

CONSUMER CLAIMS TRIBUNALS ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 16, 1974.

An Act to provide for the constitution of consumer claims tribunals and to define their jurisdiction and powers; and for purposes connected therewith.
[Assented to, 10th April, 1974.]

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 :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Consumer Claims **Short** Tribunals Act, 1974". **title.**

2.

Consumer Claims Tribunals.

No. 16, 1974 **2.** (1) This section and section 1 shall commence on the date of assent to this Act.
 Commence-
 ment.

(2) Except as provided in subsection (1), this Act shall commence upon such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division
 of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–4.

PART II.—CONSUMER CLAIMS TRIBUNALS—ss. 5–12.

PART III.—CLAIMS—ss. 13–16.

**PART IV.—JURISDICTION AND POWERS OF TRIBUNALS
 —ss. 17–26.**

PART V.—HEARINGS—ss. 27–33.

PART VI.—MISCELLANEOUS—ss. 34–42.

Interpreta-
 tion.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“claimant” means a person who has referred his claim, being a consumer claim, to a consumer claims tribunal;

“consumer” means a person, not being a corporation—

(a) who buys or hires goods otherwise than for re-sale or letting on hire or than in the course of, or for the purposes of, a trade or business carried on by him, whether alone or in partnership with one or more other persons; or

(b)

Consumer Claims Tribunals.

- (b) for whom services are rendered for fee or reward otherwise than in the course of, or for the purposes of, a trade or business carried on by him, whether alone or in partnership with one or more other persons; No. 16, 1974

“consumer claim” means a claim by a person for the payment of money or the performance of work or for the payment of money and the performance of work, being a claim arising out of a contract for the supply of goods or the provision of services or for the supply of goods and the provision of services between that person as a consumer and a person who in relation to those goods or services, or those goods and services, is a trader;

“consumer claims tribunal” means a consumer claims tribunal constituted under this Act;

“contract” means an oral or written contract;

“goods” includes anything the subject of trade, manufacture or merchandise;

“referee” means a person for the time being holding office under this Act as a referee of consumer claims tribunals;

“registrar” means the person for the time being holding office under this Act as the registrar of consumer claims tribunals and includes any person for the time being acting in that office;

“registry” means the registry of consumer claims tribunals established and maintained under this Act;

“regulations”

Consumer Claims Tribunals.

No. 16, 1974

“regulations” means regulations made under this Act;

“respondent” means a trader against whom a consumer claim referred to a consumer claims tribunal has been made;

“senior referee” means the person for the time being holding office under this Act as the senior referee of consumer claims tribunals;

“services” includes the rights or benefits to be provided under a contract for—

- (a) the performance of work (otherwise than under a contract of service);
- (b) the provision of, or the use and enjoyment of, facilities for amusement, entertainment, recreation or instruction; or
- (c) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

“trader” means a person who in the field of trade or commerce carries on a business of supplying goods or providing services or who holds himself out as carrying on such a business.

(2) For the purposes of this Act, a consumer claim shall be deemed not to have been referred to a consumer claims tribunal unless the claim has been referred to a consumer claims tribunal in accordance with section 13.

PART

Consumer Claims Tribunals.

PART II.

No. 16, 1974

CONSUMER CLAIMS TRIBUNALS.

5. (1) A consumer claims tribunal shall be constituted by a referee sitting alone. Constitution
of consumer
claims
tribunal.

(2) Where two or more persons hold office as referees at the same time the senior referee shall determine which referee shall constitute a tribunal for the purpose of any proceeding.

6. (1) The Governor may appoint persons to be referees of consumer claims tribunals and, where two or more persons hold office as referees at the same time, one of them shall by the instrument of his appointment or by a subsequent instrument executed by the Governor be appointed to be the senior referee. Appoint-
ment of
referees.

(2) A referee shall devote the whole of his time to the duties of his office and shall be paid such remuneration and expenses as the Governor may from time to time determine in respect of him.

(3) A referee shall, subject to this Act, hold office as a referee for such term not exceeding seven years as may be specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time.

(4) Any such re-appointment shall be for such term not exceeding seven years as may be specified in the instrument of re-appointment.

(5)

Consumer Claims Tribunals.

No. 16, 1974

(5) The Governor may appoint a person to act in the office of a referee during the absence of that referee from his office through illness or other cause and the person so appointed shall while so acting be deemed to be a referee and shall have the immunities, powers, authorities, duties and functions of a referee and be entitled to remuneration and expenses as a referee.

(6) Where the person absent as described in subsection (5) is the senior referee, the Governor may appoint any person appointed under that subsection or another referee to act as senior referee during the absence and the person so appointed shall while so acting have the immunities, powers, authorities, duties and functions of the senior referee and be entitled to remuneration and expenses as the senior referee.

(7) A person who is of or above the age of seventy-two years shall not be appointed as a referee or be appointed under subsection (5).

(8) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a referee, a senior referee or a person appointed under subsection (5) but the provisions of that Act and the regulations thereunder (except in so far as they are inconsistent with any of the provisions of this Act) apply to and in respect of any such appointee as if he had been appointed pursuant to the provisions of that Act.

Casual
vacancy.

7. (1) A referee or person appointed under section 6 (5) shall be deemed to have vacated his office—

(a) if he dies;

(b) if he engages in any paid employment outside the duties of his office;

(c)

Consumer Claims Tribunals.

- (c) if he absents himself from duty for a period exceeding fourteen consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant) ;
- (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or expenses as a referee, or of his estate, for their benefit ;
- (e) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act ;
- (f) if he is convicted in New South Wales of a felony or of a misdemeanour punishable by imprisonment for twelve months or longer, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or misdemeanour so punishable ;
- (g) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation ;
- (h) if he is removed from office by the Governor ; or
- (i) on the day on which he attains the age of seventy-two years.

(2) The Governor may, for any cause which to him seems sufficient, remove a referee or person appointed under section 6 (5) from office.

8. (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Preservation of certain rights of referees previously public servants, etc.

(2)

Consumer Claims Tribunals.

No. 16, 1974 (2) Subject to subsection (3) and to the terms of his appointment, where a referee was, immediately before his appointment as a referee—

- (a) an officer of the Public Service; or
- (b) a contributor to a superannuation scheme,

he—

- (c) shall retain any rights accrued or accruing to him as such an officer or contributor;
- (d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a referee; and
- (e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or contributor during his service as a referee, and—

- (f) his service as a referee shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (g) he shall be deemed to be an officer or employee and the Minister shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) A referee who, but for this subsection, would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a referee or at any later time while he holds office as a referee) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to such another superannuation scheme.

(4)

Consumer Claims Tribunals.

(4) Subsection (3) does not prevent the payment to a referee upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme. No. 16, 1974

(5) A referee shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

9. A referee who was, immediately before his appointment as a referee, an officer of the Public Service and who ceases to be a referee, otherwise than pursuant to section 7 (1) (paragraph (g) excepted) or section 7 (2), shall, if he is under the age of sixty years, be entitled to be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as a referee. Referee entitled to re-appointment to Public Service in certain cases.

10. Sittings of tribunals shall be held at such times and places as the senior referee, or, if only one person for the time being holds office as a referee, the referee from time to time determines. Venue.

11. (1) There shall be established and maintained a registry of consumer claims tribunals in which all records of consumer claims tribunals shall be kept. Registry.

(2) A registrar of consumer claims tribunals and such other persons as may be required for the proper functioning of the registry shall be appointed under and subject to the Public Service Act, 1902.

12. (1) The record of a consumer claims tribunal in respect of a claim referred to it shall consist of— Records of consumer claims tribunals.

- (a) that claim as lodged by the claimant;
- (b) the notation of the nature of the issues in dispute as determined and recorded by the tribunal during the hearing of the claim; and
- (c) the order, if any, made by the tribunal.

(2)

Consumer Claims Tribunals.

No. 16, 1974 (2) Every such record may be inspected free of charge by—

(a) the parties to the claim; and

(b) the Commissioner for Consumer Affairs,

and shall be available for production before a court or judge for the purpose of any proceedings before the court or judge.

(3) Notes made by a referee in the course of the hearing of a claim, other than the notation and order referred to in subsection (1), shall not form part of the record of the tribunal.

PART III.

CLAIMS.

Reference
of claims
to
consumer
claims
tribunal.

13. (1) A person may refer his claim, being a consumer claim, to a tribunal by lodging the claim in the prescribed form with, and paying the prescribed fee to, the registrar or any clerk of petty sessions.

(2) It shall be the duty of the registrar and of every clerk of petty sessions to give his assistance to a person who seeks it in completing the prescribed claim form.

(3) A clerk of petty sessions with whom a completed claim form is lodged shall as soon as practicable send the form or, if so required by the regulations, a copy of it to the registrar by post.

14.

*Consumer Claims Tribunals.***14. (1) The registrar—****No. 16, 1974**

- (a) shall cause notice of the consumer claim and its particulars to be given, as soon as practicable, to the respondent and to every person who appears from the claim form to have a sufficient interest in a resolution of the dispute to which the claim relates; and
- (b) shall arrange with the senior referee or, if only one person for the time being holds office as referee, the referee a time and place for the initial proceeding of a tribunal in relation to the claim and shall cause notice of that time and place to be given in writing to the claimant and respondent and to every other person to whom notice of the claim is given.

Notice
of claim
and
proceeding.

(2) Where a tribunal to which a consumer claim has been referred is of the opinion that a person has a sufficient interest in a resolution of the dispute to which the claim relates but has not been given notice of the claim under subsection (1) (a), the tribunal may direct the registrar to cause notice of the claim and its particulars to be given, as soon as practicable, to that person and the registrar shall cause notice to be given in accordance with the direction.

15. Every person to whom notice of a consumer claim is given under section 14 shall be taken to be a party to the proceeding that relates to the claim and every person who satisfies a consumer claims tribunal to which a consumer claim has been referred that he has a sufficient interest in a resolution of the dispute to which the claim relates shall be entitled to be joined as a party to the proceeding.

Parties
to proceed-
ings.

16. A claimant may at any time withdraw his consumer claim whether or not a consumer claims tribunal has entered upon a hearing of the claim.

Withdrawal
of claim.

PART

JURISDICTION AND POWERS OF TRIBUNALS.

Jurisdiction.

17. Subject to this Act, a consumer claims tribunal has jurisdiction to hear and determine any consumer claim referred to it.

No jurisdiction if contract more than two years old.

18. A consumer claims tribunal has jurisdiction in respect of a consumer claim arising from a contract whether the contract was made before or after the commencement of this Act but does not have jurisdiction in respect of such a claim if the contract was made earlier than two years before the day on which the claim was referred to a tribunal.

Exclusion of other jurisdictions.

19. (1) A court has no jurisdiction in respect of any issue in dispute in a consumer claim which has been referred to a consumer claims tribunal and has not been withdrawn.

(2) Where proceedings for the determination of any issue were commenced in a court before a consumer claim in which that issue is in dispute was referred to a consumer claims tribunal and those proceedings have not been withdrawn, nothing in subsection (1) prevents that court from having jurisdiction in respect of that issue and the tribunal on the application of any party to those proceedings who is a party to the proceeding before the tribunal, shall make an order dismissing the claim.

(3) For the purposes of this section, an issue is in dispute in a consumer claim referred to a consumer claims tribunal only if the existence of the dispute was shown in the claim referred to that tribunal or was recorded in the record made by that tribunal in accordance with section 12 (1) (b).

Order of tribunal to be final.

20. An order of a tribunal shall be final and binding on all parties to the proceeding in which the order is made and no appeal shall lie in respect of such an order.

21.

*Consumer Claims Tribunals.***21. No—****No. 16, 1974**

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

Immunity from judicial supervision.

shall be given or made in respect of a proceeding taken or to be taken by or before a consumer claims tribunal, being a proceeding that relates to a consumer claim referred to that tribunal, or in respect of any order of such a tribunal unless the court before which the judgment or order is sought is satisfied that the tribunal has or had no jurisdiction to take the proceeding or that there has occurred therein a denial of natural justice to any party to the proceeding.

22. (1) A consumer claims tribunal shall not make an order in respect of a consumer claim referred to it until it has brought, or has used its best endeavours to bring, the parties to the claim to a settlement acceptable to all of them.

Tribunal to attempt to conciliate.

(2) Where such a settlement is made the consumer claims tribunal shall, at the request of the claimant, make an order under section 23 that gives effect to the terms of the settlement.

23. (1) Subject to this Act, a consumer claims tribunal may make an order in any proceeding before it of the kind referred to in any of the following paragraphs but shall make no other order :—

Orders of consumer claims tribunal.

- (a) an order that requires a party to the proceeding, other than the claimant, to pay money to a person specified in the order within such time as may be specified in the order;
- (b) an order that requires a party to the proceeding, other than the claimant, to perform such work or take such other steps as the order specifies to rectify a defect in goods or services to which the consumer claim in the proceeding relates within such time as may be specified in the order;

(c)

No. 16, 1974

- (c) an order that requires a party to the proceeding, other than the claimant, to pay money as referred to in paragraph (a) and to perform work or take steps as referred to in paragraph (b) within such time as may be specified in the order;
- (d) an order that requires a party to the proceeding, other than the claimant, to do any thing referred to in paragraph (b) within such time as may be specified in the order and in default of his complying with that order to pay money to a person specified in the order; or
- (e) an order that dismisses the claim to which the proceeding relates.

(2) In exercising its powers under subsection (1) (a), (b), (c) or (d) a consumer claims tribunal shall make such an order as is, in its opinion, fair and equitable to all the parties to the proceeding before it.

(3) Subsection (2) does not apply where a consumer claims tribunal makes an order giving effect to the terms of a settlement.

**Enforce-
ment of
orders to
rectify
defects.**

24. (1) In this section, "work order" means an order made under section 23 (1) (b) or (c) that requires a party to a proceeding before a consumer claims tribunal to perform work or take other steps as referred to in section 23 (1) (b) but does not include an order made under section 23 (1) (d).

(2) A work order shall not be enforceable except in accordance with this section.

(3) A tribunal making a work order may at the time of making the order or at any time thereafter give leave to the person in whose favour the order is made to renew the reference of the claim in the proceeding if the order is not complied with.

(4)

Consumer Claims Tribunals.

(4) The renewal of such a reference may be effected Enforce-
ment of
orders to
pay money. **No. 16, 1974**
by the person in whose favour the work order was made
lodging a notification in the prescribed form that the order
has not been complied with and the provisions of Part III
apply to and in respect of the notification as if it were a
consumer claim.

(5) Upon renewal of a reference the tribunal may
make any order that it is empowered to make under section
23 (1) (a), (b), (c) or (d) or may refuse to make any order.

25. (1) Except as provided by subsection (2), the person
to whom payment is to be made under an order made by a
consumer claims tribunal requiring the payment of money to
that person may enforce the order by filing, free of charge,
with the registrar of a court of petty sessions (other than a
court of petty sessions specified in an order made under section
77 (3) of the Courts of Petty Sessions (Civil Claims) Act,
1970)—

- (a) a copy of the order certified by the registrar of
consumer claims tribunals to be a true copy; and
- (b) the affidavit of the person filing the order as to the
amount unpaid under the order and, where the order
is to take effect upon any default, as to the making
of that default,

and thereupon the order shall be deemed to be a judgment
of that court for the amount specified in the affidavit as being
unpaid.

(2) Where, under subsection (1), a person has filed
a copy of the order with a registrar of a court of petty sessions,
any second or subsequent filing of a copy of that order with
the registrar of that or any other court of petty sessions shall
be of no effect.

Consumer Claims Tribunals.

No. 16, 1974 26. (1) In this section, "prescribed amount" means—

Limit of
amount
of order.

(a) except as provided in paragraph (b), the amount of \$500; or

(b) where another amount is prescribed, that other amount.

(2) An order of a consumer claims tribunal made in a proceeding before that tribunal shall, if it orders the payment by one person of an amount exceeding the prescribed amount, be valid and effective as an order requiring the payment of the prescribed amount and otherwise shall be of no effect.

(3) An order of a consumer claims tribunal made in a proceeding before that tribunal shall, if it orders the payment by two or more persons of amounts the sum of which exceeds the prescribed amount, be valid and effective as an order requiring the payment by each of those persons of an amount that bears to the prescribed amount the same proportion as the amount ordered to be paid by that person bears to that sum and shall otherwise be of no effect.

(4) An order made on a consumer claim and an order made on the renewal of a reference of such a claim in accordance with section 24 shall, for the purposes of this section, be deemed to be one order.

(5) For the purposes of subsections (2) and (3), an order of a consumer claims tribunal which orders the payment by two or more persons jointly of any amount (whether or not it orders the payment by any other person of any amount) shall be deemed to be an order of such a tribunal which orders the payment by one person of that amount.

PART

Consumer Claims Tribunals.

PART V.

No. 16, 1974

HEARINGS.

27. (1) A consumer claims tribunal shall, at all times throughout the course of a proceeding, be constituted by the same referee. Continuity of consumer claims tribunal.

(2) If before an order is made in a proceeding before a consumer claims tribunal the proceeding is interrupted by the death or incapacity of the referee who constitutes the tribunal, or by vacation of his office, and the claimant notifies the registrar that he desires to proceed with the consumer claim, the registrar shall arrange for a fresh proceeding in relation to the claim to be commenced before another referee.

28. A tribunal may, at any stage of a proceeding before it, make such amendment of the consumer claim to which the proceeding relates as it thinks fit either at the request of the claimant or of its own motion with the approval of the claimant. Amendment of claim.

29. (1) A consumer claims tribunal may from time to time adjourn a proceeding before it to such times and places and for such purposes as it considers necessary or desirable. Adjournment of proceeding.

(2) The registrar shall cause to be given to any party to a proceeding that has adjourned who is not present or represented at the time when the proceeding is adjourned a notice of the time and place to which the proceeding is adjourned.

30. (1) Each party to a proceeding before a consumer claims tribunal shall have the carriage of his own case. Presentation of cases.

(2)

Consumer Claims Tribunals.

No. 16, 1974

(2) A party to a proceeding before a consumer claims tribunal or a person who applies to be made a party to such a proceeding shall not be entitled to be represented by an agent unless it appears to the tribunal that an agent should be permitted to that party as a matter of necessity and the tribunal so approves.

(3) Subsection (2) does not prevent an officer within the meaning of the Companies Act, 1961, of a corporation from representing that corporation in a proceeding before a tribunal.

(4) A consumer claims tribunal shall not approve of a party to a proceeding before it being represented by an agent who practises as a barrister or solicitor or as an advocate for fee or reward unless—

- (a) all parties to the proceeding agree; and
- (b) the tribunal is satisfied that the parties, other than the party who applies for approval of an agent, or any of them will not be thereby unfairly disadvantaged.

(5) Where apart from this subsection it appears to a consumer claims tribunal that it should allow an agent to represent a party to a proceeding before it the tribunal—

- (a) shall not approve of the proposed agent so doing unless it is satisfied that the proposed agent has sufficient personal knowledge of the issue in dispute to enable him to represent the party effectively and is vested with sufficient authority to bind the party; and
- (b) may subject its approval to such conditions as it considers reasonable to ensure that any other party to the proceeding is not unfairly disadvantaged by the agent appearing before the tribunal and, where it does so, the entitlement of the agent to represent the party shall be subject to his compliance with those conditions.

(6)

Consumer Claims Tribunals.

(6) Contravention of any provision of this section shall not invalidate any proceeding before a consumer claims tribunal in which the contravention occurs or any order made therein. No. 16, 1974

31. (1) Every proceeding before a consumer claims tribunal shall be taken in private. Taking of evidence before consumer claims tribunal.

(2) The evidence material to a proceeding before a consumer claims tribunal—

(a) may be given orally or in writing; and

(b) shall be given upon oath.

(3) For the purposes of subsection (2) (b), a referee who constitutes a tribunal is empowered to administer an oath.

(4) A tribunal is not bound by the rules or practice as to evidence but subject to subsection (2) (b) may inform itself of any matter in such manner as it thinks fit.

32. (1) Subject to this section, where the case of any party to a proceeding before a consumer claims tribunal is not presented to the tribunal, the issues in dispute in the proceeding shall be resolved by the tribunal on such evidence as is otherwise adduced before it and an order made by the tribunal therein shall be lawful and as effective as if the party whose case was not presented had been fully heard. Tribunal to act on evidence available.

(2) Where an issue in dispute has been resolved in the absence of any party to the proceeding, a referee, on application made to the registrar within seven days after the party receives notice of the order made on the consumer claim which gave rise to the dispute, may, if it appears to him that there was sufficient reason for the party's absence, order that the claim be re-heard.

(3)

Consumer Claims Tribunals.

No. 16, 1974

(3) Upon an order being made for a re-hearing—

- (a) the registrar shall notify all parties to the proceeding that related to the consumer claim of the making of the order and of the time and place appointed for the re-hearing; and
- (b) the order of the consumer claims tribunal made upon the first hearing shall thereupon cease to have effect.

(4) If the party on whose application a re-hearing is ordered does not appear at the time and place for the re-hearing or upon any adjournment of the proceeding therein, the consumer claims tribunal if it thinks fit and without re-hearing or further re-hearing the consumer claim, may direct that the order made upon the first hearing of the claim be restored and that order shall, notwithstanding subsection (3) (b), be thereby restored to full force and effect and be deemed to have been of full force and effect at all times since the time of its making.

No costs allowable.

33. Costs shall not be allowed to or against any party to a proceeding before a consumer claims tribunal.

PART VI.

MISCELLANEOUS.

Control of procedures.

34. Subject to this Act and the regulations, every consumer claims tribunal shall have control of its own procedures and in the exercise of that control shall have regard to natural justice.

35.

Consumer Claims Tribunals.

35. (1) A person shall not—

No. 16, 1974

(a) wilfully insult—

Contempt.

(i) a referee during his sitting as a consumer claims tribunal or while he is on his way to or from such a sitting; or

(ii) any person during his attendance at a sitting of a consumer claims tribunal or while he is on his way to or from such a sitting;

(b) wilfully misbehave at a sitting of a consumer claims tribunal;

(c) wilfully and without lawful excuse interrupt the proceeding of a consumer claims tribunal;

(d) unlawfully assault or wilfully obstruct a person in attendance at a consumer claims tribunal; or

(e) without lawful excuse disobey a lawful direction (not being an order referred to in section 23) of a consumer claims tribunal given to him during a sitting of the tribunal.

Penalty : \$500 or imprisonment for 6 months.

(2) A consumer claims tribunal may by oral order direct any person who does anything referred to in subsection (1) to remove himself from the sitting of the tribunal and a person to whom such direction is given shall comply with the direction.

Penalty : \$500 for a contravention of this subsection.

36. The provisions of this Act have effect notwithstanding any stipulation to the contrary and no contract or agreement made or entered into before or after the commencement of this Act operates to annul, vary or exclude any of the provisions of this Act. Contracting out prohibited.

37.

Consumer Claims Tribunals.

- No. 16, 1974** **37.** Where, by or under this Act, the registrar is required to cause any notice or other document to be given to any person, the posting of the notice or document by pre-paid mail to that person at his usual or last known address shall be deemed to be sufficient service.
- Mode of giving notice.**
- 38.** (1) A referee shall from time to time report upon—
- (a) all matters arising out of consumer claims the subject of proceedings before the consumer claims tribunal constituted by him, and any matters reported to him, where he is the senior referee, under subsection (2), being in either case matters that he considers of importance as regards the relationship of consumer and trader;
 - (b) all matters relevant to the administration of this Act or to the practices and procedures of consumer claims tribunals that in his opinion should be brought to the notice of the Minister.
- (2) A referee shall so report—
- (a) where any other person holds the office of senior referee, to that other person; and
 - (b) in every other case, to the Minister.
- 39.** The registrar shall cause to be published, in such manner as the Minister from time to time directs, such particulars in relation to references to consumer claims tribunals as the Minister specifies in the direction.
- 40.** No proceedings shall be taken against the registrar, any referee, any claimant or any other person on account of any proceeding taken, any publication made, or anything done, under the authority of this Act or the regulations or taken, made or done bona fide and purportedly under the authority of this Act or the regulations or on account of any omission made bona fide in respect of the administration of this Act or the regulations.

Consumer Claims Tribunals.

41. (1) Proceedings for an offence against this Act or **No. 16, 1974** the regulations may—

- (a) be taken and prosecuted by any person acting with the authority in writing of the Minister;
- (b) be disposed of summarily by an industrial magistrate appointed under the Industrial Arbitration Act, 1940, or a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceed-
ings.

(2) In a prosecution for any such an offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

(3) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall apply to proceedings before an industrial magistrate or a court of petty sessions held before a stipendiary magistrate for offences against this Act and the regulations as if the proceedings were proceedings under that Act.

(4) In proceedings for an offence against this Act or the regulations, the informant may conduct his case himself, or by his counsel or attorney, or by an agent authorised by him in writing, or by any officer of the Public Service.

42. (1) The Governor may make regulations not inconsistent with this Act for or with respect to—

Regula-
tions.

- (a) forms to be used for the purposes of this Act;
- (b) fees to be paid under this Act;
- (c) the practice and procedure of consumer claims tribunals and the enforcement of orders of consumer claims tribunals;

(d)

Consumer Claims Tribunals.

No. 16, 1974

- (d) the issue of summonses requiring parties to a proceeding before a consumer claims tribunal, or other persons, to give evidence before, or produce evidence to, the tribunal;
- (e) the practice and procedure of the registrar and the powers, functions and duties of the registrar and other persons employed in the registry; and
- (f) any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may impose a penalty not exceeding \$200 for an offence against the regulation.

(3) A regulation may make provisions which differ in their application according to such factors as are specified in the regulation.

CONVERSION