

[Act 1997 No 58]



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 1993

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.