

Western Australia

Small Claims Tribunals Act 1974

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Small Claims Tribunals Act 1974

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Small Claims Tribunals Act 1974

An Act to provide for the constitution of Small Claims Tribunals, to define the jurisdiction of those tribunals and the powers of the persons constituting the same, and to provide for matters related thereto.

Part I — Preliminary

[Heading inserted by No. 42 of 1983 s.3.]

1. Short title

This Act may be cited as the *Small Claims Tribunals Act 1974*¹.

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

[3. Repealed by No. 10 of 1998 s.76.]

4. Interpretation

(1) In this Act unless the context otherwise requires —

“**claimant**” means a consumer who has duly referred a small claim to a Small Claims Tribunal;

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

“**consumer**” means a person —

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- (a) who buys or hires goods otherwise than —
 - (i) for re-sale or letting on hire;
 - (ii) in the course of or for the purposes of a trade or business carried on by him or to be carried on by him; or
 - (iii) as a member of business partnership;

or

- (b) for whom services are supplied for fee or reward otherwise than —
 - (i) in the course of or for the purpose of a trade or business carried on by him or to be carried on by him; or
 - (ii) as a member of a business partnership,

but does not include —

- (c) a body corporate; or
- (d) a tenant within the meaning in section 3 of the *Residential Tenancies Act 1987*; or
- (e) a person for whom or which home building work, within the meaning in section 3 of the *Home Building Contracts Act 1991*, is to be performed under a contract within the meaning of that section;

“contract” includes all agreements, whether written or oral;

“fixed amount” means —

- (a) the amount of \$2 000; or
- (b) such other amount as is prescribed for the purposes of the appropriate paragraph of the definition of “small claim” in this section;

“goods” includes everything that is the subject of trade or manufacture or merchandise;

“Local Court” means a Local Court established under the *Local Courts Act 1904*;

“metropolitan region” has the meaning assigned to it in section 2 of the *Town Planning and Development Act 1928*;

“referee” means a person appointed and holding office under this Act as a referee of Small Claims Tribunals;

“registrar” means the person performing at the material time the duties of Registrar of Small Claims Tribunals;

“registry” means the Registry of Small Claims Tribunals established and maintained in Perth under this Act;

“respondent” means a trader against whom is made a small claim that is duly referred to a Small Claims Tribunal;

“section” means a section of this Act;

“services” includes the rights and benefits that are or are to be supplied under a pawnbroking contract or a contract of insurance, other than a contract of insurance —

- (a) required by the *Workers’ Compensation and Injury Management Act 1981*; or
- (b) within the meaning of the *Motor Vehicle (Third Party Insurance) Act 1943*;

“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;

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“Small Claims Tribunal” means a tribunal constituted as prescribed for taking a proceeding in relation to a small claim;

“subsection” means a subsection of the section wherein the term is used; and

“trader” means a person who in the field of trade or commerce carries on a business of supplying goods or providing services or who regularly holds himself out as ready to supply goods or to provide services of a similar nature, but does not include —

- (a) an owner within the meaning in section 3 of the *Residential Tenancies Act 1987*; or
- (b) a builder under a home building work contract within the meaning in section 3 of the *Home Building Contracts Act 1991*.

(2) For the purposes of this Act a person who in respect of goods supplied or services provided by him would be a trader, but for this subsection, shall not be a trader in respect of those goods or services if in supplying those goods or providing those services —

- (a) he acts in the exercise of a discipline that is not ordinarily regarded as being within the field of trade or commerce; or
- (b) he gives effect to the instructions of another who in providing those instructions acts in the exercise of a discipline that is not ordinarily regarded as being within the field of trade or commerce, and the goods supplied or the services provided are in all respects in accordance with those instructions.

[Section 4 amended by No. 19 of 1975 s.2; No. 75 of 1981 s.3; No. 42 of 1983 s.4; No. 128 of 1987 s.89; No. 61 of 1991 s.35; No. 32 of 1994 s.19; No. 88 of 1994 s.100; No. 42 of 2004 s. 175.]

Part II — Small Claims Tribunals

Division 1 — Referees

5. Appointment of referees

The Governor may appoint such number of referees of Small Claims Tribunals as he considers necessary for the proper functioning of those tribunals throughout the State and where 2 or more persons hold office as referees at the same time, one of them shall by the instrument of his appointment or by a subsequent instrument executed by the Governor be appointed to be the senior referee.

6. Term of referee's appointment

A referee shall be appointed for a term of 7 years or for such less term as the Governor approves in a particular case but, subject to section 7, shall be eligible for reappointment from time to time at the discretion of the Governor.

7. Eligibility to hold office as a referee

Any person who is a legal practitioner (as defined in the *Legal Practice Act 2003*) or a barrister or solicitor of the Supreme Court of another State or a Territory may be appointed and hold office as a referee.

[Section 7 inserted by No. 65 of 2003 s. 117.]

8. Other terms and conditions of office

- (1) A referee —
- (a) shall not engage in any paid employment outside the duties of his office except with the express permission of the Governor, which permission may at any time be withdrawn;

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Division 1 Referees

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- (b) shall be paid such remuneration as the Governor, on the recommendation of the Public Service Board³, from time to time determines in respect of him;
- (c) shall be paid the same travelling and other allowances as are paid from time to time to a public service officer within the meaning of the *Public Sector Management Act 1994*;
- (d) is entitled to the same rights in respect of annual leave of absence for recreation, leave of absence on account of illness, and long service leave as if he were an officer of the Public Service of the State;
- (e) may, at any time during the term of his appointment as referee, be removed from that office by the Governor if the Governor considers him to be —
 - (i) incompetent in the performance of his functions under this Act; or
 - (ii) unfit to hold the office of referee for any reason;
- (f) may resign his office by writing under his hand addressed to the Minister; and
- (g) where he was immediately before his appointment as a referee, an officer of the Public Service of the State —
 - (i) shall retain his existing and accruing rights, and in particular his rights, if any, under the *Superannuation and Family Benefits Act 1938*;
 - (ii) shall, for the purpose of determining all those rights, have his service as a referee taken into account as if it were service in the Public Service of the State; and
 - (iii) shall, if he resigns his office or his term of office expires by effluxion of time, be entitled to be appointed to an office in the Public Service of the State not lower in status than the office which he so occupied immediately prior to his appointment as a referee.

- (2) Notwithstanding subsection (1), where a person holds office as a referee and also holds another public office for which he is remunerated out of the Consolidated Fund of the State, the terms and conditions of office as a referee in respect of matters mentioned in subsection (1)(b), (c), (d) and (g) do not apply to or in relation to that person in his office as a referee except to the extent that they are more favourable to him than the terms and conditions of his other public office in respect of like matters to those so mentioned.

[Section 8 amended by No. 99 of 1976 s.2; No 6 of 1993 s.11; No. 32 of 1994 s.19; No. 42 of 1997 s.8.]

9. Acting referees

- (1) The Governor may appoint a person who is eligible to be appointed and hold office as a referee to act in the office of a referee during the absence of that referee from his office through illness or other cause and the person so appointed shall while so acting be deemed to be a referee and shall have the immunities, powers, authorities, duties, and functions of a referee and be entitled to remuneration and allowances as a referee.
- (2) When the referee absent as described in subsection (1) is the senior referee, the Governor may appoint any person appointed under that subsection or another referee to act as senior referee during the absence and the person so appointed shall while so acting have the immunities, powers, authorities, duties, and functions of the senior referee and be entitled to remuneration and allowances as the senior referee.

10. Functions of referees

- (1) The primary function of a referee is to attempt to bring the parties to a dispute that involves a small claim to a settlement acceptable to all the parties.
- (2) Where it appears to the referee to be impossible in a particular case to attain a settlement acceptable to all parties to a dispute

the function of a referee is to make an order with respect to the issue in dispute, or where he thinks the case requires it, an order dismissing the claim.

- (3) It is a function of a referee to report directly and confidentially to the Minister —
- (a) upon all matters arising out of references to Small Claims Tribunals constituted by that referee that are significant to the relationship of consumer and trader; and
 - (b) upon all matters relevant to the administration of this Act or to the practices and procedures of Small Claims Tribunals that in the referee's opinion should be brought to the notice of the Minister.

Division 2 — Constitution of tribunals; registry

11. Constitution of tribunal

- (1) A Small Claims Tribunal shall be constituted by a referee sitting alone.
- (2) Where 2 or more persons hold office as referees at the same time the senior referee shall determine which referee shall constitute a tribunal for the purpose of any proceeding.

12. Venue of sittings

A Small Claims Tribunal may be constituted at any place in the State.

13. Registry

There shall be established and maintained in Perth a Registry of Small Claims Tribunals wherein shall be kept all records of Small Claims Tribunals.

14. Records of tribunals

- (1) Notwithstanding anything to the contrary provided by or under any Act, rule, or practice, an official record of evidence given

before a Small Claims Tribunal shall not be made in any case but the referee who constitutes the tribunal is entitled to make such notes of evidence as he requires.

- (2) Notes of evidence made by the referee shall not form part of the record of the reference to the tribunal.
- (3) The record of a Small Claims Tribunal shall consist of —
 - (a) the claim referred to it, as completed by the claimant;
 - (b) the notation of the nature of the issue in dispute as determined and recorded by the tribunal during the hearing of the claim; and
 - (c) the order made by the tribunal.
- (4) The record of a Small Claims Tribunal kept in the registry shall be open for inspection free of charge by —
 - (a) the parties to the proceeding to which the record relates; and
 - (b) the Commissioner for Fair Trading,

and shall be available for production before a Judge of any court for the purposes of any proceeding before him or the court.

[Section 14 amended by No. 75 of 1981 s.4; No. 57 of 1997 s.39(10).]

15. Registrar and other officers

- (1) There shall be a registrar of Small Claims Tribunals and such other officers thereof as are necessary for the proper functioning thereof.
- (2) The registrar and other officers —
 - (a) shall be appointed and shall hold office subject to and in accordance with Part 3 of the *Public Sector Management Act 1994*; and
 - (b) may hold office as such in conjunction with any other office in the Public Service of the State.

[Section 15 amended by No. 75 of 1981 s.5; No. 32 of 1994 s.19.]

15A. Power of registrar to take affidavits

- (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.

[Section 15A inserted by No. 75 of 1981 s.6.]

Division 3 — Jurisdiction and powers of tribunals

16. Jurisdiction

- (1) Subject to this Act, a Small Claims Tribunal has, on and after the appointed day, jurisdiction with respect to any claim referred to it that is a small claim, whether the contract out of which it arises was made before or after the appointed day, but does not have jurisdiction with respect to such a claim if the issue in dispute in that claim arose earlier than 2 years before the day on which the claim was referred to a Small Claims Tribunal.
- (2) In subsection (1) “**appointed day**” means such day as is fixed by the Minister by notice published in the *Government Gazette* to be the appointed day for the purposes of subsection (1)⁴.

[Section 16 amended by No. 42 of 1983 s.6.]

17. Exclusion of other jurisdictions

- (1) Subject to section 17A where a claim, being a small claim, is duly referred to a Small Claims Tribunal the issue in dispute in that claim (whether as shown in the initial claim or as emerging in the course of the hearing of the claim by the tribunal) shall not be justiciable at any time by a court or by a tribunal of any other kind unless —

- (a) that issue is the subject of a proceeding that —
 - (i) was commenced in that court or tribunal of any other kind before the claim was duly referred to a Small Claims Tribunal; and
 - (ii) is still pending in that court or tribunal of any other kind;
 - or
 - (b) the claim before a Small Claims Tribunal has been withdrawn.
- (2) For the purposes of this Act a small claim shall be taken to have been duly referred to a Small Claims Tribunal when section 24(1) has been complied with and may be so duly referred before the day that is the appointed day for the purposes of section 16(1) if section 24 has come into operation.
- (3) Where a party to a proceeding before a Small Claims Tribunal is served with a summons issued by a Local Court which relates to the same issue in dispute as the issue in dispute before the Tribunal, the registrar may issue a certificate in the prescribed form which specifies —
- (a) the parties to the proceeding before the Small Claims Tribunal;
 - (b) the date on which the claim was referred to the Tribunal;
 - (c) the particulars of the claim; and
 - (d) any orders made with respect to the claim.
- (4) A certificate issued under subsection (3) may be filed, free of charge, in the office of the Local Court which issued the summons referred to in subsection (3).
- (5) Where a certificate is filed under subsection (4) —
- (a) the party filing the certificate shall give notice in the prescribed form to the registrar; and
 - (b) the registrar shall forward to the office of the Local Court where the certificate is filed a copy of any order

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made after the issue of the certificate by a Small Claims Tribunal with respect to the claim specified in the certificate.

- (6) In any proceedings in a Local Court a certificate issued or purporting to be issued pursuant to subsection (3) is evidence of the facts specified therein.

[Section 17 amended by No. 42 of 1983 s.7.]

17A. Transfer to a court

- (1) Where in respect of a claim being a small claim that is duly referred to a Small Claims Tribunal —
- (a) the referee considers that the issue in dispute in that claim involves such a complex point of law as to warrant the claim being heard and determined by a court which otherwise has jurisdiction to do so; or
 - (b) the fixed amount of the claim exceeds \$1 000,

the referee may, on the application of a party or by his own motion, order that the proceedings be transferred to a court which otherwise has jurisdiction to hear and determine the claim.

- (2) An order under this section shall not be made unless the referee is satisfied that in all the circumstances such an order would not be unfair to any of the parties to the proceedings.

- (3) Where a referee makes an order under subsection (1), that claim —
- (a) ceases to be a small claim that is duly referred to a Small Claims Tribunal;
 - (b) may not again be referred to a Small Claims Tribunal; and
 - (c) is deemed never to have been referred to a Small Claims Tribunal.

[Section 17A inserted by No. 42 of 1983 s.8.]

18. Proceedings of tribunals final

A settlement or an order made by a Small Claims Tribunal shall be final and binding on all parties to the proceeding in which the settlement or order is made and on all persons who under this Act could have become entitled to be joined as a party to the proceeding in which the settlement or order is made, and no appeal shall lie in respect thereof.

19. Immunity from judicial supervision

No writ of *certiorari*, or prohibition, or other prerogative writ shall issue, and no declaratory judgment shall be given in respect of a proceeding taken or to be taken by or before a Small Claims Tribunal or in respect of any order made therein unless the court before which such writ or judgment is sought is satisfied that the tribunal had or has no jurisdiction conferred by this Act to take the proceeding or that there has occurred therein a denial of natural justice to any party to the proceeding.

20. Orders of tribunals

- (1) Where a settlement is made in respect of a claim referred to a Small Claims Tribunal, the tribunal shall, on the request of any party to the settlement, make an order that gives effect to the terms of the settlement.
- (2) Subject to sections 21 and 22, a Small Claims Tribunal is empowered to make any one or more of the following orders —
 - (a) an order that requires a party to the proceeding before it (other than the claimant) to pay money to a person specified in the order;
 - (b) an order that requires a party to be proceeding before it (other than the claimant) to perform work to rectify a defect in goods or services to which the claim in the proceeding relates;
 - (c) in the case of a claim for relief from payment of money —

- (i) an order that money in an amount specified is not due or owing by the claimant to a person specified in the order;
 - (ii) an order that requires the claimant to pay money to a person specified in the order;
 - (d) an order that dismisses the claim to which the proceeding relates;
 - (e) an order that requires a party to the proceeding before it to return any goods to which the claim in the proceeding relates and which are in his possession or control, whether the property therein has passed or not, to a person specified in the order;
 - (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.
- (3) An order made by a Small Claims Tribunal may direct that what is, by that order, required to be done shall be done within a time limited in the order.

[Section 20 amended by No. 19 of 1975 s.3; No. 44 of 1978 s.2; No. 75 of 1981 s.7.]

21. Restricted effect of tribunal's order

- (1) An order made by a Small Claims Tribunal that —
- (a) requires the payment of money;
 - (b) requires the performance of work; or
 - (c) purports to grant relief from the payment of money,
- in an amount or to a value, as the case may be, exceeding 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.
- (2) In this section “**maximum amount**” means the maximum amount which is less than the fixed amount.

[Section 21 amended by No. 75 of 1981 s.8.]

22. Provisions affecting the making and enforcement of orders to pay money

- (1) An order made by a Small Claims Tribunal that requires the payment of money may be made to take effect instanter or so as to take effect upon default made in complying with some other order made by the tribunal.
- (2) The registrar shall cause a copy of an order that requires the payment of money to be given to the person against whom the order is made as soon as is practicable after its making if that person is not present or represented at its making.
- (3) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by his filing, free of charge, in the office of the Local Court nearest to the place where the person required by the order to make payment resides or has a place of business or nearest to the place where the person to whom payment is to be made resides —
 - (a) a copy of the order certified by the registrar to be a true copy; and
 - (b) his affidavit as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default,

whereupon the order 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.

- (4) It shall be competent to a person to file a copy order pursuant to subsection (3) once only, and a second or subsequent filing purportedly pursuant to that subsection shall be ineffectual.
- (5) If objection is taken that the office of the Local Court wherein the copy order and the affidavit are filed is not the appropriate one in terms of subsection (3), a referee shall determine the

question having regard to the relevant principles provided in section 154 of the *Local Courts Act 1904*, and his determination shall be final and conclusive.

- (6) The *Limitation Act 1935* applies in respect of a decision of a Small Claims Tribunal and in respect of the enforcement of any order made by the tribunal as it applies in respect of any judgment.

[Section 22 amended by No. 75 of 1981 s.9.]

23. Renewal of proceeding when order not complied with

- (1) Upon making any order a Small Claims Tribunal may adjourn the proceeding to a fixed date or without fixing a date and in either case may 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.
- (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.
- (2) A reference shall be renewed by the person who seeks it notifying the registrar in the prescribed form that the order in question has not been complied with whereupon the registrar shall take such steps in respect thereof as he is required by this Act to take in respect of a claim referred to a Small Claims Tribunal.
- (3) Upon renewal of a reference the tribunal may make any other order it is empowered by this Act to make.

[Section 23 amended by No. 75 of 1981 s.10.]

Division 4 — Practice on claims

24. Reference of claims to tribunal

- (1) A consumer who wishes to refer his claim, being a small claim, to a Small Claims Tribunal shall complete the prescribed form and file the same —
 - (a) within the metropolitan region, in the registry; or
 - (b) outside the metropolitan region, in the office of any Local Court,and shall pay the prescribed fee to the registrar or to the clerk of the court at the time of filing.
- (2) It is the duty of the registrar and of every clerk of the court to give his assistance to a claimant who seeks it in completing the prescribed claim form.
- (3) The clerk of the court in the office of which a completed claim form is filed and who has been paid the prescribed fee shall, as soon as is practicable, send the form or, if so permitted by the regulations, a copy thereof to the registrar by prepaid certified mail.

25. Notice of claim and proceeding

- (1) The registrar —
 - (a) shall cause notice of the claim and its particulars to be given, as soon as is practicable, to the respondent and to every person who appears from the claim or in the course of the proceedings to have a sufficient interest in a resolution of the dispute to which the claim relates;
 - (b) shall arrange a time and place for the initial proceeding of a Small Claims Tribunal in relation to the claim, having regard to the convenience of the claimant and the nature of the claim and the circumstances giving rise to it, and shall cause notice of that time and place to be given to the claimant and the respondent and to every

other person to whom notice of the claim has been given; and

- (c) shall cause notice of the time and place of the next hearing of the claim to be given to any person to whom notice of the claim is given after the start of the initial proceedings.

- (2) At any time when the case requires it, whether before or after a time arranged by him pursuant to subsection (1)(b), the registrar may arrange another time, at the same place or at another place, for the initial proceeding in relation to a claim and, if he does so, shall cause notice to be given as prescribed by that paragraph.

[Section 25 amended by No. 44 of 1978 s.3.]

26. Parties to proceeding

Every person to whom notice is given under section 25 shall be taken to be a party to the proceeding that relates to the claim of which notice is so given, and every person who satisfies a Small Claims Tribunal that he has a sufficient interest in a resolution of the dispute to which the claim in question relates shall be entitled to be joined as a party to the proceeding and shall be joined as a party thereto.

27. Withdrawal of claim

A claimant may withdraw at any time a claim referred by him to a Small Claims Tribunal, whether before or after the tribunal has entered upon a hearing of the claim.

Division 5 — Practice on hearings

28. Definition

In this division the term “**tribunal**” means a Small Claims Tribunal duly constituted to take a proceeding in relation to a small claim.

29. Continuity of tribunal

- (1) A tribunal shall, at all times throughout the taking of a proceeding, be constituted by the same referee.
- (2) If in any case the taking of a proceeding is interrupted before a settlement or order is made therein by the death, incapacity, or removal of the referee who constitutes the tribunal and the claimant desires to proceed with his claim the proceeding in relation to the claim shall be recommenced before a tribunal constituted by another referee.

30. Amendment of claim

A tribunal may, at any stage of a proceeding, make such amendment to the claim to which the proceeding relates as it thinks fit, either at the request of the claimant or of its own motion with the approval of the claimant.

31. Adjournment of proceeding

- (1) A tribunal may from time to time adjourn a proceeding to such times and places and for such purposes as it considers necessary.
- (2) The registrar shall cause to be given to any party to a proceeding that is adjourned who is not present or represented at the time when the proceeding is adjourned a notice of the time and place to which the proceeding is adjourned.
- (3) Where at a time and place to which a proceeding is adjourned a referee is or was not present or where it appears that a referee will not be present at a time and place to which a proceeding is adjourned the registrar may, by notice given to every party to the proceeding, adjourn the proceeding to another time, at the same place or at another place, whereupon the proceeding shall be taken to be duly adjourned accordingly.

32. Presentation of cases

- (1) Each party to a proceeding before a tribunal shall have the carriage of his own case.
- (2) a party to a proceeding before a tribunal shall not be entitled to be represented by an agent unless it appears to the tribunal that an agent should be permitted to that party as a matter of necessity and approves accordingly.
- (3) In no case shall a tribunal approve of the appearance in a proceeding of an agent who has a legal qualification under the laws of this State or of any other place, or who is of the nature of a professional advocate, unless —
 - (a) all parties to the proceeding agree; and
 - (b) the tribunal is satisfied that the parties, other than the party who applies for approval of an agent, or any of them shall not be thereby unfairly disadvantaged.
- (4) Where it appears to a tribunal that it should approve that an agent may present to it the case of any party to a proceeding —
 - (a) it shall, where a particular agent is proposed for its approval, satisfy itself that the proposed agent has sufficient knowledge of the issue in dispute and is vested with sufficient authority to bind the party; and
 - (b) it may subject its approval to such conditions as it considers reasonable to ensure that any other party to the proceeding is not thereby unfairly disadvantaged and, in such case, the entitlement of an agent to present that case shall be subject to compliance with those conditions.
- (5) Contravention of any provision of this section shall not invalidate the taking of the proceeding in which the contravention occurs or of any order made therein.

33. Taking of evidence before tribunal

- (1) Subject to subsection (1a), every proceeding before a tribunal shall be taken in private.
- (1a) Relatives and friends of any party to a proceeding and officers of the Department of Consumer Affairs⁶ may be present at the proceeding unless the tribunal otherwise orders.
- (2) Evidence material to a proceeding before a tribunal —
 - (a) may be given orally or in writing; and
 - (b) shall be given upon oath, or upon affirmation or declaration instead of an oath where the same is permitted by law, the referee who constitutes the tribunal being hereby empowered to administer an oath or, as the case may be, to take and receive an affirmation or declaration for the purpose.
- (3) A tribunal shall not be bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit.

[Section 33 amended by No. 42 of 1983 s.9.]

34. Tribunal to act on evidence available

- (1) Subject to the provisions of this section, where the case of any party to a proceeding before a tribunal is not presented to the tribunal the issue is dispute in the proceeding shall be resolved by the tribunal on such evidence as has otherwise been adduced before it and an order made by the tribunal therein shall be lawful and as effectual as if the party whose case was not presented has been fully heard.
- (2) Where an issue is dispute has been resolved in the absence of any party to the proceeding a referee, on application made to the registrar within 7 days after the resolution, may, if it appears to him that there was sufficient reason for the party's absence, order that the claim be reheard.

- (3) When it is ordered that a claim be reheard —
- (a) the registrar shall notify all parties to the proceeding that related to the claim of the order and, where practicable, of the time and place appointed for the rehearing; and
 - (b) the order of the tribunal made upon the first hearing shall thereupon cease to have effect unless it is restored pursuant to subsection (4).
- (4) If the party on whose application a rehearing is ordered does not appear at the time and place appointed for the rehearing or upon any adjournment of the proceeding therein the tribunal, if it thinks fit and without rehearing or further rehearing the claim, may direct that the order made upon the first hearing of the claim be restored, and that order shall be thereby restored to full force and effect and shall be deemed to have been of effect at all times since the time of its making.

34A. Written reasons for orders

A tribunal may give reasons in writing for the order made by the tribunal resolving the issue in dispute in a proceeding before the tribunal and, if so requested by a party to the proceeding not later than 30 days after the order is made, the tribunal shall do so.

[Section 34A inserted by No. 42 of 1983 s.10.]

35. Costs

- (1) Subject to subsection (2), costs shall not be allowed to or against any party to a proceeding before a tribunal.
- (2) Where a tribunal is of the opinion that because of exceptional circumstances an injustice would be done to a party to a proceeding if costs of the proceeding were not allowed to that party, the tribunal may make an order for costs not exceeding the prescribed amount against a party to the proceeding.

[Section 35 inserted by No. 42 of 1983 s.11.]

Part III — Miscellaneous provisions

36. Control of tribunal's procedures

Except to the extent that the procedure of Small Claims Tribunals is prescribed, every tribunal shall have control of its own procedures and in the exercise thereof shall have regard to natural justice.

37. Contempt in face of tribunal

(1) A person who —

- (a) wilfully insults a referee, during his sitting as a Small Claims Tribunal or while he is on his way to or from such a sitting, or any person, during his attendance at a Small Claims Tribunal or while he is on his way to or from such attendance;
- (b) wilfully misbehaves in a Small Claims Tribunal;
- (c) wilfully, and without lawful excuse interrupts the proceedings of a Small Claims Tribunal;
- (d) unlawfully assaults or wilfully obstructs a person in attendance at a Small Claims Tribunal; or
- (e) without lawful excuse, disobeys a lawful direction of a Small Claims Tribunal given to him during the sitting of the tribunal,

may, by oral order of the tribunal, be excluded from the tribunal and whether he is so excluded or not, may be summarily convicted by the tribunal of contempt.

- (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;

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- (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 the 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.

[Section 37 amended by No. 75 of 1981 s.11.]

38. Law of perjury to apply

It is declared that the law with respect to perjury or fabrication of evidence applies to a proceeding before a Small Claims Tribunal and that a proceeding before a Small Claims Tribunal is a judicial proceeding.

39. Contracting out prohibited

It is not competent to a consumer to contract out of the right conferred on him by this Act to refer a small claim to a Small Claims Tribunal.

40. Mode of giving notices, etc.

Without limiting the application of the *Interpretation Act 1918*⁵ to this Act, in any way, it is hereby expressly declared that the provisions of section 31 of that Act apply to an in relation to any notice or copy order required to be given under this Act by the registrar to any person.

[Section 40 inserted by No. 44 of 1978 s.4.]

41. Publication of particulars of reference

The registrar shall cause to be published, in such manner as the Minister from time to time directs, such particulars in relation to references to Small Claims Tribunals as the Minister specifies in the direction.

42. Protection for things done under Act

No action shall lie against the registrar, any referee, any claimant or any other person on account of any proceeding taken, any publication made, or anything done under the authority of this Act or taken, made or done *bona fide* purportedly under the authority of this Act, or on account of any omission made *bona fide* in the administration of this Act.

43. Regulations

The Governor may make regulations not inconsistent with this Act with respect to —

- (a) the fixed amount;
- (b) forms to be used for the purposes of this Act and the purposes for which they shall be used;
- (c) fees to be paid under this Act;
- (d) the practice and procedure of Small Claims Tribunals; the enforcement of orders thereof;
- (e) the practice and procedure of the registry; the powers, functions and duties of the registrar and other persons employed therein;
- (ea) the transfer of proceedings from a Small Claims Tribunal to a court;
- (f) all matters required or permitted by this Act to be prescribed; and

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- (g) all matters that in his opinion are necessary or desirable for the proper administration of this Act or to achieve the objects and purposes of this Act.

[Section 43 amended by No. 75 of 1981 s.12; No. 42 of 1983 s.12.]

Notes

¹ This is a compilation as at of the *Small Claims Tribunals Act 1974* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short Title	Number and Assent Year	Assent	Commencement
<i>Small Claims Tribunals Act 1974</i>	69 of 1974	9 Dec 1974	24 Jan 1975 (see s. 2 and <i>Gazette</i> 24 Jan 1975 p.173)
<i>Small Claims Tribunals Act Amendment Act 1975</i>	19 of 1975	13 May 1975	13 May 1975
<i>Small Claims Tribunals Act Amendment Act 1976</i>	99 of 1976	12 Nov 1976	12 Nov 1976
<i>Small Claims Tribunals Act Amendment Act 1978</i>	44 of 1978	29 Aug 1978	29 Aug 1978
<i>Small Claims Tribunals Act Amendment (No. 2) Act 1978</i>	71 of 1978	26 Sep 1978	Deemed operative 24 Jan 1975 (see s. 2)
<i>Small Claims Tribunals Amendment Act 1981</i>	75 of 1981	9 Nov 1981	1 Jan 1982 (see s. 2 and <i>Gazette</i> 18 Dec 1981 p.5166)
<i>Small Claims Tribunals Amendment Act 1983</i>	42 of 1983	5 Dec 1983	Sections 7, 8, 11 and 12: 28 Sep 1984 (see s. 2(2) and <i>Gazette</i> 28 Sep 1984 p.3154); balance: 5 Dec 1983 (see s. 2(1))
<i>Residential Tenancies Act 1987, section 89</i>	128 of 1987	21 Jan 1988	1 Oct 1989 (see s. 2 and <i>Gazette</i> 18 Aug 1989 p.2748)
<i>Home Building Contracts Act 1991, section 35</i>	61 of 1991	30 Dec 1991	4 Apr 1992 (see s. 2 and <i>Gazette</i> 3 Apr 1992 p.1461)
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p.4948)

Small Claims Tribunals Act 1974

Short Title	Number and Year	Assent	Commencement
<i>Pawnbrokers and Second-hand Dealers Act 1994</i> , section 100	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p.1495)
<i>Equal Opportunity Amendment Act (No. 3) 1997</i> , section 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 39(10)	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 117	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Workers' Compensation Reform Act 2004</i> s. 175	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)

^{1a} On the date on which this compilation was prepared, provisions referred to in the following table had not come into operation and are not included in this compilation. For the text of the provisions see the endnote referred to after the short title.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannational (Transitional and Consequential Provisions) Act 2000</i> s. 63 ⁷	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2)

² Now see the *Workers' Compensation and Rehabilitation Act 1981* (No. 86 of 1981).

³ References to the Public Service Board are to be construed as references to the Minister for Public Sector Management according to s.112(2) of the *Public Sector Management Act 1994* (No. 31 of 1994).

⁴ "Appointed day" 2 April 1975 (See *Gazette* 21 March 1975 p.968.).

⁵ Now see the *Interpretation Act 1984* (No. 12 of 1984)

⁶ Now known as Department of Fair Trading.

⁷ On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 63 had not come into operation. It reads:

“

63. Small Claims Tribunals Act 1974 amended

Section 8(1)(g)(i) of the *Small Claims Tribunals Act 1974* is amended by deleting “, and in particular his rights, if any, under the *Superannuation and Family Benefits Act 1938*”.

”.

⁸ The *Courts Legislation Amendment and Repeal Act 2004* s. 13 reads as follows:

“

13. Transitional provisions

- (1) In this section —
“**commencement**” means the commencement of this Part.
- (2) If immediately before commencement a small claim is pending before a Small Claims Tribunal, then on commencement the small claim is to be taken to be an action within the civil jurisdiction of the Magistrates Court and may be heard and determined accordingly subject to the *Magistrates Court (Civil Proceedings) Act 2004*.
- (3) If immediately before commencement an order made by a Small Claims Tribunal is in force under the *Small Claims Tribunals Act 1974*, then on commencement the order is taken to be an order made by the Magistrates Court and has effect accordingly.
- (4) The repeal of the *Small Claims Tribunals Act 1974* does not prevent an application or order being made under the *Suitors' Fund Act 1964* in relation to a claim that was before a Small Claims Tribunal before commencement.
- (5) On commencement and for the purposes of subsection (4) the Magistrates Court has jurisdiction to make any order under the *Suitors' Fund Act 1964* that a Small Claims Tribunal would have had jurisdiction to make under that Act immediately before commencement.
- (6) A reference in a written law or book, document or writing to a Small Claims Tribunal is, unless the contrary intention appears, to

be construed as if it had been amended to be a reference to the Magistrates Court.

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