

Passed by both Houses



New South Wales

# Courts Legislation Amendment (Civil Juries) Bill 2001

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2001*



New South Wales

## **Courts Legislation Amendment (Civil Juries) Bill 2001**

Act No , 2001

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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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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Courts Legislation Amendment (Civil Juries) Act 2001*.

**2 Commencement**

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

**3 Amendment of District Court Act 1973 No 9**

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

**4 Amendment of Supreme Court Act 1970 No 52**

The *Supreme Court Act 1970* is amended as set out in Schedule 2.

**5 Amendment of Defamation Act 1974 No 18**

The *Defamation Act 1974* is amended by omitting “To the extent that section 88 of the *Supreme Court Act 1970* applies to proceedings for defamation, it” from section 7A (5) and by inserting instead “Section 86 of the *Supreme Court Act 1970*”.

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## Schedule 1 Amendment of District Court Act 1973

(Section 3)

### [1] Section 76A

Insert after section 76:

#### **76A Action to be tried without jury unless jury required in interests of justice**

- (1) An action is to be tried without a jury, unless the Court orders otherwise.
- (2) The Court may make an order under subsection (1) that an action is to be tried with a jury if:
  - (a) any party to the action:
    - (i) files, within the prescribed time, a requisition for trial with a jury, and
    - (ii) pays the fee prescribed by the regulations made under section 150, and
  - (b) the Court is satisfied that the interests of justice require that the action be tried by a jury.
- (3) A fee paid under this section is to be treated as costs in the action, unless the Court orders otherwise.

### [2] Section 77 Questions of fact and law

Omit subsection (3).

### [3] Section 77 (5)

Omit the subsection. Insert instead:

- (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:
  - (a) questions of fact on a defence arising under section 63 (5) or 64 (1) (c) of the *Workers' Compensation Act 1926* or section 151Z (1) (e) of the *Workers' Compensation Act 1987*,

(b) any other question of fact ordered by the Court.

**[4] Sections 78–79A**

Omit the sections.

**[5] Schedule 3 Savings and transitional provisions consequent on amendments to this Act**

Insert at the end of clause 1 (1):

*Courts Legislation Amendment (Civil Juries) Act 2001*, but only in relation to the amendments made to this Act

**[6] Schedule 3**

Insert after Part 4:

**Part 5 Provision consequent on enactment of Courts Legislation Amendment (Civil Juries) Act 2001**

**8 Application of amendments**

A provision of subdivision 8 of Division 3 of Part 3, as in force immediately before its amendment by the *Courts Legislation Amendment (Civil Juries) Act 2001*, 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.

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## Schedule 2 Amendment of Supreme Court Act 1970

(Section 4)

### [1] Sections 85–89

Omit the sections. Insert instead:

#### **85 Trial without jury unless jury required in interests of justice**

- (1) Proceedings in any Division are to be tried without a jury, unless the Court orders otherwise.
- (2) The Court may make an order under subsection (1) that proceedings are to be tried with a jury if:
  - (a) any party to the proceedings:
    - (i) files a requisition for trial with a jury, and
    - (ii) pays the fee prescribed by the regulations made under section 130, and
  - (b) the Court is satisfied that the interests of justice require a trial by jury in the proceedings.
- (3) The rules may prescribe the time within which a requisition must be filed for the purposes of subsection (2) (a).
- (4) A fee paid under this section is to be treated as costs in the proceedings, unless the Court orders otherwise.
- (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:
  - (a) questions of fact on a defence arising under section 63 (5) or 64 (1) (c) of the *Workers' Compensation Act 1926* or section 151Z (1) (e) of the *Workers Compensation Act 1987*,
  - (b) any other question of fact ordered by the Court.
- (6) This section does not apply to proceedings referred to in section 86.

**86 Common law claim—defamation**

- (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) Despite subsection (1), the Court may order that all or any issue of fact be tried without a jury if:
  - (a) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury, or
  - (b) all parties consent to the order.

**87 Questions of fact**

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.

**[2] Fourth Schedule Savings and transitional provisions**

Insert at the end of clause 1 (2):

*Courts Legislation Amendment (Civil Juries) Act 2001*, but only in relation to the amendments made to this Act

**[3] Fourth Schedule**

Insert after Part 11:

**Part 12 Provision consequent on enactment of  
Courts Legislation Amendment (Civil Juries)  
Act 2001**

**19 Application of amendment**

Section 85, 86, 87, 88 or 89, as in force immediately before its amendment by the *Courts Legislation Amendment (Civil Juries) Act 2001*, 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.