



Queensland

# Commercial and Consumer Tribunal Act 2003

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Reprint No. 1D

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This Act is reprinted as at 22 April 2005. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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## Queensland

# Commercial and Consumer Tribunal Act 2003

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# Commercial and Consumer Tribunal Act 2003

[as amended by all amendments that commenced on or before 22 April 2005]

## An Act to establish the Commercial and Consumer Tribunal, and for other matters

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Commercial and Consumer Tribunal Act 2003*.

#### 2 Commencement

This Act commences on 1 July 2003.

#### 3 Act binds all persons

This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

#### 4 Objects of Act

- (1) The objects of this Act are—
  - (a) to establish a tribunal to deal with the matters it is empowered to deal with under an empowering Act; and
  - (b) to have the tribunal deal with matters in a way that is just, fair, informal, cost efficient and speedy.
- (2) The objects of this Act are to be achieved by establishing a system of dispute resolution that—
  - (a) is just in the results it delivers; and

- (b) is fair by—
  - (i) ensuring litigants have an equal opportunity, regardless of their resources, to assert or defend their legal rights; and
  - (ii) giving parties to proceedings an opportunity to state their case and to answer their opponent's case; and
  - (iii) treating like cases alike; and
- (c) has a range of procedures available and minimises costs to the extent practicable; and
- (d) deals with applications with reasonable speed and encourages the early resolution of disputes; and
- (e) is understandable to users of the system; and
- (f) is responsive to the needs of users of the system; and
- (g) allows parties to represent themselves and save legal costs wherever appropriate.

## **5 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

## **Part 2 The tribunal**

### **6 Tribunal established**

- (1) The Commercial and Consumer Tribunal is established.
- (2) The tribunal consists of 1, 2 or 3 members chosen by the chairperson.
- (3) When choosing how many, and which, members are to constitute the tribunal, the chairperson must consider at least the following—
  - (a) the complexity of the matter to be dealt with by the tribunal;

- (b) the interests of the business or industry to be affected by the decision;
  - (c) the public interest;
  - (d) the speed the matter can be dealt with.
- (4) The chairperson may allocate the work of the tribunal according to lists maintained by the chairperson.
- (5) More than 1 tribunal may sit at any time.

## **7 Tribunal's seal**

- (1) The tribunal must have a seal.
- (2) The director is to have custody of the seal.
- (3) The seal must be judicially noticed.

## **8 Jurisdiction of tribunal**

- (1) The tribunal has jurisdiction to deal with the matters it is empowered to deal with under this Act or an empowering Act.
- (2) In exercising its jurisdiction, the tribunal is not subject to direction or control, other than as provided under this Act.

## **9 Powers of tribunal**

- (1) The tribunal may do all things necessary or convenient to be done for exercising its jurisdiction.
- (2) Without limiting subsection (1), the tribunal has the powers conferred on it by this Act or an empowering Act.

## **10 Advertising for nominations for appointment as a member**

Before recommending a person to the Governor in Council for appointment as a member of the tribunal, the Minister must advertise in a newspaper circulating throughout the State for applications or expressions of interest from suitably qualified persons to be considered for selection as a member of the tribunal.

**11 Appointment of members**

- (1) The chairperson of the tribunal is to be appointed by the Governor in Council on a full-time basis.
- (2) The other members of the tribunal are to be appointed by the Governor in Council and may be appointed on a full-time or part-time basis.
- (3) A person is eligible for appointment as the chairperson of the tribunal only if the person is a lawyer of at least 5 years standing.
- (4) A person is eligible for appointment as another member only if the person—
  - (a) is a lawyer of at least 5 years standing; or
  - (b) has high level experience and knowledge of the business or industry to which an empowering Act relates.
- (5) A member holds office for a term of not longer than 5 years stated in the instrument of appointment.
- (6) Members are to be appointed under this Act, and not under the *Public Service Act 1996*.
- (7) The chairperson may hold, or act in, and perform the functions of, another public office in addition to the office of chairperson if the chairperson is appointed to, or appointed to act in, the other office by the Governor in Council.

**12 Member's remuneration and appointment conditions**

- (1) A member of the tribunal is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) It is a condition of a member's appointment that if the member's appointment is terminated under section 13, the member is not entitled to any remuneration or allowances from the date of the termination.
- (3) To the extent that the conditions are not provided for by this Act, a member holds office on the conditions decided by the Governor in Council.

**13 Termination of appointment**

- (1) The Governor in Council may terminate the appointment of a member of the tribunal if the Governor in Council is satisfied the member—
  - (a) is mentally or physically incapable of satisfactorily performing the member's duties; or
  - (b) performed the member's duties carelessly, incompetently or inefficiently; or
  - (c) has engaged in conduct that could warrant dismissal from the public service if the member were a public service officer; or
  - (d) is affected by bankruptcy action.
- (2) The Governor in Council must terminate the appointment of a member if the member—
  - (a) ceases to be eligible for appointment as a member; or
  - (b) is convicted of an indictable offence, whether dealt with on indictment or summarily.
- (3) This section applies to a member whether appointed before or after the commencement of this section.
- (4) In this section—

*affected by bankruptcy action*, in relation to an individual, means the individual, in any jurisdiction—

  - (a) is bankrupt; or
  - (b) has compounded with creditors; or
  - (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

**14 Resignation of members**

A member may resign by giving a signed notice of resignation to the Minister.

**15 Member's roles**

- (1) The chairperson's role includes the following—

- (a) directing the tribunal's adjudicative operations to ensure they are as just, fair, informal, cost efficient and speedy as practical;
  - (b) developing, with the participation of other members, guiding principles that promote high quality and consistent decisions by the tribunal;
  - (c) developing and implementing procedures and policies for the tribunal's adjudicative operations;
  - (d) issuing practice directions of general application to proceedings;
  - (e) managing the overall performance of members;
  - (f) being responsible for the professional development and training of members of the tribunal in relation to the discharge of their functions.
- (2) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.
- (3) A member's role includes professionally and efficiently performing the functions of the tribunal assigned or given to the member under this or another Act.
- (4) A member must comply with the procedures and policies implemented by the chairperson for the tribunal's adjudicative operations.

## **16 Delegation by chairperson**

- (1) The chairperson may delegate the chairperson's powers under this or another Act to another member.
- (2) The chairperson may delegate the chairperson's powers under section 6(2)<sup>1</sup> to the director.
- (3) The director may subdelegate the delegated power to another appropriately qualified officer of the staff of the registry.
- (4) In this section—  
*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

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<sup>1</sup> Section 6 (Tribunal established)



**17 Chairperson and director to work cooperatively**

The chairperson and the director must work cooperatively to promote the effective and efficient operation of the tribunal.

**18 Acting members**

- (1) The Governor in Council may appoint a person who is eligible for appointment as the chairperson of the tribunal to act as chairperson—
  - (a) for any period the office is vacant; or
  - (b) for any period, or all periods, when the chairperson is absent from duty or the State or can not, for another reason, perform the duties of the office.
- (2) The Governor in Council may appoint a person who is eligible for appointment as a member to act as the member—
  - (a) for any period the office is vacant; or
  - (b) for any period, or all periods, when the member is absent from duty or the State or can not, for another reason, perform the duties of the office.

**19 Disclosure of interests**

- (1) If a member becomes aware that the member has a conflict of interest about a proceeding before the tribunal, the member must disclose the issue giving rise to the conflict—
  - (a) if the member is the chairperson—to the parties to the proceeding; or
  - (b) otherwise—to the chairperson and the parties to the proceeding.
- (2) After making the disclosure, the member may disqualify himself or herself.
- (3) However, the member may take part in the proceeding, or exercise a power for the proceeding—
  - (a) if the member is the chairperson—if the parties agree; or
  - (b) otherwise—if the chairperson and the parties agree.

- (4) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.

## **Part 3                      The registry**

### **20            Registry established**

- (1) The Commercial and Consumer Tribunal Registry (the *registry*) is established.
- (2) The registry consists of the director and the staff of the registry.
- (3) The registry is the registry for the tribunal, and any other tribunal prescribed under a regulation.

### **21            Appointment of director and staff of registry**

- (1) A person is eligible for appointment as the director only if the person has particular knowledge and experience of—
  - (a) public administration; and
  - (b) something else of substantial relevance to the functions of the director.
- (2) The director and other staff of the registry are to be appointed under the *Public Service Act 1996*.
- (3) The director may hold, or act in, and perform the functions of, another public office in addition to the office of director of the registry.

### **22            Director's functions and powers**

- (1) Subject to the direction of the chief executive, the director is responsible for managing the registry and the administrative affairs of the tribunal.
- (2) The director has the following functions—

- (a) to keep a register containing details of all applications made to the tribunal, which may be kept in any form allowing it to be inspected as mentioned in paragraph (b);
  - (b) to ensure the register is available for inspection by an entity paying any fee that may be prescribed under a regulation made under this Act or an empowering Act for the inspection;
  - (c) to supply a certificate as to the correctness of a matter in the register to an entity paying any fee that may be prescribed under a regulation made under this Act or an empowering Act for the certificate;
  - (d) to sign and issue attendance notices, however described, for the tribunal;
  - (e) to keep the tribunal's records and decisions;
  - (f) to notify the parties to a proceeding of the tribunal's final decision in the proceeding and any reasons given for the decision;
  - (g) to publish decisions of the tribunal approved for publication by the chairperson under arrangements, and in the way, approved by the chairperson;
  - (h) to keep account of fees paid and payable to the tribunal;
  - (i) to collect statistical data and other information relevant to the administration of the registry for inclusion in the tribunal's annual report;
  - (j) any other functions given under this or another Act.
- (3) The director has the powers reasonably necessary to exercise the director's functions.

## **23 Delegation by director**

- (1) The director may delegate the director's powers under this Act or another Act to an appropriately qualified member of the staff of the registry.
- (2) In this section—

***appropriately qualified*** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person's seniority level as a member of the staff of the registry.

## **24 Keeping and disclosure of records and information**

- (1) The director may—
  - (a) keep the records of, and information for, the tribunal that the director considers appropriate in the way the director considers appropriate; and
  - (b) make the records and information available to the public on payment of the fee prescribed under a regulation.
- (2) Without limiting section 22<sup>2</sup> or subsection (1), the director must—
  - (a) keep the records of and information about proceedings before the tribunal that the director considers appropriate; and
  - (b) make the records and information available to the public.
- (3) Despite subsections (1) and (2), the director must not make a record or information available to the public if the tribunal orders that the record or information must not be made available to the public.

## **25 Acting director**

- (1) The chief executive may appoint an appropriately qualified person to act as director.
- (2) The appointee is to act as director if—
  - (a) the director is not available to carry out the director's duties; or
  - (b) there is a vacancy in the office of director.
- (3) In this section—

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2 Section 22 (Director's functions and powers)

*appropriately qualified* includes having particular knowledge and experience of—

- (a) public administration; and
- (b) something else of substantial relevance to the functions of the director.

## **Part 4                      Presiding case manager**

### **26            Presiding case manager**

- (1) The Governor in Council may appoint 1 or more presiding case managers.
- (2) A person is eligible for appointment as a presiding case manager only if the person is a lawyer of at least 5 years standing.
- (3) A presiding case manager may be appointed on a full-time or part-time basis.
- (4) A presiding case manager may hold, or act in, and perform the functions of, another public office in addition to the office of presiding case manager.

### **27            Acting presiding case manager**

- (1) The chief executive may appoint a person who is eligible to be appointed as a presiding case manager to act as a presiding case manager.
- (2) The appointee is to act as a presiding case manager if—
  - (a) a presiding case manager is not available to carry out the presiding case manager's duties; or
  - (b) there is a vacancy in the office of presiding case manager.

**28 Presiding case manager's power to deal with particular applications to tribunal**

- (1) A presiding case manager may deal with a case manager's matter before the tribunal if selected by the chairperson to constitute the tribunal for the matter.
- (2) For the case manager's matter, the presiding case manager constitutes, and may exercise all the jurisdiction and powers of, the tribunal.
- (3) The presiding case manager may exercise the other powers in relation to a direction given or a decision made by the presiding case manager that are incidental to the direction or decision and prescribed under a regulation.

*Example—*

A regulation may provide that a presiding case manager may correct a clerical error or accidental slip or omission in a direction given by the presiding case manager.

- (4) The exercise of power by the presiding case manager under subsection (3) is taken to be an exercise of power by the tribunal.
- (5) If the chairperson decides that a presiding case manager should not constitute the tribunal, the chairperson must—
  - (a) deal with the case manager's matter; or
  - (b) select a legally qualified member of the tribunal to constitute the tribunal to deal with it.
- (6) The presiding case manager may refer a case manager's matter to a member of the tribunal if the presiding case manager decides that the matter should be dealt with by a member of the tribunal.
- (7) In this section—

*legally qualified member* of the tribunal means a member of the tribunal who is a lawyer of at least 5 years standing.

**29 Independence of presiding case manager**

- (1) A presiding case manager when constituting the tribunal is not subject to direction or control, other than as provided under this Act.

- (2) However, the presiding case manager must comply with any procedural directions given by the chairperson.

### **30 Disclosure of interests**

- (1) If a presiding case manager becomes aware that he or she has a conflict of interest about a case manager's matter before the presiding case manager, the presiding case manager must disclose the conflict to the chairperson and the parties to the matter.
- (2) After disclosing the conflict, the presiding case manager may disqualify himself or herself.
- (3) However, the presiding case manager may deal with the matter, or exercise a power for the matter, if the chairperson and the parties agree.
- (4) The presiding case manager has a conflict of interest about a case manager's matter if he or she has an interest, financial or otherwise, that could conflict with the proper performance of the presiding case manager's functions for the matter.

## **Part 5 Operation of tribunal**

### **Division 1 Starting proceedings**

#### **31 How to start proceedings**

- (1) An entity (the *applicant*) may start a proceeding for a matter for which the tribunal has jurisdiction by—
  - (a) filing an application in the approved form in the tribunal; and
  - (b) paying the fee prescribed under a regulation, in the way prescribed under the regulation.

- (2) The application must state—
  - (a) the facts or grounds on which the application is based; and
  - (b) the claims made and outcome or order sought by the applicant.
- (3) The applicant must serve a copy of the application on each entity against whom a claim is made or in relation to whom an outcome or order is sought (the *respondent*).
- (4) Also, if the tribunal considers another entity is affected by the application, it may direct the applicant to serve a copy of the application on the entity.
- (5) The applicant must comply with a direction under subsection (4).
- (6) For a public examination, the person required to be served under subsection (4) is the person proposed to be the subject of the public examination.

### **32 Application by a group of individuals**

- (1) This section applies if an empowering Act allows a group of individuals to make a joint application arising out of the same or similar facts or circumstances.
- (2) An application made by the group must state—
  - (a) the name and address of each member of the group; and
  - (b) the name and address for service of the member (the *representative*) who, with the written appointment of each of the other members, will—
    - (i) accept service on behalf of the group; and
    - (ii) represent the group in any proceeding before the tribunal.
- (3) The group must seek the leave of the tribunal if, during the proceeding, the group wants to appoint another member of the group to be the group's representative.
- (4) The tribunal may, at any time, require the group to provide evidence of the representative's appointment.



**33 Defence and counterclaim**

- (1) This section applies to an application starting a proceeding for—
  - (a) a building dispute under the *Queensland Building Services Authority Act 1991*; or
  - (b) the recovery of a debt under the *Queensland Building Services Authority Act 1991*, section 71;<sup>3</sup> or
  - (c) a matter under the *Domestic Building Contracts Act 2000*, section 18, 55, 60 or 84.<sup>4</sup>
- (2) The respondent must file a defence to the application and any counterclaim that states—
  - (a) the facts relied on by the respondent in defence of the claims by the applicant; and
  - (b) the nature of the defence to each outcome or order sought by the applicant; and
  - (c) the facts on which any counterclaim is based and the outcome or order sought by the respondent relating to the counterclaim.
- (3) The respondent must act under subsection (2) within 14 days of being served with the application or the extended time allowed by the tribunal.
- (4) A defence and any counterclaim must be in the approved form.
- (5) The respondent must serve a copy of the defence and any counterclaim on the applicant.
- (6) Also, if the tribunal considers another entity is affected by the defence or counterclaim, it may direct the respondent to serve a copy of the defence or counterclaim on the entity.
- (7) The respondent must comply with a direction under subsection (6).

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3 *Queensland Building Services Authority Act 1991*, section 71 (Recovery from building contractor etc.)

4 *Domestic Building Contracts Act 2000*, section 18 (Effective completion date or period), 55 (Cost plus contracts), 60 (Effect of improper statements) or 84 (Right of building contractor to recover amount for variation)

- (8) If the respondent does not file a defence within the period or extended period allowed, the tribunal may deal with the matter in the absence of the respondent.

### **34 Amendment of pleadings**

- (1) The tribunal may at any stage of a proceeding amend the particulars of any pleadings in the way it considers appropriate—
- (a) on application, if the tribunal is satisfied that no party is unfairly prejudiced by the amendment; or
  - (b) on its own initiative, if all the parties agree.
- (2) The amended pleadings are taken to be the pleadings.
- (3) In this section—
- pleadings* means—
- (a) an application; or
  - (b) a defence and any counterclaim.

## **Division 2 Business names**

### **35 Proceeding if business name**

A proceeding may be brought against a person under a name or style, other than the person's own name and under which a person carries on business, regardless of whether the name or style is registered under the *Business Names Act 1962*.

### **36 Proceeding if registered business name**

- (1) This section applies if a proceeding is brought against a person in relation to a business carried on by the entity under a name or style other than the person's own name and the name is registered under the *Business Names Act 1962*.
- (2) The proceeding may be started against the person in the name or style registered under the *Business Names Act 1962*.

- (3) The name or style registered under the *Business Names Act 1962* is sufficient designation of the person in a document filed in the proceeding.
- (4) An order in the proceeding may be enforced against the person.

### **37 Proceeding in business name if unregistered**

- (1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name and the name is not registered under the *Business Names Act 1962*.
- (2) The proceeding may be started against the person in the name or style under which the person carries on business.
- (3) The name or style under which the business is carried on is sufficient designation of the person in a document filed in the proceeding.
- (4) An order in the proceeding may be enforced against the person.

### **38 Defence**

- (1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name, regardless of whether the name or style is registered under the *Business Names Act 1962*.
- (2) A defence must be in the name of the person and not in the business name.
- (3) If the person files a defence, the person must file and serve with the defence a statement of the names and places of residence of all entities who were carrying on business under the name or style as at the day the proceeding was started.
- (4) The tribunal may set aside the defence if the person does not comply with subsection (3).

**39 Amendment as to parties**

- (1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name, regardless of whether the name or style is registered under the *Business Names Act 1962*.
- (2) The applicant must, as soon as practicable, take all reasonable steps to find out the name of the person carrying on the business under the name or style in question.
- (3) The applicant must continue the proceeding in the person's name and not in the name or style under which the business was carried on.
- (4) However with the tribunal's leave, the applicant may take a further step in the proceeding in the name or style under which the business was carried on.
- (5) Before allowing a proceeding to continue against a named entity, the tribunal must be satisfied that the named entity is aware the proceeding is being continued against the named entity.

**Division 3 Transfer of proceedings****40 Transfer of proceedings between tribunal and the courts**

- (1) If a proceeding is started in a court and the proceeding could be heard by the tribunal under this Act, the court must order the entity who started the proceeding to start the proceeding again before the tribunal under section 31.<sup>5</sup>
- (2) If the tribunal considers it does not have jurisdiction to hear all matters in a proceeding before the tribunal, the tribunal may order the entity who started the proceeding to start the proceeding again before the court.
- (3) The tribunal may make an order under subsection (2) even though the proceeding has previously been transferred from a court to the tribunal under subsection (1).

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<sup>5</sup> Section 31 (How to start proceedings)

- (4) However, if the tribunal makes an order under subsection (2), a court must not make an order under subsection (1) relating to the proceeding.
- (5) For the time limit fixed for the start of a proceeding, the time between when the proceeding is started and when an order is made under subsection (1) or (2) does not count.

## **Division 4                      Service**

### **41            Service of documents**

- (1) A document may be served under this Act—
  - (a) for a document to be served on a licensee—by leaving it at, or sending it to, the licensee’s address in the register of licences under the relevant empowering Act; or
  - (b) otherwise—
    - (i) in a way directed by the tribunal; or
    - (ii) as stated in this Act.
- (2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39.<sup>6</sup>

### **42            Service in relation to a business**

- (1) This section applies if—
  - (a) a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person’s own name, regardless of whether the name or style is registered under the *Business Names Act 1962*; and
  - (b) the proceeding is brought in the name or style under which the person carries on the business.
- (2) The application may be served by leaving a copy at the person’s place of business with a person who appears to have control or management of the business at the place.

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<sup>6</sup> *Acts Interpretation Act 1954*, section 39 (Service of documents)

**43 Acceptance of service by solicitor**

- (1) A solicitor may accept service of a document for a party.
- (2) The document is taken to have been served on the party, unless the party proves the solicitor did not have authority to accept service for the party.
- (3) This section applies whether or not personal service of the document is required under this Act.
- (4) The solicitor must make a note on a copy of the document to the effect that the solicitor accepts service for the party.

**44 Informal service**

- (1) This section applies if—
  - (a) for any reason, a document is not served as required by this division but the document or a copy of it came into the possession of the party to be served; and
  - (b) the tribunal is satisfied on evidence before it that the document came into the party's possession on or before a particular day.
- (2) The tribunal may, by order, decide that the possession of the document is service for this Act on the day it came into the party's possession or a later day stated in the order.

**Division 5 Case management****45 Tribunal to fix time and place for proceedings**

- (1) This section applies if an application has been filed and served.
- (2) The tribunal must fix a time and place for the proceeding that the tribunal considers necessary for resolution of the matters to which the application and any defence and counterclaim relate.

- (3) However, the tribunal must not fix a time and place for an application for a matter mentioned in section 33(1)<sup>7</sup> until either—
- (a) a defence and any counterclaim have been filed and served; or
  - (b) the time or extended time (if the tribunal has extended the time for filing a defence and any counterclaim) for filing a defence and counterclaim has ended without a defence being filed.

#### **46 Hearings generally open to the public**

- (1) A hearing is open to the public unless the tribunal orders that the hearing, or part of the hearing, is to be closed to the public.
- (2) The tribunal must make the order if—
- (a) a provision of an empowering Act specifically states that a particular type of, or part of a, hearing is not open to the public; or
  - (b) the tribunal decides that it is in the public interest for the hearing, or part of the hearing, to be closed to the public.
- (3) The tribunal may come to the decision mentioned in subsection (2)(b) on—
- (a) its own initiative; or
  - (b) an application from a party to a proceeding.
- (4) The tribunal may, by order, give directions about the persons who may be present at a hearing, or part of a hearing, to be closed to the public.

#### **47 Way tribunal is to conduct proceedings**

- (1) This section applies to a proceeding.
- (2) The procedure is at the discretion of the tribunal, subject to this Act and the rules of natural justice.

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<sup>7</sup> Section 33 (Defence and counterclaim)

- (3) The proceeding is to be conducted with as little formality and technicality and with as much speed as the requirements of this Act and a proper consideration of the matters before the tribunal permit.
- (4) The tribunal is not bound by the rules of evidence but may inform itself in any way it considers appropriate.
- (5) The tribunal may, if appropriate, conduct the proceeding by remote conferencing.
- (6) In this section—  
*remote conferencing* means—
  - (a) telephone conferencing; or
  - (b) video conferencing; or
  - (c) another form of communication that allows persons taking part in the proceeding to hear and take part in discussions as they happen.

#### **48 Hearing on the papers**

The tribunal may decide all or part of a proceeding from a consideration of the documents filed, without the parties or witnesses appearing if—

- (a) the parties to the proceeding agree; or
- (b) the tribunal considers it appropriate in all the circumstances.

#### **49 Practice directions**

- (1) To the extent that a matter about the procedures of the tribunal is not provided for by this Act, the chairperson may issue practice directions about the tribunal's general procedures.
- (2) The members of the tribunal and parties before the tribunal must comply with the practice directions.



**50 Directions and orders**

- (1) The tribunal may make orders, give directions and do whatever is necessary for the just, fair, informal, cost efficient and speedy resolution of a proceeding.
- (2) The power to give directions under subsection (1) is subject to practice directions under section 49.
- (3) Without limiting subsection (1), the tribunal may at any time—
  - (a) set time limits for the completion of anything to be done in relation to the proceeding; and
  - (b) require a party to the proceeding to give the tribunal either or both of the following if the tribunal considers it may be relevant to the proceeding—
    - (i) a document in the party's possession or control;
    - (ii) any other information or evidence.
- (4) A party must comply with an order or direction within the time stated in the order or direction unless the party applies to the tribunal for and is granted an extension of time to comply with the order or direction.
- (5) The tribunal, on application of a party or on its own initiative, may at any time vary or revoke an order or direction given by it.
- (6) The tribunal may not vary or revoke an order or direction given by it if to do so would cause any prejudice or detriment to a party or potential party that can not be remedied by an appropriate order for costs or damages.
- (7) In this section—

*order* includes an interim order.

**51 Documents to which disclosure does not apply**

- (1) The duty of disclosure does not apply to the following documents—
  - (a) a document in relation to which there is a valid claim to privilege from disclosure;
  - (b) a document relevant only to credit;

- (c) an additional copy of a document already disclosed, if it is reasonable to suppose the additional copy contains no change, obliteration or other mark or feature likely to affect the outcome of the proceeding.
- (2) A document consisting of a statement or report of an expert is not privileged from disclosure.
- (3) In this section—  
*duty of disclosure* means a requirement under section 50(4)<sup>8</sup> relating to a document mentioned in section 50(3)(b)(i).

## **52 Extension of time and waiver of compliance**

- (1) The tribunal, on the application of any entity or on its own initiative, may extend a time limit fixed by or under this or another Act for the start of a proceeding.
- (2) The tribunal, on the application of a party or on its own initiative, may for a proceeding—
  - (a) extend a time limit fixed by or under this Act or an empowering Act for the doing of anything; or
  - (b) waive compliance with any procedural requirement under this Act.
- (3) The tribunal may extend time or waive compliance even if the time or period for compliance has expired.
- (4) The tribunal may not extend time or waive compliance—
  - (a) for a proceeding relating to a matter to which the *Property Agents and Motor Dealers Act 2000*, section 472A<sup>9</sup> applies; or
  - (b) if to do so would cause any prejudice or detriment to a party or potential party that can not be remedied by an appropriate order for costs or damages.

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<sup>8</sup> Section 50 (Directions and orders)

<sup>9</sup> *Property Agents and Motor Dealers Act 2000*, section 472A (Time limit for making particular claims relating to marketeering contraventions and non-investment residential property)

**53 Inclusion of parties**

- (1) For a proceeding, the tribunal may order that a person be included as a party to the proceeding if the tribunal considers that—
  - (a) the person ought to be bound by, or have the benefit of, an order of the tribunal in the proceeding; or
  - (b) the person's interests are affected by the proceeding; or
  - (c) for another reason it is desirable the person be included as a party.
- (2) The tribunal may make an order under subsection (1) on application of a party or on its own initiative.

**54 Consolidation of proceedings**

The tribunal may on the application of a party or on its own initiative order that 2 or more proceedings be consolidated if—

- (a) the same or substantially the same question is involved in all the proceedings; or
- (b) the decision in 1 proceeding will decide or affect the other proceeding or proceedings.

**55 Sequence of hearings**

The tribunal may on the application of any entity or on its own initiative order that 2 or more proceedings be heard together or in a particular sequence.

**56 Directions**

If the tribunal orders that proceedings be consolidated or heard together or in a specified sequence, the tribunal may give a direction it considers appropriate for the conduct of the proceeding or proceedings.

**57 Variation of order**

Before or during the hearing of a consolidated proceeding or of proceedings ordered to be heard together or in a particular sequence, the tribunal may order the proceedings be separated or heard in another sequence.

**58 Vexatious proceedings**

If, in the tribunal's opinion, a proceeding has been brought vexatiously or oppressively, the tribunal may—

- (a) summarily dismiss the proceeding; and
- (b) order costs against the party by whom the proceeding was brought to compensate the party against whom it was brought for loss, inconvenience and embarrassment resulting from the proceeding.

**59 Non-appearance of respondent**

- (1) This section applies if the tribunal is satisfied that the respondent—
  - (a) has been given notice of the hearing and does not appear at the hearing; or
  - (b) can not be located after the making of reasonable inquiries into the respondent's whereabouts.
- (2) The tribunal may hear and decide the matter in the respondent's absence.

**60 Conduct of proceeding causing disadvantage**

- (1) This section applies if the tribunal considers a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding including by—
  - (a) not complying with a direction or order of the tribunal without reasonable excuse; or
  - (b) asking for an adjournment as a result of not complying with a direction or order of the tribunal; or

- (c) vexatiously conducting the proceeding; or
  - (d) causing an adjournment.
- (2) The tribunal may—
- (a) order that the party causing the disadvantage compensate the other party for any costs incurred unnecessarily; or
  - (b) if the party causing the disadvantage is the applicant, dismiss the applicant's claim; or
  - (c) if the party causing the disadvantage has filed a counterclaim, dismiss the counterclaim.
- (3) The tribunal may refuse to continue with the proceeding until an order under subsection (2)(a) is complied with.

## **61 Withdrawal by applicant**

- (1) An applicant may withdraw all or part of an application, without the tribunal's leave, if the applicant has not been served with a defence or counterclaim relating to the application.
- (2) After being served with a defence or counterclaim, an applicant may withdraw all or part of an application only with the tribunal's leave.
- (3) Also, if there is more than 1 applicant, an applicant may withdraw all or part of an application only with the tribunal's leave.
- (4) An applicant may withdraw against 1 or more respondents without withdrawing against the other respondents only with the tribunal's leave.

## **62 Withdrawal by respondent**

A respondent may withdraw all or part of a defence or counterclaim only with the tribunal's leave.

**63 Further application after withdrawal restricted**

If an applicant withdraws all or part of an application, the applicant may make a further application relating to the same facts and circumstances only with the tribunal's leave.

**64 Costs order on applicant's withdrawal**

If an applicant withdraws all or part of an application, the tribunal may make an order that the applicant pay all, or part of, the costs of the other parties to the proceeding.

**65 Notice of withdrawal**

- (1) A withdrawal for which the tribunal's leave is not required may be effected by filing a notice of withdrawal, in the approved form, and serving it as soon as practicable on the other parties.
- (2) A withdrawal for which the tribunal's leave is required is effected by the order giving leave and a notice of withdrawal is not required.

**66 Tribunal may hear proceeding regardless of related criminal or disciplinary action**

- (1) This section applies if matters arising in a proceeding involve the contravention, or the alleged contravention, by a person of an Act.
- (2) Unless an empowering Act provides otherwise, the tribunal may make an order to resolve the proceeding whether or not the person—
  - (a) has been charged with, convicted of or sentenced for an offence arising out of the contravention; or
  - (b) is the subject of a pending disciplinary proceeding relating to the contravention; or

- (c) may be, or has been, subject to disciplinary action under section 107<sup>10</sup> relating to the contravention.

## **Division 6                      Security for costs**

### **67                      Security for costs**

- (1) On the application of a party against whom a claim is made or an outcome or order sought in a proceeding, the tribunal may order—
- (a) that another party give security for the costs of the party applying for security within the time stated in the order; and
  - (b) that the proceeding as against the party applying for security be stayed until the security is given.
- (2) An application under subsection (1) may be made at any time before the proceeding ends.
- (3) If security for costs is not given within the time stated in the order, the tribunal may make an order dismissing the proceeding as against the party applying for security.
- (4) In deciding whether to make an order, the tribunal may have regard to any of the following matters—
- (a) the means of the parties to the proceeding;
  - (b) the prospects of success or merits of the proceeding;
  - (c) the genuineness of the proceeding;
  - (d) if the party against whom an order for costs is sought suffers from a lack of means, whether this is attributable to the conduct of the applicant for the order;
  - (e) whether an order for security for costs would be oppressive;
  - (f) whether an order for security for costs would stifle the proceeding;

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10 Section 107 (Orders for disciplinary action)

- (g) whether delay by a party in starting the proceeding has prejudiced another party;
- (h) the costs of the proceeding;
- (i) anything else the tribunal considers relevant.

## **68 Way security given**

- (1) If the tribunal orders a party to give security for costs, the security must be given in the form, at the time, and on the conditions, if any, the tribunal directs.
- (2) If the tribunal does not state the form of the security—
  - (a) it must be given in a form approved by the director; and
  - (b) the form of security approved by the director must be written on the order before it is issued.
- (3) A party who gives security for costs must as soon as practicable after giving security serve on the applicant for security written notice of when, and the way in which, the security was given.

## **69 Finalising security**

- (1) This section applies if, in a proceeding, security for costs has been given by a party under an order made about security for costs under section 67.<sup>11</sup>
- (2) If the tribunal decides the party must pay all or part of the costs of the proceeding, the security may be applied in satisfaction of the costs.
- (3) However, the security must be discharged—
  - (a) if the tribunal's decision relating to the proceeding does not require the party to pay all or part of the costs of the proceeding; or
  - (b) if the tribunal orders the discharge of the security; or
  - (c) if the party entitled to the benefit of the security consents to its discharge; or

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11 Section 67 (Security for costs)



- (d) in relation to the balance after costs have been satisfied under subsection (2).

## **Division 7                      Costs generally**

### **70            Purposes of div 7**

The main purpose of this division is to have parties pay their own costs unless the interests of justice require otherwise.

### **71            Costs**

- (1) In a proceeding, the tribunal may award the costs it considers appropriate on—
  - (a) the application of a party to the proceeding; or
  - (b) its own initiative.
- (2) The costs the tribunal may award may be awarded at any stage of the proceeding or after the proceeding has ended.
- (3) If the tribunal awards costs during a proceeding, the tribunal may order that the costs not be assessed until the proceeding ends.
- (4) In deciding whether to award costs, and the amount of the costs, the tribunal may have regard to the following—
  - (a) the outcome of the proceeding;
  - (b) the conduct of the parties to the proceeding before and during the proceeding;
  - (c) the nature and complexity of the proceeding;
  - (d) the relative strengths of the claims made by each of the parties to the proceeding;
  - (e) any contravention of an Act by a party to the proceeding;
  - (f) for a proceeding to which a State agency is a party, whether the other party to the proceeding was afforded natural justice by the State agency;
  - (g) anything else the tribunal considers relevant.

*Examples of paragraph (g)—*

The tribunal may consider whether a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding.

The tribunal may consider whether the proceeding, or a part of the proceeding, has been frivolous or vexatious.

- (5) A party to a proceeding is not entitled to costs merely because—
  - (a) the party was the beneficiary of an order of the tribunal; or
  - (b) the party was legally represented at the proceeding.
- (6) The power of the tribunal to award costs under this section is in addition to the tribunal's power to award costs under another provision of this or another Act.
- (7) The tribunal may direct that costs be assessed—
  - (a) in the way decided by a presiding case manager; or
  - (b) by a person appointed by the tribunal.

**72 Stay pending payment of costs**

- (1) This section applies if a party has been ordered to pay the costs of another party whether under section 71<sup>12</sup> or otherwise, and the party, before paying the costs, starts another proceeding before the tribunal against the other party.
- (2) The tribunal may order a stay of the other proceeding until the costs are paid.

**Division 8 Representation****73 Purposes of div 8**

The main purpose of this division is to have parties represent themselves and save legal costs unless the interests of justice require otherwise.

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12 Section 71 (Costs)

**74 Who represents party at mediation**

Unless the mediator considers it appropriate in the interests of justice to allow a party to be represented by a lawyer or other person, a party must represent himself or herself at mediation.

**75 Who represents party at pre-hearing conference**

Unless the tribunal considers it appropriate in the interests of justice to allow a party to be represented by a lawyer or other person, a party must represent himself or herself at a pre-hearing conference.

**76 Who represents party at other proceedings**

- (1) Subject to the provisions of an empowering Act or subsection (2) or (3), in a proceeding—
  - (a) a party, other than an individual, appearing before the tribunal may be represented only by a person who is not a lawyer; and
  - (b) an individual appearing before the tribunal must represent himself or herself.
- (2) A party may be represented by a lawyer if—
  - (a) the proceeding relates to an application under the *Queensland Building Services Authority Act 1991*, section 93;<sup>13</sup> or
  - (b) the proceeding is a disciplinary proceeding; or
  - (c) the proceeding is a public examination; or
  - (d) all parties to the proceeding agree; or
  - (e) the tribunal directs that representation by the lawyer is appropriate having regard to all the circumstances including, for example—
    - (i) the cost of representation and whether each party can afford to be represented; and

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13 *Queensland Building Services Authority Act 1991*, section 93 (Decisions about debts arising from statutory insurance scheme (s 116 QBTA))

- (ii) the complexity of the legal and factual issues involved; and
  - (iii) the potential for lengthening the proceeding if a party is not represented; and
  - (iv) the ability of the lawyer or other person to help the tribunal and the party represented; and
  - (v) the ability of the party to represent himself or herself.
- (3) An individual appearing before the tribunal may be represented by a person who is not a lawyer if the tribunal directs that representation by the person is appropriate having regard to all the circumstances.

## **Division 9                      Other provisions about proceedings**

### **77            Tribunal may require witness to attend**

- (1) The tribunal may, on the application of a party to a proceeding or on its own initiative, issue an attendance notice requiring a person to attend before it at the time and place notified in the attendance notice to do either or both of the following—
- (a) appear as a witness and be examined on oath about the matters the subject of the proceeding;
  - (b) to produce the documents or things stated in the attendance notice or that belong to a class stated in the attendance notice.
- (2) A person required to appear as a witness is entitled to—
- (a) the witness fees prescribed under a regulation; or
  - (b) if no witness fees are prescribed—the reasonable witness fees decided by the tribunal.
- (3) The tribunal may decide whether the witness fees must be paid wholly or partly by the party who applied for the summons or by the tribunal.

**78 Offences by witnesses**

(1) A person required, under an attendance notice, to attend before the tribunal must not fail, without reasonable excuse to—

- (a) attend as required by the attendance notice; or
- (b) continue to attend as required by the tribunal until excused from further attendance.

Maximum penalty—80 penalty units.

(2) A person appearing as a witness before the tribunal must take an oath when required by the tribunal.

Maximum penalty—80 penalty units.

(3) Also, a person appearing as a witness before the tribunal must not fail, without reasonable excuse—

- (a) to answer a question the person is required to answer by the tribunal; or
- (b) to produce a document or thing the person is required to produce under an attendance notice.

Maximum penalty—80 penalty units.

(4) It is a reasonable excuse to refuse to answer a question or produce a document or thing on the ground that the answer or production of the document or thing might tend to incriminate the person.

(5) Despite subsection (1), the tribunal may at any time excuse a person for failing to attend at the time and place notified.

**79 Warrant may be issued if witness does not attend**

(1) If the tribunal gives an attendance notice to a person and the person does not attend as required by the notice, the tribunal may—

- (a) issue a warrant directed to a police officer to bring the person at the time, and to the place, stated in the warrant

to give evidence at a proceeding before the tribunal;<sup>14</sup>  
and

- (b) adjourn the hearing to the time and place mentioned in paragraph (a) on terms as to costs the tribunal considers appropriate.
- (2) A warrant issued under subsection (1) is sufficient authority for a police officer to execute it according to its terms.

## **80 False or misleading information**

- (1) A person appearing before the tribunal must not state anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) A person appearing before the tribunal must not produce a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to a person if the person, when giving the document—

- (a) tells the tribunal, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

- (4) It is enough for a complaint against a person for an offence against subsection (1) or (2) to state that the statement or document was 'false or misleading', without specifying whether it was false or whether it was misleading.

## **81 Powers of tribunal relating to taking of evidence**

- (1) For a proceeding, the tribunal may—
- (a) take evidence on oath; or

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<sup>14</sup> For particular police powers under a warrant, see the *Police Powers and Responsibilities Act 2000*, sections 19 (General power to enter to arrest or detain someone or enforce warrant) and 376 (Power to use force against individuals).

- (b) require a person who is to give evidence before the tribunal to take an oath; or
  - (c) administer an oath to a person who is to give evidence before the tribunal.
- (2) The oath to be taken or made by a person is an oath that the evidence the person will give will be true.

## **82 Referral of matters for expert report**

- (1) The tribunal may refer a matter of a technical nature arising in the course of a proceeding for investigation by an appropriate expert.
- (2) The expert must report the results of the investigation in writing to the tribunal and provide the parties with copies of the report.
- (3) The report must be given within the reasonable time stated by the tribunal in the request.
- (4) The tribunal may adopt all, some or none of the expert's findings.
- (5) The parties to the proceeding are responsible for any costs of an expert, and must pay those costs in the proportions decided by the tribunal.
- (6) A State agency may be an expert for this section.

*Example—*

The tribunal might ask the authority under the *Queensland Building Services Authority Act 1991* to give the tribunal a report about a building dispute that includes—

- (a) details of building work the authority considers is defective or incomplete; and
- (b) an assessment of the time within which the rectification or completion work should be finished.

## **83 Entry and inspection of property**

- (1) A member may, if it is necessary to do so for the purposes of a proceeding before the tribunal—

- (a) for a view, enter and inspect a building or land relevant to the proceeding accompanied by the parties to the proceeding; or
- (b) authorise a person in writing to take the following action and report to the tribunal on the action taken—
  - (i) enter and inspect a building or land relevant to the proceeding;
  - (ii) take photographs, video film or an image of the building or land or anything relevant to the proceeding;
  - (iii) carry out tests approved by the tribunal.

*Examples of 'building or land relevant to the proceeding'—*

- A display home mentioned in a contract as the model to be followed by a building contractor if the display home is occupied by a third party.
  - Land adjoining other land on which is situated building work the subject of a proceeding to better inspect the building work from the adjoining land.
- (2) A person who obstructs a member, or a person authorised under subsection (1)(b), in the exercise of a power mentioned in subsection (1) commits an offence.

Maximum penalty—200 penalty units.

## **84 Procedure before entry**

- (1) This section applies to entry under section 83.
- (2) Before entering a building or land the member or a person authorised to enter must do or make a reasonable attempt to do the following—
  - (a) give an occupier or, if there is no occupier, the owner, reasonable notice of the entry;
  - (b) on arriving at the building or land, identify himself or herself to a person present who is an occupier of the building or land by producing—
    - (i) for the member—a copy of a document that evidences the member's appointment; or



- (ii) for a person authorised to enter—a copy of the authorisation and evidence that the person is the person authorised;
- (c) give the person present a copy of the things produced under subsection (2)(b);
- (d) tell the person present the member or authorised person is permitted to enter the building or land.

## **85 Inspection of documents or things**

- (1) If a document or thing is produced to the tribunal, the tribunal may—
  - (a) inspect the document or thing; and
  - (b) copy or photograph the document or thing if it is relevant to the proceeding before the tribunal.
- (2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the proceeding.
- (3) While it keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of it to inspect, copy or photograph the document or thing at a reasonable place and time the tribunal decides.

## **86 Contempt of tribunal**

- (1) A person is in contempt of the tribunal if the person—
  - (a) insults a member or a member of the staff of the registry at a proceeding, or in going to or returning from the proceeding; or
  - (b) deliberately interrupts a proceeding, or otherwise misbehaves at a proceeding; or
  - (c) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or
  - (d) obstructs or assaults a person attending a proceeding; or
  - (e) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given at a proceeding; or

- (f) obstructs a member, or a person authorised under section 83(1),<sup>15</sup> in the exercise of a power under section 83(1); or
  - (g) does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record.
- (2) The tribunal may order that a person who is in contempt under subsection (1) at a proceeding be excluded from the place where the proceeding is being conducted.
  - (3) A member of the staff of the registry, acting under the tribunal's order, may, using necessary and reasonable help and force, exclude the person from the place.
  - (4) In this section—  
*member* includes presiding case manager.

## **87 Punishment of contempt**

- (1) Without limiting the tribunal's power to punish for contempt under section 86, a person's contempt of the tribunal may be punished under this section.
- (2) The chairperson may certify the contempt in writing to the Supreme Court (the *court*).
- (3) For subsection (2), it is enough for the chairperson to be satisfied there is evidence of contempt.
- (4) The chairperson may issue a warrant directed to all police officers for the arrest of the person to be brought before the court to be dealt with according to law.
- (5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.
- (6) The court must inquire into the alleged contempt.
- (7) The court must hear—
  - (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and

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15 Section 83 (Entry and inspection of property)

- (b) any statement given by the person in defence.
- (8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to a proceeding in the court.
- (9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish with necessary changes.
- (10) The chairperson's certificate of contempt is evidence of the matters contained in the certificate.

## **88 Conduct that is contempt and offence**

If conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

## **89 Protection of persons at tribunal**

- (1) A member has, in the performance of the member's duties as a member, the same protection and immunity as a District Court judge has in the performance of the judge's duties.
- (2) A presiding case manager has, in the performance of the presiding case manager's duties when constituting a tribunal or exercising a power under section 28(3),<sup>16</sup> the same protection and immunity as a District Court judge has in the performance of the judge's duties.
- (3) A mediator has, in the performance of the mediator's duties as a mediator, the same protection and immunity as a District Court judge has in the performance of the judge's duties.
- (4) An expert, in doing something for section 82(2),<sup>17</sup> has the same protection and immunity as a District Court judge has in the performance of the judge's duties.

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16 Section 28 (Presiding case manager's power to deal with particular applications to tribunal)

17 Section 82 (Referral of matters for expert report)

- (5) A person representing an entity before the tribunal has the same protection and immunity as a barrister appearing for a party in a proceeding before the District Court.
- (6) A person appearing before the tribunal as a witness has the same protection as a witness in a proceeding before the District Court.
- (7) A document produced at, or used for, a hearing has the same protection it would have if produced before the District Court.

## **90 Suppression of sensitive information**

- (1) This section does not apply to a disciplinary proceeding.
- (2) On the application of a party to a proceeding made during the proceeding, or on the tribunal's own initiative, the tribunal may order that sensitive information about the party is not to form part of the record available for inspection by members of the public.

*Example of sensitive information—*

- information about a person's reputation
  - information about a person's history of behaviour or attitude in relation to the management and discharge of the person's financial obligations.
- (3) On the application of an entity who was a party to a proceeding made after the proceeding, or on the tribunal's own initiative, the tribunal may order that sensitive information about the entity is not to form part of the record available for inspection by members of the public from a day stated in the order.
  - (4) However, the tribunal must—
    - (a) before making an order under subsection (3), ask the director to provide information about—
      - (i) the extent of any existing publication of the sensitive information; and
      - (ii) the period reasonably needed for the removal of the sensitive information from the record available for inspection by members of the public; and

- (b) in making the order, have regard to the extent of any publication of the information and the period for removal stated by the director.
- (5) The tribunal, in deciding whether to suppress information, is not limited by subsection (4) or to a consideration of whether or not the information is in fact sensitive.

## **Division 10            Tribunal decisions and enforcement**

### **91            Form of decisions of tribunal**

- (1) A decision of the tribunal that finally decides matters the subject of the proceeding must—
  - (a) be in writing; and
  - (b) state the decision, and the reasons for the decision; and
  - (c) be published, unless the tribunal decides otherwise in relation to a particular decision, or part of a particular decision.
- (2) Subsection (1) does not apply to a pre-hearing conference or a mediation.
- (3) Subsection (1)(c) applies to a disciplinary proceeding subject to section 107(5).<sup>18</sup>

### **92            When decision takes effect**

A decision of the tribunal takes effect—

- (a) if all parties to a proceeding before the tribunal are present when the decision is given or order is made—when the decision is given or the order is made; or
- (b) if 1 party only is not present when the decision is given or order is made—when the party is served with the decision; or

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<sup>18</sup> Section 107 (Orders for disciplinary action)

- (c) if 2 or more parties are not present when the decision is given or order is made—when the decision is served on all of those parties.

### **93 Registration and enforcement of decisions**

- (1) A party may register a decision by the tribunal by filing the following in the registry of a court of competent jurisdiction—
  - (a) a copy of the decision certified as correct by the director;
  - (b) the party's affidavit of—
    - (i) service of a certified copy of the decision on the party against whom the decision was given; and
    - (ii) noncompliance, or the extent of noncompliance, with the decision by that party.
- (2) On registration of the decision in the court—
  - (a) the decision has, for the purposes of enforcement, the same force and effect; and
  - (b) a proceeding may be taken on the decision; and
  - (c) the amount, if any, for which the decision is registered carries interest; and
  - (d) the court has the same control over the enforcement of the decision;

as if the decision had been originally given as a judgment of the court and entered on the day of registration.
- (3) No court fee is payable for filing the decision and affidavit in the court's registry.
- (4) For subsection (2), the court is taken to have had jurisdiction to make the decision.

## **Division 11                      Further action in relation to a proceeding**

### **94                      Correcting mistakes**

- (1) The tribunal may correct a decision made by it if the decision contains—
  - (a) a clerical mistake; or
  - (b) an error arising from an accidental slip or omission; or
  - (c) a material miscalculation of figures or a material mistake in the description of any entity, thing or matter referred to in the decision; or
  - (d) a defect of form.
- (2) The correction may be made—
  - (a) on the tribunal's own initiative; or
  - (b) on the written application of a party to the proceeding to which the decision relates.
- (3) An application under this section—
  - (a) must be made within 14 days after the making of the decision; and
  - (b) must be based on something mentioned in subsection (1)(a) to (d) that is of sufficient significance to have influenced the outcome of the proceeding.
- (4) The tribunal need not conduct a hearing for the application.
- (5) The correction—
  - (a) may be made by the member who made the decision, another member, the chairperson or a presiding case manager; and
  - (b) must be made only on the evidence placed before the tribunal at the hearing of the proceeding in which the decision was made.
- (6) The making of the application under this section does not, of itself, stop the order or decision from taking effect according to its terms.

**95 Reopening an order if party does not appear**

- (1) An entity in relation to whom an order is made may apply to the tribunal for a review of the order if the entity did not appear and was not represented at the hearing at which the order was made.
- (2) An application under this section must be made within 14 days after the order is served on the entity.
- (3) An entity may apply only once in relation to the same order.
- (4) The tribunal may grant the application if satisfied that the applicant had a reasonable excuse for not attending or for not being represented at the hearing.
- (5) On a review under this section, the tribunal may confirm, vary or revoke the order.
- (6) The tribunal may decide the application from a consideration of the documents filed without the applicant appearing, if the tribunal considers it appropriate in all the circumstances.

**96 Reopening an order if problems with interpretation or implementation**

- (1) A party to a proceeding may apply to the tribunal to vary an order if the party considers there are problems with interpreting or implementing the order.
- (2) The tribunal may grant the application if satisfied there are problems with interpreting or implementing the order.
- (3) The tribunal may grant an application under subsection (2) only if it has given all parties to the proceeding an opportunity to be heard on the application.
- (4) However, the tribunal may decide the application from a consideration of the documents filed without the parties appearing, if the tribunal considers it appropriate in all the circumstances.



**97 Application to reopen order must not be made if appeal filed**

An application under section 94, 95 or 96<sup>19</sup> must not be made for a proceeding in relation to which an appeal has been filed under section 100.<sup>20</sup>

**98 Questions of law to be decided by presiding member**

A question of law arising in a proceeding in the tribunal is to be decided according to the presiding member's opinion.

**99 Cases stated**

- (1) The tribunal may, on the application of a party to a proceeding or on its own initiative, state a case on a question of law arising in the proceeding for the opinion of the District Court.
- (2) The District Court may decide a question of law stated under this section as it considers just and make consequential or ancillary orders and directions.
- (3) If a question has been stated for the opinion of the District Court, the tribunal must not, in the proceeding—
  - (a) make a decision to which the question is relevant while the reference is pending; or
  - (b) proceed in a way, or make a decision, that is inconsistent with the District Court's opinion on the question.

**100 Appeals**

- (1) A party to a proceeding before the tribunal may appeal to the District Court against a decision of the tribunal, with the court's leave, only on the ground of—
  - (a) error of law; or
  - (b) excess, or want, of jurisdiction.

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19 Section 94 (Correcting mistakes), 95 (Reopening an order if party does not appear) or 96 (Reopening an order if problems with interpretation or implementation)

20 Section 100 (Appeals)

- (2) The chief executive of the department in which the *Property Agents and Motor Dealers Act 2000* is administered may appeal to the District Court against a decision of the tribunal relating to that Act only on the ground of error of law.
- (3) An appeal must be filed within 28 days after the decision takes effect.
- (4) An appeal must—
  - (a) be accompanied by the tribunal’s decision and reasons for decision, if any; and
  - (b) refer to the tribunal’s decision and reasons for decision, if any, and any other relevant material and state the grounds for the application.
- (5) The tribunal is not a party to the appeal but the party appealing must serve a copy of the appeal and supporting documents on the tribunal within 7 days of filing the appeal in the District Court.
- (6) On an appeal, the District Court may do any of the following—
  - (a) confirm, annul, vary or reverse the tribunal’s decision; or
  - (b) remit the case to the tribunal for further hearing or rehearing; or
  - (c) make consequential or ancillary orders or directions.
- (7) The registrar of the District Court must give the tribunal a copy of the court’s judgment and reasons.
- (8) The appellant must pay the costs of the appeal, including the costs of any transcript.

## **Part 6 Proceedings before tribunal**

### **Division 1 Review proceedings**

#### **101 Reviewable decisions**

The tribunal may review a decision (a *reviewable decision*) for which the tribunal is given jurisdiction to review under an empowering Act.

#### **102 Application for review**

- (1) The entity affected by the reviewable decision may apply to the tribunal for a review of the decision.
- (2) The entity must apply within 28 days after receiving written notice of the decision.
- (3) The entity must serve a copy of the application on the State agency that made the decision within 7 days after applying for the review.

#### **103 Stay of operation of decision**

- (1) Subject to the provisions of an empowering Act, the tribunal may make an order staying the operation of a decision in relation to which an application for review has been made to the tribunal.
- (2) The tribunal may make the order on the application of a party to the review proceeding or on its own initiative.
- (3) In making the order, the tribunal—
  - (a) may require any undertaking, including an undertaking as to costs or damages, it considers appropriate; and
  - (b) may make provision for the lifting of the order if stated conditions are met.

**104 Orders tribunal may make on review hearing**

- (1) In deciding an application for review of a decision, the tribunal may—
  - (a) confirm the decision being reviewed; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the State agency that made the decision with directions that the tribunal considers appropriate.
- (2) In substituting another decision, the tribunal has the same powers as the State agency that originally made the decision.

*Example—*

The tribunal may decide that an unsuccessful applicant for a licence be granted the licence either unconditionally or on particular conditions.

- (3) If the tribunal substitutes another decision, the substituted decision is taken to be the decision of the State agency who originally made the decision.

**Division 2                      Disciplinary proceedings, stop orders and suspension orders****105 Tribunal may conduct disciplinary proceeding**

The tribunal may conduct a proceeding, for which the tribunal is given jurisdiction under an empowering Act, to decide whether appropriate grounds exist under the empowering Act for taking disciplinary action against a person under this division.

**106 How to start disciplinary proceedings**

- (1) A disciplinary proceeding against a person is started by the State agency filing with the tribunal an application, in the approved form, stating—
  - (a) the grounds on which the disciplinary proceeding is to be brought against the person; and

- (b) the nature of the matter being referred to the tribunal for decision.
- (2) The tribunal must fix a day and place for the hearing of the application and issue a notice, in the approved form (*attendance notice*), requiring the person to attend before the tribunal at that day and place.
- (3) The State agency must serve a copy of the application and attendance notice on the person at least 14 days before the day fixed for the hearing.
- (4) The application and attendance notice may be combined in 1 notice.
- (5) The State agency must notify the tribunal of service of the application and attendance notice within 7 days after the application and attendance notice have been served on the person.
- (6) A disciplinary proceeding is taken to have started on the day the person is given an application and attendance notice.

## **107 Orders for disciplinary action**

- (1) If the tribunal decides that appropriate grounds exist for taking disciplinary action against a person, the tribunal may make—
  - (a) an order under an empowering Act; or
  - (b) 1 or more of the orders mentioned in subsections (2) to (4).
- (2) The tribunal may make an order imposing a penalty on the person of not more than—
  - (a) for an individual—an amount equivalent to 200 penalty units; or
  - (b) for a corporation—an amount equivalent to 1 000 penalty units.
- (3) The tribunal may make an order directing the person to pay compensation to someone else who has suffered loss or damage because of the act or omission that resulted in the disciplinary action.

- (4) If the person is a licensee, the tribunal may make an order—
  - (a) reprimanding the licensee; or
  - (b) suspending the licence; or
  - (c) imposing conditions on the licence; or
  - (d) cancelling the licence.
- (5) An order of the tribunal under subsection (2) to (4) must be published.
- (6) The State agency that brought the application may recover an amount ordered by the tribunal to be imposed as a penalty as a debt due to it in a court with jurisdiction up to the amount of the debt.

## **108 Stop orders**

- (1) This section applies if the tribunal is satisfied, on application by a State agency, that something is, or is about to be done, in contravention of an empowering Act.
- (2) The tribunal may, by order, prohibit the person who is doing, or about to do, the thing (the *prohibited person*) from starting or continuing the thing.
- (3) The tribunal may make an order under this section on application by a State agency made without notice to the prohibited person but, in that case, the tribunal must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed.
- (4) If the tribunal, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the State agency, is not satisfied the order should continue in force, the tribunal must rescind the order.
- (5) A person must not contravene an order under this section.  
Maximum penalty—500 penalty units.
- (6) The operation of this section to a provision of an empowering Act, may be excluded under the empowering Act.

**109 Suspension orders**

- (1) If the tribunal is satisfied, on application by a State agency, that a licence should be suspended, the tribunal may, by order, suspend the licence—
  - (a) for the period the tribunal considers just; or
  - (b) until the holder of the licence (the *suspended person*) complies with a condition imposed on the licence by the tribunal.
- (2) The order may direct the suspended person to deliver the licence to a State agency and include any other directions the tribunal considers necessary or convenient to give effect to the order.
- (3) The tribunal may make an order under this section on application made without notice to the suspended person, but, in that case, the tribunal must allow the suspended person a reasonable opportunity to show cause why the order should be rescinded.
- (4) If the tribunal after considering the suspended person's evidence and submissions, if any, and any further evidence or submissions of the State agency, is not satisfied the order should continue in force, the tribunal must rescind the order.
- (5) The holder of a licence who contravenes a direction under subsection (2) commits an offence.  
Maximum penalty—80 penalty units.
- (6) The operation of this section to a provision of an empowering Act, may be excluded under the empowering Act.

**Division 3 Public Examinations****110 Tribunal may conduct public examination**

The tribunal may conduct a public examination if power to do so is given under an empowering Act.

**111 Procedure before public examination starts**

- (1) Before the start of a public examination, the tribunal must be satisfied each person to be examined has received written grounds for the public examination.
- (2) On being satisfied under subsection (1), the tribunal must—
  - (a) decide a time and place for the public examination; and
  - (b) issue an attendance notice to each person to be examined.
- (3) If a person to be examined is a corporation, for the purposes of the public examination, the tribunal must issue the attendance notice requiring the executive officer of the corporation to attend the tribunal for examination.
- (4) The attendance notice must state—
  - (a) the time and place for the public examination decided by the tribunal; and
  - (b) the person may make oral and written submissions at the public examination.
- (5) The State agency must serve the attendance notice on the person to whom it was issued.

**112 Person must answer certain questions**

- (1) This section applies if—
  - (a) a person, at a public examination started under the *Property Agents and Motor Dealers Act 2000*, refuses to answer any question put to the person; or
  - (b) a person, at a public examination started under any other empowering Act, refuses to answer a question about the person's financial affairs.
- (2) If the tribunal requires the person to answer the question, the tribunal must advise the person of the following—
  - (a) that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person;



- (b) the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.
- (3) The person must answer the question, unless the person has a reasonable excuse.  
Maximum penalty—500 penalty units.
- (4) It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.
- (5) The answer is not admissible in any criminal or civil proceeding against the person, other than—
  - (a) the public examination of a person; or
  - (b) a proceeding to review a reviewable decision; or
  - (c) a perjury proceeding.
- (6) In this section—

*perjury proceeding* means a proceeding in which the falsity or misleading nature of the answer is relevant.

## **Division 4            Other matters**

### **113    Other matters**

Without limiting divisions 1 to 3, the tribunal may hear and decide matters that it may hear and decide under an empowering Act.

## **Part 7**                      **Ways tribunal may resolve proceedings**

### **Division 1**                **Hearing of proceedings**

#### **114**    **Hearing of proceedings**

- (1) The tribunal may conduct a hearing to decide a matter within its jurisdiction.
- (2) If the tribunal conducts a hearing, it must allow the parties a reasonable opportunity—
  - (a) to call or give evidence; and
  - (b) to examine or cross-examine witnesses; and
  - (c) to make submissions to the tribunal.
- (3) However, the tribunal may—
  - (a) refuse to allow a party to call evidence or cross-examine about a matter if the tribunal considers there is already sufficient evidence about the matter before the tribunal; and
  - (b) decide whether evidence is to be given orally or in writing and whether it is to be given on oath or by affidavit; and
  - (c) limit the time for a proceeding and may allocate the time equally between the parties.
- (4) If a party fails to appear at a time and place notified by the tribunal, the tribunal may proceed in the party's absence.
- (5) This section is subject to section 124.<sup>21</sup>

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21 Section 124 (Procedure for expedited hearing)

## **Division 2                      Decision by default**

### **115      Decision by default for debt**

- (1) This section applies if an applicant has filed an application to recover a liquidated amount from a respondent and the respondent has not filed a defence to the application within the period required.
- (2) The applicant may file a request for an order in favour of the applicant (a *decision by default*) in the approved form for an amount limited to—
  - (a) the amount claimed in the application starting the proceeding; and
  - (b) the fee paid for the application; and
  - (c) legal costs based on a scale prescribed under a regulation; and
  - (d) interest on the amount claimed at the rate and calculated in the way prescribed under a regulation.
- (3) If the applicant files a request for a decision by default under this section the director or a presiding case manager may give the decision.
- (4) A decision by default given under subsection (3) is taken to be a decision of the tribunal.
- (5) The applicant must prove service of the application on the respondent before a decision by default may be given under this section.

### **116      Setting aside decision by default**

The tribunal, on application by the respondent, may set aside or amend a decision by default under section 115 on terms, including terms about costs and the giving of security, the tribunal considers appropriate.

## **Division 3                      Mediation**

### **117      Tribunal may appoint mediator**

- (1) If the tribunal considers a proceeding is suitable for mediation, the tribunal may appoint a mediator or mediators to try to achieve a negotiated settlement of the proceeding.
- (2) In deciding whether a proceeding is suitable for mediation, the tribunal may consider whether some form of mediation, whether under this Act, an empowering Act, or otherwise, has previously been attempted but failed.
- (3) At the request of all the parties to a proceeding, the tribunal may appoint a particular mediator chosen by the parties.
- (4) The powers of the tribunal under subsection (1) or (3) may be exercised by the director or a presiding case manager.
- (5) If the director or presiding case manager exercises the tribunal's power under subsection (4) the power is taken to be exercised by the tribunal.
- (6) If there is an additional cost in appointing a mediator under subsection (3) when compared with the cost of a mediator not requested by the parties, the additional cost must be paid by the parties in the proportions decided by the tribunal.
- (7) The mediator may be a member of the tribunal or another person.
- (8) The tribunal may appoint a person as mediator only if the tribunal considers the person has suitable qualifications and experience to be a mediator.

*Example of 'suitable qualifications and experience'—*

Successful completion of a recognised training course in mediation and experience in a business or profession relevant to the proceeding the subject of the mediation.

### **118      Method of mediation**

- (1) The tribunal may, in appropriate cases, allow a mediator to conduct a mediation by remote conferencing.
- (2) Otherwise, a mediator may conduct a mediation in the way decided by the mediator.

(3) In this section—

***remote conferencing*** means—

- (a) telephone conferencing; or
- (b) video conferencing; or
- (c) another form of communication that allows persons taking part in the mediation to hear and take part in discussions as they happen.

### **119 Matters about mediation**

- (1) Evidence of anything done or said, or an admission made, at a mediation is admissible in a proceeding before the tribunal or elsewhere only if all parties to the mediation agree.
- (2) Despite subsection (1), if a dispute is not settled at mediation, the mediator must obtain the following from each party at the end of the mediation and report them to the tribunal—
  - (a) the issues each party considers are the issues in dispute; and
  - (b) the orders each party seeks from the tribunal.
- (3) In a hearing before the tribunal, the tribunal is not limited to considering the issues reported under subsection (2).
- (4) If a dispute is, or some of the issues in the dispute are, settled, the mediator must report the terms of the settlement to the tribunal.
- (5) The tribunal may make a decision in terms of the settlement, and may make consequential orders or give consequential directions.
- (6) The terms of the settlement must not be included in a register or other record available for inspection under this Act, unless the tribunal, at the request of the parties or on its own initiative, orders otherwise.
- (7) In this section—

***proceeding*** does not include a proceeding founded on fraud, or about an offence, alleged to be connected with, or to have happened during, the mediation.

**120 Mediators to maintain secrecy**

- (1) A mediator must not, without reasonable excuse, disclose information coming to the mediator's knowledge during a mediation.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse to disclose information if the disclosure is made—
- (a) with the agreement of all parties to the mediation; or
  - (b) for this Act; or
  - (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
  - (d) for an inquiry or proceeding about an offence happening during the mediation; or
  - (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation; or
  - (f) under a requirement imposed under an Act.

**121 Mediator precluded from tribunal hearing**

- (1) If a mediator is a member of the tribunal, the member must not hear a proceeding before the tribunal that was the subject of the mediation.
- (2) Subsection (1) does not apply to a pre-hearing conference.

**122 Time limit for mediation before expedited hearing**

If the director or a presiding case manager has set a proceeding down for mediation to be followed on the same day by an expedited hearing, the director or presiding case manager must set a time limit of not more than 2.5 hours for the mediation.

## **Division 4                      Expedited hearings**

### **123      Matters for which an expedited hearing may be held**

The tribunal may conduct an expedited hearing for a matter only if the matter is prescribed under an empowering Act to be a matter for which an expedited hearing may be heard.

### **124      Procedure for expedited hearing**

- (1) Before an expedited hearing each party to the hearing must, if directed by the tribunal—
  - (a) file statements of witnesses, expert reports and other documents the party intends to rely on; and
  - (b) exchange these with the other parties within the time limit set by the tribunal.
- (2) At the expedited hearing—
  - (a) cross-examination is at the discretion of the tribunal; and
  - (b) the parties must, as directed by the tribunal, arrange for the attendance of witnesses, including expert witnesses to clarify or expand on evidence in the documents filed; and
  - (c) the tribunal may limit the time for the hearing and allocate the time equally between the parties.

## **Division 5                      Summary decision**

### **125      Summary decision for applicant**

- (1) An applicant who starts a proceeding in the tribunal for a matter mentioned in section 33(1)<sup>22</sup> may, at any time after the end of the 14 day period allowed for the filing of a defence, apply to the tribunal under this division for a decision in favour of the applicant (a *summary decision*).

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22 Section 33 (Defence and counterclaim)

- (2) The tribunal may give the summary decision for the applicant for all or part of the relief claimed in the application if—
  - (a) the matter is a matter that is prescribed under a regulation made under this or an empowering Act as a matter for which a summary decision may be made; and
  - (b) the tribunal is satisfied—
    - (i) the applicant has complied with this division and is entitled to all or part of the relief sought in the application; and
    - (ii) the respondent has no defence other than in relation to the amount of the claim; and
    - (iii) there is no need for a hearing by the tribunal of the proceeding or of that part of the proceeding for which the summary decision is sought.
- (3) However, if the amount of the claim can not be calculated, because, for example, there is insufficient evidence available to satisfy the tribunal of the amount of the claim, the tribunal may instead—
  - (a) order the amount of the claim to be decided in the way the tribunal directs; and
  - (b) give leave for the summary decision to be given for the amount decided and costs.
- (4) A second or later application under this division may be made with the tribunal's leave.

## **126 Summary decision for respondent**

- (1) The respondent against whom a proceeding is started by application in the tribunal may at any time apply to the tribunal under this division for a decision in favour of the respondent (also a *summary decision*).
- (2) The tribunal may give the summary decision or make any other decision the tribunal considers appropriate if satisfied—
  - (a) no reasonable cause of action is disclosed against the respondent; or



- (b) the proceeding is frivolous, vexatious or an abuse of the process of the tribunal; or
- (c) the respondent has a defence to the proceeding.

## **127 Claims not disposed of by summary decision**

The giving of a summary decision under this division that does not dispose of all claims in issue in a proceeding (including a counterclaim) does not prevent the continuation of any part of the proceeding not disposed of by the summary decision.

## **128 Evidence**

- (1) In a proceeding under this division, evidence must be given by affidavit made by the party giving the evidence.
- (2) Despite subsection (1), on the hearing of an application under this division, the tribunal may, on terms the tribunal considers appropriate, permit further evidence to be given by affidavit or otherwise by or for a party.
- (3) The affidavit may contain statements of information and belief if the person making it states the sources of the information and the reasons for the belief.
- (4) A party applying for a summary decision under this division must swear in support of the application that in the party's belief the party against whom the summary decision is sought has no defence to the relief sought in the application.
- (5) If a party to an application under this division intends to rely on a document, the document must be identified in the affidavit.
- (6) A person who makes an affidavit to be read in an application under this division may not be cross-examined without the leave of the tribunal.
- (7) An affidavit giving evidence in defence of a party's claim must identify the parts of the claim for which the evidence is claimed to be a defence.

**129 Service**

Subject to section 128(2),<sup>23</sup> a party applying for a summary decision against another party must serve the other party with the application and a copy of each affidavit and any exhibits mentioned in the affidavit at least 4 business days before the date for the hearing.

**130 Examination of parties and witnesses**

The tribunal may order any of the following to attend the tribunal to be examined on oath or to produce to the tribunal all relevant documents and records—

- (a) a party applying for a summary decision;
- (b) a party defending the application for a summary decision;
- (c) a person who made an affidavit for a party;
- (d) a witness for a party;
- (e) for an incorporated party, an officer of the corporation.

**131 Stay of enforcement**

- (1) The tribunal may order a stay of the enforcement of a summary decision given under this division for the time and on the terms the tribunal considers appropriate.
- (2) If a summary decision has been registered in a court under section 93,<sup>24</sup> a stay of that decision has no effect until it is filed in the court.

**132 Setting aside summary decision**

The tribunal may set aside or vary a summary decision given against a party who did not appear on the hearing of the application for the decision.

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23 Section 128 (Evidence)

24 Section 93 (Registration and enforcement of decisions)

## **Division 6                      Pre-hearing conferences**

### **133      Pre-hearing conferences**

- (1) The tribunal may require the parties to a proceeding to attend 1 or more pre-hearing conferences before the tribunal before the proceeding is heard by the tribunal.
- (2) At a pre-hearing conference the tribunal may do any of the following—
  - (a) identify and clarify the issues in dispute in the proceeding;
  - (b) promote a settlement of the proceeding;
  - (c) identify the questions of fact and law to be decided by the tribunal;
  - (d) if the proceeding is not settled, give directions about the conduct of the proceeding;
  - (e) make the orders and give the directions the tribunal considers appropriate to manage the proceeding or resolve the dispute the subject of the proceeding.

*Examples for subsection (2)(e)—*

The tribunal may order a party to pay an amount into the tribunal's trust account pending settlement of, or a decision in relation to, the dispute.

- (3) Written notice of a pre-hearing conference must be given to each party by the director.
- (4) Unless the tribunal otherwise directs, a pre-hearing conference must be held in private.
- (5) The procedure for a pre-hearing conference is at the discretion of the tribunal.

### **134      Who is required to attend pre-hearing conferences**

The tribunal may require a party to attend a pre-hearing conference personally or by a representative who has authority to settle the proceeding on behalf of the party.

**135 Evidence from pre-hearing conferences inadmissible**

Evidence of anything said or done in the course of a pre-hearing conference is inadmissible in any hearing before the tribunal in the proceeding, except—

- (a) if all parties agree to the admission of the evidence; or
- (b) evidence of directions given at a pre-hearing conference or the reasons for the directions; or
- (c) evidence of anything said or done relevant to—
  - (i) a proceeding for an offence in relation to the giving of false or misleading information; or
  - (ii) a proceeding under section 86;<sup>25</sup> or
  - (iii) a proceeding relating to an order made under section 137(b)(i).

**136 When member may hear proceeding after presiding at a pre-hearing conference**

- (1) A member who presides at a pre-hearing conference for a proceeding that attempts to promote a settlement of the proceeding—
  - (a) may disqualify himself or herself from constituting the tribunal that hears the proceeding; and
  - (b) must not constitute the tribunal that hears the proceeding if a party to the proceeding objects to the member hearing the proceeding.
- (2) At the end of a pre-hearing conference that attempts to promote a settlement of the proceeding the presiding member must advise the parties of their rights under subsection (1)(b).
- (3) An objection under subsection (1)(b) must be made within 2 business days of receiving the advice mentioned in subsection (2) or before the start of the hearing of the proceeding, whichever is the shorter period.

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25 Section 86 (Contempt of tribunal)

**137 Failure of a party to attend a pre-hearing conference**

If a party does not attend a pre-hearing conference—

- (a) the conference may proceed at the appointed time in the party's absence; and
- (b) if all the parties present agree, the tribunal may—
  - (i) decide the proceeding adversely to the absent party and make appropriate orders; or
  - (ii) direct that the absent party be struck out of the proceeding.

**Division 7 Settlement Offers****138 Making settlement offers**

- (1) A party to a proceeding may offer to settle the proceeding in so far as it relates to another party.
- (2) The offer must be made by signed writing served on the party to whom the offer relates.
- (3) A party may make more than one offer.
- (4) If an offer provides for the payment of an amount by a party to another entity, the offer must state when the amount is to be paid and to whom.
- (5) Payment under subsection (4) may be into the tribunal's trust account<sup>26</sup> to be disbursed in accordance with the terms of the settlement.

**139 Effect of offer**

- (1) An offer to settle under this division is taken to be an offer made without prejudice.
- (2) The tribunal must not be told of the offer until after it has made its decision on the matters in dispute.

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<sup>26</sup> See section 144 (Trust account).

**140 Accepting settlement offers**

- (1) An offer to settle must remain open until immediately before the tribunal delivers its decision, or until the expiry of a period stated in the offer, whichever is the shorter period.
- (2) If a period is stated, that period must be at least 14 days from the date of service of the offer.
- (3) A party can only accept an offer by serving the party who made the offer with a signed notice of acceptance of the offer.
- (4) A party may accept an offer even though it has made a counter offer.

**141 Consequences if accepted offer is not complied with**

- (1) This section applies if an offer is accepted, but the party who made the offer does not comply with its terms.
- (2) The tribunal, at the request of a party who accepted the offer, may—
  - (a) make an order giving effect to the terms of the offer; or
  - (b) if the party making the offer was the applicant—
    - (i) dismiss the proceeding; or
    - (ii) if a party who accepted the offer made a counterclaim before the offer was made, make an order awarding the party any or all of the things asked for in the counterclaim; or
  - (c) if a party who accepted the offer is the applicant, make an order awarding the applicant any or all of the things asked for in the application.

**142 Tribunal must order party to pay costs if certain offers to settle rejected**

- (1) This section applies if—
  - (a) a party to a proceeding serves another party to the proceeding with a written offer to settle the matters in dispute between the parties; and

- (b) the other party does not accept the offer within the time the offer is open; and
  - (c) the offer complies with this division; and
  - (d) in the opinion of the tribunal, the decision of the tribunal on the matters in dispute is not more favourable to the other party than the offer.
- (2) The tribunal must award the party who made the offer all reasonable costs incurred by that party in conducting the proceeding after the offer was made.
  - (3) If a proceeding involves more than 2 parties, this section applies only if the acceptance of the offer would have resulted in the settlement of the matters in dispute between all the parties.
  - (4) In deciding whether a decision is or is not more favourable to a party than an offer, the tribunal must—
    - (a) take into account any costs it would have awarded on the date the offer was served; and
    - (b) disregard any interest or costs it awarded relating to any period after the date the offer was served.

## **Part 8                      Miscellaneous**

### **143      Finance and staffing of tribunal**

- (1) The tribunal is part of the department for the purposes of the *Financial Administration and Audit Act 1977*.
- (2) The chief executive may enter into an agreement with a State agency to recover from the agency the costs of a proceeding referred to the tribunal under the empowering Act.

### **144      Trust account**

- (1) The tribunal must maintain a trust account to receive and hold amounts ordered by the tribunal to be paid to the trust account for a proceeding.

- (2) The tribunal must pay amounts from the trust account as ordered by the tribunal.
- (3) Interest on the trust account is to be applied to the cost of keeping the account.

#### **145 Annual report on operation of tribunal**

- (1) As soon as practicable after each financial year, but not later than 30 September, the chairperson must give the Minister a report containing—
  - (a) a review of the operation of the tribunal during the preceding financial year; and
  - (b) proposals for improving the operation of, and forecasts of the workload of, the tribunal in the present financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (3) The department's annual report for a financial year must include a report on the operation of the tribunal and registry during the financial year.

#### **146 Proceedings for offences**

A prosecution for an offence against this Act is by way of a summary proceeding under the *Justices Act 1886*.

#### **147 Limitation on time for starting summary proceeding**

A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.



**148 Penalties to be paid to State agency**

All penalties recovered as a result of proceedings for offences against this Act brought by a State agency must be ordered to be paid to the State agency.

**149 Contracting out prohibited**

- (1) A contract or agreement is void to the extent to which it—
  - (a) is contrary to this Act; or
  - (b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Act.
- (2) Subsection (1) does not apply to an agreement that a dispute be referred to arbitration if the agreement is entered into after the dispute arises.
- (3) Nothing in this section prevents the parties to a contract or agreement from including provisions in the contract or agreement that impose greater or more onerous obligations on an entity than are imposed under this Act.
- (4) This section applies to contracts or agreements entered into before or after the commencement of this Act.

**150 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **151 Proof of signature unnecessary**

A signature purporting to be the signature of the director, a presiding case manager or a member of the tribunal is evidence of the signature it purports to be.

### **152 Evidentiary aids**

- (1) A certificate signed by the director certifying anything about the contents of the register is evidence of the thing stated.
- (2) A certificate signed by the director stating that a stated document is a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act is evidence of the matter.

### **153 Protection from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) a member of the staff of the registry; or
  - (b) a person authorised under section 83<sup>27</sup> by the tribunal.

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27 Section 83 (Entry and inspection of property)

**154 Forms**

The chairperson may approve forms for use under this Act.

**155 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
  - (a) set fees payable under this Act; and
  - (b) impose a penalty of not more than 40 penalty units for a contravention of a provision of a regulation; and
  - (c) provide for the appraisal of the performance of members of the tribunal; and
  - (d) prescribe an application or matter to be a case manager's matter.

## **Part 9 Transitional provisions**

**156 Definitions for pt 9**

In this part—

*former member* means a member of a former tribunal.

*former tribunal* see section 157.<sup>28</sup>

*old Act* means the *Queensland Building Tribunal Act 2000* as in force from time to time before the commencement of this section.

**157 Abolition of former tribunals**

Each of the following (*former tribunal*) is abolished—

- (a) the Queensland Building Tribunal under the old Act;

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28 Section 157 (Abolition of former tribunals)

- (b) the Property Agents and Motor Dealers Tribunal under the *Property Agents and Motor Dealers Act 2000*;
- (c) the Retirement Villages Tribunal under the *Retirement Villages Act 1999*;
- (d) the Liquor Appeals Tribunal under the *Liquor Act 1992*.

### **158 Proceedings and mediations started before commencement**

- (1) A proceeding that was started in a former tribunal, but not finished before the commencement of this section, must continue under this Act.
- (2) A former member who was hearing the proceeding may finish hearing the proceeding, and for only that purpose constitutes the tribunal.
- (3) While the former member finishes hearing the proceeding, the former member is entitled to the remuneration decided by the Governor in Council.
- (4) A mediation that was started under the old Act or an empowering Act, but not finished before the commencement of this section, must continue under this Act.
- (5) A mediator who was conducting the mediation may finish conducting the mediation.
- (6) While the mediator finishes conducting the mediation, the mediator is entitled to the remuneration to which the mediator was entitled under the empowering Act.
- (7) In this section—  
*proceeding* does not include a mediation or pre-hearing conference.

### **159 Proceedings about matters arising before commencement to be dealt with under this Act**

- (1) A proceeding for a matter that arose before the commencement of this section for which the tribunal has jurisdiction after the commencement may be started in the tribunal after the commencement.

- (2) Subsection (1) applies whether or not a former tribunal had jurisdiction before the commencement.

### **160 Orders and directions**

- (1) An order, direction or other decision of a former tribunal is a decision of the tribunal under this Act.

- (2) In this section—

*decision of a former tribunal* includes a decision of a former member.

### **161 Records of old tribunal**

All records of a former tribunal are records of the tribunal under this Act.

### **162 Chairperson**

The person who, immediately before the commencement of this section, held an appointment as the chairperson under the old Act continues to hold the appointment, subject to this Act, until 30 June 2005.

### **163 Presiding case manager**

The person who, immediately before the commencement of this section, held an appointment as the presiding case manager under the old Act continues to hold the appointment, subject to this Act.

### **164 Full-time members**

- (1) A person who, immediately before the commencement of this section, held an appointment as a full-time member of the tribunal under the old Act continues to hold the appointment, subject to this Act and on the conditions decided by the Governor in Council, until 30 June 2005.
- (2) A person is not entitled to compensation if, because of subsection (1), the person's term of appointment under the old Act is shortened.

**165 Former members**

- (1) A person who, immediately before the commencement of this section, held an appointment as deputy chairperson under the old Act goes out of office on the commencement.
- (2) The person who, immediately before the commencement of this section, held an appointment as the chairperson of the Liquor Appeals Tribunal under the *Liquor Act 1992* goes out of office on the commencement.
- (3) The person who, immediately before the commencement of this section, held an appointment as the deputy chairperson of the Liquor Appeals Tribunal under the *Liquor Act 1992* goes out of office on the commencement.
- (4) The person who, immediately before the commencement of this section, held an appointment as the chairperson of the Property Agents and Motor Dealers Tribunal under the *Property Agents and Motor Dealers Act 2000* no longer holds the appointment.
- (5) The person who, immediately before the commencement of this section, held an appointment as the chairperson of the Retirement Villages Tribunal under the *Retirement Villages Act 1999* no longer holds the appointment.
- (6) Compensation is not recoverable by a former member whose appointment ends because of the dissolution of a former tribunal.

**166 Director**

The person who, immediately before the commencement of this section, held an appointment as the director under the old Act continues to hold the appointment, subject to this Act.

**167 Staff of registry**

A person who, immediately before the commencement of this section, held an appointment as a member of the staff of the central tribunals registry under the old Act continues as a member of the staff of the registry, subject to this Act.

**Part 10****Repeal****168 Repeal**

The *Queensland Building Tribunal Act 2000* (2000 Act No. 10) is repealed.

## Schedule 2      Dictionary

### section 5

**applicant** see section 31.<sup>29</sup>

**approved form** see section 154.<sup>30</sup>

**attendance notice** means a notice issued by the tribunal that requires a person to attend before the tribunal at a stated time and place.

**building** includes any fixed structure.

**case manager's matter** means an application or matter prescribed under a regulation under section 155<sup>31</sup> to be a case manager's matter.

**chairperson** means the chairperson of the tribunal.

**decision** includes order and direction.

**decision by default**, for part 7, division 2, see section 115.<sup>32</sup>

**director** means the director of the registry.

**disciplinary proceeding** means a proceeding under section 105.<sup>33</sup>

**empowering Act** means 1 of the following Acts—

- *Architects Act 2002*
- *Building Act 1975*
- *Building and Construction Industry Payments Act 2004*
- *Domestic Building Contracts Act 2000*
- *Gaming Machine Act 1991*
- *Liquor Act 1992*

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29 Section 31 (How to start proceedings)

30 Section 154 (Forms)

31 Section 155 (Regulation-making power)

32 Section 115 (Decision by default for debt)

33 Section 105 (Tribunal may conduct disciplinary proceeding)



## Schedule 2 (continued)

- *Manufactured Homes (Residential Parks) Act 2003*
- *Pest Management Act 2001*
- *Plumbing and Drainage Act 2002*
- *Professional Engineers Act 2002*
- *Property Agents and Motor Dealers Act 2000*
- *Queensland Building Services Authority Act 1991*
- *Residential Services (Accreditation) Act 2002*
- *Retirement Villages Act 1999*
- *Tourism Services Act 2003*
- *Wine Industry Act 1994.*

***executive officer*** of a corporation means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***expedited hearing*** means an expedited hearing conducted under part 7, division 4.

***file*** means file in the tribunal.

***licence*** means a licence or registration certificate under an empowering Act.

***mediator*** means a person who holds an appointment under section 117.<sup>34</sup>

***member*** means the chairperson or another member of the tribunal.

***obstruct*** includes attempt to obstruct.

***party*** means a party to a proceeding before the tribunal, including—

- (a) the applicant; and
- (b) the respondent; and

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<sup>34</sup> Section 117 (Tribunal may appoint mediator)

## Schedule 2 (continued)

(c) a person included as a party under section 53.<sup>35</sup>

***presiding case manager*** means a person who holds an appointment under section 26.<sup>36</sup>

***presiding member*** of the tribunal means—

- (a) if the tribunal is constituted by 1 member—that person; or
- (b) if the tribunal is constituted by more than 1 member—
  - (i) if the chairperson is a constituting member—the chairperson; or
  - (ii) otherwise—the member designated as the presiding member by the chairperson when the tribunal is constituted.

***proceeding*** means a proceeding—

- (a) started by application to the tribunal; or
- (b) removed to the tribunal by order of a court under section 40.<sup>37</sup>

***public examination*** means a public examination by the tribunal under part 6, division 4.

***registry*** means the Commercial and Consumer Tribunal Registry established under section 20.<sup>38</sup>

***respondent*** see section 31.<sup>39</sup>

***reviewable decision*** means a decision that is reviewable by the tribunal under section 101.<sup>40</sup>

***State agency*** means—

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35 Section 53 (Inclusion of parties)

36 Section 26 (Presiding case manager)

37 Section 40 (Transfer of proceedings between tribunal and the courts)

38 Section 20 (Registry established)

39 Section 31 (How to start proceedings)

40 Section 101 (Reviewable decisions)

**Schedule 2 (continued)**

- (a) for a proceeding for the review of a decision made under an empowering Act—the entity that made the decision; or
- (b) for a disciplinary proceeding—the entity that, under an empowering Act, may apply to the tribunal to conduct the disciplinary proceeding; or
- (c) for an order under section 108<sup>41</sup> in relation to a contravention or proposed contravention of an empowering Act—the entity that, under the empowering Act, may apply to the tribunal to conduct a disciplinary proceeding, whether or not the contravention or proposed contravention is a ground for a disciplinary proceeding; or
- (d) for an order under section 109<sup>42</sup>—the entity that granted the licence sought to be suspended; or
- (e) for a public examination—the entity that, under an empowering Act, may apply to the tribunal to conduct the public examination.

**summary decision**, for part 7, division 5, see section 125(1).<sup>43</sup>

**tribunal** means the Commercial and Consumer Tribunal established under section 6.<sup>44</sup>

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41 Section 108 (Stop orders)

42 Section 109 (Suspension orders)

43 Section 125 (Summary decision for applicant)

44 Section 6 (Tribunal established)

## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 April 2005. Future amendments of the Commercial and Consumer Tribunal Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	2003 Act No. 41	1 July 2003	
1A	2003 Act No. 94	3 December 2003	
1B	2003 Act No. 74	1 March 2004	
1C	2004 Act No. 6	1 July 2004	
1D	2005 Act No. 14	22 April 2005	

### 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## **6 List of legislation**

### **Commercial and Consumer Tribunal Act 2003 No. 30**

date of assent 23 May 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2003 (see s 2)  
 amending legislation—

### **Gaming Machine and Other Legislation Amendment Act 2003 No. 41 pts 1, 3**

date of assent 6 June 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2003 (see s 2)

### **Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1**

date of assent 22 October 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 March 2004 (2003 SL No. 336)

### **Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2003 No. 94 s 1, pt 8**

date of assent 3 December 2003  
 commenced on date of assent

### **Building and Construction Industry Payments Act 2004 No. 6 ss 1–2, 113 sch 1**

date of assent 20 May 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2004 (2004 SL No. 91)

### **Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005 No. 14**

date of assent 22 April 2005  
 commenced on date of assent

## **7 List of annotations**

### **Application by a group of individuals**

s 32 sub 2003 No. 74 s 155 sch 1

### **Way tribunal is to conduct proceedings**

s 47 amd 2005 Act No. 14 s 2 sch

### **Extension of time and waiver of compliance**

s 52 amd 2003 No. 94 s 33

### **Purposes of div 8**

s 73 prov hdg amd 2005 Act No. 14 s 2 sch

### **Who represents party at other proceedings**

s 76 amd 2005 Act No. 14 s 2 sch

**Application to reopen order must not be made if appeal filed**

s 97 amd 2005 Act No. 14 s 2 sch

**Person must answer certain questions**

s 112 amd 2003 No. 94 s 34

**PART 10—REPEAL**

pt hdg amd 2005 Act No. 14 s 2 sch

**Consequential amendments**

s 169 om R1 (see RA s 40)

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 2—DICTIONARY**def “**empowering Act**” amd 2003 No. 41 s 29; 2003 No. 74 s 155 sch 1; 2004 No. 6 s 113 sch 1

## **8 List of forms notified or published in the gazette**

**Form 1B Version 1—Application—Domestic Building Dispute**

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**Form 1Ca Version 1—Application—Commercial Building Dispute**

pubd gaz 8 August 2003 p 1232

**Form 1Cb Version 1—Application—Major Commercial Building Dispute**

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**Form 1D Version 1—Application—Disciplinary Proceeding (Building List)**

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**Form 1DA Version 1—Application—Disciplinary Proceeding (Building List—Architects)**

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**Form 1DE Version 1—Application—Disciplinary Proceeding (Building List—Engineers)**

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**Form 1GH Version 1—Application—Allocation Dispute—Mediation**

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**Form 1GM Version 1—Application—Allocation Dispute—Hearing**

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**Form 1R Version 1—Application—Review (Building, Liquor & Property Agents and Motor Dealers Lists)**

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**Form 1RVM Version 1—Application—Dispute Notice—Mediation (Retirement Village List)**

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**Form 1RVH Version 1— Application—Tribunal Hearing (Retirement Village List)**

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**Form 2 Version 1—Affidavit of Service—generic**

pubd gaz 8 August 2003 p 1232

**Form 3 Version 1—Defence and Counterclaim**

pubd gaz 8 August 2003 p 1232

**Form 4 Version 1—Application in Proceeding—generic**

pubd gaz 8 August 2003 p 1232

**Form 5 Version 1—Request for Decision by Default**

pubd gaz 8 August 2003 p 1232