

Western Australia

Commercial Tribunal Regulations 1986

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Commercial Tribunal Regulations 1986

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Notes

Commercial Tribunal Regulations 1986

1. Citation

These regulations may be cited as the *Commercial Tribunal Regulations 1986*¹.

2. Register of panel members

- (1) The Registrar shall maintain a register identifying, in respect of each panel established under section 6 of the Act, the persons appointed to that panel.
- (2) The register referred to in subregulation (1) shall show the name and address, the date of appointment, and the qualifications, of each panel member and where applicable shall show by whom a panel member was nominated.
- (3) Any person may, on payment of the relevant fee prescribed in Schedule 3, inspect and make a copy of, or take extracts from, the register referred to in subregulation (1).

3. Matters in which Chairman or Deputy Chairman may act

The matters specified in Schedule 1 are matters that may be dealt with by the Tribunal constituted by the Chairman or a Deputy Chairman sitting alone.

4. Matters in which Registrar may act

The matters specified in Schedule 2 are matters in relation to which the Registrar may, with the approval of the Tribunal or the Chairman, exercise the functions of the Tribunal.

5. Commencement of proceedings

Unless otherwise provided under a relevant Act, proceedings before the Tribunal shall be commenced by application.

6. Form of application

- (1) Unless otherwise provided under a relevant Act, an application to the Tribunal under a relevant Act shall be made in the form set out in Schedule 4 duly completed.
- (2) An application may be dealt with notwithstanding that the application has not been made substantially in the prescribed form.

7. Other forms

Unless otherwise provided under regulation 6 or a relevant Act, the forms to be used in matters before the Tribunal shall be as determined by the Chairman or a Deputy Chairman, and the Registrar shall make the appropriate forms available to persons requiring them.

8. Directions hearing

- (1) Unless the Tribunal or the Registrar dispenses with the requirement, there shall be a directions hearing in respect of every application to the Tribunal for the purpose of enabling directions to be given to facilitate the prompt determination of the matters in issue.
- (2) The Tribunal may, at a directions hearing, determine the matters in issue in the proceedings.

9. Conciliation

The Tribunal shall, in determining its procedure, have regard to the desirability of the matters in issue in the proceedings being settled through conciliation.

10. Enforcement of decisions and orders of non-pecuniary nature

- (1) A decision or order of the Tribunal, other than a decision or order requiring the payment of a pecuniary sum, has the same effect and may be enforced and executed as if it were a decision or order of a Judge of the District Court and as if the functions exercisable by a Judge or the Registrar of the District Court for the purposes of enforcing the decision or order were exercisable by the Chairman or the Registrar, respectively, of the Tribunal.
- (2) The practice and procedure of the District Court and, in so far as they apply to the District Court, the Rules of Court of the Supreme Court apply with the necessary modifications in relation to the enforcement of decisions and orders of the Tribunal.
- (3) Where neither the Rules of Court of the District Court nor the Rules of Court of the Supreme Court, as applied by this regulation, provide for a form or procedure suitable for a purpose connected with the enforcement of a decision or order of the Tribunal, or where a question arises as to the form or procedure to be used for any such purpose, the Chairman may, *ex parte*, give such directions in relation to the matter as he sees fit.

11. Solicitor-client costs

Unless otherwise provided under a relevant Act, the costs that may be allowed by the Tribunal in respect of the fees charged by a legal practitioner shall, subject to order 66 of the *Rules of the Supreme Court 1971*, be in accordance with the scale of costs set out in the Fourth Schedule to the *Rules of the Supreme*

Court 1971 to the extent that that scale of costs is capable of being applied to proceedings before the Tribunal.

12. Fees

- (1) Unless otherwise provided under a relevant Act, the respective fees set out in Schedule 3 shall be payable in respect of the matters shown in that schedule.
- (2) A fee is not payable in respect of —
 - (a) an application under section 74 or 116 of the *Credit Act 1984*;
 - (b) an application under a relevant Act by the Commissioner;
 - (c) an objection made by the Commissioner or the Commissioner of Police to a licence being granted or continuing to be held under a relevant Act.
- (3) Where the Tribunal or the Registrar considers that special reasons warrant such action, the Tribunal or Registrar may —
 - (a) direct that a fee required under this regulation be waived wholly or in part, and that any part of the fee waived that has been paid be refunded;
 - (b) postpone the time when the whole or a part of a fee required under this regulation to be paid is to be paid and make any such postponement subject to any conditions considered to be appropriate.
- (4) Where an application to the Registrar under section 13(7) of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* relates to more than one retail shop lease, as provided for by section 13(7a) of that Act, the fee specified in item 6(1) in Schedule 3 is payable cumulatively in respect of each such lease that is the subject of the application.

[Regulation 12 amended in Gazette 20 September 1991 p.4862.]

Schedule 1

[Reg. 3]

Matters in which the Tribunal may be constituted by the Chairman or a Deputy Chairman sitting alone

1. The giving of general directions concerning the practice and procedure of the Tribunal.
2. The giving of specific directions concerning —
 - (a) practice or procedure in a particular matter before the Tribunal; or
 - (b) the conduct of any other business of the Tribunal.
3. A decision whether or not to hold an inquiry under a relevant Act into a matter.
4. The adjournment or stay at any stage of proceedings before the Tribunal.
5. The doing of any thing that the Tribunal is able to do of its own motion, other than under section 170 of the *Credit Act 1984*.
6. The extension of the time within which any thing is required by an order of the Tribunal or the Registrar to be done.
7. The making under a relevant Act of a requirement that an applicant furnish further information or verify that information by affidavit.
8. The conduct of a directions hearing and the making at that hearing of —
 - (a) any order concerning the conduct of the proceedings, the number of expert witnesses that may be called and other matters relating to the giving of evidence, and any matter of an interlocutory or procedural nature;
 - (b) where the parties to the proceedings agree to any matter in issue being determined upon that hearing, an order determining that matter.
9. The revocation or variation of any order made at a directions hearing that does not determine the matter in issue in the proceedings.
10. Where a party to proceedings before the Tribunal has defaulted in the taking of a step he has been ordered to take, the making of an order or

Schedule 1

- decision against that party on the motion of any other party to the proceedings.
11. Proceedings under a relevant Act in which there is only one party and the matter does not appear to the Chairman or the Deputy Chairman, as the case may be, to involve or be likely to involve more than one party.
 12. Proceedings under a relevant Act in which there are 2 or more parties and all parties agree to the proceedings being dealt with by the Chairman or Deputy Chairman sitting alone.
 13. Proceedings under, or matters relating to —
 - (a) section 12 of the *Credit (Administration) Act 1984* (except in cases where there is an objection to the application) or section 13(1), (3) or (4), 14(1) or (3), or 36(1) of that Act;
 - (b) any provision of the *Credit Act 1984*, or the *Credit Regulations 1985*, in which the Tribunal has jurisdiction, other than proceedings under, or matters relating to, section 74, 85, 86, 88, 112, 114(7), 115, 116, 139, 146, 147, or 170 of that Act; or
 - (c) section 12 of the *Travel Agents Act 1985* (except in cases where there is an objection to the application), or section 13(1), (3) or (4) or section 14(1) of that Act.
 14. The exercise of all of the powers of the Tribunal in respect of any matter or proceeding that may be dealt with by the Chairman or Deputy Chairman sitting alone.
 15. Under the Act —
 - (a) the extension of the period within which an appeal or application for leave to appeal is to be made, in accordance with section 20(2);
 - (b) the suspension of the operation or effect of an order or decision, in accordance with section 20(4)(a); or
 - (c) the revocation under section 20(4)(b) of a suspension under section 20(4)(a).

*[Schedule 1 amended in Gazette 8 August 1986 p.2870;
28 August 1987 p.3467.]*

Schedule 2

[Reg. 4]

Matters in relation to which the Registrar may, with the approval of the Tribunal or the Chairman, exercise the functions of the Tribunal.

1. A matter which, by reason of item 5, 6, 7, 8, 9, 10 or 13 of Schedule 1, is capable of being dealt with by the Tribunal constituted by the Chairman or Deputy Chairman sitting alone.
2. The adjournment, with the consent of all parties, of proceedings before the Tribunal.
3. At a hearing at which the Registrar exercises functions of the Tribunal, the requiring of any person to take an oath or answer questions on examination or cross-examination.
4. The settling, signing and sealing of decisions and orders of the Tribunal and copies thereof.
5. The making of an order to prevent the public disclosure of any scandalous or oppressive matter in an affidavit.
6. The giving of directions as to the service of affidavits and other documents.
7. At a hearing at which the Registrar exercises the functions of the Tribunal, approve of the use of an affidavit that has not been filed or contains any alteration, erasure or interlineation or some other irregularity.
8. The permitting of the amendment of any document in a proceeding.
9. The exercise of all of the powers of the Tribunal in respect of any matter or proceeding that may, with the approval of the Tribunal or the Chairman, be dealt with by the Registrar.
10. At a directions hearing deal with any of the matters referred to in item 15 of Schedule 1.

[Schedule 2 amended in Gazette 8 August 1986 p.2870.]

Schedule 3

Schedule 3		[Reg. 12]
Fees		\$
1.	(1) An application for which no other fee is prescribed in these regulations or under a relevant Act, not being an application to which regulation 12(2) applies	66.00
	(2) A motion	66.00
	(3) Issue of a third party notice	66.00
2.	An application to extend time or to limit time within which proceedings may be taken	18.00
3.	Objection to a licence being granted or continuing to be held	21.00
4.	Entering an appearance or filing notice of intention to be heard	21.00
5.	(1) Entering or sealing a judgment or final order given or entered before the matter has been set down for a hearing (other than a directions hearing)	34.00
	(2) Sealing an order made upon the hearing of an application or motion (other than an application of the kind referred to in item (2))	34.00
	(3) Providing a copy (not certified) of any judgment, order, reasons for decision, etc.....	15.00
6.	(1) Making an application to the Registrar under section 11(5), 13(3), 13(7) or 19(1) of the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i>	29.00
	(2) Making an application to the Tribunal under section 6(1)(b), 9(3) or 14 of the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i>	29.00
7.	Making an application under section 153 of the <i>Credit Act 1984</i> — per folio (a folio comprises 72 words)	6.00
8.	(1) Searching any proceeding or record other than a search made by or on behalf of a party to the proceeding	11.00
	(2) Where an inquiry is made through the post — for making the search and answering the inquiry	21.00

Fees		\$
9.	On an application for the production of records or documents that are required to be produced to any court	11.00
	and where an officer of the Tribunal is required to attend at any court, his reasonable expenses and, in addition, for each hour or part of an hour he is necessarily absent from his office	21.00
10.	Sealing a writ of summons or a writ of subpoena or any other writ	21.00
11.	(1) For inspection of any register kept by the Registrar	11.00
	(2) For providing a certified copy of an extract from any register kept by the Registrar —	
	first page	11.00
	each subsequent page	2.00
12.	For providing a certificate under any relevant Act	11.00
13.	(1) For providing a certified copy of any licence, certificate of registration, or authorization —	
	first page	11.00
	each subsequent page	2.00
	(2) For providing a copy (not certified) of any such licence, etc. —	
	first page	11.00
	each subsequent page	2.00
14.	For providing a certified copy of evidence taken in any proceeding before the Tribunal —	
	per page or part thereof (transcript typed — open — double spaced).....	3.80

[Schedule 3 inserted in Gazette 14 August 1992 pp.4020-22; amended in Gazette 29 January 1993 p.860; 28 February 1995 p.681.]

Schedule 4

Schedule 4

[Reg. 6]

IN THE COMMERCIAL
TRIBUNAL OF WESTERN
AUSTRALIA, AT PERTH.



No. of 19 .

IN THE MATTER of Section
of the Act.
AND IN THE MATTER of

BETWEEN:

Applicant

AND:

Respondent

APPLICATION

Application is made to the Commercial Tribunal of Western Australia
by.....
.....of
.....("the Applicant")
for the following Orders against
of ("the Respondent") —

(Set out here the Orders sought. If there is insufficient space to set out the
Orders sought, you may continue, or set out the Orders sought, on a separate
sheet of paper, of the same size as this sheet of paper, and mark the paper
"Orders Sought", or "Orders Sought (continued)", as the case may be).

on the following grounds —

(Set out here the grounds on which the Application is based. If there is
insufficient space to set out the grounds, you may continue, or set out the
grounds, on a separate sheet of paper, of the same size as this sheet of paper,
and mark that paper "Grounds On Which Application Is Based" or "Grounds
On Which Application Is Based (continued)", as the case may be).

NOTES FOR THE APPLICANT

- You must annex to this Application and also to every copy of this Application that is required to be filed, legible copies of all documents, which are relevant to your Application, and which are to be marked with the letter "A".**

2. **You must file three (3) copies of this completed Application at the Commercial Tribunal Registry, Willmar House, 1st Floor, 600 Murray Street, West Perth. Each copy should have attached to it a copy of each document which is relevant to your Application.**

Dated:

.....
Applicant (or Solicitor for the Applicant)

NOTICE TO EACH APPLICANT AND TO EACH RESPONDENT OF A DIRECTIONS HEARING

This Application has been set down for a directions hearing by the Commercial Tribunal at the time, and place, specified below, to enable the Commercial Tribunal to give such directions as are necessary to facilitate and achieve a prompt hearing of the matters in issue between the parties.

If there is no attendance before the Commercial Tribunal by you, or on your behalf, at that time, the Commercial Tribunal may make such Orders as it thinks fit in your absence.

Time: The time and date for the directions hearing is a.m./p.m. on 19 .
(The Commercial Registrar, or a member of his staff only, is to complete this section).

Place: Willmar House, 1st Floor, 600 Murray Street, West Perth.

COMMERCIAL REGISTRAR
COMMERCIAL TRIBUNAL OF WESTERN AUSTRALIA

Dated: 19 . (The Commercial Registrar, or a member of his staff only, is to insert here the date that the Application is filed).

NOTES FOR THE APPLICANT AND THE RESPONDENT

1. **The Applicant is the person/s or corporation/s who makes this Application.**
2. **The Respondent is the person/s or corporation/s against whom orders are sought by the Applicant.**
3. **If all parties so desire, the Commercial Tribunal may make a final determination of the Application at a directions hearing, without the necessity for any further proceeding.**
4. **In a proceeding before the Commercial Tribunal, you are, and every other party to the proceeding is, given a reasonable opportunity to call, or give, evidence to the Commercial Tribunal, to examine**

Schedule 4

witnesses, to cross-examine witnesses, and to make submissions to the Commercial Tribunal.

5. **If a person to whom reasonable notice is given of the time, and place, at which the Commercial Tribunal intends to conduct the proceeding does not attend at the time, and place, fixed by the notice, the Commercial Tribunal may conduct the proceeding in the absence of that person.**

* This Application is filed by (insert here the Applicant's name),

* This Application is filed by (insert here the name of the person/firm filing the Application on behalf of the Applicant) on behalf of (insert here the Applicant's name), whose address for service and whose telephone number at the address for service is (specify here an address for service and the telephone number at the address for service, etc.).

(* Delete that which is applicable).

NOTES FOR THE RESPONDENT

1. **If you do not wish to contest this Application, you should**

(a) **complete Part I (below) of this Form, and,**

(b) **return it to the Commercial Registrar of the Commercial Tribunal at Willmar House, 1st Floor, 600 Murray Street, West Perth prior to the date set for the directions hearing.**

In this event the Commercial Tribunal may make the orders sought in this Application, without any further reference to you.

2. **If you wish to contest this Application, you should**

(a) **complete Part II (below) of this Form, and**

(b) **return it to the Commercial Registrar of the Commercial Tribunal at Willmar House, 1st Floor, 600 Murray Street, West Perth at least five (5) days prior to the date set for the directions hearing.**

In your own interests you should make every endeavour to attend at the directions hearing either in person, by your solicitor, or by any other person approved by the Commercial Tribunal.

3. In a proceeding before the Commercial Tribunal, you and any other party to the proceeding may, —

(a) at your option —

(i) appear personally before the Commercial Tribunal, or,

- (ii) be represented in the proceeding by a solicitor, or by a barrister,
 - or,
 - (b) with the permission of the Commercial Tribunal, you may be represented at the hearing by any other person.
4. Irrespective of whichever Part (that is either Part I or Part II) that you as Respondent complete, you are required to file three (3) copies of the whole of this document at the Commercial Tribunal Registry, Willmar House, 1st Floor, 600 Murray Street, West Perth.

Part I

I, (insert here the name of the Respondent).....
of (insert here the address of the Respondent)..... ,

do not contest this Application and consent to the Commercial Tribunal making the orders sought in the Application.

My address for service and the telephone number at my address for service is (insert here the Respondent’s address for service and the telephone number at the address for service, etc.).

Dated:

.....
Respondent (or Solicitor for the Respondent)

Part II

I, (insert here the name of the Respondent).....
of (insert here the address of the Respondent)..... ,

contest (dispute) this Application on the following grounds —

(Set out here the grounds on which you rely. If there is insufficient space to adequately set out the grounds, you may continue, or set out the grounds, on a separate sheet of paper of the same size as this sheet of paper, and mark that paper “Grounds On Which Respondent Relies”, or “Grounds On Which Respondent Relies (continued)”, as the case may be).

I annex legible copies of all documents which I consider relevant to the proceedings, and which are marked with the letter “B”.

My address for service and the telephone number at the address for service is (insert here the Respondent’s address for service and the telephone number at the address for service, etc.).

Dated:

.....

Schedule 4

Respondent (or Solicitor for the Respondent)

IN THE COMMERCIAL
TRIBUNAL OF WESTERN
AUSTRALIA, AT PERTH.



No. of 19 .

IN THE MATTER of Section
of the Act.
AND IN THE MATTER of

BETWEEN:

Applicant

AND:

Respondent

Notes

¹ This is a compilation of the *Commercial Tribunal Regulations 1986* and includes the amendments referred to in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Commercial Tribunal Regulations 1986</i>	7 Feb 1986 pp.457-61	7 Feb 1986
<i>Commercial Tribunal Amendment Regulations 1986</i>	8 Aug 1986 p.2870	8 Aug 1986
<i>Commercial Tribunal Amendment Regulations (No. 2) 1987</i>	28 Aug 1987 p.3467	28 Aug 1987
<i>Commercial Tribunal Amendment Regulations 1987</i>	4 Sep 1987 p.3516	4 Sep 1987
<i>Commercial Tribunal Amendment Regulations 1988</i>	22 Jul 1988 pp.2519-20	22 Jul 1988
<i>Commercial Tribunal Amendment Regulations 1989</i>	30 Jun 1989 pp.1972-3	1 Jul 1989 (see regulation 2)
<i>Commercial Tribunal Amendment Regulations 1990</i>	1 Aug 1990 p.3657	1 Aug 1990
<i>Commercial Tribunal Amendment Regulations (No. 2) 1990</i>	1 Mar 1991 p.969	1 Mar 1991
<i>Commercial Tribunal Amendment Regulations 1991</i>	20 Sep 1991 pp.4862-3	20 Sep 1991
<i>Commercial Tribunal Amendment Regulations (No. 2) 1991</i>	13 Dec 1991 pp.6173-74	13 Dec 1991
<i>Commercial Tribunal Amendment Regulations 1992</i>	14 Aug 1992 pp.4020-22	14 Aug 1992
<i>Commercial Tribunal Amendment Regulations (No. 2) 1992</i>	29 Jan 1993 p.860	29 Jan 1993
<i>Commercial Tribunal Amendment Regulations 1995</i>	28 Feb 1995 p.681	28 Feb 1995