

Queensland



ANNO VICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

No. 23 of 1973

**An Act to provide for the constitution of Small Claims Tribunals, to define the jurisdiction of those tribunals and the powers of the persons constituting the same, and to provide for matters related thereto.**

[ASSENTED TO 19TH APRIL, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Small Claims Tribunals Act 1973*.

**2. Commencement of Act.** This Act shall come into operation on a date to be appointed by Proclamation.

**3. Arrangement of Act.** This Act is arranged as follows:—

PART I—PRELIMINARY (SS. 1-4);

PART II—SMALL CLAIMS TRIBUNALS (SS. 5-35);

*Division I—Referees;*

*Division II—Constitution of Tribunals; Registry;*

*Division III—Jurisdiction and Powers of Tribunals;*

*Division IV—Practice on Claims;*

*Division V—Practice on Hearings;*

PART III—MISCELLANEOUS PROVISIONS (SS. 36-44).

4. Interpretation. In this Act save where a contrary intention appears—

“claimant” means a consumer who has duly referred a small claim to a Small Claims Tribunal;

“consumer” means a person, other than an incorporated person, who buys or hires goods otherwise than for re-sale or letting on hire or than in the course of or for the purposes of a trade or business carried on by him, or than as a member of a business partnership, or for whom services are supplied for fee or reward otherwise than in the course of or for the purposes of a trade or business carried on by him, or than as a member of a business partnership;

“contract” includes all agreements, whether written or oral;

“referee” means a person appointed under this Act as a referee of Small Claims Tribunals;

“registrar” means the person performing at the material time the duties of registrar of the Registry of Small Claims Tribunals;

“registry” means the Registry of Small Claims Tribunals established and maintained in Brisbane under this Act;

“respondent” means a trader against whom is made a small claim that is duly referred to a Small Claims Tribunal;

“small claim” means—

(a) a claim for payment of money in an amount not exceeding \$450, or

(b) a claim for performance of work of a value not exceeding \$450,

that in either case arises out of a contract for the supply of goods or the provision of services made between persons who, in relation to those goods or services, are a consumer on the one hand and a trader on the other;

“Small Claims Tribunal” means a tribunal constituted as prescribed for taking a proceeding in relation to a small claim;

“trader” means a person who in the field of trade or commerce carries on a business of supplying goods or providing services or who regularly holds himself out as ready to supply goods or to provide services of a similar nature.

## PART II—SMALL CLAIMS TRIBUNALS

### *Division I—Referees*

5. Appointment of referees. The Governor in Council may appoint such number of referees of Small Claims Tribunals as he considers necessary for the proper functioning of those tribunals throughout the State.

6. Term of referee's appointment. A referee shall be appointed for a term of seven years or for such less term as the Governor in Council approves in a particular case but, subject to section seven, shall be eligible for re-appointment from time to time at the discretion of the Governor in Council.

7. Eligibility to hold office as referee. (1) Any person who has not attained the age of seventy years may be appointed as a referee.

(2) A referee shall, upon his attaining the age of seventy years, cease to hold the office of referee.

**8. Remuneration of referees not members of Public Service.** The remuneration payable to a person who at the time of his appointment as referee is not a member of the Public Service of the State or who during his tenure of office as referee ceases to be such a member shall be such as the Governor in Council approves, either generally or in a particular case.

**9. Removal of referees.** The Governor in Council may, at any time during the term of appointment of any person as referee, remove that person from that office if in the opinion of the Governor in Council—

- (a) that person is incompetent in the performance of his functions under this Act; or
- (b) that person is unfit to hold the office of referee for any reason.

**10. Functions of referees.** (1) The primary function of a referee constituting a Small Claims Tribunal shall be to attempt to bring the parties to a dispute that involves a small claim to a settlement acceptable to all the parties.

(2) Should it appear to the referee to be impossible in a particular case to attain to a settlement acceptable to all parties to a dispute, then the function of a referee constituting a Small Claims Tribunal shall be to make such an order with respect to the issue in dispute as is fair and equitable to all the parties to the proceeding concerning the dispute or, where he thinks the case requires it, an order dismissing the claim.

(3) It is a function of a referee to report directly and confidentially to the Minister charged with the administration of this Act—

- (a) upon all matters arising out of references to Small Claims Tribunals that are significant to the relationship of consumer and trader;
- (b) upon all matters relevant to the administration of this Act or to the practices and procedures of Small Claims Tribunals that in the referee's opinion should be brought to the notice of the Minister.

*Division II—Constitution of Tribunals; Registry*

**11. Constitution of tribunal.** A Small Claims Tribunal shall be constituted by a referee sitting alone.

**12. Venue of sittings.** A Small Claims Tribunal may be constituted at any place in the State.

**13. Registry.** There shall be established and maintained in Brisbane a Registry of Small Claims Tribunals wherein shall be kept all records of Small Claims Tribunals.

**14. Records of tribunals.** (1) An official record of evidence given before a Small Claims Tribunal shall not be made in any case but the referee who constitutes the tribunal is entitled to make such notes of evidence as he requires.

Notes so made shall not form part of the record of the reference to the tribunal.

- (2) The record of a Small Claims Tribunal shall consist of—
  - (a) the claim referred to it, as completed by the claimant;

- (b) the notation of the nature of the issue in dispute as determined and recorded by the tribunal during the hearing of the claim; and
- (c) the order made by the tribunal.

(3) The record of a Small Claims Tribunal kept in the registry shall be open for inspection free of charge by—

- (a) the parties to the proceeding to which the record relates;
- (b) the Commissioner for Consumer Affairs,

and shall be available for production before a judge of any court for the purposes of any proceeding before him or the court.

**15. Registrar and staff.** There shall be appointed to the Registry of Small Claims Tribunals a registrar and such staff as is required for the proper functioning of the registry.

Every such appointment shall be made under and the appointee shall hold his appointment in accordance with the *Public Service Act 1922-1968*.

A person may hold an appointment in the registry in conjunction with any other position he holds for the time being in the Public Service of the State.

#### *Division III—Jurisdiction and Powers of Tribunals*

**16. Extent of jurisdiction.** Subject to this Act, a Small Claims Tribunal has jurisdiction with respect to any claim referred to it that is a small claim.

**17. Exclusion of other jurisdictions.** (1) Where a claim, being a small claim, is duly referred to a Small Claims Tribunal the issue in dispute in that claim (whether as shown in the initial claim or as emerging in the course of the hearing of the claim by the tribunal) shall not be justiciable at any time by a court or by a tribunal of any other kind save—

- (a) where the proceeding before that court or tribunal of any other kind was commenced before the claim was duly referred to a Small Claims Tribunal; or
- (b) where the claim before a Small Claims Tribunal has been withdrawn.

(2) For the purposes of this Act a small claim shall be taken to have been duly referred to a Small Claims Tribunal when subsection (1) of section 24 has been complied with.

**18. Proceedings of tribunals final.** A settlement or an order made by a Small Claims Tribunal shall be final and binding on all parties to the proceeding in which the settlement or order is made and on all persons who under this Act could have become entitled to be joined as a party to the proceeding in which the settlement or order is made, and no appeal shall lie in respect thereof.

**19. Immunity from judicial supervision.** No writ of certiorari, or prohibition, or other prerogative writ shall issue, and no declaratory judgment shall be given in respect of a proceeding taken or to be taken by or before a Small Claims Tribunal or in respect of any order made

therein save where the court before which such writ or judgment is sought is satisfied that the tribunal had or has no jurisdiction conferred by this Act to take the proceeding or that there has occurred therein a denial of natural justice to any party to the proceeding.

**20. Orders of tribunals.** (1) Where a settlement is made by a claimant and a respondent in respect of a claim referred to a Small Claims Tribunal, the tribunal shall, on the request of the claimant, make an order that gives effect to the terms of the settlement.

(2) Subject to sections 21 and 22, a Small Claims Tribunal is empowered to make—

- (a) an order that requires a party to the proceeding before it (other than the claimant) to pay money to a person specified in the order;
- (b) an order that requires a party to the proceeding before it (other than the claimant) to perform work to rectify a defect in goods or services to which the claim in the proceeding relates; or
- (c) an order that dismisses the claim to which the proceeding relates,

and no other order.

(3) An order made by a Small Claims Tribunal may direct that what is, by that order, required to be done shall be done within a time limited in the order.

**21. Restricted effect of tribunal's orders.** An order made by a Small Claims Tribunal that requires the payment of money in an amount exceeding \$450 or that requires the performance of work of a value exceeding \$450 shall be of no effect.

**22. Provisions affecting the making and enforcement of orders to pay money.** (1) An order made by a Small Claims Tribunal that requires the payment of money may be made to take effect instanter or so as to take effect upon default made in complying with some other order made by the tribunal.

(2) The registrar shall cause a copy of an order that requires the payment of money to be given to the person against whom the order is made as soon as is practicable after its making if that person is not present or represented at its making.

(3) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by his filing, free of charge, in the office of the registrar of the Magistrates Court at a place appointed for holding Magistrates Courts in the Magistrates Courts District wherein the person required by the order to make payment resides or has a place of business or wherein the person to whom payment is to be made resides—

- (a) a copy of the order certified by the registrar of the Registry of Small Claims Tribunals to be a true copy;
- (b) his affidavit, taken by a justice, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default,

whereupon the order shall be deemed to be a judgment that requires payment of money duly made by a Magistrates Court pursuant to *The Magistrates Courts Acts 1921 to 1964* and may be enforced accordingly.

(4) It shall be competent to a person to file a copy order pursuant to subsection (3) once only, and a second or subsequent filing purportedly pursuant to that subsection shall be ineffectual.

(5) *The Limitation Act of 1960* applies in respect of a decision of a Small Claims Tribunal and in respect of the enforcement of any order made by the tribunal as it applies in respect of any judgment.

**23. Renewal of proceeding when order not complied with.** Upon making any order a Small Claims Tribunal may adjourn the proceeding to a fixed date or without fixing a date and in either case may give leave to the person in whose favour the order operates to renew the reference of the claim in the proceeding if the order is not complied with.

A reference shall be renewed by the person who seeks it notifying the registrar in the prescribed form that the order in question has not been complied with whereupon the registrar shall take such steps in respect thereof as he is required by this Act to take in respect of a claim referred to a Small Claims Tribunal.

Upon renewal of a reference the tribunal may make any other order it is empowered by this Act to make.

#### *Division IV—Practice on Claims*

**24. Reference of claims to tribunal.** (1) A consumer who wishes to refer his claim, being a small claim, to a Small Claims Tribunal shall complete the prescribed form and file the same—

- (a) within the Area of the City of Brisbane, in the registry; or
- (b) outside the Area of the City of Brisbane, in the office of any clerk of the Magistrates Court,

and shall pay the prescribed fee to the registrar or to the clerk of the court at the time of filing.

(2) It is the duty of the registrar and of every clerk of the court to give his assistance to a claimant who seeks it in completing the prescribed claim form.

(3) A clerk of the court in whose office a completed claim form is filed and who has been paid the prescribed fee shall, as soon as is practicable, send the form or, if so permitted by the regulations, a copy thereof to the registrar by prepaid certified mail.

**25. Notice of claim and proceeding.** The registrar—

- (a) shall cause notice of the claim and its particulars to be given, as soon as is practicable, to the respondent and to every person who appears from the claim form to have a sufficient interest in a resolution of the dispute to which the claim relates;
- (b) shall arrange a time and place for the initial proceeding of a Small Claims Tribunal in relation to the claim, having regard therein to the convenience of the claimant, and shall cause notice of that time and place to be given to the claimant and the respondent and to every other person to whom notice of the claim is given.

**26. Parties to proceeding.** Every person to whom notice is given under section 25 shall be taken to be a party to the proceeding that relates to the claim of which notice is so given, and every person who satisfies a Small Claims Tribunal that he has a sufficient interest in a resolution of the dispute to which the claim in question relates shall be entitled to be joined as a party to the proceeding and shall be joined as a party thereto.

**27. Withdrawal of claim.** A claimant may withdraw at any time a claim referred by him to a Small Claims Tribunal, whether before or after the tribunal has entered upon a hearing of the claim.

*Division V—Practice on Hearings.*

**28. Definition.** In this division the term “tribunal” means a Small Claims Tribunal duly constituted to take a proceeding in relation to a small claim.

**29. Continuity of tribunal.** A tribunal shall, at all times throughout the taking of a proceeding, be constituted by the same referee.

If in any case the taking of a proceeding is interrupted before a settlement or order is made therein by the death, incapacity or removal of the referee who constitutes the tribunal and the claimant desires to proceed with his claim the proceeding in relation to the claim shall be recommenced before a tribunal constituted by another referee.

**30. Amendment of claim.** A tribunal may, at any stage of a proceeding, make such amendment to the claim to which the proceeding relates as it thinks fit, either at the request of the claimant or of its own motion with the approval of the claimant.

**31. Adjournment of proceeding.** (1) A tribunal may from time to time adjourn a proceeding to such times and places and for such purposes as it considers necessary.

(2) The registrar shall cause to be given to any party to a proceeding that is adjourned who is not present or represented at the time when the proceeding is adjourned a notice of the time and place to which the proceeding is adjourned.

**32. Presentation of cases.** (1) Each party to a proceeding before a tribunal shall have the carriage of his own case.

(2) A party to a proceeding before a tribunal shall not be entitled to be represented by an agent unless it appears to the tribunal that an agent should be permitted to that party as a matter of necessity and approves accordingly.

(3) In no case shall a tribunal approve of the appearance in a proceeding of an agent who has a legal qualification under the laws of this State or of any other place, or who is of the nature of a professional advocate, unless—

(a) all parties to the proceeding agree; and

(b) the tribunal is satisfied that the parties, other than the party who applies for approval of an agent, or any of them shall not be thereby unfairly disadvantaged.

(4) Where it appears to a tribunal that it should approve that an agent may present to it the case of any party to a proceeding—

(a) it shall, where a particular agent is proposed for its approval, satisfy itself that the proposed agent has sufficient knowledge of the issue in dispute and is vested with sufficient authority to bind the party;

- (b) it may subject its approval to such conditions as to the type of agent as it considers reasonable to ensure that any other party to the proceeding is not thereby unfairly disadvantaged and, in such case, the entitlement of an agent to present that case shall be subject to compliance with those conditions.

(5) Contravention of any provision of this section shall not invalidate the taking of the proceeding in which the contravention occurs or of any order made therein.

**33. Taking of evidence before tribunal.** (1) Every proceeding before a tribunal shall be taken in private.

(2) Evidence material to a proceeding before a tribunal—

(a) may be given orally or in writing;

(b) shall be given upon oath, or upon affirmation or declaration instead of an oath where the same is permitted by law, the referee who constitutes the tribunal being hereby empowered to administer an oath or, as the case may be, to take and receive an affirmation or declaration for the purpose.

(3) A tribunal shall not be bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit.

**34. Tribunal to act on evidence available.** (1) Subject to the provisions of this section, where the case of any party to a proceeding before a tribunal is not presented to the tribunal the issue in dispute in the proceeding shall be resolved by the tribunal on such evidence as has been otherwise adduced before it and an order made by the tribunal therein shall be lawful and as effectual as if the party whose case was not presented had been fully heard.

(2) Where an issue in dispute has been resolved in the absence of any party to the proceeding a referee, on application made to the registrar within seven days after the resolution, may, if it appears to him that there was sufficient reason for the party's absence, order that the claim be re-heard.

(3) When it is ordered that a claim be re-heard—

(a) the registrar shall notify all parties to the proceeding that related to the claim of the making of the order and, where practicable, of the time and place appointed for the re-hearing;

(b) the order of the tribunal made upon the first hearing shall thereupon cease to have effect unless it is restored pursuant to subsection (4).

(4) If the party on whose application a re-hearing is ordered does not appear at the time and place appointed for the re-hearing or upon any adjournment of the proceeding therein the tribunal, if it thinks fit and without re-hearing or further re-hearing the claim, may direct that the order made upon the first hearing of the claim be restored, and that order shall be thereby restored to full force and effect and shall be deemed to have been of effect at all times since the time of its making.

**35. No costs allowable.** Costs shall not be allowed to or against any party to a proceeding before a tribunal.

PART III—MISCELLANEOUS PROVISIONS

**36. Tribunals in the charge of Minister.** Small Claims Tribunals shall be in the charge of the Minister for Justice and Attorney-General for Queensland or other Minister of the Crown for the time being charged with the administration of this Act.

**37. Control of tribunal's procedures.** Save to the extent that the procedure of Small Claims Tribunals is prescribed, every tribunal shall have control of its own procedures and in the exercise thereof shall have regard to natural justice.

**38. Contempt in face of tribunal.** (1) A person who—

- (a) wilfully insults a referee, during his sitting as a Small Claims Tribunal or while he is on his way to or from such a sitting, or any person, during his attendance at a Small Claims Tribunal or while he is on his way to or from such attendance; or
- (b) wilfully misbehaves in a Small Claims Tribunal; or
- (c) wilfully, and without lawful excuse, interrupts the proceedings of a Small Claims Tribunal; or
- (d) unlawfully assaults or wilfully obstructs a person in attendance at a Small Claims Tribunal; or
- (e) without lawful excuse, disobeys a lawful direction of a Small Claims Tribunal given to him during the sitting of the tribunal,

may, by oral order of the tribunal, be excluded from the tribunal and whether he is so excluded or not, may be summarily convicted by the tribunal of contempt.

(2) A person convicted of contempt under subsection (1) shall be liable to be imprisoned for a period not exceeding 14 days, or to a fine not exceeding \$100 and, in default of immediate payment of the fine, to be imprisoned for a period not exceeding 14 days.

(3) A person referred to in subsection (1)—

- (a) may be dealt with under that subsection without complaint being made or summons issued in respect of him;
- (b) may be taken into custody by any person assisting the Small Claims Tribunal concerned or by any member of the Police Force of the State on order of the referee who constitutes the tribunal and without further warrant;
- (c) may be received by the person in charge of any prison or police gaol to which he is committed by order of the referee concerned and, without further warrant than that order or until he is further dealt with under subsection (4);
- (d) may be called on by the Small Claims Tribunal concerned to show cause why he should not be convicted of contempt under subsection (1);
- (e) may be dealt with by the Small Claims Tribunal concerned on the tribunal's own view or on the evidence of a credible witness.

(4) A Small Claims Tribunal may, if it thinks fit, accept from any person convicted by it of contempt under subsection (1) an apology for such contempt and may thereupon recommend that the Governor in Council remit or respite any fine or punishment imposed on that person in respect thereof.

**39. Law of perjury to apply.** It is declared that the law with respect to perjury or fabrication of evidence applies to a proceeding before a Small Claims Tribunal and that a proceeding before a Small Claims Tribunal is a judicial proceeding.

**40. Contracting out prohibited.** It is not competent to a consumer to contract out of the right conferred on him by this Act to refer a small claim to a Small Claims Tribunal.

**41. Mode of giving notices, etc.** Where by this Act the registrar is required to cause any notice or copy order to be given to any person it shall be taken—

- (a) that the notice or order has been duly given to that person upon evidence that the same has been sent by pre-paid certified mail to the address last known to the registrar as the place of residence or place of business of that person or, where that person is a body corporate, as the registered office within the State of that body corporate; and
- (b) that the notice or order was received by the addressee at the time when the certified mail would have been delivered at the address to which it was sent in the ordinary course of post.

**42. Publication of particulars of reference.** (1) The registrar shall cause to be published in such manner as the Minister charged with the administration of this Act nominates generally from time to time the particulars specified in subsection (2) concerning every reference to a Small Claims Tribunal.

- (2) The particulars to be published pursuant to subsection (1) are—
- (a) the name of the claimant;
  - (b) the name of the respondent;
  - (c) the nature of the issue in dispute; and
  - (d) the order made by the tribunal.

**43. Protection for things done under Act.** No action shall lie against the registrar, any referee, any claimant or any other person on account of any proceeding taken, any publication made, or anything done under the authority of this Act or taken, made or done bona fide purportedly under the authority of this Act, or on account of any omission made bona fide in the administration of this Act.

**44. Regulations.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) forms to be used for the purposes of this Act and the purposes for which they shall be used;
- (b) fees to be paid under this Act;
- (c) the practice and procedure of Small Claims Tribunals; the enforcement of orders thereof;

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- (d) the practice and procedure of the registry; the powers, functions and duties of the registrar and other persons employed therein;
  - (e) all matters required or permitted by this Act to be prescribed;
  - (f) all matters that in his opinion are necessary or desirable for the proper administration of this Act or to achieve the objects and purposes of this Act.