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K Woodward
Chief Parliamentary Counsel
Dated 6 December 2023



TASMANIA

MAGISTRATES COURT (CIVIL DIVISION) ACT 1992

No. 27 of 1992

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SCHEDULE 1 –



**MAGISTRATES COURT (CIVIL DIVISION) ACT
1992**

No. 27 of 1992

An Act to establish a civil division of the Magistrates Court, to repeal the *Local Courts Act 1896*, and to provide for incidental matters

[Royal Assent 13 November 1992]

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Magistrates Court (Civil Division) Act 1992*.

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Part 1 – Preliminary

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears

—

action means an action brought under this Act;

Administrator means the Administrator of the Magistrates Court;

assistant bailiff means a person appointed under section 15A;

bailiff means a person appointed under section 15 and includes an assistant bailiff;

civil division means the Magistrates Court (Civil Division) established by this Act;

Court means the Magistrates Court exercising its civil jurisdiction in the civil division;

district means the area serviced by a registry;

law practice has the same meaning as in the *Legal Profession Act 2007*;

Magistrates Court means the Magistrates Court established by the *Magistrates Court Act 1987*;

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Magistrates Rule Committee means the committee referred to in section 15AC of the *Magistrates Court Act 1987*;

minor civil claim means –

- (a) a claim or counterclaim for damages, or for the payment of money, if the amount claimed does not exceed \$5 000 or any other amount as may be prescribed for the purpose of this definition; or
- (b) any other claim prescribed in the regulations to be a minor civil claim;

practitioner means an Australian legal practitioner;

prescribed amount means \$50 000;

process means any document required to be filed, issued, given or served under this Act;

registrar means the Administrator, a district registrar or a deputy district registrar;

registry means a registry of the Magistrates Court;

regulations means the regulations made and in force under this Act;

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rules of court means rules of court made for this Act by the Magistrates Rule Committee.

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**PART 2 – ESTABLISHMENT OF CIVIL DIVISION OF
THE MAGISTRATES COURT**

4. Establishment of civil division

- (1) There is established a division of the Magistrates Court to be known as the Magistrates Court (Civil Division).
- (2) The jurisdiction conferred on the Magistrates Court by Part 3 is to be exercised solely within the civil division of that court.

5.

6. Court to comprise a single magistrate

For the purposes of exercising the jurisdiction conferred on the Magistrates Court by Part 3, the Court is to be constituted by a single magistrate.

PART 3 – CIVIL JURISDICTION OF MAGISTRATES COURT

7. Monetary limit on jurisdiction

- (1) The Magistrates Court has a civil jurisdiction which is to be limited to actions for an amount not exceeding the prescribed amount.
- (2) The Magistrates Court’s civil jurisdiction includes the jurisdiction to hear and determine minor civil claims.

7A.

8. Common law jurisdiction

The Court has jurisdiction to hear and determine all actions for the recovery of an amount or goods where the amount claimed or the value of the goods claimed together with the value of the amount of any claim for consequential damages for detention of those goods does not exceed the prescribed amount, whether on a balance of account or after an admitted set-off or otherwise.

9. Equitable jurisdiction

The Court has the jurisdiction of, and may exercise the powers and authority of, the Supreme Court to hear and determine any of the following:

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-
- (a) an action for foreclosure or redemption of any mortgage or for enforcing any charge or lien, where the amount owing in respect of the mortgage, charge or lien does not exceed the prescribed amount;
 - (b) an action for the specific performance, or for the rectification, delivery up or cancellation, of any agreement for the sale, purchase or lease of any property, where, in the case of a sale or purchase, the purchase money, or in the case of a lease, the value of the property, does not exceed the prescribed amount;
 - (c) an action for the partition of land where the value of the land does not exceed the prescribed amount;
 - (d) an action for the determination of any question that has arisen in respect of any requisition, objection, claim for compensation or other matter arising out of or connected with a contract for the sale of any freehold land, the value of which does not exceed the prescribed amount, or any leasehold estate where the rent payable under the lease is at a rate not greater than the prescribed amount a year;
 - (e) an action for relief against the forfeiture of a lease or tenancy for non-payment of rent in any case where the rent payable under the lease or tenancy is at a rate not

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- greater than the prescribed amount a year;
- (f) an action for the rectification of any written contract where the value of the subject matter of the contract does not exceed the prescribed amount;
 - (g) an action for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the prescribed amount;
 - (h) an action for the dissolution or winding-up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed in amount or value the prescribed amount;
 - (i) an action for an order in the nature of an injunction, where such an order is requisite for granting relief in any matter in which jurisdiction is given by this Act to the Court, or for stay of proceedings at law to recover any debt provable under a judgment for the administration of an estate made by the Court;
 - (j) an action relating to the maintenance or advancement of a minor, where the property of the minor does not exceed in amount or value the prescribed amount;
 - (k) any other matter which is within the equitable jurisdiction of the Supreme

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Court and which is in respect of an amount that does not exceed the prescribed amount other than –

- (i) an action for the administration of the estate of a deceased person; or
- (ii) an action for the execution of a trust or for a declaration that a trust exists.

10. Law and equity to be administered concurrently

- (1) The Court may hear and determine in the one action or matter legal and equitable rights, whether a decision upon both classes of rights or upon one class of rights only is sought in the action or matter in the same manner as the Supreme Court or a judge of the Supreme Court.
- (2) Where there is any conflict or variance between the rules of equity and the rules of law in respect of any action or matter before the Court, the rules of equity prevail.

11. Consent jurisdiction

- (1) The Court has jurisdiction to hear and determine any action without limitation as to the amount of the claim if all parties to the action file with the registrar a consent in writing, signed by them or their practitioners, that the Court is to have such jurisdiction.

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- (2) On the filing of a consent referred to in subsection (1) all proceedings in respect of the action may be taken, and the matter may be heard, determined and enforced by the Court.

12. Court may award costs where action or matter struck out for want of jurisdiction

- (1) If an action or matter is commenced over which the Court does not have jurisdiction, the Court must, unless a consent is filed under section 11, order it to be struck out and has power to make an order as to costs.
- (2) Before making an order under subsection (1), the Court must advise the parties to the action or matter that they may make application under section 30 to have the action or matter transferred to the Supreme Court.
- (3) The Court must not make an order under subsection (1) before the expiration of 28 days from the day on which it advises the parties of their right to make an application under section 30.

13. Power of magistrate to sit in chambers

A magistrate in chambers has, and may exercise in respect of any action or proceeding under this Act, any of the powers which, if such action or proceeding were pending in the Supreme Court, a judge of the Supreme Court might exercise in chambers.

13A. Vexatious litigants

- (1) Where a person is declared to be a vexatious litigant under an order in force under section 194G of the *Supreme Court Civil Procedure Act 1932*, that person may not, without the leave of the Chief Magistrate or the Deputy Chief Magistrate, institute any proceedings in the Court.
- (2) If proceedings are pending in the Court when an order is made as mentioned in subsection (1), those proceedings are taken to be stayed unless leave is given as mentioned in that subsection.
- (3) Where proceedings pending in the Court are taken to be stayed and the person declared to be a vexatious litigant has not applied for, or has not been granted, leave to proceed in those proceedings, any other party to those proceedings may apply to the Court for an order for the costs incurred by that party in those proceedings.

13B. Court may make application under *Vexatious Proceedings Act 2011*

The Administrator may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to a person who institutes any action or proceeding under this Act.

PART 4 – ADMINISTRATION

14. Duties of district registrars

Each district registrar must, in respect of the district to which the district registrar is appointed

—

- (a) file, sign and issue all process, and register all orders and judgments of the Court made within the district; and
- (b) keep an account of all proceedings of the Court within the district; and
- (c) receive and keep an account of all Court fees and fines payable or paid into court within the district; and
- (d) keep an account of all moneys paid into or out of Court within the district.

15. Bailiffs

- (1) The Secretary of the Department may appoint persons employed in the Department to be bailiffs for the purposes of this Act.
- (2) A police officer is a bailiff for the purpose of this Act.

15A. Assistant bailiffs

- (1) A registrar may appoint persons as assistant bailiffs for the purpose of this Act on any terms and conditions.

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- (2) An assistant bailiff has the same powers, authorities, duties and functions as a bailiff has.

16. Duties, &c., of bailiffs

- (1) A bailiff has and may exercise and discharge such powers, authorities, duties and functions as may be specified in this or any other Act.
- (2) Subject to subsection (1), a bailiff must exercise and discharge his or her powers, authorities, duties and functions in accordance with such orders or directions as may be given by a magistrate.
- (3) Except as provided in subsection (6), a bailiff must serve and execute all process issued out of the Court and generally perform all duties and exercise all functions required to be performed and exercised by a bailiff appointed under this Act.
- (4) A bailiff must, in the execution of his or her duties, comply with the rules of court and the direction of the Court.
- (5) A bailiff is responsible for his or her acts and defaults and the acts and defaults of any person assisting the bailiff in like manner as the sheriff is responsible for his or her acts and defaults and the acts and defaults of the sheriff's officers.
- (6) Nothing in this section prohibits the service of process in any proceedings by a party to those proceedings if that process is authorized or required to be served under the rules of court.

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- (7) References in subsection (6) to a party to any proceedings are to be construed as including references to a practitioner acting on behalf of that party in those proceedings or any person acting on the directions of that party or that practitioner.
- (8) Where a person other than a bailiff serves any process in any proceedings, that person is entitled to recover a service fee in accordance with a scale prescribed by the regulations.

17.

18. Bailiff not to be trespasser by reason of irregularity

- (1) A bailiff executing any warrant of the Court and any person at whose instance the warrant was executed is not to be deemed a trespasser by reason of any irregularity or informality in the validity of the warrant or in the manner of executing the warrant.
- (2) Notwithstanding subsection (1), an aggrieved party may bring an action for any special damage which the aggrieved party may have sustained by reason of any irregularity or informality referred to in that subsection.

PART 5 – PRACTICE AND PROCEDURE

Division 1 – Rules of Court

19. Practice and procedure to be in accordance with rules of court

Subject to any provision made under any other Act, the practice and procedure of the Court is to be in accordance with the rules of court.

20 - 22.

Division 2 – Interest on debts and judgments

23. Interpretation of Division

In this Division,

prescribed rate, in relation to a judgment, means the prescribed rate referred to in section 35A of the *Supreme Court Civil Procedure Act 1932*, as in force at the time at which the judgment is given.

24.

25. Power of Court to allow interest on debts, &c.

(1) In any action for the recovery of a debt or damages, the Court may order that there be included in the whole or part of the sum for

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which judgment is given interest of such rate, not exceeding the prescribed rate, as it thinks fit for the whole or any part of the period between the date when the cause of action arose and the date when judgment is entered.

- (2) Nothing in this section –
 - (a) authorizes the giving of interest on interest; or
 - (b) applies in relation to any debt upon which interest, is payable as of right, whether by virtue of an agreement or otherwise; or
 - (c) limits the operation of any other enactment or rule of law providing for the award of interest.

26. Interest on judgments

- (1) Every judgment carries interest at –
 - (a) the rate of interest that applied, under section 165 of the *Supreme Court Civil Procedure Act 1932*, at the time at which the judgment was entered; or
 - (b) where the debt upon which the judgment is entered up carried interest, the rate at which that interest was calculated –

from the time that judgment was entered until it has been satisfied.

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- (2) The amount of any interest due and payable under this section may be levied by execution on the judgment.

Division 3 – Judgments and appeals

27. Judgment

Except as otherwise provided in this Act or in the rules of court, every judgment and order made by the Court is final and conclusive between the parties.

28. Appeals to Supreme Court

- (1) If any party to a proceeding before the Court, other than a proceeding in respect of a minor civil claim, is aggrieved by any determination, order, ruling or direction of the Court, that party may appeal to a judge of the Supreme Court who may make such orders as the judge considers appropriate in the circumstances.
- (2) If a party to a proceeding in respect of a minor civil claim before the Court is aggrieved by any determination, order, ruling or direction of the Court, that party may appeal to a judge of the Supreme Court –
- (a) on one or more of the following grounds:
- (i) that the magistrate lacked jurisdiction or exceeded his or her jurisdiction;

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- (ii) that the party was denied natural justice in the course of proceedings; or
- (b) if a judge of the Supreme Court grants leave, on any other ground.
- (3) On an appeal under subsection (2), the judge may make any orders he or she considers appropriate in the circumstances.

29. Order of review not to be made

In respect of a proceeding before the Court or a magistrate or in respect of an order made by the Court or a magistrate –

- (a) an order of review is not to be made under the *Judicial Review Act 2000*; or
- (b) a declaratory judgment is not to be given.

30. Transfer of proceedings into Supreme Court

- (1) A party to a proceeding may apply to the Supreme Court or a judge for the proceeding to be transferred to the Supreme Court.
- (2) An application may be made under subsection (1) even if the proceeding is wholly or partly beyond the jurisdiction of the Court.
- (3) On an application under subsection (1), the Supreme Court or a judge may, if in all the circumstances of the case the Supreme Court or the judge considers it fit or desirable to do so,

order that the proceedings be transferred to the Supreme Court.

31. Questions reserved for opinion of Supreme Court

- (1) The Court may, if it thinks fit, reserve any question in the form of a special case for the opinion of the Supreme Court.
- (2) A judgment or order is not to be given or made in respect of any matter on which a question referred to in subsection (1) has been reserved until the Supreme Court gives its opinion on the question.
- (3) The Supreme Court may, in respect of any question referred to in subsection (1), make such order as it thinks proper as to the costs of and occasioned by the hearing of the matter.

Division 4 – Minor civil claims

31AA. Proceedings to be in open court

A proceeding in respect of a minor civil claim is to be heard in open court unless the Court considers that the administration of justice would be rendered impracticable.

31AB. Procedure for minor civil claims

- (1) The following provisions apply to a proceeding in respect of a minor civil claim:

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- (a) the Court is not bound by the rules of evidence but may inform itself on any matter in any manner that it considers appropriate;
 - (b) the Court may itself elicit by inquiry from the parties and the witnesses and by examination of evidentiary material produced to the Court the issues in dispute and the facts necessary to decide those issues;
 - (c) the proceeding is to take the form of an inquiry by the Court into the matters in dispute between the parties rather than an adversarial contest between the parties;
 - (d) the Court may itself call and examine witnesses;
 - (e) the Court may, at the expense of the Crown, appoint a person to inquire into, and report upon, any question of fact arising in the proceeding;
 - (f) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act, the rules of court and a proper consideration of the issues in dispute permit.
- (2) The Court is to give a report made to it under subsection (1)(e) any weight that it considers appropriate.

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- (3) The Magistrates Rule Committee is to determine the rules which apply to, and in respect of, a proceeding relating to a minor civil claim.
- (3A) Notwithstanding subsection (3), where the Court considers it expedient and in the interests of justice, the Court may dispense with the application of the rules referred to in that subsection or may apply rules not generally applicable to minor civil claims.
- (4) A contravention of the provisions of this section does not invalidate the hearing of the proceeding in which the contravention occurs or of an order made in that proceeding.

31AC. Evidence and production of documents

- (1) In a proceeding in respect of a minor civil claim –
 - (a) evidence may be taken on oath or affirmation; and
 - (b) subject to any lawful claim or right of privilege, the Court may, by notice, require a member or an officer of the Consumer Affairs Council constituted under the *Consumer Affairs Act 1988* or any other person to appear before it to give evidence and to produce any documents, books or things that are specified in the notice; and
 - (c) evidence may, subject to this section, be given orally or in writing.

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- (2) A person who gives evidence in writing in a proceeding before the Court is to verify that evidence by statutory declaration.
- (3) The Court may, in its discretion, exempt a person referred to in subsection (2) from complying with that subsection.

31AD. Representation of parties

- (1) A legal practitioner is not to represent a party to a proceeding in respect of a minor civil claim unless –
 - (a) another party to the proceeding is a legal practitioner; or
 - (b) all parties to the proceeding agree; or
 - (c) the Court is of the opinion that the party would be unfairly disadvantaged if not represented by a legal practitioner.
- (2) The Court may permit the representation of a party by a legal practitioner at the hearing of interlocutory proceedings if the Court considers it appropriate to do so.
- (3) A party to a proceeding in respect of a minor civil claim who is a body corporate may be represented by an officer or an employee of the body corporate who is not a legal practitioner.
- (4) If a person is subrogated to the rights of a party to a proceeding in respect of a minor civil claim, the Court may permit that person –

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- (a) to appear in the proceeding on behalf of that party; and
 - (b) to be represented in the same way as if that person were a party to the proceeding.
- (5) The Court may permit a party, or a person subrogated to the rights of a party, to be assisted by a person who is not a legal practitioner if that person is not receiving a fee or reward for that assistance.
- (6) The Court may permit a party to be represented by an agent who is not a legal practitioner at a hearing or at an interlocutory proceeding.
- (7) A contravention of the provisions of this section does not invalidate the hearing of the proceeding in which the contravention occurs or of an order made in that proceeding.

31AE. Contracting out prohibited

- (1) This Division has effect notwithstanding any stipulation to the contrary in a contract and no contract operates to annul, vary, limit or exclude any of the provisions of this Division.
- (2) This Division applies to a contract notwithstanding a provision in it that the proper law of the contract is the law of a place other than Tasmania if, apart from that provision, that proper law would be the law of Tasmania.

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31AF. Costs, compensation and expenses

- (1) In a minor civil claim, costs for getting the action up to trial or by way of counsel fees are not to be awarded unless –
 - (a) all parties to the action were represented by counsel; or
 - (b) the Court is of the opinion that there are special circumstances justifying the award of costs.
- (2) The Court may award compensation to a party in a proceeding before it if the Court considers that the minor civil claim to which the proceeding relates is a frivolous or vexatious claim.

31AG. Estoppel

The determination of an issue in a minor civil claim does not prevent the parties from again litigating the same issue in different proceedings based on a different claim.

PART 6 – EXECUTION

31A. Enforcement of judgments and orders

The Court has the same powers in relation to the enforcement of its judgments and orders as the Supreme Court has in relation to the enforcement of its judgments and orders, unless otherwise provided by the rules of court.

32. Power of bailiff to interplead

- (1) Where a claimant makes a claim within 10 days after any personal property has been taken in execution (or such greater period as the Court may approve on such terms as it may approve) the registrar may, upon the application of the bailiff, issue a summons calling before the Court the claimant and the party who caused the process to be issued to have the Court adjudicate on who has the better claim to the property.
- (2) Upon hearing a matter referred to in subsection (1), the Court may –
 - (a) make such order between the parties (including the bailiff) as to any claims made on the property as it thinks fit; and
 - (b) make such orders as to costs as it thinks fit; and
 - (c) adjudicate on any claim against the bailiff for damages that may have arisen or be capable of arising out of the execution of process.

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- (3) An order under this section –
 - (a) may be enforced in the like manner as any order in an action brought in the Court; and
 - (b) is, subject to subsection (4), final and conclusive between all parties and the bailiff.
- (4) An order by the Court under this section is an order for the purposes of section 28.

PART 7 – MISCELLANEOUS

33. Costs

- (1) The costs of and incidental to all proceedings are in the discretion of the Court and the Court may determine by whom and to what extent the costs are to be paid.
- (2) In the due exercise of the discretion conferred by subsection (1), in any proceedings before the Court, the Court may order a practitioner to pay the costs of the proceedings or a portion of the costs.

34. Practitioners' charges

The costs as between party and party to be paid to a practitioner—

- (a) for appearing and acting in court and for business transacted by that practitioner in connection with an action brought under this Act
- (b)

are as prescribed by the rules of court.

35. Evidentiary provisions

- (1) Any book, record, account or other document required by this Act to be kept by an officer of the Court is admissible in any court as evidence

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of the matters referred to by the entries in the book, record, account or document.

- (2) A document purporting to be a copy of an entry referred to in subsection (1) and purporting to be signed and certified as a true copy by a registrar is admissible as evidence of that entry under subsection (1).
- (3) Any book, record, account or other document referred to in subsection (1) or a document purporting to be a copy as referred to in subsection (2) is, without further proof, evidence of the proceeding to which the entry relates and of the regularity of that proceeding.

35A. Expert reports

- (1) The Court may refer a question arising in any proceedings for investigation and report by a person with expertise in relation to that question.
- (2) The expert to whom the question is referred becomes, for the purposes of the investigation, an officer of the Court and may exercise such of the Court's powers as it delegates to that expert.
- (3) The Court may adopt the expert's report in whole or in part.
- (4) Notwithstanding section 33, the costs of the expert's investigation and report are to be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another

party for costs incurred pursuant to this subsection.

36. Advocates

- (1) Subject to subsection (2), it is lawful for a party to an action or proceeding, a practitioner, or, by leave of the Court, any other person on behalf of such a party, to appear and to address the Court.
- (2) A person who is not a practitioner is not entitled to have or recover any money for appearing or acting on behalf of any other person in the Court.
- (3) This section has effect subject to the *Legal Profession Act 2007*.

37. Witnesses

- (1) A person served, as prescribed by the rules of court, with a summons to appear as a witness at a hearing must not, without reasonable excuse—
 - (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused or released from further attendance by the magistrate; or
 - (c) refuse or fail to produce a document that the person was required to produce by the summons.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary

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conviction to a fine not exceeding 10 penalty units.

38. Fees

Fees are payable on proceedings in the Court and are to be determined in accordance with the scale prescribed in the regulations.

38A. Reduction or waiver of fee, &c.

If a magistrate or registrar is satisfied that paying a fee would cause a person undue hardship, the magistrate or registrar may –

- (a) waive the fee; or
- (b) reduce the fee; or
- (c) refund the whole or any part of the fee already paid; or
- (d) allow time to pay the whole or any part of the fee.

39. Appropriation of fees

All fees received under this Act are to be paid into the Public Account.

39A. Mediators and conciliators protected from liability

- (1) A mediator or conciliator does not incur any personal liability in respect of any act done or omitted in good faith in the performance or

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exercise, or in the purported performance or exercise, of any function or power under this Act.

- (2) A civil liability that would, but for subsection (1), lie against a person lies against the Crown.

39B. Rules of court

The rules of court may, without limiting the generality of the Magistrates Rule Committee's powers, make provision for or with respect to all or any of the following:

- (a) the enforcement of judgments and orders of the Court;
- (b) mediation and conciliation conferences, including –
 - (i) the appointment of mediators and conciliators; and
 - (ii) the conduct of conferences; and
 - (iii) the procedure to be followed before, at and after conferences; and
 - (iv) the giving of directions and making of orders by persons who conduct conferences; and
 - (v) the effect of conferences; and

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- (vi) judgment following conferences or the failure of persons to attend conferences.

40. Regulations

The Governor may make regulations for the purposes of this Act.

41. Repeal

The *Local Courts Act 1896* is repealed.

42. Consequential amendments

See Schedule 1

42A. Transfer of residual court of request matters

- (1) In this section,

winding-up day means the day of commencement of Part 6 of the *Justice Legislation (Miscellaneous Amendments) Act 2001*.

- (2) On the winding-up day –

- (a) an action that was pending before a court of requests immediately before that day is taken to be an action commenced within the civil division; and
- (b) the provisions of the *Local Courts Act 1896* cease to apply to the action.

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- (3) Any judgment or other order made before the winding-up day by a Commissioner of a Court of Requests in an action to which subsection (2) applies may, on and after that day, be enforced under this Act as if the judgment or order had been made within the civil division.
- (4) The Rules of Court may contain such provisions of a transitional nature as the Magistrates Rule Committee considers necessary or expedient consequent on the enactment of this section.

43. Savings and transitional provisions

- (1) In any Act, a reference to a court of requests or a local court is to be read as a reference to the Magistrates Court (Civil Division).
- (2) In any Act, a reference to a commissioner of a court of requests is to be read as a reference to a magistrate sitting in the Magistrates Court (Civil Division).
- (3) In any Act, a reference to a registrar of a court of requests is to be read as a reference to a registrar of the Magistrates Court.
- (4) If an action has been commenced and not finally disposed of under the *Magistrates Court (Small Claims Division) Act 1989* before the commencement of the *Magistrates Court (Minor Civil Claims) Act 2003* –
 - (a) the rules of court as in force immediately before that commencement apply to, and in respect of, that action except in so far

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as the rules permit judgment to be entered against a defendant in default of entering a defence; and

- (b) a party to that action has the same right to apply for a prerogative writ as if the *Judicial Review Act 2000* had not been enacted.
- (5) Any person holding appointment as a bailiff immediately before the commencement of this Act is deemed to have been appointed as a bailiff under this Act.
- (6) A judgment or order made before the commencement of the *Magistrates Court (Minor Civil Claims) Act 2003* by the Court in a small claim as defined in this Act as then in force may, on and after that day, be enforced under this Act as if the judgment or order had been made in a minor civil claim.
- (7) The rules of court may contain any provisions of a transitional nature that the Magistrates Rule Committee considers necessary or expedient consequent on the enactment of the *Magistrates Court (Minor Civil Claims) Act 2003*.
- (8) In any Act, a reference to a small claim is to be read as a reference to a minor civil claim.

43A. Transitional provision: rules of court

- (1) In this section –

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new rules means rules of court made for this Act by the Magistrates Rule Committee on or after the transition day;

old rules means the rules of court in force under Part 5 immediately before the transition day;

Transition Act means the *Justice (Delegated Legislation) Act 2003*;

transition day means the day on which Part 8 of the Transition Act commences.

- (2) Notwithstanding the amendments made to this Act by Part 8 of the Transition Act, the old rules –
- (a) continue in force on and after the transition day until new rules take effect; and
 - (b) may be amended by the Magistrates Rule Committee, for which purpose the committee has and may exercise any power expressly or impliedly conferred on it under section 15AE of the *Magistrates Court Act 1987*.
- (3) The Magistrates Rule Committee may rescind the old rules.

44. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

SCHEDULE 1

The amendments effected by Section 42 and this Schedule have been incorporated into authorised versions of the following Acts:

- (a) *Debtors Act 1870;*
- (b) *Debtors Act 1888;*
- (c) *Magistrates Court (Small Claims Division) Act 1989;*
- (d) *Magistrates Court Act 1987;*
- (e) *Supreme Court Act 1959.*

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NOTES

The foregoing text of the *Magistrates Court (Civil Division) Act 1992* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 27 November 2023 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Magistrates Court (Civil Division) Amendment Act 1993</i>	No. 73 of 1993	23.11.1993
<i>Vexatious Litigants Act 1994</i>	No. 65 of 1994	25.11.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Magistrates Court (Civil Division) (Consequential Amendments) Act 1995</i>	No. 32 of 1995	30.3.1998
<i>Magistrates Court (Civil Division) Act 1992</i>	No. 27 of 1992	30.3.1998
<i>Magistrates Court (Civil Division) Amendment Act 1997</i>	No. 4 of 1997	30.3.1998
<i>Residential Tenancy Act 1997</i>	No. 82 of 1997	1.7.1998
<i>Justice Legislation (Miscellaneous Amendments) Act 1999</i>	No. 61 of 1999	24.11.1999
<i>Judicial Review Act 2000</i>	No. 54 of 2000	1.12.2001
<i>Justice Legislation (Miscellaneous Amendments) Act 2001</i>	No. 91 of 2001	5.12.2001
<i>Justice (Delegated Legislation) Act 2003</i>	No. 6 of 2003	1.7.2003
<i>Magistrates Court (Minor Civil Claims) Act 2003</i>	No. 53 of 2003	25.9.2003
<i>Justice (Miscellaneous Amendments) Act 2003</i>	No. 69 of 2003	15.12.2003
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2004</i>	No. 44 of 2004	16.11.2004
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	1.7.2007
<i>Justice and Related Legislation</i>	No. 18 of 2008	26.6.2008

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Act	Number and year	Date of commencement
<i>(Miscellaneous Amendments) Act 2008</i>		
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009</i>	No. 76 of 2009	11.12.2009
<i>Vexatious Proceedings Act 2011</i>	No. 31 of 2011	1.3.2013
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2023</i>	No. 33 of 2023	27.11.2023

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 4 of 1997, s. 4, No. 6 of 2003, s. 35, No. 53 of 2003, s. 4, No. 43 of 2006, s. 39 and No. 66 of 2007, Sched. 1
Section 4	Amended by No. 53 of 2003, s. 5
Section 5	Repealed by No. 53 of 2003, s. 6
Section 7	Substituted by No. 53 of 2003, s. 7
Section 7A	Inserted by No. 82 of 1997, Sched. 3 Repealed by No. 53 of 2003, s. 8
Section 11	Amended by No. 66 of 2007, Sched. 1
Section 13A	Inserted by No. 65 of 1994, s. 6
Section 13B	Inserted by No. 31 of 2011, Sched. 1
Section 15	Amended by No. 76 of 2003, Sched. 1
Section 15A	Inserted by No. 4 of 1997, s. 5
Section 16	Amended by No. 6 of 2003, s. 36 and No. 53 of 2003, s. 9
Section 17	Repealed by No. 53 of 2003, s. 10
Section 19	Amended by No. 6 of 2003, s. 37
Section 20	Repealed by No. 6 of 2003, s. 38
Section 21	Repealed by No. 6 of 2003, s. 38
Section 22	Subsection (1A) inserted by No. 73 of 1993, s. 4 Subsection (1B) inserted by No. 61 of 1999, Sched. 1 Repealed by No. 6 of 2003, s. 38
Section 23	Amended by No. 33 of 2023, s. 17
Section 24	Repealed by No. 33 of 2023, s. 18
Section 26	Amended by No. 33 of 2023, s. 19
Section 27	Amended by No. 6 of 2003, s. 39
Section 28	Substituted by No. 76 of 2009, s. 18

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Provision affected	How affected
Section 29	Amended by No. 54 of 2000, Sched. 4
Section 31AA of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31AB of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31AB	Amended by No. 43 of 2006, s. 40
Section 31AC of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31AD of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31AE of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31AF of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31AG of Part 5	Inserted by No. 53 of 2003, s. 11
Section 31A	Inserted by No. 73 of 1993, s. 5 Amended by No. 18 of 2008, s. 39
Section 34	Amended by No. 6 of 2003, s. 40 and No. 53 of 2003, s. 12
Section 35A	Inserted by No. 69 of 2003, Sched. 1
Section 36	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 32 of 1995, Sched. 1 and No. 66 of 2007, Sched. 1
Section 37	Amended by No. 6 of 2003, s. 41
Section 38A	Inserted by No. 44 of 2004, s. 42
Section 39	Amended by No. 4 of 2017, Sched. 1
Section 39A	Inserted by No. 61 of 1999, Sched. 1
Section 39B	Inserted by No. 6 of 2003, s. 42
Section 42A	Inserted by No. 91 of 2001, s. 19
Section 43	Amended by No. 91 of 2001, s. 20 and No. 53 of 2003, s. 13
Section 43A	Inserted by No. 6 of 2003, s. 43
