

**COMMERCIAL TRIBUNAL OF
WESTERN AUSTRALIA**

CHAIRMAN'S ANNUAL REPORT

FOR THE YEAR ENDED 30 JUNE 2003

**PRESENTED PURSUANT TO SECTION 12 OF THE
*COMMERCIAL TRIBUNAL ACT 1984***

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COMMERCIAL TRIBUNAL OF WESTERN AUSTRALIA

CHAIRMAN'S REPORT TO THE HON. ATTORNEY GENERAL FOR THE YEAR ENDED 30 JUNE 2003.

Presented pursuant to section 12 of the *Commercial Tribunal Act 1984*.

In accordance with section 12 of the *Commercial Tribunal Act 1984*, I submit to the Hon. Attorney General my annual report on the activities of the Commercial Tribunal for the year ended 30 June 2003.

The Commercial Tribunal is not a statutory authority specified in Schedule 1 to the *Financial Administration and Audit Act 1985*.

In respect of the application of section 175ZE of the *Electoral Act 1907* to the activities of the Commercial Tribunal for the year ended 30 June 2003, any such activities that come within the ambit of that section are reported by the Department of Justice in its annual report, in compliance with that section.

SL Pynt
Chairman

Dated: 7 November 2003

THE FUNCTIONS OF THE COMMERCIAL TRIBUNAL

The Commercial Tribunal is an autonomous body established pursuant to section 4 of the *Commercial Tribunal Act 1984*.

In addition to some powers and duties that are contained in the *Commercial Tribunal Act*, the Commercial Tribunal's jurisdiction, powers, and duties, are principally Inferred by other statutes.

These other statutes are the *Chattel Securities Act 1987*; the *Consumer Credit (Western Australia) Act 1996* (which contains the *Consumer Credit (Western Australia) Code*); the *Credit Act 1984*; the *Credit (Administration) Act 1984*; the *Commercial Tenancy (Retail Shops) Agreements Act 1985*; the *Fair Trading Act 1987*; the *Pawnbrokers and Second-hand Dealers Act 1994*; and the *Travel Agents Act 1985*.

The jurisdiction of the Commercial Tribunal may also be invoked under the State Administration of the *Competition Code* pursuant to the *Competition Policy Reform (Western Australia) Act 1996*.

THE MEMBERSHIP OF THE COMMERCIAL TRIBUNAL

The Person Holding Office as Chairman.

Mr Steven Leigh Pynt.

The Person Holding Office as Deputy Chairman.

Ms Catherine Patricia Crawford.

The Membership of the Various Commercial Tribunal Panels.

The names of the persons appointed by the Hon. Attorney General to the various Commercial Tribunal Panels under section 6 of the *Commercial Tribunal Act 1984* and under section 23 of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* are set out in **Schedule 1** against the name of the Panel to which they have been appointed.

The Commercial Registrar.

Mr Hugh Barnard NanKivell is the Commercial Registrar of the Commercial Tribunal.

The Commercial Registrar is also the Registrar of the Retirement Villages Disputes Tribunal, and Registrar of the Strata Titles Referee's Office.

THE COMMERCIAL TRIBUNAL REGISTRY

Until the close of business on Friday, 17 October 2003, the Commercial Tribunal Registry was situate at Level 2 May Holman Centre, 32 St. George's Terrace, Perth.

On Monday, 20 October 2003 the Commercial Tribunal Registry relocated to Level 4, 12 St. George's Terrace, Perth.

The Commercial Tribunal Registry's telephone number from Monday, 20 October 2003 is (08) 9219-3111, and its facsimile number is (08) 9219 3115.

The Commercial Tribunal Registry is open to the public for business on weekdays from 9.00 a.m. to 4.00 p.m., public holidays excepted.

THE COMMERCIAL TRIBUNAL'S ADMINISTRATIVE AND SUPPORT STAFF

The Commercial Tribunal's administrative and support staff (whose services are shared with a number of tribunals and boards, which include the Equal Opportunity Tribunal, the Retirement Villages Disputes Tribunal, and the Strata Titles Referee) consists of seven persons - an office manager, an assistant office manager, the Commercial Registrar's secretary, and four other officers.

FINANCE AND ADMINISTRATION

The Commercial Tribunal is an autonomous body. It does not receive any direct funding from government. It is wholly funded through the Department of Justice.

The Department of Justice receives all fees paid in respect of applications to the Commercial Tribunal. The Commercial Tribunal does not receive or collect any money from the public in its own behalf.

The Commercial Tribunal does not directly employ its own administrative and support staff; they are provided by the Department of Justice.

THE COMMERCIAL TRIBUNAL'S HEARING ROOMS

Whilst the Commercial Tribunal's was located at Level 2, May Holman Centre, 32 St. George's Terrace, Perth, its principal hearing room adjoined its Registry on Level 2. This hearing room was shared with the Criminal Injuries Compensation Referees, the Equal Opportunity Tribunal, the Retirement Villages Disputes Tribunal, the Strata Titles Referee and, on occasion, other tribunals and boards.

The conference room on Level 2 "May Holman Centre" was used for pre-trial conferences when it was not appropriate to use a hearing room. This conference room was also used by the Commercial Registrar for mediations conducted pursuant to applications under -

- (a) sub-sections 16(1) and 19(1) of the *Commercial Tenancy (Retail Shops) Agreements Act 1985*;
- (b) the *Credit Act 1984* and the *Consumer Credit (Western Australia) Code 1996*;
- (c) the *Strata Titles Act 1985*; and
- (d) the *Retirement Villages Act 1992*.

BUSINESS TRANSACTED BY THE COMMERCIAL TRIBUNAL

The following is a summary of Commercial Tribunal hearings, including Directions Hearings, during the year ended 30 June 2003.

Commercial Tribunal Hearings, including Directions Hearings, by Reference to Type of Legislation.

<i>Chattel Securities Act</i>	0
<i>Commercial Tenancy (Retail Shops) Agreements Act</i>	178
<i>Competition Policy Reform (Western Australia) Act</i>	0
<i>Consumer Credit (Western Australia) Code</i>	50
<i>Credit Act</i>	4
<i>Credit (Administration) Act</i>	1
<i>Fair Trading Act</i>	0
<i>Pawn Brokers and Second-hand Dealers Act</i>	- 0
<i>Travel Agents Act</i>	1
TOTAL	234

Further statistical information in relation to applications to the Commercial Tribunal and to the Commercial Registrar is set forth in **Schedule 2**.

CASES BEFORE THE COMMERCIAL TRIBUNAL

Consumer Credit (Western Australia) Code 1996

***Krista Sims v. National Australia Bank Limited* (Commercial Tribunal Matter No. CT/2001-000913)**

In this case, the applicant sought orders to re-open a loan contract and related mortgage, claimed that the loan contract and related mortgage were transactions to which the Code applied.

The respondent submitted that the Code applies only to loan contracts and related mortgages where the loan provided is for personal, domestic or household purposes, but in this case the loan provided to the applicant was provided wholly or predominantly for investment purposes, and not for personal, domestic or household purposes and, accordingly, the Code had no application, and therefore the Commercial Tribunal had no jurisdiction.

Subsection 6 (1) of the Code reads in part -

“This Code applies to the provision of credit (and to the credit contract and related matters) if when the credit contract is entered into or (in the case of pre-contractual obligations) is proposed to be entered into -

- (a) the debtor is an actual person ordinarily resident in the jurisdiction ... ; and*
- (b) the credit is provided or intended to be provided wholly or predominantly for personal, domestic or household purposes;”*

Subsections 6(4) and (5) of the Code reads in part -

“6(4). For the purposes of this section, investment by the debtor is not a personal, domestic or household purpose.

6(5). For the purposes of this section, the predominant purpose for which credit is provided is -

- (a) ...;*
- (b) if the credit is intended to be used wholly to obtain goods or services for use for different purposes, the purpose for which the goods or services are intended to be most used.”*

Subsection 11(1) of the Code reads -

“11(1). In any proceedings (whether brought under this Code or not) in which a party claims that a credit contract, mortgage or guarantee is one to which this Code applies, it is presumed to be such unless the contrary is established.”

In the hearing to determine whether the Commercial Tribunal had jurisdiction, the respondent’s counsel referred to *Taylor & Others v. Third Szable Holdings Pty Ltd & Others [2001] ASC 155-060*, where the Victorian Civil and Administrative Tribunal held that it is the credit provider’s knowledge, not the debtor’s knowledge, that is relevant in subsection 6(1)(b) of the Code. The Deputy President stated -

“Credit is not, of course, provided by the debtor. It is provided by the credit provider. Whilst what the debtor tells the credit provider is relevant, as also is what the credit provider knows from other sources or ought to have known from reasonable inquiry, the knowledge of the credit provider is clearly relevant.”

The respondent’s counsel submitted that the loan facility was provided by it to the applicant in order to enable the applicant to purchase a house from the Applicant’s mother, who would continue to reside there and pay rent to the applicant and, accordingly, the loan facility was provided by the respondent for the purpose of investment, and not for personal, domestic or household purposes.

The Commercial Tribunal held that the respondent only provided the loan facility to the applicant because of the information contained in the applicant’s loan application to the respondent that rent would be paid by the applicant’s mother to the applicant and, although the documentation used by the respondent suggested a consumer purpose, the Commercial Tribunal determined that the purpose of the loan facility was, from the respondent’s view, for investment purposes, namely the deriving of rent from the house property.

The Commercial Tribunal considered that the relevant purpose to be considered under subsection 6(1)(b) of the Code is the credit provider’s purpose, and that the respondent had adequately rebutted the presumption contained in subsection 11(1) of the Code.

Commercial Tenancy (Retail Shops) Agreements Act 1985

Howlett Nominees Pty Ltd v. Comtel Services Pty Ltd & Donald Peter Shirren
(Commercial Tribunal Matter No. CT/2000-001053)

In this case the preliminary issue that the Commercial Tribunal was required to determine was that of jurisdiction.

Some of the material facts submitted to the Commercial Tribunal were -

1. *In their pre-lease negotiations there was no intention by the parties that the premises to be leased would be a “retail shop”, either within the ordinary meaning of that term, or within the meaning of subsection 3(1) of the Commercial Tenancy (Retail Shops) Agreements Act 1985.*
2. *The premises were zoned “Commercial” and, if the premises were to be used as a “retail shop” within the meaning of the City of Perth City Planning Scheme 1985, the approval of the City of Perth would have been required.*
3. *The business carried on from the premises by the first named respondent was the sale, installation, and maintenance, of communications equipment, such as data cabling, and telephone systems.*
4. *A small proportion of the first named respondent’s sales of products and services, in terms of turnover and number of transactions, were made over the counter at the premises.*
5. *Very few of the first named respondent’s customers ever visited the premises. The premises could not be considered to have been set up by the first named respondent to display its products for sale, although some of the products it sold were used by the first named respondent, and could be seen by persons visiting the premises.*
6. *In a sample period of six months more than 50% of the invoices issued by the first named respondent, in both number and value, included the sale of goods by the first named respondent, but of these invoices, only a small number were for the sale of goods only. The first named respondent failed to establish that more than 50% in value of invoices which were for goods and labour, were also for, or involved, the sale of goods. However, the sale of*

goods was certainly an integral part of the first named respondent's business, which was the sale of goods and services.

7. *Most of the income derived from the first named respondent was from "end users", being primarily schools, government departments, corporate clients, and private colleges.*
8. *Most of the first named respondent's business came from existing clients and new clients obtained from "cold callings". Very few customers came from advertising.*
9. *Most purchase orders for new jobs obtained by the first named respondent were either sent in, or telephoned in, to the first named respondent, at the premises. The quotes for the jobs were generally typed up at the premises, and sent out from there.*

The applicant's counsel submitted that the definition of a "retail shop" in subsection 3(1) of the Act requires the premises to be used "wholly or predominantly" for the carrying on of a business involving the sale of goods by retail. The applicant's counsel also submitted that according to the terms of subclause 7.12 of the lease and Item 9 of the Schedule to the lease, the first named respondent is bound to use the premises solely for the purpose stated in Item 9 of the Schedule to the lease, and that there was no provision in the lease or the Schedule to the lease that permitted the premises to be used for the sale of goods by retail.

The respondents' counsel submitted that the definition in the Act of a "retail shop" does not refer to the "purpose" for which a lease is granted. Accordingly, the particular purpose expressly referred to in the lease is of no relevance as to whether or not the shop is a "retail shop".

The applicant's counsel and the respondents' counsel each referred the Commercial Tribunal to the case of *Sharpe v. O'Driscoll* (an unreported judgment of the Full Court of the Supreme Court of Western Australia, delivered 21 March 1997, BC9700941).

The applicant's counsel referred to the statement of Malcolm CJ in *Sharpe v. O'Driscoll*, that in determining what constituted the predominant use of premises, the comparative uses of the premises is emphasised by the Act as the main consideration. The applicant's counsel submitted that there was no evidence that any area of the premises had been set aside to be used for the sale of goods by retail and, pursuant to the terms of the lease, the premises were used wholly for the provision of services. That is, the applicant's counsel submitted that the premises were not used at all for the sale of goods by retail, that the premises were an office, not a "retail shop".

The respondents' counsel referred to Malcolm CJ's statement in *Sharpe v. O'Driscoll*, that the expression "retail" generally refers to the sale of goods in small quantities to individual purchasers, as distinct from the sale of goods in bulk, as is the case of the sale of goods by wholesale, and that the expression may also apply to the provision of services directly to consumers, in the sense that the provision of services can be by retail, as much as the sale of goods can be by retail, and both constitute the conduct of a retail business.

The respondent's counsel also referred to the statement of Franklyn J, in *Sharpe v. O'Driscoll*, where he stated -

"I have difficulty in concluding that the expression "premises used wholly or predominantly for the carrying on of a business involving the sale of goods by retail" used in the definition of "retail shop" requires that the business be wholly or predominantly one for the sale of goods by retail. In my opinion, the use of the word "involving" clearly introduces a different concept, that is, that the business need only include as some part of its operations the sale of goods by retail. The hotel premises are used, in the words of the statutory definition of "retail shop", wholly or predominantly for the carrying on of a business involving the sale of goods by retail and so constitutes a retail shop for the purposes of the Act."

The Commercial Tribunal held that it was clear that the premises were not, in ordinary parlance, a "retail shop", and not a "retail shop" within the meaning of the City of Perth City Planning Scheme 1985, nor was it the intention of the parties that the premises, in ordinary parlance be used as a "retail shop", and that it was unclear whether Parliament intended the Act to apply to premises used for the purpose for which the premises were used.

Notwithstanding this, the Commercial Tribunal considered that none of these factors prevented the premises from being a “retail shop” within the meaning of the Act. In *Sharpe v. O’Driscoll*, Malcolm CJ stated that it was doubtful that it was intended that an hotel could constitute a “retail shop” within the meaning of the Act, but that did not mean that it could not be and, in that case, it was found that part of the hotel premises was a “retail shop”. The fact that if the premises were being used for the sale of goods by retail may have meant that the first named respondent was operating in breach of the permitted use clause in the lease (and the Commercial Tribunal made no finding in that regard) was irrelevant.

The evidence established that of those invoices that were issued for both goods and services, these amounted to more than 50% of the total income derived by the business conducted from the premises by the first named respondent in the relevant period, and also represented more than 50% of the number of invoices issued during that period. This would appear to satisfy Malcolm CJ’s test in *Sharpe v. O’Driscoll* for determining whether the premises are a “retail shop”.

However, what is not clear is that each invoice represents one transaction and that it may be possible that on any one invoice there are two transactions, one being for the sale of goods, and the other for the supply of services. This is unlike the situation in *Sharpe v. O’Driscoll*, where Malcolm CJ considered a sale by the hotel of liquor for consumption by a customer at the hotel was one transaction, being the sale of goods by retail involving the provision of a service by retail, and where the total value of each such sale was treated as the amount of a sale of goods by retail for the purposes of determining whether the predominant test was satisfied. On the evidence, the Commercial Tribunal was unable to determine whether or not the value of the goods component of the invoices amounted to more than 50% in value of the total income derived during the relevant period, and this could mean, if in fact an invoice could represent more than one transaction, that the premises failed to meet Malcolm CJ’s test for a “retail shop”. On this issue the Commercial Tribunal preferred the judgment of Franklyn J, which is more in keeping with the clear language used in the Act, and with the definition in subsection 3(1) of the Act of “retail shop”, paragraph (b). Accordingly, as in this particular case the premises were used wholly for the carrying on of a business and, as the sale of goods by retail was an integral part of that business, Franklyn J’s test that the premises

*“are used wholly or predominantly for the carrying on of
(a) a business involving the sale of goods by retail”,*

is satisfied.

The Commercial Tribunal held that the premises constituted a “retail shop” for the purposes of the Act, and that it had jurisdiction to determine the matters in issue between the parties.

The Commercial Tribunal’s determination in this matter is the subject of an appeal by the applicant to the District Court.

Sportsco Pty Ltd v. Debrito Pty Ltd (Commercial Tribunal Matter No. CT/2001-001280)

In this case the Commercial Tribunal was required to determine whether, in respect of the “retail shop lease” that the respondent had granted to the applicant, subsection 11(2)(c) of the ***Commercial Tenancy (Retail Shops) Agreements Act 1985*** applied to that lease.

Subsection 11(2)(c) of the Act reads –

“11(2)(c). If a retail shop lease provides for the review during the currency of the retail shop lease of the amount of rent payable under the retail shop lease having regard to the market rent of the retail shop concerned –

(a) ...;

(b) ...;

(c) a provision in the retail shop lease purporting to preclude the increase or reduction of that market rent or to limit the extent to which that market rent may be increased or reduced is void.”

Subsection 11(2)(c) of the Act is a subsection contained in the ***Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998*** (*‘the Amending Act’*), and applies only to a “retail shop lease” that was entered into on or after 1 July 1999. The lease

was entered into prior to 1 July 1999, for a term that is still to expire. However, the lease was varied after 1 July 1999, being the date that *the Amending Act* came into effect. The variation to the lease included the removal from the lease of a contractual option to renew the term of the lease.

The lease provided for a “market” rent review on 1 November 2001. Subclause 3.2C(2) of the lease purported to prevent a reduction in the rent. This subclause reads

—

“(2). The Rent as from the rent review date shall not be less than the rent payable by the Lessee immediately prior to the rent review date increased by three (3) per centum thereof.”

The applicant submitted that subclause 3.2C(2) of the lease was void by virtue of the provisions of subsection 11(2)(c) of the Act, on the basis that the variation of the lease after 1 July 1999, by the deletion from the lease of the contractual option to renew the term of the lease, effected at law a surrender of the then existing lease and the creation of a new lease, incorporating the variation. If so, then subsection 11(2)(c) of the Act applies to the new lease created by operation of law and thus renders subclause 3.2C(2) of the lease void, thereby allowing the rent to rise or fall to a level in accordance with the assessed current market rent, and allowing the applicant to initiate the market rent review pursuant to subsection 11(2)(b) of the Act.

The respondent submitted that the variation of the lease effected a surrender of the lease at law and the creation at law of a new lease that incorporated the variation. The respondent also submitted that as no new lease was created, subsection 11(2)(c) of the Act is of no effect in respect of this particular lease in relation to subclause 3.2C(2) of the lease, and therefore the minimum rent payable following a “market” rent review may be no less than the quantum of rent that was payable immediately prior to the date that the “market” rent review was due, increased by three (3) per centum thereof.

The Commercial Tribunal considered a number of Australian and English cases that considered the doctrine of surrender of lease and the re-grant of a new lease by operation of law and concluded that the various judgments in the Australian and English cases supported the respondent’s view in this particular matter.

In this particular case the Commercial Tribunal considered that the variation to the lease, which deleted from the lease the option to renew the term of the lease, should be likened to a future surrender of lease, and that the law can give effect to this without applying the doctrine of surrender and re-grant and, accordingly, there was no surrender of the lease and there was no re-grant of a new lease. The Commercial Tribunal held that subsection 11(2)(c) of the Act had no application to this particular lease, and the application was dismissed.

APPEAL CASES

Perron Investments Pty Ltd v. Assignment Holdings Pty Ltd (District Court [2003] WADC 107)

Assignment Holdings Pty Ltd (“Assignment”) leased “retail shop” premises (“the Premises”) from Perron Investments Pty Ltd (“Perron”). A “market” rent review became due in respect of the Premises. Assignment and Perron could not agree on the amount of the reviewed “market” rent. Assignment and Perron then each appointed their own licensed valuer to assess the “market” rent for the Premises at the “market” rent review date. The licensed valuers could not agree on the amount of the reviewed “market” rent. Assignment then applied to the Commercial Registrar of the Commercial Tribunal under section 11(5) of the ***Commercial Tenancy (Retail Shops) Agreements Act 1985*** for the Commercial Registrar to determine the amount of rent to be paid by it to Perron Investments Pty Ltd (“Perron”) for the Premises as from the “market” rent review date.

After receiving a full speaking valuation report from the two licensed valuers, and after considering the content of those reports, and after inspecting the Premises and other premises considered by each licensed valuer to be comparable to varying degrees, the Acting Commercial Registrar made a determination in respect of the “market” rent as at the “market” rent review date.

Perron was dissatisfied with the Acting Commercial Registrar’s determination and filed an appeal against it with the District Court. Perron contended that under section 20 of the Commercial Tribunal Act 1984, a party to proceedings before the Commercial Tribunal who is dissatisfied with a decision or order of the Commercial Tribunal may, where a question of law is involved, appeal to the District Court against the decision or order. Section 20 of the ***Commercial Tribunal Act 1984*** applies to the ***Commercial Tenancy (Retail Shops) Agreements Act 1985***.

Wisbey J, in his judgment, stated -

*“It would be immediately apparent that the rental determination, prima facie, was not that of the Tribunal. The appellant argues however that s 11 of the **Commercial Tribunal Act**, provides that the Registrar, the executive officer of the Tribunal, may*

*with the approval of the Tribunal or the Chairman, exercise the functions of the Tribunal in relation to prescribed matters. This was not a prescribed matter, and even if it was the case that the Registrar was exercising his function with the approval of the Tribunal, his determination could not be categorised as its determination. The Registrar was not exercising functions of the Tribunal delegated or otherwise, but was exercising a statutory obligation concerning rent review conferred by s 11(5) of the **Commercial Tenancy Act**. When performing his obligations under that section he was simply acting as Registrar, and in no other capacity.*

*The Registrar having proceeded in accordance with the requirements of s 11(5) to determine the rental, there does not appear to be any provision in the **Commercial Tenancy Act** or the **Commercial Tribunal Act** for a review of that determination. Any challenge would necessarily involve an exercise of the prerogative.*

The appeal is dismissed, ...”

Perron subsequently sought, in the Supreme Court, a **Writ of Certiorari** against the Commercial Registrar. Perron contended that the Commercial Registrar was required, in determining the rent to “hear the question with a view to achieving a solution acceptable to the parties”, pursuant to s 16 of the **Commercial Tenancy (Retail Shops) Agreements Act 1985** and, if that could not be achieved, to refer the question to the Commercial Tribunal pursuant to s 22 of the **Commercial Tenancy (Retail Shops) Agreements Act 1985**. Perron also contended that the Commercial Registrar was required to accord the applicant natural justice and failed to do so.

Wheeler J considered the relationship between sections 11 (especially s 11(5), 16, and 22 of the Commercial Tenancy (Retail Shops) Agreements Act 1985. Sections 16 and 22 come within Part III of the Act, whereas section 11 comes within Part II of the Act.

Wheeler J, in her judgment, stated -

“ ... it appears to me that, taken together, they lead to the conclusion that the procedure prescribed under Part III was not intended to apply to determinations pursuant to s 11(5).”

The Court also considered that in this case, natural justice did not require the Commercial Registrar to act in a way different than he did.

Perron's application for a **Writ of Certiorari** against the Commercial Registrar of the Commercial Tribunal was refused.

Australian Competition and Consumer Commission v. CG Berbatis Holdings Pty Ltd & Others (High Court of Australia [2003] HCA 18)

This case and the issues in respect of it was referred to in my annual report for the year ended 30 June 2003, where I indicated that the High Court had reserved its decision. I also referred to this case and the issues in respect of it in my annual report for the year ended 30 June 2001, in relation to when it was before the Full Court of the Federal Court on appeal from a single justice of the Federal Court.

The High Court delivered its decision in respect of the appeal to it from the Full Court of the Federal Court on 9 April 2003. By a majority of four (Gleeson CJ; Gummow J; Hayne J; and Callinan J) to one (Kirby J), the appeal was dismissed with costs. The essence of the High Court's decision turned on the proper meaning of and the proper construction of section 51AAA of the *Trade Practices Act 1974* of the Commonwealth. The heading to section 51AAA of the *Trade Practices Act 1974* relates to "*Unconscionable conduct within the meaning of the unwritten law of the States and Territories*".

SCHEDULE 1

MEMBERSHIP OF THE VARIOUS PANELS OF THE COMMERCIAL TRIBUNAL DURING THE YEAR 1 JULY 2002 to 30 JUNE 2003

Members of the Credit Providers' Panel:

Mr Brian Carthew

Ms Michelle Dolin (until 31 December 2002)

Mr Maurice Charles Foster (until 31 December 2002)

Mr Robert Stanhope Smith

Ms Anne Templeman-Jones

Members of the Consumers' Panel:

Mr Campbell Ansell

Mrs Colleen Marjorie Burgess

Bishop Michael Challen

Mr Rodney Lane

Mrs Kristen Carol McPhail

Members of the Experts' Panel:

Ms Susan Pervan

Mr Kingsley Vincent

Members of the Landlords' Panel:

Ms Elizabeth Brice

Mr Peter George Cook

Mrs Caroline Janet Forster

Mr Alexander Michael Gillichrist Macnaghten

Mr Phillip Joseph Oldershaw (until 31 December 2002)

Members of the Tenants' Panel:

Mr Ronald John Anderson

Mr Bradley William Dunkin

Mr Chris Elieff

Ms Leigh Smith-Knox

Mr Rae Walter

Members of the Travel Agents' Panel:

Mr Anthony Coulson

Ms Mary Elgar

SCHEDULE 2

STATISTICS - APPLICATIONS UNDER VARIOUS ACTS THAT CONFER JURISDICTION ON THE COMMERCIAL REGISTRAR AND THE COMMERCIAL TRIBUNAL

Chattel Securities Act 1987

During the year ended 30 June 2003, no applications were filed under this Act.

Commercial Tenancy (Retail) Shops Agreements Act 1985

At the commencement of business on 1 July 2002, 87 applications were carried over from the previous year to be dealt with and completed as follows -

- (a) applications to the Commercial Tribunal under section 6 - none;
- (b) applications to the Commercial Tribunal under section 6A - none;
- (c) applications to the Commercial Tribunal under section 9 - none;
- (d) applications to the Commercial Registrar under sub-section 11 (5) - 8*;
- (e) applications to the Commercial Registrar under sub-section 13(3) - none*;
- (f) applications to the Commercial Registrar under sub-sections 13(7), 13(7a) and 13(7b) - 22*;
- (g) applications to the Commercial Tribunal under section 14 - none;
- (h) applications to the Commercial Registrar under sub-sections 16(1) and 19(1) - 25*, and
- (i) remitted by the Commercial Registrar to the Commercial Tribunal under sections 22 and 26 - 32, of which 13 were remitted prior to 1 July 2001*.

During the year the following applications were filed -

- (a) to the Commercial Tribunal under section 6 - none;
- (b) to the Commercial Tribunal under section 6A - none;
- (c) to the Commercial Tribunal under section 9 - none;
- (d) to the Commercial Registrar under sub-section 11(5) - 8*;
- (e) to the Commercial Registrar under sub-section 13(3) - 2*;
- (f) to the Commercial Registrar under sub-sections 13(7), 13(7a) and 13(7b) - 1537*;
- (g) to the Commercial Tribunal under section 14 - 1; and

(h) to the Commercial Registrar for mediation under sub-sections 16(1) and 19(1) - 110*, of which 34* were subsequently referred to the Commercial Tribunal.

During the year the following applications were dealt with and completed -

- (a) by the Commercial Tribunal under section 6 - none;
- (b) by the Commercial Tribunal under section 6A - none;
- (c) by the Commercial Tribunal under section 9 - none;
- (d) by the Commercial Registrar under sub-section 11(5) - 10;
- (e) by the Commercial Registrar under sub-section 13(3) - 2*;
- (f) by the Commercial Registrar under sub-sections 13(7), 13(7a) and 13(7b) - 1524*;
- (g) by the Commercial Tribunal under section 14 - 1;
- (h) by the Commercial Registrar under sub-sections 16(1) and 19(1) - 78*; and
- (i) by the Commercial Tribunal under sections 22 and 26 - 31*.

At the close of business on 30 June 2003, 99 applications were still to be dealt with and completed.

Of those applications that were before the Commercial Registrar for mediation, all had been listed for mediation or were in the process of being mediated, and of those applications that were before the Commercial Tribunal for hearing, all had either a directions hearing scheduled, or had completed the directions hearing stage, had a substantive hearing scheduled, or were in the course of being heard.

Of the 99 applications outstanding at the close of business on 30 June 2003, 14 applications were filed prior to 1 July 2002. These 14 applications are all before the Commercial Tribunal. 7 of these 14 applications relate to one retail shopping centre. The issues raised in each of these 7 applications are identical.

Of the remaining 85 applications outstanding at the close of business on 30 June 2003, all of these were filed during the year 1 July 2002 to 30 June 2003. 35 of these applications are before the Commercial Tribunal. 11 of them relate to one retail shopping centre. The issue raised in each of these 11 applications is identical.

At the close of business on 30 June 2003, the status of the 99 outstanding applications was as follows -

- (a) to be dealt with by the Commercial Tribunal under section 6 - none;
- (b) to be dealt with by the Commercial Tribunal under section 6A - none;
- (c) to be dealt with by the Commercial Tribunal under section 9 - none;
- (d) to be dealt with by the Commercial Registrar under sub-section 11(5)- 6*;
- (e) to be dealt with by the Commercial Registrar under sub-section 13(3)- none*.
- (f) to be dealt with by the Commercial Registrar under sub-sections 13(7), 13(7a) and 13(7b) - 35*;
- (g) to be dealt with by the Commercial Tribunal under section 14 - none;
- (h) to be dealt with by the Commercial Registrar under sub-sections 16(1) and 19(1) - 23*; and
- (i) to be dealt with by the Commercial Tribunal under sections 22 and 26 - 35*.

*Note: All those matters marked * are either the exclusive jurisdiction of the Commercial Registrar of the Commercial Tribunal or, in relation to applications under sub-sections 16(1) and 19(1) of the Act, are the subject of initial jurisdiction by the Commercial Registrar and only become subject to the Commercial Tribunal's jurisdiction if the application is referred by the Commercial Registrar to the Commercial Tribunal pursuant to section 22 of the Act.*

Competition Policy Reform (Western Australia) Act 1996

During the year ended 30 June 2003, no applications were filed under this Act.

Consumer Credit (Western Australia) Code 1996

At the commencement of business on 1 July 2002, 12 applications were carried over from the previous year to be dealt with and completed.

During the year ended 30 June 2003 -

- (a) 40 applications were filed; and
- (b) 44 applications were dealt with and completed.

At the close of business on 30 June 2003, 8 applications were still to be dealt with and completed. All of these applications had either completed the directions hearing stage, or had a directions hearing scheduled, a substantive hearing scheduled, or were in the course of being heard. At the date of this report, all of these applications had been dealt with and completed.

Credit Act 1984

At the commencement of business on 1 July 2002, 2 applications were carried over from the previous year to be dealt with and completed.

During the year ended 30 June 2003 -

- (a) no applications were filed; and
- (b) 1 application was dealt with and completed.

At the close of business on 30 June 2003, 1 application was still to be dealt with and completed. The applicant in this particular application has filed similar applications in the other Australian States and Territories. The application filed in Victoria will be the subject of the principal hearing in respect of the series of applications filed in all Australian States and Territories. Once the decision and orders in respect of the Victorian application have been handed down, a copy of them will be filed on the Tribunal's file in respect of the application to it, and a listing will then be made for the Tribunal to hear the application.

Credit (Administration) Act 1984

At the commencement of business on 1 July 2002, 106 Credit Provider licences were current.

At the commencement of business on 1 July 2002, 4 Credit Provider licence applications were pending.

During the year ended 30 June 2003 -

- (a) 16 Credit Provider licence applications were received;
- (b) 14 Credit Provider licence applications were granted by the Commercial Tribunal;

- (c) 2 Credit Provider licence applications were withdrawn;
- (d) no Credit Provider licence application was refused by the Commercial Tribunal;
and
- (e) 14 Credit Provider licences were surrendered by their holders, or cancelled.

At the close of business on 30 June 2003, 4 Credit Provider licence applications were pending.

During the year ended 30 June 2003, the Commercial Tribunal did not hold any disciplinary hearing under the *Credit (Administration) Act 1984*.

Fair Trading Act 1987

During the year ended 30 June 2003, no applications were filed under this Act.

Pawnbrokers and Second-hand Dealers Act 1994

During the year ended 30 June 2003, no applications were filed under this Act.

Travel Agents Act 1985

At the commencement of business on 1 July 2002, 492 Travel Agent licences were current, which number included 15 Travel Agent licences which, at the commencement of business on 1 July 2002, were in a state of suspension as a consequence of the Trustees of the Travel Compensation Fund having suspended the relevant licensee's membership of that Fund.

At the commencement of business on 1 July 2002, 15 Travel Agent licence applications were pending.

During the year ended 30 June 2003 -

- (a) 35 Travel Agent licence applications were received;
- (b) 32 Travel Agent licence applications were granted by the Commercial Tribunal;
- (c) 1 Travel Agent licence application was withdrawn;
- (d) 2 Travel Agent licence applications were refused by the Commercial Tribunal;

(e) 6 Travel Agent licences were suspended by the Trustees of the Travel Compensation Fund; and

(f) 47 Travel Agent licences were surrendered by their holders, or cancelled.

At the close of business on 30 June 2003, 15 Travel Agent licences were in a state of suspension as a consequence of the Trustees of the Travel Compensation Fund having suspended the relevant licensee's membership of that Fund.

At the close of business on 30 June 2003, 15 Travel Agent licence applications were pending.

During the year ended 30 June 2003, the Commercial Tribunal did not hold any disciplinary hearing under the *Travel Agents Act 1985*.

During the year ended 30 June 2003 the Commercial Tribunal declined to grant 2 Travel Agent licence applications following a hearing in respect of each application.

Employment Agents Act 1976

Under this Act the Commercial Registrar is the licensing officer. The Commercial Tribunal has no role under this Act. This item is inserted solely to provide additional information in respect of some of the Commercial Registrar's other statutory work.

At the commencement of business on 1 July 2002, 497 Employment Agent licences were current.

At the commencement of business on 1 July 2002, 4 Employment Agent licence applications were pending.

During the year ended 30 June 2003 -

(a) 44 Employment Agent licence applications were received;

(b) 44 Employment Agent licence applications were granted by the Commercial Registrar;

(c) 81 Employment Agent licences were renewed;

(c) no Employment Agent licence application was withdrawn;

- (d) no Employment Agent licence application was refused by the Commercial Registrar or by the Local Court; and
- (e) 44 Employment Agent licences were surrendered by their holders, or cancelled.

At the close of business on 30 June 2003, 497 Employment Agent licences were current.

At the close of business on 30 June 2003, 4 Employment Agent licence applications were pending.