

**CONSUMER CLAIMS TRIBUNALS (AMENDMENT)
ACT, 1979, No. 139**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 139, 1979.

An Act to amend the Consumer Claims Tribunals Act, 1974, with respect to the jurisdiction of consumer claims tribunals and judicial review of proceedings of the tribunals. [Assented to, 28th November, 1979.]

Consumer Claims Tribunals (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the “Consumer Claims Tribunals Short title. (Amendment) Act, 1979”.

2. (1) Except as provided in subsection (2), this Act shall Commence-
commence on the date of assent to this Act. ment.

(2) Section 3, in its application to Schedule 1 (1), and Schedule 1 (1) shall be deemed to have commenced on 2nd December, 1976.

3. The Consumer Claims Tribunals Act, 1974, is amended in Amendment
the manner set forth in Schedule 1. of Act No.
16, 1974.

SCHEDULE 1.

Sec. 3.

**AMENDMENTS TO THE CONSUMER CLAIMS TRIBUNALS ACT,
1974.**

(1) (a) Section 4 (1), definition of “consumer claim”—

Omit “a trader”, insert instead “engaged in a business activity as referred to in subsection (3A)”.

(b) Section 4 (1), definition of “trader”—

Omit the definition.

Consumer Claims Tribunals (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE CONSUMER CLAIMS TRIBUNALS ACT,
1974—*continued.*

(c) Section 4 (3A)—

After section 4 (3), insert :—

(3A) For the purposes of the definition of “consumer claim” in subsection (1), a person is engaged in a business activity if, whether in the course of a profession or in the field of trade or commerce or otherwise, he carries on a business of supplying goods or providing services or holds himself out as carrying on such a business.

(2) (a) Section 12 (1) (b)—

Omit “and” where lastly occurring.

(b) Section 12 (1) (b1)—

After section 12 (1) (b), insert :—

(b1) the ruling, if any, given by the tribunal in relation to its jurisdiction to hear and determine the claim; and

(c) Section 12 (3)—

After “notation”, insert “, ruling”.

(3) (a) Section 19 (1)—

After “withdrawn”, insert “or dismissed for want of jurisdiction”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONSUMER CLAIMS TRIBUNALS ACT,
1974—*continued.*

(b) Section 19 (4)—

After section 19 (3), insert :—

(4) For the purposes of this section, “court” includes any court, tribunal, board or other body or person—

(a) which or who has power under any Act;
or

(b) which or who has, by agreement between 2 or more persons, authority,

to determine by arbitration, conciliation or otherwise any issue that is in dispute.

(4) Section 20A—

After section 20, insert :—

20A. (1) If at any time before an order has been made by a tribunal under section 23 in respect of a consumer claim the jurisdiction of the tribunal to hear and determine the claim is disputed by a party to the claim, the tribunal shall not make an order determining the claim without first giving a ruling as to whether it has jurisdiction to hear and determine the claim. Procedure where jurisdiction disputed.

(2) A tribunal shall not of its own motion make an order under section 23 (1) (e) dismissing a consumer claim for want of jurisdiction without first giving a ruling as to its jurisdiction to hear and determine the claim.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONSUMER CLAIMS TRIBUNALS ACT,
1974—*continued.*

(3) If a tribunal has given a ruling under subsection (1) or (2) in respect of a consumer claim it shall not make an order under section 23 in respect of the claim—

- (a) until 14 days have elapsed following the giving of the ruling; or
- (b) if at any time before it has made an order it receives notice that proceedings for the relief or remedies referred to in section 21 have been commenced in a court in respect of the ruling, until the proceedings before the court have been determined.

(5) Section 21—

Omit the section, insert instead :—

Immunity
from
judicial
supervision.

21. No court shall grant any relief or remedy to any person by way of—

- (a) a judgment or order in the nature of prohibition, mandamus, certiorari or other prerogative writ;
- (b) a declaratory judgment or order; or
- (c) an injunction,

in respect of a proceeding taken or to be taken before a consumer claims tribunal or in respect of any order or ruling of such a tribunal unless—

- (d) the tribunal has given a ruling under section 20A (1) or (2), or has made an order under section 23, in respect of the proceeding; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONSUMER CLAIMS TRIBUNALS ACT,
1974—*continued.*

(e) where the tribunal has—

- (i) given such a ruling, the only ground upon which any relief or remedy is sought is that the tribunal erred in making the ruling and the court is satisfied that the tribunal so erred; or
- (ii) made such an order (whether or not it has given such a ruling), the court is satisfied that the tribunal had no jurisdiction to make the order or, if it gave the ruling, erred in giving the ruling or that there had occurred in relation to the proceeding a denial of natural justice to any party to the proceeding.

(6) Section 23 (1) (e)—

After “relates”, insert “, whether for want of jurisdiction or any other reason”.

(7) Section 39A—

After section 39, insert :—

39A. Where any proceeding, order or ruling of a consumer claims tribunal is challenged, reviewed or called into question in proceedings before any court, the Minister may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CONSUMER CLAIMS TRIBUNALS ACT,
1974—*continued.*

party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order or judgment of the court.