

## Civil Procedure Bill 2005

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

Civil procedure (that is, the rules according to which civil proceedings are commenced and carried on) is currently governed by a number of Acts and instruments, including not only the Acts by which various courts are established (and the rules of practice and procedure made under them) but also other Acts and instruments that deal with particular aspects of civil procedure. Different regimes exist for different courts and different subject-matters, the differences frequently being merely an accident of history. Such differences make it difficult for litigants to take advantage of modern computer technology in relation to the creation, filing and service of court process, and make it difficult for courts to take advantage of such technology in relation to case management.

The object of this Bill is to consolidate as much as possible of the law relating to civil procedure, particularly insofar as it affects proceedings in the Supreme Court, the District Court and the Local Courts (the courts in which the majority of civil proceedings are heard). The Bill contains provisions with respect to commencing and carrying on proceedings generally (Part 3), mediation and arbitration (Parts 4 and 5), case management and interlocutory matters (Part 6), judgments and orders (Part 7), enforcement of judgments and orders (Part 8) and transfers of proceedings between courts (Part 9). It also contains provisions relating to administrative matters (Part 2 and Schedules 1, 2 and 3), repeals, amendments and savings and transitional provisions (Schedules 4, 5 and 6). Finally, it sets out uniform civil procedure rules to replace the core provisions of the *Supreme Court Rules 1970*, the *District Court Rules 1973* and the *Local Courts (Civil Claims) Rules 1988* (Schedule 7).

Part 4 replicates the provisions with respect to mediation that currently exist in the *Supreme Court Act 1970*, the *District Court Act 1973* and the *Local Courts (Civil Claims) Act 1970*, but does not include the provisions with respect to neutral evaluation that accompany the mediation provisions of the latter two Acts.

Part 5 replicates the provisions of the *Arbitration (Civil Actions) Act 1983*, together with the provisions of the *Supreme Court Act 1970*, the *District Court Act 1973* and the *Local Courts (Civil Claims) Act 1970* that invoke that Act.

Outline of provisions

#### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act, with specified exceptions, on a day or days to be appointed by proclamation.

**Clause 3** defines various words and expressions that are used in the proposed Act.

**Clause 4 and Schedule 1** provide for the application of Parts 3–9 of the proposed Act to different courts and different classes of civil proceedings. Initially, those Parts are to apply to proceedings in the Supreme Court, in the District Court, in the Dust Diseases Tribunal and in Local Courts. Clause 4 also allows the uniform rules to exclude certain classes of proceedings from some or all of the provisions of Parts 3–9. Clause 4 further provides that Schedule 1 (which specifies the various courts and civil proceedings to which Parts 3–9 apply) may be amended or substituted by regulations under the proposed Act.

**Clause 5** provides that the proposed Act, and the uniform rules made under the proposed Act, do not limit the jurisdiction of the Supreme Court, and that the uniform rules do not extend the jurisdiction of any court except to the extent to which the proposed Act expressly provides.

**Clause 6** is a formal provision that gives effect to **Schedules 4, 5 and 6**. Those Schedules contain repeals, amendments and savings and transitional provisions,

respectively.

**Clause 7** is a standard provision requiring the proposed Act to be reviewed in 5 years' time.

## **Part 2 Administrative matters**

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

**Clause 8** provides for the establishment of a Uniform Rules Committee comprising 10 members, of whom one is to be the Chief Justice of the Supreme Court (or his or her nominee), one is to be the President of the Court of Appeal (or his or her nominee), two are to be Judges of the Supreme Court, one is to be the Chief Judge of the District Court, one is to be a Judge of the District Court, one is to be the Chief Magistrate, one is to be a Magistrate, one is to be a practising barrister and one a practising solicitor. **Schedule 2** contains provisions with respect to the constitution and procedure of the Uniform Rules Committee.

**Clause 9** enables the Uniform Rules Committee to make uniform rules for the purposes of the proposed Act including, in particular, rules with respect to the matters set out in **Schedule 3**. The clause further provides that the uniform rules set out in **Schedule 7** are taken to have been made under the proposed section, and may be amended and repealed accordingly.

**Clause 10** provides that rules of court (that is, rules of practice and procedure made otherwise than under the proposed Act) are taken to include the uniform rules to the extent to which they are applicable in that court.

**Clause 11** provides that the uniform rules prevail over any other rules of court unless the uniform rules expressly provide that those other rules are to prevail.

**Clause 12** confers power on any registrar or other officer of a court to exercise any function conferred on the registrar or officer by the uniform rules.

**Clause 13** enables the senior judicial officer of a court to direct that a court's functions under the proposed Act and the uniform rules may be exercised by specified officers of the court.

**Clause 14** enables a court to dispense with any requirement of rules of court if satisfied that it is appropriate to do so in the circumstances of the case.

**Clause 15** enables the senior judicial officer of a court to issue practice notes in relation to civil proceedings. Part 6 of the *Interpretation Act 1987* will apply to any such practice note. A practice note, like the uniform rules, will therefore be disallowable by either House of Parliament.

**Clause 16** provides that a court may give directions with respect to any aspect of practice or procedure for which rules of court or practice notes do not provide.

**Clause 17** enables the Uniform Rules Committee to approve forms to be used in connection with civil proceedings.

### **Division 2 Fees**

**Clause 18** enables the Governor to make regulations with respect to the various fees payable in connection with court proceedings, mediation, arbitration, enforcement of judgments and administrative services.

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

**Clause 19** requires civil proceedings to be commenced and carried on in the manner prescribed by rules of court.

**Clause 20** replicates a provision of the *Supreme Court Act 1970* that states that a claim for judgment for possession of land takes the place of a claim in an action for ejectment that could have been brought in the Supreme Court before the commencement of that Act.

**Clause 21** gives effect to a recommendation of the Law Reform Commission with respect to the set-off of debts (*Report 94: Set-off*, published in February 2000) to allow the defendant in any proceedings to set off against the plaintiff's claim any debt owed to the defendant by the plaintiff.

**Clause 22** enables the defendant in any proceedings to make a cross-claim against the plaintiff or any other person, and provides that any person against whom a cross-claim is made (if not already a party to the proceedings) becomes a party to the proceedings.

**Clause 23** enables a party to proceedings to abandon that part of a claim that exceeds the court's jurisdictional limit, so that if the claim is successful the judgment in the proceedings is in full discharge of the claim.

**Clause 24** prevents a party to proceedings from overcoming a court's jurisdictional limit by splitting a cause of action into multiple proceedings. It does so by providing that the party cannot obtain judgment in his or her favour in any of those proceedings after the first judgment is given.

#### **Part 4 Mediation of proceedings**

**Clause 25** defines certain words and expressions for the purposes of the proposed Part.

**Clause 26** enables a court to refer proceedings, or any part of proceedings, for mediation.

**Clause 27** requires the parties to proceedings that have been referred for mediation to participate in the mediation.

**Clause 28** provides for the payment of the costs of mediation in accordance with an order made by the referring court or, in the absence of such an order, in accordance with an agreement by the parties to the mediation.

**Clause 29** empowers a court to make orders to give effect to any agreement or arrangement arising from mediation and, for that purpose, to hear evidence as to the fact that any such agreement or arrangement has been reached and as to the substance of any such agreement or arrangement.

**Clause 30** confers privilege on matters arising in relation to a mediation session and, with specified exceptions, renders evidence of any such matter inadmissible in any other legal proceedings.

**Clause 31** imposes restrictions on the disclosure by a mediator of information obtained by the mediator in connection with the administration or execution of the proposed Part.

**Clause 32** empowers a mediator to give directions as to the conduct of a mediation to the parties to the mediation, and to award costs against a party who fails to comply with any such direction.

**Clause 33** gives a mediator, in relation to proceedings referred to mediation by a court, the same protection and immunity as a judicial officer of that court.

**Clause 34** preserves the rights of parties to proceedings to make arrangements for mediation otherwise than under the proposed Act, such as under the provisions of the *Community Justice Centres Act 1983*.

#### **Part 5 Arbitration of proceedings**

##### **Division 1 Preliminary**

**Clause 35** defines certain words and expressions for the purposes of the proposed Part.

**Clause 36** provides for the appointment of arbitrators for the purposes of the proposed Part.

**Clause 37** provides that an arbitrator's jurisdiction under the proposed Part in relation to proceedings that have been referred to arbitration by a court is taken to form part of the jurisdiction of that court.

##### **Division 2 Arbitration**

**Clause 38** empowers a court to order that certain proceedings be referred to arbitration under the proposed Part.

**Clause 39** requires an arbitrator to determine the issues in dispute in any such proceedings on the basis of evidence adduced before the arbitrator.

**Clause 40** provides that an arbitrator's award is taken to be a judgment of the court,

as of when it is received by the referring court (where the award is made by consent of all parties) or 28 days after it is sent to the parties (in any other case).

**Clause 41** excludes an arbitrator's award from judicial review except on the grounds of lack of jurisdiction or denial of natural justice.

### **Division 3 Rehearings**

**Clause 42** provides that any person who is aggrieved by an arbitrator's award may apply for a rehearing by the court that referred the matter to arbitration. The making of such an application suspends the award until an order for rehearing is made.

**Clause 43** requires the referring court to order a rehearing, which may be either a full rehearing or a rehearing limited to particular aspects of the award.

**Clause 44** requires the referring court to conduct a full or limited rehearing, as the case requires. In the case of a full rehearing, the award ceases to have effect and the court deals with the matter as if it had never been referred to arbitration. In the case of a limited rehearing, the award is suspended pending the determination of the rehearing, and can be reinstated with such modifications as the court thinks appropriate following the rehearing.

**Clause 45** allows a rehearing to be discontinued, in which case the award is to be reinstated.

**Clause 46** enables a court to make orders for costs in relation to a rehearing and, in addition, orders for costs in relation to the hearing before the arbitrator from which the rehearing arose.

**Clause 47** restricts the rights of the parties to a rehearing to subpoena the arbitrator to attend a rehearing for the purpose of giving evidence or producing documents.

### **Division 4 Miscellaneous**

**Clause 48** provides that a party to referred proceedings has the same rights as to legal representation, and as to examination and cross-examination of witnesses, as he or she would have in proceedings before the referring court.

**Clause 49** empowers an arbitrator to determine the procedure to be followed in relation to an arbitration, subject to the proposed Part and to any directions of the referring court.

**Clause 50** provides that a referring court has the same powers with respect to compelling attendance of witnesses at referred proceedings as it would have in proceedings before the court.

**Clause 51** provides that the rules of evidence applicable to proceedings before the referring court are to apply to evidence adduced before an arbitrator.

**Clause 52** provides that the referring court may enforce compliance by a witness in proceedings before an arbitrator of any requirement by the arbitrator to take an oath or to answer any question.

**Clause 53** provides that certain misbehaviour before an arbitrator hearing proceedings referred for arbitration is taken to constitute contempt of the referring court.

**Clause 54** confers on an arbitrator the same power to make orders for costs in relation to referred proceedings as the referring court would have in relation to proceedings before the court.

**Clause 55** gives an arbitrator, in relation to proceedings referred to arbitration by a court, the same protection and immunity as a judge of that court.

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

### **Division 1 Guiding principles**

**Clause 56** states that the overriding purpose of the proposed 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. Courts are required to give effect to this purpose, and litigants are under a duty to assist the courts in furthering that purpose.

**Clause 57** requires court proceedings to be managed having regard to the following

objects, namely, the just determination of the proceedings, the efficient disposal of the business of the court, the efficient use of available judicial and administrative resources and the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties.

**Clause 58** requires courts to act in accordance with the dictates of justice in deciding whether to make orders or directions for the management of proceedings and in what terms any such order or direction should be made. The clause also sets out the matters to which a court must have regard, and the matters to which a court may have regard, for the purpose of determining what are the dictates of justice in a particular case.

**Clause 59** requires the practice and procedure of a court to be implemented in such a way as to minimise delay.

**Clause 60** requires the practice and procedure of a court to 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**

**Clause 61** empowers a court to give directions with respect to the conduct of proceedings generally, and to make orders (including orders dismissing proceedings) against parties who fail to comply with any such direction.

**Clause 62** empowers a court to give directions with respect to the conduct of any hearing in proceedings, including directions regulating the calling of witnesses, the giving of evidence and the presentation of cases.

**Clause 63** empowers a court to give directions to cure procedural irregularities in any proceedings.

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

**Clause 64** empowers a court to order, or grant leave for, the amendment of documents generally.

**Clause 65** empowers a court to grant leave for the amendment of originating process, in relation to three specific matters, after the expiration of the relevant limitation period. The provision replicates a provision that is currently contained in both the *Supreme Court Rules 1970* and the *District Court Rules 1973*.

**Clause 66** empowers a court to adjourn proceedings to a later day, and empowers a registrar to adjourn listed matters for which a judicial officer is unavailable at the appointed time to a later time or a later day.

**Clause 67** empowers a court to stay proceedings before it, either permanently or until a specified day.

**Clause 68** empowers a court to order the attendance of persons and the production of documents and things.

**Clause 69** protects proceedings from being challenged, reviewed, quashed or called into question by reason that the 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.

**Clause 70** empowers a court to dispense with formal proof of matters that are not bona fide in dispute, and to require any person to make admissions with respect to any document or question of fact. Any such admission has effect for the purposes only of the proceedings in which it is made.

**Clause 71** empowers a court to allow certain kinds of proceedings to be conducted in the absence of the public, such as proceedings of a non-contentious nature, proceedings that concern a minor and proceedings in which the presence of the public would defeat the ends of justice.

**Clause 72** empowers a court to make orders prohibiting the disclosure of information that tends to identify a party or witness in any proceedings if it is of the opinion that it is necessary to do so to secure the proper administration of justice.

**Clause 73** confers jurisdiction on a court to determine questions in dispute between

parties as to whether, and in what terms, proceedings in the court have been compromised or settled between them.

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

**Clause 74** defines certain words and expressions for the purposes of the proposed Division and excludes certain workers compensation claims and workers compensation payments from the operation of the proposed Division.

**Clause 75** empowers a court to approve or disapprove an agreement for the compromise or settlement of any claim by or against a person under legal incapacity where proceedings on the claim have not yet commenced. An agreement that is approved will bind the person, an agreement that is disapproved will not.

**Clause 76** applies to persons under legal incapacity, persons who (during the course of proceedings) become persons under legal incapacity and persons whom the court finds (during the course of proceedings) to be incapable of managing their affairs. Once proceedings by or against any such person have commenced, the proceedings cannot be compromised or settled, and money paid into court may not be accepted, except with the approval of the court. The clause also empowers a court to approve or disapprove an agreement for the compromise or settlement of proceedings commenced by or on behalf of such a person. An agreement that is approved will bind the person, an agreement that is disapproved will not.

**Clause 77** applies to money recovered in any proceedings, on behalf of persons under legal incapacity, persons who (during the course of proceedings) become persons under legal incapacity and persons whom the court finds (during the course of proceedings) to be incapable of managing their affairs, pursuant to a compromise, settlement, judgment or order. The clause requires all money recovered on behalf of such a person to be paid into court, unless the court directs otherwise, and regulates how any such money may be paid out of court.

**Clause 78** specifies the purposes for which money paid under the proposed Division to the Public Trustee on behalf of a minor may be applied.

**Clause 79** provides that money paid under the proposed Division to the manager of a protected person's estate is to form part of that estate.

**Clause 80** empowers the Supreme Court to give directions with respect to the conduct of proceedings, whether before the Supreme Court or any other court, by the tutor for a person under legal incapacity.

#### **Division 5 Interim payments**

**Clause 81** defines certain words and expressions for the purposes of the proposed Division.

**Clause 82** empowers a court to order interim payments of compensation in proceedings in which the defendant has admitted liability, in which the plaintiff has obtained judgment or in which the court is satisfied that if the proceedings went to trial the plaintiff would obtain substantial damages.

**Clause 83** provides that the making of an interim payment is not of itself an admission of liability, and that the court's making or refusing to make an order for interim payments is not a finding as to liability.

**Clause 84** provides for the variation, discontinuance and repayment of interim payments.

#### **Division 6 Miscellaneous**

**Clause 85** requires a person who is authorised to examine another person for the purposes of court proceedings to examine the other person on oath, and authorises the person to administer an oath to that other person for that purpose.

**Clause 86** contains supplementary provisions with respect to a court's power to make orders.

**Clause 87** replicates, in relation to orders for production, a provision of the *Evidence Act 1995* that provides protection against self-incrimination to the person against whom such an order is made or sought to be made.

**Clause 88** authorises the senior judicial officer of a court to nominate the judicial officer before whom proceedings are to be listed for trial where the judicial officer before whom a trial of the proceedings has commenced is unable to continue by reason of death, resignation or incapacity.

**Clause 89** provides for the directions that may be given in relation to the use of evidence in fresh trials, including directions allowing evidence given in a previous trial to be used without the need to recall witnesses and directions requiring that witnesses be recalled for limited examination or cross-examination, or both.

## **Part 7 Judgments and orders**

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

**Clause 90** requires a court to give such judgment, or make such order, as the case requires, enables it to deal with cross-claims and gives it jurisdiction to decide matters relating to compromise and settlement.

**Clause 91** provides that the dismissal of proceedings does not prevent the plaintiff in those proceedings from claiming the same relief in fresh proceedings unless the proceedings were dismissed following a determination of the claim on its merits.

**Clause 92** provides that a judgment for the possession of land takes the place of, and has the same effect as, a judgment for the claimant in ejectment had immediately prior to the commencement of the *Supreme Court Act 1970*.

**Clause 93** provides that judgment in proceedings for the detention of goods may be for the delivery of the goods to the plaintiff or for payment to the plaintiff of their assessed value, or for such of those two remedies as the defendant may choose.

**Clause 94** empowers a court that gives a judgment, or makes an order, directing a person to execute or endorse any document to order that it be executed or endorsed by some other person if the first person fails to do so.

**Clause 95** sets out the consequences on persons having a joint liability if a court gives judgment on the liability in respect of some but not all of those persons.

**Clause 96** enables any two judgments of the same or different Local Courts to be set off against each other on the application of the judgment debtor under one of the judgments.

**Clause 97** empowers a court to issue an arrest warrant against any person who fails to comply with an order of the court for that person's attendance at court or for production to the court by that person of any document or thing.

### **Division 2 Costs in proceedings**

**Clause 98** empowers a court to make orders as to costs, which may be assessed either on the ordinary basis (that is, the basis set out in the *Legal Profession Act 1987*) or on an indemnity basis, and prevents any such costs from being recovered otherwise than pursuant to an order of the court.

**Clause 99** empowers a court to disallow a lawyer's costs, to direct a lawyer to repay lawyer's costs to a client or to indemnify any party (other than a client) against costs payable by that party in circumstances in which the lawyer has been responsible for incurring unnecessary costs.

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

**Clause 100** empowers a court to order the payment of interest on money recovered under a judgment, at a rate to be determined by the court and for the whole or any part of the period from when the cause of action arose until when the judgment was given.

**Clause 101** provides for the payment of interest, at a rate to be prescribed by the uniform rules, on so much of the amount of a judgment debt as is from time to time unpaid and for the payment of interest, at a rate to be prescribed by the uniform rules or at such other rate as the court may determine, on any amount payable under an order for costs.

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

### **Division 1 Preliminary**

**Clause 102** defines various words and expressions for the purposes of the proposed Part.

**Clause 103** provides that the procedure for enforcing a judgment or order of a court is to be as prescribed by rules of court.

**Clause 104** provides for the enforcement of a judgment for the possession of land by a writ of possession.

**Clause 105** provides for the enforcement of a judgment or order for the delivery of goods by a writ of delivery.

**Clause 106** provides for the enforcement of a judgment debt by a writ for the levy of property, by a garnishee order or (in the case of a judgment of the Supreme Court or District Court) by a charging order.

**Clause 107** empowers a court to make orders allowing a judgment debtor time to pay and the right to payment by instalments. Such an order stays execution of the judgment or, if the judgment is subject to a garnishee order, stays execution of the judgment otherwise than by means of the garnishee order.

**Clause 108** empowers a court to order a judgment debtor to attend court, and to produce documents, for the purpose of ascertaining his or her financial circumstances.

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

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

**Clause 109** provides that a writ of execution against goods binds the goods as from when the writ is received by the Sheriff, but that it does not affect the title to goods that have been acquired in good faith and for valuable consideration and without notice of the writ.

**Clause 110** regulates the sale of goods the subject of a bill of sale.

**Clause 111** regulates the disposal of cheques, bills of exchange, promissory notes, bonds, specialties and other securities for money.

### **Subdivision 2 Enforcement against land**

**Clause 112** provides that a writ of execution against land binds the land as from when the writ is received by the Sheriff, but that it does not affect the title to land that has been acquired in good faith and for valuable consideration and without notice of the writ. The clause further provides that a judgment in any action at law does not of itself bind or affect any land.

**Clause 113** regulates the sale by the judgment debtor of land the subject of a writ for the levy of property that has been registered in the Register kept under the *Real Property Act 1900* or in the General Register of Deeds kept under the *Conveyancing Act 1919*.

**Clause 114** enables a court to authorise the Sheriff to enter land, together with prospective purchasers, in connection with the sale of the land pursuant to a writ of execution against the land.

### **Subdivision 3 General**

**Clause 115** validates the sale of property by the Sheriff under a writ for the levy of property.

**Clause 116** enables any transaction with respect to the sale of land under a writ for the levy of property that is entered into before the expiry of the writ to be completed after the writ expires.

## **Division 3 Garnishee orders**

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

**Clause 117** states that a garnishee order operates to attach any debt that is owed to a judgment debtor by the garnishee.

**Clause 118** requires payment of a debt attached by a garnishee order within 14 days after service of the order or, in relation to a debt falling due after that date, within 14 days after the debt falls due.

### **Subdivision 2 Enforcement against income**



**Clause 119** states that a garnishee order operates to attach any wage or salary that is payable to a judgment debtor by the garnishee while the order is in force or, if the amount outstanding under the judgment is the subject of an instalment order, such amounts from that wage or salary as are equivalent to the instalments payable under the instalment order.

**Clause 120** requires payment of an amount with respect to a wage or salary within 14 days after the wage or salary falls due.

**Clause 121** deals with circumstances in which a single wage or salary is subject to multiple garnishee orders and one of the garnishee orders is affected by an instalment order.

**Clause 122** prohibits the amounts attached under one or more garnishee orders from reducing the net weekly wage or salary paid to the judgment debtor to below 80 per cent of the standard workers compensation weekly benefit.

### **Subdivision 3 General**

**Clause 123** regulates the payments made by a garnishee under a garnishee order.

**Clause 124** empowers a court to give judgment against a garnishee who fails to comply with the requirements of a garnishee order.

**Clause 125** provides for the repayment of amounts paid by a garnishee in excess of the amount required to satisfy the relevant judgment.

### **Division 4 Charging orders**

**Clause 126** states that a charging order operates to impose a charge in favour of the judgment creditor on each security interest specified in the order, and to restrain the chargee from dealing with each such interest otherwise than in accordance with the directions of the judgment creditor.

**Clause 127** provides that a chargee or other person having notice of a charging order is liable to the judgment creditor for an amount up to the value of the security interest charged by the order if he or she deals with the interest otherwise than in accordance with the directions of the judgment creditor.

**Clause 128** invalidates, as against the judgment creditor, any purported transfer or disposal of a security interest charged by the order that is effected otherwise than in accordance with the directions of the judgment creditor.

### **Division 5 Miscellaneous**

**Clause 129** prohibits the arrest of a person on mesne process issued by a court (*mesne process* being process issued in proceedings before the proceedings are finally determined).

**Clause 130** prohibits the enforcement against a person of any judgment or order by any process for attachment of the person, any process for the committal of the person or any writ of *capias ad satisfaciendum*.

**Clause 131** preserves a court's power to attach or commit a person for contempt.

**Clause 132** empowers the Sheriff to appoint a custodian of goods seized by the Sheriff under a writ of delivery or writ for the levy of property.

**Clause 133** provides that a judgment or order of a court is not enforceable until it has been entered.

**Clause 134** provides that certain enforcement action may not be taken in relation to a judgment or order if the prescribed period (that is, 12 years or such other period as may be prescribed by the uniform rules) has elapsed since the relevant judgment was given or registered or the relevant order was made.

**Clause 135** empowers a court to give directions with respect to the enforcement of its judgments and orders.

**Clause 136** requires money recovered on account of a judgment debt to be applied towards any interest payable on the judgment debt before it is applied towards the debt itself.

**Clause 137** allows a judgment to be enforced in relation to costs separately from its enforcement in relation to anything other than costs, and provides that the costs

recoverable in relation to the enforcement of any judgment or order include the costs of any earlier attempt at enforcement.

**Clause 138** provides that the proposed Part does not limit any manner of enforcing a judgment or order otherwise than pursuant to the proposed Part.

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

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

**Clause 139** defines various words and expressions for the purposes of the proposed Division.

**Clause 140** provides for the transfer of proceedings from a Local Court to the District Court or the Supreme Court, and from the District Court to the Supreme Court.

**Clause 141** deals with administrative matters in connection with transfer orders.

**Clause 142** enables the court to which proceedings are transferred to order a stay of the proceedings.

**Clause 143** regulates the continuation of proceedings after they have been transferred.

**Clause 144** provides for the transfer of particular kinds of proceedings (such as proceedings in the District Court's limited equitable jurisdiction) from the District Court to the Supreme Court.

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

**Clause 145** defines various words and expressions for the purposes of the proposed Division.

**Clause 146** provides for the transfer of proceedings from the Supreme Court to the District Court or a Local Court, and from the District Court to a Local Court.

**Clause 147** deals with administrative matters in connection with transfer orders.

**Clause 148** regulates the continuation of proceedings after they have been transferred.

**Clause 149** ensures that the court to which proceedings are transferred has jurisdiction to deal with the proceedings.

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

**Clause 150** defines various words and expressions for the purposes of the proposed Division.

**Clause 151** provides for the transfer of proceedings between Local Courts.

**Clause 152** deals with administrative matters in connection with transfer orders.

**Clause 153** regulates the continuation of proceedings after they have been transferred.

#### **Schedule 1 Application of Act**

Schedule 1 lists the courts and civil proceedings to which Parts 3–9 of the proposed Act are to apply, being:

- (a) all civil proceedings in the Supreme Court, and
- (b) all civil proceedings in the District Court, and
- (c) all civil proceedings in the Dust Diseases Tribunal, and
- (d) all civil proceedings before the Local Court under proposed Part 7 of the *Local Courts Act 1982*.

#### **Schedule 2 Constitution and procedure of Uniform Rules Committee**

Schedule 2 is in two Parts. The first Part deals with the constitution of the proposed Uniform Rules Committee. The second Part deals with the procedures to be followed with respect to its meetings.

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

Schedule 3 sets out the various matters with respect to which the Uniform Rules Committee may make rules under the proposed Act.

#### **Schedule 4 Repeals**

Schedule 4 lists each Act and instrument to be repealed by the proposed Act. These are as follows:

*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 Amendments**

Schedule 5 amends various Acts and instruments as a consequence of the enactment of the proposed Act. In particular:

(a) it repeals provisions of the *Supreme Court Act 1970*, the *District Court Act 1973* and the *Dust Diseases Tribunal Act 1989* that are being transferred to the proposed Act, and

(b) it amends the *District Court Act 1973* so as to allow its jurisdictional limits to be exceeded up to 50 per cent by consent of parties, and

(c) it transfers to the *Local Courts Act 1982* such of the provisions of the *Local Courts (Civil Claims) Act 1970* (to be repealed by Schedule 4) as confer civil jurisdiction on a Local Court, and

(d) it transfers to the *Legal Profession Act 1987* a provision of the *District Court Act 1973* that prevents legal practitioners claiming privilege from suit in any court other than the Supreme Court, and

(e) it amends the *Oaths Act 1900* so as to make provision for statutory declarations and affidavits made by persons who are blind or illiterate, and

(f) it amends the *Real Property Act 1900* so as to clarify its provisions with respect to the registration of writs of execution against land.

#### **Schedule 6 Savings, transitional and other provisions**

Schedule 6 contains savings and transitional provisions consequent on the enactment of the proposed Act, and empowers regulations under the proposed Act to make further provision of a savings or transitional nature.

#### **Schedule 7 Uniform Civil Procedure Rules 2005**

Schedule 7 sets out the initial set of uniform rules, which under proposed section 9 are taken to have been made by the Uniform Rules Committee. These rules will be capable of being amended and repealed by that Committee.