

**DISTRICT COURT (AMENDMENT) ACT, 1979, No. 196**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 196, 1979.**

An Act to amend the District Court Act, 1973, with respect to the venue of actions, the attendance of witnesses and the giving of summary judgments in civil proceedings in the District Court; to make provision for the punishment by the District Court of certain contempts committed in relation to the Court; and for other purposes. [Assented to, 21st December, 1979.]

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*District Court (Amendment).*


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**BE** it enacted by the Queen's Most Excellent Majesty, by 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 :—

**Short title.**     **1.** This Act may be cited as the "District Court (Amendment) Act, 1979".

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

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal  
Act.**           **3.** The District Court Act, 1973, is referred to in this Act as the Principal Act.

**Schedules.**     **4.** This Act contains the following Schedules :—  
                       **SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.**  
                       **SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.**

**Amendment  
of Act No.  
9, 1973.**       **5.** The Principal Act is amended in the manner set forth in Schedule 1.

**Savings and  
transitional  
provisions.**   **6.** Schedule 2 has effect.

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*District Court (Amendment).*

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SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3—

From the matter relating to Subdivision 9 of Division 3 of Part III, omit “81”, insert instead “80A”.

(b) Section 3—

After the matter relating to Subdivision 9 of Division 3 of Part III, insert :—

*Subdivision 10.—Summary judgments—ss. 83B–83D.*

(c) Section 3—

Omit the matter relating to Part V.

(d) Section 3—

After the matter relating to Part VI, insert :—

*PART VII.—GENERAL PROVISIONS—ss. 195–202.*

(2) (a) Section 55 (2)—

Omit “agent specifying all the relevant places and the nearest proclaimed place to each of them”, insert instead :—

“agent—

- (a) specifying all the relevant places and the nearest proclaimed place to each of them; and
- (b) specifying one of the proclaimed places specified pursuant to paragraph (a) as the place which he desires to be the venue of the action”.

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*District Court (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (b) Section 55 (3) (b) (iv)—

Omit “place,”, insert instead “place.”.

## (c) Section 55 (3)—

Omit “and if a notice under paragraph (a) or affidavit under paragraph (b) is not so filed, the plaintiff shall, at the expiration of that prescribed time, be deemed to have discontinued his action.”.

## (d) Section 55 (5A)—

After section 55 (5), insert :—

(5A) Where the plaintiff files neither a notice nor an affidavit in accordance with subsection (3), the Court shall be deemed to have, at the expiration of the time prescribed for the purposes of that subsection, ordered a change of venue under section 40 to the proclaimed place specified by the defendant pursuant to subsection (2) (b) as the place which he desires to be the venue of the action.

## (3) Section 64 (3)—

Omit the subsection, insert instead :—

(3) Subsection (1) does not apply to or in respect of a person unless, not later than a reasonable time before the day on which his attendance is required, tender is made of an amount in respect of expenses of complying with the requirements of the subpoena, determined in accordance with the rules.

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*District Court (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 65—

Omit the section, insert instead :—

65. (1) Where the attendance of a person is required by a subpoena issued under section 64—

Attendance.  
S.C.R.  
Pt. 42,  
r. 7.

(a) for the purpose of giving evidence; or

(b) for the production of a document or thing,

and the person defaults in attendance in accordance with the requirement, the Court may, on application by a party or of its own motion—

(c) issue, or make an order for the issue of, a warrant to a bailiff or such other person as the Court may appoint for the arrest of the person in default and for the production of the person in default before the Court or a registrar and for his being kept in custody; and

(d) order the person in default to pay any costs occasioned by the default.

(2) A person arrested pursuant to a warrant issued under subsection (1) shall be brought before the Court or a registrar as soon as practicable.

(3) Where a person is brought before a registrar under subsection (2), he shall be kept in custody as directed by the warrant until—

(a) he is brought before the Court or his earlier release is ordered by the Court or the Supreme Court; or

(b) he gives, in accordance with the rules, an undertaking to comply with the requirement referred to in subsection (1).

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*District Court (Amendment).*


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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Where a person is brought before the Court under subsection (2) and the requirement referred to in subsection (1) is for the production of a document or thing, he is guilty of contempt of court committed in the face of the Court unless he produces the document or thing, or gives, in accordance with the rules, an undertaking to comply with the requirement.

(5) Failure to comply with an undertaking referred to in this section shall be deemed to constitute a contempt of court committed in the face of the Court.

(6) A direction in a warrant for the keeping of a person in custody is sufficient authority for his being kept in custody in accordance with the direction.

(7) The rules may make provision for or with respect to authorising compliance with an undertaking referred to in this section for production given in respect of a document or thing by the production of the document or thing to a registrar.

(8) Nothing in this section limits the powers of the Court to punish for contempt of court.

## (5) Section 66—

Omit the section, insert instead :—

Provisions  
respecting  
production  
of docu-  
ments or  
things.

66. A person is not bound, pursuant to a subpoena issued under section 64, to produce any document or thing which is not specified or otherwise sufficiently described in the subpoena or which he would not be bound to produce upon a subpoena for production in the Supreme Court.

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*District Court (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) (a) Section 72 (1) (a)—

Omit “or”.

(b) Section 72 (1) (b)—

Omit “only.”, insert instead “only; or”.

(c) Section 72 (1) (c)—

After section 72 (1) (b), insert :—

(c) if, in the case of an action commenced by the lodging of a liquidated statement of claim, the plaintiff does, but a defendant does not, appear, the Court may, without proceeding to the trial of the action, give judgment against that defendant on the part of the plaintiff only, on evidence of—

(i) the amount then due to the plaintiff in respect of the cause of action for which the action was commenced; and

(ii) any payments made or credits accrued since the commencement of the action in reduction of the amount of the plaintiff’s claim or costs.

(d) Section 72 (2)—

After “(b)”, insert “or (c)”.

(7) Section 80A—

Before section 81, insert :—

80A. Judgment in an action shall be given or entered up in such form as is appropriate to the nature of the case. <sup>Form of</sup> judgment.

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*District Court (Amendment).*


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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (8) Part III, Division 3, Subdivision 10—

After Part III, Division 3, Subdivision 9, insert :—

*Subdivision 10.—Summary judgments.*

Interpreta-  
tion:  
Pt. VIII,  
Div. 3,  
Subdiv. 10.

## 83B. In this Subdivision—

“claim for relief” means any claim which the Court has jurisdiction to determine in an action;

“defendant” includes any person against whom a claim for relief is made;

“plaintiff” includes any person making a claim for relief.

Summary  
judgment.  
S.C.R.  
Pt. 13, r. 2.

83C. (1) Where, on application by the plaintiff in relation to any claim for relief or any part of any claim for relief of the plaintiff—

(a) there is evidence of the facts on which the claim or part is based; and

(b) there is evidence given by the plaintiff or by some responsible person that, in the belief of the person giving the evidence, the defendant has no defence to the claim or part, or no defence except as to the amount of any damages claimed,

the Court, subject to and in accordance with the rules, may, at any time, give such judgment for the plaintiff on that claim or part as the nature of the case requires.

(2) Without limiting subsection (1), the Court may, under that subsection, give judgment for the plaintiff for damages to be assessed, and the action shall go to trial only as to the assessment of damages.



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*District Court (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) A judgment under this section may, on sufficient cause being shown, be set aside, on terms, by order of the Court.

(4) In this section, “damages” includes the value of goods.

83D. Where, in any action—

(a) a party applies for judgment pursuant to section 83C; and

Residue of proceedings.  
S.C.R.  
Pt. 13, r. 6.

(b) the action is not wholly disposed of by judgment, the action—

(c) may be continued as regards any claim or part of a claim not disposed of by judgment; and

(d) shall, on the hearing of the application, be before the Court for directions under section 158.

(9) Part V—

Omit the Part.

(10) Part VII—

After Part VI, insert :—

PART VII.

GENERAL PROVISIONS.

195. If a Judge or officer of the Court refuses to do any act relating to the duties of his office, the Supreme Court may, on the application of any party requiring the act to be done, by order direct the Judge or officer to do the act.

Order to Judge or officer.  
(Formerly s. 176.)

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*District Court (Amendment).*


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 SCHEDULE 1—*continued.*


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 AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Privilege.  
(Formerly  
s. 177.)

196. No privilege shall be allowed to any barrister, solicitor or other person to exempt him from the provisions of this Act.

Proclama-  
tions:  
(Formerly  
s. 178.)

197. (1) In this section, "proclamation" means a proclamation under this Act, not being the proclamation under section 2.

(2) A power conferred by any provision of this Act to make a proclamation includes the power to revoke or amend that proclamation from time to time.

(3) A proclamation shall—

- (a) be published in the Gazette; and
- (b) take effect on and from the date of publication or a later date specified in the proclamation.

Judges to  
meet and  
make recom-  
mendations.  
(Formerly  
s. 179.)

198. (1) The Judges shall assemble at least once in every 6 months for the purpose of—

- (a) considering the operation of this Act and the rules; and
- (b) inquiring into and examining any defects which appear to exist in the system of procedure or the administration of justice in the Court.

(2) The Judges shall at least once in every 6 months furnish a report to the Attorney General as to what (if any) legislation or rules, regulations, by-laws or ordinances it would, in their judgment, be expedient to enact or make for the better administration of justice in the Court.

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*District Court (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

199. (1) In this section, “contemnor” means a person guilty or alleged to be guilty of contempt of court committed in the face of the Court or in the hearing of the Court. Contempt.  
S.C.R.  
Pt. 55.

(2) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of court committed in the face of the Court or in the hearing of the Court, the Court may—

- (a) by oral order direct that the contemnor be brought before the Court; or
- (b) issue a warrant for the arrest of the contemnor.

(3) Where the contemnor is brought before the Court, the Court shall—

- (a) cause him to be informed orally of the contempt with which he is charged;
- (b) require him to make his defence to the charge;
- (c) after hearing him, determine the matter of the charge; and
- (d) make an order for the punishment or discharge of the contemnor.

(4) The Court may, pending disposal of the charge—

- (a) direct that the contemnor be kept in such custody as the Court may determine; or
- (b) direct that the contemnor be released,

and such a direction is sufficient authority for the contemnor’s being kept in custody or released, as the case may be.

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*District Court (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) The Court may give a direction under subsection (4) (b) on terms, which may include a requirement that the contemnor give security, in such sum as the Court directs, for his appearance in person to answer the charge.

(6) A warrant for the arrest or detention under this section of a contemnor shall be addressed to a bailiff and may be issued under the hand of the Judge constituting the Court.

(7) The Court may punish contempt by a fine not exceeding \$2,000.

(8) The Court may make an order for punishment on terms, including a suspension of punishment or a suspension of punishment in case the contemnor gives security in such manner and in such sum as the Court may approve for good behaviour and performs the terms of the security.

Fines  
under  
sec. 199.

200. (1) A fine imposed under section 199 is payable to the registrar for such proclaimed place as the Court directs.

(2) Payment of a fine imposed under this section may, if the Court so orders, be enforced, subject to the rules, as if the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the registrar were a judgment creditor.

(3) The amount of any fine paid to or recovered by the registrar under this section shall be paid to the Consolidated Revenue Fund.

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*District Court (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

201. (1) An appeal shall lie at the instance of the Appeals contemnor to the Supreme Court from the ruling, order, <sup>respecting</sup> contempt direction or decision of the Court under section 199, other <sup>proceedings.</sup> proceedings than for the discharge of the contemnor.

(2) An appeal under this section shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

(3) In an appeal under this section, the Supreme Court may affirm, vary or revoke the ruling, order, direction or decision appealed against or may substitute its own ruling, order, direction or decision.

202. (1) At any stage of any proceedings under section 199 or 200, the Court may, on terms, order that the Stay of contempt proceedings be stayed.

(2) Where the Court orders that proceedings be stayed under subsection (1) and an appeal is brought under section 201, the stay of proceedings shall continue until the appeal is disposed of or until the Court or the Supreme Court otherwise orders.

(3) Except as provided in this section or as directed by the Supreme Court, an appeal under section 201 shall not operate as a stay of proceedings.

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*District Court (Amendment).*

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Sec. 6.

SCHEDULE 2.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule, "the appointed day" means the day appointed and notified under section 2 (2).

2. The amendments made by this Act to sections 55 and 72 of the Principal Act apply to and in respect of actions commenced on or after, but not before, the appointed day.

3. Section 65 of the Principal Act, as amended by this Act, applies to and in respect of a subpoena issued on or after, but not before, the appointed day.

4. Except as provided by this Schedule, the amendments made by this Act apply to and in respect of proceedings commenced before, as well as on or after, the appointed day.

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