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**MAGISTRATES COURT (SMALL CLAIMS DIVISION) ACT 1989**


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**No. 14 of 1989**


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**MAGISTRATES COURT (SMALL CLAIMS DIVISION)  
ACT 1989**

**No. 14 of 1989**

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**AN ACT to establish a small claims division of the Magistrates Court, to repeal the Court of Requests (Small Claims Division) Act 1985, and to provide for incidental matters.**

**[Royal Assent 18 April 1989]**

**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 *Magistrates Court (Small Claims Division) Act 1989*. Short title.

**2—**This Act shall commence on the day fixed by proclamation Commencement. under section 2 (2) of the *Magistrates Amendment Act 1989*.

**3—(1)** In this Act, unless the contrary intention appears— Interpretation.

- “Administrator” means the Administrator of the Magistrates Court;
- “claimant” means a person who has referred a small claim to the small claims division pursuant to section 12 (1) or who has made a claim that, pursuant to section 14, is transferred to the small claims division for hearing and determination as a small claim;
- “claim form” means a claim form referred to in section 12 (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*;
- “functions” includes duties;
- “magistrate” means a magistrate sitting in the small claims division of the Magistrates Court;
- “Magistrates Court” means the Magistrates Court established by the *Magistrates Court Act 1987*;
- “practitioner” means a practitioner within the meaning of the *Legal Practitioners Act 1959*;
- “prescribed sum” means—
- (a) the sum of \$2 000; or
  - (b) such other sum as the regulations may prescribe in place of the sum mentioned in paragraph (a);
- “proclaimed day” means the day referred to in section 2;
- “registrar” or “registrar of the Magistrates Court” means a district registrar or a deputy district registrar of the Magistrates Court;
- “registry” means a registry of the Magistrates Court;
- “respondent” means a person against whom is made a small claim that is, pursuant to this Act, referred to the small claims division;
- “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 any of the following claims:—

- (a) 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;
- (b) a claim in respect of a quasi-contractual obligation;
- (c) 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 arising out of a contract or in respect of a quasi-contractual obligation;
- (d) a claim in tort for damage to property;
- (e) a claim in tort for damages in detinue or conversion,

where the total amount of the claim does not exceed the prescribed sum including, where a claim is made for an order to perform work to rectify a defect in goods or a deficiency in services, the value of the work sought to be performed, but does not include a claim for a debt or a liquidated demand where there is no dispute as to the liability for payment of the debt or demand, either in whole or in part;

“small claims division” means the small claims division of the Magistrates Court established by this Act;

“the regulations” means the regulations made and in force under this Act.

(2) In this Act, unless the contrary intention appears, a reference to the referring of a small claim to the small claims division includes a reference to the transferring of a claim from a court of requests to the small claims division for hearing and determination as a small claim pursuant to section 14.

4—This Act applies to a small claim, or a claim or counterclaim referred to in section 10 (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.

Contracting out prohibited.

**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.

**(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.

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## PART II

### ESTABLISHMENT OF SMALL CLAIMS DIVISION OF THE MAGISTRATES COURT

Establishment of small claims division of Magistrates Court.

**6—**There is established by this Act a division of the Magistrates Court to be known as the small claims division of the Magistrates Court.

Constitution of small claims division.

**7—**For the purposes of the exercise of the small claims jurisdiction of the Magistrates Court, the Court shall be constituted in the small claims division by a single magistrate.

Functions of magistrate.

**8—(1)** The primary function of a magistrate sitting in the small claims division is to attempt to bring the parties to a dispute that involves a small claim to a settlement acceptable to all the parties.

**(2)** Where it appears to a magistrate 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 24 (1) (a), the function of the magistrate 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.

Record of division.

**9—(1)** The record of the small claims division in respect of a proceeding in that division consists of—

**(a)** the claim form filed under section 12 (1) that relates to that proceeding or any document relating to that proceeding filed, issued, or given under the *Local Courts Act 1896* that relates to a claim that, pursuant to section 14, is transferred to the small claims division 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 magistrate during the hearing of that small claim; and

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

(2) Notes made by a magistrate pursuant to section 25 (4) (b) do not form part of the record of the small claims division.

(3) The record of the small claims division in respect of a proceeding in that division—

(a) shall be open for inspection free of charge by a party to the proceeding and a person acting with the authority of the Attorney-General; and

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

**10—(1)** Subject to this section, a magistrate sitting in the small claims division has jurisdiction to hear and determine the following claims:— Jurisdiction.

(a) a small claim referred to the small claims division pursuant to section 12 (1);

(b) a claim transferred to the small claims division pursuant to section 14;

(c) a claim for a set-off, or a counterclaim, not exceeding the prescribed sum 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 the prescribed sum 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 a magistrate sitting in the small claims division 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 a magistrate in the small claims division.

(4) Where a claim for a set-off, or a counterclaim, exceeds the prescribed sum in respect of a cause of action, the respondent may forgo that part of his claim or counterclaim that exceeds the prescribed sum and, on the respondent so doing, a magistrate 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 the prescribed sum in respect of a cause of action, a magistrate 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 a magistrate sitting in the small claims division hearing that claim or counterclaim.

Transfer of small claims, &c., to another court.

11—(1) Where, in relation to a claim (being a small claim referred, or a claim transferred, to the small claims division pursuant to section 12 (1) or 14), a magistrate considers that the issue in dispute warrants the claim being heard and determined by a court which otherwise has jurisdiction to do so, he may, on the application of a party to the proceeding or on his own motion, order that the proceeding be transferred to such a court.

(2) For the purposes of subsection (1), “issue in dispute”, in relation to a claim to which that subsection applies, includes any claim for a set-off or a counterclaim which the respondent alleges that he has against the claimant.

(3) An order under subsection (1) shall not be made unless the magistrate is satisfied that, in all the circumstances, such an order would not be unfair to any of the parties to the relevant proceeding.

(4) Where a magistrate makes an order under subsection (1), the claim to which the order relates—

(a) ceases to be a small claim that is referred to the small claims division as mentioned in that subsection;

(b) may not again be referred to the small claims division; and

(c) is deemed never to have been referred to the small claims division.



## PART III

REFERENCE OR TRANSFER OF SMALL CLAIMS TO SMALL  
CLAIMS DIVISION

**12—(1)** A person who has a small claim and wishes to refer it to the small claims division for hearing and determination shall complete the prescribed claim form and, after paying the prescribed fee, file the form in a registry. Reference of small claims to small claims division.

(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 a registry.

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

**13—(1)** Subject to section 11, where pursuant to section 12 (1), a small claim is referred to the small claims division, 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 a magistrate) 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 small claims division and is still pending in that court; or

(b) where the claim before the small claims division has been withdrawn.

(2) The issue in dispute in a small claim is not justiciable by a magistrate in the small claims division if, at the time that a claimant proposes to refer the claim to the small claims division, 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 small claims division when section 12 (1) has been complied with.

Transfer to small claims division of claims made to courts of requests.

**14—(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 small claims division and in the opinion of the court should be heard and determined by a magistrate in the small claims division, the court may, with the consent of the parties, transfer the claim to the small claims division to be heard and determined as a small claim referred to that division.

**(2) Where—**

**(a)** in respect of a claim that comes within the jurisdiction of the small claims division a person brings an action under the *Local Courts Act 1896*; 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 of that court of requests shall cause the claim to be transferred to the small claims division to be heard and determined as a small claim referred to the division if that claim comes within the jurisdiction of the small claims division and if an election to have the claim so transferred—

**(c)** being an election in writing made by one or more of the parties to the action, is filed in the office of the registrar of that court of requests within the period of 14 days after the notice of defence is given; or

**(d)** being an election in writing made at any time by all the parties to the action, is filed in that office.

**(3)** For the purpose of complying with subsection (2) the registrar of a court of requests may require a party to an action to provide further and better particulars relating to the claim within the prescribed time.

**(4)** If a party to an action fails to comply with a requisition made by a registrar under subsection (3) within the prescribed time, the registrar may refuse to cause the claim to be transferred to the small claims division.

**(5)** In this section, “the prescribed time” means 14 days or such further period as a magistrate may approve on application being made by the party required to answer the requisitions.

**15—(1)** Where a claim form is filed in a registry of the Magistrates Court, a 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.

Notices of small claims and proceedings.

**(2)** Where, pursuant to this Act, a small claim is referred to the small claims division, a registrar—

- (a)** having regard to the convenience of the claimant and the respondent, shall arrange a time and place for the hearing and determination 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).

**16—(1)** Where a claim form filed in a registry or a claim transferred, pursuant to section 14, to the small claims division 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, a magistrate may, at any time after the claim form is filed or the claim is transferred, require the claimant to deposit with a registrar—

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 magistrate.

**(2)** Where a claimant is required under subsection (1) to deposit money with a registrar, the magistrate 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 Administrator 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 a magistrate 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.

**17—(1)** A person on whom a notice is served under section 15 (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) A magistrate, on his own motion or on the application of one of the parties to a proceeding before the magistrate, may, in his discretion, join a person as a party to the proceeding if the magistrate 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.

**18—(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 a magistrate has commenced the hearing of the small claim.

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

(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.

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## PART IV

## HEARING AND DETERMINATION OF SMALL CLAIMS

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

(2) The power conferred by subsection (1) may be exercised by a magistrate, 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*.

**20—(1)** A magistrate 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 a magistrate to amend a small claim includes a power to amend the name and description of a party to the relevant proceeding.

**21—(1)** A magistrate 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) A registrar 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.

**22—(1)** Subject to this section, a party to a proceeding before a magistrate shall present his own case. Presentation of cases.

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

- (a) is a body corporate and the agent representing it is an officer or employee of the body corporate; or
- (b) should be allowed to be so represented as a matter of necessity and the magistrate so approves.

(3) A magistrate 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 magistrate 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 a magistrate that he should allow an agent who is not a practitioner to present to him the case of a party to a proceeding, the magistrate 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.

**23—(1)** Subject to subsection (2), a proceeding in the small claims division shall be heard in private.

(2) A proceeding in the small claims division may be open to the public if all the parties to the proceeding so agree.

Procedure of small claims division.

**24—(1)** The following provisions apply to a proceeding in the small claims division:—

- (a) the magistrate is not bound by the rules of evidence but may inform himself on any matter in such manner as he thinks fit;
- (b) the magistrate 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) A magistrate 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 small claims division.

**25—(1)** In a proceeding in the small claims division—

- (a) evidence may be taken on oath or affirmation;
- (b) subject to any lawful claim or right of privilege, the magistrate 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 a magistrate shall verify that evidence by statutory declaration.

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

(4) A magistrate is not required to keep a record of evidence given in a proceeding before him but shall make—

- (a) a summary for the purposes of section 9 (1) (b); and
- (b) notes of the proceeding,

which, on the completion of the proceeding, he shall forward to a registrar.

**26—(1)** Subject to this section, where a party to a proceeding in the small claims division does not appear at the hearing of the matter, whether personally or by agent, and does not give written evidence as provided for under section 25, the issue in dispute in the proceeding shall be resolved by the magistrate on such evidence as is placed before him and an order made by the magistrate in relation to the proceeding is lawful and as effectual as if the party whose case was not presented had been fully heard.

Magistrate to act on evidence available.

(2) Where—

- (a) an issue in dispute has been determined in accordance with subsection (1); and
- (b) the party that did not appear or give written evidence has, within 7 days after he receives notice of the determination, applied for a rehearing to a registrar,

the magistrate 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 magistrate—

(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 magistrate 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 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 magistrate 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 or give written evidence at the time and place appointed for the rehearing or any adjournment of the relevant proceeding, the magistrate, 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.

(6) Where a magistrate has directed that an order made on the first hearing of a claim be restored pursuant to subsection (5) a further application does not lie for an order for another rehearing of the matter under subsection (2).

Right of  
magistrate to  
state case.

27—(1) Where, in the opinion of a magistrate, 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 magistrate, 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 magistrate 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 14 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 magistrate 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 magistrate 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).

**28**—(1) Except as provided in an order under section 26 (2) <sup>Costs.</sup> or by subsection (2) or (3), costs shall not be awarded to or against a party to a proceeding in the small claims division.

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

(3) Where a magistrate makes an order under section 29 in favour of a claimant in a proceeding before him which relates to a claim transferred to the small claims division pursuant to section 14 (2), the magistrate may, in that order or a further order, award costs to the claimant, in accordance with the appropriate scale of fees and charges prescribed by the rules of court under the *Local Courts Act 1896*, being costs up to, and including, the commencement by the claimant of the relevant proceeding in the court of requests.

(4) Where a magistrate makes an order under section 29 in favour of a claimant in a proceeding before him, the magistrate may, in that order or a further order, require the respondent to pay to the claimant all of the prescribed fee paid by him under section 12 (1) or such part of that fee as is specified in the order.

Orders of  
magistrate.

**29**—(1) Where a settlement is made under section 8 (1) a magistrate shall make an order that gives effect to the terms of the settlement.

(2) A magistrate 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 16 (6), where a magistrate 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 the prescribed sum 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 a deficiency in services, to which a small claim in the proceeding relates;
- (d) an order that dismisses the small claim to which the proceeding relates;
- (e) an order that requires a party to the proceeding (other than the claimant) to replace any goods to which the small claim in the proceeding relates,

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

(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 magistrate.

(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 the prescribed sum;

(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) An order under subsection (3) (e) shall direct that what is required to be done by the order shall be done within the time specified in the order.

(7) Where an order is made under subsection (3), a registrar 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.

(8) 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 specified by the magistrate in the order; and

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

**30—(1)** On making an order under section 29, a magistrate 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 small claims division 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 a registrar, 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 small claims division pursuant to section 12 (1).

(3) Where, pursuant to this section, a person in whose favour an order under section 29 (3) (c) operates renews the reference of the small claim to which the order relates, a magistrate may make an order against the respondent requiring him to pay such sum of money, not exceeding the prescribed sum 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 small claims division of a small claim (not being one in respect of which an order of a kind referred to in subsection (3) has been made), a magistrate may make an order of a kind that he is empowered to make by section 29.

(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 specified by the magistrate in the order; and
- (b) enforceable in that court as provided by the *Local Courts Act 1896*.

Proceedings in  
small claims  
division final.

**31—(1)** An order made by a magistrate sitting in the small claims division is final and binding on all parties to the proceeding in which the order is made.

(2) An appeal does not lie from an order made by a magistrate sitting in the small claims division.

(3) An order made by a magistrate sitting in the small claims division is a bar to any proceeding in a court that relates to the same matter as the order.

Immunity from  
judicial  
supervision.

**32—(1)** No—

- (a) writ of certiorari, prohibition, or other prerogative writ shall issue; or
- (b) declaratory judgment shall be given,

in respect of a proceeding taken or to be taken by or before the small claims division or in respect of an order made by a magistrate.

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

- (a) that the magistrate had no jurisdiction under this Act to determine the small claim in respect of which the order was made;

- (b) that the magistrate 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 magistrate in the course of the proceeding in respect of which the order was made.

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## PART V

### MISCELLANEOUS

**33**—As soon as practicable in every month the Administrator shall cause to be published in such manner as the Attorney-General directs—

Publication of particulars of small claims referred to small claims division.

- (a) particulars of the number of small claims in respect of which claim forms have been filed and of the number of small claims transferred, pursuant to section 14, to the small claims division, being small claims which, in both cases, have been heard and determined by magistrates 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 magistrates in respect of those small claims; and
- (d) particulars of the issues in dispute in those small claims.

**34**—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.

Maintenance of secrecy.

Penalty: Fine not exceeding 5 penalty units.

**35**—A magistrate, a registrar, a registrar of a court of requests, a claimant, the Administrator, 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.

Protection of magistrates and other persons.

Service of  
documents.

**36—(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—

*(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*.

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

(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 prescribing of amounts of money under this Act;

(c) the fee for the purposes of section 12 (1);

- (d) the practice and procedure of magistrates sitting in the small claims division; and
- (e) the powers and functions that the registrars and the Administrator may exercise, and are required to perform, under this Act.

(3) Without limiting the generality of subsection (2) (d), the regulations may provide for or with respect to the holding of conferences by registrars with the parties to the relevant proceedings when small claims are referred to the small claims division pursuant to section 12 (1) or claims are transferred to it pursuant to section 14.

(4) Without limiting the generality of subsection (3), regulations for the purposes of that subsection may—

- (a) prescribe the purposes for which a conference referred to in that subsection shall be held;
- (b) authorize a registrar to delegate to an officer of the Magistrates Court of which he is the district registrar or deputy district registrar the performance of his functions, and the exercise of his powers, in relation to the holding of such a conference under those regulations;
- (c) provide for or with respect to the representation of the parties to such a conference and the parties who are not entitled to be present at such a conference;
- (d) provide for or with respect to the adjournment of such a conference; and
- (e) provide for or with respect to the bringing about of an agreement between the parties to a proceeding as a result of such a conference.

(5) 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.

Repeals.

**38**—The *Court of Requests (Small Claims Division) Act 1985* and the *Court of Requests (Small Claims Division) Amendment Act 1987* are repealed.

Savings and transitional.

**39**—(1) In any Act, a reference to the small claims division of a court of requests shall be read as a reference to the small claims division of the Magistrates Court.



(2) In any Act, a reference to the Special Commissioner shall be read as a reference to a magistrate sitting in the small claims division of the Magistrates Court.

(3) Where a claim has been referred to the Special Commissioner pursuant to the repealed Act before the proclaimed day and the Special Commissioner or a part-time Special Commissioner has not commenced to hear the matter before the proclaimed day, it shall be deemed to have been referred to the small claims division for hearing and determination under this Act.

(4) Where the Special Commissioner or a part-time Special Commissioner has commenced the hearing of a claim pursuant to the repealed Act before the proclaimed day, the provisions of the repealed Act as in force immediately before that day shall continue to apply to those proceedings.

(5) For the purposes of subsection (4), the person who held the office of Special Commissioner immediately before the proclaimed day, or the magistrate hearing the proceedings as a part-time Special Commissioner shall continue to hear those proceedings as if he were still the Special Commissioner or part-time Special Commissioner.

(6) Where a proceeding has been adjourned under section 31 of the repealed Act before the proclaimed day and a person who is entitled to renew the reference of the small claim wishes to renew the reference after the proclaimed day, the reference of the small claim shall be renewed under section 30 of this Act as if the original order in respect of the small claim and the adjournment of the proceeding were made under sections 29 and 30 respectively of this Act.

(7) In this section “the repealed Act” means the *Court of Requests (Small Claims Division) Act 1985*.



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**UNORDERED GOODS AND SERVICES AMENDMENT  
ACT 1989**

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**No. 15 of 1989**

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**TABLE OF PROVISIONS**

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| 5. Repeal of section 5 of Principal Act (Assertion of right to payment for unordered goods).  | 9. Amendment of section 12 of Principal Act (Certain proceedings not to be commenced or continued). |
| 6. Substitution of sections 7, 8, and 9 of Principal Act.<br>7—Assertion to right to payment for unordered goods or services other than prescribed services.<br>8—Assertion of right to payment for prescribed services.<br>9—Conduct constituting assertion of right to payment. | 10. Amendment of section 14 of Principal Act (Regulations).   |
|   | 11. Saving.   |





**UNORDERED GOODS AND SERVICES AMENDMENT  
ACT 1989**

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**No. 15 of 1989**

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**AN ACT to amend the Unordered Goods and Services Act  
1973.**

**[Royal Assent 18 April 1989]**

**B**E 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:—

**1**—This Act may be cited as the *Unordered Goods and Services Amendment Act 1989*. Short title.

**2**—This Act shall commence on the day on which it receives the Royal assent. Commencement.

**3**—In this Act, the *Unordered Goods and Services Act 1973* Principal Act.  
is referred to as the **Principal Act**.

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\* No. 9 of 1973. Amended by No. 115 of 1973.

Amendment of  
section 2 of  
Principal Act  
(Interpretation).

4—Section 2 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) the definition of “prescribed service” and substituting the following definition:—

“prescribed service” means—

(a) the making of a directory entry; or

(b) such other service as may be declared by the regulations to be a prescribed service for the purposes of this Act;

(b) by inserting after the definition of “recipient” in subsection (1) the following definition:—

“the regulations” means regulations in force under this Act;

(c) by omitting from the definition of “unordered goods” in subsection (1) “him.” and substituting “him;”;

(d) by adding after the definition of “unordered goods” in subsection (1) the following definition:—

“unordered services” means services that are rendered to a person in the State—

(a) otherwise than at the request of that person; and

(b) in the course of a trade or business, whether carried on within or without the State.

(e) by omitting from paragraph (a) of subsection (4) “Postmaster-General of the Commonwealth” and substituting “Australian Telecommunications Commission”.

Repeal of section  
5 of Principal  
Act (Assertion of  
right to payment  
for unordered  
goods).

5—Section 5 of the Principal Act is repealed.

Substitution of  
sections 7, 8,  
and 9 of  
Principal Act.

6—Sections 7, 8, and 9 of the Principal Act are repealed and the following sections are substituted:—

Assertion to  
right to payment  
for unordered  
goods or services  
other than  
prescribed  
services.

7—(1) A person shall not assert a right to payment from another person, being—

(a) a right to payment for unordered goods; or

- (b) a right to payment for unordered services (other than a right to payment for the rendering of a prescribed service),

unless the first-mentioned person has reasonable cause to believe that he is entitled to assert that right to payment.

Penalty: Fine not exceeding 50 penalty units.

(2) In proceedings against a person for a contravention of this section, the burden of proving that he had reasonable cause to believe that he was entitled to assert a right to payment lies on that person.

8—(1) A person shall not assert a right to payment from another person for the rendering of a prescribed service unless the first-mentioned person knows or has reasonable cause to believe that the other person has authorized the rendering of that prescribed service.

Assertion of  
right to payment  
for prescribed  
services.

Penalty: Fine not exceeding 50 penalty units.

(2) A person is not liable to make any payment to another person, and is entitled to recover by action in a court of competent jurisdiction against another person any payment made by him to the other person, in full or part satisfaction of a charge for the rendering of a prescribed service unless he has authorized the rendering of that prescribed service.

(3) A person shall not be taken for the purposes of this section to have authorized the rendering of a prescribed service unless—

- (a) a document authorizing the rendering of that prescribed service has been signed by the person or by another person authorized by him;
- (b) a copy of the document has been given to the person before the right to payment of a charge for the rendering of that prescribed service is asserted; and
- (c) the document contains the prescribed particulars.

(4) For the purposes of subsection (3), the prescribed particulars are—

- (a) where the prescribed service to which the document relates is the making of a directory entry—
  - (i) the name of the directory or other similar publication in which the entry is made or proposed to be made;

- (ii) the name and address of the person publishing that directory or other similar publication;
  - (iii) particulars of the entry; and
  - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated; and
- (b) in any other case—such particulars as may be prescribed for the purposes of this paragraph.

(5) In proceedings against a person for a contravention of this section, the burden of proving that he knew or had reasonable cause to believe that the other person had authorized the provision of a prescribed service lies on the first-mentioned person.

Conduct  
constituting  
assertion of right  
to payment.

9—(1) For the purposes of sections 7 and 8, a person shall be taken to assert a right to a payment from another person for unordered goods or unordered services, or for the rendering of a prescribed service, if the first-mentioned person—

- (a) makes a demand for the payment or asserts a present or prospective right to the payment;
- (b) threatens to bring any legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed on a list of defaulters or debtors the name of the other person, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document that states the amount of the payment or sets out the price of the services or the charge for the rendering of the prescribed service but does not state as prominently (or more prominently) that no claim is made to the payment of that price or charge.

(2) For the purposes of subsection (1) (e), an invoice or other document purporting to have been sent by or on behalf of a person shall be deemed to have been sent by that person unless the contrary is established.



**7**—Section 10 of the Principal Act is amended as follows:—

- (a) by omitting “No person shall” and substituting “A person shall not”;
- (b) by omitting “for the making of a directory entry,” (wherever occurring) and substituting “for unordered services,”;
- (c) by omitting “for the making of the directory entry,” and substituting “for the unordered services,”;
- (d) by omitting “Five hundred dollars.” and substituting “Fine not exceeding 50 penalty units.”.

Amendment of section 10 of Principal Act (Certain acts prohibited).

**8**—Section 11 of the Principal Act is amended by omitting “Two hundred and fifty dollars.” and substituting “Fine not exceeding 50 penalty units.”.

Amendment of section 11 of Principal Act (False orders).

**9**—Section 12 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (a) “goods; or” and substituting “goods;”;
- (b) by omitting paragraph (b) and substituting the following paragraphs:—

Amendment of section 12 of Principal Act (Certain proceedings not to be commenced or continued).

(b) rendering outside the State any services that, if rendered in the State, would be unordered services for which the person rendering those services had no reasonable cause to believe that there was a right of payment; or

(c) rendering outside the State a service that, if rendered in the State, would have been a prescribed service, unless section 8 (3), or a provision in the law of another State or a Territory of the Commonwealth that corresponds to that subsection, has been complied with in relation to the rendering of that service.

**10**—Section 14 of the Principal Act is amended by omitting paragraphs (c), (d), and (e) of subsection (2) and substituting the following paragraphs:—

Amendment of section 14 of Principal Act (Regulations).

(c) declare a service to be a prescribed service for the purposes of this Act; and

(d) prescribe a penalty, not exceeding 10 penalty units, for an offence against the regulations.

Saving.

**11**—Nothing in this Act affects the application of the Principal Act, as in force immediately before the date of commencement of this Act, to and in relation to any matter arising, before or after that date, out of the occurrence, before that date, of an incident constituted by—

- (a) the delivery to a person of unordered goods;
  - (b) the making of a directory entry; or
  - (c) the rendering of a prescribed service,
- within the meaning of that Act as so in force.