

Passed by both Houses



New South Wales

Consumer Claims Amendment Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Consumer Claims Amendment Bill 2007

Act No , 2007

An Act to amend the *Consumer Claims Act 1998* to make further provision with respect to the jurisdiction and powers of the Consumer, Trader and Tenancy Tribunal relating to consumer claims.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Consumer Claims Amendment Act 2007*.

2 Commencement

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

3 Amendment of Consumer Claims Act 1998 No 162

The *Consumer Claims Act 1998* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 2A

Insert after section 2:

2A Objects of Act

The objects of this Act are as follows:

- (a) to provide remedies to consumers concerning the supply of goods and services,
- (b) to simplify and improve dispute resolution for parties involved in consumer disputes.

[2] Section 3 Definitions

Omit the definition of *consumer claim* from section 3 (1). Insert instead:

consumer claim—see section 3A.

[3] Section 3A

Insert after section 3:

3A Meaning of “consumer claim”

- (1) For the purposes of this Act, a *consumer claim* is:
 - (a) a claim by a consumer for the payment of a specified sum of money, or
 - (b) a claim by a consumer for the supply of specified services, or
 - (c) a claim by a consumer for relief from payment of a specified sum of money, or
 - (d) a claim by a consumer for the delivery, return or replacement of specified goods or goods of a specified description, or
 - (e) a claim by a consumer for a combination of two or more of the remedies referred to in paragraphs (a)–(d),

that arises from a supply of goods or services by a supplier to the consumer, whether under a contract or not, or that arises under a contract that is collateral to a contract for the supply of goods or services.

- (2) For the avoidance of doubt, a reference in this Act 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.

[4] Section 7 Jurisdiction in respect of consumer claims

Insert “**General**” as the heading to section 7 (1).

[5] Section 7 (2)–(4A)

Omit section 7 (2)–(4). Insert instead:

(2) **Supply or agreement made, or supply intended to be made, in New South Wales**

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).

(3) 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.

(4) **Limitation periods**

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.

(4A) Nothing in this section affects any period of limitation under the *Limitation Act 1969*.

[6] Section 7 (5), heading

Insert “**Claim relating to solicitor’s or barrister’s costs**” as the heading to section 7 (5).

[7] Section 8 Tribunal orders

Insert after section 8 (1) (g):

- (h) an order that requires:
 - (i) 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
 - (ii) the claimant to return all or part of those goods to the respondent,whether the property in the goods has passed or not.

[8] Section 8 (2A)

Insert after section 8 (2):

- (2A) Without limiting subsection (1) or (2), in determining a consumer claim in which there is more than one respondent, the Tribunal may make such one or more of the following orders as 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.

[9] Section 8 (4) and (5)

Insert after section 8 (3):

- (4) 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 6.
- (5) Nothing in subsection (4) prevents the Tribunal from dismissing or adjourning proceedings under section 28 (5) of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

[10] Section 14 Limitation on Tribunal's jurisdiction to make orders

Omit "in favour of the respondent to the claim or, where there are two or more respondents to the claim, in favour of those respondents" from section 14 (2).

Insert instead "referred to in section 8 (2)".

[11] Section 14 (2A)

Insert after section 14 (2):

- (2A) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders referred to in section 8 (2A) if 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, under or by virtue of the order or orders would exceed the amount prescribed by the regulations in respect of claims of that class or description.

[12] Section 14 (3)

Omit "Subsections (1) and (2)". Insert instead "Subsections (1), (2) and (2A)".

[13] Schedule 1 Savings and transitional provisions

Omit clause 1 (1) of Schedule 1. Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - this Act
 - the *Consumer Claims Amendment Act 2007*

[14] Schedule 1, clause 1 (2)

Omit “this Act”. Insert instead “the Act concerned”.

[15] Schedule 1, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Consumer Claims Amendment Act 2007**

9 Definition

In this Part:

amending Act means the *Consumer Claims Amendment Act 2007*.

10 Meaning of “consumer claim”

Section 3A, as inserted by the amending Act, extends to a consumer claim arising before the commencement of that section, but not so as to affect any determination of the Tribunal before that commencement.

11 Jurisdiction—supply or contract made, or supply intended to be made, in New South Wales

Section 7 (2) and (3), as substituted by the amending Act, extend to a consumer claim arising before the substitution of those subsections, but not so as to affect any determination of the Tribunal before that substitution.

12 Jurisdiction—limitation periods

Section 7 (2)–(4), as in force immediately before the commencement of Schedule 1 [5] to the amending Act, continue to apply in respect of a consumer claim arising before the commencement of that item.

13 Tribunal orders

An amendment made to section 8 by the amending Act extends to the determination of a consumer claim arising before the commencement of the amendment, but not so as to affect any determination of the Tribunal before that commencement.