

SMALL CLAIMS TRIBUNALS.

No. 75 of 1981.

**AN ACT to amend the Small Claims Tribunals Act
1974-1978.**

[Assented to 9 November 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Small Claims Tribunals Amendment Act 1981*. Short title and citation.

(2) In this Act the Small Claims Tribunals Act 1974-1978 is referred to as the principal Act. Act No. 69 of 1974; amended by Acts Nos. 19 of 1975, 99 of 1976, 44 of 1978 and 71 of 1978.

(3) The principal Act as amended by this Act may be cited as the Small Claims Tribunals Act 1974-1981.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Section 4
amended.

3. Section 4 of the principal Act is amended in subsection (1)—

(a) by deleting the definition of “Commissioner for Consumer Protection” and substituting the following definition—

“ “Commissioner for Consumer Affairs” means the Commissioner for Consumer Affairs appointed under section 15 of the Consumer Affairs Act 1971; ” ;

(b) in the definition of “consumer”, in paragraph (a) by inserting after “carried on by him” wherever occurring, the following—

“ or to be carried on by him ” ;

(c) by inserting after the definition of “contract” the following definition—

“ “fixed amount” means—

(a) the amount of \$1 000; or

(b) such other amount as is prescribed for the purposes of the appropriate paragraph of the definition of “small claim” in this section; ” ;

(d) in the definition of “Public Service Board”, by deleting “, 1904” and substituting the following—

“ 1978 ” ;

(e) by inserting after the definition of “section” the following definition—

“ “services” includes the rights and benefits that are or are to be

supplied under a contract of insurance, other than a contract of insurance—

- (a) required by the Workers' Compensation Act 1912; or
- (b) within the meaning of the Motor Vehicle (Third Party Insurance) Act 1943; " ;

and

- (f) by deleting the definition of "small claim" and substituting the following definition—

“ “small claim” means—

- (a) a claim for payment of money in an amount less than the fixed amount;
- (b) a claim for performance of work of a value less than the fixed amount;
- (c) a claim for relief from payment of money in an amount less than the fixed amount; or
- (d) a claim for the return or replacement of goods to the value of less than the fixed amount,

that in any case arises out of a contract for the supply of goods or the provision of services made between persons who, in relation to those goods or services, are a consumer on the one hand and a trader on the other; or

- (e) a claim for—
 - (i) repayment of money in an amount less than the fixed amount held by or

on behalf of a person to whom or on whose demand such money was paid by way of bond or security; or

- (ii) relief from payment of money in an amount less than the fixed amount,

in connection with a tenancy of any premises let to the tenant for the purpose of a dwelling and otherwise than for the purpose of assigning or subletting or for the purposes of a trade or business carried on by him; ” .

Section 14
amended.

4. Section 14 of the principal Act is amended in subsection (4) (b) by deleting “Consumer Protection” and substituting the following—

“ Consumer Affairs ” .

Section 15
amended.

5. Section 15 of the principal Act is amended in subsection (2) (a) by deleting “, 1904” and substituting the following—

“ 1978 ” .

Section 15A
inserted.

6. After section 15 of the principal Act the following section is inserted—

Power of
registrar
to take
affidavits.

“ 15A. (1) The registrar may take an affidavit required by this Act, or relating to any proceeding before a Small Claims Tribunal.

(2) Any affidavit required by this Act or to be used in a Small Claims Tribunal, shall and may be sworn before the registrar, a magistrate or a clerk of a Local Court, a justice of

the peace or a commissioner for taking affidavits in the Supreme Court. ” .

7. Section 20 of the principal Act is amended in subsection (2)— Section 20 amended.

(a) in paragraph (e) by deleting “order.” and substituting the following—

“ order; ” ; and

(b) by inserting after paragraph (e) the following paragraph—

“ (f) an order that requires a party to the proceeding before it (other than the claimant) to replace any goods to which the claim in the proceeding relates. ” .

8. Section 21 of the principal Act is amended— Section 21 amended.

(a) by inserting after the section designation “21.” the subsection designation “(1)”;

(b) by deleting “the sum that is provided by or under this Act in relation to the meaning, for the purposes of this Act, of a small claim shall be of no effect.” and substituting the following—

“ the maximum amount, shall be of no effect to the extent that it exceeds the maximum amount, but shall be a valid and effective order in the amount of or to the value of or to the total of the amount and the value of the maximum amount. ” ; and

(c) by inserting the following subsection—

“ (2) In this section “maximum amount” means the maximum amount which is less than the fixed amount. ” .

Section 22
amended.

9. Section 22 of the principal Act is amended in subsection (3) (b) by deleting “, taken by a justice,”.

Section 23
amended.

10. Section 23 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (1a) Notwithstanding subsection (1), a Small Claims Tribunal may at any time after making an order give leave to the person in whose favour the order operates to renew the reference of the claim in the proceeding if the order is not complied with. ” .

Section 37
amended.

11. Section 37 of the principal Act is amended—

(a) by inserting after the section designation “37.” the subsection designation “(1)”;

(b) by deleting “is guilty of an offence against this Act and is liable on conviction to a penalty of one hundred dollars or imprisonment for fourteen days.” and substituting the following—

“ may be summarily convicted by the tribunal of contempt. ” ; and

(c) by inserting the following subsections—

“ (2) A person convicted of contempt under subsection (1) is liable to a fine not exceeding \$100.

(3) A person who does or omits to do any act referred to in subsection (1)—

(a) may be dealt with under that subsection without complaint being made or summons issued in respect of him;

(b) may be called on by the Small Claims Tribunal concerned to

show cause why he should not be convicted of contempt under subsection (1);

- (c) may be dealt with by the Small Claims Tribunal concerned on the tribunal's own view or on the evidence of a credible witness.

(4) A fine imposed under subsection (2) shall be payable instanter or within such other time as the referee shall allow.

(5) The registrar may enforce payment of a fine imposed under subsection (2) by filing free of charge in the office of a Local Court a certificate of the registrar as to the amount of the unpaid fine, whereupon the fine shall be deemed to be a judgment that requires payment of money duly made by a Local Court pursuant to the Local Courts Act 1904 and may be enforced accordingly. " .

12. Section 43 of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph—

Section 43
amended.

" (a) the fixed amount; " .