

CONCURRENCE COPY

DISTRICT COURT (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 District Court Act, 1973—

- (a) to authorise the District Court to refer certain civil actions 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 the District Court (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);
 - (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); and
 - (f) to facilitate the hearing of proceedings ancillary to an action (Schedule 6).
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DISTRICT COURT (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the District Court Act, 1973, with respect to the reference of actions to arbitration and the powers of registrars, and for other purposes.

[MR WALKER—17 March, 1983.]

District Court (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 "District Court (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 1–6, commence on the day on which the provision commences.

15 **Principal Act.**

3. The District Court Act, 1973, 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.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
POWERS OF REGISTRARS.

District Court (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.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PAYMENT OF JUDGMENT DEBTS BY INSTALMENTS.

SCHEDULE 6.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO
HEARING OF ANCILLARY PROCEEDINGS.

Amendment of Act No. 9, 1973.

10 5. The Principal Act is amended in the manner set forth in Schedules 1–6.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ARBITRATION.

(1) Section 3—

15 From the matter relating to Subdivision 6 of Division 3 of Part III,
omit “s. 63”, insert instead “ss. 63, 63A”.

(2) Section 21 (1) (a)—

Omit “section”, insert instead “sections 63A and”.

District Court (Amendment).

SCHEDULE 1—continued.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ARBITRATION
—continued.

(3) Section 63 (1)—

5 After “arbitrator”, insert “other than an arbitrator acting pursuant to the Arbitration (Civil Actions) Act, 1983”.

(4) Section 63A—

After section 63, insert:—

Arbitration under Arbitration (Civil Actions) Act, 1983.

10 63A. (1) Except as provided by subsection (3), the Court sitting at a proclaimed place prescribed by the rules for the purposes of this section at any time may, whether of its own motion or on application, order that, in accordance with the rules, an action before it under this Part (Division 8 excepted) be referred for determination pursuant to
15 the Arbitration (Civil Actions) Act, 1983, by an arbitrator or arbitrators holding office under section 5 (1) of that Act.

(2) The Court shall, before making an order under subsection (1) in relation to an action—

- (a) consider the preparations for trial of the action;
- 20 (b) as far as possible, deal with all matters that may be dealt with by the Court on application to the Court before trial of the action; and
- (c) give such directions for the conduct of the proceedings before the arbitrator as appear best adapted for the just,
25 quick and cheap disposal of the proceedings.

(3) The Court shall not make an order under subsection (1) if—

- (a) no issue in the action is contested or judgment in the action has been given or entered up and has not been set aside;
- 30 (b) the action involves complex questions of law or fact;
- (c) the hearing of the action is expected to be lengthy;

District Court (Amendment).

SCHEDULE 1—*continued.*

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

- 5 (d) the action is an action within a class of actions prescribed by the rules as a class of actions that may not be so referred; or
- (e) cause is otherwise shown why the action should not be so referred.

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

15 (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.

20 (6) This section does not affect any other power of the Court to refer a matter to arbitration.

(5) Section 161 (1) (t)—

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

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
POWERS OF REGISTRARS.

(1) Section 21 (1) (b) (iv)—

30 Omit “and”.

District Court (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
POWERS OF REGISTRARS—*continued.*

(2) Section 21 (1) (b) (v)—

5 Omit “together.”, insert instead “together;”.

(3) Section 21 (1) (b) (vi)–(viii)—

After section 21 (1) (b) (v), insert:—

(vi) orders for extension of time;

10 (vii) orders staying proceedings, subject to the stay subsisting only pending a hearing by the Court set down for the first available day; and

(viii) orders setting aside a default judgment subject to the filing of grounds of defence.

(4) Section 21 (1B)—

15 After section 21 (1A), insert:—

20 (1B) The registrar for a proclaimed place specified for the purposes of this subsection by the Governor by order published in the Gazette may exercise, in or in respect of proceedings in relation to which that proclaimed place is the proper place, the powers conferred on the registrar for Sydney by subsection (1), or such of those powers as may be specified in the order.

District Court (Amendment).

SCHEDULE 3.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
DEFAULT JUDGMENTS.

5 Section 53 (3)—

After section 53 (2), insert:—

(3) 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 84A—

After section 84, insert:—

Limitation periods.

- 25 84A. (1) An application by a judgment creditor may not, without the leave of the Court, be made under section 87 (1), 91 (1), 97 (1), 107 (1) or 113 (1) if a period of 12 years has elapsed since the judgment was given or entered up.

District Court (Amendment).

SCHEDULE 4—*continued.*

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

5 (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.

(2) Section 107 (2) (a)—
Omit the paragraph.

SCHEDULE 5.

(Sec. 5.)

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

(1) Section 87 (3)—

15 Omit “, whether payable in one sum or by instalments, shall be payable to the registrar”, insert instead:—

shall be payable to the registrar where—

(a) it is payable in one sum; or

20 (b) an order for its payment by instalments requires the instalments to be paid to the registrar or was made before the date of assent to the District Court (Amendment) Act, 1983

(2) Section 87 (3A)—

After section 87 (3), insert:—

25 (3A) Where the Court or a registrar orders payment of a judgment debt by instalments and does not require payment of the instalments to the registrar, the instalments are payable to the judgment creditor or at his direction.

District Court (Amendment).

SCHEDULE 6.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
HEARING OF ANCILLARY PROCEEDINGS.

5 Section 52 (2)—

At the end of section 52, insert:—

- (2) On application by a party to an action and for cause shown, the Court sitting at any proclaimed place may order that any or all proceedings ancillary to the action be heard and disposed of by the Court sitting at that or some other proclaimed place specified in the order, notwithstanding that
- 10 the proclaimed place to which the order relates is not the proper place in relation to the action.

BY AUTHORITY

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

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