

**COURT OF REQUESTS (SMALL CLAIMS DIVISION)
ACT 1985**

No. 6 of 1985

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SCHEDULE 1

PROVISIONS WITH RESPECT TO THE
TERM OF OFFICE AND CONDI-
TIONS OF SERVICE OF THE
SPECIAL COMMISSIONER



COURT OF REQUESTS (SMALL CLAIMS DIVISION)
ACT 1985

—————
No. 6 of 1985
—————

AN ACT to establish a small claims division of each court of requests, to provide for the constitution of each of those divisions by one person, to be known as the Special Commissioner, to provide for the hearing and determination of certain claims by the Special Commissioner, and to provide for incidental matters.

[Royal Assent 1 May 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Court of Requests (Small Claims Division) Act 1985*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

Interpretation.

3—In this Act, unless the contrary intention appears—

- “ claimant ” means a person who has referred a small claim to the Special Commissioner pursuant to section 13 (1) or who has made a claim that, pursuant to section 15, is referred to the Special Commissioner for hearing and determination as a small claim;
- “ claim form ” means a claim form referred to in section 13 (1);
- “ Council ” means the Consumer Affairs Council established under the *Consumer Affairs Act 1970*;
- “ court of requests ” means a court held before a commissioner within the meaning of the *Local Courts Act 1896*;
- “ division ” means the small claims division of a court of requests;
- “ functions ” includes duties;
- “ practitioner ” means a practitioner within the meaning of the *Legal Practitioners Act 1959*;
- “ proclaimed day ” means the day fixed by proclamation under section 2 (2);
- “ Public Service ” has the meaning assigned to that expression in the *Public Service Act 1973*;
- “ Registrar ” means a registrar or a deputy registrar of a court of requests;
- “ Registrar of a referred court ” means the registrar of a court of requests to whose division a small claim is, pursuant to section 15, referred for hearing and determination by the Special Commissioner;
- “ respondent ” means a person against whom is made a small claim that is, pursuant to this Act, referred to the Special Commissioner;
- “ services ” includes any rights, benefits, privileges, or facilities that are, or are to be, provided in the carrying on of an industrial, commercial, business, profit-making, or remunerative undertaking (including a professional practice) and the provision for reward of lodging or accommodation;
- “ small claim ” means—
 - (a) any of the following claims for the payment of an amount not exceeding \$2 000:—

- (i) a claim arising out of a contract, including a claim arising out of a lease or tenancy agreement in respect of any premises leased or let to the lessee or tenant for residential purposes;
 - (ii) a claim in respect of a quasi-contractual obligation;
 - (iii) a claim in tort for damage to property;
- or

(b) a claim for a declaration that a person is not liable to another person in respect of a claim or demand for the payment of an amount not exceeding \$2 000 arising out of a contract or in respect of a quasi-contractual obligation;

“Special Commissioner” means the Special Commissioner appointed and holding office under section 7.

4—This Act applies to a small claim, or a claim or counterclaim referred to in section 12 (1) (c) or (d), arising out of a contract or other matter, whether or not the contract or other matter giving rise to the claim or counterclaim was entered into, took place, or occurred before or after the proclaimed day. Application of Act.

5—(1) The provisions of this Act have effect notwithstanding any stipulation to the contrary and no contract made or entered into or varied after the proclaimed day operates to annul, vary, limit, or exclude any of the provisions of this Act. Contracting out prohibited.

(2) This Act applies to a contract notwithstanding a provision in it that the proper law of the contract is the law of a place other than Tasmania if, apart from that provision, that proper law would be the law of Tasmania.

PART II

ESTABLISHMENT AND CONSTITUTION OF SMALL CLAIMS DIVISIONS OF COURTS OF REQUESTS AND APPOINTMENT OF SPECIAL COMMISSIONER AND RELATED MATTERS

6—There is established by this Act a division of each court of requests to be known as the small claims division of that court. Establishment of small claims divisions of courts of requests.

Constitution
of divisions
by Special
Commissioner.

7—(1) Each division shall be constituted by one person who shall be known as the Special Commissioner.

(2) The Special Commissioner shall be—

(a) appointed by the Governor; and

(b) a practitioner of not less than 5 years' standing.

(3) Schedule 1 has effect with respect to the term of office and conditions of service of the Special Commissioner.

Acting
appointment.

8—(1) The Governor may appoint a person who is a practitioner of not less than 5 years' standing to act in the office of Special Commissioner—

(a) during a vacancy in that office; or

(b) during any period, or during all periods, when the Special Commissioner is absent from duty or from Tasmania or is, for any other reason, unable to perform the functions of his office.

(2) A person shall not be appointed under subsection (1) for a period exceeding 12 months.

(3) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) Where a person is acting in the office of Special Commissioner in accordance with subsection (1) (b) and the office becomes vacant while that person is so acting, then, subject to subsection (3), that person may continue to act in the office until the Governor otherwise directs, the vacancy is filled, or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The Governor may terminate the appointment of a person under this section at any time.

(6) The Governor may determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section.

(7) Where a person is acting in the office of Special Commissioner in pursuance of an appointment under this section, he has, and may exercise, all the powers, and he may perform all the functions, of the holder of that office under this Act or any other law.

(8) All things done or omitted to be done by a person acting in the office of Special Commissioner shall be as valid, and have the same consequences, as if they had been done or omitted to be done by the Special Commissioner.

(9) The validity of anything done by or in relation to a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect, or that the occasion for him to act had not arisen or had ceased.

(10) A person appointed under subsection (1) may at any time resign his office by writing under his hand delivered to the Governor.

9—(1) The primary function of the Special Commissioner is to attempt to bring the parties to a dispute that involves a small claim to a settlement acceptable to all the parties. Functions of Special Commissioner.

(2) Where it appears to the Special Commissioner to be impossible in a particular dispute involving a small claim to achieve a settlement acceptable to all the parties to the dispute, then, subject to section 25 (1) (a), the function of the Special Commissioner is, after hearing and determining the issue in dispute, to make an order with respect to that issue or, if he thinks the case so requires, an order dismissing the small claim.

(3) It is a function of the Special Commissioner to report directly and confidentially to the Minister on all matters relevant to the administration of this Act or to the practices and procedures of the Special Commissioner that, in his opinion, should be brought to the notice of the Minister.

10—The Special Commissioner may sit at such places, and at such times, in Tasmania to perform his functions under this Act as he determines, notwithstanding the provisions of the *Local Courts Act* 1896. Places at which the Special Commissioner shall sit, &c.

11—(1) The record of a division in respect of a proceeding in that division before the Special Commissioner consists of— Record of division.

(a) the claim form filed under section 13 (1) that relates to that proceeding or any document relating to that pro-

ceeding filed, issued, or given under the *Local Courts Act* 1896 that relates to a claim that, pursuant to section 15, is referred to the Special Commissioner for hearing and determination as a small claim;

(b) a summary of the facts of the issue in dispute in the relevant small claim as determined and recorded by the Special Commissioner during the hearing of that small claim; and

(c) any order made by the Special Commissioner in relation to that small claim.

(2) Notes made by the Special Commissioner pursuant to section 26 (4) (b) do not form part of the record of a division.

(3) The record of a division in respect of a proceeding in that division before the Special Commissioner—

(a) shall be open for inspection free of charge by a party to the proceeding and a person acting with the authority of the Chairman or Secretary of the Council; and

(b) shall be available for production before a court or a judge for the purposes of any proceedings before the court or judge.

Jurisdiction
of Special
Commissioner.

12—(1) Subject to this section, the Special Commissioner has jurisdiction to hear and determine the following claims:—

(a) a small claim referred to him pursuant to section 13 (1);

(b) a claim referred to him pursuant to section 15;

(c) a claim for a set-off, or a counterclaim, not exceeding \$2 000 in respect of a cause of action which a respondent alleges that he has against a claimant;

(d) a claim for a set-off, or a counterclaim, exceeding \$2 000 in respect of a cause of action which a respondent alleges that he has against a claimant if all the parties to the proceedings consent in writing to the Special Commissioner hearing that claim or counterclaim.

(2) Subsection (1) (a) does not apply to a small claim that is statute barred.

(3) Nothing in subsection (1) (a) prevents a person from bringing, as provided in section 41 of the *Local Courts Act* 1896, an action under that Act in respect of a small claim that is within the jurisdiction of that Act instead of referring the claim for hearing and determination by the Special Commissioner.

(4) Where a claim for a set-off, or a counterclaim, exceeds \$2 000 in respect of a cause of action, the respondent may forgo that part of his claim or counterclaim that exceeds that amount and, on the respondent so doing, the Special Commissioner has jurisdiction under subsection (1) (c) to hear the claim for the set-off or the counterclaim.

(5) Where a claim for a set-off, or a counterclaim, exceeds \$2 000 in respect of a cause of action, the Special Commissioner may, in his discretion, hear and determine the claim or counterclaim notwithstanding that all the parties to the proceeding have not consented in writing to the Special Commissioner hearing that claim or counterclaim.

PART III

REFERENCE OF SMALL CLAIMS TO SPECIAL COMMISSIONER

13—(1) A person who has a small claim and wishes to refer it to the Special Commissioner for hearing and determination by him shall complete the prescribed claim form and, after paying the prescribed fee, file the form in the office of a Registrar. Reference of small claims to Special Commissioner.

(2) A Registrar shall give his assistance, or cause assistance to be given, to a person who seeks it in completing the prescribed claim form before filing it in the Registrar's office.

(3) For the purposes of this section, a small claim shall be deemed to be referred to the Special Commissioner when subsection (1) has been complied with.

14—(1) Where, pursuant to section 13 (1), a small claim is referred to the Special Commissioner, 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 Special Commissioner) is not, at any time, justiciable under the *Local Courts Act 1896* by a court of requests or justiciable by any other court, except— Exclusion of other jurisdictions.

- (a) where the proceeding before that court was commenced before the claim was referred to the Special Commissioner and is still pending in that court; or
- (b) where the claim before the Special Commissioner has been withdrawn.

(2) The issue in dispute in a small claim is not justiciable by the Special Commissioner if, at the time that a claimant proposes to refer the claim to the Special Commissioner, proceedings relating to the same issue in dispute are pending in, or have been heard and determined by, a court referred to in subsection (1).

(3) For the purposes of this section, a small claim shall be deemed to be referred to the Special Commissioner when section 13 (1) has been complied with.

Reference to the Special Commissioner of claims made to courts of requests.

15—(1) Where, during the course of the hearing of a matter by a court of requests, it becomes apparent that the matter is in respect of a claim that properly comes within the jurisdiction of the Special Commissioner and in the opinion of the court should be heard and determined by the Special Commissioner, the court may, with the consent of the parties, refer the claim to the Special Commissioner to be heard and determined by him as a small claim referred to the division of that court.

(2) Where—

(a) a person brings an action under the *Local Courts Act 1896* in respect of a claim that comes within the jurisdiction of the Special Commissioner; and

(b) a notice of defence to that action is, as provided by that Act, given to the Registrar of the court of requests in which the action is brought,

the Registrar shall cause the claim to be referred to the Special Commissioner to be heard and determined by him as a small claim referred to the division of that court if an election to have the claim so referred, being an election in writing made by one or more of the parties to the action, is filed in the office of the Registrar within 14 days after the notice of defence is given.

Notices of small claims and proceedings.

16—(1) Where a claim form is filed in the office of a Registrar, the Registrar shall, on behalf of the claimant, as soon as practicable, cause a notice containing particulars of the small claim to be served on the respondent and on every person who appears from the claim form to have a sufficient interest in the settlement of the dispute to which the small claim relates.

(2) Where, pursuant to this Act, a small claim is referred to the Special Commissioner, the Registrar in whose office the relevant claim form is filed, or, as the case may be, the Registrar of the relevant referred court—

- (a) having regard to the convenience of the claimant and the respondent, shall arrange a time and place for the hearing and determination by the Special Commissioner of the small claim; and
- (b) shall cause notice of that time and place to be served on the claimant, the respondent, and every other person (if any) on whom a notice of the claim has been served under subsection (1) (a).

17—(1) Where a claim form filed in the office of a Registrar or a small claim referred, pursuant to section 15, to a division of a court of requests relates to the supply of goods or the provision of services for which no payment has been made or for which only part payment has been made, the Special Commissioner may, at any time after the claim form is filed or the small claim is so referred, require the claimant to deposit with that Registrar, or, as the case may be, with the Registrar of the relevant referred court—

Depositing of
money with
Registrar.

- (a) money equivalent to the amount owing for the cost of supplying those goods or providing those services; or
- (b) such other amount as is determined by the Special Commissioner.

(2) Where a claimant is required under subsection (1) to deposit money with a Registrar, the Special Commissioner shall not—

- (a) commence the hearing of the relevant small claim; or
- (b) continue the hearing of that claim, if it has already commenced,

until the claimant has deposited the money as so required.

(3) A Registrar shall keep an account into which he shall pay all money deposited with him pursuant to this section.

(4) An account referred to in subsection (3) shall be kept in accordance with such directions (if any) as the Special Commissioner gives to the Registrar by whom the account is kept.

(5) Where money relating to a small claim is deposited with a Registrar under this section, the Registrar shall supply the respondent with written particulars of the money so lodged.

(6) An order made by the Special Commissioner in respect of a small claim in relation to which money is deposited with a Registrar under this section may contain a provision that the money so deposited be disbursed or otherwise dealt with so as to give effect to the order.

(7) Where an order referred to in subsection (6) contains a provision that the money deposited with a Registrar under this section shall be disbursed or otherwise dealt with as provided in the order, the Registrar shall give effect to that provision.

(8) Where money is deposited with a Registrar under this section, he shall, if the relevant small claim is withdrawn, return the money to the claimant.

Parties to proceedings.

18—(1) A person on whom a notice is served under section 16 (1) shall be regarded as a party to the proceeding relating to the small claim in respect of which the notice is so given.

(2) The Special Commissioner, on his own motion or on the application of one of the parties to a proceeding before the Special Commissioner, may, in his discretion, join a person as a party to the proceeding if the Special Commissioner is satisfied that that person has a sufficient interest in the settlement of the dispute to which the small claim in question relates.

Withdrawal of small claims.

19—(1) Subject to subsection (2), a person may at any time withdraw a small claim in respect of which he is the claimant, whether before or after the Special Commissioner has commenced the hearing of the small claim.

(2) A small claim, other than one that is withdrawn in the presence of the Special Commissioner, shall be withdrawn by written notice to the Special Commissioner.

(3) A person who withdraws a small claim pursuant to subsection (1) is not entitled to a refund of the prescribed fee (if any) paid by him in respect of the claim.

PART IV

HEARING AND DETERMINATION OF SMALL CLAIMS

Hearing of similar small claims.

20—(1) Where it appears to the Special Commissioner that 2 or more small claims referred to him, pursuant to this Act, for hearing and determination contain a common question of fact or arise out of the same cause of action, the Special Commissioner may order that those claims shall be heard at the same time.

(2) The power conferred by subsection (1) may be exercised by the Special Commissioner, notwithstanding that a proceeding has begun in relation to one or more of the relevant small claims, but in such an event the proceedings shall be commenced *de novo*.

21—(1) The Special Commissioner may, at any stage of a proceeding, make such amendment to the small claim to which the proceeding relates as he thinks fit, either at the request of the claimant or of his own motion with the approval of the claimant. Amendment of small claims.

(2) Without prejudice to the generality of subsection (1), the power of the Special Commissioner to amend a small claim includes a power to amend the name and description of a party to the relevant proceeding.

22—(1) The Special Commissioner may from time to time adjourn a proceeding to such times and places and for such purposes as he considers necessary. Adjournment of proceedings.

(2) The Registrar in whose office a claim form is filed, or, as the case may be, the Registrar of the relevant referred court, shall cause a notice of the time and place to which the relevant proceeding is adjourned pursuant to subsection (1) to be served on a party to the proceeding who is not present or represented at the time when the proceeding is adjourned.

23—(1) Subject to this section, a party to a proceeding before the Special Commissioner shall present his own case. Presentation of cases.

(2) A party to a proceeding before the Special Commissioner is not entitled to be represented by an agent unless it appears to the Special Commissioner that the party—

(a) is a body corporate and the agent representing it is an employee of the body corporate; or

(b) should be allowed to be so represented as a matter of necessity and the Special Commissioner so approves.

(3) The Special Commissioner shall not approve of the appearance in a proceeding of an agent who is a practitioner or who practises as a professional advocate unless—

(a) all the parties to the proceeding consent to the appearance of such an agent; or

(b) the Special Commissioner is satisfied that those parties, other than the party who applies for the approval, or any of them, will not be unfairly disadvantaged by such an appearance.

(4) Where it appears to the Special Commissioner that he should allow an agent who is not a practitioner to present to him the case of a party to a proceeding, the Special Commissioner shall, where that agent is proposed for his approval, satisfy himself that the proposed agent has sufficient personal knowledge of the issue in dispute and is vested with sufficient authority to bind the party.

(5) Contravention of the provisions of this section does not invalidate the hearing of the proceeding in which the contravention occurs or of an order made in that proceeding.

Proceedings to be in private, except in certain cases.

24—(1) Subject to subsection (2), a proceeding before the Special Commissioner shall be heard in private.

(2) A proceeding before the Special Commissioner may be open to the public if all the parties to the proceeding so agree.

Procedure of Special Commissioner.

25—(1) The following provisions apply to a proceeding before the Special Commissioner:—

(a) the Special Commissioner is not bound by the rules of evidence but may inform himself on any matter in such manner as he thinks fit;

(b) the Special Commissioner may, at the expense of the Crown, appoint a person to inquire into, and report upon, any question of fact arising in the proceeding;

(c) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the issues in dispute permit.

(2) The Special Commissioner shall give to a report made to him pursuant to subsection (1) (b) such weight as he thinks fit.

(3) Except as otherwise provided by this Act or the *Local Courts Act 1896*, the *Local Courts Act 1896* and the rules of practice within the meaning of that Act do not apply to or in relation to a proceeding before the Special Commissioner.

26—(1) In a proceeding before the Special Commissioner—

- (a) evidence may be taken on oath or affirmation;
- (b) subject to any lawful claim or right of privilege, the Special Commissioner may, by notice, require a member or an officer of the Council or any other person to appear before him to give evidence and to produce such documents, books, and things (if any) as are specified in the notice; and
- (c) evidence may, subject to subsection (2), be given orally or in writing.

Provisions relating to evidence and production of documents.

(2) Subject to subsection (3), a person who gives evidence in writing in a proceeding before the Special Commissioner shall verify that evidence by statutory declaration.

(3) The Special Commissioner may, in his discretion, exempt a person referred to in subsection (2) from complying with that subsection.

(4) The Special Commissioner is not required to keep a record of the evidence given in a proceeding before him but shall make—

- (a) a summary for the purposes of section 11 (1) (b); and
- (b) notes of the proceeding,

which, on the completion of the proceeding, he shall forward to the Registrar in whose office the claim form relating to the proceeding was filed, or, as the case may be, to the Registrar of the relevant referred court.

27—(1) Subject to this section, where the case of a party to a proceeding before the Special Commissioner is not presented to the Special Commissioner, the issue in dispute in the proceeding shall be resolved by the Special Commissioner on such evidence as is placed before him and an order made by the Special Commissioner in relation to the proceeding is lawful and as effectual as if the party whose case was not presented had been fully heard.

Special Commissioner to act on evidence available.

(2) Where—

- (a) an issue in dispute has been determined in the absence of a party to the relevant proceeding; and
- (b) that party has, within 7 days after he receives notice of the determination, applied for a rehearing to the Registrar in whose office the relevant claim form was filed, or, as the case may be, the Registrar of the relevant referred court,

the Special Commissioner may order that the small claim to which the proceeding relates be reheard if it appears to him that it is just and reasonable to do so.

(3) An order under subsection (2) shall, as determined by the Special Commissioner—

(a) be subject to such terms and conditions, including, without prejudice to the generality of the foregoing, terms and conditions as to the payment of costs of a party other than the party on whose application the order is made; or

(b) be unconditional if the Special Commissioner is satisfied that no substantial injustice will be thereby caused to the parties to the relevant proceeding.

(4) On an order being made under subsection (2) for the rehearing of a small claim—

(a) the Registrar in whose office the relevant claim form was filed, or, as the case may be, the Registrar of the relevant referred court, shall give notice to all parties to the relevant proceeding of the making of the order and, where practicable, of the time and place appointed for the rehearing; and

(b) the order of the Special Commissioner made on the first hearing thereupon ceases to have effect unless it is restored pursuant to subsection (5).

(5) If the party on whose application the rehearing of a small claim is ordered does not appear at the time and place appointed for the rehearing or any adjournment of the relevant proceeding, the Special Commissioner, if he thinks fit and without rehearing or further rehearing the claim, may direct that the order made on 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.

Right of
Special
Commissioner
to state case.

28—(1) Where, in the opinion of the Special Commissioner, a matter in a proceeding before him involves a question of law of such public and general importance as to make it desirable in the public interest that it should be determined by the Supreme Court, the Special Commissioner, instead of deciding the matter, may state a case for the opinion of the Supreme Court, and may adjourn the hearing of the matter pending the receipt of the opinion of the Supreme Court on it.

(2) In any such case, the Special Commissioner shall—

- (a) immediately prepare and state a case setting forth the material facts and his findings on those facts, and stating the question of law on which he desires the opinion of the Supreme Court; and
- (b) transmit the case without delay to the Registrar of the Supreme Court.

(3) On receipt of a case stated under this section, the Registrar of the Supreme Court shall set it down for hearing and give the parties at least 3 days' notice of the hearing.

(4) On the hearing of a case stated, the Supreme Court—

- (a) shall be constituted by a single judge;
- (b) may remit the case to the Special Commissioner for amendment if, in its opinion, the case is defective;
- (c) may reserve the case or any point arising on the case for the Full Court or direct the case or any such point to be argued in the Full Court; and
- (d) shall cause the case to be remitted to the Special Commissioner with the opinion of the Court on the question submitted in that case.

(5) The Full Court has power to hear and determine a case or point that is reserved for the Full Court or directed to be argued in the Full Court pursuant to subsection (4) (c).

29—(1) Except as provided in an order under section 27 (2) or Costs. by subsection (2), costs shall not be awarded to or against a party to a proceeding before the Special Commissioner.

(2) The Special Commissioner may award costs to a party in a proceeding before him if the Special Commissioner considers that the small claim to which the proceeding relates is a frivolous or vexatious claim.

30—(1) Where a settlement is made under section 9 (1) in Orders of Special Commissioner. respect of a small claim referred to the Special Commissioner, the Special Commissioner shall make an order that gives effect to the terms of the settlement.

(2) The Special Commissioner may—

- (a) on the written application of all the parties to a proceeding before him; and
- (b) after considering the issues involved in the proceeding and being satisfied that the parties properly understand those issues,

make a consent order with respect to that proceeding.

(3) Subject to this section and to section 17 (6), where the Special Commissioner does not make an order under subsection (1) or a consent order under subsection (2) in respect of a proceeding, he may make such one or more of the following orders as may be appropriate:—

- (a) an order that requires a party to the proceeding to pay a sum of money not exceeding \$2 000 to a person specified in the order;
- (b) an order that the claimant does not owe money to a person specified in the order;
- (c) an order that requires a party to the proceeding (other than the claimant) to perform work to rectify a defect in goods or services to which a small claim in the proceeding relates;
- (d) an order that dismisses the small claim to which the proceeding relates,

and such ancillary orders as may be necessary to give effect to the order or orders so made by the Special Commissioner.

(4) An order under subsection (3) (a) may be made to take effect—

- (a) immediately or within the time specified in the order;
- (b) on compliance by the person in whose favour the order is made with any conditions specified in the order; or
- (c) on default made in complying with some other order made by the Special Commissioner.

(5) The following provisions apply to an order under subsection (3) (c):—

- (a) the value of the work required to be performed by the order shall not exceed \$2 000;

- (b) the order shall direct that what is required to be done by the order shall be done within the time specified in the order;
- (c) the order may provide that, in default of compliance with the order within the time specified in it, the claimant may have the work needed to rectify the relevant defect done by a competent person.

(6) Where an order is made under subsection (3), the Registrar in whose office the relevant claim form was filed, or, as the case may be, the Registrar of the relevant referred court, shall arrange for a copy of the order to be served on the person against whom it is made as soon as practicable after the time that it is made.

(7) Where an order is made under subsection (3) (a) for the payment of a sum of money, the order shall be—

- (a) deemed to be a judgment of the court of requests in the office of whose Registrar the claim form in respect of the relevant small claim was filed, or, as the case may be, a judgment of the court of requests to whose division the relevant small claim was referred pursuant to section 15; and
- (b) enforceable in that court as provided by the *Local Courts Act 1896*.

31—(1) On making an order under section 30, the Special Commissioner may adjourn the proceeding to which the order relates 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 to the Special Commissioner of the small claim in the proceeding if the order is not complied with.

Renewal of proceeding when order is not complied with.

(2) A person who is entitled to renew the reference of a small claim may do so by giving a written notification to the Registrar with whom he filed his claim form in relation to that claim, or, as the case may be, to the Registrar of the relevant referred court, that the order in question has not been complied with, whereupon the Registrar shall take such steps in respect of the reference as he is required by this Act to take in respect of a small claim referred to the Special Commissioner pursuant to section 13 (1).

(3) Where, pursuant to this section, a person in whose favour an order under section 30 (3) (c) operates renews the reference of the small claim to which the order relates, the Special Commissioner may make an order against the respondent requiring him to pay such sum of money, not exceeding \$2 000, as is specified in the order, to pay for the work required to be performed by him pursuant to the first-mentioned order.

(4) On the renewal of the reference to the Special Commissioner of a small claim (not being one in respect of which an order of a kind referred to in subsection (3) has been made), the Special Commissioner may make an order of a kind that he is empowered to make by section 30.

(5) Where an order is made under subsection (3) or (4) for the payment of a sum of money, the order shall be—

(a) deemed to be a judgment of the court of requests in the office of whose Registrar the claim form in respect of the relevant small claim was filed, or, as the case may be, a judgment of the court of requests to whose division the relevant small claim was referred pursuant to section 15; and

(b) enforceable in that court as provided by the *Local Courts Act 1896*.

Contempt and
other offences.

32—(1) A person who—

(a) wilfully misbehaves himself at a proceeding before the Special Commissioner;

(b) wilfully interrupts or obstructs such a proceeding;

(c) is guilty of wilful prevarication in giving evidence at such a proceeding;

(d) assaults or wilfully obstructs a person in attendance at such a proceeding; or

(e) without lawful excuse, disobeys a lawful direction of the Special Commissioner given to him during such a proceeding,

may, by oral order of the Special Commissioner, be excluded from that proceeding and, whether he is so excluded or not, is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a penalty not exceeding \$100 or imprisonment for a period not exceeding 14 days.

(3) Proceedings for an offence under subsection (1) may be brought only by the Special Commissioner.

(4) A person who—

(a) having been duly served with a notice to attend a proceeding before the Special Commissioner, neglects or fails to attend, without reasonable excuse, in answer to the notice; or

(b) having been called or examined as a witness at such a proceeding, subject to any lawful claim or right of privilege, refuses to be sworn or to affirm, refuses to answer any question, or refuses to produce a document, book, or thing specified in a document served on him,

is guilty of an offence.

(5) A person who is guilty of an offence under subsection (4) is liable on summary conviction to a penalty not exceeding \$500 or imprisonment for a term not exceeding 6 months, or both.

33—(1) An order made by the Special Commissioner is final and binding on all parties to the proceeding in which the order is made. Proceedings of Special Commissioner final.

(2) An appeal does not lie from an order made by the Special Commissioner.

(3) An order made by the Special Commissioner is a bar to any proceeding in a court that relates to the same matter as the order.

34—(1) No—

(a) writ of certiorari, prohibition, or other prerogative writ shall issue; or Immunity from judicial supervision.

(b) declaratory judgment shall be given,

in respect of a proceeding taken or to be taken by or before the Special Commissioner or in respect of an order made by the Special Commissioner.

(2) Notwithstanding subsection (1), a party aggrieved by an order made by the Special Commissioner may, within 14 days after the making of the order, apply to the Supreme Court for a writ or judgment referred to in that section on one or more of the following grounds but not otherwise:—

- (a) that the Special Commissioner had no jurisdiction under this Act to determine the small claim in respect of which the order was made;
- (b) that the Special Commissioner exceeded his jurisdiction under this Act in relation to the small claim in respect of which the order was made;
- (c) that the party was denied natural justice by the Special Commissioner in the course of the proceeding in respect of which the order was made.

PART V

MISCELLANEOUS

Publication of particulars of small claims referred to Special Commissioner.

35—As soon as practicable in every month a Registrar shall cause to be published in such manner as the Minister directs—

- (a) particulars of the number of small claims in respect of which claim forms have been filed in the Registrar's office and of the number of small claims referred, pursuant to section 15, to the division of the court of requests of which he is the Registrar, being small claims which, in both cases, have been heard and determined by the Special Commissioner during the preceding month;
- (b) the names of the claimants and respondents in relation to those small claims;
- (c) a summary of the orders made by the Special Commissioner in respect of those small claims; and
- (d) particulars of the issues in dispute in those small claims.

Maintenance of secrecy.

36—Except in the course of his functions under this Act, a person shall not disclose any information obtained by him in the exercise of any powers conferred on him by this Act or by virtue of his office under this Act.

Penalty: \$500.

Protection of Special Commissioner and other persons.

37—The Special Commissioner, a Registrar, a claimant, or any other person is not liable, and an action does not lie against him, on account of any proceeding taken, any publication made, or anything done under the authority of this Act, or taken, made, or done in good faith purportedly under the authority of this Act, or on account of any omission made in good faith in the administration of this Act.

38—(1) Where under this Act a notice or other document is required or authorized to be served on a person, the notice or other document may be served—

Service of documents.

(a) in the case of a person who is neither a body corporate nor a firm—

- (i) by delivering it to him personally;
- (ii) by leaving it at that person's place of residence last known to the person required or authorized to serve the notice or other document with someone who apparently resides there, or at that person's place of business or employment last known to the person required or authorized to serve the notice or other document with someone who is apparently employed there, being in either case a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to that person's place of residence, business, or employment last known to the person required or authorized to serve the notice or other document;

(b) in the case of a body corporate—

- (i) by delivering it to the secretary of the body corporate personally;
- (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate; or

(c) in the case of a firm—

- (i) by delivering it to a member of the firm personally;

- (ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person required or authorized to serve the notice or other document with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person required or authorized to serve the notice or other document.

(2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Tasmania.

(3) The provisions of this section are in addition to the provisions of section 528 of the *Companies (Tasmania) Code*.

**Expenses
of Act.**

39—The expenses incurred in the administration of this Act shall be paid out of money provided by Parliament for the purpose.

Regulations.

40—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for or with respect to—

- (a) forms to be used for the purposes of this Act;
- (b) the fee for the purposes of section 13 (1);
- (c) the practice and procedure of the Special Commissioner;
and
- (d) the powers and functions that the Registrars may exercise,
and are required to perform, under this Act.

(3) Regulations under subsection (1) may be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

SCHEDULE 1

Section 7 (3)

PROVISIONS WITH RESPECT TO THE TERM OF OFFICE AND CONDITIONS
OF SERVICE OF THE SPECIAL COMMISSIONER

1—Subject to this Schedule, the Special Commissioner shall be appointed Term of office. for such term, not exceeding 5 years, as is specified in the instrument of his appointment and may from time to time be reappointed for a further term, not exceeding 5 years, as is so specified.

2—A person who has attained the age of 65 years shall not be appointed Age of Special Commissioner. or reappointed as Special Commissioner.

3—The Special Commissioner shall not, without the permission of the Governor, hold any other office of profit or engage in any occupation for reward outside the duties of his office. Special Commissioner not to engage in paid employment outside duties of his office.

4—The Special Commissioner is entitled to such remuneration and allowances as the Governor determines, and holds office subject to such terms and conditions (if any) with respect to matters not provided for in this Schedule as are specified in the instrument of his appointment. Remuneration of Special Commissioner.

5—The provisions of the *Public Service Act* 1973 do not apply to or in respect of the appointment by the Governor of the Special Commissioner and the Special Commissioner is not, in his capacity as Special Commissioner, subject to the provisions of that Act during his term of office as Special Commissioner. Public Service Act 1973 not to apply to Special Commissioner.

6—The Special Commissioner shall be deemed to be an employee for the purposes of the *Retirement Benefits Act* 1982 and the *State Employees (Long-Service Leave) Act* 1950. Special Commissioner deemed to be employee for purposes of certain Acts.

7—(1) A person holding the office of Special Commissioner shall be deemed to have vacated that office— Vacation of office of Special Commissioner.

(a) when he dies;

(b) if he becomes bankrupt, applies to take the benefit of any laws for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes any assignment of his remuneration or estate for their benefit;

(c) if he becomes liable to be detained under the *Mental Health Act* 1963 in a hospital, being a hospital within the meaning of section 3 (1) of that Act;

(d) if he is convicted in the State of a crime or an offence which is punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in the State of an offence which, if committed in the State, would be a crime or an offence so punishable;

- (e) if he absents himself from duty for a period exceeding 14 days except—
- (i) on leave granted by the Minister; or
 - (ii) through illness or other unavoidable cause;
- (f) if he resigns his office by writing under his hand delivered to the Governor and the Governor accepts the resignation;
- (g) on his attaining the age of 65 years; or
- (h) if he is removed from office by the Governor under subclause (2).

(2) The Governor may remove the Special Commissioner from office for misbehaviour, neglect of duty, or incompetence.

Special
Commissioner
entitled to
retain certain
rights in certain
circumstances.

8—(1) If an officer of the Public Service is appointed to the office of Special Commissioner, he is entitled to retain all his existing and accruing rights as if his service in that office were a continuation of his service as an officer of the Public Service.

(2) Where a person referred to in subclause (1) ceases to hold the office of Special Commissioner and becomes an officer of the Public Service, his service in that office shall be regarded as service in a permanent capacity in the Public Service for the purposes of determining his rights as an officer of the Public Service.

(3) In this clause, “ officer of the Public Service ” means a person employed in any capacity in any branch of the Public Service, but does not include a person temporarily employed.