



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997

No. 94 of 1997

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AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997

No. 94 of 1997

An Act to amend the *Magistrates Court (Civil Jurisdiction) Act 1982* and for related purposes

[Notified in ACT Gazette S380: 1 December 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Magistrates Court (Civil Jurisdiction) Act 1982*.¹

Repeal

4. The following Acts are repealed:

Small Claims Act 1974

Small Claims Act (No. 2) 1974

Small Claims (Amendment) Act 1982

Small Claims (Amendment) Act 1985

Small Claims (Amendment) Act 1987

Small Claims (Amendment) Act 1989

Small Claims (Amendment) Act 1991

Small Claims (Amendment) Act (No. 2) 1991

Small Claims (Amendment) Act 1994.

Application

5. This Act does not apply in relation to proceedings commenced in the Small Claims Court before the date of commencement of section 4 of this Act.

Insertion

6. After Part XIXA of the Principal Act the following Part is inserted:

“PART XXII—SMALL CLAIMS COURT

“Division 1—Preliminary

Interpretation

“394. (1) In this Part, unless the contrary intention appears—

‘applicant’ means a person making an application;

‘application’ means an application to the Small Claims Court, whether made under this Act or any other law of the Territory;

- ‘common boundaries determination’ means a determination under the *Common Boundaries Act 1981*, and includes a variation of such a determination;
- ‘conference’ means a conference under Division 6;
- ‘Consent Judgment’ means a judgment entered by the Registrar under subsection 415 (2), 425 (3) or 451 (3) in proceedings;
- ‘damages application’ means an application for damages for negligence or for any other tort except nuisance or trespass;
- ‘debt application’ means an application for the recovery of a debt, and includes an application for the purposes of section 62AS of the *Landlord and Tenant Act 1949* in relation to an amount of bond money;
- ‘debt declaration’, in relation to proceedings, means an order declaring that—
- (a) the applicant is not indebted to the respondent;
 - (b) the applicant is not indebted to the respondent in an amount specified in the order; or
 - (c) the applicant is not indebted to the respondent in an amount exceeding an amount specified in the order;
- and includes an order in relation to an amount of bond money in the exercise in the Small Claims Court’s jurisdiction for the purposes of section 62AS of the *Landlord and Tenant Act 1949*;
- ‘Default Judgment’ means a judgment entered by the Registrar under paragraph 417 (2) (a) or 428 (3) (a) in proceedings;
- ‘functions’ includes powers and duties;
- ‘goods application’ means an application in relation to the provision of goods or services, and includes an application for damages for the detention of goods;
- ‘inquiry’ means an inquiry under Division 7;
- ‘Interim Order’ means an order of the Registrar under subparagraph 417 (2) (b) (i) or 428 (3) (b) (i) in proceedings;
- ‘investigator’ means an investigator appointed under subsection 432 (1);
- ‘judgment’, in relation to proceedings, includes an order made in association with those proceedings;

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- ‘legal practitioner’ means a barrister and solicitor within the meaning of the *Legal Practitioners Act 1970*;
- ‘nuisance application’ means an application for relief for nuisance;
- ‘order’ includes a declaration, determination and any other form of judgment of the Small Claims Court;
- ‘Originating Application’ means an Originating Application (Form 1) filed in proceedings;
- ‘proceedings’ means proceedings on an application;
- ‘referee’ means a referee appointed under section 397;
- ‘respondent’ means the respondent to an application;
- ‘Response’ means a Response (Form 2) filed in proceedings;
- ‘Restoration Order’ means an order made under section 443;
- ‘specified’, in relation to an amount of money or damages sought to be recovered in the Small Claims Court, means a liquidated amount;
- ‘summons’ means a summons issued under subsection 444 (1);
- ‘trespass application’ means an application for relief for trespass to land;
- ‘unspecified’, in relation to an amount of money or damages sought to be recovered in the Small Claims Court, means an unliquidated amount.

“(2) A reference in this Part to a document described in parentheses as a numbered form (for example, ‘Originating Application (Form 1)’) is to be taken to be a reference to a document completed, or to be completed, in accordance with—

- (a) the form so numbered in Schedule 2; or
- (b) the corresponding approved form so numbered;

as the case may be.

“(3) Explanatory material in any of the forms in Schedule 2, or in any notice otherwise required in proceedings, is not to be taken to affect the interpretation of this Act or Schedule 2, of any other law applicable to proceedings or of any approved form.

Application of the Act to small claims proceedings

“395. (1) Unless the contrary intention appears, subject to subsection (2) this Act applies with necessary changes to proceedings in the Small Claims Court in the same way as it applies to other proceedings in the Magistrates Court.

“(2) Unless the contrary intention appears, sections 5 and 9 and Parts III to X (inclusive), XII to XVI (inclusive) and XVIII do not apply to proceedings in the Small Claims Court.

“Division 2—Establishment and jurisdiction

Small Claims Court

“396. (1) The Magistrates Court has jurisdiction to inquire into and determine applications for the purposes of this Part.

“(2) The Magistrates Court shall be known as the Small Claims Court when exercising jurisdiction under this Part.

Referees—appointment

“397. (1) The Executive may, by instrument, appoint persons as referees for the purposes of this Part.

“(2) A person is eligible for appointment as a referee if—

- (a) he or she is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory; and
- (b) he or she is a member of the staff of the Magistrates Court or any other body exercising judicial powers under a law of the Territory.

“(3) A referee ceases to hold office if he or she ceases to be eligible under subsection (2).

Referees—functions

“398. (1) A referee may exercise the jurisdiction of the Small Claims Court in an inquiry in proceedings by way of a debt application, goods application or damages application, or for a debt declaration or common boundaries determination, subject to subsection (2).

“(2) A referee only has jurisdiction in proceedings in respect of an amount of \$1,000 or less, or the equivalent value of goods or services (including any associated damages), excluding any claim for interest, or for an amount in lieu of interest, determined by the Small Claims Court under section 454.

“(3) In exercising the jurisdiction of the Small Claims Court under this section, a referee—

- (a) has all the functions of a Magistrate; and
- (b) is otherwise to be taken to be a Magistrate for all purposes.

Referees—oath or affirmation of office

“399. (1) Before proceeding to perform the functions of office, a referee shall take an oath, or make an affirmation, before the Chief Justice of the Supreme Court.

“(2) An oath or affirmation under subsection (1) shall be in accordance with the form in Schedule 3.

Referees—resignation

“400. A referee may resign office by writing signed by the referee and delivered to the Minister.

Jurisdiction

“401. The Small Claims Court has jurisdiction to inquire into the following applications:

- (a) debt applications;
- (b) goods applications;
- (c) damages applications;
- (d) nuisance applications;
- (e) trespass applications;
- (f) applications for debt declarations;
- (g) applications for common boundaries determinations.

\$10,000 limit

“402. (1) The Small Claims Court’s jurisdiction is limited to applications claiming amounts of no more than \$10,000.

“(2) In relation to debt declarations, the Small Claims Court’s jurisdiction is limited to applications for declarations in respect of debts not exceeding \$10,000.

“(3) The monetary limit on the Small Claims Court’s jurisdiction does not include any claim for interest, or for an amount in lieu of interest, determined by the Small Claims Court as provided for by section 454.

“(4) In a goods application, the applicable amount for the purposes of subsection (1) is an amount equal to the sum of the value of the relevant goods or services and any amount claimed for damages for the detention of goods.

“(5) A person who, if it were not for this section, would be entitled to make an application claiming an amount exceeding \$10,000 may, by the application, abandon the excess by limiting the claim to \$10,000.

“(6) This section does not apply in relation to—

- (a) a debt application, or a debt declaration, for the purposes of section 62AS of the *Landlord and Tenant Act 1949* in relation to an amount of bond money; or
- (b) an application for a common boundaries determination.

“Division 3—Commencement of proceedings

Assistance to members of the public

“403. At the request of any person, the Registrar or a member of staff of the Magistrates Court shall explain the procedures of the Small Claims Court to the person for the purpose of assisting him or her to participate in those procedures.

Originating Applications

“404. (1) Proceedings shall be instituted by filing an Originating Application (Form 1) together with the relevant attachment set out in Form 1, except in the case of proceedings for a common boundaries determination.

“(2) Proceedings for a common boundaries determination shall be instituted as provided for by the *Common Boundaries Act 1981*.

“(3) Proceedings are to be taken to have commenced on the date the application instituting the proceedings was first filed.

Single application for each matter

“405. A person shall file no more than 1 Originating Application on the basis of an assertion of a particular right entitling him or her to relief under this Part.

Debt declarations

“406. A person shall file an application for a debt declaration only if the person named as the respondent has made a written demand on the person for payment of the debt.

Interest claims

“407. (1) Where interest is applied for pursuant to a contractual agreement between the parties to proceedings, the applicant shall specify particulars of the interest in the Originating Application.

“(2) If interest to be determined by the Small Claims Court as provided for by section 454 is claimed, the Originating Application shall include—

- (a) in the case of a debt application or any other application for specified damages—
 - (i) a statement that interest to be determined by the Small Claims Court is applied for;
 - (ii) particulars of the interest; and
 - (iii) the amount of interest calculated to have accrued to the date of lodgment of the Originating Application; or
- (b) in any other case—a statement that interest to be determined by the Small Claims Court is claimed.

“(3) In this section—

‘particulars of the interest’, in relation to an application claiming interest, means particulars of—

- (a) the period or periods in relation to which the interest is claimed;
- (b) the rate or rates of interest; and
- (c) the amount or amounts in relation to which the interest is claimed.

Service of Originating Applications

“408. (1) After an Originating Application is filed, the Registrar shall—

- (a) give the applicant a written notice summarising the possible future courses of action open to the applicant in the proceedings (depending on the respondent’s actions) and the circumstances in which a conference or inquiry may be directed; and
- (b) cause to be served on the respondent—
 - (i) a copy of the Originating Application; and

- (ii) a written notice summarising the possible courses of action open to the respondent in the proceedings and the circumstances in which a conference or inquiry may be directed.

“(2) In proceedings in relation to which 2 or more persons are alleged to be jointly liable, it is sufficient if any 1 of those persons is served with a copy of the Originating Application.

“(3) A person undertaking personal service of an Originating Application on the Registrar’s behalf under paragraph (1) (b) shall—

- (a) if service has been effected—file an affidavit of service within 14 days after service; or
- (b) if service has been attempted but not effected—endorse on the copy of the Originating Application the reason for non-service, sign the endorsement and return the copy and the notice to the respondent under subparagraph (1) (b) (ii) to the Registrar within 14 days after the attempted service.

Amendments

“409. The Small Claims Court or the Registrar may, at any stage of proceedings, on application by a party or of the Court’s or the Registrar’s own motion, make any amendment to a document filed by either party (including the addition or dismissal of a party) that appears to the Court or the Registrar (as the case may be) to be necessary or conducive to the proper determination of the proceedings.

“Division 4—Pre-conference procedures

Application—common boundaries applications

“410. This Division does not apply to applications for common boundaries determinations.

Response

“411. (1) The respondent to an Originating Application may file a Response (Form 2) within 21 days after service of the Originating Application under paragraph 408 (1) (b), or within such shorter period as is directed by the Registrar under subsection (2).

“(2) Upon written application by a person making a nuisance application or a trespass application, the Registrar may give a written direction that any Response under subsection (1) is to be filed within a period shorter than 21 days after service of the Originating Application, if the Registrar considers such a direction to be necessary or desirable to avoid undue hardship to the applicant.

“(3) The Registrar shall cause a direction under subsection (2) to be served on the respondent as soon as practicable after it is made.

“(4) Where a Response is filed under subsection (1), the Registrar shall cause a copy of the Response to be served on the applicant.

Admission of liability

“412. A respondent may, by a Response—

- (a) admit liability in respect of the application in whole or in part; and
- (b) state the terms under which liability is admitted (for example, terms as to time for payment, or payment by instalments, of an amount of money).

Admission of liability—payment of money

“413. (1) If a respondent admits liability for the payment of an amount of money, the respondent may pay the amount into the Small Claims Court.

“(2) If an amount paid by the respondent into the Small Claims Court is equal to the whole of the amount sought by the applicant, and no other order is sought by the applicant, the Registrar shall—

- (a) enter judgment in the proceedings for the amount so paid; and
- (b) deliver the amount to the applicant.

“(3) If an amount of money paid into the Small Claims Court by the respondent is not delivered to the applicant under subsection (2), the money shall remain in the Small Claims Court pending the order of the Small Claims Court or the Registrar.

Admission of liability—bonds

“414. (1) If a respondent admits liability for the payment of an amount of money, the respondent may lodge with the Registrar a bond for the payment of that amount.

“(2) Section 85 applies with all necessary changes in relation to the lodgment of a bond in proceedings under this Part.

Admission of liability—acceptance by applicant

“415. (1) If a respondent admits liability (in whole or in part) in respect of an application, the applicant may file an Admission of Liability Acceptance (Form 3) not later than 21 days after being served with the Response.

“(2) If an applicant files an Admission of Liability Acceptance under subsection (1), the Registrar shall enter a Consent Judgment (Form 11) in the proceedings in accordance with the terms of the respondent’s admission of liability, subject to any terms stated by the respondent in the Response.

“(3) A party to proceedings in which a Consent Judgment has been entered may apply to the Small Claims Court for the setting aside of the Consent Judgment and the restoration of proceedings under section 443 by filing an Interlocutory Application (Form 9).

Contested applications—conferences and inquiries

“416. (1) This section applies where a respondent—

- (a) files a Response in accordance with subsection 411 (1) indicating that the proceedings are to be contested; or
- (b) files a Response in accordance with subsection 411 (1) admitting liability in respect of the application, but—
 - (i) any amount paid into the Small Claims Court is less than the whole amount sought by the applicant; and
 - (ii) the applicant does not file an Admission of Liability Acceptance (Form 3) within 21 days after being served with the Response.

“(2) Where this section applies, the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if he or she is satisfied that in the circumstances the objectives referred to in section 420 would not be significantly advanced by holding a conference—direct the holding of an inquiry.

“(3) Where the Registrar directs a conference to be held under paragraph (2) (a), he or she shall cause a Conference Notice (Form 4) to be served on the parties not later than 10 days before the day fixed for the conference.

“(4) Where the Registrar directs an inquiry to be held under paragraph (2) (b), he or she shall cause an Inquiry Notice (Form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry.

Failure to respond

“417. (1) This section applies—

- (a) where the respondent—
 - (i) fails to file a Response in accordance with subsection 411 (1); or
 - (ii) after filing a Response in accordance with subsection 411 (1) indicating that the proceedings are to be contested, gives the Registrar written notice that this is no longer the case; and
- (b) where the applicant files a Default Judgment Application (Form 6) within 12 months and 21 days after the Originating Application was served.

“(2) Where this section applies, the Registrar shall—

- (a) if specified damages are claimed, or if the application is for a debt declaration—enter a Default Judgment (Form 7) in favour of the applicant; or
- (b) if unspecified damages are claimed, or any other order is sought by the applicant—
 - (i) make an Interim Order (Form 8) in favour of the applicant; and
 - (ii) direct an inquiry to be held for the purpose only of the assessment of any unspecified amount of damages, and a determination in respect of any other order sought by the applicant.

“(3) Where the Registrar directs an inquiry to be held under subparagraph (2) (b) (ii), he or she shall cause an Inquiry Notice (Form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry, together with a copy of the Interim Order made under that paragraph.

“(4) In an inquiry directed under subparagraph (2) (b) (ii), the Small Claims Court shall give judgment for the applicant in relation to any unspecified amount assessed in the inquiry, and may make any other order sought by the applicant or otherwise considered by the Small Claims Court to be appropriate.

“(5) The Registrar shall cause the respondent to be served with notice of—

- (a) the action taken by the Registrar under this section; and

- (b) the respondent's right to apply under subsection (6) for the restoration of proceedings.

“(6) The respondent may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an Interlocutory Application (Form 9).

“Division 5—Lapse of applications

Lapse of applications after 18 months' inactivity

“418. The Registrar may strike out an application if no action is taken by either party in the proceedings during a period of 18 months.

“Division 6—Conferences

Directions for conferences

“419. (1) A conference shall be held in the following circumstances:

- (a) in accordance with a direction by the Registrar under subsection 416 (2);
- (b) in the case of an application for a common boundaries determination—in accordance with a direction of the Registrar under the *Common Boundaries Act 1981*;
- (c) in accordance with a Restoration Order;
- (d) in accordance with an order of the Small Claims Court at any stage during proceedings;
- (e) in any other circumstances provided for by a law of the Territory.

“(2) Where a conference is ordered under paragraph (1) (c) or (d), the Registrar shall cause a Conference Notice (Form 4) to be served on the parties not later than 10 days before the day fixed for the conference, or as soon as is otherwise practicable.

Conference objectives

“420. (1) The Registrar's objectives at a conference are as follows:

- (a) to determine what are the real matters in dispute between the parties;
- (b) by conciliation between the parties, to assist the parties to reach an agreement on terms that the Registrar considers just, subject to subsection (2);

- (c) to streamline any later inquiry by—
- (i) ensuring that the parties do everything reasonably within their powers to enable any inquiry in the proceedings to take place expeditiously; and
 - (ii) assessing the time that is likely to be required for any inquiry.

“(2) The Registrar shall undertake conciliation between the parties only if satisfied that there is a reasonable possibility of the parties’ settling the matters in dispute by this means.

“(3) The Registrar may adjourn a conference in such a manner and on such terms as he or she thinks fit in the pursuance of the objectives referred to in subsection (1).

Variation of conference fixtures

“421. (1) The Registrar may vary the day, time or place fixed for a conference, if the Registrar considers there are reasonable grounds for such variation.

“(2) The Registrar shall, if practicable, give each party to proceedings 10 days’ notice in writing of a variation of the day, time or place of a conference under subsection (1), unless each party agrees to waive entitlement to such notice.

Representation at conferences

“422. A party to proceedings may be represented at a conference by any other person.

Persons entitled to be present

“423. Only the following persons are entitled to be present at a conference:

- (a) a party to the proceedings;
- (b) a representative of a party referred to in section 422;
- (c) the Registrar and any other officer or member of staff of the Magistrates Court;
- (d) a person authorised in writing by the Chief Magistrate to attend that conference or to attend conferences generally;
- (e) a person authorised in writing by the Attorney-General to attend that conference or to attend conferences generally.

Adjournment

“424. (1) The Registrar may adjourn a conference where he or she is satisfied that a party to the proceedings or his or her representative is, for good reason, unable to attend the conference.

“(2) Where the Registrar adjourns a conference under subsection (1), the Registrar shall notify the parties of the day, time and place fixed for the resumption of the conference.

Consent Judgments

“425. (1) Where the parties to proceedings reach agreement at a conference as to the judgment to be entered, they may file a Consent Judgment Application (Form 10).

“(2) A Consent Judgment Application shall be—

- (a) signed by or on behalf of each party to the agreement; and
- (b) witnessed by the Registrar, a legal practitioner or a justice of the peace.

“(3) Where a Consent Judgment Application is filed under this section, the Registrar shall enter a Consent Judgment (Form 11) in the proceedings in accordance with the Application.

“(4) A party to proceedings in which a Consent Judgment has been entered may apply to the Small Claims Court for the setting aside of the Consent Judgment and the restoration of the proceedings under section 443 by filing an Interlocutory Application (Form 9).

Failure of conciliation—direction for inquiry

“426. (1) The Registrar shall direct the holding of an inquiry, or the reconvening of an inquiry, if, after attempting to conciliate between the parties at a conference, it appears to the Registrar that there is no reasonable possibility of the parties settling the matters in dispute by means of conciliation.

“(2) Where the Registrar directs an inquiry to be held or reconvened under subsection (1), he or she shall cause an Inquiry Notice (Form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry.

Admissibility of conference proceedings in inquiries

“427. Evidence, or any statement, of words spoken or acts done at a conference in proceedings is not admissible at an inquiry in the proceedings, unless the parties agree otherwise.

Failure to attend conference

“428. (1) This section applies to a party to proceedings where—

- (a) a Conference Notice (Form 4) was served on the party in accordance with this Act;
- (b) the party fails to appear at the time fixed for the conference, at any time to which the conference has been adjourned or at any time during the conference, either personally or by a representative; and
- (c) the Registrar is not satisfied that there is a good reason for adjourning the conference under section 424.

“(2) If this section applies to an applicant in proceedings, or to both parties, the Registrar shall dismiss the application.

“(3) If this section applies to a respondent in proceedings, but not to the applicant, the Registrar shall—

- (a) if specified damages are claimed, or if the application is for a debt declaration—enter a Default Judgment (Form 7) in favour of the applicant; or
- (b) if unspecified damages are claimed, or any other order is sought by the applicant—
 - (i) make an Interim Order (Form 8) in favour of the applicant; and
 - (ii) direct an inquiry to be held for the purpose only of the assessment of any unspecified amount of damages, and a determination in respect of any other order sought by the applicant.

“(4) Where the Registrar directs an inquiry to be held under subparagraph (3) (b) (ii), he or she shall cause an Inquiry Notice (Form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry, together with a copy of the Interim Order made under that paragraph.

“(5) In an inquiry directed under subparagraph (3) (b) (ii), the Small Claims Court shall give judgment for the applicant in relation to any unspecified amount assessed in the inquiry, and may make any other order sought by the applicant or otherwise considered by the Court to be appropriate.

“(6) The Registrar shall cause notice to be served on a party to whom this section applies of—

- (a) the action taken by the Registrar under this section; and
- (b) the party’s right to apply under subsection (7) for the restoration of proceedings.

“(7) A party to whom this section applies may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an Interlocutory Application (Form 9).

“Division 7—Inquiries

“Subdivision A—General procedure

Directions for inquiries

“429. An inquiry shall be held in the following circumstances:

- (a) in accordance with a direction by the Registrar under paragraph 416 (2) (b) or subparagraph 417 (2) (b) (ii);
- (b) in an application for a common boundaries determination—as provided by the *Common Boundaries Act 1981*;
- (c) in accordance with a direction by the Registrar under subsection 426 (1) or subparagraph 428 (3) (b) (ii);
- (d) in relation to proceedings originally instituted under Part III—in accordance with section 439;
- (e) in accordance with the terms of a Restoration Order;
- (f) as otherwise provided for by a law of the Territory.

Inquiries—constitution of Small Claims Court

“430. An inquiry shall be presided over by a Magistrate or referee sitting alone.

Inquiry procedure

“431. (1) The Small Claims Court shall deal with applications by way of inquiry.

“(2) The Small Claims Court is not bound by the rules of evidence, and may inform itself in any manner it thinks fit.

“(3) The procedure to be followed in an inquiry shall be as directed by the Small Claims Court, subject to this Part.

“(4) In giving directions for the purpose of subsection (3), the Small Claims Court shall adopt such procedures as are likely to enable the inquiry to proceed expeditiously and with as little formality as possible.

Investigators

“432. (1) The Small Claims Court may, by order, appoint an investigator to assist in the investigation of any question of fact arising in proceedings.

“(2) An investigator shall investigate any question of fact referred to in the instrument of appointment, and give a written report to the Small Claims Court about the investigation.

“(3) An order under subsection (1) shall specify—

- (a) particulars of the matter requiring investigation; and
- (b) any conditions to which the appointment is subject.

“(4) The Small Claims Court shall give to an investigator’s report in relation to proceedings such weight as the Court thinks fit in its consideration of those proceedings.

“(5) An investigator is entitled to receive from the Territory such remuneration as is fixed by the Small Claims Court.

“(6) The Small Claims Court may order that a party or parties to proceedings in which an investigator is appointed pay some or all of the costs of remuneration of the investigator.

Giving evidence by oath or affirmation

“433. (1) Subject to this section, evidence in an inquiry shall not be given on oath or affirmation.

“(2) The Small Claims Court may require a person appearing as a witness in an inquiry to be examined on oath or affirmation if it appears to the Court to be necessary or conducive to the proper determination of a matter at issue.

“(3) The Small Claims Court may administer, or cause to be administered, an oath or affirmation for the purposes of an inquiry.

Representation at inquiries

“434. A party to proceedings may be represented at an inquiry by any other person.

Public nature of inquiries

“435. Section 181 applies in relation to the conduct of an inquiry in the Small Claims Court as if references in that section to a hearing were references to an inquiry.

Interlocutory Applications

“436. (1) An interlocutory application to the Small Claims Court in proceedings shall be made by filing an Interlocutory Application (Form 9), unless the Court directs otherwise.

“(2) The Registrar shall cause a copy of an Interlocutory Application filed under subsection (1) to be served on each other party to the proceedings no later than 3 days before the date set down for inquiring into the application, unless the Small Claims Court directs otherwise.

“(3) Subsection (2) does not apply to an application for an order for substituted or other service under subsection 468 (3).

Adjournment of inquiry

“437. (1) The Small Claims Court or the Registrar may vary the day, time or place fixed for an inquiry.

“(2) The Small Claims Court shall adjourn an inquiry if it appears to the Court to be necessary or conducive to the proper determination of a matter at issue.

“(3) If a party does not appear at the time and place to which an inquiry has been adjourned, the Small Claims Court may continue the inquiry in the absence of that party.

Transfer of small claims proceedings to general jurisdiction of the Court

“438. (1) The Small Claims Court may, at any stage in proceedings on an application, of its own motion or on application by a party to the application, order the application to be heard as a claim under Part III.

“(2) The Small Claims Court shall only make an order under subsection (1) if satisfied that in all the circumstances such an order would not be unfair to any party to the proceedings.

“(3) Where the Small Claims Court makes an order under subsection (1) in relation to an application—

- (a) this Act applies as if, for any step taken in proceedings on the application, the corresponding step under this Act had been taken in proceedings on a claim; and

- (b) any evidence given in the proceedings on the application is to be taken to have been given in proceedings on the claim.

Transfer of proceedings in the general jurisdiction of the Court to the small claims jurisdiction

“439. (1) The Magistrates Court may, at any stage of proceedings on a claim under Part III, of its own motion or on application by any party to the proceedings, order that the claim be heard as an application under this Part.

“(2) The Magistrates Court shall only make an order under subsection (1) in relation to a claim if satisfied that—

- (a) the claim could have been brought as an application under this Part; and
- (b) in all the circumstances such an order would not be unfair to any party to the proceedings.

“(3) Where the Magistrates Court makes an order under subsection (1) in relation to a claim—

- (a) this Part applies as if, for any step taken in proceedings on the claim, the corresponding step under this Part had been taken in proceedings on an application; and
- (b) any evidence given in the proceedings on the claim is to be taken to have been given in proceedings on the application.

“(4) In this section—

‘claim’ includes an application under section 22.

Discontinuance

“440. (1) The applicant may at any time discontinue proceedings in an inquiry.

“(2) If proceedings are discontinued before the commencement of the inquiry, the applicant shall give the Registrar written notice of the discontinuance.

“(3) The Registrar shall inform the respondent in writing of the discontinuance of proceedings upon receiving notice under subsection (2).

“(4) After proceedings have been discontinued under this section, the applicant may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an Interlocutory Application (Form 9).

Failure to appear

“441. (1) This section applies to a party to proceedings where—

- (a) an Inquiry Notice (Form 5) was served on the party in accordance with this Part;
- (b) the party fails to appear at the time fixed for the inquiry, at any time to which the inquiry has been adjourned, or at any time during the inquiry, either personally or by a representative; and
- (c) the Small Claims Court is not satisfied that there is a good reason for adjourning the inquiry.

“(2) If this section applies to an applicant in proceedings, or to both parties, the Small Claims Court may dismiss the claim.

“(3) If this section applies to a respondent in proceedings, but not to the applicant, the Small Claims Court may give judgment for the applicant.

“(4) The Small Claims Court shall give a party to whom this section applies written notice of—

- (a) the action taken by the Small Claims Court; and
- (b) the party’s right to apply under subsection (5) for the restoration of proceedings.

“(5) A party to whom this section applies may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an Interlocutory Application (Form 9).

“(6) The Registrar may exercise the power of the Small Claims Court under this section.

Dismissal for abuse of process

“442. (1) The Small Claims Court may order the dismissal of proceedings, or any claim in proceedings, where it considers the proceedings or claim to be—

- (a) frivolous or vexatious; or
- (b) otherwise an abuse of the process of the Court.

“(2) The Small Claims Court may make an order for dismissal under subsection (1) of its own motion or on application by the respondent.

“(3) The Small Claims Court may receive evidence in an inquiry into an application for an order for dismissal under subsection (1).

Restoration of proceedings

“443. (1) The Small Claims Court may make a Restoration Order (Form 12) for proceedings to be restored on application as follows:

- (a) failure to respond to an application—under subsection 417 (6);
- (b) following the making of a Consent Judgment—under subsection 415 (3), 425 (4) or 451 (4);
- (c) failure to attend a conference—under subsection 428 (7);
- (d) discontinuance of proceedings—under subsection 440 (4);
- (e) failure to appear at an inquiry—under subsection 441 (5).

“(2) In conjunction with a Restoration Order, the Small Claims Court may make any of the following additional orders:

- (a) an order for the setting aside of a judgment, including a Default Judgment, an Interim Order or a Consent Judgment;
- (b) orders for the payment of costs;
- (c) an order staying proceedings until the payment of costs;
- (d) orders setting aside any enforcement proceedings, writ issued or order made as a consequence of a judgment set aside under this section;
- (e) orders relating to the further conduct of the proceedings, including an order as to the priority of any inquiry and an order requiring that a conference be held between the parties;
- (f) any other order relating to the restoration of proceedings that the Court thinks just.

“(3) The Small Claims Court shall only make an order under subsection (2) setting aside a Consent Judgment if any of the following circumstances apply in relation to the application for the judgment or the entry of the judgment:

- (a) fraud;
- (b) duress;
- (c) suppression of relevant information or evidence;
- (d) false evidence or information given and relied on;
- (e) change of circumstances;
- (f) impracticability of enforcement;

- (g) any other ground of justice or equity justifying the setting aside of the judgment.

“(4) If the Small Claims Court refuses to make an order under subsection (1), it may make such orders for the payment of costs as it considers necessary.

“(5) An order under this section shall be made on such terms as the Small Claims Court thinks just.

“Subdivision B—Witnesses and evidence

Summons

“444. (1) The Small Claims Court or the Registrar may issue a Summons (Form 13) requiring a person to appear before the Registrar, the Court or an investigator for the purposes of proceedings.

“(2) Subject to section 445, a summons shall require the person served with the summons to appear on a specified date, and at a specified time and place—

- (a) to attend and give evidence;
- (b) to attend and give evidence and to produce any document or thing which is in the person’s possession or control; or
- (c) to produce any document or thing in the person’s possession or control.

“(3) A person shall be taken to have complied with a summons under paragraph (2) (c) if he or she delivers the document or thing to the Registrar or investigator (as the case requires) before the date and time specified in the summons.

“(4) A summons may be issued in proceedings—

- (a) at the request of a party to the proceedings or an investigator;
- (b) by the Small Claims Court on its own motion; or
- (c) by the Registrar on his or her own motion.

“(5) Where an inquiry or the taking of evidence is adjourned, any person required by summons to attend shall attend on the date and at the time and place to which the inquiry or the taking of evidence is adjourned, unless excused by the Small Claims Court or the investigator (as the case requires).

“(6) A summons shall only be issued in proceedings if the person issuing the summons is satisfied that its issue is reasonably necessary for the proper determination of the proceedings.

Summons to produce

“445. A person is only required to produce a document or thing under summons if—

- (a) the summons sufficiently specifies or describes it; and
- (b) the document or thing would be able to be required to be produced in the Supreme Court under a subpoena for production.

Retention of summonsed documents and things

“446. (1) A document or thing produced in accordance with a summons shall be returned by the Small Claims Court after the relevant proceedings are finalised.

“(2) For the purposes of subsection (1), proceedings are to be taken to be finalised if—

- (a) within 28 days after judgment by the Small Claims Court is given, no appeal has been instituted against that judgment; or
- (b) if such an appeal is instituted—the appeal has been determined.

“(3) Where an appeal is instituted against a judgment of the Small Claims Court in proceedings in which a document or thing is produced in accordance with a summons, the Court shall deliver the document or thing to the Supreme Court.

Witness fees and expenses

“447. (1) A person who attends for the purpose of giving evidence before the Small Claims Court or an investigator pursuant to a summons is entitled to receive such fees and travelling expenses as the Court directs in accordance with the scale and conditions applicable in relation to persons who attend as witnesses before the Supreme Court.

“(2) Fees and travelling expenses under subsection (1) are payable—

- (a) if the summons was issued at the request of a party—in accordance with the direction of the Small Claims Court; or
- (b) if the summons was not issued at the request of a party—by the Territory.

Enforcement of summons

“448. (1) A person duly served with a summons shall not, without reasonable excuse, refuse or fail to comply with the summons.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

“(2) If a person contravenes subsection (1), the Small Claims Court may—

- (a) issue a warrant for the apprehension of the person, requiring the person to be brought before the Court or an investigator to give evidence and to produce any document or thing specified in the summons; and
- (b) order the person to pay any costs in the proceedings occasioned by the contravention.

Requirement to answer questions

“449. A person appearing as a witness before the Small Claims Court or an investigator shall not, without lawful excuse, refuse to answer a question relevant to the proceedings asked by the Court or the investigator.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

“Subdivision C—Judgments

Finality of judgments

“450. A judgment of the Small Claims Court (other than an Interim Order) is final and conclusive, subject to this Part.

Consent Judgments

“451. (1) Where the parties to proceedings reach agreement before judgment has been given or entered in the proceedings, they may file a Consent Judgment Application (Form 10).

“(2) A Consent Judgment Application under subsection (1) shall be—

- (a) signed by or on behalf of each party to the agreement; and
- (b) witnessed by a Magistrate, a Referee, the Registrar, a legal practitioner or a justice of the peace.

“(3) Where a Consent Judgment Application is filed under subsection (1), the Registrar shall enter a Consent Judgment (Form 11) in the proceedings in accordance with the Application.

“(4) A party to proceedings in which a Consent Judgment has been entered may apply to the Small Claims Court for the setting aside of the Consent Judgment and the restoration of the proceedings under section 443 by filing an Interlocutory Application (Form 9).

Form of judgments

“452. A judgment of the Small Claims Court other than a Default Judgment, an Interim Order or a Consent Judgment shall be in accordance with Form 14 in Schedule 2.

Counterclaims and set-offs

“453. (1) The Small Claims Court shall, in giving judgment, take into account any set-off and any counterclaim for a total amount not exceeding \$5,000 established by the respondent or admitted by the applicant.

“(2) If a set-off or counterclaim referred to in subsection (1) exceeds the amount for which the applicant would otherwise be entitled to judgment, the Small Claims Court shall give judgment for the respondent for the amount of the excess.

“(3) Where the respondent’s total entitlement to any set-offs and in relation to any counterclaim exceeds \$5,000, he or she may—

- (a) abandon the excess by limiting the total amount claimed to \$5,000; or
- (b) apply to the Small Claims Court for an order under section 438 for the application to be heard as a claim under Part III.

Interest up to judgment

“454. (1) Sections 230, 232 and 233 apply in relation to the determination by the Small Claims Court of interest in proceedings as if they were proceedings on a claim under Part III.

“(2) In the determination of interest by the Small Claims Court for the purposes of a Default Judgment, section 231 applies as if that judgment were a judgment by default under section 43.

“(3) In the determination of interest by the Small Claims Court for the purposes of a Consent Judgment, section 231 applies as if that judgment were a judgment by agreement under section 45.

Interest on judgment debts

“455. (1) Interest is payable on the unpaid portion of a judgment debt in proceedings, unless the Small Claims Court orders otherwise.

“(2) Interest under subsection (1) shall form part of the judgment debt, but not so as to require the payment of interest upon interest.

“(3) Interest under subsection (1) shall be calculated—

- (a) from the date on which the judgment took effect, or from a later date directed by the Small Claims Court; and
- (b) in accordance with the rate prescribed under subsection 231 (2).

Costs

“456. (1) The Small Claims Court shall not make any order in relation to the costs of proceedings, except where expressly provided by this or any other Act.

“(2) A judgment in favour of an applicant shall include an order that the respondent pay to the applicant—

- (a) the amount of any fee paid by the applicant for the commencement of the proceedings; and
- (b) any charges and out-of-pocket expenses in respect of the proceedings (excluding the costs of representation by a legal practitioner or any other person).

“(3) The Small Claims Court may make an order for costs to compensate a party in proceedings who has incurred out-of-pocket expenses in the proceedings unnecessarily due to the action of another party.

Orders to perform work

“457. (1) In addition to any other order made in giving judgment in proceedings, the Small Claims Court may make an order requiring the respondent in the proceedings—

- (a) to perform work, or do any other thing, to rectify any defect in goods or services related to the claim in accordance with conditions set out in the order; or
- (b) in default of the respondent performing that work or thing in accordance with the order—to pay an amount of money to the applicant.

“(2) As an alternative to an order under subsection (1), the Small Claims Court may make an order requiring the respondent—

- (a) to perform work, or do any other thing, to rectify any defect in goods or services in accordance with the conditions set out in the order; and

- (b) in addition—
 - (i) to pay an amount of money to the applicant; and
 - (ii) in default of the respondent performing that work or thing in accordance with the order—to pay an additional amount of money to the applicant.

Orders to perform work—conditions for payment

“458. (1) This section applies to a judgment requiring—

- (a) a first party to pay money to the Registrar; and
- (b) a second party to perform work, or do any other thing, to rectify a defect in goods or services.

“(2) A judgment to which this section applies may provide that the money paid to the Registrar by the first party is not to be paid out until the second party has performed the work or otherwise complied with the judgment.

Goods orders

“459. Section 217 applies, with necessary changes, in relation to a judgment of the Small Claims Court in proceedings on a goods application.

Trespass

“460. (1) Subject to this Act, in proceedings on a trespass application the Small Claims Court may grant the same relief as the Supreme Court may grant in proceedings of a like nature instituted in the Supreme Court.

“(2) A person shall not contravene an order of the court in proceedings referred to in subsection (1).

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.

Debt declarations

“461. In proceedings on an application for a debt declaration, the Small Claims Court may make an order declaring that a specified amount of money is or is not due or owing to the applicant.

Other orders

“462. In addition to any order referred to in this Part, the Small Claims Court may, for the purposes of proceedings—

- (a) make any other order for the purposes of its jurisdiction under another law of the Territory; or
- (b) make any other order that it thinks fit.

“Subdivision D—Enforcement of judgments

Application of the Act

“463. Judgments in proceedings on applications to the Small Claims Court may be enforced as follows:

- (a) debt applications—under Part XIX;
- (b) goods applications—under section 217;
- (c) damages applications—under Part XIX;
- (d) nuisance applications—as provided for by section 8;
- (e) trespass applications—as provided for by section 460;
- (f) applications for common boundaries determinations—under Part XIX;
- (g) in relation to any judgment of the court requiring the payment of an amount of money—under Part XIX;
- (h) in any application—as provided for by section 6.

Joint liability

“464. Section 228 applies, with necessary changes, in relation to a judgment of the Small Claims Court in relation to which 1 or more persons is (or are) jointly liable.

Notice—orders made in a person’s absence

“465. Where the Small Claims Court makes an order affecting a person in the absence of that person, the Registrar shall cause notice of that order to be served on the person as soon as practicable.

Enforcement of orders by executors and administrators

“466. Section 154 applies in relation to an order of the Small Claims Court for the payment of an amount of money or costs where the person entitled to enforce the order has died.

Payment of money under judgment

“467. (1) An amount due under a judgment shall be paid to the Registrar or as the Small Claims Court otherwise directs.

“(2) If a person pays to the Registrar the whole of the amount due under a judgment, that person is no longer liable under that judgment to pay that amount.

“(3) The Registrar shall pay out an amount of money paid to the Registrar under subsection (1), and any amount paid into the Small Claims Court under section 413 in relation to the proceedings, subject to the fulfilment of any condition referred to in subsection 458 (2).

“Division 8—Service of documents

Service

“468. (1) For the purposes of this Part, service of a document on a person shall be effected—

- (a) by delivering the document to the person;
- (b) by leaving the document at the last-known or usual place of residence or business of the person with some other person apparently living or employed at that place and apparently not less than 16 years old; or
- (c) by the Registrar causing the document to be posted—
 - (i) in the case of a natural person—to the person at the address of his or her last-known or usual place of residence or business; or
 - (ii) where the person is a body corporate—to the body corporate at its last-known address.

“(2) After a document is served by post, the Registrar shall complete a Postal Service Certificate (Form 15) in respect of that service.

“(3) If the Small Claims Court is satisfied that service of a document under subsection (1) cannot be effected, it may order that—

- (a) the document be served in such other manner as it thinks fit; or
- (b) that a notice by advertisement or otherwise be substituted for service.

“(4) Service of a document by post—

- (a) may be proved by production of the relevant Postal Service Certificate completed under subsection (2); and

- (b) shall, unless the contrary is proved, be deemed to have been effected 2 days after the date of posting.

Doubtful service

“469. (1) This section applies where—

- (a) a document in proceedings has been served in a manner other than by personal delivery; and
- (b) the Small Claims Court is satisfied that—
 - (i) the document did not come to the knowledge of the party served within a reasonable time; or
 - (ii) doubt exists whether the document came to the knowledge of the party served within a reasonable time.

“(2) Where this section applies, the Small Claims Court shall—

- (a) not allow any fresh step in the proceedings to be taken against the party served;
- (b) make an order—
 - (i) that the proceedings be struck out or adjourned; or
 - (ii) that the relevant document be re-served on that party in the manner (if any) specified in the order; and
- (c) make such other orders, and give such directions, as it thinks just.

“(3) The Small Claims Court may proceed under subsection (2) on the application of the Registrar or any party, or of its own motion.”.

Addition of Schedules

7. The Principal Act is amended by adding at the end the Schedules in Schedule 1 to this Act.

Further amendments (Principal Act)

8. The Principal Act is amended as set out in Schedule 2.

Amendments of other Acts

9. The Acts specified in Schedule 3 are amended as set out in that Schedule.

Renumbering

10. (1) The provisions of the Principal Act (as in force immediately before the commencement of this section), being the provisions listed in column 1 of the following table, are renumbered in accordance with the table:

Existing provision	Renumbered provision
Part XVIII A	Part XIX
Part XIX	Part XX
Part XIX A	Part XXI
Part XX	Part XXIII
Part XXI	Part XXIV
Section 394	Section 470
Section 395	Section 471
Section 396	Section 472
Section 397	Section 473
Section 398	Section 474
Section 399	Section 475
Section 400	Section 476
Section 401	Section 477
Section 402	Section 478
Section 403	Section 479
Section 404	Section 480
Section 405	Section 481
Section 406	Section 482
Section 407	Section 483
Section 408	Section 484
Section 409	Section 485

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Existing provision	Renumbered provision
Section 410	Section 486
Section 411	Section 487
Section 412	Section 488
Section 413	Section 489
Section 414	Section 490
Section 415	Section 491
Section 416	Section 492
Section 417	Section 493
Section 418	Section 494
Section 419	Section 495
Section 420	Section 496
Section 421	Section 497
Section 422	Section 498
Section 425	Section 499

(2) A reference in this Act to a provision of the Principal Act that is renumbered by this section (other than in text inserted by this Act into the Principal Act or another Act) is to be taken to be a reference to that provision as numbered in the Principal Act immediately before the commencement of this section.

(3) A reference to a provision of the Principal Act that has been renumbered by this section, being a reference—

- (a) in a provision of the Principal Act as in force immediately before the commencement of this section, whether or not the latter provision has commenced;
- (b) in a provision of another law of the Territory made before the commencement of this section, whether or not the latter provision has commenced; or

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(c) in any instrument or document;

shall (except as regards the operation of the provision before it was renumbered) be construed as a reference to that provision as so renumbered.

**SCHEDULE 1
FORMS**

Section 7

**SCHEDULE 2
SMALL CLAIMS FORMS**

Paragraph 394 (2) (a)

Form 1

SMALL CLAIMS COURT

Subsection 404 (1)

ORIGINATING APPLICATION

Application No. of [year], between [applicant] and [respondent].

To the Registrar:

General declaration

I make the following application in the Small Claims Court. The required information about myself, the respondent and the application is set out below and in the Attachment.

Applicant

If the applicant is making the application on his or her own behalf—

Full name and address:

If the applicant is making the application on behalf of a company or other body corporate—

Name of the body and address of registered office:

If the applicant is represented by another person—

Representative's full name and address:

How may the applicant be contacted?

Address for service (within the ACT):

* Telephone No.: * DX No.: * Fax No.:

Respondent

If the respondent is a natural person—

Respondent's name and address:

If the respondent is a company or other body corporate—

Name of the body and address of registered office:

Prior attempts to resolve dispute

* The applicant and the respondent have attempted to resolve their dispute in the following manner:

* The applicant and the respondent have made no prior attempts to resolve their dispute.

Date:

[signed]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 1

SMALL CLAIMS COURT
ORIGINATING APPLICATION

Attachment A

Debt application

What is a debt application?

- A “debt application” is an application to recover a debt.
- You can also recover interest owing on the debt.
- You may also make a debt application to recover a rental bond, but you must go through a formal mediation process first. Ask a Registry officer for advice about how to do this.

Grounds of application:

If the application is for the recovery of a rental bond—

- * A mediation certificate under s. 62AS of the *Landlord and Tenant Act 1949* is attached to this application.

Details of specified amounts sought—

Fee for commencing proceedings: \$

Specified amount sought: \$

* Contractual interest is claimed.

* Interest to be determined by the Small Claims Court is claimed.

Particulars of interest:

— period(s) for which interest is claimed:

— rate(s) of interest:

— total interest accrued to date: \$

Total: \$

Date:

[signed]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 1

SMALL CLAIMS COURT
ORIGINATING APPLICATION

Attachment B

Goods application

What is a goods application?

- A “goods application” is an application dealing with the provision of goods or services.
- You can make a goods application for the recovery of the value of goods or services, for the recovery of goods, for the provision of services or for damages caused by the detention of goods.

Grounds of application:

- * Details of any goods to be recovered or services to be provided:
- * Details of any damages sought:

Details of specified amounts sought—

Fee for commencing proceedings: \$

If any other specified amount is sought—

Specified amount sought: \$

- * Contractual interest is claimed.
- * Interest to be determined by the Small Claims Court is claimed.

Particulars of interest:

- period(s) for which interest is claimed:
- rate(s) of interest is claimed:
- total interest accrued to date: \$

Total: \$

Date:

[signed]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 1

SMALL CLAIMS COURT
ORIGINATING APPLICATION

Attachment C

Damages application

What is a damages application?

- A “damages application” is an application to recover damages caused by someone else’s actions.

Grounds of application:

Details of damages sought:

Fee for commencing proceedings: \$

Total: \$

Date:

[*signed*]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 1

SMALL CLAIMS COURT
ORIGINATING APPLICATION

Attachment D

Nuisance application

What is a nuisance?

- A “nuisance” is an interference with your land, or with your enjoyment of your land.
— *for example, an overflow from a neighbour’s burst sewerage pipe onto your land.*
- You can apply for particular orders to deal with the interference.
— *for example, an order requiring the neighbour to repair the burst pipe.*
- You can also apply for monetary damages.
— *for example, compensation for the cost of cleaning up the overflow.*

Grounds of application:

Remedy sought:

Fee for commencing proceedings: \$

Total: \$

Date:

[signed]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 1

SMALL CLAIMS COURT
ORIGINATING APPLICATION

Attachment E

Trespass application

What is a trespass?

- A “trespass” is an unauthorised, uninvited entry onto your land.
 - If someone remains on your land after being told to leave they are also trespassing.
 - You can apply for particular orders to deal with a trespass.
— *for example, an order requiring a squatter to leave your land.*
 - You can also recover monetary damages.
— *for example, compensation for damage caused by the squatter.*
-

Grounds of application:

Remedy sought:

Fee for commencing proceedings: \$

Total: \$

Date:

[*signed*]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 1

SMALL CLAIMS COURT
ORIGINATING APPLICATION

Attachment F

Debt declaration

What is a debt declaration?

- A “debt declaration” is an order of the Small Claims Court declaring the amount, or a maximum amount, you owe to someone else.
- It could also be an order of the Court declaring you not to be indebted to the other person at all.
- You may also make an application for a debt declaration in relation to the recovery of a rental bond, but the dispute must be referred to a mediator first.

Ask a Registry officer for advice about how to do this.

Grounds of application:

If the application relates to the recovery of a rental bond—

- * A mediation certificate under s. 62AS of the *Landlord and Tenant Act 1949* is attached to this application.

Fee for commencing proceedings: \$

The respondent has issued the applicant with a written demand for payment of the following debt: \$

- * The applicant is not indebted to the respondent.
- * The applicant is indebted to the respondent in the following amount: \$
- * The applicant is not indebted to the respondent in an amount exceeding the following: \$

Date:

[signed]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 2

SMALL CLAIMS COURT

Subsection 411 (1)

RESPONSE

Application No. of [year], between [applicant] and [respondent].

To the Registrar:

Respondent

If the respondent is making the application on his or her own behalf—

Full name and address:

If the respondent is making the application on behalf of a company or other body corporate—

Name of the body and address of registered office:

If the respondent is represented by another person—

Representative's full name and address:

How may the respondent be contacted?

Address for service (within the ACT):

* Telephone No.: * DX No.: * Fax No.:

*** Admission of liability**

I admit liability (in whole or in part) and agree to the entry of judgment on the following terms:

* Judgment is to be entered in the following amount: \$

* The following amount is paid into the Court: \$

* The amount of the judgment is to be paid on or before [date]

* The amount is to be paid by instalments on the following terms:

* The following orders are to be made:

*** Contested application**

I contest the application on the following grounds:

* The following set-off or counterclaim is made: \$

Date:

[signed]

Respondent

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 3

SMALL CLAIMS COURT

Subsection 415 (1)

ADMISSION OF LIABILITY ACCEPTANCE

Application No. of [year], between [applicant] and [respondent].

To the Registrar:

I accept the terms on which the respondent has admitted liability in full satisfaction of my application.

Date:

[signed]

Applicant

SCHEDULE 1—continued

Form 4

SMALL CLAIMS COURT

Subsections 416 (3)
and 419 (2)

CONFERENCE NOTICE

Application No. of [year], between [applicant] and [respondent].

* To [name], the applicant:

* To [name], the respondent:

Conference details

I have directed a conference to be held before me at [place] on [date] at [time].

Objectives

The objectives of the conference are:

- to determine what are the real matters in dispute between the parties;
- to assist the parties to reach a compromise in the dispute by means of conciliation;
- to streamline any later inquiry by:
 - ensuring that the parties do everything they can to enable such an inquiry to take place expeditiously; and
 - assessing the time likely to be required for any such inquiry.

Dispute settlement

If agreement is reached between all parties as to terms of settlement of the dispute, a Consent Judgment Application in the form provided on the other side of this notice should be filled in and signed by the parties.

The Consent Judgment Application should then be lodged with the Registrar at [address of Registrar's office].

Non-attendance

* *To the applicant:*

If you do not attend the conference, the Registrar may dismiss your application.

* *To the respondent:*

If you do not attend the conference—

- The Registrar may enter a Default Judgment against you in favour of the applicant for any specified amount of money claimed;
- the Registrar may make an Interim Order against you in respect of any unspecified amount of money claimed by the applicant, and in respect of any other order claimed by the applicant. The Registrar would then direct an inquiry to be held to determine what judgment should be given against you.
 - If you were not to attend that inquiry, judgment might be given against you in the terms applied for by the applicant.
 - On the other hand, if you were to appear at that inquiry to contest the application or the orders sought by the applicant, the Court might in any case direct a conference to be held, and require you to pay the costs of the proceedings.

SCHEDULE 1—continued

Further information

If you have any questions about what you should do, please talk to a Registry officer at [address] or by telephone on [telephone number] between 9 am and 4 pm, Monday to Friday.

Date:

Registrar

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 5

SMALL CLAIMS COURT

Subsections 416 (4)
417 (3), 426 (2) and 428 (4)

INQUIRY NOTICE

Application No. _____ of [year], between [applicant] and [respondent].

* To [name], the applicant:

* To [name], the respondent:

Inquiry details

I have directed an inquiry into this application to be held in the Small Claims Court before [Magistrate or referee] at [place] on [date] at [time].

Dispute settlement

If agreement is reached between all parties as to terms of settlement of the dispute, a Consent Judgment Application in the form provided on the other side of this notice should be filled in and signed by the parties.

The Consent Judgment Application should then be lodged with the Registrar at [address of Registrar's office].

Non-attendance

* *To the applicant:* If you do not attend the inquiry, the Court may dismiss your application.

* *To the respondent:* If you do not attend the inquiry, the Court may give judgment against you in favour of the applicant.

Further information

If you have any questions about what you should do, please talk to a Registry officer at [address] or by telephone on [telephone number] between 9 am and 4 pm, Monday to Friday.

Date:

Registrar

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 6

SMALL CLAIMS COURT

Paragraph 417 (1) (b)

DEFAULT JUDGMENT APPLICATION

Application No. of [year], between [applicant] and [respondent].

To the Registrar:

The applicant applies for the entry of judgment in these proceedings against the respondent.

*** Specified amount**

Fee for commencing proceedings:	\$
Charges and out-of-pocket expenses:	\$
Amount claimed:	\$
Particulars of interest:	
• period(s) for which interest is claimed:	
• rate(s) at which interest is claimed:	
• total interest accrued to date:	\$
Total:	\$

*** Debt declaration**

Fee for commencing proceedings:	\$
Charges and out-of-pocket expenses:	\$
Total amount in relation to which declaration is sought:	\$

*** Unspecified amount—Interim Order sought**

The applicant applies to the Registrar for an Interim Order in relation to—

- * the whole application.
- * the following part of the application:

Date:

[signed]

Applicant

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 7

SMALL CLAIMS COURT

Paragraphs 417 (2) (a)
and 428 (3) (a)

DEFAULT JUDGMENT

Application No. of [year], between [applicant] and [respondent].

I enter judgment as follows:

Specified amount

I judge that in these proceedings, the applicant should recover from the
respondent the following amount:

\$

I order the respondent to pay that amount to the applicant.

Debt declaration

I make the following declaration:

I order that the applicant should recover from the respondent the following
amount for fees, charges and out-of-pocket expenses:

\$

Date:

Registrar

SCHEDULE 1—continued

Form 8

SMALL CLAIMS COURT

Subparagraphs 417 (2) (b) (i)
and 428 (3) (b) (i)

INTERIM ORDER

Application No. of [year], between [applicant] and [respondent].

I make the following interim order in these proceedings in favour of the applicant:

Date:

Registrar

SCHEDULE 1—continued

Form 9

SMALL CLAIMS COURT

Subsections 415 (3), 417 (6),
425 (4), 428 (7), 436 (1),
440 (4), 441 (5) and 451 (4)

INTERLOCUTORY APPLICATION

Application No. of [year], between [applicant] and [respondent].

Interlocutory applications

This form may be used for making any application during the course of an inquiry — *for example, this is the form you would use if you wished to apply for an adjournment of the inquiry, or to amend your application or response.*

Restoration of proceedings

This form may also be used to apply for “restoration of proceedings” as follows:

- Restoration for the respondent after a Default Judgment or Interim Order has been issued in the previous absence of a formal Response;
- Restoration for either party following the party’s earlier failure to appear at a conference or inquiry;
- Restoration for either party after a Consent Judgment has been entered, where the party wishes to resile from the judgment consented to;
- Restoration for the applicant after the applicant’s earlier discontinuance of proceedings in an inquiry.

Further Information

If you have any questions about what you should do, please talk to a Registry officer at [address] or by telephone on [telephone number] between 9 am and 4 pm, Monday to Friday.

* The applicant applies for the following orders or directions:

* The respondent applies for the following orders or directions:

The grounds for making this application are as follows:

Date:

[signed]

* Applicant

* Respondent

This application has been set down for inquiry at the following date and time:

Registrar

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 10

SMALL CLAIMS COURT

Subsections 425 (1)
and 451 (1)

CONSENT JUDGMENT APPLICATION

Application No. of [year], between [applicant] and [respondent].

To the Registrar:

The applicant and the respondent agree that judgment is to be entered against the respondent on the following terms:

- * Judgment is to be entered in the following amount: \$
- * The amount of the judgment is to be paid on or before [date]
- * The amount is to be paid by instalments on the following terms:
- * The following orders are to be made:

Date:

[signed]

Applicant

[signed]

Respondent

[signed by witness]

- * Magistrate
- * Referee
- * Registrar
- * Legal practitioner
- * Justice of the Peace

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 11

SMALL CLAIMS COURT

Subsections 415 (2),
425 (3) and 451 (3)

CONSENT JUDGMENT

Application No. of [year], between [applicant] and [respondent].

- * I enter the following judgment in accordance with the Admission of Liability Acceptance dated [date] by the applicant:
- * I enter the following judgment in accordance with the Consent Judgment Application dated [date] by the applicant and the respondent:

Date:

Registrar

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 12

SMALL CLAIMS COURT

Subsection 443 (1)

RESTORATION ORDER

Application No. of [year], between [applicant] and [respondent].

Proceedings on this application are ordered to be restored.

The following additional orders are made:

Date:

- * Magistrate
- * Referee
- * Registrar

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 13

SMALL CLAIMS COURT

Subsection 444 (1)

SUMMONS

Application No. of [year], between [applicant] and [respondent].

To: [name of person summonsed]

- * You are summonsed in these proceedings to attend and give evidence at [place] on [date] at [time].
- * You are summonsed in these proceedings to attend and give evidence at [place] on [date] at [time] and to produce the following document or thing:
- * You are summonsed in these proceedings to produce the following document or thing at [place] on or before [date] at [time]:

Further information

If you have any questions about what you should do, please talk to a Registry officer at [address] or by telephone on [telephone number] between 9 am and 4 pm, Monday to Friday.

Date:

Registrar

- * *Strike out where inapplicable*
- _____

SCHEDULE 1—continued

Form 14

SMALL CLAIMS COURT

Section 452

JUDGMENT

Application No. of [year], between [applicant] and [respondent].

* The following judgment is made:

* The following orders are made:

for the Small Claims Court.

Date:

* Magistrate

* Referee

* Registrar

* *Strike out where inapplicable*

SCHEDULE 1—continued

Form 15

SMALL CLAIMS COURT

Subsection 468 (2)

POSTAL SERVICE CERTIFICATE

Application No. of [year], between [applicant] and [respondent].

I certify that today I served

* the applicant(s)

* the respondent(s)

* another person

referred to within with a copy of the following documents:

[specify documents].

A copy of these documents has been sent by pre-paid post addressed to the person(s) referred to within at the person's (persons') last known address(es).

Date:

Registrar

* Strike out where inapplicable

SCHEDULE 1—continued

SCHEDULE 3

Subsection 399 (2)

**APPOINTMENT OF REFEREES
IN THE SMALL CLAIMS COURT**

OATH

I, [*name*], swear that I will well and truly serve in the office of referee in the Small Claims Court.

I swear that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

So help me God!

AFFIRMATION

I, [*name*], solemnly and sincerely affirm that I will well and truly serve in the office of referee in the Small Claims Court.

I solemnly and sincerely affirm that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

SCHEDULE 2

Section 8

FURTHER AMENDMENTS (PRINCIPAL ACT)

Subsection 3 (1) (definition of “approved form”)—

Omit “395”, substitute “471”.

Subsection 3 (1)—

Insert the following definition:

“ ‘Small Claims Court’ means the Magistrates Court when exercising jurisdiction under Part XXII;”.

Subsection 3 (5)—

Insert “except in Part XXII, ” after “Act,”.

Paragraph 3 (5) (a)—

Omit “the Schedule”, substitute “Schedule 1”.

Paragraph 4 (a)—

Omit the paragraph.

Subsection 86 (1)—

Omit “420”, substitute “496”.

Subsection 217 (8)—

Omit “XVIII A”, substitute “XIX”.

Subsection 222 (2)—

Omit “416”, substitute “492”.

Paragraph 234 (2) (b)—

Omit “XVIII A”, substitute “XIX”.

Subsection 385 (1)—

Omit the subsection, substitute the following subsection:

“(1) In this Part—

‘appeal’ means an appeal to the Supreme Court—

- (a) from a judgment or order of the Magistrates Court, whether final or interlocutory, in proceedings that the Magistrates Court has jurisdiction to hear and determine under this Act, other than proceedings in its jurisdiction under Part XXII; or

SCHEDULE 2—continued

- (b) from a judgment of the Small Claims Court;
'judgment', in relation to the Small Claims Court, has the same meaning as in Part XXII, but does not include an Interim Order of the Small Claims Court."

Section 387—

Add at the end the following subsection:

"(3) This section does not apply in relation to an appeal from a judgment of the Small Claims Court."

New section 387A—

After section 387 insert the following section:

Appeals—Small Claims Court

"387A. (1) A party to proceedings in the Small Claims Court may, with the leave of the Supreme Court, appeal from a judgment of the Small Claims Court in those proceedings.

"(2) The Supreme Court shall not grant leave under subsection (1) unless satisfied—

- (a) that the decision of the Small Claims Court on a question of law was wrong; or
(b) that the conduct of the proceedings in the Small Claims Court was unfair to the applicant for leave to appeal."

Section 388—

Insert "or section 387A" after "subsection 387 (1)".

Section 393—

Add at the end the following subsection:

"(3) In this section, a reference to the Magistrates Court, in relation to an appeal from a judgment of the Small Claims Court, is to be taken to be a reference to the Small Claims Court."

Subsection 395 (5)—

Omit "the Schedule", substitute "Schedule 1 or 2".

Subsection 395 (6)—

- (a) Omit "the Schedule" (first occurring), substitute "Schedule 1 or 2".

SCHEDULE 2—continued

(b) Omit “the Schedule” (last occurring), substitute “that Schedule”.

Subsection 395 (8)—

Omit “the Schedule”, substitute “Schedule 1 or 2”.

Section 396—

Add at the end the following subsection:

“(3) This section does not apply to a document in proceedings in the Small Claims Court.”.

Subsection 402 (1)—

Omit the subsection, substitute the following subsections:

“(1) There shall be 2 seals of the court, as follows:

(a) a seal of the Magistrates Court;

(b) a seal of the Small Claims Court.

“(1A) The Registrar shall have custody of the seals of the court.”.

Section 402—

Add at the end the following subsection:

“(3) In subsection (2) in its application to proceedings in the Small Claims Court, a reference to the seal of the court is to be taken to be a reference to the seal of the Small Claims Court.”.

Section 406—

Add at the end the following subsection:

“(5) This section does not apply to proceedings in the Small Claims Court.”.

Section 411—

Omit “410”, substitute “486”.

Subsection 416 (1)—

Omit “394”, substitute “470”.

SCHEDULE 2—continued

Section 418—

Add at the end the following subsection:

“(5) A certificate in accordance with Form 70 or 71 in relation to proceedings in the Small Claims Court is to be expressed as having been issued from the Small Claims Court in relation to proceedings in that Court.”.

Section 419—

Omit “particulars of—”, substitute “particulars of any of the following:”.

Paragraph 419 (a)—

Omit “or”.

Section 419—

Add at the end the following paragraph:

- “(c) in relation to proceedings in the Small Claims Court—
- (i) a Default Judgment within the meaning of Part XXII; or
 - (ii) a Restoration Order under section 443 setting aside such a judgment.”.

Heading to Part XXI—

Omit “**TRANSITIONAL PROVISIONS**”, substitute “**APPLICATION OF MAGISTRATES COURT ACT 1930 AND RULES**”.

Sections 423 and 424—

Repeal the sections.

Heading to Schedule—

Omit “**SCHEDULE**”, substitute “**SCHEDULE 1**”.

Schedule (Form 30)—

Omit “the Schedule”, substitute “Schedule 1”.

SCHEDULE 3

Section 9

AMENDMENTS OF OTHER ACTS

Common Boundaries Act 1981

Subsection 2 (1) (definition of “Court”)—

Omit “Magistrates”, substitute “Small Claims”.

Subsection 2 (1)—

Insert the following definitions:

“ ‘conference’ means a conference under Division 6 of Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*;

‘Conference Notice’ means a notice in the form of Form 4 in Schedule 2 to the *Magistrates Court (Civil Jurisdiction) Act 1982*;

‘inquiry’ means an inquiry in the Court;

‘Inquiry Notice’ means a notice in the form of Form 5 in Schedule 2 to the *Magistrates Court (Civil Jurisdiction) Act 1982*;

‘Registrar’ means the Registrar of the Magistrates Court.”.

Subsection 4 (6)—

Omit the subsection, substitute the following subsections:

“(6) Upon receipt of an application under subsection (1) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

“(6A) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

“(6B) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and

SCHEDULE 3—continued

- (b) cause an Inquiry Notice to be served on the parties.”.

Section 5—

Before subsection (1) insert the following subsection:

“(1A) The Court may hold an inquiry on an application under section 4 pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph 4 (6) (b) of this Act.”.

Subsection 5 (1)—

Omit “Where an application has been made under section 4, the Court may conduct an inquiry into the facts and circumstances of the matter and”, substitute “In an inquiry on an application under section 4, the Court”.

Subsection 6 (10)—

Omit the subsection, substitute the following subsections:

“(10) Upon receipt of an application under subsection (1) or (5) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

“(11) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

“(12) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause an Inquiry Notice to be served on the parties.”.

SCHEDULE 3—continued

Section 7—

Before subsection (1) insert the following subsection:

“(1A) The Court may hold an inquiry on an application under section 6 pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph 6 (10) (b) of this Act.”.

Subsection 7 (1)—

Omit “Where an application has been made”, substitute “In an inquiry on an application”.

Subsection 7 (4)—

Omit “On”, substitute “In an inquiry on”.

Subsection 8 (1)—

Omit “make application”, substitute “apply”.

Subsections 8 (4) and (5)—

Omit the subsections, substitute the following subsections:

“(4) Upon receipt of an application under subsection (1) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

“(4A) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

“(4B) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and

SCHEDULE 3—continued

(b) cause an Inquiry Notice to be served on the parties.

“(5) The Court may hold an inquiry on an application under subsection (1) pursuant to a direction of the Registrar—

(a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or

(b) under paragraph (4) (b) of this section.”.

Subsection 9 (3)—

Omit the subsection.

Section 10—

Repeal the section.

Subsections 11 (1) and (2)—

Omit “make application”, substitute “apply”.

Subsection 11 (4)—

Omit the subsection, substitute the following subsections:

“(4) Upon receipt of an application under subsection (1) or (2) the Registrar shall—

(a) direct the holding of a conference between the parties; or

(b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

“(5) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

(a) cause a copy of the application to be served on the respondent;
and

(b) cause a Conference Notice to be served on the parties.

“(6) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

(a) cause a copy of the application to be served on the respondent;
and

(b) cause an Inquiry Notice to be served on the parties.”.

SCHEDULE 3—continued

Section 12—

Before subsection (1) insert the following subsection:

“(1A) The Court may hold an inquiry on an application under subsection 11 (1) or (2) pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph 11 (4) (b) of this Act.”.

Subsection 12 (1)—

Omit “On”, substitute “In an inquiry on”.

Sections 13, 14, 16 and 17—

Repeal the sections.

Subsection 18 (3)—

Omit the subsection, substitute the following subsection:

“(3) This section is to be read together with section 408 and Division 8 of Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.”.

Paragraph 19 (1) (b)—

Omit “made under section 10”, substitute “under Part XIX of the *Magistrates Court (Civil Jurisdiction) Act 1982* in relation to such a determination”.

Section 20—

Repeal the section.

Schedule (Forms 1 to 7 (inclusive))—

Omit “Magistrates”, substitute “Small Claims”.

Schedule (Form 8)—

Omit the Form.

Interpretation Act 1967

Subsection 14 (1)—

Insert the following definition:

“ ‘Small Claims Court’ means the Magistrates Court when exercising jurisdiction as the Small Claims Court under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*;”.

SCHEDULE 3—continued

Landlord and Tenant Act 1949

Subsection 62AA (1) (definition of “Court”)—

Omit the definition.

Subsection 62AA (1)—

Insert the following definitions:

“ ‘inquiry’ means an inquiry in the Small Claims Court under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*;

‘proceedings’ means proceedings in the Small Claims Court for the purposes of this Part;

‘Registrar’ means the Registrar of the Magistrates Court;”.

Subsection 62AS (1)—

Omit “The Court has jurisdiction to hear and determine a claim”, substitute “The Small Claims Court may hold an inquiry into an application”.

Subsection 62AS (2)—

Omit the subsection, substitute the following subsection:

“(2) Section 469 (Doubtful service) of the *Magistrates Court (Civil Jurisdiction) Act 1982* does not apply in relation to an application in the Small Claims Court referred to in subsection (1).”.

Subsection 62AS (4)—

Omit the subsection, substitute the following subsection:

“(3) The Registrar shall only accept for filing an Originating Application in proceedings if the Application has attached to it a certificate by an approved mediator to the effect that the mediator has invited the parties to the relevant dispute to a conference under section 62AQ.”.

Section 62AT—

(a) Omit “under this Part”.

(b) Before “Court” insert “Small Claims”.

Subsection 62AU (1)—

(a) Omit “under this Part, the Court”, substitute “, the Small Claims Court”.

(b) Omit “of the Court”.

SCHEDULE 3—continued

Magistrates Court Act 1930

Paragraph 248A (1) (c)—

Omit the paragraph, substitute the following paragraph:

“(c) the general purposes of this Act, the *Magistrates Court (Civil Jurisdiction) Act 1982* and rules and regulations made under this Act and that Act.”.

Second Schedule—

(a) Omit—

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

substitute—

I, [name], do swear that I will well and truly serve in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

(b) Omit—

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

substitute—

I, [name], do solemnly and sincerely affirm and declare that I will well and truly serve in the office of _____ and that I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

NOTES

Principal Act

Reprinted as at 28 February 1997.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section headings

On the latest day on which the *Magistrates Court (Civil Jurisdiction) Act 1982* is amended by this Act, headings to sections of the Principal Act (as numbered immediately before the day on which section 10 of this Act commences) are altered as set out in the following table:

Section	Alteration
396	Omit the heading, substitute the following heading: Headings of Court documents
402	Omit the heading, substitute the following heading: Court seals
418	Omit the heading, substitute the following heading: Certified copies of official records

[Presentation speech made in Assembly on 4 September 1997]