



ANALYSIS

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2008, No. 20

An Act to establish a Small Claims Tribunal

(26 November 2008)

BE IT ENACTED by the Parliament of the Cook Islands in session assembled and by the authority of the same:

1. Short Title and commencement - (1) This Act may be cited as the Small Claims Tribunal Act 2008.

(2) This Act shall come into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2. Interpretation - In this Act, unless the context otherwise requires, -

“applicant” means a person who lodges a claim with the Tribunal or who claims relief in any proceedings transferred to the Tribunal under section 24(3) or (4) or section 33; and includes any person who becomes a party to proceedings on any claim in the capacity of an applicant;

“claim” means a cause of action in respect of which -

- (a) the Tribunal has jurisdiction under sections 10 to 13; and
- (b) proceedings have been -
 - (i) commenced in the Tribunal under section 24(1); or

- (ii) transferred to the Tribunal under section 24(3) or (4) or section 33 ;

“Investigator” means a person appointed under section 37(1) to inquire into, and report to the Tribunal upon any matter of fact;

“Minister” means the Minister of Justice;

“prescribed” means prescribed by rules made under this Act;

“Referee” means a person holding office as such under section 7;

“Registrar”, in relation to the Island of Rarotonga, means the Registrar or a Deputy Registrar of the High Court, and, in relation to any other island of the Cook Islands, means a Deputy Registrar of the High Court stationed on the island;

“respondent” means any person against whom a claim is made, and any person who becomes a party to the proceedings on that claim in the capacity of a respondent;

“Tribunal” means the Small Claims Tribunal established under section 4;

“work order” means an order to make good a defect in any property, or a deficiency in the performance of services, by doing such work or attending to such matters (including the replacement of any property) as may be specified in the order.

3. Act to bind the Crown - This Act binds the Crown.

PART 1

ESTABLISHMENT OF TRIBUNALS

4. Establishment of Tribunals - (1) There is hereby established a tribunal to be known as the Small Claims Tribunal having such jurisdiction as may be set out in this or any other Act.

(2) Nothing in this Act shall affect the jurisdiction of the High Court.

(3) The Ministry of Justice shall provide administrative support to the Tribunal from funds appropriated by Parliament for the purpose.

5. Exercise of Tribunal’s jurisdiction - (1) The jurisdiction of the Tribunal shall be exercised by a Referee holding office under section 7.

(2) If the Referee hearing any proceedings in respect of a claim dies, or becomes incapacitated, or is for any other reason unable or unavailable to complete the hearing or dispose of the proceedings, they shall be heard afresh by another Referee, unless the parties agree that the proceedings be disposed of in another way.

6. Times and places of sittings - The days, times, and places of the regular sittings of the Tribunal shall be determined by the Registrar, who shall act as Registrar of the Tribunal.

7. Appointment of Referees - (1) The Queen's Representative may, from time to time, by warrant under the Queen's Representative's hand, appoint qualified persons, not exceeding at any time 5 in number, to be Referees for the purposes of this Act.

(2) A person is qualified to be appointed or reappointed as a Referee only if that person is capable, by reason of that person's personal attributes, knowledge, and experience, of performing the functions of a Referee.

(3) A Justice of the Peace shall not be eligible for appointment as a Referee.

8. Tenure of office of Referees - (1) Subject to subsection (2), every person appointed as a Referee shall hold office for a term of 3 years and, subject to section 7(2), may, from time to time, be reappointed.

(2) A Referee may at any time be removed from office by the Queen's Representative for disability affecting the performance of duty, bankruptcy, neglect of duty, inability, or misconduct, proved to the satisfaction of the Queen's Representative, or may at any time resign the office of Referee by notice in writing addressed to the Minister.

(3) A Referee may -

(a) hold any other office; and

(b) engage in any other employment or calling,

that, in the opinion of the Queen's Representative, will not impair the proper discharge of the functions of a Referee.

(4) Notwithstanding anything in subsection (1), every Referee shall, unless that Referee sooner vacates office under subsection (2) of this section, continue in office until -

(a) that Referee's successor comes into office; or

(b) the Secretary for Justice notifies that Referee that no successor to that Referee is to be appointed.

9. Salary and allowances - There shall be paid to every Referee remuneration by way of sitting fees, salary, and allowances (including travelling allowances and expenses) as may be fixed from time to time by the Queen's Representative, by Order in Executive Council.

PART 2

JURISDICTION, FUNCTIONS, AND ORDERS OF TRIBUNAL

10. Jurisdiction of Tribunal - (1) Subject to sections 11, 12 and 13, the Tribunal shall have jurisdiction in respect of -

(a) a claim founded on contract or quasi-contract; and

(b) a claim for a declaration that a person is not liable to another person in respect of a claim or demand, founded on contract or quasi-contract, made against that person by that other person; and

(c) a claim in tort in respect of -

(i) the destruction or loss of any property;

(ii) any damage or injury to any property;

(iii) the recovery of any property.

(2) The Tribunal shall have such other jurisdiction as is conferred upon it by any other enactment.

(3) Subject to this Act and the Limitation Act 1950 of the Parliament of New Zealand as applied to the Cook Islands, the jurisdiction of the Tribunal shall extend to a claim based on a cause of action that accrued before the commencement of this Act.

11. Financial limitation on jurisdiction - (1) For the purposes of section 10(1), a claim is within the jurisdiction of the Tribunal only if the total amount in respect of which an order of the Tribunal is sought does not exceed \$5,000, including -

- (a) where a claim is made for the recovery of property, the value of that property; and
- (b) where a claim is made for a work order, the value of the work sought to be included in the order.

(2) If it is necessary for the purposes of this Act to ascertain the value of any property or work or to resolve any dispute as to such value (whether for the purposes of subsection (1) of this section or otherwise), that value shall be determined by the Tribunal in such manner as it thinks fit, and the Tribunal may, for that purpose, appoint an Investigator to report to it under section 37.

12. Further limitations on jurisdiction - (1) The Tribunal shall have no jurisdiction in respect of any claim -

- (a) for the recovery of land or any estate or interest in any land;
- (b) in which the title to any land, or any estate or interest in any land is in question;
- (c) in which there is a dispute concerning the entitlement of any person under a will, or settlement, or on any intestacy (including a partial intestacy);
- (d) for any chiefly or other traditional or customary title.

(2) In subsection (1) of this section "land" does not include fixtures.

(3) Without limiting subsection (2) of section 10, nothing in subsection (1) of that section in so far as it confers jurisdiction in quasi-contract on the Tribunal shall be construed as authorising a claim in respect of money due under any enactment.

13. Meaning of enactment - In section 12 (3) "enactment" means any Act of the Parliament of the Cook Islands, any Ordinance, any Act of Parliament of New Zealand in force in the Cook Islands, and any order, regulation, or rule, or any Island Council Ordinance or bylaw; a provision of any Act or of any other instrument that has legislative effect and that is authorised by or pursuant to any Act.

14. Abandonment to bring claim within jurisdiction - A person may abandon so much of a claim as exceeds \$5,000 in order to bring the claim within the jurisdiction of the Tribunal; and in that event the approval of an agreed settlement under section 18(3) or, as the case may require, an order of the Tribunal under this Act or any other enactment, in relation to the claim, shall operate to discharge from liability in respect of the amount so abandoned any other person -

- (a) who is a party to that agreed settlement; or
- (b) against whom the claim and the subsequent order are made.

15. Cause of action not to be divided - A cause of action shall not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of the Tribunal.

16. Contracting out prohibited - (1) A provision in any agreement (including one made before the commencement of this Act) to exclude or limit -

- (a) the jurisdiction of the Tribunal; or
- (b) the right of any person to invoke that jurisdiction,

shall be of no effect.

(2) Without limiting the generality of subsection (1), the Tribunal shall have jurisdiction in respect of a claim notwithstanding any agreement relating to that claim that provides for -

- (a) the submission to arbitration of any dispute or difference; or
- (b) the making of an award upon such a submission to be a condition precedent to any cause of action accruing to a party to the agreement.

(3) Subsection (1) of this section does not apply where a cause of action has accrued, or is believed to have accrued, to a person and that person has agreed to the settlement or compromise of the claim based on that cause of action.

17. Exclusion of other jurisdictions - (1) Where a claim is lodged with the Tribunal, or transferred to the Tribunal under section 24(3) or (4) or section 33, and the claim is within the Tribunal's jurisdiction, the issues in dispute in that claim (whether as shown in the initial claim or as emerging in the course of the hearing) shall not be the subject of proceedings between the same parties in any Court or other tribunal unless -

- (a) any order is made under subsection (2) of section 32 or under section 48(1)(b); or
- (b) the proceedings before that other Court or tribunal were commenced before the claim was lodged with or transferred to the Tribunal; or
- (c) the claim before the Tribunal is withdrawn, abandoned, or struck out.

(2) Where subsection (1)(b) applies to proceedings before the Court or another tribunal, the issues in dispute in the claim to which those proceedings relate (whether as shown in the initial claim or emerging in the course of the hearing) shall not be the subject of proceedings between the same parties in the Tribunal unless the proceedings are transferred to the Tribunal under section 33 or the claim before the Court or other tribunal is withdrawn, abandoned, or struck out.

18. Functions of Tribunal - (1) The Tribunal shall, as regards every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the claim.

(2) Without limiting the generality of subsection (1) of this section, in making an assessment under that subsection, the Tribunal shall have regard to any factors that, in the Tribunal's opinion, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal may approve the settlement, and the settlement shall then take effect as if it were an order of the Tribunal made under subsection (8), and shall be enforceable in accordance with section 43.

(4) In approving an agreed settlement pursuant to subsection (3), the Tribunal shall not be bound by the monetary restrictions provided for by subsections (4) to (6) of section 19.

(5) Where -

- (a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the claim; or
- (b) the parties are unable to reach an agreed settlement in relation to the claim; or
- (c) the Tribunal does not approve an agreed settlement reached by the parties in relation to the claim,

the Tribunal shall proceed to determine the dispute.

(6) 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.

(7) Without limiting the generality of subsection (6), the Tribunal may, in respect of any agreement or document that directly or indirectly bears upon the dispute between the parties, disregard any provision in that agreement or document that excludes or limits -

- (a) conditions, warranties, or undertakings; or
- (b) any right, duty, liability, or remedy that would arise or accrue in the circumstances of the dispute if there were no such exclusion or limitation.

(8) To give effect to its determination of the dispute under subsection (5), or in granting relief in respect of any claim that is not disputed (except where subsection (3) applies), the Tribunal shall make one or more of the orders that it is empowered to make under section 19 or under any other enactment.

19. Orders of Tribunal - (1) The Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders -

- (a) the Tribunal may order a party to the proceedings to pay money to any other party;
- (b) the Tribunal may make an order declaring that a person is not liable to another in respect of a claim or demand described in section 10(1)(b);
- (c) the Tribunal may order a party to deliver specific property to another party to the proceedings;
- (d) the Tribunal may make a work order against any party to the proceedings;
- (e) where it appears to the Tribunal that an agreement between the parties, or any term of any such agreement, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying the agreement, or setting it aside (either wholly or in part);
- (f) where it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying, or setting aside, the agreement or the writing (either wholly or in part);
- (g) the Tribunal may make an order dismissing the claim.

(2) Any order made by the Tribunal may be unconditional, or subject to such conditions (whether as to the time for, or mode of, compliance, or otherwise) as the Tribunal thinks fit to impose.

(3) Where the Tribunal makes a work order against a party, it shall, where the order is made under section 18(8) or section 42(2), at the same time make an order under subsection (1)(a) to be complied with as an alternative to compliance with the work order.

(4) Subject to section 20, the Tribunal shall not make an order under this Act that exceeds the monetary restrictions specified in subsection (5), and any order that exceeds such restrictions shall be entirely of no effect.

(5) The monetary restrictions that apply for the purposes of subsection (4) are as follows -

- (a) an order under subsection (1)(a) or under section 43(3)(b) shall not require payment of money exceeding \$5000;
- (b) a declaration under subsection (1)(b) shall not relate to a claim or demand exceeding \$5000;
- (c) an order under subsection (1)(c) shall not relate to any property exceeding \$5000 in value;
- (d) the work to be done or matters to be attended to under a work order shall not exceed \$5000 in value;
- (e) an order under paragraph (e) or paragraph (f) of subsection (1) shall not be made in respect of an agreement if the total amount in respect of which an order of the Tribunal is sought exceeds \$5000.

(6) Except as provided in subsection (3), and subject to subsection (7), the Tribunal shall not, in respect of a claim, make more than one of the orders authorised by paragraphs (a) to (d) of subsection (1), or by any other enactment, if the aggregate amount or value of those orders exceeds \$5000, and every order so made contrary to this subsection shall be entirely of no effect.

(7) Nothing in subsection (1) shall restrict the making by the Tribunal of any order that it is authorised to make by any other enactment.

20. Power of Tribunal to award interest - (1) Subject to subsection (2), where the Tribunal makes an order under section 19(1)(a) or section 43(3)(b) that a party to the proceedings pay money to another party to the proceedings, the Tribunal may, if it thinks fit, order that there shall be included in the amount so ordered to be paid interest at such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of that amount for the whole or any part of the period between the date when the cause of action arose and the date of the making of the order.

(2) Subsection (1) does not -

- (a) authorise the giving of interest upon interest; or
- (b) apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise.

(3) Where the Tribunal makes an order under section 19(1)(a) in respect of a debt upon which interest is payable as of right, and in respect of which the rate of interest is not agreed upon, prescribed, or ascertained under any agreement, enactment, or rule of law or otherwise, there shall be included in the amount ordered to be paid interest at such rate, not exceeding the prescribed rate, as the Tribunal thinks fit for the period between the date as from which interest became payable and the date of the making of the order.

(4) The monetary restrictions provided for by section 11, and subsections (4) to (6) of section 19 do not apply in respect of any interest claimed, payable, or ordered to be paid under this section.

(5) In this section the term “the prescribed rate” means the rate of 10 percent per annum, or such higher or lower rate as may from time to time be prescribed for the purposes of this section by the Queen’s Representative by Order in Executive Council.

21. Reasons for decisions - (1) The Tribunal shall in all proceedings give its reasons for its final decision in the proceedings.

(2) The Tribunal shall give its reasons for its final decision -

- (a) orally, at the conclusion of the hearing; or
- (b) in writing, as soon as practicable after the conclusion of the hearing.

(3) Where the Tribunal gives its reasons for its final decision orally, the Tribunal may of its own motion, and shall if any party to the proceedings so requests, record those reasons in writing.

(4) A request made by a party under subsection (3) -

- (a) if made at the conclusion of the hearing, may be made orally;
- (b) if made after the conclusion of the hearing, shall be made -
 - (i) in writing; and
 - (ii) within 28 days of the conclusion of the hearing, or within such further time as a High Court Judge may, on application, allow.

(5) Where, pursuant to subsection (2) or subsection (3) the Tribunal gives its reasons for its final decision in writing, every party to the proceedings shall, on request, be entitled to a copy of those reasons.

22. Orders and approved settlements to be recorded in writing - (1) The Tribunal shall make or cause to be made a written record of the terms of -

- (a) every agreed settlement approved by it under section 18(3);
- (b) every order made by it under section 18(8) or section 42(2) or section 43(3)(b);
- (c) every variation of a term of an agreed settlement under section 43(3)(a).

(2) The Tribunal shall, at the conclusion of the hearing, provide every party to the proceedings who is present at the hearing with a copy of every record made under subsection (1) in those proceedings.

(3) The Registrar shall send a copy of every record made under subsection (1) in any proceedings to every party to those proceedings who is not present at the hearing.

23. Decisions of Tribunal to be final - Every agreed settlement approved by the Tribunal under section 18(3), and every order made by the Tribunal under section 18(8) or section 42(2) or section 43(3)(b), and every variation of a term of an agreed settlement under section 43(3)(a) shall be final and binding on all parties to the proceedings in which that settlement is approved or the order or variation is made, as the case may require, and, except as provided in section 46, no appeal shall lie in respect of any such order or variation or approved settlement.

PART 3
PROCEEDINGS OF TRIBUNALS

Claims

24. Lodging of claims - (1) Proceedings shall be commenced by the lodging of a claim in the prescribed form, together with the prescribed fee, with the Tribunal.

(2) Subject to subsection (3), the address of the Tribunal for the purpose of subsection (1) of this section is at the Ministry of Justice, Avarua, Rarotonga.

(3) Where a claim is lodged with the Tribunal, or transferred to the Tribunal under section 33, and the Tribunal is satisfied that the claim can be more conveniently or fairly heard on an island other than Rarotonga, the Tribunal may order that the proceedings be heard on that other island.

25. Notice of claim and of hearing - (1) When a claim is lodged in accordance with section 24, the Registrar shall -

- (a) fix a time and place of hearing and give notice of those details to the applicant; and
- (b) as soon as is reasonably practicable, give notice of the claim and of the time and place of hearing to -
 - (i) the respondent; and
 - (ii) every other person who appears to the Registrar to have a sufficient connection with the proceedings on the claim in the capacity of an applicant or a respondent.

(2) Where the Tribunal finds that a person appears to have a sufficient connection with the proceedings on a claim in the capacity of an applicant or a respondent has not been given notice of the proceedings, it may direct the Registrar to give, and the Registrar shall give, to such person notice of the claim, and of the time and place for hearing.

(3) For the purposes of this section, a person has a sufficient connection with the proceedings on a claim if that person's presence as an applicant or a respondent is necessary to enable the Tribunal to effectually and completely determine the questions in dispute in the claim or to grant the relief that it considers to be due.

26. Parties - (1) Subject to subsection (2), the applicant, the respondent, and every person to whom notice of a claim has been given under section 25(1)(b)(ii) or section 25(2) shall be the parties to the proceedings on that claim.

(2) The Tribunal may, at any time, order that the name of a person who appears to it to have been improperly joined as a party be struck out from the proceedings.

27. Minors - (1) Subject to this section, a minor (as defined in subsection (5)) may be a party to, and shall be bound by, proceedings in the Tribunal as if the minor were a person of full age and capacity.

(2) Where a minor who has not attained the age of 18 years is a party to any proceedings in the Tribunal, the Tribunal may, if it considers that it would be in the interests of the minor to do so, -

- (a) at any time appoint to represent the minor a person who is willing to do so and who is not disqualified by section 34(7), and authorise that person to control the conduct of the minor's case; or
- (b) when approving a representative under section 34(3), or at any time thereafter, authorise that representative to control the conduct of the minor's case.

(3) A person empowered by or under this section to control the conduct of the case of a minor may do all such things in the proceedings as that person could do if that person were a party to the proceedings in place of that minor.

(4) In this section "proceedings in the Tribunal" means -

- (a) proceedings in a Tribunal or on appeal from a Tribunal;
- (b) a settlement agreed to in the course of proceedings referred to in paragraph (a) of this subclause;
- (c) proceedings under section 41(1) or section 43(1) for enforcement of an order or the term of an agreed settlement -

and includes any order made in proceedings as so defined.

(5) In this section, "minor" means a person under the age of 18 years.

Special Provisions Relating to Claims Where Party Insured

28. Claims for relief where applicant insured - (1) This section applies to any proceedings where a party has been, or is entitled to be, or seeks to be, indemnified (whether in whole or in part) by an insurer for any loss caused by or arising out of the act, omission, or event on which the claim is based.

(2) Where, in any proceedings lodged in the Tribunal, the Registrar receives notice of the name and address of a party's insurer, the Registrar shall give notice of the proceedings to that insurer in accordance with section 25(1)(b)(ii).

(3) Where, pursuant to subsection (2) an insurer receives notice of any proceedings before the Tribunal, that insurer shall be deemed, for the purposes of this Act, to be a party to those proceedings.

(4) Where -

- (a) any claim for relief to which this section applies is made in any proceedings before the Tribunal; and
- (b) a party's insurer has not received notice of those proceedings pursuant to subsection (2); and

- (c) an acknowledgment signed by the party and the party's insurer has not been lodged with the Tribunal pursuant to section 29(1),

the Tribunal or the Registrar shall, on the application of the party's insurer, order that that insurer be joined as a party to the proceedings.

29. Insurer may waive notice of proceedings - (1) Where, in any proceedings lodged in the Tribunal, or transferred to the Tribunal under section 24(3) or (4) or section 33, the applicant makes a claim for relief to which section 28 applies, the party may, at the time when the claim is lodged, or, in the case of a claim that is transferred to the Tribunal, as soon as practicable after the claim is transferred, lodge with the Tribunal an acknowledgment from the party's insurer that that insurer does not require notice of the proceedings under section 25.

(2) Every acknowledgment lodged under subsection (1) shall be in writing and shall be signed by the party and by the party's insurer.

(3) Where, in any proceedings before a Tribunal, an acknowledgment from the party's insurer is lodged pursuant to subsection (1) -

- (a) notwithstanding anything in section 28(2), the Registrar shall not be required to give notice of those proceedings to that insurer; and
- (b) that insurer shall be deemed, for the purposes of this Act, to be a party to those proceedings.

30. Insurer may abandon rights of subrogation - (1) In any acknowledgment lodged with the Tribunal under section 29(1) an insurer may, in respect of such sum as is specified in the acknowledgment, abandon the exercise of its rights of subrogation in relation to the cause of action that is the subject of the claim.

(2) Where, pursuant to subsection (1) of this section, an insurer abandons its rights of subrogation in respect of a specified sum, -

- (a) the party shall be deemed to have abandoned so much of the party's claim as is equal to that specified sum; and
- (b) the approval of an agreed settlement under section 18(3) or, as the case may require, an order of the Tribunal under this Act or any other enactment, in relation to the claim, shall operate to discharge from liability in respect of the amount so abandoned -
 - (i) the party, so far as the party might otherwise be liable to the party's insurer for that amount; and
 - (ii) any other person who is a party to that agreed settlement, or against whom the claim and the subsequent order are made, as the case may require.

31. Insured party entitled to control conduct of case where insurer a party - Where, in any proceedings before the Tribunal, a claim for relief to which section 28 applies is made, the insured party shall, subject to section 27, be entitled to control the conduct of the insured party's case, notwithstanding that the insured party's insurer becomes a party to those proceedings pursuant to section 28(3) or (4) or section 29(3).

Transfer of Proceedings

32. Transfer of proceedings to High Court - (1) Where any proceedings have been commenced in, or transferred under section 24(3) or (4) or section 33 to the Tribunal, and the Tribunal has no jurisdiction to hear and determine those proceedings, the Tribunal may, instead of striking out the proceedings, order that they be transferred to the High Court in its ordinary civil jurisdiction.

(2) Where any proceedings have been commenced in, or transferred under section 24(3) or (4) or section 33 to the Tribunal, the Tribunal or the Registrar may, on the application of a party (other than an insurer who has become a party to those proceedings pursuant to section 28(4) or (5) or section 29(3)) or of the Tribunal's or the Registrar's own motion, order that the proceedings be transferred to the High Court in its ordinary civil jurisdiction if, in the opinion of the Tribunal or the Registrar, the proceedings would more properly be determined in the High Court.

(3) The Tribunal shall not make an order under subsection (1) or subsection (2) in respect of a claim if any agreement of a kind described in section 16(2) requires that the claim be submitted to arbitration.

33. Transfer of proceedings from High Court - (1) Where proceedings within the jurisdiction of the Tribunal have been commenced in the High Court before a claim in respect of the same issues between the same parties has been lodged in the Tribunal, or transferred to the Tribunal under this section, the Court or a Judge of the Court may, on the application of either party, or of its or that Judge's own motion, order that the proceedings be transferred to the Tribunal.

(2) The Tribunal upon proceedings being transferred under subsection (1) may have regard to any notes of evidence transmitted to it and it shall not be necessary for that evidence to be given again in the Tribunal unless the Tribunal so requires.

Hearings

34. Right to appear at hearings - (1) At the hearing of a claim every party shall be entitled to attend and be heard.

(2) Subject to subsection (3), no party shall be entitled to be represented at a hearing by a representative unless it appears to the Tribunal to be proper in all the circumstances to so allow, and the Tribunal approves such representative.

(3) The following parties may be represented by a representative who is approved by the Tribunal -

- (a) the Crown, if the representative is an officer or employee of the Crown;
- (b) a corporation or an unincorporated body of persons, if the representative is an officer or employee or a member of the corporation or body or holds a majority interest in it;
- (c) a person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons;
- (d) a minor, or other person under disability;
- (e) any other person, if the Tribunal is satisfied that for sufficient cause that person is unable to appear in person or is unable to present his or her case adequately.

(4) Where a representative of a party is proposed for a Tribunal's approval, the Tribunal shall satisfy itself that the person proposed has sufficient knowledge of the case and sufficient authority to bind the party.

(5) The Tribunal may permit any person nominated by a party to be present at the hearing and to assist the party in the presentation of his or her case if it appears to the Tribunal to be proper in all the circumstances to so permit, and the Tribunal approves such person.

(6) No person approved by the Tribunal under subsection (5) shall be entitled as of right to be heard at the hearing, and the Tribunal may exclude any such person from the hearing at any time.

(7) The Tribunal shall not -

- (a) appoint under section 27(2)(a); or
- (b) approve as a representative under subsection (2) or subsection (3); or
- (c) approve under subsection (5),

any person who is, or has been, enrolled as a barrister and solicitor, or who, in the opinion of the Tribunal, is, or has been, regularly engaged in advocacy work before the High Court or other tribunals; but this prohibition does not apply where -

- (d) the person proposed for approval under subsection (3) is a person or one of the persons jointly liable or entitled with another or others; or
- (e) the party seeking to be represented is a company and the person proposed for approval under subsection (3) is the majority shareholder of the company.

(8) Where the Tribunal appoints any person under section 27(2)(a) or approves any person under subsection (2) or subsection (3) or subsection (5), the Tribunal may impose in respect of any such appointment or approval such conditions as it considers necessary to ensure that any other party to the proceedings is not substantially disadvantaged by that appointment or approval.

35. Proceedings to be held in private - (1) All proceedings before the Tribunal shall be held in private.

(2) Nothing in subsection (1) shall prevent the Tribunal from hearing 2 or more claims together if it appears to the Tribunal that the claims are related and that it would be convenient to the Tribunal and the parties to do so.

(3) Notwithstanding subsection (1), the Tribunal may permit to be present at any proceedings, a person who has a genuine and proper interest either in those proceedings or in the proceedings of Tribunals generally.

36. Evidence - (1) Evidence tendered to the Tribunal by or on behalf of a party to any proceedings need not be given on oath, but the Tribunal may at any stage of the proceedings require that such evidence, or any specified part of such evidence, be given on oath, whether orally or in writing.

(2) The Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit.

(3) All evidence and information received or ascertained under subsection (2) of this section shall be disclosed to every party, and every party shall be given an opportunity to comment on it.

(4) The Tribunal may receive and take into account any relevant evidence or information, whether or not that evidence or information would normally be admissible in a Court of law.

37. Investigator may be appointed - (1) The Tribunal may, if it thinks fit, appoint a person to inquire into, and report to it upon any matter of fact having a bearing on any proceedings and may give such directions as to the nature, scope, and conduct of the inquiry as it thinks fit.

(2) Where, in any proceedings before the Tribunal, a person is appointed under subsection (1) of this section to report to the Tribunal on any matter, -

(a) the Registrar shall ensure that a copy of the report is made party to those proceedings as soon as practicable after it is presented to the Tribunal; and

(b) the hearing of those proceedings shall not begin or, as the case may require, resume until at least 10 days have elapsed after the date on which the report is made available to the parties.

(3) A person appointed under subsection (1) shall be paid, out of money appropriated by Parliament for the purpose, such fees and expenses as shall be prescribed.

38. Tribunal may act on evidence available - (1) Where the case of any party is not presented to the Tribunal, after reasonable opportunity has been given to that party to do so, the issues in dispute in the proceedings may be resolved by the Tribunal, or relief in respect of an undisputed claim may be granted by it, on such evidence or information as is before it, including evidence or information obtained pursuant to section 36(2).

(2) An order made by the Tribunal in the circumstances described in subsection (1) shall not be challenged on the ground that the case of the party was not presented to the Tribunal, but the party may apply for a rehearing under section 45 on the ground that there was sufficient reason for that party's failure to present that party's case.

39. Costs - (1) Except as provided in this section, costs shall not be awarded against a party to any proceedings before the Tribunal.

(2) Where, in the opinion of the Tribunal, a claim made by a party is frivolous or vexatious, it may, subject to any rules made under this Act, order that party to pay -

- (a) to the Crown, the fees and expenses of any witness, or of an Investigator, that have been paid by the Crown;
 - (b) to a party, the costs of that party in connection with the proceedings.
- (3) Where, in the opinion of the Tribunal, any party has -
- (a) lodged a claim knowing that the claim is not within the jurisdiction of the Tribunal; or
 - (b) unnecessarily prolonged any proceedings by engaging in conduct intended to impede the prompt resolution of the proceedings,

the Tribunal may, subject to any rules made under this Act, order that party to pay to any other party the costs, or part of the costs, of that other party in connection with the proceedings.

- (4) Where -
- (a) any proceedings within the jurisdiction of the Tribunal have been commenced in the High Court; and
 - (b) those proceedings have been transferred to the Tribunal under section 33(1); and
 - (c) the Tribunal is satisfied that those proceedings were commenced in that Court and not in the Tribunal on account of any act or omission of any party to those proceedings that was intended or likely to induce the party who commenced those proceedings to believe that the proceedings were not within the jurisdiction of the Tribunal, -

the Tribunal may order the first-mentioned party to pay to the party who commenced the proceedings -

- (d) the fee paid by the latter party in respect of the filing of those proceedings in the High Court; and
- (e) any solicitor's costs incurred by the latter party in respect of the preparation of the documents necessary for the filing of those proceedings.

40. Procedure where no provision made - Subject to this Act and to any rules made under this Act, the Tribunal shall adopt such procedure consistent with principles of natural justice as it thinks best suited to the ends of justice.

Enforcement of Orders

41. Enforcement of orders except work orders - (1) Every order made by the Tribunal requiring a party to pay money or deliver specific property to another party shall be deemed to be an order of the High Court, and, subject to this section, may be enforced accordingly.

(2) Where application is made to the High Court for the issue of any process to enforce an order provided for by section 19(3) (requiring a party to pay money to another as an alternative to compliance with a work order), the Registrar shall give notice of the application to the party against whom enforcement is sought.

(3) If that party does not file in the Court, within the period prescribed for so doing, a notice of objection in the prescribed form, the order may, after the expiry of that period, be enforced pursuant to subsection (1).

(4) The notice referred to in subsection (3) may only be given on the ground that it is the belief of the party that the order of the Tribunal has been fully complied with and that that party therefore disputes the entitlement of the applicant to enforce it.

(5) If the party against whom enforcement is sought files the notice referred to in subsection (3) within the prescribed time, the Registrar shall refer the matter to the Tribunal to be heard and determined under section 42(2).

42. Enforcement of work orders - (1) Where -

- (a) a party in whose favour a work order has been made considers that the work order has not been complied with by the other party; and
- (b) that other party has not complied with the alternative money order provided for by section 19(3) -

the party in whose favour the work order was made may, instead of applying to the High Court for the issue of a process for enforcement pursuant to section 41(1), lodge in the Tribunal a request in the prescribed form that the work order be enforced.

(2) Subsequent proceedings shall be taken on a request for enforcement under subsection (1) of this section and on a notice under section 41(5) as if such request or notice were a claim lodged under section 24; and upon the hearing of the matter the Tribunal may -

- (a) vary the work order, or make a further work order, or any other order that is authorised by section 19;
- (b) grant leave to the party in whose favour the work order was made to enforce the alternative money order provided for by section 19(3), or so much of that order as the Tribunal may allow, and either subject to or without compliance with the provisions of section 41(2);
- (c) discharge any order previously made by the Tribunal.

(3) After the expiration of 12 months from the date of a work order, it shall not be enforced without the leave of the Tribunal.

43. Enforcement of agreed settlements - (1) Where a term of an agreed settlement approved by the Tribunal under section 18(3) provides for a party to pay money or deliver specific property to another party, that term shall be deemed to be an order of the High Court of which the Tribunal is a division, and may be enforced accordingly.

(2) Where -

- (a) a term of an agreed settlement approved by the Tribunal under section 18(3) provides for a party to make good a defect in any property, or a deficiency in the performance of services, by doing such work or attending to such matters (including the replacement of any property) as may be specified in the agreement; and
- (b) a party who would benefit by the enforcement of that term considers that the term has not been complied with by the other party,

the party who would benefit by the enforcement of the term may lodge in the Tribunal a request in the prescribed form for that term to be enforced.

(3) Subsequent proceedings shall be taken on a request for enforcement under subsection (2) of this section as if such request were a claim lodged under section 24; and upon the hearing of the matter the Tribunal may -

- (a) if the parties so agree, vary the term of the agreed settlement that is sought to be enforced, or any other term of that settlement;
- (b) strike out the term of the agreed settlement that is sought to be enforced and, subject to section 19(4), order the party against whom enforcement of the term is sought to pay money to the party seeking to enforce it.

44. No filing fee payable - No filing fee shall be payable by a person who, pursuant to section 41(1) or section 43(1), seeks to enforce an order or a term of an agreed settlement, but any fee that would otherwise be payable therefore shall be recoverable from the opposite party for the credit of the Cook Islands Government Account.

PART 4 **REHEARINGS AND APPEALS**

45. Rehearings - (1) Subject to subsection (2), the Tribunal may, upon the application of a party to any proceedings, order the rehearing of a claim, to be heard upon such terms as it thinks fit.

(2) A rehearing may be ordered under subsection (1) only-

- (a) where an order has been made under section 18(8); or

- (b) where an order has been made under section 42(2) or section 43(3)(b), or a term of an agreed settlement has been varied under section 43(3)(a), and, in all such cases, shall be limited to rehearing the enforcement proceedings taken under those sections; or
 - (c) where an agreed settlement has been approved by the Tribunal under section 18(3) and, after the hearing, a party to the settlement discovers facts directly relevant to the dispute that could not, with reasonable diligence, have been obtained before the hearing and that, if known at the time, would have had a bearing on whether that party agreed to the settlement.
- (3) Every application for a rehearing shall be made, accompanied by the prescribed fee, within 21 days after the Tribunal's order (or, in the case of an agreed settlement, the Tribunal's approval of the settlement or the variation of a term of that settlement under section 43(3)(a) as the case may require) or within such further time not exceeding 3 months as the Tribunal may, on application, allow, and shall be served upon the other parties to the proceedings.
- (4) Upon a rehearing being granted, -
- (a) the Registrar shall notify all parties to the proceedings of the making of the order and of the time and place appointed for the rehearing; and
 - (b) the order or approval or variation made or given by the Tribunal upon the first hearing shall cease to have effect.
- (5) Notwithstanding subsection (4)(b), if the party on whose application a rehearing is ordered does not appear at the time and place for the rehearing or at any time and place to which the rehearing is adjourned, the Tribunal may, without rehearing or further rehearing the claim, direct that the original order or approval or variation, as the case may be, be restored to full force and effect.
- (6) This Act shall apply to a rehearing in all respects as it applies to an original hearing.

46. Appeals - (1) Any party to proceedings before the Tribunal may appeal to a High Court against an order made by the Tribunal under section 18(8) or section 42(2) or section 43(3)(b), or against the approval by the Tribunal of an agreed settlement under section 18(3), or against the variation of a term of an agreed settlement under section 43(3)(a), on the grounds that -

- (a) the proceedings were conducted by the Referee; or
 - (b) an inquiry was carried out by an Investigator,
- in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.

(2) Without limiting the generality of subsection (1), a Referee shall be deemed to have conducted the proceedings in a manner that was unfair to the appellant and prejudicially affected the result if -

- (a) the Referee fails to have regard to any provision of any enactment that is brought to the attention of the Referee at the hearing; and
- (b) as a result of that failure, the result of the proceedings is unfair to the appellant.

(3) An appeal shall be brought by a party by the filing of a notice of appeal, in the prescribed form, together with the prescribed fee, in the High Court, within 21 days of the making or giving of the order or approval or variation appealed against, or within such further time not exceeding 3 months as a High Court Judge may, on application, allow.

(4) As soon as practicable after such notice of appeal has been filed, the Registrar shall lodge a copy of the notice in the Tribunal's records relating to the proceedings.

(5) The Registrar shall fix the time and place for the hearing of the appeal and shall notify the appellant.

(6) A copy of every notice of appeal together with a notice of the time and place for hearing the appeal shall be served by the Registrar on every other party to the proceedings before the Tribunal, and each such party may appear and be heard.

(7) The filing of a notice of appeal against an order or the approval of an agreed settlement or the variation of a term of an agreed settlement shall operate as a stay of any process for the enforcement of that order or that settlement or that variation, as the case may require, but a Judge of the High Court may at any time, on the application of a party to the proceedings, order that any process may be resumed or commenced or, the process having been resumed or commenced, order that it be further stayed.

47. Referee or Investigator to furnish report - (1) Within 28 days after the notice of appeal has been lodged in the Tribunal's records under section 46(4), the Referee who heard the proceedings and, where applicable, the Investigator, shall furnish to the Registrar a report on the manner in which the proceedings were, or where applicable the inquiry was, conducted and the reasons therefor.

(2) A Referee shall keep a record of the proceedings of the Tribunal sufficient to enable that Referee, if required, to furnish a report under subsection (1) of this section, and an Investigator shall do likewise in relation to an inquiry conducted by that Investigator.

(3) Where, for any reason, the Referee who heard the proceedings or, where applicable, the Investigator, is unavailable to furnish the report, the report shall be compiled by the Registrar from such information as the Registrar is able to collect from the records of the Tribunal or otherwise.

(4) The Registrar shall ensure that a copy of the report furnished or compiled under subsection (1) or subsection (3) is made available to the appellant, and to every other party to the proceedings, a reasonable time before the hearing of the appeal.

48. Powers of High Court Judge on appeal - (1) On the hearing of the appeal a High Court Judge may -

- (a) quash the order or the approval or the variation, as the case may be, and order a rehearing of the claim in the Tribunal on such terms as the Judge thinks fit; or
- (b) quash the order or the approval or the variation, as the case may be, and transfer the proceedings to the High Court for hearing; or
- (c) dismiss the appeal.

(2) In ordering a rehearing under subsection (1)(a), the Judge may give to the Tribunal such directions as the Judge thinks fit as to the conduct of the rehearing.

(3) Subject to this Act and to any rules made under this Act, the procedure at any such hearing shall be such as the Judge may determine.

PART 5

MISCELLANEOUS PROVISIONS

49. Want of form - No proceedings of the Tribunal, or order or other document of the Tribunal shall be set aside or quashed for want of form.

50. Registrar to provide assistance - The Registrar shall ensure that assistance is reasonably available, either from the Registrar himself or herself, or from that Registrar's staff, to any person who seeks it in completing the forms required by this Act, or by any rules made under this Act, in relation to the lodging of a claim in the Tribunal, an application for a rehearing, an appeal against an order or approval or variation made or given by a Tribunal, or the enforcement of an order or an agreed settlement in the Tribunal or in the High Court.

51. Contempt of Tribunal - (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months (or to both) who -

- (a) assaults, insults, or obstructs a Referee, or any witness or any officer of a Tribunal during a sitting of a Tribunal or while a Referee, a witness, or an officer is going to, or returning from, a sitting of a Tribunal; or
- (b) assaults, insults, or obstructs any person in attendance at a sitting of a Tribunal; or
- (c) interrupts, or otherwise misbehaves at, a sitting of a Tribunal; or
- (d) without lawful excuse disobeys any order or direction of a Tribunal (other than an order mentioned in section 18(3) or section 18(8) or section 42(2) or section 43(3)(b)) in the course of the hearing of any proceedings.

(2) A Referee may order the exclusion from a sitting of a Tribunal of any person whose behaviour, in the opinion of the Referee, constitutes an offence against subsection (1) of this section, whether or not such person is charged with the offence; and any Registrar, or officer under a Registrar's control, or any constable may take such steps as are reasonably necessary to enforce such exclusion.

52. Publication of orders - The Registrar shall cause to be published, the proceedings of Tribunals.

53. Protection of Referees, Investigators, etc - (1) A Referee, in the performance of his or her duties under this Act, shall have and enjoy the same protection as a Justice of the Peace has and enjoys under section 27 of the Judicature Act 1980-81.

(2) For the avoidance of doubt as to the privileges and immunities of Referees, parties, representatives, and witnesses in the proceedings of a Tribunal, it is hereby declared that such proceedings are judicial proceedings.

(3) The privileges and immunities referred to in subsection (2) shall extend and apply to -

- (a) The Tribunal acting under section 36(2); and
- (b) an Investigator acting under section 37; and
- (c) a person who gives information, or makes any statement, to the Investigator or the Tribunal on any such occasion.

54. Rules - (1) The Queen's Representative may from time to time, by Order in Executive Council, make rules -

- (a) regulating the practice and procedure of the Tribunal;
- (b) prescribing such things (including fees and allowances) as are required by this Act to be prescribed;
- (c) prescribing such matters as are necessary for carrying out the provisions of this Act.

(2) Without limiting the generality of subsection (1) of this section, rules may be made providing for the following -

- (a) the criteria and procedures for assessing candidates for recommendation for appointment or reappointment as Referees;
- (b) the keeping of records by the Tribunal and the form of such records;
- (c) the form of documents to be issued by the Tribunal and the sealing of such documents;
- (d) the form and content of documents to be used by parties and intending parties, and the service of documents and the giving of notices by such persons;
- (e) the functions, powers, and duties of the Tribunal and Registrars in relation to -
 - (i) the service of documents and giving of notices;
 - (ii) the enlargement of dates of hearing;

- (iii) the adjournment of proceedings;
- (iv) the reports of Investigators;
- (f) the withdrawal and amendment of claims;
- (g) the summoning of witnesses, and the payment of witnesses from public funds or otherwise;
- (h) the giving of evidence to the Tribunal, including the giving of evidence from a distance (for example by video link or telephone conference);
- (i) the commission of offences by, and punishment of, persons who refuse to give evidence or obey a summons to witness;
- (j) the functions, powers, and duties of Investigators;
- (k) the costs that may be awarded under section 39;
- (l) the transfer of proceedings -
 - (i) from the High Court to the Tribunal;
 - (ii) from the Tribunal to the High Court;
- (m) the removal of orders of, or agreed settlements approved by the Tribunal into the High Court for enforcement;
- (n) the searching of the records of the Tribunal.
- (3) Notwithstanding section 55, rules made under this section may make particular provision for -
 - (a) the giving of notices to, and service of documents on, the Crown; and
 - (b) the length of the notice to be given to the Crown before proceedings to which the Crown is a party may be heard.

55. Crown Proceedings Act 1950 not restricted - Nothing in this Act shall limit or restrict the operation of the Crown Proceedings Act 1950 in its application to the Cook Islands.

56. Consequential amendment to Hire Purchase Act 1986 - Section 47 is hereby amended to read as if every reference in that section to \$3,000 were a reference to \$5,000.

57. Consequential amendments to Illegal Contracts Act 1987 - (1) Section 2 of the Illegal Contracts Act 1987 is hereby amended by repealing the definition of the term "Court" and substituting the following definition:
 "Court" means the High Court or, for the purposes of this Act, the Small Claims Tribunal that has jurisdiction under section 10 of this Act:".

(2) The Illegal Contracts Act 1987 is hereby amended by adding the following section -

"10. (1) Without limiting the jurisdiction of the High Court, the Small Claims Tribunal established under the Small Claims Tribunals Act 2008 shall have jurisdiction to exercise the powers conferred by any of the provisions of section 6 of this Act in any case where -

- (a) the occasion for the exercise of the power arises in the course of proceedings properly before the Tribunal; and

(b) the total amount in respect of which an order of the Tribunal is sought does not exceed \$5,000.

(2) An order of the Small Claims Tribunal under section 6 of this Act shall not -

(a) require a person to pay an amount exceeding \$5,000;

(b) declare a person not liable to another for an amount exceeding \$5,000, or vest any property exceeding \$5,000 in value in any person;

(c) direct the transfer or assignment or delivery of possession of any such property -

and an order of the Tribunal that exceeds any such restriction shall be entirely of no effect.”

58. Repeal of Small Claims Tribunals Act - The Small Claims Tribunals Act 1986 is repealed.

This Act is administered by the Ministry of Justice