

CONCURRENCE COPY

COURTS OF PETTY SESSIONS (CIVIL CLAIMS) AMENDMENT BILL, 1983

EXPLANATORY NOTE

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

This Bill is cognate with the Arbitration (Civil Actions) Bill, 1983.

The object of this Bill is to amend the Courts of Petty Sessions (Civil Claims) Act, 1970—

- (a) to authorise a court of petty sessions to refer certain civil claims before it to an arbitrator for determination in accordance with the proposed Arbitration (Civil Actions) Act, 1983 (Schedule 1);
 - (b) to enable additional powers to be conferred on certain registrars of courts of petty sessions (Schedule 2);
 - (c) to enable the cost of repairs consequent on a motor vehicle accident to be recovered by means of a default summons (Schedule 3);
 - (d) to clarify the limitation period applicable in relation to enforcement of judgments (Schedule 4); and
 - (e) to enable certain orders for payment of a judgment debt by instalments to be satisfied by payment of the instalments to the judgment creditor instead of to the registrar (Schedule 5).
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**COURTS OF PETTY SESSIONS (CIVIL CLAIMS)
AMENDMENT BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Courts of Petty Sessions (Civil Claims) Act, 1970,
with respect to the reference of actions to arbitration and the powers of
registrars, and for other purposes.

[MR WALKER—17 *March*, 1983.]

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, 1983".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall 10 commence on the date of assent to this Act.

(2) Schedule 1 shall commence on the day appointed and notified under section 2 (2) of the Arbitration (Civil Actions) Act, 1983.

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

15 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:—

20 SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ARBITRATION.

SCHEDULE 2.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO
POWERS OF REGISTRARS.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 3.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO
DEFAULT JUDGMENTS.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITATION PERIODS.

5 SCHEDULE 5.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PAYMENT OF JUDGMENT DEBTS BY INSTALMENTS.

Amendment of Act No. 11, 1970.

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

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ARBITRATION.

(1) Section 2—

Before the matter relating to Part IV, insert:—

15 PART IIIB.—ARBITRATION UNDER ARBITRATION (CIVIL ACTIONS)
ACT, 1983—s. 21H.

(2) Part IIIA—

After Part IIIA, insert:—

PART IIIB.

20 ARBITRATION UNDER ARBITRATION (CIVIL ACTIONS) ACT, 1983.

Arbitration under Arbitration (Civil Actions) Act, 1983.

21H. (1) Except as provided by subsection (3), a court prescribed
by the rules for the purposes of this section at any time may, whether
of its own motion or on application, order that, in accordance with the

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ARBITRATION
—*continued.*

5 rules, an action before it be referred for determination pursuant to the Arbitration (Civil Actions) Act, 1983, by an arbitrator or arbitrators holding office under section 5 (2) of that Act.

(2) A court shall, before making an order under section (1) in relation to an action—

10 (a) consider the preparations for the hearing and determination of the action;

(b) as far as possible, deal with all matters that may be dealt with by the court on application to the court before the hearing and determination of the action; and

15 (c) give such directions for the conduct of the proceedings before the arbitrator as appear best adapted for the just, quick and cheap disposal of the proceedings.

(3) A court shall not make an order under subsection (1) if—

20 (a) no issue in the action is contested or judgment in the action has been given or entered up and has not been set aside;

(b) the action involves complex questions of law or fact;

(c) the hearing of the action is expected to be lengthy;

(d) the action is an action within a class of actions prescribed by the rules as a class of actions that may not be so referred;
25 or

(e) cause is otherwise shown why the action should not be so referred.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ARBITRATION
—*continued.*

5 (4) A court may, at any time before the making of an award under the Arbitration (Civil Actions) Act, 1983, in relation to an action the subject of an order under subsection (1), revoke the order and give directions for the subsequent conduct of the action and as to any costs incurred before the revocation of the order.

10 (5) Except in the case of an action in respect of which an order for rehearing has been made under section 18 of the Arbitration (Civil Actions) Act, 1983, the award of an arbitrator in relation to an action referred to him under subsection (1) shall, after the expiration of the time prescribed by the rules for the purposes of this subsection, be deemed to be a judgment or order of the court
15 by which the matter was referred to the arbitrator.

(6) This section does not affect the operation of section 71.

(3) Section 71 (a)—

After “arbitration”, insert “(other than arbitration pursuant to the Arbitration (Civil Actions) Act, 1983)”.

20 (4) (a) Section 84 (1) (n)—

After “to this Act”, insert “or any other Act pursuant to which rules made under this Act apply”.

(b) Section 84 (1A) (h)—

Omit “and”.

25 (c) Section 84 (1A) (j), (k)—

After section 84 (1A) (i), insert:—

(j) an order under section 21H (1); and

(k) an order revoking an order made under section 21H (1) by a registrar,

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 2.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO POWERS
OF REGISTRARS.

5 Section 84 (1A)—

After section 84 (1), insert:—

(1A) Rules made pursuant to subsection (1) (c) may authorise the registrar of a court specified in the rules for the purposes of this subsection to exercise the powers of the court to enter a judgment to which all the parties consent or to make—

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(a) an order consented to by—

(i) the parties to the application for the order; and

(ii) any other persons who would be required to comply with the order or to suffer anything to be done under the order;

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(b) an order for substituted service of process;

(c) an order in respect of the amendment of documents;

(d) an order that the hearing and determination of an action be expedited or adjourned;

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(e) an order that proceedings be heard together;

(f) an order for extension of time;

(g) an order to give further particulars;

(h) an order staying proceedings, subject to the stay subsisting only pending a hearing by the court set down for the first available day; or

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(i) an order setting aside a default judgment subject to the filing of grounds of defence,

or such of those powers as are specified in the rules in relation to that registrar.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 3.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
DEFAULT JUDGMENTS.

5 Section 24 (2)—

At the end of section 24, insert:—

(2) In subsection (1), a reference to an action for the recovery of a debt or liquidated demand includes a reference to an action for the recovery of the cost of—

10 (a) repairs to, and any towing of, a motor vehicle within the meaning of the Motor Traffic Act, 1909, where the repairs and towing are a consequence of damage alleged to have been sustained as a result of the defendant's negligence; or

15 (b) repairs to property in, on or abutting a public street, within the meaning of that Act, where the repairs are a consequence of damage alleged to have been sustained as a result of the defendant's negligence in driving or riding such a motor vehicle.

SCHEDULE 4.

(Sec. 5.)

20 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITATION PERIODS.

(1) Section 2—

After the matter relating to Division 5 of Part V, insert:—

DIVISION 6.—*Limitation periods*—s. 64A.

Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITATION PERIODS—*continued.*

(2) Section 58 (1)—

- 5 Omit “made at any time within 12 years after judgment is given or entered up”.

(3) Part V, Division 6—

After Division 5, insert:—

DIVISION 6.—*Limitation periods.*

10 **Limitation on enforcement.**

64A. (1) Without the leave of the court—

- (a) an application may not be made by a judgment creditor under section 40 (1), 43A (1), 47 (3) or 58 (1); and
- 15 (b) a summons may not be filed by a judgment creditor under section 41 (1),

if a period of 12 years has elapsed since the judgment was given or entered up.

- (2) The court may not grant leave under subsection (1) in respect of a judgment unless a certified copy of the judgment is produced to the court by the applicant for leave.
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Courts of Petty Sessions (Civil Claims) Amendment.

SCHEDULE 5.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PAYMENT OF JUDGMENT DEBTS BY INSTALMENTS.

5 Section 40 (13)—

After section 40 (12), insert:—

(13) Where an order is made under this section for payment of a judgment debt by instalments, the instalments are payable—

- 10 (a) where the order requires payment of the instalments to be made to the registrar—in accordance with the order; or
- (b) where the order does not require payment of the instalments to be made to the registrar—to the judgment creditor or at his direction.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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