



TASMANIA

MAGISTRATES COURT (CIVIL DIVISION) ACT 1992

No. 27 of 1992

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SCHEDULE 1

CONSEQUENTIAL AMENDMENTS



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

Short title

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

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

3—In this Act, unless the contrary intention appears—

“**action**” means an action brought under this Act;

“**Administrator**” means the Administrator of the Magistrates Court;

“**apprentice**” means a person serving an apprenticeship under Part IVAA of the *Legal Practitioners Act 1959*;

“**articled clerk**” means a clerk serving under articles of clerkship pursuant to the *Legal Practitioners Act 1959*;

“**bailiff**” means a bailiff of the Court;

“**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;

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

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

“**prescribed amount**” means \$20 000;

“**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;

“**Rules Committee**” means the Rules Committee of Magistrates Court (Civil Division) established by section 20;

“**Rules of Court**” means the Rules of Court made by the Rules Committee pursuant to section 22;

“**small claim**” has the meaning assigned to that expression by the *Magistrates Court (Small Claims Division) Act 1989*;

“small claims division” means the small claims division of the Magistrates Court established by the *Magistrates Court (Small Claims Division) Act 1989*.

PART 2

ESTABLISHMENT OF CIVIL DIVISION OF THE MAGISTRATES COURT

Establishment of civil division

4—(1) There is established a division of the Magistrates Court to be known as the Magistrates Court (Civil Division).

(2) Subject to the *Magistrates Court (Small Claims Division) Act 1989*, the jurisdiction conferred on the Magistrates Court by Part 3 is to be exercised solely within the civil division of that court.

Small claims division of Magistrates Court

5—The small claims division is to exercise concurrent jurisdiction with the civil division in respect of the hearing and determining of small claims which comprise part of the jurisdiction conferred on the Magistrates Court by Part 3.

Court to comprise a single magistrate

6—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

Monetary limit on jurisdiction

7—The Magistrates Court has a civil jurisdiction which is to be limited to actions for an amount not exceeding the prescribed amount.

Common law jurisdiction

8—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.

Equitable jurisdiction

9—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:—

- (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 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 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.

Law and equity to be administered concurrently

10—(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.

Consent jurisdiction

11—(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 solicitors, that the Court is to have such jurisdiction.

(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.

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

12—(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.

Power of magistrate to sit in chambers

13—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.

PART 4

ADMINISTRATION

Duties of district registrars

14—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.

Bailiffs

15—(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 within the meaning of the *Police Regulation Act 1898*, by virtue of his or her appointment as a police officer and without further commission or authority, is a bailiff.

Duties, &c., of bailiffs

16—(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) a party to those proceedings; or
- (b) a person who is the holder of a process server's licence under the *Commercial and Inquiry Agents Act 1974*; or

(c) a person who is specified in section 42 (1) of that Act as a person to whom that Act does not apply— where that process is authorized or required to be so served under the Rules of Court.

(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.

Service of notices and orders for small claims division

17—(1) A bailiff may serve any notice given, or any order made that relates to a small claim referred to the small claims division.

(2) A bailiff must, when serving any notice or order referred to in subsection (1), comply with any directions with respect to the service of the notice or order that are given to the bailiff by a registrar.

Bailiff not to be trespasser by reason of irregularity

18—(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*****Rules of Court**

19—Subject to this Part and any provision made under any other Act, the practice and procedure of the Court is to be in accordance with the Rules of Court.

Rules Committee of Magistrates Court (Civil Division)

20—(1) There is established a Rules Committee of Magistrates Court (Civil Division).

(2) The Rules Committee consists of—

- (a) the Chief Magistrate who is the presiding member; and
- (b) the Deputy Chief Magistrate; and
- (c) the magistrates; and
- (d) a person appointed by the Minister on the nomination of the Tasmanian Bar Association; and
- (e) a person appointed by the Minister on the nomination of the Law Society of Tasmania.

(3) The Minister may require the body referred to in subsection (2) (d) or (e) to nominate a person for appointment to the Rules Committee within a specified period (being a period not less than 30 days).

(4) If the body referred to in paragraph (d) or (e) of subsection (2) fails to nominate a person within the period specified by the Minister under subsection (3), the Minister may nominate a person for the purposes of the relevant paragraph.

(5) If the body referred to in paragraph (d) or (e) of subsection (2) changes its name, the Governor may, by order, amend the relevant paragraph by substituting the body's new name.

(6) If the body referred to in paragraph (d) or (e) of subsection (2) ceases to exist, the Governor, on the recommendation of the Rules Committee, may, by order, amend the relevant paragraph by substituting the name of a body which the Governor is satisfied substantially represents the interests represented by the body which has ceased to exist.

(7) The Minister may, on the recommendation of the body referred to in paragraph (d) or (e) of subsection (2), appoint a deputy of a member of the Rules Committee referred to in the relevant paragraph.

(8) If the member of the Rules Committee referred to in subsection (2) (d) or (e) is unable to attend a meeting of the Rules Committee for any reason, the member's deputy may attend and, when doing so, is taken to be a member of the Rules Committee with all the powers, rights and duties of a member.

(9) All acts and proceedings of the Rules Committee while a deputy is acting in the place of a member of the Rules Committee are valid and effectual for all purposes.

(10) The member of the Rules Committee referred to in subsection (2) (d) or (e) and the deputy of that member hold office for the term set out in his or her instrument of appointment.

Meetings and procedure of Rules Committee

21—(1) Meetings of the Rules Committee are to be convened by or on the direction of the Chief Magistrate.

(2) The quorum for a meeting of the Rules Committee is 8, of whom one must be the Chief Magistrate or the Deputy Chief Magistrate.

(3) Where the presiding member is unable to attend a meeting of the Rules Committee, the Deputy Chief Magistrate must preside at the meeting.

(4) Subject to this section, the Rules Committee may determine its own procedure.

Making of Rules of Court

22—(1) The Rules Committee may make Rules of Court to regulate the proceedings in the Court in respect of all matters to which they extend.

(2) Rules of Court made under this section are a statutory rule within the meaning of the *Rules Publication Act 1953*.

Division 2—Interest on debts and judgments**Interpretation of Division**

23—In this Division, “prescribed rate” means such rate of interest as is fixed under section 24.

Fixing of prescribed rate

24—(1) The Minister may from time to time, by notice published in the *Gazette*, fix a rate of interest for the purposes of this Division.

(2) Until the Minister fixes a rate of interest under subsection (1), the interest rate is 10% a year.

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

25—(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 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.

Interest on judgments

26—(1) Every judgment carries interest at—

- (a) the prescribed rate; 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.

(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

Judgment

27—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.

Appeals to Supreme Court

28—If any party to a proceeding 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 who may make such orders as are appropriate in the circumstances.

Prerogative writs not to issue

29—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) a writ of *certiorari*, prohibition or other prerogative writ is not to issue; or
- (b) a declaratory judgment is not to be given.

Transfer of proceedings into Supreme Court

30—(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.

Questions reserved for opinion of Supreme Court

31—(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.

PART 6**EXECUTION****Power of bailiff to interplead**

32—(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.

(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

Costs

33—(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.

Practitioners' charges

34—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; and

(b) for a proper attendance in court by an apprentice of the practitioner or by an articled clerk to the practitioner with a limited right of audience and for business transacted by that apprentice or articled clerk in connection with such an action—

are as prescribed by the Rules of Court.

Evidentiary provisions

35—(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 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.

Advocates

36—(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 Part IIA and Part IVAA of the *Legal Practitioners Act 1959*.

Witnesses

37—(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 conviction to a fine not exceeding 10 penalty units.

Fees

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

Appropriation of fees

39—All fees received under this Act are to be paid into the Consolidated Fund.

Regulations

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

Repeal

41—The *Local Courts Act 1896* is repealed.

Consequential amendments

42—Each Act specified in Column 1 of Schedule 1 is amended in the manner specified in Column 2 of that Schedule.

Savings and transitional provisions

43—(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) Where an action has been commenced under the *Local Courts Act 1896* before the commencement of this Act, the provisions of that Act as in force immediately before that day continue to apply to that action, and a magistrate must deal with the matter as if the magistrate were a commissioner of a court of requests.

(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.

Administration of Act

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

- (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.
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SCHEDULE 1

Section 42

CONSEQUENTIAL AMENDMENTS

COLUMN 1 Short title of Act affected	COLUMN 2 Amendment
<i>Debtors Act 1870</i>	Section 4 (1) (a) (ii)— Omit the subparagraph; Section 4 (4)— Omit the subsection; Section 4 (9)— Omit “a commissioner or chairman” and substitute “the Magistrates Court (Civil Division)”.
<i>Debtors Act 1888</i>	Section 5— Omit “, or judge, or commissioner, or chairman”, (wherever occurring) and substitute “or judge”.
<i>Magistrates Court Act 1987</i>	Section 3— (1) Omit the definition of “commissioner”; (2) Omit paragraph (c) of the definition of “lower courts”; Section 13 (2)— Omit paragraph (b); Section 14 (2)— Omit paragraph (a); Section 15 (5)— Omit “commissioner,”.
<i>Magistrates Court (Small Claims Division) Act 1989</i>	Section 3 (1)— Omit the definition of “court of requests”; Section 9 (1) (a)— Omit “ <i>Local Courts Act 1896</i> ” and substitute “ <i>Magistrates Court (Civil Division) Act 1992</i> ”; Section 10 (3)— Omit “section 41 of the <i>Local Courts Act 1896</i> ” and substitute “the <i>Magistrates Court (Civil Division) Act 1992</i> ”; Section 13 (1)— Omit “ <i>Local Courts Act 1896</i> by a court of requests” and substitute “ <i>Magistrates Court (Civil Division) Act 1992</i> ”;

SCHEDULE 1—*continued*

COLUMN 1 Short title of Act affected	COLUMN 2 Amendment
Section 14 (1)—	Omit “a court of requests” and substitute “the Magistrates Court (Civil Division)”;
Section 14 (2)—	<p>(1) Omit “<i>Local Courts Act 1896</i>” from paragraph (a) and substitute “<i>Magistrates Court (Civil Division) Act 1992</i>”;</p> <p>(2) Omit “of the court of requests in which the action is brought” from paragraph (b);</p> <p>(3) Omit “of that court of requests”, (twice occurring);</p>
Section 14 (3)—	Omit “of a court of requests”;
Section 24 (3)—	Omit “ <i>Local Courts Act 1896</i> , the <i>Local Courts Act 1896</i> and the rules of practice within the meaning of that Act” and substitute “ <i>Magistrates Court (Civil Division) Act 1992</i> , the <i>Magistrates Court (Civil Division) Act 1992</i> and the rules of court made under that Act”;
Section 28 (3)—	<p>(1) Omit “under the <i>Local Courts Act 1896</i>” and substitute “and the regulations made under the <i>Magistrates Court (Civil Division) Act 1992</i>”;</p> <p>(2) Omit “court of requests” and substitute “Magistrates Court (Civil Division)”;</p>
Section 29 (8)—	<p>Omit the subsection and substitute the following subsection:—</p> <p>(8) Where an order is made under subsection (3) (a) for the payment of a sum of money, the order is deemed to be a judgment of the Magistrates Court (Civil Division) and is enforceable as provided by the <i>Magistrates Court (Civil Division) Act 1992</i>.</p>

SCHEDULE 1—*continued*

COLUMN 1 Short title of Act affected	COLUMN 2 Amendment
<i>Supreme Court Act 1959</i>	<p>Section 30 (5)— Omit the subsection and substitute the following subsection:— (5) Where an order is made under subsection (3) or (4) for the payment of a sum of money, the order is deemed to be a judgment of the Magistrates Court (Civil Division) and is enforceable as provided by the <i>Magistrates Court (Civil Division) Act 1992</i>.</p> <p>Section 35— Omit “a registrar of a court of requests,”.</p> <p>Section 5H— Omit “and of a commissioner of the court of requests”.</p>