



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 38 of 1982

An Act to establish a tribunal to exercise statutory jurisdictions formerly exercised by various boards and tribunals; to confer certain powers on the tribunal; and for other purposes.

[Assented to 22 April 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

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| 1. This Act may be cited as the "Commercial Tribunal Act, 1982". | Short title. |
| 2. This Act shall come into operation on a day to be fixed by proclamation. | Commencement. |
| 3. This Act is arranged as follows: | Arrangement of Act. |

PART I—PRELIMINARY

PART II—THE COMMERCIAL TRIBUNAL

DIVISION I—CONSTITUTION OF THE TRIBUNAL

DIVISION II—MANNER IN WHICH TRIBUNAL IS TO ARRIVE AT ITS DECISIONS

DIVISION III—PROCEDURES AND POWERS OF THE TRIBUNAL

DIVISION IV—CASES STATED AND APPEALS

PART III—MISCELLANEOUS

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| 4. In this Act, unless the contrary intention appears— | Interpretation. |
| "the Commissioner" means the person for the time being holding or acting in the office of Commissioner for Consumer Affairs: | |
| "the Registrar" means the person for the time being holding or acting in the office of Commercial Registrar under this Act: | |
| "relevant Act" means an Act that confers jurisdiction on the Tribunal: | |

PART I

“the Senior Judge” means the person for the time being holding, or acting in, the office of Senior Judge under the Local and District Criminal Courts Act, 1926-1982:

“the Tribunal” means the Commercial Tribunal established under this Act.

PART II

PART II

THE COMMERCIAL TRIBUNAL

DIVISION I

DIVISION I—CONSTITUTION OF THE TRIBUNAL

Establishment
of the Tribunal.

5. There shall be a tribunal entitled the “Commercial Tribunal”.

Constitution
of the
Tribunal.

6. (1) Subject to this section, the Tribunal shall be constituted in relation to the hearing of any proceedings of the following members:

- (a) the Chairman or a Deputy Chairman of the Tribunal;
- (b) a member of the appropriate panel constituted under section 8 (1) and selected by the Chairman or a Deputy Chairman of the Tribunal to sit at the hearing of those proceedings;
- (c) a member of the panel constituted under section 8 (2) and selected by the Chairman or a Deputy Chairman of the Tribunal to sit at the hearing of those proceedings.

(2) The membership of the Tribunal may if the Chairman or a Deputy Chairman of the Tribunal, in a particular case, so determines include one or more members of a panel constituted under section 8 (3).

(3) Where proceedings (including proceedings founded upon an application) involving the same or similar questions are commenced under two or more of the relevant Acts and the Chairman or a Deputy Chairman of the Tribunal determines that it would be expedient to consolidate those proceedings and that the consolidation would not unfairly prejudice any party to the proceedings, he may direct that the proceedings be consolidated accordingly and in that event a member shall be selected under subsection (1) (b) from each panel constituted in relation to the Acts under which the consolidated proceedings arise.

(4) The rules of the Tribunal may provide that, in relation to the exercise of specified powers or functions, or in relation to matters of a specified class, the Tribunal may be constituted solely of the Chairman or a Deputy Chairman and where the rules so provide, the Tribunal may be constituted accordingly.

(5) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.

(6) Where the provisions of a relevant Act deal with the manner in which the Tribunal is to be constituted for the purposes of proceedings under that Act, this section shall be construed subject to those provisions.

The Chairman
and Deputy
Chairmen of
the Tribunal.

7. (1) There shall be—

- (a) a Chairman of the Tribunal;
- and
- (b) not more than five Deputy Chairmen of the Tribunal.

(2) The Chairman and Deputy Chairmen of the Tribunal shall be appointed by the Governor.

(3) A person is not eligible for appointment as the Chairman or a Deputy Chairman of the Tribunal unless he is—

(a) a District Court Judge;

or

(b) a legal practitioner of not less than seven years standing.

(4) A District Court Judge shall not be appointed as the Chairman or a Deputy Chairman of the Tribunal except upon the nomination of the Senior Judge.

(5) If the Chairman is absent, or unavailable to act in his office, a Deputy Chairman nominated by the Minister may act in the office of the Chairman.

(6) A District Court Judge is not precluded by appointment as the Chairman or a Deputy Chairman of the Tribunal from performing any other judicial functions.

8. (1) The Governor may in relation to each of the relevant Acts establish a panel consisting of members representative of the interests of the class or classes of persons who are licensed or registered under the relevant Act, or whose conduct is otherwise regulated under the relevant Act. Panels.

(2) The Governor may establish a panel consisting of members representative of members of the public who deal with the persons who are licensed or registered under the relevant Acts or whose conduct is otherwise regulated under the relevant Acts.

(3) The Governor may establish panels of experts whose expertise would in the opinion of the Governor be of value to the Tribunal.

(4) A member of a panel shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of that term, shall be eligible for re-appointment.

(5) The Governor may remove a member of a panel from office for—

(a) mental or physical incapacity to carry out satisfactorily the duties of his office;

(b) neglect of duty;

or

(c) dishonourable conduct.

(6) A person ceases to be a member of a panel if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by notice addressed to the Minister;

or

(d) he is removed under subsection (5).

(7) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of panels established under this Act.

PART II
DIVISION I
 Allowances
 and expenses.

9. A member of the Tribunal shall be entitled to such allowances and expenses as may be determined by the Governor.

The
 Commercial
 Registrar.

10. (1) There shall be a Commercial Registrar.

(2) The Commercial Registrar must be a legal practitioner.

(3) The Commercial Registrar shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967-1981, and the office of the Commercial Registrar may be held in conjunction with any other office in the Public Service of the State.

(4) The Commercial Registrar shall be the executive officer of the Tribunal and shall exercise such powers, discretions and functions—

(a) as may be conferred on, or assigned to, him by or under this Act or any other Act;

or

(b) as may be delegated to him in pursuance of subsection (5).

(5) The Chairman of the Tribunal may delegate to the Commercial Registrar any of his powers, discretions and functions of an administrative nature.

(6) The Commercial Registrar may delegate to any officer of the Public Service any functions of a clerical nature assigned (by delegation or otherwise) to him.

(7) A delegation under subsection (5) or (6)—

(a) is revocable at will;

and

(b) does not prevent the Chairman or the Commercial Registrar (as the case may require) from acting personally in any matter.

Validity of
 acts of the
 Tribunal and
 immunity of
 its members.

11. (1) An act or proceeding of the Tribunal shall not be invalid by virtue only of a vacancy in the membership of a panel from which members of the Tribunal are drawn.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or by the Tribunal, in good faith and in the exercise of his or its powers or functions or in the discharge of his or its duties.

DIVISION II **DIVISION II—MANNER IN WHICH TRIBUNAL IS TO ARRIVE AT ITS DECISIONS**

Decisions in
 cases where
 Tribunal
 sits *in banco*.

12. Where the Tribunal is constituted of the Chairman or a Deputy Chairman and two or more other members—

(a) the Chairman or Deputy Chairman shall preside at the proceedings;

(b) the Chairman or Deputy Chairman shall determine any question relating to the admissibility of evidence and any other question of law or procedure;

and

- (c) on any other question a decision in which a majority of the members of the Tribunal (excluding any drawn from a panel constituted under section 8 (3)) concurs shall be a decision of the Tribunal and, if they are equally divided in opinion, the question shall be decided in accordance with the opinion of the Chairman or Deputy Chairman.

13. (1) 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 (2) and the provisions of any other Act, shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Principles upon which Tribunal to make decisions.

(2) The Tribunal shall be bound by the rules of evidence in disciplinary proceedings.

DIVISION III—PROCEDURES AND POWERS OF THE TRIBUNAL

DIVISION III

14. (1) The Tribunal shall give a party to proceedings before the Tribunal reasonable notice of the time and place at which it intends to hear 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.

Proceedings before the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(3) The Commissioner may appear personally in proceedings before the Tribunal or may be represented at such proceedings by counsel or an officer of the Public Service.

(4) A party to proceedings before the Tribunal (not being the Commissioner) shall be entitled to appear—

(a) personally or by counsel;

or

(b) by leave of the Tribunal—by some other representative.

15. (1) The Tribunal may—

Powers of the Tribunal.

(a) by summons signed on behalf of the Tribunal by the Registrar, require the attendance before the Tribunal of any person;

(b) by summons signed on behalf of the Tribunal by the Registrar, require the production of any books, papers or documents;

(c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;

(d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal;

or

(e) require any person appearing before the Tribunal, including a person whose conduct is subject to an inquiry, (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3), if any person—

(a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;

(b) who has been served with a summons to produce any books, papers or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;

(c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member thereof, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of a contempt of the Tribunal.

(3) A contempt of the Tribunal is a summary offence punishable by a fine not exceeding two thousand dollars.

(4) A person shall not be obliged to answer a question, or to produce books, papers or documents, under this section if—

(a) the answer to the question or the contents of the books, papers or documents would tend to incriminate him;

or

(b) by answering the question or producing the books, papers or documents he would commit a breach of legal professional privilege.

(5) In the course of any proceedings, the Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;

or

(b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court or tribunal that may be relevant to the proceedings.

Orders or
fines or
costs.

16. The Tribunal may make such orders for costs as the Tribunal considers just and reasonable.

Reasons for
decisions
of Tribunal.

17. Where a party to any proceedings before the Tribunal has, within seven 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 reasons in writing for its decision or order.

18. (1) Where an order has been made by the Tribunal, and the Tribunal, or the Supreme Court, is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Tribunal has suspended the operation of an order under subsection (1), the Tribunal may terminate the suspension, and where the Supreme Court has suspended the operation of an order under subsection (1), the Supreme Court may terminate the suspension.

DIVISION IV—CASES STATED AND APPEALS

DIVISION IV

19. The Tribunal may state a case upon any question of law for the opinion of the Supreme Court.

Case stated.

20. (1) A party to proceedings before the Tribunal who is dissatisfied with a decision or order given or made by the Tribunal in those proceedings shall, subject to this section, be entitled to appeal to the Supreme Court against the decision or order of the Tribunal.

Appeal.

(2) An appeal, if it involves a question of law, lies as of right but otherwise lies only by leave of the Tribunal or the Supreme Court.

(3) The appeal or application for leave to appeal must be instituted or made within one month of the making of the decision or order appealed against, but the Supreme Court or the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal or the application should be instituted or made within that period.

(4) The Supreme Court may, on the hearing of the appeal, exercise one or more of the following powers, 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 or other order as to costs or any other matter that the case requires.

21. For the purposes of a case stated or an appeal under this Division the Supreme Court shall be constituted of a single Judge but this subsection does not derogate from the power of such a Judge to reserve an appeal or question for hearing and determination by the Full Court.

Proceedings
to lie to
single Judge
of Supreme
Court.

PART III**PART III****MISCELLANEOUS**

Registers, etc.

22. (1) The Registrar shall keep registers of all persons licensed or registered under the relevant Acts.

(2) Any person may on payment of the prescribed fee (if any) inspect any of the registers kept under this section.

(3) A certificate under the hand of the Registrar certifying that on a date, or between dates, specified in the certificate a person was or was not licensed or registered under a particular Act (being one of the relevant Acts) shall be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

(4) An apparently genuine document purporting to be a certificate under subsection (3) shall be accepted in legal proceedings, in the absence of proof to the contrary, as such a certificate.

Power to cure irregularities.

23. (1) Where in proceedings before the Tribunal or an appeal from the Tribunal to the Supreme Court it appears to the Tribunal or the Court—

(a) that some irregularity has occurred affecting the proceedings or any matter to which the proceedings relate;

and

(b) that it would conduce to the expeditious resolution of the questions of substance at issue between the parties if the powers conferred by this section were exercised,

the Tribunal or the Court may cure the irregularity by ordering that, subject to the fulfilment of such conditions as may be stipulated by the Tribunal or the Court, the requirements of this Act, or of any other Act or law, be dispensed with to the extent necessary for the purpose.

(2) An order under this section does not affect the rights or liabilities of persons who are not parties to the proceedings.

Proof of judgments and orders of the Tribunal.

24. An apparently genuine document purporting to be a copy of a judgment or order of the Tribunal and to be certified as such by the Registrar shall be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of a judgment or order of the Tribunal.

Rules and Regulations.

25. (1) The Chairman of the Tribunal may make such rules of the Tribunal as are contemplated by this Act or any other Act conferring jurisdiction on the Tribunal, or as are necessary or expedient for the purposes of this Act or any other Act conferring jurisdiction on the Tribunal.

(2) Without limiting the generality of subsection (1), those rules may—

(a) provide for the enforcement of judgments and orders of the Tribunal;

and

(b) prescribe matters relevant to the practice and procedure of the Tribunal.

(3) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(4) Without limiting the generality of subsection (3), the regulations may—

(a) provide for the constitution of panels from which members of the Tribunal are to be drawn and requiring consultation with specified bodies in relation to the membership of such panels;

(b) provide for the settlement or attempted settlement, by conciliation, of disputes between parties to proceedings before the Tribunal;

(c) prescribe information to be included in the registers to be kept under this Act;

(d) assign duties to the Registrar and prescribe the manner in which he is to carry out duties assigned to him;

(e) prescribe and provide for the payment of fees;

and

(f) prescribe penalties (to be recoverable summarily) not exceeding five hundred dollars for contravention of, or non-compliance with, any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

W. R. CROCKER, Governor's Deputy