

## **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.