Consumer, Trader and Tenancy Tribunal Regulation 2002

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New South Wales

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Consumer, Trader and Tenancy Tribunal Regulation 2002

New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Consumer, Trader and Tenancy Tribunal Regulation 2002*.

2 Commencement

This Regulation commences on 25 February 2002.

3 Definition

(1) In this Regulation:

the Act means the *Consumer, Trader and Tenancy Tribunal Act 2001*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

Part 2 Members and assessors

4 Oath of office by Chairperson, Deputy Chairperson (Determinations) and senior members

If an oath is required to be taken as referred to in clause 15 of Schedule 2 to the Act, it may be taken in one of the forms set out in Schedule 1 to this Regulation.

5 Disclosure of members' interests

(1) A member:

(a) who has a direct or indirect interest in a matter the subject of present or proposed proceedings of the Tribunal, and

(b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's

knowledge, disclose the nature of the interest to the Chairperson (and, if the matter has commenced to be heard, to the parties involved in the matter).

(2) If the member is the Chairperson, the nature of the interest must be disclosed to the Minister.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or Chairperson otherwise determines, exercise, or continue to exercise, the jurisdiction of the Tribunal in the proceedings.

6 Functions of assessors

(1) For the purpose of conducting an inquiry under section 16 of the Act, an assessor who is authorised in writing by the Chairperson to do so is to carry out such inspections in connection with any matter as the Tribunal may direct and report to the Tribunal as directed.

(2) In the exercise of his or her functions, an assessor is to act with as little formality as the circumstances permit and according to equity, good conscience and the substantial merits of the matter without regard to technicalities or legal forms.

(3) Clause 5 applies to and in respect of an inquiry or proposed inquiry by an assessor in the same way as it applies to and in respect of a member of the Tribunal in proceedings or proposed proceedings of the Tribunal.

7 Taking evidence at inquiries

For the purpose of conducting an inquiry under section 16 of the Act, an assessor:

(a) may inform himself or herself of any matter in such manner as the assessor thinks fit, and

(b) may, in particular, hear testimony from any person and administer an oath to any person testifying.

Part 3 Applications

8 Applications to Tribunal

(1) For the purposes of section 24 (2) of the Act, this clause applies in relation to an application to have a matter dealt with by the Tribunal.

(2) An application may be lodged:

(a) at any one of the registries established by the Tribunal, or

(b) at a Fair Trading Centre of the Department of Fair Trading, or

(c) at any Local Court registry, or

(d) if the application relates to a matter in the Motor Vehicles Division—at the offices of the Motor Vehicle Repair Industry Council, or

(e) if the application relates to a matter in the Residential Parks Division, Strata and Community Schemes Division or Tenancy Division—at any Department of Fair Trading Renting Services Office, or

(f) at any such other place as may be determined by the Chairperson.

(3) An application must be in the English language.

(4) The Tribunal may accept lodgment of applications by post, facsimile or electronic means.

(5) Except where the Registrar otherwise determines, an application is taken to have been lodged when it has been duly lodged in accordance with this Regulation, whether or not payment of any fee occasioned by the lodgment has been made. The Tribunal is, however, entitled to decline to hear proceedings on the application until the fee has been paid.

(6) An application must be signed and dated by the applicant unless this clause authorises another person to sign the application.

(7) An application made under the *Residential Tenancies Act 1987* by a landlord may be completed, signed, dated and lodged by the landlord's agent.

(8) An application made under the *Residential Tenancies Act 1987* by a tenant may be completed, signed, dated and lodged by:

(a) the tenant's agent under section 31 of that Act, or

(b) a person authorised in writing by the tenant to do so.

(9) An application made under the *Residential Parks Act 1998* by a resident may be completed, signed, dated and lodged by:

(a) the resident's agent under section 32 of that Act, or

(b) a person authorised in writing by the resident to do so.

(10) An application made under the *Retirement Villages Act 1999* by an operator of a retirement village may be completed, signed, dated and lodged by any person authorised in writing by the operator to do so.

(11) An application made under the *Retirement Villages Act 1999* by a resident of a retirement village may be completed, signed, dated and lodged by any person authorised in writing by the resident to do so.

(12) An application that is lodged by electronic means is taken to be duly signed so long

as:

(a) it identifies a person who, under this Regulation, is authorised to sign the application, and

(b) it indicates that person's approval of the making of the application and (where appropriate) that person's belief in the truth of the information contained in the application.

9 Particulars of application

(1) For the purposes of section 24 (2) of the Act, an application made to the Tribunal must contain the following particulars:

(a) the name and address of the applicant,

(b) the name and last known address of each other party,

(c) a description of the order or orders sought by the applicant,

(d) a concise statement containing particulars sufficient to enable each other party to know the nature of the claim or dispute,

(e) if an amount of money is claimed or in dispute, the amount claimed or disputed,

(f) if the application relates to a claim or dispute arising from the occupation of any premises—the address of those premises,

(g) if the applicant is a corporation—the applicant's ACN.

(2) The Registrar may, if the applicant requests, delete an applicant's address from the application before forwarding it to other parties to the proceedings.

10 Application fees

(1) In accordance with section 86 (2) (n) of the Act, the following fees are, subject to this Regulation, payable in respect of an application to have a matter dealt with by the Tribunal in the Division as specified:

(a) $27 in the case of a matter in the Residential Parks Division, Retirement Villages Division or Tenancy Division,

(b) $56 in the case of a matter in the Strata and Community Schemes Division,

(c) in the case of a matter in the General Division, Home Building Division or Motor Vehicles Division, or in the Commercial Division (unless it is a matter referred to in paragraph (d)):

(i) $27 if the amount claimed or in dispute is not more than $10,000 or if no amount is claimed or in dispute, or

(ii) $56 if the amount claimed or in dispute is more than $10,000 but is not more than $25,000, or

(iii) $150 if the amount claimed or in dispute is more than $25,000,

(d) in the case of a matter in the Commercial Division:

(i) $500 for an application under section 86 or 86A of the *Credit Act 1984*, or

(ii) $62 for an application under the *Consumer Credit (NSW) Code* (except as provided by subparagraph (iii)), or

(iii) $500 for an application under section 101 of the *Consumer Credit (NSW) Code* if the application is made by a credit provider.

(2) The application fee payable by a person who is an eligible pensioner or an eligible student is $5.

(3) No fee is payable in respect of the following:

(a) an application under section 74, 115 or 116 of the *Credit Act 1984*,

(b) an application under section 68 or 88 of the *Consumer Credit (NSW) Code*,

(c) an application under section 5 or 6 of the *Credit (Home Finance Contracts) Act 1984*,

(d) an application by the Director-General of the Department of Fair Trading.

(4) In this clause:

eligible pensioner means any of the following persons:

(a) a person who receives a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth, or a service pension under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government,

(b) a person who receives a pension from the Commonwealth Department of Veterans' Affairs as:

(i) the widow or widower of a member of the Australian Defence or Peacekeeping Forces, or

(ii) the unmarried mother of a deceased unmarried member of either of those Forces, or

(iii) the widowed mother of a deceased unmarried member of either of those Forces,

and who does not have income and assets that would prevent the person from being granted a pensioner concession card if the person were eligible for such a card,

(c) a person who receives a special rate of pension under section 24 of the *Veterans' Entitlements Act 1986* of the Commonwealth,

(d) a person who holds a Senior's Card (being a card of that name issued by the New South Wales Government).

eligible student means a person who is receiving full-time education at a school, college or university and is a recipient of a student assistance allowance from a Commonwealth government authority in respect of that education.

11 Waiver etc of application fees

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

(a) may direct that an application fee required to be paid under 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, subject to any conditions the Tribunal or Registrar thinks fit to impose, postpone the time for payment of the whole or a part of any such application fee.

12 Application fees also apply in relation to rehearings and notice to renew proceedings

The provisions of clauses 10 and 11 apply, with any necessary modifications, to and in respect of the following:

(a) the lodging of a notice under section 43 (2) of the Act to renew proceedings,

(b) an application under section 68 of the Act for a rehearing.

Part 4 Representation of parties

13 Application for representation

(1) An application under section 36 (2) of the Act by a party to the Tribunal for permission to be represented in any proceedings may be made:

(a) in writing addressed to the Registrar and lodged before the date set down for hearing of the proceedings, or

(b) by oral submission at the commencement of the hearing.

(2) An application for representation that is made in writing must:

(a) identify the proceedings with respect to which it is made, and

(b) specify the reason why the applicant wishes to be represented, and

(c) specify whether representation by a legal practitioner is proposed, and

(d) if representation by a legal practitioner is not proposed, specify the name and occupation of the proposed representative, and

(e) specifically authorise the representative to make decisions in the absence of the applicant in the proceedings concerned that are binding on the applicant.

(3) If an application for representation is made in writing, the applicant may include submissions in relation to the competence of the proposed representative or any matter the applicant desires to address in support of the application.

(4) An application for permission to be represented cannot be determined by the Tribunal unless each other party to the proceedings has been given an opportunity to make oral or written submissions in relation to the application.

(5) In making an order permitting a party to be represented in any proceedings, the Tribunal may impose such conditions in relation to the representation as the Tribunal thinks fit.

14 Circumstances in which application for representation may be made

An application under section 36 (2) of the Act by a party for permission to be represented in any proceedings may be made in any one or more of the following circumstances only:

(a) if the proceedings are to be heard in the Home Building Division and involve a claim or dispute for an amount exceeding $25,000,

(b) if the party is a body corporate and the body corporate is to be represented by one of its officers,

(c) if the party is an owners corporation constituted under the *Strata Schemes Management Act 1996* and the corporation is to be represented by the owner or, if there is more than one owner, by one of the owners constituting the corporation, or by the strata managing agent,

(d) if the party is a community association constituted under the *Community Land Development Act 1989* and the association is to be represented by the proprietor of each development lot in the relevant community plan or, if there is more than one proprietor, by one of the proprietors who is a member of the association, or by the managing agent,

(e) if the party is a body registered under the *Co-operatives Act 1992* and the body is to be represented by one of its officers,

(f) if the party is a firm and the firm is to be represented by one of its partners,

(g) if the party is an incorporated association registered under the *Associations Incorporation Act 1984* and the association is to be represented by one of its officers,

(h) if the party is an unincorporated body of persons and the body is to be represented by:

(i) a secretary or treasurer of the body, or

(ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body,

(i) if the party has a trustee for the management of his or her estate and the person is to be represented by the trustee,

(j) if the party is a government agency and is to be represented by an officer of that or any other government agency,

(k) if the party is a landlord of property involved in the proceedings and is to be represented by the managing agent of the property,

(l) if the party is the owner of a residential park involved in the proceedings and is to be represented by the park manager,

(m) if the party is the operator of a retirement village involved in the proceedings and is to be represented by an employee or agent (other than a legal practitioner) of the operator,

(n) if the party is a resident of a retirement village who is to be represented by:

(i) a nominated resident of the retirement village in accordance with section 122 of the *Retirement Villages Act 1999*, or

(ii) the Residents Committee of the retirement village in accordance with clause 25 of the *Retirement Villages Regulation 2000*,

(o) if another party in the proceedings is, or is to be represented by a person who is, entitled by law to practise as a legal practitioner, either in New South Wales or elsewhere,

(p) if another party in the proceedings is a government agency,

(q) if the Tribunal is of the opinion that the party would be placed at a disadvantage if not represented at the hearing,

(r) if the Tribunal is of the opinion that representation should be permitted as a matter of necessity due to the likelihood that complex issues of law or fact will arise in the proceedings.

15 Representative to be competent

(1) In dealing with an application for the representation of a party in any proceedings, the Tribunal must not approve the application unless it is satisfied that the representative:

(a) has sufficient knowledge of the issues in dispute to enable the representative to represent the applicant effectively at the hearing by the Tribunal of the matter concerned, and

(b) is vested with sufficient authority to bind the applicant.

(2) In determining a written application for representation, the Tribunal is entitled to rely on information supplied by the applicant in support of the application.

16 Representation of unincorporated body

(1) If an application to have a matter dealt with by the Tribunal is made on behalf of an unincorporated body by an officer of that body who is authorised to do so, each of the members of the body is taken to have agreed to be represented at the hearing of the matter by that officer or by such other person as may be permitted to represent the body at that hearing.

(2) This clause does not apply in respect of an application to have a matter dealt with by the Tribunal that has been made by the Residents Committee of a retirement village.

Note—

Clause 25 of the *Retirement Villages Regulation 2000* makes provision for the manner in which applications are made to the Tribunal by a Residents Committee.

17 Representation by managing agents

(1) A managing agent who represents a landlord in proceedings is entitled to demand and receive such fee or reward for so doing as may be agreed with the landlord concerned.

(2) A strata managing agent who represents an owners corporation constituted under the *Strata Schemes Management Act 1996* in proceedings is entitled to demand and receive such fee or reward for so doing as may be agreed with the owners corporation concerned.

18 Costs of representation may be disclosed

If a party in any proceedings is represented by a legal practitioner, the Tribunal may, as a condition of the order permitting the party to be represented, require the legal practitioner to disclose the estimated cost of representation by the practitioner.

Part 5 Costs

19 Costs of assessors

(1) In accordance with section 18 of the Act, the Tribunal may, in any proceedings in which a party has requested the use of an assessor, make an order as to the extent to which the costs of the assessor are to be paid by any one or more of the parties.

(2) If the Tribunal makes any such order as to the payment of costs, the parties are to pay the costs in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal.

(3) The Tribunal may, in any proceedings in the Home Building Division in respect of which:

(a) the amount claimed or in dispute is more than $25,000, and

(b) each party is represented by a legal practitioner,

order that the costs of an assessor who has assisted the Tribunal (whether or not at the request of a party) are payable by any one or more of the parties.

20 Costs generally

(1) This clause applies to the awarding of costs by the Tribunal as provided by section 53 of the Act.

(2) The Tribunal may award costs in relation to proceedings in respect of which the amount claimed or in dispute is not more than $10,000, or in respect of which no amount is claimed or in dispute, only if the Tribunal is satisfied that there are exceptional circumstances that warrant the awarding of costs.

(3) In any proceedings in respect of which the amount claimed or in dispute is more than $10,000 but not more than $25,000, the Tribunal may award costs in relation to the proceedings only if:

(a) the Tribunal is satisfied that there are exceptional circumstances that warrant the awarding of costs, or

(b) the Tribunal has made an order under section 30 (2) of the Act in relation to the proceedings.

(4) In any proceedings in respect of which the amount claimed or in dispute is more than $25,000, the Tribunal may award costs in relation to the proceedings in such circumstances as it thinks fit.

(5) Despite any other provision of this clause, the Tribunal may order:

(a) that the costs of proceedings on an application for rehearing of a matter are, if the

applicant fails to attend the hearing of the application, to be paid wholly or in part by the applicant, or

(b) that the costs of any proceedings that the Tribunal considers to be frivolous, vexatious, misconceived or lacking in substance, or as otherwise not to be heard or proceeded with, be paid wholly or in part by the person who instituted the proceedings.

(6) The amount of any costs under subclause (5) is to be substantiated in accordance with directions given by the Chairperson or, in the absence of such directions, in such manner as the Tribunal thinks fit.

21 Costs of mediation and neutral evaluation

(1) In accordance with section 60 of the Act, the parties to proceedings who, for the purposes of a mediation or neutral evaluation under Division 2 of Part 5 of the Act, elect to employ their own mediator or neutral evaluator rather than rely on one arranged by the Tribunal, are to pay the costs of the mediation or neutral evaluation.

(2) The parties are to pay the costs in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal.

Part 6 Rehearings by Tribunal

22 Application for rehearing

(1) For the purposes of section 68 (1) of the Act:

(a) an application to the Chairperson to have completed proceedings reheard by the Tribunal is to be:

(i) in writing and in the form approved by the Chairperson, and

(ii) lodged with the Chairperson, and

(b) the prescribed time within which the application may be made is, subject to subclause (2), 14 days after the date of notification of the Tribunal’s order in respect of the completed proceedings.

(2) If, in accordance with section 49 (2) of the Act, a statement of reasons for the Tribunal’s decision is requested, the prescribed time under subclause (1) is extended to 14 days after receipt of the statement.

(3) If the applicant for a rehearing alleges that a rehearing is justified because he or she did not receive notice of the hearing or notice of termination of a tenancy, the Registrar or other officer accepting lodgment of the application may require that allegation to be verified by oath or affirmation of the applicant before accepting the application.

23 Opportunity for other party to respond to application for rehearing

For the purposes of section 68 (5) (a) (ii) of the Act, the prescribed time within which a party is to be given an opportunity to respond to an application for a rehearing is 7 days after the party has been notified and given a copy of the application.

24 Excluded applications for rehearings

(1) For the purposes of section 68 (14) of the Act, an application for a rehearing cannot be made under that section unless:

(a) the amount claimed or in dispute is $500 or more but is not more than $25,000, or

(b) no amount of money is claimed or in dispute.

(2) However, the requirement under subclause (1) (a) that the amount claimed or in dispute must be at least $500 does not apply in respect of the rehearing of any proceedings in the Residential Parks Division, Retirement Villages Division or Tenancy Division.

Note—

In any of the Divisions referred to in subclause (2), an application for a rehearing may be made if the amount claimed or in dispute is less than $500.

(3) For the purposes of section 68 (14) of the Act, an application for a rehearing cannot be made under that section in relation to proceedings in the Residential Parks Division, Retirement Villages Division or Tenancy Division in respect of which an order for the termination of a tenancy or residency has been made if a warrant of possession has been executed in relation to that order.

Part 7 Procedure generally

25 Proceedings against 2 or more persons having joint liability

For the purposes of section 26 (1) of the Act, the classes of proceedings that are prescribed are those in the Residential Parks Division, Retirement Villages Division, Strata and Community Schemes Division or Tenancy Division in respect of which 2 or more persons have joint liability.

26 Dispensing with hearing

For the purposes of section 34 (2) of the Act, applications under section 86A of the *Credit Act 1984* are prescribed as a class of matters that may be determined under section 34 of the Act without the consent of the parties.

27 Lapsing of proceedings

If an application to initiate proceedings in the Tribunal is made but is not served on the other party or is not otherwise acted on by the applicant during the period of 12 months

after the application is made, the application lapses and is taken to have been withdrawn by the applicant.

28 Joinder of parties

(1) If the Tribunal is of the opinion that a person has a sufficient interest in the dispute to which an application to the Tribunal relates but the person has not been served with notice of the application, the Tribunal may make an order directing that the person be joined either as an applicant or as a respondent, as appears to the Tribunal to be appropriate, and notice of the proceedings is to be served accordingly.

(2) The powers of the Tribunal under this clause may, in accordance with any relevant directions of the Chairperson, be exercised by the Registrar.

29 Ex parte proceedings

(1) The Tribunal may proceed to hear a matter in the absence of a party who has failed to attend the hearing:

(a) if it is satisfied that notice of the hearing was duly served on the party, or

(b) if:

(i) being satisfied that service of notice of the hearing has been duly attempted, or

(ii) having given directions under clause 46 (6),

the Tribunal considers that justice requires that the matter be dealt with in the absence of the party concerned.

(2) If a matter is adjourned by the Tribunal in the absence of a party, the Registrar is to give notice of the time and place of the adjourned hearing to the absent party. If the party who is so notified fails to attend the hearing, the matter may be dealt with in the absence of the party.

30 Issue of summons

(1) A summons issued under section 40 of the Act must be served not later than 5 working days before the day the person is required to attend in accordance with the summons, except as the Tribunal by order otherwise directs.

(2) A summons may be signed by any member of the Tribunal, or by the Registrar, a Deputy Registrar or a person authorised in writing by the Registrar to do so.

(3) It is sufficient compliance with a summons for the production only of a document or other thing if the document or thing is produced to the Registrar at an address specified for the purpose in the summons at any time before the proceedings at which the document or thing is required to be produced.

(4) A summons is to be issued in Form 1 of Schedule 2.

(5) For the purposes of section 40 (2) of the Act, the fee of $31 is prescribed.

31 Allowances and expenses of witnesses

(1) A person summoned by the Tribunal to appear and give evidence before the Tribunal is entitled to allowances and expenses on the same scale as a witness attending and giving evidence in criminal proceedings before the District Court.

(2) A summons issued at the request of a party has no effect unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons, tender is made of an amount in respect of the reasonable expenses of complying with the requirements of the summons.

32 Warrants

(1) A warrant under section 41 of the Act is to be issued in Form 2 of Schedule 2.

(2) If any such warrant is issued, it must be executed within 28 days of its issue.

33 Notice to renew proceedings if order of Tribunal not complied with

For the purposes of section 43 (6) of the Act, a notice under that section is to be in Form 3 of Schedule 2.

34 Compliance with order of Tribunal

Any order of the Tribunal in its General Division, Commercial Division, Home Building Division or Motor Vehicles Division is prescribed for the purposes of section 52 (2) (c) of the Act if the order relates to goods or services of a value not exceeding $1,000.

35 Notice of decisions and reasons

(1) For the purposes of section 49 (1) of the Act, the prescribed time within which notice of the Tribunal’s decision must be given to the parties is 7 days after the Tribunal makes the decision.

(2) For the purposes of section 49 (2) of the Act, a request by a party for the Tribunal to provide a statement of reasons for its decision is to be in writing to the Registrar and may only be made after the conclusion of the proceedings concerned.

Part 8 Access to records of Tribunal

36 Definition

In this Part:

record of proceedings means the following body of records in relation to any particular application to the Tribunal:

(a) the application as lodged by the applicant and any document lodged in reply by the respondent,

(b) a transcript or sound or audio-visual recording of proceedings,

(c) any assessor's report,

(d) any notation of the nature of the issues in dispute as found and recorded by the Tribunal in the course of the hearing of the application,

(e) any ruling given by the Tribunal with respect to its jurisdiction to hear and determine the application,

(f) any order made by the Tribunal in respect of the application,

(g) any written reasons given in respect of the determination of the application,

(h) such other records as may be determined by the Chairperson.

37 Records

The Registrar is to have the care, custody and control of the following records of the Tribunal:

(a) records of proceedings,

(b) minutes of orders and directions of the Tribunal,

(c) reports or copies of reports furnished to the Tribunal,

(d) documents or copies of documents produced to the Tribunal in any proceedings, while retained by the Tribunal,

(e) exhibits, while retained by the Tribunal,

(f) correspondence received and sent by the Tribunal,

(g) diaries and other records relating to the listing and hearing of proceedings in the Tribunal.

38 Right of access

(1) Any person may apply in writing to the Registrar for access to records of proceedings in the Tribunal.

(2) The Registrar must grant access, free of charge, to records of proceedings to any person who is a party to the proceedings. However, clause 39 applies to any such person who wants a copy of a record of proceedings.

(3) On payment of a fee approved by the Minister, the Registrar may grant access to a

record of proceedings to any other person who, in the opinion of the Registrar, has a sufficient reason for being given access to the record.

(4) Nothing in this clause permits access to or the provision of a copy of:

(a) any note or other record made by or on behalf of a member of the Tribunal for the member's own use and which the member did not cause to be filed as part of the record of proceedings, or

(b) any document kept by the Registrar, if:

(i) the Tribunal has ordered that the document not be disclosed without the consent of the Tribunal, or

(ii) the disclosure of the document to the party is otherwise prohibited by or under the Act or another law.

39 Copies of record of proceedings and other documents

(1) The fee payable by a person for a copy of a record of proceedings or other document or any part of that record or document is:

(a) $2 per page or $21 (whichever is greater) in the case of a written record or document, or

(b) $21 per tape in the case of a sound or audio-visual recording.

(2) A person who is or was a party to any proceedings is, however, entitled to a single free copy of any order made by the Tribunal in respect of the proceedings and of any written reasons given by the Tribunal in relation to that order.

(3) Payment of any fee payable under this clause may be waived (either in whole or in part) by the Registrar if the Registrar is satisfied:

(a) that the person required to pay it would suffer hardship if required to pay the fee, or

(b) that, for any other reason, it would be unfair or unreasonable for the person to have to pay the fee.

Part 9 Miscellaneous

40 Chairperson may vary or dispense with requirements

(1) The Chairperson may, of his or her own motion or on application (whether made before or after the expiry of the time limit concerned) by any person, shorten or extend the period of time within which anything would otherwise be required under this Regulation to be done.

(2) The Chairperson may dispense with compliance with any requirement of this Regulation, either before or after the occasion for compliance arises.

41 Functions of Chairperson that cannot be delegated

In accordance with section 12 (5) of the Act, the functions of the Chairperson under any of the following provisions cannot be delegated:

(a) section 12 (2) (c) and (d) of the Act,

(b) clauses 1 (2) (a) and (5) and 2 (3) (a) of Schedule 3 to the Act.

42 Persons or bodies from which matters cannot be transferred to Tribunal

For the purposes of section 22 (2) (b) of the Act, the following persons and bodies are prescribed:

(a) the Fair Trading Administration Corporation,

(b) the Ombudsman,

(c) any person exercising the functions of an ombudsman under any law of the Commonwealth,

(d) any person authorised, under a law of the State or of the Commonwealth or of another State or Territory, to make decisions or orders, or give directions, that are binding only on one party to a dispute.

43 Transfer of proceedings

(1) Notice in writing of the transfer to the Tribunal, under section 23 (2) of the Act, of proceedings instituted in a court is to be given to the Registrar by the court concerned, accompanied by all documents relating to the proceedings.

(2) On receipt of such a notice of transfer and accompanying documents, the Registrar must serve on all of the parties a notice fixing a date and time for the holding of the hearing or a directions hearing in relation to the proceedings.

44 Objection to participation of member following preliminary conference

An objection under section 55 (3) (b) of the Act may be made in writing addressed to the Registrar and lodged with the Tribunal within 14 days after the matter concerned is listed for hearing or, if the matter is listed for hearing within the 14-day period, may be made by oral submission at the commencement of the hearing of the matter concerned.

45 Interest on judgment debt

(1) Interest is payable on the outstanding balance for the time being of money adjudged by the Tribunal to be payable and which, being due, remains unpaid.

(2) Such interest is payable at a rate equal to the rate for the time being prescribed for the purposes of section 39 of the *Local Courts (Civil Claims) Act 1970*.

46 Service of documents

(1) An application for the purposes of any proceedings must be served on each of the other parties within a reasonable time before the return date endorsed on the application by the Registrar or in accordance with directions under subclause (6).

(2) Service of a summons is to be effected:

(a) personally, or

(b) in the case of a company:

(i) by ordinary post addressed to the company's registered office, or

(ii) by leaving a copy with a person who is apparently of or above the age of 16 years at the company's registered office.

(3) Service of any other document may be effected in any manner provided by section 78 of the Act or in any of the following ways:

(a) if the person has an address for service on record with the Registry:

(i) by pre-paid ordinary post addressed to the person's address for service, or

(ii) if the person's address for service is a box in a document exchange, in New South Wales, of Australian Document Exchange Pty Limited, by leaving a copy in that exchange box or in another exchange box for transmission to that exchange box,

(b) in such other manner as may be directed by the Chairperson, Deputy Chairperson or Registrar in a particular case.

(4) Service by post is taken to have been effected on a person at the end of the fourth working day after the date on which the document was posted to the person.

(5) Service by document exchange is taken to have been effected on a person at the end of the second working day after the date on which the document was left in the person's exchange box or, if the document is left at some other exchange box for transmission to the person's exchange box, in that other exchange box.

(6) The Chairperson, a Deputy Chairperson or the Registrar may, without hearing from the other parties, do any one or more of the following:

(a) direct a party to serve an application or any other document on a person who is not a party,

(b) direct substituted service to be effected in such manner as the Chairperson,

Deputy Chairperson or Registrar considers appropriate,

(c) reduce (subject to any relevant Act or law) the time within which service must be effected.

(7) This clause has effect subject to the provisions of any Act or law or of any directions of the Chairperson under section 24 (3) of the Act.

47 Transitional provision—appeals concerning BSC insurance provisions

(1) The Tribunal has the same jurisdiction that the Fair Trading Tribunal had conferred on it under clause 4A of Schedule 5 to the *Fair Trading Tribunal Act 1998* in respect of decisions made in relation to claims under BSC insurance within the meaning of clause 37 of Schedule 4 to the *Home Building Act 1989*.

(2) Subclause (1) is subject to clauses 6 and 7 of Schedule 6 to the Act.

48 Transitional provision—hearing of pending proceedings by Tribunal members

Proceedings of a kind referred to in clause 6 of Schedule 6 to the Act may continue to be heard and determined in accordance with that clause by any member of the Tribunal regardless of whether that member was a member of the former Tribunal in which those proceedings were instituted.

Schedule 1 Oaths or affirmations of office

(Clause 4)

Oath

I, ..., swear that I will faithfully and impartially discharge the duties of the office of Chairperson/Deputy Chairperson (Determinations)/senior member *(delete whichever is inapplicable)* of the Consumer, Trader and Tenancy Tribunal of New South Wales.

Affirmation

I, ..., solemnly, sincerely and truly affirm and declare that I will faithfully and impartially discharge the duties of the office of Chairperson/Deputy Chairperson (Determinations)/senior member *(delete whichever is inapplicable)* of the Consumer, Trader and Tenancy Tribunal of New South Wales.

Schedule 2 Forms

(Clauses 30, 32 and 33)

Form 1 Summons

(Consumer, Trader and Tenancy Tribunal Act 2001, section 40)

IN THE CONSUMER, TRADER AND TENANCY TRIBUNAL AT: .....

IN THE MATTER OF: .....

SUMMONS

To: .....
of .....

YOU ARE REQUIRED TO ATTEND, and until you are excused from further attending, for the purpose of:

- giving evidence before the Tribunal (1)
- producing the following: (2) .....
  at the time, date and place specified below.

IF YOU FAIL TO ATTEND a warrant may be issued for your apprehension.

Time, date and place of attendance:
.....
.....

(Signature) Date

NOTES:

(1) Delete if inapplicable.

(2) Delete if inapplicable. If applicable, specify the documents or things to be produced.

It is sufficient compliance with a summons for the production only of a document or other thing if the document or thing is produced to the Registrar at the address specified above before the time specified.

Form 2 Warrant for apprehension of summons defaulter

(Consumer, Trader and Tenancy Tribunal Act 2001, section 41)

To: .....

On ..... a summons directed to ..... was issued by the Consumer, Trader and Tenancy Tribunal sitting at ..... The summons was duly served on him/her by ..... on ..... but he/she failed to comply with it.

You are by this warrant authorised and directed to apprehend ..... and to bring him/her before the Consumer, Trader and Tenancy Tribunal at ..... For that purpose you may detain him/her in custody until such time as the Chairperson or Deputy Chairperson of the Tribunal, or the Supreme Court, orders his/her release.

This warrant must be executed within 28 days of its issue.

.....

Chairperson/Deputy Chairperson of the Tribunal. Date

Form 3 Non-compliance with Tribunal order—notice to renew proceedings

(Consumer, Trader and Tenancy Tribunal Act 2001, section 43 (6))

1 Your name .....

2 Your present address .....
.....

3 Your address when original application was made *(if different from above)*.....

.....

4 What order have you already obtained? .....

5 Who was the order made against? .....

6 Date on which the order was made ../../..

7 Tribunal's reference number .....

8 In what way has the order not been complied with?

.....
.....

9 What order do you want? *(Tick where appropriate)*

☐ An order for the payment of $.....

☐ An order to rectify faulty goods or provide services

☐ An order to provide specified services

☐ An order that I do not have to pay $.....

☐ An order to deliver goods

☐ An order to replace goods or services

☐ An order to return goods to me

☐ Other (please specify)

10 It is requested that the application be relisted.

Signature .....Date ../../..