

Fair Trading Tribunal Regulation 1999

[1999-99]



New South Wales

Status Information

Currency of version

Repealed version for 30 November 2001 to 24 February 2002 (accessed 27 November 2024 at 5:16)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Repeal**

The Regulation was repealed by the *Consumer, Trader and Tenancy Tribunal Act 2001 No 82*, sec 88 (c) with effect from 25.2.2002.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 25 February 2002

Fair Trading Tribunal Regulation 1999



New South Wales

Contents

| | |
|---|----|
| Part 1 Preliminary | 5 |
| 1 Name of Regulation | 5 |
| 2 Commencement | 5 |
| 3 Definitions | 5 |
| 4 Notes | 6 |
| Part 2 Members of Tribunal | 6 |
| 5 Oath of office | 6 |
| 6 Disclosure of members' interests | 6 |
| 7 Code of conduct for members and officers | 7 |
| Part 3 Functions of Registrar, Deputy Registrars and assessors | 7 |
| 8 Records | 7 |
| 9 Functions of assessors | 8 |
| 10 Taking evidence | 8 |
| Part 4 Transfer of jurisdiction to Tribunal | 8 |
| 11 Persons or bodies from which matters cannot be transferred to Tribunal | 8 |
| 12 Transfer of proceedings to or from other courts or tribunals | 8 |
| Part 5 Representation of parties | 9 |
| 13 Applications for representation | 9 |
| 14 Representation of unincorporated body | 9 |
| 15 When parties may be represented | 9 |
| 16 Representative to be competent | 11 |

| | |
|---|----|
| 17 Representation by managing agents | 12 |
| Part 6 Appeals and rehearings | 12 |
| 18 Precluded appeals | 12 |
| 19 Rehearings | 12 |
| Part 7 Procedure in Tribunal | 13 |
| 20 Power of Chairperson to vary or dispense with requirements | 13 |
| 21 Applications and other process | 13 |
| 22 Particulars of application | 13 |
| 23 Dispensing with hearing | 14 |
| 24 Summonses | 14 |
| 25 Warrants | 14 |
| 26 Notice of decisions and reasons | 14 |
| 27 Joinder of parties | 15 |
| 28 Ex parte proceedings | 15 |
| 29 Objection to participation of member following preliminary conference | 15 |
| 30 Costs of mediation and neutral evaluation | 15 |
| 31 Allowances and expenses of witnesses | 15 |
| 32 Costs in respect of professional or expert services | 16 |
| Part 8 Access to records of Tribunal | 16 |
| 33 Right of access | 16 |
| 34 Copies of documents | 17 |
| Part 9 Miscellaneous | 17 |
| 35 Interest on judgment debt | 17 |
| 36 Filing fees | 17 |
| 37 Service of documents | 18 |
| 38 Amendment of Property, Stock and Business Agents (General) Regulation 1993 | 19 |
| 39 Notice regarding enforcement of certain orders | 19 |
| Schedule 1 Oaths or affirmations of office | 19 |
| Schedule 2 Forms | 20 |

Schedule 3 Filing fees 21

**Schedule 4 Amendment of Property, Stock and Business Agents
(General) Regulation 1993**
..... 23

Fair Trading Tribunal Regulation 1999



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fair Trading Tribunal Regulation 1999*.

2 Commencement

This Regulation commences on 1 March 1999.

3 Definitions

In this Regulation:

eligible pensioner means:

- (a) a person who receives a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth, or a service pension under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government, or
- (b) a person who receives a pension from the Commonwealth Department of Veterans' Affairs as:
 - (i) the widow or widower of a member of the Australian Defence or Peacekeeping Forces, or
 - (ii) the unmarried mother of a deceased unmarried member of either of those Forces, or
 - (iii) the widowed mother of a deceased unmarried member of either of those Forces,and who does not have income and assets that would prevent the person from being granted a pensioner concession card if the person were eligible for such a card, or
- (c) a person who receives a special rate of pension under section 24 of the *Veterans' Entitlements Act 1986* of the Commonwealth, or

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

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

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

- (a) the application as lodged by the applicant and any document lodged in reply by the respondent,
- (b) a transcript or sound recording of proceedings,
- (c) any assessor's report,
- (d) any notation of the nature of the issues in dispute as found and recorded by the Tribunal in the course of the hearing of the application,
- (e) any ruling given by the Tribunal with respect to its jurisdiction to hear and determine the application,
- (f) any order made by the Tribunal in respect of the application,
- (g) any written reasons given in respect of the determination of the application.

the Act means the [Fair Trading Tribunal Act 1998](#).

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Members of Tribunal

5 Oath of office

An oath referred to in clause 14 of Schedule 1 to the Act may be taken in one of the forms set out in Part 1 or 2 of Schedule 1 to this Regulation, as may be appropriate.

6 Disclosure of members' interests

- (1) A member:
- (a) who has a direct or indirect interest in a matter the subject of present or proposed proceedings of the Tribunal, and
 - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the Chairperson (and, if the matter has commenced to be heard, to the parties involved in the matter).

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

7 Code of conduct for members and officers

- (1) The Chairperson may, by direction under section 10 of the Act, establish one or more codes of conduct for members of the Tribunal or assessors.
- (2) A code of conduct established under this clause is to be made available to the public in such manner and form as the Chairperson may direct.

Part 3 Functions of Registrar, Deputy Registrars and assessors

8 Records

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

- (a) applications made to the Tribunal,
- (b) minutes of orders of the Tribunal,
- (c) written records of reasons given by the Tribunal for its decisions,
- (d) reports or copies of reports furnished to the Tribunal,
- (e) documents or copies of documents produced to the Tribunal in any proceedings, while retained by the Tribunal,
- (f) exhibits, while retained by the Tribunal,
- (g) correspondence received by the Tribunal,
- (h) diaries and other records relating to the listing and hearing of proceedings before the Tribunal,
- (i) any transcript of evidence or sound recording taken before the Tribunal,
- (j) such other records as may be determined by the Chairperson.

9 Functions of assessors

- (1) For the purpose of conducting an inquiry under section 17 of the Act, an assessor authorised in writing by the Chairperson to do so is to carry out such inspections in connection with any matter as the Tribunal may direct and report to the Tribunal as directed.
- (2) In the exercise of his or her functions, an assessor is to act with as little formality as the circumstances permit and according to equity, good conscience and the substantial merits of the matter without regard to technicalities or legal forms.
- (3) The provisions of clause 6 apply to and in respect of an assessor in the same way as to a member of the Tribunal.

10 Taking evidence

For the purpose of conducting an inquiry under section 17 of the Act, an assessor:

- (a) may inform himself or herself of any matter in such manner as the assessor thinks fit, and
- (b) may, in particular, hear testimony from any person and administer an oath to any person testifying.

Part 4 Transfer of jurisdiction to Tribunal

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

For the purposes of section 22 (2) (b) of the Act:

- (a) the following persons, namely:
 - (i) the Ombudsman,
 - (ii) any person exercising the functions of an ombudsman under any law of the Commonwealth,
 - (iii) any person authorised, under a law of the State or of the Commonwealth or of another State or Territory, to make decisions or orders, or give directions, that are binding only on one party to a dispute,are prescribed persons, and
- (b) the Fair Trading Administration Corporation is a prescribed body.

12 Transfer of proceedings to or from other courts or tribunals

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

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

Part 5 Representation of parties

13 Applications for representation

- (1) An application under section 33 (4) of the Act may be made:
 - (a) in writing addressed to the Registrar and filed not later than 5 days before the date set down for hearing of the matter (or at such later time as the Registrar may allow), or
 - (b) by oral submission at the commencement of the hearing, if the presiding member of the Tribunal, at his or her discretion, allows it.
- (2) An application that is made in writing must:
 - (a) identify the proceedings with respect to which it is made, and
 - (b) specify the reason why the applicant wishes to be represented, and
 - (c) specify whether representation by a legal practitioner is proposed, and
 - (d) if representation by a legal practitioner is not proposed, specify the name and occupation of the proposed representative, and
 - (e) specifically authorise the representative to make decisions in the absence of the applicant in the proceedings concerned that are binding on the applicant.
- (3) If the application is made in writing, the applicant may include submissions in relation to the competence of the proposed representative or any matter he or she desires to address in support of the application.
- (4) An application for representation cannot be determined unless the other party to the proceedings has been given an opportunity to make oral or written submissions in relation to the application.

14 Representation of unincorporated body

If a claim is lodged under the Act on behalf of an unincorporated body by an officer of that body, each of the members of the body is taken to have agreed to be represented at the hearing of the claim by that officer or by such other person as may be permitted to represent the body at that hearing.

15 When parties may be represented

- (1) A party to:

- (a) a matter in the Home Building Division of the Tribunal that involves a claim for or a dispute over an amount in excess of \$25,000, or
- (b) a matter in the Commercial Division of the Tribunal, not being a matter arising under:
 - (i) section 74, 115 or 116 of the *Credit Act 1984*, or
 - (ii) section 68 or 88 of the *Consumer Credit (NSW) Code*, or
 - (iii) section 5 or 6 of the *Credit (Home Finance Contracts) Act 1984*,

is entitled to be represented at the hearing of the matter.

- (2) A party to a matter other than a matter to which subclause (1) applies is not entitled to be represented at the hearing of the matter unless:
 - (a) the party is a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth and the corporation is represented by one of the corporation's officers, or
 - (b) the party is an owners corporation constituted under the *Strata Schemes Management Act 1996* and the corporation is represented by the owner or, if there is more than one owner, by one of the owners constituting the corporation, or by the strata managing agent, or
 - (c) the party is a community association constituted under the *Community Land Development Act 1989* and the association is represented by the proprietor of each development lot in the relevant community plan or, if there is more than one proprietor, by one of the proprietors who is a member of the association, or by the managing agent, or
 - (d) the party is:
 - (i) a society, association or union registered under the *Co-operatives Act 1992*, or
 - (ii) an institution registered under the *Financial Institutions (New South Wales) Act 1992*,and the society, association, union or institution is represented by one of its officers, or
 - (e) the party is a firm and the firm is represented by one of its partners, or
 - (f) the party is an incorporated association registered under the *Associations Incorporation Act 1984* and the association is represented by one of its officers, or
 - (g) the party is an unincorporated body of persons and the body is represented by:

- (i) a secretary or treasurer of the body, or
 - (ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body, or
 - (h) the party has a trustee for the management of his or her estate and the person is represented by the trustee, or
 - (i) the party is a government agency represented by an officer of the agency, or
 - (j) the party is a landlord of property involved in the proceedings and is represented by the managing agent of the property, or
 - (k) the party is the owner of a residential park involved in the proceedings and is represented by the park manager, or
 - (l) the party is the administering authority for a retirement village involved in the proceedings and is represented by the managing agent of the retirement village, or
 - (m) any other party to the claim is, or is represented by a person who is, entitled by law to practise as a legal practitioner, either in New South Wales or elsewhere, or
 - (n) any other party to the claim is a government agency, or
 - (o) the Tribunal, of its own motion, decides that the party would be placed at a disadvantage if not represented at the hearing, or
 - (p) in any other case, the representation is, on determination of an application made by or on behalf of the party, approved by the Tribunal.
- (3) The Tribunal must not give an approval to an application referred to in subclause (2) (p) unless the Tribunal is satisfied that:
- (i) the representation should be permitted as a matter of necessity due to the likelihood that complex issues of law or fact will arise in the proceedings, or
 - (ii) the party by whom or on whose behalf the application was made would otherwise be placed at a disadvantage.
- (4) A decision of the Tribunal to allow representation in contravention of any provision of this clause does not of itself invalidate the Tribunal's determination of any matter or any order made by the Tribunal.

16 Representative to be competent

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

- (a) has sufficient knowledge of the issues in dispute to enable the representative to represent the applicant effectively at the hearing by the Tribunal of the matter concerned, and
 - (b) (if the applicant is not present when the application is being considered) is vested with sufficient authority to bind the applicant.
- (2) In determining a written application for representation, the Tribunal is entitled to rely on information supplied by the applicant in support of the application.

17 Representation by managing agents

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

Part 6 Appeals and rehearings

18 Precluded appeals

No appeal lies to the Supreme Court under section 61 of the Act in respect of a decision of the Tribunal:

- (a) in a matter heard in the Consumer Claims Division or the Motor Vehicle Division of the Tribunal, or
- (b) in a matter heard in the Home Building Division of the Tribunal in which the amount claimed or disputed does not exceed \$25,000.

19 Rehearings

- (1) An application for a rehearing under section 63 of the Act must be made in writing addressed to the Registrar and filed with the Tribunal within 14 days after receipt of written notice of the decision concerned, except as provided by subclause (2).
- (2) If a written statement of reasons for the Tribunal's decision is duly requested, the time prescribed by subclause (1) is extended to 14 days after receipt of the statement.
- (3) If the applicant for a rehearing alleges that a rehearing is justified because he or she did not receive notice of the hearing of the proceedings, the Registrar or other officer accepting lodgment of the application may require that allegation to be verified by oath of the applicant.

- (4) Only one rehearing may be granted at the request of any one party to the matter concerned, unless the Chairperson, being satisfied that in the special circumstances of the case this subclause should not apply, by order permits a further rehearing.

Part 7 Procedure in Tribunal

20 Power of Chairperson to vary or dispense with requirements

- (1) The Chairperson may, of his or her own motion or on application (whether made before or after the expiry of the time limit concerned) by any person, abridge or extend the period of time within which anything would otherwise be required under this Regulation to be done.
- (2) The Chairperson may dispense with compliance with any requirement of this Regulation, either before or after the occasion for compliance arises.

21 Applications and other process

- (1) This clause applies to any application to have the Tribunal deal with a matter or other process to be filed in the Tribunal, and so applies subject to any other Act or law.
- (2) The Tribunal may establish one or more registries.
- (3) An application or other process may be lodged:
 - (a) at any registry of the Tribunal, or
 - (b) at a Fair Trading Centre of the Department of Fair Trading, or
 - (c) at any Local Court registry, or
 - (d) at the offices of the Motor Vehicle Repair Industry Council, if the process relates to a matter in the Motor Vehicles Division of the Tribunal.
- (4) The Tribunal may accept lodgment of applications or other process by electronic means.
- (5) Except where the Registrar otherwise determines, an application or other process is taken to have been lodged when it has been duly lodged in accordance with this clause, whether or not payment of any fee occasioned by the lodgment has been made. The Tribunal is, however, entitled to decline to hear proceedings on the application until the fee has been paid.

22 Particulars of application

- (1) An application made to the Tribunal must contain the following particulars:
 - (a) the name and address of the applicant,
 - (b) the name and last known address of the other party,

- (c) a description of the order or orders sought by the applicant,
 - (d) a concise statement containing particulars sufficient to enable the other party to know the nature of the claim,
 - (e) if an amount of money is claimed or in dispute, the amount claimed or disputed.
- (2) An application must be signed and dated by the applicant, unless any Act or law conferring jurisdiction on the Tribunal authorises another person to sign the application.

23 Dispensing with hearing

For the purposes of section 31 (2) of the Act, applications under section 86A of the [Credit Act 1984](#) are a class of matters that may be determined under section 31 without the consent of the parties.

24 Summonses

- (1) A summons issued under section 37 of the Act must be served not later than 5 working days before the day the person is required to attend in accordance with the summons.
- (2) A summons may be signed by any member of the Tribunal, or by the Registrar, a Deputy Registrar or a person authorised in writing by the Registrar to do so.
- (3) It is sufficient compliance with a summons for the production only of a document or other thing if the document or thing is produced to the Registrar at an address specified for the purpose in the summons at any time before the proceedings at which the document or thing is required to be produced.
- (4) A summons is to be issued in Form 1 in Schedule 2.

25 Warrants

A warrant under section 38 of the Act is to be issued in Form 2 in Schedule 2.

26 Notice of decisions and reasons

- (1) A notice under section 45 (1) of the Act is to be given within 7 days after the relevant decision was made.
- (2) A party to proceedings who wishes to request the Tribunal under section 45 (2) to prepare a statement of reasons for its decision must make the request in writing addressed to the Registrar within 7 days after receipt of notice of the decision.
- (3) A statement referred to in subclause (2) must be provided within 7 days after a request for it is duly made and filed with the Tribunal.

27 Joinder of parties

- (1) If the Tribunal is of the opinion that a person has a sufficient interest in resolving the dispute to which an application to the Tribunal relates but the person has not been served with notice of the application, the Tribunal may make an order directing that the person be joined either as an applicant or as a respondent, as appears to the Tribunal to be appropriate, and notice of the proceedings is to be served accordingly.
- (2) The powers of the Tribunal under this clause may, in accordance with any relevant directions of the Chairperson, be exercised by the Registrar.

28 Ex parte proceedings

The Tribunal may proceed to hear a matter ex parte if it is satisfied that notice of the hearing was duly served on the party failing to appear.

29 Objection to participation of member following preliminary conference

- (1) An objection under section 50 (3) (b) of the Act may be made in writing addressed to the Registrar and filed with the Tribunal within 14 days after the matter concerned is listed for hearing or, if the matter is listed for hearing within the 14-day period, may be made by oral submission at the commencement of the hearing of the matter concerned.
- (2) In relation to matters in the Consumer Claims Division or the Motor Vehicle Division of the Tribunal, and matters in the Home Building Division other than matters where an amount of or exceeding \$25,000 is claimed or disputed, such an objection may be made in writing in accordance with subclause (1) or by oral submission at the commencement of the hearing of the matter concerned.

30 Costs of mediation and neutral evaluation

- (1) The parties to proceedings who, for the purposes of a mediation or neutral evaluation under Division 2 of Part 5 of the Act, elect to employ their own mediator or neutral evaluator rather than rely on one arranged by the Tribunal, are to bear the costs of the mediation or neutral evaluation.
- (2) The parties are to bear the costs in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal.

31 Allowances and expenses of witnesses

- (1) A person summoned by the Tribunal to appear and give evidence before the Tribunal is entitled to allowances and expenses on the same scale as a witness attending and giving evidence in criminal proceedings before the District Court.
- (2) A summons issued at the request of a party has no effect unless, not later than a reasonable time before the day on which the attendance of the witness is required by

the summons, tender is made of an amount in respect of the reasonable expenses of complying with the requirements of the summons.

32 Costs in respect of professional or expert services

- (1) For the purposes of section 48 (4) (a) of the Act, the amount prescribed is \$25,000.
- (2) Under section 48 (4) (b) of the Act, the Tribunal may order:
 - (a) that the costs of proceedings on an application for rehearing of a matter be borne wholly or in part by the applicant, if the applicant fails to attend the hearing of the application, or
 - (b) that the costs of proceedings adjudged by the Tribunal to be frivolous, vexatious, misconceived or lacking in substance, or as otherwise not to be entertained, be borne wholly or in part by the person who instituted them.
- (3) The amount of the relevant costs is to be substantiated in accordance with directions in that behalf given by the Chairperson or, in default of such directions, in such manner as the Tribunal thinks fit.

Part 8 Access to records of Tribunal

33 Right of access

- (1) Any person may apply to the Registrar for access to records of proceedings before the Tribunal.
- (2) The Registrar must grant access to records of proceedings to any person who is a party to the proceedings, free of charge.
- (3) On payment of a fee approved by the Minister, the Registrar may grant access to a record of proceedings to any other person who, in the opinion of the Registrar, has a sufficient reason for being given access to the record.
- (4) Nothing in this clause permits access to or the provision of a copy of:
 - (a) any note or other record made by or on behalf of a member of the Tribunal for the member's own use and which the member did not cause to be filed as part of the record of proceedings, or
 - (b) any document kept by the Registrar, if:
 - (i) the Tribunal has ordered that the document not be disclosed without the consent of the Tribunal, or
 - (ii) the disclosure of the document to the party is otherwise prohibited by or under the Act or another law.

34 Copies of documents

- (1) The fee payable by a person for a copy of a record of proceedings or any part or parts of that record, is:
 - (a) \$2 per page or \$21 (whichever is greater), in the case of a documentary record, or
 - (b) \$21 per tape, in the case of a sound recording.
- (2) A person who is or was a party to any proceedings is, however, entitled to a single free copy of any order made by the Tribunal in respect of the proceedings and of any written reasons given by the Tribunal in relation to that order.
- (3) Payment of any fee payable under this clause may be waived (either in whole or in part) by the Registrar if the Registrar is satisfied:
 - (a) that the person required to pay it would suffer hardship if required to pay the fee, or
 - (b) that, for any other reason, it would be unfair or unreasonable for the person to have to pay the fee.

Part 9 Miscellaneous

35 Interest on judgment debt

- (1) Interest is payable on the outstanding balance for the time being of money adjudged by the Tribunal to be payable and which, being due, remains unpaid.
- (2) Such interest is payable at a rate equal to the rate for the time being prescribed for the purposes of section 39 of the [Local Courts \(Civil Claims\) Act 1970](#).

36 Filing fees

- (1) The fees set out in Schedule 3 are payable in respect of the matters shown in that Schedule, except as provided by subclause (2).
- (2) The fee chargeable in respect of an application made or other process lodged by an eligible pensioner or eligible student is:
 - (a) \$2, if the matter is one in which the amount claimed or in dispute is less than \$6,000, or
 - (b) \$5, if the matter is one in which the amount claimed or in dispute is not less than \$6,000.
- (3) No fee is payable by any person in respect of:
 - (a) an application under section 74, 115 or 116 of the [Credit Act 1984](#), or

- (b) an application under section 5 or 6 of the *Credit (Home Finance Contracts) Act 1984*, or
 - (c) an application by the Director-General of the Department of Fair Trading.
- (4) If the Tribunal or the Registrar considers that there are special reasons for so doing, the Tribunal or Registrar:
- (a) may direct that a fee required to be paid by this Regulation be waived wholly or in part, and that any part of the fee waived that has been paid be refunded, and
 - (b) may postpone the time for payment of the whole or a part of a fee required by this clause, and make any such postponement subject to any conditions the Tribunal or Registrar may think fit to impose.
- (5) The provisions of this clause and Schedule 3 apply, with any necessary modifications, to and in respect of an application under section 63 of the Act for a rehearing.

37 Service of documents

- (1) An application for the purposes of any proceedings must be served on each of the other parties within a reasonable time before the return date endorsed on the application by the Registrar or in accordance with directions under subclause (6).
- (2) Service of an application or summons is to be effected:
- (a) personally, or
 - (b) in the case of a company:
 - (i) by certified post addressed to the company's registered office, or
 - (ii) by leaving a copy with a person who is apparently of or above the age of 16 years at the company's registered office.
- (3) Service of any other document may be effected in any manner provided by section 71 of the Act or in any of the following ways:
- (a) if the person has an address for service on record with the Registry:
 - (i) by pre-paid ordinary post addressed to the person's address for service, or
 - (ii) if the person's address for service is a box in a document exchange, in New South Wales, of Australian Document Exchange Pty Limited, by leaving a copy in that exchange box or in another exchange box for transmission to that exchange box,
 - (b) in such other manner as may be directed by the Chairperson, Deputy Chairperson or Registrar in a particular case.

- (4) Service by post is prima facie taken to have been effected on a person at the end of the fourth working day after the date on which the document was posted to the person.
- (5) Service by document exchange is prima facie taken to have been effected on a person at the end of the second working day after the date on which the document was left in the person's exchange box or, if the document is left at some other exchange box for transmission to the person's exchange box, in that other exchange box.
- (6) The Chairperson, Deputy Chairperson or Registrar may, without hearing from the other parties, do any one or more of the following:
 - (a) direct a party to serve an application or any other document on a person who is not a party,
 - (b) direct substituted service to be effected in such manner as the Chairperson, Deputy Chairperson or Registrar considers appropriate,
 - (c) reduce (subject to any relevant Act or law) the time within which service must be effected.
- (7) This clause has effect subject to the provisions of any Act or law or of any directions of the Chairperson under section 25 (2) (b) of the Act.

38 Amendment of [Property, Stock and Business Agents \(General\) Regulation 1993](#)

The [Property, Stock and Business Agents \(General\) Regulation 1993](#) is amended as set out in Schedule 4.

39 Notice regarding enforcement of certain orders

For the purposes of section 39A of the Act, a notice under the section is to be in Form 3 of Schedule 2.

Schedule 1 Oaths or affirmations of office

(Clause 5)

Part 1 Chairperson

Oath

I,, swear that I will faithfully and impartially discharge the duties of the office of Chairperson of the Fair Trading Tribunal of New South Wales.

Affirmation

I,, solemnly, sincerely and truly affirm and declare that I will faithfully and impartially discharge the duties of the office of Chairperson of the Fair Trading Tribunal of New South Wales.

Part 2 Other members

Oath

I,, swear that I will faithfully and impartially discharge the duties of the office of a member of the Fair Trading Tribunal of New South Wales.

Affirmation

I,, solemnly, sincerely and truly affirm and declare that I will faithfully and impartially discharge the duties of the office of a member of the Fair Trading Tribunal of New South Wales.

Schedule 2 Forms

(Clauses 24, 25)

Form 1 Summons

Fair Trading Tribunal Act 1998

IN THE FAIR TRADING TRIBUNAL AT:

IN THE MATTER OF:

SUMMONS

To: of

YOU ARE REQUIRED TO ATTEND at the time, date and place specified below for the purpose of:

- giving evidence before the Tribunal¹
- producing the following²:

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

Time, date and place of attendance:

.....
.....

.....Chairperson/Deputy Chairperson/Member/Registrar/Deputy Registrar of the Tribunal.

NOTES—

1. Delete if inapplicable.

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

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

Form 2 Warrant for apprehension of summons defaulter

Fair Trading Tribunal Act 1998

To:

On a summons directed to was issued out of the Fair Trading Tribunal sitting at The summons was duly served on him/her by on but he/she failed to comply with it.

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

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

.....

Chairperson/Deputy Chairperson of the Tribunal.

Date

Form 3 Notice regarding non-compliance with Tribunal order

Fair Trading Tribunal Act 1998

This form cannot be used to enforce orders for the payment of money.

- 1 Your name.....
- 2 Your present address.....
.....
- 3 Who was the order made against?.....
- 4 Date on which the order was made/...../.....
- 5 Tribunal's reference number.....
- 6 In what way has the order not been obeyed?
.....
.....
- 7 What order do you want? (*Tick where appropriate*)
 - An order for the payment of \$.....
 - An order to rectify faulty goods or provide services
 - An order to provide specified services
 - An order that I do not have to pay \$.....
 - An order to deliver goods
 - An order to replace goods or services
 - An order to return goods to me
- 8 It is requested that the application be relisted

Signature Date .././..

Schedule 3 Filing fees

(Clause 36)

Part 1 Matters in Consumer Claims Division, Motor Vehicle Division or Home Building Division

An application:

- (a) where the amount claimed or in dispute is less than \$2,000 \$11
- (b) where the amount claimed or in dispute is not less than \$2,000 but is less than \$4,000 \$22

| | |
|---|-------|
| (c) where the amount claimed or in dispute is not less than \$4,000 but is less than \$6,000 | \$33 |
| (d) where the amount claimed or in dispute is not less than \$6,000 but is less than \$10,000 | \$43 |
| (e) where the amount claimed or in dispute is not less than \$10,000 | \$109 |
| An application where no amount is claimed or in dispute | \$27 |

Part 2 Matters in Commercial Division

| | |
|--|---|
| An application for which no other fee is prescribed by this Regulation or by or under the relevant Act | \$60 |
| An application in a matter arising under the <i>Property, Stock and Business Agents Act 1941</i> or the <i>Travel Agents Act 1986</i> | Fees payable in accordance with Part 1 of this Schedule |
| An application under section 86 or 86A of the <i>Credit Act 1984</i> : | |
| (a) if the number of contracts the subject of the application does not exceed 10 | \$263 |
| (b) if the number of contracts the subject of the application exceeds 10 but does not exceed 100 | \$598 |
| (c) if the number of contracts the subject of the application exceeds 100 but does not exceed 200 | \$1,196 |
| (d) if the number of contracts the subject of the application exceeds 200 but does not exceed 1,000 | \$2,392 |
| (e) if the number of contracts the subject of the application exceeds 1,000 | \$5,981 |
| An application under section 34 (5), 35, 44 (4), 47 (3), 80, 82, 83, 85, 92, 93, 94, 156, 157, 172 (4) (b) or 174 of the <i>Consumer Credit (NSW) Code</i> | \$60 |
| An application under section 68 or 88 of the <i>Consumer Credit (NSW) Code</i> | Nil |
| An application under section 101 of the <i>Consumer Credit (NSW) Code</i> where the application is made by a credit provider: | |
| (a) if the number of contracts the subject of the application does not exceed 10 | \$234 |
| (b) if the number of contracts the subject of the application exceeds 10 but does not exceed 100 | \$532 |
| (c) if the number of contracts the subject of the application exceeds 100 but does not exceed 200 | \$1,064 |

| | |
|---|----------------------------------|
| (d) if the number of contracts the subject of the application exceeds 200 but does not exceed 1,000 | \$2,127 |
| (e) if the number of contracts the subject of the application exceeds 1,000 | \$5,320 |
| Notice of appeal | \$167 |
| Certified copy of judgment or final order after the judgment or final order has been entered or sealed | \$36 |
| Searching any proceeding or record, other than a search made by or on behalf of a party to the proceeding | \$36 per hour or part of an hour |
| Copy of evidence taken in any proceedings before the Tribunal | Cost to Tribunal |

Schedule 4 Amendment of *Property, Stock and Business Agents (General) Regulation 1993*

(Clause 38)

Clauses 17 and 18

Omit the clauses. Insert instead:

17 Notice to be included in statements of claim or itemised accounts

- (1) There must be appended to or printed on any statement of claim or itemised account referred to in section 42A of the Act a notice referred to in subsection (4) of that section.
- (2) Until 31 August 1999, it is taken to be sufficient compliance with the requirements of subclause (1) if, instead of a notice approved by the Minister under section 42A (4) of the Act, there is appended to or printed on such a statement or account a notice in the form last approved under section 42A (4A) of the Act.

18 Proceedings under section 42A

- (1) Proceedings under section 42A of the Act that had commenced to be heard, but had not been determined, before 1 March 1999 may be continued and determined as though the section had not been amended by Schedule 4.9 [2] to the *Fair Trading Tribunal Act 1998*, and for that purpose the provisions of clauses 17 and 18 of this Regulation, as in force immediately before that date, are taken to continue in force.
- (2) Proceedings instituted under that section before 1 March 1999 that had not commenced to be heard before that date may be continued and determined by the Fair Trading Tribunal.