



New South Wales

Supreme Court Amendment (Referral of Proceedings) Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Supreme Court Act 1970* (**the Act**), to enable the Supreme Court:

- (a) to refer proceedings in equity to an arbitrator for determination in accordance with the *Arbitration (Civil Actions) Act 1983*, where the proceedings are ancillary to a claim for the recovery of damages or other money, and
- (b) to refer proceedings for mediation or neutral evaluation under Part 7B of the Act, with or without the consent of the parties to the proceedings, and
- (c) to make orders as to the payment of the costs of any mediation or neutral evaluation.

Currently under the Act, only actions for damages may be referred to an arbitrator, and any mediation or neutral evaluation requires the consent of the parties to the proceedings, who pay the costs of the mediation or neutral evaluation in equal shares (or as may otherwise be agreed between them).

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 *Supreme Court Act 1970* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends section 76B of the Act so as to permit proceedings before the Court for an equitable relief or remedy to be referred to arbitration under the *Arbitration (Civil Actions) Act 1983*, if the equitable proceedings are ancillary to a claim for the recovery of damages or other money. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [3] makes an amendment as a consequence of the amendment made by Schedule 1 [4].

Schedule 1 [4] repeals and replaces sections 110K, 110L and 110M of the Act. The substituted provisions allow the Court:

- (a) to refer proceedings before it (other than criminal proceedings), or part of the proceedings, for mediation or neutral evaluation by a person agreed to by the parties or appointed by the Court, and
- (b) to determine by order the extent to which parties are liable to pay the costs of a mediation or neutral evaluation.

The new provisions impose a duty on the parties to the proceedings to participate in good faith in a mediation or neutral evaluation undertaken in relation to the proceedings.

Schedule 1 [5] inserts a transitional provision to the effect that the powers conferred on the Court by the amendments made by the proposed Act may be exercised in respect of proceedings instituted either before or after those amendments take effect.

First print



New South Wales

Supreme Court Amendment (Referral of Proceedings) Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Supreme Court Act 1970 No 52	2
Schedule 1 Amendments	3



New South Wales

Supreme Court Amendment (Referral of Proceedings) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Supreme Court Act 1970* with respect to the powers of the Supreme Court to refer matters for determination by alternative methods of dispute resolution.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Supreme Court Amendment (Referral of Proceedings) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Supreme Court Act 1970 No 52	8
The <i>Supreme Court Act 1970</i> is amended as set out in Schedule 1.	9

Schedule 1 Amendments

1

(Section 3)

2

[1] Section 76B Arbitration under Arbitration (Civil Actions) Act 1983

3

Omit section 76B (1). Insert instead:

4

(1) The Court may, whether of its own motion or on application, order that, in accordance with the rules, proceedings before it:

5

6

(a) on a claim for the recovery of damages or other money, or

7

8

(b) in which any equitable relief or remedy is claimed ancillary to a claim for the recovery of damages or other money,

9

10

11

be referred for determination pursuant to the *Arbitration (Civil Actions) Act 1983* by an arbitrator or arbitrators holding office under section 5 (1) of that Act.

12

13

14

[2] Section 76B (2) (a) and (b)

15

Omit “trial” wherever occurring. Insert instead “hearing”.

16

[3] Section 110H Purpose of Part

17

Omit “if the parties to the proceedings concerned have agreed to that course of action” from section 110H (1).

18

19

[4] Sections 110K–110M

20

Omit the sections. Insert instead:

21

110K Referral by Court

22

(1) If it considers the circumstances appropriate, the Court may, by order, refer any proceedings, or part of any proceedings, before it (other than any or part of any criminal proceedings) for mediation or neutral evaluation, and may do so either with or without the consent of the parties to the proceedings concerned.

23

24

25

26

27

(2)	The mediation or neutral evaluation is to be undertaken by a mediator or evaluator agreed to by the parties or, if the parties cannot agree, by a mediator or evaluator appointed by the Court, who (in either case) may, but need not, be a person whose name is on a list compiled under this Part.	1 2 3 4 5
110L	Duty of parties to participate	6
	It is the duty of each party to the proceedings the subject of a referral under section 110K to participate, in good faith, in the mediation or neutral evaluation.	7 8 9
110M	Costs of mediation and neutral evaluation	10
	The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are payable:	11 12
(a)	by the parties to the proceedings, in such proportions as they may agree among themselves, or	13 14
(b)	if the Court makes an order as to the payment of those costs—by one or more of the parties, in such manner as the order may specify.	15 16 17
[5]	Fourth Schedule Savings and transitional provisions	18
	Insert after Part 9:	19
	Part 10 Provisions consequent on enactment of Supreme Court Amendment (Referral of Proceedings) Act 2000	20 21 22
15	Application of amendment	23
(1)	Section 76B and Part 7B, as amended by the <i>Supreme Court Amendment (Referral of Proceedings) Act 2000</i> , extend to proceedings instituted before the amendments took effect, except as provided by subclause (2).	24 25 26 27

Supreme Court Amendment (Referral of Proceedings) Bill 2000

Amendments

Schedule 1

-
- (2) The amendments made by that Act to Part 7B have no effect in relation to a matter that, at the time the amendments took effect, had already been referred for mediation or neutral evaluation under that Part. 1
2
3
4