

TASMANIA

**MAGISTRATES COURT (MINOR CIVIL
CLAIMS) BILL 2003**

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MAGISTRATES COURT (MINOR CIVIL CLAIMS) BILL 2003

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

A BILL FOR

An Act to regulate the procedure for minor civil claims in the Magistrates Court, to make consequential amendments to certain Acts and to repeal the *Magistrates Court (Small Claims Division) Act 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:

Short title

1. This Act may be cited as the *Magistrates Court (Minor Civil Claims) Act 2003*.

Commencement

2. (1) If the *Residential Tenancy Amendment (Boarding Premises) Act 2003* commences before the day on which this Act receives the Royal Assent, section 14 of this Act commences on that day.

(2) If this Act receives the Royal Assent before the *Residential Tenancy Amendment (Boarding Premises) Act 2003* commences, section 15 of this Act commences on the day on which this Act receives the Royal Assent.

(3) The remaining provisions of this Act commence on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act, the *Magistrates Court (Civil Division) Act 1992** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definitions of “apprentice” and “articled clerk”;
- (b) by inserting the following definition after the definition of “Magistrates Rule Committee”:

“minor civil claim” means –

- (a) a claim or counterclaim for damages, or for the payment of money, if the amount claimed does not exceed \$5 000 or any other amount as may be prescribed for the purpose of this definition; or
- (b) any other claim prescribed in the regulations to be a minor civil claim;
- (c) by omitting “Committee;” from the definition of “rules of court” and substituting “Committee.”;

*No. 27 of 1992

- (d) by omitting the definitions of “small claim” and “small claims division”.

Section 4 amended (Establishment of civil division)

5. Section 4(2) of the Principal Act is amended by omitting “Subject to the *Magistrates Court (Small Claims Division) Act 1989*, the” and substituting “The”.

Section 5 repealed

6. Section 5 of the Principal Act is repealed.

Section 7 substituted

7. Section 7 of the Principal Act is repealed and the following section is substituted:

Monetary limit on jurisdiction

7. (1) The Magistrates Court has a civil jurisdiction which is to be limited to actions for an amount not exceeding the prescribed amount.

(2) The Magistrates Court’s civil jurisdiction includes the jurisdiction to hear and determine minor civil claims.

Section 7A repealed

8. Section 7A of the Principal Act is repealed.

Section 16 amended (Duties, &c., of bailiffs)

9. Section 16 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

(6) Nothing in this section prohibits the service of process in any proceedings by a party to those proceedings if that process is authorized or required to be served under the rules of court.

Section 17 repealed

10. Section 17 of the Principal Act is repealed.

Part 5, Division 4 inserted

11. After section 31 of the Principal Act, the following Division is inserted in Part 5:

Division 4 – Minor civil claims

Proceedings to be in open court

31AA. A proceeding in respect of a minor civil claim is to be heard in open court unless the Court considers that the administration of justice would be rendered impracticable.

Procedure for minor civil claims

31AB. (1) The following provisions apply to a proceeding in respect of a minor civil claim:

- (a) the Court is not bound by the rules of evidence but may inform itself on any

matter in any manner that it considers appropriate;

- (b) the Court may itself elicit by inquiry from the parties and the witnesses and by examination of evidentiary material produced to the Court the issues in dispute and the facts necessary to decide those issues;
- (c) the proceeding is to take the form of an inquiry by the Court into the matters in dispute between the parties rather than an adversarial contest between the parties;
- (d) the Court may itself call and examine witnesses;
- (e) the Court may, at the expense of the Crown, appoint a person to inquire into, and report upon, any question of fact arising in the proceeding;
- (f) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act, the rules of court and a proper consideration of the issues in dispute permit.

(2) The Court is to give a report made to it under subsection (1)(e) any weight that it considers appropriate.

(3) The rules of court apply to, and in respect of, a proceeding relating to a minor civil claim, except in a case where the Court considers it expedient and in the interests of justice that the rules do not apply.

(4) A 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.

Evidence and production of documents

31AC. (1) In a proceeding in respect of a minor civil claim –

- (a) evidence may be taken on oath or affirmation; and
- (b) subject to any lawful claim or right of privilege, the Court may, by notice, require a member or an officer of the Consumer Affairs Council constituted under the *Consumer Affairs Act 1988* or any other person to appear before it to give evidence and to produce any documents, books or things that are specified in the notice; and
- (c) evidence may, subject to this section, be given orally or in writing.

(2) A person who gives evidence in writing in a proceeding before the Court is to verify that evidence by statutory declaration.

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

Representation of parties

31AD. (1) A legal practitioner is not to represent a party to a proceeding in respect of a minor civil claim unless –

- (a) another party to the proceeding is a legal practitioner; or
- (b) all parties to the proceeding agree; or
- (c) the Court is of the opinion that the party would be unfairly disadvantaged if not represented by a legal practitioner.

(2) The Court may permit the representation of a party by a legal practitioner at the hearing of interlocutory proceedings if the Court considers it appropriate to do so.

(3) A party to a proceeding in respect of a minor civil claim who is a body corporate may be represented by an officer or an employee of the body corporate who is not a legal practitioner.

(4) If a person is subrogated to the rights of a party to a proceeding in respect of a minor civil claim, the Court may permit that person –

- (a) to appear in the proceeding on behalf of that party; and
- (b) to be represented in the same way as if that person were a party to the proceeding.

(5) The Court may permit a party, or a person subrogated to the rights of a party, to be assisted by a person who is not a legal practitioner if that person is not receiving a fee or reward for that assistance.

(6) The Court may permit a party to be represented by an agent who is not a legal practitioner at a hearing or at an interlocutory proceeding.

(7) A 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.

Contracting out prohibited

31AE. (1) This Division has effect notwithstanding any stipulation to the contrary in a contract and no contract operates to annul, vary, limit or exclude any of the provisions of this Division.

(2) This Division 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.

Costs, compensation and expenses

31AF. (1) In a minor civil claim, costs for getting the action up to trial or by way of counsel fees are not to be awarded unless –

- (a) all parties to the action were represented by counsel; or
- (b) the Court is of the opinion that there are special circumstances justifying the award of costs.

(2) The Court may award compensation to a party in a proceeding before it if the Court considers

that the minor civil claim to which the proceeding relates is a frivolous or vexatious claim.

Estoppel

31AG. The determination of an issue in a minor civil claim does not prevent the parties from again litigating the same issue in different proceedings based on a different claim.

Section 34 amended (Practitioners' charges)

12. Section 34 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “; and”;
- (b) by omitting paragraph (b).

Section 43 amended (Savings and transitional provisions)

13. Section 43 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (3):

(4) If an action has been commenced and not finally disposed of under the *Magistrates Court (Small Claims Division) Act 1989* before the commencement of the *Magistrates Court (Minor Civil Claims) Act 2003* –

- (a) the rules of court as in force immediately before that commencement apply to, and in respect of, that action except in so far as the rules permit judgment

to be entered against a defendant in default of entering a defence; and

- (b) a party to that action has the same right to apply for a prerogative writ as if the *Judicial Review Act 2000* had not been enacted.

- (b) by inserting the following subsections after subsection (5):

(6) A judgment or order made before the commencement of the *Magistrates Court (Minor Civil Claims) Act 2003* by the Court in a small claim as defined in this Act as then in force may, on and after that day, be enforced under this Act as if the judgment or order had been made in a minor civil claim.

(7) The rules of court may contain any provisions of a transitional nature that the Magistrates Rule Committee considers necessary or expedient consequent on the enactment of the *Magistrates Court (Minor Civil Claims) Act 2003*.

(8) In any Act, a reference to a small claim is to be read as a reference to a minor civil claim.

***Residential Tenancy Act 1997* amended**

14. Section 48J of the *Residential Tenancy Act 1997* is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Court”;

- (b) by omitting from subsection (2) “the magistrate” and substituting “the Court”;
- (c) by omitting subsection (3) and substituting the following subsection:

(3) The appeal is to be heard as a minor civil claim under the *Magistrates Court (Civil Division) Act 1992* and, subject to this section, is to be instituted, heard and determined as prescribed.

***Residential Tenancy Amendment (Boarding Premises) Act 2003* amended**

15. Section 48J of the *Residential Tenancy Act 1997*, as proposed to be inserted by section 19 of the *Residential Tenancy Amendment (Boarding Premises) Act 2003*, is amended as follows:

- (a) by omitting “a magistrate” from subsection (1) and substituting “the Court”;
- (b) by omitting “the magistrate” from subsection (2) and substituting “the Court”;
- (c) by omitting subsection (3) and substituting the following subsection:

(3) The appeal is to be heard as a minor civil claim under the *Magistrates Court (Civil Division) Act 1992* and, subject to this section, is to be instituted, heard and determined as prescribed.

s. 16 No. *Magistrates Court (Minor Civil Claims)* 2003

Magistrates Court (Small Claims Division) Act 1989
repealed

16. The *Magistrates Court (Small Claims Division) Act 1989* is repealed.

Consequential amendments

17. The legislation specified in Schedule 1 is amended as specified in that Schedule.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 17

Access to Neighbouring Land Act 1992

1. Section 3 is amended by omitting “small claims division of the Magistrates Court” from paragraph (b) of the definition of “the court” and substituting “Magistrates Court”.

2. Section 11(2) is amended by omitting “either a magistrate or the small claims division of the Magistrates Court, as the Supreme Court considers to be convenient to the parties” and substituting “the court”.

Irrigation Clauses Act 1973

1. Section 2(1) is amended as follows:

- (a) by inserting the following definition after the definition of “lake”:

“minor civil claim” means a minor civil claim within the meaning of the *Magistrates Court (Civil Division) Act 1992*;

- (b) by omitting the definition of “small claim”.

2. Section 20(4)(a) is amended by omitting “small claim, by the small claims division of the Magistrates Court” and substituting “minor civil claim, by the Magistrates Court”.

Magistrates Court Act 1987

1. Section 3 is amended by inserting after the definition of “Magistrates Court” the following definition:

“minor civil claim” means a minor civil claim within the meaning of the *Magistrates Court (Civil Division) Act 1992*;

2. Section 15AE is amended as follows:

(a) by inserting the following subsection after subsection (2):

(2A) Without limiting the generality of subsection (1) –

(a) rules of court may be made for, or with respect to –

(i) the practice and procedure of a magistrate in determining a minor civil claim; and

(ii) the powers and functions that a registrar, mediator or conciliator may exercise, or be required to perform, in respect of a minor civil claim; and

(b) the rules may provide for, or with respect to, the holding of a conference by a registrar, mediator or conciliator in respect of a minor civil claim; and

(c) rules made for the purpose of paragraph (b) may –

- (i) prescribe the purpose for which a conference referred to in that paragraph is to be held; and
 - (ii) authorise a registrar to delegate to an officer of the Magistrates Court of which he or she is the district registrar or deputy district registrar the performance of his or her functions, and the exercise of his or her powers, in respect of the holding of a conference under those rules; and
 - (iii) provide for, or with respect to, the representation of the parties to a conference and the parties who are not entitled to be present at the conference; and
 - (iv) provide for, or with respect to, the adjournment of a conference; and
 - (v) provide for, or with respect to, the bringing about of an agreement between the parties to a proceeding as a result of a conference.
- (b) by inserting in subsection (3)(e) “or the *Magistrates Court (Minor Civil Claims) Act 2003*” after “*Justice (Delegated Legislation) Act 2003*”;

- (c) by omitting from subsection (3)(e) “that Act” and substituting “the Act”.

Residential Tenancy Act 1997

1. Section 3(1) is amended by omitting the definition of “magistrate”.

2. Section 16 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Court”;
- (b) by omitting from subsection (2) “magistrate” and substituting “Court”.

3. Section 20(3)(d) is amended by omitting “a magistrate” and substituting “the Court”.

4. Section 23 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Court”;
- (b) by omitting from subsection (2) “magistrate” and substituting “Court”;
- (c) by omitting from subsection (3) “magistrate” and substituting “Court”.

5. Section 30 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Court”;
- (b) by omitting from subsection (3) “magistrate” and substituting “Court”;

- (c) by omitting from subsection (4) “magistrate” and substituting “Court”.

6. Section 32(4) is amended by omitting “a magistrate” and substituting “the Court”.

7. Section 36 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Court”;
- (b) by omitting subsection (4) and substituting the following subsection:

(4) The Court may order that the owner –

- (a) reimburse the tenant for the full amount or part of the amount as the Court considers appropriate; or
- (b) is not liable to reimburse the tenant for any of the amount.

8. Section 37(1)(d) is amended by omitting “a magistrate or”.

9. Section 41 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate or”;
- (b) by omitting from subsection (2) “magistrate or” twice occurring.

10. Section 45 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate or”;

- (b) by omitting from subsection (2) “on the same day as the application is made” and substituting “a reasonable time before the application is heard”;
- (c) by omitting from subsection (3) “magistrate or”.

11. Section 46 is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Court”;
- (b) by omitting from subsection (3) “magistrate” and substituting “Court”.

12. Section 47(1) is amended by omitting “a magistrate” and substituting “the Court”.

13. Section 48(1)(c) is amended by omitting “a magistrate” and substituting “the Court”.

14. Section 57 is amended as follows:

- (a) by omitting from subsection (3) “a magistrate” and substituting “the Court”;
- (b) by omitting from subsection (4) “magistrate” and substituting “Court”.