

FIRST PRINT

**COURTS LEGISLATION (CIVIL PROCEDURE) AMENDMENT  
BILL 1994**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are:

- (a) to provide that civil proceedings in the Supreme and District Courts are to be tried without a jury unless:
  - the court orders that the proceedings (or any issues of fact in the proceedings) should be tried with a jury in the interests of justice; or
  - the proceedings arise from a cause of action based on fraud, defamation, malicious prosecution or false imprisonment; and
- (b) to give a court that has discharged a jury in civil proceedings the ability to determine issues of fact (in addition to issues of law) if the parties agree.

**Trial without jury (Schedules 1 and 2)**

Under the current provisions, motor vehicle accident cases are tried with a jury if both parties so request and may be tried with a jury at the request of one party only. Other common law cases may be tried with a jury if one party so requests. Fraud, defamation, malicious prosecution and false imprisonment cases are currently tried with a jury and this will generally continue to be the case under the proposed amendments. The only exceptions in these cases will be if any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury, or if the parties agree.

The proposed amendments will apply to proceedings already commenced, except in one case. The exception is proceedings in which a jury has already been selected under the current provisions. Such proceedings will continue to be tried with a jury under those provisions.

**Discharge of jury (Schedule 3)**

Under the current provisions, a court must discharge a jury in civil proceedings if, after 6 hours, they have not agreed on either a unanimous or a majority verdict.

*Courts Legislation (Civil Procedure) Amendment 1994*

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The proposed amendments will:

- remove the mandatory discharge requirement; and
- if the jury are discharged, give the court the ability, with the consent of the parties, to determine issues of fact that would otherwise be determined by the jury.

The proposed amendments will extend to proceedings already commenced.

**Other provisions (clause 6)**

Proposed section 6 repeals an unnecessary uncommenced provision.

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**Clause 1** specifies the short title of the proposed Act.

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

**Clause 3** provides for the amendment of the Supreme Court Act 1970 as set out in Schedule 1.

**Clause 4** provides for the amendment of the District Court Act 1973 as set out in Schedule 2.

**Clause 5** provides for the amendment of the Jury Act 1977 as set out in Schedule 3.

**Clause 6** amends the Courts Legislation (Civil Procedure) Amendment Act 1991.

**Clause 7** gives effect to Schedule 4 which contains transitional provisions arising from the proposed Act.

**Schedules 1, 2 and 3** contain the amendments to the Supreme Court Act 1970, the District Court Act 1973 and the Jury Act 1977 the effect of which is explained above.

**Schedule 4** contains transitional provisions.

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**COURTS LEGISLATION (CIVIL PROCEDURE) AMENDMENT  
BILL 1994**

NEW SOUTH WALES



No.           , 1994

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**A BILL FOR**

An Act to amend the Supreme Court Act 1970, the District Court Act 1973 and the Jury Act 1977 with respect to the trial by jury of civil proceedings in the Supreme Court and District Court; and for related purposes.

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*Courts Legislation (Civil Procedure) Amendment 1994*

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

**Short title**

1. This Act may be cited as the Courts Legislation (Civil Procedure) Amendment Act 1994.

5 **Commencement**

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

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

3. The Supreme Court Act 1970 is amended as set out in Schedule 1.

10 **Amendment of District Court Act 1973 No. 9**

4. The District Court Act 1973 is amended as set out in Schedule 2.

**Amendment of Jury Act 1977 No. 18**

5. The Jury Act 1977 is amended as set out in Schedule 3.

15 **Amendment of Courts Legislation (Civil Procedure) Amendment Act 1991 No. 12**

6. The Courts Legislation (Civil Procedure) Amendment Act 1991 is amended by omitting item 5 from Schedule 2.

**Transitional provisions**

7. Schedule 4 has effect.

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20 **SCHEDULE 1—AMENDMENT OF SUPREME COURT  
ACT 1970**

(Sec. 3)

Omit Division 2 of Part 6, insert instead:

**Division 2—Trial**

25 **Proceedings tried without a jury**

85. Proceedings in any Division (other than the Criminal Division) are to be tried without a jury, except as provided by this Division.

*Courts Legislation (Civil Procedure) Amendment 1994*

SCHEDULE 1—AMENDMENT OF SUPREME COURT  
ACT 1970—*continued*

**Court may order jury trial**

86. (1) The Court may, if it is in the interests of justice to do so:

- (a) order proceedings in any Division to be tried by jury; or
- (b) order any issue of fact in any such proceedings to be tried by jury.

(2) In making such an order, the Court is also to order that either the plaintiff or the defendant pay the prescribed fee and:

- (a) if the plaintiff is ordered to pay the fee, the plaintiff may not take any further steps in the proceedings until the fee is paid; and
- (b) if the defendant is ordered to pay the fee, the proceedings are to be tried without a jury unless the fee is paid in accordance with the rules.

(3) The prescribed fee is to be treated as costs in the proceedings, unless the Court otherwise orders.

(4) In this section, “**prescribed fee**” means the fee prescribed by the regulations for the purposes of this section.

**Jury trial for fraud, defamation, malicious prosecution or false imprisonment**

87. (1) This section applies to proceedings on a common law claim arising from a cause of action based on:

- (a) a charge of fraud against a party; or
- (b) a claim in respect of defamation, malicious prosecution or false imprisonment.

(2) The proceedings are to be tried with a jury, except as provided by this section.

(3) The Court may order that all or any issues of fact in the proceedings are to 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 such an order.

*Courts Legislation (Civil Procedure) Amendment 1994*

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SCHEDULE 1—AMENDMENT OF SUPREME COURT  
ACT 1970—*continued*

5 (4) On the setting down of the proceedings for trial by jury, the plaintiff may not take any further steps in the proceedings until the plaintiff pays the prescribed fee.

(5) The prescribed fee is to be treated as costs in the proceedings, unless the Court otherwise orders.

(6) In this section, “**prescribed fee**” means the fee prescribed by the regulations for the purposes of this section.

10 **Issue of fact**

88. The Court may order that any issue of fact in any proceedings be tried before any other issue of fact in the proceedings.

**Special verdict**

15 89. A jury must answer any issue of fact that may be left to the jury by the presiding Judge at the trial.

**References to determinations by a jury**

20 90. (1) For the purposes of any proceedings that, under this Division, are to be tried without a jury, a reference in a provision of an Act or statutory instrument (being a provision which is in force immediately before the appointed day) to a determination by a jury in the proceedings is taken to be a reference to a determination by the Court.

25 (2) In this section, “**appointed day**” means the day on which Schedule 1 to the Courts Legislation (Civil Procedure) Amendment Act 1994 commenced.

SCHEDULE 2—AMENDMENT OF DISTRICT COURT  
ACT 1973

(Sec. 4)

30 (1) Omit sections 77–79A, insert instead:

**Actions tried without a jury**

77. Actions are to be tried without a jury, except as provided by this Subdivision.



*Courts Legislation (Civil Procedure) Amendment 1994*

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SCHEDULE 2—AMENDMENT OF DISTRICT COURT  
ACT 1973—*continued*

**Court may order jury trial**

78. (1) The Court may, if it is in the interests of justice to do so: 5

- (a) order an action to be tried by jury; or
- (b) order any issue of fact in an action to be tried by jury.

(2) In making such an order, the Court is also to order that either the plaintiff or the defendant pay the prescribed fee and: 10

- (a) if the plaintiff is ordered to pay the fee, the plaintiff may not take any further steps in the action until the fee is paid; and
- (b) if the defendant is ordered to pay the fee, the action is to be tried without a jury unless the fee is paid in accordance with the rules. 15

(3) The prescribed fee is to be treated as costs in the action, unless the Court otherwise orders.

(4) In this section, “prescribed fee” means the fee prescribed by the regulations for the purposes of this section. 20

**Jury trial for fraud, defamation, malicious prosecution or false imprisonment**

79. (1) This section applies to an action arising from a cause of action based on:

- (a) a charge of fraud against a party; or 25
- (b) a claim in respect of defamation, malicious prosecution or false imprisonment,

but does not apply to an action involving the exercise of the equity jurisdiction of the Court under section 134.

(2) The action is to be tried with a jury, except as provided by this section. 30

(3) The Court may order that all or any issues of fact in the action are to 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 35
- (b) all parties consent to such an order.

*Courts Legislation (Civil Procedure) Amendment 1994*

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**SCHEDULE 2—AMENDMENT OF DISTRICT COURT  
ACT 1973—continued**

5 (4) On the setting down of the action for trial by jury, the plaintiff may not take any further steps in the action until the plaintiff pays the prescribed fee.

(5) The prescribed fee is to be treated as costs in the action, unless the Court otherwise orders.

10 (6) In this section, “**prescribed fee**” means the fee prescribed by the regulations for the purposes of this section.

**Issue of fact**

79A. The Court may order that any issue of fact in any action be tried before any other issue of fact in the action.

(2) Section 80A:

Before Subdivision 9 of Division 3 of Part 3, insert:

15 **References to determinations by a jury**

80A. (1) For the purposes of any action that, under this Subdivision, is to be tried without a jury, a reference in a provision of an Act or statutory instrument (being a provision which is in force immediately before the appointed day) to a determination by a jury in the action is taken to be a reference to a determination by the Court.

20 (2) In this section, “**appointed day**” means the day on which Schedule 2 (2) to the Courts Legislation (Civil Procedure) Amendment Act 1994 commenced.

25 **SCHEDULE 3—AMENDMENT OF JURY ACT 1977**

(Sec. 5)

**Section 58 (Discharge of jury that disagree in civil proceedings):**

(a) Omit subsection (2), insert instead:

30 (2) On discharging the jury, the court may (as well as determining issues of law) determine, if the parties agree, the issues of fact that would otherwise be determined by a jury.

(b) From subsection (3), omit “subsection (1) or (2)”, insert instead “this section without the parties agreeing to the court determining issues of fact”.

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**SCHEDULE 4—TRANSITIONAL PROVISIONS**

(Sec. 7)

**Trials in the Supreme Court**

1. (1) Division 2 of Part 6 of the Supreme Court Act 1970, as amended by this Act, applies to proceedings in the Supreme Court whenever those proceedings were commenced. 5

(2) Despite subclause (1), that Division as in force immediately before the day on which Schedule 1 to this Act commences, continues to apply to proceedings in which, before that day, a jury had been empanelled for the trial of the proceedings. 10

(3) In this clause, “**empanelled**”, in relation to a jury, means the constitution of the jury in accordance with section 49 of the Jury Act 1977.

**Trials in the District Court**

2. (1) Subdivision 8 of Division 3 of Part 3 of the District Court Act 1973, as amended by this Act, applies to an action in the District Court whenever that action was commenced. 15

(2) Despite subclause (1), that Subdivision as in force immediately before the day on which Schedule 2 to this Act commences, continues to apply to an action in which, before that day, a jury had been empanelled for the trial of the action. 20

(3) In this clause, “**empanelled**”, in relation to a jury, means the constitution of the jury in accordance with section 49 of the Jury Act 1977.

**Discharge of juries that disagree in civil proceedings**

3. Section 58 of the Jury Act 1977, as amended by this Act, extends to proceedings commenced before the day on which Schedule 3 commences. 25

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