

CONCURRENCE COPY

COURTS OF PETTY SESSIONS (CIVIL CLAIMS) AMENDMENT BILL, 1982

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the District Court (Amendment) Bill, 1982.

The objects of this Bill are—

- (a) to increase from \$3,000 to \$5,000 the upper monetary limit of the civil jurisdiction of courts of petty sessions, and to so increase the maximum amount for which a set-off may be pleaded as a defence in those courts (Schedule 1);
- (b) to provide in certain cases for the appointment, as registrar of a court of petty sessions, of a person who is not the clerk of petty sessions at the place at which the court is situated (Schedule 2 (1));
- (c) to specify that a defendant wishing to transfer a civil action to an appropriate court of petty sessions shall file a notice stating the grounds of his defence and a verifying affidavit only if the action was commenced by the filing of a default summons instead of in all cases in which any such transfer is sought (Schedule 2 (2));
- (d) to permit the registrar of any court of petty sessions, if he is of the opinion that a civil action which is pending in the court and in which the defendant has filed a notice of defence can be more conveniently tried and determined in some other court of petty sessions, to transfer the action to the other court (Schedule 2 (3));
- (e) to provide that a defendant to a civil claim in a court of petty sessions who wishes to confess to all or part of the plaintiff's claim shall file an affidavit as to his property and means only if he seeks to pay by instalments instead of in all cases when he wishes to so confess (Schedule 2 (4) (a)–(c));
- (f) to specify that, in a case in which the defendant wishes to confess to all of the plaintiff's claim for damages in respect of the plaintiff's personal injuries, the plaintiff shall be accorded a certain period of time in which he may increase the amount of his claim or apply for removal of the action to the District Court before the registrar enters up judgment for the plaintiff for the amount to which the defendant has confessed (Schedule 2 (4) (d)–(g));

- (g) to permit a judgment creditor to apply to the court for an order that the judgment debtor pay the reasonable professional costs incurred by the judgment creditor where the judgment has been entered up under section 28 of the Courts of Petty Sessions (Civil Claims) Act, 1970, following confession of the amount, or part of the amount, of the plaintiff's claim to which a notice of defence relates (Schedule 2 (5), (6));
- (h) to specify that interest payable on a judgment debt given or entered up in a court of petty sessions shall be calculated on the balance of the debt from time to time unpaid (Schedule 2 (7)); and
- (i) to make minor amendments to the Courts of Petty Sessions (Civil Claims) Act, 1970, by way of statute law revision (Schedule 3).

**COURTS OF PETTY SESSIONS (CIVIL CLAIMS)
AMENDMENT BILL, 1982**

No. , 1982.

A BILL FOR

An Act to amend the Courts of Petty Sessions (Civil Claims) Act, 1970, in relation to the amounts for which certain civil actions may be brought in courts of petty sessions, and for certain other purposes.

[MR WALKER—1 April, 1982.]

Courts of Petty Sessions (Civil Claims) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Courts of Petty Sessions (Civil Claims) Amendment Act, 1982".

Commencement.

2. (1) Except as provided in subsections (2)–(4), this Act shall
10 commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedules 1–3, commence on the day on which that provision commences.

(3) Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation
15 published in the Gazette.

(4) The several provisions of Schedule 2 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

20 3. The Courts of Petty Sessions (Civil Claims) Act, 1970, is referred to in this Act as the **Principal Act**.

Schedules.

4. This Act contains the following Schedules:—

25 **SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT EXTENDING THE CIVIL JURISDICTION OF COURTS OF PETTY SESSIONS.**

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

Courts of Petty Sessions (Civil Claims) Amendment.

Amendment of Act No. 11, 1970.

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

SCHEDULE 1.

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT EXTENDING THE CIVIL
JURISDICTION OF COURTS OF PETTY SESSIONS.**

Sections 12 (1), 13 (3), 15 (1), (6)—

Omit "\$3,000" wherever occurring, insert instead "\$5,000".

SCHEDULE 2.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 8 (1A)—

After section 8 (1), insert:—

15 (1A) The registrar of any court specified for the purposes of this subsection by the Minister by order published in the Gazette shall be appointed by the Governor under and in accordance with the Public Service Act, 1979.

(b) Section 8 (2)—

20 Before "shall", insert "which is not specified in any order in force under subsection (1A)".

(2) (a) Section 16 (2A) (a) (ii), (iii)—

Omit the subparagraphs, insert instead:—

30 (ii) stating that he elects that the action be transferred to an appropriate court specified in the notice; and

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(iii) in the case of an action commenced by the filing of a default summons, specifying the grounds of his defence; and

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(b) Section 16 (2A) (b)—

Before “an”, insert “where, pursuant to paragraph (a) (iii), he is required to specify the grounds of his defence.”.

(c) Section 16 (3)—

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Before “accompanied”, insert “or a notice”.

(3) Section 18 (1A)—

After section 18 (1), insert:—

(1A) If—

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(a) notice of defence to an action pending in a court has been filed; and

(b) the registrar of the court is satisfied that the action can be more conveniently tried or determined by some other court,

he may order that the venue be changed, and that the action be sent for hearing to the other court.

20 (4) (a) Section 28 (1)—

Omit “, accompanied by an affidavit as to the defendant’s property and means.”.

(b) Section 28 (1A)—

After section 28 (1), insert:—

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(1A) Any terms of payment specified in a statement under subsection (1) shall, for the purposes of subsections (4) (a) and (b) (ii), (4A) (b) and (d), (5) (b) and (d) and (10), be deemed to have been omitted from the statement if the statement, when filed with the registrar, was not accompanied by

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an affidavit as to the defendant’s property and means.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 28 (4)—

Omit “and affidavit are”, insert instead “is”.

5 (d) Section 28 (4) (b)—

After “plaintiff” where firstly occurring, insert “and the plaintiff has not in the action claimed damages in respect of personal injuries”.

(e) Section 28 (4A)—

10 After section 28 (4), insert:—

(4A) Where the confession is to the whole of the amount of the claim of the plaintiff, the plaintiff has in the action claimed damages in respect of personal injuries and the plaintiff, within the prescribed time—

15 (a) does not—

(i) make application for leave to amend his claim by increasing the amount of damages claimed; or

20 (ii) make application to the District Court for an order under section 21B (1) removing the action into the District Court and give notice in writing to the registrar that he has so applied; and

25 (b) does not file with the registrar a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the registrar shall forthwith after the expiration of that prescribed time—

30 (c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(f) Section 28 (8)—

After “(4) (b) (ii)”, insert “, (4A) (d)”.

(g) Section 28 (10), (10A)—

Omit section 28 (10), insert instead:—

10 (10) Where, within the prescribed time, the plaintiff does not—

15 (a) if the confession is to part only of the amount of the claim of the plaintiff—file a notice refusing to accept in full satisfaction of his claim the amount confessed to by the defendant; or

20 (b) if the confession is to the whole of that amount and the plaintiff has in the action claimed damages in respect of personal injuries—make an application referred to in subsection (4A) (a) (i), or make an application referred to in, and give notice in accordance with, subsection (4A) (a) (ii),

25 but files with the registrar a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection (1), the registrar shall enter up judgment for the plaintiff for the amount to which the defendant has confessed, and—

30 (c) the registrar shall be deemed to have made an order under section 40 that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and

*Courts of Petty Sessions (Civil Claims) Amendment.*SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (d) the plaintiff's notice of refusal shall be deemed a notice of objection under section 40 (5).
- 5 (10A) Where, within the prescribed time referred to in subsection (4A), the plaintiff makes an application referred to in subsection (4A) (a) (i), or makes an application referred to in, and gives notice in accordance with, subsection (4A) (a) (ii), and the application is, whether before or after the
- 10 expiration of that prescribed time, refused—
- (a) the provisions of subsections (4A) and (10) shall apply as if the application had not been made; and
- (b) if the time at which the registrar is, in accordance with the rules, notified of the refusal occurs after the
- 15 expiration of that prescribed time, the provisions of subsection (4A) shall so apply as if the reference therein to the expiration of the prescribed time were a reference to the time at which the registrar is so notified.
- 20 (5) Section 34A—
- After section 34, insert:—
- Professional costs following judgment by confession.**
- 34A. Where—
- 25 (a) after filing a notice of defence in an action, the defendant filed a statement under section 28 (1) confessing to the amount, or part of the amount, of the plaintiff's claim to which the notice of defence relates; and
- (b) judgment was entered up for the plaintiff in that action under section 28,
- 30 the court may, on the application of the judgment creditor, order that the judgment debtor shall pay to the judgment creditor such

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 amount as may be specified in the order for or towards the reasonable
professional costs incurred by the judgment creditor in having a
barrister or attorney (being a barrister or attorney retained by or
on behalf of the judgment creditor or being an attorney employed,
as an agent or otherwise, by an attorney so retained) act on his
10 behalf in the action in which judgment was entered up under section
28, and the amount so specified shall form part of the judgment debt
and may be enforced accordingly.

(6) Sections 36 (2), 37—

After “34” wherever occurring, insert “, 34A”.

(7) (a) Section 39 (1)—

15 After “shall” where secondly occurring, insert “, subject to
subsection (1A) (b),”.

(b) Section 39 (1A)—

After section 39 (1), insert:—

(1A) The amount payable as interest under subsection (1)
in respect of a judgment debt—

20 (a) shall be payable on so much of the amount of the
judgment debt as is from time to time unpaid; and

(b) shall not form part of the judgment debt so as to
require the payment of interest upon interest.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION.

5 (1) (a) Section 35—

Omit “(as an agent or otherwise)”, insert instead “, as an agent or otherwise,”.

(b) Section 35—

Omit “acting”, insert instead “act”.

10 (2) Section 55 (2) (a)—

Omit “, and shall be deemed never to have, satisfied”, insert instead “satisfy, and shall be deemed never to have satisfied,”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

SCHEDULE 2.

(Sec. 2.)

AMENDMENTS TO THE PROVISIONS OF THE STATUTE IN FORCE IN THIS DIVISION.

(a) Section 55—

Ord. "in any other case" inserted "in any other case" as an agent or otherwise."

(b) Section 55—

Ord. "and" inserted "and".

10 (2) Section 55 (2) (a)—

Ord. "in any other case" inserted "in any other case" as an agent or otherwise."

**COURTS OF PETTY SESSIONS (CIVIL CLAIMS)
AMENDMENT ACT, 1982, No. 42**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 42, 1982.

An Act to amend the Courts of Petty Sessions (Civil Claims) Act, 1970, in relation to the amounts for which certain civil actions may be brought in courts of petty sessions, and for certain other purposes. [Assented to, 5th May, 1982.]

Courts of Petty Sessions (Civil Claims) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Courts of Petty Sessions (Civil Claims) Amendment Act, 1982".

Commencement.

2. (1) Except as provided in subsections (2)–(4), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedules 1–3, commence on the day on which that provision commences.

(3) Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) The several provisions of Schedule 2 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Courts of Petty Sessions (Civil Claims) Act, 1970, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT EXTENDING THE CIVIL JURISDICTION OF COURTS OF PETTY SESSIONS.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

Courts of Petty Sessions (Civil Claims) Amendment.

Amendment of Act No. 11, 1970.

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

SCHEDULE 1.

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT EXTENDING THE CIVIL
JURISDICTION OF COURTS OF PETTY SESSIONS.**

Sections 12 (1), 13 (3), 15 (1), (6)—

Omit "\$3,000" wherever occurring, insert instead "\$5,000".

SCHEDULE 2.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 8 (1A)—

After section 8 (1), insert:—

(1A) The registrar of any court specified for the purposes of this subsection by the Minister by order published in the Gazette shall be appointed by the Governor under and in accordance with the Public Service Act, 1979.

(b) Section 8 (2)—

Before "shall", insert "which is not specified in any order in force under subsection (1A)".

(2) (a) Section 16 (2A) (a) (ii), (iii)—

Omit the subparagraphs, insert instead:—

(ii) stating that he elects that the action be transferred to an appropriate court specified in the notice; and

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(iii) in the case of an action commenced by the filing of a default summons, specifying the grounds of his defence; and

(b) Section 16 (2A) (b)—

Before “an”, insert “where, pursuant to paragraph (a) (iii), he is required to specify the grounds of his defence,”.

(c) Section 16 (3)—

Before “accompanied”, insert “or a notice”.

(3) Section 18 (1A)—

After section 18 (1), insert:—

(1A) If—

(a) notice of defence to an action pending in a court has been filed; and

(b) the registrar of the court is satisfied that the action can be more conveniently tried or determined by some other court,

he may order that the venue be changed, and that the action be sent for hearing to the other court.

(4) (a) Section 28 (1)—

Omit “, accompanied by an affidavit as to the defendant’s property and means,”.

(b) Section 28 (1A)—

After section 28 (1), insert:—

(1A) Any terms of payment specified in a statement under subsection (1) shall, for the purposes of subsections (4) (a) and (b) (ii), (4A) (b) and (d), (5) (b) and (d) and (10), be deemed to have been omitted from the statement if the statement, when filed with the registrar, was not accompanied by an affidavit as to the defendant’s property and means.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 28 (4)—

Omit “and affidavit are”, insert instead “is”.

(d) Section 28 (4) (b)—

After “plaintiff” where firstly occurring, insert “and the plaintiff has not in the action claimed damages in respect of personal injuries”.

(e) Section 28 (4A)—

After section 28 (4), insert:—

(4A) Where the confession is to the whole of the amount of the claim of the plaintiff, the plaintiff has in the action claimed damages in respect of personal injuries and the plaintiff, within the prescribed time—

(a) does not—

(i) make application for leave to amend his claim by increasing the amount of damages claimed; or

(ii) make application to the District Court for an order under section 21B (1) removing the action into the District Court and give notice in writing to the registrar that he has so applied; and

(b) does not file with the registrar a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(f) Section 28 (8)—

After “(4) (b) (ii)”, insert “, (4A) (d)”.

(g) Section 28 (10), (10A)—

Omit section 28 (10), insert instead:—

(10) Where, within the prescribed time, the plaintiff does not—

- (a) if the confession is to part only of the amount of the claim of the plaintiff—file a notice refusing to accept in full satisfaction of his claim the amount confessed to by the defendant; or
- (b) if the confession is to the whole of that amount and the plaintiff has in the action claimed damages in respect of personal injuries—make an application referred to in subsection (4A) (a) (i), or make an application referred to in, and give notice in accordance with, subsection (4A) (a) (ii),

but files with the registrar a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection (1), the registrar shall enter up judgment for the plaintiff for the amount to which the defendant has confessed, and—

- (c) the registrar shall be deemed to have made an order under section 40 that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (d) the plaintiff's notice of refusal shall be deemed a notice of objection under section 40 (5).

(10A) Where, within the prescribed time referred to in subsection (4A), the plaintiff makes an application referred to in subsection (4A) (a) (i), or makes an application referred to in, and gives notice in accordance with, subsection (4A) (a) (ii), and the application is, whether before or after the expiration of that prescribed time, refused—

- (a) the provisions of subsections (4A) and (10) shall apply as if the application had not been made; and
- (b) if the time at which the registrar is, in accordance with the rules, notified of the refusal occurs after the expiration of that prescribed time, the provisions of subsection (4A) shall so apply as if the reference therein to the expiration of the prescribed time were a reference to the time at which the registrar is so notified.

(5) Section 34A—

After section 34, insert:—

Professional costs following judgment by confession.

34A. Where—

- (a) after filing a notice of defence in an action, the defendant filed a statement under section 28 (1) confessing to the amount, or part of the amount, of the plaintiff's claim to which the notice of defence relates; and
- (b) judgment was entered up for the plaintiff in that action under section 28,

the court may, on the application of the judgment creditor, order that the judgment debtor shall pay to the judgment creditor such

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

amount as may be specified in the order for or towards the reasonable professional costs incurred by the judgment creditor in having a barrister or attorney (being a barrister or attorney retained by or on behalf of the judgment creditor or being an attorney employed, as an agent or otherwise, by an attorney so retained) act on his behalf in the action in which judgment was entered up under section 28, and the amount so specified shall form part of the judgment debt and may be enforced accordingly.

(6) Sections 36 (2), 37—

After “34” wherever occurring, insert “, 34A”.

(7) (a) Section 39 (1)—

After “shall” where secondly occurring, insert “, subject to subsection (1A) (b),”.

(b) Section 39 (1A)—

After section 39 (1), insert:—

(1A) The amount payable as interest under subsection (1) in respect of a judgment debt—

- (a) shall be payable on so much of the amount of the judgment debt as is from time to time unpaid; and
 - (b) shall not form part of the judgment debt so as to require the payment of interest upon interest.
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Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION.

(1) (a) Section 35—

Omit “(as an agent or otherwise)”, insert instead “, as an agent or otherwise,”.

(b) Section 35—

Omit “acting”, insert instead “act”.

(2) Section 55 (2) (a)—

Omit “, and shall be deemed never to have, satisfied”, insert instead “satisfy, and shall be deemed never to have satisfied,”.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 5th May, 1982.*



