

Western Australia

**Magistrates Court (Civil Proceedings) Act  
2004**

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## Magistrates Court (Civil Proceedings) Act 2004

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Western Australia

## **Magistrates Court (Civil Proceedings) Act 2004**

**An Act relating to the civil jurisdiction of, and civil proceedings in,  
the Magistrates Court.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Magistrates Court (Civil Proceedings) Act 2004*.

### **2. Commencement**

This Act comes into operation on a day fixed by proclamation.

### **3. Interpretation**

- (1) In this Act, unless the contrary intention appears —

***applicable costs determination***, for any proceedings in the Court, means the legal costs determination in force under the *Legal Practice Act 2003* section 210 that applies to the proceedings;

***case*** means any proceedings in the Court involving or in connection with the Court's civil jurisdiction;

***case management power*** means any of the powers conferred on the Court by sections 15 to 20;

***case statement*** means a statement of a party's claim, or of a party's defence, whether as originally lodged with the Court or as amended or as supplemented by additional information given voluntarily or as ordered by the Court;

***claim*** means a claim made to the Court by a party (whether a claimant, a defendant or another party);

***claimant*** means a person who commences a case;

***consumer/trader claim*** has the meaning given by section 7(3);

***corporation*** has the meaning given by section 57A of the *Corporations Act 2001* of the Commonwealth;

***Court*** means the Magistrates Court;

***defence*** means a defence by a party (whether a claimant, a defendant or another party) to a claim or counterclaim;



**lawyer** means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

**magistrate** means a magistrate of the Court;

**minor case** has the meaning given by section 26(1);

**minor cases jurisdictional limit** means \$7 500 and, on and after 1 January 2009, means \$10 000;

**minor cases procedure** means the procedure prescribed by Part 4 and the rules of court made for the purposes of Part 4;

**officer**, of a corporation, has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

**party** means a party to a case;

**person under a legal disability** means —

- (a) a person under 18 years of age; or
- (b) a represented person as defined by the *Guardianship and Administration Act 1990* section 3(1);

**public authority** means —

- (a) a Minister of the Crown;
- (b) a department of the Public Service;
- (c) a local government or regional local government; or
- (d) a body, whether incorporated or not, that is established for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State;

**rules of court** means rules of court made by the Magistrates Court under the *Magistrates Court Act 2004* for the purposes of this Act;

**settle**, in relation to a case, includes to accept money paid into court, to accept an offer to consent to judgment, and to compromise.

- (2) Unless the contrary intention appears, a term used in this Act has the same meaning as it has in the *Magistrates Court Act 2004*.

## **Part 2 — Jurisdiction**

### **4. Interpretation**

In this Part —

*jurisdictional limit* means \$50 000 and, on and after 1 January 2009, means \$75 000.

### **5. Court's civil jurisdiction**

The Magistrates Court's civil jurisdiction is set out in this Act.

### **6. General civil jurisdiction**

(1) The Court has jurisdiction to deal with —

- (a) a claim for an amount of money that is —
  - (i) a debt or damages, whether liquidated or unliquidated;
  - (ii) the whole or a part of the unliquidated balance of a partnership account; or
  - (iii) the whole or a part of the amount of the distributive share under an intestacy or of a legacy under a will,

where the amount claimed, even if it is a balance after allowing for a payment on account or for any admitted set-off or for any other amount, is not more than the jurisdictional limit;

- (b) a claim that involves an equitable claim or demand where the only relief claimed is the recovery of an amount of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than the jurisdictional limit;
- (c) a consumer/trader claim;
- (d) a claim to recover possession of personal property that is unlawfully detained where the value of the property is not more than the jurisdictional limit;

- (e) subject to the *Residential Tenancies Act 1987*, a claim to recover possession of real property where the gross annual rental value of the property is not more than the jurisdictional limit;
  - (f) any of the claims set out in paragraphs (a) to (e), irrespective of the amount claimed or the value of the property, if the party against which the claim is made consents; and
  - (g) a claim for an indemnity where the indemnity arises from or relates to another claim that is before the Court or that has been heard and determined by the Court.
- (2) In a claim referred to in subsection (1)(a)(ii) the Court also has jurisdiction and powers relating to the declaration of partnership or the dissolution of partnership.
- (3) For the purposes of subsection (1)(e) the gross annual rental value of any real property is —
- (a) if a rental agreement is in force in respect of the property, the gross annual rental payable under the agreement, not counting any amount payable by the tenant in respect of rates, taxes or other charges in respect of the property or in respect of the insurance or other outgoings necessary to maintain the value of the property;
  - (b) if a gross rental value is in force under the *Valuation of Land Act 1970* in respect of the property, that value;
  - (c) if both paragraphs (a) and (b) apply, the lower of the gross annual rent payable and the gross rental value; or
  - (d) if neither paragraph (a) nor (b) applies, the gross annual rental that the land might reasonably be expected to realise if let on a tenancy from year to year upon condition that the landlord were liable for all rates, taxes and other charges in respect of the property and the insurance and other outgoings necessary to maintain the value of the land.

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- (4) For the purposes of subsection (3)(a) and (d), the calculation of the gross annual rental value of any land is to include any payment usually made for or in relation to a tenancy of the kind in question but is not to include any allowance that may apply, by discounting or otherwise, for advance payment or late payment of rent.
- (5) Despite subsection (1), the Court does not have jurisdiction to deal with —
- (a) a claim in which the title to land is in question;
  - (b) a claim in which a devise, bequest or limitation under a will or settlement is in question;
  - (c) a claim for damages for libel or slander;
  - (d) a claim for damages for personal injury caused by or arising out of the use of a motor vehicle;
  - (e) a claim that the Building Disputes Tribunal, established by the *Builders' Registration Act 1939*, has jurisdiction to deal with under that Act or under the *Home Building Contracts Act 1991*.
- (6) The Court's jurisdiction to deal with a claim is not affected by the fact that the title to land comes incidentally into question in the proceedings but the Court's judgment in such a claim is not evidence of title to the land for any purpose.

**7. Consumer/trader claims**

- (1) In this section —
- consumer** means a natural person —
- (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, or to be carried on, by the person; or
    - (iii) as a member of a business partnership;

or

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

but does not include a tenant within the meaning of the *Residential Tenancies Act 1987* section 3;

**contract** includes any agreement, whether written or oral;

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

**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 Rehabilitation Act 1981*; or
- (b) within the meaning of the *Motor Vehicle (Third Party Insurance) Act 1943*;

**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 an owner within the meaning of the *Residential Tenancies Act 1987* section 3.

- (2) A person is not a trader for the purposes of this section if the person, in supplying goods or providing services —
  - (a) acts in the exercise of a discipline that is not ordinarily regarded as being within the field of trade or commerce; or
  - (b) 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

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the field of trade or commerce, and the goods supplied or the services provided are in all respects in accordance with those instructions.

- (3) For the purposes of this Act, a consumer/trader claim is a claim by a consumer or a trader (the *claimant*) —
- (a) that arises out of a contract for the supply of goods or the provision of services between the claimant and the person against whom the claim is taken; and
  - (b) that claims one or more of the following —
    - (i) the performance of work, or the provision of services, of a value that is not more than the jurisdictional limit;
    - (ii) the payment, or the relief from payment, of an amount of money that is not more than the jurisdictional limit;
    - (iii) the return or replacement of goods of a value that is not more than the jurisdictional limit.

**8. Statutory jurisdiction**

The Court's civil jurisdiction includes any jurisdiction conferred on the Court by a written law other than this Act, other than jurisdiction conferred on the Court as a court of summary jurisdiction.

**9. Counterclaims outside jurisdiction**

- (1) In this section —  
*counterclaim* means any claim, including a claim for a set-off, made in a defence.
- (2) This section applies if a party's counterclaim involves a claim or an issue that is outside the Court's civil jurisdiction.
- (3) For the purposes of subsection (2) a counterclaim is not outside the Court's civil jurisdiction by reason only that it is or includes 2 or more claims for an amount of money, each of which could

be the subject of a separate claim within that jurisdiction, but the total of which is more than the jurisdictional limit.

- (4) If the counterclaim is for an amount of money, the Court has jurisdiction to deal with the counterclaim unless the party against which the counterclaim is made objects before a date is set for the trial of the counterclaim.
- (5) If the counterclaim is not for an amount of money, the Court has jurisdiction to deal with the counterclaim but cannot give any remedy or judgment on the counterclaim that is outside the Court's jurisdiction unless the party against which the counterclaim is made consents.
- (6) Whether or not it deals with the counterclaim under subsection (4) or (5), the Court may adjourn the case, or the enforcement of any judgment given in it, for sufficient time and on any necessary terms to allow —
  - (a) a party to apply to a superior court under section 39; or
  - (b) the party concerned to take action in a court of competent jurisdiction to establish its counterclaim.

**10. Decisions for jurisdictional purposes**

- (1) The Court has jurisdiction to decide whether a claim is or is not within the jurisdiction conferred on it by section 6 or the jurisdiction referred to in section 8.
- (2) For the purposes of deciding whether or not a claim is within the jurisdiction of the Court, the following amounts are to be disregarded —
  - (a) the interest that may be included by the Court under section 12; and
  - (b) the interest that would be payable under the *Civil Judgments Enforcement Act 2004* section 8 on any judgment sum.

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**11. Remedies that may be given**

- (1) The Court has such powers as are incidental to and necessary for the exercise of the jurisdiction conferred on it by section 6 and of the jurisdiction referred to in section 8.
- (2) The Court may grant any remedy or relief in respect of a claim within the jurisdiction conferred by section 6 —
  - (a) that may be claimed under that section or, in the case of a consumer/trader claim, under section 7(3)(b); or
  - (b) that the Supreme Court could grant if the claim had been made to that court.
- (3) In the exercise of the jurisdiction referred to in section 8, the Court may grant any remedy or relief that is provided for by the written law that confers the jurisdiction on the Court.
- (4) If the Court orders a person to do an act other than paying money, it may also order the person to pay money in default of doing the act as ordered.

**12. Pre-judgment interest may be awarded**

- (1) If the Court gives judgment in favour of a claim for money, including a debt, damages or the value of goods, it may include in the judgment sum either —
  - (a) interest, at a rate decided by the Court, on the whole or a part of the money for the whole or a part of the period that —
    - (i) begins on the date when the cause of action arose; and
    - (ii) ends on the date when the judgment is given;or
  - (b) a lump sum of money in lieu of such interest.
- (2) Subsection (1) does not —
  - (a) authorise the giving of interest on interest;



- (b) apply in relation to any general damages in respect of pain and suffering or the loss of enjoyment or of the amenities of life awarded in relation to personal injury (including any disease or impairment of a person's physical or mental condition) or the death of a person;
- (c) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (d) affect the damages recoverable for the dishonour of a bill of exchange.

### **Part 3 — General procedure**

**13. Court's duties in dealing with cases and making rules**

- (1) In dealing with cases and making rules of court the Court is to ensure that cases are dealt with justly.
- (2) Ensuring that cases are dealt with justly includes ensuring —
  - (a) that cases are dealt with efficiently, economically and expeditiously;
  - (b) so far as is practicable, that the parties are on an equal footing; and
  - (c) that the Court's judicial and administrative resources are used as efficiently as possible.

**14. Rules of court to set out procedure etc.**

- (1) The procedure to be followed in a case is that set out in rules of court unless another written law provides otherwise.
- (2) Without limiting section 48(1), the rules of court may —
  - (a) provide when and in what circumstances the Court will or may exercise a case management power;
  - (b) require a person to do anything that the Court could require the person to do under such a power.
- (3) A case management power must be exercised in accordance with any applicable rules of court.
- (4) The Court must not exercise a case management power if to do so would be contrary to this Act or another written law.
- (5) If the procedure to be followed in a case is not set out in rules of court, this Act or another written law, the procedure is to be that decided by the Court for the purposes of the case.

**15. Court may act on its own initiative**

- (1) The Court may exercise its powers on the application of a party or on its own initiative unless this Act or the rules of court or another written law provides otherwise.
- (2) The Court may make an order on its own initiative with or without —
  - (a) allowing the parties to make submissions; or
  - (b) hearing the parties.
- (3) If the Court decides to allow the parties to make submissions before making an order on its own initiative, it must notify each party likely to be affected by the order of how and when the submissions are to be made.
- (4) If the Court decides to hear the parties before making an order on its own initiative, it must notify each party likely to be affected by the order of the time and place of the hearing.

**16. Court's powers to control and manage cases**

- (1) The Court may do all or any of the following for the purposes of controlling and managing cases and trials —
  - (a) extend the time for complying with any rule of court or practice direction, or any order made by the Court (even if the time for complying has expired), or shorten it;
  - (b) adjourn or bring forward a hearing to a specified date;
  - (c) stay any case, either generally or until a specified date;
  - (d) consolidate cases;
  - (e) try 2 or more cases on the same occasion;
  - (f) order any aspect of a case or a counterclaim in a case to be dealt with as a separate case;
  - (g) order that particular issues be tried in a particular order;
  - (h) order that an issue not be tried;
  - (i) order that an issue be tried separately;

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- (j) order that a case in which the value of the claim, or of the relief claimed, by the claimant is not more than the minor cases jurisdictional limit and that the claimant has not elected to have dealt with under the minor cases procedure be dealt with under the minor cases procedure;
- (k) give judgment against a claim after a decision is made on a separate trial of a preliminary issue;
- (l) hold a hearing by audio link or video link (as those terms are defined in the *Evidence Act 1906* section 120);
- (m) allow a party to amend its case statement;
- (n) order a party to provide additional information to that in or attached to its case statement, whether by disclosing or providing documents or by answering interrogatories;
- (o) order parties —
  - (i) to exchange the written statements of the evidence that is anticipated will be given by witnesses;
  - (ii) to confer, to attend before a mediator or other person or to take other measures, before trial, to try to settle the case or identify the issues that need to be tried;
  - (iii) to attend before the Court before trial to deal with case management, interlocutory and pre-trial issues;
  - (iv) to do anything that in the Court's opinion will or may facilitate the case being conducted and concluded efficiently, economically and expeditiously;
- (p) by order, limit —
  - (i) the time a party has at trial to examine, cross-examine or re-examine a witness, or to make oral submissions, or to present its case;

- (ii) the number of witnesses (including expert witnesses) that may be called in relation to an issue;
  - (iii) the length of a trial;
  - (q) refuse to admit into evidence a document that a party has deliberately not disclosed or provided in accordance with rules of court;
  - (r) as to expert witnesses —
    - (i) order a party to disclose the nature and substance of the expert evidence to be given by any expert witness the party intends to call;
    - (ii) order an expert witness to disclose the advice given to, and the work done in relation to the case of, the party that intends to call him or her;
    - (iii) refuse to allow an expert witness to be called without the leave of the Court;
    - (iv) refuse to admit the evidence of an expert witness that has not been disclosed in accordance with rules of court or a court order;
  - (s) order a party to pay the whole or a part of the costs of a case if the party has deliberately not disclosed or provided a document in accordance with rules of court;
  - (t) take any other action or make any other order for the purpose of complying with section 13.
- (2) A power in this section to make an order includes a power to vary or cancel the order.

**17. Striking out, Court's powers as to**

- (1) The Court may strike out all or a part of a case statement if —
  - (a) any claim in it is outside the Court's jurisdiction;
  - (b) it does not disclose any reasonable grounds for any claim, or for any defence, in it;

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- (c) its purpose is to harass or annoy, or to cause delay or detriment, or is otherwise wrongful;
  - (d) it is an abuse of the Court's process; or
  - (e) it is frivolous, vexatious, scandalous or improper.
- (2) If the Court strikes out all of a case statement the Court may give judgment accordingly without a trial.
- (3) The Court may set aside a judgment given under subsection (2) and may do so on conditions as to the payment of costs or as to other matters.

**18. Summary judgment, Court may give**

- (1) The Court may give judgment against a claim without a trial if the party making the claim does not satisfy the Court that the claim has a reasonable prospect of succeeding.
- (2) The Court may give judgment in favour of a claim without a trial if the party defending the claim does not satisfy the Court that the defence has a reasonable prospect of succeeding.
- (3) In order to determine whether a claim or a defence has a reasonable prospect of succeeding, the Court may determine any necessary question of fact or law.
- (4) If under subsection (3) the Court determines one or more questions of law and there is no question of fact or mixed fact and law in issue between the parties, the determination of the question of law is final for the purposes of proceedings in the Court in relation to the case concerned.
- (5) The powers in subsections (1), (2) and (3) may be exercised —
- (a) in relation to all or a part of a claim or a defence; and
  - (b) regardless of which party, or of whether any party, has made an application to the Court for their exercise.
- (6) The Court may set aside a judgment given under this section and may do so on conditions as to the payment of costs or as to other matters.

- (7) No appeal lies against the Court's decision to refuse to give judgment under subsection (1) or (2).

**19. Default by party, Court's powers to deal with**

- (1) This section does not apply to a failure to comply with the judgment of the Court in a case or any order made in or as a consequence of the judgment.
- (2) If a party does not comply with this Act, rules of court, or an order or direction made by the Court, the Court may —
- (a) order the party to pay the costs occasioned by the non-compliance irrespective of whether the party ultimately succeeds in the case; or
  - (b) give judgment against the party without a trial.
- (3) The Court may set aside a judgment given under subsection (2) and may do so on conditions as to the payment of costs or as to other matters.

**20. Procedural orders may be made conditional**

- (1) When making an order under section 16, 17, 18 or 19 the Court may order that the order is to take effect unless the party complies with a particular rule of court, order, or direction, within a particular time, as specified by the Court.
- (2) The Court may vary or cancel an order made under subsection (1).

**21. Persons under legal disability, claims by or against**

- (1) A person under 18 years of age who is or intends to be a party to a case must have a litigation guardian to conduct the case on his or her behalf unless the Court orders otherwise.
- (2) The Court may appoint a person who is not under a legal disability to be the litigation guardian of a person under 18 years of age who is or intends to be a party to a case.

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- (3) If a party to a case is not a represented person under the *Guardianship and Administration Act 1990* but the Court suspects on reasonable grounds that the party may be in need of a guardian or administrator under that Act, the Court may —
  - (a) request the Public Advocate to investigate whether the party is in such need; and
  - (b) adjourn the case until the Court is advised by the Public Advocate of the result of the investigation.
- (4) The settlement of a case in which there is a claim by or against a person under a legal disability is not valid unless the Court approves it.
- (5) The Court may approve such a settlement and may do so on any reasonable and necessary terms.

**22. Venue, changing**

- (1) If the Court is satisfied that it would be more convenient, or fair, to the parties if the whole or a part of the proceedings in a case were conducted at another place in the State (whether or not a registry of the Court is there), the Court may order accordingly.
- (2) An order may be made under subsection (1) only on the application of a party of which any other party has had notice.
- (3) If the Court makes an order under subsection (1) it may make any necessary ancillary or consequential order.
- (4) A decision made under subsection (1) by the Court constituted by a magistrate cannot be appealed.

**23. Mediation, use of**

- (1) The Court, with or without the consent of the parties, may order that a case, or any issue arising in it, be mediated.
- (2) The cost of a mediator who is not a registrar is to be paid by the parties in equal shares unless the Court orders, or the parties agree, otherwise.



**24. Experts, use of**

- (1) The Court, with or without the consent of the parties, may refer a question arising in a case to a person who is an expert in the relevant field for investigation and a report.
- (2) The expert has and may exercise any powers of the Court that are delegated to experts by rules of court for the purposes of this section.
- (3) The Court may adopt all or some of the expert's report.
- (4) The cost of the expert's investigation and report is to be paid by the parties in equal shares unless the Court orders, or the parties agree, otherwise.
- (5) The *Magistrates Court Act 2004* section 37 applies to an expert in respect of his or her performance or purported performance of the functions of an expert under this section.

**25. Costs**

- (1) The Court may order a party to a case to pay the whole or a part of another party's costs in the case.
- (2) A successful party is entitled to an order under subsection (1) that the whole of its costs in the case be paid by the unsuccessful party, unless the Court considers there is good reason not to make such an order or subsection (5) applies.
- (3) An order may be made under subsection (1) in a case even if the case is outside the Court's jurisdiction.
- (4) An order may be made under subsection (1) at any stage of the proceedings in a case.
- (5) In a case where —
  - (a) the value of the claim, or of the relief claimed, by the claimant is not more than the minor cases jurisdictional limit; and

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- (b) the claimant did not elect to have the claim dealt with under the minor cases procedure or, under section 28(3), the court ordered that the case be dealt with under the general procedure,

the Court may only make an order under subsection (1) in favour of a successful party if the order would be permitted by section 31 were the case being dealt with under the minor cases procedure.

- (6) If in a case referred to in subsection (5) judgment is given under section 18 as a result of an application by the successful party, any order made under this section in favour of the party may, in addition to relating to any allowable costs referred to in section 31, include the party's costs of the application under section 18.
- (7) The amount of any costs to be paid is to be determined by the Court unless the parties concerned agree on the amount.
- (8) The amount of any costs to be paid in respect of work done by a lawyer in conducting any proceedings in the case is to be determined under the applicable costs determination.
- (9) If the Court orders the costs of a self-represented party to be paid by another party, the Court may order that the whole or a part of the expenses or losses incurred by the self-represented party in or in connection with conducting the case be included in the costs.
- (10) If the Court is satisfied that due to the acts or omissions of a lawyer, whether personally or through an employee or agent —
  - (a) costs have been incurred improperly or without reasonable cause; or
  - (b) costs have been wasted by undue delay or by any misconduct or default,

the Court may order all or any of the following —

- (c) the lawyer to be wholly or partially disentitled to costs from the lawyer's client;
  - (d) the lawyer to repay to the lawyer's client the whole or a part of any costs that the lawyer has been paid by the client for items other than disbursements;
  - (e) the lawyer to pay to the lawyer's client the whole or a part of any costs that the client is ordered to pay to another party;
  - (f) the lawyer personally to indemnify any party other than the lawyer's client against the whole or a part of the costs payable by the indemnified party.
- (11) The Court must not make an order under subsection (10) unless it has informed the lawyer of the proposed order and allowed the lawyer to call evidence and make submissions in relation to the proposed order.
- (12) If an order is made under subsection (10)(c), the lawyer must not charge and cannot recover the costs concerned.

## **Part 4 — Minor cases procedure**

### **26. Interpretation**

(1) In this Part —

**general procedure** means the procedure prescribed by Part 3 and the rules of court other than rules of court made for the purposes of this Part;

**minor case** means —

- (a) a claim within the jurisdiction of the Court where —
  - (i) the value of the claim or of the relief claimed is not more than the minor cases jurisdictional limit; and
  - (ii) the claimant has elected to have the claim dealt with under the minor cases procedure;
- (b) a matter within the jurisdiction of the Court referred to in section 8 that is declared to be a minor case for the purposes of this Act by the written law that confers jurisdiction on the Court to deal with the matter; or
- (c) any other claim within the jurisdiction of the Court (including a claim within the jurisdiction of the Court by virtue of a consent given under section 6(1)(f)) that the parties agree is to be treated as a minor case.

### **27. Object of minor cases procedure**

- (1) The primary object of the Court when dealing with a minor case is to attempt to bring the parties to a settlement acceptable to all the parties.
- (2) The Court may, at any stage of the proceedings, do all things and take all such steps as it considers to be appropriate to achieve that primary object.
- (3) Anything said or done by a party for the purpose of attempting to settle a minor case is to be taken to be said or done without prejudice to any evidence or submission that the party —

- (a) has adduced or made; or
- (b) may subsequently adduce or make,

in or in respect of the proceedings, and the saying or doing of that thing does not disqualify the person or persons constituting the Court from sitting or continuing to deal with the case.

- (4) If the Court is unable to bring the parties to a settlement acceptable to all the parties, the Court must deal with the minor case.

**28. Minor cases procedure, general provisions**

- (1) The Court must deal with a minor case in accordance with the minor cases procedure unless an order has been made under subsection (2) or (3).
- (2) The Court must order that a minor case be dealt with under the general procedure if the case involves any jurisdiction conferred on the Court by a law of the Commonwealth.
- (3) The Court may order that a minor case be dealt with under the general procedure if —
  - (a) all the parties so request; or
  - (b) the case involves an important principle of law or complex facts or issues.
- (4) If a minor case involves a counterclaim that is not a minor case the Court may —
  - (a) with the consent of the parties, deal with the whole of the minor case under the minor cases procedure; or
  - (b) otherwise —
    - (i) order the counterclaim to be dealt with as a separate case under the general procedure; or
    - (ii) if the claimant so requests, order the whole of the minor case to be dealt with under the general procedure.

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- (5) Subsection (4) does not affect the operation of section 9.

**29. Proceedings to be private and informal**

- (1) All proceedings of the Court when dealing with a minor case are to be held in private unless the Court otherwise orders.
- (2) Relatives and friends of a party may be present at the proceeding unless the Court otherwise orders.
- (3) In dealing with a minor case the Court is to act with as little formality as the Court thinks is reasonable.
- (4) When dealing with a minor case the Court is not bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit.

**30. Representation of parties**

- (1) In this section —  
*agent* means a lawyer or any other person.
- (2) Despite section 44(2), a party to a minor case is not entitled to be represented before the Court but —
- (a) a party referred to in section 44(2)(b) or (c) may be represented by a person who may represent the party under paragraph (b) or (c) of section 44(2); and
- (b) any party may be represented by an agent with the leave of the Court given under this section.
- (3) The Court may give a party leave to be represented by an agent who is not a lawyer —
- (a) in proceedings, not being the trial of the case, if the proceedings are prescribed by the regulations; or
- (b) in the trial of the case, if the Court considers that the party should be given leave so that the party is not unfairly disadvantaged.

- (4) Except in the case of a consumer/trader claim, the Court may give a party leave to be represented by a lawyer —
  - (a) in proceedings prescribed under subsection (3)(a);
  - (b) if all parties agree; or
  - (c) if the Court is satisfied that it is in the interests of justice for the party to be represented by a lawyer.
- (5) The Court may give a party to a consumer/trader claim leave to be represented by a lawyer —
  - (a) if all parties agree; or
  - (b) if the Court is satisfied that none of the other parties will be unfairly disadvantaged as a result.
- (6) If it appears to the Court that it should give leave for a party to be represented by an agent, the Court —
  - (a) if a particular agent is proposed for its approval, must 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) may give leave subject to any reasonable conditions needed to ensure that none of the other parties will be unfairly disadvantaged as a result.
- (7) If the Court gives leave subject to conditions, the entitlement of a party to be represented by an agent is subject to compliance with those conditions.
- (8) The Court may revoke leave for a party to be represented by an agent if the agent does not conduct himself or herself in a proper manner when representing the party.
- (9) A contravention of this section in a case does not invalidate any order made, or the judgment, in the case.
- (10) Leave given under this section does not authorise an agent who is not a lawyer to claim, receive or recover, directly or indirectly, money or other remuneration for representing a party.

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**31. Costs**

- (1) In this section —  
*allowable costs* means —
  - (a) the court fees and service fees paid by a successful party; and
  - (b) the costs of enforcing a judgment.
- (2) A successful party to a minor case is entitled to an order under section 25(1) in relation to the party's allowable costs but not in relation to the party's other costs in the case.
- (3) Despite subsection (2), the Court may make an order under section 25(1) as to the payment of the party's other costs by another party if it is satisfied that —
  - (a) because of the existence of exceptional circumstances an injustice would be done to the successful party if that party's other costs were not ordered to be paid; or
  - (b) the unsuccessful party's claim or defence was wholly without merit.

**32. Appeals**

- (1) Except as provided by this section, no appeal lies against —
  - (a) an order made by the Court in the course of proceedings in a minor case; or
  - (b) the judgment of the Court in a minor case.
- (2) If a party to a minor case is dissatisfied with the judgment of the Court in the case then —
  - (a) if the Court was constituted by a magistrate — an appeal lies against the judgment under Part 7 and, subject to subsection (3), Part 7 applies to the appeal; or
  - (b) if the Court was not constituted by a magistrate — the party may appeal to a magistrate under and subject to the rules of court and this section.



- (3) Despite Part 7 an appeal against a judgment in a minor case may only be made on the grounds —
- (a) that the minor case —
    - (i) was not within the jurisdiction of the Court; or
    - (ii) was not a minor case;
  - (b) that in dealing with the minor case there was a denial of natural justice; or
  - (c) that the judgment was beyond the Court's jurisdiction.
- (4) A magistrate who deals with an appeal under this section against a judgment may —
- (a) confirm, vary or set aside all or a part of the judgment;
  - (b) give any judgment and make any order that it could have given or made in, or order a new trial of, the minor case;
  - (c) make an order as to the costs of the appeal;
  - (d) make any orders that are necessary as a result of other orders it has made.

**33. Rules of court for minor cases procedure**

Rules of court made for the purposes of this Part may —

- (a) provide for the procedures to be followed when conducting a minor case;
- (b) specify the circumstances in which any of the Court's powers in Part 3 may be exercised;
- (c) provide that all or some of the general procedure, with or without modifications, applies to minor cases.

## Part 5 — Mediation

### 34. Interpretation

In this Part, unless the contrary intention appears —

*compulsory mediation* means mediation carried out by a mediator in accordance with an order of the Court and the rules of court;

*mediator* means a mediator appointed or agreed under section 35.

### 35. Mediator, appointment of

If the Court orders that a case, or any issue arising in it, be mediated —

- (a) the Court may appoint a registrar or another person as the mediator; or
- (b) the parties may agree on who is to be the mediator.

### 36. Mediator, protection of

The *Magistrates Court Act 2004* section 37 applies to a mediator in respect of his or her performance or purported performance of the functions of a mediator when carrying out compulsory mediation as if the mediator were a Court officer.

### 37. Compulsory mediation, privilege of proceedings etc.

- (1) In this section —

*costs application* means an application for the costs of a compulsory mediation or of the case to which the compulsory mediation relates.

- (2) Evidence of —
  - (a) anything said or done;
  - (b) any communication, whether oral or written; or

(c) any admission made,

in the course of, or for the purpose of, attempting to settle a case by compulsory mediation is to be taken to be in confidence and is not admissible in any proceedings before any court, tribunal or body unless subsection (4) applies.

(3) Each of the following —

- (a) a document prepared in the course of, or for the purpose of, attempting to settle a case by compulsory mediation;
- (b) a copy of such a document; or
- (c) evidence of such a document,

is to be taken to be subject to a duty of confidence and is not admissible in any proceedings before any court, tribunal or body unless subsection (4) applies.

(4) Evidence or a document referred to in subsection (2) or (3) is admissible in proceedings if —

- (a) the parties to the compulsory mediation consent to the admission of the evidence or document;
- (b) there is a dispute in the proceedings as to whether the parties to the compulsory mediation entered into a binding agreement settling all or any of their differences and the evidence or document is relevant to that dispute;
- (c) the proceedings relate to a costs application and, under the rules of court, the evidence or document is admissible for the purposes of determining any question of costs; or
- (d) the proceedings relate to any act or omission in connection with which a disclosure has been made under section 38(2)(c).

(5) A mediator cannot be compelled to give evidence of anything referred to in subsection (2) or (3) or to produce a document or a copy of a document referred to in subsection (3) except —

- (a) in proceedings referred to in subsection (4)(d); or

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- (b) in proceedings relating to a costs application where there is a dispute as to a fact stated or a conclusion reached in a mediator's report prepared under the rules of court on the failure of a party to cooperate in the mediation and the evidence or document is relevant to that dispute.

**38. Mediator, duty of confidentiality**

- (1) A mediator must not disclose any information obtained in the course of, or for the purpose of, carrying out compulsory mediation.
- (2) Subsection (1) does not apply if —
  - (a) the disclosure is made for the purpose of reporting under the rules of court on any failure by a party to cooperate in compulsory mediation;
  - (b) the disclosure is made with the consent of the parties involved in the compulsory mediation;
  - (c) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property; or
  - (d) the disclosure is authorised by law or is required by or under a law of the State (other than a requirement imposed by a summons or other compulsory process) or of the Commonwealth.

## **Part 6 — Transferring cases to superior courts**

### **39. Transfer of Magistrates Court case to superior court**

- (1) In this section —  
*superior court* means the District Court or the Supreme Court.
- (2) A party to a case in the Court may apply to a superior court for an order that all or a part of the case be transferred to the superior court.
- (3) The application must be made in accordance with rules of court that apply in the superior court.
- (4) The superior court may make such an order if it is satisfied that all or a part of the case is within its jurisdiction and —
  - (a) involves a claim by the claimant or another party, or an issue, that is outside the Magistrates Court’s jurisdiction;  
or
  - (b) should be dealt with by the superior court because of its complexity or because of a question of law involved.
- (5) A superior court that makes an order under subsection (4) may also make any other necessary orders including orders as to —
  - (a) the registry of the superior court in which the case is to be conducted;
  - (b) the payment of fees in the superior court; and
  - (c) the costs in the case in relation to proceedings in the Magistrates Court.
- (6) On receiving an order made under subsection (4) a registrar of the Magistrates Court is to send the Court’s file to the superior court.
- (7) If an order is made under subsection (4) the superior court is to deal with the case as if it had been commenced in that court.

## **Part 7 — Appeals**

### **40. Appeal from Magistrates Court to District Court**

- (1) A party to a case that is not a minor case may appeal to the District Court against —
  - (a) any order made by the Magistrates Court in the course of proceedings in the case; or
  - (b) the judgment of the Magistrates Court in the case.
- (2) An appeal against the judgment of the Magistrates Court in a case that is a minor case is subject to section 32.
- (3) The appeal must —
  - (a) be commenced within 21 days after the date of judgment; and
  - (b) be conducted in accordance with rules of court made by the District Court.
- (4) The District Court must decide the appeal on —
  - (a) the material and evidence that were before the Magistrates Court; and
  - (b) any other evidence that it gives leave to be admitted.
- (5) Leave may only be given under subsection (4)(b) in exceptional circumstances.
- (6) Subsection (4) does not prevent the District Court from dealing with an appeal against a decision of the Magistrates Court to admit or refuse to admit any evidence.

### **41. Transfer of District Court appeal to Court of Appeal**

- (1) If an appeal under section 40 is pending in the District Court, a party to the appeal may apply to the Court of Appeal for an order that the appeal be transferred to the Court of Appeal.
- (2) The application must be made in accordance with rules of court made by the Supreme Court.

- (3) The Court of Appeal may order that the appeal be transferred to the Court of Appeal if it is satisfied that the appeal should be dealt with by the Court of Appeal because of its complexity or because of a question of law involved.
- (4) If the Court of Appeal orders that the appeal be transferred to the Court of Appeal, section 40(4) to (6), with any necessary changes, apply and the appeal must be conducted in accordance with rules of court made by the Supreme Court.

*[Section 41 amended by No. 45 of 2004 s. 37.]*

#### **42. Appeal from District Court to Court of Appeal**

- (1) A party to an appeal made to the District Court under section 40 may appeal to the Court of Appeal against the District Court's judgment on the appeal.
- (2) The appeal must —
  - (a) be commenced within 21 days after the date of the District Court's judgment; and
  - (b) be conducted in accordance with rules of court made by the Supreme Court.
- (3) The Court of Appeal must decide the appeal on —
  - (a) the material and evidence that were before the Magistrates Court;
  - (b) the material that was before the District Court and any other evidence that the District Court admitted; and
  - (c) any other evidence that the Court of Appeal gives leave to be admitted.
- (4) Leave may only be given under subsection (3)(c) in exceptional circumstances.
- (5) Subsection (3) does not prevent the Court of Appeal from dealing with an appeal against a decision of the District Court to admit or refuse to admit any evidence.

*[Section 42 amended by No. 45 of 2004 s. 37.]*

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**43. Appeal court's powers**

- (1) This section applies to a court (the *appeal court*) that is dealing with an appeal under section 40, 41 or 42 against an order or judgment of another court (the *lower court*).
- (2) The appeal court may ascertain what material or evidence was before the lower court in any manner that it considers sufficient.
- (3) The appeal court may strike out the appeal if the likely costs of the appeal to the parties would be disproportionate to the amount of the claim in, or the nature of, the case which is the subject of the appeal.
- (4) The appeal court may strike out any ground of the appeal if —
  - (a) there is no reasonable basis for it;
  - (b) it does not have a reasonable prospect of succeeding;
  - (c) although it has a reasonable prospect of succeeding, no miscarriage of justice would occur by striking it out; or
  - (d) it is frivolous, vexatious, scandalous or improper.
- (5) The appeal court may make an order under subsection (3) or (4) on its own initiative.
- (6) If the appeal court strikes out all of the grounds of the appeal the court may give judgment accordingly without a full hearing of it.
- (7) The appeal court may —
  - (a) confirm, vary or set aside all or a part of the lower court's judgment;
  - (b) give any judgment and make any order that the Magistrates Court could have given or made;
  - (c) order a new hearing in, or trial of, the case to be held in the Magistrates Court;
  - (d) order the Magistrates Court to enter judgment in favour of a party;



- (e) make an order as to the costs of the appeal and as to the costs in the Magistrates Court and, in an appeal to the Court of Appeal, as to the costs in the District Court;
- (f) make any orders that are necessary as a result of other orders it has made.

*[Section 43 amended by No. 45 of 2004 s. 37.]*

## **Part 8 — Miscellaneous**

### **44. Representation of parties**

- (1) A party to a case is personally entitled to appear before the Court in order to present and conduct the party's case and to call, examine, cross-examine, and re-examine witnesses.
- (2) Subject to section 30(2), the entitlement under subsection (1) may be performed on the party's behalf —
  - (a) by a lawyer, regardless of whether the party is referred to in paragraph (b) or (c);
  - (b) if the party is a corporation, by one of its officers whom it has authorised to do so;
  - (c) if the party is —
    - (i) a police officer or other public officer acting in the course of duty; or
    - (ii) a public authority,  
and the case involves jurisdiction of the Court that is referred to in section 8 and prescribed by the regulations — by a person who is prescribed by the regulations as a person who may do so; or
  - (d) with the Court's leave, by a person who is not a lawyer,  
unless another written law expressly provides otherwise.
- (3) The Court may only give leave under subsection (2)(d) in exceptional circumstances.
- (4) A person who is not a lawyer and who, having been given leave under subsection (2)(d), performs any act referred to in subsection (1) on behalf of a party is not entitled to claim, receive or recover, directly or indirectly, money or other remuneration for doing so.

**45. Court to be open to public, publicity**

- (1) All proceedings in the Court's civil jurisdiction are to be conducted in open court unless this Act, the rules of court or another written law provides otherwise.
- (2) On an application by a party to a case or on its own initiative, the Court may order a person who may be called as a witness in the proceedings —
  - (a) to leave the courtroom and to remain out of hearing of the courtroom until called to give evidence;
  - (b) not to discuss his or her evidence with a person or persons specified by the Court.
- (3) On an application by a party to a case, or on its own initiative, the Court may, if satisfied it is in the interests of justice to do so —
  - (a) order any or all persons, or any class of persons, to be excluded from the courtroom during the whole of the proceedings, or a part of them specified by the Court;
  - (b) make an order that prohibits or restricts the publication outside the courtroom of the whole of the proceedings, or a part or particular of them specified by the Court.
- (4) An order made under subsection (3) may be made subject to conditions specified by the Court.
- (5) A person who, under section 44(2), is entitled to act on behalf of a party to the proceedings is not to be excluded from the courtroom under this section.
- (6) A person who contravenes an order made under this section is guilty of a contempt of the Court.

**46. Enforcement of judgments**

The *Civil Judgments Enforcement Act 2004* applies to a judgment of the Magistrates Court in its civil jurisdiction.

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**47. Rules of court, making**

Rules of court for the purposes of this Act are to be made by the Court in accordance with the *Magistrates Court Act 2004* section 39.

**48. Rules of court, content**

- (1) The rules of court may regulate the practice and procedure to be followed in the Court and its registries, either generally or in relation to particular cases or to the exercise by the Court of any particular aspect of its civil jurisdiction.
- (2) Without limiting subsection (1), the rules of court may —
  - (a) subject to any regulations made for the purposes of the *Magistrates Court Act 2004* section 7(2) prescribe the cases that may be dealt with by the Court when constituted by other than a magistrate;
  - (b) regulate where and how cases are to be commenced, defended and conducted;
  - (c) provide for a claim for the recovery of possession of real property to be made where the person seeking possession does not know the name of the person in possession;
  - (d) provide for the procedure in cases involving members of partnerships or persons under a legal disability or claims by or against multiple persons;
  - (e) require parties or their lawyers to verify or certify the truth and correctness of documents lodged with the Court by means of a statement on oath or a statutory declaration or otherwise;
  - (f) regulate the lodging of documents with the Court and the service of documents on parties and others;
  - (g) provide for bringing documents to the notice of a person without serving the document on the person;

- (h) regulate the conduct and management of cases before they are tried;
- (i) regulate the trial of cases;
- (j) regulate how and when applications in the course of the proceedings in a case are to be made;
- (k) provide for payments into court and the consequences of doing so;
- (l) regulate the form in which evidence may be taken or received by the Court;
- (m) provide for when a document disclosed by a party may be admitted into evidence without formal proof of the document;
- (n) regulate the referral by the Court of claims to, and payment of, mediators and experts;
- (o) provide for the rehearing or review by a magistrate of a decision made by the Court when constituted by other than a magistrate;
- (p) require a party to provide security for costs that may be payable by the party;
- (q) regulate the making of orders as to costs and the determination of the amount of costs;
- (r) provide for the forms to be used in the Court or for forms to be approved by the Chief Magistrate.

**49. Regulations**

The Governor may make regulations prescribing all matters and things that, by this Act, are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for giving effect to this Act other than in respect of the fees to be paid in respect of or in connection with any case.

### Notes

<sup>1</sup> This is a compilation of the *Magistrates Court (Civil Proceedings) Act 2004* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Magistrates Court (Civil Proceedings) Act 2004</i>	48 of 2004	12 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7127)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

#### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Justice) Act 2008</i> Pt. 16 <sup>2</sup>	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Legal Profession Act 2008</i> s. 678 <sup>3</sup>	21 of 2008	27 May 2008	To be proclaimed (see s. 2(b))

<sup>2</sup> On the date as at which this compilation was prepared, the *Acts Amendment (Justice) Act 2008* Pt. 16 had not come into operation. It reads as follows:

“

### Part 16 — *Magistrates Court (Civil Proceedings) Act 2004* amended

#### 73. The Act amended in this Part

The amendments in this Part are to the *Magistrates Court (Civil Proceedings) Act 2004*.

#### 74. Section 3 amended

Section 3(1) is amended in the definition of “public authority” as follows:

- (a) by inserting after each of paragraphs (a), (b) and (d) —

“ or ”;  
(b) by inserting after paragraph (d) —

“

(e) the State of Western Australia;

”.

**75. Section 7 amended**

Section 7(3) is amended as follows:

- (a) by deleting “by a consumer or a trader (the “claimant”);
- (b) by deleting paragraph (a) and “and” after it and inserting instead —

“

- (a) that arises out of a contract between a consumer and a trader for the supply of goods or the provision of services; and
- (aa) that is made by the consumer or the trader against the other; and

”.

**76. Section 14 amended**

After section 14(5) the following subsection is inserted —

“

- (6) The Court may decide that the procedure set out in rules of court to be followed in a case is not appropriate for the case, in which case the procedure is to be that decided by the Court.

”.

**77. Section 30 amended**

Section 30(4) is amended by inserting after paragraph (a) —

“ or ”.

**78. Section 31 amended**

Section 31(3) is amended by deleting the full stop after paragraph (b) and inserting instead —

“

; or

- (c) the proceedings in the minor case —
  - (i) were commenced but not concluded in a Local Court before 1 May 2005; and

- (ii) were, immediately before 1 May 2005, not proceedings that were being heard and determined under the *Local Courts Act 1904* Part VIA.

”.

**79. Section 44 amended**

Section 44(2) is amended as follows:

- (a) by deleting paragraph (b) and inserting instead —

“

- (b) if the party is a corporation —
  - (i) by one of its officers; or
  - (ii) by one of its employees who has written authority from one of its officers to do so;

or

”;

- (b) after paragraph (a) by inserting —

“ or ”.

”.

<sup>3</sup> On the date as at which this compilation was prepared, the *Legal Profession Act 2008* s. 678 had not come into operation. It reads as follows:

“

**678. Magistrates Court (Civil Proceedings) Act 2004 amended**

- (1) The amendments in this section are to the *Magistrates Court (Civil Proceedings) Act 2004*.
- (2) Section 3(1) is amended as follows:
  - (a) in the definition of “applicable costs determination” by deleting “*Legal Practice Act 2003* section 210” and inserting instead —  
“ *Legal Profession Act 2008* section 275 ”;
  - (b) by deleting the definition of “lawyer”;
  - (c) by inserting in the appropriate alphabetical position —

“

*legal practitioner* means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

”.

- (3) Section 25(8) is amended by deleting “lawyer” and inserting instead —



- “ legal practitioner ”.
- (4) Section 25(10) is amended as follows:
- (a) by deleting “lawyer” in the 6 places where it occurs and inserting instead —  
“ legal practitioner ”;
- (b) by deleting “lawyer’s” in the 3 places where it occurs and inserting instead —  
“ legal practitioner’s ”.
- (5) Section 25(11) is amended by deleting “lawyer” in both places where it occurs and inserting instead —  
“ legal practitioner ”.
- (6) Section 25(12) is amended by deleting “lawyer” and inserting instead —  
“ legal practitioner ”.
- (7) Section 30(1) is amended in the definition of “agent” by deleting “lawyer” and inserting instead —  
“ legal practitioner ”.
- (8) Section 30(3) is amended by deleting “lawyer” and inserting instead —  
“ legal practitioner ”.
- (9) Section 30(4) is amended by deleting “lawyer” in both places where it occurs and inserting instead —  
“ legal practitioner ”.
- (10) Section 30(5) is amended by deleting “lawyer” and inserting instead —  
“ legal practitioner ”.
- (11) Section 30(10) is amended by deleting “lawyer” and inserting instead —  
“ legal practitioner ”.
- (12) Section 44(2) is amended by deleting “lawyer” in both places where it occurs and inserting instead —  
“ legal practitioner ”.
- (13) Section 44(4) is amended by deleting “lawyer” and inserting instead —  
“ legal practitioner ”.
- ”.

