

1993

**LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**LAW REFORM (MISCELLANEOUS PROVISIONS)
(AMENDMENT) BILL 1993**

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

LAW REFORM (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1993

OUTLINE

The *Law Reform (Miscellaneous Provisions) Act 1955* (the Principal Act) clarifies and modifies several elements of the common law, most of which relate to actions for damages in negligence.

The Law Reform (Miscellaneous Provisions) (Amendment) Bill 1993 amends Part VII of the Principal Act. That Part provides that a person who acquires a nervous shock injury as a consequence of a negligent act to a specified family member may recover damages from the person who acted negligently. The Act presently provides that legal action to recover such damages must be brought in the Supreme Court. The amendment will enable such actions to be brought in the Magistrates Court where the amount of damages sought is within the monetary jurisdictional limit of that Court. At present, that limit is \$50,000.

The Bill also makes a number of minor and technical amendments to the Act to substitute gender neutral for gender specific terms and to modernise the drafting style.

Financial Considerations: There are no financial considerations involved.

DETAILS

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They set out the short title to the Bill, establish the commencement date and define the term "Principal Act" to mean the *Law Reform (Miscellaneous Provisions) Act 1955*.

Main Amending Provision

Clause 4 repeals the provision requiring that actions for damages arising from nervous shock may only be brought in the Supreme Court, and provides appropriate definitions for the term "Court" as used in section 24 of the Principal Act.

Transitional Provision

Clause 5 applies to actions for damages arising from nervous shock that have been commenced but not finally disposed of in the Supreme Court at the time the amendments come into effect, and where the amount of damages claimed falls within the monetary limit of the Magistrates Court. That limit is presently \$50,000. The clause applies sections 279 and 280 of the *Magistrates Court (Civil Jurisdiction) Act 1982* to those actions. The effect is to enable the Supreme Court, if it thinks it just and on the application of any party to the action or of its own motion, to order that the action be transferred to the Magistrates Court. The effect of subclause 5(2) is that, where the Supreme Court decides not to transfer the action and the plaintiff is awarded damages, he or she is not subject to the rule that reduces a plaintiff's costs where the action could have been brought in the Magistrates Court.

Minor Amendments

Clause 6 and the Schedule make a number of formal and technical amendments to substitute gender neutral for gender specific terms and modernise the drafting style.