

**New law brings to an end the jurisdictional crisis in
the District Court of New South Wales**

On 28 November 2018, the Governor of New South Wales gave his assent to the *Justice Legislation Amendment Act (No 3) 2018* (the **Act**), which clarifies the jurisdiction of the District Court of New South Wales over actions arising out of commercial transactions. The Act inserts section 44(1)(c1) to the *District Court Act 1973* (NSW) (the **DCA**), which finally resolves the jurisdictional crisis which afflicted the District Court this year.

Evolution of the crisis

Pursuant to section 44(1)(a)(i) of the DCA, the District Court can hear and dispose of any action “which, if brought in the Supreme Court, would be assigned to the Common Law Division of that Court”.

In *Forsyth v Deputy Commissioner of Taxation* (2007) 231 CLR 531, the High Court of Australia held that the extent of the civil jurisdiction of the District Court, as defined in section 44(1)(a)(i) of the DCA, should be determined by assessing whether a claim would have been assigned to the Common Law Division of the Supreme Court of New South Wales on 2 February 1998.¹

Section 53 of the *Supreme Court Act 1970* (NSW), as at 2 February 1998, provided that all proceedings that are not assigned to another division of the Supreme Court should be assigned to the Common Law Division. At that time, there were eight specialised divisions in the Supreme Court in addition to the Common Law Division, including the Commercial Division. Proceedings dealing with the following issues were to be assigned to the Commercial Division of the Supreme Court:

- (a) proceedings arising out of commercial transactions; and
- (b) proceedings in which there is an issue that has importance in trade or commerce.

There was no statutory definition of the term “commercial transaction” at the time.

In August 2017, the Supreme Court heard the case of *NTF Group Pty Ltd v PA Putney Finance Australia Pty Ltd* [2017] NSWSC 1194 (**NTF Group**). Parker J, sitting alone, accepted that the proceedings must be removed from the Local Court and proceeded to consider whether the proceedings should be transferred to the District Court or the Supreme Court of NSW. He found that, in order to determine whether the proceedings can be heard by the District Court, it was necessary to assess whether the claim would have been assigned to the Common Law

¹ The date at which the *Courts Legislation Further Amendment Act 1997* (NSW) inserted s 44(1)(a).

Division of the Supreme Court on 2 February 1998. The proceedings in question were “a simple contractual claim in debt” (at [45]) under the District Court’s jurisdictional limit of \$750,000. For many decades, the District Court had been exercising its jurisdiction over that kind of matter without considering whether the matter would have been assigned to the Common Law Division, if the matter had been commenced in the Supreme Court on 2 February 1998. This time, however, the court was asked to determine the issue. The answer surprised everyone, including his Honour: the District Court did not have jurisdiction over the claim because, as at 2 February 1998, the claim would have been assigned to the Commercial Division of the Supreme Court as a “proceeding[s] arising out of commercial transactions”.

The decision in *NTF Group* opened the flood gates for claims challenging the jurisdiction of the District Court in relation to actions arising out of commercial transactions. It was found in many further cases that the District Court lacked jurisdiction: *Nova 96.9 Pty Ltd v Nativa Pty Ltd* [2018] NSWSC 1288; *Sapphire Suite Pty Ltd v Bellini Launge Pty Limited* [2018] NSWSC 1366; *Australian Wholesale Meats (Sydney) v S&R Cool Logistics Pty Ltd* [2018] NSWSC 1541; *Southern Classic Group Pty Ltd t/as Souther Classic Cars v Arch Underwriting at Lloyd’s Ltd on behalf of Syndicate 2012 [No 2]* [2018] NSWSC 1530; *Tzovaras v Williams* [2018] NSWDC 275.

Resolution of the crisis

The need for a court to conduct an analysis of the law which was in force over 20 years ago,² was undoubtedly an inconvenient outcome of his Honour’s interpretation.

It therefore came as no surprise that a bill, introduced in the Legislative Assembly on 23 October 2018, was soon declared urgent. It passed both Houses of Parliament on 21 November 2018 and received the Governor’s assent on 28 November 2018. Pursuant to section 2 of the Act, the amendment to section 44 of the DCA is to take effect from the date of assent. As such, section 44(1)(c1) of the DCA now states:

[(1) Subject to this Act, the Court has jurisdiction to hear and dispose of the following actions:...

“(c1) subject to paragraph [44(1)(c)], any action arising out of a commercial transaction in which the amount (if any) claimed does not exceed the Court’s jurisdictional limit, whether on a balance of account or after an admitted set-off or otherwise”.

The Act also inserts a new Part to Schedule 3 of the DCA, which clarifies that section 44(1)(c1) is intended to apply retrospectively. Therefore, any actions determined by the District Court on or after 2 February 1998 which would have been within the Court’s jurisdiction had section 44(1)(c1) been in force at the time are taken to have been within the jurisdiction of the District Court.

² Unless the proceedings are equitable, in which case s 134(1)(h) applies.

With the passage of the Act, a momentary crisis of confidence in the District Court's authority to decide commercial disputes has been rectified.

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For further information, please contact:

Michael Daniel, Director: michael.daniel@rllawyers.com.au, +61 2 8298 6001

Nicola Nygh, Special Counsel: nicola.nygh@rllawyers.com.au, +61 2 8298 6004

Claudia Dela Cruz, Solicitor: claudia.delacruz@rllawyers.com.au, +61 2 8298 6005

Ekaterina Zotova, Graduate Lawyer: ekaterina.zotova@rllawyers.com.au, +61 2 8298 6007