

LOCAL COURT AMENDMENT (JURISDICTION) BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill excludes the Local Court's jurisdiction to hear proceedings for invasions of privacy and other privacy contraventions, including proceedings under section 55 of the *Privacy and Personal Information Protection Act 1998* (**PPIP Act**). This means that in NSW, civil claims relating to privacy would be heard by either the District Court or Supreme Court, and not the Local Court.

Examples of the jurisdiction that will be excluded from the Local Court include:

- (a) Statutory claims for invasions of privacy – in December 2024, the Australian Government amended the *Privacy Act 1998* (Cth) to create a new statutory tort for serious invasions of privacy.
- (b) Proceedings under section 55 of the PPIP Act – these proceedings concern applications for administrative review of decisions under the PPIP Act and *Health Records and Information Privacy Act 2002*. The Local Court currently hears these matters where the NSW Civil and Administrative Tribunal (**NCAT**) is unable to do so for constitutional reasons.
- (c) Common law claims for invasions of privacy - in recent years, intermediate courts in other Australian jurisdictions, namely Victoria and Queensland, have recognised a common law tort of invasion of privacy, most recently in the Victorian decision of *Waller v Barrett* [2024] VCC 962.

These exclusions are necessary because the Local Court is not the most appropriate jurisdiction to determine civil claims relating to privacy, whether they arise under statute or the common law, as:

- The Local Court does not hear complex tort claims and does not have jurisdiction to hear defamation claims, which involve similar defences to those available under the new Commonwealth statutory privacy tort.
- The Local Court cannot order equitable remedies, such as injunctions, which are remedies available where a plaintiff is successful in establishing the elements of the new Commonwealth statutory privacy tort.
- Proceedings under section 55 of the PPIP Act may also be complex.

The District and Supreme Courts are well placed to determine these claims. They have expertise in determining complex civil proceedings, including claims that involve similar defences to the new Commonwealth statutory privacy tort such as defamation, and have the power to order equitable relief.

Objectives: What is the policy's objective couched in terms of the public interest?

The objective of the Bill is to ensure that civil claims relating to privacy are heard by the NSW courts that are best placed to determine them. This will ensure that these

claims can be dealt with as effectively and efficiently as possible. It will also ensure that the Local Court can remain focused on its significant criminal workload.

As the Local Court has limits on the remedies it can order, the Bill also ensures that if a plaintiff is successful in proving an invasion of privacy, they will be able to access the full suite of remedies available to them.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The jurisdiction of the Local Court to hear civil claims relating to privacy can only be adjusted through legislative amendment. No alternative policies or mechanisms are available. The Bill was therefore considered against the alternative of taking no action and leaving this jurisdiction with the Local Court.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Taking no action and retaining the Local Court's jurisdiction to hear and determine proceedings for invasions of privacy and other privacy contravention would not be in the public interest for the reasons outlined above.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill commences upon assent. The Department of Communities and Justice will monitor workload impacts on the District Court and Supreme Court, particularly in relation to the new Commonwealth statutory privacy tort.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Local Court, District Court and Supreme Court have been consulted. No concerns were raised with the Bill.