

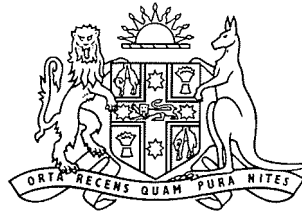


New South Wales

Fair Trading Legislation (Repeal and Amendment) Act 2015 No 12

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New South Wales

Fair Trading Legislation (Repeal and Amendment) Act 2015 No 12

Act No 12, 2015

An Act to amend the *Fair Trading Act 1987* in relation to consumer claims; to provide for the repeal of the *Consumer Claims Act 1998*, the *Fitness Services (Pre-paid Fees) Act 2000*, the *HomeFund Commissioner Act 1993* and the *Landlord and Tenant Act 1899*; and for other purposes. [Assented to 29 June 2015]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Legislation (Repeal and Amendment) Act 2015*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Section 3 (a) and (b) and Schedules 1 [6]–[8], [10]–[12] and [18], 2, 3.2 and 3.5 commence on a day or days to be appointed by proclamation.
- (3) Schedule 1 [1], [3] and [4] commence on 1 July 2015 or assent, whichever is the later.

3 Repeals

The following Acts are repealed:

- (a) the *Consumer Claims Act 1998* No 162,
- (b) the *Fitness Services (Pre-paid Fees) Act 2000* No 95,
- (c) the *HomeFund Commissioner Act 1993* No 9.

Schedule 1 Amendment of Fair Trading Act 1987 No 68

[1] Whole Act (except Schedule 5)

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s”, respectively.

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

banker has the same meaning as in section 2 (1) of the ACL.

[3] Section 4 (1)

Omit the definitions of *Department*, *Director-General* and *officer*.

Insert in alphabetical order:

Department means the Department of Finance, Services and Innovation.

employee means:

- (a) the Secretary or any other Public Service employee employed in the Department, or
- (b) any person engaged by the Secretary (with the approval of the Minister and on such terms as the Minister thinks fit) to assist in the exercise of the Secretary’s functions.

Secretary means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

[4] Sections 4 (1) (definition of “investigator”), 10 (1) (a), 18 (1), 20 (6), 21 (2), 23, 24 (2) (a) and (b) and (3), 25 (2) (b) and (4) (b) and 47 and clause 1 (5) and (6) of Schedule 4

Omit “officer”, “officer’s” and “officers” wherever occurring.

Insert instead “employee”, “employee’s” and “employees”, respectively.

[5] Section 4 (1), definition of “public authority”

Omit “, a Government Department or an administrative office”.

Insert instead “or a Public Service agency”.

[6] Section 4 (1), definition of “services”

Omit “rights or benefits being the supply of goods or the performance of work under a contract of service”.

Insert instead “the supply of goods or the performance of work under a contract of employment”.

[7] Section 4 (1), definition of “supply”

Insert “(except in Part 6A)” after “includes”.

[8] Section 8 Delegation by Secretary

Omit section 8 (1) (b1).

[9] Section 14 Assignment to Australian legal practitioner of case of assisted person

Omit section 14 (1) (c). Insert instead:

- (c) with the consent of the head of another Public Service agency—to an Australian legal practitioner employed in that agency, or

[10] Section 79 Other injunctions

Omit section 79 (1) (a) (ii).

[11] Part 6A

Insert after Part 6:

Part 6A Jurisdiction of Tribunal in relation to consumer claims

Note. For the purposes of comparison, provisions of this Part contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the *Consumer Claims Act 1998* (the **CC Act 1998**) or the *Consumer Claims Regulation 2014* (the **CC Reg 2014**), as in force before the enactment of this Part.

Division 1 Preliminary

79B Objects of this Part (cf CC Act 1998, s 2A)

The objects of this Part are to provide for remedies for, and the straightforward resolution of, disputes concerning the supply of goods and services to consumers.

79C Conferral of jurisdiction under this or any other Act not affected

This Part does not affect any provision of this or any other Act that confers jurisdiction on the Tribunal.

79D Definitions (cf CC Act 1998, s 3 (1) and s 3 (3) (transferred to definition of “consumer”))

In this Part:

consumer means any of the following persons or bodies to whom or to which a supplier has supplied, or agreed to supply, goods or services (whether or not under a contract), or with whom or with which a supplier has entered into a contract that is collateral to a contract for the supply of goods or services:

- (a) a natural person,
- (b) a firm (within the meaning of the *Partnership Act 1892*),
- (c) a small proprietary company (within the meaning of the *Corporations Act 2001* of the Commonwealth),
- (d) an owners corporation constituted under the *Strata Schemes Management Act 1996*,
- (e) a company that owns an interest in land and has a memorandum or articles of association conferring on each owner of shares in the company a right to occupy under a lease or licence a part or parts of a building erected on the land,
- (f) an incorporated association,
- (g) an unincorporated body whose members are associated for a common purpose,
- (h) a company limited by guarantee (other than a company limited both by shares and by guarantee).

consumer claim—see section 79E.

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.

services—see section 79F.

supplier means a person who, in the course of carrying on (or purporting to carry on) a business, supplies goods or services.

supply—see section 79G.

79E Meaning of “consumer claim” (cf CC Act 1998, s 3A)

- (1) For the purposes of this Part, a *consumer claim* means a claim by a consumer, for one or more of the following remedies, that arises from a supply of goods or services by a supplier to the consumer (whether or not under a contract) or that arises under a contract that is collateral to a contract for the supply of goods or services:
 - (a) the payment of a specified sum of money,
 - (b) the supply of specified services,
 - (c) relief from payment of a specified sum of money,
 - (d) the delivery, return or replacement of specified goods or goods of a specified description.
- (2) For the avoidance of doubt, a reference in this Part to a consumer claim includes a reference to a claim by a consumer against a supplier (for example, a manufacturer or wholesaler) who is not the direct supplier of goods or services to the consumer if the claim arises from or in connection with the supply of those goods or services by the direct supplier to the consumer.

79F Meaning of “services” (cf CC Act 1998, s 3 (1), definition of “services”)

- (1) For the purposes of this Part, a reference to services is a reference to any of the following:
 - (a) the performance of work (including work of a professional nature), whether with or without the supply of goods,
 - (b) the provision of gas or electricity or the provision of any other form of energy,
 - (c) the provision, or the making available for use, of facilities for amusement, entertainment, recreation or instruction,
 - (d) the letting of premises for vacation or recreational purposes,
 - (e) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction,
 - (f) the provision of insurance cover,
 - (g) the rights or benefits provided, granted or conferred under a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking,
 - (h) the provision of credit,
 - (i) any other rights (including rights in relation to, and interests in, property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce.

- (2) However, a reference in this Part to services does not include a reference to any of the following:
- (a) the supply of goods or the performance of work under a contract of employment,
 - (b) rights or benefits provided, granted or conferred under a service contract (within the meaning of the *Retirement Villages Act 1999*),
 - (c) the provision of assurance cover in respect of a person's life.

79G Meaning of "supply" (cf CC Act 1998, s 3 (1) (definition of "supply") and s 3 (2))

- (1) For the purposes of this Part, a reference to the supply of goods includes a reference to any of the following:
- (a) supplying goods by way of sale, exchange, lease, hire or hire-purchase,
 - (b) resupplying goods,
 - (c) agreeing to supply goods,
 - (d) supplying goods together with services.
- (2) For the purposes of this Part, a reference to the supply of services includes a reference to any of the following:
- (a) providing, granting or rendering services for valuable consideration,
 - (b) agreeing to supply services,
 - (c) supplying services together with goods.

79H Persons presumed to be consumers (cf CC Act 1998, s 4)

For the purposes of this Part:

- (a) a person or body claiming to be a consumer is to be presumed to be a consumer until the contrary is proved, and
- (b) in any legal proceedings (including proceedings before the Tribunal), the onus of proving that a person or body claiming to be a consumer is not a consumer is on the party who seeks to establish that fact.

Division 2 Application to and jurisdiction of Tribunal

79I Consumer may apply to Tribunal (cf CC Act 1998, s 6)

Any consumer may apply to the Tribunal for determination of a consumer claim.

79J General statement of jurisdiction (cf CC Act 1998, s 7 (1))

The Tribunal has jurisdiction, except as otherwise provided by this Division, to hear and determine a consumer claim the subject of an application under this Division.

79K Supply or agreement made, or supply intended to be made, in New South Wales (cf CC Act 1998, s 7 (2) and (3))

- (1) The Tribunal has jurisdiction to hear and determine a consumer claim only if:
- (a) the goods or services to which the claim relates were supplied in New South Wales, or
 - (b) a contract or other agreement to which the claim relates contemplated that the goods or services would be supplied in New South Wales (whether or not they were so supplied), or

- (c) a contract or other agreement to which the claim relates was made in New South Wales (whether or not the goods or services were supplied in New South Wales).
- (2) The Tribunal has such jurisdiction whether or not:
 - (a) a contract or other agreement to which the claim relates confers jurisdiction on any other court or tribunal (whether in New South Wales or elsewhere), or
 - (b) the rules of private international law require a law other than the law of New South Wales to be applied to the hearing or determination of the claim.

79L Limitation periods (cf CC Act 1998, s 7 (4) and (4A))

- (1) The Tribunal does not have jurisdiction to hear and determine a consumer claim if any of the following apply:
 - (a) the cause of action giving rise to the claim first accrued more than 3 years before the date on which the claim is lodged,
 - (b) the goods or services to which the claim relates were supplied (or, if made in instalments, were last supplied) to the claimant more than 10 years before the date on which the claim is lodged.
- (2) Nothing in this section affects any period of limitation under the *Limitation Act 1969*.

79M Claim relating to solicitor's or barrister's costs (cf CC Act 1998, s 7 (5))

A matter arising in relation to the fairness or reasonableness of the costs charged by a barrister or solicitor for an item of business transacted by the barrister or solicitor is not within the jurisdiction of the Tribunal if the costs can be the subject of a costs assessment under Part 3.2 of the *Legal Profession Act 2004*.

Division 3 Orders of Tribunal

79N Orders in favour of claimant (cf CC Act 1998, s 8 (1))

In determining a consumer claim wholly or partly in favour of a claimant, the Tribunal may, subject to this Division, make any one or more of the following orders that it considers appropriate:

- (a) an order that requires a respondent to pay to the claimant a specified amount of money,
- (b) an order that requires a respondent to perform specified work in order to rectify a defect in goods or services to which the claim relates,
- (c) an order that requires a respondent to supply to the claimant specified services other than work,
- (d) in the case of a claim for relief from payment of money—an order declaring that a specified amount of money is not due or owing by the claimant to a respondent,
- (e) an order that requires a respondent to deliver to the claimant goods of a specified description,
- (f) an order that requires a respondent to return to the claimant specified goods which are in the possession or under the control of that respondent, whether the property in the goods has passed or not,

- (g) an order that requires a respondent to replace goods to which the claim relates,
- (h) an order that requires a respondent to refund all or part of the purchase price of specified goods that are in the possession (or under the control) of the claimant and the claimant to return all or part of those goods to the respondent (whether the property in the goods has passed or not).

79O Orders in favour of respondent (cf CC Act 1998, s 8 (2))

In determining a consumer claim wholly or partly in favour of a respondent to the claim, the Tribunal may make any one or more of the following orders that it considers appropriate:

- (a) an order dismissing the claim or a part of the claim,
- (b) an order that requires the claimant to pay to the respondent a specified amount of money,
- (c) an order that requires the claimant to return to the respondent specified goods which are in the possession or under the control of the claimant, whether the property in the goods has passed or not.

79P Orders where more than one respondent (cf CC Act 1998, s 8 (2A))

Without limiting section 79N or 79O, in determining a consumer claim in which there is more than one respondent, the Tribunal may make any one or more of the following orders that it considers appropriate:

- (a) an order that requires a respondent to pay to another respondent a specified amount of money,
- (b) an order that requires a respondent to supply to another respondent specified services other than work,
- (c) an order that requires a respondent to deliver to another respondent goods of a specified description,
- (d) an order that requires a respondent (*the first respondent*) to return to another respondent specified goods that are in the possession or under the control of the first respondent, whether the property in the goods has passed or not.

79Q Other matters relating to orders under section 79N, 79O or 79P (cf CC Act 1998, s 8 (3)–(5))

- (1) In making an order under section 79N, 79O or 79P requiring a party to a consumer claim to pay a specified amount of money or to take any other specified action, the Tribunal must, unless it has good reason to the contrary, specify a period within which the money must be paid or the action must be taken.
- (2) The Tribunal may not make any of the orders referred to in this section unless the claimant's case has been presented to the Tribunal (whether or not in person) following the making of the relevant application under section 79I.
- (3) Nothing in subsection (2) prevents the Tribunal from dismissing or adjourning proceedings under section 55 of the *Civil and Administrative Tribunal Act 2013*.

79R Interim and ancillary orders (cf CC Act 1998, s 10)

- (1) In the course of hearing a consumer claim, the Tribunal may make any interim order that appears to the Tribunal desirable to be made pending final determination of the claim.

- (2) When making an order for the determination of a consumer claim, the Tribunal may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect.

79S Monetary limit on Tribunal's jurisdiction to make orders (cf CC Act 1998, s 14 and CC Reg 2014, cl 4)

- (1) The Tribunal has no jurisdiction to make, in respect of a particular consumer claim, an order or orders in favour of the claimant (or, where there are two or more claimants, in favour of those claimants) if the relevant total under or because of the order or orders would exceed the prescribed amount.
- (2) For the purposes of subsection (1), the **relevant total** is the total of:
- (a) the amount or amounts (if any) of money to be paid, and
 - (b) the value or values (if any) of the work to be performed, or the services to be supplied, and
 - (c) the amount or amounts (if any) of money to be declared not to be due or owing, and
 - (d) the value or values of goods (if any) to be delivered or replaced.
- (3) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders referred to in section 79O if the amount or the total of the amounts (if any) to be paid under or because of the order or orders would exceed the prescribed amount.
- (4) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders under section 79P if the relevant total under or because of the order or orders would exceed the prescribed amount.
- (5) For the purposes of subsection (4), the **relevant total** is the total of:
- (a) the amount or amounts (if any) of money to be paid, and
 - (b) the value or values (if any) of the services to be supplied, and
 - (c) the value or values of goods (if any) to be delivered.
- (6) Subsections (1), (3) and (4) do not apply in relation to a consumer claim:
- (a) arising from the supply of a new motor vehicle that is used substantially for private purposes within the meaning of the *Motor Vehicles Taxation Act 1988*, or
 - (b) relating to commission fees charged by agents licensed under the *Property, Stock and Business Agents Act 2002*.
- (7) In this section:
- new motor vehicle** means a motor vehicle that is not a second-hand motor vehicle within the meaning of the *Motor Dealers and Repairers Act 2013*.
- prescribed amount** means \$40,000 or such other amount as is prescribed for the purposes of this section.

79T Suspension of orders (cf CC Act 1998, s 11)

- (1) If the Tribunal has made an order under this Division that has not yet ceased to have effect, the Tribunal may (on the application of the person against whom or in whose favour the order was made or of its own motion) suspend the operation of the order by making a suspension order.
- (2) The Tribunal may make a suspension order for such reasons and for such period, or until the happening of such event or the fulfilment of such conditions, as the Tribunal specifies in the suspension order.

- (3) Nothing in this section limits the operation of section 43 (2) of the *Interpretation Act 1987*.

79U Matters to be considered by Tribunal when making orders (cf CC Act 1998, s 13)

- (1) When making any orders under this Division, the Tribunal must be satisfied that the orders will be fair and equitable to all the parties to the claim.
- (2) Without limiting subsection (1), when determining whether or not to make an order under this Division, the Tribunal is to take the following factors into consideration if they are material to the particular circumstances of the case:
- (a) whether or not there was any material inequality in bargaining power between the parties to the claim,
 - (b) whether or not any party to the claim was not reasonably able to protect the party's interest because of the age or physical or mental capacity of that party,
 - (c) whether or not any person who represented any of the parties to the claim was not reasonably able to protect the interests of the party represented because of the age or physical or mental capacity of that person,
 - (d) the relative economic circumstances, educational background and literacy of the parties to the claim and of any person who represented any of those parties,
 - (e) whether or not and when independent legal or other expert advice was obtained by the claimant,
 - (f) whether any undue influence, unfair pressure or unfair tactic was exerted on or used against the claimant:
 - (i) by any other party to the claim, or
 - (ii) by any person acting or appearing or purporting to act on behalf of any other party to the claim, or
 - (iii) by any person to the knowledge of any other party to the claim or of any person acting or appearing or purporting to act on behalf of any other party to the claim,
 - (g) the conduct of the parties to the claim in relation to similar transactions to which any of them has been a party,
 - (h) where the subject of the claim is a contract for the supply of goods or services or a contract collateral to such a contract:
 - (i) whether or not before or at the time when the contract was made its provisions were the subject of negotiation, and
 - (ii) whether or not it was reasonably practicable for the claimant to negotiate for the alteration of the contract or to reject any of its provisions, and
 - (iii) whether or not any provisions of the contract impose conditions that are unreasonably difficult to comply with or not reasonably necessary for the protection of the legitimate interests of any party to the claim, and
 - (iv) if the contract is wholly or partly in writing, the physical form of the contract and the intelligibility of the language in which it is expressed, and
 - (v) the extent (if any) to which the provisions of the contract and their legal effect were accurately explained by any person to the

- claimant and whether or not the claimant understood the provisions and their effect, and
- (vi) the commercial or other setting, purpose and effect of the contract.
- (3) Without limiting subsection (1), when determining whether or not to make an order or orders under section 79N, 79O or 79P, it is appropriate for the Tribunal to consider (if relevant to the particular circumstances of the case):
- (a) any code of practice prescribed under this Act, and
- (b) if the Secretary has brought to the attention of the Tribunal any other code of practice (whether or not prescribed by or under any other Act)—that code of practice.

79V Joint liability (cf CC Act 1998, s 12)

Section 95 of the *Civil Procedure Act 2005* applies to and in respect of an order of the Tribunal under this Division as if such an order were a judgment of the Supreme Court.

Division 4 Miscellaneous

79W Certain matters to be reported to President of Tribunal or to Minister (cf CC Act 1998, s 15)

- (1) Members of the Tribunal may give a written report to the President of the Tribunal concerning:
- (a) any matter that arises out of the hearing or determination of a consumer claim by the Tribunal (constituted by those members) that they consider to be of importance as regards the relationship of consumer and supplier, or
- (b) any matter that, in their opinion, is relevant to the administration of this Part and should be brought to the attention of the President of the Tribunal.
- (2) The President of the Tribunal may give a written report to the Minister concerning:
- (a) any matter that arises out of the hearing or determination of a consumer claim by the Tribunal (constituted by the President) that the President considers to be of importance as regards the relationship of consumer and supplier, or
- (b) any matter that, in the opinion of the President, is relevant to the administration of this Part and should be brought to the attention of the Minister, or
- (c) any matter reported to the President by any member of the Tribunal in accordance with subsection (1) and that the President considers should be brought to the attention of the Minister.
- (3) If, in the course of, or as a result of, the hearing of a consumer claim by the Tribunal, it appears to the Tribunal that a supplier has, in the course of the supplier's dealings with the claimant, engaged in conduct that should be brought to the attention of the Secretary, the Tribunal may give a written report to the Secretary concerning that conduct.

- (4) The Secretary may give a copy of any report relating to a supplier that is given to the Secretary under this section (or any information contained in the report) to:
 - (a) any authority responsible for the administration of a law that appears to the Secretary to require the supplier (as a supplier of goods or services) to be the holder of a licence, certificate of registration, practising certificate, permit or other authority, or
 - (b) any trade organisation comprising persons (or mostly persons) who supply goods or services of the kind supplied by the supplier, but only if it appears to the Secretary that the supplier is a member of that organisation.
- (5) The Secretary has qualified privilege in proceedings for defamation arising out of a communication made under this section.

79X Power of Secretary to establish and maintain list of unsatisfactory suppliers

(cf CC Act 1998, s 16)

- (1) The Secretary may establish and maintain for the purposes of this Part a list to be known as the *unsatisfactory suppliers list*.
- (2) The Secretary may enter in the unsatisfactory suppliers list the name and any other prescribed particulars of:
 - (a) any supplier who has been the subject of an adverse report made under this Division, or
 - (b) any supplier who has failed to comply with the requirements of an order made under this Part within the period specified in the order, or
 - (c) any supplier against whom more than the prescribed number of orders has been made under this Part during the period prescribed for the purposes of this paragraph.
- (3) The Secretary must not enter the name and other particulars of a supplier in the unsatisfactory suppliers list unless the supplier has first been given an opportunity to show cause as to why the name and particulars of the supplier should not be entered in the list and, having been given such an opportunity, has not shown cause within such period (not less than 7 days after the opportunity was given) as the Secretary may allow.
- (4) The Secretary must remove the name and other prescribed particulars of a supplier from the unsatisfactory suppliers list at the end of the period prescribed for the purposes of this subsection, on the happening of a prescribed event or on fulfilment of prescribed conditions.
- (5) The Secretary may publish in such manner as the Secretary thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.
- (6) The Secretary has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5).

[12] Section 79B NSW Consumer Law Fund

Renumber the section as section 79Y.

[13] Section 82 Certificate of analyst

Omit section 82 (2). Insert instead:

(2) In this section:

prescribed authority means:

- (a) a registered laboratory of the National Association of Testing Authorities, or
- (b) any other body or person prescribed by the regulations.

[14] Section 87 Publication of certain statements prohibited

Omit “employed by the Department” from section 87 (1) (e).

Insert instead “employed in the Department”.

[15] Section 87 (1) (e)

Omit “by an organisation”. Insert instead “by or in an organisation”.

[16] Section 92 Regulations

Omit “section 79B” from section 92 (1A) (c). Insert instead “section 79Y”.

[17] Schedule 4A Provisions relating to advisory councils

Omit “*Public Sector Management Act 1988*” from clause 8 (1).

Insert instead “*Government Sector Employment Act 2013*”.

[18] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1A (1):

Fair Trading Legislation (Repeal and Amendment) Act 2015
any other Act that amends this Act

[19] Schedule 5, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of Fair Trading Legislation (Repeal and Amendment) Act 2015

Division 1 Provisions consequent on repeal and re-enactment of Consumer Claims Act 1998

28 Definition of “former Act”

In this Division:

former Act means the *Consumer Claims Act 1998*.

29 Jurisdiction of Tribunal in relation to pre-existing consumer claims

- (1) Part 6A of this Act extends to a consumer claim arising before the commencement of that Part (except as provided by subclause (2)).
- (2) The former Act continues to apply in relation to a consumer claim the subject of an application made under section 6 of the former Act that is not finally determined.

- (3) For the purposes of this clause, an application is not finally determined if:
- (a) any period for bringing an appeal as of right against a decision in respect of the claim the subject of the application has not expired (ignoring any period that may be available by way of extension of time to appeal), or
 - (b) any appeal against the decision is pending (whether or not it is an appeal brought as of right).

30 Exclusion from definition of “services”

Section 79F (2) (b) does not apply in relation to a consumer claim the subject of an application made under section 6 of the former Act before the commencement of that paragraph.

31 Matters reported to President of Tribunal or to Minister

- (1) A reference in section 79W to the hearing or determination of a consumer claim includes a reference to the hearing or determination of a consumer claim under the former Act.
- (2) A reference in section 79W to a report given to the Secretary under that section includes a reference to a report given to the Secretary under section 15 (3) of the former Act.

32 Unsatisfactory suppliers list

- (1) A list compiled under section 16 of the former Act is taken (as it stood immediately before the repeal of that section) to form part of any list compiled for the purposes of section 79X of this Act.
- (2) A reference in section 79X (2) (a) of this Act to a report made under Division 4 of Part 6A includes a reference to a report made under section 15 of the former Act.
- (3) A reference in section 79X (2) (b) or (c) of this Act to an order made under Part 6A includes a reference to an order made under the former Act.

33 Qualified privilege in proceedings for defamation

Despite the repeal of the former Act, the Secretary continues, because of the operation of section 30 of the *Interpretation Act 1987*, to have qualified privilege in proceedings for defamation arising out of:

- (a) a communication made under section 15 of the former Act, or
- (b) a publication made in accordance with section 16 (5) of the former Act.

Division 2 Provisions consequent on repeal of Fitness Services (Pre-paid Fees) Act 2000

34 Definitions

In this Division:

former Act means the *Fitness Services (Pre-paid Fees) Act 2000*, as in force immediately before the repeal day.

relevant fitness service agreement means a fitness service agreement entered into before the repeal day and in force immediately before that day.

repeal day means the day on which the *Fitness Services (Pre-paid Fees) Act 2000* is repealed by the *Fair Trading Legislation (Repeal and Amendment) Act 2015*.

35 Refund of pre-paid fee if service not provided within 3 months

Section 10 (2) and (5) of the former Act continue to apply in relation to a fee accepted before the repeal day in the same way as those provisions would have applied if the former Act had continued in force.

36 Termination of fitness service agreement if service not commenced within 3 months

Section 10 (3) of the former Act continues to apply in relation to a relevant fitness service agreement in the same way as that provision would have applied if the former Act had continued in force.

37 Civil consequences of contravention

Section 17 of the former Act continues to apply in relation to a pre-paid fee accepted or received in contravention of section 10 (2) of the former Act (as continued by this Division), or under a relevant fitness service agreement terminated by the operation of section 10 (3) of the former Act (as continued by this Division), in the same way as that provision would have applied if the former Act had continued in force.

38 Pre-paid fees required to be held in trust account before service commenced

Section 11 of the former Act and the regulations made under that section (as in force immediately before the repeal day) continue to apply in relation to money received before the repeal day for a pre-paid fee for the provision of a fitness service under a fitness service agreement.

39 Injunctions may be granted by Supreme Court

Despite the repeal of section 79 (1) (a) (ii) of this Act and the repeal of the former Act, section 79 continues to apply in relation to conduct that constitutes or would constitute:

- (a) a contravention of section 10 (2) or 11 of the former Act (as continued by this Division), or
- (b) attempting to contravene that provision, or
- (c) aiding, abetting, counselling or procuring a person to contravene that provision, or
- (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene that provision, or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of that provision, or
- (f) conspiring with others to contravene that provision.

40 Penalty notices

Section 16 of the former Act and the regulations made under that section continue to apply in relation to an alleged offence against section 10 (2) or 11 (7) of the former Act (as continued by this Division).

41 Operation of Interpretation Act 1987

For the avoidance of doubt, nothing in this Division limits the operation of section 30 of the *Interpretation Act 1987* in relation to the repeal of the following:

- (a) the former Act,
- (b) section 79 (1) (a) (ii) of this Act.

Schedule 2 Amendment of Acts consequent on repeal of Consumer Claims Act 1998

2.1 Civil and Administrative Tribunal Act 2013 No 2

Schedule 4 Consumer and Commercial Division

Omit “*Consumer Claims Act 1998*” from clause 3 (1).

2.2 Conveyancers Licensing Act 2003 No 3

Section 51 Powers of Tribunal

Omit “The provisions of sections 9–13 of the *Consumer Claims Act 1998*” from section 51 (2).

Insert instead “Sections 79R and 79T–79V of the *Fair Trading Act 1987*”.

2.3 Home Building Act 1989 No 147

[1] Section 48A Definitions

Insert in alphabetical order in section 48A (1):

goods, services and *supply* have the same meanings as in Part 6A of the *Fair Trading Act 1987*.

[2] Section 48A (3) and (4)

Omit the subsections.

[3] Section 48O Powers of Tribunal

Omit “The provisions of sections 9–13 of the *Consumer Claims Act 1998*” from section 48O (3).

Insert instead “Sections 79R and 79T–79V of the *Fair Trading Act 1987*”.

2.4 Property, Stock and Business Agents Act 2002 No 66

[1] Section 36 Review of commission and fees

Omit “*Consumer Claims Act 1998*” from section 36 (4).

Insert instead “Part 6A of the *Fair Trading Act 1987*”.

[2] Section 36 (5)

Omit “the *Consumer Claims Act 1998* to that person, a reference in that Act”.

Insert instead “Part 6A of the *Fair Trading Act 1987* to that person, a reference in that Part”.

[3] Section 36 (7)

Omit “the *Consumer Claims Act 1998*”.

Insert instead “Part 6A of the *Fair Trading Act 1987*”.

2.5 Sydney Water Act 1994 No 88

[1] Section 58 Consumer claims

Omit “the *Consumer Claims Act 1998*”.

Insert instead “Part 6A of the *Fair Trading Act 1987*”.

[2] Section 58

Omit “that Act”. Insert instead “that Part”.

Schedule 3 Amendment of other Acts

3.1 Defamation Act 2005 No 77

Schedule 1 Additional publications to which absolute privilege applies

Omit clause 23.

3.2 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit the matter relating to the *Fitness Services (Pre-paid Fees) Act 2000*.

3.3 HomeFund Restructuring Act 1993 No 112

[1] Section 3 Definitions

Omit the definitions of *determination* and *HomeFund Commissioner* from section 3 (1).

[2] Section 3 (1), definition of “HomeFund mortgage”

Insert “, on or before 30 June 1994,” after “executed”.

[3] Section 8 HomeFund borrowers’ access to restructuring scheme

Insert after section 8 (1):

Note. The last date on which assistance could be taken up under the restructuring scheme was 31 August 1994.

[4] Section 8 (2)

Omit the subsection.

[5] Section 14 Provision of financial counselling and legal assistance to HomeFund borrowers

Omit the section.

[6] Section 15 Claims against the Crown and others

Omit the heading to section 15 (1).

[7] Section 15 (1)

Omit “(and a determination may not be made)”.

[8] Section 15 (2) and (3)

Omit the subsections.

[9] Section 15 (4), heading

Omit the heading.

[10] Section 15 (4)

Omit “, the *Civil and Administrative Tribunal Act 2013*”.

[11] Section 15 (5), heading

Omit the heading.

- [12] **Section 15 (5)**
Omit “(other than the right to have a determination made)”.
- [13] **Section 15 (6)–(9)**
Omit the subsections.
- [14] **Section 16 Application of section 15 (1) to entitlements existing on 28 January 1994**
Omit section 16 (1). Insert instead:
(1) Section 15 (1) applies only to entitlements in existence on 28 January 1994.
- [15] **Section 16 (2)**
Omit the subsection.
- [16] **Section 20 Suspension of limitation period**
Omit the section.
- [17] **Section 21 Report**
Omit the section.
- [18] **Section 24, heading**
Omit “**and transitional**”. Insert instead “, **transitional and other**”.
- [19] **Schedule 1 Restructuring scheme**
Insert after the heading to the Schedule:
Note. The last date on which assistance could be taken up under this scheme was 31 August 1994.
- [20] **Schedule 2 Complaints that may be the subject of a determination under the HomeFund Commissioner Act 1993**
Omit the Schedule.
- [21] **Schedule 4, heading**
Omit “**and transitional**”. Insert instead “, **transitional and other**”.
- [22] **Schedule 4, clause 1**
Omit clauses 1–3. Insert instead:
1 Revocation of repeal
Section 29A of the *Interpretation Act 1987* applies to the repeal of any provisions of this Act by the *Fair Trading Legislation (Repeal and Amendment) Act 2015*.

3.4 Landlord and Tenant Act 1899 No 18

Section 1D

Insert after section 1C:

1D Repeal of Act

This Act is repealed 5 years after the day on which this section commences or on such earlier day as may be appointed by proclamation.

3.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit the matter relating to the *Fitness Services (Pre-paid Fees) Act 2000*.

3.6 Ombudsman Act 1974 No 68

Schedule 1 Excluded conduct of public authorities

Omit item 25.

[Second reading speech made in—
Legislative Assembly on 27 May 2015
Legislative Council on 23 June 2015]