

**COURT OF REQUESTS (SMALL CLAIMS DIVISION)  
AMENDMENT ACT 1987**

---

**No. 4 of 1987**

---

TABLE OF PROVISIONS

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Short title.</li> <li>2. Commencement.</li> <li>3. Principal Act.</li> <li>4. Amendment of section 3 of Principal Act (Interpretation).</li> <li>5. Amendment of section 7 of Principal Act (Constitution of divisions by Special Commissioner)</li> <li>6. Amendment of section 8 of Principal Act (Acting appointment)</li> <li>7. Insertion of new section 8A in Principal Act.<br/>    8A—Part-time Special Commissioners.</li> <li>8. Amendment of section 12 of Principal Act (Jurisdiction of Special Commissioner).</li> </ol> | <ol style="list-style-type: none"> <li>9. Insertion in Principal Act of new section 12A.<br/>    12A—Transfer of small claims, &amp;c.</li> <li>10. Amendment of section 14 of Principal Act (Exclusion of other jurisdictions).</li> <li>11. Amendment of section 15 of Principal Act (Reference to the Special Commissioner of claims made to courts of requests).</li> <li>12. Amendment of section 29 of Principal Act (Costs, &amp;c.).</li> <li>13. Amendment of section 30 of Principal Act (Orders of Special Commissioner).</li> <li>14. Amendment of section 32 of Principal Act (Contempt and other offences).</li> <li>15. Amendment of section 40 of Principal Act (Regulations).</li> </ol> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|





COURT OF REQUESTS (SMALL CLAIMS DIVISION)  
AMENDMENT ACT 1987

—————  
No. 4 of 1987  
—————

\*\*\*\*\*  
AN ACT to amend the Court of Requests (Small Claims Division)  
Act 1985.

[Royal Assent 15 April 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and  
with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:—

**1**—This Act may be cited as the *Court of Requests (Small Claims Division) Amendment Act 1987*. Short title.

**2**—This Act shall commence on the day on which it receives the Royal assent. Commence-  
ment.

**3**—In this Act, the *Court of Requests (Small Claims Division) Act 1985\** is referred to as the Principal Act. Principal Act.

\* No. 6 of 1985. Amended by No. 14 of 1985.

Amendment of  
section 3 of  
Principal Act  
(Interpre-  
tation).

4—Section 3 of the Principal Act is amended as follows:—

(a) by inserting the following definition before the definition of “ claimant ”:—

“ barrister ” means a barrister within the meaning of the *Legal Practitioners Act 1959*;

(b) by inserting the following definition after the definition of “ practitioner ”:—

“ prescribed sum ” means—

(a) the sum of \$2 000; or

(b) such other sum as the regulations may prescribe in place of the sum mentioned in paragraph (a);

(c) by omitting the definition of “ small claim ” and substituting the following definition:—

“ small claim ” means any of the following claims:—

(a) a claim arising out of a contract, including a claim arising out of a lease or tenancy agreement in respect of any premises leased or let to the lessee or tenant for residential purposes;

(b) a claim in respect of a quasi-contractual obligation;

(c) a claim for a declaration that a person is not liable to another person in respect of a claim or demand for the payment of an amount arising out of a contract or in respect of a quasi-contractual obligation;

(d) a claim in tort for damage to property;  
or

(e) a claim in tort for damages in detinue or conversion,

where the total amount of the claim does not exceed the prescribed sum, including, where a claim is made for an order to perform work to

rectify a defect in goods or a deficiency in services, the value of the work sought to be performed, but does not include a claim for a debt or a liquidated demand where there is no dispute as to the liability for payment of the debt or demand, either in whole or in part;

**5**—Section 7 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

Amendment of section 7 of Principal Act (Constitution of divisions by Special Commissioner).

(2) The Special Commissioner—

(a) shall be appointed by the Governor; and

(b) shall be—

(i) a practitioner or barrister of not less than 5 years' standing; or

(ii) a person who has been admitted to practise in the State as a practitioner under section 11 of the *Legal Practitioners Act* 1959 or as a barrister under section 15 of that Act and who is of not less than 5 years' standing in the aggregate as such a practitioner or barrister.

**6**—Section 8 of the Principal Act is amended as follows:—

Amendment of section 8 of Principal Act (Acting appointment).

(a) by omitting from subsection (1) “of not less than 5 years' standing” and substituting “or barrister of not less than 5 years' standing, or a person of a kind referred to in section 7 (2) (b) (ii),”;

(b) by inserting the following subsection after subsection (3):—

(3A) The provisions of the *Tasmanian State Service Act* 1984 do not apply to or in respect of the appointment by the Governor of a person under subsection (1) and a person so appointed under that subsection is not, while he is acting in the office of Special Commissioner pursuant to the appointment, subject to the provisions of that Act.

Insertion  
of new  
section 8A in  
Principal Act.

7—After section 8 of the Principal Act, the following section is inserted:—

Part-time  
Special  
Commissioners.

8A—(1) The Governor may, by instrument in writing, appoint such number of persons each of whom is a practitioner or barrister of not less than 5 years' standing or a person of a kind referred to in section 7 (2) (b) (ii), as he considers necessary to be part-time Special Commissioners for the purpose of exercising the powers and performing the functions of the Special Commissioner—

(a) where, by reason of any direct or indirect interest that the Special Commissioner has or may have in respect of any small claims referred to him pursuant to section 13 (1) and any claims referred to him pursuant to section 15, he considers it appropriate or necessary to disqualify himself from hearing and determining those small claims and claims; and

(b) for the purpose of preventing or lessening delay in hearing and determining those small claims and claims.

(2) An instrument of appointment for the purposes of subsection (1) shall specify the terms and conditions to which the appointment is subject, including, without limiting the generality of the foregoing, terms and conditions with respect to the remuneration and allowances payable to the part-time Special Commissioner to whom the instrument relates and the period or periods during which he shall exercise the powers and perform the functions of the Special Commissioner.

(3) The Governor may, at any time, terminate the appointment of a person as a part-time Special Commissioner under this section.

(4) The provisions of the *Tasmanian State Service Act* 1984 do not apply to or in respect of the appointment by the Governor of a person as a part-time Special Commissioner under this section and a person so appointed under this section is not, in his capacity as a part-time Special Commissioner, subject to the provisions of that Act during his term of office as a part-time Special Commissioner.

(5) Where a person is appointed as a part-time Special Commissioner under this section, he has, and may exercise, all the powers, and he may perform all the functions, of the Special Commissioner under this Act or any other law.

(6) All things done or omitted to be done by a person appointed as a part-time Special Commissioner under this section while that person is exercising the powers, and performing the functions, referred to in subsection (5) shall be as valid, and have the same consequences, as if they had been done or omitted to be done by the Special Commissioner.

(7) The validity of anything done by or in relation to a person purporting to exercise the powers, and perform the functions, referred to in subsection (5) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect, or that the occasion for him to act had not arisen or had ceased.

(8) A person appointed under subsection (1) may at any time resign his office by writing under his hand delivered to the Governor.

**8**—Section 12 of the Principal Act is amended as follows:—

Amendment of section 12 of Principal Act (Jurisdiction of Special Commissioner).

(a) by omitting “ \$2 000 ”, wherever occurring, and substituting “ the prescribed sum ”;

(b) by omitting from subsection (4) “ that amount ” and substituting “ the prescribed sum ”.

**9**—After section 12 of the Principal Act the following section is inserted in Part II:—

Insertion in Principal Act of new section 12A.

12A—(1) Where, in relation to a claim (being a small claim referred to the Special Commissioner pursuant to section 13 (1) or 15), the Special Commissioner considers that the issue in dispute involves such a complex point of law as to warrant the claim being heard and determined by a court which otherwise has jurisdiction to do so, he may, on the application of a party to the proceeding or on his own motion, order that the proceeding be transferred to such a court.

Transfer of small claims, &c.

(2) For the purposes of subsection (1), “issue in dispute”, in relation to a claim to which that subsection applies, includes any claim for a set-off or a counterclaim which the respondent alleges that he has against the claimant.

(3) An order under subsection (1) shall not be made unless the Special Commissioner is satisfied that, in all the circumstances, such an order would not be unfair to any of the parties to the relevant proceeding.

(4) Where the Special Commissioner makes an order under subsection (1), the claim to which the order relates—

- (a) ceases to be a small claim that is referred to the Special Commissioner as mentioned in that subsection;
- (b) may not again be referred to the Special Commissioner; and
- (c) is deemed never to have been referred to the Special Commissioner.

Amendment of section 14 of Principal Act (Exclusion of other jurisdictions).

**10**—Section 14 (1) of the Principal Act is amended by omitting “Where” and substituting “Subject to section 12A, where”.

Amendment of section 15 of Principal Act (Reference to the Special Commissioner of claims made to courts of requests).

**11**—Section 15 (2) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (a) “in respect of a claim that comes within the jurisdiction of the Special Commissioner”;
- (b) by omitting from that subsection the passage beginning with “that court” and ending with “is given.” and substituting the following passage:—

“that court, if that claim comes within the jurisdiction of the Special Commissioner and if an election to have the claim so referred—

- (c) being an election in writing made by one or more of the parties to the action, is filed in the office of the Registrar within the period of 14 days after the notice of defence is given; or



(d) being an election in writing made at any time by all the parties to the action, is filed in that office.”.

**12**—Section 29 of the Principal Act is amended as follows:—

Amendment of  
section 29 of  
Principal Act  
(Costs, &c.).

(a) by inserting “or (3)” in subsection (1) after “subsection (2)”;

(b) by adding the following subsections after subsection (2):—

(3) Where the Special Commissioner makes an order under section 30 in favour of a claimant in a proceeding before him which relates to a claim referred to him pursuant to section 15 (2), the Special Commissioner may, in that order or a further order, award costs to the claimant, in accordance with the appropriate scale of fees and charges prescribed by the rules of court under the *Local Courts Act* 1896, being costs up to, and including, the commencement by the claimant of the relevant proceeding in the court of requests.

(4) Where the Special Commissioner makes an order under section 30 in favour of a claimant in a proceeding before him, the Special Commissioner may, in that order or a further order, require the respondent to pay to the claimant all of the prescribed fee paid by him under section 13 (1) or such part of that fee as is specified in the order.

**13**—Section 30 of the Principal Act is amended as follows:—

Amendment of  
section 30 of  
Principal Act  
(Orders of  
Special  
Commissioner).

(a) by omitting from subsections (3) (a) and (5) (a) “\$2 000”, wherever occurring, and substituting “the prescribed sum”;

(b) by omitting from subsection (3) (c) “or services” and substituting “, or a deficiency in services,”;

(c) by omitting from subsection (3) (d) “relates,” and substituting “relates;”;

(d) by inserting the following paragraph after subsection (3) (d):—

(e) an order that requires a party to the proceeding (other than the claimant) to replace any goods to which the small claim in the proceeding relates,

(e) by inserting the following subsection after subsection (5):—

(5A) An order under subsection (3) (e) shall direct that what is required to be done by the order shall be done within the time specified in the order.

Amendment of  
section 32 of  
Principal Act  
(Contempt  
and other  
offences).

14—Section 32 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “is guilty of an offence.” and substituting “may be summarily convicted of contempt by the Special Commissioner.”;

(b) by omitting subsections (2) and (3) and substituting the following subsections:—

(2) A person convicted of contempt under subsection (1) is liable to a fine not exceeding \$100 imposed by order of the Special Commissioner.

(3) A person who does an act referred to in paragraphs (a), (b), (c), or (d) of subsection (1) or who, without lawful excuse, disobeys a lawful direction given to him as mentioned in paragraph (e) of that subsection—

(a) may be dealt with under that subsection without a complaint being made, or a summons being issued, in respect of him;

(b) may be called on by the Special Commissioner to show cause why he should not be convicted of contempt under subsection (1); and

(c) may be dealt with by the Special Commissioner on the Special Commissioner’s own view or on the evidence of a credible witness.

(3A) A fine imposed by order under subsection (2) is payable immediately or within such other time as the Special Commissioner determines.

(3B) Where a fine is imposed by order under subsection (2), the order shall be deemed to be an order made under section 30 (3) (a) for the payment of a sum of money.

**15**—Section 40 of the Principal Act is amended as follows:—

Amendment of  
section 40 of  
Principal Act  
(Regulations).

(a) by inserting the following paragraph after subsection (2) (a):—  
(ab) the prescribed sum;

(b) by inserting the following subsections after subsection (2):—

(2A) Without limiting the generality of subsection (2) (c), the regulations may provide for or with respect to the holding of conferences by Registrars with the parties to the relevant proceedings when small claims are referred to the Special Commissioner pursuant to section 13 (1) or claims are referred to him pursuant to section 15.

(2B) Without limiting the generality of subsection (2A), regulations for the purposes of that subsection may—

- (a) prescribe the purposes for which a conference referred to in that subsection shall be held;
- (b) authorize a Registrar to delegate to an officer of the court of requests of which he is the Registrar the performance of his functions, and the exercise of his powers, in relation to the holding of such a conference under those regulations;
- (c) provide for or with respect to the representation of the parties to such a conference and the parties who are not entitled to be present at such a conference;

- (d) provide for or with respect to the adjournment of such a conference; and
- (e) provide for or with respect to the bringing about of an agreement between the parties to a proceeding as a result of such a conference.