

Queensland



# SMALL CLAIMS TRIBUNALS ACT 1973

**Reprinted as in force on 3 September 1999  
(includes amendments up to Act No. 20 of 1998)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 3B**

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

# Information about this reprint

This Act is reprinted as at 3 September 1999. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



# SMALL CLAIMS TRIBUNALS ACT 1973

## TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	5
2	Commencement of Act . . . . .	5
4	Interpretation . . . . .	5
<b>PART 2—SMALL CLAIMS TRIBUNALS</b>		
<i>Division 1—Referees</i>		
5	Appointment of referees and referees ex officio . . . . .	8
10	Functions of referees . . . . .	8
<i>Division 2—Constitution of tribunals—registry</i>		
11	Constitution of tribunal . . . . .	9
12	Venue of sittings . . . . .	9
13	Registries . . . . .	9
14	Records of tribunals . . . . .	9
15	Registrars . . . . .	10
<i>Division 3—Jurisdiction, powers and duties of tribunals</i>		
16	Extent of jurisdiction . . . . .	10
17	Exclusion of other jurisdictions . . . . .	11
18	Proceedings of tribunals final . . . . .	12
19	Immunity from judicial supervision . . . . .	12
20	Orders of tribunals . . . . .	13
21	Restriction on tribunals' orders . . . . .	14

*Small Claims Tribunals Act 1973*

22	Provisions affecting the making and enforcement of orders to pay money . . . . .	15
22A	Written reasons for orders in tenancy applications . . . . .	16
23	Renewal of proceeding when order not complied with . . . . .	16
23A	Examination of person required by order to pay money . . . . .	16

***Division 4—Practice on claims***

24	Reference of claims to tribunal . . . . .	19
25	Notice of claim and proceeding . . . . .	19
26	Parties to proceeding . . . . .	20
27	Withdrawal of claim . . . . .	20

***Division 5—Practice on hearings***

28	Definition . . . . .	21
29	Continuity of tribunal . . . . .	21
30	Amendment of claim . . . . .	21
31	Adjournment of proceeding . . . . .	21
32	Presentation of cases . . . . .	22
33	Taking of evidence before tribunal . . . . .	22
34	Tribunal to act on evidence available . . . . .	23
35	Costs . . . . .	24

**PART 3—MISCELLANEOUS PROVISIONS**

36	Tribunals in the charge of Minister . . . . .	25
37	Control of tribunal's procedures . . . . .	25
38	Contempt in face of tribunal . . . . .	25
39	Law of perjury to apply . . . . .	26
40	Contracting out prohibited . . . . .	26
41	Mode of giving notices etc. . . . .	26
42	Certain matters to be reported to the Minister . . . . .	27
43	Protection for things done under Act . . . . .	28
44	Regulations . . . . .	28

**ENDNOTES**

1	Index to endnotes . . . . .	30
2	Date to which amendments incorporated . . . . .	30

3	Key .....	31
4	Table of earlier reprints .....	31
5	Tables in earlier reprints .....	32
6	List of legislation .....	32
7	List of annotations .....	34
8	Provisions that have not commenced and are not incorporated into reprint .....	38



# SMALL CLAIMS TRIBUNALS ACT 1973

[as amended by all amendments that commenced on or before 3 September 1999]

**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 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Small Claims Tribunals Act 1973*.

### Commencement of Act

2. This Act shall come into operation on a date to be appointed by proclamation.

### Interpretation

- 4.(1) In this Act—

“**claim**” includes a tenancy application.

“**claimant**” means—

- (a) subject to paragraphs (b) to (f), in relation to a small claim that arises out of a contract between a consumer and a trader—the consumer;
- (b) in relation to a small claim that arises out of a contract between traders—any of those traders;
- (c) in relation to a claim that is the subject of a dispute arising under

*Small Claims Tribunals Act 1973*

---

the *Dividing Fences Act 1953*—any party to the dispute;

- (d) a person entitled to make a tenancy application;
- (e) in relation to a claim in an application made pursuant to or for the purposes of the *Mobile Homes Act 1989*—the owner, or the occupier, within the meaning of that Act;
- (f) in relation to a claim for payment of money for damage to property caused by or arising out of the use of a vehicle—a person incurring loss due to the damage;

who, in any such case, has duly referred the claim to a small claims tribunal.

**“consumer”** means a person, other than an incorporated person, who buys or hires goods otherwise than for resale or letting on hire or than in the course of or for the purposes of a trade or business carried on by the person, or than as a member of a business partnership, or for whom services are supplied for fee or reward otherwise than in the course of or for the purposes of a trade or business carried on by the person, or than as a member of a business partnership, and includes a person who is or was the tenant of any premises let to the person for the purposes of a dwelling and otherwise than for the purposes of assigning or subletting or for the purposes of a trade or business carried on by the person.

**“contract”** includes all agreements, whether written or oral.

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

**“metropolitan district”** means the metropolitan district within the meaning of the *Justices Act 1886*.

**“prescribed amount”** means \$5 000.

**“referee”** means a person who is a referee of small claims tribunals pursuant to section 5.

**“registrar”** means the registrar of a registry of small claims tribunals, and includes any person performing at the material time any of the duties of the registrar.

**“registry”** means a registry of small claims tribunals established and maintained under this Act.



*Small Claims Tribunals Act 1973*

---

**“respondent”** means—

- (a) a trader against whom is made a small claim that is duly referred to a small claims tribunal;
- (b) a party to a dispute, other than the claimant, concerning a claim that is duly referred to a small claims tribunal.

**“small claim”** means—

- (a) a claim—
  - (i) for payment of money of a value not exceeding the prescribed amount;
  - (ii) for relief from payment of money of a value not exceeding the prescribed amount;
  - (iii) for performance of work of a value not exceeding the prescribed amount to rectify a defect in goods supplied or services provided;
  - (iv) for return of goods of a value not exceeding the prescribed amount;
  - (v) for a combination of claims referred to in subparagraphs (i) to (iv) or any 2 or more of them where the total value of the combined claim does not exceed the prescribed 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 or a trader on the one hand and a trader on the other; or

- (c) a claim for payment of money of a value not exceeding the prescribed amount for damage to property caused by or arising out of the use of a vehicle.

**“small claims tribunal”** means a tribunal constituted as prescribed for taking a proceeding in relation to a claim.

**“tenancy application”** means an application made under the *Residential Tenancies Act 1994* to a small claims tribunal.

**“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 or herself out as ready to supply goods or to provide

services of a similar nature, and includes a person who is or was the landlord of any premises let to a tenant for the purposes of a dwelling and otherwise than for the purposes of assigning or subletting by the tenant or for the purposes of a trade or business carried on by the tenant.

(2) For the purposes of this Act a person who in respect of goods supplied or services provided by the person 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) the person acts in the exercise of a discipline that is not ordinarily regarded as being within the field of trade or commerce; or
- (b) the person 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.

## **PART 2—SMALL CLAIMS TRIBUNALS**

### *Division 1—Referees*

#### **Appointment of referees and referees ex officio**

**5.(1)** Every Stipendiary Magistrate while the Stipendiary Magistrate holds that office shall be a referee of small claims tribunals.

(2) Other referees of small claims tribunals are to be employed under the *Public Service Act 1996*.

#### **Functions of referees**

**10.(1)** The primary function of a referee constituting a small claims tribunal shall be to attempt to bring the parties to a dispute that involves a claim referred to in section 16 duly referred to the tribunal to a settlement acceptable to all the parties.

(2) Should it appear to the referee in a particular case to be impossible to reach, or inappropriate to try to reach, a settlement acceptable to all parties to a dispute, then the function of a referee constituting a small claims tribunal shall be to make such an order with respect to the issue in dispute as is fair and equitable to all the parties to the proceeding concerning the dispute or, where the referee thinks the case requires it, an order dismissing the claim.

### *Division 2—Constitution of tribunals—registry*

#### **Constitution of tribunal**

11. A small claims tribunal shall be constituted by a referee sitting alone.

#### **Venue of sittings**

12. A small claims tribunal may be constituted at any place in the State.

#### **Registries**

13.(1) The office of every clerk of the court of a Magistrates Court (other than offices in the metropolitan district) is a registry.

(2) There is to be a registry, appointed under the *Justices Act 1886*, in the metropolitan district.

(3) There shall be kept in the registry every record of a small claims tribunal that relates to a claim originating in that registry.

#### **Records of tribunals**

14.(1) 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 the referee requires.

(1A) Notes so made shall not form part of the record of the reference to the tribunal.

(2) The record of a small claims tribunal shall consist of—

(a) the claim referred to it, as completed by the claimant; and

*Small Claims Tribunals Act 1973*

---

- (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; and
- (d) if, for an order made about a tenancy application, written reasons are given—the reasons; and
- (e) all other documents filed in the registry in relation to the claim.

(3) 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;
- (b) the Commissioner for Consumer Affairs;
- (c) the chief executive officer of the residential tenancies authority; and
- (d) the Minister;

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

### **Registrars**

**15.(1)** Each clerk of the court of a Magistrates Court (other than a clerk of the court at a place in the metropolitan district) is a registrar.

(1A) Each assistant clerk, deputy clerk or deputy registrar of such a Magistrates Court may at any time perform the duties of a registrar.

(2) A registrar and deputy registrar are to be employed in the metropolitan district registry under the *Public Service Act 1996*.

(5) A deputy registrar may at any time perform the duties of the registrar appointed pursuant to this subsection.

### *Division 3—Jurisdiction, powers and duties of tribunals*

#### **Extent of jurisdiction**

**16.(1)** Subject to this Act, a small claims tribunal has jurisdiction with respect to—

*Small Claims Tribunals Act 1973*

---

- (a) any claim referred to it that is a small claim; and
- (b) a claim that is the subject of a dispute arising under the *Dividing Fences Act 1953* if the claim is in relation to an amount or value less than the prescribed amount; and
- (c) any claim in an application made to it pursuant to or for the purposes of the *Mobile Homes Act 1989*; and
- (d) a tenancy application.

(2) The jurisdiction conferred by subsection (1) may be exercised only upon a reference of a claim made by a person who in relation to that claim is of the description of person prescribed in section 4, definition “claimant”, paragraphs (a) to (f), whichever of those paragraphs is apposite to the claim.

**Exclusion of other jurisdictions**

**17.(1)** Where a claim, being one referred to in section 16, 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 save—

- (a) where the proceeding before that court or tribunal of any other kind was commenced before the claim was duly referred to a small claims tribunal; or
- (b) where the claim before a small claims tribunal has been withdrawn or has been struck out for want of jurisdiction; or
- (c) where a small claims tribunal determines that because of the nature or complexity of the issue involved the claim should not be heard by it.

**(1A)** Subsection (1)(c) does not apply to a tenancy application.

(2) For the purposes of this Act a claim referred to in section 16 shall be taken to have been duly referred to a small claims tribunal when section 24(1)<sup>1</sup> has been complied with.

---

<sup>1</sup> Section 24 (Reference of claims to tribunal)

**Proceedings of tribunals final**

**18.(1)** Subject to subsection (2), 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.

**(2)** Where the making of a settlement or order of a small claims tribunal made in respect of a claim such as section 4, definition “small claim”, paragraph (c) is relevant to proceedings relating to a cause of action (other than such a claim) brought in a court or tribunal other than a small claims tribunal, an issue estoppel or the principle of *res judicata* shall not be raised in those proceedings by reason of the settlement or order, or of any agreement on, or finding of, fact expressed by or implicit in the settlement or order.

**Immunity from judicial supervision**

**19.** No writ of certiorari,<sup>2</sup> 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 save where the court before which such writ or judgment is sought is satisfied that the tribunal had or has no jurisdiction

---

<sup>2</sup> Section 41 of the Judicial Review Act 1991 provides—

**Certain prerogative writs not to be issued**

**41.(1)** The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the Court.

**(2)** If, before the commencement of this Act, the Court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the Court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the Court is empowered to make under this section.

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.

### **Orders of tribunals**

**20.(1)** Where a settlement is made by a claimant and a respondent in respect of a claim referred to a small claims tribunal, the tribunal shall, on the request of the claimant, make an order that gives effect to the terms of the settlement.

**(2)** Subject to sections 21 and 22,<sup>3</sup> a small claims tribunal is empowered to make—

- (a) in the case of a small claim duly referred to it—
  - (i) an order that requires a party to the proceeding before it to pay money of a value specified in the order to a person specified in the order;
  - (ii) an order that money of a value specified in the order is not due or owing by the claimant to a person specified in the order or by any party to the proceeding before it to the claimant;
  - (iii) an order that requires a party to the 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;
  - (iv) an order that requires a party to the proceeding before it to return goods to which the claim in the proceeding relates and which are in the party's possession or control to a person specified in the order;
  - (v) an order that combines any 2 or more of the orders referred to in subparagraphs (i) to (iv);
- (b) in the case of a claim referred to in section 16(1)(b),<sup>4</sup> duly referred to it—any order that a Magistrates Court could make in

---

<sup>3</sup> Section 21 (Restriction on tribunals' orders), section 22 (Provisions affecting the making and enforcement of orders to pay money)

<sup>4</sup> Section 16 (Extent of jurisdiction)

*Small Claims Tribunals Act 1973*

---

respect of the claim pursuant to the *Dividing Fences Act 1953*;

- (c) for a tenancy application—an order a tribunal may make under the *Residential Tenancies Act 1994*.
- (d) in the case of any claim duly referred to it—an order that dismisses the claim;
- (e) in the case of any claim in relation to which a proceeding is before it—an order that the claim be struck out for want of jurisdiction;

and no other order.

(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.

### **Restriction on tribunals' orders**

**21.(1)** An order of a small claims tribunal—

- (a) that purports to require payment of money, performance of work or return of goods of a value exceeding the prescribed amount; or
- (b) that purports to grant relief of a value exceeding the prescribed amount from the payment of money; or
- (c) that combines 2 or more orders referred to in section 20(2)(a)(i)<sup>5</sup> to (iv) and purports to award or declare entitlements or benefits (or both) of a total value exceeding the prescribed amount;

is of no force or effect.

(2) Subsection (1) does not apply to a tenancy application.<sup>6</sup>

### **Provisions affecting the making and enforcement of orders to pay money**

**22.(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

---

<sup>5</sup> Section 20 (Orders of tribunals)

<sup>6</sup> See Residential Tenancies Act 1994, s 318 for tenancy applications involving amounts greater than the prescribed amount.



*Small Claims Tribunals Act 1973*

---

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 the person's filing, free of charge, in the office of the registrar of the Magistrates Court at a place appointed for holding Magistrates Courts in the Magistrates Courts district wherein the person required by the order to make payment resides or has a place of business or wherein the person to whom payment is to be made resides or has a place of business—

- (a) a copy of the order certified to be a true copy by the registrar of the registry of small claims tribunals who issues the same;
- (b) the person's affidavit, taken by a justice, 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 Magistrates Court pursuant to the *Magistrates Courts Act 1921* and may be enforced accordingly.

(3A) No fee shall be payable for the entering of such a judgment.

(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) The *Limitation of Actions Act 1974* 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.

### **Written reasons for orders in tenancy applications**

**22A.(1)** This section applies if—

- (a) a small claims tribunal makes an order about a tenancy application; and

- (b) the tribunal considers it appropriate to give reasons for making the order because of—
- (i) the importance of the issue about which the order is made; or
  - (ii) the significant benefits that can be derived from the reasons for precedent purposes.

(2) If this section applies, the tribunal must set out the reasons for the order in writing.

### **Renewal of proceeding when order not complied with**

**23.(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.

(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 the registrar 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.

### **Examination of person required by order to pay money**

**23A.(1)** Where an order that requires the payment of money has been made by a small claims tribunal and is unsatisfied, whether or not it is to be deemed pursuant to section 227 to be a judgment duly made by a Magistrates Court, the person in whose favour the order operates may, in the prescribed form, apply to a small claims tribunal *ex parte* for an order that the person required by the order to pay money or, where that person is a body corporate or an entity other than a natural person, an officer, employee or agent thereof be orally examined before a referee as to whether any and what debts are owing to the person required by the order to pay money and

---

<sup>7</sup> Section 22 (Provisions affecting the making and enforcement of orders to pay money)

*Small Claims Tribunals Act 1973*

---

whether that person has any and what property or means of satisfying the order.

(2) The small claims tribunal to which application is made under subsection (1) may make an order for the attendance and examination in accordance with this section of the person required by the order to pay money or, as the case may be, such officer, employee or agent and for the production by the officer, employee or agent of relevant books, deeds, papers or writings.

(3) The following provisions apply in relation to an application made under subsection (1) and an examination ordered to be taken—

- (a) where an application is made under subsection (1) at a place other than where the order for the payment of money was made a copy of the order shall be filed with the application;
- (b) costs payable in respect of the filing, issue or service of any document for the purposes of the application or examination and the expenses of executing any warrant, subpoena or other process issued in connection therewith shall be paid from moneys appropriated by Parliament for the purposes of the department and from no other source;
- (c) an examination—
  - (i) shall be taken at a place where small claims tribunals are ordinarily constituted at or near the place where the person required by the order to pay money ordinarily resides or carries on business or has a principal place of business;
  - (ii) shall be taken before a referee and may be conducted on behalf of the applicant by the registrar at the place where the examination is to be taken;
- (d) it is the duty of the registrar at the place where an examination is to be taken to conduct the examination on behalf of an applicant if the registrar is requested by the applicant so to do and, where the registrar does so, to furnish the applicant with a transcript of the evidence taken upon the examination;
- (e) except as provided in paragraph (b), expenses incurred by or on account of an applicant or a person to be examined or required by an order to pay money shall be borne by the applicant, or as the

*Small Claims Tribunals Act 1973*

---

case may be, that person;

- (f) upon an examination no costs shall be allowed to or against an applicant or any person examined or required by an order to pay money;
- (g) the provisions of sections 33 (other than subsection (2)(a)), 38 and 39<sup>8</sup> apply with respect to an examination taken pursuant to this section as if it were the taking of a proceeding by a small claims tribunal in relation to a claim duly referred to it;
- (h) if a person required to attend an examination attends an examination and without lawful excuse—
  - (i) refuses to be sworn; or
  - (ii) refuses to disclose whether any and what debts are owing to the person required by an order of the small claims tribunal to pay money and whether that person has any and what property or means of satisfying the order;

the person may be summarily convicted by the referee of contempt and section 38(2), (3) and (4) shall apply as if the person had been convicted under section 38(1) and as if the examination were the taking of a proceeding by a small claims tribunal in relation to a claim duly referred to it.

**(4)** The regulations may provide, consistently with subsection (3), for all matters necessary or desirable for the effectual exercise of the jurisdiction conferred by this section including the issue and execution of warrants and other process to secure compliance with orders made by a small claims tribunal or a referee.

**(5)** Where an order to pay money made by a small claims tribunal is to be deemed, pursuant to section 22,<sup>9</sup> to be a judgment duly made by a Magistrates Court, the procedure provided for by this section is in addition to any remedy provided for by the *Magistrates Courts Rules 1960*.

**(6)** However, in such a case a person's affairs shall not be subjected to an

---

<sup>8</sup> Section 33 (Taking of evidence before tribunal), section 38 (Contempt in face of tribunal), section 39 (Law of perjury to apply)

<sup>9</sup> Section 22 (Provisions affecting the making and enforcement of orders to pay money)

examination as a result of an application made under this section and as a result of an application made independently of this section.

#### *Division 4—Practice on claims*

##### **Reference of claims to tribunal**

**24.(1)** A person who is competent to be a claimant and who wishes to refer a claim to a small claims tribunal shall complete the prescribed form and file the same in a registry and shall pay the prescribed fee to the registrar at the time of filing.

**(1A)** The registry in which the form is to be filed must be—

- (a) in the Magistrates Court district in which the claim either wholly or in some material point arose; or
- (b) for a tenancy application—the registry, in the Magistrates Court district in which the relevant residential premises are situated, nearest the premises.

**(2)** It is the duty of the registrar to give his or her assistance to a person who appears to the registrar to be competent to be a claimant and who seeks it in completing the prescribed claim form.

##### **Notice of claim and proceeding**

**25.(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 form 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 therein 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 is given.

**(2)** At any time when the case requires it, whether before or after a time

arranged by the registrar 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 the registrar does so, shall cause notice to be given as prescribed by that provision.

(3) Where a small claims tribunal to which a claim has been referred is of the opinion that a person has a sufficient interest in a resolution of the dispute to which the claim relates but has not been given notice of the claim under subsection (1)(a), the small claims tribunal may direct the registrar to cause notice of the claim and its particulars to be given, as soon as practicable, to that person, and the registrar shall cause notice to be given in accordance with the direction.

### **Parties to proceeding**

26. 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 the person 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.

### **Withdrawal of claim**

27. A claimant may withdraw at any time a claim referred by the claimant to a small claims tribunal, whether before or after the tribunal has entered upon a hearing of the claim.

## *Division 5—Practice on hearings*

### **Definition**

28. In this division—

“**tribunal**” means a small claims tribunal duly constituted to take a proceeding in relation to a claim duly referred to it.

**Continuity of tribunal**

**29.(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 the claimant's claim the proceeding in relation to the claim shall be recommenced before a tribunal constituted by another referee.

**Amendment of claim**

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

**Adjournment of proceeding**

**31.(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.

**Presentation of cases**

**32.(1)** Each party to a proceeding before a tribunal shall have the carriage of the party's own case.

**(2)** A party to a proceeding before a tribunal shall not be entitled to be

*Small Claims Tribunals Act 1973*

---

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;
- (b) it may subject its approval to such conditions as to the type of agent 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.

### **Taking of evidence before tribunal**

**33.(1)** Every proceeding before a tribunal (other than a proceeding about a tenancy application) must be taken in private.

**(1A)** However, a proceeding about a tenancy application must be held in private if—

- (a) the application is made because of injury and, in deciding the application, the tribunal is required under the *Residential Tenancies Act 1994* to have regard to the domestic violence issues (within the meaning of that Act); or



*Small Claims Tribunals Act 1973*

---

(b) the tribunal orders that it be held in private.

(2) Evidence material to a proceeding before a tribunal—

(a) may be given orally or in writing;

(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.

**Tribunal to act on evidence available**

**34.(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 in dispute in the proceeding shall be resolved by the tribunal on such evidence as has been otherwise 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 had been fully heard.

(2) Where an issue in dispute has been resolved in the absence of any party to the proceeding, a referee, on application in writing made to and received by the registrar—

(a) within 28 days after resolution of the issue; or

(b) within such extended period (not exceeding a further 28 days) as a referee may allow in a particular case;

may, if the referee is satisfied that there was sufficient reason for the party's absence, order that the claim be re-heard.

(2A) A referee shall not allow an extension of time for making application under subsection (2) unless the referee is satisfied of the existence of sufficient reason that justifies—

(a) the failure to make application within the period of 28 days; and

(b) any delay in making application for an extension of that period.

(3) When it is ordered that a claim be re-heard—

*Small Claims Tribunals Act 1973*

---

- (a) the registrar shall notify all parties to the proceeding that related to the claim of the making of the order and, where practicable, of the time and place appointed for the re-hearing;
- (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 re-hearing is ordered does not appear at the time and place appointed for the re-hearing or upon any adjournment of the proceeding therein the tribunal, if it thinks fit and without re-hearing or further re-hearing 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.

**Costs**

**35.(1)** Subject to subsection (2), costs shall not be allowed to or against any party to a proceeding before a small claims tribunal.

(2) Where a small claims tribunal makes an order against the respondent with respect to the issue in dispute in a claim referred to it, it may order the respondent to pay to the claimant the amount of any prescribed fee paid by the claimant on filing the claimant's claim.

**PART 3—MISCELLANEOUS PROVISIONS****Tribunals in the charge of Minister**

**36.** Small claims tribunals shall be in the charge of the Minister.

**Control of tribunal's procedures**

**37.** Save 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.

**Contempt in face of tribunal**

**38.(1)** A person who—

- (a) wilfully insults a referee, during the referee sitting as a small claims tribunal or while the referee is on the way to or from such a sitting, or any person, during the person's attendance at a small claims tribunal or while the person is on his or her way to or from such attendance; or
- (b) wilfully misbehaves in a small claims tribunal; or
- (c) wilfully, and without lawful excuse, interrupts the proceedings of a small claims tribunal; or
- (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 the person during the sitting of the tribunal;

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

**(2)** A person convicted of contempt under subsection (1) shall be liable to be imprisoned for a period not exceeding 14 days, or to a fine not exceeding \$100 and, in default of immediate payment of the fine, to be imprisoned for a period not exceeding 14 days.

**(3)** A person referred to in subsection (1)—

- (a) may be dealt with under that subsection without complaint being made or summons issued in respect of the person;
- (b) may be taken into custody by any person assisting the small claims tribunal concerned or by any police officer on order of the referee who constitutes the tribunal and without further warrant;
- (c) may be received by the person in charge of any prison or police gaol to which the person is committed by order of the referee concerned and, without further warrant than that order or until the person is further dealt with under subsection (4);
- (d) may be called on by the small claims tribunal concerned to show

*Small Claims Tribunals Act 1973*

---

cause why the person should not be convicted of contempt under subsection (1);

- (e) 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 small claims tribunal may, if it thinks fit, accept from any person convicted by it of contempt under subsection (1) an apology for such contempt and may thereupon recommend that the Governor in Council remit or respite any fine or punishment imposed on that person in respect thereof.

**Law of perjury to apply**

39. 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.

**Contracting out prohibited**

40. It is not competent to a consumer to contract out of the right conferred on the consumer by this Act to refer a small claim or tenancy application to a small claims tribunal.

**Mode of giving notices etc.**

41. Where by this Act a registrar is required to cause any notice or copy order to be given to any person it shall be taken—

- (a) that the notice or order has been duly given to that person upon evidence that the same has been sent by prepaid mail to the address last known to the registrar as the place of residence or place of business of that person or, where that person is a body corporate, as the registered office within the State of that body corporate; and
- (b) that the notice or order was received by the addressee at the time when the mail would have been delivered at the address to which it was sent in the ordinary course of post.

**Certain matters to be reported to the Minister**

**42.(1)** The Governor in Council is to nominate a referee (the “**nominated referee**”) for the purposes of this section.

**(2)** In subsection (3), a reference to a referee is a reference to a referee other than the nominated referee.

**(3)** If—

- (a) a matter arises out of a proceeding before a small claims tribunal and the referee constituting the tribunal considers the matter to be of importance as regards the relationship of consumer and trader; or
- (b) in the course of a proceeding, or because of a proceeding, a referee considers that a trader has, in the course of the trader’s dealings with the claimant, engaged in conduct that should be brought to the attention of the Minister; or
- (c) a referee is of the opinion that a matter relevant to—
  - (i) the administration of this Act; or
  - (ii) the practices and procedures of tribunals;should be brought to the attention of the Minister;

the referee must give a written report on the matter to the nominated referee.

**(4)** If—

- (a) a matter arises out of a proceeding before a small claims tribunal constituted by the nominated referee and the nominated referee considers the matter to be of importance as regards the relationship of consumer and trader; or
- (b) in the course of a proceeding, or because of a proceeding, the nominated referee considers that a trader has, in the course of the trader’s dealings with the claimant, engaged in conduct that should be brought to the attention of the Minister; or
- (c) the nominated referee is of the opinion that a matter relevant to—
  - (i) the administration of this Act; or
  - (ii) the practices and procedures of tribunals;should be brought to the attention of the Minister; or

*Small Claims Tribunals Act 1973*

---

- (d) a referee reports a matter under subsection (3) to the nominated referee and the nominated referee considers that the matter is of a kind mentioned in subsection (3)(a) or (b);

the nominated referee must give a written report on the matter to the Minister.

**Protection for things done under Act**

**43.** No action shall lie against any 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.

**Regulations**

**44.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) forms to be used for the purposes of this Act and the purposes for which they shall be used;
- (b) fees to be paid under this Act;
- (c) the practice and procedure of small claims tribunals and the enforcement of orders thereof;
- (d) the practices and procedures of registries and the powers, functions and duties of registrar and of other persons employed in a registry;
- (e) all matters required or permitted by this Act to be prescribed;
- (f) all matters that in the Governor in Council's opinion are necessary or desirable for the proper administration of this Act or to achieve the objects and purposes of this Act.

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	30
3 Key . . . . .	31
4 Table of earlier reprints . . . . .	31
5 Tables in earlier reprints . . . . .	32
6 List of legislation . . . . .	32
7 List of annotations . . . . .	34
8 Provisions that have not commenced and are not incorporated into reprint . .	38

**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 September 1999. Future amendments of the Small Claims Tribunals Act 1973 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 40 of 1992	27 April 1993
2	to Act No. 86 of 1994	3 April 1995
2A	to Act No. 37 of 1996	21 January 1997
3	to Act No. 37 of 1996	20 June 1997
3A	to Act No. 20 of 1998	23 June 1998



## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	2
Corrected minor errors	1
Obsolete and redundant provisions	2
Renumbered provisions	1
Transitional and savings provisions	1

## 6 List of legislation

### **Small Claims Tribunals Act 1973 No. 23**

date of assent 13 April 1973

commenced 1 July 1973 (proc pubd gaz 9 June 1973 p 1130)

as amended by—

### **Small Claims Tribunals Act Amendment Act 1974 No. 30**

date of assent 2 May 1974

commenced on date of assent

### **Small Claims Tribunals Act Amendment Act 1975 No. 52**

date of assent 4 November 1975

commenced 1 December 1975 (proc pubd gaz 29 November 1975 p 1241)

### **Small Claims Tribunals Act Amendment Act 1978 No. 22**

date of assent 2 June 1978

commenced 1 February 1979 (proc pubd gaz 27 January 1979 p 280)

### **Dividing Fences Act and Another Act Amendment Act 1982 No. 40 pt 3**

date of assent 15 September 1982

commenced 1 November 1982 (proc pubd gaz 16 October 1982 p 743)

### **Small Claims Tribunals Act Amendment Act 1984 No. 83**

date of assent 26 October 1984

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 1985 (proc pubd gaz 23 February 1985 p 942)

### **Small Claims Tribunals and Dividing Fences Acts Amendment Act 1985 No. 77 pt 2**

date of assent 23 October 1985

commenced on date of assent

### **Small Claims Tribunals Act Amendment Act 1987 No. 46**

date of assent 21 August 1987

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1988 (proc pubd gaz 19 December 1987 p 1665)

**Rental Bond Act 1989 No. 19 s 58 (as amd by Act No. 103 1989 s 3 sch)**

date of assent 6 April 1989

commenced 22 July 1989 (proc pubd gaz 22 July 1989 p 2585)

**District Courts Act and Other Acts Amendment Act 1989 No. 40 pt 4**

date of assent 5 May 1989

commenced 1 November 1989 (proc pubd gaz 21 October 1989 p 1249)

**Mobile Homes Act 1989 No. 50 s 17**

date of assent 5 May 1989

commenced 9 September 1989 (proc pubd gaz 9 September p 212)

**Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 6**

date of assent 14 November 1990

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch**

date of assent 6 December 1990

commenced on date of assent

**Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 ss 2(1)(h), 163 sch 1**

date of assent 14 August 1992

amendment 11 commenced 12 March 1993 (1993 SL No. 62)

remaining provisions commenced on date of assent

**Residential Tenancies Act 1994 No. 86 s 343 sch 2**

date of assent 1 December 1994

commenced 3 April 1995 (1995 SL No. 35)

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1, 3 sch**

date of assent 5 December 1997

commenced on date of assent

**Civil Justice Reform Act 1998 No. 20 ss 1, 2(3), 26 sch 1**

date of assent 1 May 1998

ss 1–2 commenced on date of assent

s 26 sch 1 items 20 and 22 commenced 1 May 1999 (automatic commencement under AIA s 15DA(2))

remaining provisions not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 2 May 2000 (1999 SL No. 70 s 2(2)))

## 7 List of annotations

**Title** amd 1998 No. 20 s 26 sch 1

**Short title**

**s 1** amd 1998 No. 20 s 26 sch 1

**Commencement of Act**

**s 2** om 1998 No. 20 s 26 sch 1

**s 3** om 1992 No. 40 s 163 sch 1

**Interpretation**

**s 4** amd 1974 No. 30 s 2(c); 1992 No. 40 s 163 sch 1  
 def **“central registry”** ins 1998 No. 20 s 26 sch 1  
 def **“claim”** ins 1994 No. 86 s 343 sch 2  
 def **“claimant”** amd 1982 No. 40 s 14(a)  
     sub 1984 No. 83 s 3(a)  
     amd 1989 No. 19 s 58(3); 1989 No. 40 s 25(a); 1989 No. 50 s 17; 1990  
     No. 88 s 3 sch; 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1  
 def **“consumer”** amd 1975 No. 52 s 3(a)  
 def **“goods”** ins 1974 No. 30 s 2(a)  
 def **“metropolitan district”** ins 1992 No. 40 s 163 sch 1  
     amd 1997 No. 82 s 3 sch  
 def **“Minister”** ins 1990 No. 80 s 3 sch 6  
     om 1992 No. 40 s 163 sch 1  
 def **“prescribed amount”** ins 1985 No. 77 s 4(a)  
     amd 1989 No. 40 s 25(b); 1998 No. 20 s 26 sch 1  
 def **“referee”** amd 1987 No. 46 s 4; 1998 No. 20 s 26 sch 1  
 def **“registrar”** sub 1978 No. 22 s 4(a)  
     amd 1998 No. 20 s 26 sch 1  
 def **“registry”** sub 1978 No. 22 s 4(a)  
     amd 1998 No. 20 s 26 sch 1  
 def **“respondent”** sub 1984 No. 83 s 3(b)  
     amd 1998 No. 20 s 26 sch 1  
 def **“small claim”** sub 1974 No. 30 s 2(b)  
     amd 1975 No. 52 s 3(b); 1978 No. 22 s 4(b); 1982 No. 40 s 14(b); 1984  
     No. 83 s 3(c)  
     sub 1985 No. 77 s 4(b)  
     amd 1989 No. 19 s 58(3); 1994 No. 86 s 343 sch 2  
 def **“small claims tribunal”** amd 1994 No. 86 s 343 sch 2  
     om 1998 No. 20 s 26 sch 1  
 def **“tenancy application”** ins 1994 No. 86 s 343 sch 2  
     amd 1998 No. 20 s 26 sch 1  
 def **“trader”** amd 1975 No. 52 s 3(c)  
 def **“tribunal”** ins 1998 No. 20 s 26 sch 1

**PART 2—SMALL CLAIMS TRIBUNALS**

**pt hdg** sub 1998 No. 20 s 26 sch 1

**Division 1—Referees**

**div hdg** sub 1998 No. 20 s 26 sch 1

**Appointment of referees and referees ex officio**

- s 5**            amd 1974 No. 30 s 3; 1978 No. 22 s 5  
                   sub 1987 No. 46 s 5  
                   amd 1996 No. 37 s 147 sch 2  
                   sub 1998 No. 20 s 26 sch 1

**Members and constitution of tribunal**

- s 6**            prev s 6 om 1978 No. 22 s 6  
                   pres s 6 ins 1998 No. 20 s 26 sch 1

**Where the tribunal may be held**

- s 7**            prev s 7 om 1978 No. 22 s 7  
                   pres s 7 ins 1998 No. 20 s 26 sch 1

**Division 1A—Tenancy claims administrator**

- div hdg**      ins 1998 No. 20 s 26 sch 1

**Tenancy claims administrator**

- s 8**            prev s 8 om 1978 No. 22 s 8  
                   pres s 8 ins 1998 No. 20 s 26 sch 1

**Division 1B—Divisions of the tribunal**

- div hdg**      ins 1998 No. 20 s 26 sch 1

**Divisions of the tribunal**

- s 9**            prev s 9 om 1978 No. 22 s 9  
                   pres s 9 ins 1998 No. 20 s 26 sch 1

**Functions of referees**

- s 10**          amd 1984 No. 83 s 4; 1992 No. 40 s 163 sch 1; 1994 No. 86 s 343 sch 2  
                   sub 1998 No. 20 s 26 sch 1

**Constitution of tribunal**

- s 11**          sub 1998 No. 20 s 26 sch 1

**Division 1C—Referees**

- div hdg**      ins 1998 No. 20 s 26 sch 1

**Venue of sittings**

- s 12**          sub 1998 No. 20 s 26 sch 1

**Functions of referees**

- s 12A**        ins 1998 No. 20 s 26 sch 1

**Division 2—Constitution of tribunals—registry**

- div hdg**      sub 1998 No. 20 s 26 sch 1

**Registries**

- s 13**          sub 1978 No. 22 s 10  
                   amd 1992 No. 40 s 163 sch 1; 1998 No. 20 s 26 sch 1

**Records of tribunals**

- prov hdg**    amd 1998 No. 20 s 26 sch 1  
**s 14**          amd 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Registrars**

- s 15** sub 1978 No. 22 s 11  
 amd 1989 No. 40 s 26; 1992 No. 40 s 163 sch 1; 1996 No. 37 s 147 sch 2;  
 1997 No. 82 s 3 sch; 1998 No. 20 s 26 sch 1

**Division 3—Jurisdiction, powers and duties of tribunals**

- div hdg** amd 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Extent of jurisdiction**

- s 16** sub 1982 No. 40 s 15  
 amd 1984 No. 83 s 5; 1985 No. 77 s 5; 1989 No. 19 s 58(3); 1989 No. 40  
 s 27; 1989 No. 50 s 17; 1990 No. 88 s 3 sch; 1992 No. 40 s 163 sch 1;  
 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Exclusion of other jurisdictions**

- s 17** amd 1975 No. 52 s 4; 1978 No. 22 s 12; 1982 No. 40 s 16; 1989 No. 1  
 s 58(3); 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Proceedings of tribunals final**

- prov hdg** amd 1998 No. 20 s 26 sch 1  
**s 18** amd 1989 No. 19 s 58(3); 1989 No. 40 s 28; 1994 No. 86 s 343 sch 2; 1998  
 No. 20 s 26 sch 1

**Immunity from judicial supervision**

- prov hdg** sub 1998 No. 20 s 26 sch 1  
**s 19** amd 1998 No. 20 s 26 sch 1

**Orders of tribunals**

- prov hdg** amd 1998 No. 20 s 26 sch 1  
**s 20** amd 1974 No. 30 s 4; 1975 No. 52 s 5; 1978 No. 22 s 13; 1982 No. 40 s 17;  
 1984 No. 83 s 6; 1985 No. 77 s 6; 1994 No. 86 s 343 sch 2; 1997 No. 82  
 s 3 sch; 1998 No. 20 s 26 sch 1

**Restriction on tribunals' orders**

- prov hdg** amd 1998 No. 20 s 26 sch 1  
**s 21** amd 1974 No. 30 s 5; 1975 No. 52 s 6  
 sub 1978 No. 22 s 14  
 amd 1982 No. 40 s 18  
 sub 1985 No. 77 s 7  
 amd 1989 No. 19 s 58(3); 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Provisions affecting the making and enforcement of orders to pay money**

- s 22** amd 1975 No. 52 s 7; 1978 No. 22 s 15; 1982 No. 40 s 19; 1998 No. 20  
 s 26 sch 1

**Written reasons for orders in tenancy applications**

- s 22A** ins 1994 No. 86 s 343 sch 2

**Renewal of proceeding when order not complied with**

- s 23** amd 1998 No. 20 s 26 sch 1

**Examination of person required by order to pay money**

- s 23A** ins 1984 No. 83 s 7  
 amd 1989 No. 40 s 29; 1997 No. 82 s 3 sch; 1998 No. 20 s 26 sch 1

**Reference of claims to tribunal**

s 24 sub 1978 No. 22 s 16; 1982 No. 40 s 20  
amd 1984 No. 83 s 8; 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Notice of claim and proceeding**

s 25 amd 1974 No. 30 s 6; 1975 No. 52 s 8; 1998 No. 20 s 26 sch 1

**Parties to proceeding**

s 26 amd 1998 No. 20 s 26 sch 1

**Withdrawal of claim**

s 27 amd 1998 No. 20 s 26 sch 1

**Definition**

s 28 amd 1982 No. 40 s 21  
om 1998 No. 20 s 26 sch 1

**Continuity of tribunal**

s 29 amd 1998 No. 20 s 26 sch 1

**Amendment of claim**

s 30 amd 1998 No. 20 s 26 sch 1

**Adjournment of proceeding**

s 31 amd 1974 No. 30 s 7; 1998 No. 20 s 26 sch 1

**Presentation of cases**

s 32 amd 1998 No. 20 s 26 sch 1

**Taking of evidence before tribunal**

s 33 amd 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1

**Tribunal to act on evidence available**

s 34 amd 1978 No. 22 s 17; 1987 No. 46 s 6; 1997 No. 82 s 3 sch; 1998 No. 20 s 26 sch 1

**Registrar may make orders in certain cases**

s 34A ins 1998 No. 20 s 26 sch 1

**Costs**

s 35 sub 1989 No. 40 s 30  
amd 1998 No. 20 s 26 sch 1

**Division 6—Review of certain orders of registrar**

div hdg ins 1998 No. 20 s 26 sch 1

**Review of certain orders of registrar**

s 35A ins 1998 No. 20 s 26 sch 1

**Tribunals in the charge of Minister**

prov hdg amd 1998 No. 20 s 26 sch 1

s 36 sub 1990 No. 80 s 3 sch 6  
amd 1998 No. 20 s 26 sch 1

**Control of tribunal's procedures**

s 37 amd 1998 No. 20 s 26 sch 1

**Contempt in face of tribunal**s 38 amd 1998 No. 20 s 26 sch 1**Law of perjury to apply**s 39 amd 1998 No. 20 s 26 sch 1**Contracting out prohibited**s 40 amd 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1**Mode of giving notices etc.**s 41 amd 1975 No. 52 s 9; 1978 No. 22 s 18**Certain matters to be reported to the Minister**s 42 sub 1978 No. 22 s 19  
amd 1982 No. 40 s 22  
sub 1992 No. 40 s 163 sch 1  
amd 1997 No. 82 s 3 sch; 1998 No. 20 s 26 sch 1**Protection for things done under Act**s 43 amd 1978 No. 22 s 20**Regulations**prov hdg sub 1998 No. 20 s 26 sch 1  
s 44 amd 1978 No. 22 s 21; 1998 No. 20 s 26 sch 1**PART 4—TRANSITIONAL PROVISIONS**pt hdg ins 1998 No. 20 s 26 sch 1**Transitional—establishment of the small claims tribunal**s 45 ins 1998 No. 20 s 26 sch 1

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Civil Justice Reform Act 1997 No. 20 s 26 sch 1 reads as follows—**

**SCHEDULE 1****AMENDMENTS OF SMALL CLAIMS TRIBUNALS  
ACT 1973**

section 26

- 1. Title, ‘small claims tribunals’ to ‘those tribunals’—**  
*omit, insert—*  
**‘the small claims tribunal, to define the jurisdiction of the tribunal’.**
  
- 2. Section 1, ‘Tribunals’—**  
*omit, insert—*  
*‘Tribunal’.*
  
- 3. Section 2—**  
*omit.*
  
- 4. Section 4(1)—**  
*insert—*  
**‘“central registry” see section 13(2).’.**
  
- 5. Section 4(1), definition “claimant”, ‘a small claims tribunal’—**  
*omit, insert—*  
**‘the small claims tribunal’.**



**6. Section 4(1), definition “prescribed amount”, ‘\$5 000’—**

*omit, insert—*

‘\$7 500’.

**7. Section 4(1), definition “referee”, ‘small claims tribunals pursuant to’—**

*omit, insert—*

‘the small claims tribunal under’.

**8. Section 4(1), definition “registrar”, ‘small claims tribunals’—**

*omit, insert—*

‘the small claims tribunal’.

**9. Section 4(1), definition “registry”, from ‘small’—**

*omit, insert—*

‘the small claims tribunal.’.

**10. Section 4(1), definition “respondent”, ‘a small claims tribunal’—**

*omit, insert—*

‘the small claims tribunal’.

**11. Section 4(1), definition “small claims tribunal”—**

*omit.*

**12. Section 4(1), definition “tenancy application”, ‘a small’—**

*omit, insert—*

‘the small’.

**13. Section 4(1)—**

*insert—*

‘**“tribunal”** means the small claims tribunal.’.

**14. Part 2 heading, division 1, division 2 heading and sections 11 and 12—**

*omit, insert—*

**‘PART 2—SMALL CLAIMS TRIBUNAL*****‘Division 1—The tribunal*****‘Establishment of the small claims tribunal**

‘5. The small claims tribunal is established.

**‘Members and constitution of tribunal**

‘6.(1) The members of the small claims tribunal are magistrates and other persons who are appointed as referees under this Act.

‘(2) The tribunal is constituted by a referee sitting as a referee in its tenancy division or its general division.<sup>10</sup>

**‘Where the tribunal may be held**

‘7.(1) The tribunal may be constituted at any place.

‘(2) The tribunal may sit in more than 1 place at the same time.

---

<sup>10</sup> See section 9 (Divisions of the tribunal)

***‘Division 1A—Tenancy claims administrator*****‘Tenancy claims administrator**

‘8.(1) There is to be a tenancy claims administrator.

‘(2) The tenancy claims administrator must be a magistrate and must be appointed as the administrator by the Governor in Council.

‘(3) A person qualified to be appointed as a magistrate may be appointed as the tenancy claims administrator at the time of the person’s appointment as a magistrate.

‘(4) To avoid any doubt, the tenancy claims administrator continues to hold office as a magistrate during the administrator’s term of appointment.

‘(5) The Governor in Council may revoke the administrator’s appointment at any time.

‘(6) Revocation of the administrator’s appointment under subsection (5) does not affect the person’s appointment as a magistrate.

‘(7) The remuneration and conditions of the tenancy claims administrator are to be the same as the remuneration and conditions of a magistrate.

***‘Division 1B—Divisions of the tribunal*****‘Divisions of the tribunal**

‘9. The tribunal is divided into 2 divisions, namely, the tenancy division and the general division.

**‘Administration of tenancy division**

‘10.(1) The tribunal’s tenancy division is to be administered by the tenancy claims administrator.

‘(2) In particular, the tenancy claims administrator is responsible for—

- (a) ensuring the orderly and expeditious exercise of the tribunal’s jurisdiction and power in the division; and
- (b) in consultation with the Chief Stipendiary Magistrate, assigning

- referees to sittings of the tribunal in its tenancy division throughout the State; and
- (c) the making of practice directions about the conduct of proceedings in the tenancy division, including case management guidelines for the conduct of proceedings in the division; and
  - (d) the development and delivery of legal education programs about tenancy law for referees; and
  - (e) supervising the work, to the extent the work relates to the administration of the division, of—
    - (i) referees, other than referees who are magistrates; and
    - (ii) the registrar and staff of the central registry; and
  - (f) monitoring the operation of registries in relation to the division throughout the State; and
  - (g) reporting annually to the Chief Stipendiary Magistrate on the operation of the division.

### **‘Administration of general division**

‘11. The tribunal’s general division is to be administered in the way decided by the Chief Stipendiary Magistrate.

### ***‘Division 1C—Referees***

#### **‘Referees**

‘12.(1) Each magistrate is a referee.

‘(2) The chief executive may appoint as referees the other persons the chief executive considers necessary to appoint for the proper functioning of the tribunal.

‘(3) Persons appointed under subsection (2) are to be employed under the *Public Service Act 1996*.

**‘Functions of referees**

‘**12A.(1)** The function of a referee constituting the small claims tribunal is to decide the issue in dispute in a proceeding in a way that is fair and equitable.

‘(2) However, a referee may mediate the issue in dispute or refer the issue to a mediator under the *Dispute Resolution Centres Act 1990* if the referee considers it appropriate to do so in the special circumstances of the case.

**‘Division 2—The registry’.****15. Section 13(2)—**

*omit, insert—*

‘(2) There is to be a central registry in the metropolitan district.’

**16. Section 13(3), ‘a small’—**

*omit, insert—*

‘the small’.

**17. Section 14, heading, ‘tribunals’—**

*omit, insert—*

‘tribunal’.

**18. Section 14(1), ‘a small’—**

*omit, insert—*

‘the small’.

**19. Section 14(2), ‘a small claims’—**

*omit, insert—*

‘the’.

**21. Section 14(3), ‘a small claims’—**

*omit, insert—*

‘the’.

**23. Section 15(2) and (5)—**

*omit, insert—*

‘(2) A registrar and the other officers necessary for the administration of the tribunal are to be employed in the central registry.

‘(3) The persons mentioned in subsection (2) are to be employed under the *Public Service Act 1996*.’.

**24. Part 2, division 3, heading, ‘tribunals’—**

*omit, insert—*

**‘tribunal’.**

**25. Section 16(1), ‘a small claims tribunal’—**

*omit, insert—*

‘the small claims tribunal’.

**26. Section 17(1), ‘a small’ (first mention)—**

*omit, insert—*

‘the small’.

**27. Section 17(1)(a), (b) and (c), ‘a small claims’—**

*omit, insert—*

‘the’.

**28. Section 17(2), ‘a small claims’—**

*omit, insert—*

‘the’.

**29. Section 18, heading, ‘tribunals’—**

*omit, insert—*

‘tribunal’.

**30. Section 18(1), after ‘(2)’—**

*insert—*

‘and section 19’.

**31. Section 18(1) and (2), ‘a small’—**

*omit, insert—*

‘the small’.

**32. Section 19, heading—**

*omit, insert—*

‘**Limited right of review**’.

**33. Section 19, ‘No writ of certiorari’—**

*omit, insert—*

‘No order, the relief or remedy under which is in the nature of, and to the same effect as, a writ of certiorari’.

**34. Section 19, ‘a small’—**

*omit, insert—*

‘the small’.

**35. Section 19, from ‘therein’ (first mention)—**

*omit, insert—*

‘by the tribunal.

‘(2) However, a party to a dispute in a proceeding may apply to the District Court for an order in relation to an order made by the tribunal in the proceeding if—

- (a) if the tribunal has given written reasons for the making of the order—the tribunal has made an error of law; or
- (b) there has been a denial of natural justice in the proceeding; or
- (c) the tribunal had or has no jurisdiction, or has exceeded its jurisdiction, in the hearing or in making the order.

‘(3) The application must be made within 28 days after the making of the tribunal’s order.

‘(4) The application does not stay the tribunal’s order unless the tribunal or the court orders the order to be stayed to secure the effectiveness of the application.

‘(5) The court must not rehear the proceeding.

‘(6) The court may direct 1 or more of the parties to attend before it for the review.

‘(7) The court may make any of the following orders—

- (a) dismiss the application;
- (b) set aside the tribunal’s order and remit the proceeding to the tribunal, as constituted by the same or a different referee, for rehearing.’.

**36. Section 20, heading, ‘tribunals’—**

*omit, insert—*

‘tribunal’.



**37. Section 20(1), ‘a small’—***omit, insert—*

‘the small’.

**38. Section 20(2) and (3), ‘a small claims tribunal’—***omit, insert—*

‘the tribunal’.

**39. Section 21, heading, ‘tribunals’—***omit, insert—*

‘tribunal’s’.

**40. Section 21(1), ‘a small’—***omit, insert—*

‘the small’.

**41. Section 22(1) and (5), ‘a small’—***omit, insert—*

‘the small’.

**42. Section 22(3)(a), ‘registry of small claims tribunals’—***omit, insert—*

‘tribunal registry’.

**43. Section 22A(1)(a)—***omit, insert—*

‘(a) the small claims tribunal makes an order; and’.

**44. Section 23(1), ‘a small’—***omit, insert—*

‘the small’.

**45. Section 23(2), ‘a small claims’—***omit, insert—*

‘the’.

**46. Section 23A(1), ‘a small’ (first mention)—***omit, insert—*

‘the small’.

**47. Section 23A(1), ‘a small claims’ (second mention)—***omit, insert—*

‘the’.

**48. Section 23A(2), ‘small claims tribunal to which application is made under subsection (1)’—***omit, insert—*

‘tribunal’.

**49. Section 23A(3)(c)(i), ‘place where small claims tribunals are ordinarily constituted’—***omit, insert—*

‘registry’.

**50. Section 23A(3)(g) and (h), (4) and (5), ‘a small claims’—***omit, insert—*

‘the’.

**51. Section 23A(3)(h)(ii), ‘the small claims’—**

*omit, insert—*

‘the’.

**52. Section 23A(5), ‘the Magistrates Courts Rules 1960’—**

*omit, insert—*

‘rules of court applicable to Magistrates Courts’.

**53. Section 24(1), ‘a small’—**

*omit, insert—*

‘the small’.

**54. Section 24—**

*insert—*

‘**(1B)** However, if the Magistrates Court district for subsection (1A)(a) or (b) is the metropolitan district of the Magistrates Court, the registry in which the form must be filed is the central registry.’.

**55. Section 24—**

*insert—*

‘**(3)** A respondent to a claim (“**claimant’s claim**”) referred to the tribunal under this section who seeks to refer to the tribunal a claim arising out of the same transaction or event or series of transactions or events as the claimant’s claim may—

- (a) complete the prescribed form; and
- (b) on payment of the fee prescribed under the regulations, file the form in the registry in which the claimant’s claim was filed.

‘**(4)** A claim filed by a respondent under subsection (3)—

- (a) must be heard with the claimant’s claim, unless the tribunal otherwise orders; and

(b) is not affected by the withdrawal of the claimant's claim.

'(5) Section 26A<sup>11</sup> does not apply to a respondent who files a claim under subsection (3) or the person who is the respondent to that claim.'

**56. Section 25(1)(b), 'a small'—**

*omit, insert—*

'the small'.

**57. Section 25(3), 'a small claims tribunal to which a claim has been referred'—**

*omit, insert—*

'the tribunal'.

**58. Section 25(3), 'small claims' (second mention)—**

*omit.*

**59. Section 26, 'a small'—**

*omit, insert—*

'the small'.

**60. After section 26—**

*insert—*

**'Respondent to notify registrar of intention to appear at hearing**

'**26A.(1)** A respondent to whom notice of a claim is given under section 25<sup>12</sup> must advise the registrar giving the notice in the way and within the time that may be prescribed under a regulation whether the respondent intends to appear at the hearing.

---

<sup>11</sup> See section 26A (Respondent to notify registrar of intention to appear at hearing)

<sup>12</sup> Section 25 (Notice of claim and proceeding)

‘(2) If the respondent fails to comply with subsection (1), the tribunal may refer the proceeding to which the claim relates to a registrar to be dealt with under section 34A.<sup>13</sup>’.

**61. Section 27, ‘a small’—**

*omit, insert—*

‘the small’.

**62. Section 28—**

*omit.*

**63. Section 29(1), ‘A’—**

*omit, insert—*

‘The’.

**64. Section 29(2), ‘a tribunal’—**

*omit, insert—*

‘the tribunal as’.

**65. Section 30, ‘A’—**

*omit, insert—*

‘The’.

**66. Section 31(1), ‘A’—**

*omit, insert—*

‘The’.

---

<sup>13</sup> Section 34A (Registrar may make orders in certain cases)

**67. Section 32(1), (2), (3) and (4), ‘a tribunal’—**

*omit, insert—*

‘the tribunal’.

**68. Section 33(1)—**

*omit.*

**69. Section 33(1A), ‘However, a proceeding about a tenancy application’—**

*omit, insert—*

‘A proceeding’.

**70. Section 33—**

*insert—*

‘(1B) The tribunal may give directions about the persons who may be present at a hearing held in private.’.

**71. Section 33(2), ‘a tribunal’—**

*omit, insert—*

‘the tribunal’.

**72. Section 33(2)(b)—**

*omit, insert—*

‘(b) may be given on oath.’.

**73. Section 33(3), ‘A’—**

*omit, insert—*

‘The’.

**74. Section 34(1), ‘the provisions of this section’—**

*omit, insert—*

‘this section and without limiting section 34A<sup>14</sup>’.

**75. Section 34(1), ‘a tribunal’—**

*omit, insert—*

‘the tribunal’.

**76. Section 34(1), ‘shall be resolved’—**

*omit, insert—*

‘may be resolved’.

**77. After section 34—**

*insert—*

**‘Registrar may make orders in certain cases**

‘**34A.(1)** A registrar may act under this section if the respondent to a proceeding has failed to notify the registrar of the respondent’s intention to appear at the hearing under section 26A.<sup>15</sup>

‘**(2)**The registrar may resolve the issue in dispute in the proceeding on the evidence before him or her and make any order the tribunal is empowered to make.

‘**(3)** An order made by a registrar under subsection (2) has effect, subject to section 34(2), as if it were an order made by the tribunal.’.

**78. Section 35(1) and (2), ‘a small claims’—**

*omit, insert—*

‘the’.

---

<sup>14</sup> Section 34A (Registrar may make orders in certain cases)

<sup>15</sup> Section 26A (Respondent to notify registrar of intention to appear at hearing)

**79. Section 35(2), after ‘claimant’s claim’—**

*insert—*

‘or another amount allowed under a regulation’.

**80. Part 2, after section 35—**

*insert—*

*‘Division 6—Review of certain orders of registrar*

**‘Review of certain orders of registrar**

‘**35A.(1)** This section applies if a registrar is empowered under an Act, other than this Act, to make an order in a proceeding.

‘**(2)** A party to the proceeding who is dissatisfied with an order made by the registrar may apply to the tribunal to have the proceeding reheard before the tribunal.

‘**(3)** The application must be made in the prescribed form and filed in the registry within 14 days, or the longer period the tribunal allows, after the registrar’s order is made.

‘**(4)** The proceeding must be referred to the tribunal as constituted by a referee.

‘**(5)** The application does not stay the registrar’s order unless the tribunal orders the registrar’s order to be stayed to secure the effectiveness of the application.

‘**(6)** In this section—

“**registry**” means the registry to which the registrar was attached when the decision was made.’.

**81. Section 36, heading, ‘Tribunals’—**

*omit, insert—*

‘**Tribunal**’.



**82. Section 36, ‘Small claims tribunals’—***omit, insert—*

‘The small claims tribunal’.

**83. Section 37, ‘small claims tribunals’—***omit, insert—*

‘the small claims tribunal’.

**84. Section 37, ‘every’—***omit, insert—*

‘the’.

**85. Section 38(1), ‘a small’—***omit, insert—*

‘the small’.

**86. Section 38(1), as a penalty—***insert—*

‘Maximum penalty—10 penalty units or 14 days imprisonment.’.

**87. Section 38(2)—***omit.***88. Section 38(3)(b), (d) and (e), ‘concerned’—***omit.*

**89. Section 38(3)(e), ‘tribunal’s own view’—**

*omit, insert—*

‘view of the referee constituting the tribunal at the time of the alleged contempt’.

**90. Section 38(4), ‘A’—**

*omit, insert—*

‘The’.

**91. Section 39, ‘a small’—**

*omit, insert—*

‘the small’.

**92. Section 40, ‘a small claims tribunal’—**

*omit, insert—*

‘the small claims tribunal’.

**93. Section 42(3)(a) and (4)(a), ‘a small’—**

*omit, insert—*

‘the small’.

**94. Section 42(3)(c)(ii) and (4)(c)(ii), ‘tribunals’—**

*omit, insert—*

‘the tribunal’.

**95. Section 44, heading—**

*omit, insert—*

**‘Regulation-making power’.**

**96. Section 44(c), ‘small claims tribunals’—**

*omit, insert—*

‘the small claims tribunal’.

**97. Section 44(e) and (f)—**

*omit, insert—*

‘(e) the issue of, and limiting the issue of, subpoenas by the registrar.’.

**98. Section 44, ‘The Governor in Council’ to ‘with respect to—’—**

*omit, insert—*

‘(1) The Governor in Council may make regulations under this Act.

‘(2) Without limiting subsection (1), a regulation may be made about the following—’.

**99. After section 44—**

*insert—*

## **‘PART 4—TRANSITIONAL PROVISIONS**

**‘Transitional—establishment of the small claims tribunal**

**‘45.(1) On the commencement of this section—**

- (a) an order made by a small claims tribunal continues to have effect as an order of the small claims tribunal; and
- (b) anything done or existing in relation to a previous small claims tribunal continues, and is taken to be done or existing in relation to the small claims tribunal; and
- (c) a proceeding pending in a previous small claims tribunal is to be continued in the small claims tribunal; and

- (d) a person who is a referee of small claims tribunals immediately before the commencement of this section continues to be a referee of the small claims tribunal on the commencement.

‘(2) In an Act or document, if the context permits—

- (a) a reference to the *Small Claims Tribunals Act 1973* is taken to be a reference to the *Small Claims Tribunal Act 1973*; and
- (b) a reference to the *Small Claims Tribunals Regulation 1993* is taken to be a reference to the *Small Claims Tribunal Regulation 1993*; and
- (c) a reference to small claims tribunals is taken to be a reference to the small claims tribunal; and
- (d) a reference to a referee of a small claims tribunal is taken to be a reference to a referee of the small claims tribunal; and
- (e) a reference to a registry of small claims tribunals or a small claims tribunal is taken to be a reference to a registry of the small claims tribunal.’.