

**CONSUMER CLAIMS TRIBUNALS (AMENDMENT) ACT 1992**  
**No. 26**

NEW SOUTH WALES



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**CONSUMER CLAIMS TRIBUNALS (AMENDMENT) ACT 1992**  
**No. 26**

NEW SOUTH WALES



**Act No. 26, 1992**

An Act to amend the Consumer Claims Tribunals Act 1987 to make further provision with respect to the classes of persons who may make a consumer claim, the awarding of costs, interest on awards and administrative and procedural matters, and for other purposes. [Assented to 18 May 1992]

*Consumer Claims Tribunals (Amendment) Act 1992 No. 26*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Consumer Claims Tribunals (Amendment) Act 1992.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Consumer Claims Tribunals Act 1987 No. 206**

3. The Consumer Claims Tribunals Act 1987 is amended as set out in Schedule 1.

**Explanatory notes**

4. Matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act\*.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**Amendments: extension of definition of “consumer”**

(1) Section 3 (**Definitions**):

- (a) From paragraph (f) of the definition of “consumer” in section 3 (1), omit “or”.
- (b) At the end of paragraph (g) of the definition of “consumer” in section 3 (1), insert:
  - ; or
  - (h) a company limited by guarantee (not being a company limited both by shares and by guarantee),

**Explanatory note**

Item (1) extends the definition of “consumer” to include companies limited by guarantee (companies whose members guarantee to contribute agreed amounts of money in the event the company is wound up). Such companies are currently not entitled to lodge a claim in a Consumer Claims Tribunal.

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\* The matter marked “†” in the explanatory notes was inserted after the introduction of the Bill in the Legislative Assembly to explain amendments to the Bill that were moved in Committee.

SCHEDULE 1—AMENDMENTS—*continued*

Amendment: clarification of definition of “goods”

(2) Section 3 (**Definitions**):

From section 3 (1), omit the definition of “goods”, insert instead:

“goods” means any tangible thing that is or may be the subject of trade or commerce, but does not include money or an interest in land;

**Explanatory note**

Item (2) makes it clear that the definition of “goods” does not include interests in land.

**Amendments: lodgment of claims and certain applications**

(3) Section 3 (**Definitions**):

(a) In the definition of “registry” in section 3 (1) after “tribunals”, insert “, and any branch of that registry,”.

(b) At the end of section 3, insert:

(6) For the purposes of this Act, a decision of a taxing officer on a taxation of a solicitor’s bill of costs is (subject to any retaxation of the bill and subject to any review of the taxation of the bill by the Supreme Court) final and conclusive as to any matter determined by the taxing officer. Accordingly a tribunal has no jurisdiction in respect of any matter determined by the taxing officer.

(7) For the purposes of this Act, any issue to be determined in a taxation of a solicitor’s bill of costs is taken to be an issue the subject of a dispute in proceedings before a court and the taxing officer is taken to be a court.

(4) Section 7 (**Registry of consumer claims tribunals**):

At the end of section 7, insert:

(2) Branches of that registry may also be established and maintained. Any thing done at a branch is taken to have been done at the registry.

SCHEDULE 1—AMENDMENTS—*continued*

- (5) Section 8 (**Registrar, deputy registrars and staff of tribunals**):
  - (a) From section 8 (3), omit “a deputy registrar” insert instead “any person engaged in the administration of this Act”.
  - (b) From section 8 (3), omit “by this or any other Act”, insert instead “by or under this or any other Act”.
- (6) Section 9 (**Records**):
  - (a) In section 9 (2) (a), after “claim” insert “or a copy of that record”.
  - (b) In section 9 (3), after “record” wherever occurring, insert “(or a copy of it)”.
- (7) Section 13 (**Making a consumer claim**):
  - (a) From section 13 (1), omit “lodge with the registrar of consumer claim tribunals or the registrar of a Local Court”, insert instead “lodge at the registry or at a Local Court”.
  - (b) From section 13 (2), omit “the registrar of consumer claims tribunals or the registrar of a Local Court”, insert instead “staff of the registry or of a Local Court”.
  - (c) From section 13 (3), omit “lodged with the registrar of a Local Court, that registrar”, insert instead “lodged at a Local Court, the Clerk of the Local Court”.
- (8) Section 25 (**Rehearing of certain consumer claims**):
 

From section 25 (1), omit “made to the registrar”, insert instead “lodged at the registry”.
- (9) Section 36 (**Enforcement of other tribunal orders**):
 

From section 36 (4), omit “lodging with the registrar”, insert instead “lodging at the registry”.

**Explanatory note**

Items (3) and (4) allow branches of the registry of consumer claims tribunals to be established.

Currently the Act allows the registrar to delegate to a deputy registrar. Item (5) extends this power by allowing the registrar to delegate to any person involved in the administration of the Act. Item (6) is consequential on the creation of registry branches. It provides for a copy of the official record of a claim to be made available for inspection by a party to the claim (since the original record will not be available at all registry branches).

SCHEDULE 1—AMENDMENT—*continued*

†Item (3) (b) inserts two new provisions relating to consumer claims that involve solicitors' bills of costs. Proposed section 3 (6) makes it clear that a consumer claims tribunal cannot review any matter already determined on a taxation of a solicitor's bill of costs (such as the reasonableness of a solicitor's charges). Proposed section 3 (7) operates to equate the taxation of a solicitor's bill of costs with a dispute in court proceedings so that the current provisions of the Act relating to the overlap of the jurisdiction of consumer claims tribunals with that of courts will apply to proceedings on a taxation of a bill of costs: the effect of this will be that if a taxation of a bill of costs is pending, a consumer claims tribunal cannot hear a claim on the matter and if a consumer claim on a bill of costs is pending before a tribunal, a taxation of the bill of costs cannot be dealt with.

Item (7) revises the provisions dealing with the lodgment of claims to make it clear that lodging a claim at the registry (or a branch registry) or a local court does not require the personal involvement of a registrar, i.e. lodging it with counter staff is sufficient.

Items (8) and (9) are consequential on items (3)–(5) and (7).

**Amendments: written reasons for tribunal's decision to be provided**

(10) Section 9 (**Records**):

- (a) From section 9 (1) (c), omit "claim; and", insert instead "claim;".
- (b) At the end of section 9 (1) (d), insert:  
; and
- (e) the written reasons required to be noted on the official record in respect of the claim under section 34A.
- (c) After section 9 (2), insert:  
(2A) An entitlement that a person has under subsection (2) does not apply to that part of the official record that consists of the written reasons for an order until 7 days after the person has lodged a request at the registry, unless the order concerned was made in circumstances referred to in section 24.

(11) Section 34A:

After section 34, insert:

**Reasons for certain tribunal orders etc.**

34A. (1) There is to be noted on the official record of a tribunal in respect of a consumer claim the tribunal's reasons for:

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) any ruling given by the tribunal with respect to its jurisdiction to hear and decide the claim; and
  - (b) any order made by the tribunal in respect of the claim (other than an interim or ancillary order made under section 30).
- (2) The reasons are to be as brief as is reasonably practicable in the particular case.

**Explanatory note**

Items (10) and (11) require a tribunal, when making certain orders or rulings, to record brief reasons for them. The reasons will form part of the official record of the claim. This requirement will apply to rulings as to jurisdiction and all orders (other than interim or ancillary orders).

The Act currently provides that a party to a consumer claim may inspect and obtain a copy of the official record of the claim. Provision is made in item (10) (c) requiring a party to give the registry 7 days' notice to inspect or obtain a copy of the written reasons for an order except where the order was made in the absence of a party or all parties to the claim. This will give the registry sufficient time to incorporate written reasons in the official record. Reasons for an order in a case where one party or **all** of the parties were not present will have to be available as soon as possible so as not to disadvantage a party wishing to seek a rehearing.

**Amendment: clarification of effect of orders made by a building disputes tribunal**

- (12) Section 12I (**Power to make additional orders in favour of respondent**):

At the end of section 12I, insert:

- (3) Orders under this section are considered to be orders under section 30.

**Explanatory note**

A consumer claims tribunal hearing a building claim (i.e. a claim arising under a residential building contract or arising from a supply of residential building goods or services) is known as a building disputes tribunal. Item (12) makes it clear that orders of a building disputes tribunal are to be treated (for enforcement and other purposes) in ~~the~~ same way as an order of any other consumer claims tribunal.



SCHEDULE 1—AMENDMENTS—*continued*

**Amendment: clarification of effect of tribunal orders**

(13) Section 34:

Omit the section, insert instead:

**Order of tribunal to be final**

34. An order of a tribunal is final and binding on all parties to a consumer claim that is heard and determined by the tribunal and no appeal lies in respect of an order of the tribunal. However, this does not prevent a claim being renewed under section 36 and does not prevent a court granting relief or a remedy as referred to in section 12 (2).

**Explanatory note**

Item (13) makes it clear that while an order of the tribunal in respect of a consumer claim is final and binding on all the parties to the claim, it does not prevent a party from proceeding to renew a claim (under section 36) where the tribunal's order is not complied with.

It also does not prevent a party seeking relief from a court under section 12 (based on a dispute as to jurisdiction or denial of natural justice).

**Amendment: payment of interest on monetary order of tribunal**

(14) Section 35A:

After section 35, insert:

**Interest payable on money ordered to be paid**

35A. In the application of section 39 of the Local Courts (Civil Claims) Act 1970 to an order of a tribunal under this Act, subsection (3) of that section is not to apply.

**Explanatory note**

Currently, when a tribunal makes an order for the payment of money, the order can be enforced as a judgment of a local court. Generally, interest accrues on a local court judgment from the date the order is registered in the local court. However, if the debt is paid within 21 days of that date, no interest is payable. Item (14) provides that in the case of a tribunal order, interest is instead to accrue from the date the order is registered in the local court (i.e. the 21 days interest free period is not to apply to a tribunal order). Provision can already be made in a tribunal order for allowing time to pay.

SCHEDULE 1—AMENDMENTS—*continued***Amendments: statute law revision**(15) Section 35 (**Enforcement of orders to pay money**):

- (a) Omit “registrar of a Local Court” wherever occurring, insert instead “Clerk of a Local Court”.
- (b) From section 35 (5), omit “registrar of that or another Local Court”, insert instead “Clerk of that or another Local Court”.

**Explanatory note**

Item (15) reflects the fact that all local courts have a Clerk but not necessarily a registrar.

**Amendments: savings and transitional provisions**(16) Schedule 3 (**Savings and transitional provisions**):

- (a) Before clause 1, insert:

**PART 1—PRELIMINARY****Savings and transitional regulations**

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Consumer Claims Tribunals (Amendment) Act 1992

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent of the Act concerned or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—CONSUMER CLAIMS TRIBUNALS  
ACT 1987**

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SCHEDULE 1—AMENDMENTS—*continued*

(b) Omit clause 11.

(c) At the end of Schedule 3, insert:

**PART 3—CONSUMER CLAIMS TRIBUNALS  
(AMENDMENT) ACT 1992**

**Meaning of “amending Act”**

11. In this Part, “**amending Act**” means the Consumer Claims Tribunals (Amendment) Act 1992.

**Extension of definition of “consumer”**

12. The amendments made by Schedule 1 (1) of the amending Act do not apply to a consumer claim arising in respect of a matter that occurred before the commencement of the amendments.

**Payment of interest on monetary order of tribunal**

13. The amendment made by Schedule 1 (14) of the amending Act does not apply to orders made before the commencement of the amendment.

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*[Minister’s second reading speech made in—  
Legislative Assembly on 29 April 1992  
Legislative Council on 7 May 1992]*