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## Consumer Claims Amendment Bill

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### CONSUMER CLAIMS AMENDMENT BILL

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#### Second Reading

**The Hon. JOHN DELLA BOSCA** (Minister for Education and Training, Minister for Industrial Relations, Minister for the Central Coast, and Minister Assisting the Minister for Finance) [2.55 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

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.

**The Hon. CATHERINE CUSACK** [2.56 p.m.]: I support the Consumer Claims Amendment Bill 2007. A recent regulatory impact statement released by the Government outlines the history of the Consumer Claims Act 1998. The Act came into operation on 1 March 1999 and into simultaneous operation with the Fair Trading Tribunal Act 1998. The Consumer Claims Act was one of a number of Acts that conferred jurisdiction on the Fair Trading Tribunal. In 2002 the Fair Trading Tribunal was merged with the Residential Tribunal to form the current Consumer, Trader and Tenancy Tribunal. Claims under the Consumer Claims Act are now heard in the General Division of the Consumer, Trader and Tenancy Tribunal. According to the regulatory impact statement, in the year 2005-06 the Consumer Trader and Tenancy Tribunal received 5,177 applications under the Consumer Claims Act.

Section 21 of the Consumer Claims Act requires that it be reviewed after five years to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives. This review was tabled in Parliament on 5 April 2005. I believe that to be a year late; however, it is possible the review was completed in 2004 and the Government just held the report for an inordinately long period before tabling it. Cabinet gave approval on 26 July 2005 for miscellaneous amendments to the Act, yet it has taken two years and four months for this House to consider amendments that were first discussed in 2004.

I continue to highlight the inexplicable and inordinate delays in bringing to Parliament relatively minor amendments that are not controversial but are of benefit to the good governance of this State. There have been delays of many years in the reforms to the Associations Act and the Tenancy Act. Four years after New South Wales was tasked to prepare draft legislation to regulate mortgage brokers nothing has been produced, and not only New South Wales but also all Australia is unregulated as a result. The amendments before the House aim to give clarity and certainty to the operation of the Consumer Claims Act, and they are not opposed by the Opposition.

I turn to the specific measures. The objectives set out in the bill clarify the jurisdiction of the Consumer, Trader and Tenancy Tribunal to hear small claims matters, to alter the time limitations that apply to applications made to the tribunal, and to clarify the tribunal's powers to make orders. The question of jurisdiction has required finetuning. The supply of goods involves a chain of businesses beginning with suppliers of a manufacturer through to the retail outlet where consumers purchase goods. These amendments will ensure that the Consumer, Trader and Tenancy 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—in other words, the retailer. It enables the consumer to make claims at an earlier stage of the supply line.

The amendments clarify that the tribunal may hear and determine consumer claims only where the applicable goods or services were supplied in New South Wales, when a contract or other agreement to which the claim relates contemplated that the goods or services would be supplied in New South Wales, or when a contract or other agreement to which the claim relates was made in New South Wales. The bill extends the limitation period applying to the lodging of consumer claims with the tribunal. Currently claims must be lodged within three years from the time the problem arose to a limit of 10 years from the date of supply. This reflects the fact that warranties for products can extend for five years or longer, and it will ensure that problems with enforcing consumer rights under warranty are not confounded by the current wording of the Act.

The amendments also expand the range of orders that the tribunal may make in determining the consumer claim by clarifying that it can order refunds for faulty goods. The amendments will ensure that the tribunal cannot determine a claim and may adjourn or dismiss the proceedings only when the claimant fails to present his or her case but does not formally withdraw the claim. Finally, the amendments will increase the amount that can be considered under the Consumer, Trader and Tenancy Tribunal's jurisdiction from \$25,000 to \$30,000. This is consistent with the review of regulations that I have already referred to and the \$30,000 proposed is an appropriate limit. These amendments will streamline the administration of the Act and are consistent with its intention.

My colleague the member for Bega—who must be complimented for his strong performance representing the Opposition on Fair Trading—struck a very raw nerve with the Minister during debate on this bill in another place. The member raised significant concerns about appointments to the Consumer, Trader and Tenancy Tribunal and linked politicisation of appointments to its poor performance. I certainly share those concerns, which have been borne out by adverse comments in various reviews, including the 2006 McClelland report and the recent Ipsos focus group research that surveyed first-time users of the tribunal. The research revealed that the Consumer, Trader and Tenancy Tribunal may be finalising 60,000 disputes, but that is totally different from resolving them. The tribunal may be cost effective to government, but it is incredibly costly in time and money and demoralises the parties who use it.

For most people caught up in disputes being resolved by the Consumer, Trader and Tenancy Tribunal it will be their only involvement in a legal or quasi-legal system. The Ipsos research shows their experiences are overwhelmingly negative. The 44 focus group participants made 49 negative statements and only 14 positive statements, including one that "the guard and reception staff were very helpful in finalising matter". Most found the experience biased, unfair, frustrating, costly, stressful and confronting. I am not at all surprised by the research findings. I have yet to hear of a happy Consumer, Trader and Tenancy Tribunal customer. People are often shocked to find rules are not consistently and fairly enforced, that errors can be made but there is no appeal, and that members are rude by running late for hearings or telling the parties they are too busy to take further submissions or to allow questioning on a matter.

These comments hit a raw nerve with the Minister in another place. I am astonished that she is claiming to be oblivious to all the problems. Based on our correspondence as members of Parliament and the recent public hearing conducted by the Hon. Robyn Parker's committee inquiring into home building warranty, my colleagues and I are alarmed. I again urge the Minister to take action to ensure that reforms are timely and that organisations operating under her portfolio are effective, efficient, fair and responsive. As Minister for Fair Trading she owes a particular duty of care to consumers of services provided by her own organisation. The Opposition does not oppose this bill.

**Dr JOHN KAYE** [3.04 p.m.]: The Greens support the Consumer Claims Amendment Bill, which enacts the findings of the statutory review of the Consumer Claims Act 1998. This bill strengthens that Act because it facilitates consumers making claims before the Consumer, Trader and Tenancy Tribunal. That legislation and the ability to make claims before the tribunal is extremely important in protecting consumers across New South Wales. The Consumer, Trader and Tenancy Tribunal, if it works properly, provides affordable and cost-effective redress for consumers if they have purchased faulty, defective or substandard goods. It deals in particular with claims of less than \$25,000—or after the legislation is amended for claims of less than \$30,000. It allows consumers to avoid the expense of obtaining common law damages or relief under the Trade Practices Act, which is likely to be extremely expensive. Therefore, in theory, the Consumer, Trader and Tenancy Tribunal does reduce costs, and that is particularly important as the cost of legal proceedings escalates.

However, the process is not simply about redressing the damage done to consumers; it also has a salutary and exemplary effect on suppliers of goods and services. This is doubly important in a highly deregulated environment in which governments are taking less and less responsibility for inspection and prosecution services involving faulty goods and services or those that do not live up to the claims made about them. That being said, no regulatory system could possibly capture all the faulty goods and services on the market. The importance of this legislation is highlighted by the large number of dangerous and faulty goods that have come onto the market in the past few years. I refer particularly to toys, such as the Bindeez beads, toys decorated with lead paint and small magnets in children's toys imported from China. The moral to this story is that the competitive pressure on manufacturers is forcing many firms to cut corners and as result we are seeing a race to the bottom of the scale in product standards. It is therefore important that regulations and organisations like the Consumer, Trader and Tenancy Tribunal exist to protect consumers.

The bill makes sound amendments to the objectives of the Act and clarifies the powers and jurisdiction of the Consumer, Trader and Tenancy Tribunal. Most importantly, it extends the statute of limitations for taking action to the tribunal to three years from the date on which the cause of action gave rise to the claim; that is, when the cause of action was first discovered by the consumer rather than the date of purchase. That is much fairer, particularly for consumers who buy a product and leave it in its box for some time. The bill also increases the limit for actions before the Consumer, Trader and Tenancy Tribunal to \$30,000 from \$25,000. That increase is in line with consumer price index increases since the \$25,000 limit was set. The Greens would prefer a higher limit to allow more consumers to access the tribunal because that remedy is not as expensive as going to court. Unfortunately, over the next five years, before we have any chance of seeing the results of the next statutory review, much of that benefit could be eroded by inflation.

The bill is a positive contribution to protecting consumers and as a result the Greens support it. However, we take this opportunity to sound the alarm about areas that this and other legislation cover. In particular, we argue that consumer protection is entering a new era and will face a set of challenges the likes of which we have not seen before. The environment in which manufacturers now operate, especially in Asia—and in particular in China—has become increasingly competitive. That has put pressure on manufacturers to produce goods at ever-reducing costs. In many cases the only way to achieve the required production cost reductions is to cut corners on safety and reliability. One cannot entirely blame the manufacturers. The South East Asian and Chinese markets have become increasingly cutthroat and survival is perceived to depend on reducing costs every year, and every year those lower costs mean more pressure on producers to reduce standards. That means we will see many more Bindeez beads, lead painting on toys, formaldehyde in blankets, dangerous chemicals in toothpaste, dangerous small magnets and a whole range of consumer product issues that have evolved because of pressure on producers. This will put enormous stress on the consumer protection administration.

This bill will help in some small measure to meet that challenge, but it does not go far enough. The Greens will be arguing for a nationally coordinated independent testing regime for safety and quality and to ensure that

manufactured goods live up to the claims made for them. We will be arguing for tighter labelling laws, particularly on food. We will also be looking for a greater degree of truth in labelling, especially with respect to environmental claims. We believe penalties need to be tightened up. There needs to be a greater degree of consumer education, particularly with respect to the opportunities consumers have to seek redress through tribunals such as the Consumer, Trader and Tenancy Tribunal. We will also be arguing for the enlargement of the Office of Fair Trading with a renewed focus on consumer protection. The Greens support the bill.

**Reverend the Hon. FRED NILE** [3.10 p.m.]: The Christian Democratic Party supports the Consumer Claims Amendment Bill 2007. The bill will amend the Consumer Claims Act 1998 in line with the findings of the statutory review of the legislation conducted in 2005. We are pleased that the Government has introduced this legislation as it provides additional protection for the consumers of New South Wales, with access to certain remedies concerning the supply of goods and services and it makes provision for associated matters. It is one of a number of Acts that confers jurisdiction on the Consumer, Trader and Tenancy Tribunal. These amendments have arisen from the review of the Act that was conducted in 2005. The report found that while the policy objectives of the Act remain valid, improvements to the Act could be made in regard to a range of provisions including those relating to its objectives, its definitions, its jurisdiction in respect of consumer claims and orders able to be made by the tribunal.

The review recommended that the tribunal's monetary jurisdictional limit be increased to \$30,000. This is an important amendment because of the value of items that consumers are currently purchasing. This provision was implemented when the Consumer Claims Regulation was made on 1 September 2007. I am still getting complaints from consumers who are very unhappy with the gap that seems to be in the system when it comes to complaints about building companies. A building company supplies them with a house. They are the consumers but they find it difficult to get justice. The Government should ensure that consumers with genuine complaints about faulty construction receive quick and suitable redress of those wrongs, and even compensation. We have had increasing complaints about imported items. Honourable members are aware of the recent controversy over children's toys and the beads containing drugs. Pressure on producers should be no excuse for them producing dangerous or faulty items, especially those used by children.

This bill will specify the objectives of the Act. It will make clear that the objectives of the Act are to provide remedies to consumers concerning the supply of goods and services and to simplify and improve dispute resolution for parties involved in consumer disputes. It will clarify definitions. It will also clarify that the tribunal has jurisdiction when the supply of goods or services has taken place in New South Wales. It will amend the time limits applying to the lodging of consumer claims with the tribunal. Currently the time limit is three years from the date the goods or services were supplied or were required to be supplied. The amendment will change the time limit to three years from the date when the cause of action accrued. However, the action must still be commenced within 10 years of the date of supply. Finally, the bill will also amend the types of orders that can be made by the tribunal. We are pleased to support this important consumer legislation.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [3.14 p.m.], in reply: I thank honourable members for their contributions to this debate. The Consumer Claims Amendment Bill 2007 has broad support. I commend the bill to the House.

**Question—That this bill be now read a second time—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**Leave granted to proceed to the third reading of the bill forthwith.**

### **Third Reading**

**Motion by the Hon. Penny Sharpe agreed to:**

That this bill be now read a third time.

**Bill read a third time and returned to the Legislative Assembly without amendment.**

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