

COURTS LEGISLATION (AMENDMENT) ACT 1993 No. 80

NEW SOUTH WALES



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COURTS LEGISLATION (AMENDMENT) ACT 1993 No. 80

NEW SOUTH WALES



Act No. 80, 1993

An Act to amend certain Acts relating to the jurisdiction of the District Court and Local Courts; and for other purposes. [Assented to 24 November 1993]

Courts Legislation (Amendment) Act 1993 No. 80

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Courts Legislation (Amendment) Act 1993.

Commencement

2. A provision of a Schedule commences as provided in the Schedule. The other provisions of this Act commence on the date of assent.

Amendments

3. The Acts specified in Schedules 1–5 are amended as set out in those Schedules.

Explanatory notes

4. The matter appearing under the heading “Explanatory Note” in a Schedule does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11**

(Sec. 3)

AMENDMENTS

(1) Section 12:

Omit section 12, insert instead:

Limits of jurisdiction

12. (1) Subject to this Part, a court sitting in its General Division has jurisdiction to hear and determine actions for the recovery of any debt, demand or damage (whether liquidated or unliquidated) in which the amount claimed is not more than \$40,000, whether on a balance of account or after an admitted set-off or otherwise.

(2) Subject to this Part, a court sitting in its General Division has jurisdiction to hear and determine actions commenced after the commencement of this section to recover goods that are detained, or to recover the assessed value of the goods, if the value of the goods together with the

SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued*

amount of any consequential damages claimed for the detention of the goods does not exceed \$40,000.

(3) Subject to this Part, a court sitting in its Small Claims Division has jurisdiction to hear and determine actions for the recovery of any debt, demand or damage (whether liquidated or unliquidated) 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 $\text{\textcircled{O}}$ after an admitted set-off or otherwise.

(4) Subject to this Part, a court sitting in its Small Claims Division has jurisdiction to hear and determine actions commenced after the commencement of this section to recover goods that are detained, or to recover the assessed value of the goods, if the value of the goods together with the amount of any consequential damages claimed for the detention of the goods does not exceed \$3,000.

(5) Nothing in subsection (3) or (4) prevents an action under the subsection from being heard and determined by a court sitting in its General Division.

(6) If the amount claimed in an action includes interest (being interest which the court could, under section 39A (1), order to be included in the amount for which it could give judgment) that interest is to be disregarded for the purposes of:

- (a) determining whether the maximum amount for which the action is authorised by this Act to be brought has been exceeded or not; and
- (b) determining whether or not the court sitting in a Division has jurisdiction to hear and determine the action.

(7) If:

- (a) this section is amended, or a rule is made, to increase an amount specified in this section; and
- (b) an action in which an amount of money is claimed is pending in a court when the amendment or rule takes effect,

**SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued***

the court may, on the application of a plaintiff, make an order altering the amount specified in the claim to an amount not exceeding the relevant amount as increased.

(8) In this section, “admitted set-off”, in relation to an action, means set-off admitted by the plaintiff in the document by the filing of which the action is commenced.

(2) Section 12A:

After section 12, insert:

Jurisdiction in proceedings for review of contracts

12A. (1) In relation to a contract, a Local Court has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, to grant relief under section 7 (1) (a) of the Contracts Review Act 1980.

(2) This section applies only if application for the exercise of the jurisdiction is made in proceedings concerning the contract that are in the course of being heard by the Local court.

(3) This section does not authorise a Local Court to exercise the jurisdiction conferred by any other provision of the Contracts Review Act 1980.

(4) This section:

- (a) applies to a contract whether it was entered into before or after the commencement of this section; and
- (b) extends to proceedings pending in a court on that commencement.

(3) Section 28A:

Omit the section, insert instead:

Judgment in an action relating to the detention of goods

28A. (1) In an action relating to the detention of goods, the court may, if it finds for the plaintiff, give judgment:

- (a) for delivery of the goods to the plaintiff; or
- (b) for delivery of the goods to the plaintiff, but giving the defendant the option of retaining the goods and paying the plaintiff the value of the goods, as assessed by the court; or

SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued*

(c) for payment to the plaintiff of the value of the goods, as so assessed,

together with any consequential damages.

(2) Subject to the rules, relief under subsection (1) (a) is at the discretion of the court, but the plaintiff may choose between the other forms of relief prescribed by subsection (1).

(3) If, in an action relating to the detention of goods, judgment is given as referred to in subsection (1) (b), the court, in its discretion, may, on the application of the plaintiff, subsequently make an order for the delivery of the goods to the plaintiff without giving the defendant the option of retaining the goods and paying their assessed value.

(4) The rules may make provision with respect to the manner in which a judgment given as referred to in this section may be enforced or satisfied.

(4) Section 34A:

After section 34, insert:

Alternative basis for costs

34A. (1) This Division does not operate to prevent a Local Court from ordering a party to pay the costs of another party assessed on an indemnity basis.

(2) This section is repealed on the commencement of section 34 (1) (c) as inserted by Schedule 6 to the Legal Profession Reform Act 1993.

(5) Section 41 (**Summons for examination of judgment debtor**):

Omit section 41 (4) and (5), insert instead:

(4) If a judgment debtor served with an examination summons before or after the substitution of this subsection by the Courts Legislation (Amendment) Act 1993 attends before a registrar as required by the summons:

(a) the judgment creditor may, in accordance with the rules, orally examine the judgment debtor before the registrar; or

(b) if the judgment creditor has so requested in accordance with the rules, the registrar may, in accordance with the rules, orally examine the judgment debtor,

SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued*

as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

(6) Section 42 (**Failure to attend in answer to examination summons**):

- (a) From section 42 (1), omit “the registrar shall, as soon as practicable, report in writing to the court of which he or she is registrar that the judgment debtor has failed so to attend”, insert instead “the court may act under subsection (2)”.
- (b) From section 42 (2), omit “After the report is made to it, and without further inquiry, the court”, insert instead “The court”.
- (c) From section 42 (2) (a), omit “registrar to issue”, insert instead “issue of”.
- (d) From section 42 (3), omit “the court authorised its issue”, insert instead “the registrar served the notice under subsection (2)”.
- (e) From section 42 (4), omit “after the court authorised the issue of a warrant”, insert instead “after the registrar served the notice under subsection (2)”.
- (f) Omit section 42 (4A), insert instead:
 - (4A) If a judgment creditor fails to make an application under subsection (4) within the time limited by that subsection, the court, if satisfied with the reasons for the failure, may issue a warrant for the apprehension of the judgment debtor.
 - (4B) The functions of the court under subsections (2) and (4A) may be exercised by the registrar.

(7) Section 44 (**Examination of judgment debtor**):

From section 44 (1), omit “has filed a request referred to in section 41 (4)”, insert instead “has so requested in accordance with section 41 (4) (b)”.

(8) Section 61 (**Time when execution may be made**):

Omit the section.

SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued*

(9) Section 86:

After section 85, insert:

Savings and transitional provisions

86. Schedule 2 has effect.

(10) Schedule 2:

After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL
PROVISIONS**

(Sec. 86)

Variation in jurisdiction

1. If an action is pending in a Local Court on the commencement of section 12 as substituted by the Courts Legislation (Amendment) Act 1993 to recover the value of goods, the court may make an order for the recovery of the goods.

Limitation on time of execution of certain writs

2. Property may not be seized or taken under a writ of execution at any time between 8 p.m. on one day and 7 a.m. on the next day, if the writ was issued under Division 4 of Part 5 before the date of assent to the Courts Legislation (Amendment) Act 1993.

Commencement

The amendments to the Local Courts (Civil Claims) Act 1970 made by items (2), (4), (6), (8), (9) and (10) commence on the date of assent.

The other amendments to the Local Courts (Civil Claims) Act 1970 commence on a day or days to be appointed by proclamation.

Explanatory note

Option to order return of detained goods instead of payment of their value and damages (items (1) and (3))

In a successful action relating to the detention of goods, a Local Court may at present only order payment of the value of the goods plus damages. Unlike the Supreme Court and the District Court, it does not have the option of ordering return of the goods. The proposed amendments give a Local Court this option.

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SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued*

Jurisdiction in proceedings for review of contracts (item (2))

This amendment would confer on a Local Court, with limitations, a similar jurisdiction to that which is at present conferred by the Contracts Review Act 1980 on the Supreme Court and the District Court and which enables those Courts to refuse to enforce an unjust contract.

References to “costs” (item (4))

This amendment has a similar effect to the amendment proposed in this Bill by item (2) of the amendments to the District Court Act 1973, except that the amendment to the Local Courts (Civil Claims) Act 1970 is not retrospective.

Examination of judgment debtor (items (5) and (7))

At present, a judgment debtor may be required to attend a Local Court for financial examination, but only in the district in which the debtor resides, carries on business or is employed. A request by a judgment creditor for a summons requiring the judgment debtor to attend for examination must be made to the registrar of the Local Court at which the judgment was obtained, which may not be the Local Court at which the examination is to be held. The rules also make provision for the circumstances in which the registrar may reject a request for a summons, but it is the registrar of the Local Court at which the examination is to be held, rather than the registrar issuing the summons, who would be better placed to decide whether the request should be rejected. However, in a similar situation, the District Court Act 1973 enables the summons to be issued in accordance with the rules instead of the matter being governed partly by the Act and partly by the rules. The proposed amendment would place a Local Court on the same basis as the District Court.

Failure to answer examination summons (item (6))

If a Local Court judgment debtor fails to answer an examination summons, the registrar is required to report the failure to the Court. The Local Court may then authorise the registrar to issue a warrant for the debtor to be apprehended and brought before a registrar or may adjourn the proceedings and order the debtor to appear before the Local Court on a specified date. The proposed amendment enables the registrar, without first obtaining the authority of the Local Court, to issue the warrant or to adjourn the proceedings and order the debtor to appear.

Time when execution may be levied (item (8))

Under section 61, the seizure of property after 8 p.m. and before 7 a.m. under a writ of execution issued by the registrar of a Local Court is at present prohibited. There is no such limitation in relation to writs issued from the District Court or the Supreme Court and the proposed repeal would put Local Courts in the same position as the superior courts.

Courts Legislation (Amendment) Act 1993 No. 80

**SCHEDULE 1—AMENDMENTS TO THE LOCAL COURTS
(CIVIL CLAIMS) ACT 1970 No. 11—*continued***

Savings and transitional provisions (items (9) and (10))

The combined effect of proposed section 86 and Schedule 2 is:

- (a) in the case of clause 1 of the Schedule—to enable the plaintiff in an action pending before a Local Court to obtain an order for the recovery of the goods rather than their value; and
- (b) in the case of clause 2 of the Schedule—to retain the present restricted hours for levy under a writ of execution issued before the date of assent to the proposed Act.

Schedule 2 will also be available for the inclusion of any future savings and transitional provisions.

**SCHEDULE 2—AMENDMENTS TO THE DISTRICT COURT
ACT 1973 No. 9**

AMENDMENTS

- (1) **Section 92 (Failure to attend in answer to examination summons):**
 - (a) From section 92 (1), omit “that registrar shall report in writing to the Court that the person has so failed to attend”, insert instead “the Court may act under subsection (2)”.
 - (b) From section 92 (2), omit “After the report is made to it, the Court”, insert instead “The Court”.
 - (c) From section 92 (2) (a), omit “presiding registrar to issue”, insert instead “issue of”.
 - (d) From section 92 (3), omit “the Court authorised its issue”, insert instead “the presiding registrar served the notice under subsection (2)”.
 - (e) From section 92 (4), omit “the Court authorised the issue of a warrant”, insert instead “the presiding registrar served a notice under subsection (2)”.
 - (f) From section 92 (4), omit “after the Court authorised the issue of the warrant for the examination of the person”, insert instead “after the presiding registrar served the notice under subsection (2)”.

SCHEDULE 2—AMENDMENTS TO THE DISTRICT COURT ACT
1973 No. 9—*continued*

(g) Omit section 92 (4A), insert instead:

(4A) If a judgment creditor fails to make an application under subsection (4) within the time limited by that subsection, the Court, if satisfied with the reasons for the failure, may issue a warrant for the apprehension of the judgment debtor.

(4B) The functions of the Court under subsections (2) and (4A) may be exercised by the presiding registrar.

(2) Section 148AB:

After section 148A, insert:

Alternative basis for costs

148AB. (1) This Division does not operate to prevent the Court from ordering a party to pay the costs of another party assessed on an indemnity basis.

(2) The Court is taken to have been authorised since 28 April 1989 to make an order referred to in subsection (1), except in the case of *Milosevic v. Government Insurance Office of New South Wales* in which judgment was delivered by the Court of Appeal on 13 August 1993.

(3) This section is repealed on the commencement of section 148B (1) (c) as inserted by Schedule 6 to the Legal Profession Reform Act 1993.

(3) Section 171 (**Criminal procedure rules**):

(a) In section 171 (2), after “with respect to” where firstly occurring, insert “any of the following”.

(b) From section 171 (2) (i), omit “and” where lastly occurring.

(c) After section 171 (2) (i), insert:

(ia) conferring on the Court the same powers as the Supreme Court has to make an order for a view of real property for the purposes of any proceedings;

(d) From section 171 (4), omit “or (i)”, insert instead “, (i) or (ja)”.

Commencement

The amendments to the District Court Act 1973 commence on the date of assent.

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**SCHEDULE 2—AMENDMENTS TO THE DISTRICT COURT ACT
1973 No. 9—continued**

Explanatory note

Failure to answer an examination summons (item (1))

If a District Court judgment debtor fails to answer an examination summons, the presiding registrar is required to report the failure to the Court. The Court may then authorise the registrar to issue a warrant for the debtor to be apprehended and brought before a registrar or may adjourn the proceedings and order the debtor to appear before the Court on a specified date. The proposed amendment enables the registrar to exercise those functions of the Court.

Alternative basis for costs (item (2))

The Court of Appeal held in the case of *Milosevic v. Government Insurance Office of New South Wales* that the District Court is not authorised to make orders for costs on an indemnity basis, as has always been assumed. The proposed amendments will validate the previous assumption retrospectively, except in the decided case. The amendments will be repealed on the commencement of amendments that will have a similar effect and are proposed by the Legal Profession Reform Bill 1993 at present before Parliament. The repeal of the amendments will not affect the validation.

Power of District Court to inspect property (item (3))

The District Court has a power to make rules for the inspection of real or personal property for the purpose of civil proceedings only (section 68 (2) (e)). The proposed amendment would confer on the District Court a power to make, in relation to criminal proceedings, the same kind of rules for inspection of real property as may be made by the Supreme Court in relation to criminal proceedings. Any such rules would be included among those for which (by section 171 (4)) the consent of the Attorney General would be required. The common law requires the Court, when making the rules, to take into account the rights of those who are not parties to the proceedings.

**SCHEDULE 3—AMENDMENT TO THE CONTRACTS
REVIEW ACT 1980 No. 16**

AMENDMENT

Section 4 (Definitions):

Omit the definition of “Court” in section 4 (1), insert instead:

“Court” means:

- (a) the Supreme Court of New South Wales; or

**SCHEDULE 3—AMENDMENT TO THE CONTRACTS REVIEW
ACT 1980 No. 16—*continued***

- (b) in accordance with section 134B of the District Court Act 1973, and without affecting the jurisdictional limitations referred to in that section, the District Court of New South Wales; or
- (c) in accordance with section 12A of the Local Courts (Civil Claims) Act 1970, and without affecting the jurisdictional limitations referred to in that section, a Local Court:

Commencement

The amendment to the Contracts Review Act 1980 commences on the date of assent.

Explanatory note

The Contracts Review Act 1980 provides relief against contractual provisions that are legal but unjust. Jurisdiction under that Act is at present confined to the Supreme Court and the District Court as most of the remedies under that Act are equitable in nature. However, one of those remedies is a power enabling the Court to refuse to enforce any or all of the provisions of a contract. The proposed amendment would enable a Local Court to exercise a similar power in relation to a contract that is at present within its jurisdiction under the Local Courts (Civil Claims) Act 1970.

**SCHEDULE "AMENDMENT TO THE COMPENSATION
COURT ACT 1984 No. 89**

AMENDMENT

Section 18A:

After section 18, insert:

Alternative basis for costs

18A. (1) Section 18 does not operate to prevent the Court from ordering a party to pay the costs of another party assessed on an indemnity basis.

(2) This section is repealed on the commencement of section 18 (2) (c) as inserted by Schedule 6 to the Legal Profession Reform Act 1993.

Courts Legislation (Amendment) Act 1993 No. 80

**SCHEDULE 4—AMENDMENT TO THE COMPENSATION
COURT ACT 1984 No. 89—*continued***

Commencement

The amendment to the Compensation Court Act 1984 commences on the date of assent.

Explanatory note

This amendment has a similar effect to the amendment proposed in this Bill by item (2) of the amendments to the District Court Act 1973, except that the amendment to the Compensation Court Act 1984 is not retrospective.

**SCHEDULE 5—AMENDMENT TO THE DUST DISEASES
TRIBUNAL ACT 1989 No. 63**

AMENDMENT

Section 34A:

After section 34, insert:

**Application of Supreme Court (Fees and Percentages)
Regulation 1993**

34A. (1) Until they were repealed on 1 September 1993, the Supreme Court (Fees and Percentages) Regulations are taken always to have applied to proceedings before the Tribunal in the same way as they applied in relation to proceedings before the Supreme Court.

(2) Until regulations are made under section 34, the Supreme Court (Fees and Percentages) Regulation 1993 applies to proceedings before the Tribunal in the same way as it applies to proceedings before the Supreme Court.

(3) Any payments prescribed by the Supreme Court (Fees and Percentages) Regulation 1993 and made before the commencement of this section are validated if they would have been valid had this section been in force when the payments were made.

Commencement

The amendment to the Dust Diseases Tribunal Act 1989 commences on the date of assent.

Courts Legislation (Amendment) Act 1993 No. 80

SCHEDULE 5—AMENDMENT TO THE DUST DISEASES
TRIBUNAL ACT 1989 No. 63—*continued*

Explanatory note

This amendment validates the fees that have been charged in relation to proceedings before the Dust Diseases Tribunal since it was constituted and enables it to continue charging its present fees until different fees are prescribed by regulation. Its present fees are the same as those prescribed by the Supreme Court (Fees and Percentages) Regulation 1993.

*[Minister's second reading speech made in—
Legislative Assembly on 27 October 1993
Legislative Council on 16 November 1993]*