

Western Australia

Commercial Tribunal Act 1984

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Commercial Tribunal Act 1984

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Western Australia

Commercial Tribunal Act 1984

An Act to provide for the constitution of a tribunal having such jurisdiction as is conferred on it under any other Act, to provide for the exercise of the functions of the tribunal, and for related purposes.

Part I — Preliminary

1. Short title

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

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation ¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“**Chairman**” means the holder of the office of Chairman of the Tribunal;

“**Commissioner**” means the holder of the office of Commissioner for Fair Trading under section 15 of the *Consumer Affairs Act 1971*;

“**Deputy Chairman**” means the holder of an office of Deputy Chairman of the Tribunal;

“**Registrar**” means the Commercial Registrar referred to in section 11(1);

“**relevant Act**” means an Act under which jurisdiction is conferred on the Tribunal;

“**the Tribunal**” means the Commercial Tribunal of Western Australia established under this Act.

[Section 3 amended by No. 57 of 1997 s. 39(10).]

Part II — The Commercial Tribunal

Division 1 — Administrative provisions

4. The Tribunal

- (1) There shall be a tribunal to be known as the Commercial Tribunal of Western Australia.
- (2) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

5. Chairman and Deputy Chairman

- (1) The Minister may, in writing, appoint a person who is a legal practitioner (as defined in the *Legal Practice Act 2003*) or a barrister or solicitor of the Supreme Court of another State or a Territory of not less than 7 years standing and practice to hold office as Chairman of the Tribunal.
- (2) The Minister may, in writing, appoint a person, or each of 2 or more persons, who would be qualified for appointment as the Chairman to hold office as Deputy Chairman of the Tribunal.

[Section 5 amended by No. 65 of 2003 s. 108.]

6. Panels

- (1) The Minister shall, in respect of each relevant Act, establish —
 - (a) a panel of persons representative of the interests of persons who are required by that Act to be licensed or registered or whose conduct is otherwise regulated under that Act; and
 - (b) a panel of persons representative of the interests of members of the public who deal with persons whose interests are represented under paragraph (a).
- (2) The Minister may establish panels of persons whose expertise would, in the opinion of the Minister, be likely to be of assistance to the Tribunal.

- (3) A panel established under subsection (1) or (2) shall comprise such number of persons appointed in writing by the Minister as the Minister from time to time thinks fit.

7. Term of office

- (1) Subject to this section, a person appointed to be Chairman or Deputy Chairman, or to be a member of a panel established under section 6, shall hold office for such term not exceeding 3 years as is specified in the instrument of his appointment and, upon expiration of that term, is eligible for re-appointment.
- (2) The Minister may remove from office a person appointed to an office referred to in subsection (1) on the grounds of —
 - (a) mental or physical incapacity to carry out satisfactorily the duties of his office;
 - (b) neglect of duty; or
 - (c) misconduct.
- (3) A person appointed to an office referred to in subsection (1) may at any time resign his office by notice in writing delivered to the Minister.
- (4) Where, before his term of office expires, a person appointed to an office referred to in subsection (1) dies or, under this section, is removed from office or resigns his office, that office becomes vacant.

8. Fees and allowances

- (1) The Chairman, a Deputy Chairman, and the members of a panel established under section 6 are, subject to subsection (2), entitled to such remuneration and allowances in respect of their functions when constituting the Tribunal as the Minister from time to time determines on the recommendation of the Minister for Public Sector Management².
- (2) Subsection (1) does not apply to an officer employed in the Public Service of the State.

9. Conditions of appointment

- (1) The appointment of a person as the Chairman or a Deputy Chairman or as a member of a panel established under section 6 shall, subject to this Act, be in accordance with such terms and conditions as may be specified in the instrument of his appointment.
- (2) Where, immediately before being appointed on a full-time basis as the Chairman or a Deputy Chairman, a person occupied an office under Part 3 of the *Public Sector Management Act 1994*, that person shall —
 - (a) continue to retain his existing and accruing rights, including his rights under the *Superannuation and Family Benefits Act 1938* ³, as if his service as Chairman or Deputy Chairman were service as an officer under Part 3 of the *Public Sector Management Act 1994*; and
 - (b) if he resigns his office as Chairman or Deputy Chairman or that office ceases to exist or ceases to be held on a full-time basis or his term of office expires by effluxion of time and he is not re-appointed on a full-time basis, be entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* not lower in status than the office that he occupied immediately before he was so appointed as the Chairman or a Deputy Chairman.

[Section 9 amended by No. 32 of 1994 s. 3(2); No. 42 of 1997 s. 8.]

10. Powers not affected by vacancy

Without limiting the application of section 57 of the *Interpretation Act 1984*, the powers of the Tribunal are not affected by a vacancy in the membership of a panel established under section 6.

11. The Commercial Registrar

- (1) There shall be a person to be known as the Commercial Registrar who shall be the executive officer of the Tribunal.
- (2) The Registrar shall be a legal practitioner (as defined in the *Legal Practice Act 2003*) who is employed under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (3) The Registrar may, with the approval of the Tribunal or the Chairman, exercise the functions of the Tribunal in relation to prescribed matters but shall, if the Tribunal or the Chairman so directs, refer any matter arising in the exercise of those functions to the Tribunal for its determination.
- (4) Nothing in subsection (3) prevents the Tribunal from exercising a function referred to in that subsection.
[Section 11 amended by No. 32 of 1994 s. 3(2); No. 65 of 2003 s. 22(2).]

12. Reports of the Tribunal

- (1) The Chairman shall, on or before 30 September in each year, make and submit to the Minister a report on the activities of the Tribunal during the year ending on the preceding 30 June.
- (2) The Tribunal may from time to time report to the Minister its views as to the jurisdiction and functions of the Tribunal or any matter connected with the exercise of that jurisdiction or the carrying out of those functions.
- (3) The Minister shall cause a copy of each report submitted to him under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after he receives the report.

Division 2 — Jurisdiction and powers

13. Constitution

- (1) Subject to this section the Tribunal shall, when exercising jurisdiction conferred on it by a particular Act, be constituted by —

- (a) the Chairman or a Deputy Chairman;
 - (b) 1 person selected by the person mentioned in paragraph (a) from each of the panels established under section 6(1) for the purposes of that Act; and
 - (c) such person or persons, if any, as may be selected by the person mentioned in paragraph (a) from a panel established under section 6(2).
- (2) Where by reason of the consolidation of proceedings under section 16 the Tribunal concurrently exercises jurisdiction conferred on it by more than one Act, the Tribunal shall, subject to subsection (3), be constituted by —
 - (a) the Chairman or a Deputy Chairman; and
 - (b) 1 person selected by the person mentioned in paragraph (a) from each of the panels established under section 6(1) for the purposes of each of those Acts; and
 - (c) such person or persons, if any, as may be selected by the person mentioned in paragraph (a) from a panel established under section 6(2).
- (3) The regulations may prescribe matters in which the Tribunal has jurisdiction that may be dealt with by the Tribunal constituted by the Chairman or a Deputy Chairman sitting alone and in dealing with those matters the Tribunal may be so constituted, but nothing in this subsection prevents any such matter from being dealt with by the Tribunal constituted in accordance with subsection (1) or (2), as the case requires.
- (4) Where an Act conferring jurisdiction on the Tribunal makes express provision as to the constitution of the Tribunal when exercising that jurisdiction, that provision shall, to the extent of any inconsistency with this section, prevail.
- (5) The selection under subsection (1) or (2) of a person from a panel shall be evidenced in writing.
- (6) The Tribunal constituted in accordance with this section or any Act conferring jurisdiction on the Tribunal may sit and exercise

the jurisdiction of the Tribunal notwithstanding that the Tribunal differently constituted in accordance with this section or any such Act is at the same time sitting and exercising the jurisdiction of the Tribunal.

14. Meetings of the Tribunal

- (1) The Tribunal comprising all of the members by which it is for the time being constituted shall hold meetings at such times and places as are necessary to enable it to discharge its functions and the Minister may at any time require the Chairman or a Deputy Chairman to convene a meeting of the Tribunal.
- (2) At all meetings of the Tribunal —
 - (a) the person mentioned in section 13(1)(a) or 13(2)(a), as the case may be, shall preside and shall determine any question relating to the admissibility of evidence and any other question of law or procedure; and
 - (b) a person selected under section 13(1)(c) or 13(2)(c) shall not be entitled to vote.
- (3) Subject to subsection (2) a question arising at a meeting of the Tribunal shall be decided by a majority of the members voting and, in the event of an equality of votes, shall be decided in accordance with the vote that was cast by the person presiding.
- (4) The Tribunal shall cause accurate minutes to be kept of proceedings at its meetings.
- (5) To the extent that it is not prescribed by the regulations the Tribunal shall determine its own procedure.

15. Hearings

- (1) The Tribunal shall cause to be given to a person who is a party to proceedings instituted before the Tribunal reasonable notice of the time and place at which it intends to conduct those proceedings, and shall afford any such person a reasonable

opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

- (2) If a person to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may conduct the proceedings in his absence.
- (3) A party to proceedings before the Tribunal may —
 - (a) appear personally; or
 - (b) be represented in those proceedings —
 - (i) by counsel; or
 - (ii) with the leave of the Tribunal, by any other person,

but a person who, not being a certificated practitioner (within the meaning of the *Legal Practice Act 2003*), demands or receives any fee or reward for representing a party to proceedings before the Tribunal commits an offence and is liable to a fine not exceeding \$500.

- (4) The Commissioner may appear personally in proceedings before the Tribunal or may be represented in those proceedings by counsel or an officer employed in the Public Service of the State.

[Section 15 amended by No. 65 of 2003 s. 22(3).]

16. Consolidation of proceedings

Where proceedings before the Tribunal (including proceedings founded on an application) are instituted under 2 or more Acts and the same or similar questions are involved in those proceedings, the Chairman or a Deputy Chairman may, if it would not unfairly prejudice any party and it would be otherwise expedient to conduct the proceedings together, order that the proceedings be consolidated and thereupon the Tribunal may exercise the jurisdiction conferred by each of those Acts together in the consolidated proceedings.

17. Powers of the Tribunal

- (1) The Tribunal may —
 - (a) by summons signed on behalf of the Tribunal by the Registrar, require —
 - (i) the attendance before the Tribunal of any person;
 - (ii) the production before the Tribunal of any document;
 - (b) inspect any document produced before it, and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents;
 - (c) require any person to swear that he will truly answer all questions relating to a matter being inquired into by the Tribunal that are put to him by or before the Tribunal (and for that purpose a member of the Tribunal or an officer employed in the Public Service of the State and assisting the Tribunal in the discharge of its functions may administer any oath or affirmation); and
 - (d) require any person appearing before the Tribunal including a person whose conduct is subject to an inquiry (whether or not he has been summoned to appear) to answer any relevant question put to him by a member of the Tribunal or by any other person appearing before the Tribunal.
- (2) A person is not excused from complying with a requirement under subsection (1) to swear, or to answer any question, on the ground that the answer to, a question put to him might incriminate him or render him liable to a penalty, but an answer given by a person pursuant to a requirement under subsection (1) is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under a relevant Act arising out of the false or misleading nature of that answer.

- (3) In the course of any proceedings the Tribunal may —
 - (a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact therefrom as it thinks fit; and
 - (b) adopt, as in its discretion it thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the proceedings before the Tribunal.
- (4) In any proceedings the Tribunal shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and, subject to subsection (5), shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (5) In disciplinary proceedings the Tribunal shall be bound by the rules of evidence.
- (6) The Tribunal may make such orders for costs as it thinks fit.
- (7) Where proceedings before the Tribunal are instituted frivolously, vexatiously or for an improper purpose, the Tribunal may dismiss the proceedings and, in addition to making an order as to costs, may order the party who instituted the proceedings to pay to any other party a pecuniary sum by way of compensation for any consequential embarrassment, inconvenience or expense suffered or incurred.

18. Offence

A person who —

- (a) having been served with a summons to attend before the Tribunal, fails without reasonable excuse (proof of which lies upon him) to attend in obedience to the summons;
- (b) having been served with a summons to produce before the Tribunal any document, fails without reasonable

excuse (proof of which lies upon him) to comply with the summons;

- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or a member thereof, or interrupts the proceedings of the Tribunal; or
- (d) fails without reasonable excuse (proof of which lies upon him) to swear, or to answer any question, when required to do so by the Tribunal,

is guilty of an offence and is liable to a fine not exceeding \$2 000.

19. Reasons for decisions

Where a party to proceedings before the Tribunal has, within 14 days after the Tribunal has made a decision or order in those proceedings, requested the Tribunal to give reasons in writing for the decision or order, the Tribunal shall give that party reasons in writing for the decision or order.

20. Appeal

- (1) A party to proceedings before the Tribunal who is dissatisfied with a decision or order of the Tribunal may —
 - (a) where a question of law is involved; or
 - (b) where a question of law is not involved but the Tribunal or the District Court gives leave to do so,

appeal to the District Court against the decision or order.

- (2) An appeal or application for leave to appeal under subsection (1) shall be made in accordance with the rules of court within 1 month after the making of the decision or order concerned, but the Tribunal or the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend the period within which the appeal or application may be made.

- (3) The District Court has jurisdiction to hear and determine an application or appeal made under this section and on hearing an appeal, may, according to the nature of the case —
 - (a) affirm, vary, or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
 - (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;
 - (c) make any further other order, as to costs or otherwise, as it thinks fit.
- (4) Without limiting subsection (3), where under this section an appeal has been made, or an application has been made for leave to appeal, against a decision or order of the Tribunal, the Tribunal or the District Court may —
 - (a) suspend the operation or effect of the order or decision until the determination of the appeal; and
 - (b) revoke any suspension ordered by it under paragraph (a).

21. Case stated

- (1) Where a question of law arises in proceedings before the Tribunal, the Tribunal may, in accordance with the rules of court, state a case for the opinion of the District Court upon the question.
- (2) The District Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of it.

Part III — Miscellaneous

22. Protection

No liability attaches to a member of the Tribunal, the Tribunal, the Registrar, or any other person for any act or omission by him or on his part or by the Tribunal or on the part of the Tribunal that occurred in good faith and in the performance or discharge or purported performance or discharge, of his or its functions under this or any other Act.

23. Evidentiary provisions

In all courts and before all persons and bodies authorised to receive evidence —

- (a) a certificate purporting to be issued by the Registrar and stating that on any date or dates or during any period specified in the certificate any person was or was not licensed or registered under a particular Act that is a relevant Act, or that the licence or registration of a person under such an Act was suspended, is evidence of the matters so stated;
- (b) a document purporting to be a copy of a decision or order of the Tribunal and purporting to be certified by the Registrar to be such a copy shall be admitted as a true copy of a decision or order of the Tribunal; and
- (c) judicial notice shall be taken of the signature of the Registrar on a certificate mentioned in paragraph (a) or a document mentioned in paragraph (b).

24. Enforcement of payment of pecuniary sums

- (1) Where a decision or order of the Tribunal requires the payment of a pecuniary sum, the Registrar shall, upon application by a party to the proceedings in which the decision or order was made or a person claiming through or under such a party, issue a certified copy of the decision or order.

- (2) Where a certified copy of a decision or order of the Tribunal is lodged with the clerk of a Local Court in accordance with the rules of court (which may include provision for the payment of a lodging fee), the clerk shall register the decision or order and payment of the pecuniary sum thereunder may be enforced as if it were required by an order of that court.

25. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for enabling the Tribunal to exercise the jurisdiction conferred on it under any other Act or otherwise for giving effect to the purposes of this Act.
- (2) The regulations may —
- (a) provide for the constitution of the panels established under section 6 and require consultation with persons in relation to the membership of such panels;
 - (b) prescribe matters relating to the practice and procedure of the Tribunal;
 - (c) make provision for the settlement or attempted settlement, by conciliation, of disputes between parties to proceedings before the Tribunal;
 - (d) provide for the enforcement of decisions and orders of the Tribunal (other than for the payment of pecuniary sums);
 - (e) assign functions to the Registrar and regulate the manner in which they are to be carried out;
 - (f) make provision as to fees.

[Section 25 amended by No. 65 of 1987 s. 36.]

26. Transitional

- (1) Where any other Act is amended so as to confer on the Tribunal jurisdiction to hear and determine any proceedings or deal with

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any other matter that immediately before such jurisdiction is conferred on the Tribunal was exercisable under that Act by any other person or body, any proceedings or other matter commenced before such jurisdiction was conferred on the Tribunal may be continued and determined or dealt with, and any proceedings in the nature of an appeal arising therefrom may be taken and disposed of, as if that Act had not been amended and, where applicable, that person or body is continued in existence for that purpose.

- (2) The Minister may where this or any other Act does not make satisfactory provision as to any matter connected with the transfer of jurisdiction from any person or body to the Tribunal, give directions as to the matter and the matter may be dealt with in accordance with those directions.
- (3) Nothing in this section affects the operation of the *Interpretation Act 1984*.

Notes

- ¹ This is a compilation of the *Commercial Tribunal Act 1984* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Commercial Tribunal Act 1984</i>	103 of 1984	19 Dec 1984	28 Feb 1985 (see s. 2 and <i>Gazette</i> 22 Feb 1985 p. 657)
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. IX</i>	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1987 p. 397)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Equal Opportunity Amendment Act (No. 3) 1997 s. 8</i>	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10)</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the <i>Commercial Tribunal Act 1984</i> as at 10 May 2002 (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 22, 108</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 34 ³	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 142 ⁴	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

² Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

³ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 34 had not come into operation. It reads as follows:

“

34. Commercial Tribunal Act 1984 amended

Section 9(2)(a) of the *Commercial Tribunal Act 1984* is amended by deleting “, including his rights under the *Superannuation and Family Benefits Act 1938*,”.

”.

⁴ On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 2 cl. 10 reads as follows:

“

Schedule 2 — Other amendments to Acts

10. Commercial Tribunal Act 1984

s. 24(2)	Delete “clerk of a Local Court” and insert instead — “ Magistrates Court ”. Delete “clerk shall” and insert instead — “ court shall ”.
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