

# Civil Procedure Act 2005 No 28

[2005-28]



New South Wales

## Status Information

### Currency of version

Historical version for 7 April 2009 to 24 May 2009 (accessed 24 May 2024 at 22:37)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Community Justice Centres Amendment Act 2007 No 70](#) (not commenced)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
- **See also**
  - [Civil Procedure Amendment \(Transfer of Proceedings\) Bill 2009](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 6 May 2009

# Civil Procedure Act 2005 No 28



New South Wales

## Contents

<b>Long title</b> .....	10
<b>Part 1 Preliminary</b> .....	10
1 Name of Act .....	10
2 Commencement .....	10
3 Definitions .....	10
4 Application of Parts 3–9 .....	13
5 Jurisdiction of courts .....	14
6 Repeals, amendments and savings provisions .....	14
7 Review of Act .....	14
<b>Part 2 Administrative matters</b> .....	14
<b>Division 1 Rules, practice notes and forms</b> .....	14
8 Uniform Rules Committee .....	14
9 Uniform rules .....	15
10 Rules of court taken to include uniform rules .....	15
11 Relationship between uniform rules and local rules .....	16
12 Officers of the court may exercise functions conferred by uniform rules .....	16
13 Officers of the court may be authorised to exercise court’s functions .....	16
14 Court may dispense with rules in particular cases .....	16
15 Practice notes .....	16
16 Court may give directions in circumstances not covered by rules .....	16
17 Forms .....	17

<b>Division 2 Fees</b> .....	17
18 Fees .....	17
<b>Part 3 Commencing and carrying on proceedings generally</b> .....	18
19 Commencing and carrying on proceedings .....	18
20 Claims for possession of land .....	18
21 Defendant's right to set-off .....	18
22 Defendant's right to cross-claim .....	19
23 Effect of abandoning excess claim .....	20
24 Effect of splitting cause of action .....	20
<b>Part 4 Mediation of proceedings</b> .....	21
25 Definitions .....	21
26 Referral by court .....	21
27 Duty of parties to participate .....	21
28 Costs of mediation .....	21
29 Agreements and arrangements arising from mediation sessions .....	22
30 Privilege .....	22
31 Confidentiality .....	23
32 Directions by mediator .....	23
33 Protection from liability for mediator .....	23
34 Mediation otherwise than under this Part .....	24
<b>Part 5 Arbitration of proceedings</b> .....	24
<b>Division 1 Preliminary</b> .....	24
35 Definitions .....	24
36 Appointment to office as arbitrator .....	24
37 Jurisdiction of arbitrator .....	25
<b>Division 2 Arbitration</b> .....	25
38 Referral to arbitration .....	25
39 Determination by arbitrator .....	26
40 Award taken to be judgment of court .....	26
41 Judicial supervision of arbitrator .....	27

<b>Division 3 Rehearings</b> .....	27
42 Application for rehearing .....	27
43 Order for rehearing .....	27
44 Rehearing .....	28
45 Discontinuance of rehearing .....	28
46 Costs of rehearing .....	29
47 Subpoena at rehearing against arbitrator .....	29
<b>Division 4 Miscellaneous</b> .....	29
48 Appearances .....	29
49 Procedure .....	29
50 Issue of subpoenas .....	30
51 Evidence .....	30
52 Refusal or failure to take oath etc .....	30
53 Contempt .....	31
54 Costs .....	31
55 Protection from liability for arbitrator .....	31
<b>Part 6 Case management and interlocutory matters</b> .....	32
<b>Division 1 Guiding principles</b> .....	32
56 Overriding purpose .....	32
57 Objects of case management .....	32
58 Court to follow dictates of justice .....	32
59 Elimination of delay .....	33
60 Proportionality of costs .....	34
<b>Division 2 Powers of court to give directions</b> .....	34
61 Directions as to practice and procedure generally .....	34
62 Directions as to conduct of hearing .....	35
63 Directions with respect to procedural irregularities .....	36
<b>Division 3 Other powers of court</b> .....	37
64 Amendment of documents generally .....	37
65 Amendment of originating process after expiry of limitation period .....	37

66	Adjournment of proceedings .....	38
67	Stay of proceedings .....	38
68	Attendance at court and production of documents and things to court .....	38
69	Affidavits and witness statements may be read in advance of hearing.....	38
70	Informal proof and admissions .....	39
71	Business in the absence of the public .....	39
72	Court may prohibit disclosure of information .....	40
73	Power of court to determine questions about compromises and settlements .....	40
	<b>Division 4 Persons under legal incapacity</b> .....	40
74	Definitions and application .....	40
75	Settlement of claim made on behalf of, or against, person under legal incapacity .....	41
76	Settlement of proceedings commenced by or on behalf of, or against, person under legal incapacity .....	41
77	Payment of money recovered on behalf of person under legal incapacity .....	42
78	Application of money by Public Trustee .....	42
79	Application of money by manager of protected person's estate .....	43
80	Directions to tutor of person under legal incapacity.....	43
	<b>Division 5 Interim payments</b> .....	43
81	Definitions and application .....	43
82	Court may order interim payments .....	43
83	Interim payment not admission of liability .....	44
84	Adjustments on final judgment etc.....	44
	<b>Division 6 Miscellaneous</b> .....	45
85	Examination on oath .....	45
86	Orders.....	45
87	Protection against self-incrimination in relation to interlocutory matters .....	46
88	Fresh trial.....	48
89	Procedure on fresh trial .....	48
	<b>Part 7 Judgments and orders</b> .....	49
	<b>Division 1 Judgments and orders generally</b> .....	49
90	Judgments generally .....	49

91 Effect of dismissal of proceedings .....	49
92 Judgments for possession of land .....	49
93 Judgments for detention of goods .....	49
94 Failure to comply with order to execute instrument .....	50
95 Joint liability .....	50
96 Set-off of judgments .....	51
97 Arrest warrants .....	52
<b>Division 2 Costs in proceedings</b> .....	<b>52</b>
98 Courts powers as to costs .....	52
99 Liability of legal practitioner for unnecessary costs .....	53
<b>Division 3 Payment of interest</b> .....	<b>55</b>
100 Interest up to judgment .....	55
101 Interest after judgment .....	56
<b>Part 8 Enforcement of judgments and orders</b> .....	<b>56</b>
<b>Division 1 Preliminary</b> .....	<b>56</b>
102 Definitions .....	56
103 Enforcement of judgments generally .....	57
104 Judgments for possession of land .....	57
105 Judgments for delivery of goods .....	57
106 Judgments for payment of money .....	58
107 Deferred payment and payment by instalments .....	59
108 Order for examination .....	59
<b>Division 2 Writs for the levy of property</b> .....	<b>60</b>
<b>Subdivision 1 Enforcement against goods and securities</b> .....	<b>60</b>
109 Effect of writ of execution on goods .....	60
110 How goods subject to conditional bill of sale to be dealt with .....	60
111 How securities to be dealt with .....	61
<b>Subdivision 2 Enforcement against land</b> .....	<b>61</b>
112 Effect of judgment and writ of execution on land .....	61

113 Sale or mortgage by judgment debtor of land affected by order .....	61
114 Entry onto land for purposes of sale by auction .....	63
<b>Subdivision 3 General</b> .....	63
115 Effect of sale of property .....	63
116 Effect of expiry of writ .....	64
<b>Division 3 Garnishee orders</b> .....	64
<b>Subdivision 1 Enforcement against debts</b> .....	64
117 Operation of garnishee order in relation to debts.....	64
118 Time within which payment to be made.....	64
<b>Subdivision 2 Enforcement against income</b> .....	65
119 Operation of garnishee order in relation to income .....	65
120 Time within which payment to be made.....	65
121 Maximum payment under one of several concurrent garnishee orders .....	65
122 Maximum total payment under all garnishee orders .....	65
<b>Subdivision 3 General</b> .....	66
123 Payments by garnishee .....	66
124 Procedure where garnishee order not complied with.....	67
125 Repayment of excess amounts.....	67
<b>Division 4 Charging orders</b> .....	67
126 Operation of charging order in relation to specified security interests.....	67
127 Unauthorised transfer or disposal of security interest under charging order .....	68
128 Disposal of security interest by judgment debtor invalid .....	69
<b>Division 5 Miscellaneous</b> .....	69
129 No arrest on mesne process .....	69
130 Judgments not enforceable by certain means .....	69
131 Committal for contempt .....	69
132 Sheriff may appoint custodian for goods.....	69
133 Judgments and orders unenforceable until entered.....	70
134 Stale judgments and orders enforceable only by leave.....	70

135 Directions as to enforcement .....	71
136 Appropriation of payments towards judgment debt .....	71
137 Execution of judgments and orders for costs .....	71
138 Other methods of enforcing judgments.....	71
<b>Part 9 Transfer of proceedings between courts.....</b>	<b>72</b>
<b>Division 1 Transfer of proceedings from lower to higher court.....</b>	<b>72</b>
139 Definitions .....	72
140 Transfer of proceedings to higher court.....	72
141 Transfer orders .....	73
142 Stay of proceedings in lower court .....	73
143 Proceedings after transfer .....	73
144 Transfer of certain proceedings from District Court to Supreme Court.....	74
<b>Division 2 Transfer of proceedings from higher to lower court.....</b>	<b>75</b>
145 Definitions .....	75
146 Transfer of proceedings to lower court .....	75
147 Transfer orders .....	76
148 Proceedings after transfer .....	77
149 Jurisdiction of lower court.....	77
<b>Division 2A Transfer of proceedings from Supreme Court to Land and Environment Court</b>	
.....	77
149A Definition.....	77
149B Transfer of proceedings from Supreme Court to Land and Environment Court .....	77
149C Transfer orders .....	77
149D Proceedings after transfer.....	78
149E Jurisdiction of Land and Environment Court .....	78
<b>Division 3 Transfer of proceedings between Local Courts.....</b>	<b>78</b>
150 Definitions .....	78
151 Transfer of proceedings between Local Courts .....	78
152 Transfer orders .....	79
153 Proceedings after transfer .....	79



<b>Schedule 1 Application of Act</b> .....	79
<b>Schedule 2 Constitution and procedure of Uniform Rules Committee</b> .....	80
<b>Schedule 3 Rule-making powers</b> .....	83
<b>Schedule 4 Repeals</b> .....	85
<b>Schedule 5 (Repealed)</b> .....	85
<b>Schedule 6 Savings, transitional and other provisions</b> .....	86
<b>Schedule 7 (Repealed)</b> .....	90

# Civil Procedure Act 2005 No 28



New South Wales

An Act with respect to practice and procedure in civil proceedings.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Civil Procedure Act 2005*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, subject to this section.
- (2) Schedule 5.3 [1], [2] and [3], 5.15 [4], 5.17 [3] and 5.30 [8] commence on the commencement of section 3, or on the commencement of Part 3.2 of the *Legal Profession Act 2004*, whichever is the later.
- (3) Schedule 5.3 [4] commences on the commencement of section 9.
- (4) Schedule 5.43 and 5.44 commence on the commencement of section 18.
- (5) Different days may be appointed for the commencement of a single provision of Schedule 4 or 5 for the purpose of commencing the repeals or amendments effected by the provision on different days.

### 3 Definitions

- (1) In this Act:

***civil proceedings*** means any proceedings other than criminal proceedings.

***claim for relief*** includes:

- (a) a claim for possession of land, and
- (b) a claim for delivery of goods, and
- (c) a claim for the recovery of damages or other money, and

- (d) a claim for a declaration of right, and
- (e) a claim for the determination of any question or matter that may be determined by the court, and
- (f) any other claim (whether legal, equitable or otherwise) that is justiciable in the court.

**costs**, in relation to proceedings, means costs payable in or in relation to the proceedings, and includes fees, disbursements, expenses and remuneration.

**court** includes tribunal.

**criminal proceedings** means proceedings against a person for an offence (whether summary or indictable), and includes the following:

- (a) committal proceedings,
- (b) proceedings relating to bail,
- (c) proceedings relating to sentence,
- (d) proceedings on an appeal against conviction or sentence.

**cross-claim** means a claim by a defendant for the grant of relief under section 22.

**defendant** means a person against whom proceedings are commenced, and includes a person against whom a cross-claim is made.

**exercise** a function includes perform a duty.

**function** includes power, authority and duty.

**hearing** includes both trial and interlocutory hearing.

**judgment** includes any order for the payment of money, including any order for the payment of costs.

**judgment creditor** means the person to whom a judgment debt is payable.

**judgment debt** includes:

- (a) any amount payable under a judgment, and
- (b) any interest after judgment that is payable on that amount under section 101, and
- (c) any other amount payable under rules of court without the need for a judgment.

**judgment debtor** means the person by whom a judgment debt is payable.

**judicial officer** has the same meaning as it has in the [Judicial Officers Act 1986](#).

**jurisdictional limit** means:

- (a) in relation to the District Court, the jurisdictional limit of that Court within the meaning of the [District Court Act 1973](#), and
- (b) in relation to a Local Court sitting in its General Division, the jurisdictional limit of a Local Court when sitting in that Division within the meaning of the [Local Courts Act 1982](#), and
- (c) in relation to a Local Court sitting in its Small Claims Division, the jurisdictional limit of a Local Court when sitting in that Division within the meaning of the [Local Courts Act 1982](#).

**local rules** means rules of court other than uniform rules.

**minor** means a person who is under the age of 18 years.

**motor accident claim** has the same meaning as **claim** has in the [Motor Accidents Compensation Act 1999](#).

**officer**, in relation to a court, includes any registrar or other member of staff employed in the administration of the business of the court, and includes the Judicial Registrar of the District Court.

**ordinary basis**, in relation to the assessment of legal costs that a court has ordered to be paid, means the basis of assessing costs set out in section 364 (1) and (2) of the [Legal Profession Act 2004](#).

**originating process** means the process by which proceedings are commenced, and includes the process by which a cross-claim is made.

**person under legal incapacity** means any person who is under a legal incapacity in relation to the conduct of legal proceedings (other than an incapacity arising under section 4 of the [Felons \(Civil Proceedings\) Act 1981](#)) and, in particular, includes:

- (a) a child under the age of 18 years, and
- (b) an involuntary patient, a forensic patient or a correctional patient within the meaning of the [Mental Health Act 2007](#), and
- (c) a person under guardianship within the meaning of the [Guardianship Act 1987](#), and
- (d) a protected person within the meaning of the [Protected Estates Act 1983](#), and
- (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.

**plaintiff** means a person by whom proceedings are commenced, or on whose behalf proceedings are commenced by a tutor, and includes a person by whom a cross-claim is made or on whose behalf a cross-claim is made by a tutor.

**possession**, otherwise than of land, includes custody and power.

**trial** means any hearing that is not an interlocutory hearing.

**tutor**, in relation to a person under legal incapacity, means a tutor appointed to represent the person (whether by the court or otherwise) in accordance with the uniform rules.

**uniform rules** means rules made, or taken to have been made, under section 9.

**Uniform Rules Committee** means the Uniform Rules Committee established under section 8.

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

**Note—**

Other words and expressions (for example, rules of court) are defined in the [Interpretation Act 1987](#).

(2) Notes included in this Act do not form part of this Act.

**Note—**

In the notes to this Act, **DCR** means the [District Court Rules 1973](#), **LCR** means the [Local Courts \(Civil Claims\) Rules 1988](#) and **SCR** means the [Supreme Court Rules 1970](#).

#### **4 Application of Parts 3-9**

- (1) Subject to this section, Parts 3-9 apply to each court referred to in Schedule 1 in relation to civil proceedings of a kind referred to in that Schedule in respect of that court.
- (2) The uniform rules may exclude any class of civil proceedings from the operation of all or any of the provisions of Parts 3-9.
- (3) The Governor may, by regulation, amend or substitute Schedule 1.
- (4) A regulation under this section may contain provisions consequent on the amendment or substitution of Schedule 1, including:
  - (a) provisions excluding any class of civil proceedings from the operation of all or any of the provisions of Parts 3-9, and
  - (b) provisions modifying any specified provision of Parts 3-9, or of any other Act or law, in its application to any class of civil proceedings.

- (5) Subject to any such regulation, this Act does not limit the operation of any other Act with respect to the conduct of civil proceedings.

## **5 Jurisdiction of courts**

- (1) Nothing in this Act or the uniform rules limits the jurisdiction of the Supreme Court.
- (2) Nothing in the uniform rules extends the jurisdiction of any court except to the extent to which this Act expressly so provides.

## **6 Repeals, amendments and savings provisions**

- (1) Each Act and instrument referred to in Schedule 4 is repealed.
- (2) (Repealed)
- (3) Schedule 6 has effect.

## **7 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

# **Part 2 Administrative matters**

## **Division 1 Rules, practice notes and forms**

### **8 Uniform Rules Committee**

- (1) There is to be a Uniform Rules Committee comprising 11 members, of whom:
  - (a) one is to be the Chief Justice of the Supreme Court or a Judge of the Supreme Court nominated for the time being by the Chief Justice, and
  - (b) one is to be the President of the Court of Appeal or a Judge of Appeal nominated for the time being by the President, and
  - (c) two are to be Judges of the Supreme Court appointed by the Chief Justice, and
  - (c1) one is to be the Chief Judge of the Land and Environment Court or a Judge nominated for the time being by the Chief Judge, and
  - (d) one is to be the Chief Judge of the District Court or a Judge of the District Court

nominated for the time being by the Chief Judge, and

- (e) one is to be a Judge of the District Court appointed by the Chief Judge, and
- (f) one is to be the Chief Magistrate or a Magistrate nominated for the time being by the Chief Magistrate, and
- (g) one is to be a Magistrate appointed by the Chief Magistrate, and
- (h) one is to be a barrister appointed by the Bar Council, and
- (i) one is to be a solicitor appointed by the Law Society Council.

- (2) Schedule 2 has effect with respect to the constitution and procedure of the Uniform Rules Committee.

## **9 Uniform rules**

- (1) The Uniform Rules Committee may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by rules or that is necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), rules under this section may make provision, in relation to all civil proceedings in respect of which a court has jurisdiction (however arising), for or with respect to the matters specified in Schedule 3.
- (3) On the commencement of this section, the rules set out in Schedule 7 are taken to have been made under this section, and may be amended and repealed accordingly.
- (4) The rules made under this section may authorise or require the use of an electronic case management system established under section 14B of the *Electronic Transactions Act 2000* in relation to any proceedings in a court in respect of which the use of such a system is authorised by an order in force under section 14C of that Act.
- (5) This section does not give power to make rules with respect to any matter for which rules may be made under section 38 of the *Legal Profession Act 2004* or any matter relating to costs that is regulated by Part 3.2 of that Act.
- (6) This section does not limit the operation of section 78 of the *Interpretation Act 1987*.

## **10 Rules of court taken to include uniform rules**

- (1) Rules of court are taken to include the uniform rules to the extent to which they are applicable in that court.
- (2) Subsection (1) does not authorise the person or body having power to make local rules to amend or repeal a uniform rule in its application to that court.

### **11 Relationship between uniform rules and local rules**

- (1) The uniform rules prevail over any provision of any local rules unless the uniform rules expressly provide that the provision of the local rules is to prevail.
- (2) One rule prevails over another, as referred to in subsection (1), to the extent only of any inconsistency between them.

### **12 Officers of the court may exercise functions conferred by uniform rules**

Without limiting any other functions he or she may exercise, a registrar or other officer of any court may exercise any function conferred on such an officer by the uniform rules.

### **13 Officers of the court may be authorised to exercise court's functions**

- (1) The senior judicial officer of any court may, by instrument in writing:
  - (a) direct that any function of the court under this Act or the uniform rules may be exercised by such registrars or other officers of the court, and in such circumstances and subject to such conditions, as are specified in the instrument, and
  - (b) vary or revoke any such instrument.
- (2) This section does not limit any provision of the Act by which the court is constituted with respect to the exercise of the court's functions.

### **14 Court may dispense with rules in particular cases**

In relation to particular civil proceedings, the court may, by order, dispense with any requirement of rules of court if satisfied that it is appropriate to do so in the circumstances of the case.

### **15 Practice notes**

- (1) Subject to rules of court, the senior judicial officer of the court may issue practice notes for that court in relation to civil proceedings to which this Act applies.
- (2) Part 6 of the *Interpretation Act 1987* applies to a practice note issued under this section in the same way as it applies to a rule of court.

### **16 Court may give directions in circumstances not covered by rules**

- (1) In relation to particular civil proceedings, the court may give directions with respect to any aspect of practice or procedure for which rules of court or practice notes do not provide.
- (2) Anything done in accordance with such a direction (including the commencing of proceedings and the taking of any step in proceedings) is taken to have been validly done.



## 17 Forms

- (1) Subject to the uniform rules, the Uniform Rules Committee:
  - (a) may approve forms for documents to be used in connection with civil proceedings, and
  - (b) in the case of documents filed with a court, or issued by a court, by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*, may approve the format in which such documents are to be filed or issued.
- (2) Copies of the approved forms are to be made available for public inspection at each registry of the court concerned and on the court's internet website.
- (3) If a form is approved in relation to a document to be used in connection with proceedings in a court, a document that is filed with or issued by the court is to be in that form.

### Note—

See section 80 of the *Interpretation Act 1987* with respect to compliance with approved forms.

## Division 2 Fees

### 18 Fees

- (1) The Governor may make regulations for or with respect to the following matters:
  - (a) the fees payable to a court in relation to the conduct of civil proceedings in the court, including fees for the following:
    - (i) the filing or registration of any document in the court,
    - (ii) the allocation of hearing dates,
    - (iii) the conduct of hearings,
    - (iv) the retention of juries,
    - (v) the sealing or other authentication of any document that has been filed in the court,
    - (vi) the issue of any document out of the court,
  - (b) the fees payable in relation to proceedings referred to mediation under Part 4,
  - (c) the fees payable in relation to proceedings referred to arbitration under Part 5,
  - (d) the fees payable in relation to the examination of a judgment debtor by a registrar or other officer of the court under Part 8,

- (e) the fees payable in relation to the functions exercised by the Sheriff, whether under this Act or otherwise,
  - (f) the fees payable for administrative services provided by a registrar or other officer of the court, whether in connection with the administration of this Act or otherwise,
  - (g) the waiver, postponement and remittal of fees.
- (2) Fees of the kind referred to in subsection (1) (a) or (d) are not payable by the Crown, or by any person acting on behalf of the Crown, with respect to any civil proceedings to which any of the following persons or bodies is a party:
- (a) the Crown,
  - (b) any Minister of the Crown,
  - (c) any person or body prescribed by the regulations or belonging to a class of persons or bodies so prescribed.
- (3) Subsection (2) does not prevent the recovery by the Crown or any such person or body of any fees that would, had they been paid by the Crown or any such person or body, have been so recoverable.
- (4) Unpaid fees may be recovered by the person to whom they are payable, as a debt, in any court of competent jurisdiction.

### **Part 3 Commencing and carrying on proceedings generally**

#### **19 Commencing and carrying on proceedings** (cf Act No 9 1973, sections 53 and 56; Act No 11 1970, section 22)

- (1) Subject to this Act, proceedings are to be commenced and carried on in the manner prescribed by rules of court.
- (2) For the purposes of this Act and the uniform rules, **carry on proceedings** includes defend proceedings.

#### **20 Claims for possession of land** (cf Act No 52 1970, section 79)

A claim for judgment for possession of land takes the place of a claim in an action for ejectment that could have been brought under the practice of the Supreme Court as it was immediately before 1 July 1972.

**Note—**

1 July 1972 was the date of commencement of the [Supreme Court Act 1970](#).

#### **21 Defendant's right to set-off**

- (1) If there are mutual debts between a plaintiff and a defendant in any proceedings, the

defendant may, by way of defence, set off against the plaintiff's claim any debt that is owed by the plaintiff to the defendant and that was due and payable at the time the defence of set-off was filed, whether or not the mutual debts are different in nature.

- (2) This section extends to civil proceedings in which one or more of the mutual debts is owed by or to a deceased person who is represented by a legal personal representative.
- (3) This section does not apply to the extent to which the plaintiff and defendant have agreed that debts (whether generally or as to specific debts) may not be set off against each other.
- (4) This section does not affect any other rights or obligations of a debtor or creditor in respect of mutual debts, whether arising in equity or otherwise.
- (5) This section is subject to section 120 of the *Industrial Relations Act 1996*.
- (6) In this section, **debt** means any liquidated claim.

**Note—**

The application of this provision to existing debts is dealt with in clause 6 of Schedule 6 (Savings, transitional and other provisions).

**22 Defendant's right to cross-claim** (cf Act No 52 1970, section 78; Act No 11 1970, section 15; DCR Part 20, rule 1)

- (1) Subject to subsection (2), the court may grant to the defendant in any proceedings (**the first proceedings**) such relief against any person (whether or not a plaintiff in the proceedings) as the court might grant against that person in separate proceedings commenced by the defendant for that purpose.
- (2) Relief may not be granted under this section against a person who is not a plaintiff in the first proceedings unless the relief relates to, or is connected with, the subject of the first proceedings.
- (3) A person against whom a defendant makes a claim for relief under this section:
  - (a) has the same rights in respect of his or her defence against the claim as he or she would have in separate proceedings commenced against the person by the defendant, and
  - (b) if not already a party to the first proceedings:
    - (i) becomes a party to the first proceedings, and
    - (ii) unless the court otherwise orders, is bound by any judgment (including a judgment by consent or by default) or decision (including a decision by consent) on any claim for relief in the proceedings (including a claim for relief

in any cross-claim in the proceedings).

**23 Effect of abandoning excess claim** (cf Act No 9 1973, section 50; Act No 11 1970, section 14)

- (1) If, in any proceedings on a claim, the cause of action giving rise to the claim is for more than the court's jurisdictional limit:
  - (a) the person may abandon the excess by a statement to that effect in the originating process, and
  - (b) in that event, the person's claim is taken to be reduced by the amount of the excess.
- (2) If a person's claim is successful in respect of a cause of action:
  - (a) the amount recoverable by the person (exclusive of costs and interest) is not to exceed the court's jurisdictional limit, and
  - (b) the judgment in the proceedings is in full discharge of all of the person's demands in respect of that cause of action, and
  - (c) entry of the judgment in the records of the court is to be made accordingly.
- (3) This section is subject to section 51 of the *District Court Act 1973* and section 66 of the *Local Courts Act 1982*.

**Note—**

Under those sections, claims in the District Court or a Local Court for amounts in excess of the court's jurisdictional limit can, in some cases, be dealt with by consent of parties.

**24 Effect of splitting cause of action** (cf Act No 9 1973, section 49; Act No 11 1970, section 13)

- (1) If:
  - (a) a person (***the first person***) splits any cause of action against another person (***the other person***) so as to commence proceedings, or make a cross-claim, for part only of the amount for which proceedings may be commenced on that cause, and
  - (b) judgment is given or entered, or a final order is made, on the proceedings or cross-claim,the other person is entitled to judgment in any other proceedings, whether in that or any other court, with respect to the same cause of action.
- (2) Despite subsection (1), if the other person has given a number of securities in respect of a claim made by the first person, the first person:
  - (a) may commence proceedings in any court in respect of each of those securities, or

(b) may make a cross-claim in proceedings in any court in respect of each of those securities,

as if each of those securities gave rise to a distinct cause of action, and may do so whether or not the claim made by the first person is for an amount that is more than the court's jurisdictional limit.

## Part 4 Mediation of proceedings

**25 Definitions** (cf Act No 52 1970, sections 110I and 110J; Act No 9 1973, sections 163 and 164; Act No 11 1970, sections 21J and 21K)

In 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.

**mediation session** means a meeting arranged for the mediation of a matter.

**mediator** means a person to whom the court has referred a matter for mediation.

**26 Referral by court** (cf Act No 52 1970, section 110K; Act No 9 1973, section 164A; Act No 11 1970, section 21L)

- (1) If it considers the circumstances appropriate, the court may, by order, refer any proceedings before it, or part of any such proceedings, for mediation by a mediator, and may do so either with or without the consent of the parties to the proceedings concerned.
- (2) The mediation is to be undertaken by a mediator agreed to by the parties or appointed by the court, who may (but need not be) a listed mediator.
- (3) In this section, **listed mediator** means a mediator appointed in accordance with a practice note with respect to the nomination and appointment of persons to be mediators for the purposes of this Part.

**27 Duty of parties to participate** (cf Act No 52 1970, section 110L; Act No 9 1973, section 164B; Act No 11 1970, section 21M)

It is the duty of each party to proceedings that have been referred for mediation to participate, in good faith, in the mediation.

**28 Costs of mediation** (cf Act No 52 1970, section 110M; Act No 9 1973, section 164C; Act No 11 1970, section 21N)

The costs of mediation, including the costs payable to the mediator, are payable:

- (a) 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, or

- (b) in any other case, by the parties in such proportions as they may agree among themselves.

**29 Agreements and arrangements arising from mediation sessions** (cf Act No 52 1970, section 110N; Act No 9 1973, section 164D; Act No 11 1970, section 21O)

- (1) The court may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) On any application for an order under this section, any party may call evidence, including evidence from the mediator and any other person engaged in the mediation, as to the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement.
- (3) 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.

**30 Privilege** (cf Act No 52 1970, section 110P; Act No 9 1973, section 164F; Act No 11 1970, section 21Q)

- (1) In this section, **mediation 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) 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
  - (b) a document or other material sent to or produced to a mediator, or sent to or produced at the court or the registry of the court, for the purpose of enabling a mediation session to be arranged.
- (3) The privilege conferred by subsection (2) extends only to a publication made:
  - (a) at a mediation session, or
  - (b) in a document or other material sent to or produced to a mediator, or sent to or produced at the court or the registry of the court, for the purpose of enabling a mediation session to be arranged, or
  - (c) in circumstances referred to in section 31.
- (4) Subject to section 29 (2):
  - (a) evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court or other body, and

(b) a document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court or other body.

(5) Subsection (4) does not apply with respect to any evidence or document:

(a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons specified in the document, consent to the admission of the evidence or document, or

(b) in proceedings commenced with respect to any act or omission in connection with which a disclosure has been made as referred to in section 31 (c).

**31 Confidentiality** (cf Act No 52 1970, section 110Q; Act No 9 1973, section 164G; Act No 11 1970, section 21R)

A mediator may disclose information obtained in connection with the administration or execution of this Part only in 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, including section 29 (2),

(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 to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation 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.

**32 Directions by mediator** (cf SCR Part 72C, rule 3)

Subject to the uniform rules and any relevant practice notes, a mediator may, by order, give directions as to the preparation for, and conduct of, the mediation.

**33 Protection from liability for mediator**

A mediator to whom the court refers proceedings has, in the exercise of his or her functions as a mediator in relation to those proceedings, the same protection and immunity as a judicial officer of the court has in the exercise of his or her functions as a judicial officer.

**34 Mediation otherwise than under this Part** (cf Act No 52 1970, section 110H (2); Act No 9 1973, section 162 (2))

This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation 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*.

## **Part 5 Arbitration of proceedings**

### **Division 1 Preliminary**

**35 Definitions** (cf Act No 43 1983, section 3)

In this Part:

**arbitrator** means an arbitrator appointed under section 36.

**award** means an arbitrator's award under section 39.

**referred proceedings** means proceedings the subject of an unrevoked reference to an arbitrator under section 38.

**referring court**, in relation to referred proceedings, means the court by which the proceedings have been referred.

**36 Appointment to office as arbitrator** (cf Act No 43 1983, section 5)

- (1) The senior judicial officer of the court may appoint suitable persons to be arbitrators to hear and determine referred proceedings.
- (2) A person is not eligible to be appointed as an arbitrator unless the person is a former judicial officer, a barrister nominated by the Bar Council or a solicitor nominated by the Law Society Council.
- (3) The senior judicial officer concerned may, and if the nominating body so requests in writing must, revoke an appointment under this section.
- (4) An appointment, or revocation of appointment, of an arbitrator is to be made by instrument in writing signed by the senior judicial officer.
- (5) An arbitrator may resign office by instrument in writing delivered to the senior judicial officer.
- (6) An arbitrator is entitled to such remuneration as the Minister may from time to time determine.



(7) An arbitrator's remuneration is to be paid out of money provided by Parliament.

**37 Jurisdiction of arbitrator** (cf Act No 43 1983, section 7)

- (1) The jurisdiction conferred on an arbitrator by this Part in relation to referred proceedings is part of the jurisdiction of the court by which the proceedings were referred.
- (2) Subject to this Part, but without limiting the specific powers and authorities of an arbitrator under this Part, an arbitrator has and may exercise, in relation to referred proceedings, all of the functions of the court by which the proceedings were referred.
- (3) Subsection (2) does not confer on an arbitrator functions of the court which are the same as, or similar to, the functions conferred by sections 52 and 53 or any other functions in respect of contempt.
- (4) The functions conferred on an arbitrator may be exercised only:
  - (a) for the purpose of determining the issues in dispute in referred proceedings, and
  - (b) for the purpose of making an award in referred proceedings, and
  - (c) for related purposes.
- (5) Subject to this Part, a tribunal (other than the arbitrator to whom proceedings have been referred for determination) has no jurisdiction in respect of any issue in dispute in the proceedings while those proceedings are before the arbitrator.
- (6) In subsection (5), **tribunal** means any court, tribunal, board or other body, or any person, empowered by an Act or by agreement of parties to determine by litigation, arbitration, conciliation or otherwise any issue that is in dispute.

## **Division 2 Arbitration**

**38 Referral to arbitration** (cf Act No 52 1970, section 76B; Act No 9 1973, section 63A; Act No 11 1970, section 21H)

- (1) The court may order that proceedings before it:
  - (a) in respect of a claim for the recovery of damages or other money, or
  - (b) in respect of a claim for any equitable or other relief ancillary to a claim for the recovery of damages or other money,be referred for determination by an arbitrator.
- (2) Before making such an order in relation to any proceedings, the referring court:
  - (a) is to consider the preparations made by the parties for the hearing of the proceedings, and

- (b) is, as far as possible, to deal with all matters that may be dealt with by the court on application to the court before the hearing of the proceedings, and
  - (c) is to 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 referring court may not make such an order in relation to any proceedings if:
- (a) no issue in the proceedings is contested or judgment in the proceedings has been given or entered and has not been set aside, or
  - (b) rules of court provide that such an order may not be made in relation to proceedings of that kind, or
  - (c) cause is otherwise shown why the proceedings should not be so referred.
- (4) At any time before the making of an award in relation to referred proceedings, the referring court may revoke an order under this section and give directions for the subsequent conduct of the proceedings and directions as to any costs incurred before the revocation of the order.
- (5) This section does not limit any other power of the court to refer a matter to arbitration.

**39 Determination by arbitrator** (cf Act No 43 1983, section 15)

- (1) The issues in dispute in referred proceedings are to be determined by the arbitrator on the evidence adduced before the arbitrator.
- (2) The arbitrator must record the arbitrator's determination of the proceedings, and the reasons for the determination, by an award in writing signed by the arbitrator.
- (3) The arbitrator must immediately send the award to the referring court.
- (4) An arbitrator may not make a determination that could not have been made had the proceedings been heard and determined by the referring court.
- (5) Despite subsection (4), an award does not fail to have full effect, and may not be called in question, by reason only that the amount awarded exceeds the amount claimed in the proceedings to which the award relates.

**40 Award taken to be judgment of court** (cf Act No 43 1983, section 16A; Act No 52 1970, section 76B (5); Act No 9 1973, section 63A (5); Act No 11 1970, section 21H (5))

Subject to section 41 and Division 3, an award is final and conclusive, and is taken to be a judgment of the referring court:

- (a) if it is expressed to be made by consent of all the parties, on the date on which it is received by the referring court, or

(b) in any other case, at the expiry of 28 days after it is sent to all of the parties.

**41 Judicial supervision of arbitrator** (cf Act No 43 1983, section 17)

(1) No relief lies:

(a) under section 69 or 101 of the *Supreme Court Act 1970*, or

(b) by way of declaratory judgment or order, or

(c) by way of injunction, or

(d) under section 126, 127 or 128 of the *District Court Act 1973*, or

(e) under section 73 or 74 of the *Local Courts Act 1982*,

in relation to proceedings under this Act on referred proceedings.

(2) Subsection (1) does not apply if the relief is sought on the ground of a lack of jurisdiction or a denial of natural justice.

### **Division 3 Rehearings**

**42 Application for rehearing** (cf Act No 43 1983, section 18)

(1) A person aggrieved by an award may apply to the referring court for a rehearing of the proceedings concerned.

(2) The application may (but need not) request that the rehearing be a full rehearing or limited rehearing.

(3) The award is suspended from the time the application is made until an order for rehearing is made.

**43 Order for rehearing** (cf Act No 43 1983, section 18A)

(1) The referring court must order a rehearing of proceedings the subject of an award if an application for rehearing is made before the award takes effect.

(2) An order for rehearing may not be made unless the amount claimed in the proceedings, or the value of the property to which the proceedings relate, exceeds the jurisdictional limit of a Local Court when sitting in its Small Claims Division.

(3) An order for rehearing need not be made if it appears to the court that the applicant failed to attend a hearing before an arbitrator without good reason.

(4) In an order for rehearing, the referring court may direct that the rehearing be a full rehearing or a limited rehearing, as the court thinks appropriate, and may do so regardless of whether the applicant requested a full rehearing or a limited rehearing or made no such request.

- (5) In the absence of a direction under subsection (4), the rehearing is to be a full rehearing.
- (6) An order for a limited rehearing must specify the aspects that are to be the subject of the rehearing, whether by reference to specific issues in dispute, specific parties to the dispute or otherwise.
- (7) The referring court may amend an order for rehearing at any time before or during a rehearing.

**44 Rehearing** (cf Act No 43 1983, section 18B)

- (1) If an order is made for a full rehearing, the award ceases to have effect and the proceedings are to be heard and determined in the referring court as if they had never been referred to an arbitrator.
- (2) If an order is made for a limited rehearing:
  - (a) the award is suspended from the time the order is made until the proceedings are determined, and
  - (b) the aspects ordered to be dealt with at the limited rehearing are to be heard and determined in the court concerned as if they had not been dealt with in the arbitration, and
  - (c) following the rehearing, the court may reinstate the award with such modifications (if any) as the court thinks appropriate, and
  - (d) the award, as reinstated, is final and conclusive, and is taken to be a judgment of the referring court.
- (3) Subject to this Division, this Act and the uniform rules apply to proceedings on a rehearing in the same way as they apply to any other civil proceedings.

**45 Discontinuance of rehearing** (cf Act No 43 1983, section 18D)

- (1) A rehearing may be discontinued, but only with the consent of all parties or by leave of the court.
- (2) If a rehearing is discontinued, the court is to reinstate the award from which the rehearing has arisen.
- (3) An award that is reinstated under this section:
  - (a) is final and conclusive, and
  - (b) is taken to be a judgment of the referring court, and
  - (c) unless the court otherwise orders, is taken to have had effect as such a judgment

as from the date on which it would have taken effect under section 40 (b) had no application for a rehearing been made under this Division.

**Note—**

Under section 40 (b), the award would have taken effect at the expiry of 28 days after it was sent to all of the parties.

**46 Costs of rehearing** (cf Act No 43 1983, section 18C)

- (1) A court that hears and determines proceedings on a full rehearing:
  - (a) may make an order for costs in respect of the rehearing, and
  - (b) may, in addition, make an order for costs in respect of the hearing under Division 2.
- (2) A court that hears and determines any aspect of proceedings on a limited rehearing:
  - (a) may make an order for costs in respect of the rehearing as to that aspect, and
  - (b) may, in addition, make an order for costs in respect of the hearing as to that aspect under Division 2.
- (3) This section applies to proceedings in respect of which a rehearing is discontinued under section 45 in the same way as it applies to proceedings that are heard and determined on a rehearing.

**47 Subpoena at rehearing against arbitrator** (cf Act No 43 1983, section 18E)

A subpoena for the giving of evidence or the production of documents at a rehearing is not to be issued against the arbitrator to whom the proceedings concerned were referred just because the evidence or documents relate to the arbitration.

## **Division 4 Miscellaneous**

**48 Appearances** (cf Act No 43 1983, section 8)

A party to referred proceedings before an arbitrator has the same rights as to:

- (a) representation by a barrister or solicitor, or otherwise, and
- (b) examination and cross-examination of witnesses,

as the party would have in relation to proceedings before the referring court.

**49 Procedure** (cf Act No 43 1983, section 10)

- (1) Subject to this Act and any directions given by the referring court, the procedure at an arbitration is to be determined by the arbitrator.

- (2) Subject to the rules of evidence, an arbitrator must act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms.

**50 Issue of subpoenas** (cf Act No 43 1983, section 11)

A referring court has the same powers with respect to:

- (a) ordering persons to attend as witnesses at referred proceedings or to attend and produce documents at referred proceedings, and
- (b) enforcing compliance with any such orders,

as it would have had in respect of the proceedings had they been heard and determined by the court.

**51 Evidence** (cf Act No 43 1983, section 13)

- (1) Subject to the uniform rules, evidence in referred proceedings before an arbitrator is to be given and received in the same way as it would be given and received before the referring court.
- (2) Subsection (1) does not require any such evidence to be recorded.
- (3) An arbitrator may administer an oath or take an affidavit for the purposes of referred proceedings.
- (4) Referred proceedings are taken to be judicial proceedings for the purposes of section 327 (Offence of perjury) of the *Crimes Act 1900*.

**52 Refusal or failure to take oath etc** (cf Act No 43 1983, section 12)

- (1) If, at any hearing of referred proceedings, a witness:
  - (a) refuses or fails to take an oath when required by the arbitrator to do so, or
  - (b) refuses or fails to answer a question that the witness is required by the arbitrator to answer,the arbitrator or a party to the proceedings may apply to the referring court for an order that the witness attend before the court for examination.
- (2) Unless satisfied that there was a reasonable excuse for the refusal or failure of the witness to take the oath or answer the question, the referring court must make the order applied for.
- (3) A court before which a witness attends and gives evidence pursuant to such an order may order the transmission to the arbitrator of the transcript of evidence.
- (4) Any such evidence is taken to have been given at the hearing before the arbitrator.

- (5) Failure to comply with an order under this section constitutes a contempt of the referring court, committed in the face of the court.

**53 Contempt** (cf Act No 43 1983, section 14)

- (1) A person must not:
- (a) wilfully insult an arbitrator while the arbitrator is hearing referred proceedings or proceeding to or from such a hearing, or
  - (b) wilfully insult a person in attendance at such a hearing or proceeding to or from such a hearing, or
  - (c) wilfully misbehave during the hearing of referred proceedings, or
  - (d) wilfully and without lawful excuse interrupt the hearing of referred proceedings, or
  - (e) assault or wilfully obstruct an arbitrator or other person during the hearing of referred proceedings, or
  - (f) without lawful excuse, disobey a lawful direction given to the person by an arbitrator during the hearing of referred proceedings.
- (2) An arbitrator may direct a person who contravenes subsection (1) to leave the sitting of the arbitrator at which the contravention occurs and the person to whom the direction is given must immediately comply with the direction.
- (3) Failure to comply with such a direction constitutes a contempt of the referring court, committed in the face of the court.

**54 Costs** (cf Act No 43 1983, section 16)

- (1) An arbitrator may make orders with respect to the payment, as between the parties, of the costs of referred proceedings.
- (2) An arbitrator has the same powers in relation to an order for costs under subsection (1) as the referring court would have had if the hearing before the arbitrator had been a hearing before the court.
- (3) This section does not limit the power of the referring court to make orders under section 98 with respect to the costs of referred proceedings.

**55 Protection from liability for arbitrator** (cf Act No 43 1983, section 6)

An arbitrator to whom the court refers proceedings has, in the exercise of his or her functions as an arbitrator in relation to those proceedings, the same protection and immunity as a judicial officer of the court has in the exercise of his or her functions as a judicial officer.

## **Part 6 Case management and interlocutory matters**

### **Division 1 Guiding principles**

#### **56 Overriding purpose** (cf SCR Part 1, rule 3)

- (1) The overriding purpose of this Act and of rules of court, in their application to civil proceedings, is to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
- (2) The court must seek to give effect to the overriding purpose when it exercises any power given to it by this Act or by rules of court and when it interprets any provision of this Act or of any such rule.
- (3) A party to civil proceedings is under a duty to assist the court to further the overriding purpose and, to that effect, to participate in the processes of the court and to comply with directions and orders of the court.
- (4) A solicitor or barrister must not, by his or her conduct, cause his or her client to be put in breach of the duty identified in subsection (3).
- (5) The court may take into account any failure to comply with subsection (3) or (4) in exercising a discretion with respect to costs.

#### **57 Objects of case management**

- (1) For the purpose of furthering the overriding purpose referred to in section 56 (1), proceedings in any court are to be managed having regard to the following objects:
  - (a) the just determination of the proceedings,
  - (b) the efficient disposal of the business of the court,
  - (c) the efficient use of available judicial and administrative resources,
  - (d) the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties.
- (2) This Act and any rules of court are to be so construed and applied, and the practice and procedure of the courts are to be so regulated, as best to ensure the attainment of the objects referred to in subsection (1).

#### **58 Court to follow dictates of justice**

- (1) In deciding:
  - (a) whether to make any order or direction for the management of proceedings, including:
    - (i) any order for the amendment of a document, and



- (ii) any order granting an adjournment or stay of proceedings, and
  - (iii) any other order of a procedural nature, and
  - (iv) any direction under Division 2, and
- (b) the terms in which any such order or direction is to be made,
- the court must seek to act in accordance with the dictates of justice.
- (2) For the purpose of determining what are the dictates of justice in a particular case, the court:
- (a) must have regard to the provisions of sections 56 and 57, and
  - (b) may have regard to the following matters to the extent to which it considers them relevant:
    - (i) the degree of difficulty or complexity to which the issues in the proceedings give rise,
    - (ii) the degree of expedition with which the respective parties have approached the proceedings, including the degree to which they have been timely in their interlocutory activities,
    - (iii) the degree to which any lack of expedition in approaching the proceedings has arisen from circumstances beyond the control of the respective parties,
    - (iv) the degree to which the respective parties have fulfilled their duties under section 56 (3),
    - (v) the use that any party has made, or could have made, of any opportunity that has been available to the party in the course of the proceedings, whether under rules of court, the practice of the court or any direction of a procedural nature given in the proceedings,
    - (vi) the degree of injustice that would be suffered by the respective parties as a consequence of any order or direction,
    - (vii) such other matters as the court considers relevant in the circumstances of the case.

**59 Elimination of delay** (cf Western Australia Supreme Court Rules, Order 1, rule 4A)

In any proceedings, the practice and procedure of the court should be implemented with the object of eliminating any lapse of time between the commencement of the proceedings and their final determination beyond that reasonably required for the interlocutory activities necessary for the fair and just determination of the issues in dispute between the parties and the preparation of the case for trial.

## **60 Proportionality of costs**

In any proceedings, the practice and procedure of the court should be implemented with the object of resolving the issues between the parties in such a way that the cost to the parties is proportionate to the importance and complexity of the subject-matter in dispute.

## **Division 2 Powers of court to give directions**

### **61 Directions as to practice and procedure generally** (cf SCR Part 23, rule 4; Act No 9 1973, section 68A)

- (1) The court may, by order, give such directions as it thinks fit (whether or not inconsistent with rules of court) for the speedy determination of the real issues between the parties to the proceedings.
- (2) In particular, the court may, by order, do any one or more of the following:
  - (a) it may direct any party to proceedings to take specified steps in relation to the proceedings,
  - (b) it may direct the parties to proceedings as to the time within which specified steps in the proceedings must be completed,
  - (c) it may give such other directions with respect to the conduct of proceedings as it considers appropriate.
- (3) If a party to whom such a direction has been given fails to comply with the direction, the court may, by order, do any one or more of the following:
  - (a) it may dismiss the proceedings, whether generally, in relation to a particular cause of action or in relation to the whole or part of a particular claim,
  - (b) it may strike out or limit any claim made by a plaintiff,
  - (c) it may strike out any defence filed by a defendant, and give judgment accordingly,
  - (d) it may strike out or amend any document filed by the party, either in whole or in part,
  - (e) it may strike out, disallow or reject any evidence that the party has adduced or seeks to adduce,
  - (f) it may direct the party to pay the whole or part of the costs of another party,
  - (g) it may make such other order or give such other direction as it considers appropriate.
- (4) Subsection (3) does not limit any other power the court may have to take action of the kind referred to in that subsection or to take any other action that the court is

empowered to take in relation to a failure to comply with a direction given by the court.

**62 Directions as to conduct of hearing** (cf Act No 52 1970, section 87; Act No 9 1973, section 77 (4); SCR Part 34, rules 6 and 6AA)

- (1) The court may, by order, give directions as to the conduct of any hearing, including directions as to the order in which evidence is to be given and addresses made.
- (2) The court may, by order, give directions as to the order in which questions of fact are to be tried.
- (3) Without limiting subsections (1) and (2), the court may, by order, give any of the following directions at any time before or during a hearing:
  - (a) a direction limiting the time that may be taken in the examination, cross-examination or re-examination of a witness,
  - (b) a direction limiting the number of witnesses (including expert witnesses) that a party may call,
  - (c) a direction limiting the number of documents that a party may tender in evidence,
  - (d) a direction limiting the time that may be taken in making any oral submissions,
  - (e) a direction that all or any part of any submissions be in writing,
  - (f) a direction limiting the time that may be taken by a party in presenting his or her case,
  - (g) a direction limiting the time that may be taken by the hearing.
- (4) A direction under this section must not detract from the principle that each party is entitled to a fair hearing, and must be given a reasonable opportunity:
  - (a) to lead evidence, and
  - (b) to make submissions, and
  - (c) to present a case, and
  - (d) at trial, other than a trial before a Local Court sitting in its Small Claims Division, to cross-examine witnesses.
- (5) In deciding whether to make a direction under this section, the court may have regard to the following matters in addition to any other matters that the court considers relevant:
  - (a) the subject-matter, and the complexity or simplicity, of the case,

- (b) the number of witnesses to be called,
  - (c) the volume and character of the evidence to be led,
  - (d) the need to place a reasonable limit on the time allowed for any hearing,
  - (e) the efficient administration of the court lists,
  - (f) the interests of parties to other proceedings before the court,
  - (g) the costs that are likely to be incurred by the parties compared with the quantum of the subject-matter in dispute,
  - (h) the court's estimate of the length of the hearing.
- (6) At any time, the court may, by order, direct a solicitor or barrister for a party to give to the party a memorandum stating:
- (a) the estimated length of the trial, and the estimated costs and disbursements of the solicitor or barrister, and
  - (b) the estimated costs that, if the party were unsuccessful at trial, would be payable by the party to any other party.

**63 Directions with respect to procedural irregularities** (cf Act No 52 1970, section 81; Act No 9 1973, section 159; Act No 11 1970, section 75A)

- (1) This section applies to proceedings in connection with which there is, by reason of anything done or omitted to be done, a failure to comply with any requirement of this Act or of rules of court, whether in respect of time, place, manner, form or content or in any other respect.
- (2) Such a failure:
- (a) is to be treated as an irregularity, and
  - (b) subject to subsection (3), does not invalidate the proceedings, any step taken in the proceedings or any document, judgment or order in the proceedings.
- (3) The court may do either or both of the following in respect of proceedings the subject of a failure referred to in subsection (1):
- (a) it may, by order, set aside the proceedings, any step taken in the proceedings or any document, judgment or order in the proceedings, either wholly or in part,
  - (b) it may exercise its powers to allow amendments and to make orders dealing with the proceedings generally.
- (4) The court may not take action of the kind referred to in subsection (3) (a) on the application of any party unless the application is made within a reasonable time and,

in any case, before the party takes any fresh step in the proceedings after becoming aware of the failure.

### **Division 3 Other powers of court**

#### **64 Amendment of documents generally** (cf SCR Part 20, rules 1 and 4; DCR Part 17, rules 1 and 4)

- (1) At any stage of proceedings, the court may order:
  - (a) that any document in the proceedings be amended, or
  - (b) that leave be granted to a party to amend any document in the proceedings.
- (2) Subject to section 58, all necessary amendments are to be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, correcting any defect or error in the proceedings and avoiding multiplicity of proceedings.
- (3) An order under this section may be made even if the amendment would have the effect of adding or substituting a cause of action that has arisen after the commencement of the proceedings but, in that case, the date of commencement of the proceedings, in relation to that cause of action, is, subject to section 65, taken to be the date on which the amendment is made.
- (4) If there has been a mistake in the name of a party, this section applies to the person intended to be made a party as if he or she were a party.
- (5) This section does not apply to the amendment of a judgment, order or certificate.

#### **65 Amendment of originating process after expiry of limitation period** (cf SCR Part 20, rule 4; DCR Part 17, rule 4)

- (1) This section applies to any proceedings commenced before the expiration of any relevant limitation period for the commencement of the proceedings.
- (2) At any time after the expiration of the relevant limitation period, the plaintiff in any such proceedings may, with the leave of the court under section 64 (1) (b), amend the originating process so as:
  - (a) to enable the plaintiff to maintain the proceedings in a capacity in which he or she has, since the proceedings were commenced, become entitled to bring and maintain the proceedings, or
  - (b) to correct a mistake in the name of a party to the proceedings, whether or not the effect of the amendment is to substitute a new party, being a mistake that, in the court's opinion, is neither misleading nor such as to cause reasonable doubt as to the identity of the person intended to be made a party, or

(c) to add or substitute a new cause of action, together with a claim for relief on the new cause of action, being a new cause of action that, in the court's opinion, arises from the same (or substantially the same) facts as those giving rise to an existing cause of action and claim for relief set out in the originating process.

- (3) Unless the court otherwise orders, an amendment made under this section is taken to have had effect as from the date on which the proceedings were commenced.
- (4) This section does not limit the powers of the court under section 64.
- (5) This section has effect despite anything to the contrary in the [Limitation Act 1969](#).
- (6) In this section, **originating process**, in relation to any proceedings, includes any pleading subsequently filed in the proceedings.

**66 Adjournment of proceedings** (cf Act No 11 1970, section 75)

- (1) Subject to rules of court, the court may at any time and from time to time, by order, adjourn to a specified day any proceedings before it or any aspect of any such proceedings.
- (2) If a judicial officer is not available at the time appointed for the hearing of any proceedings, a registrar may adjourn, to a later time on the same day or to a later specified day, any matters listed for hearing by the judicial officer at the appointed time.

**67 Stay of proceedings** (cf Act No 9 1973, section 156)

Subject to rules of court, the court may at any time and from time to time, by order, stay any proceedings before it, either permanently or until a specified day.

**68 Attendance at court and production of documents and things to court** (cf Act No 9 1973, section 64; Act No 11 1970, section 72; SCR Part 36, rule 12)

Subject to rules of court, the court may, by subpoena or otherwise, order any person to do either or both of the following:

- (a) to attend court to be examined as a witness,
- (b) to produce any document or thing to the court.

**Note—**

See also section 77 of the [Crimes \(Administration of Sentences\) Act 1999](#) and section 42 of the [Children \(Detention Centres\) Act 1987](#) with respect to the attendance of persons detained in custody.

**69 Affidavits and witness statements may be read in advance of hearing**

Proceedings are not to be challenged, reviewed, quashed or called into question by reason only that the judicial officer or other person before whom the proceedings are being

conducted has, prior to hearing, read any affidavit or witness statement that has been filed or lodged in the proceedings.

**70 Informal proof and admissions** (cf Act No 52 1970, section 82)

- (1) At any stage of the proceedings, the court:
  - (a) may, by order, dispense with the rules of evidence for proving any matter that is not bona fide in dispute, also with such rules of evidence as may give rise to expense or delay, and
  - (b) without limiting the generality of paragraph (a), may, by order, dispense with the proof of handwriting, documents, the identity of parties or parcels of land, or of authority, and
  - (c) may, by order, require any party (not being a person under legal incapacity) to make admissions with respect to any document or to any question of fact, and
  - (d) in the case of a party's refusal or neglect to make any admission required under paragraph (c), may, unless of the opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect are to be paid by the party.
- (2) An admission made under subsection (1) (c):
  - (a) is to be for the purpose of the proceedings in which it is made and for no other purpose, and
  - (b) is to be subject to all just exceptions, and
  - (c) may, with the leave of the court, be amended or withdrawn.

**71 Business in the absence of the public** (cf Act No 52 1970, section 80)

Subject to any Act, the business of a court in relation to any proceedings may be conducted in the absence of the public in any of the following circumstances:

- (a) on the hearing of an interlocutory application, except while a witness is giving oral evidence,
- (b) if the presence of the public would defeat the ends of justice,
- (c) if the business concerns the guardianship, custody or maintenance of a minor,
- (d) if the proceedings are not before a jury and are formal or non-contentious,
- (e) if the business does not involve the appearance before the court of any person,
- (f) if, in proceedings in the Equity Division of the Supreme Court, the court thinks fit,

(g) if the uniform rules so provide.

## **72 Court may prohibit disclosure of information**

The court may, by order, prohibit the publication or disclosure of any information tending to reveal the identity of:

- (a) any party to proceedings, or
- (b) any witness in proceedings,

if it is of the opinion that it is necessary to do so to secure the proper administration of justice in the proceedings.

## **73 Power of court to determine questions about compromises and settlements**

(1) In any proceedings, the court:

- (a) has and may exercise jurisdiction to determine any question in dispute between the parties to the proceedings as to whether, and on what terms, the proceedings have been compromised or settled between them, and
- (b) may make such orders as it considers appropriate to give effect to any such determination.

(2) This section does not limit the jurisdiction that the court may otherwise have in relation to the determination of any such question.

## **Division 4 Persons under legal incapacity**

### **74 Definitions and application** (cf Act No 25 1929, sections 2 and 3)

(1) In this Division:

**manager**, in relation to a protected person's estate, means the person having the management of the estate under the [Protected Estates Act 1983](#).

**protected person** has the same meaning as it has in the [Protected Estates Act 1983](#).

(2) This Division does not apply to claims made or compensation awarded under any of the following Acts:

- (a) the [Workers Compensation Act 1987](#),
- (b) the [Workers Compensation \(Bush Fire, Emergency and Rescue Services\) Act 1987](#),
- (c) the [Workers' Compensation \(Dust Diseases\) Act 1942](#),
- (d) the [Workplace Injury Management and Workers Compensation Act 1998](#).

(3) This Division does not limit the operation of the [Minors \(Property and Contracts\) Act](#)



1970 or section 16 of the *Infants' Custody and Settlements Act 1899*.

**75 Settlement of claim made on behalf of, or against, person under legal incapacity** (cf SCR Part 63, rule 13)

- (1) This section applies to any claim, enforceable by proceedings in the court, that is made by or on behalf of, or against, a person under legal incapacity.
- (2) If, before proceedings are commenced with respect to any such claim, an agreement for the compromise or settlement of the claim is made by or on behalf of the person under legal incapacity, the court may approve or disapprove the agreement.
- (3) An agreement disapproved by the court does not bind the person under legal incapacity.
- (4) An agreement approved by the court binds the person under legal incapacity as if he or she were of full capacity and (if it was made by some other person on his or her behalf) as if that other person had made the agreement as his or her agent.

**76 Settlement of proceedings commenced by or on behalf of, or against, person under legal incapacity** (cf Act No 25 1929, section 4)

- (1) This section applies to proceedings commenced by or on behalf of, or against, any of the following persons:
  - (a) a person under legal incapacity,
  - (b) a person who, during the course of the proceedings, becomes a person under legal incapacity,
  - (c) a person whom the court finds, during the course of the proceedings, to be incapable of managing his or her own affairs.
- (2) The court may make a finding referred to in subsection (1) (c) only on the basis of evidence given in the proceedings in which it is made, and such a finding has effect for the purpose only of those proceedings.
- (3) Except with the approval of the court, there may not be:
  - (a) any compromise or settlement of any proceedings to which this section applies, or
  - (b) any acceptance of money paid into court in any such proceedings,as regards a claim made by or on behalf of, or against, a person referred to in subsection (1).
- (4) If an agreement for the compromise or settlement of any matter in dispute in any such proceedings is made by or on behalf of a person referred to in subsection (1), the court may approve or disapprove the agreement.

- (5) An agreement disapproved by the court does not bind the person by whom or on whose behalf it was made.
- (6) An agreement approved by the court binds the person by whom or on whose behalf it was made as if he or she were of full capacity and (if it was made by some other person on his or her behalf) as if that other person had made the agreement as his or her agent.

**77 Payment of money recovered on behalf of person under legal incapacity** (cf Act No 25 1929, section 4)

- (1) This section applies to money recovered in any proceedings on behalf of any of the following persons:
  - (a) a person under legal incapacity,
  - (b) a person who, during the course of the proceedings, becomes a person under legal incapacity,
  - (c) a person whom the court has found, under section 76 (1) (c), to be incapable of managing his or her own affairs,pursuant to a compromise, settlement, judgment or order in any proceedings.
- (2) All money recovered on behalf of a person referred to in subsection (1) is to be paid into court.
- (3) Despite subsection (2), the court may order that the whole or any part of such money not be paid into court but be paid instead to such person as the court may direct, including:
  - (a) if the person is a minor, to the Public Trustee, or
  - (b) if the person is a protected person, to the manager of the protected person's estate.
- (4) Money paid into court under subsection (2) is to be paid to such person as the court may direct, including:
  - (a) if the person is a minor, to the Public Trustee, or
  - (b) if the person is a protected person, to the manager of the protected person's estate.

**78 Application of money by Public Trustee** (cf Act No 25 1929, section 5 (1), (2) and (3))

- (1) Subject to any order of the court, money paid under this Division to the Public Trustee on behalf of a minor is to be held and applied by the Public Trustee for the maintenance and education of, or otherwise for the benefit of, the minor.

- (2) On the application of the Public Trustee, the Supreme Court may give directions to the Public Trustee as to the administration of any such money.
- (3) If given effect to by the Public Trustee, any such direction exonerates the Public Trustee from any claim or demand by any other person.

**79 Application of money by manager of protected person's estate** (cf Act No 25 1929, section 5 (4))

Subject to any order of the court, money paid under this Division to the manager of a protected person's estate is to be held and applied by the manager as part of that estate.

**80 Directions to tutor of person under legal incapacity**

On the application of the tutor for a person under legal incapacity, the Supreme Court may give directions with respect to the tutor's conduct of proceedings, whether before the Supreme Court or any other court, on behalf of that person.

## Division 5 Interim payments

**81 Definitions and application** (cf Act No 52 1970, sections 76D and 76H; Act No 9 1973, sections 57 and 61)

- (1) In this Division:

***interim payment***, 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, either voluntarily or in accordance with an order of the court under this Division.

***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 any such authority, Department or body.

- (2) This Division does not apply to an award of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies except as specifically provided by section 82 (7).

**Note—**

Clause 11 of Schedule 6 to this Act provides that the reference in subsection (2) to an award of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies includes a reference to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

**82 Court may order interim payments** (cf Act No 52 1970, section 76E; Act No 9 1973, section 58)

- (1) In any proceedings for the recovery of damages, the court may order a defendant in the proceedings to make one or more payments to the plaintiff of part of the damages sought to be recovered in the proceedings.

- (2) The court may make such an order against a defendant on the application of the plaintiff at any stage of the proceedings.
- (3) The court may not make such an order unless:
  - (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 proceedings went 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 that, in the court's opinion, are likely to be recovered by the plaintiff.
- (6) In estimating those damages, the court is to take into account any relevant contributory negligence, and any cross-claims, on which the defendant may be entitled to rely.
- (7) The court may make an order under this section in proceedings for the recovery of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies, but only an order for one or more payments to be made to the plaintiff of part of the damages for economic loss sought to be recovered in the proceedings and only if the court is satisfied that the plaintiff would suffer financial hardship if such a payment were not made.

**83 Interim payment not admission of liability** (cf Act No 52 1970, section 76F; Act No 9 1973, section 59)

- (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 this Division is not a finding as to liability in respect of the proceedings.

**84 Adjustments on final judgment etc** (cf Act No 52 1970, section 76G; Act No 9 1973, section

60)

- (1) This section applies to proceedings 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 variation or discontinuance of interim payments,
  - (b) the repayment by the plaintiff of all or part of any interim payment, with or without interest,
  - (c) the payment by another party of all or part of any interim payment that the defendant is entitled to recover from that other party.
- (3) The court may make an order under this section:
  - (a) when making a final judgment or order, or
  - (b) when granting the plaintiff leave to discontinue proceedings or to withdraw a claim, or
  - (c) on the application of any party, at any other stage of the proceedings.

## **Division 6 Miscellaneous**

### **85 Examination on oath** (cf Act No 52 1970, section 83; Act No 9 1973, section 70)

If a person is authorised by this Act or by rules of court, or by an order of the court, to take the examination of any person:

- (a) the examination is to be taken on oath, and
- (b) the oath may be administered by the person taking the examination or by a judicial officer of the court.

### **86 Orders** (cf Act No 52 1970, section 21; Act No 9 1973, section 6; SCR Part 1, rule 11A)

- (1) The power of the court to make orders in relation to proceedings, whether under this or any other Act or otherwise, includes the power:
  - (a) to make orders by way of leave or direction, and
  - (b) to make all or any orders on terms.
- (2) The power of the court to make orders on terms is taken to be a power to make orders on such terms and conditions as the court thinks fit.
- (3) Subject to this Act and to rules of court, the court may make any order that it has

power to make either of its own motion or on the application of a party or any other person entitled to make such an application.

(4) Nothing in this Act limits the operation of section 43 of the *Interpretation Act 1987*.

**87 Protection against self-incrimination in relation to interlocutory matters** (cf Act No 25 1995, sections 128 and 133)

(1) In this section:

**civil penalty** has the same meaning as it has in the *Evidence Act 1995*.

**conduct** includes both act and omission.

**culpable conduct** means conduct that, under:

- (a) the laws of New South Wales, or
- (b) the laws of any other State or Territory, or
- (c) the laws of the Commonwealth, or
- (d) the laws of a foreign country,

constitutes an offence or renders a person liable to a civil penalty.

**order for production** means an interlocutory order requiring a person (other than a body corporate) to provide evidence to the court or to a party to a proceeding before the court.

**provide evidence** means:

- (a) to provide an answer to a question or to produce a document or thing, or
- (b) to swear an affidavit, or
- (c) to file and serve an affidavit or a witness statement, or
- (d) to permit possession to be taken of a document or thing.

(2) This section applies in circumstances in which:

- (a) an application is made for, or the court makes, an order for production against a person, and
- (b) the person objects to the making of such an order, or applies for the revocation of such an order, on the ground that the evidence required by the order may tend to prove that the person has engaged in culpable conduct.

(2A) This section does not apply in circumstances in which section 128A of the *Evidence Act 1995* applies.

- (3) If the court finds that there are reasonable grounds for the objection or application referred to in subsection (2) (b), the court is to inform the person, or the person's legal representative:
  - (a) that the person need not provide the evidence, and
  - (b) that, if the person provides the evidence, the court will give a certificate under this section, and
  - (c) of the effect of such a certificate.
- (4) If the person informs the court that he or she will provide the evidence, the court is to cause the person to be given a certificate under this section in respect of the evidence.
- (5) The court is also to cause a person to be given a certificate under this section if the court overrules an objection to the making of an order for production, or refuses an application for the revocation of such an order, but, after the evidence is provided, the court finds that there were reasonable grounds for the objection or application.
- (6) Despite anything in this section, the court may make an order for production if it is satisfied of the following:
  - (a) that the evidence required by the order may tend to prove that the person has engaged in culpable conduct,
  - (b) that the culpable conduct does not comprise conduct that, under:
    - (i) the laws of any State or Territory (other than New South Wales), or
    - (ii) the laws of the Commonwealth, or
    - (iii) the laws of a foreign country,constitutes an offence or renders a person liable to a civil penalty,
  - (c) that the interests of justice require that the person provide the evidence.
- (7) If the court makes an order for production under subsection (6), it is to cause the person to be given a certificate under this section in respect of the evidence required by the order.
- (8) In any proceedings:
  - (a) evidence provided by a person in respect of which a certificate under this section has been given, and
  - (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having provided such evidence,

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.

- (9) If a question arises under this section relating to a document, the court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

## **88 Fresh trial**

- (1) If a trial of proceedings has commenced before a judicial officer and he or she is unable to continue the trial or give judgment in the proceedings, by reason of death, resignation or incapacity, the senior judicial officer of the relevant court may nominate some other judicial officer of that court as the judicial officer before whom the proceedings are to be listed for trial.
- (2) In this section, a reference to a trial of proceedings includes a reference to a trial of one or more questions in the proceedings.

## **89 Procedure on fresh trial**

- (1) If:
- (a) any proceedings have been listed for trial pursuant to section 88, or
  - (b) an appellate court has made an order for a fresh trial generally (being an order given on an appeal after a trial of any proceedings), or
  - (c) a judicial officer before whom a trial of any proceedings has commenced has discharged himself or herself from the trial without having given judgment in the proceedings,
- the court may give such directions as it thinks fit as to the evidence to be used in the fresh trial.
- (2) In particular, the court may give either or both of the following directions:
- (a) a direction that all or any part of the evidence given at the previous trial is to be taken to be evidence in the fresh trial without the need for the witnesses to be recalled,
  - (b) a direction that all or any of the witnesses are to be recalled for examination or cross-examination, or both, either generally or as to a particular question or questions in the proceedings.
- (3) In subsection (1), a reference to a trial of proceedings includes a reference to a trial of one or more questions in the proceedings.



## **Part 7 Judgments and orders**

### **Division 1 Judgments and orders generally**

#### **90 Judgments generally** (cf Act No 52 1970, section 91; Act No 9 1973, section 81)

- (1) The court is, at or after trial or otherwise as the nature of the case requires, to give such judgment or make such order as the nature of the case requires.
- (2) If there is a claim by a plaintiff and a cross-claim by a defendant, the court:
  - (a) may give judgment for the balance only of the sums of money awarded on the respective claims, or
  - (b) may give judgment in respect of each claim,and may give judgment similarly where several claims arise between plaintiffs, defendants and other parties.

#### **91 Effect of dismissal of proceedings** (cf SCR Part 40, rule 8)

- (1) Dismissal of:
  - (a) any proceedings, either generally or in relation to any cause of action, or
  - (b) the whole or any part of a claim for relief in any proceedings,does not, subject to the terms on which any order for dismissal was made, prevent the plaintiff from bringing fresh proceedings or claiming the same relief in fresh proceedings.
- (2) Despite subsection (1), if, following a determination on the merits in any proceedings, the court dismisses the proceedings, or any claim for relief in the proceedings, the plaintiff is not entitled to claim any relief in respect of the same cause of action in any subsequent proceedings commenced in that or any other court.

#### **92 Judgments for possession of land** (cf Act No 52 1970, sections 92 and 96 (3))

Judgment for possession of land takes the place of, and, subject to the uniform rules, has the same effect as, a judgment for the claimant in ejectment given under the practice of the Supreme Court as it was immediately before 1 July 1972.

**Note—**

1 July 1972 was the date of commencement of the [Supreme Court Act 1970](#).

#### **93 Judgments for detention of goods** (cf Act No 52 1970, section 93; Act No 9 1973, section 83; Act No 11 1970, section 28A)

- (1) In proceedings for the detention of goods, the court may (whether or not their value has yet been assessed) give judgment:

- (a) for their delivery to the plaintiff, or
- (b) for payment to the plaintiff of an amount equivalent to their assessed value, or
- (c) for their delivery to the plaintiff or for payment to the plaintiff of their assessed value, at the defendant's option,

and, in addition to any judgment referred to in paragraph (a), (b) or (c), may also give judgment for payment to the plaintiff of damages for their detention.

- (2) The court may, in an order for delivery of goods or in a subsequent order, specify the date by which delivery of the goods must be effected.
- (3) If judgment has been given as referred to in subsection (1) (a), but the goods are subsequently damaged, destroyed or otherwise rendered unavailable for delivery, the court may, on application by the plaintiff, make an order for the payment to the plaintiff of an amount equivalent to their assessed value, as referred to in subsection (1) (b).
- (4) If judgment has been given as referred to in subsection (1) (c) and the plaintiff subsequently applies for an order under this subsection, the court may make an order for the delivery of the goods to the plaintiff without the option for any payment of the kind referred to in subsection (1) (b).
- (5) In this section, the **assessed value** of goods is their value as assessed by, or in accordance with the directions of, the court.

**94 Failure to comply with order to execute instrument** (cf Act No 52 1970, section 100)

- (1) If any person does not comply with a judgment or order directing the person:
  - (a) to execute any conveyance, contract or other document, or
  - (b) to endorse any negotiable instrument,

the court may order that the conveyance, contract or other document be executed, or the negotiable instrument endorsed, by such person as the court may nominate for that purpose.

- (2) A conveyance, contract, document or instrument that is executed or endorsed pursuant to an order under subsection (1) operates, and is for all purposes available, as if it had been executed or endorsed by the person originally directed to execute or endorse it.

**95 Joint liability** (cf Act No 52 1970, section 97)

- (1) If two or more persons have a joint liability and, in any proceedings, judgment on the liability is given against one or more but not all of them:

- (a) the liability of the other or others of them is not discharged by the judgment or by any step taken for the enforcement of the judgment, and
  - (b) after the judgment takes effect, those of them against whom the judgment is given and the other or others of them become liable, as between those of them against whom the judgment is given on the one hand and the other or the others of them on the other hand, severally but not jointly, and
  - (c) if there are two or more such persons against whom the judgment is not given, they remain, after the judgment takes effect, jointly liable amongst themselves, and
  - (d) if the judgment is satisfied wholly or in part by payment or by recovery under execution, the liability of the persons against whom the judgment is not given is taken also to have been satisfied in the amount of the payment or recovery.
- (2) This section does not affect a person's right to contribution or indemnity in respect of the person's satisfaction, wholly or in part, of a liability that the person has (whether jointly or severally or jointly and severally) with any other person.
- (3) This section does not apply to a judgment to which section 5 (1) (a) of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#) applies.
- (4) In this section, **liability** includes liability in contract, liability in tort and liability under a statute.

**96 Set-off of judgments** (cf DCR Part 31, rule 23; Act No 11 1970, section 64)

- (1) This section applies if, in relation to any two or more judgments of the same court, the judgment creditor and judgment debtor under one or more of the judgments are the judgment debtor and judgment creditor, respectively, under the other judgments.
- (2) The judgment debtor under any such judgment (**the first judgment**) may apply to the court for an order that the judgment be set off against any other such judgment (**the second judgment**) in respect of which he or she is the judgment creditor.
- (3) An order under this section has the following effect:
- (a) if the amount of the first judgment is less than the amount of the second judgment, the first judgment is taken to have been satisfied and the amount of the second judgment is taken to have been reduced by the amount of the first judgment,
  - (b) if the amount of the first judgment is equal to the amount of the second judgment, both judgments are taken to have been satisfied,
  - (c) if the amount of the first judgment is greater than the amount of the second judgment, the second judgment is taken to have been satisfied and the amount of

the first judgment is taken to have been reduced by the amount of the second judgment.

(4) For the purposes of this section:

(a) judgments of different Local Courts are taken to be judgments of the same court, and

(b) an application for an order that one such judgment be set off against another may be made to either of the Local Courts in which those judgments were given or entered.

(5) This section does not apply to judgments of the Supreme Court.

**97 Arrest warrants** (cf SCR Part 42, rule 7)

(1) Subject to rules of court:

(a) if, by subpoena or otherwise, the court makes an order, whether under this Act or any other law:

(i) for a person to attend court for any purpose, or

(ii) for a person to produce any document or thing to the court, and

(b) the person fails to comply with the order,

the court may issue, or make an order for the issue of, a warrant for the person's arrest.

(2) Subject to rules of court, an arrest warrant may be issued without notice to the person.

(3) The court from which an arrest warrant has been issued may revoke the warrant.

(4) An arrest warrant is sufficient authority for any person to whom it is addressed, with the assistance of such police officers as may be necessary, to arrest the person named in the warrant, to convey the person to the place specified in the warrant and to deliver the person into the custody of the court sitting at that place.

## **Division 2 Costs in proceedings**

**98 Courts powers as to costs** (cf Act No 52 1970, section 76; SCR Part 52A, rules 5, 6, 7 and 8; Act No 9 1973, section 148B; Act No 11 1970, section 34)

(1) Subject to rules of court and to this or any other Act:

(a) costs are in the discretion of the court, and

(b) the court has full power to determine by whom, to whom and to what extent costs

are to be paid, and

- (c) the court may order that costs are to be awarded on the ordinary basis or on an indemnity basis.
- (2) Subject to rules of court and to this or any other Act, a party to proceedings may not recover costs from any other party otherwise than pursuant to an order of the court.
- (3) An order as to costs may be made by the court at any stage of the proceedings or after the conclusion of the proceedings.
- (4) In particular, at any time before costs are referred for assessment, the court may make an order to the effect that the party to whom costs are to be paid is to be entitled to:
  - (a) costs up to, or from, a specified stage of the proceedings, or
  - (b) a specified proportion of the assessed costs, or
  - (c) a specified gross sum instead of assessed costs, or
  - (d) such proportion of the assessed costs as does not exceed a specified amount.
- (5) The powers of the court under this section apply in relation to a married woman, whether as party, tutor, relator or otherwise, and this section has effect in addition to, and despite anything in, the *Married Persons (Equality of Status) Act 1996*.
- (6) In this section, **costs** include:
  - (a) the costs of the administration of any estate or trust, and
  - (b) in the case of an appeal to the court, the costs of the proceedings giving rise to the appeal, and
  - (c) in the case of proceedings transferred or removed into the court, the costs of the proceedings before they were transferred or removed.

**99 Liability of legal practitioner for unnecessary costs** (cf Act No 52 1970, section 76C; SCR Part 52A, rules 43 and 43A)

- (1) This section applies if it appears to the court that costs have been incurred:
  - (a) by the serious neglect, serious incompetence or serious misconduct of a legal practitioner, or
  - (b) improperly, or without reasonable cause, in circumstances for which a legal practitioner is responsible.
- (2) After giving the legal practitioner a reasonable opportunity to be heard, the court may do any one or more of the following:

- (a) it may, by order, disallow the whole or any part of the costs in the proceedings:
    - (i) in the case of a barrister, as between the barrister and the instructing solicitor, or as between the barrister and the client, as the case requires, or
    - (ii) in the case of a solicitor, as between the solicitor and the client,
  - (b) it may, by order, direct the legal practitioner:
    - (i) in the case of a barrister, to pay to the instructing solicitor or client, or both, the whole or any part of any costs that the instructing solicitor or client, or both, have been ordered to pay to any other person, whether or not the solicitor or client has paid those costs, or
    - (ii) in the case of a solicitor, to pay to the client the whole or any part of any costs that the client has been ordered to pay to any other person, whether or not the client has paid those costs,
  - (c) it may, by order, direct the legal practitioner to indemnify any party (other than the client) against costs payable by that party.
- (3) Before making such an order, the court may refer the matter to a costs assessor (within the meaning of Part 3.2 of the [Legal Profession Act 2004](#)) for inquiry and report.
- (4) The court may direct that notice of any proceedings or order under this section with respect to a legal practitioner be given:
- (a) in the case of a barrister, to the instructing solicitor or client, or both, as the court may direct, or
  - (b) in the case of a solicitor, to the client.
- (5) The court may give ancillary directions to give full effect to an order under this section, including directions to a legal practitioner to provide a bill of costs in assessable form:
- (a) to the court, or
  - (b) to a party to the proceedings, or
  - (c) in the case of a barrister, to the instructing solicitor or client, or both, or
  - (d) in the case of a solicitor, to the client.
- (6) A party's legal practitioner is not entitled to demand, recover or accept:
- (a) in the case of a barrister, from the instructing solicitor or client, or
  - (b) in the case of a solicitor, from the client,

any part of the amount for which the legal practitioner is directed by the court to indemnify any party pursuant to an order referred to in subsection (2) (c).

(7) In this section, **client** includes former client.

### **Division 3 Payment of interest**

**100 Interest up to judgment** (cf Act No 52 1970, section 94; Act No 9 1973, section 83A; Act No 11 1970, section 39A)

- (1) In proceedings for the recovery of money (including any debt or damages or the value of any goods), the court may include interest in the amount for which judgment is given, the interest to be calculated at such rate as the court thinks fit:
  - (a) on the whole or any part of the money, and
  - (b) for the whole or any part of the period from the time the cause of action arose until the time the judgment takes effect.
- (2) In proceedings for the recovery of a debt or damages in which payment of the whole or a part of the debt or damages has been made after the proceedings commenced but before, or without, judgment being given, the court may include interest in the amount for which judgment is given, the interest to be calculated at such rate as the court thinks fit:
  - (a) on the whole or any part of the money paid, and
  - (b) for the whole or any part of the period from the time the cause of action arose until the time the money was paid.
- (3) This section:
  - (a) does not authorise the giving of interest on any interest awarded under this section, and
  - (b) does not authorise the giving of interest on a debt in respect of any period for which interest is payable as of right, whether by virtue of an agreement or otherwise, and
  - (c) does not authorise the giving of interest in any proceedings for the recovery of money in which the amount claimed is less than such amount as may be prescribed by the uniform rules, and
  - (d) does not affect the damages recoverable for the dishonour of a bill of exchange.
- (4) In any proceedings for damages, the court may not order the payment of interest under this section in respect of the period from when an appropriate settlement sum was offered (or first offered) by the defendant unless the special circumstances of the case warrant the making of such an order.

- (5) For the purposes of subsection (4), **appropriate settlement sum** means a sum offered in settlement of proceedings in which 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.

**101 Interest after judgment** (cf Act No 52 1970, section 95; Act No 9 1973, section 85; Act No 11 1970, section 39)

- (1) Unless the court orders otherwise, interest is payable on so much of the amount of a judgment (exclusive of any order for costs) as is from time to time unpaid.
- (2) Interest under subsection (1) is to be calculated, at the prescribed rate or at such other rate as the court may order, as from:
- (a) the date on which the judgment takes effect, or
  - (b) such later date as the court may order.
- (3) Despite subsection (1), interest is not payable on the amount of a judgment if the amount is paid in full within 28 days after the date on which the judgment takes effect, unless the court orders to the contrary.
- (4) The court may order that interest is to be paid on any amount payable under an order for the payment of costs.
- (5) Interest under subsection (4) is to be calculated, at the prescribed rate or at such other rate as the court may order, as from:
- (a) the date or dates on which the costs concerned were paid, or
  - (b) such later date as the court may order.
- (6) This section does not authorise the giving of interest on any interest payable under this section.
- (7) In this section, a reference to the **prescribed rate** of interest is a reference to the rate of interest prescribed by the uniform rules for the purposes of this section.

**Note—**

See section 136 in relation to the order in which payments on account of a judgment debt are to be appropriated.

## **Part 8 Enforcement of judgments and orders**

### **Division 1 Preliminary**

**102 Definitions** (cf Act No 9 1973, section 99; Act No 11 1970, section 49)

In this Part:



**chargee** means the person to whom a charging order is addressed.

**charging order** means an order referred to in section 106 (1) (c).

**financial institution** means an authorised deposit-taking institution within the meaning of the [Banking Act 1959](#) of the Commonwealth.

**garnishee** means the person to whom a garnishee order is addressed.

**garnishee order** means an order referred to in section 106 (1) (b).

**goods** means chattels, other than chattels real.

**instalment order** means an order referred to in section 107 (1).

**order for examination** means an order referred to in section 108 (1).

**wage or salary** includes:

- (a) earnings that, although not payable under a contract of employment, are analogous to or in the nature of wage or salary, and
- (b) earnings of a share farmer or share worker.

**writ for the levy of property** means a writ referred to in section 106 (1) (a).

**writ of delivery** means a writ referred to in section 105.

**writ of execution** means a writ of delivery, writ for the levy of property or writ of possession.

**writ of possession** means a writ referred to in section 104.

**Note—**

Other words and expressions (for example, **land** and **property**) are defined in the [Interpretation Act 1987](#).

### **103 Enforcement of judgments generally**

Subject to this Part, the procedure for enforcing a judgment or order of the court is to be as prescribed by rules of court.

### **104 Judgments for possession of land**

- (1) A judgment for the possession of land may be enforced by a writ of possession.
- (2) Execution of a writ of possession does not require any goods to be removed from the land.

### **105 Judgments for delivery of goods**

A judgment or order for the delivery of goods may be enforced by a writ of delivery.

**106 Judgments for payment of money** (cf Act No 9 1973, section 109; Act No 8 1901, sections 4 and 5)

- (1) A judgment debt may be enforced by means of any one or more of the following:
  - (a) a writ for the levy of property,
  - (b) a garnishee order,
  - (c) in the case of a judgment of the Supreme Court or the District Court, a charging order.
- (2) Subject to the uniform rules, a writ for the levy of property is sufficient authority for the Sheriff:
  - (a) to seize and to sell goods of or to which the judgment debtor is or may be possessed or entitled or which the judgment debtor may, at law or in equity, assign or dispose of, and
  - (b) to seize money belonging to the judgment debtor, and
  - (c) to seize and to realise cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money belonging to the judgment debtor, and
  - (d) to enter into possession of, and to sell, land of or to which the judgment debtor is seized or entitled, or which the judgment debtor may, at law or in equity, assign or dispose of, and
  - (e) to take and to sell choses in action or equitable interests in goods or land held by the judgment debtor.
- (3) The power conferred on the Sheriff by subsection (2) (a) may not be exercised in relation to:
  - (a) any clothing, or
  - (b) any bedroom or kitchen furniture, or
  - (c) any tools of trade (including vehicles, plant, equipment and reference books) not exceeding, in aggregate value, the sum prescribed by the uniform rules,if the clothing, furniture or tools are used by the judgment debtor or by any member of his or her family.
- (4) For the purposes of subsection (2) (d), the Sheriff is taken to have entered into possession of land when notice of the proposed sale of the land is published in accordance with the uniform rules.
- (5) The power conferred on the Sheriff by subsection (2) (d) may not be exercised in

relation to land if the amount outstanding under the judgment is less than the jurisdictional limit of a Local Court when sitting in its Small Claims Division.

- (6) A garnishee order or charging order addressed to the Crown binds the Crown as garnishee or chargee, as the case requires.

**Note—**

Divisions 2, 3 and 4, respectively, apply to the enforcement of writs for the levy of property, garnishee orders and charging orders.

**107 Deferred payment and payment by instalments**

- (1) A court in which judgment has been entered may, subject to and in accordance with the uniform rules, make an order allowing for:
- (a) payment of the judgment debt within such time as is specified in the order, or
  - (b) payment of the judgment debt by instalments, payable in such amounts and at such times as are specified in the order.

**Note—**

Such an order may be varied or rescinded pursuant to section 43 (2) of the [Interpretation Act 1987](#). The circumstances in which such an order may be varied or rescinded, and the procedure for varying or rescinding such an order, may be dealt with by the uniform rules.

- (2) Subject to section 119, execution of a judgment for the payment of money is stayed while the judgment is the subject of an order in force under this section.
- (3) If the uniform rules so provide, the functions conferred on a Local Court by this section in relation to a judgment debt may be exercised by any Local Court, whether or not the Local Court in which the judgment was given.

**108 Order for examination** (cf Act No 9 1973, section 91; Act No 11 1970, section 41; SCR Part 43, rule 1)

- (1) The court may, subject to and in accordance with the uniform rules, make an order requiring a person bound by a judgment or order:
- (a) to attend the court to be orally examined as to any material question, or
  - (b) to produce any document or thing that is in his or her possession and that relates to a material question.
- (2) An order under this section with respect to a person that is a corporation:
- (a) may be addressed to any officer or former officer of the corporation, and
  - (b) binds any such officer or former officer as if he or she were the person bound by the judgment or order.

- (3) Without limiting subsection (1), the uniform rules may require the judgment creditor under a judgment debt to have attempted to obtain information as to the judgment debtor's financial circumstances (whether by means of a notice requiring the judgment debtor to supply such information or otherwise) before the judgment creditor may apply for an order under this section.
- (4) If the uniform rules so provide, the functions conferred on a Local Court by this section in relation to a judgment or order may be exercised by any Local Court, whether or not the Local Court in which the judgment or order was given or made.
- (5) For the purposes of this section, the **material questions** in relation to a judgment or order are:
  - (a) to the extent to which it requires the person bound by it to pay money:
    - (i) questions as to whether any and, if so, what debts are owing to that person, and
    - (ii) questions as to whether that person has any and, if so, what other property or other means of satisfying the judgment or order, and
  - (b) to the extent to which it does not require the person bound by it to pay money, such questions concerning or in aid of the enforcement or satisfaction of the judgment or order as may be specified in the order under this section.

## **Division 2 Writs for the levy of property**

### **Subdivision 1 Enforcement against goods and securities**

#### **109 Effect of writ of execution on goods** (cf Act No 1 1923, section 29)

- (1) A writ of execution against goods binds the property in the goods as from the time the writ is delivered to the Sheriff.
- (2) Despite subsection (1), a writ of execution does not affect the title to goods acquired by a person in good faith and for valuable consideration unless, when the person acquires title, he or she has notice that such a writ has been delivered to the Sheriff and remains unexecuted.

#### **110 How goods subject to conditional bill of sale to be dealt with** (cf Act No 8 1901, section 16)

- (1) If goods the subject of a writ for the levy of property (being goods in the possession of the judgment debtor) are the subject of a conditional bill of sale, the Sheriff may sell the judgment debtor's interest in the goods without taking possession of them.
- (2) On receiving written notice of the purchase of the judgment debtor's interest, the person having the benefit of the bill of sale (**the holder of the bill**) may take

possession of the goods and, if he or she does so, is taken to hold them for the use of the purchaser, subject to the purchaser's due payment of any amounts payable under the bill of sale.

- (3) If the goods are subsequently sold under the bill of sale, and there is any surplus remaining from the proceeds of sale after the debt to the holder of the bill is satisfied, the holder must pay the surplus to the purchaser, and, accordingly, the amount of that surplus is recoverable by the purchaser from the holder as a debt.
- (4) Nothing in this section affects the right of any judgment creditor to test the validity of any bill of sale by interpleader.

**111 How securities to be dealt with** (cf Act No 8 1901, sections 6, 7 and 8)

- (1) The Sheriff may hold any cheque, bill of exchange, promissory note, bond, specialty or other security for money as a security for the amount outstanding under the judgment and, if payment thereof has become due, may sue in the name of the Sheriff for the recovery of the sum secured thereby.
- (2) The payment to the Sheriff by the person liable on any such security for money, or the recovery by the Sheriff against the person so liable, discharges the person from that liability to the extent of the payment or recovery.

## **Subdivision 2 Enforcement against land**

**112 Effect of judgment and writ of execution on land** (cf Act No 8 1901, section 13)

- (1) A writ of execution against land binds the land, as from the time the writ is delivered to the Sheriff, in the same way as a writ of execution against goods binds the property in the goods.
- (2) Despite subsection (1), a writ of execution does not affect the title to land acquired by a person in good faith and for valuable consideration unless, when the person acquires title, he or she has notice that such a writ has been delivered to the Sheriff and remains unexecuted.
- (3) A judgment in any action at law does not of itself bind or affect any land.

**113 Sale or mortgage by judgment debtor of land affected by order** (cf Act No 52 1970, section 98A; Act No 9 1973, section 112; Act No 11 1970, section 62A)

- (1) This section applies to land the subject of a writ for the levy of property:
  - (a) that is registered, in the Register kept under the *Real Property Act 1900*, pursuant to section 105 of that Act, or
  - (b) that is registered, in the General Register of Deeds kept under the *Conveyancing Act 1919*, pursuant to section 186 of that Act.

(2) During the period:

- (a) that begins when the writ is registered in the relevant register, and
- (b) that ends at the expiration of 6 months after the writ is registered in the relevant register, or on the expiration of the writ, whichever first occurs,

land the subject of the writ may not be sold or mortgaged by the judgment debtor otherwise than in accordance with this section.

(3) Before the land may be sold or mortgaged by the judgment debtor:

(a) the judgment creditor:

- (i) must consent, by notice in writing, to the sale or mortgage of the land by the judgment debtor, and
- (ii) must stipulate, in the notice of consent, the minimum amount to be paid to the Sheriff from the proceeds of the sale of the land or from the money advanced under the mortgage of the land, and

(b) the judgment debtor must lodge the notice of consent with the Sheriff, and

(c) the Sheriff, after due inquiry, must endorse the notice of consent with a certificate to the effect that the land has not been sold under the writ.

(4) During the period of 8 weeks commencing on the date on which the Sheriff endorses the notice of consent, as referred to in subsection (3) (c):

(a) the judgment debtor may enter into an agreement for the sale or mortgage of the land, and

(b) the Sheriff is prohibited from causing the land to be sold.

(5) Any deposit paid under an agreement for the sale of the land is to be paid to the Sheriff, to be held by the Sheriff as stakeholder.

(6) On payment to the Sheriff, from the proceeds of the sale of the land or from the money advanced under the mortgage of the land, of an amount that (together with any such deposit) is at least as much as the minimum amount referred to in subsection (3) (a) (ii):

(a) any liability of the purchaser or mortgagee for payment to the judgment debtor from those proceeds or that advance is extinguished, to the extent of the amount paid to the Sheriff, and

(b) the Sheriff, on production of the agreement for the sale or the mortgage instrument, must endorse:

- (i) in the case of a sale, the agreement for sale, or

(ii) in the case of a mortgage, the mortgage instrument.

- (7) The purchaser's or mortgagee's interest in the land, as evidenced by the agreement or mortgage instrument so endorsed, is not affected by anything done under the writ, whether before or after the endorsement of the consent.
- (8) The amount paid to the Sheriff, as referred to in subsection (6), is to be paid:
- (a) firstly, towards the Sheriff's costs in connection with the execution of the writ, and
  - (b) secondly, in reduction of the judgment debt, and
  - (c) thirdly, if the amount exceeds the amounts required to satisfy the Sheriff's costs and the judgment debt, to the judgment debtor.
- (9) In this section, **notice of consent** means a notice referred to in subsection (3) (a) (i).

**114 Entry onto land for purposes of sale by auction** (cf Act No 8 1901, section 17A)

- (1) The court may, in relation to land to be sold by public auction under a writ of execution, make orders:
- (a) authorising entry onto the land by the Sheriff (including entry by force if necessary) for the purpose of showing the land to prospective purchasers, and
  - (b) authorising entry onto the land by prospective purchasers in the presence of the Sheriff.
- (2) For those purposes, such an order may also authorise the Sheriff to do either or both of the following:
- (a) to secure entry onto the land (including by breaking or replacing locks, bars and other devices restricting entry, if necessary),
  - (b) to take such steps as are necessary to prevent persons from entering the land.
- (3) This section does not affect any other power of the court to make orders in relation to such matters.
- (4) A reference in this section to land includes any premises on land.

### **Subdivision 3 General**

**115 Effect of sale of property** (cf Act No 8 1901, section 12)

- (1) A sale of property by the Sheriff under this Part is as valid and effectual as if the property had been sold to the purchaser by the judgment debtor personally.
- (2) Subsection (1) does not apply to the sale of an equity of redemption or other equitable interest relating to land unless a deed of bargain and sale to the purchaser

is duly executed by the Sheriff.

- (3) In a deed of conveyance executed by the Sheriff in relation to any land, a statement to the effect that:
- (a) the land has been sold under a writ for the levy of property, and
  - (b) the writ for the levy of property has been issued pursuant to a judgment of a court in relation to proceedings specified in the writ,

is admissible in any proceedings as evidence of those facts.

### **116 Effect of expiry of writ**

Subject to section 135:

- (a) the expiry of a writ for the levy of property does not affect any agreement for sale or other transaction entered into under the authority of the writ before that expiry, and
- (b) any action necessary to complete that sale or give effect to that transaction may be taken as if the writ were still in force.

## **Division 3 Garnishee orders**

### **Subdivision 1 Enforcement against debts**

#### **117 Operation of garnishee order in relation to debts** (cf Act No 9 1973, section 97)

- (1) Subject to the uniform rules, a garnishee order operates to attach, to the extent of the amount outstanding under the judgment, all debts that are due or accruing from the garnishee to the judgment debtor at the time of service of the order.
- (2) For the purposes of this Division, any amount standing to the credit of the judgment debtor in a financial institution is taken to be a debt owed to the judgment debtor by that institution.

#### **118 Time within which payment to be made** (cf Act No 9 1973, section 97B; Act No 11 1970, section 47B)

Payment of an amount with respect to a debt attached by a garnishee order must be made:

- (a) within 14 days after the date on which the order is served on the garnishee, or
- (b) if the order attaches a debt that falls due after that date, within 14 days after the date on which the debt falls due.



## Subdivision 2 Enforcement against income

### 119 Operation of garnishee order in relation to income (cf Act No 9 1973, section 97)

- (1) Subject to sections 121 and 122 and the uniform rules, a garnishee order operates to attach, to the extent of the amount outstanding under the judgment:
  - (a) any wage or salary that, while the order is in force, is payable to the judgment debtor by the garnishee, or
  - (b) if the judgment debt becomes the subject of an instalment order, such amounts from the wage or salary payable to the judgment debtor by the garnishee as are equivalent to the instalments payable under the instalment order.
- (2) An instalment order with respect to a judgment debt the subject of a garnishee order takes effect in relation to the amounts payable under the garnishee order as from the time the instalment order is served on the garnishee.
- (3) A garnishee order ceases to have effect, in relation to the wage or salary payable to a judgment debtor, when the judgment debt is satisfied.
- (4) An order under this section addressed to the Crown as garnishee binds the Crown.

### 120 Time within which payment to be made (cf Act No 9 1973, section 97B; Act No 11 1970, section 47B)

Payment of an amount with respect to a wage or salary attached by a garnishee order must be made within 14 days after the date on which the wage or salary falls due.

### 121 Maximum payment under one of several concurrent garnishee orders (cf Act No 9 1973, section 101; Act No 11 1970, section 51)

- (1) This section applies in circumstances in which a wage or salary is attached by one or more garnishee orders of which one or more (but not all) are limited garnishee orders.
- (2) Unless the court orders otherwise, the amount payable by a garnishee under a garnishee order that is not a limited garnishee order must not, in respect of any wage or salary attached by the garnishee order, exceed the greatest amount payable by the garnishee under any limited garnishee order that attaches the same wage or salary.
- (3) In this section, **limited garnishee order** means a garnishee order in respect of a judgment debt that is the subject of an instalment order.

### 122 Maximum total payment under all garnishee orders (Act No 9 1973, section 99; Act No 11 1970, section 49)

- (1) The amounts attached under one or more garnishee orders must not, in total, reduce the net weekly amount of any wage or salary received by the judgment debtor from the garnishee to less than 80 per cent of the standard workers compensation weekly

benefit.

(2) In this section:

**net weekly amount**, in relation to any wage or salary payable to a judgment debtor, means the amount payable each week to the judgment debtor after deducting any taxes or other sums that, pursuant to any Act (including any Commonwealth Act), are required to be deducted from any such money.

**standard workers compensation weekly benefit** means an amount equivalent to the weekly payment of compensation referred to in section 37 (1) (a) (i) of the [Workers Compensation Act 1987](#), as adjusted under Division 6 of Part 3 of that Act.

### Subdivision 3 General

**123 Payments by garnishee** (cf Act No 9 1973, section 105; DCR Part 33, rule 7; Act No 11 1970, section 47D; LCR Part 29, rule 3)

- (1) A payment under a garnishee order must be made in accordance with, and to the judgment creditor specified in, the order.
- (2) Out of each amount attached under the garnishee order, the garnishee:
  - (a) subject to payment of the balance being made within the time required by section 118 or 120, as the case may be, may retain up to the amount prescribed by the uniform rules to cover the garnishee's expenses in complying with the garnishee order, and
  - (b) must pay the balance to the judgment creditor.
- (3) A payment to the judgment creditor must be accompanied by a statement showing:
  - (a) the amount attached under the garnishee order, and
  - (b) how much of that amount has been retained by the garnishee, and
  - (c) how much of that amount has been paid to the judgment creditor.
- (4) As between the garnishee and the judgment debtor, the amount attached under the garnishee order is taken, subject to any order of the court, to have been paid by the garnishee to the judgment debtor.

**Note—**

Such an order may be made, for example, if the garnishee has failed to comply with the requirements of subsection (3).

- (5) As between the judgment creditor and the judgment debtor, the amount of the payment to the judgment creditor is taken to have been paid by the judgment debtor to the judgment creditor in satisfaction, to the extent of that amount, of the judgment.

**124 Procedure where garnishee order not complied with** (cf Act No 9 1973, section 102; Act No 11 1970, section 52)

- (1) On the application of a judgment creditor who considers that a garnishee order has not been complied with, the court:
  - (a) may hear and determine any question as to the liability of the garnishee to pay the debt, wage or salary sought to be attached by the garnishee order, and
  - (b) if satisfied that the garnishee is so liable, may give judgment in favour of the judgment creditor against the garnishee:
    - (i) for the amount of that debt, wage or salary, or
    - (ii) for the unpaid amount of the judgment debt,whichever is the lesser.
- (2) The court may refuse to give such a judgment if it is of the opinion that such a judgment should not be given.
- (3) Without limiting subsection (2), the reasons that may lead the court to form such an opinion may include:
  - (a) the smallness of the amount outstanding under the judgment, and
  - (b) the smallness of the debt, wage or salary to be attached.
- (4) As between the garnishee and the judgment debtor, an amount paid to the judgment creditor by the garnishee under a judgment given under this section is taken to have been paid to the judgment debtor.

**125 Repayment of excess amounts** (cf Act No 9 1973, section 106; Act No 11 1970, section 56)

- (1) If a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment, the judgment creditor:
  - (a) must forthwith notify the judgment debtor and the garnishee of that fact, and
  - (b) on demand made by the judgment debtor, must repay the excess to the judgment debtor.
- (2) The amount of the excess is recoverable from the judgment creditor, by the judgment debtor or by the garnishee, as a debt in any court of competent jurisdiction.

## **Division 4 Charging orders**

**126 Operation of charging order in relation to specified security interests** (cf Act No 8 1901,

section 27)

- (1) This section applies to the following kinds of property in relation to a judgment debtor (referred to in this Division as **security interests**):
  - (a) stock and shares in a public company,
  - (b) money on deposit in a financial institution, being:
    - (i) money held in the judgment debtor's name in the judgment debtor's own right, or
    - (ii) money held in the name of some other person in trust for the judgment debtor,
  - (c) any equitable interest in property.
- (2) Subject to the uniform rules, a charging order operates, in relation to each security interest specified in the order:
  - (a) to charge the security interest in favour of the judgment creditor to the extent necessary to satisfy the judgment, and
  - (b) to restrain the chargee from dealing with the security interest otherwise than in accordance with the directions of the judgment creditor.
- (3) A charging order takes effect when it is made.
- (4) Despite subsection (3), the judgment creditor may not commence proceedings to take the benefit of a charge arising under a charging order until after the expiration of 3 months from the date of the order.
- (5) A charging order entitles the judgment creditor, in relation to the security interests charged by the order, to any relief to which the judgment creditor would have been entitled had the charge been made in the judgment creditor's favour by the judgment debtor.

**127 Unauthorised transfer or disposal of security interest under charging order** (cf Act No 8 1901, section 29)

- (1) A chargee or other person who, having notice of a charging order, deals with any security interest charged by the order otherwise than in accordance with the directions of the judgment creditor is liable to the judgment creditor for such amount (not exceeding the value of the security interest) as may be necessary to satisfy the judgment.
- (2) This section does not prevent the court from granting the judgment creditor, as a consequence of the chargee or other person having dealt with the security interest, any relief that is available apart from this section.

**128 Disposal of security interest by judgment debtor invalid** (cf Act No 8 1901, section 30)

While a charging order is in force, any purported transfer or disposal by the judgment debtor of a security interest charged by the order, being a transfer or disposal effected otherwise than in accordance with the directions of the judgment creditor, is of no effect as against the judgment creditor.

**Division 5 Miscellaneous**

**129 No arrest on mesne process** (cf Act No 52 1970, section 10)

- (1) No person is to be arrested on mesne process issued by the court.
- (2) This section does not affect any power of arrest exercisable pursuant to an arrest warrant issued under this or any other Act.

**130 Judgments not enforceable by certain means** (cf Act No 52 1970, section 98)

A judgment or order is not enforceable against a person:

- (a) by any process for attachment of the person, or
- (b) by any process for committal of the person, or
- (c) by any writ of *capias ad satisfaciendum*.

**131 Committal for contempt**

Nothing in this Act or the uniform rules limits or otherwise affects the power of the court to attach or commit a person for contempt.

**132 Sheriff may appoint custodian for goods** (cf Act No 9 1973, section 109 (9))

- (1) After seizing a judgment debtor's goods pursuant to a writ of delivery or writ for the levy of property, the Sheriff, by notice in writing served on:
  - (a) the judgment debtor, or
  - (b) any other person who has the custody of the goods,may appoint the judgment debtor or other person as custodian of the goods pending their delivery or sale under the writ.
- (2) A custodian so appointed, and any other person aware that a custodian is so appointed, must not:
  - (a) sell, give or otherwise deal with the goods, or
  - (b) damage or destroy the goods, or
  - (c) hide or remove the goods, or

(d) cause, permit or allow the goods to be sold, given or otherwise dealt with, damaged or destroyed or hidden or removed,

otherwise than with the leave of the court or the written consent of the Sheriff.

Maximum penalty: 50 penalty units.

- (3) Prosecution of a person for an offence under subsection (2) does not prevent any other proceedings from being taken against the person in respect of an alleged failure to comply with a duty arising from the person's appointment as a custodian of goods.

### **133 Judgments and orders unenforceable until entered**

- (1) A judgment or order of the court may not be enforced until it has been entered in accordance with the uniform rules.

- (2) This section extends to:

(a) any judgment, order, determination or decree of a court, and

(b) any adjudication or award of a person having authority to make an adjudication or award,

that may be filed or registered in the court, or of which a certificate may be filed or registered in the court, under any other Act or law.

- (3) In subsection (2), **law** includes:

(a) a law of the Commonwealth, and

(b) a law of another State or Territory, and

(c) in relation to the Supreme Court, a law of a foreign country.

### **134 Stale judgments and orders enforceable only by leave** (cf Act No 9 1973, section 84A)

- (1) An application by a judgment creditor for:

(a) a writ of execution, or

(b) a garnishee order, or

(c) a charging order, or

(d) an order for examination,

may not be made, except by leave of the court, if the prescribed period has elapsed since the judgment was given or (in the case of a judgment, order or decree referred to in section 133 (2)) was registered as referred to in section 133 (2).

- (2) In this section, **prescribed period** means 12 years or, if the uniform rules prescribe a

different period, the period so prescribed.

### **135 Directions as to enforcement**

- (1) The court may, by order, give directions with respect to the enforcement of its judgments and orders.
- (2) Without limiting subsection (1), the court may make any of the following orders:
  - (a) an order authorising the Sheriff to enter premises for the purpose of taking possession of goods under a writ of execution,
  - (b) an order prohibiting the Sheriff from taking any further action on a writ,
  - (c) an order prohibiting any other person from taking any further action, either permanently or until a specified day, to enforce a judgment or order of the court,
  - (d) an order requiring the Registrar-General to cancel any recording of a writ for the levy of property that, under section 105 of the *Real Property Act 1900*, has been made in the Register under that Act, either generally or in relation to specified land.

### **136 Appropriation of payments towards judgment debt**

Unless the court otherwise orders, any payment made on account of a judgment debt is to be appropriated:

- (a) firstly, towards such part of the judgment debt as comprises interest payable under section 101, and
- (b) secondly, towards the balance of the judgment debt.

### **137 Execution of judgments and orders for costs**

- (1) A judgment may be enforced in relation to costs separately from its enforcement in relation to matters other than costs.
- (2) Unless the court otherwise orders, the costs recoverable under a writ of execution, garnishee order or charging order include:
  - (a) costs in relation to any prior writ of execution, garnishee order or charging order in relation to the same judgment, whether or not the prior writ or order was productive, and
  - (b) money recoverable under section 107 (1) of the *Service and Execution of Process Act 1992* of the Commonwealth.

### **138 Other methods of enforcing judgments**

- (1) Nothing in this Part limits the manner in which a judgment or order of the court may

be enforced apart from this Act.

- (2) Without limiting subsection (1), nothing in this Part prevents the court:
- (a) from issuing consecutive writs for the levy of property against the same judgment debtor, or making consecutive garnishee orders or consecutive charging orders in respect of the same judgment debtor, in respect of the same judgment debt, or
  - (b) from making concurrent garnishee orders against different garnishees, or consecutive garnishee orders against the same garnishee, in respect of the same judgment debt.

## **Part 9 Transfer of proceedings between courts**

### **Division 1 Transfer of proceedings from lower to higher court**

#### **139 Definitions**

In this Division:

**higher court** means the court to which proceedings are transferred, or are proposed to be transferred, by a transfer order.

**lower court** means the court from which proceedings are transferred, or are proposed to be transferred, by a transfer order.

**transfer order** means an order referred to in section 140.

#### **140 Transfer of proceedings to higher court** (cf Act No 9 1973, section 145; Act No 11 1970, section 21B)

- (1) The Supreme Court may, of its own motion or on application by a party to proceedings before the District Court or a Local Court, order that the proceedings, including any cross-claim in the proceedings, be transferred to the Supreme Court.
- (2) The District Court may, of its own motion or on application by a party to proceedings before a Local Court, order that the proceedings, including any cross-claim in the proceedings, be transferred to the District Court.
- (3) Proceedings in the District Court on a claim for damages arising from personal injury or death are not to be transferred to the Supreme Court under this section unless the Supreme Court is satisfied:
  - (a) in the case of a motor accident claim or a workplace injury damages claim:
    - (i) that the amount to be awarded to the plaintiff, if successful, is likely to be more than \$1,000,000, and
    - (ii) that the case involves complex legal issues or issues of general public



importance, or

(b) in any other case:

- (i) that the amount to be awarded to the plaintiff, if successful, is likely to exceed the jurisdictional limit of the District Court, or
- (ii) that there is other sufficient reason for hearing the proceedings in the Supreme Court.

- (4) Proceedings in a Local Court are not to be transferred to a higher court under this section unless the higher court is satisfied that there is sufficient reason for hearing the proceedings in the higher court.
- (5) This section extends to proceedings that have been transferred to the District Court or a Local Court pursuant to a previous transfer order under this Division or under Division 2 or 3.

**141 Transfer orders** (cf Act No 9 1973, section 145; Act No 11 1970, section 21B)

- (1) A transfer order takes effect when it is made.
- (2) A transfer order does not invalidate any order made or other thing done in the proceedings before the order was made.
- (3) Any order made by the lower court may be varied or revoked by an order of the higher court.

**142 Stay of proceedings in lower court** (cf Act No 9 1973, section 146; Act No 11 1970, section 21C)

- (1) The higher court may make an order for a stay of proceedings in respect of which an application for a transfer order has been made.
- (2) Subsection (1) does not limit the power of the lower court to adjourn or stay the proceedings.

**143 Proceedings after transfer** (cf Act No 11 1970, section 21E; DCR Part 5, rule 12)

- (1) Subject to the rules of court applicable in the higher court, any proceedings with respect to which a transfer order takes effect are to be continued in the higher court:
  - (a) as if the proceedings had been duly commenced in the higher court on the date on which they were commenced in the lower court, and
  - (b) as if any cross-claim in the proceedings had been duly made in the higher court on the date on which it was made in the lower court.
- (2) For the purposes of any proceedings continued in the higher court:

- (a) any abandonment of an amount under section 23 ceases to have effect except to the extent to which the amount originally claimed in the proceedings, or in any cross-claim in the proceedings, exceeded the jurisdictional limit of the higher court, and
  - (b) any admission duly made in the lower court is to be treated as if it had been duly made in the higher court.
- (3) Subject to the rules of court applicable in the higher court, the power of the higher court to make orders as to costs includes a power to make orders with respect to the costs of:
- (a) the application for, and the making of, the transfer order, and
  - (b) any step taken in the proceedings before the transfer order was made.

**144 Transfer of certain proceedings from District Court to Supreme Court** (cf Act No 9 1973, section 147)

- (1) This section applies to proceedings under Subdivision 2 of Division 8 of Part 3 of the *District Court Act 1973*.
- (2) If, during proceedings to which this section applies, the District Court decides that it lacks, or may lack, jurisdiction to hear and dispose of the proceedings, the District Court must order that the proceedings be transferred to the Supreme Court.
- (3) Proceedings that are transferred to the Supreme Court under subsection (2):
  - (a) are to be continued in the Supreme Court:
    - (i) as if the proceedings had been duly commenced in the Supreme Court on the date on which they were commenced in the District Court, and
    - (ii) as if any cross-claim in the proceedings had been duly made in the Supreme Court on the date on which it was made in the District Court, or
  - (b) if the Supreme Court so orders, are to be remitted to the District Court and continued in the District Court as if they had not been transferred.
- (4) The District Court has, and may exercise, jurisdiction to hear and dispose of proceedings the subject of an order by the Supreme Court under subsection (3) (b), including such jurisdiction as is necessary to determine any question arising in any such proceedings.
- (5) If, during proceedings to which this section applies, the District Court decides that it is appropriate to do so for any reason other than the reason referred to in subsection (2), the District Court may order that the proceedings be transferred to the Supreme Court.

- (6) Proceedings that are transferred to the Supreme Court under subsection (5), are to be continued in the Supreme Court:
  - (a) as if the proceedings had been duly commenced in the Supreme Court on the date on which they were commenced in the District Court, and
  - (b) as if any cross-claim in the proceedings had been duly made in the Supreme Court on the date on which it was made in the District Court.
- (7) Subject to the rules of court applicable in the Supreme Court, the power of the Supreme Court to make orders as to costs includes a power to make orders with respect to the costs of:
  - (a) the application for, and the making of, an order under subsection (2) or (5), and
  - (b) any step taken in the proceedings before an order under subsection (2) or (5) was made.
- (8) The making of an order under subsection (2) or (5) does not invalidate any order previously made by the District Court in the proceedings.

## **Division 2 Transfer of proceedings from higher to lower court**

### **145 Definitions**

In this Division:

**higher court** means the court from which proceedings are transferred, or are proposed to be transferred, by a transfer order.

**lower court** means the court to which proceedings are transferred, or are proposed to be transferred, by a transfer order.

**transfer order** means an order referred to in section 146.

### **146 Transfer of proceedings to lower court** (cf Act No 9 1973, section 143; Act No 11 1970, section 21F)

- (1) If the Supreme Court is satisfied, in relation to proceedings before it:
  - (a) that the proceedings could properly have been commenced in the District Court or a Local Court, and
  - (b) that any cross-claim in the proceedings could properly have been brought as a cross-claim in the District Court or a Local Court,the Supreme Court may order that the proceedings, including any such cross-claim, be transferred to the District Court or to a Local Court, as the case requires.
- (2) If the District Court is satisfied, in relation to proceedings before it:

- (a) that the proceedings could properly have been commenced in a Local Court, and
- (b) that any cross-claim in the proceedings could properly have been brought as a cross-claim in a Local Court,

the District Court may order that the proceedings, including any such cross-claim, be transferred to a Local Court.

(3) In determining:

(a) whether any proceedings could properly have been commenced in the lower court, or

(b) whether any cross-claim could properly have been brought in the lower court,

the higher court must have regard to the current limits of the lower court's jurisdiction as if they had been the limits of that jurisdiction when the proceedings were commenced, or the cross-claim brought, in the higher court.

(4) Proceedings in the Supreme Court on a claim for damages arising from personal injury or death are to be transferred under this section unless the Supreme Court is satisfied:

(a) in the case of a motor accident claim or workplace injury damages claim:

(i) that the amount to be awarded to the plaintiff, if successful, is likely to be more than \$1,000,000, and

(ii) that the case involves complex legal issues or issues of general public importance, or

(b) in any other case:

(i) that the amount to be awarded to the plaintiff, if successful, is likely to exceed the jurisdictional limit of the District Court, or

(ii) that there is other sufficient reason for hearing the proceedings in the Supreme Court.

(5) This section extends to proceedings that have been transferred to the Supreme Court or the District Court pursuant to a previous transfer order under Division 1.

**147 Transfer orders** (cf Act No 11 1970, section 21F)

(1) A transfer order takes effect when it is made.

(2) A transfer order does not invalidate any order made or other thing done in the proceedings before the transfer order was made.

**148 Proceedings after transfer** (cf Act No 11 1970, section 21G)

- (1) Subject to the rules of court applicable in the lower court, any proceedings with respect to which a transfer order takes effect continue in the lower court:
  - (a) as if the proceedings had been duly commenced in the lower court on the date on which they were commenced in the higher court, and
  - (b) as if any cross-claim in the proceedings had been duly made in the lower court on the date on which it was made in the higher court.
- (2) For the purposes of any proceedings continued in the lower court, any admission duly made in the higher court is to be treated as if it had been duly made in the lower court.
- (3) Subject to the rules of court applicable in the lower court, the power of the lower court to make orders as to costs includes a power to make orders with respect to the costs of:
  - (a) the application for, and the making of, the transfer order, and
  - (b) any step taken in the proceedings before the transfer order was made.

**149 Jurisdiction of lower court**

The lower court has, and may exercise, all of the jurisdiction of the higher court in relation to any proceedings to which a transfer order relates, including jurisdiction to determine any question arising in any such proceedings.

**Division 2A Transfer of proceedings from Supreme Court to Land and Environment Court**

**149A Definition**

In this Division:

***transfer order*** means an order referred to in section 149B.

**149B Transfer of proceedings from Supreme Court to Land and Environment Court**

If the Supreme Court is satisfied, in relation to proceedings before it, that the proceedings could properly have been commenced in the Land and Environment Court, the Supreme Court may, on application by a party to the proceedings or of its own motion, order that the proceedings be transferred to the Land and Environment Court.

**149C Transfer orders**

- (1) A transfer order takes effect when it is made.
- (2) A transfer order does not invalidate any order made or other thing done in the

proceedings before the order was made.

- (3) Any order made by the Supreme Court, other than a transfer order, may be varied or revoked by an order of the Land and Environment Court.

#### **149D Proceedings after transfer**

- (1) Subject to the rules of the Land and Environment Court, any proceedings with respect to which a transfer order takes effect are to be continued in the Land and Environment Court as if they had been duly commenced in that Court on the date on which they were commenced in the Supreme Court.
- (2) For the purposes of any proceedings continued in the Land and Environment Court, any admission duly made in the Supreme Court is to be treated as if it had been duly made in the Land and Environment Court.
- (3) Subject to the rules of the Land and Environment Court, the power of the Land and Environment Court to make orders as to costs includes a power to make orders with respect to the costs of:
  - (a) the application for, and the making of, the transfer order, and
  - (b) any step taken in the proceedings before the transfer order was made.

#### **149E Jurisdiction of Land and Environment Court**

The Land and Environment Court has, and may exercise, all of the jurisdiction of the Supreme Court in relation to any proceedings to which a transfer order relates, including jurisdiction to determine any question arising in any such proceedings.

### **Division 3 Transfer of proceedings between Local Courts**

#### **150 Definitions**

In this Division:

***transfer order*** means an order referred to in section 151.

***transferee court*** means the Local Court to which proceedings are transferred, or are proposed to be transferred, by a transfer order.

***transferor court*** means the Local Court from which proceedings are transferred, or are proposed to be transferred, by a transfer order.

#### **151 Transfer of proceedings between Local Courts**

- (1) A Local Court may, of its own motion or on application by a party to proceedings before it, order that the proceedings, including any cross-claim in the proceedings, be transferred to some other Local Court.

- (2) Without limiting subsection (1), the uniform rules may authorise the transfer of proceedings from one Local Court to another in circumstances in which none of the parties to the proceedings object to the transfer.
- (3) Proceedings are not to be transferred under this section to a Local Court that, pursuant to an order in force under section 78 of the *Local Courts Act 1982*, has no jurisdiction to hear and determine the proceedings.
- (4) This section extends to proceedings that have been transferred to the Local Court pursuant to a previous transfer order under this Division or under Division 2.

### **152 Transfer orders**

- (1) A transfer order takes effect when it is made.
- (2) A transfer order does not invalidate any order made or other thing done in proceedings before the order was made.
- (3) Any order made by the transferor court may be varied or revoked by an order of the transferee court.

### **153 Proceedings after transfer**

- (1) Any proceedings with respect to which a transfer order takes effect are to be continued in the transferee court:
  - (a) as if the proceedings had been duly commenced in the transferee court on the date on which they were commenced in the transferor court, and
  - (b) as if any cross-claim in the proceedings had been duly made in the transferee court on the date on which it was made in the transferor court.
- (2) Subject to rules of court, the power of the transferee court to make orders as to costs includes a power to make orders with respect to the costs of:
  - (a) the application for, and the making of, the transfer order, and
  - (b) any step taken in the proceedings before the transfer order was made.

## **Schedule 1 Application of Act**

(Section 4)

<b>Column 1</b>	<b>Column 2</b>
<b>Court</b>	<b>Kinds of civil proceedings</b>
Supreme Court	All civil proceedings
Land and Environment Court	All civil proceedings in Class 1, 2, 3, 4 or 8 of the Court's jurisdiction
District Court	All civil proceedings

Dust Diseases Tribunal	All civil proceedings
Local Court	All civil proceedings under Part 7 of the <i>Local Courts Act 1982</i> All civil proceedings under the <i>Property (Relationships) Act 1984</i>

## Schedule 2 Constitution and procedure of Uniform Rules Committee

(Section 8)

### Part 1 Constitution

#### 1 Definitions

In this Schedule:

**ex-officio member** means the Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the Land and Environment Court, the Chief Judge of the District Court or the Chief Magistrate, and includes any of their nominees under section 8.

**member** means a member of the Uniform Rules Committee.

#### 2 Term of office

Subject to this Schedule:

- (a) an ex-officio member holds office indefinitely, and
- (b) any other member holds office for such period as is specified in his or her instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3 Vacancy in office

(1) The office of a member (other than an ex-officio member) becomes vacant if the member:

- (a) dies, or
- (b) resigns office by instrument in writing addressed to the Chief Justice of the Supreme Court, or
- (c) ceases to hold the office or qualification by virtue of which he or she was eligible for appointment as a member, or
- (d) has his or her appointment revoked by the person or body by whom or by which he or she was appointed.

(2) If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Note—**



See also section 47 of the *Interpretation Act 1987* with respect to appointments generally.

### **3A Deputies for members**

- (1) An ex-officio member of the Uniform Rules Committee may nominate his or her own deputy.
- (1A) Each person referred to in section 8 (1) who is authorised to nominate or appoint some other person as a member of the Uniform Rules Committee may nominate or appoint a deputy for that member.
- (2) In the absence of an ex-officio member or a member appointed or nominated under section 8 (1), the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) subject to clause 6 (6)—while so acting, has the functions of the member and is taken to be the member.
- (3) In this clause, **ex-officio member** means the Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the Land and Environment Court, the Chief Judge of the District Court or the Chief Magistrate, but does not include any of their nominees under section 8 (1).

## **Part 2 Procedure**

### **4 General procedure**

The procedure for the calling of meetings of the Uniform Rules Committee and for the conduct of business at those meetings is, subject to this Part, to be as determined by the Committee.

### **5 Quorum**

The quorum for a meeting of the Uniform Rules Committee is 6 members, of whom at least 3 must be judicial officers.

### **6 Presiding member**

- (1) At any meeting of the Uniform Rules Committee:
  - (a) the Chief Justice of the Supreme Court, or
  - (b) the Chief Justice's nominee referred to in section 8 (1) (a),is to preside.
- (2) In the absence of the Chief Justice or the Chief Justice's nominee:
  - (a) the President of the Court of Appeal, or

(b) the President's nominee referred to in section 8 (1) (b),  
is to preside.

(3) In the absence of:

(a) the Chief Justice or the Chief Justice's nominee, and

(b) the President of the Court of Appeal or the President's nominee,

the next most senior of the Judges of the Supreme Court who are present is to preside.

(4) In the absence of any Judge of the Supreme Court, the next most senior judicial officer who is present is to preside.

(5) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

(6) A person nominated as a deputy is not entitled to exercise any of the functions of a presiding member under this clause.

## **7 Decisions**

A decision supported by a majority of the votes cast at a meeting of the Uniform Rules Committee at which a quorum is present is a decision of the Uniform Rules Committee.

## **8 Transaction of business outside meetings or by telephone**

(1) The Uniform Rules Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee, but only if the members from whom votes are received in relation to the resolution would form a quorum at an ordinary meeting of the Committee.

(2) The Uniform Rules Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the presiding member and each other member have the same voting rights as they have at an ordinary meeting of the Uniform Rules Committee.

(4) A resolution approved under subclause (1) is to be recorded in the minutes of the

meetings of the Uniform Rules Committee.

- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **9 First meeting**

The first meeting of the Uniform Rules Committee is to be called by the Chief Justice of the Supreme Court in such manner as the Chief Justice thinks fit.

## **Schedule 3 Rule-making powers**

(Section 9 (2))

- 1 The procedure (including the method of pleading) and the practice to be followed in the court in all civil proceedings in, or with respect to which, the court has jurisdiction (including the procedure and practice to be followed in the offices of the court), and any matters incidental to, or relating to, any such procedure or practice (including the manner and time of making any applications that under this or any other Act, or under any Commonwealth Act, are to be made to the court).
- 2 The rights and obligations of parties, prospective parties and other persons as to examination, interrogatories, discovery and inspection and other means of obtaining access to information, documents or things in relation to civil proceedings and prospective civil proceedings.
- 3 The service of documents (including the service of documents outside New South Wales, whether interstate or overseas).
- 4 The form and contents of any case stated to the court by or from any other court or person, and the time within which and the manner in which proceedings on a stated case are to be commenced and maintained and the court's decision notified.
- 5 The practice and procedure to be followed in connection with interpleaders.
- 6 The practice and procedure to be followed in connection with the splitting and consolidation of civil proceedings.
- 7 The admission and exclusion of evidence and the manner in which evidence is to be tendered.
- 8 The practice and procedure to be followed in connection with the review by the court of decisions made on its behalf by registrars and other officers of the court.
- 9 The practice and procedure to be followed in connection with any appeal to the court, including the time within which, and the manner in which, such an appeal is to be made, and the practice and procedure to be followed in the court with respect to such an appeal.
- 10 The practice and procedure to be followed in connection with the transfer of any civil proceedings to or from the court and the practice and procedure to be followed with respect to civil proceedings that are so transferred.
- 11 The assignment of civil proceedings to any division of the court or to any list established within the court.

- 12 The nomination and appointment of suitable persons to be mediators for the purposes of Part 4.
- 13 The practice and procedure to be followed in relation to the mediation of any matter under Part 4 or the arbitration of any matter under Part 5.
- 14 The circumstances in which civil proceedings, or claims in civil proceedings, may be dismissed.
- 15 The circumstances in which the court may order parties to civil proceedings not to disclose matters that arise in hearings that are held in the absence of the public.
- 16 The circumstances in which the court may stay civil proceedings, either permanently or temporarily.
- 17 The practice and procedure to be followed with respect to the giving of judgment, including judgment that is reserved and judgment where the giving of reasons is deferred.
- 18 Matters relating to the costs of civil proceedings in the court and, in particular, prescribing, limiting or otherwise affecting the costs recoverable in any action or proceedings that the court considers might properly have been dealt with in a lower court.
- 19 The means for, and the practice and procedure to be followed in, securing the future conduct of parties to civil proceedings.
- 20 The means for, and the practice and procedure to be followed in, the enforcement and execution of judgments and orders.
- 21 The circumstances in which the court may authorise entry on land for the purpose of enabling its orders to be enforced.
- 22 The exercise by the Supreme Court of its jurisdiction to make orders for the enforcement of its judgments and orders.
- 23 The circumstances in which the court may vary or set aside its judgments and orders.
- 24 The means for proving particular facts, and the mode in which evidence may be given (including the administration of oaths to and the taking of the evidence of witnesses in or out of New South Wales), in any civil proceedings, or on any application in connection with, or at any stage of, any civil proceedings.
- 25 Matters relating to expert evidence, including:
  - (a) the disclosure (by the furnishing of copies of reports or otherwise) of the nature of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence, and
  - (b) the use of expert witnesses including, in particular, the use of expert witnesses engaged jointly by parties to civil proceedings and the use of court-appointed expert witnesses.
- 26 The cases in which security may be required, and the form of such security, and the manner in which, and the person to whom, it is to be given.

- 27 For regulating or making other provision concerning interim payments referred to in Division 5 of Part 6.
- 28 The payment or transfer into or out of court and, subject to the consent of the Treasurer, the custody, management and investment of moneys, securities and effects.
- 29 The duties of registrars and other officers of the court in relation to or for the purpose of any civil proceedings.
- 30 Any matter with respect to civil proceedings for which rules of court may be made under the Act by which the court is constituted.
- 31 Any matter with respect to which the court has jurisdiction under any other Act or law (including any Commonwealth Act).
- 32 Any matter for which the rules set out in Schedule 7 made provision when that Schedule commenced.
- 33 Any matter for which any other Act provides that rules may be made under this Act.
- 34 Any matter of a savings or transitional nature consequent on the making of any uniform rule.

## **Schedule 4 Repeals**

(Section 6 (1))

*Administration of Justice Act 1924 No 42*

*Arbitration (Civil Actions) Act 1983 No 43*

*Arbitration (Civil Actions) Regulation 1999*

*Attachment of Wages Limitation Act 1957 No 28*

*Damages (Infants and Persons of Unsound Mind) Act 1929 No 25*

*Foreign Judgments Act 1973 No 39*

*Judgment Creditors' Remedies Act 1901 No 8*

*Local Courts (Civil Claims) Act 1970 No 11*

*Maintenance Orders (Facilities for Enforcement) Act 1923 No 4*

## **Schedule 5 (Repealed)**

## Schedule 6 Savings, transitional and other provisions

(Section 6 (3))

### Part 1 General

#### 1 Regulations

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Courts Legislation Amendment Act 2006*, to the extent that it amends this Act

*Courts Legislation Further Amendment Act 2006* (but only to the extent that it amends this Act)

*Courts Legislation Amendment Act 2007* (but only to the extent to which it amends 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 Provisions consequent on enactment of this Act

#### 2 Definition

In this Part:

**the old legislation** means the *Supreme Court Act 1970*, the *District Court Act 1973* and the *Local Courts (Civil Claims) Act 1970*, and the rules of court made under those Acts, as in force immediately before the commencement of this clause.

#### 3 Rules under the *Local Courts (Civil Claims) Act 1970*

The *Local Courts (Civil Claims) Rules 1988* are taken to have been made under the *Local Courts Act 1982*, and may be amended and repealed accordingly.

#### **4 Regulations**

The following regulations are taken to have been made under section 18, and may be amended and repealed accordingly:

- (a) the *Supreme Court Regulation 2000*,
- (b) the *District Court Regulation 2000*,
- (c) the *Local Courts (Civil Claims) Regulation 2000*.

#### **5 Pending proceedings**

- (1) Subject to subclause (2), this Act and the uniform rules apply to proceedings commenced before the commencement of this Act in the same way as they apply to proceedings commenced on or after that commencement.
- (2) A court before which proceedings have been commenced before the commencement of this Act may make such orders dispensing with the requirements of the uniform rules in relation to the proceedings, and such consequential orders (including orders as to costs), as are appropriate in the circumstances.

#### **6 Right to claim set-off**

- (1) Subject to subclause (2), section 21 extends to:
  - (a) any debt arising under an agreement entered into before the commencement of that section, and
  - (b) any other debt arising before the commencement of that section.
- (2) The court may order that section 21 does not apply to a debt referred to in subclause (1) (a) if it is satisfied that it would be in the interests of justice to make such an order.

#### **7 Amendment of originating process after expiry of limitation period**

Section 65 extends to any proceedings commenced before the commencement of that section.

#### **8 Delegations**

Any delegation that was in force immediately before the commencement of this Act under a provision of the old legislation for which there is a corresponding provision in this Act is taken to be a delegation in force under the corresponding provision of this Act.

#### **9 Construction of references**

Subject to this Schedule and the regulations, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding

provision in this Act extends to the corresponding provision of this Act or the uniform rules, and

- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in this Act or the uniform rules extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act or the uniform rules, as the case requires.

## **10 General saving**

Subject to this Schedule and the regulations:

- (a) anything begun before the commencement of this Act under a provision of the old legislation for which there is a corresponding provision in this Act or the uniform rules may be continued and completed under the old legislation as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in this Act or the uniform rules (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act or the uniform rules, as the case requires.

## **11 Motor accident claims**

- (1) In the definition of **motor accident claim** in section 3 (1), the reference to a claim within the meaning of the *Motor Accidents Compensation Act 1999* includes a reference to a claim within the meaning of Part 5 of the *Motor Accidents Act 1988*.
- (2) In section 81 (2), the reference to an award of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies includes a reference to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

## **Part 3 Provisions relating to dismissal of proceedings**

### **12 Dismissal of proceedings**

- (1) Any proceedings taken to have been dismissed under clause 18 of the *Civil Procedure Regulation 2005* before the repeal of that clause by the *Civil Procedure Amendment (Savings and Transitional) Regulation 2005* are taken to have never been dismissed under that clause and may be continued accordingly.
- (2) Subclause (1) does not apply to any such proceedings to the extent to which they relate to a cause of action for which relief has been claimed in fresh proceedings, as referred to in section 91.
- (3) The District Court or Local Court, as the case may be, may make such orders as are necessary to enable the proceedings to be continued.



## **Part 4 Provisions consequent on enactment of the [Courts Legislation Amendment Act 2007](#)**

### **13 Definitions**

In this Part:

**relevant commencement date** means the date of the commencement of Schedule 2 [9] to the [Courts Legislation Amendment Act 2007](#).

**relevant proceedings** means proceedings in Class 1, 2, 3 or 4 of the jurisdiction of the Land and Environment Court.

**unamended L & E legislation** means the [Land and Environment Court Act 1979](#) or the rules of court made under that Act, as in force immediately before the relevant commencement date.

### **14 Regulation**

The [Land and Environment Court Regulation 2005](#) is taken to have been made under section 18 and may be amended and repealed accordingly.

### **15 Pending proceedings**

- (1) Subject to subclause (2), this Act and the uniform rules apply to relevant proceedings commenced in the Land and Environment Court before the relevant commencement date in the same way as they apply to relevant proceedings commenced on or after that commencement.
- (2) If relevant proceedings are commenced in the Land and Environment Court before the relevant commencement date, the Land and Environment Court may make such orders dispensing with the requirements of the uniform rules in relation to the proceedings, and such consequential orders (including orders as to costs), as are appropriate in the circumstances.

### **16 Construction of references**

Subject to the regulations, in any other Act or instrument:

- (a) a reference to a provision of the unamended L & E legislation for which there is a corresponding provision in this Act extends to the corresponding provision of this Act or the uniform rules, and
- (b) a reference to any act, matter or thing referred to in a provision of the unamended L & E legislation for which there is a corresponding provision in this Act or the uniform rules extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act or the uniform rules, as the case requires.

## **17 General saving**

Subject to this Schedule and the regulations:

- (a) anything begun before the relevant commencement date under a provision of the unamended L & E legislation for which there is a corresponding provision in this Act or the uniform rules may be continued and completed under the unamended L & E legislation as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the unamended L & E legislation for which there is a corresponding provision in this Act or the uniform rules (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act or the uniform rules, as the case requires.

## **Schedule 7 (Repealed)**