

NORTHERN TERRITORY OF AUSTRALIA

SMALL CLAIMS ACT

As in force at 13 February 2002

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 13 February 2002. Any amendments that commence after that date are not included.

SMALL CLAIMS ACT

An Act relating to small claims

Part I Preliminary

1 Short title

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

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice published in the *Gazette*.

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 Party to proceedings may not commence or continue any other proceedings for same cause or matter

Subject to this Act, if the Court makes a final order in proceedings, a party to the proceedings may not commence or continue any other proceedings (whether under this Act or any other law) in any court for the same cause or matter.

20 Re-hearing

- (1) If, other than in an appeal to the Court, an order is made in proceedings against a party to the proceedings who:
- (a) did not file a notice of defence;
 - (b) did not appear in the proceedings; or
 - (c) consented to the making of the order but there are grounds on which to satisfy the Court that the order is to be set aside (for example on the grounds of fraud, duress, suppression of evidence or the giving of false evidence),

the party may, subject to and in accordance with the Rules, apply to the Court for an order that the order be set aside and that the proceedings be re-heard.

- (2) On an application under this section, the Court may set aside the order subject to such terms and conditions, if any, as it considers just and re-hear the proceedings.
- (3) An application under this section operates as a stay of the order unless the Court orders otherwise.
- (4) If an application made under this section is heard and determined, the party who made the application must not file in respect of the proceedings to which the determined application relates another application under this section without the leave of the Court or the consent of the other party.

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 III Appeals**31 Appeal from order made by Registrar**

- (1) A party to proceedings may appeal to the Court constituted by a magistrate from an order in those proceedings made by a Registrar.
- (2) A party to proceedings may not appeal to the Supreme Court from an order in those proceedings made by a Registrar.

- (3) An appeal under subsection (1) is to:
 - (a) be made within 14 days after the day on which the order appealed against was made (and, if so, is made without the leave of the Court); or
 - (b) be made with the leave of a Registrar or a magistrate.
- (4) The hearing of the appeal is to be by hearing de novo.
- (5) The appeal does not operate as a stay of the order appealed against unless a magistrate orders otherwise.

32 Other appeals to be made after final order of magistrate

- (1) A party to proceedings may appeal to the Supreme Court on one or both of the following grounds:
 - (a) that an order made in those proceedings by a magistrate is wrong on a question of law;
 - (b) that the conduct of the proceedings was unfair.
- (2) A party may not make an appeal under subsection (1) until a magistrate has made the final order in the proceedings.
- (3) An appeal under subsection (1) is to be made within 28 days after the day on which the magistrate made the final order in the proceedings.

33 Matters relating to appeals to Supreme Court

- (1) An appeal from proceedings to the Supreme Court is to be brought in accordance with the Rules of the Supreme Court.
- (2) After hearing and determining the appeal, the Supreme Court may make any order it thinks just, including an order remitting the case for re-hearing to the Court with or without directions on the law.
- (3) An order made by the Supreme Court on an appeal from proceedings, other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.

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.

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.

51 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may:
- (a) prescribe fees and charges payable in respect of a proceeding in the Court or any other matter or thing under this Act, including for inspection and copies of documents relating to proceedings;
 - (b) prescribe the time for the payment of fees and charges;
 - (c) provide for the waiver of the payment of a fee or charge, in whole or in part, or the exemption of specified persons from the payment of a fee or charge;
 - (d) provide for the recovery of a fee or charge, including a fee or charge that has been waived or that a person is exempt from paying;
 - (e) provide for payment to the Court of an amount equal to a fee or charge that has been waived, or that a person is exempt from paying, on the recovery of the fee or charge; and
 - (f) provide for the recovery of disbursements.

ENDNOTES
1**KEY**

Key to abbreviations

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

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

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)

Small Claims Amendment Act 2001 (Act No. 63, 2001)

Assent date 21 December 2001
 Commenced 13 February 2002 (s 2, s 2 *Local Court Amendment Act 2001* (Act No. 64, 2001) and *Gaz* G6, 13 February 2002, p 4)

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

ENDNOTES

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
s 17	amd No. 10, 1982, s 8 rep No. 43, 1988, s 10
s 18	amd No. 43, 1988, s 26
s 19	amd No. 43, 1988, s 26 sub No. 63, 2001, s 4
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 sub No. 63, 2001, s 4
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
pt III hdg	sub No. 63, 2001, s 6
s 31	rep No. 43, 1988, s 17 ins No. 63, 2001, s 6
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 ins No. 63, 2001, s 6
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 rep No. 63, 2001, 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 rep No. 63, 2001, s 7
s 50	ins No. 10, 1982, s 10 sub No. 43, 1988, s 25; No. 46, 1992, s 8
s 51	ins No. 63, 2001, s 8
sch	rep No. 10, 1982, s 11