

Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for Fair Trading, Minister for Youth, and Minister for Volunteering) [10.50 a.m.]: I move:

That this bill be now agreed to in principle.

I have great pleasure today in introducing the Consumer Claims Amendment Bill 2007, which implements the recommendations of the statutory review of the Consumer Claims Act 1998. The Act lets people take consumer disputes to the Consumer, Trader and Tenancy Tribunal where there is a range of remedies available. The tribunal resolves disputes in an accessible, informal, efficient and inexpensive manner. The Consumer Claims Act, which first came into operation on 1 March 1999, enables the tribunal to make orders relating to the general supply of goods or services, including orders for the refund of purchase money or faulty goods to be replaced. The bill I introduce today arises as a result of the Government's consultation with interest groups and stakeholders during a statutory five-year review of the Act's operation in practice.

Relevant interest groups were invited to identify issues they felt should be included in an issues paper. The Office of Fair Trading released an issues paper for public consultation and 22 submissions were received in response. Submissions came from industry and consumer groups, as well as individual traders, consumers, government agencies and other interested stakeholders. A report on the review was tabled in Parliament by my colleague the Hon. John Hatzistergos. The review found that the policy objectives of the Act remain valid and the terms of the Act are appropriate for serving its objectives. The review recommended a number of refinements to enhance the operation of the Act. The amendments in the bill are designed to improve dispute resolution processes for parties involved in consumer and general marketplace disputes. The bill's provisions fall into four categories relating to the objectives of the Act, the Act's definitions, the Act's jurisdiction in respect of consumer claims and orders able to be made by the tribunal.

I will now take the opportunity to outline the main provisions in the bill under these four categories. Currently the Act does not contain specific objectives. The bill specifies that the Act's objectives will be to provide certain remedies to consumers concerning the supply of goods and services, and to simplify and improve dispute resolution for parties involved in consumer and general marketplace disputes. This makes the purpose of the Act clear. It will assist in ongoing assessments of the legislation's effectiveness and any future reviews of its operation. The review found that some of the definitions in section 3 of the Act lack clarity about the tribunal's jurisdiction over claims relating to the supply of goods and services. Currently, the definition of a consumer claim can include a supply of goods or services by a supplier to a consumer, even if there is no contract between them. On the other hand, the definition of "supply" refers to an agreement to supply goods or services under a contract.

Submissions to the review raised concerns that consumers may not always be able to obtain relief under the Act when there is no direct contract, even though a manufacturer or distributor may have a legal liability to the consumer. The bill addresses this problem in new section 3A, which clarifies the definition of consumer claim and additionally makes it clear that the claim may, but need not necessarily, arise under a contract; that if there is no contract, there must at least be a "supply" between the consumer and a supplier; and that the supplier need not be the immediate supplier, but must be involved in the supply of the goods or services. The amendment will not change the effect of the Act but will clarify its meaning and remove the current capacity for confusion. The third group of amendments will clarify and improve the tribunal's jurisdiction in a number of areas. In the 2004 case of *Oubani v MCI Technologies* the Supreme Court found that the tribunal has jurisdiction where goods or services are supplied to a consumer in New South Wales, regardless of where the contract was made.

In the case in question, the contract was formed in Queensland, because the company was based in Queensland and accepted the consumer's offer over the telephone, but the goods were supplied in New South Wales. The court found that the tribunal had jurisdiction to hear the consumer's claim. Before this decision, it was thought that the tribunal's jurisdiction was based on where the contract was made, rather than where the goods or services were supplied. However, the decision raised doubts as to whether the tribunal has jurisdiction only if the supply takes place in New South Wales. Industry and consumer groups, in their submissions to the review, favoured clarifying the Act to make sure the tribunal has jurisdiction when the supply of goods or services has taken place in New South Wales, the supplier has agreed to supply goods or services in New South Wales, or the contract for the supply of goods or services was made in New South Wales.

Another jurisdictional issue raised in the review related to the time limit for commencing action under the Act. Currently the tribunal has jurisdiction where a claim is lodged within three years of the date the goods or services were supplied or meant to be supplied. However, in some cases, goods are supplied with warranties of longer than three years, which means the provisions of the Act may prevent a consumer from enforcing a warranty. To address this issue, the bill changes the time for commencing action to three years from the date when the cause of action accrues, that is, when the problem arises. This will mean that a consumer who wishes to lodge a claim relating to a broken washing machine, for example, will have three years to do so after the machine breaks. It is also necessary to contain the time period for lodging an application, as it would not be reasonable to allow claims to be made over an indefinite period. The bill accordingly provides that action must be commenced within 10 years of the date of supply. This is consistent with section 75AO of the Trade Practices Act 1974 concerning the

liability of manufacturers and importers of defective goods. That provision requires action to be commenced within three years of the claimant becoming aware of the problem, but at any rate within 10 years of supply.

The final group of amendments relates to the types of orders that can be made by the Consumer, Trader and Tenancy Tribunal. Section 8 of the Consumer Claims Act outlines the orders the tribunal can currently make. If the consumer's claim is partly or wholly successful, the respondent can be ordered to pay money, do rectification work or supply services, return or deliver goods to the claimant, or replace goods. If the claim is determined wholly or partly in favour of the respondent, the consumer may be ordered to pay the respondent money or return specified goods. The review noted that these provisions leave a gap in the Act whereby if the consumer's claim is completely successful, an order cannot be made for goods to be returned to the respondent and the purchase price refunded. Submissions to the review overwhelmingly supported an amendment to the Act to enable the tribunal to make an order for a supplier to refund part or all of the purchase price and for a consumer to return part or all of the goods when a consumer's claim is successful.

The bill amends section 8 of the Act to implement this recommendation. Another issue identified by the review relates to orders between respondents. The Act allows the tribunal to make orders for a claimant to pay money to a respondent and vice versa. However, there may also be occasions when it would be appropriate for the tribunal to order that a respondent pay money to another respondent. For example, a consumer may lodge a claim against a retailer and a manufacturer seeking a refund of the cost of faulty goods. The manufacturer may agree to refund at the price the goods were supplied to the retailer, but that may be substantially different to what was paid by the consumer. A retailer may be less averse to an order against it if there was an ancillary order against the manufacturer for the cost paid by the retailer.

The Act currently does not allow this to happen, creating difficulties for the tribunal and the parties in resolving claims. A power to make orders between respondents currently exists under the Home Building Act 1989. The proposed amendment will enable the tribunal to do so in relation to consumer claims. All parties that responded to this issue supported the proposed amendment. The final amendment that I will go into today relates to orders the tribunal can make where the claimant does not pursue their application. The Act only permits consumers to lodge a claim in the tribunal, and this is entirely appropriate. In cases where the consumer does not attend the hearing of their application, suppliers often request that the tribunal make an order for the consumer to pay money. However if it did this, the tribunal in effect would be determining a claim by the supplier. In these circumstances the tribunal should make orders to either dismiss the application or adjourn the proceedings.

At the moment, however, there is uncertainty as to whether the tribunal can entertain what is effectively a cross-claim by the supplier, or whether the supplier must take debt-recovery action through the Local Court. The review recommended the Act be amended to make it clear that the tribunal cannot determine a claim, and may only adjourn or dismiss proceedings where the claimant fails to present their case but does not formally withdraw the claim. I would like to stress that this amendment will not remove the claimant's right to submit documentary evidence to the tribunal to enable their application to be determined on the papers, for instance, where they are not able to or do not wish to attend the hearing in person. The review recommended also that the tribunal's maximum jurisdiction under the Act of \$25,000 be increased to \$30,000. This recommendation was implemented on 1 September 2007 when the Consumer Claims Regulation was remade.

The bill includes a consequential amendment to provide that the \$30,000 limit applies also to orders made between respondents. In concluding, this bill delivers a range of refinements and improvements to the Consumer Claims Act to significantly improve the Consumer, Trader and Tenancy Tribunal's ability to resolve disputes between consumers and traders effectively. It comes as a result of the Government's statutory review, which involved extensive consultation with stakeholders, and it deserves to receive strong support. I commend the bill to the House.