

1977/137



## THE SMALL CLAIMS TRIBUNALS RULES 1977

DENIS BLUNDELL, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 30th day of May 1977

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Small Claims Tribunals Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

### ANALYSIS

<ul style="list-style-type: none"> <li>1. Title and commencement</li> <li>2. Application of rules</li> <li>3. Interpretation</li> <li>4. Forms</li> <li>5. Seals</li> <li>6. Offices of Tribunals</li> <li>7. Office hours</li> <li>8. Holidays of Tribunals</li> <li>9. Opening or closing by special order</li> <li>10. Records</li> <li>11. Accounts</li> <li>12. Searches</li> <li>13. Commencement of proceedings</li> </ul>	<ul style="list-style-type: none"> <li>14. Service of documents</li> <li>15. Notice of hearing</li> <li>16. Approval of representative</li> <li>17. Summons to witness</li> <li>18. Service of summons</li> <li>19. Witnesses' expenses</li> <li>20. Failure to give evidence</li> <li>21. Appeals</li> <li>22. Notice of objection to orders</li> <li>23. Requests for enforcement of work orders Schedule</li> </ul>
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### RULES

**1. Title and commencement**—(1) These rules may be cited as the Small Claims Tribunals Rules 1977.

(2) These rules shall come into force on the day after the date of their notification in the *Gazette*.

**2. Application of rules**—These rules shall apply to all proceedings under the Small Claims Tribunals Act 1976.

**3. Interpretation**—In these rules, unless the context otherwise requires,—

“Act” means the Small Claims Tribunals Act 1976.

**4. Forms**—Where any form in the Schedule to these rules is prescribed or authorised to be used, such variations may be made in the form as the circumstances of any particular case require.

**5. Seals**—Every Tribunal shall have a seal, which shall be approved by the Minister and kept by the Registrar.

**6. Offices of Tribunals**—(1) For every Tribunal there shall be an office for the transaction of business relating to proceedings in the Tribunal.

(2) Every office shall be situated at such place as the Minister directs and shall be in the charge of the Registrar.

**7. Office hours**—(1) The office of every Tribunal shall be open at the same times and on the same days as the office of the Magistrate's Court of which the Tribunal is a division.

(2) A notice of the office hours shall be posted in a convenient place that is in the vicinity of the office and is accessible to the public.

**8. Holidays of Tribunals**—(1) The days for the time being appointed to be observed as holidays in the Public Service shall be holidays on which the office of every Tribunal shall be closed.

(2) The Minister may by general or special order direct that any office be closed on any day specified in the order.

**9. Opening or closing by special order**—Any office of a Tribunal may from time to time be opened or closed by special order of the Magistrate specified in section 6 of the Act in respect of that Tribunal.

**10. Records**—(1) The Registrar shall keep a record of all proceedings of the Tribunal.

(2) The record required by this rule shall be kept by entries in books belonging to the Tribunal, in accordance with directions given under the authority of the Minister of Justice.

**11. Accounts**—(1) The Registrar shall keep account of all money paid into or out of the Tribunal, in accordance with directions given under the authority of the Minister of Justice.

(2) All money paid into the Tribunal shall be held in the trust account, referred to in rule 23 of the Magistrates' Courts Rules 1948, of the Magistrate's Court of which the Tribunal is a division, and shall be kept in the same manner as the other money in that trust account.

**12. Searches**—(1) After an order has been made under section 16 of the Act in any proceedings, any person may search, inspect and take, without fee, a copy of the record relating to those proceedings.

(2) Subject to subclause (1) of this rule, no person shall search or copy any of the records of the Tribunal without the leave of the Registrar.

(3) Unless the Registrar is satisfied that a person seeking leave, under subclause (2) of this rule, has a genuine and proper interest in the records in respect of which leave is sought, he shall refuse leave.

(4) Any person aggrieved by such refusal may appeal to a Magistrate, who may confirm or reverse the decision of the Registrar.

(5) Nothing in this rule shall prevent a party to any proceedings from inspecting or taking a copy of any part of the record kept by the Tribunal in respect of those proceedings.

**13. Commencement of proceedings**—(1) Every claim shall be made in accordance with Form No. 1 of the Schedule to these rules.

(2) A fee of \$4 shall be payable to the Tribunal at the time of lodging of any claim.

**14. Service of documents**—(1) Subject to subclause (2) of this rule, and to rule 18 (1) of these rules, any document that is to be served on any person in any proceedings before a Tribunal shall be served by personal delivery to that person.

(2) The Tribunal may in any particular case order that a document be served on a person by any other means that the Tribunal considers proper.

**15. Notice of hearing**—(1) Where a claim is lodged in accordance with section 18 of the Act, the Registrar shall—

(a) Fix a time and place for the hearing of the claim; and

(b) Give notice in accordance with Form No. 2 of the Schedule to these rules of the time and place of hearing so fixed to the claimant, the respondent, and every person specified in section 19 (1) (b) (ii) of the Act.

(2) A copy of the claim shall be attached by the Registrar to every notice under subclause (1) of this rule that is given to any person other than the claimant.

(3) The Tribunal may from time to time adjourn the hearing on such conditions as it thinks just.

**16. Approval of representative**—(1) Any party to any proceedings who wishes to appear by a representative shall apply to the Tribunal for approval of his proposed representative before the hearing.

(2) Where the proposed representative is a person who is eligible for approval as such under section 24 of the Act, the Tribunal may approve the person at any time before the commencement of the hearing.

(3) Nothing in this rule shall limit the power of a Tribunal to approve a representative on the application of a party or otherwise at any time after a hearing has commenced.

**17. Summons to witness**—(1) A Tribunal may at any time during any proceedings, by a summons in accordance with Form No. 3 of the Schedule to these rules, under the hand of the Registrar and the seal of the Tribunal, summon any person—

(a) To attend before the Tribunal, or any Investigator appointed by the Tribunal in respect of the proceedings, at the time and place specified in the summons; and

(b) To give evidence in the proceedings; and

(c) To produce to the Tribunal or to the Investigator such documents in his possession or control as are specified in the summons.

(2) A summons shall not be issued under subclause (1) of this rule unless the Registrar believes on reasonable grounds that the attendance of the witness is necessary or expedient for the proper determination of the proceedings.

**18. Service of summons**—(1) Every summons issued under rule 17 of these rules shall be served on the person to whom it is directed, either by personally delivering it to him or, if he refuses to accept it, by bringing it to his attention, within a reasonable time before the time specified in the summons for his attendance.

(2) There shall be paid or tendered to the witness at the time of service of the summons, or at any other reasonable time before the time at which his attendance is required, the sum that the Registrar estimates to be payable to him under rule 19 of these rules for allowances and travelling expenses (but not for fees).

(3) No witness shall be obliged to comply with a summons issued under rule 17 of these rules unless the sum specified in subclause (2) of this rule is paid or tendered to him in accordance with that subclause.

(4) The obligation on a witness summoned under rule 17 of these rules to attend any proceedings shall extend to any time and place to which the proceedings may be adjourned, provided that subclause (2) of this rule has first been complied with in respect of each subsequent attendance, but the Tribunal or the Investigator (as the case may require) may excuse him from any such further attendance.

**19. Witnesses' expenses**—(1) Every person who attends before a Tribunal or an Investigator, for the purpose of giving evidence in any proceedings, shall be entitled to receive such fees, allowances, and travelling expenses as the Tribunal directs, in accordance with the scale set out in the Schedule to the Witnesses and Interpreters Fees Regulations 1974\*.

(2) The fees, allowances, and travelling expenses referred to in subclause (1) of this rule shall be payable—

- (a) In every case where the person attends in compliance with a summons issued under rule 17 of these rules, out of money appropriated by Parliament for such purposes; and
- (b) In every other case, by the party on whose behalf he attends, unless in any particular case the Tribunal orders them to be paid out of money appropriated by Parliament for such purposes.

**20. Failure to give evidence**—(1) Any person who—

- (a) Has been duly served in accordance with these rules with a summons issued under rule 17 of these rules;
- (b) Has been paid or tendered the sum specified in rule 18 (2) of these rules; and
- (c) Fails without sufficient cause to comply with the directions of the summons or with the requirements of rule 18 of these rules in respect of the summons—

commits an offence against these rules and is liable on summary conviction to a fine not exceeding \$100.

(2) Every person present at any proceedings before a Tribunal (whether or not as a result of the service of any summons on him) who is required to give evidence in the proceedings but refuses—

(a) To be sworn; or

(b) To give evidence in the proceedings—

commits an offence against these rules and is liable on summary conviction to a fine not exceeding \$100.

(3) The payment of a fine shall not release a person from any liability under any other action for failing to comply with the directions of a summons issued under rule 17 of these rules.

**21. Appeals**—Every notice of appeal shall be made to the Registrar of the Magistrate’s Court of which the Tribunal is a division, in accordance with Form 4 of the Schedule to these rules.

**22. Notice of objection to orders**—Where under section 31 (2) of the Act, any application is made to a Magistrate’s Court for the issue of any process to enforce an order referred to in that subsection, every person wishing to give notice of objection under that section shall, within 14 days after being given notice under subsection (2) of that section, file in the Court to which the application to enforce the order has been made a notice of objection in accordance with Form No. 5 of the Schedule to these rules.

**23. Requests for enforcement of work orders**—Every application under section 32 (1) of the Act for the enforcement of a work order shall be made to the Registrar in accordance with Form No. 6 of the Schedule to these rules.

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**SCHEDULE**

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Form 1

Rule 13

*Small Claims Tribunals Act 1976*

**CLAIM**

To—The Registrar,  
Small Claims Tribunal,  
Magistrate’s Court,  
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I, ..... [Name] of ..... [Address] hereby give notice that I wish to refer the following small claim against ..... [Name] of ..... [Address] to the Small Claims Tribunal.

*Particulars of Claim:*

Dated at ..... this ..... day of ..... 19.....

.....  
(Signature of Claimant)

Form 2

Rule 15

Small Claims Tribunals Act 1976

NOTICE OF HEARING

Claim No. ....

In the Small Claims Tribunal, Magistrate's Court, at ..... between
[Name] of [Address] Claimant and
[Name] [Address] Respondent.

TAKE NOTICE that the claim lodged by the above-named claimant, [a
copy of which is attached\*], has been set down for hearing on ..... day,
the ..... day of ..... 19..... at ..... am/pm before the Referee
of the Small Claims Tribunal located in the abovenamed Magistrate's
Court.

Dated at ..... this ..... day of ..... 19.....

Registrar
(Small Claims Tribunal).

\*Note: Delete if notice to be sent to claimant.

Form 3

Rule 17

Small Claims Tribunals Act 1976

SUMMONS TO WITNESS

[Same heading as in Form 2]

To [Name of Witness]
[Address]

You are hereby summoned to attend before the Small Claims Tribunal
located in the above-named Magistrate's Court on ..... day, the
..... day of ..... 19..... at ..... am/pm, and thereafter
(unless excused from attendance) at all subsequent times and places to
which the above-named proceedings may be adjourned, to give evidence
in the proceedings, and to bring with you and produce in the proceedings
the following documents:

.....
.....
.....

Dated at ..... this ..... day of ..... 19.....

Registrar
(Small Claims Tribunal).

Form 4

Rule 21

Small Claims Tribunals Act 1976

NOTICE OF APPEAL

THIS appeal MUST be filed in the Magistrate's Court where the Small Claims Tribunal is located within 14 days of the making of the order.

[Same heading as in Form 2]

TAKE NOTICE that I, ..... [Name] hereby appeal against the order/s made by the Small Claims Tribunal on the ..... day of ..... 19..... on the following grounds:

(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 and prejudicially affected the result of the proceedings.

Dated at ..... this ..... day of ..... 19.....

To—The Registrar,  
Magistrate's Court,  
.....

.....  
(Signature of Appellant).

Form 5

Rule 22

Small Claims Tribunals Act 1976

NOTICE OF OBJECTION TO ORDER

[Same heading as in Form 2]

TAKE NOTICE that I, ..... [Name], object to the enforcement of the order made by the Tribunal in this matter on the ..... day of ..... 19..... on the grounds that the order has been fully complied with and that I therefore dispute the entitlement of the claimant to enforce it.

Dated at ..... this ..... day of ..... 19.....

.....  
(Signature of Objector).

To—The Registrar,  
Magistrate's Court,  
.....

## Form 6

Rule 23

*Small Claims Tribunals Act 1976*NOTICE TO RESPONDENT OF APPLICATION FOR  
ENFORCEMENT[*Same heading as in Form 2*]

I REQUEST YOU to issue a process for the enforcement of the work order made by the Tribunal in this matter on the ..... day of ..... 19.....

Dated at ..... this ..... day of ..... 19.....

.....  
(Signature of Claimant)

To—The Registrar,  
Small Claims Tribunal,  
Magistrate's Court,  
.....

P. G. MILLEN,  
Clerk of the Executive Council.

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 EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules supplement the requirements of the Small Claims Tribunals Act 1976, and provide for procedural matters relating to claims before Small Claims Tribunals.

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Issued under the authority of the Regulations Act 1936.  
Date of notification in *Gazette*: 2 June 1977.  
These rules are administered in the Department of Justice.