

FIRST PRINT

**COURTS LEGISLATION (CIVIL PROCEDURE) FURTHER
AMENDMENT BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is 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.

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 continue to be the case under the proposed amendments.

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.

Proposed section 5 repeals an unnecessary uncommenced provision.

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Supreme Court Act 1970 No. 52
4. Amendment of District Court Act 1973 No. 9
5. Amendment of Courts Legislation (Civil Procedure) Amendment Act 1991 No. 12
6. Transitional provisions

SCHEDULE 1—AMENDMENT OF SUPREME COURT ACT 1970

SCHEDULE 2—AMENDMENT OF DISTRICT COURT ACT 1973

SCHEDULE 3—TRANSITIONAL PROVISIONS

**COURTS LEGISLATION (CIVIL PROCEDURE) FURTHER
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No. , 1991

A BILL FOR

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

Courts Legislation (Civil Procedure) Further Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Courts Legislation (Civil Procedure) Further Amendment Act 1991.

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.

Amendment of District Court Act 1973 No. 9

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

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

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

Transitional provisions

6. Schedule 3 has effect.

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

(Sec. 3)

Omit Division 2 of Part 6, insert instead:

Division 2—Trial

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.

Court may order jury trial

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

Courts Legislation (Civil Procedure) Further Amendment 1991

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

- (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, he or she 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 etc.
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.
- (4) On setting down 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.

Courts Legislation (Civil Procedure) Further Amendment 1991

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

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

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

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

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.

(2) In this section, “**appointed day**” means the day on which Schedule 1 to the Courts Legislation (Civil Procedure) Further Amendment Act 1991 commenced.

SCHEDULE 2—AMENDMENT OF DISTRICT COURT
ACT 1973

(Sec. 4)

(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.

Court may order jury trial

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

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

Courts Legislation (Civil Procedure) Further Amendment 1991

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

- (a) if the plaintiff is ordered to pay the fee, he or she 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.

(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.

Jury trial for fraud, defamation etc.

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
- (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.

(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
- (b) all parties consent to such an order.

(4) On setting down 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.

(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.

Courts Legislation (Civil Procedure) Further Amendment 1991

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

(2) Section 80A:

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

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.

(2) In this section, “**appointed day**” means the day on which Schedule 2 to the Courts Legislation (Civil Procedure) Further Amendment Act 1991 commenced.

SCHEDULE 3—TRANSITIONAL PROVISIONS

(Sec. 6)

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.

(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.

(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.

(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.

(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.
