- (c) the judgment debtor is, within three months after the service on him of the notice, examined pursuant to an examination summons before or by a

registrar

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registrar (whether that summons was filed before or after the service of the notice on the judgment debtor or before or after the commencement of this section); and

- (d) the registrar, on the application of the judgment debtor made at the examination of the judgment debtor, certifies that he is satisfied that the judgment debtor answered the questions contained in the notice fairly and truthfully,

there shall not be added, pursuant to section 33 (1), to the judgment debt any costs in respect of the filing, issuing or serving of that examination summons or of any document filed, issued or served in connection with that examination of the judgment debtor.

(70) Section 44 (1)—

Omit “appears before the registrar pursuant to subsection six of section forty-three of this Act”, insert instead “is brought before the registrar in accordance with a warrant issued under section 42 (4)”.

(71) Section 52 (1)—

Omit “or business”, insert instead “, business or employment”.

(72) Section 52 (2)—

Omit “one of this section”, insert instead “(1)”.

(73)

Courts of Petty Sessions (Civil Claims) Amendment.

(73) Section 52 (2)—

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Omit “fixed by that registrar”, insert instead “so determined”.

(74) Section 52A—

After section 52, insert :—

52A. (1) An amount standing to the credit of a judgment debtor in an account in a bank shall, for the purposes of this Division, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied.

(2) An amount standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Division, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied :—

- (a) a condition that notice is required before money is withdrawn ;
- (b) a condition that a personal application must be made before money is withdrawn ;
- (c) a condition that a deposit book must be produced before money is withdrawn ; or
- (d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

(3)

Courts of Petty Sessions (Civil Claims) Amendment.

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(3) Where after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor as referred to in subsection (1) or (2), the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

(4) Where—

- (a) after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor in a deposit account, the garnishee pays to the registrar the whole or any part of the debt attached; and
- (b) the condition, or one of the conditions, applicable to the account is that a deposit book must be produced before money is withdrawn,

the garnishee may, at the time of payment of that amount to the registrar, by instrument in writing signed by an officer of the bank, require the registrar to retain the amount so paid for any specified period not exceeding two months commencing on the date of payment thereof.

(5)

Courts of Petty Sessions (Civil Claims) Amendment.

(5) Where—

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- (a) a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection; and
- (b) the garnishee during that period makes application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation thereto but nevertheless, because of the production of a current deposit book relating to that amount or any part thereof, has (whether during or before that period) paid to the judgment debtor the whole or any part of the debt attached or otherwise dealt with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached,

the court may, if it thinks fit, order the registrar to repay that amount or any part thereof to the garnishee.

(6) Where a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection, the registrar shall not pay that amount or any part thereof to the judgment creditor—

(a) until after—

- (i) the garnishee, by instrument in writing signed by an officer of the bank, informs the registrar that, or the registrar has other information satisfying him that, a current

deposit

Courts of Petty Sessions (Civil Claims) Amendment.

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deposit book relating to that amount or any part thereof has, during that period, come into the possession of the garnishee at the place of keeping of the account to the credit of which the amount was standing; or

(ii) the expiration of that period,

whichever first occurs; and

(b) unless he is satisfied, on such information as is available to him, that no application made during that period by the garnishee for an order under subsection (5) in relation to that amount or any part thereof is still pending,

and where that amount or any part thereof is ordered to be repaid to the garnishee under subsection (5), the balance (if any) only is payable to the judgment creditor.

(75) Section 54—

Omit "Payment", insert instead "Subject to section 55 (2), payment".

(76) Section 55—

After "payment" where secondly occurring, insert "(subject to section 55 (2))".

(77) Section 55—

Omit "notifies the judgment debtor", insert instead "serves on the judgment debtor notice".

(78)

Courts of Petty Sessions (Civil Claims) Amendment.

(78) Section 55—

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At the end of the section, insert :—

(2) Where any amount is ordered to be repaid to a garnishee under section 52A (5)—

- (a) the payment of that amount by the garnishee does not, and shall be deemed never to have, satisfied the judgment debt; and
- (b) this Division applies to and in respect of the judgment debt as if the garnishee had never made that payment.

(79) Section 56 (1)—

Omit “so notify the garnishee and the judgment debtor”, insert instead “serve on the garnishee and the judgment debtor notice of that fact”.

(80) Section 57—

Omit “Any”, insert instead “Subject to section 52A, any”.

(81) Section 59 (1)—

Omit “except wearing apparel, bedding, tools and implements of trade, of that person or any member of his family, to the value of one hundred dollars in respect of each such class of goods”, insert instead “except—

- (a) any wearing apparel and any bedroom or kitchen furniture; and

(b)

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(b) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate \$500 in value,

being used as such by the judgment debtor or any member of his family”.

(82) Section 59 (7)—

Omit “given”, insert instead “served”.

(83) Section 60 (2)—

Omit “any District Court having jurisdiction within the district of the court in which the certificate was issued, or having jurisdiction where the judgment debtor resides”, insert instead “the District Court sitting at the nearest proclaimed place, as defined in section 4 (1) of the District Court Act, 1973, to the—

(a) court in which the certificate was issued;
or

(b) place where the judgment debtor resides”.

(84) Section 60 (3)—

Omit “that District Court”, insert instead “the District Court”.

(85)

Courts of Petty Sessions (Civil Claims) Amendment.

(85) Section 60 (5)—

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Omit the subsection, insert instead :—

(5) Where such a certificate has been filed in the District Court the provisions of the District Court Act, 1973, relating to proceedings consequent on a judgment or order given or made in the District Court shall apply as if the judgment of the court in respect of which the certificate was issued were a judgment or order of the District Court.

(86) Section 63—

After “Where a”, insert “defence by way of”.

(87) Section 72 (4)—

Omit “three of this section”, insert instead “(3) (b)”.

(88) Section 72 (5)—

Omit the subsection, insert instead :—

(5) Where a person who has been apprehended pursuant to a warrant issued under subsection (3) (b) does not enter into a recognizance in accordance with subsection (6), he shall, as soon as practicable, be taken before the registrar of the nearest convenient court and if he does not then so enter into a recognizance that registrar may by warrant commit him to prison and order him to be brought before the court at which he was required by subpoena to attend at such time as may be specified in the warrant.

(89)

Courts of Petty Sessions (Civil Claims) Amendment.

No. 106, 1975 (89) Section 72 (6)—

Omit "Where a person is held in custody pursuant to a warrant issued under subsection five of this section he may enter into a recognizance in the sum of fifty dollars", insert instead "Where a person is apprehended or held in custody pursuant to a warrant issued under subsection (3) (b) or (5) he may enter into a recognizance in the sum of \$50".

(90) Section 72 (7)—

Omit "five or six of this section", insert instead "(6)".

(91) Section 72 (8)—

Omit "five or six of this section", insert instead "(6)".

(92) Section 75 (1)—

After "may", insert ", upon such terms as to costs or otherwise,".

(93) Section 75 (3)—

After "Act", insert ", whether or not the judgment debtor appears".

(94) Section 84 (1) (d)—

Omit "required to be given", insert instead ", and the filing, giving or serving of notices,".

(95)

Courts of Petty Sessions (Civil Claims) Amendment.

(95) Section 84 (2)—

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Omit the subsection, insert instead :—

(2) Rules may be made so as to apply differently according to such factors as may be specified in the rules.

INDUSTRIAL