



New South Wales

Fair Trading Tribunal Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. The *Consumer Claims Bill 1998* is cognate with this Bill.

The object of this Bill is to establish a Fair Trading Tribunal and to provide for its powers and procedures. The Bill provides for the phasing out of:

- the Commercial Tribunal constituted under the *Commercial Tribunal Act 1984*, and
- disputes committees constituted under section 34 of the *Motor Dealers Act 1974*, and
- the Motor Vehicle Repair Disputes Committee constituted under the *Motor Vehicle Repairs Act 1980*,

the functions of which will be exercised by the Tribunal.

The Bill provides for the repeal of the *Commercial Tribunal Act 1984* and for the amendment of other Acts that conferred jurisdiction on the Commercial Tribunal and those disputes committees.

The Bill also provides for the transfer to the Fair Trading Tribunal of the powers and functions of the Director-General of the Department of Fair Trading under section 42A of the *Property, Stock and Business Agents Act 1941*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 specifies the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that notes included in the proposed Act are explanatory notes and do not form part of the proposed Act.

Part 2 Establishment of Tribunal

Division 1 Establishment and functions

Clause 6 establishes the Tribunal.

Clause 7 provides that the Tribunal is to be constituted by a Chairperson, one or more Deputy Chairpersons, senior members and other members.

Division 2 Membership of Tribunal

Clause 8 provides for the appointment of members of the Tribunal. A member may be appointed on a full-time or part-time basis.

Clause 9 prescribes the requisite qualifications for membership of the Tribunal. The Chairperson or a Deputy Chairperson must be qualified for appointment as a District Court Judge. Senior members must be legally qualified. Other members must have appropriate specialist knowledge and skills. The clause gives effect to a Schedule that prescribes the terms of office of the members and makes provision for such matters as the remuneration and seniority of members and the circumstances that give rise to a vacancy of office.

Clause 10 describes the responsibilities of the Chairperson in ensuring the proper functioning of the Tribunal, and empowers the Chairperson to give directions in connection with a range of matters concerning the business of the Tribunal. The Chairperson's functions may be performed under delegated authority by staff or other members of the Tribunal.

Clause 11 provides that members of the Tribunal generally have the functions assigned to them under the proposed Act or other laws.

Division 3 Organisation

Clause 12 enables the Tribunal to exercise its functions in specialist Divisions.

Clause 13 confers power on the Chairperson to determine the constitution of the Tribunal for the purposes of different classes of matters before it, and provides for the reconstitution of the Tribunal proceedings if a member should die or be otherwise unavailable or cease to be a member.

Clause 14 provides for simultaneous sittings of the Tribunal or of its Divisions.

Clause 15 provides for an annual report to be submitted to Parliament concerning the work and activities of the Tribunal.

Division 4 Assessors

Clause 16 provides for the appointment of assessors with specialist knowledge in any of the areas over which the Tribunal exercises jurisdiction.

Clause 17 provides for assessors to be commissioned to inquire into and report on a matter concerning the business of the Tribunal.

Clause 18 enables assessors to provide other advice and assistance to the Tribunal.

Division 5 Registrar and staff

Clause 19 provides for the appointment of a Registrar, Deputy Registrars and staff to assist the Tribunal in the exercise of its functions.

Clause 20 describes the functions of the Registrar and Deputy Registrars. The Registrar, in particular, is responsible for assisting the Chairperson in managing the affairs of the Tribunal.

Part 3 Jurisdiction of Tribunal

Clause 21 describes the jurisdiction of the Tribunal. In general, the Tribunal exercises any jurisdiction conferred on it by or under other enactments. When the proposed Act has commenced, this jurisdiction will consist of the jurisdiction now exercised by the Commercial Tribunal, the consumer claims tribunals and other persons and bodies exercising functions under the Acts amended by Schedule 4. Other laws enacted from time to time may confer further jurisdiction on the Tribunal.

Clause 22 provides for determining the proper forum when another court or tribunal has concurrent jurisdiction with the Tribunal in a particular matter. A person bringing a claim or seeking to have the Tribunal review the decision of any person or body may generally choose whichever forum the person prefers, the proper forum being determined by where the proceedings are first commenced.

Clause 23 provides for the transfer of proceedings from the Tribunal to a court that has jurisdiction in the matter or from a court to the Tribunal, if it has jurisdiction.

Part 4 Procedure of Tribunal

Clause 24 describes the general procedure for bringing matters before the Tribunal.

Clause 25 requires notice of an application lodged with the Tribunal to be served by the Registrar on other parties to the proceedings.

Clause 26 determines what member presides in proceedings before the Tribunal when it is constituted by two or more persons.

Clause 27 describes the general features of proceedings before the Tribunal. The Tribunal is not bound by the rules of evidence and is to conduct its business with minimum formality. It has a duty to assist the understanding of the parties before it as to the significance of any aspect of the proceedings and to deal with matters as quickly as practicable. The clause confers various powers on the Tribunal in connection with proceedings before it.

Clause 28 allows the member presiding at a sitting of the Tribunal to give procedural directions that appear to the member to be cost-effective and expeditious.

Clause 29 allows the Tribunal, if it thinks fit, to allow errors or omissions in pleadings or other documents filed in connection with proceedings to be corrected and to cure irregularities in connection with the commencement or conduct of proceedings.

Clause 30 provides that hearings before the Tribunal are generally to be in public, but confers discretion on the Tribunal to order a private or partly private hearing and empowers it to make orders for the suppression of names and facts involved in the proceedings.

Clause 31 allows the Tribunal, in an appropriate case, to dispense with a hearing of any matter and to decide the matter by a review of documentary evidence.

Clause 32 imposes a duty on the Tribunal to afford the parties to a dispute before it a reasonable opportunity to present their cases and to make submissions to the Tribunal.

Clause 33 deals with representation of parties before the Tribunal. The general rule is that the parties to proceedings must present their own cases, but in circumstances prescribed by the regulations the Tribunal may by order allow a party to be represented by someone else. The Tribunal may itself appoint a person to represent an incapacitated person.

Clause 34 provides for the use of interpreters to assist the Tribunal.

Clause 35 allows the Tribunal to take evidence by telephone or closed-circuit television or other means.

Clause 36 allows the Tribunal to call evidence of its own motion, to administer oaths and examine and summon witnesses.

Clause 37 empowers the Registrar to issue summonses to compel the attendance of witnesses or the production of documentary or other evidence.

Clause 38 allows the apprehension by warrant of witnesses who fail to obey a summons.

Clause 39 defines what constitutes contempt of the Tribunal and provides for its punishment.

Clause 40 affords to legal practitioners and other persons appearing or testifying before the Tribunal the same protections and immunities as when they appear or testify before the Supreme Court.

Clause 41 determines the decision of the Tribunal, when constituted by two or more persons, on a matter where opinion is divided.

Clause 42 allows the Tribunal to reserve its decision on a matter before it, (subject to time limits imposed by regulations under proposed section 45).

Clause 43 confers a general power on the Tribunal, in making any order it is otherwise empowered to make, to attach conditions to the order.

Clause 44 allows the Tribunal to give effect to agreements between the parties for the settlement of matters before it.

Clause 45 requires the Tribunal to serve notice of its decisions on the parties to the relevant proceedings and to give reasons in writing (if it has not already done so) at the request of either party.

Clause 46 enables the Tribunal to correct any error discovered in the text of its judgments or statements.

Clause 47 provides that an order made by the Tribunal for the payment of money is, when its particulars are certified by the Registrar and the certificate filed with a court of competent jurisdiction, enforceable as a judgment of that court.

Clause 48 provides for the award of costs in respect of proceedings before the Tribunal. Costs are to be awarded, in general, only if the parties were legally represented in the Commercial Division or the Home Building Division, but costs are available in circumstances to be determined by the regulations or in special circumstances recognised by the Tribunal in a particular case.

Part 5 Alternative dispute resolution

Division 1 Conciliation and preliminary measures

Clause 49 imposes a duty on the Tribunal to attempt to bring the parties to a dispute to a settlement without the need for further proceedings.

Clause 50 provides for the holding of preliminary conferences between the parties before the hearing of a matter before the Tribunal, as a means of attempting to achieve early settlement.

Division 2 Mediation and neutral evaluation

Clause 51 defines *mediation session*, *mediator*, *neutral evaluation session* and *neutral evaluator* for the purposes of the proposed Division.

Clause 52 specifies the difference between *mediation* and *neutral evaluation*. In a mediation, the mediator presides over a negotiation process in which the parties are encouraged to come to a resolution of their dispute. In a neutral evaluation, the evaluator attempts to simplify the issues, isolate the relevant principles that will determine the outcome of the dispute and evaluate each party's probability of success.

Clause 53 provides for the appointment of the persons who will conduct mediation sessions and neutral evaluation sessions.

Clause 54 allows the Tribunal to refer any matter arising in proceedings before it for mediation or neutral evaluation.

Clause 55 enables the regulations to require the costs of mediation or neutral evaluation to be borne by the parties to the dispute.

Clause 56 permits the Tribunal to make orders giving effect to any compromise arrived at in a mediation or neutral evaluation of a dispute.

Clause 57 extends to mediations and neutral evaluations the same privilege with regard to defamation as exists in relation to legal proceedings.

Clause 58 restricts the disclosure, by a mediator or neutral evaluator, of information obtained in a mediation or neutral evaluation.

Clause 59 provides that nothing in the proposed Division precludes the parties to proceedings from seeking other means of resolving their dispute.

Part 6 Appeals and rehearings

Clause 60 provides that there is no appeal from the Tribunal by proceedings in the nature of the prerogative writs or by proceedings in equity except to the extent that the Tribunal's jurisdiction is disputed.

Clause 61 affords a right of appeal to the Supreme Court on a matter of law in certain cases.

Clause 62 allows the Tribunal to refer any matter of law to the Supreme Court for determination.

Clause 63 provides for a limited right to have a matter reheard by the Tribunal in a case where the Chairperson is satisfied that an injustice has been done.

Clause 64 provides that an appeal under this Part does not stay the decision against which the appeal is brought unless the Chairperson or the Supreme Court hearing the appeal otherwise orders or other provision is made by another law.

Part 7 Miscellaneous

Clause 65 applies certain provisions of the *Evidence Act 1995* to the Tribunal in connection with the production of documents.

Clause 66 prohibits the disclosure, by persons employed or acting for the purposes of the proposed Act, of information that comes to their knowledge while so employed or acting.

Clause 67 provides that the proposed Act is to bind the Crown.

Clause 68 provides for a seal of the Tribunal, of which judicial notice may be taken.

Clause 69 provides for the authentication of documents of the Tribunal (otherwise than by its seal) by signature of the Chairperson, Deputy Chairperson, senior member or Registrar, of whose signatures judicial notice may be taken.

Clause 70 creates a presumption in legal proceedings that the constitution and decisions of the Tribunal, and the appointment or holding of office by its members, are not irregular.

Clause 71 provides for the giving of notices and lodgment of documents for the purposes of the proposed Act.

Clause 72 provides for the return to their rightful owners of documents used in evidence before the Tribunal.

Clause 73 provides for witnesses' expenses.

Clause 74 provides that proceedings for an offence against the proposed Act or the regulations are to be taken before a Local Court.

Clause 75 affords to members of the Tribunal, the Registrar and Deputy Registrars protection from liability for acts and omissions in the exercise of their respective functions.

Clause 76 allows the Chairperson to report to the Minister or to the Director-General of the Department of Fair Trading concerning matters arising under the administration of the proposed Act or affecting the jurisdiction of the Tribunal.

Clause 77 allows regulations to be made in aid of the proposed Act.

Clause 78 provides for the form of documents to be used for the purposes of the proposed Act.

Clause 79 repeals the *Commercial Tribunal Act 1984*.

Clause 80 gives effect to a schedule of consequential amendments to other Acts.

Clause 81 gives effect to a schedule of savings, transitional and other provisions.

Clause 82 requires a review of the Act to be undertaken after 2 years of operation.

Fair Trading Tribunal Bill 1998

Explanatory note

Schedules

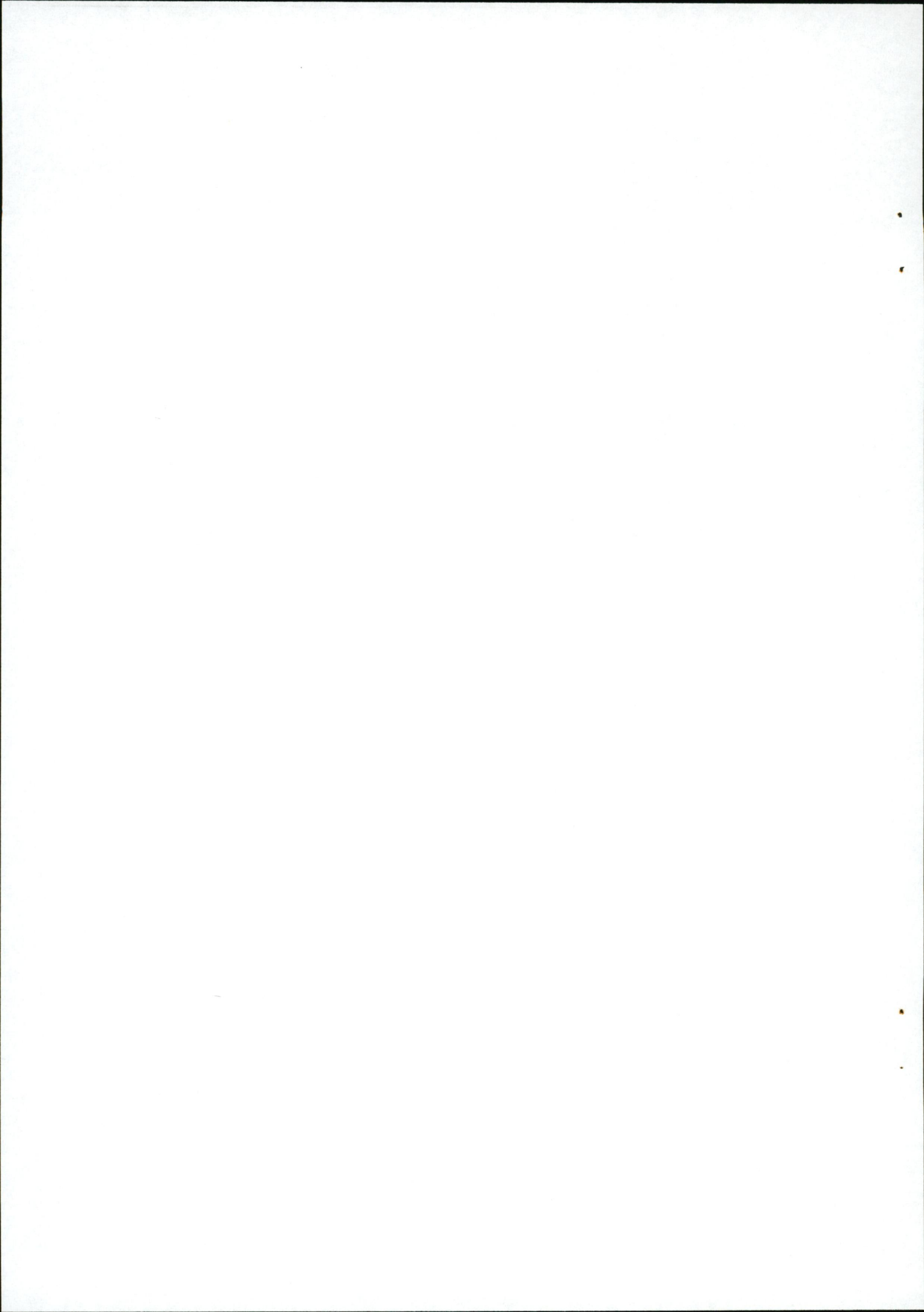
Schedule 1 contains additional provisions relating to members of the Tribunal.

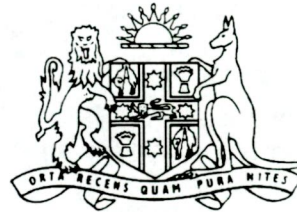
Schedule 2 contains additional provisions relating to assessors of the Tribunal.

Schedule 3 contains additional provisions relating to mediators and neutral evaluators.

Schedule 4 contains consequential amendments to certain Acts.

Schedule 5 contains savings, transitional and other provisions.





New South Wales

Fair Trading Tribunal Bill 1998

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New South Wales

Fair Trading Tribunal Bill 1998

No. , 1998

A Bill for

An Act to establish a tribunal to adjudicate consumer and commercial disputes; to repeal the *Commercial Tribunal Act 1984* and to amend certain other Acts consequentially; and for other purposes.

See also *Consumer Claims Bill 1998*.

Clause 1 Fair Trading Tribunal Bill 1998

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Fair Trading Tribunal Act 1998*.

2 Commencement

5

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

3 Objects of Act

The objects of this Act are as follows:

- (a) to establish an independent Fair Trading Tribunal to determine disputes in relation to matters over which it is given jurisdiction by an enactment, and 10
- (b) to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair, and
- (c) to enable proceedings before the Tribunal to be determined in an informal, expeditious and inexpensive manner. 15

4 Definitions

In this Act:

assessor means an assessor appointed under this Act.

Chairperson means the Chairperson of the Tribunal. 20

Deputy Chairperson means a Deputy Chairperson of the Tribunal.

Deputy Registrar means a Deputy Registrar of the Tribunal.

exercise a function includes perform a duty.

function includes a power, authority or duty. 25

legal practitioner means a barrister, or solicitor, within the meaning of the *Legal Profession Act 1987*.

Registrar means the Registrar of the Tribunal.

senior member means a senior member of the Tribunal.

Tribunal means the Fair Trading Tribunal established by this Act. 5

5 Notes

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

Clause 6 Fair Trading Tribunal Bill 1998

Part 2 Establishment of Tribunal
Division 1

Part 2 Establishment of Tribunal

Division 1 Establishment and functions

6 Fair Trading Tribunal

- (1) A Fair Trading Tribunal of New South Wales is established by this Act. 5
- (2) The Tribunal has and may exercise such functions as are conferred or imposed on it by or under this or any other Act or law.

Note. The following Acts confer jurisdiction on the Tribunal:

<i>Consumer Claims Act 1998</i>	10
<i>Consumer Credit Administration Act 1995</i>	
<i>Consumer Credit (New South Wales) Act 1995</i>	
<i>Credit Act 1984</i>	
<i>Credit (Finance Brokers) Act 1984</i>	
<i>Credit (Home Finance Contracts) Act 1984</i>	15
<i>Fair Trading Act 1987</i>	
<i>Home Building Act 1989</i>	
<i>Motor Dealers Act 1974</i>	
<i>Motor Vehicle Repairs Act 1980</i>	
<i>Property, Stock and Business Agents Act 1941</i>	20
<i>Retail Leases Act 1994</i>	
<i>Travel Agents Act 1986</i>	

7 Members of Tribunal

The Tribunal consists of the following members:

- (a) a Chairperson. 25
- (b) a Deputy Chairperson or Deputy Chairpersons.

- (c) senior members,
- (d) other members.

Division 2 Membership of Tribunal

8 Appointment of members of Tribunal

- (1) The members of the Tribunal are to be appointed by the Governor. 5
- (2) A member of the Tribunal may be appointed on a full-time basis or a part-time basis.

9 Qualifications and terms of office of members

- (1) A person is eligible to be appointed as the Chairperson or a Deputy Chairperson only if the person is qualified to be a judge of the District Court. 10
- (2) A person is eligible to be appointed as a senior member only if the person is a legal practitioner, or is qualified to be admitted as a legal practitioner, in New South Wales. 15
- (3) A person is eligible to be appointed as a member of the Tribunal (other than the Chairperson, a Deputy Chairperson or a senior member) only if the person has the qualifications or skills determined by the Minister.
- (4) Schedule 1 has effect with respect to the members of the Tribunal. 20

10 Functions of Chairperson

- (1) The Chairperson is the executive officer of the Tribunal and is responsible for the overall operation and administration of the Tribunal. 25
- (2) The Chairperson must:
 - (a) monitor the operations of the Tribunal to ensure that those operations are just, economical, informal and as speedy as practicable, and
 - (b) allocate the work of the Tribunal among the members (including the Chairperson) in accordance with directions under this section. 30

- (3) Without limiting the operation of subsection (1), the Chairperson may give directions as to:
- (a) the arrangement of the business of the Tribunal, and
 - (b) the practice and procedure to be followed in, or for the purposes of, proceedings before the Tribunal, or in alternative dispute resolution procedures under this Act, and 5
 - (c) the places at which the Tribunal may sit, and
 - (d) the procedure of the Tribunal generally, and
 - (e) the procedure of the Tribunal at a particular place, and 10
 - (f) any matter in respect of which the Chairperson is authorised by or under this Act or any other law to give directions, and
 - (g) subject to this Act, the regulations and any other law—any matter necessary or convenient to be determined by direction of the Chairperson for carrying out or giving effect to this Act. 15
- (4) Subject to the regulations, the functions of the Chairperson (other than a power of delegation under this section) may be delegated to any member of the Tribunal or to the Registrar or another staff member of the Tribunal. 20

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

11 Functions of Tribunal members

A member of the Tribunal has and may exercise the functions conferred or imposed on the member by or under this or any other Act or law. 25

Division 3 Organisation

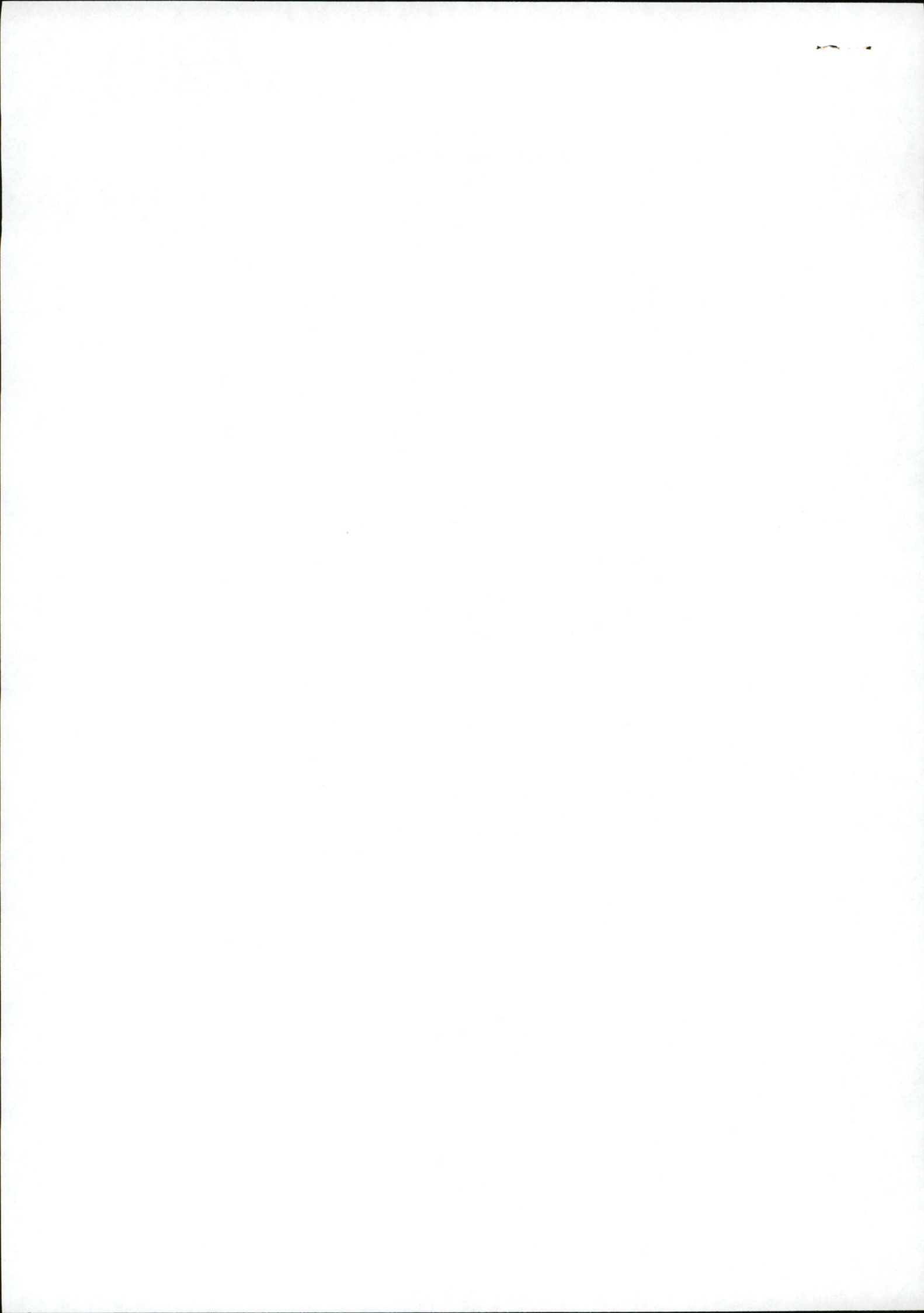
12 Divisions of Tribunal

- (1) The Tribunal comprises the following Divisions: 30
- (a) the Commercial Division, in which the Tribunal's jurisdiction is to be exercised in respect of matters arising under any of the following Acts:

FAIR TRADING TRIBUNAL BILL

Schedule of the amendments referred to in the Legislative Council's Message of 1 December 1998.

- No. 1 Page 7, clause 12, line 18. Omit "General". Insert instead "Consumer".
- No. 2 Page 19, clause 33. Insert after line 18:
- (2) In cases where an amount is claimed or disputed, representation by a legal practitioner is not allowed 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.
- No. 3 Page 26, clause 46, line 20. Insert "a notice of the decision or" after "text of".
- No. 4 Page 26, clause 46, line 22. Insert "notice or" before "statement".
- No. 5 Page 26, clause 46, lines 24 and 25. Omit all words on those lines. Insert instead:
- (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.
- No. 6 Page 26, clause 46, line 26. Insert "a notice of a decision or" after "text of".
- No. 7 Page 26, clause 46, line 29. Insert "notice or" before "statement".
- No. 8 Page 27, clause 48, lines 19-22. Omit all words on those lines. Insert instead:
- (2) In cases where an amount is claimed or disputed, costs are not to be awarded 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 an award of costs.
- (3) Except as otherwise provided by the regulations or by any other Act or law, in cases where an amount is claimed or disputed in the Commercial Division or the Home Building Division, the Tribunal may award costs if:
- (a) the amount claimed or disputed exceeds \$10,000 (or such other amount as may be prescribed by the regulations), and
- (b) the parties were granted the right to legal representation.
- No. 9 Page 27, clause 48. Insert after line 24:
- (a) in respect of expenses incurred in obtaining professional or expert services (other than legal services), if the amount ordered to be paid by the Tribunal exceeds the amount prescribed for the purposes of this paragraph, or
- No. 10 Page 27, clause 48, line 30. Omit "The". Insert instead "If costs are to be awarded, the".



No. 11 Page 35, clause 63, line 36.

Insert "the applicant may have suffered a substantial injustice because" after "that".

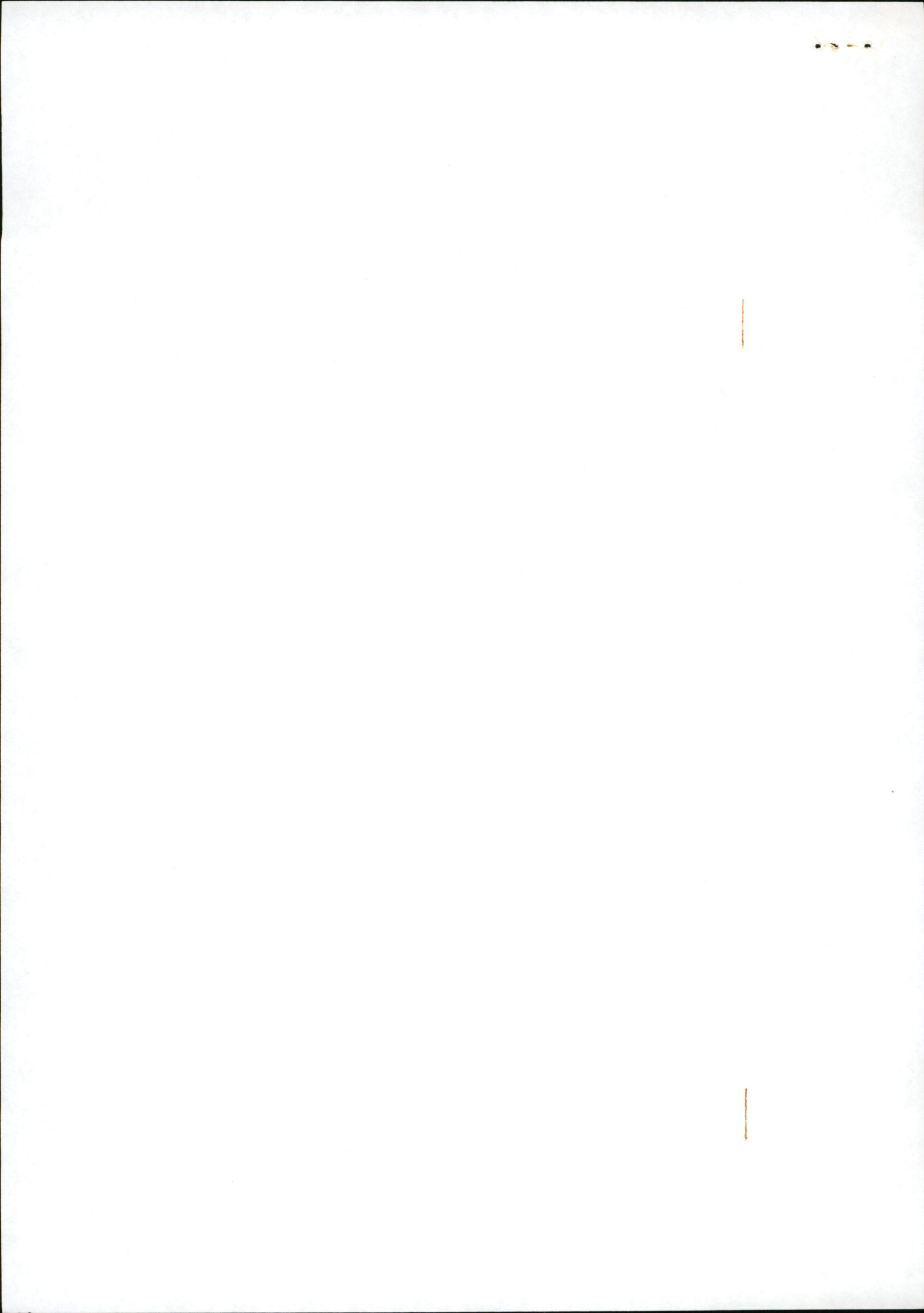
No. 12 Page 36, clause 63, line 4. Omit all words on that line. Insert instead:

(c) evidence that is now available was not reasonably available
at the time of the hearing.

No. 13 Page 67, Schedule 5. Insert after line 16:

7 Transfer of jurisdiction to Administrative Decisions Tribunal

On and from the commencement of section 11 of the *Administrative Decisions Tribunal Act 1997*, the jurisdiction of the Tribunal is vested in the Administrative Decisions Tribunal.



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- (i) the *Consumer Credit Administration Act 1995*,
- (ii) the *Consumer Credit (New South Wales) Act 1995*,
- (iii) the *Credit Act 1984*,
- (iv) the *Credit (Finance Brokers) Act 1984*,
- (v) the *Credit (Home Finance Contracts) Act 1984*, 5
- (vi) the *Property, Stock and Business Agents Act 1941*,
- (vii) the *Retail Leases Act 1994*,
- (viii) the *Travel Agents Act 1986*,
- and in respect of any matter prescribed by or under any Act, and 10
- (b) 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*, and
- (c) the Motor Vehicles Division, in which the Tribunal's jurisdiction is to be exercised in respect of any matter arising under the *Consumer Claims Act 1998* in connection with a motor vehicle, and 15
- (d) the General Claims Division, in which the Tribunal's jurisdiction is to be exercised in respect of any matter arising under the *Consumer Claims Act 1998* (other than a matter in connection with a motor vehicle) and all other matters, except as provided by subsection (2). 20
- (2) An Act or law conferring jurisdiction on the Tribunal may provide for that jurisdiction to be exercised in any specified Division of the Tribunal. 25
- (3) In case of any doubt, the proper Division for dealing with any matter may be determined by the Registrar.
- (4) Matters may be transferred between Divisions in accordance with directions of the Chairperson.
- 13 Constitution of Tribunal for particular proceedings 30**
- (1) For the purposes of any proceedings, the Tribunal may be constituted by one, two or three of its members.

- (2) The Chairperson may give directions as to which 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 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. 5
- (4) A direction under this section in respect of particular proceedings may be revoked, and another given in its place: 10
- (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 before the Tribunal where it is constituted by two 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: 15
- (i) ceases to be a member, or
- (ii) ceases to be available for the purposes of the proceedings, 20
- 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 before the Tribunal as previously constituted, including a record of any evidence taken in the proceedings. 25
- 14 Sittings of Tribunal**
- More than one sitting of the Tribunal, or of any Division of the Tribunal, may be held at the same time. 30
- 15 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. 35

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- (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.

Division 4 Assessors

16 Appointment of assessors

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

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17 Inquiries by assessors

- (1) If proceedings are pending in the Tribunal, the Tribunal or the Chairperson may, with the consent of the parties, 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 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.

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18 Assessors sitting with Tribunal

- (1) If proceedings are pending in the Tribunal, the Tribunal may, in determining the proceedings or any part of the 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 before the Tribunal. 5
- (3) The Tribunal may dispense with the services of an assessor at any stage of the proceedings.

Division 5 Registrar and staff 10

19 Appointment of 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*. 15
- (2) The Tribunal may also employ staff. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of staff appointed under this subsection.
- (3) The Chairperson may on behalf of the Tribunal 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

20 Functions of Registrar and Deputy Registrars

- (1) The Registrar has the following functions: 25
 - (a) to assist the Chairperson in managing the affairs of the Tribunal, and
 - (b) such judicial, administrative or other functions as may be conferred or imposed on the Registrar by or under this or any other Act or law. 30

- (2) A Deputy Registrar may exercise the functions of the Registrar:
- (a) as directed by the Registrar, 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.

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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 any Act or law. 5
- (2) Except as provided by any Act, the Tribunal has jurisdiction in respect of a matter arising whether before or after the commencement of any provision of this Act.

22 Other jurisdictions excluded in certain cases 10

- (1) In this section, *court* means any court, tribunal, board or other body or person (other than one prescribed by or under subsection (2)) that:
- (a) is empowered under any other Act, or
- (b) by consent of or agreement between two or more persons has authority, 15
- to decide or resolve any issue that is in dispute, whether through arbitration or conciliation or any other means.
- (2) The definition in subsection (1) does not extend to:
- (a) a court, tribunal, board, 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 20 25
- (b) a court, tribunal, board, body or person prescribed, or of a class prescribed, by the regulations.
- (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. 30

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- (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 preclude a court of record 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. 5
- (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. 10
- (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. 15
- (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. 20
- (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) (a) or prescribed under subsection (2) (b) is admissible as evidence of the finding or decision. 25

23 Transfer of proceedings to other courts or tribunals

- (1) If all the parties so agree or the Tribunal of its own motion or on the application of a party so directs, proceedings instituted in or before the Tribunal must be transferred, in accordance with the rules of that court, to a court that has jurisdiction in the matter and are to continue before that court as if they had been instituted there. 30

Clause 23 Fair Trading Tribunal Bill 1998

Part 3 Jurisdiction of Tribunal

- (2) If all the parties so agree or a court of its own motion or on the application of a party so directs, proceedings instituted in or before the court for a matter for which the Tribunal has jurisdiction must be transferred to the Tribunal in accordance with the regulations and are to continue before the Tribunal as if they had been instituted there. 5

Part 4 Procedure of Tribunal

24 Application to Tribunal

A person may, in the manner and within the time prescribed by or under the enactment under which the application is made, apply to the Tribunal to have a matter dealt with.

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25 Notice of application to be served on other parties

(1) The Registrar must cause notice of an application to the Tribunal to be served on each party (other than the applicant) to the proceedings within such time and in such manner as the Chairperson directs.

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(2) It is sufficient compliance with this section if:

(a) the Registrar directs a party to 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 (1).

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26 Presiding member

(1) This section applies in relation to proceedings before the Tribunal where the Tribunal is constituted for the purposes of those proceedings by two or three members.

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(2) If the Chairperson is one of the members of the Tribunal as constituted for the purposes of the proceedings, the Chairperson is to preside at the proceedings.

(3) If the Tribunal as constituted for the purposes of the proceedings does not include the Chairperson but includes a Deputy Chairperson, the Deputy Chairperson is to preside at the proceedings.

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(4) If the Tribunal as constituted for the purposes of the proceedings:

(a) does not include the Chairperson or a Deputy Chairperson, and

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(b) includes one, and only one, senior member, the senior member is to preside at the proceedings.

(5) If none of subsections (2)–(4) applies, the Chairperson is to designate one of the members who constitute the Tribunal for the purposes of the proceedings as the member who is to preside at the proceedings.

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27 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 natural justice. 5
- (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. 10
- (4) The Tribunal is to take such measures as are reasonably practicable to ensure that the parties to the proceedings before it understand:
 - (a) the nature of the assertions made in the proceedings and the legal implications of those assertions, and 15
 - (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 20
 - (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 25
 - (d) in the case of a hearing—may require the presentation of the respective cases of the parties before it to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases, and 30
 - (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

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- (g) may dismiss at any stage any proceedings before it for want of prosecution by the applicant or at the request of the applicant, and
- (h) may dismiss at any stage any proceedings before it if it considers the proceedings to be frivolous or vexatious or for any other reason that appears to it sufficient. 5
- (6) The Tribunal may, of its own motion or on application (whether made before or after the expiry of the time limit concerned) by any person, extend the period of time within which anything would otherwise be required by or under this Act to be done. 10

28 Procedural directions

- (1) Subject to any directions of the Chairperson, the member of the Tribunal who presides, or is to preside, at proceedings before the Tribunal may, at a directions hearing held for the purpose or otherwise, give directions relating to procedure 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 to the proceedings. 15
- (2) The powers conferred by subsection (1) extend to enabling the presiding 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. 20
- (3) The functions of a member of the Tribunal under this section may, to the extent prescribed by the regulations, be delegated to the Registrar. 25

29 Amendments and irregularities

- (1) The Tribunal may, in any proceedings before it, make any amendments to any document filed in connection with the proceedings that the Tribunal considers to be necessary in the interests of justice. 30
- (2) Any such amendment may be made:
- (a) at any stage of the proceedings (including the commencement or purported commencement of proceedings), and
- (b) on such terms as the Tribunal thinks fit (including, subject to this Act, terms as to costs). 35

- (3) If a provision of this Act or the regulations is not complied with in relation to the commencement (or purported commencement) of proceedings or conduct of proceedings before the Tribunal, the failure to comply is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings or any decision in the proceedings unless the Tribunal otherwise determines. 5
- (4) The Tribunal may, however, in dealing with any such irregularity, wholly or partly set aside the proceedings, a step taken in the proceedings or a decision in the proceedings. 10

30 Proceedings on hearing to be conducted in public

- (1) If proceedings before the Tribunal 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: 15
- (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, 20
 - (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, 25
 - (d) an order prohibiting or restricting the disclosure to some or all of the parties to 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. 30

31 Circumstances in which hearing may be dispensed with

- (1) The Tribunal may, with the consent of the parties to any proceedings before it, determine the proceedings by considering the documents or other material lodged with or provided to the 35

Tribunal and without holding a 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. 5

32 Opportunity for parties to present case

The Tribunal must ensure that every party to proceedings before the Tribunal is given a reasonable opportunity:

- (a) to adduce evidence and otherwise present the party's case (whether at a hearing or otherwise), and 10
(b) to make submissions in relation to the issues in the proceedings.

33 Representation of parties

- (1) Except to the extent that the Tribunal, in accordance with the regulations, otherwise orders, a party to proceedings before the Tribunal has the carriage of his or her own case, and is not entitled to be represented. 15
- (2) If, however, a party to the proceedings has been granted legal assistance under Division 2 of Part 2 of the *Fair Trading Act 1987*, the parties to the proceedings are entitled to be represented by a legal practitioner. 20
- (3) A party to proceedings may, in accordance with the regulations, apply to the Tribunal for permission to be represented in the proceedings or in part of the proceedings. 25
- (4) Except as otherwise provided by the regulations, no person other than a legal practitioner is entitled to demand or receive any fee or reward for representing a party in proceedings before the Tribunal.
- (5) Without limiting the generality of subsection (1), the Tribunal may appoint any other person it thinks fit to represent a party who appears to the Tribunal to be an incapacitated person. 30

(6) In this section:

incapacitated person means:

- (a) a minor, or
- (b) a person who is totally or partially incapable of representing himself or herself in proceedings before the Tribunal because the person is intellectually, physically, psychologically or sensorily disabled, of advanced age, a mentally incapacitated person or otherwise disabled, or 5
- (c) any other person of a class prescribed by the regulations for the purposes of this paragraph. 10

34 Interpreters

- (1) A person appearing before the Tribunal to give evidence may 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. 15
- (3) If the Tribunal considers that a person appearing before it to give evidence 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. 20
- (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. 25

35 Oral evidence by telephone etc

- (1) The Tribunal may allow a person to appear before the Tribunal, or to give evidence, and may conduct any aspect of proceedings before it, by telephone or closed-circuit television or by any other means of communication. 30
- (2) If, when proceedings are held in public, a person appears or gives evidence by a means allowed under subsection (1), the Tribunal must take such steps as are reasonably necessary to ensure that the public nature of the proceedings is preserved and that the rights of parties to the proceedings are not prejudiced. 35

36 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 by use of a statutory declaration, and 5
 - (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 before it. 10
- (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 15
 - (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. 20

37 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 to the proceedings, or 25
 - (b) at the direction of the Tribunal.
- (2) 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: 30
- (a) to attend and give evidence, or
 - (b) to attend and produce documents or other things,
- or both.

- (3) 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.
- (4) A person who, without lawful excuse, fails to comply with the requirements of a summons is guilty of an offence. 5
Maximum penalty: 100 penalty units.
- (5) A summons may be served within or outside the State.

38 Witness may be apprehended

- (1) If any person served with a summons to attend before the Tribunal fails to comply with the summons, the Chairperson or a Deputy Chairperson may, on proof of the service of the summons, issue to such person as the Chairperson or Deputy Chairperson appoints a warrant for the apprehension of that person. 10
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- (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 or the Supreme Court. 20
- (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.

39 Contempt of Tribunal

- (1) A person is guilty of contempt of the Tribunal if: 25
- (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 30

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- (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: 5
- (i) a member, assessor or officer of the Tribunal, or
- (ii) any witness or person summoned to attend before the Tribunal, or
- (iii) a practising legal practitioner or other person authorised to appear before the Tribunal, or 10
- (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 15
- (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 20
- (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 25
- (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, 30
- unless the person establishes that there was a reasonable excuse for the act or omission concerned.
- (2) The provisions of sections 199–203 of the *District Court Act 1973* apply to and in respect of contempt of the Tribunal, when constituted by (or by members that include) the Chairperson or a Deputy Chairperson, in the same way as they apply to and in respect of contempt of the District Court. 35

- (3) If, when the Tribunal is constituted otherwise than as referred to in subsection (2), it is alleged or it appears to the Tribunal that a person is guilty of contempt of the Tribunal, the Tribunal may refer the matter to the Supreme Court, which may dispose of the matter in such manner as it considers appropriate. 5

40 Protection of practising legal practitioners, witnesses and others

- (1) A practising legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court. 10
- (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. 15

41 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. 20
- (2) However, a question of law (including the question 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. 25
- (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.

42 Tribunal may reserve decision 30

- (1) The Tribunal may reserve its decision in any proceedings before it.

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- (2) A reserved decision of a member or members of the Tribunal may be given:
- (a) by the member or members at a subsequent sitting of the Tribunal, or
 - (b) if the decision of a member is set out in writing and signed by the member—by being delivered by a member of the Tribunal, or 5
 - (c) by the Registrar, at a time and place of which the parties have been given reasonable notice, or
 - (d) by publication to the parties in a manner approved by the Chairperson. 10

43 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. 15

44 Powers when proceedings settled

- (1) The Tribunal may, at any stage of proceedings before it, 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 to the proceedings if: 20
- (a) the terms of the agreed settlement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal, and 25
 - (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. 30

45 Service of notice of decisions of Tribunal

- (1) The Tribunal must, within the time prescribed by the regulations, give notice of its decision in a matter to the parties to the proceedings.
- (2) If the regulations so require (or if a party to the proceedings, 5
within the time and in the manner prescribed by the regulations,
requests the Tribunal to do so), the Tribunal must also prepare a
written statement of reasons for its decision. The statement may
be brief, but must:
 - (a) set out the decision and the reasons for it, and 10
 - (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.
- (3) The Tribunal is to cause a copy of any statement prepared under 15
subsection (2) to be served on each party to the proceedings
within the prescribed time after the decision concerned was
made.

46 Power to correct decisions of Tribunal

- (1) If, after the making of a decision by the Tribunal, the Tribunal is 20
satisfied that there is an obvious error in the text of a written
statement of reasons for the decision, the Tribunal may direct the
Registrar to alter the text of the statement in accordance with the
directions of the Tribunal.
- (2) If the text of a statement is so altered, the altered text is taken to 25
be the statement of the Tribunal's reasons for its decision.
- (3) Examples of obvious errors in the text of a statement of reasons
for a decision are where:
 - (a) there is an obvious clerical or typographical error in the
text of the statement, or
 - (b) there is an error arising from an accidental slip or 30
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 senior member who presided at the proceedings to which the decision relates.

47 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. 5
- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of the Registrar that: 10
- (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. 15

48 Costs

- (1) The parties to a matter before the Tribunal are to bear their own costs, except as provided by this section.
- (2) Subject to the regulations and any other Act or law, the Tribunal may award costs in relation to proceedings before it in the Commercial Division or the Home Building Division only if legal representation of the parties was granted. 20
- (3) The Tribunal may, however, in any case award costs in relation to proceedings before it in any Division:
- (a) in respect of expenses incurred in a manner or in circumstances prescribed by the regulations, or 25
- (b) in respect of any particular expenses, if it is satisfied that there are special circumstances warranting an award of costs in respect of them.
- (4) The Tribunal may: 30
- (a) determine by whom and to what extent costs are to be paid, and

Clause 48 Fair Trading Tribunal Bill 1998

Part 4 Procedure of Tribunal

- (b) order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* or on any other basis.
- (5) In this section, *costs* includes:
- (a) costs of or incidental to proceedings in the Tribunal, and 5
 - (b) the costs of or incidental to the application.

Part 5 Alternative dispute resolution

Division 1 Conciliation and preliminary measures

49 Tribunal to promote conciliation

- (1) Before making an order to determine a matter before it, it is the duty of the Tribunal to use its best endeavours to bring the parties to the proceedings to a settlement acceptable to all of them. 5
- (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 proceeding held for the purposes of subsection (1) is not admissible at a hearing of the matter concerned or in any other legal proceedings. 10

50 Preliminary conferences

- (1) In addition to or in the course of any action taken under section 49, the Tribunal may, before commencing to hear and determine an application, confer with, or arrange for a member of the Tribunal or the Registrar to confer with, the parties to the proceedings and make any determination with respect to the proceedings that is agreed to by the parties. 15
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- (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: 25
 - (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 30

(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 to the preliminary conference objects, in the manner and form prescribed by the regulations, to the member's participation in the proceedings. 5

(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 10

51 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. 15

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. 20

52 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. 25

(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.

53 Appointment of mediators and neutral evaluators

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| (1) | The Chairperson may appoint any person whose name is on the list compiled under Schedule 3 as a mediator or neutral evaluator for the purpose of particular proceedings pending in the Tribunal. | 5 |
| (2) | Mediators and neutral evaluators have the functions conferred or imposed on them by or under this or any other Act or law. | |
| (3) | Schedule 3 has effect in respect of a mediator or neutral evaluator appointed under this section. | 10 |

54 Referral by Tribunal

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| (1) | The Tribunal may, by order, refer a matter arising in proceedings before it for mediation or neutral evaluation if the Tribunal considers the circumstances appropriate. | 15 |
| (2) | The mediator or neutral evaluator may, but need not be, a person whose name is on a list compiled under Schedule 3. | |

55 Costs of mediation and neutral evaluation

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| (1) | The costs of mediation or neutral evaluation, including the costs payable to the mediator or neutral evaluator, are to be borne by the Tribunal, except to the extent that the regulations provide that the parties to the proceedings are to bear them. | 20 |
| (2) | Regulations made for the purposes of this section may provide that the parties are to bear the 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 | 25 |
| | (b) in any other prescribed manner. | |

56 Agreements and arrangements arising from mediation or neutral evaluation sessions

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|-----|---|----|
| (1) | The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session or neutral evaluation session. | 30 |
|-----|---|----|

- (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.

57 Privilege

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- (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 58.
- (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 58 (c).

58 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: 5

- (a) with the consent of the person to whom the information relates, 10
- (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, 15
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to 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 to 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, 20
- (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. 25

59 Other measures not precluded

Nothing in this Division prevents:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Division, or 30
- (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983*.

Part 6 Appeals and rehearings

60 Review by prerogative writ etc generally excluded

- (1) Except as provided by this section, a court of record 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 5
 - (b) a declaratory judgment or order, or
 - (c) an injunction,
- in respect of a matter heard and determined or 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. 10
- (2) A court is not precluded from granting relief or a remedy of a kind referred to in subsection (1) in relation to a matter in which the jurisdiction of the Tribunal to determine the matter was disputed, where the ground on which the relief or remedy is sought is that: 15
- (a) the Tribunal gave a ruling as to its jurisdiction that was erroneous, or
 - (b) the Tribunal erred in refusing or failing to give a ruling as to its jurisdiction when its jurisdiction was disputed. 20
- (3) A court is not precluded from granting relief or a remedy of a kind referred to in subsection (1) in relation to a matter in which the Tribunal has made an order, where the ground on which the relief or remedy is sought is that: 25
- (a) the Tribunal had no jurisdiction to make the order, or
 - (b) in relation to the hearing or determination of the matter, a party to the claim had been denied natural justice.

61 Right of appeal to Supreme Court on question of law

- (1) A party to proceedings before the Tribunal may appeal to the Supreme Court on a question of law against any decision of the Tribunal in those proceedings, except where the regulations preclude such an appeal. 30
- (2) The Supreme Court is to hear and determine the appeal and may make such orders as it thinks appropriate in light of its decision. 35

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- (3) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
- (a) an order affirming or setting aside the decision of the Tribunal, and
 - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court. 5
- (4) Regulations made for the purposes of subsection (1) may preclude an appeal: 10
- (a) in cases where the amount claimed or disputed in the matter concerned did not exceed \$25,000 (or such other amount as may be prescribed), or
 - (b) in cases of any prescribed class or description.

62 Referral of questions of law to Supreme Court 15

- (1) The Tribunal may refer a question of law arising in the proceedings before the Tribunal to the Supreme Court for the opinion of the Supreme Court.
- (2) The Supreme Court has jurisdiction to hear and determine any question of law referred to it under this section. 20
- (3) If a question of law arising in any proceedings before the Tribunal has been referred to the Supreme Court under this section, the Tribunal is not:
- (a) to give a decision in the proceedings to which the question is relevant while the reference is pending, or 25
 - (b) to proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.
- (4) A referral under this section is to be made in accordance with rules of the Supreme Court. 30

63 Rehearings

- (1) Except where the regulations preclude the making of an application under this section, a party to proceedings before the Tribunal may, in the manner and within a time prescribed by the regulations, apply to the Chairperson for an order directing that the matter be reheard by the Tribunal, on the ground that: 35

- (a) the decision of the Tribunal was not fair and equitable, or
 - (b) the decision of the Tribunal was against the weight of evidence, or
 - (c) fresh evidence has become available.
- (2) The Chairperson is not to grant the application unless, on the face of the application, it appears to the Chairperson that the applicant may have suffered a substantial injustice. 5
- (3) If the application is granted, the Chairperson is to determine the constitution of the Tribunal in a manner appropriate for the purposes of the rehearing, having regard to the circumstances of the case and the requirements of natural justice. 10
- (4) The matter is to be dealt with as a hearing de novo by the Tribunal as constituted under subsection (3).
- (5) Regulations made for the purposes of subsection (1) may preclude the making of an application under this section: 15
- (a) in cases where the amount claimed or disputed in the matter concerned exceeded \$25,000 (or such other amount as may be prescribed), or
 - (b) in cases of any prescribed class or description.
- 64 Original decision to operate unless otherwise ordered 20**
- (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. 25
- (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 Supreme Court in connection with an appeal under section 61, or
 - (b) by the Chairperson in connection with an application under section 63. 30

Part 7 Miscellaneous

65 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 adduced 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: 5
- (a) section 9 (Application of common law and equity), but only to the extent that it preserves any privilege against the adducing of evidence, 10
 - (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: 15
- (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.

66 Improper disclosure of information

- A person must not disclose information obtained in exercising a function under this Act unless the disclosure is made: 20
- (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 25
 - (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: 10 penalty units or imprisonment for 6 months, or both. 30

67 Act to bind Crown

This Act binds the Crown.

68 Seal of Tribunal

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

69 Authentication of documents

- (1) Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is: 5
- (a) signed by the Chairperson, or a Deputy Chairperson or senior 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 Chairperson, a Deputy Chairperson, a senior member or the Registrar when appearing on a document issued by the Tribunal. 10

70 Proof of certain matters not required

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of: 15

- (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 of the Tribunal.

71 Notices, service and lodgment of documents 20

- (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 25
 - (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 30
 - (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.

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- (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 5
 - (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. 10
- (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. 15

72 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 before it to be returned to the person by whom it was provided if: 20

- (a) the proceedings before the Tribunal 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. 25

73 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. 30
- (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. 35

74 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

75 Immunity of Tribunal members and others

5

A member of the Tribunal, in the exercise of the functions of a member, and the Registrar and Deputy Registrars, in the exercise of jurisdiction or functions conferred, imposed or delegated by or under this or any other Act, have the same protections and immunities as a judge of the District Court.

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76 Chairperson may furnish reports

The Chairperson may on behalf of the Tribunal provide reports to the Minister or to the Director-General of the Department of Fair Trading concerning any matter the Chairperson considers 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.

15

77 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 provide for the following:
 - (a) the initiation of proceedings in the Tribunal,
 - (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 to proceedings, of other parties,
 - (d) the circumstances in which matters may be heard *ex parte* or in which default judgments may be obtained,
 - (e) the payment of interest on money adjudged by the Tribunal to be payable and which remains unpaid.

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- (f) the functions of the Registrar or other officers under this Act, including functions in relation to proceedings instituted before the Tribunal,
 - (g) records of the Tribunal and its proceedings,
 - (h) mediation and neutral evaluation. 5
 - (i) the provision by the Tribunal of statistical information and of services,
 - (j) the form of any summons or warrant under this Act,
 - (k) the fees payable in respect of an application to the Tribunal (including the waiver or refund of any such fees). 10
- (3) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

78 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. 15

79 Repeal of Commercial Tribunal Act 1984 No 98

The *Commercial Tribunal Act 1984* is repealed.

80 Amendment of other Acts

Each Act specified in Schedule 4 is amended as set out in that Schedule. 20

81 Savings, transitional and other provisions

Schedule 5 has effect.

82 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. 25
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of section 6.
- (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 2 years. 30

Schedule 1 Provisions relating to members of Tribunal

(Section 9)

1 Definition

- In this Schedule, *judicial office* means the office of: 5
- (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 10
 - (e) Judge of the Supreme Court.

2 Terms of appointment

Subject to this Act, a member of the Tribunal holds office for such period (not exceeding 5 years) as is specified in the instrument of the member's appointment, but is eligible for re-appointment. 15

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. 20
- (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).

4 Remuneration 25

- (1) A member of the Tribunal 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. 30

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- (2) A member of the Tribunal 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. 5
- (3) A member of the Tribunal 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 or senior member 10**
- (1) The appointment of a person who is the holder of a judicial office as the Chairperson or as a Deputy Chairperson or senior member, or service by a person who is the holder of a judicial office as Chairperson, Deputy Chairperson 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. 15
- (2) The person's service as Chairperson, Deputy Chairperson or senior member is, for all purposes, taken to be service as the holder of that judicial office. 20
- 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. 25
- (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. 30 35
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- (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. 5
- (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 10

- (1) The office of a member of the Tribunal 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 15
 - (d) 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 20
 - (e) 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
 - (f) becomes a mentally incapacitated person, or 25
 - (g) is convicted in New South Wales of an offence that is punishable by penal servitude or 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 30
 - (h) is removed from office under this clause.
- (2) The Governor may remove a member of the Tribunal from office for incapacity, incompetence or misbehaviour.

8 Acting Chairperson

- (1) If the Chairperson is absent from duty, the most senior Deputy Chairperson or senior member is to be Acting Chairperson unless the Minister makes an appointment under subclause (2).
- (2) The Minister may appoint a Deputy Chairperson or senior member to be Acting Chairperson during the absence of the Chairperson from duty. 5
- (3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (4) 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. 10
- (5) In this clause, *absence from duty* includes a vacancy in the office of Chairperson.

9 Appointment of acting Deputy Chairperson or acting senior member for a period 15

- (1) The Governor may appoint, as an acting Deputy Chairperson 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. 20
- (2) The person's appointment is for the period (not exceeding 12 months) specified in the instrument of appointment.
- (3) An acting Deputy Chairperson or acting senior member has the functions of, and is taken to be, Deputy Chairperson or senior member, as the case may be, subject to any conditions or limitations specified in the instrument of appointment. 25

10 Seniority

- (1) The members of the Tribunal have seniority according to the following order of precedence: 30
 - (a) the Chairperson,

(b) Deputy Chairpersons and 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, 5

(c) 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. 10

11 Leave

(1) The entitlement of a member of the Tribunal 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: 15

(a) in the case of the Chairperson—by the Minister, and

(b) in any other case—by the Chairperson.

(3) This clause is subject to clause 4.

12 Superannuation and leave—preservation of rights

(1) In this clause: 20

eligible member means a member of the Tribunal who, immediately before holding that office, was a public servant or 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. 25

(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 30

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- (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. 5
- (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. 10
- (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. 15
- (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. 20

13 Effect of other Acts

- (1) The *Public Sector Management Act 1988* (except Part 8) does not apply to the appointment of a member of the Tribunal and the member is not, as a member of the Tribunal, subject to that Act. 25
- (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 30
- (b) prohibiting the person from engaging in employment outside the duties of that office.

Fair Trading Tribunal Bill 1998

Schedule 1 Provisions relating to members of Tribunal

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

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14 Oaths

The Governor may require oaths to be taken by the Chairperson and any Deputy Chairperson or senior member of the Tribunal.

Schedule 2 Provisions relating to assessors

(Section 16)

1 Terms of appointment

An assessor is to be engaged on a contract basis in accordance with section 19 (2), and an assessor's entitlements in respect of remuneration, allowances and other matters are as stipulated in the relevant contract of employment. 5

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. 10

(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. 15

(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. 20

3 Protection and immunities of assessor

An assessor of the Tribunal has, in the performance of functions performed as an assessor, the same protection and immunities as a Judge of the District Court.

4 Effect of certain other Acts 25

(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, 5
- that provision does not operate to disqualify the person from holding that office and also from being engaged as an assessor or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as an assessor. 10
- (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 3 Provisions relating to mediators and neutral evaluators

(Section 53)

1 Terms of appointment

A mediator or neutral evaluator is to be engaged on a contract basis in accordance with section 19 (2), and his or her entitlements in respect of remuneration, allowances and other matters are as stipulated in the relevant contract of employment. 5

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

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(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. 15

(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. 20

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

3 Exoneration from liability for listed mediators and neutral evaluators

No matter or thing done or omitted to be done by a mediator or neutral evaluator subjects the mediator or neutral evaluator to any action, liability, claim or demand if: 25

(a) the matter or thing was done or omitted in good faith for the purposes of a mediation session or neutral evaluation session under this Act, and 30

- (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

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- (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:

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- (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,

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that provision does not operate to disqualify the person from holding that office and also from being engaged 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.

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- (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 4 Amendment of other Acts

(Section 80)

4.1 Consumer Credit Administration Act 1995 No 69**[1] Section 3 Definitions**Omit the definition of *Tribunal* from section 3 (1). Insert instead: 5

Tribunal means the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998*.

[2] Section 28 Minister may order inquiryOmit "section 8 of the *Commercial Tribunal Act 1984*" from section 28 (8). 10Insert instead "section 75 of the *Fair Trading Tribunal Act 1998*".**[3] Sections 28 (9), 36 (2)**Omit "*Commercial Tribunal Act 1984*" wherever occurring. Insert instead "*Fair Trading Tribunal Act 1998*".**[4] Section 45 Secrecy** 15Omit "section 28 of the *Commercial Tribunal Act 1984*" from section 45 (1) (g).Insert instead "section 19 of the *Fair Trading Tribunal Act 1998*".**4.2 Credit Act 1984 No 94****[1] Section 5 Definitions** 20Omit the definition of *Tribunal* from section 5 (1). Insert instead:

Tribunal means the Fair Trading Tribunal established under the *Fair Trading Tribunal Act 1998*.

[2] Section 86 General order varying civil penalty

Omit "*Commercial Tribunal Act 1984*" from section 86 (5).
Insert instead "*Fair Trading Tribunal Act 1998*".

4.3 Credit (Finance Brokers) Act 1984 No 96

Section 4 Definitions 5

Omit the definition of *Tribunal* from section 4 (1).
Insert instead:

Tribunal means the Fair Trading Tribunal established
under the *Fair Trading Tribunal Act 1998*.

4.4 Credit (Home Finance Contracts) Act 1984 No 97 10

Section 4 Definitions

Omit the definition of *Tribunal*. Insert instead:

Tribunal means the Fair Trading Tribunal established
under the *Fair Trading Tribunal Act 1998*.

4.5 Fair Trading Act 1987 No 68 15

[1] Section 4 Definitions

Omit the definition of *Commercial Tribunal* from section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

Tribunal means the Fair Trading Tribunal established by 20
the *Fair Trading Tribunal Act 1998*.

[3] Section 8 Delegation by Director-General

Omit section 8 (3).

[4] Sections 66 (1) (a), 77 (1) (a) and 78–79A

Omit “Commercial” wherever occurring.

[5] Section 68 Actions for damages

Insert after section 68 (2):

- (3) If the matter of such loss or damage arises in connection with a matter the subject of proceedings in the Tribunal, the Tribunal may proceed to decide it, and in so doing may award such sum, and make such ancillary orders, as it thinks fit. 5

4.6 Home Building Act 1989 No 147 10

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Tribunal means (except in Part 4A) the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998*. 15

[2] Section 51 Improper conduct: generally

Omit section 51 (2) (c). Insert instead:

- (c) does not comply with an order of the Tribunal, or

[3] Sections 51 (3), 53 (3), 54 (3), 65, 66, 74, 75, 77, 80 (1), 82, 85, 86, 88, 89, 89D and 112 20

Omit “Commercial” wherever occurring.

[4] Section 112 (4)

Omit “Tribunal concerned”.
Insert instead “tribunal concerned”.

- [5] **Section 76 Costs of hearing**
Omit "Commercial" where firstly occurring.
- [6] **Section 76**
Omit "*Commercial Tribunal Act 1984*".
Insert instead "*Fair Trading Tribunal Act 1998*". 5
- [7] **Part 5, heading**
Omit "Commercial Tribunal".
Insert instead "Fair Trading Tribunal".
- 4.7 Motor Dealers Act 1974 No 52**
- [1] **Section 4 Definitions** 10
Omit the definition of *Commercial Tribunal* from section 4 (1).
- [2] **Section 4 (1)**
Insert in alphabetical order:
Tribunal means the Fair Trading Tribunal established by
the *Fair Trading Tribunal Act 1998*. 15
- [3] **Sections 20D (1) (c), 20I (1) (d), 20J (1) (b), 20K (1) (a) and (5),
20L, 20M and 54 (1)**
Omit "Commercial" wherever occurring.
- [4] **Section 30 Definitions** 20
Omit the definition of *disputes committee* from section 30 (1).
- [5] **Section 31 Disputes**
Omit "and determine" from section 31 (1).
- [6] **Section 31 (2)-(4)**
Omit the subsections.

-
- [7] **Section 32 Settlement of disputes**
Omit section 32 (2)–(5).
- [8] **Section 33 Investigation by Director-General**
Omit section 33 (3) and (4).
- [9] **Sections 34–36** 5
Omit the sections.
- [10] **Section 37 False or misleading statements**
Omit “any proceeding for the investigation or determination of a claim”.
Insert instead “an investigation, or any attempt to facilitate a settlement of a dispute, undertaken by the Director-General under this Part”. 10
- [11] **Section 55B Other orders on conviction of person**
Omit section 55B (2) (a).
- 4.8 Motor Vehicle Repairs Act 1980 No 71** 15
- [1] **Section 3 Arrangement**
Omit “AND THE DISPUTES COMMITTEE” from the matter relating to Part 2.
- [2] **Section 3**
Omit the matter relating to Schedules 3 and 4. 20
- [3] **Section 4 Definitions**
Omit the definition of *Disputes Committee* from section 4 (1).

[4] Section 4 (1), definition of "Tribunal".

Insert in alphabetical order:

Tribunal means the Fair Trading Tribunal established under the *Fair Trading Tribunal Act 1998*.

[5] Part 2, heading

5

Omit "and the Disputes Committee".

[6] Section 13 Disputes Committee

Omit the section.

[7] Section 38 Registers of licences and certificates

Omit ", the Disputes Committee" wherever occurring in section 38 (4). 10

[8] Section 41 Definitions

Omit all words after "section 44".

[9] Section 45 Action on complaints

Omit ", or upon any recommendation made by the Disputes Committee to the Council under section 55 (2) (b) (iv)," from section 45 (1). 15

[10] Section 45 (1)

Omit "or recommendation" wherever occurring.

[11] Section 45 (4)

20

Omit "or recommendation by the Disputes committee".

[12] Section 50 Appeals

Omit section 50 (8).

[13] Section 51 Definitions

Omit "Disputes Committee" from the definition of *application* in section 51 (1).

Insert instead "Council".

5

[14] Section 52 Disputes

Omit "Disputes Committee" wherever occurring.

Insert instead "Council".

[15] Section 52 (1)

Omit "and determine".

10

[16] Section 52 (2) (c)

Omit the paragraph.

[17] Section 52 (3)

Omit the subsection.

15

[18] Section 53

Omit the section. Insert instead:

53 Settlement of disputes

(1) On receipt of an application under section 52 (1), the Council is to use its best endeavours by communication with the applicant and the repairer, or otherwise, to settle the dispute.

(2) The Council may appoint any inspector to assist it in the exercise of its functions under this section.

20

- (3) An inspector appointed under subsection (2) to assist the Council may enter at any reasonable time any place occupied by a repairer at which the inspector has reasonable grounds for believing that a motor vehicle which is the subject of a dispute is situated and there examine that motor vehicle. 5

[19] Sections 54–56

Omit the sections.

[20] Section 57 False or misleading statements

Omit “or determination”. 10

[21] Section 61 General Fund

Omit “and of the Disputes Committee” from section 61 (2) (a).

[22] Section 79 Proof of certain matters not required

Omit “or the Disputes Committee” from section 79 (1).

[23] Section 79 (1)

Omit “or that Committee” wherever occurring. 15

[24] Section 83 Authentication of documents

Omit section 83 (2).

[25] Section 84 Protection from liability

Omit section 84 (2). 20

[26] Schedules 3 and 4

Omit the Schedules.

4.9 Property, Stock and Business Agents Act 1941 No 28

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Tribunal means the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998*.

5

[2] Section 42A Statement of claim

Omit section 42A (4)–(13). Insert instead:

- (4) The regulations may make provision for or with respect to requiring the inclusion in the prescribed manner, in statements of claim or itemised accounts referred to in this section, of a notice, in a form approved by the Minister, containing advice concerning available remedies under the *Consumer Claims Act 1998*.

10

[3] Section 83L Liens for costs on property held by receiver

Omit section 83L (3).

15

4.10 Retail Leases Act 1994 No 46

[1] Section 63 Interpretation

Omit the definition of *Tribunal* from section 63 (1). Insert instead:

Tribunal means the Fair Trading Tribunal established under the *Fair Trading Tribunal Act 1998*.

20

[2] Part 8, Division 3, heading

Omit "Commercial Tribunal".
Insert instead "Fair Trading Tribunal".

[3] Section 72

Omit the section. Insert instead:

72 Powers of Tribunal

- (1) The Tribunal has jurisdiction to hear and determine a retail tenancy claim lodged with the Tribunal under this Part. 5
- (2) In proceedings on such a claim, the Tribunal is empowered to make such one or more of the following orders as it considers appropriate:
 - (a) an order that a party to the proceedings pay money to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person, 10
 - (b) an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings, 15
 - (c) an order that a party to the proceedings:
 - (i) do any specified work or perform any specified service or any obligation arising under this Act or the terms of a lease, or 20
 - (ii) surrender possession of specified premises to another person, or
 - (iii) assign his or her or its rights under a lease to a specified person, or 25
 - (iv) do or perform, or refrain from doing or performing, any specified act, matter or thing,
 - (d) an order granting a party to the proceedings relief against forfeiture. 30

-
- (e) an order requiring the parties to the proceedings to rectify a lease.
 - (f) an order:
 - (i) declaring that any provision made by a lease to be void for being inconsistent with this Act or the regulations, or 5
 - (ii) declaring that a lessor is not entitled to withhold consent to an assignment of the rights of a tenant, or
 - (iii) declaring the rights and liabilities of the parties under law, whether any consequential relief is or could be claimed or not, 10
 - (g) such other order, whether in the nature of an interlocutory or final order, as the Tribunal considers proper to be made in order to resolve or assist resolution of the dispute between the parties. 15
- (3) The Tribunal may make such ancillary orders as it considers necessary for the purpose of enabling an order under this section to have full effect. 20
 - (4) The Tribunal may impose such conditions as it considers appropriate when making an order under this section.
 - (5) The Tribunal may make an interim order under this section pending final determination of a claim, if it appears to the Tribunal desirable to do so. 25

[4] Section 77 Order of Tribunal to be final

Omit "section 20 (Questions of procedure and law) of the *Commercial Tribunal Act 1984*".

Insert instead "Part 6 of the *Fair Trading Tribunal Act 1988*".

**4.11 Statutory and Other Offices Remuneration Act 1975
(1976 No 4)**

Schedule 2 Public Offices

Insert at the end of Part 1 of Schedule 2:

Chairperson of the Fair Trading Tribunal (not being a
judicial officer) appointed on a full-time basis and
working on a full-time basis. 5

Member of the Fair Trading Tribunal (not being a
judicial officer) appointed on a full-time basis and
working on a full-time basis. 10

4.12 Travel Agents Act 1986 No 5

[1] Section 54 Secrecy

Omit section 54 (1) (g). Insert instead:

(g) a person employed under section 19 of the *Fair
Trading Tribunal Act 1998*. 15

[2] Section 54 (2)

Omit "*Commercial Tribunal Act 1984*".
Insert instead "*Fair Trading Tribunal Act 1998*".

[3] Section 57 Regulations

Insert after section 57 (2) (c): 20

, and

(d) make provision for or with respect to appeals
against the administrators of any scheme
prescribed under this subsection and with respect
to the functions of the Fair Trading Tribunal
established by the *Fair Trading Tribunal Act 1998*
in determining any such appeal. 25

Schedule 5 Savings, transitional and other provisions

(Section 81)

Part 1 General

1 Regulations

5

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act 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 10 15
 - (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

20

2 Definitions

In this Part:

closure date, in relation to a former body, means the date on which an amendment made to another Act by this Act takes effect, being an amendment whose effect is to confer jurisdiction on the Fair Trading Tribunal to determine any matter that, immediately before that date, could have been determined by the former body. 25

former bodies means the following:

- (a) the Commercial Tribunal constituted under the *Commercial Tribunal Act 1984*.
- (b) a disputes committee constituted under section 34 of the *Motor Dealers Act 1974*. 5
- (c) the Motor Vehicle Repairs Disputes Committee constituted under the *Motor Vehicle Repairs Act 1980*.

3 Commercial Tribunal

On and from its closure date:

- (a) no application may be made to bring any matter before a former body, and 10
- (b) a former body continues to exist, and any person holding office as a member of the body concerned immediately before that date continues to hold office as such, only for the purpose of the exercise by the body concerned of its functions under clause 5. 15

4 Members of former bodies

- (1) On a date on which notice is served on a member of a former body by the Director-General, the member ceases to hold office as a member of that body. 20
- (2) A member served with such notice is not entitled to any compensation by reason of ceasing to hold office as a member of the body concerned, but is eligible (if otherwise qualified) to be appointed as a member of the Fair Trading Tribunal.

5 Pending proceedings 25

- (1) Proceedings before a former body that:
 - (a) were instituted before its closure date, and
 - (b) have not been finally determined by the former body 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, 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.

(2) An order made under another Act by a former body, being an order: 5

(a) having effect immediately before its closure date, or

(b) made after that date in order to determine proceedings under this clause,

is taken to be an order made by the Tribunal under the corresponding provision of this Act and may be enforced accordingly. 10

6 References to former bodies

A reference in another Act, in an instrument made under an Act or in any other document to any of the former bodies is to be read as a reference to the Fair Trading Tribunal. 15