

**COURTS LEGISLATION (PROCEDURE) AMENDMENT  
ACT 1989 No. 169**

**NEW SOUTH WALES**



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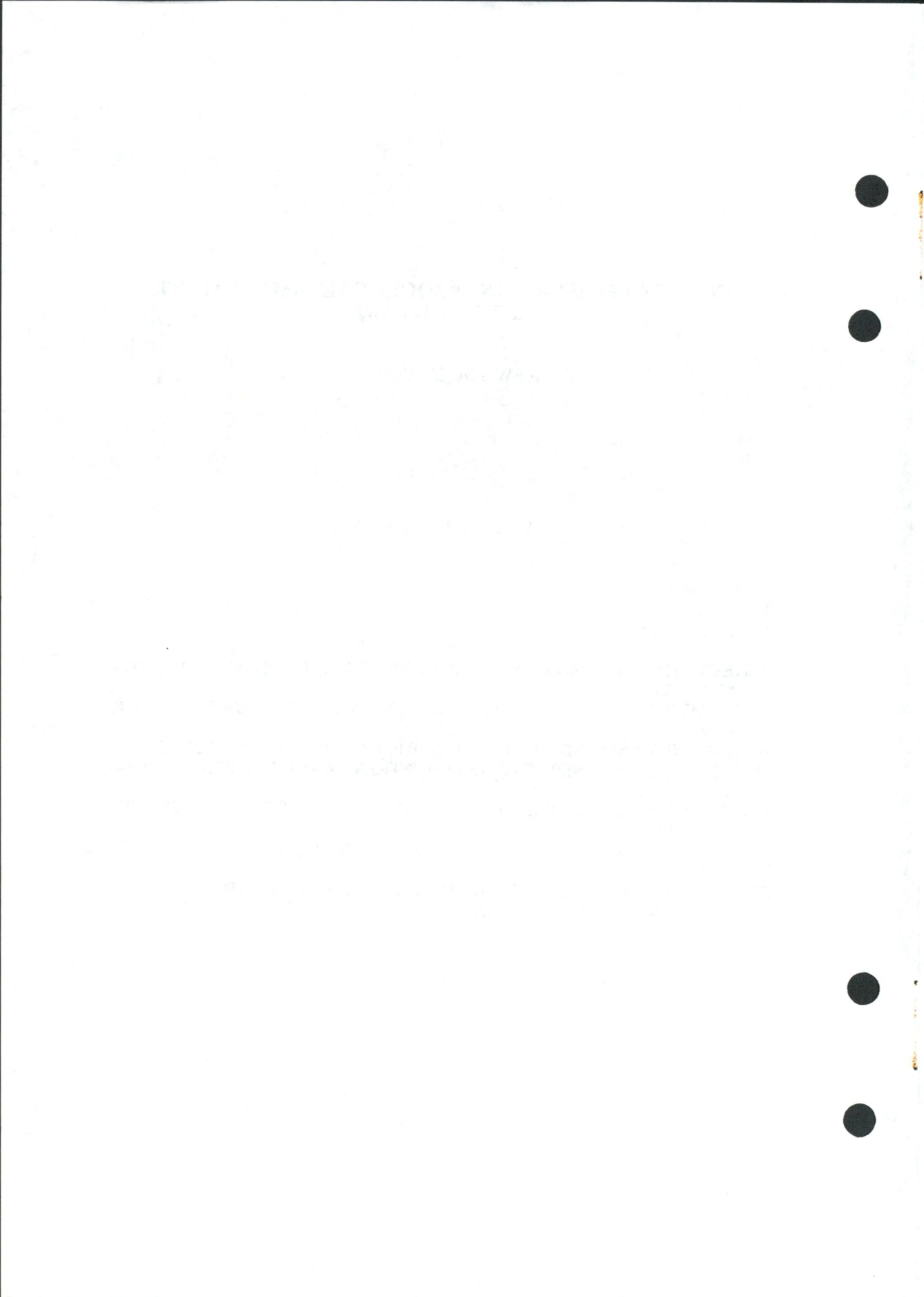
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**COURTS LEGISLATION (PROCEDURE) AMENDMENT  
ACT 1989 No. 169**

**NEW SOUTH WALES**



**Act No. 169, 1989**

An Act to amend various Acts to make further provision for the procedure of the Supreme Court, Industrial Commission, Land and Environment Court, Compensation Court, District Court and Local Courts; and for other purposes. [Assented to 14 December 1989]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Courts Legislation (Procedure) Amendment Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendments**

3. Each Act specified in Schedules 1 - 8 is amended as set out in those Schedules.

**Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedules 1 - 8 does not form part of this Act.

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**SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43**

(Sec. 3)

**Amendments**

(1) Long title:

Before "District Court", insert "Supreme Court,".

(2) Section 3 (**Definitions**):

(a) Insert in alphabetical order in section 3 (1):

"**action**" includes proceedings;

(b) In the definition of "referred action" in section 3 (1), before "section 63A", insert "section 76B of the Supreme Court Act 1970,".

SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued*

- (c) In the definition of "rules" in section 3 (1), before "District Court", insert "Supreme Court Act 1970, the".
  - (d) In section 3 (2), before "section 63A", insert "section 76B of the Supreme Court Act 1970,".
- (3) Section 4 (**Independent operation of Act**):
- (a) In section 4 (1), after "provisions of", insert "any rules made under section 124 of the Supreme Court Act 1970 and of".
  - (b) Renumber section 4 (2) (a) and (b) as section 4 (2) (b) and (c), respectively, and insert before section 4 (2) (b) as so renumbered:
    - (a) section 76B of the Supreme Court Act 1970;
- (4) Section 5 (**Appointment to office as arbitrator**):
- (a) Renumber section 5 (1) - (7) as section 5 (2) - (8), respectively, and insert before section 5 (2) as so renumbered:
    - (1) The Chief Justice may appoint suitable persons to be arbitrators to hear and determine actions to which orders under section 76B of the Supreme Court Act 1970 apply.
  - (b) From section 5 (4) - (6), as so renumbered, omit "subsection (1) or (2)" wherever occurring, insert instead "this section".
- (5) Section 7 (**Jurisdiction of arbitrator**):
- (a) In section 7 (1A), after "Act", insert ", but without limiting the specific powers and authorities of an arbitrator under this Act".
  - (b) In section 7 (1B), after "14", insert "or any other power in respect of contempt".

SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued*

(6) Section 8 (**Appearances**):

At the beginning of section 8, insert:

(1) In relation to appearances before an arbitrator in proceedings on a referred action under section 76B of the Supreme Court Act 1970, a party to the proceedings has the same rights as to:

(a) appearance by a barrister or solicitor, or otherwise; and

(b) examination and cross-examination of witnesses,

as the party would have in relation to appearances before the Supreme Court.

(7) Section 11 (**Issue of subpoenas**):

At the beginning of section 11, insert:

(1) The Supreme Court has the same powers in respect of a referred action under section 76B of the Supreme Court Act 1970 as the Court would have in respect of the action if it had not been referred to an arbitrator, for and with respect to:

(a) ordering persons to attend as witnesses at proceedings or to attend and produce at proceedings any documents; and

(b) enforcing compliance with any such orders.

(8) Section 16 (**Costs**):

Re-number section 16 (1) and (2) as section 16 (2) and (3), respectively, and insert before section 16 (2) as so renumbered:

(1) An arbitrator has the same powers in relation to costs in an action referred to the arbitrator under section 76B of the Supreme Court Act 1970 as the Supreme Court would have had if the hearing before the arbitrator had been a hearing before the Court.

SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued*

- (9) Section 17 (**Judicial supervision of arbitrator**):  
In section 17 (1) (a), after "section 69", insert "or 101".
- (10) Section 18 (**Rehearing**):
- (a) After section 18 (2), insert:
- (2A) Despite subsection (2), a rehearing need not be ordered under that subsection if:
- (a) it appears to the court or registrar to whom the application for rehearing is made that the applicant failed to attend a hearing before an arbitrator on the referred action concerned; and
- (b) the applicant fails to satisfy the court or registrar that there was good reason for the failure to attend the hearing.
- (b) In section 18 (4), before "section 148B", insert "the Supreme Court Act 1970,".
- (11) Section 20 (**Regulations**):
- (a) After section 20 (1), insert:
- (1A) Without prejudice to the generality of subsection (1) and section 124 of the Supreme Court Act 1970, the rules in force under that Act that, but for this subsection, would not apply to or in respect of an arbitrator and an action referred to the arbitrator under section 76B of that Act, so apply, with such modifications as may be necessary or as the rules may prescribe, in the same way as they would apply to and in respect of the Supreme Court and the action if the action had not been so referred.
- (b) In section 20 (2), omit "section 161 (1) (t)", insert instead "section 161".
- (c) In section 20 (3), omit "section 84 (1) (n)", insert instead "section 84".

**SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued***

**Explanatory note**

Items (1) - (9) and (11) are consequential on the enactment of proposed section 76B of the Supreme Court Act 1970 (which will authorise the Supreme Court to refer a civil claim before it to an arbitrator under the Arbitration (Civil Actions) Act 1983). The amendments will make the necessary changes for the application of the Act to actions in the Supreme Court.

Item (10) qualifies the automatic right of a party to an arbitration under the Act to be granted a rehearing by the court which referred the matter for arbitration. A rehearing will now be able to be refused if the party failed without good reason to attend a hearing before the arbitrator.

**SCHEDULE 2 - AMENDMENT OF COMPENSATION COURT ACT 1984 No. 89**

(Sec. 3)

**Amendment - age of acting Judges**

**Section 11 (Acting Chief Judge and acting Judges):**

In section 11 (6), omit "72", insert instead "75".

**Explanatory note**

The proposed amendment will increase from 72 to 75 years the maximum age for acting Judges of the Compensation Court who are retired Judges (whether of the Compensation Court or another State court).

**SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT 1973 No. 9**

(Sec. 3)

**Amendment - age of acting Judges**

**(1) Section 18 (Acting Judges):**

In section 18 (4), omit "72", insert instead "75".

**Explanatory note - item (1)**

Item (1) will increase from 72 to 75 years the maximum age for acting Judges of the District Court who are retired Judges (whether of the District Court or another State court).



**SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT  
1973 No. 9 - *continued***

**Amendment - consequential**

- (2) Section 63A (**Arbitration under Arbitration (Civil Actions) Act 1983**):

In section 63A (1), omit "section 5 (1)", insert instead "section 5 (2)".

**Explanatory note - item (2)**

Item (2) is consequential on the proposed extension to the Supreme Court of the scheme for compulsory arbitration in civil actions.

**Amendment - speedy determination of real questions**

- (3) Section 68A:

After section 68, insert:

**Directions for speedy determination of real questions in civil proceedings**

68A. The Court may, from time to time, give such directions as the Court thinks fit (whether or not inconsistent with the rules) for the speedy determination of the real questions between the parties to a civil action.

**Explanatory note - item (3)**

Item (3) will enable the District Court to give directions for the speedy determination of the real questions in a civil action. The Supreme Court currently has such a power in relation to commercial proceedings and that power is proposed to be expanded to cover all civil proceedings (see the amendments to the Supreme Court Act 1970 in this Act).

**Amendments - jurisdiction in equity proceedings and proceedings for possession of land**

- (4) Section 133 (**Jurisdiction in proceedings for possession of land**):

Omit "\$10,000", insert instead "\$20,000".

- (5) Sections 134 (**Jurisdiction in equity proceedings**), 140 (**Temporary injunctions**):

**SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT  
1973 No. 9 - *continued***

Omit "\$5,000" wherever occurring, insert instead "\$20,000".

**(6) Section 147 (Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court):**

Omit section 147 (1), insert instead:

(1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value \$20,000 in the case of proceedings under section 133 or 134, the validity of any order already made in the proceedings shall not be affected by that decision, and:

- (a) the Court is to order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (b), the proceedings are to be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court; and
- (b) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (a) had not been made and as if the subject-matter did not exceed \$20,000 in amount or value.

**Explanatory note - items (4), (5) and (6)**

Items (4), (5) and (6) will increase to \$20,000 the limit on the District Court's jurisdiction in equity proceedings (current limit \$5,000) and proceedings for possession of land (current limit \$10,000). The jurisdictional limit in common law proceedings remains at \$100,000.

**Amendment - transfer of proceedings from Supreme Court**

**(7) Section 143 (Transfer of proceedings from Supreme Court):**

After section 143 (2), insert:

(3) In considering any limitation on the jurisdiction of the District Court for the purposes of determining whether proceedings can be transferred under this section, the

**SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT  
1973 No. 9 - *continued***

Supreme Court is to have regard to the limitation as in force when the determination is made.

**Explanatory note - item (7)**

Item (7) makes it clear that, when considering the jurisdictional limitations on the District Court in the context of a proposal to transfer proceedings from the Supreme Court to the District Court, the Supreme Court is to consider the limitation at the level at which it is set when the proposal for transfer is determined (rather than, for example, the level at the time the proceedings were originally commenced).

**SCHEDULE 4 - AMENDMENT OF INDUSTRIAL ARBITRATION  
ACT 1940 No. 2**

(Sec. 3)

**Amendment - age of acting Judges**

Section 14 (**Industrial commission**):

In section 14 (4A), omit "72", insert instead "75".

**Explanatory note**

The proposed amendment will increase from 72 to 75 years the maximum age for acting Judges of the Industrial Commission who are retired judicial members of the Commission or retired Judges of another State court.

**SCHEDULE 5 - AMENDMENT OF LAND AND ENVIRONMENT  
COURT ACT 1979 No. 204**

(Sec. 3)

**Amendment - age of acting Judges**

Section 11 (**Acting Judges**):

In section 11 (4), omit "72", insert instead "75".

**Explanatory note**

The proposed amendment will increase from 72 to 75 years the maximum age for acting Judges of the Land and Environment Court who are retired Judges (whether of that Court or another State court).

**SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11**

(Sec. 3)

**Amendment - extra-territorial jurisdiction**

(1) Section 17:

Omit the section, insert instead:

**Jurisdiction when cause of action or defendant outside the State**

17. (1) A court has jurisdiction in accordance with this Act and a registrar may exercise the powers conferred on a registrar by or under this Act:

- (a) even if part of the cause of action arose outside New South Wales, so long as a material part of the cause of action arose within New South Wales; and
- (b) even if the whole cause of action arose outside New South Wales, so long as the defendant was resident within New South Wales at the time of service of the document which commenced the action; and
- (c) even if the defendant is not within New South Wales, so long as the whole or a material part of the cause of action arose within New South Wales and the defendant was within a State or a part of the Commonwealth (within the meaning of the Service and Execution of Process Act 1901 of the Commonwealth) at the time of service of the document which commenced the action.

(2) Subsection (1) (c) applies whether or not the defendant has ever been resident or carried on business in New South Wales.

(3) In this section, "defendant" includes, if there are 2 or more defendants, any one of those defendants.

(4) This section applies whether the cause of action arose before or after the commencement of this section.

**SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued***

**Explanatory note - item (1)**

Item (1) will bring Local Courts into line with the District Court in relation to the extent of their extra-territorial jurisdiction in civil matters. Currently it is provided that a Local Court has jurisdiction even if the defendant is not within the State. There is a suggestion that jurisdiction will not lie unless every material part of the cause of action arose within the State. As proposed to be substituted, section 17 provides that a Local Court has jurisdiction in either of the following cases:

- . where the whole or a material part of the cause of action arose within the State (if the defendant is not resident in the State there is an additional requirement that the defendant be amenable to the procedure under the Service and Execution of Process Act 1901 of the Commonwealth);
- . where the defendant was resident in the State when the action was commenced (even if the whole cause of action arose outside the State).

**Amendment - consequential**

- (2) Section 21H (**Arbitration under Arbitration (Civil Actions) Act 1983**):

In section 21H (1), omit "section 5 (2)", insert instead "section 5 (3)".

**Explanatory note - item (2)**

Item (2) is consequential on the proposed extension to the Supreme Court of the scheme for compulsory arbitration in civil actions.

**Amendment - costs awarded by arbitrator**

- (3) Section 34 (**Costs to be in discretion of court**):

In section 34 (3), omit "a Magistrate on the application of a party", insert instead "the arbitrator who determined the action".

**Explanatory note - item (3)**

Item (3) will extend to an arbitrator under the Arbitration (Civil Actions) Act 1983 who determines an action referred by a Local Court the power (currently exercisable only by a Magistrate) to certify that the costs of the action should not be determined in accordance with the prescribed scales because special circumstances exist.

SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

**Amendments - execution against land**

(4) Section 58 (**Execution**):

In section 58 (1), before "all bailiffs", insert "the Sheriff and".

(5) Section 59 (**Sheriff or bailiff to take under writ of execution**):

(a) Omit section 59 (1), insert instead:

(1) The Sheriff or a bailiff of any court may seize and take under any writ of execution whereby he or she is directed to levy any sum of money, and may cause to be sold:

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be possessed or entitled, or which the person can, either at law or in equity, assign or dispose of, except:

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate \$500 in value,

being used as such by the judgment debtor or any member of his or her family; and

(b) subject to this Division, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which the person can, either at law or in equity, assign or dispose of.

(b) In section 59 (6), omit "the property", insert instead "the personal property".

(c) In section 59 (7), omit "any property", insert instead "any personal property".

SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

(6) Section 59A (**Auctioning of seized property**):

Omit "the bailiff" wherever occurring, insert instead "the Sheriff or bailiff".

(7) Section 60 (**Certificate may issue in respect of unsatisfied judgment or order**):

Omit the section.

(8) Section 62 (**Realty and leaseholds**):

After "execution", insert "except as provided by section 62A".

(9) Sections 62A - 62B:

After section 62, insert:

**Special provisions relating to execution against land**

62A. (1) This section does not apply to a writ of execution unless the amount required to satisfy it is at least \$3,000 or such other amount as may be prescribed.

(2) Subject to section 105 of the Real Property Act 1900 and section 188 of the Conveyancing Act 1919, a writ of execution, when delivered to the Sheriff or bailiff required to execute it, binds land in the same manner as a writ of execution against property binds goods and chattels.

(3) Land is not to be sold under a writ of execution before all the property referred to in section 59 (1) (a) that may be sold under the writ has been sold unless:

- (a) the judgment debtor requests that the land be sold before all or any of that property is sold; or
- (b) the Sheriff or bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.

(4) The Sheriff or bailiff must not cause land to be sold under a writ of execution except on compliance by the

SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

judgment creditor and the Sheriff or bailiff with the prescribed procedures, but a purchaser of the land, and the Registrar-General, need not be concerned to inquire whether this subsection has been complied with.

(5) The publication under section 59 (5) of notice of the intended sale under a writ of execution of any land is to be considered to be a seizure by the Sheriff or bailiff of the land under the writ, and no actual seizure of the land is necessary in order to authorise its sale under the writ.

(6) If land that is not under the provisions of the Real Property Act 1900 is sold under a writ of execution, the registrar of the court that is nearest to the place of sale is to execute a proper assurance in favour of the purchaser.

**Sale or mortgage by judgment debtor of land affected by writ**

62B. (1) In this section:

"**issuing registrar**", in relation to a writ of execution, means the registrar of the court at which the writ of execution was issued;

"**notice of consent**" means the notice referred to in subsection (2) (a).

(2) If land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the Real Property Act 1900, or which has been registered in the register of causes, writs, and orders affecting land in accordance with section 186 of the Conveyancing Act 1919 and:

- (a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor; and
- (b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage; and



SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

- (c) the notice of consent is filed with the issuing registrar; and
- (d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

(3) If during that prescribed period:

- (a) the judgment debtor sells or mortgages the land; and
- (b) in the case of a sale, the amount of the deposit (if any) is paid to the issuing registrar, to be held by the registrar as stakeholder; and
- (c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than:
  - (i) the minimum amount referred to in subsection (2) (b); or
  - (ii) if the judgment creditor notifies the issuing registrar in writing that he or she consents to payment of a specified amount that is less than that minimum amount - that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar must, upon production to him or her of the instrument evidencing the sale or mortgage, and if he or she is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with his or her consent to the sale or mortgage.

**SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued***

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent is not, in relation to the land, affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), is, subject to and in accordance with the rules:

- (a) to be paid to or at the direction of the judgment creditor; and
- (b) to be in reduction of the judgment debt.

**Explanatory note - items (4)-(9)**

Items (4) - (9) will permit execution against land on a Local Court judgment where the amount of the judgment is at least \$3,000 (or such other amount as may be prescribed by rules of court). Currently such a judgment can only be enforced against land by using the District Court procedure. The District Court procedure will no longer be available so that execution against land will not be possible in the case of judgments for less than \$3,000. Execution against land is currently available for judgments of the Supreme Court and District Court and the proposed provision for Local Courts will be in the same terms as and have the same safeguards as the provisions for those Courts. Other minor or consequential amendments are also made.

**Amendment - orders for costs**

(10) Section 84 (Rules):

Omit section 84 (1A) (1), insert instead:

- (1) an order for costs of proceedings.

**Explanatory note - item (10)**

Item (10) will enable rules to be made under the Act authorising a registrar of a Local Court to make orders for costs. Currently the rules can only authorise a registrar to make an order for costs in respect of an application to set aside a judgment or order.

**SCHEDULE 7 - AMENDMENT OF REAL PROPERTY  
ACT 1900 No. 25**

(Sec. 3)

**Amendment - execution against land in Local Court**

**Section 105A (Effect of recording of writ):**

Before "section 112 (3) of the District Court Act, 1973" wherever occurring, insert "section 62B (3) of the Local Courts (Civil Claims) Act 1970,".

**Explanatory note**

The proposed amendment is consequential on the amendment to the Local Courts (Civil Claims) Act 1970 that will enable execution against land in a Local Court. Section 105A of the Real Property Act 1900 allows registration of a dealing affecting land in respect of which a writ is registered and that provision will now apply to Local Court writs in the same way as it applies to Supreme Court and District Court writs.

**SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52**

(Sec. 3)

**Amendments - ages of acting Judges and acting Masters**

(1) **Section 37 (Acting Judges):**

In section 37 (4), omit "72", insert instead "75".

(2) **Section 111 (Appointment):**

In section 111 (6), omit "72", insert instead "75".

**Explanatory note - items (1) and (2)**

Items (1) and (2) will increase from 72 to 75 years the maximum age for acting Judges of the Supreme Court who are retired Judges (whether of the Supreme Court or another State court) and for acting Masters who are retired Masters.

**Amendment - speedy determination of real questions**

(3) **Section 76A (Directions for the speedy determination of real questions):**

Omit "proceedings in the Commercial Division", insert instead "civil proceedings".

**SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52 - *continued***

**Explanatory note - item (3)**

Item (3) will expand the scope of a provision that enables the Supreme Court to give directions for the speedy determination of the real questions in proceedings so that the provision will not be restricted to proceedings in the Court's Commercial Division but will apply to civil proceedings generally.

**Amendment - civil arbitration**

(4) Section 76B:

After section 76A, insert:

**Arbitration under Arbitration (Civil Actions) Act 1983**

76B. (1) The Court may, whether of its own motion or on application, order that, in accordance with the rules, proceedings before it on a claim for the recovery of damages or other money be referred for determination pursuant to the Arbitration (Civil Actions) Act 1983 by an arbitrator or arbitrators holding office under section 5 (1) of that Act.

(2) Before making an order under subsection (1) in relation to proceedings, the Court:

- (a) is to consider the preparations for trial 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 trial 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 Court may not make an order under subsection (1) 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) the proceedings involve complex questions of law or fact; or

SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52 - *continued*

- (c) the hearing of the proceedings is expected to be lengthy, or
- (d) the proceedings are proceedings within a class of proceedings prescribed by the rules as a class of proceedings that may not be so referred; or
- (e) cause is otherwise shown why the proceedings should not be so referred.

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

(5) Except in the case of proceedings 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 proceedings referred to the arbitrator under subsection (1) is, after the expiration of the time prescribed by the rules for the purposes of this subsection, to be taken to be a judgment or order of the Court.

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

(7) This section applies to proceedings even if they arose or were commenced before the commencement of this section.

**Explanatory note - item (4)**

Item (4) will allow the Supreme Court to refer civil proceedings before it to an arbitrator under the Arbitration (Civil Actions) Act 1983 for decision by the arbitrator. The decision of an arbitrator is to be taken to be the decision of the

SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52 - *continued*

Supreme Court but there is power to order a rehearing of the matter by the Court. The proposed new provision is the same as provisions that authorise the referral to an arbitrator of civil actions before a Local Court or the District Court.

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[*Minister's second reading speech made in -  
Legislative Assembly on 12 October 1989  
Legislative Council on 21 November 1989*]







FIRST PRINT

**COURTS LEGISLATION (PROCEDURE) AMENDMENT  
BILL 1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend certain Acts:

- (a) to extend to the Supreme Court the scheme for compulsory arbitration in civil proceedings that currently applies to the District Court and Local Courts and to make a minor amendment to that scheme;
- (b) to enable a writ of execution issued by a Local Court to be enforced against land if the writ is for at least \$3,000;
- (c) to make it clear that the jurisdictional limit on a transfer of proceedings from the Supreme Court to the District Court is the limit in force at the time of transfer;
- (d) to increase to \$20,000 the limit on the District Court's jurisdiction in equity proceedings and proceedings for possession of land;
- (e) to clarify the civil jurisdiction of a Local Court when the defendant is in another State;
- (f) to enable a Local Court registrar to make orders for costs in any proceedings;
- (g) to enable an arbitrator (under the Arbitration (Civil Actions) Act 1983) on an action referred by a Local Court to certify in special circumstances that costs should not be determined in accordance with the prescribed scales;
- (h) to extend the procedural provisions of section 76A of the Supreme Court Act 1970 (Directions for the speedy determination of real questions in commercial proceedings) to other Divisions of the Supreme Court and to insert a similar provision in the District Court Act 1973;

*Courts Legislation (Procedure) Amendment 1989*

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- (i) to increase from 72 to 75 years the maximum age for Acting Judges of the Supreme Court, Industrial Commission, Land and Environment Court, District Court and Compensation Court who are retired Judges and for Acting Masters of the Supreme Court who are retired Masters.

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Schedule 1 makes amendments to the Arbitration (Civil Actions) Act 1983.

Schedule 2 makes amendments to the Compensation Court Act 1984.

Schedule 3 makes amendments to the District Court Act 1973.

Schedule 4 makes amendments to the Industrial Arbitration Act 1940.

Schedule 5 makes amendments to the Land and Environment Court Act 1979.

Schedule 6 makes amendments to the Local Courts (Civil Claims) Act 1970.

Schedule 7 makes amendments to the Real Property Act 1900.

Schedule 8 makes amendments to the Supreme Court Act 1970.

The amendments to each Act are explained in detail in the explanatory note relating to the Act concerned set out in each Schedule.

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FIRST PRINT

**COURTS LEGISLATION (PROCEDURE) AMENDMENT  
BILL 1989**

NEW SOUTH WALES



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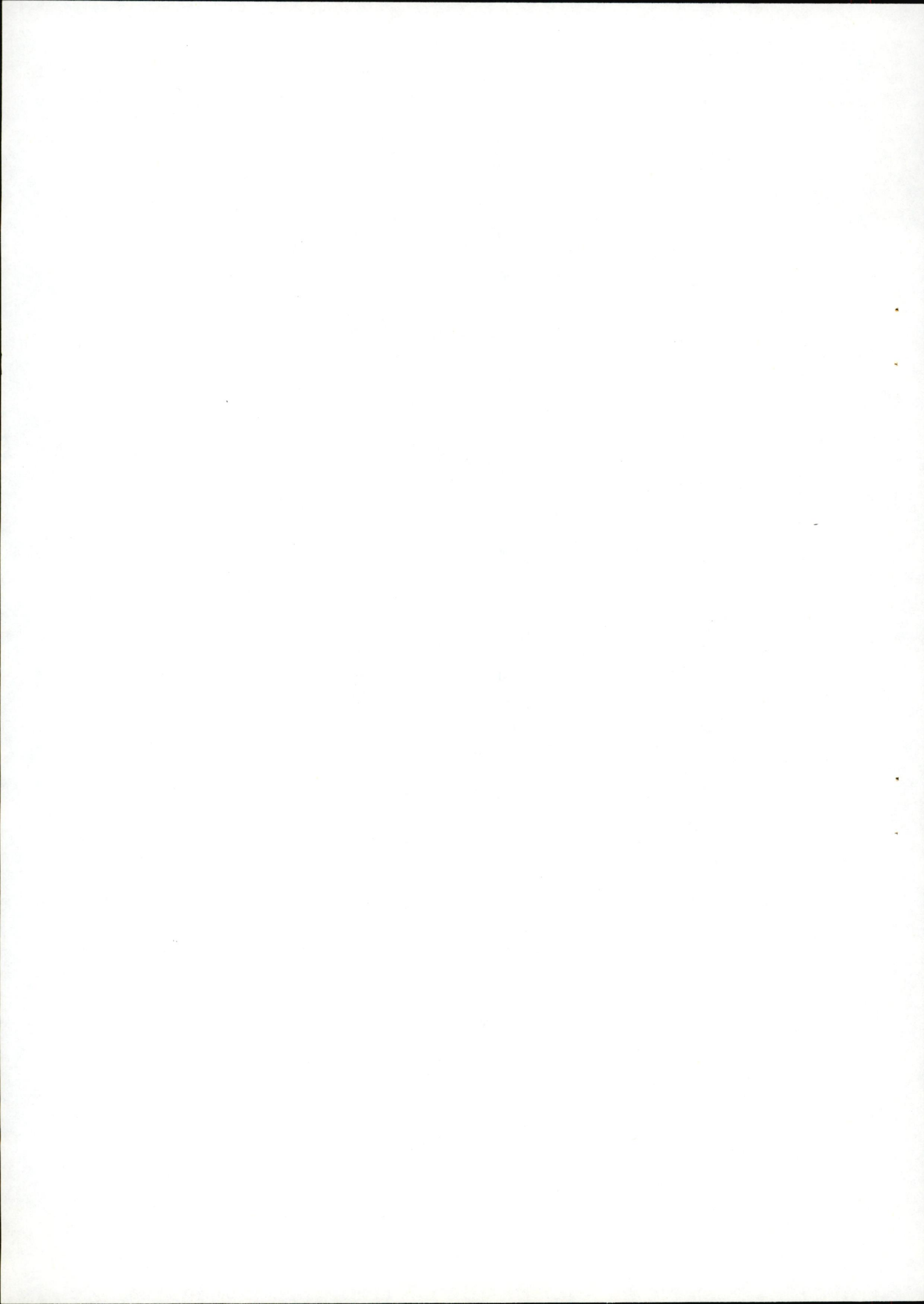
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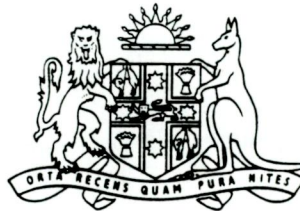
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**COURTS LEGISLATION (PROCEDURE) AMENDMENT BILL  
1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend various Acts to make further provision for the procedure of the Supreme Court, Industrial Commission, Land and Environment Court, Compensation Court, District Court and Local Courts; and for other purposes.

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*Courts Legislation (Procedure) Amendment 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Courts Legislation (Procedure) Amendment Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendments**

3. Each Act specified in Schedules 1 - 8 is amended as set out in those Schedules.

**Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedules 1 - 8 does not form part of this Act.

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**SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL  
ACTIONS) ACT 1983 No. 43**

(Sec. 3)

**Amendments**

(1) Long title:

Before "District Court", insert "Supreme Court".

(2) Section 3 (**Definitions**):

(a) Insert in alphabetical order in section 3 (1):

"action" includes proceedings;

(b) In the definition of "referred action" in section 3 (1), before "section 63A", insert "section 76B of the Supreme Court Act 1970".

SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued*

- (c) In the definition of "rules" in section 3 (1), before "District Court", insert "Supreme Court Act 1970, the".
  - (d) In section 3 (2), before "section 63A", insert "section 76B of the Supreme Court Act 1970,".
- (3) Section 4 (**Independent operation of Act**):
- (a) In section 4 (1), after "provisions of", insert "any rules made under section 124 of the Supreme Court Act 1970 and of".
  - (b) Renumber section 4 (2) (a) and (b) as section 4 (2) (b) and (c), respectively, and insert before section 4 (2) (b) as so renumbered:
    - (a) section 76B of the Supreme Court Act 1970;
- (4) Section 5 (**Appointment to office as arbitrator**):
- (a) Renumber section 5 (1) - (7) as section 5 (2) - (8), respectively, and insert before section 5 (2) as so renumbered:
    - (1) The Chief Justice may appoint suitable persons to be arbitrators to hear and determine actions to which orders under section 76B of the Supreme Court Act 1970 apply.
  - (b) From section 5 (4) - (6), as so renumbered, omit "subsection (1) or (2)" wherever occurring, insert instead "this section".
- (5) Section 7 (**Jurisdiction of arbitrator**):
- (a) In section 7 (1A), after "Act", insert ", but without limiting the specific powers and authorities of an arbitrator under this Act".
  - (b) In section 7 (1B), after "14", insert "or any other power in respect of contempt".

SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued*

(6) Section 8 (**Appearances**):

At the beginning of section 8, insert:

(1) In relation to appearances before an arbitrator in proceedings on a referred action under section 76B of the Supreme Court Act 1970, a party to the proceedings has the same rights as to:

(a) appearance by a barrister or solicitor, or otherwise; and

(b) examination and cross-examination of witnesses,

as the party would have in relation to appearances before the Supreme Court.

(7) Section 11 (**Issue of subpoenas**):

At the beginning of section 11, insert:

(1) The Supreme Court has the same powers in respect of a referred action under section 76B of the Supreme Court Act 1970 as the Court would have in respect of the action if it had not been referred to an arbitrator, for and with respect to:

(a) ordering persons to attend as witnesses at proceedings or to attend and produce at proceedings any documents; and

(b) enforcing compliance with any such orders.

(8) Section 16 (**Costs**):

Renumber section 16 (1) and (2) as section 16 (2) and (3), respectively, and insert before section 16 (2) as so renumbered:

(1) An arbitrator has the same powers in relation to costs in an action referred to the arbitrator under section 76B of the Supreme Court Act 1970 as the Supreme Court would have had if the hearing before the arbitrator had been a hearing before the Court.



SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued*

- (9) Section 17 (**Judicial supervision of arbitrator**):  
In section 17 (1) (a), after "section 69", insert "or 101".
- (10) Section 18 (**Rehearing**):
- (a) After section 18 (2), insert:  
(2A) Despite subsection (2), a rehearing need not be ordered under that subsection if:
- (a) it appears to the court or registrar to whom the application for rehearing is made that the applicant failed to attend a hearing before an arbitrator on the referred action concerned; and
- (b) the applicant fails to satisfy the court or registrar that there was good reason for the failure to attend the hearing.
- (b) In section 18 (4), before "section 148B", insert "the Supreme Court Act 1970,".
- (11) Section 20 (**Regulations**):
- (a) After section 20 (1), insert:  
(1A) Without prejudice to the generality of subsection (1) and section 124 of the Supreme Court Act 1970, the rules in force under that Act that, but for this subsection, would not apply to or in respect of an arbitrator and an action referred to the arbitrator under section 76B of that Act, so apply, with such modifications as may be necessary or as the rules may prescribe, in the same way as they would apply to and in respect of the Supreme Court and the action if the action had not been so referred.
- (b) In section 20 (2), omit "section 161 (1) (t)", insert instead "section 161".
- (c) In section 20 (3), omit "section 84 (1) (n)", insert instead "section 84".

**SCHEDULE 1 - AMENDMENT OF ARBITRATION (CIVIL ACTIONS) ACT 1983 No. 43 - *continued***

**Explanatory note**

Items (1) - (9) and (11) are consequential on the enactment of proposed section 76B of the Supreme Court Act 1970 (which will authorise the Supreme Court to refer a civil claim before it to an arbitrator under the Arbitration (Civil Actions) Act 1983). The amendments will make the necessary changes for the application of the Act to actions in the Supreme Court.

Item (10) qualifies the automatic right of a party to an arbitration under the Act to be granted a rehearing by the court which referred the matter for arbitration. A rehearing will now be able to be refused if the party failed without good reason to attend a hearing before the arbitrator.

**SCHEDULE 2 - AMENDMENT OF COMPENSATION COURT ACT 1984 No. 89**

(Sec. 3)

**Amendment - age of acting Judges**

**Section 11 (Acting Chief Judge and acting Judges):**

In section 11 (6), omit "72", insert instead "75".

**Explanatory note**

The proposed amendment will increase from 72 to 75 years the maximum age for acting Judges of the Compensation Court who are retired Judges (whether of the Compensation Court or another State court).

**SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT 1973 No. 9**

(Sec. 3)

**Amendment - age of acting Judges**

**(1) Section 18 (Acting Judges):**

In section 18 (4), omit "72", insert instead "75".

**Explanatory note - item (1)**

Item (1) will increase from 72 to 75 years the maximum age for acting Judges of the District Court who are retired Judges (whether of the District Court or another State court).

SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT  
1973 No. 9 - *continued*

**Amendment - consequential**

- (2) Section 63A (**Arbitration under Arbitration (Civil Actions) Act 1983**):

In section 63A (1), omit "section 5 (1)", insert instead "section 5 (2)".

**Explanatory note - item (2)**

Item (2) is consequential on the proposed extension to the Supreme Court of the scheme for compulsory arbitration in civil actions.

**Amendment - speedy determination of real questions**

- (3) Section 68A:

After section 68, insert:

**Directions for speedy determination of real questions in civil proceedings**

68A. The Court may, from time to time, give such directions as the Court thinks fit (whether or not inconsistent with the rules) for the speedy determination of the real questions between the parties to a civil action.

**Explanatory note - item (3)**

Item (3) will enable the District Court to give directions for the speedy determination of the real questions in a civil action. The Supreme Court currently has such a power in relation to commercial proceedings and that power is proposed to be expanded to cover all civil proceedings (see the amendments to the Supreme Court Act 1970 in this Act).

**Amendments - jurisdiction in equity proceedings and proceedings for possession of land**

- (4) Section 133 (**Jurisdiction in proceedings for possession of land**):

Omit "\$10,000", insert instead "\$20,000".

- (5) Sections 134 (**Jurisdiction in equity proceedings**), 140 (**Temporary injunctions**):

SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT  
1973 No. 9 - *continued*

Omit "\$5,000" wherever occurring, insert instead "\$20,000".

(6) Section 147 (**Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court**):

Omit section 147 (1), insert instead:

(1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value \$20,000 in the case of proceedings under section 133 or 134, the validity of any order already made in the proceedings shall not be affected by that decision, and:

- (a) the Court is to order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (b), the proceedings are to be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court; and
- (b) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (a) had not been made and as if the subject-matter did not exceed \$20,000 in amount or value.

**Explanatory note - items (4), (5) and (6)**

Items (4), (5) and (6) will increase to \$20,000 the limit on the District Court's jurisdiction in equity proceedings (current limit \$5,000) and proceedings for possession of land (current limit \$10,000). The jurisdictional limit in common law proceedings remains at \$100,000.

**Amendment - transfer of proceedings from Supreme Court**

(7) Section 143 (**Transfer of proceedings from Supreme Court**):

After section 143 (2), insert:

(3) In considering any limitation on the jurisdiction of the District Court for the purposes of determining whether proceedings can be transferred under this section, the

**SCHEDULE 3 - AMENDMENT OF DISTRICT COURT ACT  
1973 No. 9 - *continued***

Supreme Court is to have regard to the limitation as in force when the determination is made.

**Explanatory note - item (7)**

Item (7) makes it clear that, when considering the jurisdictional limitations on the District Court in the context of a proposal to transfer proceedings from the Supreme Court to the District Court, the Supreme Court is to consider the limitation at the level at which it is set when the proposal for transfer is determined (rather than, for example, the level at the time the proceedings were originally commenced).

**SCHEDULE 4 - AMENDMENT OF INDUSTRIAL ARBITRATION  
ACT 1940 No. 2**

(Sec. 3)

**Amendment - age of acting Judges**

Section 14 (**Industrial commission**):

In section 14 (4A), omit "72", insert instead "75".

**Explanatory note**

The proposed amendment will increase from 72 to 75 years the maximum age for acting Judges of the Industrial Commission who are retired judicial members of the Commission or retired Judges of another State court.

**SCHEDULE 5 - AMENDMENT OF LAND AND ENVIRONMENT  
COURT ACT 1979 No. 204**

(Sec. 3)

**Amendment - age of acting Judges**

Section 11 (**Acting Judges**):

In section 11 (4), omit "72", insert instead "75".

**Explanatory note**

The proposed amendment will increase from 72 to 75 years the maximum age for acting Judges of the Land and Environment Court who are retired Judges (whether of that Court or another State court).

**SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11**

(Sec. 3)

**Amendment - extra-territorial jurisdiction**

(1) Section 17:

Omit the section, insert instead:

**Jurisdiction when cause of action or defendant outside the State**

17. (1) A court has jurisdiction in accordance with this Act and a registrar may exercise the powers conferred on a registrar by or under this Act:

- (a) even if part of the cause of action arose outside New South Wales, so long as a material part of the cause of action arose within New South Wales; and
- (b) even if the whole cause of action arose outside New South Wales, so long as the defendant was resident within New South Wales at the time of service of the document which commenced the action; and
- (c) even if the defendant is not within New South Wales, so long as the whole or a material part of the cause of action arose within New South Wales and the defendant was within a State or a part of the Commonwealth (within the meaning of the Service and Execution of Process Act 1901 of the Commonwealth) at the time of service of the document which commenced the action.

(2) Subsection (1) (c) applies whether or not the defendant has ever been resident or carried on business in New South Wales.

(3) In this section, "defendant" includes, if there are 2 or more defendants, any one of those defendants.

(4) This section applies whether the cause of action arose before or after the commencement of this section.

**SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued***

**Explanatory note - item (1)**

Item (1) will bring Local Courts into line with the District Court in relation to the extent of their extra-territorial jurisdiction in civil matters. Currently it is provided that a Local Court has jurisdiction even if the defendant is not within the State. There is a suggestion that jurisdiction will not lie unless every material part of the cause of action arose within the State. As proposed to be substituted, section 17 provides that a Local Court has jurisdiction in either of the following cases:

- . where the whole or a material part of the cause of action arose within the State (if the defendant is not resident in the State there is an additional requirement that the defendant be amenable to the procedure under the Service and Execution of Process Act 1901 of the Commonwealth);
- . where the defendant was resident in the State when the action was commenced (even if the whole cause of action arose outside the State).

**Amendment - consequential**

- (2) Section 21H (Arbitration under Arbitration (Civil Actions) Act 1983):

In section 21H (1), omit "section 5 (2)", insert instead "section 5 (3)".

**Explanatory note - item (2)**

Item (2) is consequential on the proposed extension to the Supreme Court of the scheme for compulsory arbitration in civil actions.

**Amendment - costs awarded by arbitrator**

- (3) Section 34 (Costs to be in discretion of court):

In section 34 (3), omit "a Magistrate on the application of a party", insert instead "the arbitrator who determined the action".

**Explanatory note - item (3)**

Item (3) will extend to an arbitrator under the Arbitration (Civil Actions) Act 1983 who determines an action referred by a Local Court the power (currently exercisable only by a Magistrate) to certify that the costs of the action should not be determined in accordance with the prescribed scales because special circumstances exist.

SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

**Amendments - execution against land**

(4) Section 58 (**Execution**):

In section 58 (1), before "all bailiffs", insert "the Sheriff and".

(5) Section 59 (**Sheriff or bailiff to take under writ of execution**):

(a) Omit section 59 (1), insert instead:

(1) The Sheriff or a bailiff of any court may seize and take under any writ of execution whereby he or she is directed to levy any sum of money, and may cause to be sold:

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be possessed or entitled, or which the person can, either at law or in equity, assign or dispose of, except:

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate \$500 in value,

being used as such by the judgment debtor or any member of his or her family; and

(b) subject to this Division, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which the person can, either at law or in equity, assign or dispose of.

(b) In section 59 (6), omit "the property", insert instead "the personal property".

(c) In section 59 (7), omit "any property", insert instead "any personal property".



SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

- (6) Section 59A (**Auctioning of seized property**):  
Omit "the bailiff" wherever occurring, insert instead "the Sheriff or bailiff".
- (7) Section 60 (**Certificate may issue in respect of unsatisfied judgment or order**):  
Omit the section.
- (8) Section 62 (**Realty and leaseholds**):  
After "execution", insert "except as provided by section 62A".
- (9) Sections 62A - 62B:  
After section 62, insert:  
**Special provisions relating to execution against land**  
62A. (1) This section does not apply to a writ of execution unless the amount required to satisfy it is at least \$3,000 or such other amount as may be prescribed.  
(2) Subject to section 105 of the Real Property Act 1900 and section 188 of the Conveyancing Act 1919, a writ of execution, when delivered to the Sheriff or bailiff required to execute it, binds land in the same manner as a writ of execution against property binds goods and chattels.  
(3) Land is not to be sold under a writ of execution before all the property referred to in section 59 (1) (a) that may be sold under the writ has been sold unless:  
(a) the judgment debtor requests that the land be sold before all or any of that property is sold; or  
(b) the Sheriff or bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.  
(4) The Sheriff or bailiff must not cause land to be sold under a writ of execution except on compliance by the

SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

judgment creditor and the Sheriff or bailiff with the prescribed procedures, but a purchaser of the land, and the Registrar-General, need not be concerned to inquire whether this subsection has been complied with.

(5) The publication under section 59 (5) of notice of the intended sale under a writ of execution of any land is to be considered to be a seizure by the Sheriff or bailiff of the land under the writ, and no actual seizure of the land is necessary in order to authorise its sale under the writ.

(6) If land that is not under the provisions of the Real Property Act 1900 is sold under a writ of execution, the registrar of the court that is nearest to the place of sale is to execute a proper assurance in favour of the purchaser.

**Sale or mortgage by judgment debtor of land affected by writ**

62B. (1) In this section:

"**issuing registrar**", in relation to a writ of execution, means the registrar of the court at which the writ of execution was issued;

"**notice of consent**" means the notice referred to in subsection (2) (a).

(2) If land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the Real Property Act 1900, or which has been registered in the register of causes, writs, and orders affecting land in accordance with section 186 of the Conveyancing Act 1919 and:

- (a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor; and
- (b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage; and

SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued*

- (c) the notice of consent is filed with the issuing registrar; and
- (d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

- (3) If during that prescribed period:
  - (a) the judgment debtor sells or mortgages the land; and
  - (b) in the case of a sale, the amount of the deposit (if any) is paid to the issuing registrar, to be held by the registrar as stakeholder; and
  - (c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than:
    - (i) the minimum amount referred to in subsection (2) (b); or
    - (ii) if the judgment creditor notifies the issuing registrar in writing that he or she consents to payment of a specified amount that is less than that minimum amount - that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar must, upon production to him or her of the instrument evidencing the sale or mortgage, and if he or she is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with his or her consent to the sale or mortgage.

**SCHEDULE 6 - AMENDMENT OF LOCAL COURTS  
(CIVIL CLAIMS) ACT 1970 No. 11 - *continued***

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent is not, in relation to the land, affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), is, subject to and in accordance with the rules:

- (a) to be paid to or at the direction of the judgment creditor; and
- (b) to be in reduction of the judgment debt.

**Explanatory note - items (4)-(9)**

Items (4) - (9) will permit execution against land on a Local Court judgment where the amount of the judgment is at least \$3,000 (or such other amount as may be prescribed by rules of court). Currently such a judgment can only be enforced against land by using the District Court procedure. The District Court procedure will no longer be available so that execution against land will not be possible in the case of judgments for less than \$3,000. Execution against land is currently available for judgments of the Supreme Court and District Court and the proposed provision for Local Courts will be in the same terms as and have the same safeguards as the provisions for those Courts. Other minor or consequential amendments are also made.

**Amendment - orders for costs**

(10) Section 84 (**Rules**):

Omit section 84 (1A) (1), insert instead:

- (1) an order for costs of proceedings.

**Explanatory note - item (10)**

Item (10) will enable rules to be made under the Act authorising a registrar of a Local Court to make orders for costs. Currently the rules can only authorise a registrar to make an order for costs in respect of an application to set aside a judgment or order.

**SCHEDULE 7 - AMENDMENT OF REAL PROPERTY  
ACT 1900 No. 25**

(Sec. 3)

**Amendment - execution against land in Local Court**

**Section 105A (Effect of recording of writ):**

Before "section 112 (3) of the District Court Act, 1973" wherever occurring, insert "section 62B (3) of the Local Courts (Civil Claims) Act 1970,".

**Explanatory note**

The proposed amendment is consequential on the amendment to the Local Courts (Civil Claims) Act 1970 that will enable execution against land in a Local Court. Section 105A of the Real Property Act 1900 allows registration of a dealing affecting land in respect of which a writ is registered and that provision will now apply to Local Court writs in the same way as it applies to Supreme Court and District Court writs.

**SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52**

(Sec. 3)

**Amendments - ages of acting Judges and acting Masters**

(1) **Section 37 (Acting Judges):**

In section 37 (4), omit "72", insert instead "75".

(2) **Section 111 (Appointment):**

In section 111 (6), omit "72", insert instead "75".

**Explanatory note - items (1) and (2)**

Items (1) and (2) will increase from 72 to 75 years the maximum age for acting Judges of the Supreme Court who are retired Judges (whether of the Supreme Court or another State court) and for acting Masters who are retired Masters.

**Amendment - speedy determination of real questions**

(3) **Section 76A (Directions for the speedy determination of real questions):**

Omit "proceedings in the Commercial Division", insert instead "civil proceedings".

SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52 - *continued*

**Explanatory note - item (3)**

Item (3) will expand the scope of a provision that enables the Supreme Court to give directions for the speedy determination of the real questions in proceedings so that the provision will not be restricted to proceedings in the Court's Commercial Division but will apply to civil proceedings generally.

**Amendment - civil arbitration**

(4) Section 76B:

After section 76A, insert:

**Arbitration under Arbitration (Civil Actions) Act 1983**

76B. (1) The Court may, whether of its own motion or on application, order that, in accordance with the rules, proceedings before it on a claim for the recovery of damages or other money be referred for determination pursuant to the Arbitration (Civil Actions) Act 1983 by an arbitrator or arbitrators holding office under section 5 (1) of that Act.

(2) Before making an order under subsection (1) in relation to proceedings, the Court:

- (a) is to consider the preparations for trial 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 trial 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 Court may not make an order under subsection (1) 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) the proceedings involve complex questions of law or fact; or

SCHEDULE 8 - AMENDMENT OF SUPREME COURT  
ACT 1970 No. 52 - *continued*

- (c) the hearing of the proceedings is expected to be lengthy; or
- (d) the proceedings are proceedings within a class of proceedings prescribed by the rules as a class of proceedings that may not be so referred; or
- (e) cause is otherwise shown why the proceedings should not be so referred.

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

(5) Except in the case of proceedings 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 proceedings referred to the arbitrator under subsection (1) is, after the expiration of the time prescribed by the rules for the purposes of this subsection, to be taken to be a judgment or order of the Court.

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

(7) This section applies to proceedings even if they arose or were commenced before the commencement of this section.

**Explanatory note - item (4)**

Item (4) will allow the Supreme Court to refer civil proceedings before it to an arbitrator under the Arbitration (Civil Actions) Act 1983 for decision by the arbitrator. The decision of an arbitrator is to be taken to be the decision of the Supreme Court but there is power to order a rehearing of the matter by the Court. The proposed new provision is the same as provisions that authorise the referral to an arbitrator of civil actions before a Local Court or the District Court.

