

NORTHERN TERRITORY OF AUSTRALIA

SMALL CLAIMS ACT

As in force at 1 June 1998

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 June 1998

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## SMALL CLAIMS ACT

### An Act relating to small claims

#### Part 1 Preliminary matters

##### 1 Short title

This Act may be cited as the *Small Claims Act*.

##### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

##### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

***Court*** means the Local Court.

***inquiry*** includes the hearing for the purposes of assessing the amount of damages.

***investigator*** means a person appointed under section 27 to inquire into, and report upon, a question of fact arising in proceedings.

***judgment*** includes an order.

***proceedings*** means proceedings under this Act.

***Registrar*** has the same meaning as in the *Local Court Act*.

***Rules*** means the Rules made under section 50.

## **Part II Proceedings in Local Court**

### **5 Proceedings under Act**

Subject to and in accordance with the Rules, a person may institute proceedings in the Court to be dealt with under this Act with respect to a claim for:

- (a) the recovery of an amount not exceeding \$10,000;
- (b) the performance of work of a value not exceeding \$10,000;
- (c) relief from payment of money of an amount not exceeding \$10,000; and
- (d) the return or replacement of goods to a value not exceeding \$10,000.

### **9 Pre-hearing conferences**

- (1) The Court may, on or without the application of a party, order that a claim be referred to a magistrate or the Registrar for a pre-hearing conference.
- (2) A magistrate or the Registrar shall conduct the pre-hearing conference in accordance with the Rules and may:
  - (a) if the matter is not settled between the parties, refer back to the Court; or
  - (b) enter an order with the consent in writing of each of the parties.
- (3) An order entered under subsection (2)(b) has effect as an order of the Court.

### **12 Court not bound by rules of evidence**

In proceedings, the Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

### **14 Court to inquire into claims**

The Court shall, as required, conduct an inquiry into the matters at issue in proceedings and shall give judgment and assess damages, if necessary, accordingly.

**18 Inquiries to be in public**

- (1) An inquiry in proceedings shall be conducted in public unless the Court orders to the contrary.
- (2) Where the Court makes an order under subsection (1), a person shall not publish, or cause to be published:
  - (a) any report of the proceedings or of the evidence given in the proceedings; or
  - (b) any matter that discloses the identity of a party to the proceedings or from which a party to the proceedings may reasonably be identified.

Penalty: \$1,000.

**19 Judgment final and conclusive**

A judgment of the Court is final and conclusive, and, subject to this Act, a party to the proceedings is not thereafter entitled to institute or continue other proceedings in any court for the same cause or matter.

**20 Re-hearing**

- (1) Subject to and in accordance with the Rules, a person may apply to the Court for an order that a final order made by the Court be set aside and that the proceeding be re-heard.
- (2) The Rules may prescribe the procedures and jurisdiction of the Court in relation to a re-hearing referred to in subsection (1).

**21 Witness to answer questions**

A person appearing as a witness before the Court or an investigator shall not, without lawful excuse, refuse to answer a question relevant to the proceedings put to him by the Court or the investigator.

Penalty: \$1,000.

**22 Enforcement of decisions**

Judgment under this Act is enforceable as if it were an order made by the Court on a claim under the *Local Court Act*.

**23 Court may order proceedings be dealt with under *Local Court Act***

- (1) Subject to subsection (3), the Court may, at any stage of proceedings, order that a claim be dealt with as if it had been commenced under the *Local Court Act*, and give such directions as it thinks appropriate.
- (2) An order under this section may be made by the Court either of its own motion or on application.
- (3) The Court is not to make an order under this section unless the Court is satisfied that:
  - (a) the value of the claim concerned is more than \$5,000; and
  - (b) the order will not be unfair to any of the parties to the proceedings.

**24 Court may order proceedings under *Local Court Act* to be dealt with under this Act**

- (1) Subject to subsection (3), the Court may at any stage of proceedings under the *Local Court Act*, where it appears to the Court that the proceedings could have been instituted under this Act, order that a claim be dealt with as if it had been commenced under this Act, and give such directions as it thinks appropriate.
- (2) An order under this section may be made by the Court either of its own motion or on application.
- (3) An order under this section shall not be made unless the Court is satisfied that in all the circumstances such an order would not be unfair to any of the parties to the proceedings.

**27 Court may appoint investigator**

- (1) The Court may, if it thinks fit, appoint a person to inquire into, and report upon, any question of fact arising in proceedings.
- (2) In exercising its power under subsection (1), the Court shall, if a person is nominated by, or with the consent of, all the parties to the proceedings, appoint that person.
- (3) The Court shall have regard to the report of the person so appointed and shall give to it such weight as the Court thinks fit.
- (4) The Court shall furnish each of the parties to the proceedings with a copy of the report.

- (5) A person who reports to the Court pursuant to this section is not liable to be called as a witness in the proceedings but shall furnish to the Court such information (if any) in addition to the report as the Court requests.
- (6) A person appointed under this section is entitled to receive from the Territory such remuneration as is fixed by the Court.

## **28 Record of proceedings**

At an inquiry under this Act, the Magistrate shall keep a record of the proceedings sufficient to enable him, if required, to prepare a report for the Supreme Court.

## **29 Costs**

- (1) Except in respect of an application for re-hearing, the Court is not to make an order in relation to the costs of proceedings unless the Court is satisfied that:
  - (a) the order is in respect of an amount or claim the value of which is more than \$5,000; and
  - (b) having regard to the complexity of the law, the facts or any other matter in respect of the proceedings, it is fair and reasonable to do so.
- (2) Where an order is made under section 24, the costs of and incidental to the proceedings under the *Local Court Act* and of the application (if any) under section 24 shall be in the discretion of the Court.

## **30A Order of Court**

- (1) Where a settlement is made in respect of a claim, the Court shall, on the request of a party to the settlement, make an order that gives effect to the terms of the settlement.
- (2) The Court may make an order:
  - (a) that requires a party to the proceedings before it to pay money to a person specified in the order;
  - (b) that requires a party to the proceedings before it to perform work to rectify a defect in goods or services to which the claim in the proceedings relates;

- (c) in the case of a claim for relief from payment of money:
    - (i) that money in an amount specified is not due or owing by the claimant to a person specified in the order; or
    - (ii) that requires the claimant to pay money to a person specified in the order;
  - (d) that dismisses the claim to which the proceedings relates;
  - (e) that requires a party to the proceedings before it to return any goods to which the claim in the proceedings relates and which are in his possession or control, whether the property therein has passed or not, to a person specified in the order; or
  - (f) that requires a party to the proceedings before it to replace any goods to which the claim in the proceedings relates.
- or any 2 or more of those things.
- (3) An order may direct that what is by that order required to be done shall be done within a time limited in the order.

## **Part IV                      Miscellaneous**

### **42                      Judgments, &c., to be paid to Registrar**

- (1) An amount due under a judgment given or an order made under this Act by the Court or the Supreme Court shall be paid to the Registrar.
- (2) Payment to the Registrar of the whole of the amount due under a judgment or order discharges the liability under the judgment or order of the person making the payment to pay that amount.
- (3) Money paid to the Registrar in accordance with subsection (1) shall be paid out on proof to the satisfaction of the Registrar that the person applying for the money is entitled or authorised to receive it.

### **43                      Parties to be assisted in instituting proceedings, &c.**

The Registrar shall ensure that a person subject to his direction is available to assist persons:

- (a) who request assistance with the institution of proceedings or the giving of any notice under this Act; or
- (b) who request an explanation of the procedures of the Court.



**45 Court fees**

No fee is payable to the Registrar in respect of a step taken in proceedings except:

- (a) fees for filing; and
- (b) the same fees for:
  - (i) the enforcement of a judgment; or
  - (ii) the personal service of a document under this Act,as payable under the *Local Court Act* in respect of those proceedings in the Local Court.

**49 Publication of details of claim**

In relation to proceedings, other than proceedings in relation to which the Court has made an order under section 18(1), the Registrar shall cause to be published in the *Gazette* and in such other publications as the Minister directs, within 6 months after the Court gives a judgment under this Act:

- (a) the name of the claimant;
- (b) the name of the defendant;
- (c) the nature of the claim; and
- (d) the judgment of the Court.

**50 Rules**

- (1) The Chief Magistrate, within the meaning of the *Magistrates Act*, may make such rules and give such practice directions, not inconsistent with this Act:

- (a) regulating the practice and procedures of the Court, including the practice and procedures to be followed in the registry; and
- (b) regulating and prescribing all matters and things incidental or relating to any such practice or procedure or to costs,

as are necessary or convenient for the conduct of the business of the Court and, without limiting the generality of this subsection, which could be made, in respect of the Local Court, under section 21 of the *Local Court Act*.

- (2) The Rules may impose or confer on the Registrar functions and powers in relation to the Court and proceedings before the Court and the Registrar shall perform those functions and may exercise those powers accordingly.
- (3) Subject to this Act, the practice and procedures of the Court in relation to a matter within its jurisdiction are in the discretion of the Court.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Small Claims Ordinance 1974 (Act No. 67, 1974)***

Assent date	24 October 1974
Commenced	2 July 1976 ( <i>Gaz</i> No. 27, 2 July 1976, p 812)

***Small Claims Ordinance 1977 (Act No. 39, 1977)***

Assent date	29 July 1977
Commenced	29 July 1977

***Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)***

Assent date	9 December 1977
Commenced	1 January 1978 (s 2)

***Transfer of Powers (Self Government) Ordinance 1978 (Act No. 54, 1978)***

Assent date	1 July 1978
Commenced	1 July 1978

***Small Claims Amendment Act 1981 (Act No. 10, 1982)***

Assent date	8 April 1982
Commenced	26 November 1982 ( <i>Gaz</i> S31, 26 November 1982)

***Small Claims Amendment Act 1988 (Act No. 43, 1988)***

Assent date	15 September 1988
Commenced	5 June 1989 ( <i>Gaz</i> G17, 3 May 1989, p 2)

**Amending Legislation*****Statute Law Revision Act 1988 (Act No. 66, 1988)***

Assent date	22 December 1988
Commenced	22 December 1988

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**Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)**

Assent date 5 June 1989  
 Commenced s 6: 5 June 1989; rem: 1 Jan 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), *Gaz G17*, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz G49*, 12 December 1990, p 2)

**Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)**

Assent date 5 June 1989  
 Commenced s 6: 5 June 1989; rem: 1 Jan 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), *Gaz G17*, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz G49*, 12 December 1990, p 2)

**Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)**

Assent date 11 June 1990  
 Commenced s 5: 11 June 1990; rem: 1 January 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), *Gaz G17*, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz G49*, 12 December 1990, p 2)

**Statute Law Revision Law 1992 (Act No. 46, 1992)**

Assent date 7 September 1992  
 Commenced 7 September 1992

**Small Claims Amendment Act 1997 (Act No. 21, 1997)**

Assent date 7 May 1997  
 Commenced 1 June 1998 (s 2, s 2 *Local Court Amendment Act 1997* (Act No. 20, 1997) and *Gaz G19*, 20 May 1998, p 2)

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

s 4 *Small Claims Amendment Act 1997* (Act No. 21, 1997)

**4 LIST OF AMENDMENTS**

It amd No. 43, 1988, s 26  
 ss 1 – 2 amd No. 43, 1988, s 26  
 s 3 rep No. 51, 1977, s 3  
 s 4 amd No. 10, 1982, s 4; No. 43, 1988, ss 4 and 26  
 s 5 amd No. 10, 1982, s 5; No. 43, 1988, ss 5 and 26; No. 21, 1997, s 5  
 s 6 amd No. 10, 1982, s 12  
 rep No. 43, 1988, s 6  
 s 7 rep No. 43, 1988, s 6  
 s 8 amd No. 10, 1982, s 6; No. 43, 1988, s 7  
 rep No. 14, 1989, s 7  
 s 9 amd No. 10, 1982, s 12  
 sub No. 43, 1988, s 8  
 s 10 amd No. 10, 1982, s 12  
 rep No. 43, 1988, s 6  
 s 11 rep No. 43, 1988, s 8  
 s 13 sub No. 10, 1982, s 7; No. 43, 1988, s 9; No. 14, 1989, s 7  
 rep No. 31, 1990, s 7  
 ss 15 – 16 rep No. 43, 1988, s 10

## ENDNOTES

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s 17	amd No. 10, 1982, s 8 rep No. 43, 1988, s 10
ss 18 – 19	amd No. 43, 1988, s 26
s 20	amd No. 54, 1978, s 4; No. 10, 1982, s 12 rep No. 43, 1988, s 10 ins No. 46, 1992, s 8
s 21	amd No. 43, 1988, s 11
s 22	amd No. 43, 1988, s 26; No. 31, 1990, s 7
s 23	amd No. 43, 1988, ss 12 and 26; No. 14, 1989, s 7; No. 21, 1997, s 6
s 24	amd No. 43, 1988, ss 13 and 26; No. 14, 1989, s 7; No. 31, 1990, s 7
ss 25 – 26	rep No. 43, 1988, s 14
s 27	amd No. 54, 1978, s 4
s 28	amd No. 43, 1988, s 26
s 29	amd No. 43, 1988, s 26; No. 31, 1990, s 7; No. 21, 1997, s 7
s 30	amd No. 43, 1988, ss 15 and 26 rep No. 14, 1989, s 7
s 30A	ins No. 43, 1988, s 16
s 31	rep No. 43, 1988, s 17
s 32	sub No. 43, 1988, s 18 rep No. 31, 1990, s 7 ins No. 63, 2001, s 6
s 33	sub No. 43, 1988, s 18 rep No. 31, 1990, s 7
ss 34 – 38	rep No. 43, 1988, s 18
s 39	amd No. 43, 1988, s 19 rep No. 14, 1989, s 7
s 40	rep No. 14, 1989, s 7
s 41	rep No. 43, 1988, s 20
s 42	amd No. 43, 1988, s 26; No. 14, 1989, s 7
s 43	amd No. 43, 1988, ss 21 and 26
s 44	amd No. 10, 1982, s 12 rep No. 43, 1982, s 22
s 45	amd No. 10, 1982, s 9; No. 43, 1988, s 23; No. 14, 1989, s 7 sub No. 31, 1990, s 7
s 46	amd No. 10, 1982, s 12 rep No. 43, 1988, s 24
ss 47 – 48	rep No. 43, 1988, s 24
s 49	ins No. 39, 1977, s 3 amd No. 54, 1978, s 4; No. 14, 1989, s 7
s 50	ins No. 10, 1982, s 10 sub No. 43, 1988, s 25; No. 46, 1992, s 8
sch	rep No. 10, 1982, s 11