



New South Wales

District Court Amendment Bill 1997

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 *District Court Act 1973*:

- (a) to increase, from \$250,000 to \$750,000, the maximum amount for which civil claims generally may be brought in the District Court, and
- (b) to allow motor accident cases to be brought before the Court, irrespective of the amount claimed, and
- (c) to allow applications under the *De Facto Relationships Act 1984*, the *Family Provision Act 1982* or the *Testator's Family Maintenance and Guardianship of Infants Act 1916* that involve amounts, or property to the value of, not more than \$250,000 to be brought before the Court, and
- (d) to allow the Court to grant equitable relief in matters of debt and damages involving an amount not greater than \$750,000.

The Bill provides for consequential amendments to the *De Facto Relationships Act 1984*, the *Family Provision Act 1982*, the *Supreme Court Act 1970* and the *Testator's Family Maintenance and Guardianship of Infants Act 1916*.

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 *District Court Act 1973* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *De Facto Relationships Act 1984*, the *Family Provision Act 1982*, the *Supreme Court Act 1970* and the *Testator's Family Maintenance and Guardianship of Infants Act 1916* set out in Schedule 2.

Schedule 1 Amendment of District Court Act 1973

Civil jurisdiction of the District Court

Schedule 1 [2] amends section 44 of the Act to provide that any personal action for an amount not exceeding \$750,000 may be brought in the District Court. (Currently the Court's jurisdiction is limited to amounts not exceeding \$250,000.)

Schedule 1 [3] makes consequential amendments to several provisions of the Act.

Motor accident claims

Schedule 1 [1] amends section 4 of the Act to insert a definition of *motor accident claim*. The term is defined to mean a claim for damages to which Part 6 of the *Motor Accidents Act 1988* applies. The provisions of that Part apply to claims involving death or injury caused by road vehicles, City and State Rail trains, or ferries or other public transport watercraft.

Schedule 1 [4] amends section 44 of the Act to provide that any motor accident claim may be brought in the District Court, irrespective of the amount claimed. (Currently such claims are within the Court's general civil jurisdiction—that is, the Court's jurisdiction in such matters is limited to claims in amounts not exceeding \$250,000.)

Schedule 1 [5] and [6] amend section 79 of the Act (which deals with the circumstances in which the Court may order a trial by jury) to make it clear that an application under that section may be made in respect of a motor accident that occurred otherwise than on a public street.

Equitable jurisdiction of the Court

Schedule 1 [7] amends section 134 of the Act to provide that any equitable claim for debt or damages in an amount not exceeding \$750,000 may be brought in the District Court. (Currently the Court has no jurisdiction in this area.)

Claims under the De Facto Relationships Act 1984, the Family Provision Act 1982 and the Testator's Family Maintenance and Guardianship of Infants Act 1916

Schedule 1 [7]–[9] amend section 134 of the Act to provide that a claim under the *De Facto Relationships Act 1984*, the *Family Provision Act 1982* or the *Testator's Family Maintenance and Guardianship of Infants Act 1916* involving not more than \$250,000 may be brought in the District Court. (Currently the Court has jurisdiction to hear matters under the *Family Provision Act* or the *Testator's Family Maintenance and Guardianship of Infants Act* involving amounts not greater than \$20,000, but has no jurisdiction to hear matters under the *De Facto Relationships Act*.)

Transfer of proceedings

Schedule 1 [10] amends section 143 (3) of the Act to make its meaning a little clearer. When the Supreme Court is considering whether a matter listed before it should be transferred to the District Court, it is obliged to consider whether the matter might properly have been commenced in that Court. As the jurisdiction of the District Court is from time to time increased (as, for example, in the manner proposed by this Bill), the Supreme Court is to imagine that the District Court had had the increased jurisdiction at the time the matter was commenced. (In the context of this Bill, for example, the intention is that the Supreme Court may consider whether a civil claim worth, say, \$500,000, which could not previously be transferred to the District Court, may now be transferred because the Court's jurisdiction will have been increased.)

Schedule 1 [11] amends section 143 of the Act to provide that, where a plaintiff in the Supreme Court applies to have the matter transferred to the District Court, the defendant is not permitted to oppose the application. The Supreme Court may, for reasons appearing to it to be sufficient, decline to order the transfer. The amendment also makes it the duty of the Supreme Court to consider, before setting it down for hearing, each action for damages in respect of personal injury or death, to see whether an order transferring the

proceedings to the District Court should be made, and requires the Supreme Court to make an order effecting the transfer unless it is satisfied, on criteria specified by the proposed amendment, that the matter should be retained in the Supreme Court. (The criteria are similar to those on which the Supreme Court decides on an application to transfer a similar action from the District Court to the Supreme Court—see the note on Schedule 1 [12] below.)

Schedule 1 [12] amends section 145 of the Act with respect to the circumstances in which a case listed in the District Court may be transferred to the Supreme Court. A personal injury or death claim (other than a motor accident claim) may only be transferred if the Supreme Court is satisfied that the likely verdict in the case will exceed \$750,000 or that there is other sufficient reason why the matter should be tried in the Supreme Court. A motor accident claim may only be transferred if the Supreme Court is satisfied that the likely verdict in the case will exceed \$1,000,000 and that the case is of sufficient legal complexity or public interest to justify the transfer.

Transitional provisions

Schedule 1 [13] inserts a new section 183C, which is a formal provision giving effect to Schedule 3 to the Act.

Schedule 1 [14] inserts a new Schedule 3 containing provisions governing the transitional application of the amendments proposed by the Bill.

Schedule 2 Consequential amendment of other Acts

The Schedule amends the *De Facto Relationships Act 1984*, the *Family Provision Act 1982*, the *Supreme Court Act 1970* and the *Testator's Family Maintenance and Guardianship of Infants Act 1916*, as a consequence of the amendments contained in Schedule 1. The amendments to the *Supreme Court Act* make explicit the power of the Supreme Court to restrict or otherwise regulate the costs recoverable in matters brought before it that, in the Court's opinion, might properly have been dealt with in a court of limited jurisdiction.

First print



New South Wales

District Court Amendment Bill 1997

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of District Court Act 1973 No 9	2
4 Consequential amendment of other Acts	2

Schedules

1 Amendment of District Court Act 1973	3
2 Consequential amendment of other Acts	8



New South Wales

District Court Amendment Bill 1997

No , 1997

A Bill for

An Act to amend the *District Court Act 1973* with respect to the jurisdiction of the District Court; to amend certain other Acts consequentially; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *District Court Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of District Court Act 1973 No 9

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

4 Consequential amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule. 10

Schedule 1 Amendment of District Court Act 1973

(Section 3)

[1] Section 4 Definitions: general

Insert in alphabetical order in section 4 (1):

motor accident claim means an action for an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies. 5

[2] Section 44 Actions

Omit section 44 (1) (a). Insert instead:

(a) any personal action at law (other than a motor accident claim) in which the amount claimed does not exceed \$750,000, whether on a balance of account or after an admitted set-off or otherwise, 10

[3] Sections 44 (1) (b), 48 (2) and (3), 49 (2), 51 (2) and 134A

Omit "\$250,000" wherever occurring. Insert instead "\$750,000". 15

[4] Section 44 (1) (d)

Insert after section 44 (1) (c):

(d) any motor accident claim, irrespective of the amount claimed.

[5] Section 79 Motor accident cases

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Omit all words after "vehicle" from section 79 (2) (a) (i).

[6] Section 79 (3), definition of "public street"

Omit the definition.

[7] Section 134 Jurisdiction in equity proceedings

Insert after section 134 (1) (f):

, or

- (g) any application under the *De Facto Relationships Act 1984*, or 5
- (h) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated (not being a claim or demand of a kind to which any other paragraph of this subsection applies), in an amount not exceeding \$750,000. 10

[8] Section 134 (2)

Omit "\$20,000". Insert instead "\$250,000".

[9] Section 134 (3)

Insert after section 134 (2): 15

- (3) In any proceedings pursuant to subsection (1) (g), the Court has no power to make an order for financial adjustment under Part 3 of the *De Facto Relationships Act 1984* that will or may result in the amount of the adjustment so made exceeding \$250,000. 20

[10] Section 143 Transfer of proceedings from Supreme Court

Insert "(as though that limitation had been in force at the time the proceedings were commenced in the Supreme Court)" after "made" in section 143 (3).

[11] Section 143 (4) and (5) 25

Insert after section 143 (3):

- (4) If the plaintiff in the proceedings applies for a transfer of the proceedings under this section, the defendant is not permitted to oppose the application. The Supreme Court, however, for any reason appearing to it sufficient (but having due regard to the provisions of section 145), may decline to make the order sought. 30

-
- (5) Without limiting any power of the Supreme Court under this section, the Supreme Court may, at any time after the commencement and before the hearing of the action, consider any action for damages in respect of personal injury or death, in order to determine whether an order under this section transferring the proceedings ought to be made. Having considered the action, the Supreme Court is to make such an order unless: 5
- (a) in the case of a motor accident claim, the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$1,000,000 and that the case involves complex legal issues or issues of general public importance, or 10
- (b) in any other case, the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$750,000 or that there is other sufficient reason for trying the action in the Supreme Court. 15

[12] Section 145 Transfer of proceedings to Supreme Court 20

Insert at the end of section 145:

- (2) An action for damages in respect of personal injury or death (other than a motor accident claim) may be so removed only if the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$750,000 or that there is other sufficient reason for trying the action in the Supreme Court. 25
- (3) A motor accident claim may be so removed only if the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$1,000,000 and that the case involves complex legal issues or issues of general public importance. 30

[13] Section 183C

Insert at the end of Division 1 of Part 6:

183C Provision consequent on enactment of other amendments

Schedule 3 has effect in respect of enactments amending this Act. 5

[14] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings and transitional provisions consequent on amendments to this Act 10

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 15

District Court Amendment Act 1997

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 20

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 25

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 30

**Part 2 Provision consequent on enactment of
District Court Amendment Act 1997**

2 Definition

In this Part, *the amending Act* means the *District Court Amendment Act 1997*.

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3 Causes of action generally

Sections 44, 48, 49, 51, 79, 134 and 134A, as amended by the amending Act, extend to apply in respect of any cause of action that accrued before their amendment by that Act.

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4 Motor accident claims

The Court may, on the application of the plaintiff in a motor accident claim that was pending at the time the amendment of section 44 (1) by the amending Act took effect, by order determine that the amount recoverable by the plaintiff is not limited to any amount claimed in the pleadings.

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5 Transfer of proceedings to or from the Court

Sections 143 and 145, as amended by the amending Act, extend to apply to proceedings instituted before their amendment by that Act.

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Schedule 2 Consequential amendment of other Acts

(Section 4)

2.1 De Facto Relationships Act 1984 No 147

[1] **Section 12 Transfer of proceedings from Local Courts in certain cases** 5

Omit "Supreme Court" from section 12 (1).
Insert instead "District Court or the Supreme Court, as may be appropriate".

[2] **Section 12 (3)** 10

Insert "District Court or" before "Supreme Court".

[3] **Section 12 (4)**

Omit "to the Supreme Court".

[4] **Section 12 (4)**

Omit "the Supreme Court" where secondly occurring. 15
Insert instead "the District Court or Supreme Court, as the case may be,".

2.2 Family Provision Act 1982 No 160

Section 6 Definitions

Omit the definition of *Court* from section 6 (1). Insert instead: 20

Court means:

- (a) in relation to a matter in which the District Court has jurisdiction in accordance with section 134 of the *District Court Act 1973*—the District Court, or
- (b) in relation to any other matter—the Supreme Court. 25

2.3 Supreme Court Act 1970 No 52

[1] Section 124 Rule-making power

Insert “and for the co-ordination or expedition of any such transfers,” after “inferior court,” in section 124 (1) (d).

[2] Section 124 (1) (j)

5

Insert “and, in particular, prescribing, limiting or otherwise affecting the costs recoverable in any action or proceedings that the Court considers might properly have been dealt with in an inferior court” after “Court”.

2.4 Testator’s Family Maintenance and Guardianship of Infants Act 1916 No 41

10

Section 2 Definitions

Omit the definition of *Court*. Insert instead:

Court means:

- (a) in relation to a matter in which the District Court has jurisdiction in accordance with section 134 of the *District Court Act 1973*—the District Court, or
- (b) in relation to any other matter—the Supreme Court.

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New South Wales

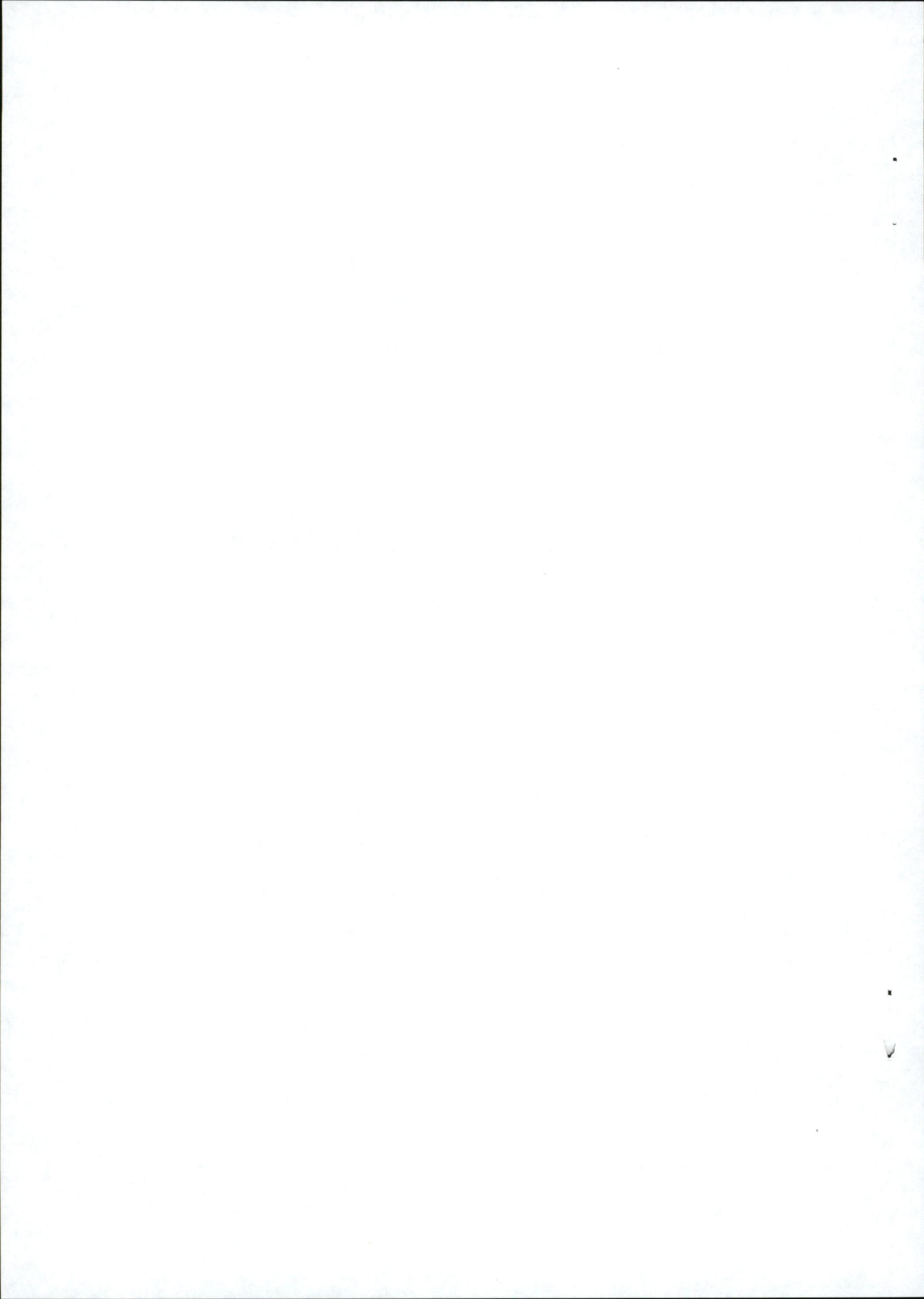
District Court Amendment Act 1997 No 58

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of District Court Act 1973 No 9	2
4 Consequential amendment of other Acts	2

Schedules

1 Amendment of District Court Act 1973	3
2 Consequential amendment of other Acts	8





New South Wales

District Court Amendment Act 1997 No 58

Act No 58, 1997

An Act to amend the *District Court Act 1973* with respect to the jurisdiction of the District Court; to amend certain other Acts consequentially; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *District Court Amendment Act 1997*.

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 Consequential amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of District Court Act 1973

(Section 3)

[1] Section 4 Definitions: general

Insert in alphabetical order in section 4 (1):

motor accident claim means an action for an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

[2] Section 44 Actions

Omit section 44 (1) (a). Insert instead:

- (a) any personal action at law (other than a motor accident claim) in which the amount claimed does not exceed \$750,000, whether on a balance of account or after an admitted set-off or otherwise,

[3] Sections 44 (1) (b), 48 (2) and (3), 49 (2), 51 (2) and 134A

Omit "\$250,000" wherever occurring. Insert instead "\$750,000".

[4] Section 44 (1) (d)

Insert after section 44 (1) (c):

- (d) any motor accident claim, irrespective of the amount claimed.

[5] Section 79 Motor accident cases

Omit all words after "vehicle" from section 79 (2) (a) (i).

[6] Section 79 (3), definition of "public street"

Omit the definition.

[7] Section 134 Jurisdiction in equity proceedings

Insert after section 134 (1) (f):

, or

- (g) any application under the *De Facto Relationships Act 1984*, or
- (h) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated (not being a claim or demand of a kind to which any other paragraph of this subsection applies), in an amount not exceeding \$750,000.

[8] Section 134 (2)

Omit "\$20,000". Insert instead "\$250,000".

[9] Section 134 (3)

Insert after section 134 (2):

- (3) In any proceedings pursuant to subsection (1) (g), the Court has no power to make an order for financial adjustment under Part 3 of the *De Facto Relationships Act 1984* that will or may result in the amount of the adjustment so made exceeding \$250,000.

[10] Section 143 Transfer of proceedings from Supreme Court

Insert "(as though that limitation had been in force at the time the proceedings were commenced in the Supreme Court)" after "made" in section 143 (3).

[11] Section 143 (4) and (5)

Insert after section 143 (3):

- (4) If the plaintiff in the proceedings applies for a transfer of the proceedings under this section, the defendant is not permitted to oppose the application. The Supreme Court, however, for any reason appearing to it sufficient (but having due regard to the provisions of section 145), may decline to make the order sought.

- (5) Without limiting any power of the Supreme Court under this section, the Supreme Court may, at any time after the commencement and before the hearing of the action, consider any action for damages in respect of personal injury or death, in order to determine whether an order under this section transferring the proceedings ought to be made. Having considered the action, the Supreme Court is to make such an order unless:
- (a) in the case of a motor accident claim, the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$1,000,000 and that the case involves complex legal issues or issues of general public importance, or
 - (b) in any other case, the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$750,000 or that there is other sufficient reason for trying the action in the Supreme Court.

[12] Section 145 Transfer of proceedings to Supreme Court

Insert at the end of section 145:

- (2) An action for damages in respect of personal injury or death (other than a motor accident claim) may be so removed only if the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$750,000 or that there is other sufficient reason for trying the action in the Supreme Court.
- (3) A motor accident claim may be so removed only if the Supreme Court is satisfied that the amount to be awarded to the plaintiff in the case, if successful, would be likely to exceed \$1,000,000 and that the case involves complex legal issues or issues of general public importance.

[13] Section 183C

Insert at the end of Division 1 of Part 6:

183C Provision consequent on enactment of other amendments

Schedule 3 has effect in respect of enactments amending this Act.

[14] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings and transitional provisions consequent on amendments to this Act

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

District Court Amendment Act 1997

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provision consequent on enactment of District Court Amendment Act 1997

2 Definition

In this Part, *the amending Act* means the *District Court Amendment Act 1997*.

3 Causes of action generally

Sections 44, 48, 49, 51, 79, 134 and 134A, as amended by the amending Act, extend to apply in respect of any cause of action that accrued before their amendment by that Act.

4 Motor accident claims

The Court may, on the application of the plaintiff in a motor accident claim that was pending at the time the amendment of section 44 (1) by the amending Act took effect, by order determine that the amount recoverable by the plaintiff is not limited to any amount claimed in the pleadings.

5 Transfer of proceedings to or from the Court

Sections 143 and 145, as amended by the amending Act, extend to apply to proceedings instituted before their amendment by that Act.

Schedule 2 Consequential amendment of other Acts

(Section 4)

2.1 De Facto Relationships Act 1984 No 147

[1] Section 12 Transfer of proceedings from Local Courts in certain cases

Omit "Supreme Court" from section 12 (1).

Insert instead "District Court or the Supreme Court, as may be appropriate".

[2] Section 12 (3)

Insert "District Court or" before "Supreme Court".

[3] Section 12 (4)

Omit "to the Supreme Court".

[4] Section 12 (4)

Omit "the Supreme Court" where secondly occurring.

Insert instead "the District Court or Supreme Court, as the case may be,".

2.2 Family Provision Act 1982 No 160

Section 6 Definitions

Omit the definition of *Court* from section 6 (1). Insert instead:

Court means:

- (a) in relation to a matter in which the District Court has jurisdiction in accordance with section 134 of the *District Court Act 1973*—the District Court, or
- (b) in relation to any other matter—the Supreme Court.

2.3 Supreme Court Act 1970 No 52

[1] Section 124 Rule-making power

Insert “and for the co-ordination or expedition of any such transfers,” after “inferior court,” in section 124 (1) (d).

[2] Section 124 (1) (j)

Insert “and, in particular, prescribing, limiting or otherwise affecting the costs recoverable in any action or proceedings that the Court considers might properly have been dealt with in an inferior court” after “Court”.

2.4 Testator’s Family Maintenance and Guardianship of Infants Act 1916 No 41

Section 2 Definitions

Omit the definition of *Court*. Insert instead:

Court means:

- (a) in relation to a matter in which the District Court has jurisdiction in accordance with section 134 of the *District Court Act 1973*—the District Court, or
- (b) in relation to any other matter—the Supreme Court.

[Minister’s second reading speech made in—
Legislative Assembly on 18 June 1997
Legislative Council on 26 June 1997]

BY AUTHORITY

