



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 63**

**Small Debts Court**

**WORKING PAPER**

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The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

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## CONTENTS

	Paragraph
<b>PREFACE</b>	
<b>TERMS OF REFERENCE</b>	1.1
<b>THE ADVANTAGES OF SMALL CLAIMS TRIBUNALS</b>	2.1
General	2.1
Initiation of claim	2.2
Hearing	2.3
Costs	2.5
Finality of decision	2.6
Absence of delay	2.8
Enforcement	2.9
Generally	2.10
<b>SHOULD THESE ADVANTAGES BE CONFINED TO CONSUMERS?</b>	
<b>ARGUMENTS FOR EXTENSION</b>	3.1
Genesis of the Small Claims Tribunal	3.1
Different types of trader	3.5
Other classes of claim	3.12
<b>ARGUMENTS AGAINST EXTENSION</b>	3.14
(a) Cost	3.15
(b) Disadvantages to the respondent	3.21
<b>IF A SPECIAL FORUM FOR NON-CONSUMER CLAIMS IS DESIRABLE, HOW SHOULD IT BE ACHIEVED?</b>	
<b>ALTERNATIVES</b>	4.1
<b>HOW HAVE OTHER JURISDICTIONS DEALT WITH THE QUESTION?</b>	4.2
<b>TABLE</b>	4.13
<b>DISCUSSION OF DIFFERENT WAYS OF MAKING PROVISION FOR NON CONSUMER CLAIMS</b>	4.14
(a) Extension of Small Claims Tribunals	4.14
(b) A special Small Claims Tribunal confined to traders	4.22
(c) Creating a special division of the Local Court	4.24
<b>OTHER MATTERS TO BE DECIDED</b>	4.34
General	4.35
Maxima	4.37
Filing fee	4.38
Assistance by clerk	4.39
Conciliation	4.40

Privacy, general prohibition of legal representation, absence of appeal and costs	4.41
Technical assistance	4.42
Should the proposed jurisdiction be exercisable by all magistrates?	4.45

**QUESTIONS AT ISSUE** 5.1

**APPENDIX**

## **PREFACE**

The Commission has been 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.

The Commission having completed its first consideration of the matter now issues this working paper. The paper does not necessarily represent the final views of the Commission.

Comments and criticisms (with reasons where appropriate) on individual issues raised in the working paper, on the paper as a whole or on any other aspect coming within the terms of reference, are invited. The Commission requests that they be submitted by 29 September 1978.

The research material on which the paper is based is at the offices of the Commission and will be made available there on request.

## TERMS OF REFERENCE

1.1 The Commission has been 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.

1.2 The terms of reference need explanation. Under the existing laws a debt or other claim up to a value of \$3,000 may be heard by a magistrate in the Local Court in accordance with the ordinary procedure of that Court.<sup>1</sup> However, the law gives "consumers" (which includes tenants in the case of tenancy bond claims)<sup>2</sup> a special privilege in that claims by them against "traders" (which includes landlords in the case of tenancy bond claims)<sup>3</sup> of amounts less than \$1,000 may be heard by a referee in the Small Claims Tribunal.<sup>4</sup> The name of the Tribunal is therefore misleading since it deals only with small claims by consumers, not small claims generally. The substantial question discussed in this paper is whether a similar procedure

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<sup>1</sup> *Local Courts Act 1904*, as amended by the *Acts Amendment (Jurisdiction of Courts) Act 1976*. Subject to the prescribed money limit, the jurisdiction of the Local Court is wide and generally covers personal actions of whatever kind. However, actions in ejectment, those in which the title to land or the validity of a bequest under a will or settlement is in question, seduction or defamation are limited or excluded. A litigant may alternatively commence proceedings in the District Court or Supreme Court, but this would be unusual in the case of a small claim. It is a deterrent that the Court may award costs only on the Local Court scale; *Supreme Court Rules 1971*, 066, R17.

<sup>2</sup> The *Small Claims Tribunals Act 1974* (s.4(1)) defines a consumer as -

"(a) a person, other than an incorporated person, who buys or hires goods otherwise than for re-sale or letting on hire or than in the course of or for the purposes of a trade or business carried on by him, or than as a member of a business partnership, or for whom services are supplied for fee or reward otherwise than in the course of or for the purpose of a trade or business carried on by him, or than as a member of a business partnership; or

(b) a person who is or was the tenant of any premises let to him for the purposes of a dwelling and otherwise than for the purposes of assigning or sub-letting or for the purposes of a trade or business carried on by him".

<sup>3</sup> The *Small Claims Tribunals Act 1974* (s.4(1)) defines a "trader" as -

"(a) a person who in the field of trade or commerce carries on a business of supplying goods or providing services or who regularly holds himself out as ready to supply goods or to provide services of a similar nature; or

(b) a person who is or was the landlord of any premises let to the tenant for the purpose of a dwelling and otherwise than for the purposes of assigning or sub-letting by the tenant or for the purposes of a trade or business carried on by the tenant".

<sup>4</sup> The *Small Claims Tribunals Act* (s.4(1)) defines a small claim as -

(a) a claim for payment of money in an amount less than \$1,000;

(b) a claim for performance of work of a value less than \$1,000; or

(c) a claim for relief from payment of money in an amount less than \$1,000

"that in any case arises out of a contract for the supply of goods or the provision of services made between persons who, in relation to those goods or services, are a consumer on the one hand and a trader on the other. ...". The figure of \$1,000 was substituted for \$500 by an amendment in 1977 (*Gazette*, 12 August 1977) to the *Small Claims Tribunals Act Regulations 1975: Gazette*, 7 March 1975.

It also includes a claim for repayment of a tenancy bond of less than \$1,000.

The *Small Claims Tribunals Act* contemplates the setting up of more than one Tribunal. For convenience, however, this paper refers to them separately or collectively as "the Small Claims Tribunal", or "the Tribunal". A similar convention has been adopted in regard to Local Courts.

should also be made available for claims of persons other than consumers and, if so, whether this should be achieved by expanding the jurisdiction of the Small Claims Tribunal, by creating a separate Small Debts Tribunal or by creating a special procedure in the Local Court.

1.3 In its consideration of the problem, the Commission has been helped by discussions with Mr. A.G. Smith, the Senior Referee of the Small Claims Tribunal in this State. It expresses its gratitude to him for this assistance.

## THE ADVANTAGES OF THE SMALL CLAIMS TRIBUNAL

### General

2.1 Under the existing law, a consumer<sup>1</sup> is in a privileged position in that, if he has a dispute with a trader<sup>2</sup> he may in certain cases elect to have the dispute dealt with by the Small Claims Tribunal instead of undertaking proceedings in the Local Court. Proceedings before the Small Claims Tribunal offer a number of advantages to a consumer contemplating proceedings against a trader. However, if for some reason a consumer considers that proceedings before the Tribunal would be undesirable from his point of view, he is free to commence an action in the Local Court in the ordinary way. The Small Claims Tribunal offers an alternative jurisdiction to a consumer which he may take advantage of or not, as he chooses.

### Initiation of claim

2.2 One possible advantage of the Small Claims Tribunal lies in its procedure. It is simplicity itself. All a consumer has to do to commence proceedings is to, complete and file<sup>3</sup> a simple form setting out the circumstances of his claim and pay a \$2 fee. If he finds it difficult to complete the form, an official will help him do so.<sup>4</sup> It is the responsibility of the registrar to arrange for service of the claim on the respondent by certified mail.<sup>5</sup> The claimant then simply appears before the referee at the time and place set down for the hearing, bringing whatever documents are necessary, such as receipts, letters or a written contract. He will also bring witnesses if he considers they will help his case. The respondent does likewise if he desires to defend the claim.

### Hearing

2.3 The hearing is conducted in quite a different manner from a hearing in the Local Court. The aim is to conduct the proceedings in as relaxed, personal and informal manner as

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<sup>1</sup> See note 2 above.

<sup>2</sup> See note 3 above.

<sup>3</sup> The form is filed in the Small Claims Tribunal Registry if the claimant is in the Perth metropolitan region, otherwise in any Local Court office.

<sup>4</sup> The registrar is bound to give such assistance if required: *Small Claims Tribunals Act*, s.24(2). If the claim is to be filed in a Local Court office, the clerk is required to give such assistance: *ibid.*

<sup>5</sup> s.40.

is practicable. All constraints which may work against these ends are avoided. The hearing is in private. A party cannot be legally represented except in special cases.<sup>6</sup> In the words of s.32(1) of the *Small Claims Tribunals Act*, "Each party to a proceeding before a tribunal shall have the carriage of his own case". However, a claimant need not fear that he would therefore be obliged to display any forensic skill, since the referee himself will attempt to get at the true position by questioning the parties and their witnesses and by inspecting any documents the parties bring with them. A referee is not bound by the rules of evidence and may inform himself as he thinks fit.<sup>7</sup> This role has been described as "inquisitorial", which is probably a technically correct description, though it may give a misleading impression because of the term's unfortunate historical associations.

2.4 In contrast to the function of a magistrate or judge in court proceedings, it is the referee's primary function to attempt to bring the parties to a dispute to a settlement that is acceptable to all of them.<sup>8</sup> It is only if this appears to be impossible will he proceed to make an order determining the dispute. The referee accordingly normally attempts to get each party to see the other's point of view.<sup>9</sup> During this stage legal issues are usually kept in the background and the parties are encouraged to concentrate on what would be a fair and reasonable solution in the circumstances.<sup>10</sup> The referee may leave the parties alone in the room together if he thinks this would help bring about a settlement. If he thinks it desirable he will adjourn the hearing to inspect the subject matter of the dispute (e.g. an allegedly faulty concrete driveway or the condition of the premises in a tenancy bond claim). Often an expert employed by the Consumer Affairs Bureau is called by the referee to give his opinion on the subject of the claim (for example a claim that repairs to a car were defective or that the bill was unreasonable). The cost of doing so is borne by the Government in the sense that such experts are civil servants attached to the Consumer Affairs Bureau.<sup>11</sup>

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<sup>6</sup> Legal representation is permitted only where all parties agree and the Tribunal is satisfied that the other parties will not be unfairly disadvantaged: s.32(3).

<sup>7</sup> s.33(3).

<sup>8</sup> s.10(1).

<sup>9</sup> This account of the usual procedure of a referee was given by Mr. A.G. Smith: see paragraph 1.3 above.

<sup>10</sup> Where conciliation attempts have failed and the referee decides to make an order determining the dispute, he must apply the law: see *R. v The Small Claims Tribunal and Syme* [1975] VR 831.

<sup>11</sup> A division of the State Department of Labour and Industry.

## Costs

2.5 A hearing in the Small Claims Tribunal differs from that in a court in other ways as well. The Tribunal has no power to award costs to or against any party to a proceeding before it.<sup>12</sup> In certain cases a potential claimant may see this as a disadvantage, since he will receive nothing by way of costs if he wins. In other cases it may be a distinct advantage, since a claimant may otherwise be disinclined to commence proceedings by the fear that substantial costs would be awarded against him if he loses.

## Finality of decision

2.6 Another significant point of difference from a court action is that a settlement or order made by the Small Claims Tribunal is final and not subject to appeal.<sup>13</sup> In most cases the absence of appeal probably would be considered an advantage by a potential claimant and a factor in favour of commencing proceedings in the Small Claims Tribunal. If he wins, the decision in his favour cannot be overturned on appeal. Equally he cannot seek to overturn a decision against him, but a right of appeal would probably be illusory, since the expense of appealing would usually be disproportionate to the amount in issue.

2.7 Although there is no appeal as such, the Supreme Court is given a limited supervisory role in that it could quash a decision which had been made without jurisdiction or where there had been a denial of natural justice.<sup>14</sup>

## Absence of delay

2.8 Delays in proceedings are not necessarily avoided simply by setting up a Small Claims Tribunal jurisdiction, but the simplicity of the procedure may yield speedier results. It appears that a hearing before the Tribunal usually takes place about five weeks after the claim form is filed, whereas it is about five months before a hearing takes place in the Local Court in Perth.<sup>15</sup> Although a particular claimant may not see a delay as a serious disadvantage, it would

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<sup>12</sup> s.35.

<sup>13</sup> s.18.

<sup>14</sup> s.19. See the Victorian case of *R. v Small Claims Tribunal and Homewood* [1976] VR 427, for an illustration of the exercise of this power.

<sup>15</sup> That is, after the action is listed for trial. Before this point is reached, many months could elapse, depending on the complexity of the interlocutory proceedings. In the default judgment procedure,

generally be in a claimant's interest to dispose of a claim quickly. In the absence of a power in the Local Court to award interest from the date of the original demand for payment, a delay of five months could mean a significant loss in inflationary conditions for a creditor.

## Enforcement

2.9 The Small Claims Tribunal does not offer any advantage over the Local Court when it comes to enforcement of a decision in a party's favour. The Tribunal has no powers of enforcement. If the Tribunal makes an order against a trader for the payment of money and he does not comply with it, the consumer must register the order in the Local Court to compel enforcement.<sup>16</sup> There is no power to enforce directly an order for the performance of work (which is the only other positive order the Tribunal can make).<sup>17</sup> If such an order is not complied with, the claimant can apply to the Tribunal for an order for the payment of money instead.<sup>18</sup> In practice, to avoid the necessity for the claimant to re-apply, the referee usually requests the trader to do the work required and then adjourns the hearing. If the trader does not comply, the case is brought on again and an order for the payment of money is made.

## Generally

2.10 A general picture of the work of the Tribunal, and of the approach of referees to their task, may be gathered from the 1977 Annual Report of the Senior Referee.<sup>19</sup>

2.11 In its present role as a forum for consumers to bring their claims against traders, the Small Claims Tribunal seems to be a success if its continually increasing use by consumers is a guide. During the year ending 30 June 1976, 775 claims were lodged with the Tribunal, resulting in 824 sittings and 678 determinations. During the corresponding period in the year following, 910 claims were lodged, resulting in 1,195 sittings and 931 determinations. This is

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however, judgment can generally be entered ten days from the date of service of the summons: *Local Courts Act 1904*, s.46(2) (a). See also *Local Court Rules 1961*, 05, R9.

<sup>16</sup> *Small Claims Tribunals Act*, s.22.

<sup>17</sup> The Small Claims Tribunals Act Amendment Bill, presently before Parliament, would enable the Tribunal to order the return of specific goods.

<sup>18</sup> *Small Claims Tribunals Act*, s.23.

<sup>19</sup> The report is reproduced as an Appendix to this paper. A most useful account of the procedures of small claims jurisdictions in Australia is given by G.D.S. Taylor, now the Director of Research of the Administrative Review Council, in an article to be published in Vol.II of *Access to Justice* (Florence Institute of Comparative Civil Procedure).

an increase of 17½% in the number of claims, bringing with it a corresponding increase in sittings and determinations.<sup>20</sup>

2.12 The power to settle claims by conciliation<sup>21</sup> has been used in about 30% of cases, showing a significant use of this aspect of the jurisdiction. The figure that referees are "carrying out the intentions of the legislature to endeavour to settle cases where possible".<sup>22</sup>

2.13 A wide range of claims is dealt with by the Tribunal, including claims against builders, building trades contractors, retailers (particularly those selling furniture, floor coverings and household appliances) motor vehicle repairers and landlords (tenancy bond claims).<sup>23</sup> Many of these claims were brought before the Tribunal by a consumer at the request of a trader. The Tribunal was seen as a convenient forum for determining the dispute.<sup>24</sup> This gives the trader indirect access to the Tribunal.

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<sup>20</sup> The increase in claims has required the appointment of two referees.

<sup>21</sup> See paragraph 2.4 above.

<sup>22</sup> Senior Referee's report, 30 June 1977. See Appendix below.

<sup>23</sup> Ibid.

<sup>24</sup> The Senior Referee, Mr. A.G. Smith, informed the Commission of this. See also paragraph 3.2 below.

## SHOULD THESE ADVANTGES BE CONFINED TO CONSUMERS?

### ARGUMENTS FOR EXTENSION

#### Genesis of the Small Claims Tribunal

3.1 The present restricted jurisdiction of the Small Claims Tribunal is explained by its genesis as a means of assisting consumers who approach the Consumer Affairs Bureau with complaints against traders. The Minister in charge of the Small Claims Tribunals Bill in the Legislative Assembly said:<sup>1</sup>

"A function of the Consumer Protection Bureau [now the Consumer Affairs Bureau] ...is to receive complaints from consumers as to fraudulent or other illegal or unfair practices. The Bureau normally refers a complaint to a trader seeking an explanation and the matter often results in a satisfactory settlement. ... There are, of course, other cases where the supplier either ignores the approach from the Consumer Protection Bureau or refuses to correct the cause of complaint where it is a justifiable claim.

In such cases, the consumer may be required to take civil proceedings but the thought of doing so and the likely cost involved deters a person from continuing with the complaint and, by not doing so, his case may not receive the justice it merits. Many people, particularly those more elderly, have a fear of courts or a dislike of court atmosphere and are unwilling to prosecute claims by appearing in court to give sworn evidence from a witness box. As an alternative method, the Bill will provide a cheap and speedy method of settling small claims by the use of informal proceedings".

3.2 Consumers, particularly the elderly, were seen as being in urgent need of a special judicial forum because of the high cost of proceedings in the ordinary courts and their allegedly intimidatory atmosphere. The Minister was, however, aware that traders also may have a case for a special forum apart from the ordinary courts. To begin with, he envisaged that the Small Claims Tribunal system would indirectly confer some benefit upon them also. He said:<sup>2</sup>

"A trader involved in a complaint lodged by a consumer with the Tribunal is not burdened with the costs of legal representation to defend his actions. ... Thus he may find it more advantageous to have a consumer with a grievance refer the case to the tribunal, than committing himself initially to an action before the Local Court for payment of an outstanding debt".

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<sup>1</sup> W.A. Parl. Deb. (1974) at 2863.

<sup>2</sup> Ibid., at 2864.

This refers to the possibility of a trader who claims money from a consumer, agreeing that the latter will commence proceedings in the Small Claims Tribunal for an order granting relief from paying the trader the amount the trader claims. By this means a trader can get indirect access to the Tribunal for a determination of a dispute with a consumer. It is, however, important to note that the trader himself cannot commence proceedings before the Small Claims Tribunal: the initiative must come from the consumer. If the consumer refuses to cooperate, and continues to refuse to pay what the trader claims is owing, the latter must take proceedings in the Local Court if he wishes to pursue his claim.

3.3 The Minister also foreshadowed<sup>3</sup> the possibility of setting up a "small debts court" to which traders could resort to

"...take more expedient and inexpensive action to obtain orders for enforcement of small debts owing to them. ... A court of this nature, similar to a small claims tribunal, would help overcome the deterrent of persons failing to seek redress in court because often legal costs are out of proportion to the amount of money in dispute".

3.4 Should the advantages provided by the Small Claims Tribunal be confined to consumers who have claims against traders? Why should not the advantages of an informal, cheap and speedy procedure equally be available to traders who have claims against consumers and indeed to other sorts of claimants?

### **Different types of trader**

3.5 Whether or not one considers that traders should also have access to a special forum possibly depends on the sort of trader one has in mind. If one thinks of a large company operating a department store or car sales yard, one may feel that they are not in need of any special procedure for the determination of their disputes with their customers. One may feel that the Local Court is not an inappropriate forum for them to sue those to whom they have extended credit.

3.6 However, even if that be a just approach, not all traders are in this category. Some cannot, by the very nature of their business, obtain payment before they perform work or transfer property. Many building trade contractors are in this position. For example, an

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<sup>3</sup> Ibid.

electrician contracts with a householder to install additional wiring in his home. It is usually not practicable to decide upon a fixed price for such a contract beforehand, so that an implied term of the contract would usually be that the householder pay a reasonable sum for the work upon completion. The electrician, having done the work to what he regards as a reasonable standard, sends the householder a bill for, say, \$400 which the householder refuses to pay.<sup>4</sup> Unless the customer agrees to commence proceedings in the Small Claims Tribunal seeking relief from paying the \$400,<sup>5</sup> the electrician must sue him in the Local Court. It would be an unusually confident person who would be prepared to conduct his own case in the Local Court in such an action. The argument would probably involve questions of law (what were the precise terms of the contract), questions of fact (what precisely the electrician did in his purported performance of the contract), and questions of mixed law and fact (did the work conform to the standard laid down in the contract).

3.7 The electrician would therefore probably engage a solicitor to conduct the proceedings on his behalf. The cost of engaging a solicitor could well approach the amount in dispute, depending on the complexity of the case.<sup>6</sup> Of course, if the electrician won his case he would obtain an order for costs (that is, an order that the customer, in addition to paying the amount in dispute, pay an amount towards the electrician's legal costs). However, it would not be unusual for the legal costs (covering pre-trial preparation and, say, one day in court) to be about \$300 in a case of this sort, of which the defendant would probably be ordered to pay \$200.<sup>7</sup> Thus, in order to recover the sum of \$400, the electrician would be required to outlay \$300, of which \$100 would be irrecoverable. If the electrician felt confident of winning the case he might nevertheless be prepared to commence proceedings in the Local Court. But if his solicitor regarded his case as less than watertight he might well decide not to sue at all. Instead, he might attempt to compromise with the householder who might, or might not, be prepared to negotiate.

3.8 If, in the above example, the electrician had access to the Small Claims Tribunal or its equivalent, all that he would have had to outlay would have been a \$2 filing fee. Of course, he

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<sup>4</sup> For example, the householder may consider the bill too much, or the work defective.

<sup>5</sup> See paragraph 2.13 above.

<sup>6</sup> The solicitor's work could be considerable and would not be confined simply to appearing in court. He would be required to draft a statement of claim and pleadings (although these are not required under the Local Court Rules, as a matter of practice it is usual to supply them in a defended case). Discovery and interrogatories may also be necessary.

<sup>7</sup> This is an estimate of what the Court would award under the recently revised Local Court scale: see *Gazette* (1978) at 849.

would be required to attend in person at the hearing before the referee, and this may represent a hidden cost in that he might be foregoing the earning of income during the time he was attending.<sup>8</sup> However, the hearing would be unlikely to last more than about an hour or two<sup>9</sup> and, if a settlement could be reached through the referee's efforts at conciliation, possibly much less than that. The electrician need not consult his solicitor at all (although he could do so if he wished). Legal questions could be left to the referee and, since the referee plays an active part in bringing out the relevant facts, there would be little need for the services of an advocate to present them to the Tribunal.

3.9 Electricians are just one example of "traders" who seem to be at a disadvantage under the present system. Other examples are plumbers and fencing contractors. None of these can readily protect themselves by demanding payment before completing the work.<sup>10</sup> It may be regarded as unfair that although a customer of such a trader is able to commence proceedings in the Small Claims Tribunal if he considers that the trader has not performed his side of the contract, the trader is unable to do so if he considers that the consumer has not performed his.<sup>11</sup> Such traders are often in business in a relatively small way and could be seen to be in as much need of protection as some consumers, who may in fact be better off financially than they are.

3.10 In the above discussion, the Commission has described the difficulties that might be faced by certain classes of tradesmen in enforcing claims against their customers under the present law. However, it could be argued that there is no real justification for differentiating between small traders and other sorts, no matter how large their business. The difficulty in pursuing any one small claim would not cause the same hardship to a larger trader as to a small one, but the former is likely to have many more small claims, so that the total effect could be as significant.<sup>12</sup>

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<sup>8</sup> Since he would be required to attend as a witness in a Local Court action, this "hidden cost" would be common to both types of proceeding.

<sup>9</sup> This is the estimate given the Commission by Mr. A.G. Smith.

<sup>10</sup> Although motor vehicle repairers often contract with consumers they are not in a vulnerable position. Under the law a repairer has a possessory lien over a vehicle on which he has worked and can lawfully retain possession of it until he is paid: see *Crossley Vaines' Personal Property* (5th ed. 1973) at 139.

<sup>11</sup> Architects are also in a vulnerable position since they usually do work before being paid. However, an architect is not a "trader" for the purposes of the *Small Claims Tribunals Act* (see s.4(2) (a)), so that a client of an architect cannot take proceedings against him in the Tribunal if, for example, he seeks relief against paying what the architect demands. The situation would also apply to doctors, dentists and legal practitioners: see *R v Small Claims Tribunal* [1973] Qd R at 490, where it was held that a dentist was not a "trader". The argument based on reciprocity cannot be used in the case of such professions.

<sup>12</sup> The discussion here is intended to relate only to cases where there is a genuine dispute and not where the person against whom the claim is made is merely attempting to avoid payment: see paragraph 4.16 below.

3.11 There is the further argument that to confine access to a special forum to "small traders" would be bound to produce arbitrary results, whether the criterion was amount of capital, or turnover or profit. It would almost certainly generate resentment among those excluded.

### **Other classes of claim**

3.12 There are other classes of claims which possibly merit consideration, such as -

- (a) Claims by persons to whom goods or services are supplied for the purposes of a trade or business. For example, a small trader may purchase a refrigerator for his delicatessen shop. If the appliance proves faulty he may wish to obtain repayment of the cost of repairing it and compensation for spoilt goods. A person acting in such a capacity is not a "consumer" under the present legislation.<sup>13</sup>
- (b) Claims by landlords against tenants for non-payment of rent or for compensation for damage to premises.<sup>14</sup> Usually a landlord protects himself by obtaining a tenancy bond as a condition of letting the premises. If he does, he may have no need to sue the tenant. He simply deducts the appropriate amount from the bond. However, if he did not obtain a tenancy bond - perhaps because he trusted the tenant - or if the bond is insufficient, it could be argued that he should have access to a special forum to recover the amount.
- (c) Claims by one private person against another. For example, a person may have bought a motor vehicle from another private person who promised to pay for certain repairs as an inducement for the other to buy. If the vehicle proves defective and the seller disputes that he made such a promise, the buyer cannot bring proceedings in the Small Claims Tribunal. However, this might be the very sort of case which could be settled by a referee under his powers of conciliation.

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<sup>13</sup> See paragraph 1.2, note 2 above. Corporate bodies also cannot be consumers: *ibid.*

<sup>14</sup> Claims by tenants for return of tenancy bond money are already included: see paragraph 1.2 above.

3.13 In all these cases it could be argued that claimants should be given the advantages of a small claims jurisdiction with its attendant low cost, simplicity of procedure, opportunity for settlement and finality. However, in deciding whether such a facility should be extended to them, it is necessary to have regard to arguments against any such extension.

### **ARGUMENTS AGAINST EXTENSION**

3.14 There are two broad arguments against extending the concept of a special forum (whether by extending the jurisdiction of the Small Claims Tribunal or by some other means) much beyond its present limits. These are (a) cost and (b) the position of the defendant and the effect on the administration of justice generally.

#### **(a) Cost**

3.15 The Commission has been informed by the Crown Law Department that Local Court fees are set at a figure which would broadly recoup the cost of running the Perth Local Court.<sup>15</sup> The cost of running the judicial system in Western Australia is considerable, consisting of salaries for judicial officers and court staff, equipment, stores and the upkeep of buildings. All this must be paid for, whether by those who resort to the judicial system or by the taxpayer through the Consolidated Revenue Fund. Determinations of this kind are a matter of policy.

3.16 One of the main advantages seen in the Small Claims Tribunal system is the nominal amount of the fee payable by a claimant (at present \$2). For this amount he has available the services not only of a referee, but the registrar (to help him fill out his claim form and serve the claim on the other party) and, if necessary, experts of the Consumer Affairs Bureau (to attend at the hearing and give evidence).<sup>16</sup> The cost of running the Small Claims Tribunal is not publicly available, but it must be many times more than the sum of \$1,820, which was the total amount of the fees collected by the Tribunal in the year ended 30 June 1977.<sup>17</sup> There are at present two referees, a registrar and administrative staff. Any extension of the Small

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<sup>15</sup> Local Courts outside the metropolitan area generally run at a loss. The Perth Local Court accounts for about 2/3rds of the total Local Court business in this State.

<sup>16</sup> See paragraph 2.4 above.

<sup>17</sup> See Appendix below.

Claims Tribunal system must generate more expense which would have to be borne by the general community.

3.17 Because of the generally inferior bargaining position in which consumers were considered to be in relation to traders, the Western Australian Parliament, in common with many other jurisdictions, has passed a number of enactments aimed at restoring the balance, including the Small Claims Tribunal legislation.<sup>18</sup> Other legislation is in prospect.<sup>19</sup> It could possibly be seen as inconsistent that, having created a special forum with its attendant expense to improve the position of consumers as against traders, legislation should then be enacted to grant a similar concession to traders as against consumers.<sup>20</sup>

3.18 It might be argued that traders who do not regard it as economically feasible to pursue small debts through the Local Court system<sup>21</sup> are able to treat the loss as a business expense for income tax purposes, so that the actual loss to them would be less than to a consumer, who cannot deduct such losses for tax purposes.

3.19 Further, it might be argued that a trader can, to some extent, protect himself by insisting on a high credit rating before he deals with a customer or by demanding payment beforehand.<sup>22</sup> However, these steps may be neither practicable nor effective. As was pointed out above,<sup>23</sup> some traders cannot readily insist on payment beforehand or on doing business only with persons with a high credit rating. In any case, it is not in the interests of consumers generally for traders to insist on prepayment or high credit ratings as a way of avoiding bad debts.

3.20 It could accordingly be suggested that some extension of the small claims system would benefit both traders and consumers, and that the resulting expense to the taxpayer would be justified. It could also be argued in favour of an extension that it is in the general public interest that all members of the community should have access to an inexpensive

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<sup>18</sup> Another example is the *Hire Purchase Act 1959*.

<sup>19</sup> Legislation regulating credit sales.

<sup>20</sup> This probably takes too narrow a view of the purpose of providing a convenient forum for the determination of disputes: see paragraph 3.20 below.

<sup>21</sup> In some cases - where the trader can obtain judgment by default - the Local Court procedure is comparatively inexpensive: see paragraph 4.16 below.

<sup>22</sup> A Small Business Advisory Service has recently been established by the Government in the Department of Industrial Development. This is available to give advice on the avoidance of bad debts.

<sup>23</sup> See paragraph 3.6 above.

procedure for determination of their claims, and that it is undesirable that some should forgo taking legal proceedings merely because of the expense of doing so.

**(b) Disadvantages to the respondent**

3.21 The possible advantages of the Small Claims Tribunal system have been described in terms of the advantages to the claimant, that is the person who wishes to commence legal proceedings. A claimant is not obliged to take his case to the Small Claims Tribunal. If he considers that the disadvantages of doing so outweigh the advantages, he can commence an action in the Local Court instead. A respondent has no such choice. If proceedings are taken against him in the Small Claims Tribunal he is obliged to defend them there.

3.22 The low cost of proceedings in the Small Claims Tribunal is brought about not only by the nominal filing fee, but because legal representation is generally excluded.<sup>24</sup> But a person against whom a claim is made may not wish to "have the carriage of his own case", particularly if it is complicated. It is true that the referee is presumed to have the expertise to ascertain the facts and correctly apply the law, but a defendant may feel that he should be legally represented if he is to be sure that nothing in his favour is overlooked. Furthermore, it may not always be the case that appearing on one's own behalf is significantly cheaper than being represented by a solicitor. It may depend on whether a person must take time off from income producing activity to attend the Tribunal.

3.23 The absence of any right of appeal could also appear as a significant disadvantage to a respondent. He might regard the proceedings as a test case which he would have been prepared to take on appeal to the District Court if he had been sued in the Local Court and had lost.<sup>25</sup> Although it is in the public interest that claimants have ready access to a cheap and speedy system of justice, such attributes may be bought too dearly if a party is not permitted adequate legal assistance or a right of review.

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<sup>24</sup> See note 6, chapter 2 above.

<sup>25</sup> The *Small Claims Tribunals Act* (s.17(3)) empowers the referee to rule that the claim involves such a complex point of law as to warrant it being heard in a court. If he does so rule, the Tribunal ceases to have jurisdiction. However, this is a matter for the discretion of the referee.

## **IF A SPECIAL FORUM FOR NON CONSUMER CLAIMS IS DESIRABLE, HOW SHOULD IT BE ACHIEVED?**

### **ALTERNATIVES**

4.1 Put broadly, there are three ways in which the small claims procedure can be made available to a wider class of claimants than at present, as follows -

- (a) By extending the jurisdiction of the present Small Claims Tribunal.
- (b) By creating a tribunal along the lines of the present Small Claims Tribunal, but separate from it.
- (c) By creating a special division of the Local Court.<sup>1</sup>

### **HOW HAVE OTHER JURISDICTIONS DEALT WITH THE QUESTION?**

4.2 It may be useful at this point to discuss briefly the ways in which other jurisdictions have dealt with small "non consumer" claims. Attention is concentrated on the position in England, New Zealand and Australia. Where relevant, the situation in those States of the United States which have special procedures for small claims is also referred to.

4.3 In England,<sup>2</sup> New Zealand,<sup>3</sup> South Australia,<sup>4</sup> the Australian Capital Territory<sup>5</sup> and the Northern Territory<sup>6</sup> the problem was dealt with by providing at the outset for both consumer and non-consumer claims. These jurisdictions have done this by creating a special division of their equivalent of the Local Court. There are, however, certain differences between them.

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<sup>1</sup> It would also be possible to revise the procedure of the Local Court generally in the interests of simplicity, economy and expedition, and the Commission is considering this question in its study of Project No. 16 (*Local Courts Act and Rules*). However, the limit of jurisdiction of the Local Court has recently been raised to \$3,000. This is quite a significant increase, probably requiring retention of the provision for legal representation, interlocutory proceedings and other matters to ensure that justice is done. It cannot be expected that the general procedure of the Local Court could be simplified to the extent desirable to deal with the problem of small claims.

<sup>2</sup> *County Court (Amendment No.3) Rules 1973* (SI 1973/1412).

<sup>3</sup> *Small Claims Tribunals Act 1976*.

<sup>4</sup> *Local and District Criminal Courts Act 1926-74*.

<sup>5</sup> *Small Claims Ordinance 1974*.

<sup>6</sup> *Small Claims Ordinance 1974*.

4.4 In *England*, the small claims jurisdiction is exercised by way of arbitration, with the registrar usually being appointed the arbitrator. The jurisdiction is not confined to any particular class of case. The proceedings are in private, and the precise terms on which the arbitration is to take place are settled in the particular case by the Court. There is no express power given to the arbitrator to attempt conciliation. There is no appeal, although the judge may set aside the award in special circumstances.

4.5 The development in *New Zealand* is interesting. The forum is called the Small Claims Tribunal, but it is really a division of the Magistrates' Court. However, the cases are heard by specially appointed referees, who need not be legally qualified. The jurisdiction of the Tribunal is up to \$500 and covers claims in contract, quasi-contract and tort claims arising out of damage to property resulting from a motor vehicle accident. The procedure is substantially the same as in the Small Claims Tribunal of this State.

4.6 There is a provision which may be of significance to Western Australia if it is decided to extend the small claims jurisdiction to traders and others. The New Zealand Tribunal does not have power to hear small claims for a debt or a liquidated demand, unless the claimant either satisfies the registrar that "the claim, or a part thereof, is in dispute" or that "the claim is in the nature of a counter claim by a respondent against a claimant".<sup>7</sup> The exclusion of actions for undisputed debts has the object of preventing the Tribunal from being used as a forum for actions relating to arrears in payment or non payment of debts. The restriction is aimed at preventing the Tribunal from being inundated with claims which can be pursued just as effectively before the Magistrates' Court.<sup>8</sup>

4.7 A further significant feature of the New Zealand legislation is the provision that the Tribunal "shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities".<sup>9</sup>

4.8 In *South Australia*, the small claims jurisdiction extends to claims of not more than \$500 -

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<sup>7</sup> *Small Claims Tribunals Act 1976*, s.10(1) and (2).

<sup>8</sup> N.Z. Parl. Deb. (1976) at 2774. See also Ellinger, *Small Claims Tribunals*, Aus. Bus. Law Review, June 1977, 121 at 124 to 125.

<sup>9</sup> s.15.

(a) upon a contract or by way of damages for breach of contract;

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

(c) by way of damages for tort;

or

(d) upon a cause of action of a kind declared by the Attorney-General, by notice published in the Gazette, to be a cause of action upon which a small claim may be founded.

Certain magistrates have been appointed as the sole small claims magistrates in Adelaide. Power is given to the magistrate to attempt conciliation, though it is expressed simply as an option open to him, and not as his primary function. Proceedings are in public, the magistrate is not bound by the rules of evidence, and there is a restriction on legal representation. There is no appeal.

4.9 The provisions in the *Australian Capital Territory* and the *Northern Territory* are substantially the same. The jurisdiction extends to all claims of \$1,000 or less, except where title to land is in question. It would seem that the principal differences in procedure from ordinary actions are that the Court is not bound by the rules of evidence, evidence is not given on oath, and there is no power to award costs. The proceedings are in public unless the Court decides otherwise. There is a limited right of appeal.

4.10 *Queensland* has adopted a dual jurisdiction approach, probably because it first established a Small Claims Tribunal for consumer claims and subsequently wished to make provision for other small claims. This was done by retaining the existing jurisdiction of the Small Claims Tribunal and by requiring the Magistrates Court to adopt a special procedure with regard to certain claims, whether consumer or non consumer.<sup>10</sup> The Court when hearing such an action is called the Small Debts Court.

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<sup>10</sup> Qld. Parl. Deb (1975) at 889. The legislation creating the special division of the Magistrates Court is the *Magistrates Courts Act Amendment Act 1975*.

4.11 The jurisdiction of the Small Debts Court is confined to a claim in the nature of a debt or liquidated demand of not more than \$450. This would include a claim for a specific sum of money due and payable under a contract or statute, but would exclude a damages claim (whether in contract or tort) and a claim for the return of property. A trader could thus take proceedings in the Small Debts Court for payment of the purchase price of an article he had sold to a consumer or another trader. However, he could not apply in the Small Debts Court for an order requiring the other party to return goods.<sup>11</sup> He also could not take proceedings in the Court for payment of the cost of repairing damage to his vehicle. This claim would not be a "liquidated demand".

4.12 There is provision for the magistrate to attempt conciliation, the hearing is in private and there is no appeal.

#### **TABLE**

4.13 The following table sets out in tabulated form information about the legislation described above and the existing Western Australian legislation.

[SEE OVER FOR TABLE]

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<sup>11</sup> For example, which the other party had possession of under a hire purchase agreement which had been breached.

	<b>W.A. Small Claims Tribunal</b>	<b>QLD. Small Debts Court</b>	<b>N.Z. Small Claims Tribunal</b>	<b>A.C.T. Petty Sessions (Small Claims)</b>	<b>N.T. Local Court (Small Claims)</b>	<b>S.A. Local Court (Small Claims)</b>	<b>England County Court (Small Claims)</b>
Who may sue	Consumers	Anyone	Anyone	Anyone	Anyone	Anyone	Anyone
Who may be sued	Traders	Anyone	Anyone	Anyone	Anyone	Anyone	Anyone
Maximum amount of claim	Less than \$1,000	\$450	\$500	\$1,000	\$1,000	\$500	£100
Is there requirement to conciliate?	Yes	Optional	Yes	No	No	Optional	No
Is there any appeal?	No	No	Limited right of appeal	No in nuisance cases. Otherwise leave to appeal may be given in special cases	Leave to appeal given in special cases	Only in special cases	No
Is official obliged to assist claimants complete documents?	Yes	No	Yes	Yes	Yes	Not specifically	Not specifically
Is legal representation permitted?	Only with consent of parties and referee	Only with consent of parties	No	Yes	Yes	Generally only with consent of parties and Court	Yes
Are hearings in private?	Yes	Yes	Yes	Not unless Court orders	Not unless Court orders	No	Yes
Is body bound by rules of evidence?	No	No	No	No	No	No	No
Must body apply the law strictly when adjudicating?	Yes	No (in cases under \$150)	No	Yes	Yes	Yes	Yes
Are costs allowable?	No	No	Only if claim or vexatious or frivolous	No	No	Only if all parties represented or in special circumstances	Yes
Can defendant bring a counter-claim?	No - but if claimant seeks relief from payment he can be ordered to pay	No	Yes	Yes	Yes	Yes	Yes
Other matters.	-	-	Express power given to appoint investigator	Express power given to appoint investigator	Express power given to appoint investigator	Express power given to appoint investigator	Express power given to appoint investigator

Note: The table does not contain information about small claims legislation in New South Wales and Victoria. This is because the relevant legislation there does not make special provision for claims by non-consumers: see the *Consumer Claims Tribunal Act 1974* (NSW); the *Small Claims Tribunals Act 1973* (Vic).

It can be seen that, apart from differences as to details, the basic difference in regard to small claims lies between those jurisdictions which have created a single jurisdiction on the one hand, and Queensland which has a dual jurisdiction on the other. In the discussion which follows, the Commission draws attention to considerations for the adoption of one or other of these approaches, should it be decided to make special provision for non-consumer claims.

## **DISCUSSION OF DIFFERENT WAYS OF MAKING PROVISION FOR NON-CONSUMER CLAIMS**

### **(a) Extension of the Small Claims Tribunal**

4.14 It would be possible to extend the jurisdiction of the Small Claims Tribunal to cover non-consumer claims. At first sight this possibility seems to have much to commend it. The organisational machinery already exists, and the referees and registrar have no doubt developed expertise in the special procedures involved. Such an extension would also mean that jurisdiction with respect to all small claims was vested in the one judicial body.

4.15 There are, however, dangers in extending the jurisdiction of the Small Claims Tribunal in this way. The volume of business of the Tribunal is steadily increasing,<sup>12</sup> though not yet to an extent which is throwing a strain on the system.<sup>13</sup> A significant increase in the jurisdiction could impose severe pressures upon it. In the United States of America there are a number of small claims tribunals whose jurisdiction covers claims against consumers as well as claims by consumers. Persons who have studied these tribunals have noted the marked degree to which they have tended to become "small debts" tribunals, dominated by trade creditors.<sup>14</sup> This is largely because business claimants who have frequent recourse to the tribunal become increasingly familiar with the format and procedure and tend to squeeze out individual claimants. The tribunal becomes more and more adapted to the ends of business and less to the ends of private individuals. The present Small Claims Tribunal is well adapted to suit the needs of consumers. Any enlargement of the jurisdiction may adversely affect its operations.

4.16 It may be the case that in Western Australia traders would not generally avail themselves of any right of access given them to the Small Claims Tribunal to the exclusion of

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<sup>12</sup> See paragraph 2.11 above.

<sup>13</sup> See the Senior Referee's 1977 annual report in the Appendix below.

<sup>14</sup> See, for example, the article entitled *Special Project: Judicial Reform at the Lowest Level - A Model Statute for Small Claims Courts*, (1975) 28 Vand. L. Rev. 711.

the Local Court. Under the *Local Courts Act* at present, where the claim is for "a debt or liquidated demand in money or for delivery of goods",<sup>15</sup> or for a damages claim of not more than \$50<sup>16</sup> the plaintiff may obtain judgment if the defendant has not given a notice of defence. This process is called "judgment by default" and does not involve a hearing. All that is necessary is the filing with the clerk of a form requesting him to enter judgment.<sup>17</sup> In such cases plaintiffs might continue to use the Local Court. Only \$8.20 in court fees are payable by the plaintiff.<sup>18</sup> This is \$6.20 more than the fee payable in the Small Claims Tribunal, but on the other hand if a party commences proceedings in the Small Claims Tribunal he must attend a hearing before the referee. A trade creditor might find this inconvenient, since he would be required to attend himself if he was an individual<sup>19</sup> or, if an incorporated body, through an agent who cannot be a legal practitioner.<sup>20</sup>

4.17 However, if the defendant in the Local Court files a notice of defence, the case cannot proceed to judgment without a hearing. It is true that s.47A of the *Local Courts Act* permits a plaintiff to apply for leave to sign judgment in such cases where he swears that he believes that the defendant has no defence. Nevertheless, it would still be necessary to appear personally, or by a legal practitioner, before a magistrate to obtain leave. Whether or not a trade claimant would use the Local Court or the Small Claims Tribunal in a particular case might therefore depend on his assessment of whether the defendant would be likely to file a notice of defence if the action were commenced in the Local Court.

4.18 No statistical information is available as to the number of actions in the Local Court which are of the sort for which judgment by default is possible and in what proportion of these is judgment by default actually entered. The Commission has been informed that in Perth alone there are about 38,000 of such actions commenced annually, and that judgment is

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<sup>15</sup> s.46(2)(a).

<sup>16</sup> There would seem to be a good argument for increasing this amount to, say, \$200. Insurance companies commonly require young persons to meet the first \$100-\$200 of the cost of a motor vehicle accident. An increase in the limit in respect of judgment by default would allow such persons a simplified procedure for recovering the excess from the party at fault.

<sup>17</sup> *Local Court Rules 1961*, 0.10, R.4.

<sup>18</sup> \$2 for the issue of the summons, \$4.20 for service of the summons by the bailiff, and \$2 for entry of judgment: *Local Court Rules 1961*, Appendix, Part II.

<sup>19</sup> A claimant can be represented by an agent only "as a matter of necessity": *Small Claims Tribunals Act*, s.32(2). The Commission assumes that the existing procedural rules would apply to any extended jurisdiction.

<sup>20</sup> *Ibid.*, s32(3). An incorporated body must, of course, act through an agent.

entered in about 13,000 of them.<sup>21</sup> About 2,000 of these cases go to trial. The Perth Local Court does about two thirds of all Local Court business.

4.19 If these assumptions as to numbers are broadly correct, and if it is assumed that all actions for which judgment by default was likely to occur would continue in the Local Court, there would still be up to 3,000 cases throughout the State where the plaintiff might opt instead for the Small Claims Tribunal. A hearing would be required under both systems, the Small Claims Tribunal involves less fees and the claimant does not need to be legally represented.

4.20 It might be possible to avoid "swamping" the Small Claims Tribunal system by a provision aimed at restricting the number of traders' claims which could be dealt with there. This could possibly be achieved -

- (a) by limiting the number of claims which a trader could take to the Small Claims Tribunal each year;<sup>22</sup>
- (b) by excluding corporate bodies,<sup>23</sup> or
- (c) by requiring a trader, as a condition of commencing proceedings in the Tribunal, to declare that the claim is genuinely in dispute.<sup>24</sup>

4.21 The Commission does not consider that it would be desirable to implement either (a) or (b). To limit the number of claims numerically would be arbitrary, and act to the detriment of traders who operate the sort of business where the granting of credit is usual (e.g. traders in country areas where credit is extended on a seasonal basis and tradesmen, such as electricians, who specialise in household repairs). To exclude corporate bodies would tend to thwart the very purpose of the extension. Possibility (c) has, however, more to commend it. If the decision was made to extend the jurisdiction of the Small Claims Tribunal, such a condition could be imposed with the object of ensuring that the Tribunal remained a forum for deciding genuine disputes and did not become a mere debt collecting agency. The Commission doubts

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<sup>21</sup> In 1975, 62,561 actions were commenced in the Local Court in Western Australia. In only a proportion of these is any further step taken. The figures given in paragraphs 4.18 and 4.19 are not intended as more than educated guesses, based on limited spot checks.

<sup>22</sup> This was suggested in connection with a proposal to set up a Small Claims Tribunal in Tennessee: see the article referred to in note 14 above.

<sup>23</sup> As in the New York Small Claims Tribunal: see Fox, *Small Claims Revisions: A Break for the Layman*, *De Paul Law Review*, Vol. XX (1971) 912 at 916.

<sup>24</sup> As New Zealand has done: see paragraph 4.6 above.

whether this would in fact be successful, because the making of the required declaration would almost inevitably become a mere formality.<sup>25</sup>

**(b) A special Small Claims Tribunal confined to traders**

4.22 The obvious disadvantage with this proposal is that it involves the creation of a further judicial body outside the court system. Such a step would be expensive, since further referees, registrars and administrative staff would be required. The Commission is not aware of any such tribunal having been set up in any country.

4.23 Jurisdictional difficulties would be created because of the possibility of each party to the dispute suing in different tribunals. A trader may decide to commence proceedings in a "traders" tribunal, but the consumer may at the same time commence proceedings against him in the Small Claims Tribunal over the same contract.<sup>26</sup> It would clearly be inconvenient if each tribunal continued to deal with the case before it. But if consolidation were to be permitted, which tribunal should be chosen as the one to hear both claims? At present the *Small Claims Tribunals Act* does not give a general power to the referee to order that a consumer pay money, so that the Act would need to be altered in this respect if counterclaims by traders were to be included in that jurisdiction.

**(c) Creating a special division of the Local Court**

4.24 This was the method adopted in Queensland.<sup>27</sup> That State was faced with a similar problem of attempting to provide a special forum to which traders and other non-consumers could apply.<sup>28</sup> It wished to make provision for such claims, although not at the expense of possibly damaging the Small Claims Tribunal system.

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<sup>25</sup> An additional difficulty would be that the registrar would be required to peruse carefully any declaration and demand supporting evidence if necessary.

<sup>26</sup> For example, a plumber may sue for payment for the repairs he had done while his customer may sue him for water damage which he claims was due to faulty repairs. A dispute may have three or more parties. If so, the possibility would arise of one party suing in the Small Claims Tribunal, another in the "Traders' Tribunal" and the third in the Local Court.

<sup>27</sup> See paragraph 4.10 above.

<sup>28</sup> There is, however, nothing in the legislation which limits the sort of person who can be a claimant: see paragraph 4.11 above.

4.25 It is the Commission's provisional view that this should also be the approach to be adopted in this State, should it be decided to institute a special procedure covering non-consumer claims.

4.26 Possibly it would have been more desirable at the outset to have adopted the approach of England, New Zealand, South Australia and the Northern and Capital Territories by creating a unified small claims jurisdiction in the first place, provided that an effective way could have been found to prevent any imbalance of traders' claims as against consumers' claims. However, consumer claims were seen as the more pressing and there was much to be said for focussing attention on them in the first instance.

4.27 The creation of a special division of the Local Court to deal with certain sorts of small claims raises the possibility of consumers choosing that forum instead of the Small Claims Tribunal. However, the probability of this occurring would be minimised if the proposed special division were restricted to deciding claims for "debts or liquidated demands", since a claim by a consumer against a trader would usually be for damages or for a "work order"<sup>29</sup> arising out of a breach of contract.<sup>30</sup> Such a claim is neither for a "debt" nor a "liquidated demand". The creation of a special division would also raise the possibility of a conflict of jurisdiction if a trader sued in the special division of the Local Court for payment of the purchase price of an article, and a consumer applied to the Tribunal for relief against paying him that amount. However, this possibility also exists under the present system, since the trader can sue in the Local Court under its ordinary procedure.<sup>31</sup>

4.28 Restriction of the jurisdiction of the proposed special division of the Local Court to debts and liquidated demands would mean that its jurisdiction was more limited than the Small Claims Tribunal. The Tribunal can deal with a claim for the payment of money which "arises out of a contract for the supply of goods or the provision of services" (s.4(1)), thus clearly giving it jurisdiction to deal with a claim for unliquidated damages for breach of such a contract (for example, the loss of perishable items due to a faulty refrigerator). The consequence would be that a special procedure would be available to deal with a claim by a consumer, but not for a similar claim by a non-consumer.

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<sup>29</sup> "An order that requires a party....to perform work to rectify a defect in goods or services": *Small Claims Tribunals Act*, s. 20(2)(b).

<sup>30</sup> The claim would normally be for the cost of repairing the article.

<sup>31</sup> It appears that, under the present law, the body in which the relevant proceedings are first commenced has got exclusive jurisdiction: *Small Claims Tribunals Act*, s.17.

4.29 On the other hand, there is possibly something to be said for limiting the jurisdiction of the special division of the Local Court (should a decision be made to establish it) to a relatively narrow range of claims in the first instance. The situation could be reviewed in the light of experience. Most traders' claims would probably be for non-payment of the purchase price of an article or for non-payment of the sum owing under a contract for services. As such they would come within the definition of "debt" or "liquidated demand" and fall within the division's jurisdiction. Some common types of claim would, however, fall outside. For example, a claim by a firm against a carrier for the loss of an article which the latter had contracted to deliver would fall outside the jurisdiction, unless the contract of carriage had stipulated a specific sum payable upon the loss.<sup>32</sup>

4.30 The Commission has formed no firm view on the matter, and welcomes comment.

4.31 When discussing the possibility of extending the jurisdiction of the Small Claims Tribunal to deal with non-consumer claims,<sup>33</sup> attention was drawn to the danger of the Tribunal being overwhelmed by the additional number of traders' claims. It could be argued that the same danger could arise if a special division were created in the Local Court. One way of avoiding this possibly would be to ensure that the court fee payable in respect of such a jurisdiction was at least as much as for a default judgment. Although it would be impracticable to distinguish between claims in this way in the Small Claims Tribunal,<sup>34</sup> there would seem to be no objection if it were used as a device to prevent traders, who would normally use the default judgment procedure, from using the "small debt" procedure.

4.32 A possible way of dealing with actions for debts or liquidated demands in relation to the proposed special division could be as follows.<sup>35</sup> A person suing in respect of a debt or liquidated demand would commence proceedings in the Local Court in the ordinary way, paying the ordinary court fees that were prescribed. If the defendant filed a notice of defence, the proceedings would be transferred to the special division unless, on the application of either party, the magistrate ordered that the claim be dealt with in the Local Court in the

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<sup>32</sup> Also excluded would be tort claims by private individuals involving damage to property in motor vehicle accidents, which are provided for in New Zealand: see paragraph 4.5 above.

<sup>33</sup> See paragraphs 4.14 to 4.21 above.

<sup>34</sup> The device could not, therefore, be used to stop the Tribunal becoming a "debt collection agency".

<sup>35</sup> The emphasis in any such procedure should be on simplicity and ease of understanding. It might be thought that the procedure outlined in this paragraph is much more complicated than the procedure in the Small Claims Tribunal.

ordinary way. This could happen if the questions at issue were unusually complex. Otherwise the claim would be determined in the special division.

4.33 This procedure could apply whether or not the jurisdiction of the special division were confined to debts or liquidated demands. If other sorts of actions were to be included the filing of a notice of defence in these cases would also determine that the special procedure would apply. Otherwise, the case would go before a magistrate for hearing in the ordinary way.

## **OTHER MATTERS TO BE DECIDED**

4.34 A decision on the forum as to non-consumer claims and the type of claim that could be adjudicated in it, still leaves for decision certain other matters. These are discussed in the following paragraphs.

### **General**

4.35 If a decision were made to extend the jurisdiction of the Small Claims Tribunal to cover non-consumer claims, it would seem to be inevitable that those claims should be dealt with in precisely the same way as claims by consumers.<sup>36</sup> Any attempt to provide for different rules, for example by prescribing a higher filing fee for non-consumer claims, would be bound to cause confusion in the minds of the public and resentment among those required to pay the higher fee. If different rules were thought to be desirable, this of itself would be a reason for creating a separate forum for non-consumer claims, rather than extending the jurisdiction of the Small Claims Tribunal.

4.36 However, if a decision were made to set up a special forum to deal with non-consumer claims the enactment of different rules would be feasible. The Commission assumes that the creation of a separate tribunal for non-consumer claims would be undesirable.<sup>37</sup> Accordingly it has confined its discussion in what follows to the only practical alternative to extending the jurisdiction of the Small Claims Tribunal, namely, the creation of a special division of the Local Court.

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<sup>36</sup> See paragraphs 2.2 to 2.9 above.

<sup>37</sup> See paragraph 4.22 above.

## **Maxima**

4.37 The first question to decide is what the maximum amount of a non-consumer claim should be. A consumer's claim can be up to \$1,000,<sup>38</sup> and the reasons for choosing this figure<sup>39</sup> would appear to apply equally to non-consumer claims.

## **Filing fee**

4.38 The Commission has already suggested that a claimant should pay the same filing fee whether the claim is to be dealt with in the proposed special division of the Local Court or by that Court in the ordinary way.<sup>40</sup> In this respect, therefore, there would be a difference between the fee for filing a claim in the Small Claims Tribunal and for commencing proceedings in the special division.

## **Assistance by clerk**

4.39 There should be a further difference if non-consumer claims were dealt with in a special division of the Local Court. The clerk of the Local Court should not be obliged to assist in the preparation of claims by non-consumers, except perhaps in special circumstances.<sup>41</sup> If assistance were not so limited, the clerk and his assistants could find themselves involved in drafting a substantial proportion of the many thousands of debt or liquidated demand claims filed in that Court annually. Possibly the best course may be to leave the decision whether to assist, to the discretion of the clerk.

## **Conciliation**

4.40 It would seem undesirable to set up a special forum for non-consumer claims but not to adopt perhaps one of the most significant features of the Small Claims Tribunal procedure, namely the obligation of the referee to attempt conciliation.<sup>42</sup> As an incidental feature,

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<sup>38</sup> See paragraph 1.2 above. Claims for \$1,000 or more are excluded.

<sup>39</sup> Namely, so that the Tribunal can deal with a substantial proportion of cases where disputes involving consumers are likely to arise. The cost of repairing a motor vehicle can be as high as \$1,000, and claims arising out of building disputes can in fact be higher.

<sup>40</sup> See paragraph 4.30 above.

<sup>41</sup> In the case of the Small Claims Tribunal, the registrar is bound by statute to give assistance if required.

<sup>42</sup> See paragraph 2.4 above.

experience of conciliation gained by magistrates in the special division of the Local Court could be of advantage in the exercise of their ordinary jurisdiction.

### **Privacy, general prohibition of legal representation, absence of appeal and costs**

4.41 There seems no reason why the rules of the Small Claims Tribunal as to privacy of proceedings, the general prohibition of legal representation, the absence of any right of appeal and the prohibition against any award of costs<sup>43</sup> should not also apply to proceedings in the proposed special division of the Local Court. The Commission would, however, welcome comment.

### **Technical assistance**

4.42 Referees of the Small Claims Tribunal have access to expert assistance from officers of the Consumer Affairs Bureau. This is of considerable assistance to them in determining disputes dealing with claims involving repairs to motor vehicles and other technical matters.<sup>44</sup> The assistance is made available at no cost to the parties.<sup>45</sup>

4.43 The question is whether a magistrate sitting in the proposed special division of the Local Court should similarly have access to expert assistance and, if so, at whose expense. The Commission considers that access to expert assistance is a significant aid to good adjudication in the Small Claims Tribunal, and should also be available in any special division of the Local Court. How often such assistance would be required would partly depend on the nature of the jurisdiction of the special division. If tort claims generally were to be permitted to be litigated there, questions as to the precise nature of the loss might often require expert evidence for satisfactory determination. Even a claim for a debt or liquidated demand could sometimes involve questions requiring expert assistance. For example, a person may refuse to pay the cost of the goods because of an alleged defect, and it would accordingly be important for the magistrate to have evidence available as to their quality. No doubt the parties themselves would often be able to supply this evidence, or the magistrate perhaps could assess the quality upon a simple inspection. However, the question might not always be resolvable in

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<sup>43</sup> But see paragraph 4.44 below where the possibility is discussed of a party being ordered to pay for the cost of expert evidence.

<sup>44</sup> See the Report of the Senior Referee in the Appendix below.

<sup>45</sup> See paragraph 2.4 above.

this way. The Commission's provisional view therefore is that the magistrate should be empowered to call expert evidence to assist him.

4.44 More difficult, however, is the question of who should pay for the cost of such assistance. The possibilities are that -

- (a) the losing party pays,
- (b) both parties pay in equal shares,
- (c) the claimant pays, or
- (d) the Government pays.

The Commission's provisional view is that, as in the Small Claims Tribunal, expert assistance should be afforded at Government expense. To adopt any of the first three possibilities would significantly increase the cost of the proceedings to the party concerned. To that extent it would negate one of the main purposes of setting up a special forum, namely inexpensive adjudication. If it were decided to provide expert evidence at Government expense, this could be done by making available employees of the Consumer Affairs Bureau or, alternatively, by giving the proposed special division of the Local Court access to a Government Fund, to defray the cost of employing an outside expert.

**Should the proposed jurisdiction be exercisable by all magistrates?**

4.45 The Commission does not consider that the proposed jurisdiction should be confined to designated magistrates. One of the advantages of creating a special division of the Local Court is that it could make use of the facilities of Local Court offices and staff throughout the State. Not to empower all magistrates to exercise the jurisdiction could prevent people outside the metropolitan area from having ready access to the forum.

## QUESTIONS AT ISSUE

5.1 The Commission would welcome comment (with reasons where appropriate) on the following questions or on any other question arising out of the terms of reference.

5.2 (a) Should there be a special forum for non-consumer claims?

If so, should this be achieved by -

- (i) extending the jurisdiction of the Small Claims Tribunal;
  - (ii) creating a separate tribunal;
  - (iii) creating a special division of the Local Court;
  - (iv) some other means?
- (b) If there is to be special provision for non-consumer claims, should these claims be confined to traders or be unrestricted as to the person who could bring the claim?
- (c) What class of claims should be included -
- (i) Debts and liquidated demands?
  - (ii) All contract and quasi-contract claims?
  - (iii) Tort claims (whether generally or confined to, say, motor vehicle accident property claims)?
  - (iv) Possession or title to goods?
  - (v) Possession or title to land?
- (d) What should be the maximum value of such claims? Should it vary with the type of claim?
- (e) What should be the powers and procedure of the forum? As in the Small Claims Tribunal? If not, what should be the modifications? For example -
- (i) Should legal representation be permitted?

- (ii) Should costs be allowable?
  - (iii) Should there be a right of appeal?
  - (iv) Should the forum have special enforcement powers?
- (f) Should the forum have access to experts, and if so, at whose expense?
- (g) Should the forum be able to disregard the strict letter of the law?

## **APPENDIX**

### **ANNUAL REPORT OF THE REFEREE, SMALL CLAIMS TRIBUNAL, FOR THE YEAR ENDED 30th JUNE, 1977**

During the year, ending June 30, 1977, nine hundred and ten (910) claims were lodged with the Tribunal, there were eleven hundred and ninety five (1195) sittings and nine hundred and thirty one (931) claims were determined.

During the year, ending June 30, 1976, seven hundred and seventy five (775) claims were lodged, there were eight hundred and twenty four (824) sittings and six hundred and seventy eight (678) claims were determined.

There were, therefore, one hundred and thirty five (135) more claims in 1977, three hundred and seventy one (371) more sittings and there were two hundred and fifty three (253) more claims determined, than in the previous year.

Of the cases determined, two hundred and eighty two (282) were settled or roughly thirty per cent. This is satisfactory and as in 1976, shows that the Referees are carrying out the intentions of the Legislature, to endeavour to settle cases, where possible.

There was no jurisdiction in seventeen (17) cases and seventy five (75) claims were withdrawn. One hundred and seventy four (174) were either dismissed or orders totally made in favour of the respondent, one hundred and eighty nine (189) were totally in favour of the claimant, whilst one hundred and ninety four (194) were partially in favour of each.

The settlement figures were actually higher than shown above, because most of the claims withdrawn, were due to settlements being effected and not due to abandonment of the claims themselves.

As there were nine hundred and ten (910) claims during the year, this means that eighteen hundred and twenty (1820) litigants had their cases determined for a cost of \$1 820.00. There were really more litigants than this because in some cases, more than two parties were

involved. All this means cheap litigation for the public and shows beyond any doubt, that, the establishment of Small Claims Tribunals has been of great public benefit.

It is also very obvious that, due to the cost of litigation in the courts, many of the cases, particularly, in tenancy matters, except for the establishment of the Tribunal, would never have been litigated at all.

Annexed hereto as Annexure “A” is a graph prepared by the Registrar, Mr. Bastow, showing the trend of claims over the year and giving the comparison with 1976. It will be seen that the monthly pattern was very similar, although, in toto, 1977 figures were higher. The figures for the year reached a crescendo in March when a record number of one hundred and five (105) claims were lodged.

It is a matter of interest that whilst, 931 claims were determined, there were 1195 sittings. This means that in many cases, two or more sittings were necessary. This is chiefly due to the fact, that either all the evidence was not available at the initial hearing or cases were adjourned for inspections. This corresponds with the position in the Eastern States and in New South Wales in 1975-1976, thirty per cent of initial hearings resulted in adjournments.

It has to be remembered that parties are not legally represented, some are simple folk, do not understand how to present cases, have no expert evidence available in technical cases and adjournments are necessary to call experts in an attempt to do justice. In this respect, I am most grateful to the Commissioner of Consumer Affairs, Mr. Fletcher, for making expert witnesses available to me. I have received extraordinary assistance in claims involving buildings and motor vehicles from Messrs. Foster, Gorey, Powdrill and Cowan. Without these gentlemen, I would not have been able to determine many cases.

They are absolutely honest and independent in their views, whether their evidence assists a claimant or a respondent.

Annexed hereto as Annexure “B” are particulars showing the monthly number of claims lodged, the total for the year and showing how they were determined.

Annexure “C” sets out the various categories of cases determined.

As will be seen, the pattern of claims lodged was similar to the previous year and every form of activity which arises out of every day contracts, was dealt with by the Tribunal. Individually, motor vehicle cases, of which there were 206, headed the list, closely followed by 192 tenancy bond cases. The highest category were building and kindred claims which contained miscellaneous items including plumbing, painting, wall papering, concreting etc. Altogether, there were 249 of these.

Interminable disputes arise out of concrete and brick work in homes and there were 43 of these during the year.

There were 34 swimming pool cases, twelve more than in the previous year. The erection of pools in Western Australia has by no means reached saturation point and it is astounding, the number of claims, in which claimants with very meagre means are involved.

To show the variation in the type of cases handled, there was one in which a claimant was not satisfied with the standard of proposed spouses supplied by a matrimonial agency. There was another in which the claimant was not satisfied with the type of entertainment provided by a night club and there was another, in which it was alleged, that, the respondent's staff had either eaten or done away with portion of a wedding cake at a wedding reception.

### **Tenancy Bonds**

In 1976, 104 tenancy bond cases were decided and this represented about one sixth of the total dealt with in the year. In 1977, 192 were determined, an increase of 88 over 1976 and this represents about one fifth of the total number of cases decided.

These cases are the most difficult to decide, as I have previously pointed out, due to the very conflicting evidence. I feel, however, that these alone, justify the existence of a Small Claims Tribunal.

The figures show that honours have been reasonably even between landlord and tenant and these appear in Annexure "D".

Of the 192 claims determined, 19 were withdrawn. As with withdrawn claims generally, this does not mean they were abandoned.

Many were settled to the mutual satisfaction of the parties, but the terms were not disclosed to the Tribunal.

Thirty (30) cases were settled, fifty five (55) dismissed, thirteen (13) were totally in favour of the claimant and there were seventy four (74) partially in favour of each.

About thirty per cent of claims were dismissed, simply because there was no merit in them.

Only thirteen cases were determined totally in favour of the claimant but this should not create a false impression and there are good reasons for it. Generally speaking, there are certain deductions, mostly admitted, which are to be made from bonds and frequently the claim is not for the return of the whole bond but only portion thereof.

For example, in many instances, the tenant does not pay rent for the last week or two and requests it to be deducted from the bond. Frequently, excess water, gas and electricity charges cannot be calculated until the expiry of the tenancy and these are legitimate deductions.

Generally speaking, if the bond is \$100.00, this is the sum the claimant puts down in his claim and unless he gets all this, or all the portion thereof he is seeking, the result is put down as partially in favour of each.

The true position is that in the seventy per cent of cases not found totally in favour of the respondent, eighty seven (87) orders were made, returning some or all bond money to claimants and in many instances a goodly proportion of that sought. Added to this, must be practically all of the thirty (30) settlements, because some money agreed on, will have been returned and some in a good percentage of withdrawn claims. This is because, with few exceptions, the cases are also withdrawn because some money has been returned. Without being able to be really specific, I would say that of the seventy per cent above referred to, a large proportion would have been very favourable to the tenant.

I must say, as in 1976, the least trouble in tenancy bond cases is where the agent is a member of the Real Estate Institute. Interest is always paid on bond money where one of these gentlemen is the agent, whereas in other cases, only a fraction of landlords ever credit the tenant with interest. My thanks are again due to the Institute's management for its willing co-operation with the Tribunal.

There are some cases which come before the Tribunal in which we suspect, that, monies paid by way of bond are put by landlords into their own accounts and interest obtained thereon and not paid to the tenants.

In one case, it was admitted by a landlord that he had received interest on the bond money and had not credited the tenant with it.

In another, it was admitted by the landlord that he paid the bond money into his Building Society Account and this helped him to pay off his mortgage on the subject premises.

In other cases, the landlord is hesitant as to what he did with the money and just the other day, one said he could not remember.

In these cases, it is a fair assumption that, it was never intended to return the bond to the claimants. As indicated by the Real Estate Institute, many of these practices are tantamount to stealing. It is no wonder that in such cases, there is difficulty in extracting a penny of the bond money from the landlord.

Another practice is for a dishonest landlord to exaggerate and multiply alleged damage to the demised premises three, four and five fold above the secured sum, hoping that the Referee will then allow him to retain the whole of the bond money. This will not work and an inspection of the premises, generally gives the lie to it.

There are other landlords who would not even know what reasonable wear and tear are. They expect to keep the premises in exactly the same condition as the day they were built but at the tenant's expense.

Much of the alleged damage caused to demised premises is due entirely to reasonable wear and tear. Very often, the premises are old and dilapidated when the tenant takes over and no amount of care on his part can keep them from deteriorating.

With one particular landlord who is a "recidivist", the only safe way for the tenant to receive his bond money back is to lock up the premises, clean them every day and sleep in a tent in the back yard.

It is felt by Mr. Burton, the staff and myself, but for the existence of the Tribunal, many tenants would have been done extreme injustice because, it is frequently more expensive to get the money back in a court than the claim is worth and hence the dishonest landlord scores.

Out of the total number of lettings in Western Australia, 192 claims are not high and whilst an increase on last year, do not disclose an alarming landlord and tenant situation in the State. Of course, it may be that the existence of a Tribunal may act as a deterrent on some other landlords or that some tenants just do not bother.

Many good landlords are, on occasions, brought before the Tribunal and often unjustifiably. This is borne out by the number of dismissals.

All my remarks above are directed to the recalcitrant. It is only to be expected that the Tribunal will see more of these than the good.

As I said, there are few landlords, however, who are crediting the tenants with interest on their bonds. The question I ask myself is "If the Real Estate Institute insists on interest being paid, why cannot others do the same?" All sorts of excuses are offered and many say they will not pay interest unless forced by law. It is respectfully suggested that the time has now arrived when consideration should be given to compelling landlords to credit tenants with interest on their bonds.

In many instances, claimants are in fairly poor circumstances and need their bond money to secure other premises. After wrangling for some weeks in unsuccessful attempts to get their money back, they have to make a claim before the Tribunal. This means that a successful

tenant will not get his money back for some considerable time. Interest should, therefore, be payable up to the time the money is repaid.

In Victoria, a government body, may be requested by a landlord or tenant to inspect premises when a tenant is about to leave. This is an ideal practice but I feel sure, it will be a very expensive exercise, needing many inspectors. Further, it is not much use unless a comparison can be made with the condition of the premises when the tenancy commenced.

Joint inspections are not generally being carried out at the conclusion of the tenancy and both landlord and tenant are often to blame.

The dishonest landlord, however, does not want a joint inspection, with often independent witnesses present, and he puts off the return of the bond on some pretext or other so that he can find some damages, often wear and tear with which he subsequently saddles the tenant.

The tenant is sometimes to blame because he does not want to face up to his neglect of the premises, with the landlord. Later, however, he will argue strenuously that he left the premises in perfect condition.

There are very many cases in which there are joint inspections and the landlords promise to return the bond money in due course but never do so.

I think the statistics show what I have previously said, that the truth in tenancy cases is often half way between the two stories.

### **Short Term Tenancies**

Most of the trouble in these tenancy cases seems to be with short-term tenancies. Four out of five are for much less periods than twelve months and frequently there are very heated arguments over a tenancy that only lasts two months. There are many of these cases in which no bond moneys at all have been returned.

We have found that some of these tenants are "fly by nights", have wild parties and they neglect and damage the premises. They are often the most vociferous in seeking return of their bond money.

Some tenants take premises for a minimum term and then give a week's notice or no proper notice at all. In these circumstances, the landlord takes some time to re-let and the tenant is liable for rent up to the time of re-letting, providing reasonable efforts have been made to re-let. Many tenants are very unfair to landlords in this respect and my sympathy is with the latter in these circumstances.

### **Posters on Walls**

Some tenants, particularly young people, have a mania for putting posters on walls and stick them on with sticky tape. When they are taken down, pieces of the plaster are pulled away. The tenants then try to patch the walls and paint over the patches unsuccessfully.

They cannot then object if money is deducted from the bond, to have the wall repainted.

### **Motor Vehicle Claims**

Individually, these were the highest for the year and there were 206 of them compared with 131 in the previous year. The claims arise out of the purchase of vehicles, particularly second hand, and the alleged failure of dealers to service them and repair faults under warranty. There are also many, in which vehicles are taken to garages for repair and maintenance and allegations of overcharges and poor workmanship are made.

There have been many cases in which sums in dispute have exceeded \$500.00 and in order to bring the matters within the jurisdiction claimants have had to reduce the amount of the claims. The claimants have done this rather than go to the expense of litigating in the courts.

The proposed increase in jurisdiction will obviate much of this. Experience shows that, these days, repairs to motor vehicles very quickly cost more than \$500.00.

1. *Warranties*

It is frequently alleged by claimants that they are given certain warranties or special terms prior to signing an Offer to Purchase Form but they are not subsequently included in the Form. Interminable disputes arise out of this and purchasers should insist on all warranties and promises being inserted in the Form. This is particularly so because many of These Forms specifically negative any prior warranties.

There are cases in which, it is alleged that verbal promises have been made to return deposits, if the deal goes off. If such a promise has been made, it should be incorporated in the Form.

There have been several cases, however, in which a proposed purchaser signs an agreement, pays a deposit and then goes off to try and get a better deal elsewhere. Having obtained a better deal, he then comes back to the original dealer and asks for his deposit to be returned. In one such case, a claimant admitted this, agreed he had paid a holding deposit, that the vehicle was held for him accordingly and he then became very angry when the dealer refused to return the deposit.

2. *Exchange Engines and Gear Boxes*

These are frequently bought from dealers, particularly wreckers and it is alleged that warranties have been given that the engines and gear boxes have recently been re-conditioned. It turns out that the purchasers have been sold a heap of junk. The defence is that no warranty was given, that “The engine was running alright when I ran it etc,” or that the engine had been overhauled as distinct from having been re-conditioned.

If any such warranty has been given, the purchaser should insist on it being put in writing.

Great care should be taken in buying exchange or second hand engines from wreckers. When the disputes come before the Tribunal, the defence is “We sold them as is”. Nevertheless, if true, high prices are charged.

3. *R.A.C. Inspections*

Repeatedly purchasers are buying motor vehicles which have done high mileages, pay high prices for them in cash or sign up for terms and the vehicles are then taken to the R.A.C. for inspection.

The R.A.C. reports frequently indicate that many hundreds of dollars have to be spent in order to make the vehicles roadworthy.

The purchasers then try to get out of the deals.

The time to have an R.A.C. check is before the vehicle is purchased.

No reasonable dealer will object to this. If he does, then the vehicle should not be purchased.

4. *Warranty and Warranty Period*

Purchasers should not wait till after the warranty period runs out.

As soon as a fault is discovered, they should take it back. If the dealer refuses to do anything about it, a complaint should be made to the Bureau of Consumer Affairs, forthwith.

5. *Purchase of Vehicles Under \$500.00*

These vehicles are not warrantable and great care should be exercised in their purchase. These are often taken by purchasers to the R.A.C. and naturally enough, the report is very adverse.

Many of these purchasers, however, expect work to be done on the vehicle, which if carried out, would make the vehicle worth three or four times the price paid for it.

6, *Roadworthiness*

There is often a big difference between work that is required to make a vehicle road worthy in accordance with the *Motor Vehicle Dealers Act* and all the work that is frequently found necessary to be done in an R.A.C. Report.

Under the above Act, regard has to be had to the age of the vehicle and its mileage etc., whereas the R.A.C. merely reports what is wrong, generally, with it.

The cost of conforming to the Act is often very much lower than attending to the majority of items in the R.A.C. Report. Many claims are also based on new parts, when serviceable second hand parts will suffice.

Frequently, a claimant who pays \$750.00 to \$1000.00 for a vehicle with 90,000 to 100,000 miles on the clock, wants work to be done which will virtually give him a new car.

### **Building and Kindred Work**

There were 249 cases of this sort determined during the year, or over twenty five per cent of the total work load. This has necessitated very many inspections by building experts and myself, as Referee. This is, of course, most time consuming but is well worth while.

### **Shady Companies**

One alarming feature is the existence of “shady” companies. They engage in contracts, receive their money, carry out required work poorly or not at all, will not complete or carry out rectification work and then go into liquidation or cease to operate without honouring any of their obligations. Husband and wife are often the directors and rectification work could quite easily be carried out.

The next thing is a new company is floated with the same directors, carrying out the same work and operating in the same old manner.

I shall give one example, being a case which came before the Tribunal.

A trader carried on business in his own and wife's name at a particular address. He also had a company, of which he was Managing Director, registered at the same address and doing the same sort or work. The trader made out the contract in the Company's name, he, himself, did the work and unsatisfactorily and when requested to rectify it, merely said it was the Company's responsibility not his own and the Company was in liquidation. He received all the monies, however, and the poor consumer was left lamenting.

Once again, and I cannot stress the matter too much, consumers should be very careful with so called tradesmen who advertise and merely give their telephone numbers. The answer, once again, is to deal only with reputable tradesmen or to ensure that advertisers are what they purport to be. There is no better way of ensuring this than by checking their credentials.

### **General**

Little trouble is experienced with reputable firms and as the Minister has said on many occasions in the past, the honest trader or honest landlord has nothing to fear from the Tribunal.

Another very important thing is, that, the cheapest job very often turns out to be the dearest because it is not done properly.

Sometimes, it is difficult to get real tradesmen to do small jobs and consumers are forced to get self advertised experts, who turn out to be handy men or odd job men, but who charge as much as the experts.

### **Acknowledgments**

The Hon. The Minister has taken a very lively interest in the Tribunal and has been most considerate and helpful throughout the year and this is much appreciated by Mr. Burton, myself and the staff.

This consideration and help have been passed right down. The Under Secretary and his staff have been more than co-operative and without this, the Tribunal would not have had the successful year, which we believe we have had.

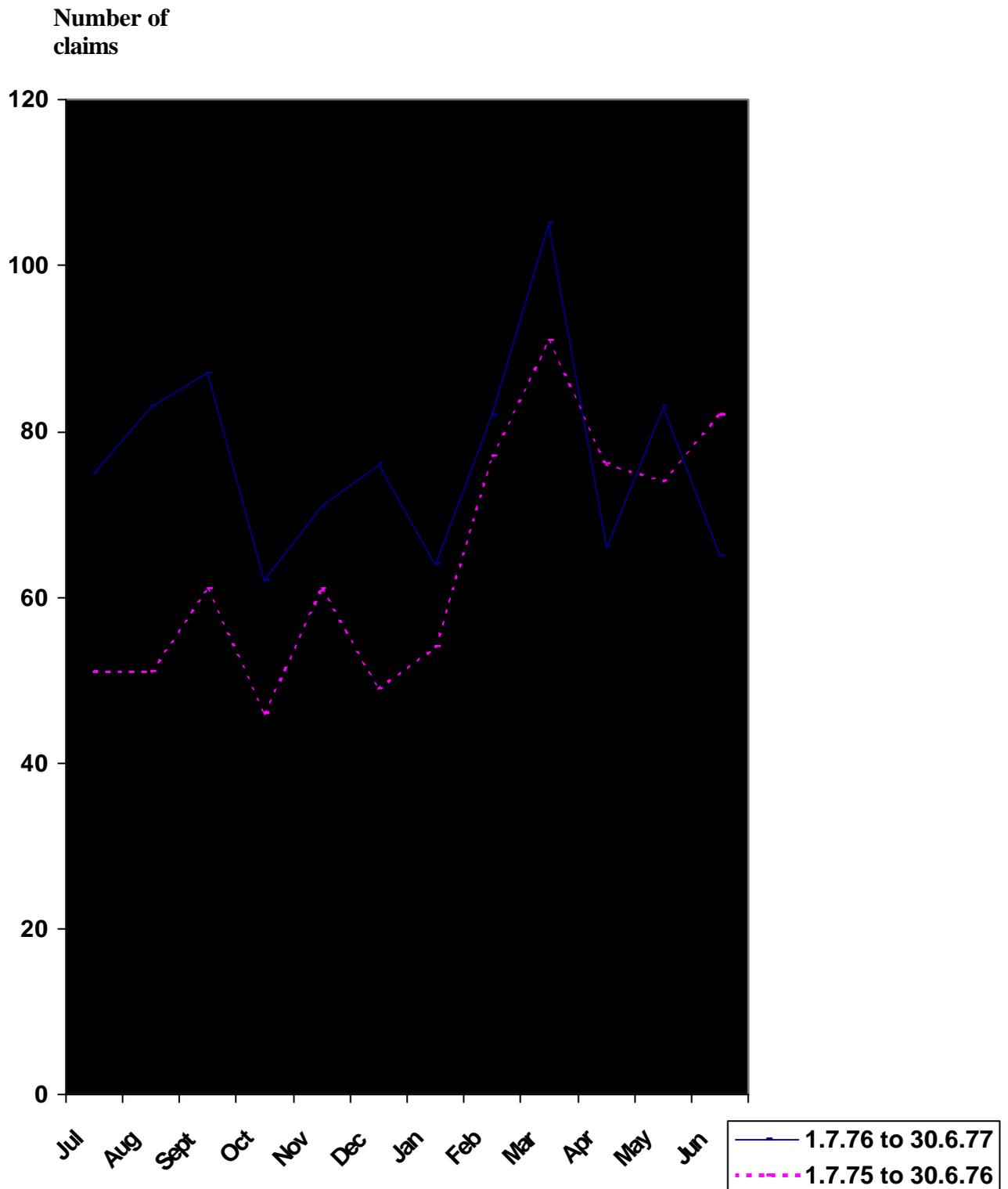
I would like to give particular thanks to Mr. Bob Barry and his officers of the Factories and Shops Branch for the great help received in serving claims and other documents where this has been necessary. Their co-operation is also greatly appreciated.

I desire to thank Mr. Burton, who has been helping me for two days a week for some considerable time. He has done an excellent job in a very cheerful and helpful way. Unfortunately, his services will no longer be available after August 18. I would be very remiss if I did not take this opportunity to thank him.

Lastly, I desire to thank the two hard working and ever loyal members of my staff, Mrs. Hegarty and Mr. Bastow. There have been occasions, with many hot headed litigants, in sometimes, a very electrical atmosphere, when their patience must have been sorely tried. At all times their sangfroid has amazed me.

There is little doubt that the successful operation of a body such as the Tribunal, is very much dependent on the Registrar. I am most grateful for Mr. Bastow's help, good sense and ever wise counsel.

**ANNEXURE “A”**  
**CLAIMS RECEIVED PER MONTH**  
1-7-76 to 30-6-77



**ANNEXURE “B”**  
**SMALL CLAIMS TRIBUNAL 1/7/76 to 30/6/77**

	<b>July</b>	<b>Aug.</b>	<b>Sept.</b>	<b>Oct.</b>	<b>Nov.</b>	<b>Dec.</b>	<b>Jan.</b>	<b>Feb.</b>	<b>Mar.</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>Total</b>
<b>Claims Lodged</b>	73	83	89	61	70	75	63	80	105	65	84	62	910
<b>Number of Sittings</b>	86	87	75	84	107	101	78	102	95	106	145	129	1195
<b>Claims Determined</b>	76	74	59	72	79	84	51	83	73	73	103	104	931
<b>No Jurisdiction</b>	2	2	1	1	2	1	1	3	1	1	1	1	17
<b>Withdrawn</b>	7	10	4	6	6	4	-	5	3	15	7	8	75
<b>Settled</b>	9	23	9	21	22	7	17	19	8	14	18	15	182
<b>Settled – But Made an Order</b>	16	11	8	12	9	8	-	5	2	7	12	10	100
<b>Dismissed</b>	9	5	10	8	11	24	13	15	18	16	16	10	155
<b>Totally in favour of Respondent</b>	2	-	2	-	-	3	-	1	2	2	2	5	19
<b>Total in favour of Claimant</b>	16	13	13	13	12	19	11	15	16	11	30	20	189
<b>Partially in favour of Each</b>	15	10	12	11	17	18	9	20	23	7	17	35	194

**ANNEXURE “B”****PARTICULARS AS TO THE VARIETY OF CASES DETERMINED**

<b>BUILDING</b>		<b>TENANCY BONDS</b>	192
General	127		
Patio & Pergola	23	<b>SWIMMING POOL</b>	34
Painting and Wallpaper	22		
Plumbing	15	<b>DRY CLEANING</b>	13
Concrete and Brick Work	43		
Plaster Work	6	<b>PLEASURE ITEMS</b>	
Electrical Work and Equipment	12	Boat – Purchase and Repairs	7
Earth Moving Work	1	Photography	5
		Holiday Cruise	11
Total	<u>249</u>	Entertainment	1
		Pool and Billiard Table	5
<b>FURNITURE AND FLOOR COVERINGS</b>		Radio and Cassette Recorder	3
Furniture	25	Total	<u>32</u>
Carpets and Tiles	25		
Interior Designing	1	<b>GARDENING</b>	
Lighting	1	Landscaping	9
		Law Mower Repairs	2
Total	<u>52</u>	Water Tank	1
		Water Bore and Reticulation	9
<b>HOUSEHOLD APPLIANCES</b>		Total	<u>21</u>
Washing Machine	14		
Tumble Dryer	1	<b>MISCELLANEOUS</b>	
Air Conditioner	3	Animals	5
Refrigerator	11	Food and Drinks	3
Heater	3	Window Cleaning and Tinting	3
Television	7	Pest Control	8
Water Cooler	1	Wedding Reception	1
Faulty Bath	1	Accommodation	3
Cook Ware	2	Caravan Repairs and Hire	5
Hot Water System	22	Storage Costs	1
		Demurrage on Goods	2
Total	<u>65</u>	Tuition Fees	2
		Chain Saw	1
<b>PERSONAL ITEMS</b>		Matrimonial Agency	1
Clothing	17	Transport Costs	1
Hearing Aid	2	Inquiry Services	1
Jewellery	3	Bales of Hay	1
Spectacles	1	China Tiger	1
Footwear	2	Picture Frame	1
Suit Case	1		
Sewing Machine	1	Total	<u>40</u>
Total	<u>27</u>		
<b>MOTOR VEHICLE</b>	206	<b>TOTAL FOR THE YEAR</b>	931

**ANNEXURE “D”**  
**TENANCY BOND CASES 1/7/76 to 30/6/77**

	<b>July</b>	<b>Aug.</b>	<b>Sept.</b>	<b>Oct.</b>	<b>Nov.</b>	<b>Dec.</b>	<b>Jan.</b>	<b>Feb.</b>	<b>Mar.</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>Total</b>
<b>Withdrawn</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>19</b>
<b>Settled</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>9</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>30</b>
<b>Dismissed</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>2</b>	<b>4</b>	<b>10</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>7</b>	<b>5</b>	<b>4</b>	<b>55</b>
<b>Total in Favour of Claimant</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>13</b>
<b>Partially in Favour of Each</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>4</b>	<b>8</b>	<b>5</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>2</b>	<b>7</b>	<b>14</b>	<b>74</b>
<b>No Jurisdiction</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>