

1994—No. 406

COMMERCIAL TRIBUNAL ACT 1984—REGULATION

(Commercial Tribunal Regulation 1994)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Commercial Tribunal Act 1984, has been pleased to make the Regulation set forth hereunder.

WENDY MACHIN, MP
Minister for Consumer Affairs.

Citation

1. This Regulation may be cited as the Commercial Tribunal Regulation 1994.

Commencement

2. This Regulation commences on 1 September 1994.

Definitions

3. In this Regulation:

“**notice of appearance**” means a notice referred to in clause 6;
“**relevant Act**” means an Act that confers jurisdiction on the Tribunal;

“**the Act**” means the Commercial Tribunal Act 1984.

Oath to be taken by members of Tribunal

4. For the purposes of section 9 (2) of the Act, the prescribed form of oath to be taken:

(a) by the Chairman, is the oath set out in Part 1 of Schedule 1; and

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- (b) by a Deputy Chairman, is the oath set out in Part 2 of Schedule 1; and
- (c) by a part-time member, is the oath set out in Part 3 of Schedule 1.

Proceedings that may be dealt with by the Chairman or Deputy Chairman

5. For the purposes of section 19 (3) (c) of the Act, the class of proceedings specified in Schedule 2 may be heard and determined by the Chairman, or a Deputy Chairman, sitting alone.

Notice of appearance

6. (1) A notice under section 22 of the Act in relation to proceedings under section 85 of the Credit Act 1984 must be accompanied by a further notice requesting the person on whom it is served to state whether he or she intends to appear at the hearing of the proceedings.

(2) A notice of appearance:

- (a) must be in a form approved by the Chairman; and
- (b) must state that, if the notice is not returned by the date specified in the notice, the proceedings may be heard and determined by the Chairman or a Deputy Chairman sitting alone.

Proceedings in which representation is restricted

7. (1) The following proceedings are prescribed for the purposes of section 23 (1) (b) (ii) of the Act:

- (a) proceedings in which an order for the payment of an amount of money not exceeding \$3,000 is sought; and
- (b) proceedings in which the value of the matter the subject of the proceedings does not, in the opinion of the Tribunal, exceed \$3,000.

(2) This clause does not apply to appeals made to the Tribunal under the following enactments:

- (a) section 20F of the Motor Dealers Act 1974;
- (b) Division 4 (sections 22–25) of Part 2 of the Travel Agents Act 1986;
- (c) Part 5 (sections 84–89) of the Building Services Corporation Act 1989;
- (d) Division 4 (section 59) of Part VI of the Trade Measurement Act 1989.

Allowances payable to certain witnesses

8. For the purposes of section 25 (5) of the Act, the fees and allowances for witnesses are to be calculated in accordance with the Scale of Allowances paid to witnesses attending criminal trials held before the District Court in its criminal jurisdiction.

Fees

9. (1) The fees set out in Schedule 3 are payable in respect of the matters shown in that Schedule.

(2) A fee is not payable in respect of

- (a) an application under section 74, 115 or 116 of the Credit Act 1984; or
- (b) an application under section 5 or 6 of the Credit (Home Finance Contracts) Act 1984; or
- (c) an application by the Commissioner for Consumer Affairs; or
- (d) an objection by the Commissioner for Consumer Affairs or the Commissioner of Police to a licence being granted or continuing to be held under a relevant Act.

(3) If the Tribunal or the Registrar considers that there are special reasons for so doing, the Tribunal or Registrar:

- (a) may direct that a fee required to be paid by this Regulation be waived wholly or in part, and that any part of the fee waived that has been paid be refunded; and
- (b) may postpone the time for payment of the whole or a part of a fee required by this Regulation, and make any such postponement subject to any conditions considered by the Tribunal or Registrar to be appropriate.

Repeal

10. (1) The Commercial Tribunal Regulation 1984 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Commercial Tribunal Regulation 1984, had effect under that Regulation is taken to have effect under this Regulation.

SCHEDULE 1—OATHS OF OFFICE

(Cl. 4)

PART 1**OATH OF OFFICE OF CHAIRMAN**

I , do swear that I will well and truly serve Her Majesty Queen Elizabeth II in the office of Chairman of the Commercial Tribunal of New South Wales, and I will faithfully and impartially discharge the duties of that office.

PART 2**OATH OF OFFICE OF DEPUTY CHAIRMAN**

I , do swear that I will well and truly serve Her Majesty Queen Elizabeth II in the office of Deputy Chairman of the Commercial Tribunal of New South Wales, and I will faithfully and impartially discharge the duties of that office.

PART 3**OATH OF OFFICE OF PART-TIME MEMBER**

I , do swear that I will well and truly serve Her Majesty Queen Elizabeth II in the office of part-time member of the Commercial Tribunal of New South Wales, and I will faithfully and impartially discharge the duties of that office.

SCHEDULE 3—PROCEEDINGS BEFORE THE TRIBUNAL THAT MAY BE HEARD AND DETERMINED BY THE CHAIRMAN OR DEPUTY CHAIRMAN SITTING ALONE

(Cl. 5)

Proceedings generally

1. Proceedings for the extension of the period within which anything is required by an order of the Tribunal or the Registrar to be done (even though that period has expired), but only if the Tribunal has the power to grant the extension.
2. Proceedings for the making of an order or decision against a party to proceedings before the Tribunal on the motion of any other party to those proceedings, if the first-mentioned party has defaulted in the taking of a step ordered, at the conclusion of those proceedings, to be taken.

Proceedings under the Commercial Tribunal Act 1984

1. Proceedings under section 23 (1) (b) for a grant of leave.
2. Proceedings under section 31 for dismissal of proceedings.
3. Proceedings under section 32 for an award of costs.

4. Proceedings under section 35 for an adjournment or a stay of proceedings.

Proceedings under the Credit Act 1984

1. Proceedings under section 47 for determination of a reasonable amount or value.
2. Proceedings under section 76 (3) for determination of the amount of a debtor's liability.
3. Proceedings under section 85 for an order to increase the liability of the debtor to a credit provider, if notice of appearance has not been returned by the due date.
4. Proceedings under section 93 (3) for determination of a mortgagor's liability.
5. Proceedings under section 95 for an order authorising entry.
6. Proceedings under section 104 (3) for determination of the net balance due by a debtor.
7. Proceedings under section 110 (1) for the consent of the Tribunal to take possession of goods.
8. Proceedings under section 111 (1) for an order for delivery of goods.
9. Proceedings under section 118 for an order approving removal of goods.

SCHEDULE 3—FEES

(Cl. 9)

1. An application for which no other fee is prescribed by this Regulation or by or under the relevant Act	\$110
2. An application under section 14 (3) of the Credit (Administration) Act 1984	\$50
3. An application under section 86 or 86A of the Credit Act 1984:	
(a) if the number of contracts the subject of the application does not exceed 10	\$220
(b) if the number of contracts the subject of the application exceeds 10 but does not exceed 100	\$500
(c) if the number of contracts the subject of the application exceeds 100 but does not exceed 200	\$1,000
(d) if the number of contracts the subject of the application exceeds 200 but does not exceed 1,000	\$2,000
(e) if the number of contracts the subject of the application exceeds 1,000	\$5,000
4. Notice of appeal	\$140

5. Objection to a licence's being granted or continuing to be held	\$55
6. Certified copy of a judgment or final order after the judgment or final order has been entered or sealed	\$30
7. Searching any proceeding or record, other than a search made by or on behalf of a party to the proceeding	\$30 per hour or part of an hour
8. Copy of a document	\$2 per Page (minimum fee \$10)
9. Copy of evidence taken in any proceedings before the Tribunal	Cost to Tribunal
10. Taxation of costs: filing fee	\$100

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any changes in substance, the provisions of the Commercial Tribunal Regulation 1984. The new Regulation deals with the following matters:

- (a) the oaths to be taken by the various members of the Tribunal (clause 4 and Schedule 1);
- (b) the proceedings that can be dealt with by the Chairman or Deputy Chairman of the Tribunal sitting alone (clause 5 and Schedule 2);
- (c) the serving of notices of appearance in relation to proceedings before the Commercial Tribunal (clause 6);
- (d) the proceedings in which legal representation is not allowed except with the leave of the Commercial Tribunal (clause 7);
- (e) the payment of witnesses' expenses (clause 8);
- (f) the payment of fees (clause 9 and Schedule 3);
- (g) other matters of a formal nature (clauses 1, 2, 3 and 10).

This Regulation is made under the Commercial Tribunal Act 1984, including section 39 (the general regulation making power) and sections 9, 19, 22, 23 and 25.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
