

[Act 2001 No 124]



New South Wales

## Courts Legislation Amendment (Civil Juries) Bill 2001

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The objects of this Bill are:

- (a) to amend the *District Court Act 1973* to provide that civil actions in the District Court are to be tried without a jury, unless the Court otherwise orders, and
- (b) to amend the *Supreme Court Act 1970* to provide that civil proceedings in any Division of the Supreme Court (other than in respect of proceedings for defamation) are to be tried without a jury, unless the Court otherwise orders.

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\* Amended in committee—see table at end of volume.

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## 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 *Supreme Court Act 1970* set out in Schedule 2.

### **Schedule 1 Amendment of District Court Act 1973**

**Schedule 1 [1]** inserts proposed section 76A. The proposed section provides that an action in the District Court is to be tried without a jury unless the Court otherwise orders. The Court may make an order for a trial with a jury if any party to the action files a requisition for such a trial and pays the prescribed fee and the Court is satisfied there is a special need for a jury trial. **Schedule 1 [2], [3] and [4]** make consequential amendments.

**Schedule 1 [6]** inserts proposed Part 5 to Schedule 3 to provide for a savings and transitional matter. Proposed clause 8 specifies that a provision of subdivision 8 of Division 3 of Part 3, as in force immediately before its amendment, continues to apply in relation to actions commenced in the District Court, and not finally determined, before the commencement of the amendment. **Schedule 1 [5]** makes a consequential amendment.

### **Schedule 2 Amendment of Supreme Court Act 1970**

**Schedule 2 [1]** substitutes sections 85, 86 and 87. Proposed section 85 provides that proceedings in any Division of the Supreme Court (other than proceedings in respect of defamation) are to be tried without a jury unless the Court otherwise orders. The Court may make an order for a trial by jury if any party to the proceedings files a requisition for such a trial and pays the prescribed fee and the Court is satisfied there is a special need for a jury trial.

Proposed section 86 preserves the present position in relation to proceedings on a common law claim in which there are issues of fact on a claim in respect of defamation.

Proposed section 87 preserves the present position in relation to the Court's power to order that any question of fact in proceedings be tried before another question of fact.

Explanatory note

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**Schedule 2 [3]** inserts proposed Part 12 to the Fourth Schedule to provide for a savings and transitional matter. Proposed clause 19 specifies that sections 85–89 as in force immediately before their amendment, continue to apply in relation to proceedings commenced, and not finally determined, before the commencement of the amendments. **Schedule 2 [2]** makes a consequential amendment.