

1995—No. 462

CONSUMER CLAIMS TRIBUNALS ACT 1987—REGULATION

(Consumer Claims Tribunals Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 105 of 1 September 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Consumer Claims Tribunals Act 1987, has been pleased to make the Regulation set forth hereunder.

FAYE LO PO'MP
Minister for Consumer Affairs.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Consumer Claims Tribunals Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“authorised officer” means:

- (a) in relation to the registry, the registrar or a member of staff of the registry authorised by the registrar for the purposes of the provision in which the expression occurs;
- (b) in relation to a Local Court, the Clerk of the Local Court or a member of staff of the Local Court authorised by the Clerk for the purposes of the provision in which the expression occurs;

“BSC” means the Building Services Corporation constituted by the BSC Act;

“BSC Act” means the Building Services Corporation Act 1989;

“eligible pensioner” means:

- (a) a person who receives a pension, benefit or allowance under Chapter 2 of the Social Security Act 1991 of the Commonwealth, or a service pension under Part III of the Veterans’ Entitlements Act 1986 of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government; or
- (b) a person who receives a pension from the Commonwealth Department of Veterans’ Affairs as:
 - (i) the widow or widower of a member of the Australian Defence or Peacekeeping Forces; or
 - (ii) the unmarried mother of a deceased unmarked member of either of those Forces; or
 - (iii) the widowed mother of a deceased unmarried member of either of those Forces,and who does not have income and assets that would prevent the person from being granted a pensioner concession card if the person were eligible for such a card; or
- (c) a person who receives a special rate of pension under section 24 of the Veterans, Entitlements Act 1986 of the Commonwealth; or
- (d) a person who holds a Senior’s Card (being a card of that name issued by the New South Wales Government);

“eligible student” means a person who is receiving full-time education at a school, college or university and is a recipient of a student assistance allowance from a Commonwealth government authority in respect of that education;

“officer” of an unincorporated body means:

- (a) a secretary or treasurer of the body; or
- (b) a member of the executive or management committee of the body who has been duly elected at a general meeting of members of the body;

“the Act” means the Consumer Claims Tribunals Act 1987.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

PART 2—JURISDICTION OF TRIBUNALS**Tribunals to have jurisdiction in respect of certain provisions of the Credit Act 1984: sec. 10**

4. For the purposes of section 10 (4) of the Act, the prescribed provisions of the Credit Act 1984 in respect of which a tribunal has jurisdiction are sections 21, 23, 24, 25, 26, 37, 47, 62, 76, 93, 103, 104 and 114.

Exceptions from general exclusion of jurisdiction of other courts: sec. 11

5. For the purposes of section 11 (1) (d) of the Act, the BSC is a prescribed body whose jurisdiction is not excluded by section 11 of the Act.

Limitation of amount of order: sec. 32

6. (1) For the purposes of section 32 of the Act, the prescribed amount above which a tribunal has no jurisdiction to make an order is \$25,000.

(2) In the event that the amount prescribed by subclause (1) is varied, the prescribed amount for a claim lodged before the variation takes effect is the amount prescribed by that subclause, as at the time when the claim was lodged.

(3) The prescribed amount for a claim lodged before the commencement of this Regulation is the amount prescribed under section 32 of the Act, as at the time when the claim was lodged.

PART 3—BUILDING DISPUTES**Definition of building goods or services: sec. 12A**

7. For the purposes of paragraph (b) of the definition of “building goods or services” in section 12A of the Act, the prescribed circumstances are circumstances in which the goods or services:

- (a) are supplied to the person who contracts to do residential building work or specialist work; and
- (b) are supplied in connection with the carrying out of that work.

Claims not to be building claims: sec. 12C

8. For the purposes of section 12C of the Act, a claim is not to be considered to be a building claim:

- (a) if it is made by a supplier of building goods or services who is not required to hold a licence under the BSC Act for the supply of those goods or services; or
- (b) if it relates to specialist work (other than specialist work carried out in connection with residential building work).

Claims not to be referred to BSC: sec. 12F

9. The following building claims are prescribed as being exempt from section 12F of the Act:

- (a) claims against a person under a contract for the supply of building goods or services, where the person against whom the claim is made was not, when the contract was entered into, the holder of a licence under the BSC Act for the performance of work under the contract;
- (b) claims for money only that are made by a holder of a licence under the BSC Act against a consumer;
- (c) claims for money only that are made by a holder of a licence under the BSC Act against another person who is the holder of such a licence;
- (d) claims that have already been referred to or investigated by the BSC.

Rectification orders

10. (1) (The manner of making; hearing, determining and otherwise dealing with applications for rectification orders, and the procedure to be adopted with respect to rectification orders after they have been made, are to be the same as for building claims (within the meaning of Part 3A of the Act) and orders made in relation to those claims, except as provided by this clause.

(2) No fee is payable for the making of an application by the BSC for a rectification order.

(3) Section 10 (3) of the Act does not apply in respect of rectification orders.

(4) An application for a rectification order is to be made in the form approved for the time being by the senior referee.

**PART 4—LODGMET, RENEWAL AND WITHDRAWAL OF
CONSUMER CLAIMS****Lodgment of consumer claims: sec. 13**

11. (1) For the purposes of section 13 (1) of the Act, the prescribed fee for a consumer claim (other than a claim made by an eligible pensioner or eligible student) is as follows:

- (a) \$10 for a claim for a nominal amount of less than \$2,000;
- (b) \$20 for a claim for a nominal amount of \$2,000 or more but less than \$4,000;
- (c) \$30 for a claim for a nominal amount of \$4,000 or more but less than \$6,000;
- (d) \$40 for a claim for a nominal amount of \$6,000 or more but less than \$10,000;
- (e) \$100 for a claim for a nominal amount of \$10,000 or more.

(2) For the purposes of section 13 (1) of the Act, the prescribed fee for a consumer claim made by an eligible pensioner or eligible student is as follows:

- (a) \$2 for a claim for a nominal amount of less than \$6,000;
- (b) \$5 for a claim for a nominal amount of \$6,000 or more.

(3) For the purposes of subclauses (1) and (2), the nominal amount of a claim is:

- (a) in the case of a liquidated claim, the amount specified in the claim as the amount claimed; or
- (b) in any other case, the amount estimated by the claimant as the nominal amount of the claim.

(4) For the purposes of section 13 (1) of the Act, the prescribed form for making a consumer claim is Form 1.

Withdrawal of a consumer claim: sec. 16

12. The withdrawal of a consumer claim under section 16 of the Act is to be effected by lodging with the registrar a notice in writing of the withdrawal that identifies the claim.

Renewal of a consumer claim: sec. 36

13. For the purposes of section 36 (4) of the Act, the prescribed form for a notification referred to in that subsection is Form 2.

PART 5—HEARINGS OF CONSUMER CLAIMS**Application for representation of a party to a consumer claim**

14. (1) A party to a proceeding before a consumer claims tribunal who wishes to be represented at the hearing of the proceeding must apply for representation by means of:

- (a) an application lodged with the registrar before the scheduled date of the hearing; or
- (b) an application lodged with the presiding referee at the hearing.

(2) The application must comply with the following requirements:

- (a) it must be in writing;
- (b) it must identify the proceeding;
- (c) it must specify the reasons why the party wishes to be represented;
- (d) it must specify the name and occupation of the proposed representative;
- (e) it must state that the proposed representative has sufficient personal knowledge of the issue in dispute to enable the proposed representative to represent the applicant effectively;
- (f) it must state that the proposed representative is vested with sufficient authority to bind the applicant.

Representation of unincorporated body in consumer claims proceedings

15. If a claim is lodged under the Act by an officer of an unincorporated body, each of the members of the body is taken to have agreed to be represented at the hearing of the claim by that officer or by such other person as may be permitted to represent the body at that hearing.

Application for rehearing of a consumer claim: sec. 25

16. For the purposes of section 25 (1) of the Act, the prescribed form for an application for the rehearing of a consumer claim is Form 3.

PART 6—MISCELLANEOUS**Fee for copy of record: sec. 9**

17. (1) For the purposes of section 9 (2) (b) of the Act, the prescribed fee payable by a person for a copy of the official record, or any part or parts of that record, is:

- (a) \$20 for a person (other than an eligible pensioner or eligible student);
- (b) \$5 for an eligible pensioner or eligible student.

(2) However, a party to proceedings on a consumer claim is entitled to a single free copy of any order made by the tribunal in respect of the claim and of the written reasons given by the tribunal in relation to that order.

Waiver of fees

18. An authorised officer may waive payment of any fee (either in whole or in part) if satisfied:

- (a) that the consumer is a person of small means; or
- (b) that the consumer would suffer hardship if required to pay the fee; or
- (c) that, for any other reason, it would be unfair or unreasonable for the consumer to have to pay the fee.

Transmission of orders for enforcement

19. For the purposes of section 35 (2) (b) (ii) of the Act, the information referred to in that subparagraph may be transmitted to the Clerk of a Local Court by post, by facsimile transmission or by electronic data transfer.

Informant in contempt proceedings: sec. 38

20. For the purposes of section 38 (5) of the Act, the office of the Commissioner is a prescribed office.

List of unsatisfactory suppliers: sec. 42

21. (1) For the purposes of section 42 (2) of the Act, the prescribed particulars are:

- (a) the address at which the supplier carries on business; and
- (b) the reason for inclusion of the supplier's name on the unsatisfactory suppliers list.

- (2) For the purposes of section 42 (4) of the Act:
- (a) the prescribed event is the supplier's compliance with a specified order or specified orders of a tribunal within the period notified to the supplier by the Commissioner; and
 - (b) the prescribed condition is that the supplier must satisfy the Commissioner that the unsatisfactory conduct of the supplier will be discontinued.

Service of notices on unincorporated bodies

22. (1) If, by or under the Act, the registrar is required to serve a notice or other document on an unincorporated body, the posting of the notice or document by pre-paid mail to an officer of that body at the address of that officer last known to the registrar is taken to be sufficient service for the purposes of the Act.

(2) A notice served in accordance with this clause is taken to have been served on each of the members of the unincorporated body concerned.

Repeal

23. (1) The Consumer Claims Tribunals Regulation 1988 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Consumer Claims Tribunals Regulation 1988, had effect under that Regulation continues to have effect under this Regulation.

SCHEDULE 1—FORMS

Form 1

(Cl. 11)

CONSUMER CLAIMS TRIBUNALS ACT 1987 CLAIM FORM		Office Use Only
Before Completing this Claim Form Please Read Information Provided		
1. Indicate <input checked="" type="checkbox"/>		
<u>TYPE OF CLAIM</u>		
Consumer Claim <input type="checkbox"/>	Building Claim <input type="checkbox"/> Address of Building Work: Lot No. _____ Street No. _____ Street _____ Suburb _____ Council _____	<input type="checkbox"/>
<u>PARTICULARS OF CLAIMANT</u>		
2. Indicate <input checked="" type="checkbox"/>		
Consumer <input type="checkbox"/> Building/Trade Contractor <input type="checkbox"/>		
<u>NAME AND ADDRESS OF CLAIMANT</u>		
3. Please complete in block letters and leave space between names		
Name: _____		
(Please Read Information Brochure) _____		
Address for Service of Notices: _____		

Telephone: Home _____ STD _____ Business _____ STD _____		
Fax No.: _____ STD _____		
If you are a contractor, provide details of your Contractor Licence held under Building Services Corporation Act 1989		
Contractor Licence No. _____ Expiry Date: ____/____/____		
4. Do you need an interpreter at the hearing Yes <input type="checkbox"/> No <input type="checkbox"/>		
If yes, indicate language required: _____		
<u>SIGNATURE OF CLAIMANT</u>		
5. Signature of Claimant: _____ Date: ____/____/____		
Position (where appropriate): _____		
(If a Partner, Director, Secretary, Proprietor, Licensed Officer)		

<u>PARTICULARS OF RESPONDENT/S</u>		838
6. Indicate <input checked="" type="checkbox"/> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Building/Trade Contractor <input type="checkbox"/> Consumer <input type="checkbox"/> Other Supplier </div>		<input type="checkbox"/>
<u>NAME AND ADDRESS OF RESPONDENT/S</u>		
7. Please complete in block letters and leave space between names		
(i) Name:	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
(Please Read Information Brochure)	<input style="width: 100%;" type="text"/>	
Address for Service of Notices	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Telephone:	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Home	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
STD	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Fax No.:	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
STD	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
If applicable, provide details of Respondent Contractor's Licence held under Building Services Corporation Act 1989		
Respondent Contractor's Licence No.	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Expiry Date	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
(ii) Name:	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
(Please Read Information Brochure)	<input style="width: 100%;" type="text"/>	
Address for Service of Notices	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Telephone:	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Home	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
STD	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Fax No.:	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
STD	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
If applicable, provide details of Respondent Contractor's Licence held under Building Services Corporation Act 1989		
Respondent Contractor's Licence No.	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>
Expiry Date	<input style="width: 100%;" type="text"/>	<input type="checkbox"/>

PARTICULARS OF AGREEMENT/CONTRACT	
8. Give details about the agreement/contract.	
Was the Agreement/ Contract in Writing?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date of Agreement/Contract	<div style="border: 1px solid black; width: 100px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div>
Place where Agreement/ Contract was made:	<div style="border: 1px solid black; width: 150px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> <div style="display: flex; justify-content: space-between; font-size: 0.8em; margin-top: 2px;"> Suburb/Town Post Code </div>
Contract Price/Price of goods or services:	<div style="display: flex; align-items: center;"> \$ <div style="border: 1px solid black; width: 80px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div>
	<div style="display: flex; align-items: center;"> Amount Paid \$ <div style="border: 1px solid black; width: 80px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div>
Is there a Warranty?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" who gave the Warranty?	<div style="border: 1px solid black; width: 150px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div>
Date of Supply of Goods or Services	<div style="border: 1px solid black; width: 100px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div>
ATTEMPT AT RESOLUTION	
9. Give details of any attempt to resolve the dispute.	
Was your complaint referred to the Respondent?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Was there a Response?	<input type="checkbox"/> Yes <input type="checkbox"/> No
State particulars of response:.....	
.....	
Is any legal action pending in respect of this matter or has the complaint been referred to the Building Services Corporation?	
If yes, state particulars:.....	
.....	
ORDERS SOUGHT	
10. Indicate the order(s) you think the Tribunal should impose if a settlement cannot be reached (<i>More than one order may be sought</i>).	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> A money order for <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 80px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> An order to rectify faulty goods or services <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 30px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> An order to provide specified services <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 30px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> An order that I do not have to pay <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 80px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> An order to deliver goods <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 30px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> An order to return goods to me <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 30px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
<div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> An order to replace goods <div style="margin-left: 10px;"> <div style="border: 1px solid black; width: 30px; height: 1.2em; position: relative;"><div style="position: absolute; top: -10px; left: 0; right: 0; border-top: 1px solid black;"></div></div> </div> <input type="checkbox"/> </div>	
Please turn over and complete	

<h2 style="margin: 0;"><u>DETAILS OF CLAIM</u></h2>		<div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: 8px; font-weight: bold;">Office Use Only</div>
<p>11. Describe the goods or services and give details of your claim. (If a building claim you must give full details of faulty or incomplete work.) Attach additional sheet if necessary.</p> <div style="border-top: 1px dotted black; height: 500px; margin-top: 10px;"></div>		
<p>The following voluntary details will assist the Tribunal to compile statistical information on the country of origin of users of its services.</p> <p>Place of Birth: First Language Spoken: </p>		
<h2 style="margin: 0;"><u>OFFICE USE ONLY</u></h2>		
<p>The prescribed fee of \$100 for a building claim or \$40 (\$5 for pensioners or students) for a consumer claim has been paid/received.</p> <p>Receipt Number </p> <p>Issued on at : am/pm</p> <p>Signature Registrar/Clerk of the Local Court at </p>		

Form 2

(Cl. 13)

CONSUMER CLAIMS TRIBUNALS

RENEWAL OF CLAIM

1. Your Name?

2. Your present address?

3. Who was the order made against?

4. Place of original hearing?

5. Date of original hearing?

6. Tribunal's Reference Number?

7. In what way has the order not been obeyed?

8. What order do you want? (tick the appropriate boxes)

• Money order for \$ ☐• An order to rectify faulty goods or provide services ☐

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- An order to provide specified services ☐
 - An order that I do not have to pay \$ ☐
 - An order to deliver goods ☐
 - An order to replace goods or services ☐
 - An order to return goods to me ☐
-

9. I ask that the claim be relisted

Signature

Date

-
- You can post this form or bring it in person to any of the places listed on the back
-

For office use only**Original order**

Form 3

(Cl. 16)

CONSUMER CLAIMS TRIBUNALS
NOTICE OF ORDER

Tribunal's Reference No.

Claimant's name

Respondent's name

At a hearing held at

on (date of hearing)

the following orders were made—

If you were not present or represented at the hearing and if you did not submit your evidence by affidavit or statutory declaration, you may apply for a rehearing. To apply, you must complete the affidavit on the bottom of this form, tear it off and get it to the office shown above WITHIN 14 DAYS of receiving this notice. The affidavit must be signed by you in front of a Justice of the Peace. If a Referee considers that you had a good reason for not attending the hearing, your claim MAY be reheard.

Registrar, Consumer Claims Tribunals

AFFIDAVIT TO APPLY FOR REHEARING

On the day of 19.....

I, Applicant

of (address)

make oath and say as follows:

1. I wish to apply for a rehearing of Tribunal reference number

2. This claim was heard at (place) on the day of 19.....

3. On (date) I received notification of the Tribunal's order.

4. I was not present at the hearing
and
I was not represented by anyone
and
my case was not presented by affidavit or statutory declaration.

5. I did not attend the hearing because:

.....
.....
.....

Sworn by the Applicant at:

on:

before me:

Signature

(Justice of the Peace)

You can post this affidavit or bring it to any of the places listed on the back.

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SCHEDULE 1—FORMS

EXPLANATORY NOTE

The objects of this Regulation are to repeal and remake, with various changes, the provisions of the Consumer Claims Tribunals Regulation 1988. The new Regulation deals with the following matters:

- (a) the jurisdiction of tribunals (Part 2);
- (b) building disputes (Part 3);
- (c) the lodgment, renewal and withdrawal of consumer claims (Part 4);
- (d) hearings of consumer claims (Part 5);
- (e) other matters of a minor, consequential or ancillary nature (Parts 1 and 6).

This Regulation is made under the Consumer Claims Tribunals Act 1987, including section 48 (the general regulation making power) and sections 9, 10, 11, 12A, 12C, 12F 13, 16, 25, 32, 35, 36, 38 and 42.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
