



New South Wales

# Consumer Claims Amendment Bill 2007

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are to amend the *Consumer Claims Act 1998* (*the Principal Act*) as follows:

- (a) to specify the objects of the Principal Act,
- (b) to clarify that the Consumer, Trader and Tenancy Tribunal (*the Tribunal*) may hear and determine a consumer claim, arising from or in connection with the supply of goods or services to the consumer, against a supplier who is not the direct supplier of the goods or services,
- (c) to make it clear that the Tribunal may hear and determine consumer claims only where:
  - (i) the applicable goods or services were supplied in New South Wales, or
  - (ii) a contract or other agreement to which the claim relates contemplated that the goods or services would be supplied in New South Wales, or
  - (iii) a contract or other agreement to which the claim relates was made in New South Wales,

- (d) to extend the limitation period applying to the lodging of consumer claims with the Tribunal,
- (e) to expand the range of orders that the Tribunal may make in determining a consumer claim,
- (f) to ensure that the Tribunal cannot determine a claim, and may only adjourn or dismiss the proceedings, where the claimant fails to present his or her case but does not formally withdraw the claim,
- (g) to make other amendments of a savings and transitional nature consequent on the enactment of the proposed Act.

## Outline of provisions

**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** is a formal provision that gives effect to the amendments to the *Consumer Claims Act 1998* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

### Objects of Act

**Schedule 1 [1]** inserts proposed section 2A, which specifies the objects of the Principal Act, namely:

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

### Consumer claims

Section 6 of the Principal Act enables a consumer to apply to the Tribunal for the determination of a consumer claim. **Consumer claim** is defined in the Principal Act to include a claim arising from a supply of goods or services by a supplier to the consumer, whether under a contract or not. This definition is recreated in the new section 3A of the Principal Act (as inserted by **Schedule 1 [3]**). The new section 3A also clarifies that a consumer claim extends to a claim by a consumer against a supplier (such as a manufacturer or distributor) who is not the direct supplier of the goods or services to the consumer concerned.

**Schedule 1 [2]** contains an amendment to the Principal Act that is consequential on the amendment made by Schedule 1 [3].

### **Jurisdiction in respect of consumer claims**

**Schedule 1 [5]** amends section 7 of the Principal Act.

The new section 7 (2) limits the jurisdiction of the Tribunal to claims where the applicable supply of goods or services occurred in New South Wales, a contract or other agreement to which the claim relates contemplated that the goods or services would be supplied in New South Wales or a contract or other agreement to which the claim relates was made in New South Wales. The new subsection is in line with the decision of the Supreme Court of New South Wales in *Oubani v MCI Technologies P/L & Anor* [2004] NSWSC 733. That decision confirmed that the Tribunal has jurisdiction to determine a claim involving the supply of goods regardless of where any applicable contract for the supply of goods is made if the supply occurs in New South Wales.

The new section 7 (3) provides that the Tribunal has that jurisdiction whether or not any applicable agreement confers jurisdiction on any other court or tribunal, or whether or not 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.

The new section 7 (4) deals with the period within which a claim must be lodged for the Tribunal to be able to hear and determine the claim. Generally, under existing provisions, a claim must be lodged with the Tribunal within 3 years of the date of supply of the applicable goods or services. Under the new section 7 (4), the Tribunal may not hear and determine a claim that is lodged with the Tribunal more than:

- (a) 3 years after the date on which the cause of action giving rise to the claim first accrued, or
- (b) 10 years after the date of supply.

The new section 7 (4A) clarifies that the new section 7 (4) does not affect any period of limitation provided for in the *Limitation Act 1969*.

**Schedule 1 [4] and [6]** make amendments to section 7 of the Principal Act that are consequential on the amendments made by Schedule 1 [5].

### **Powers of Tribunal**

**Schedule 1 [7] and [8]** amend section 8 of the Principal Act to expand the range of orders that the Tribunal may make in determining a consumer claim. Schedule 1 [7] amends section 8 (1) of the Principal Act to enable the Tribunal to order a respondent to refund the purchase price of goods possessed or controlled by the claimant in exchange for the claimant returning those goods.

Currently, a number of orders available to the Tribunal are limited to requiring respondents to provide something (for example, money) to claimants or vice versa. Schedule 1 [8] inserts proposed section 8 (2A) to enable similar orders to be made requiring one respondent to provide something to another respondent following a cross-claim.

**Schedule 1 [9]** amends section 8 of the Principal Act to ensure that the Tribunal cannot determine a claim, and may only adjourn or dismiss the proceedings, where the claimant fails to present his or her case but does not formally withdraw the claim.

**Schedule 1 [10]–[12]** contain amendments that are consequential on the amendments made by Schedule 1 [8]. In particular, Schedule 1 [11] inserts a new section 14 (2A) to ensure that the limit of \$30,000 that may be ordered in favour of claimants or respondents under the Act applies also to orders made under proposed section 8 (2A).

### **Savings and transitional provisions**

**Schedule 1 [13]** amends clause 1 of Schedule 1 to the Principal Act to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [14]** contains an amendment to the Principal Act that is consequential on the amendment made by Schedule 1 [13].

**Schedule 1 [15]** inserts a new Part 3 in Schedule 1 to the Principal Act containing savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

# Consumer Claims Amendment Bill 2007

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New South Wales

# Consumer Claims Amendment Bill 2007

No. , 2007

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## A Bill for

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Consumer Claims Amendment Act 2007</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Consumer Claims Act 1998 No 162</b>	6
The <i>Consumer Claims Act 1998</i> is amended as set out in Schedule 1.	7
<b>4 Repeal of Act</b>	8
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

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<b>Schedule 1</b>	<b>Amendments</b>	1	
	(Section 3)	2	
<b>[1]</b>	<b>Section 2A</b>	3	
	Insert after section 2:	4	
	<b>2A</b>	<b>Objects of Act</b>	5
		The objects of this Act are as follows:	6
		(a) to provide remedies to consumers concerning the supply of goods and services,	7
		(b) to simplify and improve dispute resolution for parties involved in consumer disputes.	8
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<b>[2]</b>	<b>Section 3 Definitions</b>	11	
	Omit the definition of <i>consumer claim</i> from section 3 (1). Insert instead:	12	
	<i>consumer claim</i> —see section 3A.	13	
<b>[3]</b>	<b>Section 3A</b>	14	
	Insert after section 3:	15	
	<b>3A</b>	<b>Meaning of “consumer claim”</b>	16
	(1)	For the purposes of this Act, a <i>consumer claim</i> is:	17
		(a) a claim by a consumer for the payment of a specified sum of money, or	18
		(b) a claim by a consumer for the supply of specified services, or	19
		(c) a claim by a consumer for relief from payment of a specified sum of money, or	20
		(d) a claim by a consumer for the delivery, return or replacement of specified goods or goods of a specified description, or	21
		(e) a claim by a consumer for a combination of two or more of the remedies referred to in paragraphs (a)–(d),	22
		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.	23
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(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.	1 2 3 4 5 6
<b>[4]</b>	<b>Section 7 Jurisdiction in respect of consumer claims</b>	7
	Insert “ <b>General</b> ” as the heading to section 7 (1).	8
<b>[5]</b>	<b>Section 7 (2)–(4A)</b>	9
	Omit section 7 (2)–(4). Insert instead:	10
(2)	<b>Supply or agreement made, or supply intended to be made, in New South Wales</b>	11 12
	The Tribunal has jurisdiction to hear and determine a consumer claim only if:	13 14
(a)	the goods or services to which the claim relates were supplied in New South Wales, or	15 16
(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	17 18 19 20
(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).	21 22 23
(3)	The Tribunal has such jurisdiction whether or not:	24
(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	25 26 27
(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.	28 29 30
(4)	<b>Limitation periods</b>	31
	The Tribunal does not have jurisdiction to hear and determine a consumer claim if any of the following apply:	32 33
(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,	34 35 36

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(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.	1 2 3 4
(4A)	Nothing in this section affects any period of limitation under the <i>Limitation Act 1969</i> .	5 6
<b>[6]</b>	<b>Section 7 (5), heading</b>	7
	Insert “ <b>Claim relating to solicitor’s or barrister’s costs</b> ” as the heading to section 7 (5).	8 9
<b>[7]</b>	<b>Section 8 Tribunal orders</b>	10
	Insert after section 8 (1) (g):	11
(h)	an order that requires:	12
(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	13 14 15
(ii)	the claimant to return all or part of those goods to the respondent,	16 17
	whether the property in the goods has passed or not.	18
<b>[8]</b>	<b>Section 8 (2A)</b>	19
	Insert after section 8 (2):	20
(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:	21 22 23 24
(a)	an order that requires a respondent to pay to another respondent a specified amount of money,	25 26
(b)	an order that requires a respondent to supply to another respondent specified services other than work,	27 28
(c)	an order that requires a respondent to deliver to another respondent goods of a specified description,	29 30
(d)	an order that requires a respondent ( <i>the first respondent</i> ) 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.	31 32 33 34

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<b>[9] Section 8 (4) and (5)</b>	1
Insert after section 8 (3):	2
(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.	3 4 5 6
(5) Nothing in subsection (4) prevents the Tribunal from dismissing or adjourning proceedings under section 28 (5) of the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	7 8 9
<b>[10] Section 14 Limitation on Tribunal’s jurisdiction to make orders</b>	10
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).	11 12
Insert instead “referred to in section 8 (2)”.	13
<b>[11] Section 14 (2A)</b>	14
Insert after section 14 (2):	15
(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:	16 17 18
(a) the amount or amounts (if any) of money to be paid, and	19
(b) the value or values (if any) of the services to be supplied, and	20 21
(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.	22 23 24 25
<b>[12] Section 14 (3)</b>	26
Omit “Subsections (1) and (2)”. Insert instead “Subsections (1), (2) and (2A)”.	27
<b>[13] Schedule 1 Savings and transitional provisions</b>	28
Omit clause 1 (1) of Schedule 1. Insert instead:	29
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	30 31 32
this Act	33
the <i>Consumer Claims Amendment Act 2007</i>	34

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<b>[14] Schedule 1, clause 1 (2)</b>	1
Omit “this Act”. Insert instead “the Act concerned”.	2
<b>[15] Schedule 1, Part 3</b>	3
Insert after Part 2:	4
<b>Part 3 Provisions consequent on enactment of Consumer Claims Amendment Act 2007</b>	5 6
<b>9 Definition</b>	7
In this Part:	8
<i>amending Act</i> means the <i>Consumer Claims Amendment Act 2007</i> .	9 10
<b>10 Meaning of “consumer claim”</b>	11
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.	12 13 14 15
<b>11 Jurisdiction—supply or contract made, or supply intended to be made, in New South Wales</b>	16 17
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.	18 19 20 21
<b>12 Jurisdiction—limitation periods</b>	22
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.	23 24 25 26

**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.

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