

## Small Debts Court

### Terms of Reference

In 1976 the Commission was asked to examine the desirability of expanding the jurisdiction of the Small Claims Tribunal into a comprehensive Small Debts Court or of making some other special provision for the hearing of claims in respect of small debts.

### Background of Reference

The Commission was given the reference following increasing complaints that access to the Small Claims Tribunal was restricted to a very narrow range of litigants and did not address the needs of a significant section of the commercial community.

The Small Claims Tribunal allowed consumers to bring a claim against a trader where the claim was less than \$1000. The process of bringing such a claim was inexpensive and fast.<sup>1</sup> By contrast, a trader with a claim against a consumer was required to pursue the claim through the ordinary courts. Such claims were generally heard in the Local Court, which had jurisdiction over various matters up to \$3000, including debts.<sup>2</sup> Traders felt they were at a disadvantage because of the difficulties of delay and cost that attend a Local Court action. In some cases such action was abandoned because legal costs would likely exceed the value of the claim.

### Nature and Extent of Consultation

The Commission issued a working paper in June 1978, and received comments from a wide range of organisations and individuals, including the Consumer Affairs Council, the Department for Consumer Affairs, the Perth Chamber of Commerce, the Master Painters, Decorators and Signwriters' Association, the Master Plumbers' Association, magistrates, and individuals directly involved in small business.

On 14 November 1978 one of the Commissioners Mr DK Malcolm, presented a paper entitled "The Proposed 'Small Debts Court'"<sup>3</sup> to a seminar organised by the Australian Institute of Credit Management (WA Division). There was a general consensus of opinion at the seminar that the proposal to establish a simplified procedure for the settlement of small debts within the Local Court was a worthwhile reform.<sup>4</sup> The final report containing the Commission's recommendations was delivered in April 1979.<sup>5</sup>

### Recommendations

The Commission examined the various alternatives<sup>6</sup> and recommended the establishment of a 'Small Debts Division' within the Local Court as the most suitable forum for addressing the problems raised by the reference. The Commission preferred this approach because it could be introduced on a statewide basis through the existing Local Court system at minimal cost and within a relatively short time.

1 At the time of the reference, a claimant in the Small Claims Tribunal was required to pay a very modest \$3 filing fee and the action would be listed for hearing within five weeks. There were no pleadings or interlocutory proceedings and the hearing was conducted without solicitors. The referee would attempt to negotiate a settlement, and if the attempt failed, would proceed to determine the matter. The decision of the referee was final and there was no right of appeal.

2 *Local Courts Act 1904 (WA)*.

3 A copy of this paper may be viewed at the offices of the Law Reform Commission of Western Australia.

4 The seminar was attended by almost three hundred representatives drawn from all sections of the credit industry in Western Australia.

5 Law Reform Commission of Western Australia, *Small Debts Court*, Project No 63 (1979).

6 The three alternatives considered by the Commission were:  
 (i) To extend the jurisdiction of the Small Claims Tribunal;  
 (ii) To establish a separate small debts tribunal; or  
 (iii) To establish a special division of the Local Court.

The Commission also made an in-depth examination of the procedural issues attending the establishment of a Small Debts Division. In this regard the Commission recommended that:

- The Small Debts Division should have a simplified procedure similar to that of the Small Claims Tribunal.
- The jurisdiction of the Small Debts Division should be to adjudicate small disputed claims for debts or liquidated demands with a monetary limit not exceeding \$1000.
- The jurisdiction should be exercised only by magistrates, who should have all the powers of a referee of the Small Claims Tribunal to make orders in addition to the powers derived from the Local Courts Act and Rules.
- The procedure and fees for lodging a claim should be the same as for any other claim in the Local Court.

The Commission made several other consequential recommendations dealing with service of summonses, rules regarding hearings, costs and the enforcement of judgments. Details of these and other recommendations may be found in the Commission's final report at pages 39–42.

#### Legislative or Other Action Undertaken

The Commission's recommendations were legislatively implemented by the *Local Courts Amendment Act 1982* (WA).