

Queensland



# **SMALL CLAIMS TRIBUNALS ACT 1973**

**Reprinted as in force on 3 December 2004  
(includes commenced amendments up to 2004 Act No. 43)**

**Reprint No. 4A**

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

**Also see endnotes for information about—**

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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 . . . . .	11
19	Immunity from judicial supervision . . . . .	12
20	Orders of tribunals . . . . .	12
21	Restriction on tribunals' orders . . . . .	14
22	Provisions affecting the making and enforcement of orders to pay money . . . . .	14
22A	Written reasons for orders in tenancy applications . . . . .	15
23	Renewal of proceeding when order not complied with . . . . .	16

23A	Examination of person required by order to pay money . . . . .	16
	<b><i>Division 4—Practice on claims</i></b>	
24	Reference of claims to tribunal . . . . .	18
25	Notice of claim and proceeding . . . . .	19
26	Parties to proceeding . . . . .	19
27	Withdrawal of claim . . . . .	20
	<b><i>Division 5—Practice on hearings</i></b>	
28	Definition . . . . .	20
29	Continuity of tribunal . . . . .	20
30	Amendment of claim . . . . .	20
31	Adjournment of proceeding . . . . .	20
32	Presentation of cases . . . . .	21
33	Taking of evidence before tribunal . . . . .	22
34	Tribunal to act on evidence available . . . . .	22
35	Costs . . . . .	23
	<b>PART 3—MISCELLANEOUS PROVISIONS</b>	
36	Tribunals in the charge of Minister . . . . .	24
37	Control of tribunal's procedures . . . . .	24
38	Contempt in face of tribunal . . . . .	24
39	Law of perjury to apply . . . . .	25
40	Contracting out prohibited . . . . .	25
41	Mode of giving notices etc. . . . .	25
42	Certain matters to be reported to the Minister. . . . .	26
43	Protection for things done under Act . . . . .	27
44	Regulations . . . . .	27

### ENDNOTES

1	Index to endnotes . . . . .	29
2	Date to which amendments incorporated. . . . .	29
3	Key . . . . .	29
4	Table of reprints . . . . .	30
5	Tables in earlier reprints. . . . .	30

6	List of legislation . . . . .	30
7	List of annotations . . . . .	33



# SMALL CLAIMS TRIBUNALS ACT 1973

[as amended by all amendments that commenced on or before 3 December 2004]

**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

### 1 Short title

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

### 2 Commencement of Act

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

### 4 Interpretation

(1) In this Act—

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

“**claimant**” means—

- (a) subject to paragraphs (b) to (g), in relation to a small claim that arises out of a contract between a consumer and a trader—the consumer; or
- (b) in relation to a small claim that arises out of a contract between traders—any of those traders; or
- (c) in relation to a claim that is the subject of a dispute arising under the *Dividing Fences Act 1953*—any party to the dispute; or
- (d) a person entitled to make a tenancy application; or

*Small Claims Tribunals Act 1973*

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- (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; or
- (g) in relation to a claim for repair of a defect in a motor vehicle under the *Property Agents and Motor Dealers Act 2000*—the buyer of the vehicle;

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 \$7 500.

**“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.

**“respondent”** means—

- (a) a trader against whom is made a small claim that is duly referred to a small claims tribunal; or



*Small Claims Tribunals Act 1973*

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- (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; or
  - (ii) for relief from payment of money of a value not exceeding the prescribed amount; or
  - (iii) for performance of work of a value not exceeding the prescribed amount to rectify a defect in goods supplied or services provided; or
  - (iv) for return of goods of a value not exceeding the prescribed amount; or
  - (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

- (b) a claim for repair of a defect in a motor vehicle under the *Property Agents and Motor Dealers Act 2000*, section 324;<sup>1</sup> 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* or the *Residential Services (Accommodation) Act 2002* 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

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<sup>1</sup> *Property Agents and Motor Dealers Act 2000*, section 324 (Warrantor’s failure to repair)

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*

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

(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*.

#### **10 Functions of referees**

(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*

#### **11 Constitution of tribunal**

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

#### **12 Venue of sittings**

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

#### **13 Registries**

(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.

#### **14 Records of tribunals**

(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

- (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, or a claim for repair of a defect in a motor vehicle under the *Property Agents and Motor Dealers Act 2000*, 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; and
- (b) the commissioner for fair trading; and
- (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.

## 15 Registrars

(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.

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

## 16 Extent of jurisdiction

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

- (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
- (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 (g), whichever of those paragraphs is apposite to the claim.

## **17 Exclusion of other jurisdictions**

(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>2</sup> has been complied with.

## **18 Proceedings of tribunals final**

(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

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<sup>2</sup> Section 24 (Reference of claims to tribunal)

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.

## **19 Immunity from judicial supervision**

No writ of certiorari,<sup>3</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 conferred by this Act to take the proceeding or that there has occurred therein a denial of natural justice to any party to the proceeding.

## **20 Orders of tribunals**

(1) Where a settlement is made 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.

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3 Section 41 of the *Judicial Review Act 1991*—

### **41 Certain prerogative writs not to be issued**

- (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.

*Small Claims Tribunals Act 1973*

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(2) Subject to sections 21 and 22,<sup>4</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; or
  - (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; or
  - (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; or
  - (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; or
  - (v) an order that combines any 2 or more of the orders referred to in subparagraphs (i) to (iv); or
- (b) in the case of a claim referred to in section 16(1)(b),<sup>5</sup> duly referred to it—any order that a Magistrates Court could make in respect of the claim pursuant to the *Dividing Fences Act 1953*; or
- (c) for a tenancy application under the *Residential Tenancies Act 1994*—an order a tribunal may make under that Act; or
- (d) for a tenancy application under the *Residential Services (Accommodation) Act 2002*—an order a tribunal may make under that Act; or
- (e) in the case of any claim duly referred to it—an order that dismisses the claim; or
- (f) 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;

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4 Sections 21 (Restriction on tribunals' orders) and 22 (Provisions affecting the making and enforcement of orders to pay money)

5 Section 16 (Extent 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.

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

(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) 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> or a claim for repair of a defect in a motor vehicle under the *Property Agents and Motor Dealers Act 2000*, section 324.<sup>7</sup>

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

(1) An order made by a small claims tribunal that requires the payment of money may be made to take effect *instanter* or so as to take effect upon default made in complying with some other order made by the tribunal.

(2) The registrar shall cause a copy of an order that requires the payment of money to be given to the person against whom the order is made as soon as is practicable after its making if that person is not present or represented at its making.

(3) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by the person's

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

<sup>7</sup> *Property Agents and Motor Dealers Act 2000*, section 324 (Warrantor's failure to repair)



*Small Claims Tribunals Act 1973*

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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; and
- (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.

## **22A Written reasons for orders in tenancy applications**

**(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.

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

(1) Upon making any order a small claims tribunal may adjourn the proceeding to a fixed date or without fixing a date and in either case may give leave to the person in whose favour the order operates to renew the reference of the claim in the proceeding if the order is not complied with.

(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.

**23A Examination of person required by order to pay money**

(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 22<sup>8</sup> 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 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—

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8 Section 22 (Provisions affecting the making and enforcement of orders to pay money)

*Small Claims Tribunals Act 1973*

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- (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; and
  - (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 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>9</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—

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9 Sections 33 (Taking of evidence before tribunal), 38 (Contempt in face of tribunal) and 39 (Law of perjury to apply)

*Small Claims Tribunals Act 1973*

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- (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>10</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 *Uniform Civil Procedure Rules 1999*.

(6) However, in such a case a person's affairs shall not be subjected to an 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***24 Reference of claims to tribunal**

(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

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<sup>10</sup> Section 22 (Provisions affecting the making and enforcement of orders to pay money)

- (b) for a tenancy application—the registry, in the Magistrates Court district in which the relevant residential premises or rental 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.

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

(1) The registrar—

- (a) shall cause notice of the claim and its particulars to be given, as soon as is practicable, to the respondent and to every person who appears from the claim form to have a sufficient interest in a resolution of the dispute to which the claim relates; and
- (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.

## **26 Parties to proceeding**

Every person to whom notice is given under section 25 shall be taken to be a party to the proceeding that relates to the claim of which notice is so given, and every person who satisfies a small claims tribunal that 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.

## **27 Withdrawal of claim**

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*

## **28 Definition**

In this division—

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

## **29 Continuity of tribunal**

(1) A tribunal shall, at all times throughout the taking of a proceeding, be constituted by the same referee.

(2) If in any case the taking of a proceeding is interrupted before a settlement or order is made therein by the death, incapacity or removal of the referee who constitutes the tribunal and the claimant desires to proceed with the claimant’s claim the proceeding in relation to the claim shall be recommenced before a tribunal constituted by another referee.

## **30 Amendment of claim**

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

## **31 Adjournment of proceeding**

(1) A tribunal may from time to time adjourn a proceeding to such times and places and for such purposes as it considers necessary.

(2) The registrar shall cause to be given to any party to a proceeding that is adjourned who is not present or represented at the time when the proceeding is adjourned a notice of the time and place to which the proceeding is adjourned.

(3) Where at a time and place to which a proceeding is adjourned a referee is or was not present or where it appears that a referee will not be present at a time and place to which a proceeding is adjourned the registrar may, by notice given to every party to the proceeding, adjourn the proceeding to another time, at the same place or at another place, whereupon the proceeding shall be taken to be duly adjourned accordingly.

### **32 Presentation of cases**

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

(2) A party to a proceeding before a tribunal shall not be entitled to be represented by an agent unless it appears to the tribunal that an agent should be permitted to that party as a matter of necessity and approves accordingly.

(3) In no case shall a tribunal approve of the appearance in a proceeding of an agent who has a legal qualification under the laws of this State or of any other place, or who is of the nature of a professional advocate, unless—

- (a) all parties to the proceeding agree; and
- (b) the tribunal is satisfied that the parties, other than the party who applies for approval of an agent, or any of them shall not be thereby unfairly disadvantaged.

(4) Where it appears to a tribunal that it should approve that an agent may present to it the case of any party to a proceeding—

- (a) it shall, where a particular agent is proposed for its approval, satisfy itself that the proposed agent has sufficient knowledge of the issue in dispute and is vested with sufficient authority to bind the party; and
- (b) it may subject its approval to such conditions as 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.

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

(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
- (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; and
- (b) shall be given upon oath, or upon affirmation or declaration instead of an oath where the same is permitted by law, the referee who constitutes the tribunal being hereby empowered to administer an oath or, as the case may be, to take and receive an affirmation or declaration for the purpose.

(3) A tribunal shall not be bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit.

### **34 Tribunal to act on evidence available**

(1) Subject to the provisions of this section, where the case of any party to a proceeding before a tribunal is not presented to the tribunal the issue 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



*Small Claims Tribunals Act 1973*

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- (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 reheard.

**(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 reheard—

- (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 rehearing;
- (b) the order of the tribunal made upon the first hearing shall thereupon cease to have effect unless it is restored pursuant to subsection (4).

**(4)** If the party on whose application a rehearing is ordered does not appear at the time and place appointed for the rehearing or upon any adjournment of the proceeding therein the tribunal, if it thinks fit and without rehearing or further rehearing the claim, may direct that the order made upon the first hearing of the claim be restored, and that order shall be thereby restored to full force and effect and shall be deemed to have been of effect at all times since the time of its making.

### **35 Costs**

**(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**

### **36 Tribunals in the charge of Minister**

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

### **37 Control of tribunal's procedures**

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.

### **38 Contempt in face of tribunal**

(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; and
- (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; and
- (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); and
- (d) may be called on by the small claims tribunal concerned to show cause why the person should not be convicted of contempt under subsection (1); and
- (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.

### **39 Law of perjury to apply**

It is declared that the law with respect to perjury or fabrication of evidence applies to a proceeding before a small claims tribunal and that a proceeding before a small claims tribunal is a judicial proceeding.

### **40 Contracting out prohibited**

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.

### **41 Mode of giving notices etc.**

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.

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

(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

*Small Claims Tribunals Act 1973*

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- (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
- (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.

**43 Protection for things done under Act**

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.

**44 Regulations**

The Governor in Council may make regulations not inconsistent with this Act with respect to the following—

- (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 . . . . .	29
3	Key . . . . .	29
4	Table of reprints . . . . .	30
5	Tables in earlier reprints . . . . .	30
6	List of legislation . . . . .	30
7	List of annotations . . . . .	33

### 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 December 2004. 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 1992 Act No. 40	12 March 1993	27 April 1993
2	to 1994 Act No. 86	3 April 1995	3 April 1995
2A	to 1996 Act No. 37	1 December 1996	21 January 1997
3	to 1996 Act No. 37	1 December 1996	20 June 1997
3A	to 1998 Act No. 20	5 December 1997	23 June 1998
3B	to 1998 Act No. 20	1 May 1999	3 September 1999
3C	to 1998 Act No. 20	2 May 2000	12 May 2000
3D	to 2000 Act No. 62	1 July 2001	25 January 2002 (Column discontinued) Notes
3E	to 2002 Act No. 19	23 August 2002	
3F	to 2003 Act No. 74	1 March 2004	R3F withdrawn, see R4
4	to 2003 Act No. 74	1 March 2004	
4A	to 2004 Act No. 43	3 December 2004	

## 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)

amending legislation—



**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 (this Act is amended, see amending legislation below)**

date of assent 6 April 1989  
commenced 22 July 1989 (proc pubd gaz 22 July 1989 p 2585)

amending legislation—

**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch (amends 1989 No. 19 above)**

date of assent 25 October 1989  
commenced 22 July 1989 (see s 2(9))

**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  
amdt 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 (this Act is amended, see amending legislation below)**

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))  
s 26 sch 1 item 6 commenced 2 May 2000 (automatic commencement under AIA s 15DA(2) (1999 SL No. 70 s 2(2)))  
remaining provision never proclaimed into force and on 2000 No. 11 s 3 (proposed commencement 2 May 2000 (automatic commencement under AIA s 15DA(2) (1999 SL No. 70 s 2(2))))

amending legislation—

**Civil Justice Reform Amendment Act 2000 No. 11 s 3 (amends 1998 No. 20 above)**

date of assent 20 April 2000  
commenced on date of assent

**Property Agents and Motor Dealers Act 2000 No. 62 ss 1–2, 601 sch 2**

date of assent 24 November 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2001 (2001 SL No. 54)

**Residential Services (Accommodation) Act 2002 No. 19 pts 1, 14 div 4**

date of assent 17 May 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 23 August 2002 (2002 SL No. 203)

**Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1**

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2004 (2003 SL No. 336)

**Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–3 sch**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2004 (2004 SL No. 263)

**7 List of annotations****Arrangement of Act****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 “**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; 2000 No. 62 s 601 sch 2; 2003 No. 74 s 155 sch 1; 2004 No. 43 s 3 sch
- 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
- def “**registrar**” sub 1978 No. 22 s 4(a)
- def “**registry**” sub 1978 No. 22 s 4(a)
- def “**respondent**” sub 1984 No. 83 s 3(b)
- amd 2004 No. 43 s 3 sch
- 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; 2000 No. 62 s 601 sch 2; 2004 No. 43 s 3 sch
- def “**small claims tribunal**” amd 1994 No. 86 s 343 sch 2
- def “**tenancy application**” ins 1994 No. 86 s 343 sch 2
- amd 2002 No. 19 s 164
- def “**trader**” amd 1975 No. 52 s 3(c)

**PART 2—SMALL CLAIMS TRIBUNALS****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

**Term of referee's appointment**

s 6 om 1978 No. 22 s 6

**Eligibility to hold office as referee**

s 7 om 1978 No. 22 s 7

**Remuneration of referees not members of Public Service**

s 8 om 1978 No. 22 s 8

**Removal of referees**

s 9 om 1978 No. 22 s 9

**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

**Registries**

s 13 sub 1978 No. 22 s 10  
amd 1992 No. 40 s 163 sch 1

**Records of tribunals**

s 14 amd 1994 No. 86 s 343 sch 2; 1998 No. 20 s 26 sch 1; 2000 No. 62 s 601  
sch 2; 2004 No. 43 s 3 sch

**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

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

div hdg amd 1994 No. 86 s 343 sch 2

**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; 2000 No. 62 s 601 sch 2; 2003 No. 74 s 155 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

**Proceedings of tribunals final**

s 18 amd 1989 No. 19 s 58(3); 1989 No. 40 s 28; 1994 No. 86 s 343 sch 2

**Orders of tribunals**

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; 2002 No. 19 s 165; 2004 No. 43 s 3 sch

**Restriction on tribunals' orders**

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; 2000 No. 62 s 601 sch 2

**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; 2004 No. 43 s 3 sch

**Written reasons for orders in tenancy applications**

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

**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; 2004 No. 43 s 3 sch

**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; 2002 No. 19 s 166

**Notice of claim and proceeding**

s 25 amd 1974 No. 30 s 6; 1975 No. 52 s 8; 2004 No. 43 s 3 sch

**Definition**

s 28 amd 1982 No. 40 s 21

**Adjournment of proceeding**

s 31 amd 1974 No. 30 s 7

**Presentation of cases**

s 32 amd 2004 No. 43 s 3 sch

**Taking of evidence before tribunal**

s 33 amd 1994 No. 86 s 343 sch 2; 2004 No. 43 s 3 sch

**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

**Costs**

s 35 sub 1989 No. 40 s 30

**Tribunals in the charge of Minister**

s 36 sub 1990 No. 80 s 3 sch 6

**Contempt in face of tribunal**

s 38 amd 2004 No. 43 s 3 sch

**Contracting out prohibited**

s 40 amd 1994 No. 86 s 343 sch 2

**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

**Protection for things done under Act**

s 43 amd 1978 No. 22 s 20

**Regulations**

**s 44**      amd 1978 No. 22 s 21; 2004 No. 43 s 3 sch