

South Australia



**STATUTES REPEAL AND AMENDMENT (COMMERCIAL TRIBUNAL)
ACT 1995**

No. 82 of 1995

SUMMARY OF PROVISIONS

**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART 2
REPEAL OF COMMERCIAL TRIBUNAL ACT 1982**

4. Repeal of Commercial Tribunal Act 1982

**PART 3
AMENDMENT OF FAIR TRADING ACT 1987**

5. Amendment of s. 3—Interpretation
6. Amendment of s. 34—Correction of errors
7. Amendment of s. 37—Powers of District Court
8. Amendment of s. 80—Registration of deeds of assurance
9. Amendment of s. 82—Prohibition orders
10. Amendment of s. 91—Evidentiary provisions
11. Transitional provisions

**PART 4
AMENDMENT OF GOODS SECURITIES ACT 1986**

12. Amendment of s. 3—Interpretation
13. Amendment of s. 8—Correction, amendment and cancellation of entries
14. Amendment of s. 13—Jurisdiction of Court
15. Amendment of s. 14—Compensation
16. Amendment of s. 15—Application of fees and payment of compensation and administrative costs

**PART 5
AMENDMENT OF SURVEY ACT 1992**

- 17. Amendment of s. 4—Interpretation
- 18. Amendment of s. 36—Investigations by Institution of Surveyors
- 19. Amendment of s. 37—Disciplinary powers of Institution of Surveyors, etc.
- 20. Amendment of s. 38—Disciplinary powers of Court
- 21. Insertion of s. 38A
 - 38A. Participation of assessors in disciplinary proceedings
- 22. Amendment of s. 39—Return of licence or certificate of registration
- 23. Amendment of s. 40—Restrictions on disqualified persons
- 24. Amendment of s. 41—Consequences of action against surveyor in other jurisdictions
- 25. Amendment of heading
- 26. Amendment of s. 42—Appeal to Court
- 27. Amendment of s. 44—Investigations by Surveyor-General
- 28. Insertion of s. 59A
 - 59A. Parties to proceedings before Court
- 29. Insertion of schedule 1
- 30. Transitional provision

**PART 6
AMENDMENT OF TRADE MEASUREMENT ACT 1993**

- 31. Amendment of s. 58—Taking of disciplinary action
- 32. Amendment of s. 59—Rights of appeal

**PART 7
AMENDMENT OF TRADE MEASUREMENT ADMINISTRATION ACT 1993**

- 33. Amendment of s. 3—Definitions, etc.
- 34. Substitution of s. 13
 - 13. Appeals court
- 35. Amendment of s. 14—Determination of appeal
- 36. Insertion of s. 14A
 - 14A. Participation of assessors in determination of appeals
- 37. Insertion of schedule

**SCHEDULE 1
*Schedule substituted in Survey Act 1992***

**SCHEDULE 2
*Schedule inserted in Trade Measurement Administration Act 1993***



ANNO QUADRAGESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1995

No. 82 of 1995

An Act to repeal the Commercial Tribunal Act 1982 and to make certain related amendments; to enact transitional provisions; and for other purposes.

[Assented to 30 November 1995]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Repeal and Amendment (Commercial Tribunal) Act 1995*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
REPEAL OF COMMERCIAL TRIBUNAL ACT 1982**

Repeal of Commercial Tribunal Act 1982

4. The *Commercial Tribunal Act 1982* is repealed.

**PART 3
AMENDMENT OF FAIR TRADING ACT 1987**

Amendment of s. 3—Interpretation

5. Section 3 of the principal Act is amended—

(a) by inserting after the definition of "credit" in subsection (1) the following definition:

"District Court" means the Administrative and Disciplinary Division of the District Court;;

- (b) by striking out from subsection (1) the definition of "the Tribunal".

Amendment of s. 34—Correction of errors

6. Section 34 of the principal Act is amended—

- (a) by striking out from subsections (5), (6) and (7) "Tribunal" wherever occurring and substituting, in each case, "Magistrates Court";
- (b) by inserting after subsection (7) the following subsection:

(8) In this section—

"Magistrates Court" means the Civil (Consumer and Business) Division of the Magistrates Court.

Amendment of s. 37—Powers of District Court

7. Section 37 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" first occurring and substituting "District Court";
- (b) by striking out from subsection (1) "Tribunal" second occurring and substituting "Court";
- (c) by striking out from subsection (2) "Tribunal" first occurring and substituting "District Court";
- (d) by striking out from subsection (2) "Tribunal" second occurring and substituting "Court";
- (e) by striking out from subsection (3) "Tribunal" and substituting "Court".

Amendment of s. 80—Registration of deeds of assurance

8. Section 80 of the principal Act is amended by striking out from subsection (1) "Commercial Registrar" and substituting "Commissioner".

Amendment of s. 82—Prohibition orders

9. Section 82 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" first occurring and substituting "District Court";
- (b) by striking out from subsection (1) "Tribunal" second occurring and substituting "Court";
- (c) by striking out from subsections (2), (3) and (4) "Tribunal" wherever occurring and substituting, in each case, "Court";
- (d) by striking out subsection (5) and substituting the following subsection:

(5) The Court may not make an order under this section (other than an interim order) unless satisfied on the balance of probabilities that proper grounds for the order have been established.

**Statutes Repeal and Amendment (Commercial
Tribunal) Act 1995**

No. 82 of 1995

Amendment of s. 91—Evidentiary provisions

10. Section 91 of the principal Act is amended by striking out subsection (7) and substituting the following subsection:

(7) In any proceedings an apparently genuine document purporting to be certified by the Commissioner as a true copy of an assurance given by a trader and accepted by the Commissioner under Division II is, in the absence of proof to the contrary, proof of the contents of the assurance and proof that the trader gave the assurance and that the Commissioner accepted it.

Transitional provisions

11. (1) An order of the Commercial Tribunal in force under section 37 of the principal Act immediately before the commencement of this section continues in force as if it were an order of the District Court subject to that section.

(2) The register of assurances maintained under section 80 of the principal Act immediately before the commencement of this section continues as the register of assurances maintained under that section.

(3) An order of the Commercial Tribunal in force under section 82 of the principal Act immediately before the commencement of this section continues in force as if it were an order of the District Court subject to that section.

(4) An apparently genuine document purporting to be a copy of an assurance certified by the Commercial Registrar under section 91(7) of the principal Act before the commencement of this section will be treated as if it were a copy of an assurance certified by the Commissioner under that section as amended by this Act.

**PART 4
AMENDMENT OF GOODS SECURITIES ACT 1986**

Amendment of s. 3—Interpretation

12. Section 3 of the principal Act is amended—

(a) by inserting after the definition of "corresponding law" in subsection (1) the following definition:

"Court" means the Civil (Consumer and Business) Division of the Magistrates Court;;

(b) by striking out from subsection (1) the definition of "the Tribunal".

Amendment of s. 8—Correction, amendment and cancellation of entries

13. Section 8 of the principal Act is amended—

(a) by striking out from subsection (6) "Tribunal" and substituting "Court";

(b) by striking out from subsection (7) "Tribunal" (wherever occurring) and substituting, in each case, "Court".

Amendment of s. 13—Jurisdiction of Court

14. Section 13 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "Court";
- (b) by striking out subsection (2).

Amendment of s. 14—Compensation

15. Section 14 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "Court";
- (b) by striking out from subsection (2) "Tribunal" (twice occurring) and substituting, in each case, "Court".

Amendment of s. 15—Application of fees and payment of compensation and administrative costs

16. Section 15 of the principal Act is amended—

- (a) by striking out from subsection (2)(b) "Tribunal" and substituting "Court";
- (b) by striking out from subsection (3) "Tribunal" (twice occurring) and substituting, in each case, "Court".

**PART 5
AMENDMENT OF SURVEY ACT 1992**

Amendment of s. 4—Interpretation

17. Section 4 of the principal Act is amended—

- (a) by inserting after the definition of "course" in subsection (1) the following definition:

"Court" means the Administrative and Disciplinary Division of the District Court;;
- (b) by striking out from subsection (1) the definition of "Tribunal".

Amendment of s. 36—Investigations by Institution of Surveyors

18. Section 36 of the principal Act is amended—

- (a) by striking out from subsection (1) "or the Commercial Registrar of the Tribunal";
- (b) by striking out from subsection (6) "or the Commercial Registrar of the Tribunal, the Institution of Surveyors must report to the Surveyor-General or Commercial Registrar (as the case may require)" and substituting ", the Institution of Surveyors must report to the Surveyor-General".

Amendment of s. 37—Disciplinary powers of Institution of Surveyors, etc.

19. Section 37 of the principal Act is amended by striking out from subsection (1)(b) "Tribunal" and substituting "Court".

**Statutes Repeal and Amendment (Commercial
Tribunal) Act 1995**

No. 82 of 1995

Amendment of s. 38—Disciplinary powers of Court

20. Section 38 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "Court";
- (b) by striking out subsections (2), (3), (4) and (5) and substituting the following subsections:

(2) On the lodging of a complaint under this Act, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.

(3) Without limiting the usual powers of the Court, the Court may during the hearing—

- (a) allow an adjournment to enable the Surveyor-General or the Institution of Surveyors to investigate or further investigate matters to which the complaint relates;

and

- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.;

- (c) by striking out from subsection (6) "an inquiry under this section, the Tribunal" and substituting "a hearing under this section, the Court";
- (d) by striking out from subsection (8) "Tribunal" (twice occurring) and substituting, in each case, "Court";
- (e) by striking out from subsection (9) "Tribunal" and substituting "Court".

Insertion of s. 38A

21. The following section is inserted after section 38 of the principal Act:

Participation of assessors in disciplinary proceedings

38A. In any proceedings under this Division, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.

Amendment of s. 39—Return of licence or certificate of registration

22. Section 39 of the principal Act is amended by striking out "Tribunal" and substituting "Court".

Amendment of s. 40—Restrictions on disqualified persons

23. Section 40 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "Court";
- (b) by striking out from subsection (2) "Tribunal" and substituting "Court";

- (c) by striking out from subsection (3) "Tribunal" (twice occurring) and substituting, in each case, "Court";
- (d) by striking out from subsection (4) "Tribunal" and substituting "Court".

Amendment of s. 41—Consequences of action against surveyor in other jurisdictions

24. Section 41 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "Court";
- (b) by striking out from subsection (2) "Tribunal" and substituting "Court".

Amendment of heading

25. The heading to Division V of Part III of the principal Act is amended by striking out "TRIBUNAL" and substituting "COURT".

Amendment of s. 42—Appeal to Court

26. Section 42 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "Court";
- (b) by striking out from subsection (2) "Tribunal" and substituting "Court";
- (c) by striking out from subsection (3) "Tribunal" and substituting "Court";
- (d) by striking out from subsection (4) "Tribunal" and substituting "Court";
- (e) by striking out from subsection (5) "Tribunal" and substituting "Court";
- (f) by striking out from subsection (8) "Tribunal" and substituting "Court".

Amendment of s. 44—Investigations by Surveyor-General

27. Section 44 of the principal Act is amended by striking out from subsection (1) "must at the direction of the Commercial Registrar of the Tribunal, and may" and substituting "may,".

Insertion of s. 59A

28. The following section is inserted after section 59 of the principal Act:

Parties to proceedings before Court

59A. (1) The Surveyor-General and the Institution of Surveyors are entitled to be joined as parties to any proceedings of the Court under this Act.

(2) The Surveyor-General may appear personally in any such proceedings or may be represented at any proceedings by counsel or a person employed in the Public Service.

Insertion of schedule 1

29. The schedule set out in schedule 1 of this Act is inserted before the schedule of the principal Act (now to be designated as schedule 2).

Transitional provision

30. Where an order is in force under Division IV of Part III of the principal Act immediately before the commencement of this section—

- (a) imposing conditions on a person's licence or registration to practice surveying; or
- (b) suspending a person's licence or registration to practice surveying; or
- (c) disqualifying a person from being licensed or registered to practice surveying,

the order has effect as if it were an order of the Administrative and Disciplinary Division of the District Court under that Division of the principal Act as amended by this Act.

**PART 6
AMENDMENT OF TRADE MEASUREMENT ACT 1993**

Amendment of s. 58—Taking of disciplinary action

31. Section 58 of the principal Act is amended by striking out from paragraph (b) of subsection (2) "tribunal" and substituting "court".

Amendment of s. 59—Rights of appeal

32. Section 59 of the principal Act is amended by striking out from subsection (1) "tribunal" and substituting "court".

**PART 7
AMENDMENT OF TRADE MEASUREMENT ADMINISTRATION ACT 1993**

Amendment of s. 3—Definitions, etc.

33. Section 3 of the principal Act is amended by striking out from subsection (1) the definition of "the Commercial Tribunal".

Substitution of s. 13

34. Section 13 of the principal Act is repealed and the following section is substituted:

Appeals court

13. For the purposes of section 59 of the principal Act, the appeals court is the Administrative and Disciplinary Division of the District Court.

Amendment of s. 14—Determination of appeal

35. Section 14 of the principal Act is amended—

- (a) by striking out from subsection (1) "tribunal" and substituting "court";
- (b) by striking out from subsection (2) "tribunal" and substituting "court";
- (c) by striking out from subsection (3) "tribunal" and substituting "court".

Insertion of s. 14A

36. The following section is inserted after section 14 of the principal Act:

Participation of assessors in determination of appeals

14A. In any proceedings under this Part, the appeals court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the schedule.

Insertion of schedule

37. The schedule set out in schedule 2 of this Act is inserted after section 24 of the principal Act.

SCHEDULE 1

Schedule inserted in Survey Act 1992

SCHEDULE 1

Appointment and Selection of Assessors for District Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of surveyors.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with surveyors.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under Division IV of Part III, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

SCHEDULE 2
Schedule inserted in Trade Measurement Administration Act 1993

SCHEDULE
Appointment and Selection of Assessors for District Court

- (1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of licensees under the principal Act.
- (2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with licensees under the principal Act.
- (3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under Part 5, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.
- (6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.
- (7) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

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

ROMA MITCHELL Governor