

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 10 August 1976

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 20 September 1976.

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SMALL CLAIMS TRIBUNALS (NO. 2) BILL

EXPLANATORY NOTE

[This explanatory note has been revised to show the effect of the Bill as reported from the Statutes Revision Committee. In addition, an explanation is given of amendments in those cases where it may not be apparent how the Bill as reported differs from the Bill as introduced. Amendments of a drafting nature are not explained.]

The main purposes of this Bill are—

- (a) To authorise the setting up of Small Claims Tribunals, each to be a division of a specified Magistrate's Court:
- (b) To give the Tribunals jurisdiction to hear and determine certain types of small claims:
- (c) To provide for the appointment of Referees to exercise the jurisdiction:
- (d) To charge the Tribunals with the primary task of bringing about an agreed settlement of claims:
- (e) To empower the Tribunals to resolve those small claims which are not settled, in a manner which achieves a fair result without necessarily applying legal technicalities:
- (f) To provide for a simplified, informal, and inexpensive procedure for the proceedings of Tribunals.

Clause 1 provides for the Short Title.

Clause 2 sets out definitions of certain terms used in the Bill.

Clause 3 makes provision for the Crown to be bound.

PART I

ESTABLISHMENT OF TRIBUNALS

Under *clause 4* the Minister of Justice may establish Small Claims Tribunals. Each Tribunal will constitute a division of a specified Magistrate's Court. Provision is made for the disestablishment of Tribunals (*clause 4 (5)*).

Clause 5 provides for the exercise of the jurisdiction of a Tribunal by a Referee or a Magistrate.

Clause 6 makes provision for the days, times, and places of a Tribunal's regular sittings.

Clause 7 empowers the Governor-General to appoint Referees for 3 year terms, with power to reappoint for a like term. By *clause 7 (2)* a person is qualified for appointment if—

- (a) He is a barrister or solicitor of 3 years' practice; or
- (b) He is otherwise capable by reason of his special knowledge or experience of performing the functions of a Referee.

A Referee may hold another office or employment unless the Governor-General considers it would impair his work as a Referee (*clause 7 (5)*).

Amendment to clause 7 (2) (a): This amendment makes practice as a barrister or solicitor rather than admission to the roll of barristers or solicitors a qualification for appointment as a Referee.

Clause 8 provides for the remuneration of Referees in accordance with the Fees and Travelling Allowances Act 1951.

PART II

JURISDICTION, FUNCTIONS, AND ORDERS OF TRIBUNALS

Subclauses (1), (2), and (3) of clause 9 confer on Tribunals jurisdiction—

- (a) To determine claims, not exceeding \$500, based on contract or quasi-contract (*clause 9 (1) (a)*):
- (b) To declare that a person is not liable for any such claim made against him (*clause 9 (1) (b)*):
- (c) To determine claims for property damage, not exceeding \$500, arising out of the negligent use, care, or control of a motor vehicle (*clause 9 (1) (c)*):
- (d) To determine claims which may be brought before them pursuant to other enactments (*clause 9 (2)*).

Under *clause 9 (4)* a Tribunal is empowered to fix the value of chattels or work in such manner as it thinks fit and to call for an Investigator's report for that purpose (*see clause 27*).

A small claim which arose before the commencement of the Act may be brought so long as it is not statute-barred (*clause 9 (5)*).

Amendments to clause 9 (3): The first amendment to that subclause is of a drafting nature. The second amendment is intended to widen its scope to include a case where a claim for a declaration of non-liability turns out not to be disputed by the other party. The wording of the Bill as introduced would not cover that situation.

Clause 10 (1) provides that, with the exceptions mentioned below, claims for recovery of debts and other liquidated demands may not be brought in a Tribunal under *clause 9 (1) (a)*. However they may be the subject of relief under *clause 9 (1) (b)*. The exceptions referred to are—

- (a) Where the Registrar is satisfied that a claim about to be lodged is disputed (*clause 10 (1) (a)*):
- (b) Where the Registrar or the Tribunal is satisfied that the claim is in the nature of a counterclaim (*clause 10 (1) (b)*):
- (c) Where a defended claim for a liquidated sum is transferred under *clause 23 (clause 10 (1) (c))*.

In addition, at the hearing of a claim, a debt or liquidated demand may be raised as a set-off (*clause 10 (2) (a)*) and, where a declaration under *clause 9 (1) (b)* in respect of a debt or liquidated demand is refused, the Tribunal may order payment to the respondent (*clause 10 (2) (b)*).

By *clause 10 (3)* a Tribunal cannot entertain proceedings for recovery of land, or which involve questions of entitlement to land, or a franchise, or under a will, settlement, or intestacy.

Clause 10 (4) is intended to make it quite clear that debts created by legislative enactment (as defined in *subclause (5)*) are not recoverable in a Tribunal.

Clause 10 (6) provides that a counterclaim admitted under *clause 10 (1) (b)* may be dealt with even if the original claim is not pursued.

Amendments to clause 10: The provisions in *clause 9 (2)* and *clause 9 (6)* of the Bill as introduced have been transferred to the new *clause 10 (1)* and *clause 10 (2) (a)* respectively. *Clause 10* of the Bill as introduced is now contained in *clause 10 (3)*. The rest of the clause is new.

Clause 11 enables a person to reduce his claim to \$500 in order to bring it within the jurisdiction of a Tribunal; but he cannot, for the same purpose, divide one cause of action into separate claims (*clause 12*).

Amendment to clause 11: This amendment makes it clear that it is the making of the order which operates as a discharge from liability in respect of the amount abandoned.

Clause 13 (1) makes of no effect any agreement to exclude the jurisdiction of a Tribunal, with specific reference, in *clause 13 (2)*, to compulsory arbitration provisions. However, an agreement to settle a claim which has actually arisen will not be caught by *clause 13 (1)* (*clause 13 (3)*).

Clause 14 (1) provides that where proceedings have been commenced in or transferred to a Tribunal, those proceedings are a bar to subsequent proceedings involving the same issues between the same parties in another Court or tribunal, unless the Tribunal transfers its proceedings to the other Court or tribunal, or the claim before the Tribunal is withdrawn, abandoned, or struck out.

Clause 14 (2) provides that where proceedings in another Court or tribunal are the earlier, those proceedings take precedence and the same claim cannot come before a Tribunal unless a transfer is effected under *clause 23* or the earlier proceedings are withdrawn, abandoned, or struck out.

Amendment to clause 14: The new *subclause (2)* inserts a provision which is not in the Bill as introduced. The effect of the Bill as introduced is to allow a party to proceedings in another Court or tribunal to initiate concurrent proceedings in a Tribunal. The new *subclause (2)* will prevent this.

Clause 15 (1) charges a Tribunal with the primary task of bringing the parties to a settlement.

Clause 15 (2) provides that where a settlement is reached the Tribunal may make an appropriate order even if the amount involved in the settlement exceeds the monetary limit of its jurisdiction.

Amendment effected by new clause 15 (2): Under the Bill as introduced (*clause 15 (5)*) the Tribunal is bound to make an order, where it brings the

parties to a settlement. The new *clause 15 (2)* is worded to provide for the possibility that the parties may make their own settlement without being “brought” to it by the Tribunal; the clause also provides that the making of an order following a settlement shall be discretionary rather than mandatory.

Clause 15 (3) and clause 15 (4) require a Tribunal, in the case of disputes which are not settled, to adjudicate according to the substantial merits and justice of the case. The Tribunal shall have regard to the law but shall not be bound to apply it strictly. A Tribunal is specifically empowered to disregard “escape” clauses designed to deny redress to a party who has been wronged (*clause 15 (5)*).

Amendment effected by new clause 15 (4): That clause replaces *clause 15 (3)* of the Bill as introduced; it omits paragraph (a) of that provision and places the emphasis on the settlement of disputes according to the merits and justice of the case. *Clause 15 (5)* replaces the existing *clause 15 (4)* but the amendments are of a drafting nature only.

Clause 15 (6) authorises a Tribunal to make an appropriate order to give effect to its determination of a dispute.

Amendment effected by new clause 15 (6): The provision which appears in *clause 15 (2)* of the Bill as introduced has been amended to bring in a reference to orders authorised by other enactments. The subclause also expressly authorises the making of an order where a claim turns out to be undisputed.

Clause 16 (1) specifies the orders which a Tribunal may make. It may—

- (a) Order a party to pay money to another (*clause 16 (1) (a)*);
- (b) Declare that a party is not liable to another in respect of a particular claim or demand (*clause 16 (1) (b)*);
- (c) Order a party to deliver specific chattels to another (*clause 16 (1) (c)*);
- (d) Order a party to make good a defective chattel, or any services which have not been adequately performed (*clause 16 (1) (d)*);
- (e) Vary, or set aside, an agreement between parties if it is harsh or manifestly unjust in its operation (*clause 16 (1) (e)*), or if it has been induced by fraud, misrepresentation, or mistake, or if the written document is not a true reflection of the parties’ agreement (*clause 16 (1) (f)*);
- (f) Order that the claim be dismissed (*clause 16 (1) (g)*).

Clause 16 (2) provides that whenever a work order is made following the determination of a dispute, the Tribunal shall also make a money order to be complied with as an alternative to compliance with the work order. The Tribunal may make an alternative money order, but is not bound to do so, where the work order follows a settlement reached by the parties.

Clause 16 (3) and clause 16 (4) limit a Tribunal’s power to make the various orders mentioned in *subclause (1)* by reference to the monetary limit of \$500.

Clause 16 (5) expressly saves any power which the Tribunal is given under any other Act to make an order in proceedings.

Amendments to clause 16: Subclauses (2), (3), (4), and (5) are all new and do not correspond to any provisions in the Bill as introduced.

Clause 17 provides that an order of a Tribunal is final, subject to the right of appeal conferred by *clause 33*.

PART III

PROCEEDINGS OF TRIBUNALS

Claims

Proceedings are commenced by lodging a claim in the prescribed form with the office of the Tribunal nearest to the claimant's residence (*clause 18*). The Registrar (as defined in *clause 2*) fixes a time and place for a hearing and notifies the claimant and the respondent (*clauses 19 (1) (a) and 19 (1) (b) (i)*).

The Registrar may of his own initiative, or shall at the direction of the Tribunal, notify any person who has a sufficient connection with the proceedings as a claimant or respondent (*clause 19 (1) (b) (ii) and clause 19 (2)*). The provisions of *clauses 18 (2) and 19* may be dispensed with where a counterclaim is accepted by a Tribunal at a hearing (*clause 19 (4)*). The claimant, the respondent, and all persons who are notified are parties to the proceedings (*clause 20*).

Amendment to clause 19 (3): This is intended to cover cases where the claim turns out to be undisputed.

Clause 21 (1) provides that a minor may be a party to proceedings (which term is defined in *subclause (6)*) as if he were a person of full age. By *clause 21 (2)* a Tribunal may appoint a person to represent a minor under 18 years of age and confer on that person the power to control the minor's case. The manager of a protected mental patient or of an aged or infirm person shall represent that patient or person and have control of the case (*clause 21 (3)*).

Clause 21 (5) makes it clear that section 12 (1) (b) of the Minors' Contracts Act 1969 applies to a settlement or payment made by or to a minor after proceedings have been commenced in a Tribunal. Under that provision any such settlement or payment is of no effect unless it is approved by a Tribunal.

Amendments to clause 21: Subclauses (2) to (6) of this clause are all new and do not correspond to any provisions in the Bill as introduced.

Clause 22 provides for the transfer of proceedings by a Tribunal to a Magistrate's Court where they involve matters which are beyond its jurisdiction (*clause 22 (1)*) or matters which the Tribunal considers would be more properly determined in that Court (*clause 22 (2)*). The clause also provides for proceedings to be transferred to a Disputes Tribunal under the Motor Vehicle Dealers Act 1975 where the claim is one in respect of which such a Tribunal has jurisdiction (*clause 22 (2A)*).

However, if, but for *clause 13 (1) and clause 13 (2)*, the dispute would be required to go to arbitration, the Tribunal is not to transfer proceedings under *clause 22 (1) or clause 22 (2) (subclause (3))*.

Clause 23 (1) (a) provides that proceedings will be automatically transferred from a Magistrate's Court to a Tribunal (but only if one has been established at that Court) where the defendant files a notice of intention to defend, within the number of days allowed by the Magistrates' Courts Rules, and in the notice requests the transfer. In other cases transfer of proceedings will be at the discretion of the Registrar or of the Court (if a Tribunal has been established at that Court) which may make an order as to costs to suit the circumstances (*clause 23 (1) (b)*).

The Supreme Court is also given similar discretion to transfer proceedings to a Tribunal (*clause 23 (2)*).

Where notes of evidence are transferred it is not necessary for that evidence to be reheard (*clause 23 (3)*).

Amendments effected by the new clause 23: Subclauses (1) (b) and (3) substantially repeat the existing *clause 23*. The rest of the clause contains new material.

Hearings

At hearings, the Crown, a corporation, an unincorporated body of persons, persons jointly liable or entitled, and persons under a disability may appear by a representative (*clause 24 (3)*); but in other cases the parties must appear in person unless the Tribunal otherwise allows (*clause 24 (2)*).

Clause 24 (4) requires a Tribunal to be satisfied that sufficient authorisation has been conferred on a representative by a party. A barrister or solicitor or a person who is regularly engaged in advocacy work before other tribunals may not appear as a representative of a party, except where he is one of the persons jointly liable or entitled (*clause 24 (5)*).

Amendments to clause 24: The new *clause 24 (3) (c)* allows all persons jointly liable or entitled (not just partners) to appear by a representative. The new *clause 24 (5)* is substantially a repetition of the existing *clause 24 (4)* except that—

- (a) The reference to a person regularly engaged in advocacy work before Small Claims Tribunals is replaced by a reference to a person regularly engaged in such work before other tribunals; and
- (b) The prohibition does not apply to persons jointly liable or entitled.

Clause 25 provides for proceedings to be held in private but 2 or more claims may be heard together if convenience so requires; and by *subclause (3)* the Tribunal may permit any person to be present if he has a genuine and proper interest.

Clause 26 (1) provides that evidence need be given on oath only where the Tribunal so requires. A Tribunal may also make its own inquiries and, if so, must disclose the result to the parties (*clause 26 (2)*). The normal rules as to admissibility of evidence do not apply (*clause 26 (3)*).

Under *clause 27* a Tribunal may appoint an Investigator to report to it on any matter of fact having a bearing on the proceedings.

Clause 28 (1) empowers a Tribunal to resolve the issues in dispute, and to grant relief on an undisputed claim, in the absence of a party if he fails to appear; but if he offers a sufficient excuse for his non-appearance he may be granted a rehearing (*clauses 28 (2) and 32*).

Costs will not be awarded against a party unless his claim is frivolous or vexatious (*clause 29*).

Clause 30 provides that where express provision is not made on any point of procedure, the Tribunal may decide how it shall proceed.

Enforcement of Orders

Orders for the payment of money and delivery of specific chattels are enforceable in a Magistrate's Court (*clause 31 (1)*), without fee (*clause 31 (6)*). However, an order to pay money which is made as an alternative to a work order may only be enforced after notice has been given to the party

liable (*clause 31 (2) and (3)*). If that party maintains that he has complied with the Tribunal's order the matter goes to the Tribunal for adjudication (*clause 31 (5)*).

If a party alleges that a work order has not been complied with, and if the alternative money order has not been satisfied, he may apply to the Tribunal to enforce the work order (*clause 31A (1)*). The Tribunal will hold a hearing to determine whether the work order has in fact been complied with, and may thereupon make an appropriate further order (*clause 31A (2)*).

Amendments effected by new clauses 31 and 31A: The provisions of *clause 31 (2) to (5)* are new and are consequent on the new provision in *clause 16 (2)* for an alternative money order to be made whenever a Tribunal makes a work order. The new *clause 31A* replaces *clause 31 (3) to (5)* of the Bill as introduced with changes which are also consequent on the provision in *clause 16 (2)* and with some widening of the range of orders which the Tribunal may make.

PART IV

Rehearing and Appeals

Clause 32 (1) and clause 32 (2) empower a Tribunal to grant a rehearing on the application of a party made within 14 days of an order of the Tribunal. If a rehearing is granted, the Registrar is to notify all parties and the order ceases to have effect (*clause 32 (3)*). However, if the party who applied for the rehearing does not appear, the Tribunal may reinstate the order without rehearing the case (*clause 32 (4)*).

Clause 33 (1) enables a party to appeal against an order on the ground that the proceedings were conducted by the Referee, or an inquiry was carried out by an Investigator, in a manner which was unfair to the party.

Only orders made on disputed claims or where the respondent does not present a case (*clause 15 (6)*), and orders made in enforcement proceedings (*clause 31A (2)*) may be appealed against. An order made following a settlement is not subject to appeal. By virtue of *clause 32 (1A)* the same rule limits the cases in which a rehearing may be applied for under *clause 32 (1)*.

The appeal is to the Magistrate's Court of which the Tribunal is a division and must be filed in that Court within 14 days of the Tribunal's order (*clause 33 (2)*). Notice is given to all parties by the Registrar (*clause 33 (5)*) and execution is stayed pending the outcome unless the Tribunal otherwise orders (*clause 33 (6)*).

Amendment to clause 33 (6): The new subclause will enable the Court to order a further stay of any enforcement process if, after ordering that enforcement should proceed, it is satisfied that there is justification for a further stay.

If an appeal is brought, *clause 34 (1)* requires the Referee, or Investigator, to furnish the Registrar with a report on the manner in which the proceedings, or the inquiry, were conducted. Where the Referee or Investigator is not available to furnish the report, the Registrar is to compile it (*clause 34 (3)*).

Clause 35 provides for the appeal to be disposed of by the Magistrate by an order for a rehearing, the making of any order which a Tribunal could make, the transfer of the proceedings to a Magistrate's Court, or the dismissal of the appeal.

PART V

MISCELLANEOUS PROVISIONS

Clause 36 protects the proceedings and documents of a Tribunal from attack on the ground of defects of form only.

Clause 37 imposes a responsibility on the Registrar to provide assistance to persons in completing forms at all stages of the small claims procedure.

Clause 38 (1) creates offences of specified acts which would tend to disrupt or impede the free and orderly conduct of proceedings before a Tribunal.

Clause 38 (2) empowers a Referee to exclude offending persons from a sitting of a Tribunal.

Clause 39 requires the Registrar to publish particulars relating to proceedings in Tribunals as and when directed by the Minister.

Clause 40 (1) gives a Referee, in his official capacity, the same protection from legal action as a Magistrate enjoys.

Clause 40 (2) makes it clear that proceedings of a Tribunal are judicial proceedings for the purpose of affording privilege to statements made by Referees, parties, witnesses, and representatives.

Clause 40 (3) extends that privilege to inquiries made under *clauses 26 (2) and 27*.

Clause 41 declares that a Referee, while acting as such, is a Crown employee for the purposes of the Accident Compensation Act 1972. The levies under that Act, in respect of his earnings as a Referee, would thus be payable by the Crown.

Clause 42 authorises the making of rules for proceedings before Tribunals, and the general implementation of the Act.

Clause 44 provides for the following consequential amendments:

- (a) The Inferior Courts Procedure Act 1909 is amended to insert therein a reference to Small Claims Tribunals and to Referees:
- (b) The Magistrates' Courts Act 1947 is amended to expressly recognise, in that Act, that each Small Claims Tribunal is to be a division of a Magistrate's Court:
- (c) A reference to Small Claims Tribunals is inserted in the definition of "Court" in the Crown Proceedings Act 1950:
- (d) The Oaths and Declarations Act 1957 is amended to provide for the taking of an oath of office by a Referee:
- (e) The Minors' Contracts Act 1969, the Illegal Contracts Act 1970, and the Hire Purchase Act 1971 are amended to confer on a Tribunal jurisdiction to exercise certain powers conferred by those Acts. The Minors' Contracts Act 1969 is also amended so that Tribunals will not have power to approve settlements made by minors except where the settlement is made after proceedings have been commenced in a Tribunal.

Amendments to Schedule: The effect of these amendments is—

- (a) To bring in the consequential amendments to the Minors' Contracts Act 1969.
 - (b) To make it clear that the monetary limit of \$500 on the jurisdiction of Tribunals applies to orders made under the Illegal Contracts Act 1970 and the Hire Purchase Act 1971.
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Hon. Mr Thomson

SMALL CLAIMS TRIBUNALS (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to make provision for the establishment of tribunals to hear and determine certain small claims; to provide for the jurisdiction, powers, and procedures of those tribunals; and for purposes connected therewith 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Small Claims Tribunals Act (*No. 2*) 1975) 1976. 10

2. **Interpretation**—In this Act, unless the context otherwise requires,—

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“Claim” means a small claim lodged under section 18 of this Act: 15

“Claimant” means a person who lodges a claim with a Tribunal and any person who becomes a party to the proceedings on that claim in the capacity of a claimant:

New

“Claim” means a small claim lodged with a Tribunal under section 18 or transferred to a Tribunal under section 23 of this Act: 20

“Claimant” means a person who lodges a claim with a Tribunal or who claims relief in any proceedings transferred to a Tribunal under section 23 of this Act, and includes any person who becomes a party to proceedings on any claim in the capacity of a claimant: 25

“Investigator” means a person appointed under section 27 (1) of this Act to inquire into, and report to a Tribunal upon, any matter of fact: 30

“Magistrate” means a Stipendiary Magistrate appointed under the Magistrates’ Courts Act 1947:

“Minister” means the Minister of Justice: 35

New

“Motor vehicle” has the same meaning as in the Transport Act 1962:

“Prescribed” means prescribed by rules made under this Act:

5 “Referee” means a person appointed as such under section 7 of this Act; and includes a Magistrate where he is exercising the jurisdiction of a Tribunal:

“Registrar” means the Registrar of the Magistrate’s Court of which the Tribunal is a division pursuant to section 4 (4) of this Act; and includes any Deputy Registrar of that Court:

10 “Respondent” means any person against whom a claim is made and any person who becomes a party to the proceedings on that claim in the capacity of a respondent:

15 “Small claim” means a claim in respect of which a Tribunal has jurisdiction under (subsections (1), (2), and (3) of section 9) sections 9 and 10 of this Act:

“Tribunal” means a Small Claims Tribunal established under section 4 of this Act:

20 “Work order” means an order to make good a defect in chattels, or a deficiency in the performance of services, by doing such work or (taking such steps) attending to such matters (including the replacement of chattels) as may be specified in the order.

3. Act to bind the Crown—This Act shall bind the Crown.

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PART I

ESTABLISHMENT OF TRIBUNALS

30 **4. Establishment of Tribunals**—(1) The Minister may from time to time, by notice in the *Gazette*, establish in accordance with this section such number of tribunals as he thinks fit to exercise the jurisdiction in respect of small claims created by this Act.

(2) The tribunals established under subsection (1) of this section shall be known as Small Claims Tribunals.

35 (3) Each Small Claims Tribunal shall be a division of a Magistrate’s Court.

(4) A notice under subsection (1) of this section establishing a Small Claims Tribunal shall specify the Magistrate’s Court of which the Tribunal is to be a division.

40 (5) The Minister may at any time, by notice in the *Gazette*,—

(a) Disestablish a Small Claims Tribunal; and

- (b) Direct how the records of that Tribunal shall be dealt with.

5. Exercise of Tribunal's jurisdiction—(1) The jurisdiction of a Tribunal shall be exercised by a Referee appointed under section 7 of this Act, or by a Magistrate. 5

(2) If the Referee or Magistrate hearing any proceedings in respect of a claim dies, or becomes incapacitated, or is for any other reason unable or unavailable to complete the hearing or dispose of the proceedings, they shall be heard afresh by another Referee or Magistrate, unless the parties agree 10 that the proceedings be otherwise disposed of.

6. Times and places of sittings—The days, times, and places of the regular sittings of a Tribunal shall be determined by the Magistrate who is for the time being responsible for the work of the Magistrate's Court of which the Tribunal is a 15 division or, where more than one Magistrate is for the time being responsible therefor, by the Magistrate who is senior by length of service.

7. Appointment of Referees—(1) The Governor-General may, from time to time, by warrant under his hand appoint 20 qualified persons to be Referees for the purposes of this Act.

(2) A person is qualified to be so appointed if—

- (a) He is a barrister or solicitor of the Supreme Court of not less than 3 years' (standing) practice; or

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- (b) He is a person who has held office for a period of not less than 5 years in the aggregate as a Registrar of the Supreme Court, or of a Magistrate's Court, or for part of that period in one such capacity and for the remainder in the other; or 30

~~(c) He is~~ (b) He is otherwise capable by reason of his special knowledge or experience of performing the functions of a Referee.

(3) Subject to subsection (4) of this section, every person appointed as a Referee shall hold office for a term of 3 years 35 and may, from time to time, be reappointed for a like term by the Governor-General.

(4) A Referee may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister.

(5) A Referee may hold any other office or engage in any other employment or calling unless the Governor-General considers that the proper discharge of the functions of a Referee will be impaired thereby.

10 **8. Salary and allowances**—There shall be paid to every Referee (other than a Magistrate), out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, and allowances (including travelling allowances and expenses) in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply
15 accordingly as if a Referee were a member of a statutory Board within the meaning of that Act.

PART II

JURISDICTION, FUNCTIONS AND ORDERS OF TRIBUNALS

20 **9. Jurisdiction of Tribunals**—(1) Subject to this section and to section 10 of this Act, a Tribunal shall have jurisdiction in respect of—

- (a) A claim founded on contract or quasi-contract: and
- 25 (b) A claim for a declaration that a person is not liable to another person in respect of a claim or demand, founded on contract or quasi-contract, made against him by that other person:

New

30 (c) A claim in tort for damage to property resulting from negligence in the use, care, or control of a motor vehicle.

Struck Out

(2) A debt or liquidated demand is not within the jurisdiction conferred by subsection (1) (a) of this section, but may
35 be the subject of a declaration under subsection (1) (b) of this section.

New

(2A) A Tribunal shall have such other jurisdiction as is conferred upon it by any other enactment.

(3) For the purposes of subsection (1) of this section, a claim (or demand) is within the jurisdiction of a Tribunal only if the total amount (in dispute, or sought to be recovered,) in respect of which an order of the Tribunal is sought does not exceed \$500, including— 5

(a) Where a claim is made for the recovery of chattels, the value of those chattels; and

(b) Where a claim is made for a work order, the value of the work sought to be included therein.

(4) If it is necessary for the purposes of this Act to ascertain the value of any chattels or work or to resolve any dispute as to such value (whether for the purposes of subsection (3) of this section or otherwise), that value shall be determined by the Tribunal in such manner as it thinks fit and the Tribunal may for that purpose appoint an investigator to report to it under section 27 of this Act. 10 15

(5) Subject to this Act and the Limitation Act 1950, the jurisdiction of a Tribunal shall extend to a claim based on a cause of action which accrued before the commencement of this Act. 20

Struck Out

(6) Nothing in subsection (2) of this section shall prevent a respondent from pleading a debt or liquidated demand as a defence by way of set-off to a small claim made against him. 25

10. Further limitation of jurisdiction—A Tribunal shall have no jurisdiction in respect of any claim—

(a) For the recovery of land or any estate or interest therein:

(b) In which the title to any land, or any estate or interest therein, or to any franchise is in question: 30

(c) In which there is a dispute concerning the entitlement of any person under a will, or settlement, or on an intestacy (including a partial intestacy).

New

10. Further limitation of jurisdiction—(1) A debt or liquidated demand may be the subject of a declaration under section 9 (1) (b) of this Act but, subject to subsection (2) of this section, a claim for a debt or liquidated demand is not within the jurisdiction conferred by section 9 (1) (a), of this Act unless— 35 40

(a) The claimant satisfies the Registrar, before the claim is lodged in a Tribunal, that the claim, or a part thereof, is in dispute; or

New

- (b) The claimant either—
- (i) Satisfies the Registrar before the claim is lodged in a Tribunal; or
 - (ii) Not having lodged or attempted to lodge the claim pursuant to subparagraph (i) of this paragraph, satisfies the Tribunal at a hearing— that the claim is in the nature of a counterclaim by a respondent against a claimant; or
- (c) The claim is transferred to a Tribunal pursuant to section 23 of this Act.
- (2) Notwithstanding subsection (1) of this section a Tribunal may—
- (a) Where a respondent raises a debt or liquidated demand as a defence by way of set-off, give effect to that defence:
 - (b) Where it dismisses a claim for a declaration under section 9 (1) (b) of this Act in respect of a debt or liquidated demand, make an order under section 16 (1) (a) of this Act requiring the claimant to pay the debt or liquidated demand, or part thereof, to the respondent.
 - (3) Except as provided in an enactment referred to in section 9 (2) of this Act, a Tribunal shall have no jurisdiction in respect of any claim—
 - (a) For the recovery of land or any estate or interest therein:
 - (b) In which the title to any land, or any estate or interest therein, or to any franchise is in question:
 - (c) In which there is a dispute concerning the entitlement of any person under a will, or settlement, or on any intestacy (including a partial intestacy).
 - (4) Without limiting subsection (2) of section 9 of this Act, nothing in subsection (1) of that section in so far as it confers jurisdiction in quasi-contract on a Tribunal shall be construed as authorising a claim in respect of money due under any enactment.
 - (5) In subsection (4) of this section “enactment” means a provision of any Act or of any other instrument which has legislative effect and which is authorised by or pursuant to any Act.
 - (6) A Tribunal may hear and determine a claim in the nature of a counterclaim to which subsection (1) (b) of this section applies notwithstanding that the original claim is withdrawn, abandoned, or struck out.

11. Abandonment to bring within jurisdiction—A person may abandon so much of a claim as exceeds \$500 in order to bring the claim within the jurisdiction of a Tribunal; and in that event an order of the Tribunal under (*section 16 of this Act*) this Act or any other enactment, in relation to the claim, shall operate to discharge from liability in respect of the amount so abandoned any person against whom the claim and the subsequent order is made. 5

12. Cause of action not to be divided—A cause of action shall not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of a Tribunal. 10

13. Contracting out prohibited—(1) A provision in any agreement (including one made before the commencement of this Act) to exclude or limit—

(a) The jurisdiction of a Tribunal; or 15

(b) The right of any person to invoke that jurisdiction— shall be of no effect.

(2) Without limiting the generality of subsection (1) of this section, a Tribunal shall have jurisdiction in respect of a claim notwithstanding any agreement relating thereto which provides for— 20

(a) The submission to arbitration of any dispute or difference; or

(b) The making of an award upon such a submission to be a condition precedent to any cause of action accruing to a party to the agreement. 25

(3) Subsection (1) of this section does not apply where a cause of action has accrued, or is believed to have accrued, to a person and he has agreed to the settlement or compromise of the claim based on that cause of action. 30

14. Exclusion of other jurisdictions—(1) Where a claim is lodged with or transferred to a Tribunal and is within its jurisdiction, the issues in dispute in that claim (whether as shown in the initial claim or as emerging in the course of the hearing) shall not be the subject of proceedings between the same parties in any other Court or tribunal unless— 35

- (a) An order is made under ~~(section 22 (2))~~ subsection (2) or (2A) of section 22 or section 35 (1) (c) of this Act; or
- 5 (b) The proceedings before that other Court or tribunal were commenced before the claim was lodged with or transferred to the Tribunal; or
- (c) The claim before the Tribunal is withdrawn, abandoned, or struck out.

Struck Out

10 (2) Subsection (1) (b) of this section shall not in any way restrict the operation of section 23 of this Act.

New

15 (2) Where subsection (1) (b) of this section applies to proceedings before another Court or tribunal, the issues in dispute in the claim to which those proceedings relate (whether as shown in the initial claim or emerging in the course of the hearing) shall not be the subject of proceedings between the same parties in a Tribunal unless the proceedings are transferred to a Tribunal under section 23 of this Act or

20 the claim before the other Court or tribunal is withdrawn, abandoned, or struck out.

Struck Out

25 **15. Functions of Tribunal—**(1) The primary function of a Tribunal is to attempt to bring the parties to a dispute to an agreed settlement.

(2) If it appears to a Tribunal to be impossible to reach such a settlement within a reasonable time, the Tribunal shall determine the dispute by making such order under section 16 of this Act as will, in its opinion, achieve a fair and equitable result in all the circumstances.

30

(3) In reaching a determination under subsection (2) of this section, the Tribunal—

- (a) Is bound to give effect to the provisions of any enactment; but
- 35 (b) Is not otherwise bound to give effect to the strict legal rights or obligations of any party, or to legal forms or technicalities; and

Struck Out

(c) May instead have regard to the substantial merits and justice of the case.

(4) Without limiting the generality of subsections (2) and (3) of this section, a Tribunal may, if it thinks fit, disregard any exclusion of conditions, warranties, or undertakings or any limitation or exclusion of liability or remedies contained in any agreement or document which directly or indirectly bears upon the dispute between the parties.

(5) Where the Tribunal brings the parties to a settlement under subsection (1) of this section, it shall make an order giving effect to that settlement, whether or not such order is one which could be made under section 16 of this Act.

New

15. Functions of Tribunal—(1) The primary function of a Tribunal is to attempt to bring the parties to a dispute to an agreed settlement.

(2) Where an agreed settlement is reached, the Tribunal may make one or more of the orders which it is empowered to make under section 16 of this Act or under any other enactment, but shall not be bound by the monetary restrictions provided for by subsections (3) and (4) of section 16.

(3) If it appears to the Tribunal to be impossible to reach a settlement under subsection (1) of this section within a reasonable time, the Tribunal shall proceed to determine the dispute.

(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

(5) Without limiting the generality of subsection (4) of this section, a Tribunal may, in respect of any agreement or document which directly or indirectly bears upon the dispute between the parties, disregard any provision therein which excludes or limits—

(a) Conditions, warranties, or undertakings; or

(b) Any right, duty, liability, or remedy which would arise or accrue in the circumstances of the dispute if there were no such exclusion or limitation.

New

(6) To give effect to its determination of the dispute under subsection (3) of this section, or in granting relief in respect of any claim which is not disputed (except where subsection 5 (2) of this section applies), the Tribunal shall make one or more of the orders which it is empowered to make under section 16 of this Act or under any other enactment.

- 16. Orders of Tribunal**—*(In discharging its functions under section 15 (2) of this Act, a)* (1) A Tribunal may, as regards
- 10 any claim within its jurisdiction, make one or more of the following orders and may include therein such stipulations and conditions (whether as to the time for, or mode of, compliance or otherwise) as it thinks fit:
- 15 (a) The Tribunal may order a party to the proceedings to pay money to any other party:
- (b) The Tribunal may make an order declaring that a person is not liable to another in respect of a claim or demand described in section 9 (1) (b) of this Act:
- 20 (c) The Tribunal may order a party to deliver specific chattels to another party to the proceedings:
- (d) The Tribunal may make a work order against any party to the proceedings:
- 25 (e) Where it appears to the Tribunal that an agreement between the parties, or any term thereof, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying the agreement, or setting it aside (either wholly or in part):
- 30 (f) Where it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying, or setting aside, the agreement or the writing (either wholly or in part):
- 35 (g) The Tribunal may make an order dismissing the claim.
- 40

New

- (2) Where a Tribunal makes a work order against a party it—
- 45 (a) Shall, where the order is made under section 15 (6) or 31A (2) of this Act; and
- (b) May, where the order is made under section 15 (2) of this Act,—

New

at the same time make an order under subsection (1) (a) of this section to be complied with as an alternative to compliance with the work order.

(3) A Tribunal shall not make an order under this Act which exceeds the monetary restriction hereunder which is applicable to that order and any order which does exceed that restriction shall be entirely of no effect. The monetary restrictions are—

- (a) An order under subsection (1) (a) of this section shall not require payment of money exceeding \$500:
- (b) A declaration under subsection (1) (b) of this section shall not relate to a claim or demand exceeding \$500:
- (c) An order under subsection (1) (c) of this section shall not relate to chattels exceeding \$500 in value:
- (d) The work to be done or matters to be attended to under a work order shall not exceed \$500 in value:
- (e) An order under paragraph (e) or (f) of subsection (1) of this section shall not be made in respect of an agreement if the value of the consideration for the promise or act of any party to the agreement exceeds \$500.

Struck Out

(4) Except as provided in subsection (2) of this section a Tribunal shall not, under this Act, make more than one of the orders mentioned in subsections (1) (a) to (1) (d) of this section in respect of a claim if the aggregate amount or value of those orders exceeds \$500; every order so made contrary to this subsection shall be entirely of no effect.

New

“(4) Except as provided in subsection (2) of this section, a Tribunal shall not, in respect of a claim, make more than one of the orders authorised by subsections (1) (a) to (1) (d) of this section, or by any other enactment, if the aggregate amount or value of those orders exceeds \$500; every order so made contrary to this subsection shall be entirely of no effect.”

(5) Nothing in subsection (1) of this section shall restrict the making by a Tribunal of any order which it is authorised to make by any other enactment.

17. Orders of Tribunal to be final—An order made by a Tribunal shall be final and binding on all parties to the proceedings in which the order is made, and, except as provided in section 33 of this Act, no appeal shall lie in respect thereof.

PART III

PROCEEDINGS OF TRIBUNALS

Claims

5 **18. Lodging of claims**—(1) Proceedings shall be commenced by the lodging of *(the prescribed form of claim, duly completed)* a claim in the prescribed form, together with the prescribed fee, with the appropriate Tribunal.

(2) The appropriate Tribunal for the purpose of subsection (1) of this section is that which is nearest by the most
10 practicable route to the place where the claimant resides.

19. Notice of claim and of hearing—(1) When a claim is lodged in accordance with section 18 of this Act, the Registrar shall—

15 (a) Fix a time and place of hearing and give notice thereof in the prescribed form to the claimant; and

(b) As soon as is reasonably practicable, give notice of the claim and of the time and place of hearing in the prescribed form to—

20 (i) The respondent; and

(ii) Every other person who appears to the Registrar to have a sufficient connection with the proceedings on the claim in the capacity of a claimant or respondent.

(2) Where a Tribunal finds that a person who appears to
25 it to have a sufficient connection with the proceedings on a claim in the capacity of a claimant or respondent has not been given notice of the proceedings, it may direct the Registrar to give, and the Registrar shall give, to such person notice of the claim, and of the time and place for hearing.

30 (3) For the purposes of this section, a person has a sufficient connection with the proceedings on a claim if his presence as a claimant or respondent is necessary to enable the Tribunal to effectually and completely determine the questions in dispute in the claim or to grant the relief which it considers
35 to be due.

New

40 (4) Where a claim to which section 10 (1) (b) (ii) of this Act applies is made at a hearing, the Tribunal may, in relation to that claim, dispense with the requirements of this section and of section 18 (2) of this Act, or any of those requirements, if it appears to the Tribunal that neither the respondent in the claim nor any other person will be prejudiced thereby.

20. Parties—(1) Subject to subsection (2) of this section, the claimant, the respondent, and every person to whom notice of a claim has been given under section 19 (1) (b) (ii) or section 19 (2) of this Act shall be the parties to the proceedings on that claim. 5

(2) A Tribunal may, at any time, order that the name of a person who appears to it to have been improperly joined as a party be struck out from the proceedings.

Struck Out

21. Minor may be a party—A minor may be a party to, and shall be bound by,— 10

(a) Proceedings before a Tribunal; and

(b) A settlement reached under section 15 (1) of this Act and the order thereon—

as if he were a person of full age. 15

New

21. Minors and persons under disability—(1) Subject to this section, a minor may be a party to, and shall be bound by, proceedings in a Tribunal as if he were a person of full age and capacity. 20

(2) Where a minor who has not attained the age of 18 years is a party to any proceedings in a Tribunal, the Tribunal may, if it considers that it would be in the interests of the minor to do so,—

(a) At any time appoint to represent the minor a person who is willing to do so and who is not disqualified by section 24 (5) of this Act, and authorise that person to control the conduct of the minor's case; or 25

(b) When approving a representative under section 24 (3) of this Act, or at any time thereafter, authorise that representative to control the conduct of the minor's case. 30

(3) In any proceedings in a Tribunal—

(a) The manager of the estate of a protected patient under the Mental Health Act 1969 shall, subject to that Act, control the conduct of the protected patient's case: 35

(b) The manager of the estate of a protected person under the Aged and Infirm Persons Protection Act 1912 shall, subject to that Act, control the conduct of the protected person's case (so far as the proceedings relate to the protected estate). 40

New

(4) A person empowered by or under this section to control the conduct of the case of another person may do all such things in the proceedings as he could do if he himself were a party to the proceedings in place of that other person.

(5) Nothing in this section shall restrict the application of section 12 of the Minors' Contracts Act 1969 to a—

(a) Settlement agreed to by or on behalf of a minor; or

(b) Payment made or proposed to be made by, or on behalf of, or to, or for the benefit of, a minor—
after proceedings have been commenced in a Tribunal.

(6) In this section "proceedings in a Tribunal" means—

(a) Proceedings in a Tribunal or on appeal from a Tribunal:

(b) A settlement agreed to in the course of proceedings referred to in paragraph (a) of this subsection:

(c) Proceedings under section 31 (1) of this Act for enforcement of an order—

and includes any order made in proceedings as so defined.

22. Transfer of proceedings to Magistrate's Court, etc.—

(1) Where any proceedings have been commenced in a Tribunal which it has no jurisdiction to hear and determine, the Tribunal may, instead of striking out the proceedings, order that they be transferred to a Magistrate's Court in its ordinary civil jurisdiction.

(2) Where any proceedings have been commenced in a Tribunal which in the opinion of the Tribunal would more properly be determined in a Magistrate's Court, the Tribunal may, on the application of a party or of its own motion, order that the proceedings be transferred to a Magistrate's Court in its ordinary civil jurisdiction.

New

(2A) Where any proceedings have been commenced in a Tribunal and those proceedings—

(a) Relate to a dispute described in section 96 (1) of the Motor Vehicle Dealers Act 1975; and

(b) Are within the jurisdiction of a Disputes Tribunal constituted under section 97 of that Act; and

(c) Would, in the opinion of the Small Claims Tribunal, more properly be determined by a Disputes Tribunal—

the Small Claims Tribunal may, on the application of a

New

party or of its own motion, order that the proceedings be transferred to a Disputes Tribunal specified by it; and any such order shall be deemed to be a reference to a Disputes Tribunal for the purposes of section 96 (4) of the said Act.

5

(3) The Tribunal shall not make an order under subsections (1) or (2) of this section in respect of a claim if any agreement of a kind described in section 13 (2) of this Act requires that the claim be submitted to arbitration.

Struck Out

10

23. Transfer of proceedings from Magistrate's Court—

(1) Where proceedings have been commenced in a Magistrate's Court and it appears to the Court that the proceedings involve issues in respect of which the defendant could have instituted a claim under this Act, the Court may, if a Tribunal has been established as a division of that Court, on the application of the defendant or of its own motion, order that the proceedings be transferred to that Tribunal.

15

(2) A Tribunal to which proceedings are transferred under subsection (1) of this Act may have regard to any notes of evidence transmitted to it by the Magistrate's Court and it shall not be necessary for that evidence to be given again in the Tribunal unless the Tribunal so requires.

20

New

23. Transfer of proceedings from Magistrate's Court, etc.—(1) The provisions of this subsection apply where proceedings within the jurisdiction of a Tribunal have been commenced in a Magistrate's Court, which has a Tribunal as a division of it, before a claim in respect of the same issues between the same parties has been lodged in, or transferred to, a Tribunal:

25

(a) If the defendant, within the number of days specified by rules made under the Magistrates' Courts Act 1947, files a notice of intention to defend the claim and requests in that notice that the proceedings be transferred to the Tribunal, the Registrar shall transfer the proceedings accordingly:

35

(b) In every other case a Magistrate or Registrar may, on the application of either party or of his own motion, order that the proceedings be transferred to the Tribunal, subject to such provision (if any) as to payment of costs as he thinks fit.

40

New

(2) Where proceedings within the jurisdiction of a Tribunal have been commenced in the Supreme Court before a claim in respect of the same issues between the same parties has been lodged in, or transferred to, a Tribunal, that Court or a Judge thereof may, on the application of either party or of its or his own motion, order that the proceedings be transferred to a Tribunal subject to such provision (if any) as to payment of costs as the Court or Judge thinks fit.

(3) A Tribunal to which proceedings are transferred under subsection (1) or (2) of this section may have regard to any notes of evidence transmitted to it and it shall not be necessary for that evidence to be given again in the Tribunal unless the Tribunal so requires.

Hearings

15

24. Right of audience—(1) At the hearing of a claim every party shall be entitled to attend and be heard.

(2) Subject to subsection (3) of this section, no party shall appear by a representative unless it appears to the Tribunal to be proper in all the circumstances to so allow, and the Tribunal approves such representative.

(3) The following parties may appear by a representative who is approved by the Tribunal—

(a) The Crown, if the representative is a servant of the Crown:

(b) A corporation or an unincorporated body of persons, if the representative is an employee or member thereof:

Struck Out

(c) A partnership, if the representative is a member of the partnership:

New

(c) A person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons:

(d) A minor, or other person under a disability.

Struck Out

(4) In no case shall a Tribunal approve as a representative a person who is, or has been, enrolled as a barrister or solicitor or who, in the opinion of the Tribunal, is, or has been, regularly engaged in advocacy work before Tribunals.

5

New

(4) A Tribunal shall, where a representative of a party is proposed for its approval, satisfy itself that the person proposed has sufficient personal knowledge of the case and sufficient authority to bind the party.

10

(5) A Tribunal shall not appoint under section 21 (2) (a), or approve as a representative under section 24 (2) or (3) of this Act, a person who is, or has been, enrolled as a barrister or solicitor or who, in the opinion of the Tribunal is, or has been, regularly engaged in advocacy work before other tribunals; but this prohibition does not apply where the person proposed for approval under section 24 (3) is a person or one of the persons jointly liable or entitled with another or others.

15

25. Proceedings to be held in private—(1) All proceedings before a Tribunal shall be held in private.

20

(2) Nothing in subsection (1) of this section shall prevent a Tribunal from hearing 2 or more claims together if it appears to the Tribunal that it would be convenient to the Tribunal and the parties to do so.

New

25

(3) Notwithstanding subsection (1) of this section, a Tribunal may permit to be present at any proceedings a person who has a genuine and proper interest either in those proceedings or in the proceedings of Tribunals generally.

Struck Out

30

26. Evidence—(1) All evidence tendered to a Tribunal by or on behalf of a party to any proceedings shall be given on oath either orally or, where the Tribunal so permits, in writing.

New

26. Evidence—(1) Evidence tendered to a Tribunal by or on behalf of a party to any proceedings need not be given on oath, but the Tribunal may at any stage of the proceedings
5 require that such evidence, or any specified part thereof, be given on oath whether orally or in writing.

(2) A Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. All evidence and information so
10 received or ascertained shall be disclosed to every party.

(3) A Tribunal may receive and take into account any relevant evidence or information, whether or not the same would normally be admissible in a Court of law.

27. Investigator may be appointed—(1) A Tribunal may,
15 if it thinks fit, appoint a person to inquire into, and report to it upon, any matter of fact having a bearing on any proceedings and may give such directions as to the nature, scope, and conduct of the inquiry as it thinks fit.

(2) A person appointed under subsection (1) of this section
20 shall be paid, out of money appropriated by Parliament for the purpose, such fees and expenses as are fixed by the Tribunal in accordance with a scale approved by the Secretary
for Justice.

28. Tribunal may act on evidence available—(1) Where
25 the case of any party is not presented to the Tribunal, after reasonable opportunity has been given to him to do so, the issues in dispute in the proceedings may be resolved by the Tribunal, or relief in respect of an undisputed claim may be granted by it, on such evidence or information as is before it,
30 including evidence or information obtained pursuant to section 26 (2) of this Act.

(2) An order made by the Tribunal in the circumstances described in subsection (1) of this section shall not be
35 challenged on the ground that the case of the party was not presented to the Tribunal, but the party may apply for a rehearing under section 32 of this Act on the ground that there was sufficient reason for his failure to present his case.

29. No costs allowable—Costs shall not be awarded against a party unless, in the opinion of the Tribunal, a claim made by that party is frivolous or vexatious, in which case it may order that party to pay—

- (a) To the Crown, the fees and expenses of any witness, or of an Investigator, which have been paid by the Crown: 5
- (b) To a party, the reasonable costs of that party in connection with the proceedings.

30. Procedure where no provision made—Subject to this Act and any rules made thereunder, a Tribunal shall adopt such procedure as it thinks best suited to the ends of justice. 10

Enforcement of Orders

Struck Out

31. Modes of enforcement—(1) Every order made by a Tribunal under section 16 (a) or section 16 (c) of this Act shall be deemed to be an order of the Magistrate's Court of which the Tribunal is a division, and may be enforced accordingly. 15

(2) Notwithstanding section 113 of the Magistrates' Courts Act 1947, no fee shall be payable by a person who seeks to enforce an order in accordance with subsection (1) of this section, but any fee which would otherwise be payable therefor shall be recoverable from the opposite party for the credit of the Consolidated Revenue Account. 20 25

(3) If the party in whose favour a work order has been made considers that it has not been complied with, he may lodge a request for enforcement in the prescribed form. All subsequent proceedings shall be taken on such request as if it were a claim lodged under section 18 of this Act. 30

(4) Upon the hearing of a request for enforcement of a work order, the Tribunal may make a further work order, or an order under section 16 (a) of this Act, or may discharge the order sought to be enforced.

(5) After the expiration of 12 months from the date of a work order, the order shall not be enforced without the leave of the Tribunal. 35

New

31. Enforcement of orders except work orders—(1) Every order made by a Tribunal requiring a party to pay money or deliver specific chattels to another party shall be deemed to be an order of the Magistrate's Court of which the Tribunal is a division, and, subject to this section, may be enforced accordingly.

(2) Where application is made to a Magistrate's Court for the issue of any process to enforce an order provided for by section 16 (2) of this Act (requiring a party to pay money to another as an alternative to compliance with a work order), the Registrar shall give notice of the application to the party against whom enforcement is sought.

(3) If that party does not file in the Court, within the period prescribed for so doing, a notice of objection in the prescribed form, the order may, after the expiry of that period, be enforced pursuant to subsection (1) of this section.

(4) The notice referred to in subsection (3) of this section may only be given on the ground that it is the belief of the party that the order of the Tribunal has been fully complied with and that he therefore disputes the entitlement of the applicant to enforce it.

(5) If the party against whom enforcement is sought files the notice referred to in subsection (3) of this section within the prescribed time, the Registrar shall refer the matter to the Tribunal to be heard and determined under section 31A (2) of this Act.

(6) Notwithstanding section 113 of the Magistrates' Courts Act 1947, no filing fee shall be payable by a person who seeks to enforce an order pursuant to subsection (1) of this section, but any fee which would otherwise be payable therefor shall be recoverable from the opposite party for the credit of the Consolidated Revenue Account.

31A. Enforcement of work orders—(1) Where—
(a) A party in whose favour a work order has been made considers that the work order has not been complied with by the other party; and
(b) That other party has not complied with the alternative money order provided for by section 16 (2) of this Act—

the party in whose favour the work order was made may, instead of applying to the Magistrate's Court for the issue of a

New

process for enforcement pursuant to section 31 (1) of this Act; lodge in the Tribunal a request in the prescribed form that the work order be enforced.

(2) Subsequent proceedings shall be taken on a request for enforcement under subsection (1) of this section and on a notice under section 31 (5) of this Act as if such request or notice were a claim lodged under section 18 of this Act; and upon the hearing of the matter the Tribunal may—

(a) Vary the work order, or make a further work order, or any other order which is authorised by section 16 of this Act:

(b) Grant leave to the party in whose favour the work order was made to enforce the alternative money order provided for by section 16 (2) of this Act, or so much thereof as the Tribunal may allow, and either subject to or without compliance with the provisions of section 31 (2) of this Act:

(c) Discharge any order previously made by the Tribunal.

(3) After the expiration of 12 months from the date of a work order, it shall not be enforced without the leave of the Tribunal.

PART IV

REHEARING AND APPEALS

32. Rehearing—(1) (A) Subject to subsection (1A) of this section, a Tribunal may, upon the application of a party to any proceedings, order the rehearing of a claim, to be had upon such terms as it thinks fit.

New

(1A) A rehearing may be ordered under subsection (1) of this section only where an order has been made under section 15 (6) or 31A (2) of this Act and, in the latter case, shall be limited to rehearing the enforcement proceedings taken under that section.

(2) Every application for a rehearing shall be made within 14 days after the Tribunal's order and shall be served upon the other parties to the proceedings.

(3) Upon a rehearing being granted—

(a) The Registrar shall notify all parties to the proceedings of the making of the order and of the time and place appointed for the rehearing; and

(b) The order of the Tribunal made upon the first hearing shall cease to have effect.

(4) Notwithstanding subsection (3) (b) of this section, if the party on whose application a rehearing is ordered does not
 5 appear at the time and place for the rehearing or at any time and place to which the rehearing is adjourned, the Tribunal may, without rehearing or further rehearing the claim, direct that the original order be restored to full force and effect.

(5) This Act shall apply to a rehearing in all respects as
 10 it applies to an original hearing.

33. Appeals—(1) Any party to proceedings before a Tribunal may appeal to a Magistrate's Court against an order *(of the Tribunal)* made by the Tribunal under section 15 (6) or 31A (2) of this Act on the grounds that—

15 (a) The proceedings were conducted by the Referee (not being a Magistrate); or

(b) An inquiry was carried out by an Investigator—
 in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings.

20 (2) An appeal shall be brought by a party by the filing of a notice of appeal, in the prescribed form, in the Magistrate's Court of which the Tribunal is a division, within 14 days of the Tribunal's order.

25 (3) As soon as practicable after such notice of appeal has been filed, the Registrar shall lodge a copy thereof in the Tribunal's records relating to the proceedings.

(4) The Registrar shall fix the time and place for the hearing of the appeal and shall notify the appellant.

30 (5) A copy of every notice of appeal together with a notice of the time and place for hearing the appeal shall be served by the Registrar on every other party to the proceedings before the Tribunal, and each such party may appear and be heard.

Struck Out

35 (6) The filing of a notice of appeal against an order, under subsection (2) of this section, shall, unless the Tribunal otherwise orders on the application of any party, operate as a stay of any process for the enforcement of that order.

New

(6) The filing of a notice of appeal against an order shall operate as a stay of any process for the enforcement of that order, but the Tribunal may at any time, on the application of a party to the proceedings, order that any process may be resumed or commenced or, the process having been resumed or commenced, order that it be further stayed. 5

34. Referee or Investigator to furnish report—(1) Within 14 days after a notice of appeal has been lodged in the Tribunal's records under section 33 (3) of this Act, the Referee who heard the proceedings and, where applicable, the Investigator, shall furnish to the Registrar a report on the manner in which the proceedings were, or where applicable the inquiry was, conducted and the reasons therefor. 10

(2) A Referee shall keep a record of the proceedings of a Tribunal sufficient to enable him, if required, to furnish a report under subsection (1) of this section, and an Investigator shall do likewise in relation to an inquiry conducted by him. 15

(3) Where, for any reason, the Referee who heard the proceedings or, where applicable, the Investigator, is unavailable to furnish the report, the same shall be compiled by the Registrar from such information as he is able to collect from the records of the Tribunal or otherwise. 20

35. Powers of Magistrate on appeal—(1) On the hearing of the appeal a Magistrate may— 25

(a) Quash the order of the Tribunal and order a rehearing of the claim in the Tribunal on such terms as he thinks fit; or

(b) Quash the order and invoke his authority under section 5 of this Act to exercise the jurisdiction of a Tribunal; or 30

(c) Quash the order and transfer the proceedings to a Magistrate's Court for hearing; or

(d) Dismiss the appeal.

(2) In ordering a rehearing under subsection (1) (a) of this section, the Magistrate may give to the Tribunal such directions as he thinks fit as to the conduct of the rehearing. 35

(3) An appeal under this section shall be heard by a Magistrate in chambers and, subject to this Act and any rules made thereunder, the procedure thereat shall be such as he may determine. 40

PART V

MISCELLANEOUS PROVISIONS

36. **Want of form**—No proceedings of a Tribunal, or order, or other document thereof shall be set aside or quashed for
5 want of form.

37. **Registrar to provide assistance**—A Registrar shall ensure that assistance is reasonably available from himself or his staff to any person who seeks it in completing the forms required by this Act, or any rules made thereunder,
10 in relation to the lodging of a claim in a Tribunal, an application for a rehearing, an appeal against an order of a Tribunal, or the enforcement of an order in the Tribunal or in a Magistrate's Court.

38. **Contempt of Tribunal**—(1) Any person who—
15 (a) Wilfully assaults, insults, or obstructs a Referee, or any witness or any officer of a Tribunal during a sitting of a Tribunal or while a Referee, a witness, or an officer is going to or returning from a sitting of a Tribunal; or
20 (b) Wilfully assaults, insults, or obstructs any person in attendance at a sitting of a Tribunal; or
(c) Wilfully interrupts, or otherwise misbehaves at, a sitting of a Tribunal; or
25 (d) Wilfully and without lawful excuse disobeys any order or direction of a Tribunal (other than an order (under section 16) mentioned in section 15 (2), 15 (6) or 31A (2) of this Act) in the course of the hearing of any proceedings,—
30 commits an offence and is liable on summary conviction to a fine not exceeding \$100.

(2) A Referee may order the exclusion from a sitting of a Tribunal of any person whose behaviour, in the opinion of the Referee, constitutes an offence against subsection (1) of this section, whether or not such person is charged with the
35 offence; and any Registrar, or officer under his control, or constable may take such steps as are reasonably necessary to enforce such exclusion.

39. **Publication of orders**—The Registrar shall cause to be published, in such manner as the Minister from time to time
40 directs, such particulars relating to proceedings in Tribunals as the Minister specifies in the direction.

40. Protection of Referees, Investigators, etc.—(1) A Referee shall have and enjoy the same protection as a Magistrate has and enjoys under the Magistrates' Courts Act 1947.

Struck Out

(2) The privileges and immunities of Referees, parties, and witnesses in the proceedings of a Tribunal shall extend and apply to— 5

New

(1A) For the avoidance of doubt as to the privileges and immunities of Referees, parties, representatives, and witnesses in the proceedings of a Tribunal it is declared that such proceedings are judicial proceedings. 10

(2) The privileges and immunities referred to in subsection (1A) of this section shall extend and apply to—

- (a) A Tribunal acting under section 26 (2) of this Act; and 15
- (b) An Investigator acting under section 27 of this Act; and
- (c) A person who gives information, or makes any statement, to the Investigator or Tribunal on any such occasion.

41. Referee to be employee for accident compensation purposes—A Referee, while acting as such, is an employee employed by the Crown for the purposes of the Accident Compensation Act 1972. 20

42. Rules—(1) The Governor-General may from time to time, by Order in Council, make rules— 25

- (a) Regulating the practice and procedure of Tribunals:
- (b) Prescribing such things (including fees) as **(may) are** required by this Act to be prescribed:

(c) Prescribing such matters as are necessary for carrying out the provisions of this Act. 30

(2) Without limiting the generality of subsection (1) of this section, rules may be made providing for the following:

- (a) The keeping of records by Tribunals and the form thereof:
- (b) The form of documents to be issued by Tribunals and the sealing of its documents: 35
- (c) The form and content of documents to be used by parties and intending parties, and the service of documents and the giving of notices by **(them)** such persons: 40

- (d) The functions, powers, and duties of Tribunals and Registrars in relation to—
- (i) The service of documents and giving of notices:
 - (ii) The enlargement of dates of hearing:
 - (iii) The adjournment of proceedings:
 - (iv) The reports of Investigators:
- (e) The withdrawal and amendment of claims:
- (f) The summoning of witnesses, and the payment of witnesses from public funds or otherwise:
- (g) The commission of offences by, and punishment of, persons who refuse to give evidence or obey a summons to witness:
- (h) The functions, powers, and duties of Investigators:
- (i) The transfer of proceedings—
- (i) From a Magistrate's Court or the Supreme Court to a Tribunal:
 - (ii) From a Tribunal to a Magistrate's Court or a Disputes Tribunal referred to in section 22 (2A) of this Act:
 - (iii) From one Tribunal to another:
- (j) The removal of orders of Tribunals into a Magistrate's Court for enforcement:
- (k) The searching of the records of Tribunals.
- (3) Notwithstanding section 43 of this Act, rules made under this section may make particular provision for—
- (a) The giving of notices to, and service of documents on, the Crown; and
 - (b) The length of the notice to be given to the Crown before proceedings to which the Crown is a party may be heard.

43. Crown Proceedings Act 1950 not restricted—Nothing in this Act shall limit or restrict the operation of the Crown Proceedings Act 1950.

44. Consequential amendments—The enactments specified in the Schedule to this Act are hereby consequentially amended in the manner indicated in that Schedule.

SCHEDULE

Section 44

CONSEQUENTIAL AMENDMENTS

| Enactment Amended | Amendment |
|--|--|
| 1909, No. 13—The Inferior Courts Procedure Act 1909 (1957 Reprint, Vol. 6, p. 617) | By repealing section 2, and substituting the following section: “2. Interpretation —In this Act the term ‘inferior Court’ means— “(a) A Magistrate’s Court: “(b) A Small Claims Tribunal: “(c) A Magistrate, Justice of the Peace, Coroner, or Referee of a Small Claims Tribunal in respect of the exercise of any judicial authority conferred upon him by any Act.” |
| 1947, No. 16—The Magistrates’ Courts Act 1947 | By inserting, after section 4A (as inserted by section 2 of the Magistrates’ Courts Amendment Act 1974), the following section: “4B. Small Claims Tribunals —(1) A Magistrate’s Court constituted under section 4 of this Act shall have a division for the hearing and determination of small claims within the meaning of the Small Claims Tribunals Act (1975) 1976 where, under section 4 (4) of that Act, the notice establishing a Small Claims Tribunal so provides. “(2) Notwithstanding subsection (1) of this section, the jurisdiction of a Small Claims Tribunal shall be limited to such as is conferred on it by the Small Claims Tribunals Act (1975) 1976, or by any other enactment, and except as provided in that Act, or in any other enactment, no provision of this Act or of any rules or regulations made under this Act shall apply to a Small Claims Tribunal.” |
| 1950, No. 54—The Crown Proceedings Act 1950 (1957 Reprint, Vol. 3, p. 517) | By inserting in section 2 (1) in the definition of the term “Court”, after the words “the Magistrates’ Courts Act 1947;”, the words “a Small Claims Tribunal constituted under the Small Claims Tribunals Act (1975) 1976.” |
| 1957, No. 88—The Oaths and Declarations Act 1957 (1957 Reprint, Vol. 11, p. 381) | By adding to the Second Schedule, the item “Referees of Small Claims Tribunals.” |

SCHEDULE—continued

CONSEQUENTIAL AMENDMENTS—continued

| Enactment Amended | Amendment |
|---|--|
| <i>New</i> | |
| <p>“1969, No. 41—The Minors’ Act 1969 Contracts</p> | <p>By inserting in the definition of “Court” in section 2, after the words “of this Act”, the words “or a Small Claims Tribunal which has jurisdiction under section 14A of this Act”:</p> <p>By inserting in section 12 (7), after the words “means a Court”, the words “(other than a Small Claims Tribunal)”:</p> <p>By inserting, after section 14, the following section—</p> <p>“14A. Jurisdiction of Small Claims Tribunals—(1) A Small Claims Tribunal established under the Small Claims Tribunals Act 1976 shall have jurisdiction to exercise the powers conferred by any of the provisions of sections 5 to 7 of this Act in any case where—</p> <p>(a) The occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal; and</p> <p>(b) The value of the consideration for the promise or act of any minor under the contract is not more than \$500.</p> <p>“(2) An order of a Small Claims Tribunal under section 7 of this Act shall not—</p> <p>(a) Require a person to pay money exceeding \$500;</p> <p>(b) Declare a person not liable to another for a sum exceeding that figure;</p> <p>(c) Vest any property exceeding \$500 in value in any person;</p> <p>(d) Direct the transfer or assignment of any such property—</p> <p>and an order of a Tribunal which exceeds any such restriction shall be entirely of no effect.</p> |
| <i>Struck Out</i> | |
| | <p>“(3) A Small Claims Tribunal shall not make more than one of the orders mentioned in subsection (2) of this section in respect of any proceedings if the aggregate amount or value of those orders exceeds \$500; every order so made contrary to this subsection shall be entirely of no effect.”</p> |

SCHEDULE—continued

CONSEQUENTIAL AMENDMENTS—continued

| Enactment Amended | Amendment |
|--|--|
| 1970, No. 129—The Illegal Contracts Act 1970 | <p>By inserting in the definition of "Court" in section 2, after the words "of this Act", the words "or a Small Claims Tribunal which has jurisdiction under section 9A of this Act":</p> <p>By inserting, after section 9, the following section—</p> <p><i>Struck Out</i></p> |
| | <p>"9A. Jurisdiction of Small Claims Tribunals—A Small Claims Tribunal established under the Small Claims Tribunals Act 1975 shall have jurisdiction to exercise any of the powers conferred by any of the provisions of section 7 of this Act in any case where the occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal."</p> |
| <i>New</i> | |
| | <p>"9A. Jurisdiction of Small Claims Tribunals—(1) A Small Claims Tribunal established under the Small Claims Tribunals Act 1976 shall have jurisdiction to exercise the powers conferred by any of the provisions of section 7 of this Act in any case where—</p> <p>(a) The occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal; and</p> <p>(b) The value of the consideration for the promise or act of any party to the contract is not more than \$500.</p> <p>"(2) An order of a Small Claims Tribunal under section 7 of this Act shall not—</p> <p>(a) Require a person to pay money exceeding \$500;</p> <p>(b) Declare a person not liable to another for a sum exceeding that figure;</p> <p>(c) Vest any property exceeding \$500 in value in any person:</p> |

SCHEDULE—continued

CONSEQUENTIAL AMENDMENTS—continued

| Enactment Amended | Amendment |
|---|---|
| <i>New</i> | |
| | <p>(d) Direct the transfer or assignment of any such property— and an order of a Tribunal which exceeds any such restriction shall be entirely of no effect.</p> <p><i>Struck Out</i></p> |
| | <p>“(3) A Small Claims Tribunal shall not make more than one of the orders mentioned in <u>subsection (2)</u> of this section in respect of any proceedings if the aggregate amount or value of those orders exceeds \$500; every order so made contrary to this subsection shall be entirely of no effect”.</p> |
| <p>1971, No. 147—The Hire Purchase Act 1971</p> | <p>By inserting in the definition of “Court” in section 2, after the words “of this Act”, the words “or a Small Claims Tribunal which has jurisdiction under section 47A of this Act”:</p> <p>By inserting, after section 47, the following section—</p> <p><i>Struck Out</i></p> |
| | <p>“47A. Jurisdiction of Small Claims Tribunals—A Small Claims Tribunal established under the Small Claims Tribunals Act 1975 shall have jurisdiction to exercise any of the powers conferred by any of the provisions of sections 10 (1), 26 (2), and 37 of this Act in any case where the occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal.”</p> |
| <i>New</i> | |
| | <p>“47A. Jurisdiction of Small Claims Tribunals—(1) A Small Claims Tribunal established under the Small Claims Tribunals Act 1976 shall have jurisdiction to exercise the powers conferred by any of the provisions of sections 10 (1), 26 (2), and 37 of this Act in any case where—</p> <p>(a) The occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal; and</p> |

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS—*continued*

| Enactment Amended | Amendment |
|-------------------|--|
| <i>New</i> | |
| | <p>(b) The cash price of the goods comprised in the hire purchase agreement is not more than \$500.</p> <p>“(2) An order of a Small Claims Tribunal under any of the provisions of sections 10 (1), 26 (2), and 37 of this Act shall not—</p> <p>(a) Require a person to pay money exceeding \$500:</p> <p>(b) Declare a person not liable to another for a sum exceeding that figure:</p> <p>(c) Direct the transfer, assignment, or delivery of goods the cash price of which exceeds \$500—</p> <p>and an order of a Tribunal which exceeds any such restriction shall be entirely of no effect.</p> <p><i>Struck Out</i></p> |
| | <p>“(3) A Small Claims Tribunal shall not make more than one of the orders mentioned in <u>subsection (2)</u> of this section in respect of any proceedings if the aggregate amount or value of those orders exceeds \$500; every order so made contrary to this subsection shall be entirely of no effect.”</p> |