

# Consumer, Trader and Tenancy Tribunal Act 2001 No 82

[2001-82]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Consumer, Trader and Tenancy Tribunal Amendment Act 2008 No 51](#), Sch 1 [18] and [19] (not commenced)  
[Residential Tenancies Act 2010 No 42](#) (not commenced — to commence on 31.1.2011)

### Authorisation

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# Consumer, Trader and Tenancy Tribunal Act 2001 No 82



New South Wales

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# Consumer, Trader and Tenancy Tribunal Act 2001 No 82



New South Wales

An Act to establish the Consumer, Trader and Tenancy Tribunal to adjudicate certain consumer and commercial disputes and disputes between landlords and tenants; to repeal the *Fair Trading Tribunal Act 1998* and the *Residential Tribunal Act 1998* and to amend certain other Acts consequentially; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Consumer, Trader and Tenancy Tribunal Act 2001*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Clause 4 of Schedule 6, and section 89 in its application to that clause, commence on the date of assent.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to establish a Consumer, Trader and Tenancy Tribunal to determine disputes in relation to matters over which it has jurisdiction,
- (b) to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair,
- (c) to enable proceedings to be determined in an informal, expeditious and inexpensive manner,
- (d) to ensure the quality and consistency of the Tribunal's decision-making.

### 4 Definitions

- (1) In this Act:

**assessor** means an assessor appointed under this Act.

**Chairperson** means the Chairperson of the Tribunal.

**Commissioner for Fair Trading** means the Commissioner for Fair Trading, Department of Commerce or if there is no such position in the Department—the Director-General.

**Deputy Chairperson (Registry and Administration)** means the member referred to in section 6 (1) (b).

**Deputy Chairperson (Determinations)** means the member referred to in section 6 (1) (c).

**Director-General** means the Director-General of the Department of Commerce.

**Division** of the Tribunal means a Division of the Tribunal specified in Schedule 1.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**member** means member of the Tribunal.

**procedural directions** means directions relating to the practice and procedures to be followed in, and to the actual conduct of, proceedings.

**proceedings** means proceedings in or before the Tribunal, and includes any alternative dispute resolution procedures under Part 5.

**Registrar** means the Registrar of the Tribunal.

**Tribunal** means the Consumer, Trader and Tenancy Tribunal of New South Wales established by this Act.

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

## **Part 2 Establishment of Tribunal**

### **Division 1 Establishment and membership**

#### **5 Establishment of Consumer, Trader and Tenancy Tribunal**

(1) A Consumer, Trader and Tenancy Tribunal of New South Wales is established by this Act.

(2) The Tribunal has and may exercise such functions as are conferred or imposed on it by or under any Act.

**Note—**



The following Acts confer jurisdiction on the Tribunal:

*Community Land Management Act 1989*

*Consumer Claims Act 1998*

*Fair Trading Act 1987*

*Holiday Parks (Long-term Casual Occupation) Act 2002*

*Home Building Act 1989*

*Motor Dealers Act 1974*

*Motor Vehicle Repairs Act 1980*

*Residential Parks Act 1998*

*Residential Tenancies Act 1987*

*Retirement Villages Act 1999*

*Strata Schemes Management Act 1996*

*Travel Agents Act 1986*

The Tribunal also has jurisdiction, on a transitional basis, in relation to the maximum annual percentage rate for credit contracts and certain other matters under the **former consumer credit legislation** within the meaning of Schedule 3 to the *Credit (Commonwealth Powers) Act 2010*.

## **6 Membership of Tribunal**

- (1) The Tribunal consists of the following members:
  - (a) the Chairperson,
  - (b) the Deputy Chairperson (Registry and Administration),
  - (c) the Deputy Chairperson (Determinations),
  - (d) senior members,
  - (e) other members.
- (2) Schedule 2 has effect with respect to the members.

## **7 Appointment of members**

- (1) The members are to be appointed by the Governor under this section.
- (2) A member appointed under this section may be appointed on a full-time basis or a part-time basis.
- (3) This section does not apply to the Deputy Chairperson (Registry and Administration).

## **8 Qualifications of members**

- (1) A person is not eligible to be appointed as the Chairperson or the Deputy Chairperson (Determinations) unless the person is an Australian lawyer.
- (2) A person is eligible to be appointed as a member (including the Chairperson) under section 7 if the person has such qualifications or skills as may be determined by the Minister.
- (3) In determining any such qualifications or skills, the Minister is to have regard to the following:
  - (a) whether the person has the ability to exercise sound and fair judgment and to make objective and independent decisions based on the merits of the case,
  - (b) whether the person has the ability to command the respect of the parties in proceedings,
  - (c) whether the person has relevant expertise in one or more of the areas of the jurisdiction of the Tribunal,
  - (d) whether the person has ability or experience in alternative dispute resolution procedures.

## **9 Performance management and review**

Schedule 3 has effect.

## **Division 2 Organisation and functions**

### **10 Divisions and sittings of Tribunal**

- (1) The Tribunal comprises the Divisions specified in clause 1 of Schedule 1 and is to exercise its functions in accordance with that Schedule.
- (2) The regulations may amend clause 1 of Schedule 1.
- (3) More than one sitting of the Tribunal, or of any Division, may be held at the same time.

### **11 Constitution of Tribunal for particular proceedings**

- (1) For the purposes of any proceedings, the Tribunal may be constituted by 1, 2 or 3 of its members.
- (2) The Chairperson may give directions as to which member or members are to constitute the Tribunal for the purposes of any particular proceedings or class of proceedings.
- (3) In giving a direction as to the member or members who are to constitute the Tribunal

for the purposes of any particular proceedings, the Chairperson is to have due regard to the degree of public importance or complexity of the matters to which the proceedings relate.

- (4) A direction under this section in respect of particular proceedings may be revoked, and another given in its place:
  - (a) at any time after the giving of the direction and before the commencement of the hearing of the proceedings, or
  - (b) if the member constituting the Tribunal (or, in the case of proceedings where it is constituted by 2 or more members, one of those members) during the hearing of the proceedings, or after the completion of the hearing but before the matter to which the proceedings relate is determined:
    - (i) ceases to be a member, or
    - (ii) ceases to be available for the purposes of the proceedings,at any time after the member ceases to be a member or to be available.
- (5) The Tribunal, if reconstituted in accordance with subsection (4) (b), may, for the purposes of the proceedings, have regard to any record of the proceedings of the Tribunal as previously constituted, including a record of any evidence taken in the proceedings.

## **12 Functions of Chairperson**

- (1) The Chairperson is responsible for the following:
  - (a) the effective and efficient operation of the Tribunal generally,
  - (b) the effective and efficient management of the Tribunal's work.
- (2) In particular, the Chairperson has the following functions:
  - (a) to direct and monitor the procedural operations of the Tribunal to ensure that those operations are fair, economical, informal and as speedy as practicable,
  - (b) to allocate the work of the Tribunal among the members,
  - (c) to give procedural directions to the members,
  - (c1) to give procedural directions with respect to a particular class or particular classes of proceedings,
  - (d) to review those directions on a regular basis.
- (3) The procedural directions given by the Chairperson must:

- (a) be made publicly available, and
  - (b) be consistent with this Act and the regulations.
- (4) The Chairperson may also give directions in relation to the following:
- (a) the practice and procedure to be followed in alternative dispute resolution procedures under this Act,
  - (b) the places at which the Tribunal may sit,
  - (c) any matter in respect of which the Chairperson is authorised by this or any other Act or the regulations to give directions,
  - (d) subject to this or any other Act and the regulations—any matter necessary or convenient to be determined by direction of the Chairperson for carrying out or giving effect to this Act.
- (5) Subject to the regulations, the functions of the Chairperson (other than a power of delegation under this section) may be delegated to any member or to the Registrar or another member of the staff of the Tribunal.

**Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

### **13 Deputy Chairperson (Registry and Administration)**

- (1) The Deputy Chairperson (Registry and Administration) of the Tribunal is to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Deputy Chairperson (Registry and Administration) is responsible to the Commissioner for Fair Trading for the effective, efficient and equitable management of the staff and resources of the Tribunal.
- (3) The Deputy Chairperson (Registry and Administration) is not a sitting member and does not have the function of hearing or determining matters that are the subject of any proceedings.
- (4) The Deputy Chairperson (Registry and Administration) has and may exercise the functions of the Registrar.

### **14 Functions of other Tribunal members**

- (1) A member has and may exercise the functions conferred or imposed on the member by or under this or any other Act.
- (2) Each member must comply with any procedural directions given by the Chairperson.

## **Division 3 Assessors**

### **15 Appointment of assessors**

- (1) The Chairperson may appoint any person whose name is on the list compiled under Schedule 4 as an assessor for the purpose of particular proceedings.
- (2) An assessor has the functions conferred or imposed on an assessor by or under any Act.
- (3) Schedule 4 applies to and in respect of an assessor appointed under this section.

### **16 Inquiries by assessors**

- (1) If proceedings are pending, the Tribunal or the Chairperson may, with the consent of the parties to whom the proceedings relate, direct that an inquiry into any issue raised in, or other matter connected with, the proceedings be made by a single assessor.
- (2) The assessor making such an inquiry is to make a report to the Tribunal.
- (3) If a report is made to the Tribunal under this section, the Registrar is to furnish a copy of the report to each of the parties concerned as soon as is practicable.
- (4) The Tribunal may adopt any findings or observations set out in a report under this section.
- (5) An assessor, in making an inquiry under this section, has and may exercise such functions as the regulations may prescribe.
- (6) An assessor who has made an inquiry under this section in relation to any proceedings is disqualified from further participation in those proceedings unless the parties otherwise agree.

### **17 Assessors sitting with Tribunal**

- (1) The Tribunal may, in determining any proceedings or part of any proceedings, be assisted by one or more assessors.
- (2) An assessor assisting the Tribunal under this section may assist and advise the Tribunal, but is not to adjudicate on any matter that is the subject of the proceedings.
- (3) The Tribunal may dispense with the services of an assessor at any stage of the proceedings concerned.

### **18 Costs of assessors**

- (1) Any costs payable to an assessor who has assisted the Tribunal in proceedings are payable by the Tribunal, except to the extent that regulations provide that the parties in the proceedings are to pay such costs.

- (2) The regulations made for the purposes of this section may provide that the parties are to pay such costs:
  - (a) in the proportions that they may agree among themselves or, failing agreement, in the manner ordered by the Tribunal, or
  - (b) in any other manner prescribed by the regulations.

## **Division 4 Registrar and staff**

### **19 Registrar and staff**

- (1) A Registrar of the Tribunal, and such Deputy Registrars and other staff as may be necessary for the purposes of this Act, may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Chairperson may enter into arrangements with any government agency or other body or person (whether in the public or private sector) for the provision of assistance to the Tribunal in connection with the exercise of its functions.

### **20 Functions of Registrar and Deputy Registrars**

- (1) The Registrar has the following functions:
  - (a) to assist in managing the business and the affairs of the Tribunal,
  - (a1) any function of a member or the Tribunal under this Act that is prescribed by the regulations and that the Chairperson authorises the Registrar to exercise,
  - (b) such administrative or other functions as may be conferred or imposed on the Registrar by or under any Act.
- (2) A Deputy Registrar may exercise the functions of the Registrar:
  - (a) as directed by the Registrar or the Chairperson, and
  - (b) during the absence of, or a vacancy in the office of, the Registrar.
- (3) Anything done or omitted to be done by a Deputy Registrar in exercising a function of the Registrar has effect as if it had been done or omitted to be done by the Registrar.

## **Part 3 Jurisdiction of Tribunal**

### **21 General statement of jurisdiction**

- (1) The Tribunal has such jurisdiction to decide matters, and such powers to make orders and otherwise exercise any function in connection with any such decisions, as is conferred on it by this or any other Act.
- (2) Except as provided by this or any other any Act, the Tribunal has jurisdiction in respect

of matters arising before or after the commencement of section 5.

## 22 Other jurisdictions excluded in certain cases

- (1) For the purposes of this section, **court** means any court, tribunal, board or other body or person (other than one referred to in subsection (2)) that:
  - (a) is empowered under any other Act, or
  - (b) by consent of or agreement between 2 or more persons has authority, to decide or resolve any issue that is in dispute, whether through arbitration or conciliation or any other means.
- (2) However, **court** does not, for the purposes of this section, include:
  - (a) a court, tribunal, board or other body or person that, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter, or
  - (b) a court, tribunal, board or other body or person prescribed, or of a class prescribed, by the regulations for the purposes of this section.
- (3) If, at the time when an application was made to the Tribunal in accordance with this Act, no issue arising under the application was the subject of a dispute in proceedings pending before a court, a court has no jurisdiction to hear or determine such an issue.
- (4) Subsection (3) ceases to apply to the extent to which the application concerned is dismissed for want of jurisdiction or withdrawn.
- (5) Subsection (3) does not prevent a court from hearing and determining any proceedings in which it is claimed that any order, determination or ruling of the Tribunal is invalid for want of jurisdiction or from making any order as a consequence of that finding.
- (6) For the purposes of subsection (3), an issue arises under an application made to the Tribunal only if the existence of the issue is shown in the applicant's claim or is recorded in the record made by the Tribunal in accordance with this Act.
- (7) If, at the time when an application is made to the Tribunal in accordance with this Act, an issue arising under the application was the subject of a dispute in proceedings pending before a court, the Tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue.
- (8) Subsection (7) ceases to apply to the extent to which the proceedings concerned are dismissed or quashed by the court, or by another court, for want of jurisdiction or

without deciding the issue on its merits, or withdrawn.

- (9) At a hearing of an application by the Tribunal, a finding or decision made by a court, tribunal, board, body or person referred to in subsection (2) is admissible as evidence of the finding or decision.

### **23 Transfer of proceedings to courts or to other tribunals**

- (1) If the parties in any Tribunal proceedings so agree, or if the Tribunal of its own motion or on the application of a party so directs, the proceedings are:
- (a) to be transferred to a court (in accordance with the rules of that court) that has jurisdiction in the matter, and
  - (b) to continue before that court as if they had been instituted there.
- (2) If the parties in any proceedings that have been instituted in a court so agree, or if the court of its own motion or on the application of a party so directs, the proceedings are, if the proceedings relate to a matter for which the Tribunal has jurisdiction:
- (a) to be transferred to the Tribunal in accordance with the regulations, and
  - (b) to continue before the Tribunal as if the proceedings had been instituted in the Tribunal.

## **Part 4 Procedure of Tribunal**

### **24 Application to Tribunal**

- (1) A person (***the applicant***) may, in accordance with the Act under which the application is made, apply to the Tribunal to have a matter dealt with by the Tribunal.
- (2) Despite the provisions of any other Act, an application to have a matter dealt with by the Tribunal must be made:
- (a) in writing (or in such other form as may be prescribed by the regulations), and
  - (b) in accordance with the regulations.
- (3) The Registrar must cause notice of an application to the Tribunal to be given to each party (other than the applicant) in the proceedings within such time and in such manner as the Chairperson directs.
- (4) It is sufficient compliance with subsection (3) if:
- (a) the Registrar directs a party in the proceedings to serve notice of the application on another party on the Registrar's behalf, and
  - (b) notice is served on the other party in accordance with the Chairperson's directions referred to in subsection (3).



## 25 Notice of proceedings

- (1) If any proceedings are to be determined by a hearing, the Registrar must cause notice of the time and place that is fixed for the hearing to be given to each party in the proceedings.
- (2) If a party who has been notified under subsection (1) fails to attend at the time and place notified, the proceedings may be held in the absence of the party.
- (3) If a person who is a party in any proceedings:
  - (a) is a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*, or
  - (b) has a guardian, or
  - (c) is both a protected person and a person who has a guardian,

the Registrar must cause notice of the time and place that is fixed for the hearing to be given to the NSW Trustee and Guardian, any guardian of the person, and any other person the Registrar considers appropriate and any other person prescribed by the regulations for the purposes of this subsection.

## 26 Parties to proceedings (joint liability)

- (1) This section applies to or in respect of such classes of proceedings as may be prescribed by the regulations.
- (2) If a party in any proceedings to which this section applies has a right to proceed against 2 or more persons having joint liability:
  - (a) it is sufficient if any one of those persons is (or are) served with any notice in respect of the proceedings, and
  - (b) a decision in the proceedings may be given and enforced against the person or persons subject to the liability.
- (3) Section 95 of the *Civil Procedure Act 2005* applies to and in respect of a decision by the Tribunal in any proceedings to which this section applies in the same way as section 95 of that Act applies to and in respect of a judgment given in proceedings before the Supreme Court.
- (4) If at any time the Tribunal is of the opinion that a person should be joined as a party in proceedings to which this section applies, the Tribunal may, by notice in writing given to the person or by oral direction during the proceedings, join the person as a party in the proceedings.

## **27 Presiding member**

- (1) This section applies in relation to proceedings in which the Tribunal is constituted by 2 or 3 members.
- (2) If the Chairperson is one of the members of the Tribunal as constituted for the purposes of the proceedings, the Chairperson is the presiding member.
- (3) If the Tribunal as constituted for the purposes of the proceedings does not include the Chairperson but includes the Deputy Chairperson (Determinations), that Deputy Chairperson is the presiding member.
- (4) If the Tribunal as constituted for the purposes of the proceedings:
  - (a) does not include the Chairperson or the Deputy Chairperson (Determinations), and
  - (b) includes one, and only one, senior member,the senior member is the presiding member.
- (5) In any case where subsections (2)-(4) do not apply, the Chairperson is to designate one of the members who constitute the Tribunal for the purposes of the proceedings as the presiding member.

## **28 Procedure of Tribunal generally**

- (1) The Tribunal may, subject to this Act, determine its own procedure.
- (2) The Tribunal is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of procedural fairness.
- (3) The Tribunal is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (4) The Tribunal is to take such measures as are reasonably practicable to ensure that the parties in any proceedings understand:
  - (a) the nature of the assertions made in the proceedings and the legal implications of those assertions, and
  - (b) the procedure of the Tribunal and any decision or ruling made by the Tribunal that relates to the proceedings.
- (5) The Tribunal:
  - (a) is to act as expeditiously as is practicable, and
  - (b) is to ensure, as far as practicable, that all relevant material is disclosed to the

Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings, and

- (c) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument, and
  - (d) in the case of a hearing—may require the presentation of the respective cases of the parties in proceedings to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases, and
  - (e) may require a document to be served outside the State, and
  - (f) may adjourn proceedings to any time and place (including for the purpose of enabling the parties to negotiate a settlement), and
  - (g) may dismiss any proceedings if the applicant fails to attend a hearing, and
  - (h) must, if requested by the applicant, allow the applicant to withdraw the application, and
  - (i) may dismiss any proceedings if it considers the proceedings to be frivolous or vexatious or for any other reason that appears to it sufficient, and
  - (j) may order that any proceedings are to be stayed.
- (6) The Registrar or Deputy Registrar is to give any party in proceedings that have been stayed under subsection (5) (j), and who was not present or represented when the proceedings were stayed, notice that the proceedings have been stayed.
- (7) Subsection (5) (g)-(i) does not apply in relation to proceedings arising under the *Strata Schemes Management Act 1996* or the *Community Land Management Act 1989*.
- (8) Subsection (5) (h) does not apply in relation to proceedings on a building claim arising under Part 3A of the *Home Building Act 1989*.

**Note—**

The withdrawal of building claims is dealt with in section 48I of that Act.

## **29 Procedural directions by members**

- (1) A member may, in any proceedings, give procedural directions in relation to the proceedings.
- (2) In the event of an inconsistency between any procedural direction given by a member under this section and any procedural direction given by the Chairperson under section 12, the procedural direction given by the Chairperson is to prevail.
- (3) Procedural directions under this section may be given by any member (whether or not

the member is hearing the matter to which the proceedings relate).

- (4) Without limiting the grounds on which a member may give procedural directions, such directions may be given that, in the opinion of the member, will enable costs to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties in the proceedings.
- (5) The powers conferred by this section extend to enabling a member, if it appears just and expedient to do so, to direct that several matters that are in some manner associated are to be heard and determined together.
- (6) The functions of a member under this section may be delegated to the Registrar.

### **30 Proceedings causing disadvantage**

- (1) This section applies if the Tribunal is of the opinion that a party in any proceedings is conducting the proceedings in such a way that unreasonably disadvantages another party in the proceedings by any conduct (including by failing to comply with an order or direction of the Tribunal).
- (2) The Tribunal may:
  - (a) if the party causing the disadvantage is the applicant—order that the proceedings (or part of the proceedings) be dismissed or struck out, or
  - (b) if the party causing the disadvantage is not the applicant:
    - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
    - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).
- (3) Before making any order under subsection (2) against a party, the Tribunal is to have regard to the following:
  - (a) the extent to which the party is familiar with the procedures of the Tribunal,
  - (b) the party's capacity to understand, and act on, a direction of the Tribunal,
  - (c) whether the party suffers from a disability,
  - (d) whether the party is acting deliberately in failing to comply with the Tribunal's directions.

### **31 Assistance to Tribunal**

The Tribunal or Registrar may, in relation to any proceedings, request a report or other assistance from the Commissioner for Fair Trading or any other person or body.

### **32 Amendments and irregularities**

- (1) The Tribunal may, in any proceedings, make any amendments to any document (for example, an application) filed in connection with the proceedings that the Tribunal considers to be necessary in the interests of justice.
- (2) Any such amendment may be made:
  - (a) at any stage of the proceedings, and
  - (b) on such terms as the Tribunal thinks fit,but may only be made after notifying the party to whom the amendment relates.
- (3) If a provision of this Act or the regulations is not complied with in relation to the commencement or conduct of proceedings, the failure to comply is to be treated as an irregularity and does not nullify the proceedings or any decision in the proceedings unless the Tribunal otherwise determines.
- (4) The Tribunal may, however, in dealing with any such irregularity, wholly or partly set aside the proceedings or a decision in the proceedings.

### **33 Proceedings on hearing to be conducted in public**

- (1) If any proceedings are to be determined by a hearing, the hearing is to be open to the public, except as provided by this section.
- (2) If the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, it may make any one or more of the following orders:
  - (a) an order that the hearing be conducted wholly or partly in private,
  - (b) an order prohibiting or restricting the publication of the names and addresses of witnesses appearing before the Tribunal,
  - (c) an order prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal,
  - (d) an order prohibiting or restricting the disclosure, to any of the parties in the proceedings, of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.

### **34 Circumstances in which hearing may be dispensed with**

- (1) The Tribunal may, with the consent of the parties in any proceedings, determine the proceedings:

(a) by considering the documents or other material lodged with or provided to the Tribunal, and

(b) without any hearing,

if it appears to the Tribunal that the issues for determination can be adequately determined in the absence of the parties.

(2) The regulations may prescribe classes of matters or circumstances in which the consent referred to in subsection (1) may be dispensed with.

### **35 Opportunity for parties to present case**

The Tribunal must ensure that each party in any proceedings is given a reasonable opportunity:

(a) to call or give evidence and otherwise present the party's case (whether at a hearing or otherwise), and

(b) to make submissions in relation to the issues in the proceedings.

### **36 Representation of parties**

(1) Except as provided by this section, a party in any proceedings has the carriage of his or her own case and is not entitled to be represented by any person.

(2) A party may, in accordance with the regulations, apply to the Tribunal for permission to be represented by a person in the proceedings or in part of the proceedings. The Tribunal may approve any such application and make an order permitting the party to be represented.

(3) In any proceedings where an amount is claimed or disputed, a party is not entitled to be represented by an Australian legal practitioner if the amount does not exceed \$10,000 (or such other amount as may be prescribed by the regulations) unless the Tribunal is of the opinion that the exceptional circumstances of the case warrant such representation.

(4) If a party has been granted legal assistance under Division 2 of Part 2 of the *Fair Trading Act 1987*, the parties in the proceedings are entitled to be represented by an Australian legal practitioner.

(5) Except as otherwise provided by the regulations, a person is not entitled to demand or receive any fee or reward for representing a party in any proceedings. This subsection does not apply to or in respect of an Australian legal practitioner.

(6) If a party is, in the opinion of the Tribunal, a special class of person, the Tribunal may appoint another person, with that other person's consent, to represent the party concerned. For the purposes of this subsection, a **special class of person** means any

of the following:

- (a) a minor,
- (b) a person who is totally or partially incapable of representing himself or herself in proceedings because the person is intellectually, physically, psychologically or sensorily disabled, of advanced age, a mentally incapacitated person or otherwise disabled,
- (c) any other person of a class prescribed by the regulations for the purposes of this subsection.

(7) However, even though the Tribunal is satisfied that a party is a special class of person, the Tribunal:

- (a) is not to delay the proceedings unduly because another person has not been appointed under subsection (6) after a reasonable period of time, and
- (b) is to determine the proceedings as expeditiously as possible in the interests of all the parties concerned.

(7A) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed under subsection (6) does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions under this Act.

(7B) However, any such liability attaches instead to the Crown.

(8) The Chairperson may give such directions as the Chairperson considers appropriate in relation to the appointment of a person for the purposes of subsection (6).

(9) This section does not apply in relation to proceedings arising under the [Strata Schemes Management Act 1996](#) or the [Community Land Management Act 1989](#).

**Note—**

In the case of Tribunal proceedings under an Act referred to in subsection (9), a party is automatically entitled to be represented in the proceedings.

(10) In this section:

***Guardian Ad Litem Panel*** means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

### **37 Interpreters**

- (1) A person may, in any proceedings, request the Tribunal to appoint an interpreter for the purposes of communication between the Tribunal and the person.
- (2) The Tribunal must comply with a request made by a person under this section unless it considers that the person is sufficiently proficient in spoken English.

- (3) If the Tribunal considers that a person in any proceedings is not sufficiently proficient in spoken English, the Tribunal must appoint an interpreter for the purposes of communication between the Tribunal and the person, even though the person has not made a request under this section.
- (4) In this section, **interpreter** includes a person who interprets signs or other things made or done by a person who cannot speak adequately for the purposes of giving evidence in proceedings.

### **38 Oral evidence by telephone etc**

- (1) The Tribunal may allow a person to appear before it, or to give evidence in any proceedings, and may conduct any aspect of its proceedings, by telephone, audio visual link or any other means of communication.
- (2) If, any case where proceedings are held in public, a person appears or gives evidence by any means referred to in subsection (1), the Tribunal is to take such steps as are reasonably necessary to ensure that the public nature of the proceedings is preserved and that the rights of all the parties in the proceedings are not prejudiced.

### **39 Powers in relation to witnesses**

- (1) The Tribunal may:
  - (a) call any witness of its own motion, and
  - (b) examine any witness on oath, or require evidence to be verified by a statutory declaration, and
  - (c) examine or cross-examine any witness to such extent as the Tribunal thinks proper in order to elicit information relevant to the exercise of the functions of the Tribunal in any proceedings, and
  - (d) compel any witness to answer questions which the Tribunal considers to be relevant in any proceedings.

#### **Note—**

See section 80 for the payment of witnesses' allowances and expenses.

- (2) If the Tribunal decides to call a person as a witness under subsection (1) (a), the Tribunal may:
  - (a) seek to procure the voluntary attendance of the witness before it by notifying the person in such manner as it thinks appropriate in the circumstances, or
  - (b) issue a summons to compel the attendance of the person before it.
- (3) Nothing in subsection (1) enables the Tribunal to compel a witness to answer a



question if the witness has a reasonable excuse for refusing to answer the question.

#### **40 Issue of summons**

- (1) A summons for the purposes of this Act may be issued by the Registrar:
  - (a) on the application of a party in the proceedings, or
  - (b) at the direction of the Tribunal.
- (2) The fee prescribed by the regulations is payable for the issue of a summons on the application of a party in the proceedings.
- (3) Such a summons must be signed by the Registrar or as otherwise prescribed by the regulations and may require the person to whom it is addressed:
  - (a) to attend and give evidence, or
  - (b) to attend and produce documents or other things,or both.
- (4) The regulations may make provision for or with respect to excusing, in prescribed circumstances, a person who produces documents or other things in answer to a summons from attendance at the Tribunal.
- (5) A person who, without lawful excuse, fails to comply with the requirements of a summons is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (6) A summons may be served within or outside the State.

#### **41 Witness may be apprehended**

- (1) If a person who is served with a summons to attend before the Tribunal fails to comply with the summons, the Chairperson or the Deputy Chairperson (Determinations) may, on proof of the service of the summons, issue a warrant for the apprehension of the person.
- (2) A warrant issued under subsection (1) authorises the apprehension of the witness, the bringing of the witness before the Tribunal and the detention of the witness in custody for that purpose until released by order of the Chairperson or Deputy Chairperson (Determinations) or the Supreme Court.
- (3) The apprehension of any witness under this section does not relieve the witness from any liability incurred by reason of non-compliance with a summons to attend before the Tribunal.

## 42 Contempt of Tribunal

- (1) A person is guilty of contempt of the Tribunal if:
- (a) the person fails to attend in obedience to a summons after having been served with a summons to attend before the Tribunal as a witness, or
  - (b) the person fails to produce any document or other thing in the person's custody or control that the person is required by a summons to produce after having been served with a summons to attend before the Tribunal, or
  - (c) the person refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question that is put to the person by the Tribunal after being called or examined as a witness before the Tribunal, or
  - (d) the person wilfully threatens or insults:
    - (i) a member, assessor or officer of the Tribunal, or
    - (ii) any witness or person summoned to attend before the Tribunal, or
    - (iii) any person who is a party in the proceedings concerned, or
    - (iv) any person who is authorised to appear before the Tribunal, or
  - (e) the person misbehaves himself or herself before the Tribunal, or
  - (f) the person interrupts the proceedings of the Tribunal, or
  - (g) the person obstructs or attempts to obstruct the Tribunal, a member of the Tribunal or a person acting with the authority of the Tribunal in the exercise of any lawful function, or
  - (h) the person publishes, or permits or allows to be published, any evidence given before the Tribunal or any of the contents of a document produced at a hearing that the Tribunal has ordered not to be published, or
  - (i) the person publishes, or permits or allows to be published, any evidence given before the Tribunal at a hearing held in private or any of the contents of a document produced at a hearing held in private, except to an officer or member of the Tribunal or as permitted by the Tribunal or by the regulations, or
  - (j) the person does any other thing that, if the Tribunal were a court of law having power to commit for contempt, would be contempt of that court,

unless the person establishes that there was a reasonable excuse for the act or omission concerned.

- (2) Section 24 of the [Local Court Act 2007](#) applies to and in respect of contempt of the

Tribunal, when constituted by (or by members that include) the Chairperson or the Deputy Chairperson (Determinations), in the same way as that section applies to and in respect of contempt of the Local Court.

#### **43 Enforcement of certain Tribunal orders**

- (1) If the Tribunal makes an order in relation to any proceedings, the Tribunal may, when the order is made or later, give leave to the person in whose favour the order is made to renew the proceedings if the order is not complied with within the period specified by the Tribunal.
- (2) If an order has not been complied with within the period specified by the Tribunal, the person in whose favour the order was made may renew the proceedings to which the order relates by lodging a notice with the Tribunal, within 12 months after the end of the period, stating that the order has not been complied with.
- (3) The provisions of this Act apply to a notice lodged in accordance with subsection (2) as if the notice were an application made in accordance with section 24.
- (4) When proceedings have been renewed in accordance with this section, the Tribunal:
  - (a) may make any other appropriate order under this Act as it could have made when the matter was originally determined, or
  - (b) may refuse to make such an order.
- (5) This section does not apply if the operation of an order has been suspended.
- (6) A notice under this section must be in the form prescribed by the regulations.

#### **44 Protection of Australian legal practitioners, witnesses and others**

- (1) An Australian legal practitioner, or any other person appearing before the Tribunal on behalf of a party in any proceedings, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.
- (3) In this section, **barrister** has the same meaning as in the [Legal Profession Act 2004](#).

#### **45 Tribunal divided in opinion**

- (1) If the Tribunal is constituted by more than one member for the purposes of the determination of any proceedings and the members are divided in opinion, the opinion of a majority is taken to be the decision of the Tribunal.
- (2) However, a question of law (including the question as to whether a particular question

is a question of law) arising in proceedings constituted by more than one member is to be decided in accordance with the opinion of the member presiding at the proceedings.

- (3) If, on a matter other than a question of law, opinion is equally divided, the opinion of the presiding member is taken to be the decision of the Tribunal.

#### **46 Tribunal may reserve decision**

- (1) The Tribunal may reserve its decision in relation to any proceedings.
- (2) A decision of the Tribunal that has been reserved may be handed down:
  - (a) by the Tribunal at a subsequent sitting, or
  - (b) if the decision of a member is set out in writing and signed by the member—by being delivered by any member, or
  - (c) by the Registrar, at a time and place of which the parties in the proceedings have been given reasonable notice, or
  - (d) by publication to the parties in a manner approved by the Chairperson.

#### **47 Power to impose conditions**

A power of the Tribunal to make an order or other decision includes a power to make the order or other decision subject to such conditions (including exemptions) as the Tribunal specifies when making the order or other decision, except as may be provided to the contrary by any other Act.

#### **48 Powers when proceedings settled**

- (1) The Tribunal may, in any proceedings, make such orders (including an order dismissing the application that is the subject of the proceedings) as it thinks fit to give effect to any agreed settlement reached by the parties in the proceedings if:
  - (a) the terms of the agreed settlement are in writing, signed by or on behalf of the parties and lodged with the Tribunal, and
  - (b) the Tribunal is satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms that are consistent with the terms of the agreed settlement.
- (2) The Tribunal may dismiss the application that is the subject of the proceedings if it is not satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms consistent with the terms of the agreed settlement.

#### **49 Notice of decisions and reasons**

- (1) The Tribunal must, within the time prescribed by the regulations, give notice of its decision in a matter that is the subject of proceedings to the parties in the proceedings. The notice must indicate that any party may, within 14 days of receiving notice of the decision, request the Tribunal to provide a statement of reasons for its decision.
- (2) Any party may, within 14 days of receiving notice of the decision, request the Tribunal, in the manner prescribed by the regulations, to provide a statement of reasons for its decision. The statement must be provided within 28 days after the request is made.
- (3) The statement may be brief but must:
  - (a) set out the decision and the reasons for it, and
  - (b) set out the findings on any material question of fact, and
  - (c) refer to the evidence or any other material on which the findings of fact were based.

#### **50 Power to correct decisions of Tribunal**

- (1) If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is an obvious error in the text of a notice of the decision or a written statement of reasons for the decision, the Tribunal may direct the Registrar to alter the text of the notice or statement in accordance with the directions of the Tribunal.
- (2) If the text of a notice or statement is so altered, the altered text is taken to be the notice of the Tribunal's decision or the statement of its reasons, as the case may be, and notice of the alteration is to be given to the parties in the proceedings in such manner as the Chairperson may direct.
- (3) Examples of obvious errors in the text of a notice of a decision or a statement of reasons for a decision are where:
  - (a) there is an obvious clerical or typographical error in the text of the notice or statement, or
  - (b) there is an error arising from an accidental slip or omission, or
  - (c) there is a defect of form, or
  - (d) there is an inconsistency between the stated decision and the stated reasons.
- (4) The powers of the Tribunal under this section may be exercised by the Chairperson or by the member who presided at the proceedings to which the decision relates.

### 51 Recovery of amounts ordered to be paid (other than penalties)

- (1) For the purposes of the recovery of any amount ordered to be paid by the Tribunal (including costs, but not including a civil or other penalty), the amount is to be certified by the Registrar.
- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of the Registrar that:
  - (a) is given under this section, and
  - (b) is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate,operates as such a judgment.

### 52 Compliance with order of Tribunal

- (1) A person must not wilfully contravene or fail to comply with an order of the Tribunal made under this or any other Act.  
Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.
- (2) Subsection (1) does not apply to or in respect of:
  - (a) an order for the payment of any money, or
  - (b) an order under section 52 of the *Residential Tenancies Act 1987*, or
  - (c) such classes of orders, or such classes of proceedings, as may be prescribed by the regulations.

### 53 Costs

- (1) Subject to this section and the regulations, the parties in any proceedings are to pay their own costs.
- (2) The Tribunal may, in accordance with the regulations, award costs in relation to any proceedings.
- (3) If costs are to be awarded by the Tribunal in accordance with the regulations, the Tribunal may:
  - (a) determine by whom and to what extent costs are to be paid, and
  - (b) order costs to be assessed on the basis set out in Division 11 of Part 3.2 of the *Legal Profession Act 2004* or on any other basis.
- (4) In this section, **costs** includes the costs of, or incidental to, proceedings.

- (5) This section does not apply in relation to proceedings under the *Strata Schemes Management Act 1996* or the *Community Land Management Act 1989*.

## **Part 5 Alternative dispute resolution**

### **Division 1 Conciliation and preliminary measures**

#### **54 Tribunal to promote conciliation**

- (1) Before making an order to determine any matter that is the subject of proceedings, it is the duty of the Tribunal to use its best endeavours to bring the parties in the proceedings to a settlement that is acceptable to all the parties.
- (2) If such a settlement is reached, the Tribunal must make orders that give effect to the settlement to the extent permitted by this Act.
- (3) Any statement or admission made before the Tribunal or any person at a meeting or other proceeding held for the purposes of subsection (1) is not admissible at a hearing of the matter concerned or in any other legal proceedings.

#### **55 Preliminary conferences**

- (1) In addition to or in the course of any action taken under section 54, the Tribunal may, before commencing to hear and determine an application, confer with, or arrange for a member or the Registrar to confer with, the parties in the proceedings and make any determination with respect to the proceedings that is agreed to by the parties.
- (2) If proceedings are referred under this section to a member or the Registrar and the parties agree to the determination of the member or the Registrar, the determination has effect as a decision of the Tribunal.
- (3) If the proceedings are not determined under this section and the matter proceeds to a hearing:
  - (a) evidence is not to be given, and statements are not to be made, concerning any words spoken or acts done at a conference held in accordance with this section unless the parties otherwise agree, and
  - (b) any member who presided over a preliminary conference in respect of the proceedings is not entitled to be a member of the Tribunal determining the proceedings if any party in the preliminary conference objects, in the manner and form prescribed by the regulations, to the member's participation in the proceedings.
- (4) The Chairperson may direct that a preliminary conference is to be held under this section in the case of any applications made to the Tribunal of a kind specified in the direction.

## Division 2 Mediation and neutral evaluation

### 56 Definitions

In this Division:

**mediation session** means a meeting arranged for the mediation of a matter under this Division.

**mediator** means a person to whom the Tribunal refers a matter for mediation under this Division.

**neutral evaluation session** means a meeting arranged for the neutral evaluation of a matter under this Division.

**neutral evaluator** means a person to whom the Tribunal refers a matter for neutral evaluation under this Division.

### 57 Meaning of “mediation” and “neutral evaluation”

- (1) In this Act, **mediation** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.
- (2) In this Act, **neutral evaluation** means a process of evaluation of a dispute in which the neutral evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The neutral evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings.

### 58 Appointment of mediators and neutral evaluators

- (1) The Chairperson may appoint any person whose name is on the list compiled under Schedule 5 as a mediator or neutral evaluator for the purpose of particular proceedings in the Tribunal.
- (2) Mediators and neutral evaluators have the functions conferred or imposed on them by or under this or any other Act.
- (3) Schedule 5 has effect in respect of a mediator or neutral evaluator appointed under this section.

### 59 Referral by Tribunal

- (1) The Tribunal may, by order, refer a matter arising in any proceedings for mediation or neutral evaluation if the Tribunal considers the circumstances appropriate.
- (2) The mediator or neutral evaluator may, but need not be, a person whose name is on a list compiled under Schedule 5.



- (3) Without limiting subsections (1) and (2), the Tribunal may refer a matter arising in proceedings for mediation under the *Community Justice Centres Act 1983*.

#### **60 Costs of mediation and neutral evaluation**

- (1) The costs of mediation or neutral evaluation, including the costs payable to the mediator or neutral evaluator, are payable by the Tribunal, except to the extent that the regulations provide that the parties in the proceedings are to pay such costs.
- (2) Regulations made for the purposes of this section may provide that the parties are to pay such costs:
- (a) in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal, or
  - (b) in any other prescribed manner.

#### **61 Agreements and arrangements arising from mediation or neutral evaluation sessions**

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session or neutral evaluation session if the Tribunal is satisfied that it would have the power to make a decision in terms of the agreement or arrangement or in terms that are consistent with the agreement or arrangement.
- (2) Nothing in this Division affects the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session or neutral evaluation session, in relation to the matters the subject of any such session.

#### **62 Privilege**

- (1) In this section, **mediation session** or **neutral evaluation session** includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
- (a) a mediation session or neutral evaluation session, or
  - (b) a document or other material sent to or produced to a mediator or neutral evaluator, or sent to or produced at the Tribunal or the office of the Registrar, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
- (a) at a mediation session or neutral evaluation session, or

- (b) as provided by subsection (2) (b), or
  - (c) as provided by section 63.
- (4) Evidence of any thing said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 63 (c).

### **63 Secrecy**

A mediator or neutral evaluator may disclose information obtained in connection with the administration or execution of this Division only in any one or more of the following circumstances:

- (a) with the consent of the person to whom the information relates,
- (b) in connection with the administration or execution of this Division,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties in a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties in the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

### **64 Other measures not precluded**

Nothing in this Division prevents:

- (a) the parties in any proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Division, or
- (b) a matter arising in any proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983* without having been referred under section 59.

## **Part 6 Appeals and rehearings**

### **65 Review by prerogative writ etc generally excluded**

- (1) Except as provided by this section, a court has no jurisdiction to grant relief or a remedy by way of:
  - (a) a judgment or order in the nature of prohibition, mandamus, certiorari or other relief, or
  - (b) a declaratory judgment or order, or
  - (c) an injunction,in respect of any matter that has been heard and determined (or is to be heard or determined) by the Tribunal in accordance with this Act or in respect of any ruling, order or other proceeding relating to such a matter.
- (2) A court is not prevented from granting relief or a remedy of a kind referred to in subsection (1) in relation to a matter in respect of which the jurisdiction of the Tribunal to determine the matter was disputed if the ground on which the relief or remedy is sought is that:
  - (a) the Tribunal gave an erroneous ruling as to its jurisdiction, or
  - (b) the Tribunal erred in refusing or failing to give a ruling as to its jurisdiction when its jurisdiction was disputed.
- (3) A court is not prevented from granting relief or a remedy of a kind referred to in subsection (1) in relation to a matter in respect of which the Tribunal has made an order if the ground on which the relief or remedy is sought is that:
  - (a) the Tribunal had no jurisdiction to make the order, or
  - (b) in relation to the hearing or determination of the matter, a party had been denied procedural fairness.

### **66 Referral of questions of law to Supreme Court**

- (1) A referral under this section is to be made in accordance with rules of the Supreme Court.
- (2) If, in any proceedings, a question arises with respect to a matter of law, the Tribunal

may decide the question or may refer it to the Supreme Court for decision.

- (3) If a question with respect to a matter of law is referred to the Supreme Court by the Tribunal:
  - (a) the Tribunal is not to make an order or a decision to which the question is relevant until the Supreme Court has decided the question, and
  - (b) on deciding the question, the Supreme Court is to remit its decision to the Tribunal, and
  - (c) the Tribunal is not to proceed in a manner, or make an order or a decision, that is inconsistent with the decision of the Supreme Court.
- (4) Any costs to the parties in proceedings arising out of the referral of a question with respect to a matter of law to the Supreme Court are not payable by the parties but are to be paid as a cost of the administration of this Act.
- (5) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

#### **67 Appeal against decision of Tribunal with respect to matter of law**

- (1) If, in respect of any proceedings, the Tribunal decides a question with respect to a matter of law, a party in the proceedings who is dissatisfied with the decision may, subject to this section, appeal to the District Court against the decision.
- (2) An appeal is to be made in accordance with the rules of the District Court. The rules of the District Court may provide that an appeal (or such classes of appeal as may be specified in the rules) may be made only with the leave of the Court.
- (3) After deciding the question the subject of such an appeal, the District Court may, unless it affirms the decision of the Tribunal on the question:
  - (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal, or
  - (b) remit its decision on the question to the Tribunal and order a rehearing of the proceedings by the Tribunal.
- (4) If such a rehearing is held, the Tribunal is not to proceed in a manner, or make an order or a decision, that is inconsistent with the decision of the District Court remitted to the Tribunal.
- (5) If a party has appealed to the District Court against a decision of the Tribunal on a question with respect to a matter of law, either the Tribunal or the District Court may suspend, until the appeal is determined, the operation of any order or decision made in respect of the proceedings.

- (6) If the Tribunal suspends the operation of an order or a decision, the Tribunal or the District Court may terminate the suspension or, where the District Court has suspended the operation of an order or a decision, the District Court may terminate the suspension.
- (7) If a rehearing is held, fresh evidence, or evidence in addition to or in substitution for the evidence on which the original decision was made, may be given on the rehearing.
- (8) A reference in this section to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.
- (9) The regulations may exclude the making of an appeal under this section in such classes or description of cases as may be prescribed.

### **68 Rehearings by Tribunal**

- (1) A party in any proceedings that have been heard and determined by the Tribunal (***the completed proceedings***) may, in the manner and within the time prescribed by the regulations, apply to the Chairperson to have the completed proceedings reheard by the Tribunal.
- (2) The grounds on which such an application may be made are that the applicant may have suffered a substantial injustice because:
  - (a) the decision of the Tribunal in the completed proceedings was not fair and equitable, or
  - (b) the decision of the Tribunal was against the weight of evidence, or
  - (c) significant new evidence has arisen (being evidence that was not reasonably available at the time the completed proceedings were being heard).
- (3) The applicant may request that the rehearing be limited to the matters specified in the application.
- (4) If the applicant is relying on significant new evidence as a ground for the rehearing, the applicant must establish or otherwise produce the new evidence in support of the application.
- (5) The Chairperson is not to grant the application unless:
  - (a) each other party in the completed proceedings has:
    - (i) been notified and given a copy of the application, and
    - (ii) been given an opportunity to respond in writing to the application within the time prescribed by the regulations, and
  - (b) the Chairperson has taken into consideration any such response.

- (6) Subsection (5) does not apply in relation to such classes of applications as may be prescribed by the regulations.
- (7) The Chairperson is not to grant the application unless it appears to the Chairperson that the applicant may have suffered a substantial injustice.
- (8) The Chairperson's decision whether to grant or refuse the application:
  - (a) may be made without the need for any hearing or meeting, and
  - (b) is not to be considered to be part of the Tribunal's proceedings, and
  - (c) is final and not subject to review of any kind.
- (9) If the application is granted, the Chairperson is to determine:
  - (a) the constitution of the Tribunal in a manner appropriate for the purposes of the rehearing (having regard to the circumstances of the case), and
  - (b) the matters that are to be reheard.
- (9A) If an application is refused, a person may make a further application under this section, but only if the application is made within the time prescribed by the regulations and the Chairperson is satisfied that:
  - (a) significant new evidence has arisen since the application was refused, and
  - (b) that evidence suggests a substantial injustice to one or more parties to the proceedings has occurred.
- (10) The rehearing is to be dealt with by the Tribunal as a fresh hearing of the matters to be reheard, but it does not give rise to any further rehearing under this section.
- (11) Subsection (9) does not prevent the Tribunal from dealing with any matter that arises during the rehearing so long as it is a matter that is related to the completed proceedings.
- (12) If, in relation to any completed proceedings, more than one application for a rehearing is granted by the Chairperson, all of the matters to be reheard are to be reheard together.
- (13) A person cannot make an application under this section for a rehearing of completed proceedings if:
  - (a) the amount claimed or disputed under the completed proceedings is more than the amount prescribed by the regulations, or
  - (b) the person is a corporation and the matter relates to a dispute in respect of which the Tribunal has jurisdiction because of the operation of Schedule 3 to the [Credit](#)

*(Commonwealth Powers) Act 2010.*

- (14) The regulations may exclude the making of an application for a rehearing under this section in cases of any prescribed class or description.

**69 Original decision to operate unless otherwise ordered**

- (1) Lodgment of an appeal or application for a rehearing under this Part does not affect the operation of the decision the subject of the appeal or application or prevent the taking of action to implement the decision, except as provided by any other Act or as otherwise ordered under this section.
- (2) An order staying the operation of a decision the subject of an appeal or application under this Part may be made:
- (a) by the District Court in connection with an appeal under section 67, or
  - (b) by the Chairperson in connection with an application under section 68.

**Part 7 Miscellaneous**

**70 Privileged documents**

- (1) Nothing in this Act requires the disclosure of a document if the Tribunal or the Chairperson is satisfied that evidence of the document could not be given in proceedings before a NSW court within the meaning of the *Evidence Act 1995* by reason of the operation of any of the following provisions of that Act:
- (a) section 9 (Application of common law and equity), but only to the extent that it preserves any privilege against the adducing of evidence,
  - (b) section 10 (Parliamentary privilege preserved),
  - (c) Part 3.10 (Privileges) of Chapter 3.
- (2) In this section:
- disclosure** of a document includes the following:
- (a) the provision of copies of the document,
  - (b) the granting of access to the document,
  - (c) the disclosure of the contents of the document.

**document** includes a part of a document.

**71 False or misleading statements**

A person must not:

- (a) in any proceedings, or
- (b) in any application under this Act,

provide any information, or make any statement, to the Tribunal, Chairperson or Registrar knowing that the information or statement is false or misleading in a material respect.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

## **72 Provision of information by Tribunal**

- (1) For the purposes of any investigation or disciplinary action that is being carried out under any legislation administered by the Minister, the Commissioner for Fair Trading may request the Tribunal to provide any information that:
  - (a) relates to any such investigation or disciplinary action, and
  - (b) is within the knowledge or possession of the Tribunal.
- (2) The Tribunal must comply with any such request unless the Chairperson is of the opinion that to do so would compromise proceedings of the Tribunal.
- (3) The Chairperson may, if requested by the Commissioner for Fair Trading, make available to the Department of Fair Trading any other information that is within the knowledge or possession of the Tribunal.
- (4) For the purposes of subsection (1), **disciplinary action** includes any prosecution or enforcement activity.

## **73 Improper disclosure of information**

A person must not disclose information obtained in exercising a function under this Act unless the disclosure is made:

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution or administration of this Act, or
- (c) for the purpose of any legal proceedings arising out of this Act or any report of such proceedings, or
- (d) with other legal excuse.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

## **74 Act to bind Crown**

This Act binds the Crown.



## **75 Seal of Tribunal**

The Tribunal is to have a seal and that seal is to be judicially noticed.

## **76 Authentication of documents**

- (1) Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is:
  - (a) signed by any member or the Registrar, or
  - (b) authenticated in a manner prescribed by the regulations.
- (2) Judicial notice is to be taken of the signature of the member concerned or the Registrar when appearing on a document issued by the Tribunal.

## **77 Proof of certain matters not required**

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of:

- (a) the constitution of the Tribunal, or
- (b) any decision of the Tribunal, or
- (c) the appointment of, or the holding of office by, a member.

## **78 Notices, service and lodgment of documents**

- (1) For the purposes of this Act, a notice or document may be given to a person (and a document may be served on a person):
  - (a) in the case of a natural person—by:
    - (i) delivering it to the person personally, or
    - (ii) leaving it at, or by sending it by post to, the residential or business address, or other address for service, of the person that was last known to the person giving or serving the document, or
  - (b) in the case of a body corporate—by leaving it at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate, or
  - (c) in the case of a Government Department—by leaving it at, or by sending it by post to, any office of that Department addressed to the head of the Government Department.
- (2) A notice or other document may be served on the Tribunal by leaving it at, or by sending it by post to (or a document that is required or permitted to be lodged with the Tribunal may be lodged at):
  - (a) the office of the Registrar, or

- (b) if the Registrar has more than one office, any one of those offices.
- (3) Nothing in this section affects the operation of any provision of any law or the rules of a court authorising a document to be served in a manner not provided for by this section.
- (4) The regulations may:
  - (a) provide for additional means of serving, giving or lodging any notice or document, and
  - (b) provide that a notice or document of a class specified by the regulations be served, given or lodged only in the prescribed manner.

#### **79 Return of documents after proceedings concluded**

The Chairperson may cause a document or any other object provided to the Tribunal for the purposes of any proceedings to be returned to the person by whom it was provided if:

- (a) the proceedings have concluded, and
- (b) the time within which an appeal from the decision of the Tribunal in the proceedings may be lodged (or the period of an extension of time for lodging the appeal) has expired with no appeal being lodged.

#### **80 Allowances and expenses of witnesses**

- (1) A person who is required to appear or give evidence before the Tribunal is entitled to be paid such allowances and expenses as are ascertained in accordance with a scale of allowances and expenses prescribed by the regulations.
- (2) Subject to subsection (3), the allowances and expenses are to be paid by the party at whose request a witness is summoned.
- (3) The Tribunal may order that the allowances and expenses of a witness referred to in subsection (2) be paid wholly or partly by the State out of money otherwise lawfully available.

#### **80A Sound recording of hearings**

The Tribunal must ensure that, as far as is reasonably practicable, sound recordings of all proceedings of the Tribunal are made and kept for such period as may be prescribed by the regulations, or if no such period is prescribed, for a reasonable time after the end of the relevant proceedings.

#### **81 Extensions of time**

- (1) Despite any other provision of this or any other Act, the Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of

anything under any Act in respect of which the Tribunal has jurisdiction.

- (2) Such an application may be made even though the relevant period of time has expired.

## **82 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before the Local Court.
- (2) Proceedings for an offence under this Act or the regulations may be brought within the period of 12 months of the date on which the offence is alleged to have been committed.

## **83 Protection from personal liability**

Any thing done or omitted to be done by a member, the Registrar or a Deputy Registrar in exercising the functions conferred or imposed on the member, Registrar or Deputy Registrar by or under this or any other Act does not, if the thing was done or omitted to be done in good faith, subject the member, Registrar or Deputy Registrar personally to any action, liability, claim or demand.

## **84 Annual report**

- (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Chairperson must provide the Minister with a report on the operations of the Tribunal for the period ending on 30 June in that year.
- (2) The Minister is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

## **85 Chairperson may furnish reports**

The Chairperson may, on behalf of the Tribunal, provide reports to the Minister or to the Commissioner for Fair Trading concerning any matter the Chairperson considers:

- (a) to be of importance in relation to the administration of this Act or in relation to the jurisdiction of the Tribunal or any matter falling within its jurisdiction, or
- (b) to be in the public interest.

## **86 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to the following:

- (a) the initiation, lapsing and withdrawal of proceedings,
  - (b) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions of the Tribunal,
  - (c) the joinder, by the Tribunal or by a party in any proceedings, of other parties,
  - (d) the circumstances in which proceedings may be heard ex parte or in which default judgments may be obtained,
  - (e) the representation of parties in proceedings,
  - (f) the awarding of costs by the Tribunal in relation to proceedings,
  - (g) any other matter relating to proceedings,
  - (h) the payment of interest on money adjudged by the Tribunal to be payable and which remains unpaid,
  - (i) the functions of the Registrar or other officers under this Act, including functions in relation to proceedings,
  - (j) records of the Tribunal and proceedings,
  - (k) mediation and neutral evaluation,
  - (l) the provision by the Tribunal of statistical information and of services,
  - (m) the form of any summons or warrant under this Act,
  - (n) the fees payable in respect of an application to the Tribunal (including the waiver or refund of any such fees).
- (3) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

## **87 Forms**

The Minister may approve the form of any document to be used for the purposes of this Act or the regulations and that is not otherwise required or permitted to be prescribed under this Act.

## **88 Repeal of legislation**

The following Acts and Regulations are repealed:

- (a) the *Fair Trading Tribunal Act 1998*,
- (b) the *Residential Tribunal Act 1998*,
- (c) the *Fair Trading Tribunal Regulation 1999*,

(d) the *Residential Tribunal Regulation 1999*.

## 89 Savings, transitional and other provisions

Schedule 6 has effect.

## 90 (Repealed)

## 91 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of section 5.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## Schedule 1 Divisions of the Tribunal

(Sections 4 (1) and 10)

### 1 Divisions

The Tribunal comprises the following Divisions:

- (a) the **General Division**, in which the Tribunal's jurisdiction is to be exercised in respect of:
  - (i) consumer claims under the *Consumer Claims Act 1998* (other than consumer claims that relate to motor vehicles or to matters arising under section 36 of the *Property, Stock and Business Agents Act 2002*), and
  - (iA) any matter arising under the *Holiday Parks (Long-term Casual Occupation) Act 2002*, and
  - (ii) except as provided by paragraphs (b)-(i), all other matters in respect of which the Tribunal has jurisdiction,
- (b) the **Commercial Division**, in which the Tribunal's jurisdiction is to be exercised in respect of the following:
  - (i) matters in respect of which the Tribunal has jurisdiction because of the operation of Schedule 3 to the *Credit (Commonwealth Powers) Act 2010*,
  - (ii) matters arising under the *Travel Agents Act 1986*,
  - (iii) consumer claims under the *Consumer Claims Act 1998* that relate to matters

arising under section 36 of the *Property, Stock and Business Agents Act 2002*,

- (c) the **Home Building Division**, in which the Tribunal's jurisdiction is to be exercised in respect of any matter arising under the *Home Building Act 1989*,
- (d) the **Motor Vehicles Division**, in which the Tribunal's jurisdiction is to be exercised in respect of consumer claims under the *Consumer Claims Act 1998* that relate to motor vehicles,
- (e) the **Residential Parks Division**, in which the Tribunal's jurisdiction is to be exercised in respect of any matter arising under:
  - (i) the *Residential Parks Act 1998*, and
  - (ii) the *Landlord and Tenant (Rental Bonds) Act 1977* that relates to a residential park,
- (f) the **Retirement Villages Division**, in which the Tribunal's jurisdiction is to be exercised in respect of any matter arising under the *Retirement Villages Act 1999*,
- (g) the **Strata and Community Schemes Division**, in which the Tribunal's jurisdiction is to be exercised in respect of matters arising under:
  - (i) the *Community Land Management Act 1989*, and
  - (ii) the *Strata Schemes Management Act 1996*,
- (h) the **Tenancy Division**, in which the Tribunal's jurisdiction is to be exercised in respect of matters arising under:
  - (i) the *Residential Tenancies Act 1987* (other than matters that relate to social housing premises within the meaning of that Act), and
  - (ii) the *Landlord and Tenant (Rental Bonds) Act 1977* (other than matters that relate to residential parks or matters that relate to social housing premises within the meaning of the *Residential Tenancies Act 1987*),
- (i) the **Social Housing Division**, in which the Tribunal's jurisdiction is to be exercised in respect of matters arising under the *Residential Tenancies Act 1987* or the *Landlord and Tenant (Rental Bonds) Act 1977* (or both) that relate to social housing premises, within the meaning of the *Residential Tenancies Act 1987*.

## 2 Other provisions

- (1) An Act conferring jurisdiction on the Tribunal may provide for that jurisdiction to be exercised in any specified Division.
- (2) In case of doubt, the proper Division for dealing with any matter may be determined by the Registrar.

- (3) Matters may be transferred between Divisions in accordance with directions of the Tribunal.

## Schedule 2 Provisions relating to members

(Section 6 (2))

### 1 Definitions

In this Schedule:

**judicial office** means the office of:

- (a) Magistrate, or
- (b) Judge of the District Court, or
- (c) judicial member of the Industrial Relations Commission, or
- (d) Judge of the Land and Environment Court, or
- (e) Judge of the Supreme Court.

**member** does not (except in clause 10) include the Deputy Chairperson (Registry and Administration).

### 2 Terms of appointment

- (1) Subject to this Act, a member holds office for such period as is specified in the instrument of the member's appointment.
- (2) The term of an appointment must not exceed 5 years.
- (3) A member is eligible for re-appointment.

### 3 Full-time member may serve on part-time basis

- (1) The Governor may, at the request of a member appointed on a full-time basis, determine that the person may work on a part-time basis for a specified period or periods.
- (2) A person appointed on a full-time basis who was not, at the time of appointment, the holder of a judicial office must devote the whole of his or her time to the duties of the office of member, except during any period referred to in subclause (1).
- (3) Despite subclause (2), a member may:
  - (a) hold, and exercise the functions of, a judicial office or another statutory or other public office, or
  - (b) engage in any other employment,

with the consent of the Chairperson.

#### **4 Remuneration**

- (1) A member appointed on a full-time basis is, while working on a full-time basis, entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) A member appointed on a part-time basis or working on a part-time basis is entitled to be paid:
  - (a) such remuneration as is determined by the Minister, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (3) A member who is the holder of a judicial office is not, while receiving remuneration as such an officer, entitled to remuneration under this Act.

#### **5 Provisions where judicial officer is holding office as Chairperson, Deputy Chairperson (Determinations) or senior member**

- (1) The appointment of a person who is the holder of a judicial office as the Chairperson, Deputy Chairperson (Determinations) or senior member, or service by a person who is the holder of a judicial office as Chairperson, Deputy Chairperson (Determinations) or senior member, does not affect:
  - (a) the person's tenure of that judicial office, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as Chairperson, Deputy Chairperson (Determinations) or senior member is, for all purposes, taken to be service as the holder of that judicial office.

#### **6 Chairperson holding office on another tribunal**

- (1) Nothing in any Act or other law operates to disqualify:
  - (a) a state tribunal member from also being appointed and holding office as Chairperson of the Tribunal, or
  - (b) the Chairperson of the Tribunal from also being appointed and holding office as a state tribunal member.



- (2) However, if the Chairperson of the Tribunal is appointed to or holds office as a state tribunal member, the latter office is taken to be a part-time office only despite any provision made by or under any Act or other law:
  - (a) requiring the holder of the office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office.
- (3) If the Chairperson of the Tribunal also holds office as a state tribunal member, the Chairperson is not entitled to any remuneration payable in respect of that office by or under any Act. However, nothing in this clause affects any other right of the Chairperson to remuneration that is conferred or recognised by this Act.
- (4) In this clause, **state tribunal member** means a member of any tribunal (other than the Tribunal) established by an Act of the Parliament of New South Wales.

## **7 Vacancy in office**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) retires on medical grounds, or
  - (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairperson, by the Minister, or in the case of any other member, by the Chairperson, or
  - (h) becomes a mentally incapacitated person, or
  - (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(j) is removed from office under this clause.

(2) The Governor may remove a member from office:

(a) for incapacity, incompetence or misbehaviour, or

(b) if the member fails to enter into a performance agreement (as referred to in clause 1 of Schedule 3), or

(c) if the member commits a serious or continuing breach of the member's performance agreement or a direction under clause 1 (5) of Schedule 3 in relation to the agreement, or

(d) if the member commits a serious or continuing breach of his or her obligations to comply with a code of conduct (as referred to in clause 1 (4) of Schedule 3) or a direction under clause 1 (5) of that Schedule in relation to the code, or

(e) if the Minister is satisfied, following a recommendation by the Professional Practice and Review Committee (as referred to in Part 2 of Schedule 3), that the member should not continue to hold office as a member.

## **8 Acting Chairperson**

(1) The Minister may appoint the Deputy Chairperson (Determinations) or a senior member to be Acting Chairperson during the absence from duty of the Chairperson.

(2) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.

(3) An Acting Chairperson has the functions of the Chairperson and anything done by an Acting Chairperson in the exercise of those functions has effect as if it had been done by the Chairperson.

(4) In this clause, **absence from duty** includes a vacancy in the office of Chairperson.

## **9 Appointment of acting Deputy Chairperson (Determinations) or acting senior member for a period**

(1) The Minister may appoint, as an acting Deputy Chairperson (Determinations) or acting senior member of the Tribunal, a person qualified for appointment as such if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.

(2) The person's appointment is for the period (not exceeding 12 months) specified in the instrument of appointment.

(3) An acting Deputy Chairperson (Determinations) or acting senior member has the functions of, and is taken to be, Deputy Chairperson (Determinations) or senior member, as the case may be, subject to any conditions or limitations specified in the

instrument of appointment.

## **10 Seniority**

- (1) The members have seniority according to the following order of precedence:
  - (a) the Chairperson,
  - (b) the Deputy Chairperson (Registry and Administration) and the Deputy Chairperson (Determinations) who are equal in seniority,
  - (c) senior members according to the days on which their appointments took effect or, if the appointments of 2 or more of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
  - (d) other members according to the days on which their appointments took effect.
- (2) If a person is re-appointed under this Act, the person's seniority is to be determined as if there had been no break in the person's service.

## **11 Leave**

- (1) The entitlement of a member to annual and other leave is to be as stated in the instrument of the member's appointment.
- (2) A member may be granted leave:
  - (a) in the case of the Chairperson—by the Minister, and
  - (b) in any other case—by the Chairperson.

## **12 Superannuation and leave—preservation of rights**

- (1) In this clause:

**eligible member** means a member of the Tribunal who, immediately before holding that office, was:

- (a) a public servant, or
- (b) an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

- (2) An eligible member:
  - (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and

(b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service as a member of the Tribunal.

- (3) Service by the eligible member as a member of the Tribunal is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
- (7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

### **13 Full-time member entitled to re-appointment to former employment in certain cases**

A person who:

- (a) ceases to be a full-time member because of the expiration of the period for which the person was appointed or because of resignation, and
- (b) was, immediately before being appointed as a full-time member:
  - (i) a public servant, or
  - (ii) an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies,

is entitled to be appointed to some position in the Public Service or the service of that public authority, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time member.

### **14 Effect of other Acts**

- (1) The [Public Sector Management Act 1988](#) (except Part 8) does not apply to the appointment of a member and the member is not, as a member, subject to that Act.
- (2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

## **15 Oaths**

The Governor may require oaths to be taken by the Chairperson, the Deputy Chairperson (Determinations) or a senior member of the Tribunal.

## **Schedule 3 Performance management and review**

(Section 9)

### **Part 1 Performance agreements and code of conduct**

#### **1 Members required to enter into and comply with performance agreements and code of conduct**

- (1) This clause does not apply to the Deputy Chairperson (Registry and Administration).
- (2) As soon as practicable after being appointed, each member is required to enter into a performance agreement with:
  - (a) in the case of a member other than the Chairperson—the Chairperson, or
  - (b) in the case of the Chairperson—the Minister.
- (3) The performance agreement is to deal with the performance by the member of the duties of his or her office, and in particular may deal with the following matters:
  - (a) participation by the member in a performance appraisal scheme,
  - (b) the member's accountability for his or her productivity and performance.
- (4) Each member must comply with:
  - (a) the member's performance agreement, and
  - (b) the code of conduct established for members by the Chairperson.
- (5) If a member (other than the Chairperson) does not comply with the member's performance agreement or the code of conduct, the Chairperson may direct the member to take specified action to improve his or her duties so that the member will in future comply with the agreement or code.

## **Part 2 Professional Practice and Review Committee**

### **2 Constitution of Committee**

- (1) A Professional Practice and Review Committee is established by this Act.
- (2) The Committee is to consist of the following:
  - (a) the Commissioner for Fair Trading,
  - (b) the Chairperson,
  - (c) the Deputy Chairperson (Registry and Administration),
  - (d) the Deputy Chairperson (Determinations),
  - (e) 2 other persons appointed by the Minister who the Minister considers to have expertise in consumer protection, ethics, dispute resolution, education or public administration, one of whom is to be appointed as the Chair of the Committee by the Minister.

### **3 Functions of Committee**

- (1) The functions of the Committee are to review and provide advice on matters that are referred to it by the Minister, the Commissioner for Fair Trading, the Chairperson or any other person prescribed by the regulations.
- (2) Such matters are to relate to one or more of the following:
  - (a) the education, training or professional development of members,
  - (b) the performance or management of members,
  - (c) complaints against members and remedial or disciplinary action to be taken in relation to any such complaints,
  - (d) trends in complaints or performance,
  - (e) any other matter prescribed by the regulations.
- (3) The Committee may recommend to the Minister that a member who is the subject of a review by the Committee should, or should not, continue to hold office as a member.
- (4) One or more members of the Committee, if dissatisfied with an advice provided by the Committee in relation to a matter, may provide a minority advice on the matter to the person who referred the matter to the Committee.

### **4 Review of certain members of Committee**

- (1) In any case where the Chairperson or the Deputy Chairperson (Determinations) is the

member who is the subject of a review, the Minister is to convene the Committee in such manner as the Minister thinks appropriate.

- (2) The Deputy Chairperson (Registry and Administration) cannot be the subject of a review under this Part.

## **5 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.

## **6 Quorum**

The quorum for a meeting of the Committee is a majority of its members for the time being. However, that majority must include at least one of the members appointed under clause 2 (2) (e).

## **7 Presiding member**

- (1) The Chair of the Committee (or in the absence of the Chair, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **8 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

## **9 Transaction of business outside meetings or by telephone**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),

the Chair of the Committee and each member have the same voting rights as they have at an ordinary meeting of the Committee.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **10 Meetings**

The Committee is to meet at least 3 times in each year and is to meet at such other times as the Chair of the Committee thinks fit.

## **11 Minutes**

A copy of the minutes for each meeting of the Committee is to be provided to the Minister as soon as reasonably practicable after the meeting.

## **12 Annual report**

The annual report of the Tribunal under section 84 is to include a statement describing the functions and activities of the Committee.

# **Schedule 4 Provisions relating to assessors**

(Section 15)

## **1 Appointment of assessors**

- (1) The Chairperson may appoint persons to be assessors of the Tribunal.
- (2) The appointment of a person as an assessor is to be for such period as is specified in the instrument of appointment.
- (3) An assessor is entitled to be paid such remuneration and other allowances as may be determined by the Minister.
- (4) The Chairperson may remove an assessor from office at any time.

## **2 Lists of persons eligible for appointment as assessors**

- (1) The Chairperson may compile a list or lists of persons considered by the Chairperson to be suitable to be appointed as assessors.
- (2) Different lists may be compiled for different types of matters or to take account of any other factors.
- (3) A person may be included in a list under this clause only if the person consents to being included in the list.



(4) The Chairperson may amend or cancel any list compiled under this clause for any reason that the Chairperson considers appropriate.

(5) The Chairperson is to review at least annually any list compiled under this clause.

### **3 Protection from person liability**

Any thing done or omitted to be done by an assessor under this Act does not, if the thing was done or omitted to be done in good faith for the purposes of this Act, subject the assessor personally to any action, liability, claim or demand.

### **4 Effect of certain other Acts**

(1) The provisions of the *Public Sector Management Act 1988* do not apply to or in respect of the appointment of an assessor and an assessor is not, as an assessor, subject to that Act.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting a person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also from being appointed as an assessor or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as an assessor.

(3) Subclause (2) does not operate to authorise an officer of a court to accept or retain any remuneration payable to the officer as an assessor.

## **Schedule 5 Provisions relating to mediators and neutral evaluators**

(Section 58)

### **1 Appointment of mediators and neutral evaluators**

(1) The appointment of a person as a mediator or neutral evaluator is to be for such period as is specified in the instrument of appointment.

(2) A mediator or neutral evaluator is entitled to be paid such remuneration and other allowances as may be determined by the Minister.

(3) The Chairperson may remove a mediator or neutral evaluator from office at any time.

### **2 Lists of persons eligible for appointment as mediators or neutral evaluators**

(1) The Chairperson may compile a list or lists of persons considered by the Chairperson to be suitable to be appointed as mediators or neutral evaluators.

- (2) Different lists may be compiled for different types of matters or to take account of any other factors.
- (3) A person may be included in a list under this clause only if the person consents to being included in the list.
- (4) The Chairperson may amend or cancel any list compiled under this clause for any reason that the Chairperson considers appropriate.
- (5) The Chairperson is to review at least annually any list compiled under this clause.

### **3 Protection from personal liability**

Any thing done or omitted to be done by a mediator or neutral evaluator does not subject the mediator or neutral evaluator personally to any action, liability, claim or demand if:

- (a) the thing was done or omitted to be done in good faith for the purposes of a mediation session or neutral evaluation session under this Act, and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or neutral evaluator's name was included in a list compiled under this Schedule.

### **4 Effect of certain other Acts**

- (1) The provisions of the *Public Sector Management Act 1988* do not apply to or in respect of the appointment of a mediator or neutral evaluator and a mediator or neutral evaluator is not, as a mediator or neutral evaluator, subject to that Act.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting a person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also from being appointed under this Act as a mediator or neutral evaluator or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as a mediator or neutral evaluator so engaged.

- (3) Subclause (2) does not operate to authorise an officer of a court to accept or retain any remuneration payable to the officer as a mediator or neutral evaluator.

## Schedule 6 Savings, transitional and other provisions

(Section 89)

### 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

*Consumer, Trader and Tenancy Tribunal Amendment Act 2008*

- (1A) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of the *Courts and Crimes Legislation Amendment Act 2008*.
- (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

#### 2 Definitions

In this Part:

**final closure date** means the day occurring 8 months after the relevant date.

**former Tribunal** means:

- (a) the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998*, or
- (b) the Residential Tribunal established by the *Residential Tribunal Act 1998*.

**relevant date** means the day on which section 5 commences.

### **3 Phasing-out and abolition of former Tribunals**

- (1) On and from the relevant date:
  - (a) no application may be made to bring any matter before a former Tribunal, and
  - (b) a former Tribunal continues to exist, and any person holding office as a member of the former Tribunal concerned immediately before that date continues to hold office, only for the purpose of the exercise by that Tribunal of its functions under clause 6.
- (2) A former Tribunal is abolished:
  - (a) when the last of its members ceases, in accordance with an order under clause 5, to hold office, or
  - (b) on the final closure date,whichever is earlier.

### **4 Chairpersons of former Tribunals cease to hold office**

- (1) The person holding office as Chairperson of the Fair Trading Tribunal or as Chairperson of the Residential Tribunal:
  - (a) ceases to hold office as the Chairperson of the Tribunal concerned on the date of assent to this Act, and
  - (b) is not entitled to any compensation by reason of ceasing to hold office.
- (2) Despite anything in the *Fair Trading Tribunal Act 1998* or the *Residential Tribunal Act 1998*, the Minister may appoint any person as the Acting Chairperson of the Fair Trading Tribunal or the Residential Tribunal (including as the Acting Chairperson of both those Tribunals at the same time).

### **5 Members of former Tribunals**

- (1) The Minister may, by order published in the Gazette, declare that the member or members of a former Tribunal who are specified in the order cease to hold office from the date specified in the order. Any such member of a former Tribunal is not entitled to any compensation by reason of ceasing to hold office, but is eligible (if otherwise qualified) to be appointed as a member of the Consumer, Trader and Tenancy Tribunal.
- (2) A member of a former Tribunal who is holding office immediately before the final closure date ceases to hold office on that date. Any such member is not entitled to any compensation by reason of ceasing to hold office, but is eligible (if otherwise qualified) to be appointed as a member of the Consumer, Trader and Tenancy Tribunal.

## **6 Pending proceedings**

(1) Proceedings in a former Tribunal (including any proceedings in a former Tribunal that are the subject of an appeal to the Supreme Court) that:

- (a) were instituted before the relevant date, and
- (b) have not been finally determined before that date,

may be continued and determined as if this Act had not been enacted, and for that purpose the provisions of any Act that would have applied to or in respect of the proceedings had this Act not been enacted continue to apply.

(2) Subclause (1) ceases to have effect on the final closure date.

(3) An order made under any other Act by a former Tribunal, being an order:

- (a) having effect immediately before the relevant date, or
- (b) made after that date in order to determine proceedings under this clause,

is taken to be an order made by the Consumer, Trader and Tenancy Tribunal under the corresponding provision of this Act and may be enforced accordingly.

## **7 Pending proceedings after final closure date**

(1) If proceedings were instituted before the relevant date but have not commenced to be heard by a former Tribunal before the final closure date, the proceedings are taken to have been duly instituted in the Consumer, Trader and Tenancy Tribunal.

(2) If a former Tribunal had commenced to hear (but had not finally determined) a matter before the final closure date, the Consumer, Trader and Tenancy Tribunal is to continue to hear and determine the matter.

(3) For the purposes of subclauses (1) and (2):

- (a) the Consumer, Trader and Tenancy Tribunal has and may exercise all the functions that the relevant former Tribunal had immediately before its abolition, and
- (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the proceedings had this Act not been enacted continue to apply.

(4) For the purposes of proceedings heard under subclause (2), the Consumer, Trader and Tenancy Tribunal may have regard to any record of the proceedings before the relevant former Tribunal, including a record of any evidence taken in the proceedings.

## **8 Pending applications for rehearings**

An application for the rehearing of a matter by a former Tribunal that was made before the relevant date is, if the application has not been dealt with by that date, to be dealt with in

accordance with this Act as if the application had been made under this Act.

## **9 References to former Tribunals**

A reference in another Act, in an instrument made under an Act or in any other document to either of the former Tribunals (including any reference that is to be read as, or otherwise treated as, a reference to either of the former Tribunals) is to be read as a reference to the Consumer, Trader and Tenancy Tribunal.

## **Part 3 Provisions consequent on enactment of [Consumer, Trader and Tenancy Tribunal Amendment Act 2008](#)**

### **10 Definition**

In this Part:

**amending Act** means the [Consumer, Trader and Tenancy Tribunal Amendment Act 2008](#).

### **11 Enforcement of orders**

Section 43, as amended by the amending Act, extends to an order made before that amendment and to any recommencement of proceedings in relation to that order.

### **12 Reasons for decisions**

Section 49, as amended by the amending Act, extends to a notice given under that section before the amendment.

### **13 Rehearings by Tribunal**

Section 68 (13) (a), as amended by the amending Act, does not apply to an application made before the amendment, and that paragraph continues to apply to any such application as if the amendment had not been made.

### **14 Social Housing Division**

Schedule 1, as amended by the amending Act, does not apply in respect of a matter for which an application has been made to the Tribunal under section 24 before those amendments, and that Schedule continues to apply in respect of any such matter as if those amendments had not been made.

### **15 Remuneration of members**

Clause 4 of Schedule 2, as amended by the amending Act, applies only in respect of remuneration for work performed after those amendments.

### **16 Professional Practice and Review Committee**

(1) A matter that was referred to the Peer Review Panel before the commencement of Part 2 of Schedule 3, and that has not been fully dealt with by that Panel is, on the

commencement of that Part, taken to have been referred to the Professional Practice and Review Committee and is to be dealt with accordingly.

- (2) A member of the Peer Review Panel is not entitled to be paid any compensation as a consequence of the substitution of clause 2 of Schedule 3 by the amending Act.

## **Part 4 Provision consequent on enactment of [Courts and Crimes Legislation Amendment Act 2008](#)**

### **17 Pending appeals**

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 5 to the [Courts and Crimes Legislation Amendment Act 2008](#) is to be determined as if that Act had not been enacted.

### **Schedule 7 (Repealed)**