

[Act 2000 No 36]



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.