

## 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).

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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:

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**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)).

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### **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)).

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**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.

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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.

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