



New South Wales

Commercial Tribunal Legislation Amendment Act 1995 No 40

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New South Wales

Commercial Tribunal Legislation Amendment Act 1995 No 40

Act No 40, 1995

An Act to amend the *Commercial Tribunal Act 1984* and certain other Acts with respect to the composition and the practice and procedure of the Commercial Tribunal and for other purposes. [Assented to 26 October 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Commercial Tribunal Legislation Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Commercial Tribunal Act 1984 No 98

The *Commercial Tribunal Act 1984* is amended as set out in Schedule 1.

4 Amendment of Credit (Administration) Act 1984 No 95

The *Credit (Administration) Act 1984* is amended as set out in Schedule 2.

5 Amendment of Building Services Corporation Act 1989 No 147

The *Building Services Corporation Act 1989* is amended as set out in Schedule 3.

Schedule 1 Amendment of Commercial Tribunal Act 1984

(Section 8)

[1] Section 4 Definitions

Omit the definition of *Deputy Registrar*.

[2] Section 4A

Insert after section 4:

4A Notes in text

Notes in the text of this Act are explanatory notes only and do not form part of this Act.

[3] Section 7 Part-time members

Omit section 7 (1). Insert instead:

- (1) The part-time members are to comprise:
 - (a) persons who, in the Minister's opinion, have knowledge of, or experience in conducting, the business or other activity that is regulated by the Act in relation to which the persons are appointed, and
 - (b) persons who, in the Minister's opinion, have knowledge of, or experience in dealing with, consumer issues concerning the business or other activity that is regulated by the Act in relation to which the persons are appointed.

[4] Section 8 Immunity of members and Registrar

Omit "and Deputy Registrar".

[5] Section 10

Omit the section. Insert instead:

10 Effect of the Public Sector Management Act 1988

Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

[6] Section 12 Vacation of office of member

Section 12 (1) (f)

Omit section 12 (1) (f). Insert instead:

(f) becomes a mentally incapacitated person,

[7] Section 12 (1) (i)

Omit “or retired from office under subsection (3)”.

[8] Section 12 (3)

Omit section 12 (3).

[9] Section 17

Omit the section. Insert instead:

17 Registrar and staff of Tribunal

(1) A Registrar and such other staff as are necessary to enable the Tribunal to exercise its functions are to be employed under Part 2 of the *Public Sector Management Act 1988*.

- (2) The Registrar has the functions conferred or imposed on the Registrar by or under this or any other Act or by the Tribunal.
- (3) During the absence or a vacancy in the office of the Registrar, a member of staff holding office as Deputy Registrar or, if there is no such office holder, a member of staff duly appointed to act as Registrar has the functions of the Registrar and is taken to be the Registrar.

[10] Section 18 Jurisdiction and functions of Tribunal

Insert after section 18 (1):

Note. The following Acts confer jurisdiction on the Tribunal:

Building Services Corporation Act 1989

Credit Act 1984

Credit (Administration) Act 1984

Credit (Finance Brokers) Act 1984

Credit (Home Finance Contracts) Act 1984

Fair Trading Act 1987

Motor Dealers Act 1974

Registration of Interests in Goods Act 1986

Retail Leases Act 1994

Trade Measurement Act 1989

Trade Measurement Administration Act 1989

Travel Agents Act 1986

[11] Section 19 Proceedings before Tribunal

Section 19 (2)

Omit section 19 (2). Insert instead:

- (2) The constitution of the Tribunal for hearings is to be determined by the Chairman.
- (2A) The Registrar is, subject to any directions of the Chairman, to arrange and determine the times and places at which hearings of the Tribunal are to be held.

[12] Section 19 (3) (a)

Insert “or” at the end of section 19 (3) (a).

[13] Section 19 (3) (b1)

Insert after section 19 (3) (b):

- (b1) where the proceedings relate to:
- (i) a question as to the jurisdiction of the Tribunal, or
 - (ii) an application to amend an application or other document relating to proceedings before the Tribunal, or
 - (iii) an application to set aside a summons issued under section 25, or
 - (iv) an application to strike out proceedings before the Tribunal, or
 - (v) an application under section 86A of the *Credit Act 1984*, or

[14] Section 19 (3)

Insert at the end of section 19 (3):

Note. Section 86A of the Credit Act 1984 empowers the Tribunal to vary civil penalties imposed on credit providers for minor errors found not to disadvantage the debtors concerned in any significant respect.

[15] Section 19 (4)

Omit section 19 (4). Insert instead:

- (4) The Tribunal may deal with 2 or more matters together if the Chairman is satisfied that the parties concerned will not be prejudicially affected and the Tribunal is duly constituted in respect of all of those matters.

[16] Section 19 (5)

Omit “subsections (3) and (6)”. Insert instead “subsection (3)”.

[17] Section 19 (6)

Omit section 19 (6).

[18] Section 19 (7)

Omit “sitting” wherever occurring. Insert instead “hearing”.

[19] Section 19A

Insert after section 19:

19A Variation in constitution of Tribunal during proceedings

- (1) If during any proceedings one of the members constituting the Tribunal ceases to hold office or for any reason becomes unable to continue with the proceedings, the Chairman may replace the member with another member who is similarly qualified to the member.
- (2) The member may be replaced with the consent of the parties or without their consent. However, if the parties do not consent, the member may be replaced only if:
 - (a) the Tribunal has not, before the member ceased to hold office or was unable to continue with the proceedings, received evidence essential for the determination of the proceedings, and
 - (b) the Chairman is satisfied that failure to replace the member would delay the determination of the proceedings and that the delay would impose additional costs on the parties, and
 - (c) the Chairman is otherwise satisfied that the interests of the parties would not be detrimentally affected by the replacement.

- (3) If during any proceedings one of the members constituting the Tribunal (other than the person presiding) ceases to hold office or for any reason becomes unable to continue with the proceedings, the proceedings may be continued before the remaining 2 members of the Tribunal, but only with the consent of the parties. If the remaining 2 members of the Tribunal are equally divided on any matter, the decision of the person presiding prevails.
- (4) A consent under this section is irrevocable.
- (5) A decision of the Tribunal is not invalid only because the constitution of the Tribunal at the time of the pronouncement of the decision is different from the constitution of the Tribunal at the time the decision was made.

[20] Section 21 Parties

Omit “or entered up” wherever occurring.

[21] Section 24 Evidence before Tribunal

Omit section 24 (3).

[22] Section 25 Summons and examination of witnesses

Omit section 25 (1). Insert instead:

- (1) If, in relation to a hearing before the Tribunal, the Chairman or a Deputy Chairman so directs or a party so requests, the Registrar is to issue a summons requiring a person named in the summons to attend the hearing and at the time and place specified in the summons:
 - (a) to give evidence, or
 - (b) to produce any record specified in the summons that is in the person’s possession or control, or
 - (c) to do both of those things.
- (1A) A requirement under this section to produce a record is taken to be complied with if the record is produced to the Registrar before the hearing concerned.

[23] Section 28 Assistance to Tribunal

Omit “employ”. Insert instead “appoint”.

[24] Section 28

Omit “employed”. Insert instead “appointed”.

[25] Section 31 Dismissal of frivolous etc proceedings

Omit section 31 (1). Insert instead:

- (1) The Tribunal may dismiss proceedings before it if satisfied that:
 - (a) the proceedings are frivolous, vexatious, misconceived or lacking in substance, or
 - (b) it does not have jurisdiction to hear and determine the proceedings, or
 - (c) the proceedings are not being actively prosecuted, or
 - (d) for any other reason the proceedings should not be entertained.

[26] Section 34 Reasons for decision of Tribunal

Omit “14” from section 34 (2). Insert instead “28”.

[27] Section 34 (3)

Insert after section 34 (2):

- (3) If
 - (a) an appeal lies to the Supreme Court against an order or decision of the Tribunal, and
 - (b) the period for lodging such an appeal is limited to a specified period after the order or decision is made, and
 - (c) a notice is served under subsection (1) requesting the Tribunal to state its reasons for the order or decision,

the period for lodging the appeal commences on the date those reasons are notified to the party who served the notice.

[28] Schedule 1 Transitional provisions

Renumber clause 1 as clause 1A.

[29] Schedule 1, clause 1A (as renumbered),

Omit "Schedule". Insert instead "Part".

[30] Schedule 1, Part 1

Insert before clause 1A (as renumbered):

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - this Act,
 - the Commercial Tribunal Legislation Amendment Act 1995.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions Consequent on Enactment of this Act

[31] Schedule 1, Part 3

Insert at the end of the Schedule:

Part 3 Provisions Consequent on Enactment of Commercial Tribunal Legislation Amendment Act 1995

4 Continuity of appointment of part-time members of the Tribunal

- (1) A person holding office as a part-time member of the Tribunal referred to in paragraph (a) or (b) of section 7 (1) (as in force immediately before the commencement of Schedule 1 [3] to the *Commercial Tribunal Legislation Amendment Act 1995*) is taken to satisfy the requirements of that paragraph (as in force after that commencement).
- (2) Any such person does not cease to hold office only because of the amendments made to section 7 by that Schedule.

5 Continuity of employment of Registrar and staff of the Tribunal

The employment of the Registrar, Deputy Registrar (if any) or other staff of the Tribunal is not affected by the amendment made to section 17 by Schedule 1 [9] to the *Commercial Tribunal Legislation Amendment Act 1995*.

6 Pending proceedings of Tribunal

- (1) The amendments made by the following provisions of the *Commercial Tribunal Legislation Amendment Act 1995* do not affect proceedings pending on the commencement of those amendments:
 - (a) Schedule 1 [11] and [[15]–[18],
 - (b) Schedule 2.

- (2) The amendments made by the following provisions of the *Commercial Tribunal Legislation Amendment Act 1995* extend to proceedings pending on the commencement of those amendments:
- (a) Schedule 1 [13],
 - (b) Schedule 1 [19],
 - (c) Schedule 1 [21] and [22],
 - (d) Schedule 1 [25],
 - (e) Schedule 1 [27].
- (3) The amendment made by Schedule 3 to the *Commercial Tribunal Legislation Amendment Act 1995* extends to appeals against decisions made before the commencement of the amendment.

7 Reasons for decision of Tribunal

The amendment made by Schedule 1 [26] to the *Commercial Tribunal Legislation Amendment Act 1995* applies only to notices served on the Registrar under section 34 (1) after the commencement of that amendment.

**Schedule 2 Amendment of Credit (Administration)
Act 1984**

(Section 4)

[1] Section 12 Grant or refusal of licence

Omit section 12 (6).

[2] Section 23 Disciplinary action against licensee

Omit section 23 (15).

[3] Section 25 Death of licensee

Omit section 25 (6).

[4] Section 57 Secrecy

Omit “employed” from section 57 (1) (h).
Insert instead “appointed”.

Schedule 3 Amendment of Building Services Corporation Act 1989

(Section 5)

Section 86 Time limits

Insert after section 86 (2):

- (3) Despite subsection (1), an appeal may, with the leave of the Commercial Tribunal, be lodged with the registrar of the Tribunal after the end of the period referred to in that subsection, but only if:
 - (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and
 - (b) the Tribunal grants that leave.
- (4) The Commercial Tribunal must grant leave applied for under this section if satisfied that:
 - (a) there is a sufficient explanation as to why the appeal was not lodged in time, and
 - (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

[Minister's second reading speech made in—
Legislative Assembly on 20 September 1995
Legislative Council on 19 October 1995]