

DISTRICT COURT (AMENDMENT) ACT 1990 No. 103

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS



DISTRICT COURT (AMENDMENT) ACT 1990 No. 103

NEW SOUTH WALES



Act No. 103, 1990

An Act to amend the District Court Act 1973 with respect to appeals to the Supreme Court and dismissal of actions. [Assented to 13 December 1990]

District Court (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the District Court (Amendment) Act 1990.

Commencement

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

Amendment of District Court Act 1973 No. 9

3. The District Court Act 1973 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 128 (**Appeal to Supreme Court**):

- (a) In section 128 (2A), after “action”, insert “(not being proceedings ancillary to an action, as referred to in subsection (5A))”.
- (b) Omit section 128 (3) (a), insert instead:
- (a) if it is of the opinion that an order for the dismissal of the action, or of the action so far as concerns any cause or causes of action on which the action is brought, should have been made at the trial—may make such an order; or
- (c) After section 128 (5), insert:

(5A) With the leave of the Supreme Court, an appeal lies to the Supreme Court from any ruling, order, direction or decision of a Judge of the District Court (being a ruling, order, direction or decision made or given after the commencement of Schedule 1 (1) (c) to the District Court (Amendment) Act 1990) in respect of any proceedings ancillary to an action, unless subsection (5B) or section 129 prevents such an appeal.

(5B) An appeal may not be made under subsection (5A) from a ruling, order, direction or decision given or made after the hearing of the action concerned has

District Court (Amendment) 1990

SCHEDULE 1—AMENDMENTS—*continued*

commenced unless, by the ruling, order, direction or decision:

- (a) a judgment was set aside; or
- (b) an application to set aside a judgment was refused.

(d) In section 128 (6), omit “or (2A)”, insert instead “, (2A) or (5A)”.

(2) Section 129 (**Agreement not to appeal**):

Omit “or (2A)”, insert instead “, (2A) or (5A)”.

(3) Section 130 (**Whether application or appeal to Supreme Court is as of right**):

Omit section 130 (1) (a) (ii) and (iii), insert instead:

- (ii) in the case of an action commenced on or after 1 April 1975 but before 1 April 1983—\$3,000 or upwards;
- (iii) in the case of an action commenced on or after 1 April 1983 and in respect of which a verdict or judgment has been given before the commencement of Schedule 1 (3) to the District Court (Amendment) Act 1990—\$5,000 or upwards; or
- (iv) in the case of an action commenced on or after 1 April 1983 and in respect of which a verdict or judgment has not been given before the commencement of Schedule 1 (3) to the District Court (Amendment) Act 1990—\$10,000 or upwards,

[*Minister's second reading speech made in—
Legislative Assembly on 14 November 1990
Legislative Council on 5 December 1990*]





FIRST PRINT

DISTRICT COURT (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the District Court Act 1973 so as:

- (a) to provide for appeals to the Supreme Court from decisions etc. of the District Court in proceedings ancillary to an action brought in that Court; and
- (b) to provide that the value of a matter in dispute in the District Court must be at least \$10,000 if an appeal from the Court's judgment in the matter is to lie as of right.

The Bill also makes a minor amendment in relation to a nonsuit of the plaintiff in an action.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS

Appeals from decisions etc. in ancillary proceedings

Schedule 1 (1) (c) and (d) amend section 128 to provide for an appeal to the Supreme Court from any District Court ruling, order, direction or decision in respect of proceedings incidental to the main proceedings. (Instances of such incidental proceedings are applications to set aside default judgments, applications to strike out proceedings and applications for summary judgments.)

Such an appeal requires the leave of the Supreme Court and must be made in the manner prescribed by the Supreme Court Rules.

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The appeal cannot be brought in respect of any ruling etc. made after the start of the main proceedings, except for such rulings etc. by which a judgment is set aside or by which an application for the setting aside of a judgment is refused.

Schedule 1 (1) (a) and (2) make consequential amendments.

Appeal as of right

Schedule 1 (3) amends section 130 (1) (a) so as to provide that the value of any property or civil right the subject of an action in the District Court must be at least \$10,000 (compared with the present \$5,000) if there is to be an automatic right of appeal from the Court's decision in the matter.

Dismissal of action

Schedule 1 (1) (b) replaces the references in section 128 (3) (a) to a "nonsuit" by a reference to the "dismissal of the action" (the expression now used in the Supreme Court Rules and the District Court Rules). A nonsuit is an order for dismissal of an action, usually for want of sufficient evidence to obtain a verdict or judgment for the plaintiff.

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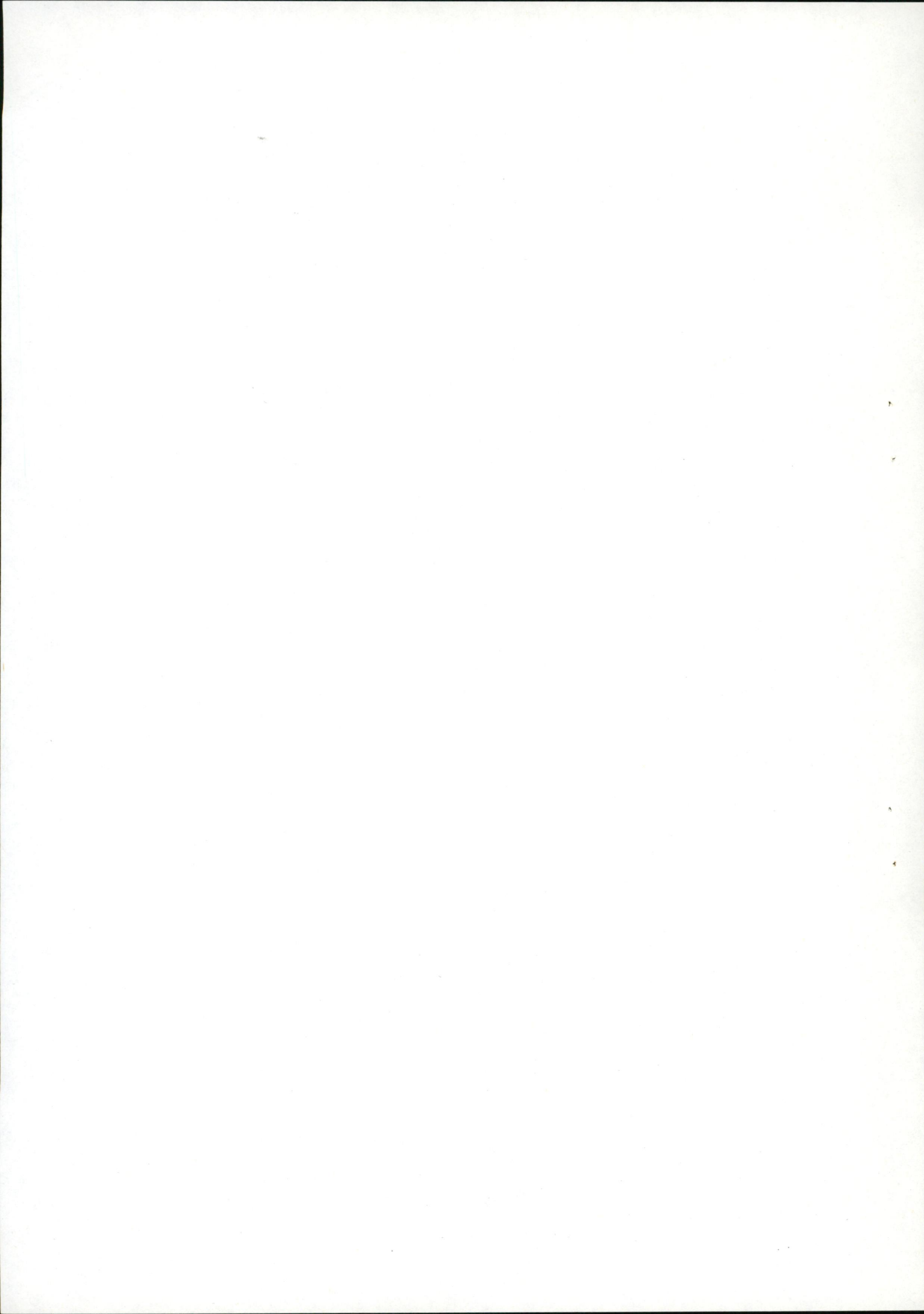
NEW SOUTH WALES



TABLE OF PROVISIONS

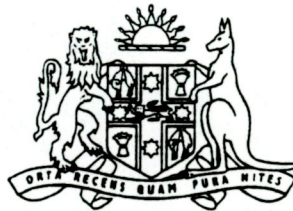
1. Short title
2. Commencement
3. Amendment of District Court Act 1973 No. 9

SCHEDULE 1—AMENDMENTS



DISTRICT COURT (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the District Court Act 1973 with respect to appeals to the Supreme Court and dismissal of actions.

District Court (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the District Court (Amendment) Act 1990.

Commencement

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

Amendment of District Court Act 1973 No. 9

3. The District Court Act 1973 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 128 (Appeal to Supreme Court):

- (a) In section 128 (2A), after "action", insert "(not being proceedings ancillary to an action, as referred to in subsection (5A))".

- (b) Omit section 128 (3) (a), insert instead:

- (a) if it is of the opinion that an order for the dismissal of the action, or of the action so far as concerns any cause or causes of action on which the action is brought, should have been made at the trial—may make such an order; or

- (c) After section 128 (5), insert:

(5A) With the leave of the Supreme Court, an appeal lies to the Supreme Court from any ruling, order, direction or decision of a Judge of the District Court (being a ruling, order, direction or decision made or given after the commencement of Schedule 1 (1) (c) to the District Court (Amendment) Act 1990) in respect of any proceedings ancillary to an action, unless subsection (5B) or section 129 prevents such an appeal.

(5B) An appeal may not be made under subsection (5A) from a ruling, order, direction or decision given or made after the hearing of the action concerned has

District Court (Amendment) 1990

SCHEDULE 1—AMENDMENTS—*continued*

commenced unless, by the ruling, order, direction or decision:

- (a) a judgment was set aside; or
 - (b) an application to set aside a judgment was refused.
- (d) In section 128 (6), omit “or (2A)”, insert instead “, (2A) or (5A)”.
- (2) Section 129 (**Agreement not to appeal**):
Omit “or (2A)”, insert instead “, (2A) or (5A)”.
- (3) Section 130 (**Whether application or appeal to Supreme Court is as of right**):
Omit section 130 (1) (a) (ii) and (iii), insert instead:
- (ii) in the case of an action commenced on or after 1 April 1975 but before 1 April 1983—\$3,000 or upwards;
 - (iii) in the case of an action commenced on or after 1 April 1983 and in respect of which a verdict or judgment has been given before the commencement of Schedule 1 (3) to the District Court (Amendment) Act 1990—\$5,000 or upwards; or
 - (iv) in the case of an action commenced on or after 1 April 1983 and in respect of which a verdict or judgment has not been given before the commencement of Schedule 1 (3) to the District Court (Amendment) Act 1990—\$10,000 or upwards,
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