

# CONCURRENCE COPY

## COMMERCIAL TRIBUNAL BILL, 1984

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Credit Bill, 1984.

The object of this Bill is to constitute the Commercial Tribunal of New South Wales to exercise jurisdiction expressly conferred on it by Acts under which persons are licensed or registered or have their conduct otherwise regulated, e.g., the proposed Credit Act, 1984, and associated legislation.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Transitional provisions.

Clause 4. Interpretation.

Clause 5 constitutes the Commercial Tribunal of New South Wales (“the Tribunal”) with a full-time Chairman (“the Chairman”) and part-time members and, if appointed, a full-time Deputy Chairman or Deputy Chairmen.

Clause 6 specifies certain disqualifications for membership of the Tribunal.

Clause 7 provides for the manner in which persons are to be selected for appointment as part-time members of the Tribunal.

Clause 8 confers on the members of the Tribunal while acting as such and, in certain circumstances, on the Registrar and Deputy Registrar the protection and immunities of a Judge of the District Court.

Clause 9 prescribes the term of office of a member of the Tribunal as a period not exceeding 5 years.

Clause 10 excludes members of the Tribunal from the operation of the Public Service Act, 1979.

Clause 11 provides for the remuneration and allowances to be paid to members of the Tribunal.

Clause 12 prescribes the circumstances in which a member of the Tribunal vacates office or may be removed or retired from office.

Clause 13 authorises the Governor to fill a vacancy in the membership of the Tribunal.

Clause 14 authorises the Minister, in certain circumstances, to appoint an acting Chairman or acting Deputy Chairman of the Tribunal.

Clause 15 authorises the Minister, in certain circumstances, to appoint an acting part-time member of the Tribunal.

Clause 16 gives effect to Schedule 2 which preserves certain accrued rights when a person is appointed as Chairman or Deputy Chairman of the Tribunal.

Clause 17 provides for the appointment of a Registrar, Deputy Registrar and other staff of the Tribunal.

Clause 18 confers on the Tribunal such jurisdiction as is conferred on it by an Act and confers on the Chairman, while acting as Chairman, and on a presiding Deputy Chairman, the powers of a Judge of the District Court.

Clause 19 governs the manner in which the Tribunal is to be constituted for the hearing and determination of proceedings before it and other matters relating to those proceedings.

Clause 20 provides for references and appeals, on a matter of law, from the Tribunal to the Supreme Court.

Clause 21 deals with matters relating to parties to proceedings before the Tribunal.

Clause 22 requires notice of the time and venue of proceedings to be given to the parties.

Clause 23 deals with the rights of a party to appear before the Tribunal personally or by solicitor or counsel.

Clause 24 deals with the giving of evidence before the Tribunal.

Clause 25 deals with the summoning of witnesses to attend, and their examination, before the Tribunal.

Clause 26 provides for the apprehension of a witness who fails to appear in answer to a summons.

Clause 27 empowers the Tribunal to inspect, retain and make copies of documents and other records produced to it.

Clause 28 enables the Chairman to employ any person to assist the Tribunal in relation to proceedings before it.

Clause 29 confers on the Chairman of the Tribunal and on a presiding Deputy Chairman the same powers of punishment for contempt as are conferred on a Judge of the District Court.

Clause 30 applies Part III of the Royal Commissions Act, 1923, to and in respect of proceedings before the Tribunal.

Clause 31 empowers the Tribunal to dismiss frivolous and vexatious proceedings.

Clause 32 empowers the Tribunal to order payment of costs.

Clause 33 provides for the enforcement of orders by the Tribunal for the payment of money.

Clause 34 requires the Tribunal to state reasons for its decision.

Clause 35 empowers the Tribunal to adjourn or stay proceedings before it.

Clause 36 prescribes the manner in which documents relating to proceedings before the Tribunal may be served.

Clause 37 authorises the Chairman or a presiding Deputy Chairman of the Tribunal to give procedural directions where the proposed Act and rules are silent.

Clause 38 enables the Chairman and 2 members of the Tribunal to make rules relating to the business of the Tribunal.

Clause 39 enables the Governor to make regulations to give effect to the proposed Act.

Schedule 1 provides for certain transitional arrangements.

Schedule 2 relates to the preservation of certain rights accrued by a person appointed as Chairman or Deputy Chairman.

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# COMMERCIAL TRIBUNAL BILL, 1984

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NEW SOUTH WALES.

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## TABLE OF PROVISIONS.

### PART I.—PRELIMINARY.

1. Short title.
2. Commencement.
3. Transitional provisions.
4. Interpretation.

### PART II.—THE COMMERCIAL TRIBUNAL OF NEW SOUTH WALES.

#### DIVISION 1.—*Constitution of the Tribunal.*

5. Constitution of Tribunal.
6. Persons disqualified from appointment.
7. Part-time members.
8. Immunity of members and others.
9. Term of office of member.
10. Effect of Public Service Act, 1979.
11. Remuneration and allowances.
12. Vacation of office of member.
13. Filling of vacancy.
14. Acting Chairman or Deputy Chairman.

15. Acting part-time member.
16. Superannuation and re-employment rights of Chairman and Deputy Chairman.

DIVISION 2.—*Registrar and staff of Tribunal.*

17. Registrar, officers and employees.

DIVISION 3.—*Jurisdiction of, and proceedings before, the Tribunal.*

18. Jurisdiction and functions of Tribunal.
19. Proceedings before Tribunal.
20. Questions of procedure and law.
21. Parties.
22. Notice and conduct of proceedings.
23. Right of appearance and representation.
24. Evidence before Tribunal.
25. Summons and examination of witnesses.
26. Witness may be apprehended.
27. Inspection and retention of records.
28. Assistance to Tribunal.
29. Contempt of Tribunal, etc.
30. Application of Royal Commissions Act, 1923.
31. Dismissal of frivolous, etc., proceedings.
32. Costs.
33. Orders for payment of money.
34. Reasons for decision of Tribunal.
35. Adjournments.
36. Service of documents.
37. Procedure.

PART III.—RULES AND REGULATIONS.

38. Rules of Tribunal.
39. Regulations.

SCHEDULE 1.—TRANSITIONAL PROVISIONS.

SCHEDULE 2.—RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN.

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**COMMERCIAL TRIBUNAL BILL, 1984**

No.           , 1984.

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**A BILL FOR**

An Act to constitute the Commercial Tribunal of New South Wales and  
provide for the exercise of its functions.

[MR PACIULLO—3 *May*, 1984.]

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*Commercial Tribunal.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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**PART I.**

**PRELIMINARY.**

**Short title.**

1. This Act may be cited as the "Commercial Tribunal Act, 1984".

**Commencement.**

- 10 **2. (1)** Sections 1 and 2 shall commence on the date of assent to this Act.

**(2)** Except as provided by subsection (1), this Act shall commence on such day as may be appointed in respect thereof and as may be notified by proclamation published in the *Gazette*.

15 **Transitional provisions.**

3. Schedule 1 has effect.

**Interpretation.**

**4. (1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

- 20 "Chairman" means Chairman of the Tribunal and includes an acting Chairman of the Tribunal;

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*Commercial Tribunal.*

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- “Commissioner” means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act, 1969, and any person appointed under section 14 of that Act to act as Commissioner;
- 5 “Deputy Registrar” means Deputy Registrar of the Tribunal;
- “District Court” means the District Court of New South Wales;
- “member” means the Chairman, any Deputy Chairman or a part-time member of the Tribunal and includes an acting Chairman, an acting Deputy Chairman and an acting part-time member of the
- 10 Tribunal;
- “record” includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;
- 15 “Registrar” means Registrar of the Tribunal;
- “regulation” means a regulation made under this Act;
- “rules” means rules made under section 38;
- “Supreme Court” means the Supreme Court of New South Wales;
- “Tribunal” means the Commercial Tribunal of New South Wales.
- 20 (2) In this Act a reference to—
- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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*Commercial Tribunal.*

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PART II.

THE COMMERCIAL TRIBUNAL OF NEW SOUTH WALES.

DIVISION 1.—*Constitution of the Tribunal.*

**Constitution of Tribunal.**

5 **5. (1)** There shall be a Commercial Tribunal of New South Wales which shall consist of—

- (a) a person who is qualified for appointment as a Judge of the District Court and is appointed by the Governor as Chairman of the Tribunal;
- 10 (b) if the Governor approves the appointment of a Deputy Chairman or Deputy Chairmen—a person so qualified who is, or persons so qualified who are, appointed by the Governor as Deputy Chairman or, as the case may be, Deputy Chairmen, of the Tribunal; and
- 15 (c) where jurisdiction is conferred on the Tribunal by an Act—part-time members appointed by the Governor in relation to that Act as provided by section 7.

**(2)** The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

20 **Persons disqualified from appointment.**

**6. (1)** A person—

- (a) who has attained the age of 65 years—is not qualified for appointment as Chairman or Deputy Chairman; or
- 25 (b) who has attained the age of 70 years—is not qualified for appointment as a part-time member.

**(2)** A person who is—

- (a) a member of the Legislative Council or the Legislative Assembly; or

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*Commercial Tribunal.*

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(b) a member of the legislature of the Commonwealth, or of another State, or of a Territory of the Commonwealth,

is not qualified for appointment as Chairman or Deputy Chairman or as a part-time member.

**5 Part-time members.**

7. (1) Subject to this Division, the part-time members shall comprise—

10 (a) persons who, in the opinion of the Minister, are qualified to represent the interests of persons who are licensed or registered under, or whose conduct is, or may be, otherwise regulated by, the Act in relation to which the part-time members are to be appointed; and

(b) persons who, in the opinion of the Minister, are qualified to represent the interests of persons who deal with persons referred to in paragraph (a).

15 (2) The instrument of appointment of a part-time member shall specify—

(a) in the case of a person referred to in subsection (1) (a)—that the person is a member so referred to; or

20 (b) in the case of a person referred to in subsection (1) (b)—that the person is a member so referred to,

and shall, in each case, specify the Act in relation to which the member is appointed.

(3) The same person may be appointed as a part-time member in relation to more than one Act.

**25 Immunity of members and others.**

8. A member, in the exercise of the functions of a member, and the Registrar and Deputy Registrar, in the exercise of jurisdiction or functions delegated to the Registrar under section 18 (5), have the same protection and immunity as a Judge of the District Court has in the exercise of the  
30 functions of such a Judge.

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*Commercial Tribunal.*

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**Term of office of member.**

9. (1) Subject to this Part, a member shall hold office for such period, not exceeding 5 years, as is specified in the instrument of appointment of the member but is eligible (if otherwise qualified) for re-appointment.

5 (2) A member shall, before first sitting as a member, take an oath in the prescribed form that the member will faithfully and impartially discharge the duties of the office of a member.

**Effect of Public Service Act, 1979.**

10. The provisions of the Public Service Act, 1979, do not apply to 10 or in respect of the appointment of a member and a member is not, as a member, subject to the provisions of that Act.

**Remuneration and allowances.**

11. (1) The Chairman and any Deputy Chairman are entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975, and such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Chairman or, as the case may require, a Deputy Chairman. 15

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from 20 time to time determine in respect of the member.

**Vacation of office of member.**

12. (1) A member shall be deemed to have vacated office if the member—

(a) dies;

25 (b) in the case of the Chairman or a Deputy Chairman, attains the age of 65 years or, in the case of a part-time member, attains the age of 70 years;



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*Commercial Tribunal.*

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- (c) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairman or a Deputy Chairman, by the Minister or, in the case of a part-time member, by the Chairman before, during or after that period;
- 5 (d) is nominated for election as a member of the Legislative Council or Legislative Assembly or as a member of the legislature of the Commonwealth, another State or a Territory of the Commonwealth;
- 10 (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;
- 15 (f) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 20 (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (h) resigns the office of Chairman, Deputy Chairman or part-time member, as the case may be, by instrument in writing addressed to the Minister and the Governor accepts the resignation; or
- 25 (i) is removed from office under subsection (2) or retired from office under subsection (3).

(2) The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

(3) The Chairman, and any Deputy Chairman, may be retired from office by the Governor after attaining the age of 60 years and before attaining 30 the age of 65 years and a Chairman or Deputy Chairman so retired is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

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*Commercial Tribunal.*

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**Filling of vacancy.**

13. Where a vacancy in the office of a member occurs otherwise than by the expiration of the term for which the member was appointed, the Governor may fill the vacancy by appointing a person who has the same qualification for appointment as the member had when appointed and a person so appointed shall hold office as a member for the residue of the term of office of the member's predecessor.

**Acting Chairman or Deputy Chairman.****14. (1) Where—**

- 10 (a) there is a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) the Chairman is, or is about to be, absent or for any reason is, or is about to become, unable to exercise the functions of that office,

15 the Minister may appoint a Deputy Chairman or, if there is no Deputy Chairman, a person who is qualified for appointment as a Judge of the District Court, to act as the Chairman until the vacancy is filled or, as the case may be, during the absence or inability.

**(2) Where—**

- 20 (a) a Deputy Chairman has, or Deputy Chairmen have, been appointed and there is a vacancy in the office of Deputy Chairman; or
- (b) a Deputy Chairman is, or is about to be, absent or for any reason is, or is about to become, unable to exercise the functions of that office,

25 the Minister may appoint a person who is qualified for appointment as a Judge of the District Court to act as a Deputy Chairman until the vacancy is filled or, as the case may be, during the absence or inability.



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*Commercial Tribunal.*

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(3) The appointment of an acting Chairman or acting Deputy Chairman made in anticipation of the absence or inability of the Chairman or a Deputy Chairman has effect on and from the day on which that absence or inability begins.

5 (4) The appointment of an acting Chairman or acting Deputy Chairman ceases to have effect—

(a) when the vacancy in the office of Chairman or Deputy Chairman is filled or, as the case may be, the absence or inability comes to an end;

10 (b) when it is terminated under subsection (5); or

(c) if the acting Chairman or acting Deputy Chairman resigns office by instrument in writing addressed to the Minister and the Minister accepts the resignation.

(5) The Minister may, at any time, terminate the appointment of an  
15 acting Chairman or acting Deputy Chairman.

(6) While the appointment of an acting Chairman or acting Deputy Chairman continues in force, the person holding the appointment has and shall exercise the functions, and is entitled to the rights and privileges, attaching to the office of Chairman or, as the case may be, to the office of  
20 Deputy Chairman.

**Acting part-time member.**

15. (1) Where—

(a) there is a vacancy in the office of a part-time member; or

25 (b) a part-time member is, or is about to be, absent or for any reason is, or is about to become, unable to exercise the functions of that office,

the Minister may, subject to subsection (2), appoint a person to act as a part-time member until the vacancy is filled or, as the case may be, during the absence or inability.

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*Commercial Tribunal.*

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(2) A person shall not be appointed under subsection (1) unless the person has the same qualification for appointment as the member who vacated the office, or, as the case may be, the member who is absent or unable to exercise the functions of the office, was required to have when appointed as a part-time member and the instrument of appointment shall specify in relation to the person appointed the matters required to be specified under section 7 (2) in relation to a part-time member.

(3) The appointment of an acting part-time member made in anticipation of the absence or inability of a part-time member has effect on and from the day on which that absence or inability begins.

(4) The appointment of an acting part-time member ceases to have effect—

- (a) when the vacancy in the office of the part-time member is filled or, as the case may be, the absence or inability comes to an end;
- 15 (b) when it is terminated under subsection (5); or
- (c) if the acting part-time member resigns office by instrument in writing addressed to the Minister and the Minister accepts the resignation.

(5) The Minister may, at any time, terminate the appointment of an acting part-time member.

(6) While the appointment of an acting part-time member continues in force, the person holding the appointment has and shall exercise the functions, and is entitled to the rights and privileges, attaching to the office of a part-time member.

25 **Superannuation and re-employment rights of Chairman and Deputy Chairman.**

16. Schedule 2 has effect in relation to the Chairman and any Deputy Chairman.

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*Commercial Tribunal.*

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DIVISION 2.—*Registrar and staff of the Tribunal.***Registrar, officers and employees.**

17. (1) A Registrar and Deputy Registrar of the Tribunal shall be appointed and employed under and subject to the Public Service Act, 1979.

5 (2) The Registrar shall exercise such functions as are conferred or imposed on the Registrar by or under this or any other Act or by the Tribunal in the exercise of its functions.

(3) During the absence of the Registrar, the Deputy Registrar has, and may exercise, the functions of the Registrar.

10 (4) Any act, matter or thing done or omitted by the Deputy Registrar shall be as valid and effectual, and shall have the same consequences, as if the act, matter or thing had been done or omitted by the Registrar.

(5) Such officers and temporary employees as may be necessary to enable the Tribunal and the Registrar to exercise their functions under this  
15 or any other Act shall be appointed and employed under and subject to the Public Service Act, 1979.

DIVISION 3.—*Jurisdiction of, and proceedings before, the Tribunal.***Jurisdiction and functions of Tribunal.**

18. (1) The Tribunal has such jurisdiction as is, and such functions as  
20 are, conferred on it by or under an Act.

(2) The Tribunal, wherever sitting, has jurisdiction throughout New South Wales.

(3) Without derogating from any powers conferred on the Chairman by this Act, the Chairman, while acting as Chairman, and any Deputy  
25 Chairman while presiding at a sitting of the Tribunal, have the same powers as are conferred by the District Court Act, 1973, and by law, on a Judge of that Court when acting as such a Judge.



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*Commercial Tribunal.*

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(4) Subject to section 33, a judgment or order of the Tribunal has the same effect as, and may be enforced in the same way as, a judgment or order of the District Court.

(5) The Chairman may, by instrument in writing, delegate to the Registrar with such limitations, and upon such conditions, as the Chairman thinks fit—

(a) the exercise of any part of the jurisdiction of the Tribunal that is exercisable by the Chairman sitting alone; and

10 (b) the exercise of such other functions (other than the powers conferred by sections 26 and 29 and this power of delegation) as are conferred by an Act on the Chairman,

and may, by instrument in writing, revoke any such delegation.

(6) Notwithstanding the delegation under this section of the exercise of jurisdiction or of a function, the Chairman may continue to exercise the 15 jurisdiction and exercise the function.

(7) Any jurisdiction exercised or thing done by the Registrar pursuant to a delegation under this section shall be deemed to have been exercised or done by the Chairman.

### **Proceedings before Tribunal.**

20 **19. (1)** Proceedings before the Tribunal shall be held as in open court except to the extent that the rules otherwise provide.

(2) Sittings of the Tribunal, and the constitution of the Tribunal at each sitting, shall be arranged and determined by the Chairman.

25 (3) Proceedings before the Tribunal may be heard and determined by the Chairman sitting alone or, if there is a Deputy Chairman and the Chairman so directs, by a Deputy Chairman sitting alone—

(a) where there is only one party to the proceedings and the proceedings relate to a matter which, in the opinion of the Chairman, does not, and is not likely to, involve 2 or more parties;

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*Commercial Tribunal.*

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(b) where there are 2 or more parties to the proceedings and both or, as the case may be, all of the parties agree to the proceedings being heard and determined by the Chairman, or a Deputy Chairman, sitting alone; or

5 (c) where the proceedings are included in a class of proceedings that may, in accordance with the regulations, be heard and determined by the Chairman, or a Deputy Chairman, sitting alone.

(4) Where proceedings under 2 or more Acts are before the Tribunal and the Chairman is of the opinion that some or all of the proceedings  
10 could, without prejudice to any party to the proceedings, be heard and determined together, the proceedings shall, to the extent directed by the Chairman, be so heard and determined.

(5) Except as provided by subsections (3) and (6), proceedings before the Tribunal shall be heard and determined by the Chairman or, if there  
15 is a Deputy Chairman, by a Deputy Chairman, and 2 part-time members, one of whom shall be a member referred to in section 7 (1) (a) and the other a member referred to in section 7 (1) (b).

(6) Where, pursuant to subsection (4), the Chairman directs that proceedings be heard and determined together, the proceedings shall, if the  
20 Chairman so directs, be heard by the Chairman or, if there is a Deputy Chairman, by a Deputy Chairman, and such part-time members (who may exceed 2 in number) selected equally from the members referred to in section 7 (1) (a) and the members referred to in section 7 (1) (b) as are nominated by the Chairman.

25 (7) Where the Tribunal, as constituted for a sitting of the Tribunal—

(a) comprises, or includes, the Chairman—the Chairman shall preside at the sitting; or

(b) comprises, or includes, a Deputy Chairman—the Deputy Chairman shall preside at the sitting.

30 (8) In any proceedings before the Tribunal other than proceedings before the Chairman or a Deputy Chairman sitting alone, the decision of the majority of the members hearing the proceedings is the decision of the Tribunal.



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*Commercial Tribunal.*

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(9) In any proceedings before it, other than proceedings prescribed for the purposes of this subsection, the Tribunal—

- (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and
- 5 (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(10) The Chairman or Deputy Chairman who presides, or is to preside, at proceedings before the Tribunal—

- 10 (a) may give directions relating to procedure that, in the opinion of the Chairman or the Deputy Chairman, 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; and
- (b) may, in relation to those proceedings, request a report from, or other assistance by, the Commissioner.

### 15 Questions of procedure and law.

20. (1) A reference or appeal under this section shall be made in accordance with rules of the Supreme Court.

(2) Any question with respect to procedure that arises in proceedings before the Tribunal shall be decided by the presiding Chairman or  
20 Deputy Chairman.

(3) Where, in proceedings before the Tribunal, a question arises with respect to a matter of law, the presiding Chairman or Deputy Chairman may decide the question or may refer it to the Supreme Court for decision.

(4) Where a question with respect to a matter of law is referred  
25 to the Supreme Court under subsection (3)—

- (a) the Tribunal shall not make an order or decision to which the question is relevant until the Supreme Court has decided the question;

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*Commercial Tribunal.*

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(b) upon deciding the question, the Supreme Court shall remit its decision to the Tribunal; and

5 (c) the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court.

(5) Where, in proceedings before the Tribunal, the Chairman or a Deputy Chairman decides a question with respect to a matter of law, a party to the proceedings who is dissatisfied with the decision may appeal to the Supreme Court against the decision of the Chairman or Deputy  
10 Chairman.

(6) After deciding the question the subject of an appeal under subsection (5), the Supreme Court may, unless it affirms the decision of the Chairman or Deputy Chairman on the question—

15 (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal; or

(b) remit its decision on the question to the Tribunal and order a re-hearing of the proceedings before the Tribunal.

(7) Where a re-hearing is held pursuant to an order under subsection (6) (b), the Tribunal shall not proceed in a manner, or make an order or  
20 decision, that is inconsistent with the decision of the Supreme Court remitted to the Tribunal.

(8) Where a party to proceedings before the Tribunal has appealed to the Supreme Court under subsection (5) against a decision of the Chairman or a Deputy Chairman, either the Tribunal or the Supreme Court  
25 may suspend, until the appeal is determined, the operation of any order or decision made in the proceedings.

(9) Where, under subsection (8), the Tribunal suspends the operation of an order or decision, the Tribunal or the Supreme Court may terminate the suspension or, where the Supreme Court has suspended the operation of  
30 an order or decision, the Supreme Court may terminate the suspension.

(10) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal and a matter as to the admission or rejection of evidence.



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*Commercial Tribunal.*

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**Parties.**

21. (1) Subject to any Act and the rules, where a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having a joint liability, it is sufficient if any one or more of those persons is or are 5 served with process in the proceedings, and a decision in the proceedings may be given or entered up and enforced against the person or persons subject to the liability.

(2) Section 97 of the Supreme Court Act, 1970, applies to and in respect of a decision given or entered up in proceedings before the Tribunal 10 in the same way as it applies to and in respect of a judgment given in proceedings before the Supreme Court.

(3) A legal personal representative may bring or defend proceedings before the Tribunal in the same manner as if he or she were bringing or defending proceedings in his or her own right.

15 (4) Where, before the holding of proceedings before the Tribunal, or at any stage during the holding of any such proceedings, the presiding Chairman or Deputy Chairman is of the opinion that a person ought to be joined as a party to the proceedings, the Chairman or Deputy Chairman may, by notice in writing given to the person or by oral direction given during 20 the holding of the proceedings, join the person as a party to the proceedings.

**Notice and conduct of proceedings.**

22. (1) The Chairman shall fix a time and place for the holding of proceedings before the Tribunal and the Registrar shall thereupon serve on each party to the proceedings a notice specifying the time and place so fixed 25 and the matters to which the proceedings relate and directing the party to attend at that time and place.

(2) The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

30 (3) If a party to proceedings before the Tribunal on whom a notice has been served in accordance with subsection (1) fails to attend at the time and place specified in the notice, the proceedings may be held in the absence of the party.

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*Commercial Tribunal.*

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**Right of appearance and representation.**

23. (1) A party to proceedings before the Tribunal—

(a) may appear personally in the proceedings or, except as provided by paragraph (b) (ii), by solicitor or counsel; and

(b) may not, except by leave of the Tribunal, be represented in the proceedings—

(i) otherwise than by solicitor or counsel; or

(ii) by solicitor or counsel if the proceedings are proceedings, or are within a class of proceedings, prescribed for the purposes of this subparagraph.

(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party in proceedings before the Tribunal.

**Evidence before Tribunal.**

24. (1) In proceedings before the Tribunal, the Tribunal may, in its discretion—

(a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal, whether constituted in the State or elsewhere, and draw any conclusions of fact from that transcript that it considers proper;

(b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the proceedings; and

(c) receive in evidence any report of the Commissioner that may be relevant to the proceedings but only if a copy of that report has been made available to every party to the proceedings.

(2) The evidence of a witness shall be recorded by means of writing, shorthand, stenotype machine, sound-recording apparatus or such other means as may be prescribed.

(3) Where the evidence of a witness is recorded by means of writing, it shall be read over either to or by the witness, as the presiding Chairman or Deputy Chairman may direct, and be signed by the witness.



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*Commercial Tribunal.*

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**Summons and examination of witnesses.**

25. (1) The Registrar shall, at the direction of the Chairman or a Deputy Chairman in relation to proceedings before the Tribunal or at the request of a party to any such proceedings, issue a summons requiring any person to  
5 attend the proceedings at a time and place specified in the summons and then and there to give evidence and produce any record in the person's custody or under the person's control that the person is required by the summons to produce.

(2) Where, pursuant to this section, a person is required by a  
10 summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require the person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the  
15 whole of the information in the record.

(3) The Chairman or a Deputy Chairman may administer an oath to any person appearing as a witness before the Tribunal, whether or not the witness has been summoned, and allow the witness to be examined and cross-examined on oath.

20 (4) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed pursuant to this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court.

(5) A witness summoned under subsection (1) at the direction of the  
25 Chairman or a Deputy Chairman is entitled to be paid such fees and allowances as are prescribed.

(6) A summons issued under subsection (1) at the request of a party does not have effect, unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons,  
30 tender is made of an amount in respect of reasonable expenses of complying with the requirements of the summons.



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*Commercial Tribunal.*

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**Witness may be apprehended.**

26. (1) If any person served with a summons to attend before the Tribunal fails to comply with the summons, the Chairman or a Deputy Chairman may, on proof of the service of the summons, issue to such person  
5 as the Chairman or Deputy Chairman appoints a warrant for the apprehension of that person.

(2) A warrant issued under subsection (1) authorises the apprehension of the witness, the bringing of the witness before the Tribunal and the detention of the witness in custody for that purpose until released by order  
10 of the Chairman, a Deputy Chairman or the Supreme Court.

(3) The apprehension of any witness under this section does not relieve the witness from any liability incurred by reason of non-compliance with a summons to attend before the Tribunal.

**Inspection and retention of records.**

15 27. (1) The Tribunal may inspect any record or statement produced before it and may retain it for such period as it thinks necessary for the purposes of the proceedings in relation to which it was produced and may make copies of the record or statement or any part of the record or statement.

(2) Where a record or statement is produced before, and retained by,  
20 the Tribunal, the person otherwise entitled to possession of the record or statement is, on request, entitled to be supplied, as soon as practicable, with a copy certified by the Registrar to be a true copy and a record or statement so certified is admissible as evidence in all courts as if it were the original record or statement.

25 (3) Where, pursuant to subsection (2), a person is entitled to be supplied with a copy of a record or statement, the person, or a person authorised by the person, may, at such times and places as the Registrar directs, inspect, make copies of, or take extracts from, the record or statement.

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*Commercial Tribunal.*

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**Assistance to Tribunal.**

28. The Chairman may employ any person to give such assistance as the Chairman considers necessary to enable the Tribunal to arrive at a decision in any proceedings before it and may, by instrument in writing, authorise  
5 any person so employed to inspect and report to the Tribunal on any record or statement that the Chairman considers relevant to the subject-matter of the proceedings.

**Contempt of Tribunal, etc.**

29. In respect of proceedings before the Tribunal, the Chairman or  
10 Deputy Chairman presiding at a sitting of the Tribunal has, subject to this Act but without limiting any of the powers, rights and privileges conferred on the Tribunal or the Chairman or Deputy Chairman by or under any other provision of this Act, the same powers for punishing contempt of the Tribunal as are conferred on a Judge of the District Court for punishing  
15 contempt of the District Court.

**Application of Royal Commissions Act, 1923.**

30. (1) Subject to subsection (2), Part III of the Royal Commissions Act, 1923, applies to and in respect of proceedings before the Tribunal in the same way as it applies to and in respect of an inquiry held under that  
20 Act, and for the purpose of that application—

- (a) a reference in that Part to a commission shall be construed as a reference to the Tribunal;
- (b) a reference in that Part to an inquiry shall be construed as a reference to proceedings before the Tribunal; and
- 25 (c) a reference in that Part to a book, document, writing or record shall be construed as including a reference to a record within the meaning of this Act and a reference to a statement referred to in section 25 (2) of this Act.

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*Commercial Tribunal.*

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**(2) A person who is guilty of an offence—**

- 5 (a) pursuant to section 19 of the Royal Commissions Act, 1923, is liable to a penalty not exceeding \$1,000 or to imprisonment for 6 months, or to both, instead of the penalty prescribed by that Act; or
- (b) pursuant to section 20 of the Royal Commissions Act, 1923, is liable to a penalty not exceeding \$1,000 or to imprisonment for 6 months, or to both, instead of the penalty prescribed by that Act.

**Dismissal of frivolous, etc., proceedings.**

10 **31. (1)** Where, at any stage of proceedings before the Tribunal, the Tribunal is satisfied that the proceedings are frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may dismiss the proceedings.

15 **(2)** Where the Tribunal dismisses proceedings under subsection (1), it may order the person who brought the proceedings to pay the costs of the proceedings.

**Costs.**

**32.** The Tribunal may award costs against a party to proceedings before it and may determine the amount of costs to be so awarded.

**20 Orders for payment of money.**

25 **33. (1)** Where an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs) the order shall, upon the filing of the prescribed documents in the office or registry of a court having jurisdiction to order the payment of such an amount of money, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the Tribunal.



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*Commercial Tribunal.*

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(2) For the purposes of subsection (1), the prescribed documents are—

(a) a copy of the order of the Tribunal certified by the Registrar to be a true copy; and

5 (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, where the order is to take effect upon any default, as to the making of the default.

(3) Notwithstanding anything in any other Act, no fee is payable for 10 the filing of documents under subsection (1).

**Reasons for decision of Tribunal.**

34. (1) Where the Tribunal does not state its reasons for any order or decision made in relation to proceedings before it, any party to the proceedings may, by notice in writing served on the Registrar within 7 days after 15 the date on which the order or decision was made, request the Tribunal to state its reasons for the order or decision.

(2) The Tribunal shall, within 14 days after the service of a notice under subsection (1), state its reasons for the order or decision referred to in the notice.

**20 Adjournments.**

35. (1) The Tribunal may adjourn any proceedings before it in such manner as it thinks fit.

(2) At any stage of proceedings before it, the Tribunal may order that the proceedings be stayed.

**25 Service of documents.**

36. Service of a document for the purposes of or in relation to proceedings before the Tribunal shall be effected by a person prescribed by the rules in respect of the same class of document, and may be effected by delivering a copy of the document to the person on whom the document is to 30 be served or in such manner as may be prescribed by the rules.

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*Commercial Tribunal.*

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**Procedure.**

37. If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by this Act or by the rules, the Chairman or Deputy Chairman who presides, or is to preside, in the proceedings may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall, for the purposes of the proceedings, be regular and sufficient.

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**PART III.****RULES AND REGULATIONS.****10 Rules of the Tribunal.**

38. (1) The Chairman and any 2 members may make rules for or with respect to—

- 15 (a) the procedure and practice to be followed in proceedings before the Tribunal (including the procedure and practice to be followed in the office of the Registrar) and any matters incidental or relating to any such procedure or practice;
- (b) the continuance of proceedings on death or bankruptcy of any party;
- 20 (c) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairman, a Deputy Chairman or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing;
- (d) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal;
- 25 and
- (e) any matters relating to costs of proceedings before the Tribunal.



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*Commercial Tribunal.*

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(2) The rules may be made to apply differently according to such factors, or according to such limitations or conditions, whether as to time or circumstance or otherwise, as may be prescribed in the rules.

(3) The provisions of section 41 (I), (II) and (III) of the Interpretation Act, 1897, apply to and in respect of a rule in the same way as they apply to and in respect of a regulation.

(4) Judicial notice shall be taken—

(a) of a rule made, or purporting to have been made, under this Act and published in the Gazette; and

10 (b) of the date of publication.

(5) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

### Regulations.

15 39. (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 and, in particular, but without affecting the generality of the foregoing, for or with respect to—

20 (a) the fees payable with respect to proceedings before the Tribunal; and

(b) the powers of the Registrar to postpone, or to remit, wholly or partly, the payment of any such fee.

(2) A provision of a regulation may—

25 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind;  
or

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*Commercial Tribunal.*

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(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body, or may do any combination of those things.

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**SCHEDULE 1.**

5

(Sec. 3.)

**TRANSITIONAL PROVISIONS.****Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

**10 Registrar and Deputy Registrar.**

2. (1) The person who, immediately before the appointed day, held office as Registrar of the Credit Tribunal of New South Wales under section 205 (1) of the Consumer Credit Act, 1981, shall be deemed to have been on that day appointed as Registrar of the Tribunal under section 17 (1) of this Act.

15 (2) The person who, immediately before the appointed day, held office as Deputy Registrar of the Credit Tribunal of New South Wales under section 205 (3) of the Consumer Credit Act, 1981, shall be deemed to have been on that day appointed as Deputy Registrar of the Tribunal under section 17 (1) of this Act.

**Pending proceedings.**

20 3. (1) Where, immediately before the appointed day, proceedings instituted for determination by the Credit Tribunal of New South Wales had not been heard and determined, they shall be heard and determined by the Commercial Tribunal of New South Wales.

(2) For the purposes of subclause (1)—

25 (a) an application made under the Consumer Credit Act, 1981, for a credit provider's licence or a finance broker's licence shall be deemed to be an application made under the Credit (Administration) Act, 1984, for such a licence; and

30 (b) a matter referred to the Credit Tribunal of New South Wales under section 162B (3) of the Consumer Credit Act, 1981, shall be deemed to have been referred to the Commercial Tribunal of New South Wales under section 5 (3) of the Credit (Home Finance Contracts) Act, 1984.

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*Commercial Tribunal.*

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## SCHEDULE 2.

(Sec. 16.)

## RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN.

**Interpretation.**

5 1. In this Schedule—

“Chairman” includes a Deputy Chairman;

“statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;

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

**Preservation of certain rights of Chairman.**

2. (1) Subject to subclause (2) and to the terms of appointment, where the Chairman was, immediately before being appointed as Chairman—

15 (a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a statutory body; or

20 (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

25 (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Chairman; and

(g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as Chairman and—

30 (h) his or her service as Chairman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and



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*Commercial Tribunal.*

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SCHEDULE 2—*continued.*RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN—*continued.*

5 (i) he or she shall be deemed to be an officer or employee for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the Chairman would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as Chairman or at any later time while holding office as Chairman) 10 a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her, in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to the Chairman upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would 15 have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purpose of the scheme.

(4) The Chairman shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**Chairman entitled to re-appointment to former employment in certain cases.**

20 3. (1) A person who—

(a) ceases to be Chairman by reason of the expiration of the period for which the person was appointed or by reason of resignation;

(b) was, immediately before being appointed as Chairman—

(i) an officer of the Public Service or a Teaching Service; or

25 (ii) an officer or employee of a statutory body; and

(c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in 30 classification and salary than that which the person held immediately before being appointed as Chairman.



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*Commercial Tribunal.*

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SCHEDULE 2—*continued.*

RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN—*continued.*

(2) Where subclause (1) does not apply to a person who—

- 5 (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and  
(b) is, after that appointment, appointed as Chairman,

10 the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Chairman, as are specified in the instrument of appointment as Chairman or as are agreed upon by the person and by or on behalf of the Government.

**Declaration of statutory bodies.**

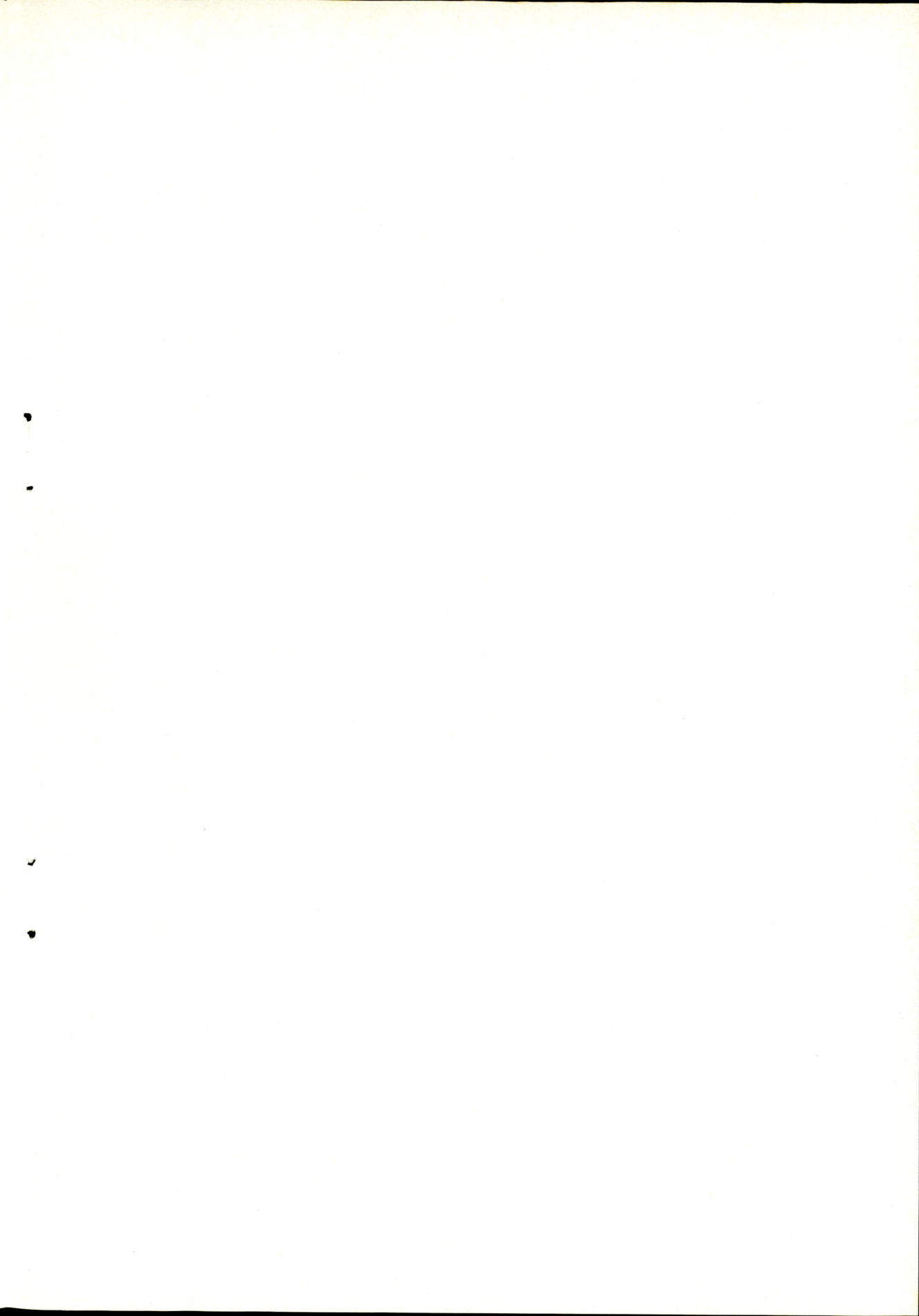
4. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

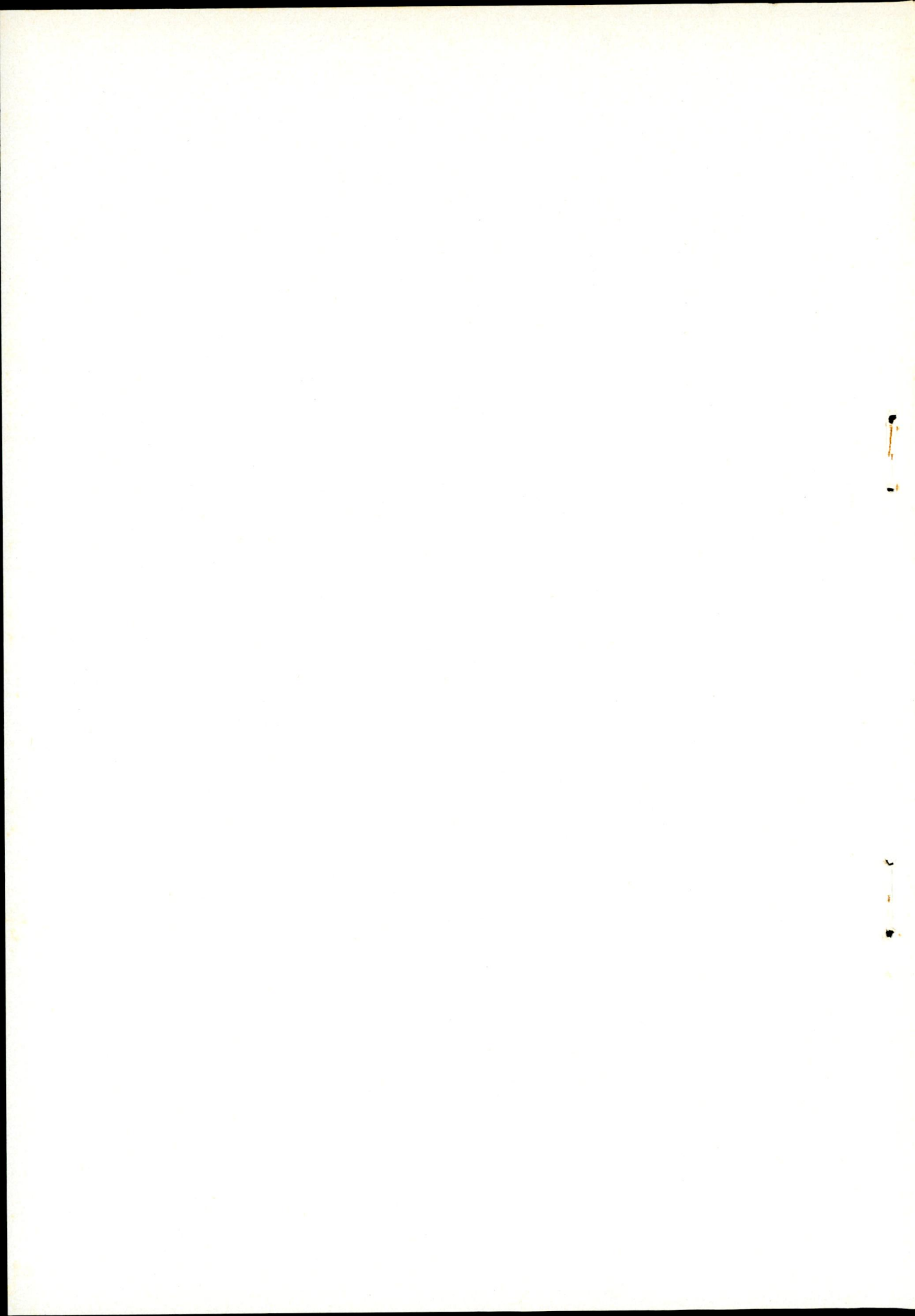
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# COMMERCIAL TRIBUNAL ACT, 1984, No. 98

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NEW SOUTH WALES.



## TABLE OF PROVISIONS.

### PART I.—PRELIMINARY.

1. Short title.
2. Commencement.
3. Transitional provisions.
4. Interpretation.

### PART II.—THE COMMERCIAL TRIBUNAL OF NEW SOUTH WALES.

#### DIVISION 1.—*Constitution of the Tribunal.*

5. Constitution of Tribunal.
6. Persons disqualified from appointment.
7. Part-time members.
8. Immunity of members and others.
9. Term of office of member.
10. Effect of Public Service Act, 1979.
11. Remuneration and allowances.
12. Vacation of office of member.
13. Filling of vacancy.
14. Acting Chairman or Deputy Chairman.



15. Acting part-time member.
16. Superannuation and re-employment rights of Chairman and Deputy Chairman.

DIVISION 2.—*Registrar and staff of Tribunal.*

17. Registrar, officers and employees.

DIVISION 3.—*Jurisdiction of, and proceedings before, the Tribunal.*

18. Jurisdiction and functions of Tribunal.
19. Proceedings before Tribunal.
20. Questions of procedure and law.
21. Parties.
22. Notice and conduct of proceedings.
23. Right of appearance and representation.
24. Evidence before Tribunal.
25. Summons and examination of witnesses.
26. Witness may be apprehended.
27. Inspection and retention of records.
28. Assistance to Tribunal.
29. Contempt of Tribunal, etc.
30. Application of Royal Commissions Act, 1923.
31. Dismissal of frivolous, etc., proceedings.
32. Costs.
33. Orders for payment of money.
34. Reasons for decision of Tribunal.
35. Adjournments.
36. Service of documents.
37. Procedure.

PART III.—RULES AND REGULATIONS.

38. Rules of Tribunal.
39. Regulations.

SCHEDULE 1.—TRANSITIONAL PROVISIONS.

SCHEDULE 2.—RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN.

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COMMERCIAL TRIBUNAL ACT, 1984, No. 98

New South Wales



ANNO TRICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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Act No. 98, 1984.

An Act to constitute the Commercial Tribunal of New South Wales and provide for the exercise of its functions. [Assented to, 28th June, 1984.]

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*Commercial Tribunal.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.****PRELIMINARY.****Short title.**

1. This Act may be cited as the "Commercial Tribunal Act, 1984".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed in respect thereof and as may be notified by proclamation published in the *Gazette*.

**Transitional provisions.**

3. Schedule 1 has effect.

**Interpretation.**

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Chairman" means Chairman of the Tribunal and includes an acting Chairman of the Tribunal;



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*Commercial Tribunal.*

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“Commissioner” means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act, 1969, and any person appointed under section 14 of that Act to act as Commissioner;

“Deputy Registrar” means Deputy Registrar of the Tribunal;

“District Court” means the District Court of New South Wales;

“member” means the Chairman, any Deputy Chairman or a part-time member of the Tribunal and includes an acting Chairman, an acting Deputy Chairman and an acting part-time member of the Tribunal;

“record” includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“Registrar” means Registrar of the Tribunal;

“regulation” means a regulation made under this Act;

“rules” means rules made under section 38;

“Supreme Court” means the Supreme Court of New South Wales;

“Tribunal” means the Commercial Tribunal of New South Wales.

(2) In this Act a reference to—

- (a) a function includes a reference to a power, authority and duty;  
and
  - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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*Commercial Tribunal.*

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## PART II.

## THE COMMERCIAL TRIBUNAL OF NEW SOUTH WALES.

DIVISION 1.—*Constitution of the Tribunal.***Constitution of Tribunal.**

**5. (1)** There shall be a Commercial Tribunal of New South Wales which shall consist of—

- (a) a person who is qualified for appointment as a Judge of the District Court and is appointed by the Governor as Chairman of the Tribunal;
- (b) if the Governor approves the appointment of a Deputy Chairman or Deputy Chairmen—a person so qualified who is, or persons so qualified who are, appointed by the Governor as Deputy Chairman or, as the case may be, Deputy Chairmen, of the Tribunal; and
- (c) where jurisdiction is conferred on the Tribunal by an Act—part-time members appointed by the Governor in relation to that Act as provided by section 7.

**(2)** The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

**Persons disqualified from appointment.**

**6. (1)** A person—

- (a) who has attained the age of 65 years—is not qualified for appointment as Chairman or Deputy Chairman; or
- (b) who has attained the age of 70 years—is not qualified for appointment as a part-time member.

**(2)** A person who is—

- (a) a member of the Legislative Council or the Legislative Assembly;  
or

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*Commercial Tribunal.*

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(b) a member of the legislature of the Commonwealth, or of another State, or of a Territory of the Commonwealth, is not qualified for appointment as Chairman or Deputy Chairman or as a part-time member.

**Part-time members.**

7. (1) Subject to this Division, the part-time members shall comprise—

- (a) persons who, in the opinion of the Minister, are qualified to represent the interests of persons who are licensed or registered under, or whose conduct is, or may be, otherwise regulated by, the Act in relation to which the part-time members are to be appointed; and
- (b) persons who, in the opinion of the Minister, are qualified to represent the interests of persons who deal with persons referred to in paragraph (a).

(2) The instrument of appointment of a part-time member shall specify—

- (a) in the case of a person referred to in subsection (1) (a)—that the person is a member so referred to; or
- (b) in the case of a person referred to in subsection (1) (b)—that the person is a member so referred to,

and shall, in each case, specify the Act in relation to which the member is appointed.

(3) The same person may be appointed as a part-time member in relation to more than one Act.

**Immunity of members and others.**

8. A member, in the exercise of the functions of a member, and the Registrar and Deputy Registrar, in the exercise of jurisdiction or functions delegated to the Registrar under section 18 (5), have the same protection and immunity as a Judge of the District Court has in the exercise of the functions of such a Judge.

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*Commercial Tribunal.*

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**Term of office of member.**

9. (1) Subject to this Part, a member shall hold office for such period, not exceeding 5 years, as is specified in the instrument of appointment of the member but is eligible (if otherwise qualified) for re-appointment.

(2) A member shall, before first sitting as a member, take an oath in the prescribed form that the member will faithfully and impartially discharge the duties of the office of a member.

**Effect of Public Service Act, 1979.**

10. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a member and a member is not, as a member, subject to the provisions of that Act.

**Remuneration and allowances.**

11. (1) The Chairman and any Deputy Chairman are entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975, and such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Chairman or, as the case may require, a Deputy Chairman.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Vacation of office of member.**

12. (1) A member shall be deemed to have vacated office if the member—

(a) dies;

(b) in the case of the Chairman or a Deputy Chairman, attains the age of 65 years or, in the case of a part-time member, attains the age of 70 years;



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*Commercial Tribunal.*

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- (c) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairman or a Deputy Chairman, by the Minister or, in the case of a part-time member, by the Chairman before, during or after that period;
- (d) is nominated for election as a member of the Legislative Council or Legislative Assembly or as a member of the legislature of the Commonwealth, another State or a Territory of the Commonwealth;
- (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;
- (f) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (h) resigns the office of Chairman, Deputy Chairman or part-time member, as the case may be, by instrument in writing addressed to the Minister and the Governor accepts the resignation; or
- (i) is removed from office under subsection (2) or retired from office under subsection (3).

**(2)** The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

**(3)** The Chairman, and any Deputy Chairman, may be retired from office by the Governor after attaining the age of 60 years and before attaining the age of 65 years and a Chairman or Deputy Chairman so retired is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

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*Commercial Tribunal.*

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**Filling of vacancy.**

13. Where a vacancy in the office of a member occurs otherwise than by the expiration of the term for which the member was appointed, the Governor may fill the vacancy by appointing a person who has the same qualification for appointment as the member had when appointed and a person so appointed shall hold office as a member for the residue of the term of office of the member's predecessor.

**Acting Chairman or Deputy Chairman.****14. (1) Where—**

- (a) there is a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) the Chairman is, or is about to be, absent or for any reason is, or is about to become, unable to exercise the functions of that office,

the Minister may appoint a Deputy Chairman or, if there is no Deputy Chairman, a person who is qualified for appointment as a Judge of the District Court, to act as the Chairman until the vacancy is filled or, as the case may be, during the absence or inability.

**(2) Where—**

- (a) a Deputy Chairman has, or Deputy Chairmen have, been appointed and there is a vacancy in the office of Deputy Chairman; or
- (b) a Deputy Chairman is, or is about to be, absent or for any reason is, or is about to become, unable to exercise the functions of that office,

the Minister may appoint a person who is qualified for appointment as a Judge of the District Court to act as a Deputy Chairman until the vacancy is filled or, as the case may be, during the absence or inability.

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*Commercial Tribunal.*

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(3) The appointment of an acting Chairman or acting Deputy Chairman made in anticipation of the absence or inability of the Chairman or a Deputy Chairman has effect on and from the day on which that absence or inability begins.

(4) The appointment of an acting Chairman or acting Deputy Chairman ceases to have effect—

- (a) when the vacancy in the office of Chairman or Deputy Chairman is filled or, as the case may be, the absence or inability comes to an end;
- (b) when it is terminated under subsection (5); or
- (c) if the acting Chairman or acting Deputy Chairman resigns office by instrument in writing addressed to the Minister and the Minister accepts the resignation.

(5) The Minister may, at any time, terminate the appointment of an acting Chairman or acting Deputy Chairman.

(6) While the appointment of an acting Chairman or acting Deputy Chairman continues in force, the person holding the appointment has and shall exercise the functions, and is entitled to the rights and privileges, attaching to the office of Chairman or, as the case may be, to the office of Deputy Chairman.

**Acting part-time member.**

15. (1) Where—

- (a) there is a vacancy in the office of a part-time member; or
- (b) a part-time member is, or is about to be, absent or for any reason is, or is about to become, unable to exercise the functions of that office,

the Minister may, subject to subsection (2), appoint a person to act as a part-time member until the vacancy is filled or, as the case may be, during the absence or inability.



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*Commercial Tribunal.*

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(2) A person shall not be appointed under subsection (1) unless the person has the same qualification for appointment as the member who vacated the office, or, as the case may be, the member who is absent or unable to exercise the functions of the office, was required to have when appointed as a part-time member and the instrument of appointment shall specify in relation to the person appointed the matters required to be specified under section 7 (2) in relation to a part-time member.

(3) The appointment of an acting part-time member made in anticipation of the absence or inability of a part-time member has effect on and from the day on which that absence or inability begins.

(4) The appointment of an acting part-time member ceases to have effect—

- (a) when the vacancy in the office of the part-time member is filled or, as the case may be, the absence or inability comes to an end;
- (b) when it is terminated under subsection (5); or
- (c) if the acting part-time member resigns office by instrument in writing addressed to the Minister and the Minister accepts the resignation.

(5) The Minister may, at any time, terminate the appointment of an acting part-time member.

(6) While the appointment of an acting part-time member continues in force, the person holding the appointment has and shall exercise the functions, and is entitled to the rights and privileges, attaching to the office of a part-time member.

**Superannuation and re-employment rights of Chairman and Deputy Chairman.**

16. Schedule 2 has effect in relation to the Chairman and any Deputy Chairman.



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*Commercial Tribunal.*

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DIVISION 2.—*Registrar and staff of the Tribunal.***Registrar, officers and employees.**

17. (1) A Registrar and Deputy Registrar of the Tribunal shall be appointed and employed under and subject to the Public Service Act, 1979.

(2) The Registrar shall exercise such functions as are conferred or imposed on the Registrar by or under this or any other Act or by the Tribunal in the exercise of its functions.

(3) During the absence of the Registrar, the Deputy Registrar has, and may exercise, the functions of the Registrar.

(4) Any act, matter or thing done or omitted by the Deputy Registrar shall be as valid and effectual, and shall have the same consequences, as if the act, matter or thing had been done or omitted by the Registrar.

(5) Such officers and temporary employees as may be necessary to enable the Tribunal and the Registrar to exercise their functions under this or any other Act shall be appointed and employed under and subject to the Public Service Act, 1979.

DIVISION 3.—*Jurisdiction of, and proceedings before, the Tribunal.***Jurisdiction and functions of Tribunal.**

18. (1) The Tribunal has such jurisdiction as is, and such functions as are, conferred on it by or under an Act.

(2) The Tribunal, wherever sitting, has jurisdiction throughout New South Wales.

(3) Without derogating from any powers conferred on the Chairman by this Act, the Chairman, while acting as Chairman, and any Deputy Chairman while presiding at a sitting of the Tribunal, have the same powers as are conferred by the District Court Act, 1973, and by law, on a Judge of that Court when acting as such a Judge.

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*Commercial Tribunal.*

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(4) Subject to section 33, a judgment or order of the Tribunal has the same effect as, and may be enforced in the same way as, a judgment or order of the District Court.

(5) The Chairman may, by instrument in writing, delegate to the Registrar with such limitations, and upon such conditions, as the Chairman thinks fit—

- (a) the exercise of any part of the jurisdiction of the Tribunal that is exercisable by the Chairman sitting alone; and
- (b) the exercise of such other functions (other than the powers conferred by sections 26 and 29 and this power of delegation) as are conferred by an Act on the Chairman,

and may, by instrument in writing, revoke any such delegation.

(6) Notwithstanding the delegation under this section of the exercise of jurisdiction or of a function, the Chairman may continue to exercise the jurisdiction and exercise the function.

(7) Any jurisdiction exercised or thing done by the Registrar pursuant to a delegation under this section shall be deemed to have been exercised or done by the Chairman.

### **Proceedings before Tribunal.**

19. (1) Proceedings before the Tribunal shall be held as in open court except to the extent that the rules otherwise provide.

(2) Sittings of the Tribunal, and the constitution of the Tribunal at each sitting, shall be arranged and determined by the Chairman.

(3) Proceedings before the Tribunal may be heard and determined by the Chairman sitting alone or, if there is a Deputy Chairman and the Chairman so directs, by a Deputy Chairman sitting alone—

- (a) where there is only one party to the proceedings and the proceedings relate to a matter which, in the opinion of the Chairman, does not, and is not likely to, involve 2 or more parties;

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*Commercial Tribunal.*

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- (b) where there are 2 or more parties to the proceedings and both or, as the case may be, all of the parties agree to the proceedings being heard and determined by the Chairman, or a Deputy Chairman, sitting alone; or
- (c) where the proceedings are included in a class of proceedings that may, in accordance with the regulations, be heard and determined by the Chairman, or a Deputy Chairman, sitting alone.

**(4)** Where proceedings under 2 or more Acts are before the Tribunal and the Chairman is of the opinion that some or all of the proceedings could, without prejudice to any party to the proceedings, be heard and determined together, the proceedings shall, to the extent directed by the Chairman, be so heard and determined.

**(5)** Except as provided by subsections (3) and (6), proceedings before the Tribunal shall be heard and determined by the Chairman or, if there is a Deputy Chairman, by a Deputy Chairman, and 2 part-time members, one of whom shall be a member referred to in section 7 (1) (a) and the other a member referred to in section 7 (1) (b).

**(6)** Where, pursuant to subsection (4), the Chairman directs that proceedings be heard and determined together, the proceedings shall, if the Chairman so directs, be heard by the Chairman or, if there is a Deputy Chairman, by a Deputy Chairman, and such part-time members (who may exceed 2 in number) selected equally from the members referred to in section 7 (1) (a) and the members referred to in section 7 (1) (b) as are nominated by the Chairman.

- (7)** Where the Tribunal, as constituted for a sitting of the Tribunal—
- (a) comprises, or includes, the Chairman—the Chairman shall preside at the sitting; or
  - (b) comprises, or includes, a Deputy Chairman—the Deputy Chairman shall preside at the sitting.

**(8)** In any proceedings before the Tribunal other than proceedings before the Chairman or a Deputy Chairman sitting alone, the decision of the majority of the members hearing the proceedings is the decision of the Tribunal.



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*Commercial Tribunal.*

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(9) In any proceedings before it, other than proceedings prescribed for the purposes of this subsection, the Tribunal—

- (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(10) The Chairman or Deputy Chairman who presides, or is to preside, at proceedings before the Tribunal—

- (a) may give directions relating to procedure that, in the opinion of the Chairman or the Deputy Chairman, 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; and
- (b) may, in relation to those proceedings, request a report from, or other assistance by, the Commissioner.

**Questions of procedure and law.**

20. (1) A reference or appeal under this section shall be made in accordance with rules of the Supreme Court.

(2) Any question with respect to procedure that arises in proceedings before the Tribunal shall be decided by the presiding Chairman or Deputy Chairman.

(3) Where, in proceedings before the Tribunal, a question arises with respect to a matter of law, the presiding Chairman or Deputy Chairman may decide the question or may refer it to the Supreme Court for decision.

(4) Where a question with respect to a matter of law is referred to the Supreme Court under subsection (3)—

- (a) the Tribunal shall not make an order or decision to which the question is relevant until the Supreme Court has decided the question;



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*Commercial Tribunal.*

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- (b) upon deciding the question, the Supreme Court shall remit its decision to the Tribunal; and
- (c) the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court.

(5) Where, in proceedings before the Tribunal, the Chairman or a Deputy Chairman decides a question with respect to a matter of law, a party to the proceedings who is dissatisfied with the decision may appeal to the Supreme Court against the decision of the Chairman or Deputy Chairman.

(6) After deciding the question the subject of an appeal under subsection (5), the Supreme Court may, unless it affirms the decision of the Chairman or Deputy Chairman on the question—

- (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal; or
- (b) remit its decision on the question to the Tribunal and order a re-hearing of the proceedings before the Tribunal.

(7) Where a re-hearing is held pursuant to an order under subsection (6) (b), the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court remitted to the Tribunal.

(8) Where a party to proceedings before the Tribunal has appealed to the Supreme Court under subsection (5) against a decision of the Chairman or a Deputy Chairman, either the Tribunal or the Supreme Court may suspend, until the appeal is determined, the operation of any order or decision made in the proceedings.

(9) Where, under subsection (8), the Tribunal suspends the operation of an order or decision, the Tribunal or the Supreme Court may terminate the suspension or, where the Supreme Court has suspended the operation of an order or decision, the Supreme Court may terminate the suspension.

(10) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal and a matter as to the admission or rejection of evidence.

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*Commercial Tribunal.*

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**Parties.**

**21. (1)** Subject to any Act and the rules, where a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having a joint liability, it is sufficient if any one or more of those persons is or are served with process in the proceedings, and a decision in the proceedings may be given or entered up and enforced against the person or persons subject to the liability.

**(2)** Section 97 of the Supreme Court Act, 1970, applies to and in respect of a decision given or entered up in proceedings before the Tribunal in the same way as it applies to and in respect of a judgment given in proceedings before the Supreme Court.

**(3)** A legal personal representative may bring or defend proceedings before the Tribunal in the same manner as if he or she were bringing or defending proceedings in his or her own right.

**(4)** Where, before the holding of proceedings before the Tribunal, or at any stage during the holding of any such proceedings, the presiding Chairman or Deputy Chairman is of the opinion that a person ought to be joined as a party to the proceedings, the Chairman or Deputy Chairman may, by notice in writing given to the person or by oral direction given during the holding of the proceedings, join the person as a party to the proceedings.

**Notice and conduct of proceedings.**

**22. (1)** The Chairman shall fix a time and place for the holding of proceedings before the Tribunal and the Registrar shall thereupon serve on each party to the proceedings a notice specifying the time and place so fixed and the matters to which the proceedings relate and directing the party to attend at that time and place.

**(2)** The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

**(3)** If a party to proceedings before the Tribunal on whom a notice has been served in accordance with subsection (1) fails to attend at the time and place specified in the notice, the proceedings may be held in the absence of the party.

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*Commercial Tribunal.*

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**Right of appearance and representation.**

**23. (1)** A party to proceedings before the Tribunal—

- (a) may appear personally in the proceedings or, except as provided by paragraph (b) (ii), by solicitor or counsel; and
- (b) may not, except by leave of the Tribunal, be represented in the proceedings—
  - (i) otherwise than by solicitor or counsel; or
  - (ii) by solicitor or counsel if the proceedings are proceedings, or are within a class of proceedings, prescribed for the purposes of this subparagraph.

**(2)** No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party in proceedings before the Tribunal.

**Evidence before Tribunal.**

**24. (1)** In proceedings before the Tribunal, the Tribunal may, in its discretion—

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal, whether constituted in the State or elsewhere, and draw any conclusions of fact from that transcript that it considers proper;
- (b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the proceedings; and
- (c) receive in evidence any report of the Commissioner that may be relevant to the proceedings but only if a copy of that report has been made available to every party to the proceedings.

**(2)** The evidence of a witness shall be recorded by means of writing, shorthand, stenotype machine, sound-recording apparatus or such other means as may be prescribed.

**(3)** Where the evidence of a witness is recorded by means of writing, it shall be read over either to or by the witness, as the presiding Chairman or Deputy Chairman may direct, and be signed by the witness.



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*Commercial Tribunal.*

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**Summons and examination of witnesses.**

**25. (1)** The Registrar shall, at the direction of the Chairman or a Deputy Chairman in relation to proceedings before the Tribunal or at the request of a party to any such proceedings, issue a summons requiring any person to attend the proceedings at a time and place specified in the summons and then and there to give evidence and produce any record in the person's custody or under the person's control that the person is required by the summons to produce.

**(2)** Where, pursuant to this section, a person is required by a summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require the person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

**(3)** The Chairman or a Deputy Chairman may administer an oath to any person appearing as a witness before the Tribunal, whether or not the witness has been summoned, and allow the witness to be examined and cross-examined by oath.

**(4)** A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed pursuant to this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court.

**(5)** A witness summoned under subsection (1) at the direction of the Chairman or a Deputy Chairman is entitled to be paid such fees and allowances as are prescribed.

**(6)** A summons issued under subsection (1) at the request of a party does not have effect, unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons, tender is made of an amount in respect of reasonable expenses of complying with the requirements of the summons.



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*Commercial Tribunal.*

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**Witness may be apprehended.**

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

(2) A warrant issued under subsection (1) authorises the apprehension of the witness, the bringing of the witness before the Tribunal and the detention of the witness in custody for that purpose until released by order of the Chairman, a Deputy Chairman or the Supreme Court.

(3) The apprehension of any witness under this section does not relieve the witness from any liability incurred by reason of non-compliance with a summons to attend before the Tribunal.

**Inspection and retention of records.**

27. (1) The Tribunal may inspect any record or statement produced before it and may retain it for such period as it thinks necessary for the purposes of the proceedings in relation to which it was produced and may make copies of the record or statement or any part of the record or statement.

(2) Where a record or statement is produced before, and retained by, the Tribunal, the person otherwise entitled to possession of the record or statement is, on request, entitled to be supplied, as soon as practicable, with a copy certified by the Registrar to be a true copy and a record or statement so certified is admissible as evidence in all courts as if it were the original record or statement.

(3) Where, pursuant to subsection (2), a person is entitled to be supplied with a copy of a record or statement, the person, or a person authorised by the person, may, at such times and places as the Registrar directs, inspect, make copies of, or take extracts from, the record or statement.

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*Commercial Tribunal.*

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**Assistance to Tribunal.**

**28.** The Chairman may employ any person to give such assistance as the Chairman considers necessary to enable the Tribunal to arrive at a decision in any proceedings before it and may, by instrument in writing, authorise any person so employed to inspect and report to the Tribunal on any record or statement that the Chairman considers relevant to the subject-matter of the proceedings.

**Contempt of Tribunal, etc.**

**29.** In respect of proceedings before the Tribunal, the Chairman or Deputy Chairman presiding at a sitting of the Tribunal has, subject to this Act but without limiting any of the powers, rights and privileges conferred on the Tribunal or the Chairman or Deputy Chairman by or under any other provision of this Act, the same powers for punishing contempt of the Tribunal as are conferred on a Judge of the District Court for punishing contempt of the District Court.

**Application of Royal Commissions Act, 1923.**

**30. (1)** Subject to subsection (2), Part III of the Royal Commissions Act, 1923, applies to and in respect of proceedings before the Tribunal in the same way as it applies to and in respect of an inquiry held under that Act, and for the purpose of that application—

- (a) a reference in that Part to a commission shall be construed as a reference to the Tribunal;
- (b) a reference in that Part to an inquiry shall be construed as a reference to proceedings before the Tribunal; and
- (c) a reference in that Part to a book, document, writing or record shall be construed as including a reference to a record within the meaning of this Act and a reference to a statement referred to in section 25 (2) of this Act.

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*Commercial Tribunal.*

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**(2) A person who is guilty of an offence—**

- (a) pursuant to section 19 of the Royal Commissions Act, 1923, is liable to a penalty not exceeding \$1,000 or to imprisonment for 6 months, or to both, instead of the penalty prescribed by that Act; or
- (b) pursuant to section 20 of the Royal Commissions Act, 1923, is liable to a penalty not exceeding \$1,000 or to imprisonment for 6 months, or to both, instead of the penalty prescribed by that Act.

**Dismissal of frivolous, etc., proceedings.**

**31. (1)** Where, at any stage of proceedings before the Tribunal, the Tribunal is satisfied that the proceedings are frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may dismiss the proceedings.

**(2)** Where the Tribunal dismisses proceedings under subsection (1), it may order the person who brought the proceedings to pay the costs of the proceedings.

**Costs.**

**32.** The Tribunal may award costs against a party to proceedings before it and may determine the amount of costs to be so awarded.

**Orders for payment of money.**

**33. (1)** Where an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs) the order shall, upon the filing of the prescribed documents in the office or registry of a court having jurisdiction to order the payment of such an amount of money, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the Tribunal.



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*Commercial Tribunal.*

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(2) For the purposes of subsection (1), the prescribed documents are—

- (a) a copy of the order of the Tribunal certified by the Registrar to be a true copy; and
- (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, where the order is to take effect upon any default, as to the making of the default.

(3) Notwithstanding anything in any other Act, no fee is payable for the filing of documents under subsection (1).

**Reasons for decision of Tribunal.**

34. (1) Where the Tribunal does not state its reasons for any order or decision made in relation to proceedings before it, any party to the proceedings may, by notice in writing served on the Registrar within 7 days after the date on which the order or decision was made, request the Tribunal to state its reasons for the order or decision.

(2) The Tribunal shall, within 14 days after the service of a notice under subsection (1), state its reasons for the order or decision referred to in the notice.

**Adjournments.**

35. (1) The Tribunal may adjourn any proceedings before it in such manner as it thinks fit.

(2) At any stage of proceedings before it, the Tribunal may order that the proceedings be stayed.

**Service of documents.**

36. Service of a document for the purposes of or in relation to proceedings before the Tribunal shall be effected by a person prescribed by the rules in respect of the same class of document, and may be effected by delivering a copy of the document to the person on whom the document is to be served or in such manner as may be prescribed by the rules.



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*Commercial Tribunal.*

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**Procedure.**

37. If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by this Act or by the rules, the Chairman or Deputy Chairman who presides, or is to preside, in the proceedings may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall, for the purposes of the proceedings, be regular and sufficient.

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**PART III.****RULES AND REGULATIONS.****Rules of the Tribunal.**

38. (1) The Chairman and any 2 members may make rules for or with respect to—

- (a) the procedure and practice to be followed in proceedings before the Tribunal (including the procedure and practice to be followed in the office of the Registrar) and any matters incidental or relating to any such procedure or practice;
- (b) the continuance of proceedings on death or bankruptcy of any party;
- (c) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairman, a Deputy Chairman or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing;
- (d) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal; and
- (e) any matters relating to costs of proceedings before the Tribunal.

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*Commercial Tribunal.*

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(2) The rules may be made to apply differently according to such factors, or according to such limitations or conditions, whether as to time or circumstance or otherwise, as may be prescribed in the rules.

(3) The provisions of section 41 (I), (II) and (III) of the Interpretation Act, 1897, apply to and in respect of a rule in the same way as they apply to and in respect of a regulation.

(4) Judicial notice shall be taken—

- (a) of a rule made, or purporting to have been made, under this Act and published in the Gazette; and
- (b) of the date of publication.

(5) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

### **Regulations.**

39. (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 and, in particular, but without affecting the generality of the foregoing, for or with respect to—

- (a) the fees payable with respect to proceedings before the Tribunal; and
- (b) the powers of the Registrar to postpone, or to remit, wholly or partly, the payment of any such fee.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or

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*Commercial Tribunal.*

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(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,  
or may do any combination of those things.

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**SCHEDULE 1.**

(Sec. 3.)

**TRANSITIONAL PROVISIONS.****Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

**Registrar and Deputy Registrar.**

2. (1) The person who, immediately before the appointed day, held office as Registrar of the Credit Tribunal of New South Wales under section 205 (1) of the Consumer Credit Act, 1981, shall be deemed to have been on that day appointed as Registrar of the Tribunal under section 17 (1) of this Act.

(2) The person who, immediately before the appointed day, held office as Deputy Registrar of the Credit Tribunal of New South Wales under section 205 (3) of the Consumer Credit Act, 1981, shall be deemed to have been on that day appointed as Deputy Registrar of the Tribunal under section 17 (1) of this Act.

**Pending proceedings.**

3. (1) Where, immediately before the appointed day, proceedings instituted for determination by the Credit Tribunal of New South Wales had not been heard and determined, they shall be heard and determined by the Commercial Tribunal of New South Wales.

(2) For the purposes of subclause (1)—

- (a) an application made under the Consumer Credit Act, 1981, for a credit provider's licence or a finance broker's licence shall be deemed to be an application made under the Credit (Administration) Act, 1984, for such a licence; and
  - (b) a matter referred to the Credit Tribunal of New South Wales under section 162B (3) of the Consumer Credit Act, 1981, shall be deemed to have been referred to the Commercial Tribunal of New South Wales under section 5 (3) of the Credit (Home Finance Contracts) Act, 1984.
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*Commercial Tribunal.*

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## SCHEDULE 2.

(Sec. 16.)

## RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN.

**Interpretation.**

## 1. In this Schedule—

“Chairman” includes a Deputy Chairman;

“statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;

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

**Preservation of certain rights of Chairman.**

2. (1) Subject to subclause (2) and to the terms of appointment, where the Chairman was, immediately before being appointed as Chairman—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

he or she—

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

(f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Chairman; and

(g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as Chairman and—

(h) his or her service as Chairman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and



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*Commercial Tribunal.*

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SCHEDULE 2—*continued.*RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN—*continued.*

- (i) he or she shall be deemed to be an officer or employee for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the Chairman would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as Chairman or at any later time while holding office as Chairman) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her, in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to the Chairman upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purpose of the scheme.

(4) The Chairman shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**Chairman entitled to re-appointment to former employment in certain cases.**

3. (1) A person who—
- (a) ceases to be Chairman by reason of the expiration of the period for which the person was appointed or by reason of resignation;
  - (b) was, immediately before being appointed as Chairman—
    - (i) an officer of the Public Service or a Teaching Service; or
    - (ii) an officer or employee of a statutory body; and
  - (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee.

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as Chairman.

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*Commercial Tribunal.*

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SCHEDULE 2—*continued.*RIGHTS OF CHAIRMAN AND DEPUTY CHAIRMAN—*continued.*

(2) Where subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is, after that appointment, appointed as Chairman,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Chairman, as are specified in the instrument of appointment as Chairman or as are agreed upon by the person and by or on behalf of the Government.

**Declaration of statutory bodies.**

4. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*By Deputation from  
His Excellency the Governor.*

*Government House,  
Sydney, 28th June, 1984.*





