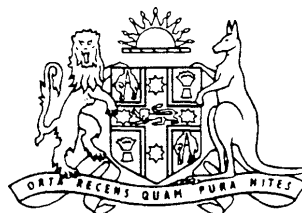


[Act 1998 No 162]



New South Wales

Consumer Claims Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
This Bill is cognate with the *Fair Trading Tribunal Bill 1998*.

Overview of Bill

The object of this Bill is to continue the remedies afforded to consumers by the *Consumer Claims Tribunals Act 1987*. Under the Bill, a consumer claim may be brought before the Fair Trading Tribunal to be constituted under the proposed *Fair Trading Tribunal Act 1998*.

The Bill proposes:

- (a) to repeal the *Consumer Claims Tribunals Act 1987* and phase out the operation of the tribunals operating under that Act, and
- (b) to amend the *Home Building Act 1989*, to include in it provision for remedies in the nature of building claims currently able to be brought under the *Consumer Claims Tribunals Act 1987*. and
- (c) to make amendments to other Acts as a consequence of the enactment of the Bill.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines *consumer*, *consumer claim* and other words and expressions used in the proposed Act. *Tribunal* is defined to mean the Fair Trading Tribunal (that is, the tribunal to be established by the proposed *Fair Trading Tribunal Act 1998*).

Clause 4 creates a presumption in favour of a person alleging to be a consumer for the purposes of the proposed Act.

Clause 5 provides that notes to the text of the proposed Act do not form part of the proposed Act.

Part 2 Consumer claims

Clause 6 provides that a consumer may apply to the Tribunal to have a consumer claim determined.

Clause 7 invests the Tribunal with jurisdiction to hear and determine any consumer claim referred to it under the proposed Act. In general, it will not have jurisdiction to hear a consumer claim referred to it more than 3 years before the date on which the goods or services involved in the claim were supplied (or were contracted to be supplied).

Clause 8 describes the orders the Tribunal can make in determining a consumer claim. In addition to being able to make orders for the payment of money, requiring a party to perform work or relieving a party from being required to pay a specified sum of money in respect of a supply of goods or services, the Tribunal will also be able to make orders requiring the delivery, return or replacement of goods or requiring the supply of services other than the performance of work.

Clause 9 provides that an order made by the Tribunal under the proposed Part may be made subject to conditions imposed by the Tribunal.

Clause 10 confers power on the Tribunal to make interim and ancillary orders in connection with the determination of consumer claims.

Clause 11 allows the Tribunal, on such conditions as may be appropriate, to suspend the operation of an order previously made by it.

Clause 12 provides for the application, to orders of the Tribunal under the proposed Part, of provisions of the *Supreme Court Act 1970* concerning the effect of a judgment against one of several persons having a joint liability.

Clause 13 requires the Tribunal to act fairly and equitably in making any order under the proposed Part, and specifies the factors that are relevant in making such orders. One such factor is whether or not there was any material inequality in bargaining power between the parties to the relevant claim. The clause also makes provision for the provisions of certain codes of practice to be taken into account where these are relevant in determining a consumer claim.

Clause 14 limits the jurisdiction of the Tribunal over consumer claims to cases where the total amount payable by virtue of a verdict for the claimant or respondent has a value not exceeding an amount prescribed by the regulations.

Part 3 Miscellaneous

Clause 15 allows the Chairperson and members of the Fair Trading Tribunal to furnish reports to appropriate authorities in respect of matters arising under the administration of the proposed Act or the hearing of consumer claims.

Clause 16 allows the Director-General of the Department of Fair Trading to compile and maintain a list of suppliers whose activities have come to unfavourable notice under the proposed Act.

Clause 17 allows the Governor-in-Council to make regulations in aid of the proposed Act.

Clause 18 repeals the *Consumer Claims Tribunals Act 1987*.

Clause 19 gives effect to a Schedule of savings and transitional provisions.

Clause 20 gives effect to a Schedule of consequential amendments to other Acts.

Clause 21 provides for review of the proposed Act after 5 years.

Schedule 1 Savings and transitional provisions

This Schedule provides for the phasing out of the consumer claims tribunals. After its commencement, new consumer claims may not be brought before them, and must be brought before the Fair Trading Tribunal, but pending claims may be in all respects completed.

Schedule 2 Consequential amendment of other Acts

This Schedule contains amendments to other Acts as a consequence of the enactment of the proposed Act. In particular, the *Home Building Act 1989* is amended to include provisions analogous to those of Part 3A of the *Consumer Claims Tribunals Act 1987*.