

First print



New South Wales

# Courts Legislation Amendment (Civil Juries) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *District Court Act 1973* to provide that civil actions in the District Court are to be tried without a jury, unless the Court otherwise orders, and
- (b) to amend the *Supreme Court Act 1970* to provide that civil proceedings in any Division of the Supreme Court (other than in respect of proceedings for defamation) are to be tried without a jury, unless the Court otherwise orders.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *District Court Act 1973* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Supreme Court Act 1970* set out in Schedule 2.

### **Schedule 1 Amendment of District Court Act 1973**

**Schedule 1 [1]** inserts proposed section 76A. The proposed section provides that an action in the District Court is to be tried without a jury unless the Court otherwise orders. The Court may make an order for a trial with a jury if any party to the action files a requisition for such a trial and pays the prescribed fee and the Court is satisfied there is a special need for a jury trial. **Schedule 1 [2], [3] and [4]** make consequential amendments.

**Schedule 1 [6]** inserts proposed Part 5 to Schedule 3 to provide for a savings and transitional matter. Proposed clause 8 specifies that a provision of subdivision 8 of Division 3 of Part 3, as in force immediately before its amendment, continues to apply in relation to actions commenced in the District Court, and not finally determined, before the commencement of the amendment. **Schedule 1 [5]** makes a consequential amendment.

### **Schedule 2 Amendment of Supreme Court Act 1970**

**Schedule 2 [1]** substitutes sections 85, 86 and 87. Proposed section 85 provides that proceedings in any Division of the Supreme Court (other than proceedings in respect of defamation) are to be tried without a jury unless the Court otherwise orders. The Court may make an order for a trial by jury if any party to the proceedings files a requisition for such a trial and pays the prescribed fee and the Court is satisfied there is a special need for a jury trial.

Proposed section 86 preserves the present position in relation to proceedings on a common law claim in which there are issues of fact on a claim in respect of defamation.

Proposed section 87 preserves the present position in relation to the Court's power to order that any question of fact in proceedings be tried before another question of fact.

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**Schedule 2 [3]** inserts proposed Part 12 to the Fourth Schedule to provide for a savings and transitional matter. Proposed clause 19 specifies that sections 85–89 as in force immediately before their amendment, continue to apply in relation to proceedings commenced, and not finally determined, before the commencement of the amendments. **Schedule 2 [2]** makes a consequential amendment.



New South Wales

# Courts Legislation Amendment (Civil Juries) Bill 2001

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New South Wales

# Courts Legislation Amendment (Civil Juries) Bill 2001

No. , 2001

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## A Bill for

An Act to amend the *District Court Act 1973* and *Supreme Court Act 1970* to restrict the use of juries in civil proceedings; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Courts Legislation Amendment (Civil Juries) Act 2001</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of District Court Act 1973 No 9</b>	7
The <i>District Court Act 1973</i> is amended as set out in Schedule 1.	8
<b>4 Amendment of Supreme Court Act 1970 No 52</b>	9
The <i>Supreme Court Act 1970</i> is amended as set out in Schedule 2.	10

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<b>Schedule 1</b>	<b>Amendment of District Court Act 1973</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 76A</b>	3
	Insert after section 76:	4
	<b>76A Action to be tried without jury except in special circumstances</b>	5
	(1) An action is to be tried without a jury, unless the Court orders otherwise.	6 7
	(2) The Court may make an order under subsection (1) that an action is to be tried with a jury if:	8 9
	(a) any party to the action:	10
	(i) files, within the prescribed time, a requisition for trial with a jury, and	11 12
	(ii) pays the fee prescribed by the regulations made under section 150, and	13 14
	(b) the Court is satisfied there is a special need for the action to be tried by a jury.	15 16
	(3) A fee paid under this section is to be treated as costs in the action, unless the Court orders otherwise.	17 18
<b>[2]</b>	<b>Section 77 Questions of fact and law</b>	19
	Omit subsection (3).	20
<b>[3]</b>	<b>Section 77 (5)</b>	21
	Omit the subsection. Insert instead:	22
	(5) In any proceedings in which the Court has ordered a jury be summoned, the following questions of fact must be tried without the jury:	23 24 25
	(a) questions of fact on a defence arising under section 63 (5) or 64 (1) (c) of the <i>Workers' Compensation Act 1926</i> or section 151Z (1) (e) of the <i>Workers Compensation Act 1987</i> ,	26 27 28 29
	(b) any other question of fact ordered by the Court.	30

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Schedule 1      Amendment of District Court Act 1973

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<b>[4] Sections 78–79A</b>	1
Omit the sections.	2
<b>[5] Schedule 3 Savings and transitional provisions consequent on amendments to this Act</b>	3
Insert at the end of clause 1 (1):	4
<i>Courts Legislation Amendment (Civil Juries) Act 2001</i> , but	5
only in relation to the amendments made to this Act	6
<b>[6] Schedule 3</b>	7
Insert after Part 4:	8
<b>Part 5 Provision consequent on enactment of Courts Legislation Amendment (Civil Juries) Act 2001</b>	9
<b>8 Application of amendments</b>	10
A provision of subdivision 8 of Division 3 of Part 3, as in force immediately before its amendment by the <i>Courts Legislation Amendment (Civil Juries) Act 2001</i> , continues to apply in relation to actions commenced but not finally determined before the commencement of that amendment as if the provision had not been amended.	11
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<b>Schedule 2</b>	<b>Amendment of Supreme Court Act 1970</b>	1
	(Section 4)	2
<b>[1]</b>	<b>Sections 85–89</b>	3
	Omit the sections. Insert instead:	4
	<b>85 Trial without jury except in special circumstances</b>	5
	(1) Proceedings in any Division are to be tried without a jury, unless the Court orders otherwise.	6 7
	(2) The Court may make an order under subsection (1) that proceedings are to be tried with a jury if:	8 9
	(a) any party to the proceedings:	10
	(i) files a requisition for trial with a jury, and	11
	(ii) pays the fee prescribed by the regulations made under section 130, and	12 13
	(b) the Court is satisfied there is a special need for a trial by jury in the proceedings.	14 15
	(3) The rules may prescribe the time within which a requisition must be filed for the purposes of subsection (2) (a).	16 17
	(4) A fee paid under this section is to be treated as costs in the proceedings, unless the Court orders otherwise.	18 19
	(5) In any proceedings in which the Court has ordered a trial by jury, the following questions of fact must be tried without the jury:	20 21 22
	(a) questions of fact on a defence arising under section 63 (5) or 64 (1) (c) of the <i>Workers' Compensation Act 1926</i> or section 151Z (1) (e) of the <i>Workers Compensation Act 1987</i> ,	23 24 25 26
	(b) any other question of fact ordered by the Court.	27
	(6) This section does not apply to proceedings referred to in section 86.	28 29

<b>86</b>	<b>Common law claim—defamation</b>	1
(1)	Proceedings on a common law claim in which there are issues of fact on a claim in respect of defamation are to be tried with a jury.	2 3 4
(2)	Despite subsection (1), the Court may order that all or any issue of fact be tried without a jury if:	5 6
(a)	any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury, and	7 8 9
(b)	all parties consent to the order.	10
<b>87</b>	<b>Questions of fact</b>	11
	The Court may order that any question of fact in proceedings (whether the proceedings are to be tried with or without a jury) be tried before any other question of fact in the proceedings.	12 13 14
<b>[2]</b>	<b>Fourth Schedule Savings and transitional provisions</b>	15
	Insert at the end of clause 1 (2):	16
	<i>Courts Legislation Amendment (Civil Juries) Act 2001</i> , but only in relation to the amendments made to this Act	17 18

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<b>[3] Fourth Schedule</b>	1
Insert after Part 11:	2
<b>Part 12 Provision consequent on enactment of Courts Legislation Amendment (Civil Juries) Act 2001</b>	3 4 5
<b>19 Application of amendment</b>	6
Section 85, 86, 87, 88 or 89, as in force immediately before its amendment by the <i>Courts Legislation Amendment (Civil     Juries) Act 2001</i> , continues to apply in relation to proceedings commenced but not finally determined before the commencement of that amendment as if the section had not been amended.	7 8 9 10 11 12