

District Court Act 1973 No 9

[1973-9]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Civil Procedure Act 2005 No 28](#) (not commenced)
- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2005](#)

Authorisation

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District Court Act 1973 No 9



New South Wales

An Act to establish a District Court of New South Wales, to provide for the appointment of, and the powers, authorities, duties and functions of, Judges and other officers of the Court, to empower the Court to hear and dispose of certain civil and criminal proceedings; to abolish the several District Courts and Courts of Quarter Sessions; to repeal the [District Courts Act 1912](#) and certain other Acts; to amend the [Crimes Act 1900](#) and certain other Acts; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the [District Court Act 1973](#).

2 Commencement

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.

3 (Repealed)

4 Definitions: general

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

action means action in the Court, but does not include any proceedings under Division 8 of Part 3 or under Part 4.

admitted set-off, in relation to an action, means set-off admitted by the plaintiff in the document lodged by the plaintiff to commence the action or, where a defendant pleads a cross-claim, by the defendant in the prescribed notice of the cross-claim.

barrister means person who is on the roll of barristers in the Supreme Court.

Chief Judge means Chief Judge of the Court.

civil procedure rules means rules of Court made and in force under Part 3.

civil proceedings means proceedings in the Court in its civil jurisdiction.

corporation includes any 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.

criminal procedure rules means rules of Court made and in force under Part 4.

criminal proceedings means proceedings in the Court in its criminal jurisdiction.

file, in relation to any proceedings, means lodge with the registrar for the proper place in relation to the proceedings, for inclusion in the record of the Court.

Judge means Judge of the Court.

judgment, in relation to an action, means judgment given or entered up in the action.

land includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity.

motor accident claim means a claim for damages arising from the death of, or injury to, a person where the death or injury has been caused by an act or omission of the owner or driver of a motor vehicle in the use or operation of the vehicle.

officer, in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation.

prescribed means prescribed by this Act or the rules.

Principal Registrar means the registrar for Sydney.

proceedings:

- (a) where occurring in a provision of Part 3 and in subsections (3) and (5), means civil proceedings,
- (b) where occurring in a provision of Part 4, means criminal proceedings, and
- (c) where occurring in any other provision of this Act, shall be construed according to the context in which the expression occurs.

proclaimed place means a place for the time being specified in a proclamation under section 18F.

proper place, in relation to any proceedings in the Court in its civil jurisdiction:

- (a) where there has been no change of venue in respect of the proceedings—means

the proclaimed place at which the proceedings were commenced,

- (b) where there has been only one change of venue in respect of the proceedings—means the proclaimed place to which the venue was changed, or
- (c) where there have been two or more changes of venue in respect of the proceedings—means the proclaimed place to which the venue was last changed.

registry, in relation to a proclaimed place, means the office of the registrar for the proclaimed place.

Rule Committee means the District Court Rule Committee established under section 18A.

sitting place means:

- (a) any proclaimed place, and
- (b) in relation to the Court's civil jurisdiction—any place (other than a proclaimed place) that is the subject of a direction in force under section 32 (1), and
- (c) in relation to the Court's criminal jurisdiction—any place (other than a proclaimed place) that is the subject of a direction in force under section 173 (1).

solicitor means attorney, solicitor and proctor of the Supreme Court.

the Court or **the District Court** means the District Court of New South Wales, and includes all registries and offices of the Court, whether they are within the precincts of the Court or not.

the registrar, in relation to any proceedings, means the registrar for the proper place in relation to the proceedings, and, where any other registrar is authorised by or under this Act to exercise or discharge any power, authority, duty or function of the registrar for that place, includes that other registrar when exercising or discharging that power, authority, duty or function.

the rules means:

- (a) where occurring in Part 3 and Division 2 of Part 6, the civil procedure rules, and
- (b) where occurring in Part 4, the criminal procedure rules.

work injury damages claim means a claim for an award of damages to which Division 3 (Modified common law damages) of Part 5 of the [Workers Compensation Act 1987](#) applies.

writ against the person means writ against the person issued under section 113.

writ of execution means writ of execution issued under section 107.

- (2) A reference in this Act:
- (a) to 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 civil procedure 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 the civil procedure rules so prescribed.
- (3) A reference in this Act to the commencement of proceedings at a proclaimed place (however expressed) is a reference to the commencement of those proceedings by the lodging of the document commencing the proceedings with the registrar for that place.
- (4) A reference in this Act to the issue of a document at a proclaimed place (however expressed) is a reference to the issue of that document by the registrar for that place.
- (5) A reference in this Act to a stay of proceedings (however expressed) includes a reference to a stay of enforcement of the judgment arising from the proceedings.
- (6) A reference in this Act to a stay of enforcement of a judgment includes a reference to a stay of the issue of:
- (a) an examination summons under section 91 (1),
 - (b) a warrant under section 92 (4), and
 - (c) a charging order under the *Judgment Creditors' Remedies Act 1901*,
- in respect of the judgment debt.
- (7) Where a provision of this Act refers to the amount claimed in an action or cross-claim or to the amount for which an action is authorised by this Act to be brought and the action or cross-claim is for the detention of goods, the reference to that amount shall be construed as a reference to an amount equivalent to the value of the goods together with any damages claimed for the detention of the goods.
- (8) A reference in this Act to a Court of Quarter Sessions includes a reference to a court which, before 1 July 1973, was a Court of Sessions of the Peace, General Sessions of the Peace, General Sessions, General Quarter Sessions, General or Quarter Sessions, or General and Quarter Sessions.
- (9) A reference in this Act to criminal jurisdiction includes a reference to jurisdiction to hear an appeal from any conviction, finding of guilt, sentence or other decision relating to the commission or alleged commission of an offence against the law in force in New South Wales.
- (10) 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.

(11) A reference in this or any other Act, or in any instrument, to the registrar of the District Court for a proclaimed place is, if there are 2 registrars for that place, a reference to either registrar.

5 Definition: nearest proclaimed place

(1) A reference in this Act to the nearest proclaimed place to another place (however expressed) is a reference to the proclaimed place the distance between the principal registry for which and that other place is shorter than the distance between any other principal registry and that other place.

(2) In subsection (1):

distance means distance computed in accordance with the civil procedure rules.

principal registry, in relation to a proclaimed place, means:

- (a) where there is only one registry for the proclaimed place—that registry, or
- (b) where there are two or more registries for the proclaimed place—the registry specified in, or determined in accordance with, the civil procedure rules as being the principal registry for the proclaimed place.

(3) The Governor may, at the Governor's discretion, by proclamation, specify an address or a place at which the principal registry for a proclaimed place shall be deemed to be situated, and that principal registry shall, for the purposes of subsection (1), be deemed to be situated at the address or place so specified, notwithstanding that it may be situated elsewhere.

6 Order on terms

Where under this Act or the civil or criminal procedure rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

7 Application of certain provisions of this Act

The provisions of Part 3 and Division 2 of Part 6 and the civil procedure rules:

- (a) apply to and in respect of proceedings in the Court in its civil jurisdiction, and
- (b) except as provided by Part 4, do not apply to or in respect of proceedings in the Court in its criminal jurisdiction.

Part 2 The District Court of New South Wales

Division 1 Establishment of the Court

8 The Court

- (1) There shall be a District Court of New South Wales.
- (2) The Court shall be a court of record.
- (3) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

9 Jurisdiction of the Court generally

- (1) The Court shall have a civil jurisdiction, consisting of:
 - (a) its jurisdiction conferred by Part 3, and
 - (b) the jurisdiction conferred by or under any other Act or law on the Court, not being its jurisdiction referred to in subsection (2).
- (2) The Court shall have a criminal jurisdiction, consisting of:
 - (a) its jurisdiction conferred by Part 4, and
 - (b) the jurisdiction conferred by or under any other Act or law on the Court in its criminal jurisdiction.

10 State-wide jurisdiction

The Court, wherever sitting, shall, subject to this Act, have jurisdiction throughout the whole of New South Wales.

11 Single Judge to constitute the Court

- (1) All civil and criminal proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act and the *Jury Act 1977*, be heard and disposed of before a Judge, who shall constitute the Court.
- (2) Subsection (1) does not affect the provisions of this Act and the civil or criminal procedure rules concerning the hearing and disposal of civil and criminal proceedings and business before a registrar or other officer of the Court.

Division 2 Judges

12 Composition of the Court

The Court shall be composed of a Chief Judge and such other Judges as the Governor may

from time to time appoint.

13 Appointment and qualifications of Judges

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person as a Judge.
- (2) In this section:
qualified person means any of the following persons:
 - (a) a person who is a legal practitioner of at least 7 years' standing,
 - (b) a person who holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory.
 - (c), (d) (Repealed)
- (3) (Repealed)
- (4) The Governor may, by the commission of a person's appointment as a Judge or by a subsequent commission under the public seal of the State, appoint a Judge to be Chief Judge.
- (5) Subject to subsection (6), the Chief Judge shall hold office as Chief Judge so long as he or she holds office as a Judge.
- (6) With the approval of the Governor, the Chief Judge may resign his or her office as Chief Judge without resigning his or her office as a Judge.
- (7) A Judge shall, while he or she holds office as such, be deemed to have been appointed a justice of the peace.

14 (Repealed)

15 Remuneration

- (1) The Judges (other than the Chief Judge) are entitled to be paid remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#).
- (2) The remuneration referred to in subsection (1) and payable to a Judge shall be paid to the Judge so long as he or she continues to hold office.

15A The Chief Judge

- (1) The Chief Judge is entitled to a like style and title as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.
- (2) The Chief Judge is entitled to the same remuneration as that to which a Judge of the

Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.

16 Vacancy in office of or absence of Chief Judge

- (1) Where there is a vacancy in the office of Chief Judge, or the Chief Judge is absent from duty, the senior of the other Judges willing to act as Chief Judge shall, if there is no Acting Chief Judge appointed under section 17, act as Chief Judge, and shall, while so acting, have the powers and authorities and fulfil the duties of the Chief Judge.
- (2) For the purposes only of subsection (1):
 - (a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act or the *District Courts Act 1912*, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge, and
 - (b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commission or, failing any such assignment, according to the order of their being sworn.

17 Acting Chief Judge

- (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from duty.
- (2) While holding office, the Acting Chief Judge shall have the powers and authorities and fulfil the duties of the Chief Judge, and is entitled to be paid remuneration at the rate provided for the Chief Judge.

18 Acting Judges

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding 12 months to be specified in the commission.
- (2) In subsection (1), **qualified person** means a person qualified for appointment as a Judge.
- (3) The person so appointed, for the time and subject to the conditions or limitations specified in the person's commission, shall have the powers and authorities and fulfil the duties of the Judge and shall, for the purposes of this or any other Act (other than the *Statutory and Other Offices Remuneration Act 1975*), be deemed to be a Judge.
- (3A) The person so appointed may, despite the expiration of the period of the person's appointment, complete or otherwise continue to deal with any matters relating to

proceedings that have been heard, or partly heard, by the person before the expiration of that period.

- (3B) The person so appointed is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*. The remuneration payable to such a person is to be paid to the person so long as he or she continues to hold office.
- (4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission or the Industrial Relations Commission) may be so appointed even though the retired Judge has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.
- (4A) A person who is or has been a judge of the Federal Court of Australia or of the Supreme Court, District Court or County Court of another State or Territory may be so appointed even though that person has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.
- (5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as prior judicial service (within the meaning of section 8 of the *Judges' Pensions Act 1953*) by the person.
- (6) A person appointed under this section may be appointed under the title of Acting Judge or Associate Judge.

Division 3 Rule Committee

18A Establishment of the Rule Committee

There shall be a District Court Rule Committee.

18B Composition of the Rule Committee

- (1) The Rule Committee shall be composed of no fewer than 9 and no more than 10 members.
- (2) Of the members of the Rule Committee:
- (a) one shall be the Chief Judge,
 - (b) six shall be Judges other than the Chief Judge,
 - (c) one shall be a barrister, and

(d) one shall be a solicitor.

- (3) If the Minister thinks it appropriate to do so, the Minister may, by instrument in writing, appoint as a member of the Rule Committee a person who, in the Minister's opinion, is suitably qualified to hold that position.
- (4) A member of the Rule Committee referred to in subsection (2) (b), (c) or (d) shall be appointed by the Chief Judge by instrument in writing.
- (5) Subject to this section, a member of the Rule Committee referred to in subsection (2) (b), (c) or (d) shall hold office for such period as may be specified in the member's instrument of appointment and, if otherwise qualified, is eligible for re-appointment or, as the case may be, for further re-appointment.
- (6) A member of the Rule Committee referred to in subsection (3) shall hold office as such only during the pleasure of the Minister.
- (7) A member of the Rule Committee referred to in subsection (2) ceases to hold office as such:
- (a) when the member ceases to hold the qualification by virtue of which the member was appointed, or
 - (b) in the case of a member referred to in subsection (2) (b), (c) or (d), if the member resigns as such by writing under the member's hand addressed to the Chief Judge.
- (8) In the event of the office of any member of the Rule Committee becoming vacant, a suitably qualified person:
- (a) in the case of a member referred to in subsection (2) (b), (c) or (d), shall, and
 - (b) in the case of a member referred to in subsection (3), may,
- subject to this section, be appointed to fill the vacancy.
- (9) In this section and in section 18BA:

barrister means a legal practitioner who holds a current practising certificate as a barrister.

solicitor means a legal practitioner who holds a current practising certificate as a solicitor.

18BA Deputies for barrister and solicitor members

- (1) The Chief Judge may, from time to time, appoint to the Rule Committee:
- (a) a barrister to be the deputy of the member appointed under section 18B (2) (c), and

(b) a solicitor to be the deputy of the member appointed under section 18B (2) (d), and the Chief Judge may revoke any such appointment.

(2) In the absence of a member appointed under section 18B (2) (c) or (d), the member's deputy:

(a) may, if available, act in the place of the member, and

(b) while so acting, has the functions of the member and is taken to be the member.

18C Chairperson and deputy chairperson of Rule Committee

(1) The Chief Judge shall be the chairperson of the Rule Committee and one of the other members of that Committee shall, in and by the relevant instrument of appointment as such a member or by another instrument executed by the Chief Judge, be appointed as deputy chairperson of that Committee.

(2) (Repealed)

18D Meetings of the Rule Committee

(1) The procedure for calling meetings of the Rule Committee and for the conduct of business at those meetings shall, subject to any procedure that is prescribed by or under this Act, be as determined by the Rule Committee.

(2) Five members of the Rule Committee shall form a quorum and any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and shall have and may exercise all the powers, authorities, duties and functions of the Rule Committee.

(3) The chairman of the Rule Committee or, in the absence of the chairman, the deputy chairman of that Committee shall preside at a meeting of that Committee.

(4) In the absence from a meeting of the Rule Committee of both the chairman and the deputy chairman another member of the Rule Committee elected by the members present shall preside at the meeting.

(5) The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present shall be the decision of that Committee.

(7) The Chief Judge shall call the first meeting of the Rule Committee in such manner as the Chief Judge thinks fit and, subject to any decision of that Committee under subsection (1), may call other meetings of that Committee as and when the Chief Judge thinks necessary.

- (8) The Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Rule Committee for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Rule Committee.

18E Secretary to the Rule Committee

- (1) Subject to and in accordance with the *Public Service Act 1979*, a person shall be appointed to hold office as the Secretary to the Rule Committee.
- (2) The appointment of a person under subsection (1) is subject to the prior approval of the Chief Judge.
- (3) A person may hold office under subsection (1) in conjunction with some other office or position in the Public Service, including the office of registrar.
- (4) The Secretary to the Rule Committee has and may exercise and discharge such powers, authorities, duties and functions as may be specified in the civil procedure rules or the criminal procedure rules or as the Rule Committee may determine.

Division 4 Proclaimed places

18F Proclaimed places

- (1) The Governor may, by proclamation, specify places at which the Court may sit, and one of those places shall be Sydney.
- (2) In this section, **place** means city, town or other place.

Division 5 Registrars

Subdivision 1 Judicial Registrar

18FA Appointment and qualifications of Judicial Registrar

- (1) The Minister may appoint any qualified person to be the Judicial Registrar of the Court.
- (2) A person is qualified for appointment as the Judicial Registrar if the person is, or is eligible to be, admitted as a legal practitioner of any court of a State or Territory or of the High Court.
- (3) The Judicial Registrar is to devote the whole of his or her time to the office of Judicial Registrar.
- (4) The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the Judicial Registrar and, in particular, Chapter 5 of that Act does not apply to the person appointed to the office of Judicial Registrar.
- (5) The Judicial Registrar is an officer of the Court.

- (6) Schedule 1A has effect with respect to the Judicial Registrar.

18FB Powers of Judicial Registrar

- (1) The Judicial Registrar may, subject to the direction of the Chief Judge, exercise such powers of the Court as are, by or under this or any other Act, conferred on the Judicial Registrar. The Judicial Registrar constitutes the Court for the purpose of the exercise of those powers.
- (2) A judgment given, or an order (other than an interlocutory order) made, by the Judicial Registrar may be set aside or varied by the Court.
- (3) Subject to subsection (2), a judgment given or an order made or a direction given by the Judicial Registrar has effect as a judgment or order or direction of the Court, whether or not the judgment, order or direction is within the powers of the Judicial Registrar.

18FC Acting Judicial Registrar

- (1) If there is a vacancy in the office of Judicial Registrar, or the Judicial Registrar is absent from duty, the Minister may appoint a person who is qualified for appointment as the Judicial Registrar to act in the position of Judicial Registrar for the period of the vacancy or absence from duty.
- (2) A person appointed under subsection (1) has, for the period of the appointment, all the entitlements, powers, authorities, functions and duties of the Judicial Registrar and, for that period, is taken to be the Judicial Registrar.

Subdivision 2 Other registrars

18G Registrars

- (1) There shall be a registrar of the Court for each proclaimed place.
- (2) The Principal Registrar, and the registrar for any proclaimed place specified for the purposes of this subsection by the Minister by order published in the Gazette, shall be appointed subject to and in accordance with the [Public Service Act 1979](#).
- (3) The registrar for any proclaimed place (other than Sydney) not referred to in subsection (2) shall be:
 - (a) the registrar of the Local Court for that place, or
 - (b) if there is no such registrar—the registrar of the Local Court for some other place (whether or not that place is a proclaimed place) specified for the purposes of this subsection by the Minister by order published in the Gazette.
- (4) The Minister may, by order published in the Gazette, direct that there can be 2

registrars for a particular proclaimed place, each having the functions specified in that order.

- (5) In this section, **registrar of the Local Court**, in relation to a place, includes a person for the time being exercising the functions of the registrar of the Local Court for the place.

18H Functions of registrars

- (1) The registrar for a proclaimed place shall have and may exercise such functions as may be prescribed by the civil procedure rules and the criminal procedure rules.
- (2) The registrar for a proclaimed place may exercise any or all of those functions in respect of that proclaimed place only.
- (3) The Principal Registrar may exercise any or all of those functions in respect of any place in the State.

18I Assistant registrars

- (1) Subject to and in accordance with the [Public Service Act 1979](#), one or more assistant registrars may be appointed for a proclaimed place.
- (2) If the Governor by proclamation so directs, the registrar of the Local Court for a place specified in the proclamation (whether or not that place is a proclaimed place) shall be an assistant registrar for the proclaimed place specified in the proclamation.
- (3) In this section, **registrar of the Local Court**, in relation to a place, includes a person for the time being exercising the functions of the registrar of the Local Court for the place.

18J Functions of assistant registrars

- (1) An assistant registrar for a proclaimed place shall have and may exercise such of the functions of the registrar for that proclaimed place as may be specified in the civil procedure rules or the criminal procedure rules, and may exercise any or all of those functions in respect of that proclaimed place only.
- (1A) An assistant Principal Registrar may exercise any or all of the functions of the Principal Registrar in respect of any place in the State.
- (2) Anything done or omitted to be done by an assistant registrar for a proclaimed place in the exercise of the assistant registrar's functions under this Act shall, for the purposes of this Act, have the same effect as if it had been done or omitted by the registrar for that proclaimed place.
- (3) Nothing in this section affects the functions of any registrar.

18K Temporary appointment of registrars and assistant registrars

- (1) The Minister may, by order in writing, appoint a person to act in the office of registrar or assistant registrar during:
 - (a) an absence from duty of the registrar or assistant registrar, or
 - (b) a vacancy of not more than 6 months' duration in the office of the registrar or assistant registrar.
- (2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.
- (3) While acting in the office of registrar or assistant registrar, a person so appointed has and may exercise all the functions of that office.
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done.
- (5) Any act, matter or thing done by a person while acting in the office of registrar or assistant registrar is taken to have been done by the registrar or assistant registrar, as the case requires.
- (6) This section does not apply to an office that is held by a registrar of a Local Court.

Part 3 The civil jurisdiction of the Court

Division 1 Officers and general provisions

Subdivision 1

19-24 (Repealed)

Subdivision 2 Sheriff and bailiffs

25 Sheriff and Sheriff's officers

- (1) The Sheriff shall have and may exercise the functions conferred or imposed on the Sheriff by this Act and the rules.
- (2) Unless the rules provide otherwise, the Sheriff may delegate to any Sheriff's officer any of the Sheriff's functions under this Act, except this power of delegation.
- (3) Subject to the rules, the Sheriff and any Sheriff's officers to whom functions are delegated shall exercise their functions under this Act in accordance with any orders and directions given by a Judge.

26 Bailiffs and assistant bailiffs—appointment etc

- (1) The Chief Judge may, by order in writing, appoint persons to be bailiffs of the Court for the proclaimed places specified in the order and may suspend or remove from office any person so appointed.
- (2) The Sheriff, or a bailiff for the proclaimed place, may by instrument in writing appoint a sufficient number of persons to be assistant bailiffs for a proclaimed place.
- (3) An assistant bailiff may be dismissed or suspended from office by the Chief Judge, the Sheriff or a bailiff for the proclaimed place concerned.

27 Functions of bailiffs and assistant bailiffs

- (1) Bailiffs and assistant bailiffs shall have and may exercise the functions conferred or imposed on them by this Act and the rules.
- (2) Without limiting subsection (1), it is the duty of an assistant bailiff for a proclaimed place to assist the Sheriff or a bailiff for that place, in accordance with the directions of the Sheriff or bailiff, as the case may be.
- (3) Subject to the rules, a bailiff and an assistant bailiff shall exercise their functions under this Act in accordance with any orders and directions given by a Judge.

28 Liability of bailiffs

A bailiff who undertakes or is required to undertake the execution or service of any warrant, writ or other document relating to any proceedings is responsible to any party to those proceedings for all the acts and omissions of the bailiff and any assistant bailiff assisting him or her in the same manner as the Sheriff is responsible for the acts and omissions of the Sheriff and Sheriff's officers.

29 Remuneration of bailiffs

A bailiff and an assistant bailiff are entitled, in respect of any service performed by them under this Act, to receive and retain, out of the Consolidated Fund, the amount of the appropriate fee prescribed by the regulations as payable by a party in respect of that service.

30 Obstruction of Sheriff, bailiff etc

A person shall not:

- (a) assault, resist, interrupt or obstruct the Sheriff, a Sheriff's officer, a bailiff or an assistant bailiff exercising a function under this Act, or
- (b) rescue or attempt to rescue any property seized or taken by the Sheriff, a Sheriff's officer, a bailiff or an assistant bailiff in accordance with this Act.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

Subdivision 3 Sittings of the Court

31 (Repealed)

32 Directions as to sittings of Court in its civil jurisdiction

- (1) The Chief Judge may, by order in writing, direct that the Court is, during a specified calendar year, to sit in its civil jurisdiction at such proclaimed places or other places within the State and at such times as may be specified in the order.
- (2) If a place specified in a direction under subsection (1) is not a proclaimed place, the specified place is, for the purposes of this Act or any other law and while the direction remains in force, taken to form part of the nearest proclaimed place to the specified place.
- (3) Subsection (2) ceases to have effect if and when the specified place becomes a proclaimed place.
- (4) If the Chief Judge considers that it is not expedient or practicable for the Court to sit at a particular place during a specified period:
 - (a) the Chief Judge may, by order in writing, direct that during that period all civil proceedings (other than proceedings before a registrar or some other officer of the Court) for which the proper place is that place are to be continued by the Court sitting at some other place specified in the order, and
 - (b) while a direction under this subsection remains in force, the proceedings to which it relates are, if continued, to be dealt with accordingly.
- (5) A direction under this section may be given in respect of a particular calendar year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.
- (6) If a direction having effect during a particular calendar year is given under subsection (1) in relation to a particular place, a previous direction under subsection (4) having effect, during that year, in respect of proceedings the proper place in relation to which is that place, ceases to have effect.

33 General provisions as to sittings

- (1) Subject to this Part and the rules, sittings of the Court shall be arranged by the Chief Judge.
- (2) Subject to this Part and the rules:
 - (a) the Court may sit simultaneously at different sitting places,

(b) a Judge shall preside at such sittings of the Court at such sitting places as the Chief Judge may from time to time direct, and

(c) two or more Judges may preside simultaneously at separate sittings of the Court at the one sitting place.

(3) (Repealed)

34 Permanent substitution of proclaimed place

(1) Where a place ceases to be a proclaimed place by reason of the revocation or amendment of a proclamation made under section 18F, the Governor may, by proclamation, direct that:

(a) all proceedings (including proceedings before a registrar or any other officer of the Court) pending before the Court at that place, and

(b) any unsatisfied judgment or order of the Court in proceedings the proper place in relation to which was that place,

may be continued or enforced by the Court sitting at such other place as may be specified in the proclamation, and the proceedings shall, if continued, be continued accordingly or the judgment or order enforced accordingly, as the case may require.

(2) The Governor may, in any such proclamation, direct that the records of the Court at the place that has so ceased to be a proclaimed place shall be removed at or within a time stated in the proclamation to the registry for the other place specified therein.

(3) A direction under subsection (1) shall, for the purposes of the definition of **proper place** in section 4 (1), have effect as if it were an order for a change of venue under section 40 in respect of the proceedings to which it relates to the other place specified in the proclamation.

35-38 (Repealed)

39 Proper place not affected

Nothing contained in or done under section 32 or under the rules has, for the purposes of the definition of **proper place** in section 4 (1), effect as a change of venue, unless the Court orders a change of venue under section 40.

Subdivision 4 Change of venue

40 Change of venue

Where it appears to the Court:

(a) that a fair or unprejudiced trial of an issue arising or likely to arise in or in connection with any proceedings cannot otherwise be had, or

- (b) any circumstances prescribed for the purposes of this section have arisen or are likely to arise in or in connection with particular proceedings,

the Court may, subject to and in accordance with the rules, make an order changing the venue of the proceedings.

Subdivision 5 Parties

41 Joint liability

- (1) Subject to this Act and the rules, where a plaintiff has a cause of action against two or more persons having a joint liability, it shall be sufficient if any one or more of those persons is or are served with process in any proceedings, and judgment in the proceedings may be given or entered up and enforced against the person or persons so served notwithstanding that others jointly liable have not been served or sued, or are not within New South Wales.
- (2) The provisions of section 97 of the *Supreme Court Act 1970* apply to and in respect of a judgment given or entered up in proceedings in the Court in the same way as they apply to and in respect of a judgment given in proceedings in the Supreme Court.

42 (Repealed)

Subdivision 6 Right of appearance

43 Right of appearance

- (1) A party to any proceedings may appear:
- (a) by a barrister or solicitor retained by or on behalf of that party, or by a solicitor employed (as an agent or otherwise) by a solicitor so retained, or
- (b) if no barrister or solicitor is so retained and:
- (i) if that party is a natural person—by himself or herself, or
- (ii) if that party is a corporation—by an officer of the corporation authorised in that behalf by the corporation in accordance with the rules,
- or by another person allowed by leave of the Court granted in the particular proceedings to appear on that party's behalf.
- (2) Subject to and in accordance with the rules, a person appearing in any proceedings may address the Court and examine and cross-examine witnesses.
- (3) A person who is not a barrister or solicitor shall not be entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person in the Court or before a registrar.

- (4) Subsection (3) does not operate to prevent an employee who appears on behalf of the employee's employer in the ordinary course of the employee's employment from receiving wages or salary for so appearing.
- (5) No amount paid to a person who appears in any proceedings, and who is not a barrister or solicitor retained as mentioned in subsection (1), shall be allowed as costs.
- (6) (Repealed)

Division 2 Actions: jurisdiction

Subdivision 1 General jurisdiction in relation to actions

44 Actions

- (1) Subject to this Act, the Court has jurisdiction to hear and dispose of the following actions:
 - (a) any action of a kind:
 - (i) which, if brought in the Supreme Court, would be assigned to the Common Law Division of that Court, and
 - (ii) in which the amount claimed does not exceed \$750,000, whether on a balance of account or after an admitted set-off or otherwise,other than an action referred to in paragraph (d) or (e),
 - (b) (Repealed)
 - (c) any action brought to recover an amount not exceeding \$20,000, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will,
 - (d) any motor accident claim, irrespective of the amount claimed,
 - (d1) any work injury damages claim, irrespective of the amount claimed,
 - (e) any proceedings transferred to the Court under section 143 (1), irrespective of the amount (if any) claimed in those proceedings.
- (2) Where the amount claimed in an action includes interest (being interest which the Court could, under section 83A (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 dispose of the action.

(3) Where:

(a) an amendment to subsection (1) which is enacted after, or was enacted before the commencement of Schedule 3 to the *District Court (Procedure) Amendment Act 1984* has or had the effect of increasing the amount specified in paragraph (a) or (b) of that subsection, and

(b) an action in which an amount of money is claimed is pending 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 at the time when the amendment had effect and has not been finally determined,

the Court may, on the application of the claimant, make an order altering the amount specified in the claim to an amount not exceeding that specified in paragraph (a) or (b) of that subsection, as in force immediately after the amendment has or had effect.

45 (Repealed)

46 Ancillary equitable relief: injunctions

(1) Without affecting the generality of Division 8, the Court shall, in any action, have power to grant any injunction (whether interlocutory or otherwise) which the Supreme Court might have granted if the action were proceedings in the Supreme Court.

(2) In relation to the power of the Court to grant an injunction under this section:

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances,

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on the officer, discharge:

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances, and

(ii) any duty imposed on the officer by the rules or by any order of the Court,

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances, and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c) shall, subject to the rules,

extend to the enforcement of any order of the Court made in connection with proceedings for the grant of the injunction.

- (3) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to:
- (a) the procedure to be followed with respect to the granting and enforcing of an injunction under this section, and
 - (b) any other matter necessary or convenient for giving effect to this section.

47 Cause of action or defendant outside the State

- (1) The Court has jurisdiction in accordance with this Act to hear and dispose of an action, and a registrar may exercise the powers conferred on the registrar by any of the rules prescribed for the purposes of this subsection, regardless of whether the cause of action to which the action relates arose wholly or partly outside New South Wales if the defendant has been duly served with the document commencing the action.
- (2) For the purposes of subsection (1), it is immaterial whether the defendant was within or outside New South Wales:
- (a) at the time the cause of action arose, or
 - (b) at the time of service of the document commencing the action.
- (3) For the purposes of this section, a defendant is duly served with a document commencing an action if the defendant is served with the document by or under this Act or in accordance with the *Service and Execution of Process Act 1992* of the Commonwealth.
- (4) In this section, **defendant** includes, if there are two or more defendants, any one of those defendants.

48 Miscellaneous limitations on jurisdiction

- (1) An action in which the amount claimed does not exceed \$4,000 and which could have been commenced in a Local Court shall not be commenced in the District Court except with the leave of the District Court, which leave may be given on terms.
- (2) Subject to subsection (3), the Court shall not have jurisdiction in an action in which title to land the value of which is more than \$750,000 is in question.
- (3) If the title to land the value of which is more than \$750,000 incidentally comes in question in an action, the Court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the Court shall not be evidence of title between the parties or their privies in other proceedings in the Court or in any proceedings in any other court.

- (4) Without affecting Division 8, the Court shall not have jurisdiction in actions for possession of land by virtue of this Part.

Subdivision 2 Splitting and dividing of causes of action and abandonment

49 Actions not to be split or divided

- (1) Where a person splits or divides any cause of action against another person:
- (a) so as to bring an action for part of the amount for which an action may be brought on that cause, or
 - (b) so as to plead a cross-claim for part of the amount for which an action 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 brought or cross-claim pleaded on that cause (whether brought or pleaded in the Court or brought, taken or pleaded in any other court).

- (2) Where a person has given two or more bills of exchange, promissory notes, bonds or other securities for any claim by another person, whether or not the amount of that claim exceeds \$750,000, that other person may, notwithstanding the provisions of subsection (1) but subject to any other provision of this Act, bring an action on, or plead by way of cross-claim in the Court, each of those securities as if each of them formed a distinct cause of action.

50 Abandonment

A plaintiff who has a cause of action for more than the amount for which an action may be brought on that cause of action under this Act may abandon the excess by stating the abandonment in the document by the lodging of which an action is commenced on that cause of action, and where the abandonment is so stated:

- (a) the plaintiff's claim shall be reduced by the amount of the excess and the plaintiff shall, on proving his or her case, recover to an amount not exceeding the amount for which an action may be brought on that cause of action under this Act,
- (b) judgment in the action shall be in full discharge of all demands in respect of that cause of action, and
- (c) entry of the judgment in the records of the Court shall be made accordingly.

Subdivision 3 Jurisdiction by consent

51 Consent jurisdiction

- (1) In this section *memorandum of consent* in relation to an action or cross-claim means a document signed by each party to the action or cross-claim, or the party's solicitor, in which it is stated that each of those parties consents to the action or cross-claim being tried in the Court and is aware that, unless the document is filed, the Court will not have jurisdiction to dispose of the action or cross-claim.
- (2) Where, but for this subsection, the Court would not have jurisdiction to hear and dispose of an action or cross-claim by reason only of the fact that the amount claimed exceeds \$750,000, the Court shall have jurisdiction to hear and dispose of that action or cross-claim if a party to the action or cross-claim files a memorandum of consent in respect of the action or cross-claim.
- (2A) The reference in subsection (2) to \$750,000 is taken to be a reference to:
 - (a) \$100,000, in the case of an action commenced before 1 July 1993, and
 - (b) \$250,000, in the case of an action commenced after 1 July 1993 but before 18 July 1997.
- (3) This section does not apply in relation to an action referred to in section 44 (1) (c).

Division 3 Actions: procedure

Subdivision 1

52 (Repealed)

Subdivision 2 Commencement of actions

53 Manner of commencement of actions

An action and proceedings ancillary to an action shall be commenced in the manner prescribed by the rules.

54, 55 (Repealed)

Subdivision 3 Defences

56 Right to defend action

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

Subdivision 4 Interim payments

57 Definitions

In this Subdivision:

interim payments, in relation to proceedings for the recovery of damages, means a payment of any of those damages by a defendant before the completion of the proceedings:

- (a) in accordance with an order of the Court under section 58, or
- (b) voluntarily.

public authority means a public or local authority constituted by or under an Act, a Government Department or a statutory body representing the Crown, and includes a person exercising functions on behalf of that authority, Department or body.

58 Court may order interim payments

- (1) In any action for the recovery of damages, the Court may, in accordance with this section, order a defendant in the action to make one or more payments to the plaintiff of part of the damages sought to be recovered in the action.
- (2) The Court may make such an order against a defendant on the application of the plaintiff at any stage of the action.
- (3) The Court may make such an order if:
 - (a) the defendant has admitted liability, or
 - (b) the plaintiff has obtained judgment against the defendant for damages to be assessed, or
 - (c) the Court is satisfied that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the defendant.
- (4) The Court may not make such an order if the defendant satisfies the Court that:
 - (a) the defendant is not insured in respect of the risk giving rise to the plaintiff's claim for the recovery of damages, and
 - (b) the defendant is not a public authority, and
 - (c) the defendant would, having regard to the defendant's means and resources, suffer undue hardship if such a payment were to be made.
- (5) The Court may order a defendant to make one or more payments of such amounts as it thinks just but not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff.
- (6) In estimating those damages the Court is to take into account any relevant

contributory negligence or any cross-claims on which the defendant may be entitled to rely.

59 Interim payment not admission of liability

- (1) The fact that a defendant makes one or more interim payments is not of itself an admission of liability by the defendant.
- (2) The making of, or refusal to make, an order under section 58 is not a finding as to liability in respect of the action.

60 Adjustments on final judgment etc

- (1) This section applies to an action in which a defendant makes one or more interim payments.
- (2) The Court may make such orders with respect to the interim payments as may be just, and in particular may order one or more of the following:
 - (a) the repayment by the plaintiff of all or part of any interim payment, with or without interest,
 - (b) the variation or discontinuance of any such payments,
 - (c) the payment by another party to the action of all or part of any interim payment that the defendant is entitled to recover from that party.
- (3) The Court may make an order under this section:
 - (a) in making a final judgment or order, or
 - (b) in granting the plaintiff leave to discontinue the action or to withdraw the claim, or
 - (c) on the application of any party, at any other stage in the action.

61 Exclusion of damages relating to motor accidents

This Subdivision does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

Subdivision 5

62 (Repealed)

Subdivision 6 Arbitration

63 Arbitration

- (1) Subject to subsection (2), the rules may make provision for or with respect to:
 - (a) the cases in which the whole of any action or any question or issue arising in any

action may be referred by the Court to an arbitrator or referee for determination or for inquiry and report,

- (b) the appointment of a Judge, registrar or other officer of the Court or other person as an arbitrator or referee,
 - (c) the fees to be paid to such an arbitrator or referee,
 - (d) the person by whom the whole or any part of any such fees are payable,
 - (e) the consequences of a determination or report by an arbitrator or referee,
 - (f) the manner in which such a determination or report may be called in question,
 - (g) whether or not, or to what extent, a determination or report may be called in question on a matter of fact or law,
 - (h) the provision of the services of officers of the Court and the provision of court rooms and other facilities for the purpose of a reference of any action or any question or issue arising in any action to an arbitrator or referee, and
 - (i) any other matters associated with such a reference.
- (2) The Court, on application made to it by any party within the prescribed time, may set aside a determination made by an arbitrator or referee and may:
- (a) refer the determination back to the arbitrator or referee who made it, or
 - (b) revoke the reference to the arbitrator or referee who made the determination and make such order as it thinks fit for the continuance of the action.

63A Arbitration under [Arbitration \(Civil Actions\) Act 1983](#)

- (1) Except as provided by subsection (3), the Court sitting at a proclaimed place prescribed by the rules for the purposes of this section at any time may, whether of its own motion or on application, order that, in accordance with the rules, an action before it under this Part (Division 8 excepted) be referred for determination pursuant to the [Arbitration \(Civil Actions\) Act 1983](#) by an arbitrator or arbitrators holding office under section 5 (2) of that Act.
- (2) The Court shall, before making an order under subsection (1) in relation to an action:
 - (a) consider the preparations for trial of the action,
 - (b) as far as possible, deal with all matters that may be dealt with by the Court on application to the Court before trial of the action, and
 - (c) give such directions for the conduct of the proceedings before the arbitrator as appear best adapted for the just, quick and cheap disposal of the proceedings.

- (3) The Court shall not make an order under subsection (1) if:
 - (a) no issue in the action is contested or judgment in the action has been given or entered up and has not been set aside,
 - (b), (c) (Repealed)
 - (d) the action is an action within a class of actions prescribed by the rules as a class of actions that may not be so referred, or
 - (e) cause is otherwise shown why the action should not be so referred.
- (4) The Court may, at any time before the making of an award under the *Arbitration (Civil Actions) Act 1983* in relation to an action the subject of an order under subsection (1), revoke the order and give directions for the subsequent conduct of the action and as to any costs incurred before the revocation of the order.
- (5) Except in the case of an action in respect of which an order for rehearing has been made under section 18 of the *Arbitration (Civil Actions) Act 1983*, the award of an arbitrator in relation to an action referred to the arbitrator under subsection (1) shall, after the expiration of the time prescribed by the rules for the purposes of this subsection, be deemed to be a judgment or order of the Court.
- (6) This section does not affect any other power of the Court to refer a matter to arbitration.

Subdivision 7 Witnesses, evidence and ancillary matters

64 Subpoenas

- (1) On request by a party to an action, the registrar for any proclaimed place (whether or not that place is the proper place in relation to the action) shall, subject to the rules, issue:
 - (a) a subpoena to give evidence, requiring a person specified therein to attend and give evidence at any hearing of the action or of proceedings ancillary to the action, as directed by the subpoena, or
 - (b) a subpoena for production, requiring a person specified therein to attend and produce, for the purpose of evidence, at any hearing of the action or of proceedings ancillary to the action any document or thing that is in the person's possession or control and specified in the subpoena, as directed by the subpoena.
- (1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. However, the person who is required by the subpoena to produce a document or thing can still elect to produce the document or thing at the specified hearing of the action or of proceedings ancillary to the action.

- (2) The rules may make provision for or with respect to authorising compliance with a subpoena for production at a hearing issued in respect of a document or thing by the production of the document or thing to a registrar.
- (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 the person's 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.
- (4) This section does not affect the operation of Division 1 of Part 4.6 of the *Evidence Act 1995* (Requests to produce documents or call witnesses).

65 Attendance

- (1) Where the attendance of a person at the hearing of an action is required by a subpoena issued under section 64:
 - (a) for the purpose of giving evidence at the hearing, or
 - (b) for the production at the hearing of a document or thing,and the person defaults in attending the hearing as required by the subpoena, the Court may, on the application of a party or of its own motion:
 - (c) issue, or make an order for the issue of, a warrant to the Sheriff or a bailiff, or to such other person as the Court may appoint, directing the defaulting person to be arrested and brought before the Court or a registrar and, where appropriate, to be kept in custody as required by subsection (3), or
 - (d) order the defaulting person to appear before the Court to show cause as to why such a warrant should not be issued against that person,and in either case order the defaulting person to pay any costs attributable to 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), the person shall be kept in custody as directed by the warrant until:
 - (a) the person is brought before the Court or the person's earlier release is ordered by the Court or the Supreme Court, or
 - (b) the person gives, in accordance with the rules, an undertaking to comply with the requirement referred to in subsection (1).
- (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, the person is

guilty of contempt of court committed in the face of the Court unless the person 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 the person's 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.
- (9) This section applies in relation to a subpoena issued under this Act to the exclusion of section 194 (Witnesses failing to attend proceedings) of the *Evidence Act 1995*.

66 Provisions respecting production of documents or things

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 the person would not be bound to produce upon a subpoena for production in the Supreme Court.

67 Bringing up a prisoner to give evidence

- (1) A Judge (whether or not sitting at a proclaimed place), on application made in the prescribed manner by a party to an action, may if the Judge thinks fit issue an order under the seal of the Court for bringing up before the Court any person confined in any prison or place under any sentence, under commitment for trial, or for any other reason, to be examined as a witness in the action, and for returning the person to confinement.
- (2) The person having the custody of a person in respect of whom an order is made under subsection (1) shall not be bound to comply with the order unless tender is made to the custodian of an amount sufficient to cover the reasonable expenses involved in complying with the order.

68 Matters ancillary to trial

- (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 all or any of the following things:
 - (i) to give discovery of documents,

- (ii) to produce documents for inspection,
 - (iii) to produce documents at the hearing of the action,
 - (iv) to attend for a medical examination,
 - (v) to make admissions for the purposes of the action, or
 - (vi) to answer interrogatories administered by the party giving the notice,
- (b) the manner of compliance with such a requirement, and
- (c) empowering the 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 the Court to order that:
- (a) a natural person, or a corporation through any of its officers, attend for examination before the Court, or attend and produce documents, for the purpose of ascertaining or assisting in the ascertainment of the identity of, and the name and place of residence of, and other particulars relating to, a person against whom an action may be brought,
 - (b) a party give discovery of documents to any party,
 - (b1) a party answer interrogatories administered by another party,
 - (c) a party produce documents for inspection by any party,
 - (d) a party produce documents at the hearing of any action,
 - (e) a party be at liberty to inspect property, whether real or personal, and whether or not in the possession or control of any party, for the purposes of any action,
 - (f) the evidence of a witness be allowed to be taken on an examination before the hearing of an action,
 - (g) a party attend for a medical examination, or
 - (h) a party give further particulars of any action commenced, grounds of defence filed, or cross-claim pleaded by the party,
- and empowering the Court to make such further order as may be prescribed in the event of the failure of a person to comply with an order of the Court made under rules made under this subsection.

68A Directions for speedy determination of real questions in civil proceedings

The Court may, from time to time, give such directions as the Court thinks fit (whether or

not inconsistent with the rules) for the speedy determination of the real questions between the parties to a civil action.

69, 69A (Repealed)

70 Examination on oath

Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person for the purposes of an action:

- (a) the examination shall be taken on oath, and
- (b) the oath shall be administered by the person taking the examination or by a Judge.

Subdivision 8 Trial and jury

71-75 (Repealed)

76 Amount recoverable

- (1) Where in an action commenced before the commencement of section 3 (k) of the *District Court (Amendment) Act 1975* a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if there had been no contributory negligence by the successful party is found at:
 - (a) an amount in excess of \$10,000 but not in excess of \$15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover:
 - (i) the full amount of the verdict, or
 - (ii) the total amount reduced in accordance with Part 3 of the *Law Reform (Miscellaneous Provisions) Act 1965*,as the case may be, or
 - (b) an amount in excess of \$15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover:
 - (i) the amount of \$15,000, or
 - (ii) the amount of \$15,000 reduced in accordance with Part 3 of the *Law Reform (Miscellaneous Provisions) Act 1965*,as the case may be.
- (2) Where in an action commenced after the commencement of section 3 (k) of the *District Court (Amendment) Act 1975* a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if there had been

no contributory negligence by the successful party is found at, an amount in excess of the amount for which the action was authorised by this Act to be brought, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover:

- (a) the maximum amount for which the action was authorised by this Act to be brought, or
- (b) that amount reduced in accordance with Part 3 of the *Law Reform (Miscellaneous Provisions) Act 1965*,

as the case may be.

76A Action to be tried without jury unless jury required in interests of justice

- (1) An action is to be tried without a jury, unless the Court orders otherwise.
- (2) The Court may make an order under subsection (1) that an action is to be tried with a jury if:
 - (a) any party to the action:
 - (i) files, within the prescribed time, a requisition for trial with a jury, and
 - (ii) pays the fee prescribed by the regulations made under section 150, and
 - (b) the Court is satisfied that the interests of justice require that the action be tried by a jury.
- (3) A fee paid under this section is to be treated as costs in the action, unless the Court orders otherwise.
- (4) This section does not apply to an action referred to in section 76B.

76B Defamation actions to be tried by jury unless Court orders otherwise

- (1) An action in which there are issues of fact on a claim in respect of defamation is to be tried with a jury.
- (2) Despite subsection (1), the Court may order that all or any issue of fact be tried without a jury if:
 - (a) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury, or
 - (b) all parties consent to the order.

77 Questions of fact and law

- (1) In an action the Judge shall determine all questions of law.

- (2) In an action the Judge shall, subject to subsection (5), determine all questions of fact unless a jury has been summoned.
- (3) (Repealed)
- (4) The Court may order that any question of fact in an action be tried before any other question of fact in the action.
- (5) In any proceedings in which the Court has ordered a jury be summoned, the following questions of fact must be tried without the jury:
 - (a) questions of fact on a defence arising under section 63 (5) or 64 (1) (c) of the *Workers' Compensation Act 1926* or section 151Z (1) (e) of the *Workers Compensation Act 1987*,
 - (b) any other question of fact ordered by the Court.

78-79A (Repealed)

80 Special verdict

It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial of an action.

Subdivision 9 Judgments and orders

80A (Repealed)

81 Judgment final

Subject to this or any other Act, a judgment in an action shall, unless set aside in accordance with this Act, be final and conclusive between the parties to the action.

82 (Repealed)

83 Judgment in an action relating to the detention of goods

- (1) In an action relating to the detention of goods, the Court may, if it finds for the plaintiff, give judgment:
 - (a) for delivery of the goods to the plaintiff,
 - (b) for delivery of the goods to the plaintiff, but giving the defendant the option of retaining the goods and paying the plaintiff the value of the goods, as assessed by the Court, or
 - (c) for payment to the plaintiff of the value of the goods, as so assessed,together with, in any of the cases mentioned in paragraphs (a), (b) and (c), any consequential damages.

- (2) Subject to the rules, relief under subsection (1) (a) is at the discretion of the Court but the plaintiff may choose between the other forms of relief prescribed by subsection (1).
- (3) Where in an action relating to the detention of goods judgment is given as referred to in subsection (1) (b), the Court, in its discretion, may, on the application of the plaintiff, subsequently make an order for the delivery of the goods to the plaintiff without giving the defendant the option of retaining the goods and paying their assessed value.
- (4) The rules may make provision with respect to the manner in which a judgment given as referred to in subsection (1) may be satisfied.

83A Interest up to judgment

- (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) the Court may order that there shall be included, in the amount for which judgment is given, interest at such rate as it thinks fit on the whole or any part of that amount for the whole or any part of the period between the date when the cause of action arose and the date when judgment takes effect.

(1A) Where:

- (a) proceedings have been commenced for the recovery of a debt or liquidated demand, and
- (b) payment of the whole or a part of the debt or demand is made during the currency of the proceedings and prior to or without judgment being given in respect of the debt or demand,

the Court may order that interest be paid at such rate as it thinks fit on the whole or any part of the money paid for the whole or any part of the period between the date when the cause of action arose and the date of the payment.

(2) This section does not:

- (a) authorise the giving of interest upon interest,
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise, or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

- (3) In any action for damages, the Court may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order.

- (4) For the purposes of subsection (3), **appropriate settlement sum** is a sum offered by a defendant on or after the commencement of subsection (3) (as inserted by the [Courts Legislation Amendment Act 1995](#)) in settlement of an action where the amount for which judgment is given (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. This subsection extends to such a settlement offer whether the action commenced before, on or after the commencement of this subsection.
- (5) Subsection (3) does not prevent an award of interest for the period before the settlement offer is made.

83AA (Repealed)

Subdivision 10

83B-83D (Repealed)

Division 4 Actions: enforcement of judgments

Subdivision 1 General

84 Definitions

- (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires:

judgment includes any order of the Court for the payment of an amount of money as costs or otherwise.

judgment debt includes:

- (a) any amount ordered by the Court to be paid as costs or otherwise, and
- (b) any amount payable as provided by the rules as costs without any order of the Court.
- (2) A reference in this Division to the giving of a judgment includes a reference to the making by the Court of an order for the payment of an amount of money as costs or otherwise.

84A Limitation periods

- (1) An application by a judgment creditor may not, without the leave of the Court, be made under section 91 (1), 97 (1), 107 (1) or 113 (1) if the prescribed period has elapsed since the judgment was given or entered up.
- (2) The Court may not grant leave under subsection (1) in respect of a judgment unless a certified copy of the judgment is produced to the Court by the applicant for leave.

85 Interest on judgment debt

- (1) Unless the 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 the 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) Despite subsection (1) or (2), where:
 - (a) the amount of a judgment debt (excluding the amount of costs to be assessed) is paid in full within 21 days after the judgment debt becomes payable, or
 - (b) the amount of costs assessed is paid in full within 21 days after that amount is assessed,interest is not payable on the amount so paid, unless the Court otherwise orders.
- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970*, from the date or dates when the amount in respect of costs was duly paid.

86 (Repealed)

Subdivision 2

87-89 (Repealed)

Subdivision 3 Examination of judgment debtor

90 Definitions

In this Subdivision:

examination summons means summons issued under section 91 (1).

issuing registrar, in relation to an examination summons, means the registrar for the proclaimed place at which the summons was issued.

presiding registrar means a registrar or an assistant registrar before whom a person is

required to attend, or attends, for examination pursuant to a summons issued under section 91 (1) or by arrangement as referred to in section 92 (4).

90A Power of Chief Judge to give certain directions for the purposes of this Subdivision

For the purposes of this Subdivision, the Chief Judge may, from time to time, give a direction in writing to the effect that assistant registrars at the places specified in the direction are assistant registrars before whom persons may be directed to attend for examination under this Subdivision in answer to or consequent on the issue of examinations summonses.

91 Examination summonses

- (1) Where a judgment debt arising from an action has not been satisfied, the judgment creditor may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons directed:
 - (a) where the judgment debtor is not a corporation—to the judgment debtor, or
 - (b) where the judgment debtor is a corporation—to an officer or former officer of the corporation.
- (1A) Before issuing an examination summons under subsection (1), the registrar shall, for the purposes of subsection (2) (a), determine the place, being either a proclaimed place or a place specified in a direction in force under section 90A, that, in the opinion of the registrar, is the most easily accessible to the person to whom the summons is to be directed.
- (2) The examination summons:
 - (a) shall summon the person to whom it is directed to attend before the registrar or an assistant registrar at the place determined under subsection (1A) and specified in the summons,
 - (b) shall summon that person so to attend on a day and at a time fixed by the issuing registrar and specified in the summons, and thereafter as required by the registrar or an assistant registrar at the place so determined, to be orally examined as to the matters referred to in subsection (3), and
 - (c) may require that person to produce to the registrar or assistant registrar, at the examination referred to in paragraph (b), any document or thing in that person's possession or control which tends to show the judgment debtor's true financial circumstances.
- (3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons:
 - (a) the judgment creditor may orally examine that person before the presiding

registrar, or

(b) where the judgment creditor has so requested in accordance with the rules, the presiding registrar may, in accordance with the rules, orally examine that person, as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

- (4) The examination summons shall not be directed to an officer or former officer of a corporation under subsection (1) (b) unless the Court or the issuing registrar is satisfied by affidavit or otherwise that the officer or former officer is likely:
- (a) to have sufficient knowledge of the affairs of the corporation to enable the officer or former officer to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination under this Subdivision, or
- (b) to have in his or her possession or control any document or thing which tends to show the true financial circumstances of the corporation.
- (5) Where in respect of the judgment debt the person to whom the examination summons is directed has attended before the presiding registrar for examination under this Subdivision in answer to or consequent upon the issue of an examination summons, another examination summons directed to that person shall not, unless the Court, on the application of the judgment creditor, otherwise orders, be issued in respect of the judgment debt within three months after that person's attendance.
- (6) A registrar may be a presiding registrar as well as the issuing registrar in relation to the one examination summons.
- (7) Subsection (3) does not authorise both the judgment creditor and the presiding registrar at the one examination to examine a person as to the matters referred to in subsection (3).

92 Failure to attend in answer to examination summons

- (1) If, at the time set down (whether originally or in an order under subsection (7A) (d) or on an adjournment) for the examination of the person to whom an examination summons is directed:
- (a) the person fails to attend before the presiding registrar,
- (b) that registrar has no information which satisfies that registrar that the judgment debt has been paid,
- (c) there is due proof of service of the examination summons on the person (or, if the examination has been adjourned, that the person has been notified of the time and place fixed for the examination), and

(d) the judgment creditor so requests,
the Court may act under subsection (2).

(2) The Court may, if it thinks fit:

- (a) authorise the issue of a warrant for the apprehension of the person to whom the examination summons was directed, or
- (b) adjourn the examination of that person and order that the person attend before the presiding registrar on a date and at a time specified in the order,

and the presiding registrar shall forthwith give that person, or send to the person by post at the person's address last known to the presiding registrar, a notice informing the person of any action taken by the Court under this subsection.

- (3) A warrant shall not be issued under this section until after the expiration of fourteen days after the presiding registrar served the notice under subsection (2).
- (4) If during the period of fourteen days after the presiding registrar served a notice under subsection (2) in respect of a person the person has not attended, by arrangement with the presiding registrar, to be examined as to the matters referred to in section 91 (3), the presiding registrar, on the application of the judgment creditor verified by the judgment creditor's affidavit or in such other manner as may be prescribed, may, not earlier than 14 days and not later than 3 months after the presiding registrar served the notice under subsection (2), issue a warrant for the apprehension of that person.
- (4A) If a judgment creditor fails to make an application under subsection (4) within the time limited by that subsection, the Court, if satisfied with the reasons for the failure, may issue a warrant for the apprehension of the judgment debtor.
- (4B) The functions of the Court under subsections (2) and (4A) may be exercised by the presiding registrar.
- (5) The warrant shall:
 - (a) be under the hand of the presiding registrar,
 - (b) name or otherwise describe the person whose apprehension is required by the warrant,
 - (c) state shortly the reason for its issue,
 - (d) order the Sheriff or bailiff, required under the rules to execute it, to apprehend that person if he or she is within New South Wales and cause the person to be brought before the registrar for the proclaimed place nearest to the place at which he or she is apprehended to be examined as to the matters referred to in section

91 (3), and

(e) continue in force until it:

(i) is executed,

(ii) is revoked by order of the Court sitting at any proclaimed place or of the registrar for the proclaimed place at which it was issued, communicated to the Sheriff or bailiff in whose hands the warrant is for execution, or

(iii) expires in accordance with the rules,

whichever first occurs.

(6) Any member of the police force shall, if called upon by the Sheriff or bailiff to do so, aid and assist in the execution of the warrant.

(7) Where:

(a) the person in respect of whom the issue of a warrant is authorised under subsection (2) (a):

(i) by arrangement, attends before the presiding registrar, as referred to in subsection (4), or

(ii) is brought under the warrant before the registrar for the proclaimed place referred to in subsection (5) (d), and

(b) the judgment creditor attends before that presiding registrar or registrar,

the judgment creditor may orally examine that person before that presiding registrar or registrar as to the matters referred to in section 91 (3) or, where the judgment creditor has so requested in accordance with the rules, that presiding registrar or registrar may, in accordance with the rules, orally examine that person as to those matters.

(7A) Where:

(a) the person in respect of whom the issue of a warrant is authorised under subsection (2) (a):

(i) by arrangement, attends before the presiding registrar, as referred to in subsection (4), or

(ii) is brought under the warrant before the registrar for the proclaimed place referred to in subsection (5) (d), and

(b) the judgment creditor does not attend before that presiding registrar or registrar, that presiding registrar or registrar may:

- (c) in accordance with the rules, orally examine that person as to the matters referred to in section 91 (3),
 - (d) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a date and at a time specified in the order, or
 - (e) strike out the examination.
- (8) For the purposes of subsection (5) (e) (i), the warrant is executed when the person whose apprehension is required has been examined as to the matters referred to in section 91 (3), or the examination is adjourned to another day, or an order is made under subsection (7A) (d) in respect of the examination, or the examination is struck out, whichever first occurs.
- (9) Subsection (7) does not authorise both the judgment creditor and the presiding registrar or registrar referred to in that subsection to examine a person at the same examination as to the matters referred to in section 91 (3).

93 (Repealed)

94 Failure to give evidence etc at examination

Where a person attends before the presiding registrar, or, as the case may be, is brought before a registrar, for examination in accordance with this Subdivision and that person:

- (a) without reasonable excuse, refuses to give evidence on oath at the examination,
- (b) gives false information at the examination, or
- (c) without reasonable excuse, fails to produce any document or thing that the person is required by an examination summons to produce thereat,

the Court may, if that presiding registrar or registrar reports the refusal, giving of false information or failure to the Court and if the Court thinks fit, deal with the refusal, giving of false information or failure as if it were a contempt committed in the face of the Court.

94A-96 (Repealed)

Subdivision 4 Attachment of debts

97 Garnishee orders

- (1) Where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his or her solicitor or agent, make, in respect of the judgment debt, a garnishee order directed to a specified person (who is in this Subdivision referred to as a ***garnishee***).

- (2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served:
- (a) except in a case to which paragraph (b) or (c) applies, shall operate to attach in the hands of the garnishee, to the extent of the amount specified in the order, all debts which are due or accruing from the garnishee to the judgment debtor at the time of service of the order (whether or not they were so due or accruing at the time when the order was made),
 - (b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which paragraph (c) applies, shall operate to attach, to the extent of the amount specified in the order, the wage or salary next payable by the garnishee to the judgment debtor within one month after the service of the order on the garnishee, and
 - (c) in the case of an order expressed to be for the continuous attachment of the wage or salary of a judgment debtor, shall operate to attach any wage or salary as provided in section 98 (4).
- (3) A garnishee order shall:
- (a) specify the unpaid amount of the judgment debt owing to the judgment creditor, and
 - (b) require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached or so much of it as may be sufficient to satisfy that unpaid amount after deducting such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of that unpaid amount otherwise than under the order.
- (4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, the registrar may refuse to make the order.

97A Affidavit that no debt due or accruing

- (1) A garnishee who believes that, at the time of service of the garnishee order, there was no debt due or accruing from the garnishee to the judgment debtor may serve on the judgment creditor an affidavit which is to that effect and contains a summary of the grounds on which that belief is based.
- (2) A disclosure of any information in an affidavit served pursuant to subsection (1) shall not, if the disclosure was reasonable in the circumstances, subject the garnishee to any action, liability, claim or demand.

97B Time for payment by garnishee

- (1) Payment by a garnishee in accordance with a garnishee order not expressed to be for the attachment of any wage or salary shall be made:
 - (a) within the period of 21 days after service of the order on the garnishee, or
 - (b) in the case of any debt attached which is due for payment to the judgment debtor after the expiration of that period—not later than the date on which that debt is due for payment to the judgment debtor.
- (2) Payment by a garnishee in accordance with a garnishee order expressed to be for the attachment of any wage or salary shall be made within the period of 14 days after the wage or salary is due for payment to the judgment debtor.

97C Notice required for certain attached debts accruing

- (1) Where a garnishee order not expressed to be for the attachment of any wage or salary attaches a debt which is due for payment to the judgment debtor after the expiration of the period of 21 days after service of the order on the garnishee, the garnishee shall, before the expiration of that period, serve on the judgment creditor a notice which complies with subsection (2).
- (2) A notice under subsection (1) in respect of a debt shall specify:
 - (a) the date on which the debt is, or is likely to be, due for payment to the judgment debtor, and
 - (b) if the amount of the debt is less than the unpaid amount of the judgment debt specified in the garnishee order—the amount of the debt.
- (3) A person shall not make in a notice served pursuant to subsection (1) a statement which, to the person's knowledge, is false.

Maximum penalty: 2 penalty units.

97D Garnishee's costs

If a garnishee complies with a garnishee order (other than a garnishee order to which section 98 applies) within the time prescribed by section 97B and, where applicable, complies with section 97C (1):

- (a) the garnishee may retain out of the debt attached for the garnishee's own use an amount not exceeding that prescribed by the rules, and
- (b) any amount so retained shall, for the purposes of the debt attached, be deemed to have been paid by the garnishee to the judgment debtor.

97E Reduction of attached debt by Court

If, after service of a garnishee order on the garnishee, 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.

98 Continuous operation of certain garnishee orders

- (1) In this section, **instalment order** means an order made in accordance with the rules providing for a judgment debt to be paid by instalments.
- (2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor.
- (3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach, to the extent of the amount specified in the order, any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.
- (4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time.
- (5) A garnishee order made for the attachment of a wage or salary to answer the same judgment debt in respect of which a garnishee order to which this section applies is in force shall have no force or effect.

99 Limitation on operation of garnishee orders attaching a wage or salary

- (1) In this section:

prescribed rate, in relation to a wage or salary, means:

- (a) if no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to the weekly compensation payment, or
- (b) if any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to the weekly compensation payment increased by the amount so attached, calculated on a weekly basis.

wage or salary includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

weekly compensation payment means an amount calculated at a weekly rate that is equivalent to 80 per cent of the maximum single weekly payment of compensation for the time being referred to in section 37 (1) (a) (i) of the [Workers Compensation Act 1987](#) as adjusted under that Act.

- (2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only:
 - (a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate, or
 - (b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

100 Payment under certain garnishee orders

- (1) Subject to compliance with subsection (2), a garnishee required to make a payment under a garnishee order to which section 98 applies may deduct therefrom for the garnishee's own use an amount equal to ten per centum thereof.
- (2) Where a garnishee makes a deduction in accordance with subsection (1), the garnishee shall forward to the judgment creditor, when making payment to the registrar or to or at the direction of the judgment creditor of the balance of the payment due, a statement showing:
 - (a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor,
 - (b) the amount deducted by the garnishee for the garnishee's own use under subsection (1), and
 - (c) the amount of the payment to the registrar or to or at the direction of the judgment creditor, as the case may be.
- (3) Where a garnishee makes a payment in accordance with a garnishee order to which section 98 applies after making a deduction in accordance with subsection (1), the amount deducted shall for the purposes of the wage or salary attached be deemed to have been paid by the garnishee to the judgment debtor.

101 Limitation of payment under certain concurrent garnishee orders

- (1) In this section, **instalment garnishee order** means a garnishee order that operates as provided in section 98 (4), and includes an attachment order, made or given under

an Act other than this Act, that has a like operation.

- (2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order made under this Act, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.
- (3) Subject to section 99 and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed:
 - (a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of that payment of wage or salary, or
 - (b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of that payment of wage or salary.

102 Procedure where garnishee order not complied with

- (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, the judgment creditor may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons (in this Subdivision referred to as the ***garnishee summons***) requiring the garnishee to show cause before the Court why the garnishee should not comply with the garnishee order.
- (2) The garnishee summons:
 - (a) shall summon the garnishee to attend the Court sitting at a proclaimed place that, in the opinion of the registrar issuing the garnishee summons, is either:
 - (i) the nearest proclaimed place to the place where the garnishee is resident, as stated by the judgment creditor to that registrar in writing, or
 - (ii) the most easily accessible to the garnishee,and that is specified in the garnishee summons, and
 - (b) shall summon the garnishee so to attend on a day and at a time fixed by that registrar and specified in the garnishee summons.
- (3) At the time set down (whether originally or on an adjournment) for the garnishee to attend to answer the garnishee summons the Court may hear and determine any question in dispute concerning the liability of the garnishee to pay the debt, wage or

salary sought to be attached by the garnishee order and may give judgment for the amount of that debt, wage or salary or the unpaid amount of the judgment debt, whichever is the lesser, in favour of the judgment creditor against the garnishee, but shall not give judgment in the absence of the garnishee except upon due proof of service of the summons on the garnishee or, where the matter has been adjourned, of the garnishee having been notified of the time and place fixed for the garnishee to attend.

- (4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the Court is of the opinion that judgment should not be given under subsection (3), it may refuse to give the judgment.

103 Bank, building society and credit union accounts

- (1) In this section, except in so far as the context or subject-matter otherwise indicates or requires:

account includes:

- (a) a deposit account or withdrawable share account, and
- (b) any record of deposit or of subscription for withdrawable shares,

but does not include an account or a record which is prescribed by the regulations as exempt from the operation of this section.

bank means:

- (a) a bank within the meaning of the [Banking Act 1959](#) of the Commonwealth, as amended and in force for the time being, or
- (b) a person who carries on State banking within the meaning of section 51 (xiii) of the Constitution of the Commonwealth.

building society means a building society registered under the *Financial Institutions (NSW) Code* or a co-operative housing society registered under the [Co-operative Housing and Starr-Bowkett Societies Act 1998](#).

credit union means a credit union registered under the *Financial Institutions (NSW) Code*.

deposit-taking institution means a bank, building society or credit union.

- (2) For the purpose of determining whether an account standing to the credit of a judgment debtor in an account in a deposit-taking institution is attachable as a debt due or accruing to the judgment debtor, the following conditions shall be disregarded:
- (a) a condition that a demand must be made before any money or share is

withdrawn,

- (b) a condition relating to the manner in which or the place at which any such demand is to be made,
 - (c) a condition that a passbook, receipt or other document must be produced before any money or share is withdrawn,
 - (d) a condition that notice is required before any money or share is withdrawn,
 - (e) except in the case of an account in a Starr-Bowkett society, a condition that any money or share must not be withdrawn for any specified period,
 - (f) a condition prescribing a minimum amount in respect of any withdrawal from the account,
 - (g) a condition that a minimum balance must be maintained in the account,
 - (h) a condition relating to the account prescribed by the regulations for the purposes of this subsection.
- (3) So much of the amount standing to the credit of a judgment debtor in a withdrawable share account in a building society or credit union as is the minimum amount that must be maintained in the account in order that the judgment debtor retains membership of the building society or credit union is not attachable.
- (4) Where an amount standing to the credit of a judgment debtor in an account in a deposit-taking institution is attached, the garnishee order shall be deemed to operate as a notice of withdrawal or demand for payment under the contract between the garnishee and judgment debtor in respect of the account, and that notice or demand is, while the order remains in force, irrevocable and shall be deemed to have been received by the garnishee:
- (a) on the date of service of the order, or
 - (b) where the judgment debtor is not entitled under the contract to give a notice of withdrawal or make a demand for payment on the date of service of the order—on the date on which the judgment debtor would, but for the order, have become so entitled.
- (5) Any charge on an amount standing to the credit of a judgment debtor in an account in a building society or credit union (being a charge created by an Act under which the building society or credit union is registered or regulated or by the rules of the building society or credit union) shall be disregarded for the purposes of a garnishee order, but nothing in the foregoing affects the rights of the building society or credit union to set off or appropriate the whole or any part of that amount.
- (6) Where:

- (a) before the expiration of the period of 21 days after service of a garnishee order on a deposit-taking institution with respect to an amount standing to the credit of a judgment debtor in an account, the garnishee pays to the registrar the debt attached to the extent of the attachment, and
- (b) one of the conditions applicable to the account is that a passbook must be produced before any money or share 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 deposit-taking institution, require the registrar to retain the amount so paid for any specified period not exceeding 2 months commencing on the date of that payment.

(7) Where:

- (a) a registrar is required under subsection (6) by a garnishee to retain an amount for a period specified under that subsection, and
- (b) the garnishee during that period makes an application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation to the garnishee order but nevertheless, because of the production of a current passbook relating to that amount or any part of that amount, 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 of that amount to the garnishee.

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

- (a) until after:
 - (i) the garnishee, by instrument in writing signed by an officer of the deposit-taking institution, informs the registrar, or the registrar is otherwise satisfied, that a current passbook relating to that amount or any part of that amount has, during that period, come into the possession of the garnishee at the place of keeping of the account to the credit of which that amount was standing, or
 - (ii) the expiration of that period,whichever first occurs, and
- (b) unless the registrar is satisfied, on such information as is available to the registrar, that no application made during that period by the garnishee for an order under

subsection (7) in relation to that amount or any part of that amount is still pending.

- (9) If an amount referred to in subsection (8) or any part of such an amount is ordered to be repaid to the garnishee under subsection (7), the balance (if any) only is payable to the judgment creditor.
- (10) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this section is required or permitted to be prescribed by the regulations.
- (11) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.

104 Lien or claim of third person on debt

Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to any money paid under a garnishee order, or to the debt, wage or salary attached by such an order, or to any charge or lien on, or other interest in that money, debt, wage or salary, the Court may make orders for giving to that person notice of the proceedings and may hear and determine the person's claim and give such judgment or make such order in respect of the claim (including an order barring the claim and an order for the payment into court by a judgment creditor of money received under the garnishee order) as the nature of the case requires.

105 Payment by garnishee

- (1) A payment under a garnishee order shall be made to the registrar, for payment (subject to section 103) to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that the garnishee proposes so to do, may be made to or at the direction of the judgment creditor.
- (2) Subject to subsection (3), payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to the garnishee as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment may be set aside or the judgment reversed.
- (3) Where any amount is ordered to be repaid to a garnishee under section 103 (7):
 - (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.

106 Judgment creditor to account for any excess paid by a garnishee

- (1) Where a judgment creditor receives an amount paid under a garnishee order in

excess of the amount required to satisfy the judgment debt, the judgment creditor shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Maximum penalty: 2 penalty units.

- (2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor as a debt in any court of competent jurisdiction.

Subdivision 5 Writ of execution

107 Issue of writ of execution

- (1) Subject to subsection (2), where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his or her solicitor or agent, issue a writ of execution to enforce the judgment in the action.
- (2) The registrar shall not, without the leave of the Court granted on application made by the judgment creditor, issue a writ of execution to enforce a judgment:
 - (a) (Repealed)
 - (b) if since the judgment was given or entered up any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment,
 - (c) if the judgment is against the assets of a deceased person coming to the hands of his or her executor or administrator after the date of the giving or entering up of the judgment, and the writ of execution is sought against assets of that description,
 - (d) if an order, or a summons issued under the rules to show cause why an order should not be made, for the issue of a writ to enforce the judgment against the person of the judgment debtor remains in force, or
 - (e) in the prescribed circumstances.

108 Priority and duration of writs of execution

- (1) The date and time when an application is made to a registrar for the issue of a writ of execution shall be recorded by the registrar and entered by the registrar on the writ, and the Sheriff or bailiff who is required, under the rules, to execute more than one writ of execution against the property of a judgment debtor shall execute them in the order of the times so entered.

(2) A writ of execution shall be valid for the prescribed period.

109 Seizing and taking under writ of execution

(1) The Sheriff or bailiff who is required, under the rules, to execute a writ of execution may seize and take under the writ and may cause to be sold:

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be possessed or entitled, or which the person can, either at law or in equity, assign or dispose of, except:

(i) any wearing apparel and any bedroom or kitchen furniture, and

(ii) 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 or her family, and

(b) subject to this Subdivision, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which the person can, either at law or in equity, assign or dispose of.

(2) The Sheriff or a bailiff shall, before causing any property to be sold under a writ of execution, diligently ascertain whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall cause the sale to be at the place where, in his or her judgment, those prices are most likely to be obtained.

(3) Where it appears to the Sheriff or bailiff that the property subject to levy under a writ of execution is more than sufficient to satisfy the execution, the Sheriff or bailiff shall first cause to be sold so much of the property as appears to the Sheriff or bailiff to be sufficient, and if it is not sufficient shall then cause to be sold so much of the property as appears to the Sheriff or bailiff to be sufficient to satisfy the balance due under the execution.

(4) The Sheriff or bailiff shall cause property to be sold under subsection (3):

(a) in such order as seems to the Sheriff or bailiff best for the speedy execution of the writ without undue expense,

(b) subject to paragraph (a), in such order as the judgment debtor may direct, and

(c) subject to paragraphs (a) and (b), in such order as seems to the Sheriff or bailiff best for minimising hardship to the judgment debtor or any other person.

(5) Subsections (3) and (4) do not affect any liability of the Sheriff or bailiff to the

judgment creditor.

- (6) Subject to subsections (3) and (4), any property intended to be sold under a writ of execution shall be put up for sale as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.
- (7) Where the Sheriff or a bailiff may cause property to be sold under a writ of execution, the property may be sold by the Sheriff or by that bailiff or by another bailiff or by an auctioneer, as referred to in section 111.
- (8) Where any property is to be put up for sale under a writ of execution, the Sheriff or bailiff shall cause notice of the writ, of the intended day, time and place of the sale, and of particulars of the property to be published in the prescribed manner.
- (9) The Sheriff or a bailiff may serve:
 - (a) on a judgment debtor against whom a writ of execution has been issued, or
 - (b) on any person who has the custody of any personal property of such a judgment debtor,a notice in writing informing the person so served that the person is responsible for the safekeeping of such of the personal property of the judgment debtor in the person's custody as has been seized under the writ of execution.
- (10) A person (whether or not the person is the judgment debtor), knowing that any personal property has been seized under subsection (1) or is the subject of a notice under subsection (9), shall not, except with the leave of the Court or with the consent in writing of the Sheriff or bailiff by whom the property was seized or by whom the notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served, or cause, permit or suffer any such property to be so interfered with, disposed of or removed.

Maximum penalty: 50 penalty units.
- (11) Nothing in this section affects the provisions of the *Judgment Creditors' Remedies Act 1901*.

110 Special provisions as to execution against land

- (1) Subject to section 105 of the *Real Property Act 1900* and section 188 of the *Conveyancing Act 1919*, a writ of execution, when delivered to the Sheriff or bailiff required under the rules to execute it, binds land in like manner as a writ of execution against property binds goods and chattels.
- (2) Land shall not be sold under a writ of execution before all the property referred to in section 109 (1) (a) that may be sold under the writ has been sold unless:

- (a) the judgment debtor requests that the land be sold before all or any of that property is sold, or
 - (b) the Sheriff or bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.
- (3) The Sheriff or a bailiff shall not cause land to be sold under a writ of execution except on compliance by the judgment creditor and the Sheriff or bailiff with the prescribed procedures, but a purchaser of the land, and the Registrar-General, shall not be concerned to inquire whether this subsection has been complied with.
- (4) The publication under section 109 (8) of notice of the intended sale under a writ of execution of any land shall be deemed to be a seizure by the Sheriff or bailiff of the land under the writ, and no actual seizure of the land shall be necessary in order to authorise the sale thereof under the writ.
- (5) Where land that is not under the provisions of the *Real Property Act 1900* is sold under a writ of execution, the registrar for the proclaimed place that is nearest to the place of sale shall execute a proper assurance thereof in favour of the purchaser.
- (6) (Repealed)

111 Auctioneers

The rules may make provision for or with respect to:

- (a) the appointment of an auctioneer licensed under the *Auctioneers and Agents Act 1941* to sell any property under a writ of execution, and
- (b) where an auctioneer is appointed in accordance with the rules—the respective powers, authorities, duties and functions of the auctioneer and the Sheriff or bailiff,

and without affecting the generality of the foregoing provisions of this section, the rules may authorise or require the auctioneer to exercise or perform any power, authority, duty or function of the Sheriff or bailiff in connection with the sale of the property.

112 Sale or mortgage by judgment debtor of land affected by writ

- (1) In this section:

issuing registrar, in relation to a writ of execution, means the registrar for the proclaimed place at which the writ of execution was issued.

notice of consent means the notice referred to in subsection (2) (a).

- (2) Where land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the *Real Property Act 1900*, or which has been registered in the register of causes, writs, and orders affecting land in accordance with

section 186 of the *Conveyancing Act 1919* and:

- (a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor,
- (b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage,
- (c) the notice of consent is filed with the issuing registrar, and
- (d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

(3) Where during that prescribed period:

- (a) the judgment debtor sells or mortgages the land,
- (b) in the case of a sale—the amount of the deposit (if any) is paid to the issuing registrar, to be held by the issuing registrar as stakeholder, and
- (c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than:
 - (i) the minimum amount referred to in subsection (2) (b), or
 - (ii) if the judgment creditor notifies the issuing registrar in writing that the judgment creditor consents to payment of a specified amount that is less than that minimum amount—that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar shall, upon production to the issuing registrar of the instrument evidencing the sale or mortgage, and if the issuing registrar is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with the issuing registrar's consent to the sale or mortgage.

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent shall not, in relation to the land, be affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), shall,

subject to and in accordance with the rules:

- (a) be paid to or at the direction of the judgment creditor, and
- (b) be in reduction of the judgment debt.

Subdivision 6 Writ against the person

113 Writ against the person

(1) Where the Court is satisfied on the application of a judgment creditor that:

- (a) the judgment debt arising from an action has not been satisfied, and
- (b) the judgment debtor is about to leave the Commonwealth, or to remove any property from the Commonwealth, with intent to evade payment of the judgment debt,

the Court may, if it thinks fit, authorise the registrar to issue a writ against the person of the judgment debtor to enforce payment of the judgment debt and the registrar shall, on being so authorised, issue the writ.

(1A) As a condition of authorising the issue of a writ under subsection (1), the Court may require the judgment creditor to provide such security as the Court considers appropriate.

(2) A writ against the person of a judgment debtor shall:

- (a) be under the hand of the registrar by whom it is issued,
- (b) name or otherwise describe the judgment debtor whose arrest is required by the writ,
- (c) order the Sheriff or a bailiff, determined in accordance with the rules, to arrest the judgment debtor (but only if the judgment debtor is in New South Wales) and, except where paragraph (d) applies, to bring the judgment debtor before the Court for examination,
- (d) where it is not practicable to bring the judgment debtor before the Court on the day of arrest, order the Sheriff or bailiff to deliver the judgment debtor to the governor of the prison to whom the writ is directed and order that governor to keep that judgment debtor in custody until the judgment debtor is brought before the Court as required by subsection (2A), and
- (e) continue in force until the judgment debtor is discharged in accordance with the law or, if the judgment debtor is not arrested, until the writ expires in accordance with the rules,

and may lawfully be executed on a Sunday.

- (2A) Where a judgment debtor is arrested pursuant to a writ issued under this section, the Sheriff or bailiff, or the governor of the prison, who has custody of the judgment debtor shall, as soon as practicable after the arrest, cause the judgment debtor to be brought before the Court at the most convenient proclaimed place, and the Court shall thereupon examine the judgment debtor.
- (2B) If after examining a judgment debtor under subsection (2A) the Court is of the opinion that the judgment debtor should be kept in custody until discharged in accordance with law, it shall:
- (a) order the judgment debtor to be delivered to such prison as may be specified in the order, and
 - (b) order the governor of that prison to keep the judgment debtor in custody until the judgment debtor is discharged in accordance with law,
- but if the Court is not of that opinion it shall forthwith order that the judgment debtor be discharged from custody under the writ.
- (2C) An order under subsection (2B) discharging a judgment debtor from custody may be on terms.
- (3) Any member of the police force shall, if called upon by the Sheriff or bailiff to do so, aid and assist in the execution of a writ against the person.
- (4) The arrest or imprisonment of a judgment debtor under a writ against the person shall not operate as a satisfaction of the judgment debt or any part thereof, but this issue of the writ shall, except as provided in this Subdivision, operate as a stay of enforcement of the judgment until the writ ceases to be in force.
- (5) In this section, **the Commonwealth** includes any part of the Commonwealth within the meaning of the *Service and Execution of Process Act 1901* of the Commonwealth.

114 Discharge of judgment debtor

- (1) A judgment debtor arrested or imprisoned under a writ against the person shall be discharged from custody under the writ on payment of the amount specified in the writ as being due under the judgment and the costs of executing the writ, and the Sheriff, and any bailiff, and the governor of any prison, in whose custody the judgment debtor is under the writ, are hereby empowered and required to receive that amount and those costs if tendered, and to transmit them to the registrar for the proclaimed place at which the writ was issued.
- (2) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the registrar for the proclaimed place at which the writ was issued a request in writing for the discharge of the judgment debtor from custody, the registrar shall, as soon as practicable after receipt of the

request, issue a notice requesting the discharge of the judgment debtor and send or deliver the notice to the Sheriff or bailiff or governor of the prison in whose custody the judgment debtor is under the writ, and the Sheriff or bailiff or governor of the prison shall on receipt of the notice forthwith discharge the judgment debtor from custody under the writ.

- (3) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the Sheriff or bailiff or governor of the prison in whose custody the judgment debtor is under the writ a request in writing for the discharge of the judgment debtor, the Sheriff or bailiff or governor of the prison shall on receipt of the request forthwith discharge the judgment debtor from custody under the writ.
- (4) Where a judgment debtor makes application to the governor of the prison in whose custody the judgment debtor is under a writ against the person for the judgment debtor's discharge from that custody, the governor shall as soon as practicable cause the judgment debtor to be brought before the Court at the most convenient proclaimed place for the purpose of making the judgment debtor's application to the Court, and on hearing any such application the Court may, if it thinks fit, order, on terms, that the judgment debtor be discharged from custody under the writ.
- (5) Where a judgment debtor is discharged by virtue of subsection (2), (3) or (4) or section 113 (2B) from the custody in which the judgment debtor is held under a writ against the person, the discharge from custody shall not operate as a satisfaction of the judgment debt or any part thereof.

Division 5 Actions: interpleader

115 Interpleader by defendant, Sheriff or bailiff

- (1) An application may be made for relief by way of interpleader:
 - (a) by a person who is under a liability (otherwise than as the Sheriff or a bailiff) in respect of a debt or other personal property, where two or more adverse claims to the debt or property have been made in the Court, or are expected to be made in any court, or
 - (b) by the Sheriff or a bailiff if a claim is made to any money, goods or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.
- (2) An application under subsection (1) shall be in accordance with, and be disposed of as provided by, the rules.
- (3) (Repealed)

116 Claim to property taken or intended to be taken in execution

(1) Where:

- (a) a person, other than the person against whom a writ of execution is issued, makes to the Sheriff or bailiff a claim to any money, goods or chattels (in this section referred to as **the property**) taken or intended to be taken in execution under the writ,
- (b) the judgment creditor has not, in accordance with the rules, directed the Sheriff or bailiff to withdraw from possession of the property, or not to seize the property, as the case may require, and
- (c) the property has not been sold under the writ,

then:

- (d) where, whether or not a notice referred to in paragraph (e) is given to the claimant and whether or not the period specified in the notice has expired, the claimant pays to the Sheriff or bailiff an amount equal to the value of the property or gives the Sheriff or bailiff security to that value—the property shall thereupon be released from execution under the writ and the Sheriff or bailiff shall make an application for relief by way of interpleader under section 115 in respect of the amount so paid or the security so given, or
 - (e) where the claimant neither pays that amount nor gives that security before the expiration of a reasonable period specified in a notice given by the Sheriff or bailiff to the claimant for the purposes of this subsection—the Sheriff or bailiff:
 - (i) may make an application for relief by way of interpleader under section 115 in respect of the property, or
 - (ii) may, subject to paragraph (d), sell the property as if the claim had not been made, and shall make an application under section 115 for relief by way of interpleader in respect of the proceeds of the sale as if the claim had been made to those proceeds.
- (2) The rules may require that a claim referred to in subsection (1) be verified by affidavit of the claimant.
- (3) The amount of the value and the nature of the security referred to in subsection (1) shall be as may be agreed upon between the claimant and the Sheriff or bailiff, or where they have not agreed be as determined by some competent person appointed by the registrar, and the costs of the determination shall in the first instance be payable by the claimant.
- (4) Any amount paid to the Sheriff or bailiff as referred to in subsection (1) (d), and the proceeds of any sale under subsection (1) (e) (ii), shall as soon as practicable

thereafter be paid by the Sheriff or bailiff to the registrar to whom the application by the Sheriff or bailiff for relief by way of interpleader is made, and shall be paid out by the registrar in accordance with the order of the Court.

117, 117A (Repealed)

118 Adverse titles

Relief by way of interpleader may be granted though the titles of the persons claiming to the money, goods or chattels in question, or to the proceeds or value thereof have not a common origin, but are adverse to and independent of each other.

Division 6

119-124 (Repealed)

Division 7 Actions: new trial and appeal

125 Definition

In this Division, **action** includes interpleader action.

126 Order of the Court for new trial

- (1) The Court in its discretion may, after judgment in an action, order that a new trial of the action be had if:
 - (a) the parties to the action consent, or
 - (b) the action is tried with a jury and on the day on which the jury gives its verdict in the action a party to the action:
 - (i) in the presence of the other party, or
 - (ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party,makes application for the order, or
 - (c) the action is tried without a jury and a party to the action:
 - (i) in the presence of the other party and on the day on which judgment in the action is given, or
 - (ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party and, in any case, within 21 days after judgment in the action is given,makes application for the order.

- (2) The Court may, before judgment in an action and if no verdict in the action has been entered, order, on sufficient cause being shown, that the hearing of the action be discontinued and that a new trial be had.

127 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a Judge's judgment or order in an action may appeal to the Supreme Court.
- (2) The following appeals lie only by leave of the Supreme Court:
 - (a) an appeal from an interlocutory judgment or order,
 - (b) an appeal from a judgment or order as to costs only,
 - (c) an appeal from a final judgment or order, other than an appeal:
 - (i) that involves a matter at issue amounting to or of the value of \$100,000 or more, or
 - (ii) that involves (directly or indirectly) any claim, demand or question to or respecting any property or civil right amounting to or of the value of \$100,000 or more,
 - (d) an appeal from a judgment or order on an application for summary judgment under the rules,
 - (e) an appeal from an order made with the consent of the parties.
- (3) In any other case, an appeal lies as of right.

128 Stay of proceedings on appeal to Supreme Court

- (1) This section applies if, after judgment in an action, the Court orders that proceedings be stayed during the period within which an appeal may be brought.
- (2) If during that period:
 - (a) an appeal is brought in respect of proceedings that have been stayed, and
 - (b) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,the stay of proceedings is to continue until the appeal is disposed of or until the Court or the Supreme Court otherwise orders.
- (3) An appeal does not operate to stay proceedings in any other way.
- (4) This section does not affect the operation of section 156 (1).

129 Agreement not to appeal

An appeal shall not lie to the Supreme Court from any ruling, order, direction or decision if before the ruling, order, direction or decision is pronounced the parties agree in writing, signed by themselves or their solicitors, that the ruling, order, direction or decision shall be final.

130, 131 (Repealed)

Division 8 Miscellaneous jurisdiction

Subdivision 1 General

132 Non-application of Divs 2-7

Subject to this Act and the rules, nothing in Divisions 2 to 7 (inclusive) applies to or in respect of any proceedings under this Division.

Subdivision 2 Possession of land, equity and other proceedings

133 Jurisdiction in proceedings for possession of land

- (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for possession of land the value of which does not exceed \$20,000, as determined by the Court.
- (2) Nothing in subsection (1) applies in respect of proceedings under the *Landlord and Tenant Act 1899*.

134 Jurisdiction in equity proceedings

- (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for:
 - (a) the foreclosure or redemption of a mortgage or the enforcing of any charge or lien where the amount owing in respect of the mortgage, charge or lien does not exceed \$20,000, as determined by the Court,
 - (b) the specific performance, rectification, delivery up or cancellation of any agreement for:
 - (i) the sale or purchase of any property at a price not exceeding \$20,000, or
 - (ii) the lease of any property the value of which does not exceed \$20,000, as determined by the Court,
 - (c) an order under section 3 of the *Testator's Family Maintenance and Guardianship of Infants Act 1916* or an order under section 7 of the *Family Provision Act 1982*,

- (d) relief against fraud or mistake where the damage sustained or the estate or fund in respect of which relief is sought does not exceed \$20,000 in amount or value, as determined by the Court,
 - (e) the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed \$20,000 in amount or value, as determined by the Court, or
 - (f) the administration of the estate of a deceased person, where the estate does not exceed \$20,000 in amount or value, as determined by the Court, or
 - (g) any application under the *Property (Relationships) Act 1984*, or
 - (h) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated (not being a claim or demand of a kind to which any other paragraph of this subsection applies), in an amount not exceeding \$750,000.
- (2) In any proceedings pursuant to subsection (1) (c), the Court shall not have power to make an order for provision under the *Testator's Family Maintenance and Guardianship of Infants Act 1916* or the *Family Provision Act 1982* that will or may result in the amount of provision so made exceeding \$250,000.
- (3) In any proceedings pursuant to subsection (1) (g), the Court has no power to make an order for financial adjustment under Part 3 of the *Property (Relationships) Act 1984* that will or may result in the amount of the adjustment so made exceeding \$250,000.

134A Frustrated contracts

The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings under Division 4 of Part 3 of the *Frustrated Contracts Act 1978* where the claim does not exceed \$750,000 in amount or value, as determined by the Court.

134B Jurisdiction in proceedings for review of contracts

- (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought, where the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another does not exceed the amount for the time being specified in section 44 (1) (a), as determined by the Court.
- (2) Subsection (1) does not authorise the Court to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*.

135 Jurisdiction in proceedings under the Fair Trading Act 1987

The Court has the same jurisdiction as the Supreme Court, and may exercise all the

powers and authority of the Supreme Court, in any proceedings in which relief is sought under the *Fair Trading Act 1987* and where the amount of the claim concerned does not exceed the amount for the time being specified in section 44 (1) (a).

136 (Repealed)

137 Powers of the Court under this Subdivision

In relation to proceedings under this Subdivision:

- (a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances,
- (b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on the officer, discharge:
 - (i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances, and
 - (ii) any duty imposed on the officer by the rules or by any order of the Court,
- (c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances, and
- (d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of any judgment or order of the Court in those proceedings.

138 Rules

- (1) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to:
 - (a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings,
 - (b) the costs of any such proceedings, and
 - (c) any other matter necessary or convenient for giving effect to this Subdivision.
- (2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the *Legal Profession Act 1987*.

139 Appeal

Division 7 applies to and in respect of proceedings under this Subdivision in the same way

as if they were an action.

Subdivision 3 Temporary injunctions

140 Temporary injunctions

- (1) The Court shall have jurisdiction to grant an injunction, to be called a temporary injunction, to restrain:
 - (a) a threatened or apprehended trespass or nuisance, or
 - (b) the breach of a negative stipulation in a contract the consideration for which does not exceed \$20,000,in like manner, subject to this Subdivision, as the Supreme Court might grant an interlocutory injunction in like circumstances.
- (2) Subject to this Subdivision, a temporary injunction shall continue in force for a specified period not exceeding fourteen days, but if the specified period is less than fourteen days, it may be renewed from time to time, but so that the total period for which the temporary injunction is in force does not exceed fourteen days.
- (3) A temporary injunction may be renewed so that the total period for which it is in force exceeds fourteen days if the Court is satisfied that the additional time is required to enable proceedings to be commenced or heard in the Supreme Court in relation to the matter.
- (4) A temporary injunction shall cease to be in force if:
 - (a) the Court, on the application of a party, so orders, or
 - (b) the Supreme Court, on the application of a party, so orders, whether or not the Supreme Court grants an injunction or gives any other relief in relation to the matter.
- (5) Proceedings for a temporary injunction may be commenced at any proclaimed place, not being a prescribed proclaimed place.
- (6) A temporary injunction may be renewed by the Court only where it is sitting at a proclaimed place that is not a prescribed proclaimed place.
- (7) A reference in this section to the renewal of a temporary injunction includes a reference to the grant of another temporary injunction in respect of the same matter by the Court, whether before or after the expiry of the firstmentioned injunction.

141 Powers of Court under this Subdivision

With respect to temporary injunctions:

- (a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof with respect to the granting of interlocutory injunctions,
- (b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on the officer, discharge:
 - (i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge with respect to interlocutory injunctions, and
 - (ii) any duty imposed on the officer by the rules or by any order of the Court,
- (c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable with respect to the granting of interlocutory injunctions, and
- (d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of a temporary injunction and any order of the Court made in connection with proceedings for the granting of the temporary injunction.

142 Rules

- (1) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to:
 - (a) the procedure to be followed with respect to the granting and enforcing of temporary injunctions,
 - (b) the costs of proceedings in the Court in relation to temporary injunctions, and
 - (c) any other matter necessary or convenient for giving effect to this Subdivision.
- (2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the [Legal Profession Act 1987](#).

Subdivision 4 Special civil jurisdiction

142A Definitions

In this Subdivision:

- (a) a reference to an instrument is a reference to an Act (other than this Act) enacted before 1 July 1973, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before that date, and

- (b) a reference to the special civil jurisdiction of the Court is a reference to the jurisdiction conferred on it under section 142B.

142B Special civil jurisdiction of Court

- (1) The District Court shall have the same civil jurisdiction as each Court of Quarter Sessions had immediately before 1 July 1973.
- (2) The reference in subsection (1) to civil jurisdiction in relation to a Court of Quarter Sessions is a reference to that part of such a court's jurisdiction that, immediately before 1 July 1973, was not of a criminal nature.
- (3) Subsection (1) is subject to the provisions of any enactment which commenced on or after 1 July 1973 and which relates to the jurisdiction referred to in that subsection.

142C References to Courts of Quarter Sessions in relation to the exercise by the District Court of its special jurisdiction

A reference in any instrument to a Court of Quarter Sessions shall, in relation to that part of the jurisdiction of such a Court which was not of a criminal nature, be construed as a reference to the District Court in its special civil jurisdiction.

142D Judges exercising special civil jurisdiction

- (1) A Judge exercising the special civil jurisdiction of the District Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions had in relation to corresponding proceedings in a Court of Quarter Sessions before 1 July 1973.
- (2) Except where express provision to the contrary is made by any other Act:
- (a) the trial of all issues arising in the Court in the exercise of its special civil jurisdiction,
- (b) the hearing of any application, or the making of any order, in relation to any such issues, and
- (c) all other matters relating to the exercise of that jurisdiction,
- shall be held before or dealt with by a Judge sitting alone.
- (3) A reference in any instrument to a Chairman of Quarter Sessions shall, in relation to a Court of Quarter Sessions in the exercise of that part of its jurisdiction which was not of a criminal nature, be construed as a reference to a Judge exercising the special civil jurisdiction of the District Court.

142E Powers of registrar in relation to exercise by the Court of its special civil jurisdiction

- (1) The registrar has, in relation to the District Court in its special civil jurisdiction and to

proceedings in the District Court in that jurisdiction, such of the powers, authorities, duties and functions that the Clerk of the Peace had in relation to Courts of Quarter Sessions when exercising the corresponding jurisdiction and in relation to similar proceedings in those courts before 1 July 1973 as are prescribed in the rules.

- (2) Subsection (1) is subject to the provisions of any enactment which commenced on or after 1 July 1973 and which relates to the jurisdiction referred to in that subsection.

142F Rules in relation to hearing etc of proceedings in the Court in its special civil jurisdiction

- (1) Without affecting the generality of any other provision of this Part authorising the making of rules, the rules may make provision for or with respect to:
- (a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings,
 - (b) the costs of any such proceedings, and
 - (c) any other matter necessary or convenient for giving effect to this Subdivision.
- (2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the [Legal Profession Act 1987](#).

Division 8A Residual jurisdiction of Court

Subdivision 1 General

142G Definition

In this Division:

residual jurisdiction means the jurisdiction conferred on the District Court by operation of the [Compensation Court Repeal Act 2002](#).

Note—

The jurisdiction conferred on the District Court by operation of the [Compensation Court Repeal Act 2002](#) is the following jurisdiction:

- (a) jurisdiction to examine, hear and determine all coal miner matters (within the meaning of the [Workplace Injury Management and Workers Compensation Act 1998](#)) except matters arising under Part 5 of the [Workers Compensation Act 1987](#),
- (b) jurisdiction to make determinations under section 216A of the [Police Act 1990](#), section 21 of the [Police Regulation \(Superannuation\) Act 1906](#), section 29 of the [Sporting Injuries Insurance Act 1978](#) and sections 16 and 30 of the [Workers Compensation \(Bush Fire, Emergency and Rescue Services\) Act 1987](#),
- (c) jurisdiction to determine appeals under section 81 of the [Workers' Compensation \(Dust Diseases\) Act 1942](#).

142H Non-application of other Divisions

Subject to this Act and the rules, nothing in Division 2, 3, 7 or 8 (except for Subdivisions 6 and 7 of Division 3), and nothing in Division 9 or 9A, applies to or in respect of any proceedings under this Division.

Subdivision 2 Exercise of residual jurisdiction

142I Powers of Court when exercising residual jurisdiction

For the purposes of exercising its residual jurisdiction, the District Court has the same powers, authorities, duties and functions as the Compensation Court had under the [Compensation Court Act 1984](#) immediately before 1 January 2004. The powers conferred by this section are not limited by any other provisions of this Division.

142J Decisions of Court when exercising residual jurisdiction

- (1) The following apply in the exercise of the Court's residual jurisdiction:
 - (a) a decision of the Court in any matter is to be on the real merits and justice of the case,
 - (b) the Court is not bound to follow strict legal precedent,
 - (c) subject to Subdivision 3:
 - (i) a decision or proceeding of the Court is not vitiated by reason of any informality or want of form, and
 - (ii) a decision or proceeding of the Court is not liable to be appealed against, reviewed, quashed or called in question by any court, and
 - (iii) no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of any decision or proceeding of the Court relating to, or on the face of the proceedings appearing to relate to, any matter within its residual jurisdiction, and
 - (iv) the validity of any decision or proceeding of the Court cannot be challenged in any manner.
- (2) Nothing in subsection (1) prevents the Court from reconsidering any matter that has been dealt with by it in its residual jurisdiction (or had been dealt with by the Compensation Court), or from rescinding, altering or amending any decision previously made or given by the Court in the exercise of that jurisdiction (or by the Compensation Court), all of which the Court has authority to do.
- (3) In this section, **decision** includes award, order, determination, ruling and direction.

142K Costs under other Acts

Section 112 of the *Workplace Injury Management and Workers Compensation Act 1998* extends to any proceedings in the residual jurisdiction of the Court (not just proceedings under that Act), and in its application to proceedings under any other Act, is not limited by section 111A (Costs provisions apply only to existing claim matters) of that Act.

142L Special provision for evidence of exposure to noise

Historical evidence and general medical or other expert evidence concerning exposure of workers to noise in employment with particular employers or in employment of a particular class, that has been admitted in any proceedings before the Compensation Court or before the Court in its exercise of its residual jurisdiction, may, with the leave of the Court, be received as evidence in any other proceedings before the Court in its exercise of that jurisdiction, whether or not the proceedings are between the same parties.

Subdivision 3 Appeals

142M Definition

- (1) In this Subdivision, **award** includes interim award, order, decision, determination, ruling and direction.
- (2) A reference in this Subdivision to the making of an award includes, where the award is a ruling or direction, a reference to the giving of the ruling or direction.

142N Appeal to Court of Appeal on question of law

- (1) If a party to any proceedings before the Court in its residual jurisdiction is aggrieved by an award of the Court in point of law or on a question as to the admission or rejection of evidence, that party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the District Court in its residual jurisdiction for determination by that Court in accordance with any decision of the Court of Appeal and may make such other order in relation to the appeal as the Court of Appeal sees fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the District Court and on all the parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made only by leave of the Court of Appeal:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,

- (c) an appeal from a final decision or award, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$20,000 or more,
- (d) an appeal from a decision or award made with the consent of the parties.

Subdivision 4 Stay of proceedings

1420 Stay of proceedings

- (1) The Court may, subject to any order of the Supreme Court, order a stay of proceedings (on such terms as the Court thinks fit) in respect of any award the subject of an appeal under this Division.
- (2) In the absence of a stay of proceedings ordered by the Supreme Court or by the District Court, a notice of appeal does not operate as a stay of proceedings.
- (3) If a stay of proceedings is ordered by the Supreme Court or the District Court in respect of an appeal against an award of weekly payments of compensation, the stay of proceedings does not operate to affect the liability to make those payments under the award to the extent that the payments are in respect of a period after the award is made.
- (4) If the decision of the Supreme Court or District Court on any such appeal is to terminate liability to make the weekly payments of compensation, that Court may:
 - (a) order that the Uninsured Liability and Indemnity Scheme established under the [Workers Compensation Act 1987](#) bear the whole or a specified part of the liability to make those payments, and
 - (b) give such directions as are necessary to give effect to the order.

Subdivision 5 Miscellaneous

142P Liaison with WorkCover Authority

- (1) The Chief Judge may refer to the WorkCover Authority for inquiry or report any matter relating to the functions of the Court in its residual jurisdiction.
- (2) A Judge may refer to the WorkCover Authority:
 - (a) a report on suspected fraud or contravention of the [Workers Compensation Act 1987](#) or the [Workplace Injury Management and Workers Compensation Act 1998](#) or the regulations under either of those Acts by any party to proceedings in the residual jurisdiction of the Court, and
 - (b) a report on any neglect in the provision of rehabilitation for an injured worker, and
 - (c) any other matter the Judge considers appropriate to refer to the Authority.

Division 9 Transfer of proceedings from or to Supreme Court

Subdivision 1 Transfer of proceedings from Supreme Court

143 Transfer of proceedings from Supreme Court

- (1) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as an action in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.
- (2) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.
- (3) In considering any limitation on the jurisdiction of the District Court for the purposes of determining whether proceedings can be transferred under this section, the Supreme Court is to have regard to the limitation as in force when the determination is made (as though that limitation had been in force at the time the proceedings were commenced in the Supreme Court).
- (4) If the plaintiff in the proceedings applies for a transfer of the proceedings under this section, the defendant is not permitted to oppose the application. The Supreme Court, however, for any reason appearing to it sufficient (but having due regard to the provisions of section 145), may decline to make the order sought.
- (5) Without limiting any power of the Supreme Court under this section, the Supreme Court may, at any time after the commencement and before the hearing of the action, consider any action for damages in respect of personal injury or death, in order to determine whether an order under this section transferring the proceedings ought to be made. Having considered the action, the Supreme Court is to make such an order unless:
 - (a) in the case of a motor accident claim or work injury damages claim, the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$1,000,000 and that the case involves complex legal issues or issues of general public importance, or
 - (b) in any other case, the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$750,000 or that there is other sufficient reason for trying the action in the Supreme Court.

144 (Repealed)

Subdivision 2 Transfer of proceedings to Supreme Court

145 Transfer of proceedings to Supreme Court

- (1) Proceedings may, upon the application of a party, be removed into the Supreme Court by order of the Supreme Court upon such terms as to payment of costs, giving security for the amount claimed or costs, or otherwise, as the Supreme Court thinks fit.
- (2) An action for damages in respect of personal injury or death (other than a motor accident claim or work injury damages claim) may be so removed only if the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$750,000 or that there is other sufficient reason for trying the action in the Supreme Court.
- (3) A motor accident claim or work injury damages claim may be so removed only if the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$1,000,000 and that the case involves complex legal issues or issues of general public importance.

146 Stay of proceedings on application for order

- (1) Where an application is pending in the Supreme Court for an order of removal or prohibition relating to any proceedings, the Supreme Court may make orders for a stay of the proceedings until the determination of the application or until the Supreme Court otherwise orders.
- (2) An order for a stay of proceedings made under subsection (1) shall take effect immediately a copy of the order is served by the party who obtained the order upon the registrar for the proper place in relation to the action.

147 Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court

- (1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value \$20,000 in the case of proceedings under section 133 or 134, the validity of any order already made in the proceedings shall not be affected by that decision, and:
 - (a) the Court is to order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (b), the proceedings are to be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court, and
 - (b) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (a) had not been made and as if the subject-matter did not exceed \$20,000 in amount or

value.

- (2) Subject to subsection (1), the Court may, during the progress of any proceedings under Subdivision 2 of Division 8, for any reason that appears to it to be sufficient, order that the proceedings be transferred to the Supreme Court, and:
- (a) the validity of any order already made in the proceedings shall not be affected by the order for transfer, and
 - (b) the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court.

148 Removal of proceedings otherwise

Proceedings shall not, except as provided by this Act, be removed out of the Court by appeal, motion, order or otherwise.

Division 9A Costs in proceedings

148A Definition of “costs”

In this Division (except section 148E), a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.

148AB (Repealed)

148B Costs to be in discretion of the Court

- (1) Subject to this Act and the rules and subject to any other Act:
- (a) costs in or in relation to any proceedings shall be in the discretion of the Court,
 - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings, and
 - (c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* or on an indemnity basis.
- (2) (Repealed)

148C Agreement as to costs

Where in any proceedings:

- (a) the costs or any part of the costs of a party to the proceedings are required to be paid by another such party,
- (b) those parties agree on the amount of those costs, and
- (c) the agreement is evidenced to the registrar in the manner prescribed by the rules,

the amount of those costs shall, unless the Court otherwise orders, be as so agreed.

148D Costs to form part of the judgment debt

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

148E Liability of legal practitioners for clients' costs in certain cases

- (1) The Court may, at any stage of an action, make one or more of the following orders in respect of a legal practitioner whose serious neglect, serious incompetence or serious misconduct delays, or contributes to delaying, the action:
 - (a) disallow the whole or any part of the costs between the legal practitioner and his or her client,
 - (b) direct the legal practitioner to repay to his or her client the whole or any part of the costs which the client has been ordered to pay to any other party,
 - (c) direct the legal practitioner to indemnify any party other than his or her client against the whole or any part of the costs payable by the party indemnified.
- (2) The Court may refer the matter to a costs assessor under the [Legal Profession Act 1987](#) for inquiry and report before making such an order.
- (3) The Court may order that notice of such an order against a legal practitioner is to be given to the legal practitioner's client in a specified manner.
- (4) A legal practitioner is not entitled to demand, recover or accept from his or her client any part of the amount for which the legal practitioner is directed by the Court to indemnify a party pursuant to such an order.
- (5) Nothing in this section limits the generality of section 148B or any other provision of this Act.

Division 10 Miscellaneous provisions

149 Costs where no jurisdiction

Where any proceedings purport to be commenced in the Court and the Court has no jurisdiction to hear and dispose of the proceedings, the Court may, notwithstanding the lack of jurisdiction, make such order (if any) as it thinks fit for the payment by any party to any other party of the costs of the proceedings in the Court, and any such order for costs may be enforced as if the Court had had jurisdiction to hear and dispose of the proceedings.

150 Regulations: Court fees

- (1) The Governor may make regulations for or with respect to fees to be paid in respect of

the business of the Court.

- (2) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.

151 Fees form part of Consolidated Fund

All fees received by a registrar under this Act shall be paid by the registrar to the Treasurer for payment to the Consolidated Fund.

152 Unclaimed money

- (1) An amount which:
 - (a) was paid to a registrar for or on account of or for the use or benefit of any party to any proceedings, and
 - (b) remains unclaimed in the hands of the registrar for one year after a party to the proceedings becomes entitled to claim the amount,

shall be paid by the registrar to the Treasurer and placed to the credit of the Special Deposits Account in the Treasury.

- (2) The provisions of section 14 (3) and (4) of the *Public Finance and Audit Act 1983* apply to an amount placed to the credit of the Special Deposits Account under subsection (1) in the same way as they apply to money paid into that Account pursuant to section 14 (2) of that Act.

153 Proceedings for offences

- (1) All proceedings for offences against this Act shall be disposed of summarily before a Local Court.
- (2) Nothing in subsection (1) applies in respect of the failure of a person to attend proceedings of the Court as required by a subpoena issued under section 64.

154 Offences by corporations

Where a person convicted of an offence against this Act is a corporation, every person who at the time of the commission of the offence was an officer of the corporation shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for the offence accordingly, if the person knowingly and wilfully authorised or permitted the commission of the offence.

155 Civil remedy not affected by proceedings for an offence

Notwithstanding any proceedings against a person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.

156 General power of Court to stay proceedings

- (1) At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.
- (2) Nothing in subsection (1) limits any power conferred on the Court or a Judge by any other provision of this Act or by any other Act or rule of law to stay proceedings.

157, 158 (Repealed)

159 Irregularity

- (1) Where, in the purported commencement of any proceedings or at any stage in the course of or in connection with any proceedings, there is, by reason of anything done or left undone, a failure to comply with any requirement of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect:
 - (a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings, and
 - (b) subject to subsections (2) and (3), the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings, or exercise its powers under the rules to allow amendments and to make orders dealing with the proceedings generally.
- (2) The Court shall not wholly set aside any proceedings on the ground that although not constituting an action for the recovery of a debt or liquidated demand they were commenced by the lodging of a statement of liquidated claim.
- (3) The Court shall not set aside any proceedings or any step taken in any proceedings or any document, judgment or order in any proceedings on the ground of a failure to which subsection (1) applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

160 (Repealed)

Division 11 Rules

161 Civil procedure rules

- (1) The Rule Committee may make rules, not inconsistent with this Act, for or with respect to any matter:
 - that by this Act, or by any other Act or law, is required or permitted to be prescribed by rules, or
 - that is necessary or convenient to be prescribed by rules,

for the purposes of, or in connection with, the exercise by the Court of its civil jurisdiction under provisions of this Act, or of any other Act or law, or for carrying any such provisions into effect, and in particular for or with respect to:

- (a) providing for the procedure (including the method of pleading) and the practice to be followed in the Court in all proceedings in which, or with respect to which, the Court has for the time being civil jurisdiction, and regulating or providing for any matters incidental to, or relating to, any such procedure or practice,
 - (b) subject to the provisions of any other Act, regulating and prescribing the procedure and practice to be followed in connection with the transfer of any proceedings to the Court from any other court or from the Court to any inferior court, and, where proceedings are transferred to the Court, the procedure and practice thereafter to be followed in the Court, and
 - (c) subject to the provisions of any other Act, regulating and prescribing the procedure and practice to be followed in connection with the institution of any appeal to the Court, including:
 - (i) the time within which, and the manner in which, the appeal is to be instituted, and
 - (ii) the procedure and practice thereafter to be followed in the Court.
- (2) Without limiting the generality of subsection (1), rules may be made under that subsection for or with respect to:
- (a) prescribing the powers, authorities, duties and functions of the Judicial Registrar, other registrars, assistant registrars, bailiffs, assistant bailiffs and other officers of the Court, and the Sheriff, and the records to be kept by them in relation to or for the purposes of any proceedings,
 - (b) enabling any specified registrar, in such circumstances as may be prescribed, to exercise the powers and authorities, and to discharge the duties and functions, of another specified registrar,
 - (c) providing for the sittings of the Court and the regulation of business at those sittings,
 - (d) prescribing and providing for the places at which particular proceedings may be heard, commenced or otherwise dealt with and prescribing the circumstances in which, and the conditions subject to which, the venue of proceedings or specified parts of proceedings may be changed,
 - (e) providing for the vacations and holidays of the Court and for the hearing and disposal of proceedings during any such vacations or holidays,
 - (f) providing for and regulating the joinder of causes of action and the consolidation of

proceedings,

- (g) providing for the bringing and disposal of proceedings by or against the executor, administrator or trustee of the estate of any person and providing for the enforcement of judgment in any such proceedings,
- (h) prescribing or providing for the manner in which corporations may participate in proceedings,
- (i) providing for the joinder of parties in proceedings,
- (j) prescribing the cases or circumstances in which security may be required in relation to proceedings, the form of any such security, and the manner in which, and the person to whom, it is to be given,
- (k) providing for pleading in relation to cross-claims (whether in the nature of set-off, cross-action or otherwise),
- (l) empowering the Court to strike out the whole or any part of any proceedings brought by a party on the ground that the proceedings or part of the proceedings are frivolous or vexatious or disclose no cause of action, or on any other ground prescribed in the rules, and to reinstate any proceedings that have been struck out,
- (m) providing for the trial or hearing of proceedings, including the giving of written or oral evidence and the production of documents and other things in evidence at the trial or hearing,
- (n) regulating the means by which particular facts may be proved, and the mode in which evidence may be given (including the administration of oaths to and the taking of evidence of witnesses in or out of New South Wales), in any proceedings or in any application in connection with, or at any stage of, any proceedings,
- (o) empowering the Court:
 - (i) 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, and
 - (ii) to require a party to any proceedings (not being a minor or person of unsound mind) to make admissions with respect to documents or questions of fact, and prescribing the effects of and consequences for failing to comply with a requirement of the kind referred to in subparagraph (ii),
- (p) prescribing matters relating to expert evidence, including the disclosure, by providing copies of reports or otherwise, of the nature of expert evidence to be

- given, and including the exclusion of expert evidence in the case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence,
- (q) providing for and regulating the payment or transfer of money into and out of the Court,
 - (r) providing for the manner and form in which, and the times and places at which, judgments, orders or other decisions of the Court may be given,
 - (s) empowering Judges to deal with and determine specified kinds of proceedings or specified parts of specified kinds of proceedings while sitting in chambers,
 - (t) prescribing the circumstances in which judgments may be set aside,
 - (u) providing for judgments by confession, agreement or consent and providing for orders for judgment, default judgments and orders for summary judgment and the circumstances in which such judgments and orders may be given or made,
 - (v) prescribing the circumstances in which a party to proceedings may be non-suited,
 - (w) enabling the Court to order that the amount of a judgment in favour of a person against another person be set off against an amount payable under another judgment in favour of that other person against the firstmentioned person,
 - (x) providing for matters relating to proceedings in which a person interpleads, including the staying of proceedings in courts other than the Court and for the barring of claims of persons who do not interplead when required to do so,
 - (y) providing for any matters relating to the costs of proceedings,
 - (z) empowering the Court to order the solicitor for a party to particular proceedings personally to pay specified costs of the proceedings and to order further that the costs so specified not be recoverable by the solicitor from that party,
 - (aa), (ab) (Repealed)
 - (ac) 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 the Court,
 - (ad) prescribing means for, and the procedure and practice to be followed in, the enforcement and execution of judgments and orders of the Court,
 - (ae) 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,

- (af) empowering the Court to direct the manner or form of procedure to be followed in any particular proceedings in which the manner or form of procedure for taking any step in the proceedings is not prescribed by or under this Part,
 - (ag) providing for the service or giving of notices, documents and other instruments relating to proceedings,
 - (ah) providing for the amendment of documents filed by a party to any proceedings,
 - (ai) prescribing the times for doing or not doing any act or thing for the purposes of this Act or the rules in or in relation to any proceedings, and
 - (aj) interim payments.
- (3) (Repealed)
- (4) The rules may make provision for or with respect to the bringing of money into the Court by a defendant in any proceedings and, without affecting the generality of the foregoing provisions of this subsection, may make provision for or with respect to:
- (a) prescribing the manner in which money may be so brought into the Court,
 - (b) without affecting the generality of paragraph (a), deeming money to be brought into the Court if there is filed a security given by:
 - (i) the Government Insurance Office under the *Motor Vehicles (Third Party Insurance) Act 1942* or the *Transport Accidents Compensation Act 1987* or where the matter relates to a cause of action which arose before 1 July 1984, an authorised insurer under that Act,
 - (ii) a licensed insurer under the *Workers' Compensation Act 1926*, or
 - (iii) any other person authorised by the Court,
 - (c) requiring the Government Insurance Office, insurer or other person who gives a security as referred to in paragraph (b) to pay the amount for which the security was given in the prescribed circumstances and providing that any such amount not so paid may be enforced as a judgment against the Government Insurance Office, insurer or other person, and
 - (d) determining the effect on the cause or causes of action on which the proceedings were brought where the plaintiff accepts the money so brought into the Court.
- (5) A provision of the rules may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

- (6) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the *Legal Profession Act 1987*.
- (7) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of Part 6 of the *Interpretation Act 1987*. This subsection does not apply to a practice note issued before the commencement of this subsection.

Part 3A Mediation and neutral evaluation

162 Purpose of Part

- (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation.
- (2) This Part does not prevent:
- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part, or
 - (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983*.

163 Meaning of “mediation” and “neutral evaluation”

- (1) For the purposes of this Part, **mediation** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.
- (2) For the purposes of this Part, **neutral evaluation** means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

164 Other definitions

In this Part:

evaluator means a person to whom the Court refers a matter for neutral evaluation under this Part.

mediation session means a meeting arranged for the mediation of a matter under this

Part.

mediator means a person to whom the Court refers a matter for mediation under this Part.

neutral evaluation session means a meeting arranged for the neutral evaluation of a matter under this Part.

164A Referral by Court

- (1) If it considers the circumstances appropriate, the Court may, by order, refer any proceedings, or part of any proceedings, before it (other than any or part of any criminal proceedings) for mediation or neutral evaluation, and may do so either with or without the consent of the parties to the proceedings concerned.
- (2) The mediation or neutral evaluation is to be undertaken by a mediator or evaluator agreed to by the parties or, if the parties cannot agree, by a mediator or evaluator appointed by the Court, who (in either case) may, but need not, be a person whose name is on a list compiled under this Part.

164B Duty of parties to participate

It is the duty of each party to the proceedings the subject of a referral under section 164A to participate, in good faith, in the mediation or neutral evaluation.

164C Costs of mediation and neutral evaluation

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are payable:

- (a) by the parties to the proceedings, in such proportions as they may agree among themselves, or
- (b) if the Court makes an order as to the payment of those costs—by one or more of the parties, in such manner as the order may specify.

164D Agreements and arrangements arising from mediation sessions

- (1) The Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

164E Mediators and evaluators

- (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part.

- (2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Part.
- (3) Different lists may be compiled for different types of matters or to take account of any other factors.
- (4) A person may be included in a list under this section only if:
 - (a) the person consents to being included in the list, and
 - (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.
- (5) The Chief Judge may amend or revoke any list compiled under this section for any reason that the Chief Judge considers appropriate.
- (6) The Chief Judge is to review at least annually any list compiled under this section.

164F Privilege

- (1) In this section, **mediation session** or **neutral evaluation session** includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
 - (a) a mediation session or neutral evaluation session, or
 - (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
 - (a) at a mediation session or neutral evaluation session, or
 - (b) as provided by subsection (2) (b), or
 - (c) as provided by section 164G.
- (4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 164G (c).

164G Secrecy

A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Part,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

164H Exoneration from liability for listed mediators and evaluators

No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part, and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

164I Rules

The Rule Committee may make rules, not inconsistent with this Act, for or with respect to regulating and prescribing the practice and procedure to be followed in the mediation or

neutral evaluation of any matter under this Part.

164J Regulations for the purposes of this Part

The Governor may make regulations for the purposes of this Part.

Part 4 The criminal jurisdiction of the Court

165 Definition

In this Part:

instrument means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act.

166 Criminal jurisdiction of the Court

- (1) The Court has the criminal jurisdiction conferred or imposed on it by or under this Act, the *Criminal Procedure Act 1986* and any other Act.
- (2) The Court has generally the same criminal jurisdiction as each Court of Quarter Sessions had immediately before the commencement of this Act, except as regards any offences prescribed for the purposes of section 46 of the *Criminal Procedure Act 1986*.

167 Abolition of Courts of Quarter Sessions

Courts of Quarter Sessions are abolished.

168 References to Courts of Quarter Sessions

A reference in any instrument to a Court of Quarter Sessions shall, in relation to the exercise of that Court's criminal jurisdiction, be construed as a reference to the District Court in its criminal jurisdiction.

169 Judges

- (1) A Judge exercising the criminal jurisdiction of the Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions would have had, in relation to the like proceedings in a Court of Quarter Sessions, had this Act not been enacted.
- (2) Except where express provision to the contrary is made by any other Act:
 - (a) the trial of all issues arising in the Court in the exercise of its criminal jurisdiction,
 - (b) the hearing of any application, or the making of any order, in relation to any such issues, and

(c) all other matters relating to the exercise of that jurisdiction, shall be held before or dealt with by a Judge sitting alone.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall, in relation to a Court of Quarter Sessions in its criminal jurisdiction, be construed as a reference to a Judge exercising the criminal jurisdiction of the District Court.

170 (Repealed)

171 Criminal procedure rules

- (1) The Rule Committee may make rules, not inconsistent with this Act or any other Act, for or with respect to any matter that by this Act is required or permitted to be prescribed for the purposes of, or in connection with, the exercise by the Court of its criminal jurisdiction or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part and Division 3 of Part 2 or any Act under or by virtue of which rules under this Part apply, and in particular for or with respect to providing for the procedure and practice to be followed in the Court in all proceedings in which, and with respect to which, the Court has for the time being criminal jurisdiction and regulating or providing for any matters incidental to, or relating to, any such procedure or practice.
- (2) Without limiting the generality of subsection (1), rules may be made under that subsection for or with respect to any of the following:
- (a) prescribing the duties and functions of the Judicial Registrar, other registrars and other officers of the Court and the records to be kept by them in relation to or for the purposes of any proceedings,
 - (b) conferring on a registrar in particular proceedings power, subject to the rules, to issue on behalf of a defendant or an appellant in those proceedings:
 - (i) a subpoena requiring a person specified in the subpoena to attend and give evidence in the proceedings, or
 - (ii) a subpoena requiring a person specified in the subpoena to attend and produce, for the purpose of evidence, in the proceedings any document or thing that is in the possession or under the control of that person,
 - (c) providing for the sittings of the Court and the regulation of business at those sittings,
 - (d) prescribing and providing for the places at which particular proceedings may be held and, subject to any enactment or rule of law which confers powers on the Attorney General with respect to the venue or changes of venue of proceedings, providing for the venue of proceedings to be changed and prescribing the circumstances in which, and the conditions subject to which, any such change may

be made,

- (e) providing for the vacations and holidays of the Court and the hearing and disposal of proceedings during any such vacations or holidays,
- (f) providing for all procedural matters relating to or incidental to the indictment and arraignment of an accused person, including motions to quash or stay indictments,
- (g) providing for all matters relating to the conduct of the proceedings, including matters concerning the representation of defendants and appellants in proceedings,
- (h) providing for evidentiary matters in proceedings, including matters relating to the giving of expert evidence,
- (i) prescribing the procedure and practice with respect to the delivery of verdicts, the convicting and sentencing of persons found by the Court guilty of offences and the acquittal of persons found by the Court not guilty of offences,
- (j) prescribing the procedure for proceedings in the Court under section 126 of the *Criminal Procedure Act 1986* and Part 4 of the *Victims Compensation Act 1996*,
- (ja) conferring on the Court the same powers as the Supreme Court has to make an order for a view of real property for the purposes of any proceedings,
- (k) subject to the *Costs in Criminal Cases Act 1967*, providing for matters relating to the payment of the costs of or in relation to proceedings and, in particular:
 - (i) empowering the Court to order a solicitor appearing in particular proceedings to disclose the amount of any costs that the solicitor intends to retain out of any sum ordered by the Court to be paid to the solicitor's client, and
 - (ii) empowering the Court to order the solicitor for a party to particular proceedings personally to pay specified costs of the proceedings and to order further that the costs so specified not be recoverable by the solicitor from the party.

(3) A provision of the rules may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) (Repealed)

171A-171C (Repealed)

171D Practice and procedure of Supreme Court to be followed unless other provision made

Subject to this Act and the rules, the procedure and practice of the District Court when exercising its criminal jurisdiction shall, so far as practicable, be the same as the procedure and practice of the Supreme Court when exercising similar jurisdiction.

172 (Repealed)

173 Directions as to sittings of Court in its criminal jurisdiction

- (1) The Chief Judge is, by order in writing, to direct that the Court is, during a specified calendar year, to sit in its criminal jurisdiction at such proclaimed places or other places within the State and at such times as may be specified in the order.
- (2) If a place specified in a direction under subsection (1) is not a proclaimed place, the specified place is, for the purposes of this Act or any other law and while the direction remains in force, taken to form part of the nearest proclaimed place to the specified place.
- (3) Subsection (2) ceases to have effect if and when the specified place becomes a proclaimed place.
- (4) A direction under subsection (1) may be given in respect of a particular calendar year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

174 General provisions as to sittings

- (1) Subject to this Part:
 - (a) the Court may sit simultaneously at different sitting places in its criminal jurisdiction,
 - (b) a Judge shall preside at such sittings of the Court in its criminal jurisdiction at such sitting places as the Chief Judge may from time to time direct, and
 - (c) two or more Judges may preside simultaneously at separate sittings of the Court in its criminal jurisdiction at the one sitting place.
- (2) Where a sitting of the Court in its criminal jurisdiction is to be held and the Judge who is to preside at that sitting is not present at the time appointed for the sitting to commence, a registrar may adjourn the sitting to another time.

175 Hearing of appeals

- (1) An appeal to the Court in its criminal jurisdiction may be heard and disposed of by the Court sitting at any sitting place.
- (2) Subsection (1) has effect subject to any other Act or any instrument under any other Act.

176 No proceedings in the nature of certiorari

No adjudication on appeal of the District Court is to be removed by any order into the Supreme Court.

Part 5

177-179 (Repealed)

Part 6 Repeals, amendments, savings and transitional provisions

Division 1 General

180 Repeals

Each Act mentioned in Schedule 1 is repealed.

181 (Repealed)

182 Non-revivor

A repeal made by section 180 or an amendment made by section 181 shall not revive anything not in force or existing immediately before the commencement of this Act.

183 References to “appointed place”

A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to an “appointed place” (being an appointed place within the meaning of Part 4 as in force immediately before the commencement of the *District Court (Amendment) Act 1986*) shall be read as a reference to a proclaimed place at which the court sits in its criminal jurisdiction.

183A Provision consequent on enactment of *Courts Legislation Further Amendment Act 1995*

The substitution of sections 127 and 128 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Court if, when the decision was made, an appeal lay as of right.

183B Provisions consequent on enactment of *Courts Legislation Amendment Act 1997*

- (1) Section 126, as amended by the *Courts Legislation Amendment Act 1997*, applies to

judgments given before the commencement of Schedule 3 [1] to that Act in the same way as it applies to judgments given after that commencement.

- (2) Section 127, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 3 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

183C Provisions consequent on enactment of *Courts Legislation Further Amendment Act 1997*

Section 127, as amended by the *Courts Legislation Further Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 1.5 [6] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

183D Provision consequent on enactment of other amendments

Schedule 3 has effect in respect of enactments amending this Act.

Division 2 The civil jurisdiction of the Court

184 Definitions

In this Division:

district means district referred to in section 5 of the *District Courts Act 1912*.

former Court means a District Court established under the *District Courts Act 1912* and includes a court referred to in an instrument as “the District Court” or “the district court”.

instrument means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act.

the new Court means the Court.

185 Savings as to places, sittings, Judges and officers etc

- (1) (Repealed)
- (2) A person appointed as a judge under section 14 of the *District Courts Act 1912* and holding office as such immediately before the commencement of this Act, shall be deemed to have been appointed as a Judge under section 13 of this Act.
- (3) A person appointed to sit and act as a judge under section 19A of the *District Courts Act 1912* and whose appointment continues in force immediately before the commencement of this Act, shall be deemed to have been appointed to act as a Judge

under section 18 of this Act, but the person shall not, by virtue of this subsection, hold office as such for a time longer than that for which the person was appointed to exercise jurisdiction under section 19A of the *District Courts Act 1912*.

- (4) The person who was, immediately before the commencement of this Act, the Chairman of the District Court Judges shall be deemed to have been appointed as the Chief Judge under section 13 (4).
- (5) A person appointed as a judge under the *District Courts Act 1912* and not holding office as such immediately before the commencement of this Act, and the spouse of any such person, shall, notwithstanding anything in this Act, have the same rights as to salary, pension or otherwise which he or she would have had if this Act had not been enacted.
- (6) (Repealed)
- (7) A person holding office immediately before the commencement of this Act as a bailiff for a former Court appointed under section 26 (3) of the *District Courts Act 1912* or an officer appointed under section 26 (4) of that Act to assist a bailiff for a former Court, shall be deemed to have been appointed under this Act as a bailiff or as an assistant bailiff, as the case may require, of the new Court for the proclaimed place that is the place at which the former Court was ordered, under section 4 (1) of the *District Courts Act 1912*, to be holden.

186 Pending proceedings etc

- (1) Subject to the rules, and unless the Court otherwise orders:
 - (a) any proceedings pending in a former Court immediately before the commencement of this Act shall be continued in and disposed of by the new Court sitting at the proclaimed place that is the place at which the former Court was holden immediately before the commencement of this Act, but otherwise those proceedings shall be continued and disposed of as if this Act had not been enacted,
 - (b) any judgment or order of the new Court in proceedings referred to in paragraph (a) shall be enforceable in accordance with this Act and the rules,
 - (c) except as provided in paragraph (d), any judgment or order of a former Court shall be enforceable in accordance with this Act and the rules by the new Court sitting at the proclaimed place at which the former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act,
 - (d) any judgment or order of a former Court shall, as regards any step taken in the enforcement of the judgment or order before the commencement of this Act, be enforceable by the new Court sitting at the proclaimed place at which the former

Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act, but otherwise shall be enforceable as if this Act had not been enacted, and

(e) the entitlement of any party to costs in respect of proceedings commenced before the commencement of this Act and completed after that commencement shall be ascertained as if this Act had not been enacted.

(2) For the purposes of continuing any proceedings in, or enforcing any judgment or order in, the new Court sitting at a proclaimed place, that place shall be deemed to be the proper place in relation to those proceedings or the proceedings in which the judgment was given or entered up or the order was made, as the case may require.

(3) Unless the Supreme Court in a particular case otherwise orders:

(a) Division 7 of Part 3 (section 126 excepted) applies to and in respect of proceedings in, or a judgment or order of, a former Court as if they or it were proceedings in, or a judgment or order of, the new Court, and

(b) any appeal made under Part 6 of the *District Court Act 1912* and pending in the Supreme Court immediately before the commencement of this Act shall be deemed to have been made under Division 7 of Part 3 of this Act.

187 References to District Court in existing instruments

(1) In an instrument:

(a) subject to paragraphs (b) and (c), a reference to a former Court shall be read and construed as a reference to the new Court,

(b) subject to paragraph (c), a reference to a former Court within the jurisdiction of which, or within the district of which, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his or her place of abode or resides or carries on his or her business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his or her place of abode or resides or carries on his or her business, and

(c) a reference to a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) In an instrument, a reference to the Metropolitan District Court (however expressed)

shall be read and construed as a reference to the new Court sitting at Sydney.

- (3) Where under any instrument any power is vested in a former Court, the power shall be exercised by the new Court in all respects as it might have been exercised immediately before the commencement of this section, but in accordance with this Act and the rules.

188 References to District Court judges in existing instruments

- (1) Subject to subsection (3), in an instrument:
- (a) a reference to the Chairman of the District Court Judges shall be read and construed as a reference to the Chief Judge,
 - (b) subject to paragraphs (c) and (d), a reference to a District Court judge shall be read and construed as a reference to a Judge appointed under this Act,
 - (c) subject to paragraph (d), a reference to a District Court judge within whose jurisdiction, or within whose district, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his or her place of abode or resides or carries on his or her business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his or her place of abode or resides or carries on his or her business, and
 - (d) a reference to a District Court judge occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.
- (2) Subject to subsections (1) (c) and (d) and (3), where under an instrument a power (other than a power to make rules) is vested in the District Court judges, or in any number of them, or a majority of them, or any one of them that power shall be exercised by the new Court in all respects as those judges or that judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.
- (3) The Governor may direct by proclamation that:
- (a) subsection (1) (c) and (d) shall not apply to a reference specified in the proclamation, or
 - (b) subsection (2) shall not apply to any power specified in the proclamation,
- and the proclamation shall have effect accordingly, but subject to section 41 of the

Interpretation Act 1987.

- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* apply to a proclamation under subsection (3) in the same way as they apply to a statutory rule within the meaning of that Act.
- (5), (6) (Repealed)

189 References to registrars and bailiffs in existing instruments

In an instrument:

- (a) subject to paragraphs (b) and (c), a reference to a registrar or bailiff of a former Court shall be read and construed as a reference to a registrar or bailiff of the new Court,
- (b) subject to paragraph (c), a reference to the registrar or a bailiff of a former Court shall, if the reference to that former Court is, under section 187 (1) (b) or (c), to be read and construed as a reference to the new Court sitting at a proclaimed place specified in section 187 (1) (b) or specified in or determined in accordance with the rules, be read and construed as a reference to the registrar or a bailiff of the new Court for that place, and
- (c) a reference to a registrar or bailiff of a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the registrar or a bailiff of the new Court for the proclaimed place specified in or determined in accordance with the rules.

190 References to writs etc in existing instruments

(1) In an instrument:

- (a) a reference to a writ of fieri facias issued out of a former Court shall be read and construed as a reference to a writ of execution issued out of the new Court, and
- (b) a reference to a writ of capias ad satisfaciendum issued out of a former Court shall be read and construed as a reference to a writ against the person issued out of the new Court.

(2) In an instrument, a reference to an action of or proceedings in ejectment in a former Court includes a reference to proceedings for possession of land under Division 8 of Part 3.

191 Provisions as to practice and procedure in existing instruments

The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the new Court or any documents that may be or are issued by or in respect of the new Court, have effect subject to the rules.

Division 3 The criminal and special jurisdiction of the Court

192 Definitions

In this Division:

former Court means a Court of Quarter Sessions.

the new Court means the Court.

193 (Repealed)

194 Pending proceedings etc

- (1) Where any proceedings would, had section 3 (ff) of the *District Court (Amendment) Act 1975* not taken effect, have been continued, heard or disposed of after the commencement of that provision in a former Court, those proceedings shall be continued, heard or disposed of, respectively, in the new Court in its criminal and special jurisdiction, sitting at the place at which the former Court was sitting.
- (2) Nothing in subsection (1) affects the powers of the Supreme Court under section 30 of the *Criminal Procedure Act 1986*.
- (3) Where a question of law was submitted by a Chairman of Quarter Sessions to:
 - (a) the Court of Criminal Appeal under section 5B of the *Criminal Appeal Act 1912* and the matter was pending in that Court immediately before the commencement of this subsection, that section, or
 - (b) the Supreme Court under section 131A of the *Justices Act 1902*, and the matter was pending in that Court immediately before the commencement of this subsection, that section,shall apply to and in respect of the matter as if the question had been submitted by a Judge of the new Court.
- (4) Any act, matter or thing that could, had section 3 (ff) of the *District Court (Amendment) Act 1975* not taken effect, have been done or suffered by a person in the person's capacity as a Chairman of Quarter Sessions may be done or suffered by the person in the person's capacity as a Judge of the new Court.
- (5) (Repealed)

Part 7 General provisions

195 Order to Judge or officer

If a Judge or officer of the Court refuses to do any act relating to the duties of his or her 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.

196 Privilege

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

197 Proclamations

- (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.

198 (Repealed)

199 Contempt

- (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.
- (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 the contemnor to be informed orally of the contempt with which he or she is charged,
 - (b) require the contemnor to make his or her defence to the charge,
 - (c) after hearing the contemnor, 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.

- (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 or her 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 the Sheriff or 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 20 penalty units or by imprisonment for a period not exceeding 28 days.
- (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.

200 Fines under sec 199

- (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 section 199 may, if the Court so orders, be enforced, subject to the civil or criminal procedure 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 Fund.

201 Appeals respecting contempt proceedings

- (1) An appeal shall lie at the instance of the contemnor to the Supreme Court from the ruling, order, direction or decision of the Court under section 199, other 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 Stay of contempt proceedings

- (1) At any stage of any proceedings under section 199 or 200, the Court may, on terms, order that the 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.

203 Power to refer allegation etc of contempt to Supreme Court

- (1) Without prejudice to the powers of the District Court under section 199, where it is alleged, or appears to the District Court on its own view, that a person is guilty of contempt of court, whether committed in the face or hearing of the District Court or not, the District Court may refer the matter to the Supreme Court for determination.
- (2) On any matter being referred to the Supreme Court under subsection (1), the Supreme Court shall dispose of the matter in such manner as it considers appropriate.

Schedule 1 Repeals

(Section 180)

Year and number of Act	Short title of Act
1901 No 48	Inter-state Debts Recovery Act 1901
1912 No 23	District Courts Act 1912
1920 No 9	Quarter Sessions Enabling Act 1920
1924 No 30	District Courts (Judges Pensions) Act 1924
1928 No 7	Supreme Court and District Courts (Judges) Act 1928
1932 No 34	District Courts (Validation and Amendment) Act 1932
1932 No 35	District Courts (Further Validation and Amendment) Act 1932
1936 No 4	District Courts (Amendment) Act 1936
1940 No 44	Attachment of Wages Limitation Act 1940
1949 No 44	District Courts (Amendment) Act 1949
1951 No 19	District Courts (Amendment) Act 1951
1955 No 20	District Courts (Amendment) Act 1955
1958 No 11	District Courts (Amendment) Act 1958

Schedule 1A Provisions relating to Judicial Registrar

(Section 18FA (6))

1 Term of office

Subject to this Schedule, a Judicial Registrar holds office for such period (not exceeding 5 years) as is specified in the Judicial Registrar's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

2 Remuneration

A Judicial Registrar is entitled to be paid the following:

- (a) such remuneration as is from time to time determined under the [Statutory and Other Offices Remuneration Act 1975](#) in respect of a Senior Commissioner under the [Land and Environment Court Act 1979](#),
- (b) such travelling and subsistence allowances as the Minister administering the [Land and Environment Court Act 1979](#) from time to time determines in respect of such a Commissioner.

3 Leave

(1) A Judicial Registrar is entitled to such leave:

- (a) as may be specified in respect of the Judicial Registrar in the Judicial Registrar's instrument of appointment, or
- (b) if no leave is specified in the instrument of appointment—as is determined by the Minister.

(2) For the purposes of subclause (1), leave may be specified or determined by reference to the leave entitlement of the holder of any other office or class of office.

4 Vacancy in office

(1) The office of Judicial Registrar becomes vacant if the Judicial Registrar:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt

or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(f) becomes a mentally incapacitated person, or

(g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a Judicial Registrar from office at any time for incapacity, incompetence or misbehaviour.

Schedule 2 (Repealed)

Schedule 3 Savings and transitional provisions consequent on amendments to this Act

Part 1 Preliminary

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Courts Legislation Further Amendment Act 1998, but only in relation to the amendments made to this Act

District Court Amendment Act 1997

Courts Legislation Amendment (Civil Juries) Act 2001, but only in relation to the amendments made to this Act

Courts Legislation Amendment Act 2003, but only in relation to the amendments made to this Act

Courts Legislation Amendment Act 2004, but only in relation to the amendments made to this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision 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, 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.

Part 2 Provision consequent on enactment of [District Court Amendment Act 1997](#)

2 Definition

In this Part, **the amending Act** means the [District Court Amendment Act 1997](#).

3 Causes of action generally

Sections 44, 48, 49, 51, 79, 134 and 134A, as amended by the amending Act, extend to apply in respect of any cause of action that accrued before their amendment by that Act.

4 Motor accident claims

The Court may, on the application of the plaintiff in a motor accident claim that was pending at the time the amendment of section 44 (1) by the amending Act took effect, by order determine that the amount recoverable by the plaintiff is not limited to any amount claimed in the pleadings.

5 Transfer of proceedings to or from the Court

Sections 143 and 145, as amended by the amending Act, extend to apply to proceedings instituted before their amendment by that Act.

Part 3 Provision consequent on enactment of [Courts Legislation Amendment Act 1998](#)

6 Appeals from applications for summary judgment

The amendment made to section 127 by the [Courts Legislation Amendment Act 1998](#) does not apply to applications for summary judgment made before the commencement of the amendment.

Part 4 Provision consequent on enactment of [Courts Legislation Further Amendment Act 1998](#)

7 Application of jurisdictional amendment to causes of action

- (1) Section 47 of this Act (as inserted by Schedule 1 [1] to the amending Act) does not apply to any cause of action that arose before the commencement of that item.
- (2) Any rules prescribed for the purposes of section 47 (1) (as in force immediately before the commencement of Schedule 1 [1] to the amending Act) conferring powers on the registrar are taken to have been made for the purposes of section 47 (1) (as inserted

by Schedule 1 [1] to the amending Act).

- (3) In this clause, **amending Act** means the *Courts Legislation Further Amendment Act 1998*.

Part 5 Provision consequent on enactment of Courts Legislation Amendment (Civil Juries) Act 2001

8 Application of amendments

A provision of subdivision 8 of Division 3 of Part 3, as in force immediately before its amendment by the *Courts Legislation Amendment (Civil Juries) Act 2001*, continues to apply in relation to actions commenced but not finally determined before the commencement of that amendment as if the provision had not been amended.

Part 6 Provisions consequent on enactment of Courts Legislation Further Amendment Act 2001

9 Application of amendments

- (1) Section 63A and Part 3A, as amended by the *Courts Legislation Further Amendment Act 2001*, extend to and in respect of proceedings instituted before the amendments took effect, except as provided by subclause (2).
- (2) The amendments made by that Act to Part 3A have no effect in relation to a matter that, at the time the amendments took effect, had already been referred for mediation or neutral evaluation under that Part.

Part 7 Provisions consequent on enactment of Courts Legislation Amendment Act 2003

10 Application of amendments to existing sittings directions

- (1) Any direction given under section 32 before the commencement of Schedule 3 [2] to the *Courts Legislation Amendment Act 2003* and in force immediately before that commencement continues to have effect under the corresponding provisions of section 32 as inserted by that Schedule until it is revoked or varied by order of the Chief Judge.
- (2) Any direction given under section 173 before the commencement of Schedule 3 [4] to the *Courts Legislation Amendment Act 2003* and in force immediately before that commencement continues to have effect under the corresponding provisions of section 173 as inserted by that Schedule until it is revoked or varied by order of the Chief Judge.