

Queensland



**COMMERCIAL AND
CONSUMER TRIBUNAL
BILL 2003**

Queensland



**COMMERCIAL AND CONSUMER
TRIBUNAL BILL 2003**

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2003

A BILL

FOR

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

The Parliament of Queensland enacts—	1
PART 1—PRELIMINARY	2
1 Short title	3
This Act may be cited as the <i>Commercial and Consumer Tribunal Act 2003</i> .	4 5
2 Commencement	6
This Act commences on 1 July 2003.	7
3 Act binds all persons	8
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.	9 10 11
4 Objects of Act	12
(1) The objects of this Act are—	13
(a) to establish a tribunal to deal with the matters it is empowered to deal with under an empowering Act; and	14 15
(b) to have the tribunal deal with matters in a way that is just, fair, informal, cost efficient and speedy.	16 17
(2) The objects of this Act are to be achieved by establishing a system of dispute resolution that—	18 19
(a) is just in the results it delivers; and	20
(b) is fair by—	21
(i) ensuring litigants have an equal opportunity, regardless of their resources, to assert or defend their legal rights; and	22 23
(ii) giving parties to proceedings an opportunity to state their case and to answer their opponent's case; and	24 25

(iii) treating like cases alike; and	1
(c) has a range of procedures available and minimises costs to the extent practicable; and	2 3
(d) deals with applications with reasonable speed and encourages the early resolution of disputes; and	4 5
(e) is understandable to users of the system; and	6
(f) is responsive to the needs of users of the system; and	7
(g) allows parties to represent themselves and save legal costs wherever appropriate.	8 9
5 Definitions	10
The dictionary in schedule 2 defines particular words used in this Act.	11
PART 2—THE TRIBUNAL	12
6 Tribunal established	13
(1) The Commercial and Consumer Tribunal is established.	14
(2) The tribunal consists of 1, 2 or 3 members chosen by the chairperson.	15
(3) When choosing how many, and which, members are to constitute the tribunal, the chairperson must consider at least the following—	16 17
(a) the complexity of the matter to be dealt with by the tribunal;	18
(b) the interests of the business or industry to be affected by the decision;	19 20
(c) the public interest;	21
(d) the speed the matter can be dealt with.	22
(4) The chairperson may allocate the work of the tribunal according to lists maintained by the chairperson.	23 24
(5) More than 1 tribunal may sit at any time.	25

7 Tribunal's seal	1
(1) The tribunal must have a seal.	2
(2) The director is to have custody of the seal.	3
(3) The seal must be judicially noticed.	4
8 Jurisdiction of tribunal	5
(1) The tribunal has jurisdiction to deal with the matters it is empowered to deal with under this Act or an empowering Act.	6 7
(2) In exercising its jurisdiction, the tribunal is not subject to direction or control, other than as provided under this Act.	8 9
9 Powers of tribunal	10
(1) The tribunal may do all things necessary or convenient to be done for exercising its jurisdiction.	11 12
(2) Without limiting subsection (1), the tribunal has the powers conferred on it by this Act or an empowering Act.	13 14
10 Advertising for nominations for appointment as a member	15
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.	16 17 18 19 20
11 Appointment of members	21
(1) The chairperson of the tribunal is to be appointed by the Governor in Council on a full-time basis.	22 23
(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.	24 25 26
(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.	27 28

- (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—	1 2
(a) ceases to be eligible for appointment as a member; or	3
(b) is convicted of an indictable offence, whether dealt with on indictment or summarily.	4 5
(3) This section applies to a member whether appointed before or after the commencement of this section.	6 7
(4) In this section—	8
“ affected by bankruptcy action ”, in relation to an individual, means the individual, in any jurisdiction—	9 10
(a) is bankrupt; or	11
(b) has compounded with creditors; or	12
(c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.	13 14
14 Resignation of members	15
A member may resign by giving a signed notice of resignation to the Minister.	16 17
15 Member’s roles	18
(1) The chairperson’s role includes the following—	19
(a) directing the tribunal’s adjudicative operations to ensure they are as just, fair, informal, cost efficient and speedy as practical;	20 21
(b) developing, with the participation of other members, guiding principles that promote high quality and consistent decisions by the tribunal;	22 23 24
(c) developing and implementing procedures and policies for the tribunal’s adjudicative operations;	25 26
(d) issuing practice directions of general application to proceedings;	27
(e) managing the overall performance of members;	28
(f) being responsible for the professional development and training of members of the tribunal in relation to the discharge of their functions.	29 30 31

(2) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson’s role.	1 2
(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.	3 4 5
(4) A member must comply with the procedures and policies implemented by the chairperson for the tribunal’s adjudicative operations.	6 7
16 Delegation by chairperson	8
(1) The chairperson may delegate the chairperson’s powers under this or another Act to another member.	9 10
(2) The chairperson may delegate the chairperson’s powers under section 6(2) ¹ to the director.	11 12
(3) The director may subdelegate the delegated power to another appropriately qualified officer of the staff of the registry.	13 14
(4) In this section—	15
“ appropriately qualified ” includes having the qualifications, experience or standing appropriate to exercise the power.	16 17
17 Chairperson and director to work cooperatively	18
The chairperson and the director must work cooperatively to promote the effective and efficient operation of the tribunal.	19 20
18 Acting members	21
(1) The Governor in Council may appoint a person who is eligible for appointment as the chairperson of the tribunal to act as chairperson—	22 23
(a) for any period the office is vacant; or	24
(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.	25 26 27

1 Section 6 (Tribunal established)

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- (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
(1) A person is eligible for appointment as the director only if the person has particular knowledge and experience of—	2 3
(a) public administration; and	4
(b) something else of substantial relevance to the functions of the director.	5 6
(2) The director and other staff of the registry are to be appointed under the <i>Public Service Act 1996</i> .	7 8
(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.	9 10
22 Director's functions and powers	11
(1) Subject to the direction of the chief executive, the director is responsible for managing the registry and the administrative affairs of the tribunal.	12 13 14
(2) The director has the following functions—	15
(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);	16 17 18
(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;	19 20 21
(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;	22 23 24 25
(d) to sign and issue attendance notices, however described, for the tribunal;	26 27
(e) to keep the tribunal's records and decisions;	28
(f) to notify the parties to a proceeding of the tribunal's final decision in the proceeding and any reasons given for the decision;	29 30 31
(g) to publish decisions of the tribunal approved for publication by the chairperson under arrangements, and in the way, approved by the chairperson;	32 33 34

(h) to keep account of fees paid and payable to the tribunal;	1
(i) to collect statistical data and other information relevant to the administration of the registry for inclusion in the tribunal's annual report;	2 3 4
(j) any other functions given under this or another Act.	5
(3) The director has the powers reasonably necessary to exercise the director's functions.	6 7
23 Delegation by director	8
(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.	9 10
(2) In this section—	11
“ appropriately qualified ” includes having the qualifications, experience or standing appropriate to exercise the power.	12 13
<i>Example of standing—</i>	14
A person's seniority level as a member of the staff of the registry.	15
24 Keeping and disclosure of records and information	16
(1) The director may—	17
(a) keep the records of, and information for, the tribunal that the director considers appropriate in the way the director considers appropriate; and	18 19 20
(b) make the records and information available to the public on payment of the fee prescribed under a regulation.	21 22
(2) Without limiting section 22 ² or subsection (1), the director must—	23
(a) keep the records of and information about proceedings before the tribunal that the director considers appropriate; and	24 25
(b) make the records and information available to the public.	26
(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.	27 28 29

2 Section 22 (Director's functions and powers)

25 Acting director	1
(1) The chief executive may appoint an appropriately qualified person to act as director.	2 3
(2) The appointee is to act as director if—	4
(a) the director is not available to carry out the director’s duties; or	5
(b) there is a vacancy in the office of director.	6
(3) In this section—	7
“appropriately qualified” includes having particular knowledge and experience of—	8 9
(a) public administration; and	10
(b) something else of substantial relevance to the functions of the director.	11 12

PART 4—PRESIDING CASE MANAGER

13

26 Presiding case manager	14
(1) The Governor in Council may appoint 1 or more presiding case managers.	15 16
(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.	17 18
(3) A presiding case manager may be appointed on a full-time or part-time basis.	19 20
(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.	21 22 23
27 Acting presiding case manager	24
(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.	25 26
(2) The appointee is to act as a presiding case manager if—	27

(a)	a presiding case manager is not available to carry out the presiding case manager's duties; or	1 2
(b)	there is a vacancy in the office of presiding case manager.	3
28	Presiding case manager's power to deal with particular applications to tribunal	4 5
(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.	6 7 8
(2)	For the case manager's matter, the presiding case manager constitutes, and may exercise all the jurisdiction and powers of, the tribunal.	9 10 11
(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.	12 13 14
	<i>Example—</i>	15
	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.	16 17
(4)	The exercise of power by the presiding case manager under subsection (3) is taken to be an exercise of power by the tribunal.	18 19
(5)	If the chairperson decides that a presiding case manager should not constitute the tribunal, the chairperson must—	20 21
(a)	deal with the case manager's matter; or	22
(b)	select a legally qualified member of the tribunal to constitute the tribunal to deal with it.	23 24
(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.	25 26 27
(7)	In this section—	28
	“legally qualified member” of the tribunal means a member of the tribunal who is a lawyer of at least 5 years standing.	29 30

29 Independence of presiding case manager	1
(1) A presiding case manager when constituting the tribunal is not subject to direction or control, other than as provided under this Act.	2 3
(2) However, the presiding case manager must comply with any procedural directions given by the chairperson.	4 5
30 Disclosure of interests	6
(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.	7 8 9 10
(2) After disclosing the conflict, the presiding case manager may disqualify himself or herself.	11 12
(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.	13 14
(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.	15 16 17 18

PART 5—OPERATION OF TRIBUNAL 19

Division 1—Starting proceedings 20

31 How to start proceedings	21
(1) An entity (the “ applicant ”) may start a proceeding for a matter for which the tribunal has jurisdiction by—	22 23
(a) filing an application in the approved form in the tribunal; and	24
(b) paying the fee prescribed under a regulation, in the way prescribed under the regulation.	25 26
(2) The application must state—	27
(a) the facts or grounds on which the application is based; and	28

- (b) the claims made and outcome or order sought by the applicant. 1
- (3) The applicant must serve a copy of the application on each entity 2
against whom a claim is made or in relation to whom an outcome or order 3
is sought (the “**respondent**”). 4
- (4) Also, if the tribunal considers another entity is affected by the 5
application, it may direct the applicant to serve a copy of the application on 6
the entity. 7
- (5) The applicant must comply with a direction under subsection (4). 8
- (6) For a public examination, the person required to be served under 9
subsection (4) is the person proposed to be the subject of the public 10
examination. 11
- 32 Unincorporated applicant’s prescribed officer** 12
- (1) This section applies if— 13
- (a) an empowering Act allows an unincorporated body to make an 14
application; and 15
- (b) an unincorporated body makes an application. 16
- (2) The application must state the name and address for service of the 17
individual who holds the prescribed office of the unincorporated body (the 18
“**prescribed officer**”). 19
- (3) If, during the proceeding, the prescribed officer ceases to hold the 20
prescribed office, the unincorporated body must give the director a written 21
notice stating the name and address for service of the individual who has 22
become the holder of the office. 23
- (4) The tribunal may, at any time, require the unincorporated body to 24
provide evidence that the prescribed officer continues to hold the 25
prescribed office. 26
- (5) For the proceeding, the prescribed officer is taken to be the applicant, 27
with all the rights and obligations of the applicant. 28
- (6) In this section— 29
- “**prescribed office**” means an office prescribed under a regulation made 30
under the empowering Act. 31

33 Defence and counterclaim	1
(1) This section applies to an application starting a proceeding for—	2
(a) a building dispute under the <i>Queensland Building Services Authority Act 1991</i> ; or	3 4
(b) the recovery of a debt under the <i>Queensland Building Services Authority Act 1991</i> , section 71; ³ or	5 6
(c) a matter under the <i>Domestic Building Contracts Act 2000</i> , section 18, 55, 60 or 84. ⁴	7 8
(2) The respondent must file a defence to the application and any counterclaim that states—	9 10
(a) the facts relied on by the respondent in defence of the claims by the applicant; and	11 12
(b) the nature of the defence to each outcome or order sought by the applicant; and	13 14
(c) the facts on which any counterclaim is based and the outcome or order sought by the respondent relating to the counterclaim.	15 16
(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.	17 18 19
(4) A defence and any counterclaim must be in the approved form.	20
(5) The respondent must serve a copy of the defence and any counterclaim on the applicant.	21 22
(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.	23 24 25
(7) The respondent must comply with a direction under subsection (6).	26
(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.	27 28 29

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)

34 Amendment of pleadings	1
(1) The tribunal may at any stage of a proceeding amend the particulars of any pleadings in the way it considers appropriate—	2 3
(a) on application, if the tribunal is satisfied that no party is unfairly prejudiced by the amendment; or	4 5
(b) on its own initiative, if all the parties agree.	6
(2) The amended pleadings are taken to be the pleadings.	7
(3) In this section—	8
“pleadings” means—	9
(a) an application; or	10
(b) a defence and any counterclaim.	11

Division 2—Business names 12

35 Proceeding if business name	13
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 <i>Business Names Act 1962</i> .	14 15 16 17
36 Proceeding if registered business name	18
(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 <i>Business Names Act 1962</i> .	19 20 21 22
(2) The proceeding may be started against the person in the name or style registered under the <i>Business Names Act 1962</i> .	23 24
(3) The name or style registered under the <i>Business Names Act 1962</i> is sufficient designation of the person in a document filed in the proceeding.	25 26
(4) An order in the proceeding may be enforced against the person.	27

37 Proceeding in business name if unregistered	1
(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 <i>Business Names Act 1962</i> .	2 3 4 5
(2) The proceeding may be started against the person in the name or style under which the person carries on business.	6 7
(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.	8 9
(4) An order in the proceeding may be enforced against the person.	10
38 Defence	11
(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 <i>Business Names Act 1962</i> .	12 13 14 15
(2) A defence must be in the name of the person and not in the business name.	16 17
(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 entity who were carrying on business under the name or style as at the day the proceeding was started.	18 19 20 21
(4) The tribunal may set aside the defence if the person does not comply with subsection (3).	22 23
39 Amendment as to parties	24
(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 <i>Business Names Act 1962</i> .	25 26 27 28
(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.	29 30 31
(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.	32 33

(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. 1
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(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. 4
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Division 3—Transfer of proceedings 7

40 Transfer of proceedings between tribunal and the courts 8

(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 31.⁵ 9
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(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. 13
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(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). 17
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(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. 20
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(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. 22
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Division 4—Service 25

41 Service of documents 26

(1) A document may be served under this Act— 27

5 Section 31 (How to start proceedings)

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- (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 39.⁶
- 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.
- 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.

⁶ *Acts Interpretation Act 1954*, section 39 (Service of documents)

44	Informal service	1
	(1) This section applies if—	2
	(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	3 4 5
	(b) the tribunal is satisfied on evidence before it that the document came into the party's possession on or before a particular day.	6 7
	(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.	8 9 10
	 <i>Division 5—Case management</i>	 11
45	Tribunal to fix time and place for proceedings	12
	(1) This section applies if an application has been filed and served.	13
	(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.	14 15 16
	(3) However, the tribunal must not fix a time and place for an application for a matter mentioned in section 33(1) ⁷ until either—	17 18
	(a) a defence and any counterclaim have been filed and served; or	19
	(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.	20 21 22
46	Hearings generally open to the public	23
	(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.	24 25
	(2) The tribunal must make the order if—	26

7 Section 33 (Defence and counterclaim)

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- (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.
- (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 mediation 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	1
(b) the tribunal considers it appropriate in all the circumstances.	2
49 Practice directions	3
(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.	4 5 6
(2) The members of the tribunal and parties before the tribunal must comply with the practice directions.	7 8
50 Directions and orders	9
(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.	10 11 12
(2) The power to give directions under subsection (1) is subject to practice directions under section 49. ⁸	13 14
(3) Without limiting subsection (1), the tribunal may at any time—	15
(a) set time limits for the completion of anything to be done in relation to the proceeding; and	16 17
(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—	18 19 20
(i) a document in the party's possession or control;	21
(ii) any other information or evidence.	22
(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.	23 24 25
(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.	26 27
(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	28 29

8 Section 49 (Practice directions)

party that can not be remedied by an appropriate order for costs or damages.	1 2
(7) In this section—	3
“ order ” includes an interim order.	4
51 Documents to which disclosure does not apply	5
(1) The duty of disclosure does not apply to the following documents—	6
(a) a document in relation to which there is a valid claim to privilege from disclosure;	7 8
(b) a document relevant only to credit;	9
(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.	10 11 12 13
(2) A document consisting of a statement or report of an expert is not privileged from disclosure.	14 15
(3) In this section—	16
“ duty of disclosure ” means a requirement under section 50(4) ⁹ relating to a document mentioned in section 50(3)(b)(i).	17 18
52 Extension of time and waiver of compliance	19
(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.	20 21 22
(2) The tribunal, on the application of a party or on its own initiative, may for a proceeding—	23 24
(a) extend a time limit fixed by or under this Act or an empowering Act for the doing of anything; or	25 26
(b) waive compliance with any procedural requirement under this Act.	27 28

9 Section 50 (Directions and orders)

(3) The tribunal may extend time or waive compliance even if the time or period for compliance has expired.	1 2
(4) The tribunal may not extend time or waive compliance 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.	3 4 5
53 Inclusion of parties	6
(1) For a proceeding, the tribunal may order that a person be included as a party to the proceeding if the tribunal considers that—	7 8
(a) the person ought to be bound by, or have the benefit of, an order of the tribunal in the proceeding; or	9 10
(b) the person's interests are affected by the proceeding; or	11
(c) for another reason it is desirable the person be included as a party.	12 13
(2) The tribunal may make an order under subsection (1) on application of a party or on its own initiative.	14 15
54 Consolidation of proceedings	16
The tribunal may on the application of a party or on its own initiative order that 2 or more proceedings be consolidated if—	17 18
(a) the same or substantially the same question is involved in all the proceedings; or	19 20
(b) the decision in 1 proceeding will decide or affect the other proceeding or proceedings.	21 22
55 Sequence of hearings	23
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.	24 25 26
56 Directions	27
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.	28 29 30

57 Variation of order	1
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.	2 3 4 5
58 Vexatious proceedings	6
If, in the tribunal's opinion, a proceeding has been brought vexatiously or oppressively, the tribunal may—	7 8
(a) summarily dismiss the proceeding; and	9
(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.	10 11 12 13
59 Non-appearance of respondent	14
(1) This section applies if the tribunal is satisfied that the respondent—	15
(a) has been given notice of the hearing and does not appear at the hearing; or	16 17
(b) can not be located after the making of reasonable inquiries into the respondent's whereabouts.	18 19
(2) The tribunal may hear and decide the matter in the respondent's absence.	20 21
60 Conduct of proceeding causing disadvantage	22
(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—	23 24 25
(a) not complying with a direction or order of the tribunal without reasonable excuse; or	26 27
(b) asking for an adjournment as a result of not complying with a direction or order of the tribunal; or	28 29
(c) vexatiously conducting the proceeding; or	30
(d) causing an adjournment.	31

(2) The tribunal may—	1
(a) order that the party causing the disadvantage compensate the other party for any costs incurred unnecessarily; or	2 3
(b) if the party causing the disadvantage is the applicant, dismiss the applicant's claim; or	4 5
(c) if the party causing the disadvantage has filed a counterclaim, dismiss the counterclaim.	6 7
(3) The tribunal may refuse to continue with the proceeding until an order under subsection (2)(a) is complied with.	8 9
61 Withdrawal by applicant	10
(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.	11 12 13
(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.	14 15
(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.	16 17
(4) An applicant may withdraw against 1 or more respondents without withdrawing against the other respondents only with the tribunal's leave.	18 19
62 Withdrawal by respondent	20
A respondent may withdraw all or part of a defence or counterclaim only with the tribunal's leave.	21 22
63 Further application after withdrawal restricted	23
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.	24 25 26
64 Costs order on applicant's withdrawal	27
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.	28 29 30

65	Notice of withdrawal	1
	(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 3 4
	(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.	5 6
66	Tribunal may hear proceeding regardless of related criminal or disciplinary action	7 8
	(1) This section applies if matters arising in a proceeding involve the contravention, or the alleged contravention, by a person of an Act.	9 10
	(2) Unless an empowering Act provides otherwise, the tribunal may make an order to resolve the proceeding whether or not the person—	11 12
	(a) has been charged with, convicted of or sentenced for an offence arising out of the contravention; or	13 14
	(b) is the subject of a pending disciplinary proceeding relating to the contravention; or	15 16
	(c) may be, or has been, subject to disciplinary action under section 107 ¹⁰ relating to the contravention.	17 18
	<i>Division 6—Security for costs</i>	19
67	Security for costs	20
	(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—	21 22
	(a) that another party give security for the costs of the party applying for security within the time stated in the order; and	23 24
	(b) that the proceeding as against the party applying for security be stayed until the security is given.	25 26
	(2) An application under subsection (1) may be made at any time before the proceeding ends.	27 28

¹⁰ Section 107 (Orders for disciplinary action)

(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. 1
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(4) In deciding whether to make an order, the tribunal may have regard to any of the following matters— 4
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- (a) the means of the parties to the proceeding; 6
- (b) the prospects of success or merits of the proceeding; 7
- (c) the genuineness of the proceeding; 8
- (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; 9
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- (e) whether an order for security for costs would be oppressive; 12
- (f) whether an order for security for costs would stifle the proceeding; 13
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- (g) whether delay by a party in starting the proceeding has prejudiced another party; 15
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- (h) the costs of the proceeding; 17
- (i) anything else the tribunal considers relevant. 18

68 Way security given 19

(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. 20
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(2) If the tribunal does not state the form of the security— 23

- (a) it must be given in a form approved by the director; and 24
- (b) the form of security approved by the director must be written on the order before it is issued. 25
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(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. 27
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69	Finalising security	1
	(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. ¹¹	2 3 4
	(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.	5 6
	(3) However, the security must be discharged—	7
	(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	8 9 10
	(b) if the tribunal orders the discharge of the security; or	11
	(c) if the party entitled to the benefit of the security consents to its discharge; or	12 13
	(d) in relation to the balance after costs have been satisfied under subsection (2).	14 15
	 <i>Division 7—Costs generally</i>	 16
70	Purposes of div 7	17
	The main purpose of this division is to have parties pay their own costs unless the interests of justice require otherwise.	18 19
71	Costs	20
	(1) In a proceeding, the tribunal may award the costs it considers appropriate on—	21 22
	(a) the application of a party to the proceeding; or	23
	(b) its own initiative.	24
	(2) The costs the tribunal may award may be awarded at any stage of the proceeding or after the proceeding has ended.	25 26
	(3) If the tribunal awards costs during a proceeding, the tribunal may order that the costs not be assessed until the proceeding ends.	27 28

11 Section 67 (Security for costs)

- (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 71¹² or otherwise, and the party, before

12 Section 71 (Costs)

paying the costs, starts another proceeding before the tribunal against the other party.	1 2
(2) The tribunal may order a stay of the other proceeding until the costs are paid.	3 4
<i>Division 8—Representation</i>	
73 Purposes of div 7	6
The main purpose of this division is to have parties represent themselves and save legal costs unless the interests of justice require otherwise.	7 8
74 Who represents party at mediation	9
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.	10 11 12
75 Who represents party at pre-hearing conference	13
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.	14 15 16
76 Who represents party at other proceedings	17
(1) Subject to the provisions of an empowering Act or subsection (2) or (3), in a proceeding—	18 19
(a) a party, other than an individual, appearing before the tribunal may be represented only by a person who is not a lawyer; and	20 21
(b) an individual appearing before the tribunal must represent himself or herself.	22 23
(2) A party may be represented by a lawyer if—	24

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| (a) the proceeding relates to an application under the <i>Queensland Building Services Act 1991</i> , section 93; ¹³ or | 1
2 |
| (b) the proceeding is a disciplinary proceeding; or | 3 |
| (c) the proceeding is a public examination; or | 4 |
| (d) all parties to the proceeding agree; or | 5 |
| (e) the tribunal directs that representation by the lawyer is appropriate having regard to all the circumstances including, for example— | 6
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| (i) the cost of representation and whether each party can afford to be represented; and | 9
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| (ii) the complexity of the legal and factual issues involved; and | 11 |
| (iii) the potential for lengthening the proceeding if a party is not represented; and | 12
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| (iv) the ability of the lawyer or other person to help the tribunal and the party represented; and | 14
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| (v) the ability of the party to represent himself or herself. | 16 |
| (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. | 17
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Division 9—Other provisions about proceedings 20

77 Tribunal may require witness to attend 21

(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— 22
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| (a) appear as a witness and be examined on oath about the matters the subject of the proceeding; | 26
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| (b) to produce the documents or things stated in the attendance notice or that belong to a class stated in the attendance notice. | 28
29 |

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

(2) A person required to appear as a witness is entitled to—	1
(a) the witness fees prescribed under a regulation; or	2
(b) if no witness fees are prescribed—the reasonable witness fees decided by the tribunal.	3 4
(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.	5 6 7
78 Offences by witnesses	8
(1) A person required, under an attendance notice, to attend before the tribunal must not fail, without reasonable excuse to—	9 10
(a) attend as required by the attendance notice; or	11
(b) continue to attend as required by the tribunal until excused from further attendance.	12 13
Maximum penalty—80 penalty units.	14
(2) A person appearing as a witness before the tribunal must take an oath when required by the tribunal.	15 16
Maximum penalty—80 penalty units.	17
(3) Also, a person appearing as a witness before the tribunal must not fail, without reasonable excuse—	18 19
(a) to answer a question the person is required to answer by the tribunal; or	20 21
(b) to produce a document or thing the person is required to produce under an attendance notice.	22 23
Maximum penalty—80 penalty units.	24
(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.	25 26 27
(5) Despite subsection (1), the tribunal may at any time excuse a person for failing to attend at the time and place notified.	28 29

79 Warrant may be issued if witness does not attend	1
(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—	2 3
(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; and ¹⁴	4 5 6
(b) adjourn the hearing to the time and place mentioned in paragraph (a) on terms as to costs the tribunal considers appropriate.	7 8 9
(2) A warrant issued under subsection (1) is sufficient authority for a police officer to execute it according to its terms.	10 11
80 False or misleading information	12
(1) A person appearing before the tribunal must not state anything the person knows is false or misleading in a material particular.	13 14
Maximum penalty—100 penalty units.	15
(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.	16 17 18
Maximum penalty—100 penalty units.	19
(3) Subsection (2) does not apply to a person if the person, when giving the document—	20 21
(a) tells the tribunal, to the best of the person’s ability, how it is false or misleading; and	22 23
(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.	24 25
(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.	26 27 28 29

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

81 Powers of tribunal relating to taking of evidence	1
(1) For a proceeding, the tribunal may—	2
(a) take evidence on oath; or	3
(b) require a person who is to give evidence before the tribunal to take an oath; or	4
(c) administer an oath to a person who is to give evidence before the tribunal.	5
(2) The oath to be taken or made by a person is an oath that the evidence the person will give will be true.	6
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82 Referral of matters for expert report	10
(1) The tribunal may refer a matter of a technical nature arising in the course of a proceeding for investigation by an appropriate expert.	11
	12
(2) The expert must report the results of the investigation in writing to the tribunal and provide the parties with copies of the report.	13
	14
(3) The report must be given within the reasonable time stated by the tribunal in the request.	15
	16
(4) The tribunal may adopt all, some or none of the expert's findings.	17
(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.	18
	19
(6) A State agency may be an expert for this section.	20
<i>Example—</i>	21
The tribunal might ask the authority under the <i>Queensland Building Services Authority Act 1991</i> to give the tribunal a report about a building dispute that includes—	22
	23
(a) details of building work the authority considers is defective or incomplete; and	24
(b) an assessment of the time within which the rectification or completion work should be finished.	25
	26
83 Entry and inspection of property	27
(1) A member may, if it is necessary to do so for the purposes of a proceeding before the tribunal—	28
	29
(a) for a view, enter and inspect a building or land relevant to the proceeding accompanied by the parties to the proceeding; or	30
	31

(b) authorise a person in writing to take the following action and report to the tribunal on the action taken—	1 2
(i) enter and inspect a building or land relevant to the proceeding;	3 4
(ii) take photographs, video film or an image of the building or land or anything relevant to the proceeding;	5 6
(iii) carry out tests approved by the tribunal.	7
<i>Examples of 'building or land relevant to the proceeding'—</i>	8
• 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.	9 10
• 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.	11 12
(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.	13 14 15
Maximum penalty—200 penalty units.	16
84 Procedure before entry	17
(1) This section applies to entry under section 83.	18
(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—	19 20
(a) give an occupier or, if there is no occupier, the owner, reasonable notice of the entry;	21 22
(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—	23 24 25
(i) for the member—a copy of a document that evidences the member's appointment; or	26 27
(ii) for a person authorised to enter—a copy of the authorisation and evidence that the person is the person authorised;	28 29
(c) give the person present a copy of the things produced under subsection (2)(b);	30 31
(d) tell the person present the member or authorised person is permitted to enter the building or land.	32 33

85 Inspection of documents or things	1
(1) If a document or thing is produced to the tribunal, the tribunal may—	2
(a) inspect the document or thing; and	3
(b) copy or photograph the document or thing if it is relevant to the proceeding before the tribunal.	4 5
(2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the proceeding.	6 7
(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.	8 9 10
86 Contempt of tribunal	11
(1) A person is in contempt of the tribunal if the person—	12
(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	13 14
(b) deliberately interrupts a proceeding, or otherwise misbehaves at a proceeding; or	15 16
(c) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or	17 18 19
(d) obstructs or assaults a person attending a proceeding; or	20
(e) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given at a proceeding; or	21 22
(f) obstructs a member, or a person authorised under section 83(1), ¹⁵ in the exercise of a power under section 83(1); or	23 24
(g) does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record.	25 26
(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.	27 28 29

15 Section 83 (Entry and inspection of property)

- (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. 1
2
3
- (4) In this section— 4
“**member**” includes presiding case manager. 5
- 87 Punishment of contempt** 6
- (1) Without limiting the tribunal’s power to punish for contempt under section 86,¹⁶ a person’s contempt of the tribunal may be punished under this section. 7
8
9
- (2) The chairperson may certify the contempt in writing to the Supreme Court (the “**court**”). 10
11
- (3) For subsection (2), it is enough for the chairperson to be satisfied there is evidence of contempt. 12
13
- (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. 14
15
16
- (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. 17
18
- (6) The court must inquire into the alleged contempt. 19
- (7) The court must hear— 20
- (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and 21
22
- (b) any statement given by the person in defence. 23
- (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. 24
25
26
- (9) The *Uniform Civil Procedure Rules 1999* apply to the court’s investigation, hearing and power to punish with necessary changes. 27
28
- (10) The chairperson’s certificate of contempt is evidence of the matters contained in the certificate. 29
30

16 Section 86 (Contempt of tribunal)

88	Conduct that is contempt and offence	1
	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.	2 3 4
89	Protection of persons at tribunal	5
	(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.	6 7 8
	(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), ¹⁷ the same protection and immunity as a District Court judge has in the performance of the judge's duties.	9 10 11 12
	(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.	13 14 15
	(4) An expert, in doing something for section 82(2), ¹⁸ has the same protection and immunity as a District Court judge has in the performance of the judge's duties.	16 17 18
	(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.	19 20 21
	(6) A person appearing before the tribunal as a witness has the same protection as a witness in a proceeding before the District Court.	22 23
	(7) A document produced at, or used for, a hearing has the same protection it would have if produced before the District Court.	24 25
90	Suppression of sensitive information	26
	(1) This section does not apply to a disciplinary proceeding.	27
	(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	28 29

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

18 Section 82 (Referral of matters for expert report)

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sensitive information about the party is not to form part of the record available for inspection by members of the public.	1 2
<i>Example of sensitive information—</i>	3
• information about a person’s reputation	4
• information about a person’s history of behaviour or attitude in relation to the management and discharge of the person’s financial obligations.	5 6
(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.	7 8 9 10 11
(4) However, the tribunal must—	12
(a) before making an order under subsection (3), ask the director to provide information about—	13 14
(i) the extent of any existing publication of the sensitive information; and	15 16
(ii) the period reasonably needed for the removal of the sensitive information from the record available for inspection by members of the public; and	17 18 19
(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.	20 21 22
(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.	23 24 25

Division 10—Tribunal decisions and enforcement 26**91 Form of decisions of tribunal** 27

(1) A decision of the tribunal that finally decides matters the subject of the proceeding must—	28 29
(a) be in writing; and	30
(b) state the decision, and the reasons for the decision; and	31
(c) be published, unless the tribunal decides otherwise in relation to a particular decision, or part of a particular decision.	32 33

- (2) Subsection (1) does not apply to a pre-hearing conference or a mediation. 1
2
- (3) Subsection (1)(c) applies to a disciplinary proceeding subject to section 107(5).¹⁹ 3
4
- 92 When decision takes effect** 5
- A decision of the tribunal takes effect— 6
- (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 7
8
9
- (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 10
11
- (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. 12
13
14
- 93 Registration and enforcement of decisions** 15
- (1) A party may register a decision by the tribunal by filing the following in the registry of a court of competent jurisdiction— 16
17
- (a) a copy of the decision certified as correct by the director; 18
- (b) the party's affidavit of— 19
- (i) service of a certified copy of the decision on the party against whom the decision was given; and 20
21
- (ii) noncompliance, or the extent of noncompliance, with the decision by that party. 22
23
- (2) On registration of the decision in the court— 24
- (a) the decision has, for the purposes of enforcement, the same force and effect; and 25
26
- (b) a proceeding may be taken on the decision; and 27
- (c) the amount, if any, for which the decision is registered carries interest; and 28
29

19 Section 107 (Orders for disciplinary action)

- (d) the court has the same control over the enforcement of the decision; 1
2
- as if the decision had been originally given as a judgment of the court and entered on the day of registration. 3
4
- (3) No court fee is payable for filing the decision and affidavit in the court's registry. 5
6
- (4) For subsection (2), the court is taken to have had jurisdiction to make the decision. 7
8

Division 11—Further action in relation to a proceeding 9

94 Correcting mistakes 10

- (1) The tribunal may correct a decision made by it if the decision contains— 11
12
- (a) a clerical mistake; or 13
- (b) an error arising from an accidental slip or omission; or 14
- (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 15
16
17
- (d) a defect of form. 18
- (2) The correction may be made— 19
- (a) on the tribunal's own initiative; or 20
- (b) on the written application of a party to the proceeding to which the decision relates. 21
22
- (3) An application under this section— 23
- (a) must be made within 14 days after the making of the decision; and 24
25
- (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. 26
27
28
- (4) The tribunal need not conduct a hearing for the application. 29
- (5) The correction— 30

(a)	may be made by the member who made the decision, another member, the chairperson or a presiding case manager; and	1 2
(b)	must be made only on the evidence placed before the tribunal at the hearing of the proceeding in which the decision was made.	3 4
(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.	5 6
95	Reopening an order if party does not appear	7
(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.	8 9 10
(2)	An application under this section must be made within 14 days after the order is served on the entity.	11 12
(3)	An entity may apply only once in relation to the same order.	13
(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.	14 15 16
(5)	On a review under this section, the tribunal may confirm, vary or revoke the order.	17 18
(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.	19 20 21
96	Reopening an order if problems with interpretation or implementation	22 23
(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.	24 25 26
(2)	The tribunal may grant the application if satisfied there are problems with interpreting or implementing the order.	27 28
(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.	29 30 31

(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 93, 95 or 96²⁰ must not be made for a proceeding in relation to which an appeal has been filed under section 100.²¹

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—

20 Section 93 (Correcting mistakes), 95 (Reopening an order if party does not appear) or 96 (Reopening an order if problems with interpretation or implementation)

21 Section 100 (Appeals)

-
- (a) error of law; or 1
- (b) excess, or want, of jurisdiction. 2
- (2) An appeal must be filed within 28 days after the decision takes effect. 3
- (3) An appeal must— 4
- (a) be accompanied by the tribunal’s decision and reasons for decision, if any; and 5
6
- (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. 7
8
9
- (4) 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. 10
11
12
- (5) On an appeal, the District Court may do any of the following— 13
- (a) confirm, annul, vary or reverse the tribunal’s decision; or 14
- (b) remit the case to the tribunal for further hearing or rehearing; or 15
- (c) make consequential or ancillary orders or directions. 16
- (6) The registrar of the District Court must give the tribunal a copy of the court’s judgment and reasons. 17
18
- (7) The appellant must pay the costs of the appeal, including the costs of any transcript. 19
20

PART 6—PROCEEDINGS BEFORE TRIBUNAL 21

Division 1—Review proceedings 22

101 Reviewable decisions 23

The tribunal may review a decision (a “**reviewable decision**”) for which the tribunal is given jurisdiction to review under an empowering Act. 24
25

102 Application for review	1
(1) The entity affected by the reviewable decision may apply to the tribunal for a review of the decision.	2 3
(2) The entity must apply within 28 days after receiving written notice of the decision.	4 5
(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.	6 7
103 Stay of operation of decision	8
(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.	9 10 11
(2) The tribunal may make the order on the application of a party to the review proceeding or on its own initiative.	12 13
(3) In making the order, the tribunal—	14
(a) may require any undertaking, including an undertaking as to costs or damages, it considers appropriate; and	15 16
(b) may make provision for the lifting of the order if stated conditions are met.	17 18
104 Orders tribunal may make on review hearing	19
(1) In deciding an application for review of a decision, the tribunal may—	20 21
(a) confirm the decision being reviewed; or	22
(b) set aside the decision and substitute another decision; or	23
(c) set aside the decision and return the matter to the State agency that made the decision with directions that the tribunal considers appropriate.	24 25 26
(2) In substituting another decision, the tribunal has the same powers as the State agency that originally made the decision.	27 28
<i>Example—</i>	29
The tribunal may decide that an unsuccessful applicant for a licence be granted the licence either unconditionally or on particular conditions.	30 31

(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. 1
2
3

Division 2—Disciplinary proceedings 4

105 Tribunal may conduct disciplinary proceeding 5

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. 6
7
8
9

106 How to start disciplinary proceedings 10

(1) A disciplinary proceeding against a person is started by the State agency filing with the tribunal an application, in the approved form, stating— 11
12
13

(a) the grounds on which the disciplinary proceeding is to be brought against the person; and 14
15

(b) the nature of the matter being referred to the tribunal for decision. 16
17

(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. 18
19
20
21

(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. 22
23

(4) The application and attendance notice may be combined in 1 notice. 24

(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. 25
26
27

(6) A disciplinary proceeding is taken to have started on the day the person is given an application and attendance notice. 28
29

107 Orders for disciplinary action	1
(1) If the tribunal decides that appropriate grounds exist for taking disciplinary action against a person, the tribunal may make—	2 3
(a) an order under an empowering Act; or	4
(b) 1 or more of the orders mentioned in subsections (2) to (4).	5
(2) The tribunal may make an order imposing a penalty on the person of not more than—	6 7
(a) for an individual—an amount equivalent to 200 penalty units; or	8
(b) for a corporation—an amount equivalent to 1 000 penalty units.	9
(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.	10 11 12
(4) If the person is a licensee, the tribunal may make an order—	13
(a) reprimanding the licensee; or	14
(b) suspending the licence; or	15
(c) imposing conditions on the licence; or	16
(d) cancelling the licence.	17
(5) An order of the tribunal under subsection (2) to (4) must be published.	18 19
(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.	20 21 22
108 Stop orders	23
(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.	24 25 26
(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.	27 28 29
(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	30 31

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 person, at a public examination, 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. 1
2
- (3) The person must answer the question, unless the person has a reasonable excuse. 3
4
- Maximum penalty—500 penalty units. 5
- (4) It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person. 6
7
- (5) The answer is not admissible in any criminal or civil proceeding against the person, other than— 8
9
- (a) the public examination of a person; or 10
- (b) a proceeding to review a reviewable decision; or 11
- (c) a perjury proceeding. 12
- (6) In this section— 13
- “**perjury proceeding**” means a proceeding in which the falsity or misleading nature of the answer is relevant. 14
15

Division 4—Other matters 16

113 Other matters 17

Without limiting divisions 1 to 3, the tribunal may hear and decide matters that it may hear and decide under an empowering Act. 18
19

PART 7—WAYS TRIBUNAL MAY RESOLVE PROCEEDINGS 20
21

Division 1—Hearing of proceedings 22

114 Hearing of proceedings 23

(1) The tribunal may conduct a hearing to decide a matter within its jurisdiction. 24
25

-
- (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 124.²²

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

22 Section 124 (Procedure for expedited hearing)

(d) interest on the amount claimed at the rate and calculated in the way prescribed under a regulation.	1 2
(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.	3 4
(4) A decision by default given under subsection (3) is taken to be a decision of the tribunal.	5 6
(5) The applicant must prove service of the application on the respondent before a decision by default may be given under this section.	7 8
116 Setting aside decision by default	9
The tribunal, on application by the respondent, may set aside or amend a decision by default under section 115 ²³ on terms, including terms about costs and the giving of security, the tribunal considers appropriate.	10 11 12
<i>Division 3—Mediation</i>	
117 Tribunal may appoint mediator	14
(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.	15 16 17
(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.	18 19 20 21
(3) At the request of all the parties to a proceeding, the tribunal may appoint a particular mediator chosen by the parties.	22 23
(4) The powers of the tribunal under subsection (1) or (3) may be exercised by the director or a presiding case manager.	24 25
(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.	26 27 28

23 Section 115 (Decision by default for debt)

(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). 1
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. 3
4
- (5) The tribunal may make a decision in terms of the settlement, and may make consequential orders or give consequential directions. 5
6
- (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
8
9
- (7) In this section— 10
- “**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. 11
12
13
- 120 Mediators to maintain secrecy** 14
- (1) A mediator must not, without reasonable excuse, disclose information coming to the mediator’s knowledge during a mediation. 15
16
- Maximum penalty—40 penalty units. 17
- (2) It is a reasonable excuse to disclose information if the disclosure is made— 18
19
- (a) with the agreement of all parties to the mediation; or 20
 - (b) for this Act; or 21
 - (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or 22
23
24
 - (d) for an inquiry or proceeding about an offence happening during the mediation; or 25
26
 - (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation; or 27
28
 - (f) under a requirement imposed under an Act. 29

121 Mediator precluded from tribunal hearing	1
(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 3
(2) Subsection (1) does not apply to a pre-hearing conference.	4
122 Time limit for mediation before expedited hearing	5
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.	6 7 8 9
<i>Division 4—Expedited hearings</i>	
	10
123 Matters for which an expedited hearing may be held	11
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.	12 13 14
124 Procedure for expedited hearing	15
(1) Before an expedited hearing each party to the hearing must, if directed by the tribunal—	16 17
(a) file statements of witnesses, expert reports and other documents the party intends to rely on; and	18 19
(b) exchange these with the other parties within the time limit set by the tribunal.	20 21
(2) At the expedited hearing—	22
(a) cross-examination is at the discretion of the tribunal; and	23
(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	24 25 26
(c) the tribunal may limit the time for the hearing and allocate the time equally between the parties.	27 28

<i>Division 5—Summary decision</i>	1
125 Summary decision for applicant	2
(1) An applicant who starts a proceeding in the tribunal for a matter mentioned in section 33(1) ²⁴ 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 ”).	3 4 5 6
(2) The tribunal may give the summary decision for the applicant for all or part of the relief claimed in the application if—	7 8
(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	9 10 11
(b) the tribunal is satisfied—	12
(i) the applicant has complied with this division and is entitled to all or part of the relief sought in the application; and	13 14
(ii) the respondent has no defence other than in relation to the amount of the claim; and	15 16
(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.	17 18 19
(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—	20 21 22
(a) order the amount of the claim to be decided in the way the tribunal directs; and	23 24
(b) give leave for the summary decision to be given for the amount decided and costs.	25 26
(4) A second or later application under this division may be made with the tribunal’s leave.	27 28

24 Section 33 (Defence and counterclaim)

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. 1
2

(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. 3
4
5

129 Service 6

Subject to section 128(2),²⁵ 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. 7
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130 Examination of parties and witnesses 11

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— 12
13
14

- (a) a party applying for a summary decision; 15
- (b) a party defending the application for a summary decision; 16
- (c) a person who made an affidavit for a party; 17
- (d) a witness for a party; 18
- (e) for an incorporated party, an officer of the corporation. 19

131 Stay of enforcement 20

(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. 21
22
23

(2) If a summary decision has been registered in a court under section 93,²⁶ a stay of that decision has no effect until it is filed in the court. 24
25

25 Section 128 (Evidence)

26 Section 93 (Registration and enforcement of decisions)

132 Setting aside summary decision	1
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.	2 3
<i>Division 6—Pre-hearing conferences</i>	
4	
133 Pre-hearing conferences	5
(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.	6 7 8
(2) At a pre-hearing conference the tribunal may do any of the following—	9 10
(a) identify and clarify the issues in dispute in the proceeding;	11
(b) promote a settlement of the proceeding;	12
(c) identify the questions of fact and law to be decided by the tribunal;	13 14
(d) if the proceeding is not settled, give directions about the conduct of the proceeding;	15 16
(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.	17 18 19
<i>Examples for subsection (2)(e)—</i>	20
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.	21 22
(3) Written notice of a pre-hearing conference must be given to each party by the director.	23 24
(4) Unless the tribunal otherwise directs, a pre-hearing conference must be held in private.	25 26
(5) The procedure for a pre-hearing conference is at the discretion of the tribunal.	27 28

134 Who is required to attend pre-hearing conferences	1
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.	2 3 4
135 Evidence from pre-hearing conferences inadmissible	5
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—	6 7 8
(a) if all parties agree to the admission of the evidence; or	9
(b) evidence of directions given at a pre-hearing conference or the reasons for the directions; or	10 11
(c) evidence of anything said or done relevant to—	12
(i) a proceeding for an offence in relation to the giving of false or misleading information; or	13 14
(ii) a proceeding under section 86; ²⁷ or	15
(iii) a proceeding relating to an order made under section 137(b)(i). ²⁸	16 17
136 When member may hear proceeding after presiding at a pre-hearing conference	18 19
(1) A member who presides at a pre-hearing conference for a proceeding that attempts to promote a settlement of the proceeding—	20 21
(a) may disqualify himself or herself from constituting the tribunal that hears the proceeding; and	22 23
(b) must not constitute the tribunal that hears the proceeding if a party to the proceeding objects to the member hearing the proceeding.	24 25 26
(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).	27 28 29

27 Section 86 (Contempt of tribunal)

28 Section 137 (Failure of a party to attend a pre-hearing conference)

(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.

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 account²⁹ 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.

²⁹ See section 144 (Trust account).

(2) The tribunal must not be told of the offer until after it has made its decision on the matters in dispute.	1 2
140 Accepting settlement offers	3
(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.	4 5 6
(2) If a period is stated, that period must be at least 14 days from the date of service of the offer.	7 8
(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.	9 10
(4) A party may accept an offer even though it has made a counter offer.	11
141 Consequences if accepted offer is not complied with	12
(1) This section applies if an offer is accepted, but the party who made the offer does not comply with its terms.	13 14
(2) The tribunal, at the request of a party who accepted the offer, may—	15
(a) make an order giving effect to the terms of the offer; or	16
(b) if the party making the offer was the applicant—	17
(i) dismiss the proceeding; or	18
(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;	19 20 21
or	22
(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.	23 24 25
142 Tribunal must order party to pay costs if certain offers to settle rejected	26 27
(1) This section applies if—	28
(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	29 30 31

- (b) the other party does not accept the offer within the time the offer is open; and 1
2
- (c) the offer complies with this division; and 3
- (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. 4
5
6
- (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. 7
8
9
- (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. 10
11
12
- (4) In deciding whether a decision is or is not more favourable to a party than an offer, the tribunal must— 13
14
- (a) take into account any costs it would have awarded on the date the offer was served; and 15
16
- (b) disregard any interest or costs it awarded relating to any period after the date the offer was served. 17
18

PART 8—MISCELLANEOUS 19

143 Finance and staffing of tribunal 20

(1) The tribunal is part of the department for the purposes of the *Financial Administration and Audit Act 1977*. 21
22

(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. 23
24
25

144 Trust account 26

(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. 27
28
29

(2) The tribunal must pay amounts from the trust account as ordered by the tribunal.	1 2
(3) Interest on the trust account is to be applied to the cost of keeping the account.	3 4
145 Annual report on operation of tribunal	5
(1) As soon as practicable after each financial year, but not later than 30 September, the chairperson must give the Minister a report containing—	6 7
(a) a review of the operation of the tribunal during the preceding financial year; and	8 9
(b) proposals for improving the operation of, and forecasts of the workload of, the tribunal in the present financial year.	10 11
(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.	12 13
(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.	14 15
146 Proceedings for offences	16
A prosecution for an offence against this Act is by way of a summary proceeding under the <i>Justices Act 1886</i> .	17 18
147 Limitation on time for starting summary proceeding	19
A proceeding for an offence against this Act must start—	20
(a) within 1 year after the commission of the offence; or	21
(b) within 6 months after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.	22 23 24
148 Penalties to be paid to State agency	25
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.	26 27 28

149 Contracting out prohibited	1
(1) A contract or agreement is void to the extent to which it—	2
(a) is contrary to this Act; or	3
(b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Act.	4
(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.	5
(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.	6
(4) This section applies to contracts or agreements entered into before or after the commencement of this Act.	7
	8
150 Executive officers must ensure corporation complies with Act	9
(1) The executive officers of a corporation must ensure the corporation complies with this Act.	10
(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.	11
Maximum penalty—the penalty for the contravention of the provision by an individual.	12
(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.	13
(4) However, it is a defence for an executive officer to prove—	14
(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	15
(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.	16
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151 Proof of signature unnecessary	1
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.	2 3 4
152 Evidentiary aids	5
(1) A certificate signed by the director certifying anything about the contents of the register is evidence of the thing stated.	6 7
(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.	8 9 10
153 Protection from liability	11
(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.	12 13
(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.	14 15
(3) In this section—	16
“official” means—	17
(a) a member of the staff of the registry; or	18
(b) a person authorised under section 83 ³⁰ by the tribunal.	19
154 Forms	20
The chairperson may approve forms for use under this Act.	21
155 Regulation-making power	22
(1) The Governor in Council may make regulations under this Act.	23
(2) Without limiting subsection (1), a regulation may—	24
(a) set fees payable under this Act; and	25

30 Section 83 (Entry and inspection of property)

-
- | | |
|--|--------|
| (b) impose a penalty of not more than 40 penalty units for a contravention of a provision of a regulation; and | 1
2 |
| (c) provide for the appraisal of the performance of members of the tribunal; and | 3
4 |
| (d) prescribe an application or matter to be a case manager's matter. | 5 |

PART 9—TRANSITIONAL PROVISIONS 6

156 Definitions for pt 9 7

In this part— 8

“former member” means a member of a former tribunal. 9

“former tribunal” see section 157.³¹ 10

“old Act” means the *Queensland Building Tribunal Act 2000* as in force from time to time before the commencement of this section. 11
12

157 Abolition of former tribunals 13

Each of the following (**“former tribunal”**) is abolished— 14

- | | |
|--|----------|
| (a) the Queensland Building Tribunal under the old Act; | 15 |
| (b) the Property Agents and Motor Dealers Tribunal under the <i>Property Agents and Motor Dealers Act 2000</i> ; | 16
17 |
| (c) the Retirement Villages Tribunal under the <i>Retirement Villages Act 1999</i> ; | 18
19 |
| (d) the Liquor Appeals Tribunal under the <i>Liquor Act 1992</i> . | 20 |

158 Proceedings and mediations started before commencement 21

(1) A proceeding that was started in a former tribunal, but not finished before the commencement of this section, must continue under this Act. 22
23

31 Section 157 (Abolition of former tribunals)

(2) A former member who was hearing the proceeding may finish hearing the proceeding, and for only that purpose constitutes the tribunal.	1 2
(3) While the former member finishes hearing the proceeding, the former member is entitled to the remuneration decided by the Governor in Council.	3 4 5
(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.	6 7 8
(5) A mediator who was conducting the mediation may finish conducting the mediation.	9 10
(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.	11 12 13
(7) In this section— “proceeding” does not include a mediation or pre-hearing conference.	14 15
159 Proceedings about matters arising before commencement to be dealt with under this Act	16 17
(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.	18 19 20
(2) Subsection (1) applies whether or not a former tribunal had jurisdiction before the commencement.	21 22
160 Orders and directions	23
(1) An order, direction or other decision of a former tribunal is a decision of the tribunal under this Act.	24 25
(2) In this section— “decision of a former tribunal” includes a decision of a former member.	26 27
161 Records of old tribunal	28
All records of a former tribunal are records of the tribunal under this Act.	29

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 <i>Retirement Villages Act 1999</i> no longer holds the appointment.	1 2 3 4
(6) Compensation is not recoverable by a former member whose appointment ends because of the dissolution of a former tribunal.	5 6
166 Director	7
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.	8 9 10
167 Staff of registry	11
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.	12 13 14 15
PART 10—REPEAL AND CONSEQUENTIAL AMENDMENTS	16 17
168 Repeal	18
The <i>Queensland Building Tribunal Act 2000</i> (2000 Act No. 10) is repealed.	19 20
169 Consequential amendments	21
Schedule 1 amends the Acts it mentions.	22

SCHEDULE 1	1
CONSEQUENTIAL AMENDMENTS	2
section 169	3
ARCHITECTS ACT 2002	4
1 Section 120—	5
<i>omit.</i>	6
2 Section 121(3)—	7
<i>omit.</i>	8
3 Section 122—	9
<i>omit.</i>	10
4 Section 123(2) and (3)—	11
<i>omit.</i>	12
5 Section 124—	13
<i>omit.</i>	14
6 Section 127—	15
<i>omit.</i>	16
7 Schedule 2, definition “tribunal”, ‘Queensland Building Tribunal’—	17
	18

SCHEDULE 1 (continued)	
<i>omit, insert—</i>	1
‘Commercial and Consumer Tribunal’.	2
8 Schedule 2, definition “Tribunal Act”, ‘Queensland Building Tribunal Act 2000’—	3 4
<i>omit, insert—</i>	5
‘Commercial and Consumer Tribunal Act 2003.’.	6
DOMESTIC BUILDING CONTRACTS ACT 2000	
1 Schedule 2, definition “tribunal”—	8
<i>omit, insert—</i>	9
‘“tribunal” means the tribunal under the <i>Commercial and Consumer Tribunal Act 2003</i> .’.	10 11
JUDICIAL REVIEW ACT 1991	
1 Schedule 1, part 1, item 6—	13
<i>omit, insert—</i>	14
‘6. <i>Queensland Building Services Authority Act 1991</i> , section 97 ³² ’.	15
LIQUOR ACT 1992	
1 Section 3(b), ‘a Liquor Appeals Tribunal with jurisdiction’—	17
<i>omit, insert—</i>	18
‘the jurisdiction of the tribunal’.	19

32 *Queensland Building Services Authority Act 1991*, section 97 (Judicial Review excluded for minor domestic building disputes)

SCHEDULE 1 (continued)

2	Section 4, definitions “deputy chairperson”, “registrar” and “Tribunal”—	1
		2
	<i>omit.</i>	3
3	Section 4—	4
	<i>insert—</i>	5
	‘ “registrar” of the tribunal means the director of the tribunal.	6
	“tribunal” means the Commercial and Consumer Tribunal under the tribunal Act.	7
	“tribunal Act” means the <i>Commercial and Consumer Tribunal Act 2003</i> .’.	8
		9
4	Part 2, heading—	10
	<i>omit, insert—</i>	11
	‘PART 2—JURISDICTION OF TRIBUNAL’.	12
5	Part 2, division 1 and 1A—	13
	<i>omit.</i>	14
6	Part 2, division 2, heading—	15
	<i>omit, insert—</i>	16
	‘Division 1—Jurisdiction of the tribunal’.	17
7	Section 21(1), from ‘Tribunal has jurisdiction’ to ‘to it against’—	18
	<i>omit, insert—</i>	19
	‘tribunal may review the’.	20
8	Section 21(1), from ‘and to hear and’ to ‘hear and determine.’—	21
	<i>omit.</i>	22

SCHEDULE 1 (continued)

9	Sections 22 to 29—	1
	<i>omit.</i>	2
10	Part 2, division 3—	3
	<i>renumber</i> as division 2.	4
11	Section 31(1)—	5
	<i>omit, insert—</i>	6
	‘(1) A person entitled to appeal against a decision of the chief executive under section 30 may appeal to the tribunal.’	7
		8
12	Section 31(2) to (4)—	9
	<i>omit.</i>	10
13	Section 34(4)(c), after ‘lawyer’—	11
	<i>insert—</i>	12
	‘or other person’.	13
14	Section 34(4) to (6)—	14
	<i>omit.</i>	15
15	Section 35 to 37—	16
	<i>omit, insert—</i>	17
	‘37 Compliance with orders	18
	‘Every order made by the Tribunal, in exercise of its jurisdiction or of a power had by the Tribunal for the purpose of exercising its jurisdiction must be complied with by the appellant, the chief executive and all other persons affected by the order.	19
		20
		21
		22
	Maximum penalty—350 penalty units.’	23

SCHEDULE 1 (continued)

16 Section 38 to 41A—	1
<i>omit, insert—</i>	2
‘38 Application of the tribunal Act	3
‘To the extent that this part does not provide for an appeal to the tribunal, the <i>Commercial and Consumer Tribunal Act 2003</i> applies.’.	4
	5
17 Section 43(5)—	6
<i>omit, insert—</i>	7
‘(5) In this section—	8
“sensitive information” about a person means information about—	9
(a) the person’s reputation; or	10
(b) the person’s history of behaviour or attitude in relation to the management and discharge of the person’s financial obligations.’.	11
	12
18 Section 117(3)(a), ‘and’—	13
<i>omit, insert—</i>	14
‘or’.	15
19 Section 117(3)(b), after ‘application’—	16
<i>insert—</i>	17
‘, or within a longer time stated by the chief executive in the advice’.	18
PEST MANAGEMENT ACT 2001	19
1 Section 14(1)(d)(ii)—	20
<i>omit, insert—</i>	21

SCHEDULE 1 (continued)

(ii) the repealed <i>Queensland Building Tribunal Act 2000</i> , part 5, division 3; ³³ or	1 2
(iii) the <i>Commercial and Consumer Tribunal Act 2003</i> , part 6, division 2; ³⁴ .	3 4
PLUMBING AND DRAINAGE ACT 2002	5
1 Section 55(2)(b), ‘Queensland Building Tribunal’—	6
<i>omit, insert—</i>	7
‘Commercial and Consumer Tribunal’.	8
2 Sections 129(2) and 130, ‘Queensland Building Tribunal Act 2000’—	9 10
<i>omit, insert—</i>	11
‘ <i>Commercial and Consumer Tribunal Act 2003</i> .’	12
3 Section 131(1) and heading, ‘Queensland Building Tribunal’—	13
<i>omit, insert—</i>	14
‘Commercial and Consumer Tribunal’.	15
4 Section 161(2), definition “building tribunal”—	16
<i>omit.</i>	17
5 Section 161(2), definition “former building certifier”, paragraph (b)(ii), ‘building’—	18 19
<i>omit.</i>	20

33 Repealed *Queensland Building Tribunal Act 2000*, part 5 (Particular jurisdiction of the tribunal), division 3 (Disciplinary proceedings)

34 *Commercial and Consumer Tribunal Act 2003*, part 6 (Proceedings before tribunal), division 2 (Disciplinary proceedings)

SCHEDULE 1 (continued)

6	Section 161(2), definition “professional misconduct”, paragraph (c), ‘building’—	1 2
	<i>omit.</i>	3
7	Section 161(2)—	4
	<i>insert—</i>	5
	‘ “tribunal” means the Commercial and Consumer Tribunal under the Tribunal Act.’.	6 7
8	Section 161(2), definition “Tribunal Act”, ‘Queensland Building Tribunal Act 2000’—	8 9
	<i>omit, insert—</i>	10
	‘ <i>Commercial and Consumer Tribunal Act 2003</i> ’.	11
9	Section 173, inserted section 30B(2)(d), ‘building’—	12
	<i>omit.</i>	13
10	Section 187, inserted section 40(6) and (7)(b), ‘building tribunal’—	14 15
	<i>omit, insert—</i>	16
	‘tribunal’.	17
11	Section 187, inserted section 41(2), ‘building tribunal’—	18
	<i>omit, insert—</i>	19
	‘tribunal’.	20
12	Section 188, inserted section 41A(1), ‘building tribunal’—	21
	<i>omit, insert—</i>	22
	‘tribunal’.	23

SCHEDULE 1 (continued)

13	Section 188, inserted section 41B(2)(b), ‘building tribunal’—	1
	<i>omit, insert—</i>	2
	‘tribunal’.	3
14	Section 188, inserted section 42, heading, ‘Building tribunal’—	4
	<i>omit, insert—</i>	5
	‘Tribunal’.	6
15	Section 188, inserted section 42(1), ‘building tribunal’—	7
	<i>omit, insert—</i>	8
	‘tribunal’.	9
16	Section 188, inserted section 43, ‘section 108’—	10
	<i>omit, insert—</i>	11
	‘section 105 ³⁵ ’.	12
17	Section 188, inserted section 44(3), ‘building’—	13
	<i>omit.</i>	14
18	Section 188, inserted section 45(1) to (9), ‘building tribunal’—	15
	<i>omit, insert—</i>	16
	‘tribunal’.	17
19	Section 188, inserted section 45(9), ‘section 45 of the Tribunal Act’—	18
		19

35 Tribunal Act, section 105 (Tribunal may conduct disciplinary proceeding)

SCHEDULE 1 (continued)

<i>omit, insert—</i>	1
‘section 53 ³⁶ of the Tribunal Act’.	2
20 Section 188, inserted section 45A(10), ‘section 45 of the Tribunal Act’—	3 4
<i>omit, insert—</i>	5
‘section 53 ³⁷ of the Tribunal Act’.	6
21 Section 188, inserted section 45A(1), (3) to (10), ‘building tribunal’—	7 8
<i>omit, insert—</i>	9
‘tribunal’.	10
22 Section 188, inserted section 45B, heading, ‘building’—	11
<i>omit.</i>	12
23 Section 188, inserted section 45B, ‘building tribunal’—	13
<i>omit, insert—</i>	14
‘tribunal’.	15
24 Section 188, inserted section 45C(b), ‘building’—	16
<i>omit.</i>	17
25 Section 191, inserted section 62(1) and (2), ‘building tribunal’—	18
<i>omit, insert—</i>	19
‘tribunal’.	20

36 Tribunal Act, section 53 (Inclusion of parties)

37 Tribunal Act, section 53 (Inclusion of parties)

SCHEDULE 1 (continued)

26	Section 191, inserted section 63(2), ‘building’—	1
	<i>omit.</i>	2
27	Section 191, inserted section 65(1) to (3), ‘building tribunal’—	3
	<i>omit, insert—</i>	4
	‘tribunal’.	5
28	Schedule, definition “review period”, ‘Queensland Building Tribunal’—	6
	<i>omit, insert—</i>	7
	‘Commercial and Consumer Tribunal’.	8
		9
	PROFESSIONAL ENGINEERS ACT 2002	10
1	Section 121—	11
	<i>omit.</i>	12
2	Section 122(3)—	13
	<i>omit.</i>	14
3	Section 123—	15
	<i>omit.</i>	16
4	Section 124(2) and (3)—	17
	<i>omit.</i>	18
5	Section 125—	19
	<i>omit.</i>	20

SCHEDULE 1 (continued)

6	Schedule 2, definition “tribunal”, ‘Queensland Building Tribunal’—	1 2
	<i>omit, insert—</i>	3
	‘Commercial and Consumer Tribunal’.	4
7	Schedule 2, definition “Tribunal Act”, ‘Queensland Building Tribunal Act 2000’—	5 6
	<i>omit, insert—</i>	7
	‘Commercial and Consumer Tribunal Act 2003.’.	8
	PROPERTY AGENTS AND MOTOR DEALERS ACT 2000	9
1	Chapter 13, heading—	10
	<i>omit, insert—</i>	11
	‘CHAPTER 13—JURISDICTION OF TRIBUNAL’.	12
2	Chapter 13, part 1, heading—	13
	<i>omit.</i>	14
3	Chapter 13, part 2, heading—	15
	<i>omit.</i>	16
4	Chapter 13, part 2, division 1—	17
	<i>omit.</i>	18
5	Chapter 13, part 2, division 2, heading—	19
	<i>omit.</i>	20

SCHEDULE 1 (continued)

6	Section 450, ‘The’—	1
	<i>omit, insert—</i>	2
	‘For this Act, the’.	3
7	Section 451—	4
	<i>omit.</i>	5
8	Chapter 13, parts 3 to 5—	6
	<i>omit.</i>	7
9	Section 472(5)—	8
	<i>omit.</i>	9
10	Section 477, note—	10
	<i>omit.</i>	11
11	Section 483(2) and (3)—	12
	<i>omit.</i>	13
12	Section 484, ‘483(1)’—	14
	<i>omit, insert—</i>	15
	‘483’.	16
13	Sections 486 and 487—	17
	<i>omit.</i>	18
14	Sections 497 to 500—	19
	<i>omit, insert—</i>	20

SCHEDULE 1 (continued)

‘497 Starting disciplinary proceedings	1
‘The chief executive may apply to the tribunal to conduct a proceeding to decide whether grounds exist under section 496 for taking disciplinary action against a licensee or registered employee.’.	2 3 4
15 Section 500B(1), from ‘A marketeer’ to ‘chief executive’—	5
<i>omit, insert—</i>	6
‘The chief executive may apply to the tribunal to conduct a marketeer proceeding by’.	7 8
16 Section 500E—	9
<i>omit.</i>	10
17 Sections 502 to 504—	11
<i>omit.</i>	12
18 Chapter 14, part 5, divisions 1 to 5—	13
<i>omit, insert—</i>	14
<i>‘Division 1—Extending time</i>	15
‘511 Tribunal may extend time	16
‘(1) The tribunal may extend the time within which to file the claim or seek review of a decision of the chief executive if the tribunal is satisfied—	17 18
(a) the application is made—	19
(i) for a claim—within the time mentioned in the notice given under section 473(5)(b); ³⁸ or	20 21

38 Section 473 (General provision for how to make a claim)

SCHEDULE 1 (continued)

(ii)	for a review of a decision of the chief executive—within 42 days after the person receives notice of the decision to be reviewed; and	1 2 3
(b)	it is appropriate to extend time having regard to—	4
(i)	the reasons for not making the claim or seeking the review within the time allowed; and	5 6
(ii)	the application generally; and	7
(iii)	for a claim, the relative hardship that an extension of time or a refusal to extend time would place on the claimant or respondent; and	8 9 10
(iv)	the justice of the matter generally.	11
‘(2)	No appeal lies against the tribunal’s decision under this section.’.	12
19	Section 528B and 528BA—	13
	<i>omit.</i>	14
20	Section 531—	15
	<i>omit.</i>	16
21	Sections 533 to 535—	17
	<i>omit.</i>	18
22	Chapter 14, part 5, divisions 11 to 13—	19
	<i>omit.</i>	20
23	Schedule 2, definition “presiding case manager”, ‘<i>Queensland Building Tribunal Act 2000</i>’—	21 22
	<i>omit, insert—</i>	23
	<i>‘Commercial and Consumer Tribunal Act 2003’.</i>	24

SCHEDULE 1 (continued)

24	Schedule 2, definition “Property Agents and Motor Dealers Tribunal”—	1 2
	<i>omit.</i>	3
25	Schedule 2, definition “registrar”, after ‘director’—	4
	<i>omit, insert—</i>	5
	‘under the <i>Commercial and Consumer Tribunal Act 2003</i> .’.	6
26	Schedule 2, definition “tribunal”—	7
	<i>omit, insert—</i>	8
	‘ “tribunal” means the tribunal under the <i>Commercial and Consumer Tribunal Act 2003</i> .’.	9 10
	QUEENSLAND BUILDING SERVICES AUTHORITY	11
	ACT 1991	12
1	Section 39(3)(b), ‘section 111 of the Tribunal Act’—	13
	<i>omit, insert—</i>	14
	‘section 107 ³⁹ of the Tribunal Act’.	15
2	Section 39(3)(c), ‘section 101 of the Tribunal Act’—	16
	<i>omit, insert—</i>	17
	‘section 84 ⁴⁰ ’.	18
3	After section 49A—	19
	<i>insert—</i>	20

39 Tribunal Act, section 107 (Orders for disciplinary action)

40 Section 84 (Tribunal to decide about rectification or completion work)

SCHEDULE 1 (continued)

‘49B ‘Suspension or cancellation for failure to comply with tribunal’s orders and directions (s 86 QBTA)	1 2
‘(1) The tribunal may, in a proceeding to which a licensee is a party, order that the licensee’s licence be suspended or cancelled if the licensee fails to comply with an order or direction of the tribunal within the time allowed by the tribunal.	3 4 5 6
‘(2) Before ordering that a licence be suspended or cancelled, the tribunal must give the licensee a reasonable opportunity to show cause why it should not be cancelled or suspended.	7 8 9
‘(3) Subsection (2) does not apply to an order or direction made in a disciplinary proceeding under part 7, division 4. ⁴¹	10 11
‘(4) An order under this section operates, of its own force, to suspend or cancel the licence if the licensee fails to comply with the tribunal’s order or direction within the time allowed by the tribunal.’	12 13 14
4 Section 56AD(6), ‘the Tribunal Act, section 104(1)(j)’—	15
<i>omit, insert—</i>	16
‘section 86(1)(j) ⁴² ’.	17
5 Section 61(a), ‘the Tribunal Act, section 104(1)(j)’—	18
<i>omit, insert—</i>	19
‘section 86(1)(j) ⁴³ ’.	20
6 Section 61(b), ‘the Tribunal Act, section 104(1)(k)’—	21
<i>omit, insert—</i>	22
‘section 86(1)(k) ⁴⁴ ’.	23

41 Part 7 (Jurisdiction of the tribunal), division 4 (Disciplinary proceedings)

42 Section 86 (Reviewable decisions)

43 Section 86 (Reviewable decisions)

44 Section 86 (Reviewable decisions)

SCHEDULE 1 (continued)

7	Section 67AP, heading—	1
	<i>omit, insert—</i>	2
	‘Relationship of this part with pt 7, div 4’.	3
8	Section 67AP(1)—	4
	<i>omit, insert—</i>	5
	‘(1) Subsection (2) applies if the authority has applied under section 88⁴⁵ for disciplinary action relating to defective building work on a ground mentioned in section 89(i) or 90(d)⁴⁶ and the tribunal has decided the proceeding.’.	6 7 8 9
9	Section 67AP(5), ‘the Tribunal Act, section 108’—	10
	<i>omit, insert—</i>	11
	‘section 88⁴⁷’.	12
10	Section 67AP(6)(a), ‘the Tribunal Act, section 104(1)(n)’—	13
	<i>omit, insert—</i>	14
	‘section 86(1)(n)⁴⁸’.	15
11	Section 67AP(8)—	16
	<i>omit, insert—</i>	17
	‘(8) For subsection (7), the authority is taken to have applied under section 88 and the tribunal must consider whether proper grounds exist under 89(i) or 90(d).⁴⁹’.	18 19 20

45 Section 88 (Tribunal has jurisdiction to conduct disciplinary proceeding)

46 Section 89 (Proper grounds for disciplinary action against a licensee) or 90 (Proper grounds for disciplinary action against person not a licensee)

47 Section 88 (Tribunal has jurisdiction to conduct disciplinary proceeding)

48 Section 86 (Reviewable decisions)

49 Section 89 (Proper grounds for disciplinary action against a licensee) or 90 (Proper grounds for disciplinary action against person not a licensee)

SCHEDULE 1 (continued)

12	After part 6—	1
	<i>insert—</i>	2
	‘PART 7—JURISDICTION OF TRIBUNAL	3
	<i>‘Division 1—Meaning of central terms</i>	4
‘75	“Tribunal work” defined (ss 7 & 8 QBTA)	5
	‘(1) The following is “tribunal work” —	6
	(a) the erection or construction of a building;	7
	(b) the renovation, alteration, extension, improvement or repair of a building;	8 9
	(c) the provision of electrical work, water supply, sewerage or drainage or other like services for a building;	10 11
	(d) the demolition, removal or relocation of a building;	12
	(e) any site work (including the construction of retaining structures, driveways, landscaping and the construction of a swimming pool) related to tribunal work of a kind mentioned in paragraphs (a) to (d);	13 14 15 16
	(f) the preparation of plans, specifications or bills of quantity for the carrying out of tribunal work;	17 18
	(g) the inspection of a completed building;	19
	(h) subject to subsection (3), work prescribed under a regulation.	20
	‘(2) To remove doubt, it is declared that reviewable domestic work is tribunal work.	21 22
	‘(3) A person carries out tribunal work whether the person carries it out personally, or directly or indirectly causes it to be carried out.	23 24
	‘(4) A person is taken to carry out tribunal work if the person provides advisory services, administration services, management services or supervisory services relating to the tribunal work.	25 26 27

SCHEDULE 1 (continued)

‘(5) A person undertakes to carry out tribunal work if the person enters into a contract to carry it out or submits a tender or makes an offer to carry it out.	1 2 3
‘76 What is not “tribunal work” (s 7 QBTA)	4
‘(1) The following is not “tribunal work”—	5
(a) the construction, extension, repair or replacement of a water reticulation system, sewerage system or storm water drain, outside the boundaries of private property;	6 7 8
(b) the building or maintenance of a road as defined under the <i>Land Act 1994</i> ;	9 10
(c) the construction, maintenance or repair of a bridge, other than a bridge on private property;	11 12
(d) the construction, maintenance or repair of railway tracks, signals or associated structures, unless the structures are buildings for residential purposes, or are storage or service facilities;	13 14 15
(e) the construction, maintenance or repair of airport runways, taxiways and aprons;	16 17
(f) the construction, maintenance or repair of ports or ports infrastructure, unless the structures are buildings for residential purposes, or are storage or service facilities;	18 19 20
(g) the construction, maintenance or repair of a dam;	21
(h) the construction, maintenance or repair of communications installations performed for a public company or public body engaged in radio or television broadcasting or in some other form of communications business or undertaking;	22 23 24 25
(i) the installation of manufacturing equipment or equipment for hoisting, conveying or transporting materials or products (including primary produce), other than the installation of fixed structures providing shelter for the equipment;	26 27 28 29
(j) construction work in mining;	30
(k) work consisting of monumental masonry, sculpture, or the erection or construction of statues, fountains or other works of	31 32

SCHEDULE 1 (continued)

art, other than work affecting the way in which a building is constructed;	1 2
(l) tribunal work carried out by the State for the State or for an entity representing the State;	3 4
(m) tribunal work carried out by a local government for a local government, the State or an entity representing a local government or the State;	5 6 7
(n) tribunal work carried out outside Queensland.	8
‘(2) For subsection (1)(l), tribunal work is not carried out by the State if the work is carried out for the State by an independent contractor.	9 10
‘(3) For subsection (1)(m), tribunal work is not carried out by a local government if the work is carried out for the local government by an independent contractor.	11 12 13
 <i>‘Division 2—Building disputes</i>	 14
 ‘77 Tribunal may decide building dispute (s 93 QBTA)	 15
‘(1) A person involved in a building dispute may apply to the tribunal to have the tribunal decide the dispute.	16 17
‘(2) Without limiting the tribunal’s powers to resolve the dispute, the tribunal may exercise 1 or more of the following powers—	18 19
(a) order the payment of an amount found to be owing by 1 party to another;	20 21
(b) order relief from payment of an amount claimed by 1 party from another;	22 23
(c) award damages, and interest on the damages at the rate, and calculated in the way, prescribed under a regulation;	24 25
(d) order restitution;	26
(e) declare any misleading, deceptive or otherwise unjust contractual term to be of no effect, or otherwise vary a contract to avoid injustice;	27 28 29
(f) avoid a policy of insurance under the statutory insurance scheme;	30

SCHEDULE 1 (continued)

(g) order rectification or completion of defective or incomplete tribunal work;	1 2
(h) award costs.	3
‘78 When major commercial building dispute may be heard by tribunal (s 94 QBTA)	4 5
‘A major commercial building dispute may be decided by the tribunal only if the tribunal is satisfied all parties to the dispute consent to it doing so.	6 7 8
‘79 Procedure to decide whether all parties consent (s 95 QBTA)	9
‘(1) An application to start a proceeding for a major commercial building dispute must be accompanied by the written consent of all parties to the dispute.	10 11 12
‘(2) The written consent must include an acknowledgment by the consenting party that the consent can not be withdrawn.	13 14
‘(3) The tribunal may, before another step is taken in the proceeding, conduct a pre-hearing conference to decide whether there is another person who should be joined as a party to the dispute.	15 16 17
‘(4) If the tribunal decides that there is another person who should be joined as a party to the dispute, the tribunal—	18 19
(a) must give the consenting parties an opportunity to obtain the written consent of the other person; and	20 21
(b) may hear the dispute only if the other person consents.	22
‘(5) If the consenting parties obtain the consent of the other person, the tribunal must join the other person as a party to the dispute.	23 24
‘(6) The consent of all parties to the dispute must be obtained before another step is taken in the proceeding.	25 26
‘80 Procedure if another party discovered (s 96 QBTA)	27
‘(1) This section applies if the tribunal becomes aware that there is another person who should be joined as a party to a major commercial building dispute (other than at a pre-hearing conference under section 79).	28 29 30

SCHEDULE 1 (continued)

‘(2) The tribunal does not have jurisdiction to decide the dispute.	1
‘(3) The tribunal must order that the proceeding be removed to a court under section 94(3). ⁵⁰	2 3
‘81 Consent may not be withdrawn (s 97 QBTA)	4
‘A party that gives written consent to have a major commercial building dispute heard and decided by the tribunal can not withdraw the consent.	5 6
‘82 Tribunal may make interim order (s 98 QBTA)	7
‘(1) Before finally deciding a building dispute, the tribunal may make 1 or more of the interim orders mentioned in subsections (2) to (4).	8 9
‘(2) The tribunal may make an order requiring a building contractor to rectify or complete defined tribunal work, or tribunal work to be defined by a process identified in the order, that is the subject of the dispute.	10 11 12
‘(3) The tribunal may make an order requiring a building owner, in relation to the amount claimed to be owing from the building owner to a building contractor, to do 1 or more of the following—	13 14 15
(a) pay an amount decided by the tribunal into the tribunal’s trust account to be held until the tribunal is satisfied that the building contractor has completed the tribunal work;	16 17 18
(b) provide security of a type and for an amount decided by the tribunal until the tribunal is satisfied that the building contractor has completed the tribunal work;	19 20 21
(c) pay an amount decided by the tribunal to the building contractor.	22
‘(4) The tribunal may make an order requiring a person, in relation to the amount claimed to be owing from the person to a subcontractor, to do 1 or more of the following—	23 24 25
(a) pay an amount decided by the tribunal into the tribunal’s trust account to be held until the tribunal is satisfied that the subcontractor has completed the tribunal work;	26 27 28

50 Section 94 (Transfer of proceedings between tribunal and the courts)

SCHEDULE 1 (continued)

(b)	provide security of a type and for an amount decided by the tribunal until the tribunal is satisfied that the subcontractor has completed the tribunal work;	1 2 3
(c)	pay an amount decided by the tribunal to the subcontractor.	4
‘(5)	On being satisfied the tribunal work has been completed the tribunal must order—	5 6
(a)	the amount paid into the tribunal’s trust account under subsection (3)(a) or (4)(a) be paid to the building contractor or subcontractor; or	7 8 9
(b)	the application of the security in satisfaction of the amount decided by the tribunal under subsection (3)(b) or (4)(b) in favour of the building contractor or subcontractor.	10 11 12
‘(6)	However for subsection (5)(b), the tribunal may order that the security be discharged if an amount equal to the amount of the security is paid to the building contractor or subcontractor.	13 14 15
‘83	Proceeding in tribunal stops action by authority (s 99 QBTA)	16
‘(1)	If a proceeding about a building dispute is started in or removed from a court to the tribunal—	17 18
(a)	the tribunal is to have the management of the dispute; and	19
(b)	the authority must not act in relation to the dispute except as allowed or required by section 84.	20 21
‘(2)	To remove doubt, it is declared that nothing in this section affects a direction that tribunal work be rectified or completed issued by the authority before the proceeding is started or removed.	22 23 24
‘84	Tribunal to decide about rectification or completion work (s 101 QBTA)	25 26
‘(1)	This section applies if—	27
(a)	a proceeding about a building dispute is started in, or removed from a court to, the tribunal; and	28 29

SCHEDULE 1 (continued)

(b) before the proceeding is started or removed, the authority has acted in relation to the building dispute but has not issued a direction that tribunal work be rectified or completed.	1 2 3
‘(2) The authority may apply to the tribunal for an order that tribunal work be rectified or completed if the authority considers the tribunal work needs to be urgently rectified or completed.	4 5 6
‘(3) The application must be heard by the tribunal as an expedited hearing.	7 8
‘(4) Whether or not the authority applies under subsection (2), the authority may also apply to the tribunal for a decision about whether it would have been appropriate for the authority to have issued a direction to rectify or complete tribunal work if section 83 had not stopped the authority from acting further in relation to the dispute.	9 10 11 12 13
‘(5) The tribunal must make a decision under subsection (4) if it hears the proceeding mentioned in subsection (1).	14 15
‘85 Tribunal may hear dispute while contract still in operation (s 102 QBTA)	16 17
‘The tribunal may make an order to resolve a building dispute even though the contract under which the dispute arose has not been terminated or finalised.	18 19 20
<i>‘Division 3—Proceedings for review</i>	21
‘86 Reviewable decisions (s 104 QBTA)	22
‘(1) The tribunal may review the following decisions of the authority—	23
(a) a decision to refuse an application for a licence or a permit;	24
(b) a decision to impose or vary a condition of a licence;	25
(c) a decision to suspend or cancel a licence;	26
(d) a decision that there are reasonable grounds for concern that a licensee does not satisfy the relevant financial requirements for a licence;	27 28 29

SCHEDULE 1 (continued)

(e)	a decision to direct or not to direct rectification or completion of tribunal work;	1 2
(f)	a decision that tribunal work undertaken at the direction of the authority is or is not of a satisfactory standard;	3 4
(g)	a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete tribunal work;	5 6
(h)	a decision to disallow a claim under the statutory insurance scheme wholly or in part;	7 8
(i)	a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the statutory insurance scheme;	9 10 11
(j)	a decision not to categorise an individual as a permitted individual for a relevant event;	12 13
(k)	a decision under section 56AF or 56AG ⁵¹ that—	14
	(i) a person is an excluded individual or excluded company; or	15
	(ii) an individual is still a director or secretary of, or an influential person for, a company;	16 17
(l)	a decision under section 66 or 67 that a person is a convicted company officer;	18 19
(m)	a decision under section 67AA that a company that is a licensee has an individual who is a convicted company officer as a director or secretary of, or an influential person or nominee for, the company;	20 21 22 23
(n)	a decision under section 67AH, 67AI, 67AL or 67AM that an individual is a banned individual for a stated term;	24 25
(o)	a decision under section 67AN that a company that is a licensee has an individual who is a banned individual as a director or secretary of, or an influential person or nominee for, the company;	26 27 28 29
(p)	a decision under section 67AZF, 67AZG, 67AZJ or 67AZK that an individual is a disqualified individual for a stated term;	30 31

51 Section 56AF (Procedure if licensee is excluded individual) or 56AG (Procedure if licensee is excluded company)

SCHEDULE 1 (continued)

- (q) a decision under section 67AZL that a company that is a licensee has an individual who is a disqualified individual as a director or secretary of, or an influential person or nominee for, the company. 1
2
3
4
- ‘(2) However, the tribunal may not review the following decisions of the authority— 5
6
- (a) a decision to recover an amount under section 71; 7
- (b) a decision to direct rectification or completion of tribunal work by a building contractor and any finding by the authority in arriving at the decision if— 8
9
10
- (i) 28 days have elapsed from the date the direction to rectify or complete was served on the building contractor and the contractor has not, within that time, applied to the tribunal for a review of the decision; and 11
12
13
14
- (ii) the authority has— 15
- (A) started a disciplinary proceeding against the building contractor by an application under division 4;⁵² or 16
17
- (B) served a notice on the building contractor advising a claim under the statutory insurance scheme has been approved in relation to tribunal work stated in the direction; 18
19
20
21
- (c) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete tribunal work if 22
23
24
25
26
28 days have elapsed since the decision was served on the building contractor and the contractor has not, within that time, applied to the tribunal for a review of the decision.
- ‘(3) For subsection (1)(n), if the tribunal, after reviewing the matters mentioned in section 67AH(1)(a) and (b), 67AI(1)(a) and (b), 67AL(1)(a) and (b) or 67AM(1)(a) and (b), is satisfied that an individual is a banned individual, it may not vary the term of ban applying to the individual if it has been correctly calculated under section 67AO. 27
28
29
30
31
- ‘(4) For subsection (1)(p), if the tribunal, after reviewing the matters mentioned in section 67AZF(1), 67AZG(1), 67AZJ(1)(a) and (b) or 32
33

52 Division 4 (Disciplinary proceedings)

SCHEDULE 1 (continued)

67AZK(1)(a) and (b), is satisfied that an individual is a disqualified individual, it may not vary the term of disqualification applying to the individual if it has been correctly calculated under section 67AZM.	1 2 3
‘87 Application for review (s 105 QBTA)	4
‘A person affected by a reviewable decision of the authority may apply to the tribunal for a review of the decision.	5 6
<i>‘Division 4—Disciplinary proceedings</i>	7
‘88 Tribunal has jurisdiction to conduct disciplinary proceeding (s 108 QBTA)	8 9
‘The authority may apply to the tribunal to conduct a proceeding to decide whether proper grounds exist for taking disciplinary action against a person under this division.	10 11 12
‘89 Proper grounds for disciplinary action against a licensee (s 109 QBTA)	13 14
‘For section 88, ⁵³ proper grounds exist for taking disciplinary action against a licensee if—	15 16
(a) the licensee contravenes a requirement imposed under this Act or the <i>Domestic Building Contracts Act 2000</i> ; or	17 18
(b) the licensee is convicted of an indictable offence; or	19
(c) if a licensee is a corporation—a director or other person who is in a position to control or substantially influence the conduct of the corporation’s affairs is not a fit and proper person to exercise that control or influence; or	20 21 22 23
(d) the licensee is carrying on business under the licence in partnership with a person who is not a fit and proper person to have an interest in the business; or	24 25 26
(e) the licensee is bankrupt or insolvent; or	27

53 Section 88 (Tribunal has jurisdiction to conduct disciplinary proceeding)

SCHEDULE 1 (continued)

(f) the licensee has committed an offence involving fraud or dishonesty relating to the business carried on under the licence; or	1 2 3
(g) the licensee knowingly helps a person to perform tribunal work in contravention of this Act or the <i>Domestic Building Contracts Act 2000</i> ; or	4 5 6
(h) the licensee contravenes or is taken to have contravened the <i>Fair Trading Act 1989</i> in relation to tribunal work carried out under the licence; or	7 8 9
(i) the licensee is negligent or incompetent in carrying out tribunal work under the licence; or	10 11
(j) the licensee fails to comply with a direction of the authority to rectify or complete tribunal work; or	12 13
(k) the licensee contravenes a condition of the licence; or	14
(l) the licensee owes an amount to the authority and fails to comply with a demand by the authority to pay the amount; or	15 16
(m) the licensee fails to comply with an order of the tribunal.	17
‘90 Proper grounds for disciplinary action against person not a licensee (s 110 QBTA)	18 19
‘(1) For section 88, ⁵⁴ proper grounds exist for taking disciplinary action against a person who is not a licensee if the person—	20 21
(a) carries out, or undertakes to carry out, tribunal work for which a licence is required without holding a licence of the appropriate class; or	22 23 24
(b) has committed an offence involving fraud or dishonesty relating to the performance of tribunal work; or	25 26
(c) contravenes or is taken to have contravened the <i>Fair Trading Act 1989</i> in relation to the performance of tribunal work; or	27 28
(d) is negligent or incompetent in carrying out tribunal work for which a licence is required; or	29 30

54 Section 88 (Tribunal has jurisdiction to conduct disciplinary proceeding)

SCHEDULE 1 (continued)

(e) fails to comply with a direction of the authority to rectify or complete tribunal work.	1 2
‘(2) In this section—	3
“undertakes to carry out” tribunal work means enters into a contract to carry out tribunal work or submits a tender or makes an offer to carry out tribunal work, unless the contract, submission or offer is conditional on the person obtaining a licence of the appropriate class.	4 5 6 7
‘91 Orders for disciplinary action (s 111 QBTA)	8
‘If the tribunal decides that proper grounds exist for taking disciplinary action against a person, the tribunal may, in relation to defective or incomplete tribunal work carried out by the person for a building owner—	9 10 11
(a) make an order that the person rectify or complete the work; or	12
(b) if the person is not appropriately licensed to rectify or complete the work—make an order that the person have the work rectified or completed by another person who is appropriately licensed; or	13 14 15
(c) make an order that the person pay the building owner an amount sufficient to rectify or complete the work.	16 17
 <i>‘Division 5—Public Examinations</i>	 18
‘92 Tribunal may conduct public examination (s 112 QBTA)	19
‘The tribunal may, on application by the authority, conduct a public examination—	20 21
(a) that investigates the conduct or competence of a person who has carried out tribunal work or undertaken to carry out tribunal work; or	22 23 24
(b) that investigates whether a person—	25
(i) meets the financial requirements imposed for the licence held by the person; or	26 27
(ii) has the qualifications and experience required for the licence held by the person; or	28 29

SCHEDULE 1 (continued)

(iii) if the person is the nominated supervisor for a corporation that holds a licence has the qualifications and experience required for the licence held by the corporation; or	1 2 3
(iv) is a fit and proper person to hold a licence; or	4
(v) if the person exercises control over a corporation that holds a licence—is a fit and proper person to exercise control over the corporation; or	5 6 7
(vi) has breached a condition imposed on the person’s licence.	8
<i>‘Division 6—Decisions about debts arising from statutory insurance scheme</i>	9 10
‘93 Decisions about debts arising from statutory insurance scheme (s 116 QBTA)	11 12
‘(1) The authority may recover a debt under section 71 by application to the tribunal under this section.	13 14
‘(2) The tribunal may exercise 1 or more of the following powers—	15
(a) order the payment of an amount the tribunal has found to be owing to the authority;	16 17
(b) order the payment of interest on the amount mentioned in paragraph (a);	18 19
(c) order the payment of costs;	20
(d) order that amounts mentioned in paragraphs (a), (b) and (c) be paid by instalments or another way directed by the tribunal.	21 22
<i>‘Division 7—Transfer of proceedings</i>	23
‘94 Transfer of proceedings between tribunal and the courts (s 117 QBTA)	24 25
‘If proceedings relating to a major commercial building dispute are brought in a court, the court may order that the proceeding be transferred to the tribunal only if all parties to the dispute apply for the order.	26 27 28

SCHEDULE 1 (continued)

Division 8—Expedited hearings

	1
‘95 Expedited hearing of domestic building disputes (s 128 QBTA)	2
‘(1) The tribunal must decide a minor domestic building dispute at an expedited hearing if the dispute has been to mediation but has not been settled, unless the tribunal considers the dispute is too complex to be properly dealt with at an expedited hearing.	3 4 5 6
<i>Example of ‘too complex to be properly dealt with’—</i>	7
The dispute involves complex legal and contractual issues for which the tribunal is unaware of any authoritative precedent.	8 9
‘(2) The tribunal may decide a domestic building dispute that is not a minor domestic building dispute at an expedited hearing only if—	10 11
(a) all parties to the proceeding apply to the tribunal for the matter to be dealt with at an expedited hearing; and	12 13
(b) the tribunal considers it appropriate for the dispute to be decided at an expedited hearing.	14 15
‘96 Certain minor commercial building disputes may be expedited (s 129 QBTA)	16 17
‘(1) The tribunal may conduct an expedited hearing for a minor commercial building dispute between a subcontractor and another person if—	18 19 20
(a) neither the claim nor any counterclaim exceeds \$10 000; and	21
(b) the dispute relates only to a claim for moneys owing by a person to the subcontractor for tribunal work completed by the subcontractor under a written contract; and	22 23 24
(c) the subcontractor files an application for an expedited hearing, a copy of the contract and an affidavit by the subcontractor stating that—	25 26 27
(i) the tribunal work under the contract has been completed by the subcontractor to the standard required under the contract; and	28 29 30

SCHEDULE 1 (continued)

(ii) a claim for payment payable under the contract has been given to the other person by the subcontractor; and	1 2
(iii) the amount claimed by the subcontractor has not been paid by the other person; and	3 4
(iv) no complaint about the tribunal work under the contract has been made to the subcontractor by the other person.	5 6
‘(2) A hearing under this section may proceed only if the subcontractor has given the other person a copy of the application and all documents filed by the subcontractor at least 5 days before the hearing.	7 8 9
‘97 Judicial Review excluded for minor domestic building disputes (s 170 QBTA)	10 11
‘(1) The exercise by the tribunal of its powers in relation to a proceeding for a minor domestic building dispute is not subject to the <i>Judicial Review Act 1991</i> .	12 13 14
‘(2) Subsection (1) does not apply if—	15
(a) the tribunal had or has no jurisdiction under the Act to hear and decide the proceeding; or	16 17
(b) a breach of the rules of natural justice happened in relation to a party to the proceeding.’	18 19
13 Section 111A(1)(b), ‘part 5, division 3 of the Tribunal Act’—	20
<i>omit, insert—</i>	21
‘part 7, division 4 ⁵⁵ ’.	22
14 Section 111C(2)(a), ‘section 111 of the Tribunal Act’—	23
<i>omit, insert—</i>	24
‘section 91 ⁵⁶ ’.	25

55 Part 7 (Jurisdiction of tribunal), division 4 (Disciplinary proceedings)

56 Section 91 (Orders for disciplinary action)

SCHEDULE 1 (continued)

15	Schedule 2, definitions “tribunal” and “Tribunal Act”—	1
	<i>omit.</i>	2
16	Schedule 2—	3
	<i>insert—</i>	4
	“building dispute” means—	5
	(a) a domestic building dispute; or	6
	(b) a minor commercial building dispute; or	7
	(c) a major commercial building dispute if the parties to the dispute consent to the dispute being heard by the tribunal under section 79. ⁵⁷	8 9 10
	“building owner” means a person for whom tribunal work is to be, is being or has been carried out, but does not include a building contractor for whom tribunal work is carried out by a subcontractor.	11 12 13
	“commercial building dispute” means—	14
	(a) a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work; or	15 16 17 18
	(b) a claim or dispute arising between 2 or more building contractors relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work; or	19 20 21
	(c) a claim or dispute in negligence, nuisance or trespass related to the performance of reviewable commercial work other than a claim for personal injuries; or	22 23 24
	(d) a claim or dispute arising between a building owner or a building contractor and any 1 or more of the following relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work—	25 26 27 28
	(i) an architect;	29

57 Section 79 (Procedure to decide whether all parties consent)

SCHEDULE 1 (continued)

(ii) an engineer;	1
(iii) a surveyor;	2
(iv) a quantity surveyor;	3
(v) an electrician or an electrical contractor;	4
(vi) a supplier or manufacturer of materials used in the tribunal work.	5 6
“contract” means a contract for carrying out tribunal work.	7
“decision” includes an order or direction.	8
“disciplinary proceeding” means a proceeding under section 88. ⁵⁸	9
“domestic building dispute” means—	10
(a) a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work; or	11 12 13 14
(b) a claim or dispute arising between 2 or more building contractors relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work; or	15 16 17
(c) a claim or dispute in negligence, nuisance or trespass related to the performance of reviewable domestic work other than a claim for personal injuries; or	18 19 20
(d) a claim or dispute arising between a building owner or a building contractor and any 1 or more of the following relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work—	21 22 23 24
(i) an architect;	25
(ii) an engineer;	26
(iii) a surveyor;	27
(iv) a quantity surveyor;	28
(v) an electrician or an electrical contractor;	29

58 Section 88 (Tribunal has jurisdiction to conduct disciplinary proceeding)

SCHEDULE 1 (continued)

(vi) a supplier or manufacturer of materials used in the tribunal work.	1 2
“major commercial building dispute” means a commercial building dispute where either the claim or the counterclaim exceeds \$50 000.	3 4
“minor commercial building dispute” means a commercial building dispute where neither the claim nor the counterclaim exceeds \$50 000.	5 6
“minor domestic building dispute” means a domestic building dispute where neither the claim nor the counterclaim exceeds \$10 000.	7 8
“reviewable commercial work” means tribunal work other than reviewable domestic work.	9 10
“reviewable domestic work” means domestic building work under the <i>Domestic Building Contracts Act 2000</i> , except that for applying section 8(8) of that Act, the definition “excluded building work” in that Act is taken not to mean anything mentioned in paragraph (b), (c) or (d) of the definition.	11 12 13 14 15
“subcontractor” means—	16
(a) a building contractor that carries out tribunal work for another building contractor; or	17 18
(b) a building contractor that carries out tribunal work for another person under a construction management trade contract under section 67B.	19 20 21
“tribunal” means the tribunal under the <i>Commercial and Consumer Tribunal Act 2003</i> .	22 23
“Tribunal Act” means the <i>Commercial and Consumer Tribunal Act 2003</i> .	24

RACING ACT 2002 25

1 Sections 165(2) and 355(2), ‘ <i>Queensland Building Tribunal Act 2000</i> , section 26C’—	26 27
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SCHEDULE 1 (continued)

<i>omit, insert—</i>	1
<i>‘Commercial and Consumer Tribunal Act 2003, section 28⁵⁹’.</i>	2
2 Schedule 3, definition “presiding case manager”, ‘Queensland Building Tribunal Act 2000’—	3 4
<i>omit, insert—</i>	5
<i>‘Commercial and Consumer Tribunal Act 2003’.</i>	6
3 Schedule 3, definition “secretary”—	7
<i>omit, insert—</i>	8
<i>‘“secretary” means the director under the Commercial and Consumer Tribunal Act 2003.’.</i>	9 10
RESIDENTIAL SERVICES (ACCREDITATION) ACT 2002	11 12
1 Sections 84, 85(1), 86(1), 87(1), 88, 90(2), 129(5)(a), 155(1)(d), 158(4)(c), 160(1), 161(1), 162(1) and 163, ‘Queensland Building Tribunal’—	13 14 15
<i>omit, insert—</i>	16
<i>‘Commercial and Consumer Tribunal’.</i>	17
2 Section 101(1)(b), ‘Queensland Building Tribunal Act 2000’—	18
<i>omit, insert—</i>	19
<i>‘Commercial and Consumer Tribunal Act 2003’.</i>	20

59 *Commercial and Consumer Tribunal Act 2003, section 28 (Presiding case manager’s power to deal with particular applications to tribunal)*

SCHEDULE 1 (continued)

3	Section 157—	1
	<i>omit.</i>	2
4	Section 159(1), from ‘Queensland’—	3
	<i>omit, insert—</i>	4
	‘Commercial and Consumer Tribunal. ⁶⁰ ’.	5
5	Sections 161 to 163—	6
	<i>omit.</i>	7
6	Schedule 2, definition “Queensland Building Tribunal”—	8
	<i>omit, insert—</i>	9
	‘ “Commercial and Consumer Tribunal” means the tribunal under the	10
	<i>Commercial and Consumer Tribunal Act 2003.</i> ’.	11
	RETIREMENT VILLAGES ACT 1999	12
1	Section 22(b), ‘a tribunal’—	13
	<i>omit, insert—</i>	14
	‘an’.	15
2	Section 59(1)(b) and (2)(b), ‘a tribunal’—	16
	<i>omit, insert—</i>	17
	‘the tribunal’.	18

⁶⁰ See the *Commercial and Consumer Tribunal Act 2003*, section 31 (How to start proceedings).

SCHEDULE 1 (continued)

3	Section 104(1)(c), ‘a tribunal’—	1
	<i>omit, insert—</i>	2
	‘the tribunal’.	3
4	Section 158(1)(b)(ii), ‘mediation conference’—	4
	<i>omit, insert—</i>	5
	‘conference (“ mediation conference ”)’.	6
5	Section 166(c)—	7
	<i>omit.</i>	8
6	Section 167, ‘the registrar to refer the dispute to a’—	9
	<i>omit, insert—</i>	10
	‘the’.	11
7	Section 167(a), ‘mediated’—	12
	<i>omit, insert—</i>	13
	‘mediation’.	14
8	Section 168—	15
	<i>omit.</i>	16
9	Sections 169(2), 170(2) and 171(2), ‘registrar for an order by a tribunal’—	17
	<i>omit, insert—</i>	18
	‘tribunal for an order’.	19
		20

SCHEDULE 1 (continued)

10 Section 172—	1
<i>omit.</i>	2
11 Part 11, division 1—	3
<i>omit.</i>	4
12 Section 191(2), ‘Without limiting subsection (1) or sections 192 to 194’—	5
	6
<i>omit, insert—</i>	7
‘For example’.	8
13 Section 191(4)—	9
<i>omit.</i>	10
14 Sections 195 and 196—	11
<i>omit.</i>	12
15 Section 198—	13
<i>omit.</i>	14
16 Part 11, division 3—	15
<i>omit.</i>	16
17 Part 12, divisions 1 and 1A—	17
<i>omit.</i>	18
18 Part 12, division 2, heading—	19
<i>omit.</i>	20

SCHEDULE 1 (continued)

19 Sections 207 and 208—	1
<i>omit.</i>	2
20 Section 209, ‘A’—	3
<i>omit, insert—</i>	4
‘The’.	5
21 Section 209(a), ‘a’—	6
<i>omit, insert—</i>	7
‘the’.	8
22 Section 210(1), ‘A’—	9
<i>omit, insert—</i>	10
‘The’.	11
23 Sections 211 and 212—	12
<i>omit.</i>	13
24 Part 13, division 1—	14
<i>omit.</i>	15
25 Section 215(2)(b), ‘a tribunal’—	16
<i>omit, insert—</i>	17
‘the tribunal’.	18
26 Sections 216 and 218—	19
<i>omit.</i>	20

SCHEDULE 1 (continued)

27	Schedule, definitions “chairperson”, “presiding case manager”, “registrar”, “tribunal” and “tribunal panel”—	1
		2
	<i>omit.</i>	3
28	Schedule—	4
	<i>insert—</i>	5
	‘ “chairperson” means the chairperson of the tribunal.	6
	“mediation conference” see section 158.	7
	“presiding case manager” means a presiding case manager under the <i>Commercial and Consumer Tribunal Act 2003</i> .	8
		9
	“registrar” means the director under the <i>Commercial and Consumer Tribunal Act 2003</i> .	10
		11
	“tribunal” means the tribunal under the <i>Commercial and Consumer Tribunal Act 2003</i> .’.	12
		13

SCHEDULE 2	1
DICTIONARY	2
section 5	3
“ applicant ” see section 31. ⁶¹	4
“ approved form ” see section 154. ⁶²	5
“ attendance notice ” means a notice issued by the tribunal that requires a person to attend before the tribunal at a stated time and place.	6 7
“ building ” includes any fixed structure.	8
“ case manager’s matter ” means an application or matter prescribed under a regulation under section 155 ⁶³ to be a case manager’s matter.	9 10
“ chairperson ” means the chairperson of the tribunal.	11
“ decision ” includes order and direction.	12
“ decision by default ”, for part 7, division 2, see section 115. ⁶⁴	13
“ director ” means the director of the registry.	14
“ disciplinary proceeding ” means a proceeding under section 105. ⁶⁵	15
“ empowering Act ” means 1 of the following Acts—	16
• <i>Architects Act 2002</i>	17
• <i>Building Act 1975</i>	18
• <i>Domestic Building Contracts Act 2000</i>	19
• <i>Liquor Act 1992</i>	20
• <i>Pest Management Act 2001</i>	21
• <i>Plumbing and Drainage Act 2002</i>	22
• <i>Professional Engineers Act 2002</i>	23
• <i>Property Agents and Motor Dealers Act 2000</i>	24

61 Section 31 (How to start proceedings)

62 Section 154 (Forms)

63 Section 155 (Regulation-making power)

64 Section 115 (Decision by default for debt)

65 Section 105 (Tribunal may conduct disciplinary proceeding)

SCHEDULE 2 (continued)

• <i>Queensland Building Services Authority Act 1991</i>	1
• <i>Residential Services (Accreditation) Act 2002</i>	2
• <i>Retirement Villages Act 1999</i>	3
• <i>Tourism Services Act 2003</i>	4
• <i>Wine Industry Act 1994.</i>	5
“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.	6 7 8 9
“expedited hearing” means an expedited hearing conducted under part 7, division 4.	10 11
“file” means file in the tribunal.	12
“licence” means a licence or registration certificate under an empowering Act.	13 14
“mediator” means a person who holds an appointment under section 117. ⁶⁶	15 16
“member” means the chairperson or another member of the tribunal.	17
“obstruct” includes attempt to obstruct.	18
“party” means a party to a proceeding before the tribunal, including—	19
(a) the applicant; and	20
(b) the respondent; and	21
(c) a person included as a party under section 53. ⁶⁷	22
“presiding case manager” means a person who holds an appointment under section 26. ⁶⁸	23 24
“presiding member” of the tribunal means—	25
(a) if the tribunal is constituted by 1 member—that person; or	26
(b) if the tribunal is constituted by more than 1 member—	27

66 Section 117 (Tribunal may appoint mediator)

67 Section 53 (Inclusion of parties)

68 Section 26 (Presiding case manager)

SCHEDULE 2 (continued)

(i) if the chairperson is a constituting member—the chairperson; or	1 2
(ii) otherwise—the member designated as the presiding member by the chairperson when the tribunal is constituted.	3 4
“proceeding” means a proceeding—	5
(a) started by application to the tribunal; or	6
(b) removed to the tribunal by order of a court under section 40. ⁶⁹	7
“public examination” means a public examination by the tribunal under part 6, division 4.	8 9
“registry” means the Commercial and Consumer Tribunal Registry established under section 20. ⁷⁰	10 11
“respondent” see section 31. ⁷¹	12
“reviewable decision” means a decision that is reviewable by the tribunal under section 101. ⁷²	13 14
“State agency” means—	15
(a) for a proceeding for the review of a decision made under an empowering Act—the entity that made the decision; or	16 17
(b) for a disciplinary proceeding—the entity that, under an empowering Act, may apply to the tribunal to conduct the disciplinary proceeding.	18 19 20
“summary decision” , for part 7, division 5, see section 125(1). ⁷³	21
“tribunal” means the Commercial and Consumer Tribunal established under section 6. ⁷⁴	22 23 24

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

70 Section 20 (Registry established)

71 Section 31 (How to start proceedings)

72 Section 101 (Tribunal may review certain decisions)

73 Section 125 (Summary decision for applicant)

74 Section 6 (Tribunal established)



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