

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT ACT 1990
No. 104

NEW SOUTH WALES



TABLE OF PROVISIONS

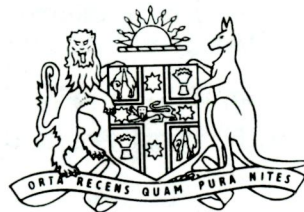
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SCHEDULE 1—AMENDMENTS



LOCAL COURTS (CIVIL CLAIMS) AMENDMENT ACT 1990
No. 104

NEW SOUTH WALES



Act No. 104, 1990

An Act to amend the Local Courts (Civil Claims) Act 1970 to establish Small Claims Divisions of Local Courts; to provide for the appointment of Assessors; and for other purposes. [Assented to 13 December 1990]

Local Courts (Civil Claims) Amendment 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Courts (Civil Claims) Amendment Act 1990.

Commencement

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

Amendment of Local Courts (Civil Claims) Act 1970 No. 11

3. The Local Courts (Civil Claims) Act 1970 is amended as set out in Schedule 1.

Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)

4. The Statutory and Other Offices Remuneration Act 1975 is amended by inserting at the end of Part 1 of Schedule 2 the following words:

Full-time Assessor (under the Local Courts (Civil Claims) Act 1970).

Part-time Assessor (under the Local Courts (Civil Claims) Act 1970).

Transitional provision

5. The amendments made by Schedule 1 do not apply to actions commenced in a Local Court before the commencement of Schedule 1 (2).

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4 (**Definitions**):

Insert, in alphabetical order, in section 4 (1):

“**Assessor**” means a person appointed as an Assessor under section 10;

“**Division**” means a Division of a court specified in section 6;

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 6:

Omit the section, insert instead:

Divisions of courts exercising jurisdiction under this Act

6. (1) For the purposes of exercising the jurisdiction conferred on courts by or under this Act, a court is to be divided into:

- (a) the General Division; and
- (b) the Small Claims Division.

(2) The jurisdiction conferred by or under this Act on a court sitting in its General Division is to be exercised by a Magistrate sitting alone.

(3) The jurisdiction conferred by or under this Act on a court sitting in its Small Claims Division is to be exercised:

- (a) by an Assessor; or
- (b) by a Magistrate sitting alone.

(3) Part 2, Division 3:

After Division 2 of Part 2, insert:

Division 3—Assessors

Appointment of, and qualifications for, Assessors

10. (1) The Minister may appoint any qualified person to be an Assessor.

(2) The appointment of an Assessor may be on a full-time or part-time basis.

(3) A person is qualified to be appointed as an Assessor if the person is, or is eligible to be admitted as:

- (a) a barrister or solicitor of the Supreme Court; or
- (b) a barrister or solicitor (or both) of any Court of another State or Territory or of the High Court.

(4) If appointed on a full-time basis, an Assessor is to devote the whole of his or her time to the duties of the office of an Assessor.

(5) Schedule 1 has effect with respect to Assessors.

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 12 (**Limits of jurisdiction**):

(a) After “a court” wherever occurring in section 12 (1) and (2), insert “sitting in its General Division”.

(b) After section 12 (2), insert:

(2A) Subject to this Part, a court sitting in its Small Claims Division has jurisdiction to hear and determine actions for:

(a) the recovery of any debt, demand or damage, whether liquidated or unliquidated; or

(b) the detention of goods,

in which the amount claimed is not more than \$3,000 (or such greater amount as the rules may prescribe) whether on a balance of account or after an admitted set-off or otherwise. However, nothing in this subsection prevents such an action being heard and determined by a court sitting in its General Division.

(c) After “court” in section 12 (3) (b), insert “sitting in a Division”.

(5) Part 4, Division 2A:

After Division 2 of Part 4, insert:

**Division 2A—Procedure etc. in Small Claims
Division**

Conciliation of parties

23A. (1) An Assessor or Magistrate is not to give judgment or make a final order in respect of an action being heard in the Small Claims Division of a court unless the Assessor or Magistrate has brought, or has used his or her best endeavours to bring, the parties to the action to a settlement acceptable to the parties.

(2) If such a settlement is reached, whether or not pursuant to subsection (1), the Assessor or Magistrate is to give judgment or make a final order that gives effect to the terms of the settlement.

Procedure generally in Small Claims Division

23B. (1) Proceedings in the Small Claims Division of a court are to be conducted with as little formality and technicality as the proper consideration of the matter permits.

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(2) The rules of evidence do not apply to an action being heard or other proceedings in the Small Claims Division of a court.

(3) An Assessor or Magistrate exercising the jurisdiction conferred on a court sitting in its Small Claims Division may inform himself or herself on any matter relating to an action being heard or other proceedings in the Small Claims Division in such manner as he or she thinks fit.

(4) Proceedings in the Small Claims Division of a court (other than any judgment given or order made in respect of the proceedings) are not required to be recorded.

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

After section 34 (1), insert:

(1A) Except as may be provided by the rules, a court sitting in its Small Claims Division has no power to award costs to or against a party to proceedings in the Division.

(7) Section 69 (**Appeal**):

After section 69 (2), insert:

(2A) However, in the case of proceedings in the Small Claims Division of a court, an appeal under subsection (2) lies only on the ground of lack of jurisdiction or denial of natural justice.

(8) Section 75 (**Adjournment**):

After “Magistrate” in section 75 (2), insert “or an Assessor”.

(9) Section 84 (**Rules**):

(a) After section 84 (1) (a), insert:

(b) removal of actions between Divisions;

(b1) determining the Division in which any particular action or class of action is to be heard;

(b2) referring any matter to a Community Justice Centre;

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 84 (2), insert:

(3) In this section, a reference to a court includes a reference to a Division of a court.

(10) Schedule 1:

Omit The Schedule, insert instead:

SCHEDULE 1—PROVISIONS RELATING TO
ASSESSORS

(Sec. 10 (5))

Terms of office

1. Subject to this Schedule, an Assessor holds office, for such period (not exceeding 7 years) as may be specified in the Assessor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

2. An Assessor is entitled to be paid:

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Assessor.

Effect of certain other Acts

3. (1) The provisions of the Public Sector Management Act 1988 do not apply to or in respect of the appointment of an Assessor and an Assessor is not, as an Assessor, subject to that Act.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting a person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of an Assessor appointed on a part-time basis or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as an Assessor appointed on a part-time basis.

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(3) Subclause (2) does not operate to authorise an officer of a court to accept or retain any remuneration payable to the officer as an Assessor.

Leave

4. (1) An Assessor, if appointed on a full-time basis, is entitled to such leave:

- (a) as is determined by the Minister; or
- (b) as may be specified in respect of the Assessor in the Assessor's instrument of appointment.

(2) Leave may be determined or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

Removal from office

5. The Minister may remove an Assessor from office for incapacity, incompetence or misbehaviour.

Vacation of office

6. An Assessor vacates office if the Assessor:

- (a) completes a term of office and is not re-appointed; or
- (b) dies; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) becomes a mentally incapacitated person; or
- (e) is removed from office by the Minister under clause 5.

[*Minister's second reading speech made in—
Legislative Assembly on 22 November 1990
Legislative Council on 5 December 1990*]







FIRST PRINT

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

At present, the Local Courts (Civil Claims) Act 1970 confers on Local Courts the jurisdiction to hear and determine actions for claims not exceeding \$10,000. The jurisdiction conferred on a court by or under the Act is exercised by a Magistrate.

The object of this Bill is to amend the Local Courts (Civil Claims) Act 1970:

- to establish Small Claims Divisions of Local Courts for the purposes of hearing and determining actions for claims not exceeding \$3,000
- as a consequence, to divide Local Courts when exercising jurisdiction under the Act into 2 Divisions (the General Division and the Small Claims Division)
- to provide for the appointment of Assessors to exercise the jurisdiction conferred on a court sitting in its Small Claims Division and to provide that Magistrates may also exercise this jurisdiction
- to provide that an Assessor or Magistrate is required to bring or attempt to bring the parties to an action in the Small Claims Division to a settlement
- to provide generally that proceedings in the Small Claims Division are to be conducted informally and without the rules of evidence being applied
- to provide that costs are not to be awarded to or against a party in the Small Claims Division
- to provide that an appeal in respect of proceedings in the Small Claims Division lies only on the ground of lack of jurisdiction or denial of natural justice
- to enable rules to be made for removing actions between Divisions, determining the Division which is to hear certain action and referring matters to Community Justice Centres for mediation
- to make provisions relating to the term of appointment, remuneration, removal etc. of Assessors

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Local Courts (Civil Claims) Amendment 1990

Clause 3 gives effect to the Schedule of amendments.

Clause 4 amends the Statutory and Other Offices Remuneration Act 1975 to provide for the determination by the Statutory and Other Offices Remuneration Tribunal of the remuneration to be paid to Assessors appointed under the Local Courts (Civil Claims) Act 1970 as amended by the proposed Act.

Clause 5 provides that the amendments to the Local Courts (Civil Claims) Act 1970 do not apply to actions already commenced.

Schedule 1 contains the amendments described above.

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LOCAL COURTS (CIVIL CLAIMS) AMENDMENT BILL 1990

NEW SOUTH WALES



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5. Transitional provision

SCHEDULE 1—AMENDMENTS

LOCAL COURTS (CIVIL CLAIMS) AMENDMENT BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Local Courts (Civil Claims) Act 1970 to establish Small Claims Divisions of Local Courts; to provide for the appointment of Assessors; and for other purposes.

Local Courts (Civil Claims) Amendment 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Courts (Civil Claims) Amendment Act 1990.

Commencement

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Amendment of Local Courts (Civil Claims) Act 1970 No. 11

3. The Local Courts (Civil Claims) Act 1970 is amended as set out in Schedule 1.

Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)

4. The Statutory and Other Offices Remuneration Act 1975 is amended by inserting at the end of Part 1 of Schedule 2 the following words:

Full-time Assessor (under the Local Courts (Civil Claims) Act 1970).

Part-time Assessor (under the Local Courts (Civil Claims) Act 1970).

Transitional provision

5. The amendments made by Schedule 1 do not apply to actions commenced in a Local Court before the commencement of Schedule 1 (2).

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4 (**Definitions**):

Insert, in alphabetical order, in section 4 (1):

“**Assessor**” means a person appointed as an Assessor under section 10;

“**Division**” means a Division of a court specified in section 6;

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 6:

Omit the section, insert instead:

Divisions of courts exercising jurisdiction under this Act

6. (1) For the purposes of exercising the jurisdiction conferred on courts by or under this Act, a court is to be divided into:

- (a) the General Division; and
- (b) the Small Claims Division.

(2) The jurisdiction conferred by or under this Act on a court sitting in its General Division is to be exercised by a Magistrate sitting alone.

(3) The jurisdiction conferred by or under this Act on a court sitting in its Small Claims Division is to be exercised:

- (a) by an Assessor; or
- (b) by a Magistrate sitting alone.

(3) Part 2, Division 3:

After Division 2 of Part 2, insert:

Division 3—Assessors

Appointment of, and qualifications for, Assessors

10. (1) The Minister may appoint any qualified person to be an Assessor.

(2) The appointment of an Assessor may be on a full-time or part-time basis.

(3) A person is qualified to be appointed as an Assessor if the person is, or is eligible to be admitted as:

- (a) a barrister or solicitor of the Supreme Court; or
- (b) a barrister or solicitor (or both) of any Court of another State or Territory or of the High Court.

(4) If appointed on a full-time basis, an Assessor is to devote the whole of his or her time to the duties of the office of an Assessor.

(5) Schedule 1 has effect with respect to Assessors.

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

- (4) Section 12 (**Limits of jurisdiction**):
- (a) After “a court” wherever occurring in section 12 (1) and (2), insert “sitting in its General Division”.
 - (b) After section 12 (2), insert:
 - (2A) Subject to this Part, a court sitting in its Small Claims Division has jurisdiction to hear and determine actions for:
 - (a) the recovery of any debt, demand or damage, whether liquidated or unliquidated; or
 - (b) the detention of goods,
 in which the amount claimed is not more than \$3,000 (or such greater amount as the rules may prescribe) whether on a balance of account or after an admitted set-off or otherwise. However, nothing in this subsection prevents such an action being heard and determined by a court sitting in its General Division.
 - (c) After “court” in section 12 (3) (b), insert “sitting in a Division”.

- (5) Part 4, Division 2A:

After Division 2 of Part 4, insert:

**Division 2A—Procedure etc. in Small Claims
Division**

Conciliation of parties

23A. (1) An Assessor or Magistrate is not to give judgment or make a final order in respect of an action being heard in the Small Claims Division of a court unless the Assessor or Magistrate has brought, or has used his or her best endeavours to bring, the parties to the action to a settlement acceptable to the parties.

(2) If such a settlement is reached, whether or not pursuant to subsection (1), the Assessor or Magistrate is to give judgment or make a final order that gives effect to the terms of the settlement.

Procedure generally in Small Claims Division

23B. (1) Proceedings in the Small Claims Division of a court are to be conducted with as little formality and technicality as the proper consideration of the matter permits.

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(2) The rules of evidence do not apply to an action being heard or other proceedings in the Small Claims Division of a court.

(3) An Assessor or Magistrate exercising the jurisdiction conferred on a court sitting in its Small Claims Division may inform himself or herself on any matter relating to an action being heard or other proceedings in the Small Claims Division in such manner as he or she thinks fit.

(4) Proceedings in the Small Claims Division of a court (other than any judgment given or order made in respect of the proceedings) are not required to be recorded.

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

After section 34 (1), insert:

(1A) Except as may be provided by the rules, a court sitting in its Small Claims Division has no power to award costs to or against a party to proceedings in the Division.

(7) Section 69 (**Appeal**):

After section 69 (2), insert:

(2A) However, in the case of proceedings in the Small Claims Division of a court, an appeal under subsection (2) lies only on the ground of lack of jurisdiction or denial of natural justice.

(8) Section 75 (**Adjournment**):

After "Magistrate" in section 75 (2), insert "or an Assessor".

(9) Section 84 (**Rules**):

(a) After section 84 (1) (a), insert:

- (b) removal of actions between Divisions;
- (b1) determining the Division in which any particular action or class of action is to be heard;
- (b2) referring any matter to a Community Justice Centre;

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 84 (2), insert:

(3) In this section, a reference to a court includes a reference to a Division of a court.

(10) Schedule 1:

Omit The Schedule, insert instead:

SCHEDULE 1—PROVISIONS RELATING TO
ASSESSORS

(Sec. 10 (5))

Terms of office

1. Subject to this Schedule, an Assessor holds office, for such period (not exceeding 7 years) as may be specified in the Assessor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

2. An Assessor is entitled to be paid:

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Assessor.

Effect of certain other Acts

3. (1) The provisions of the Public Sector Management Act 1988 do not apply to or in respect of the appointment of an Assessor and an Assessor is not, as an Assessor, subject to that Act.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting a person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of an Assessor appointed on a part-time basis or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as an Assessor appointed on a part-time basis.

Local Courts (Civil Claims) Amendment 1990

SCHEDULE 1—AMENDMENTS—*continued*

(3) Subclause (2) does not operate to authorise an officer of a court to accept or retain any remuneration payable to the officer as an Assessor.

Leave

4. (1) An Assessor, if appointed on a full-time basis, is entitled to such leave:

- (a) as is determined by the Minister; or
- (b) as may be specified in respect of the Assessor in the Assessor's instrument of appointment.

(2) Leave may be determined or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

Removal from office

5. The Minister may remove an Assessor from office for incapacity, incompetence or misbehaviour.

Vacation of office

6. An Assessor vacates office if the Assessor:

- (a) completes a term of office and is not re-appointed; or
 - (b) dies; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) becomes a mentally incapacitated person; or
 - (e) is removed from office by the Minister under clause 5.
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