

1993

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SMALL CLAIMS (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

Circulated by authority of

**Terry Connolly MLA
ATTORNEY GENERAL**

SMALL CLAIMS (AMENDMENT) BILL 1993

OUTLINE

The *Small Claims Act 1974* (the Principal Act) provides for matters relating to the Small Claims Court of the Territory.

The amendments of the Principal Act by the Small Claims (Amendment) Bill 1993 are part of a package of amendments of legislation relating to the Magistrates Court and the Small Claims Court designed to replace existing powers to determine fees with a broad based scheme applying to both courts and located, for ease of reference and administration, in the *Magistrates Court Act 1930*. Under section 4A of the *Small Claims Act 1974* the Magistrates Court is known as the Small Claims Court when exercising jurisdiction under the Small Claims Act and, similarly, the Registrar and Deputy Registrars of the Magistrates Court are known as the Registrar and Deputy Registrars of the Small Claims Court when performing duties or functions under that Act.

The Small Claims (Amendment) Bill 1993 will also make an amendment of section 27 of the Principal Act to allow the Court to order a party to pay some or all of an investigator's costs.

FINANCIAL CONSIDERATIONS

Nil.

DETAILS OF INDIVIDUAL CLAUSES

Clauses 1, 2 and 3 are formal provisions relating to the short title of the Bill, its interpretation and its commencement. The term "Principal Act" is defined to mean the *Small Claims Act 1974*.

Clause 4 will omit the definition of "determined fee" from subsection 3(1) of the Principal Act. References to "determined fee" in the Principal Act will be omitted by this Bill making the definition unnecessary.

Clause 5 will insert subsection 27(7) into the Principal Act. Under section 27, the Court may appoint a person to inquire into and report upon any question of fact arising in proceedings. Such a person is entitled to receive from the Territory such remuneration as is fixed by the Court. Subsection 27(7) will provide the Court with the discretion to order that a party or parties to proceedings pay some or all of the costs of remuneration of a person appointed as an investigator.

Clause 6 will amend paragraph 29(1A)(a) of the Principal Act by replacing the reference to fees referred to in subsection 46(1) with the words "determined under subsection 248A(1) of the *Magistrates Court Act 1930* for the institution of proceedings under this Act". Subsection 29(1) provides that, subject to the Principal Act, the Court shall not make any order in relation to the costs of proceedings but subsection 29(1A) provides for a successful claimant to recover from the defendant the filing fee, liability for the payment of which is presently

imposed by subsection 46(1). The amendment proposed contemplates the relocation of the fee determining power to proposed subsection 248A(1) of the *Magistrates Court Act 1930*.

Cluses 7 and 8 will repeal sections 46 and 50A of the Principal Act respectively. Section 46 imposes the obligation to pay the determined fee, provides for fees for execution of process to be aligned with those in the *Magistrates Court (Civil Jurisdiction) Act 1982* and provides for exemption from payment of the fee in cases of hardship. Section 50A grants the power to determine fees. The provisions of sections 46 and 50A are included in the scheme which will locate provisions relating to fees and charges in the *Magistrates Court Act 1930*.

Clause 9 will ensure that the existing determination continues in force until the first determination made under proposed subsection 248A(1) of the *Magistrates Court Act 1930* commences and makes a consequential provision in relation to the interpretation of the Principal Act.