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REVISITING THE LIMIT ON SMALL CLAIMS IN SOUTH AUSTRALIA'S MINOR CIVIL JURISDICTION

Abstract

Minor civil jurisdictions provide 'an effective and low cost dispute resolution mechanism' for cases where the value in dispute is relatively low.[1] The limit on small claims in South Australia ('SA') has been set at $12,000 since 2016, after an increase to $25,000 four years earlier was rolled back. This comment argues that raising this limit would have three main benefits. First, it would facilitate access to justice for individuals who may be deterred from the courts due to the disproportionate (and rising) cost of litigation in the general jurisdiction. Second, it would bring SA more in line with other states which have made similar amendments and take account of the impact of inflation since 2016. Finally, and most significantly, it would support the objectives of our courts in ensuring 'just, efficient, timely, cost-effective and proportionate resolution' of matters.[2]

I Introduction

Small claims form part of the minor civil jurisdiction under the *Magistrates Court Act 1991* (SA) ('Act').[3] When the Act first came into force, this was deemed to be 'a monetary claim for $5000 or less';[4] this increased slightly to $6,000 in 2002.[5] However, a decade later the limit vacillated considerably in a relatively short time, raised to $25,000 in 2013[6] before being more than halved to $12,000 in 2016,[7] at which level it has remained.[8] Setting the 'correct' limit for the

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1 Department of the Attorney-General and Justice (NT), *Review of the Jurisdictional Limit and Legal Representation in the Small Claims Act: Consultation Outcomes* (Report, June 2014) 13.

2 *Uniform Civil Rules 2020* (SA) r 1.5 ('*UCRs*').

3 *Magistrates Court Act 1991* (SA) s 3(2)(a) ('*MCA*').

4 Ibid s 3(1) (definition of 'small claim'), as enacted.

5 *Statutes Amendment (Courts and Judicial Administration) Act 2001* (SA) s 16(b).

6 *Statutes Amendment (Courts Efficiency Reforms) Act 2012* (SA) s 23: the amendment came into force on 1 July 2013.

7 *Magistrates Court (Monetary Limits) Amendment Act 2016* (SA) s 4(2).

8 *MCA* (n 3) s 3(1) (definition of 'small claim').

small claims jurisdiction is a complicated question. In essence, it involves balancing two main commonsense factors. The first is that parties to litigation should have the opportunity to be fairly and fully heard, maximising the chance of a just outcome in accordance with our adversarial court system.[9] The second is that legal costs, procedural requirements and demands on court time and resources associated with litigation should be, as far as possible, proportionate to the matter's complexity and the amount in dispute.[10] This comment will examine the appropriateness of the current limit, with these factors in mind. In doing so, it will consider: the procedural differences between the minor civil and general jurisdictions in SA; the impact of legal costs and inflation; the concern of reduced access to justice, on both sides of the debate; the potential issues associated with ensuring unrepresented applicants are adequately heard; and other arguments raised in support of the 2016 reduction to the SA small claims jurisdiction.

This comment will conclude that, on balance, the current limit is inappropriately low. While it acknowledges that there are downsides to a matter being heard in the minor civil jurisdiction (such as reduced capacity to have legal representation and limited options for appeal), these cannot outweigh the significant access to justice issue created by forcing applicants seeking to dispute relatively small sums into the general jurisdiction. The risk of potentially disproportionate legal expenses creates an obvious deterrent effect. The comment will propose that a raised limit for small claims to approximately $20,000, which could be subject to indexation[11] or change by regulation,[12] would strike a more appropriate balance.

II What is the Difference?

There are significant procedural differences between the minor civil and general jurisdictions of the SA Magistrates Court. While the general jurisdiction retains the formal, adversarial approach typical of common law courts, the minor civil jurisdiction operates in a manner reminiscent, at least superficially, of the inquisitorial system preferred in many civil law jurisdictions (and in some Australian tribunals).[13] In a minor civil matter the magistrate leads the inquiry on behalf of the Court, rather than it being 'an adversarial contest'.[14] Parties can only be represented

9 See, eg, *UCRs* (n 2) rr 1.5, 21.1(4), 67.2(2)(c), 263.2(2)(a)(ii).

10 See, eg, ibid rr 1.5, 3.1(h), 12.2(2), 61.1(d).

11 As was suggested in the Legislative Council in 2012: South Australia, *Parliamentary Debates*, Legislative Council, 20 July 2012, 1899 (Dennis Hood).

12 As in Tasmania: *Magistrates Court (Civil Division) Act 1992* (Tas) s 3 (definition of 'minor civil claim'); *Magistrates Court (Civil Division) (Minor Civil Claims) Regulations 2023* (Tas) reg 3.

13 Narelle Bedford and Robin Creyke, *Inquisitorial Processes in Australian Tribunals* (Australian Institute of Judicial Administration, 2006) 4–5; Margaret Castles, David Caruso and Anne Hewitt, 'Why Representation and Resources are Critical to Access to Justice in Minor Civil Jurisdictions: The Experience of Advisory Services in Minor Civil Claims' (2014) 8 *Court of Conscience* 25, 26.

14 *MCA* (n 3) s 38(1)(a).

by lawyers where they unanimously agree, or fairness requires one party be allowed such a concession.[15] Costs are generally not awarded.[16] The Court is not bound by the rules of evidence or formal procedure,[17] and determines the facts for itself based on examination of the evidence and witnesses presented.[18] This creates a meaningful distinction in how extensively an individual's case may be presented and by whom, as well as the financial outlay required to engage in the process.

III The Case For the $12,000 Limit

In 2012, the limit for small claims remained $6,000 as it had been since 1991.[19] In July 2011, Steven Marshall MP (then member for Norwood) had formally introduced a private member's bill which proposed an increase to $25,000.[20] Mr Marshall raised his concerns as follows:

> By having the limit set so low, we are forcing businesses and individuals to take disputes over relatively minor claims to the General Division of the Magistrates Court. … Quite often the costs far outweigh the work of the original dispute, meaning that it is not worth the time, effort and money needed to effect justice for this important sector in South Australia. Moreover, this disadvantages the business community in South Australia and deprives them of cost-effective justice that they would be able to achieve in other jurisdictions around the country. This is particularly a problem for small businesses that do not bother taking disputes to court because it is simply not worth it.[21]

Mr Marshall's bill received significant support from other Liberal MPs[22] but was ultimately not passed. When the Labor Government of the time later put forward the Statutes Amendment (Courts Efficiency Reforms) Bill 2011 in the House of Assembly, which incorporated reform in this area, it proposed the limit should be increased to only $12,000.[23] The opposition at the time strongly supported adhering

15 Ibid s 38(4).

16 Ibid s 38(5).

17 Ibid s 38(1).

18 Ibid s 38(1)(b).

19 South Australia, *Parliamentary Debates*, House of Assembly, 14 March 2012, 673 (Vickie Chapman).

20 South Australia, *Parliamentary Debates*, House of Assembly, 28 July 2011, 4717–18; ibid, 675–6 (Steven Marshall).

21 South Australia, *Parliamentary Debates*, House of Assembly, 28 July 2011, 4717.

22 South Australia, *Parliamentary Debates*, House of Assembly, 15 September 2011, 4984–8.

23 South Australia, *Parliamentary Debates*, House of Assembly, 23 November 2011, 6115 (John Rau, Deputy Premier); South Australia, *Parliamentary Debates*, House of Assembly, 1 March 2012, 494 (John Rau, Deputy Premier).

to the original proposal,[24] and an amendment proposed by Labor's Stephen Wade in the Legislative Council to this affect received majority support from that body.[25] This was largely based around the high cost of legal services and the perception that the $12,000 limit would perpetuate an access to justice issue.[26] The amendment was accepted by the House of Assembly[27] and by the Government,[28] and the bill was passed, lifting the limit to $25,000 in 2012.[29]

In April 2016, a bill proposing to lower the limit was introduced by John Rau MP, then Deputy Premier and Attorney-General.[30] An inquiry by the Office of Crime and Statistics Research (unfortunately not publicly available) had reportedly found that although the increase in jurisdictional limit had resulted in increased 'accessibility to the civil justice system' and 'a possible reduction in the median number of days to finalise a defended claim', there was a corresponding increase in demand on the small claims jurisdiction.[31] Further, 'the number of complex claims where the parties were unrepresented had also increased which was requiring additional time for the Registrar or Magistrate to determine the relevant issues'.[32] It was also noted in the second reading speech that other states had retained a lower limit on small claims (generally, at that time, $10,000).[33] Therefore, the amendment aimed to 'reduce court delays by decreasing the number and complexity of small claim lodgements'.[34] There was some criticism by the opposition, in particular that the report had not considered all the available data and that the Government had not looked at less absolute pathways for amendment suggested by the Joint Rules Advisory Committee (such as excluding certain claims, or giving Magistrates a discretion to refer matters to the general jurisdiction).[35]

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24 South Australia, *Parliamentary Debates*, House of Assembly, 14 March 2012, 673–4 (Vickie Chapman). Although early discussion in the Legislative Council was more restrained, Stephen Wade did note that 'the opposition … have concerns, and some of those will be reflected in amendments we will move at the committee stage': South Australia, *Parliamentary Debates*, Legislative Council, 3 May 2012, 1130 (Stephen Wade).

25 South Australia, *Parliamentary Debates*, Legislative Council, 20 July 2012, 1897–1900.

26 Ibid.

27 South Australia, *Parliamentary Debates*, House of Assembly, 30 October 2012, 3461–2 (John Rau, Deputy Premier).

28 South Australia, *Parliamentary Debates*, Legislative Council, 13 November 2012, 2662 (Stephen Wade).

29 *Statutes Amendment (Courts Efficiency Reforms) Act 2012* (SA) s 23(2).

30 South Australia, *Parliamentary Debates*, House of Assembly, 13 April 2016, 5134–1 (John Rau, Deputy Premier).

31 Ibid 5135.

32 Ibid.

33 Ibid 5136.

34 Ibid.

35 South Australia, *Parliamentary Debates*, House of Assembly, 18 May 2016, 5468 (Vickie Chapman).

In May 2016, the Law Society of SA wrote a letter to Mr Rau, strongly in support of lowering the small claims limit to $12,000.[36] Their primary justifications were that: (1) 'very few claimants … would consider $25,000 to be a "minor" amount of money, and that disputes involving sums of this kind are often complex';[37] (2) it was 'unfair' that a successful claimant in such a matter could receive only nominal costs;[38] and (3) claims against 'corporate or insurance defendants' would often be under $25,000, creating a heightened risk of a power imbalance between parties under the larger statutory limit.[39] The Law Society's recommendations, among others, were noted in support of the bill by both Labor and Liberal members of the Legislative Council.[40] Despite some misgivings from the Liberal members about the absolute terms of the bill, they ultimately accepted the amendment.[41] As a result, the small claims limit was changed to $12,000.[42]

Although the small claims limit has not been reviewed in the intervening years, there are numerous counterarguments that can now be made for raising the limit once more.

IV A 'Minor' Amount of Money?

The Law Society was clearly correct in stating that most people, in their everyday life, do not consider $25,000 a minor amount of money — but this proposition must be considered in context. The essential practical question for litigants is not whether the amount in dispute is significant. Rather, it is ultimately whether they can go to court without their legal costs exceeding the amount in dispute. The answer at present, for a claim between $12,000 and $25,000, is likely no.

A monetary claim over $12,000 will be heard in the fully adversarial general division; to achieve any modicum of fairness, this requires a party to pay for appropriate legal advice and representation. Of course, the *Uniform Civil Rules* ('*UCRs*') strongly promote 'cost-effective and proportionate resolution' of matters.[43] They further allow a court to limit the party/party costs which may be awarded in a proceeding,[44] which should theoretically encourage parties to keep costs down to a range proportionate to the amount in dispute.

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36 Letter from David RA Caruso at the Law Society of South Australia to John Rau, 2 May 2016, [3] ('LSSA Letter').

37 Ibid [6].

38 Ibid [7].

39 Ibid [8].

40 South Australia, *Parliamentary Debates*, Legislative Council, 7 June 2016, 4148–9 (Andrew McLachlan), 4151 (Peter Malinauskas).

41 Ibid 4148–9 (Andrew McLachlan).

42 *Magistrates Court (Monetary Limits) Amendment Act 2016* (SA) s 4(2).

43 *UCRs* (n 2) r 1.5. See also rr 3.1(h), 61.1(b), 61.1(d).

44 Ibid r 194.2(1).

However, preparation for litigation under these same rules is complex and time-consuming. The power of a court to limit a costs award at the conclusion of a matter does not actually remove any of the mandatory steps parties must perform to get to trial.[45] These steps may possibly be more straightforward when the amount in dispute is $15,000 instead of $150,000 (although by no means guaranteed) but in any event, they are generally no fewer. Even the most costs-conscious lawyer may accrue thousands of dollars in solicitor/client costs just taking fully informed instructions, complying with pre-action steps and properly preparing pleadings — only the preliminary stages of a disputed matter. If a lawyer does not represent their client properly, they not only risk losing the case but may be subject to adverse costs orders against them personally[46] and even potential accusations of unsatisfactory professional conduct or professional misconduct.[47]

The reality is therefore that going to trial in the general jurisdiction — no matter the amount in dispute — is very costly for all parties. There is no way to ensure that solicitor/client costs are proportionate to the disputed sum while also ensuring the case is adequately argued.

In the seven years since the most recent adjustment of the small claims limit in SA, legal costs have only risen further. Scale costs have always increased incrementally each year; even since the *UCRs* were enacted in 2020, every given value on the Magistrates Court costs scale has increased.[48] Of course, most law firms charge more than scale.[49] It is not unknown for an applicant to obtain a judgment in their favour, but at the cost of an outlay over ten times that amount in legal fees.[50]

Ultimately, the small claims limit should be such that an individual can pursue their claim in court without their out-of-pocket legal costs necessarily outweighing the disputed sum.

Another clear consideration, especially in the context of the high current rate of inflation, is that $12,000 is simply not worth as much as it was in 2016. On average, $12,000 spent in SA during March 2016 is equivalent to $15,487.85 as at March

45 Ibid chs 7–9, 13–14.

46 Ibid r 194.8.

47 Law Society of South Australia, *South Australian Legal Practitioners' Conduct Rules* (at 1 January 2022) rr 2.3, 4.1.1, 4.1.3.

48 *UCRs* (n 2) sch 6, pt 3, r 5(3) cf sch 6, pt 3, as enacted. For example, item 7 (first day '[a]ttendance as counsel at trial') has increased from $1,333 to $1,480.

49 See, eg, *Sullivan v Krepp* [2023] SASC 4, [26].

50 See, eg: *Be Financial Pty Ltd v Das* [2012] NSWCA 164, in which the applicant had obtained an order for $24,124.64 but apparently accrued costs of $231,224 for costs up to and including a seven day trial: at [16], [30]; *Mathieson Nominees Pty Ltd v AJH Lawyers Pty Ltd* [2017] VSC 377, where the applicant allegedly accrued $421,109.43 in costs during a dispute over $35,000: at [1], [120].

2024.[51] A contract for goods or services costing $11,000 in 2016, and therefore well within the range which could be disputed in the minor civil claims jurisdiction, now costs on average $14,197 and is not considered a small claim. Therefore, a significant number of potential disputes which would have been small claims in 2016, now cannot be heard as a minor civil action purely due to inflation and the higher relative costs of goods and services as at 2024.

In the specific context of a litigated court matter, with inflation pushing more and more disputes out of the minor civil jurisdiction, $25,000 should now be more appropriately considered a 'minor' sum.

V Imbalance of Power Between Parties?

Parties to small claims are generally not permitted to be represented, unless: (1) one of them is a legal practitioner; (2) all parties agree; or (3) the Court 'is of the opinion that the party would be unfairly disadvantaged' without representation.[52] One concern raised by the Law Society in 2016 was that the inability for an individual to obtain representation would cause a serious power imbalance if facing a corporate opponent.[53] This is a valid concern. Just because a party cannot be represented in court does not stop them from engaging significant legal expertise behind the scenes. Litigants proceeding without advice and having to represent themselves in a hearing may be less able to obtain a just result due to their lack of legal expertise.[54]

However, it is unclear how this issue is helped by reducing the small claims jurisdiction. Such a power imbalance is only magnified in a traditional, adversarial trial. An individual with legal representation will still be unlikely to equal the resources of a powerful corporate opponent. Further, an individual who cannot reasonably afford legal costs at all will be far more disadvantaged than they might have been in the minor civil jurisdiction — especially if they fall within the broad cohort of individuals 'too poor to afford a lawyer but not sufficiently poor to qualify for legal aid',[55] a demographic sometimes referred to as the 'missing middle'.[56] A self-represented

51 Calculations based on 'Time Series Spreadsheets: Tables 3 and 4, CPI: All Groups, Weighted Average of Eight Capital Cities', available at 'Consumer Price Index, Australia', *Australian Bureau of Statistics* (Web Page, 24 April 2024) <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>.

52 *MCA* (n 3) s 38(4)(a).

53 LSSA Letter (n 36) [8].

54 Castles, Caruso and Hewitt (n 13) 26.

55 Gabrielle Canny, 'Grim Prediction Comes to Pass', *Legal Services Commission South Australia* (online, 16 February 2022) <https://lsc.sa.gov.au/cb_pages/news/Grimpredictioncomestopass.php>.

56 Law Council of Australia, 'Closing the Justice Gap for the Missing Middle' (Media Release, 9 December 2021) <https://lawcouncil.au/media/media-releases/closing-the-justice-gap-for-the-missing-middle>.

litigant in the general jurisdiction — having to manage formal rules of pleadings, evidence and court procedure, and likely opposed by professional counsel — is far less likely to succeed than if they were represented.[57] Further, self-represented litigants are often detrimental to the efficient administration of justice: inexperience and ignorance may lead to longer, more difficult and more numerous hearings and increased pressure on the court to manage inadequate pleadings.[58]

In the minor civil jurisdiction, the playing field is at least somewhat levelled as the magistrate themselves provides legal expertise and guides the proceedings. This reduces the potential disadvantage to unrepresented parties. Additionally, even those with inadequate resources to pay a lawyer and no access to legal aid have some options: for example, they can seek assistance in understanding their case from services such as the Adelaide Law School Magistrates Court Legal Advice Service,[59] prior to lodging a claim. While such services cannot represent a client in a trial, they can certainly help a litigant prepare to bring a small claim effectively.

VI Unfairness of Costs Awards?

The Law Society was also concerned about the limited costs awards available in the minor civil jurisdiction.[60] It is true that even where legal representation is permitted, the costs which can be awarded are much more limited than in the general jurisdiction — for example, costs for filing an action are capped at $500,[61] while in the general jurisdiction they can be as much as $5,000.[62] Further, costs can be awarded for fewer tasks performed by a lawyer during the trial process.[63]

But this can equally be considered a positive rather than a negative, particularly for applicants of reduced means. Indeed, as Barrett J has observed: '[t]he purpose of the legislation in restricting the right to legal representation is to enable people involved in litigation concerning small amounts of money to conduct their litigation without incurring relatively high fees for legal representation'.[64] The limitation on costs awards is a disincentive for affluent parties to expend significant amounts

57 RW White, 'Advocacy and Ethics: The Self-Represented Litigant' (Speech, 18 October 2014) 8 [17] <https://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/Pre-2015%20Speeches/White/white_20141018.pdf>.

58 Ibid 2 [4]; Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) vol 1, 498.

59 'Magistrates Court Legal Advice Service', *University of Adelaide* (Web Page) <https://law.adelaide.edu.au/free-legal-clinics/magistrates-court-legal-advice-service>.

60 LSSA Letter (n 36) [7].

61 *UCRs* (n 2) sch 6, pt 4, r 7(3) item 1.

62 Ibid sch 6, pt 3, r 5(3) item 2.

63 Ibid sch 6, pt 3, r 5(3) (13 categories for costs) cf sch 6, pt 4, r 7(3) (9 categories for costs).

64 *People's Choice Credit Union v Robey* [2013] SADC 34, [26].

on solicitor fees in preparing for a small claim: after all, the reality is most parties will not spend more defending a minor matter than it would cost to simply settle, especially when there is no prospect of recovering their costs. The risk of an adverse costs award has been recognised as a deterrent for potential litigants.[65] In the general jurisdiction, an unsuccessful party is often out of pocket for damages or loss, required to pay their own lawyers, and finally required to at least partially fund the successful party's legal fees. The normalisation of unrepresented parties and assistance from the Court also reduces the need for parties to engage extensive legal assistance in order to navigate the process.

Overall, minor civil actions should be comparatively low cost for parties, and the limit on available costs awards should not be a major motivation for keeping the current threshold on small claims.

VII Other Arguments Against a Raised Limit

A *Flexibility to be Heard in the Minor Civil Jurisdiction*

It must be acknowledged that there is flexibility built into the Act to allow a civil matter, falling within the general jurisdiction, to be heard in the minor jurisdiction. A party involved in a dispute over a larger claim (up to the Magistrates Court maximum quantum of $100,000[66]) may apply to the Court to have it heard as a minor civil action.[67] This could be an option where parties are concerned about potential costs, wish to be self-represented, or believe the matter is simpler than would warrant a full formal trial. However, a transfer of this kind can only occur at the discretion of the Court and requires the other side to agree,[68] so this option cannot adequately compensate for a low small claims limit.

B *Limited Right to Appeal*

One area in which minor civil actions are at a clear disadvantage is potential avenues of appeal. Parties to a minor civil action have only a right of review by the District Court of SA[69] (although the District Court has its own discretion to rehear evidence).[70] Legal representation is limited much as the first instance proceed-

65 See, eg: Nicola Pain and Rachel Pepper, 'Legal Costs Considerations in Public Interest Climate Change Litigation' (2019) 30(2) *King's Law Journal* 211, 211; Explanatory Memorandum, Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 (Cth) 39 [2.115].

66 *MCA* (n 3) s 8(1); note however there is an exception to this maximum, if the parties agree, in s 8(2).

67 Ibid s 10AB(a); *UCRs* (n 2) r 113.4.

68 *MCA* (n 3) s 10AB(a).

69 Ibid ss 38(6), (7).

70 Ibid s 38(7)(c).

ings are, and the decision of the District Court is not open to further appeal.[71] Therefore available appeal is quite limited compared to a decision under the general jurisdiction, which gives a right of appeal to a single judge of the Supreme Court of SA (and a further discretion for that judge to refer the matter on to the Court of Appeal).[72]

But limits on possible appeal seem reasonable. Small claims being heard in an abridged, efficient manner proportionate to the amount in dispute is strongly in accordance with the overarching objects of the *UCRs*.[73] It is therefore appropriate that a smaller claim is more limited in its potential use of court resources. A statutory review by right in the District Court seems like an ample concession in this context. In reality, appeals are often refused anyway where the likely costs are disproportionate to the sum in dispute.[74]

VIII Reform by Other States

As noted above, one justification for the 2016 reduction of the small claims jurisdiction was that SA's $25,000 limit compared with other states and territories made it an outlier.[75] However, this would no longer be the case. It should be unsurprising, in the context canvassed above, that many other Australian states and territories have since increased the limit of their small claims jurisdiction. Although the Tasmanian *Magistrates Court (Civil Division) Act 1992* sets a default limit of $5,000, this is subject to regulation and is currently in practice $15,000 for most matters.[76] Victoria changed the limit from $10,000 to $15,000 in 2018.[77] However these are relatively modest increases compared to several other jurisdictions. Queensland instituted a far earlier change than even SA, in 2010, when the 'prescribed amount' under the jurisdiction of their Civil and Administrative Tribunal was changed from $7,500 to $25,000.[78] In New South Wales, the small claims limit was doubled to $20,000 in 2018.[79] Finally, both the Northern Territory and Australian Capital Territory each

71 Ibid s 38(8).

72 See ibid s 40.

73 *UCRs* (n 2) r 1.5.

74 See, eg, *South Australian Superannuation Board (Super SA) v McIntyre* [2015] SASCFC 57; *Kedem v Johnson Lawyers Legal Practice Pty Ltd* (2014) 121 SASR 118.

75 South Australia, *Parliamentary Debates*, House of Assembly, 13 April 2016, 5136.

76 *Magistrates Court (Civil Division) Act 1992* (Tas) s 3 (definition of 'minor civil claim'); *Magistrates Court (Civil Division) (Minor Civil Claims) Regulations 2023* (Tas) reg 3.

77 *Justice Legislation Amendment (Access to Justice) Act 2018* (Vic) s 3; *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 183(a).

78 *Justice and Other Legislation Amendment Act 2010* (Qld) cl 177; *Queensland Civil and Administrative Tribunal Act 2009* (Qld) sch 3 (definition of 'prescribed amount').

79 *Justice Legislation Amendment Act (No 3) 2018* (NSW) sch 1, s 1.20[1]; *Local Court Act 2007* (NSW) s 29(1)(b).

set a new higher limit of $25,000 in 2016 (only shortly after the SA reduction), associated with the transfer of jurisdiction to their respective civil tribunals.[80] Western Australia has not reformed its small claims jurisdiction in many years, with the limit remaining $10,000.[81] Among all of these states, SA is the only one that has increased and then decreased its statutory small claims limit. SA's current limit of $12,000 sits below every jurisdiction except Western Australia.

IX Recommendation and Conclusion

Whether the reduction of the small claims jurisdiction in 2016 was warranted or not, there are many reasons that the limit should now be reconsidered.

An increase in the statutory limit of small claims from $12,000 to $20,000 would seem a proportionate response to the issues raised above. Setting such a limit would bring SA's minor civil jurisdiction in line with other states which have made similar amendments. While $20,000 is admittedly not a small amount of money in many circumstances, in the context of litigation the advantages and concessions offered by the minor civil jurisdiction processes strike the right balance for hearing a dispute of this magnitude or below. The $20,000 limit could further be made subject to regular indexation, or change by regulation, to increase potential flexibility in response to changing economic conditions and inflation.

This change would significantly reduce the number of claimants who may be practically denied access to justice due to the ever-rising costs of litigating a matter in the general jurisdiction. As a result, it would better uphold the objectives of our courts in ensuring 'just, efficient, timely, cost-effective and proportionate resolution' of matters.[82]

The manner in which the minor civil jurisdiction operates, so different from usual common law process, may be considered by some a lesser form of justice. It could be argued that without a full adversarial court process being available, it is less likely that a fair outcome will be reached. Being unrepresented may also disadvantage parties who are inexperienced in dealing with courts or otherwise unable to argue their own case effectively, especially where dealing with more sophisticated opponents.

On the other hand, the availability of small claims may provide an avenue to court adjudication which would otherwise simply be unavailable to many who are 'priced out' of traditional court proceedings. 'Poor man's justice' may seem perfectly acceptable to those for whom the alternative is no justice at all, and a low small claims limit alone serves only to further reduce access to justice for many potential litigants.

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80 *Small Claims Act 2016* (NT) s 5(1); *Civil and Administrative Tribunal Act 2008* (ACT) s 18(2).

81 *Magistrates Court (Civil Proceedings) Act 2004* (WA) s 3(1) (definition of 'minor cases jurisdictional limit').

82 *UCRs* (n 2) r 1.5.