



New South Wales

Consumer Claims Bill 1998

Explanatory note

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

This Bill is cognate with the *Fair Trading Tribunal Bill 1998*.

Overview of Bill

The object of this Bill is to continue the remedies afforded to consumers by the *Consumer Claims Tribunals Act 1987*. Under the Bill, a consumer claim may be brought before the Fair Trading Tribunal to be constituted under the proposed *Fair Trading Tribunal Act 1998*.

The Bill proposes:

- (a) to repeal the *Consumer Claims Tribunals Act 1987* and phase out the operation of the tribunals operating under that Act, and
 - (b) to amend the *Home Building Act 1989*, to include in it provision for remedies in the nature of building claims currently able to be brought under the *Consumer Claims Tribunals Act 1987*, and
 - (c) to make amendments to other Acts as a consequence of the enactment of the Bill.
-

Outline of provisions

Part 1 Preliminary

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 defines *consumer*, *consumer claim* and other words and expressions used in the proposed Act. *Tribunal* is defined to mean the Fair Trading Tribunal (that is, the tribunal to be established by the proposed *Fair Trading Tribunal Act 1998*).

Clause 4 creates a presumption in favour of a person alleging to be a consumer for the purposes of the proposed Act.

Clause 5 provides that notes to the text of the proposed Act do not form part of the proposed Act.

Part 2 Consumer claims

Clause 6 provides that a consumer may apply to the Tribunal to have a consumer claim determined.

Clause 7 invests the Tribunal with jurisdiction to hear and determine any consumer claim referred to it under the proposed Act. In general, it will not have jurisdiction to hear a consumer claim referred to it more than 3 years before the date on which the goods or services involved in the claim were supplied (or were contracted to be supplied).

Clause 8 describes the orders the Tribunal can make in determining a consumer claim. In addition to being able to make orders for the payment of money, requiring a party to perform work or relieving a party from being required to pay a specified sum of money in respect of a supply of goods or services, the Tribunal will also be able to make orders requiring the delivery, return or replacement of goods or requiring the supply of services other than the performance of work.

Clause 9 provides that an order made by the Tribunal under the proposed Part may be made subject to conditions imposed by the Tribunal.

Clause 10 confers power on the Tribunal to make interim and ancillary orders in connection with the determination of consumer claims.

Clause 11 allows the Tribunal, on such conditions as may be appropriate, to suspend the operation of an order previously made by it.

Clause 12 provides for the application, to orders of the Tribunal under the proposed Part, of provisions of the *Supreme Court Act 1970* concerning the effect of a judgment against one of several persons having a joint liability.

Clause 13 requires the Tribunal to act fairly and equitably in making any order under the proposed Part, and specifies the factors that are relevant in making such orders. One such factor is whether or not there was any material inequality in bargaining power between the parties to the relevant claim. The clause also makes provision for the provisions of certain codes of practice to be taken into account where these are relevant in determining a consumer claim.

Clause 14 limits the jurisdiction of the Tribunal over consumer claims to cases where the total amount payable by virtue of a verdict for the claimant or respondent has a value not exceeding an amount prescribed by the regulations.

Part 3 Miscellaneous

Clause 15 allows the Chairperson and members of the Fair Trading Tribunal to furnish reports to appropriate authorities in respect of matters arising under the administration of the proposed Act or the hearing of consumer claims.

Clause 16 allows the Director-General of the Department of Fair Trading to compile and maintain a list of suppliers whose activities have come to unfavourable notice under the proposed Act.

Clause 17 allows the Governor-in-Council to make regulations in aid of the proposed Act.

Clause 18 repeals the *Consumer Claims Tribunals Act 1987*.

Clause 19 gives effect to a Schedule of savings and transitional provisions.

Clause 20 gives effect to a Schedule of consequential amendments to other Acts.

Clause 21 provides for a review of the proposed Act after 5 years.

Schedule 1 Savings and transitional provisions

This Schedule provides for the phasing out of the consumer claims tribunals. After its commencement, new consumer claims may not be brought before them, and must be brought before the Fair Trading Tribunal, but pending claims may be in all respects completed.

Consumer Claims Bill 1998

Explanatory note

Schedule 2 Consequential amendment of other Acts

This Schedule contains amendments to other Acts as a consequence of the enactment of the proposed Act. In particular, the *Home Building Act 1989* is amended to include provisions analogous to those of Part 3A of the *Consumer Claims Tribunals Act 1987*.



New South Wales

Consumer Claims Bill 1998

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Persons presumed to be consumers	5
5 Notes	5
Part 2 Consumer claims	
6 Application for determination	6
7 Jurisdiction in respect of consumer claims	6
8 Tribunal orders	7
9 Conditional orders	8
10 Interim and ancillary orders	8
11 Suspension of orders	8
12 Joint liability	9

Consumer Claims Bill 1998

Contents

	Page
13 Matters to be taken into account by Tribunal when making orders under this Part	9
14 Limitation on Tribunal's jurisdiction to make orders	11

Part 3 Miscellaneous

15 Certain matters to be reported to Chairperson of Tribunal or to Minister	12
16 Power of Director-General to establish and maintain list of unsatisfactory suppliers	13
17 Regulations	14
18 Repeal of Consumer Claims Tribunals Act 1987 No 206	14
19 Savings and transitional provisions	14
20 Consequential amendment of other Acts	14
21 Review of Act	14

Schedules

1 Savings and transitional provisions	15
2 Consequential amendment of other Acts	18



New South Wales

Consumer Claims Bill 1998

No. , 1998

A Bill for

An Act to provide certain remedies to consumers concerning the supply of goods and services; to repeal the *Consumer Claims Tribunals Act 1987* and to amend certain Acts consequentially; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Consumer Claims Act 1998*.

2 Commencement

5

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

3 Definitions (cf Act No 206 of 1987, sec 3)

(1) In this Act:

banker includes a building society, credit union and any other person who carries on the ordinary business of banking. 10

business includes:

- (a) a business not carried on for profit, and
- (b) a trade or profession.

consumer means:

15

- (a) a natural person, or
- (b) a firm, or
- (c) a small proprietary company, or
- (d) an owners corporation constituted under the *Strata Schemes Management Act 1996*, or 20
- (e) a company that owns an interest in land and has a memorandum or articles of association conferring on each owner of shares in the company a right to occupy under a lease or licence a part or parts of a building erected on the land, or 25
- (f) an incorporated association, or
- (g) an unincorporated body whose members are associated for a common purpose, or
- (h) a company limited by guarantee (not being a company limited both by shares and by guarantee), 30

to whom or to which a supplier has supplied or agreed to supply goods or services, whether under a contract or not, or with whom or which a supplier has entered into a contract that is collateral to a contract for the supply of goods or services.

consumer claim means:

5

- (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),

10

15

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.

20

Director-General means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*.

firm has the same meaning as it has in the *Partnership Act 1892*.

goods means any tangible thing that is or may be the subject of trade or commerce, but does not include money or an interest in land.

25

services includes any rights (including rights in relation to, and interests in, property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce and, without limiting the generality of the foregoing, includes:

30

- (a) the performance of work (including work of a professional nature), whether with or without the supply of goods,
- (b) the provision of gas or electricity or the provision of any other form of energy,

35

- (c) the provision, or the making available for use, of facilities for amusement, entertainment, recreation or instruction,
- (d) the letting of premises for vacation or recreational purposes,
- (e) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction, 5
- (f) the provision of insurance cover (but not assurance cover in respect of a person's life),
- (g) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking, 10
- (h) the provision of credit,

but does not include rights or benefits being the supply of goods or the performance of work under a contract of employment. 15

supplier means a person who, in the course of carrying on, or purporting to carry on, a business, supplies goods or services.

supply:

- (a) in relation to goods, includes supply goods by way of a contract for the sale, exchange, lease, hire or hire-purchase of goods or an alleged contract for the sale, exchange, lease, hire or hire-purchase of goods, and 20
- (b) in relation to services, includes provide, grant or render services for valuable consideration under a contract or for valuable consideration claimed to have been agreed to under an alleged contract. 25

trade or commerce includes any business or professional activity.

Tribunal means the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998*.

- (2) In this Act: 30
 - (a) a reference to supply in relation to goods includes a reference to resupply, and
 - (b) a reference to the supply of goods includes a reference to agreeing to supply goods, and

-
- (c) a reference to the supply of services includes a reference to agreeing to supply services, and
- (d) a reference to the supply of goods includes a reference to the supply of goods together with services, and
- (e) a reference to the supply of services includes a reference to the supply of services together with goods. 5
- (3) In this Act, a reference to a foreign company, a recognised company or a small proprietary company is a reference to such a company as defined in section 9 of the *Corporations Law*.
- (4) In this Act: 10
- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty. 15

4 Persons presumed to be consumers (cf Act No 206 of 1987, sec 3 (5))

For the purposes of this Act, a person who claims to be a consumer is to be presumed to be one until the contrary is proved, and in any legal proceedings (including proceedings before the Tribunal), the onus of proving that a person who claims to be a consumer is not a consumer is on the party who seeks to establish that fact. 20

5 Notes

Notes included in the text of this Act do not form part of this Act. 25

Part 2 Consumer claims

6 Application for determination

Any consumer may apply to the Tribunal, in accordance with the regulations, for determination of a consumer claim.

7 Jurisdiction in respect of consumer claims (cf Act No 206 of 1987, sec 10) 5

- (1) The Tribunal has jurisdiction to hear and determine any consumer claim brought before it under this Part, whether or not the matter to which the claim relates arose before or after the commencement of this Part, except as otherwise provided by this section. 10
- (2) The Tribunal does not have jurisdiction in respect of a consumer claim relating to goods or services that have been supplied to or for the claimant if the date on which the supply was made (or, if made in instalments, the date on which the supply was last made) was more than 3 years before the date on which the claim was lodged. 15
- (3) The Tribunal does not have jurisdiction in respect of a consumer claim relating to goods or services that are required under a contract to be supplied to or for the claimant on or by a specified date or within a specified period but which have not been so supplied if the date on or by which the supply was required under the contract to be made was more than 3 years before the date on which the claim was lodged. 20
- (4) The Tribunal does not have jurisdiction in respect of a consumer claim relating to: 25
 - (a) a contract for the supply of goods or services to which neither subsection (2) nor (3) applies, or
 - (b) a collateral contract,

if the date on which the contract was entered into was more than 30

3 years before the date on which the claim was lodged. 30

- (5) A matter arising in relation to the fairness or reasonableness of the costs charged by a barrister or solicitor for an item of business transacted by the barrister or solicitor is not within the jurisdiction of the Tribunal.

5

8 Tribunal orders (cf Act No 206 of 1987, sec 30)

- (1) In determining a consumer claim wholly or partly in favour of a claimant, the Tribunal may, subject to this Part, make such one or more of the following orders as it considers appropriate:
- (a) an order that requires a respondent to pay to the claimant a specified amount of money, 10
 - (b) an order that requires a respondent to perform specified work in order to rectify a defect in goods or services to which the claim relates,
 - (c) an order that requires a respondent to supply to the claimant specified services other than work, 15
 - (d) in the case of a claim for relief from payment of money, an order declaring that a specified amount of money is not due or owing by the claimant to a respondent,
 - (e) an order that requires a respondent to deliver to the claimant goods of a specified description, 20
 - (f) an order that requires a respondent to return to the claimant specified goods which are in the possession or under the control of that respondent, whether the property in the goods has passed or not, 25
 - (g) an order that requires a respondent to replace goods to which the claim relates.
- (2) In determining a consumer claim wholly or partly in favour of a respondent to the claim, the Tribunal may make such one or more of the following orders as it considers appropriate: 30
- (a) an order dismissing the claim or a part of the claim,
 - (b) an order that requires the claimant to pay to the respondent a specified amount of money,

- (c) an order that requires the claimant to return to the respondent specified goods which are in the possession or under the control of the claimant, whether the property in the goods has passed or not.

- (3) In making an order under this section requiring a party to a consumer claim to pay a specified amount of money or to take any other specified action, the Tribunal must, unless it has good reason to the contrary, specify a period within which the money must be paid or the action must be taken. 5

9 Conditional orders (cf Act No 206 of 1987, sec 30 (6)) 10

The Tribunal may impose such conditions on an order under this Part as it considers appropriate.

10 Interim and ancillary orders (cf Act No 206 of 1987, sec 30 (4) and (5))

- (1) In the course of hearing a consumer claim, the Tribunal may make any interim order that appears to the Tribunal desirable to be made pending final determination of the claim. 15
- (2) When making an order for the determination of a consumer claim, the Tribunal may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect. 20

11 Suspension of orders (cf Act No 206 of 1987, sec 30 (7))

- (1) If the Tribunal has made an order under this Part which has not yet ceased to have effect, the Tribunal may, on the application of the person against whom or in whose favour the order was made or of its own motion, make a further order suspending the operation of the first-mentioned order: 25
 - (a) for such reasons and for such period, or
 - (b) until the happening of such event or the fulfilment of such condition, 30as the Tribunal specifies in the further order.
- (2) Nothing in this section limits the operation of section 43 (2) of the *Interpretation Act 1987*.

12 Joint liability (cf Act No 206 of 1987, sec 30 (8))

Section 97 of the *Supreme Court Act 1970* applies to and in respect of an order of the Tribunal under this Part as if such an order were a judgment of the Supreme Court.

13 Matters to be taken into account by Tribunal when making orders under this Part (cf Act No 206 of 1987, sec 31) 5

- (1) When making an order or orders under this Part, the Tribunal must make such orders as, in its opinion, will be fair and equitable to all the parties to the claim.
- (2) Without limiting subsection (1), when the Tribunal is considering whether or not to make an order or orders under this Part, the following factors are relevant, so far as they are material to the particular circumstances of the case:
 - (a) whether or not there was any material inequality in bargaining power between the parties to the claim, 15
 - (b) whether or not:
 - (i) any party to the claim was not reasonably able to protect the party's interest, or
 - (ii) any person who represented any of the parties to the claim was not reasonably able to protect the interests of any party represented by that person, 20
 because of the age or physical or mental capacity of that party or person,
 - (c) the relative economic circumstances, educational background and literacy of: 25
 - (i) the parties to the claim, and
 - (ii) any person who represented any of those parties,
 - (d) whether or not and when independent legal or other expert advice was obtained by the claimant,
 - (e) whether any undue influence, unfair pressure or unfair tactics were exerted on or used against the claimant: 30
 - (i) by any other party to the claim, or
 - (ii) by any person acting or appearing or purporting to act for or on behalf of any other party to the claim, or 35

- (iii) by any person to the knowledge of any other party to the claim or of any person acting or appearing or purporting to act for or on behalf of any other party to the claim,
- (f) the conduct of the parties to the claim in relation to similar transactions to which any of them has been a party, 5
- (g) where the subject of the claim is a contract for the supply of goods or services or a contract collateral to such a contract:
 - (i) whether or not before or at the time when the contract was made its provisions were the subject of negotiation, and 10
 - (ii) whether or not it was reasonably practicable for the claimant to negotiate for the alteration of or to reject any of the provisions of the contract, and 15
 - (iii) whether or not any provisions of the contract impose conditions which are unreasonably difficult to comply with or not reasonably necessary for the protection of the legitimate interests of any party to the claim, and 20
 - (iv) if the contract is wholly or partly in writing, the physical form of the contract and the intelligibility of the language in which it is expressed, and
 - (v) the extent (if any) to which the provisions of the contract and their legal effect were accurately explained by any person to the claimant and whether or not the claimant understood the provisions and their effect, and 25
 - (vi) the commercial or other setting, purpose and effect of the contract. 30
- (3) Without limiting subsection (1), when the Tribunal is considering whether or not to make an order or orders under section 30, it is appropriate for the Tribunal to take into account, so far as material to the particular circumstances of the case:
 - (a) any code of practice for fair dealing prescribed under Part 7 of the *Fair Trading Act 1987*, and 35

CONSUMER CLAIMS BILL

Schedule of the amendments referred to in the Legislative Council's Message of 1 December 1998.

- No. 1 Page 10, clause 13, line 32. Omit "section 30". Insert instead "section 8".
 - No. 2 Page 11, clause 13, line 2. Omit "senior referee". Insert instead "Tribunal".
 - No. 3 Page 21, Schedule 2.4 [4], line 9. Omit "consumer".
Insert instead "building".
 - No. 4 Page 21, Schedule 2.4 [4], line 15. Omit "consumer".
Insert instead "building".
 - No. 5 Page 22, Schedule 2.4 [4], line 2. Omit "consumer".
Insert instead "building".
-

- (b) where the Director-General has brought to the attention of the senior referee any other code of practice, whether or not prescribed by or under any other Act—that code of practice.

14 Limitation on Tribunal's jurisdiction to make orders (cf Act No 206 of 1987, sec 32) 5

- (1) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders in favour of the claimant or, where there are two or more claimants, in favour of those claimants if the total of: 10

- (a) the amount or amounts (if any) of money to be paid, and
(b) the value or values (if any) of the work to be performed, or the services to be supplied, and
(c) the amount or amounts (if any) of money to be declared not to be due or owing, and 15
(d) the value or values of goods (if any) to be delivered or replaced,

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. 20

- (2) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders in favour of the respondent to the claim or, where there are two or more respondents to the claim, in favour of those respondents if the amount or the total of the amounts (if any) to be paid 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. 25

Part 3 Miscellaneous

15 Certain matters to be reported to Chairperson of Tribunal or to Minister (cf Act No 206 of 1987, sec 41)

- (1) Members of the Tribunal may submit a written report to the Chairperson of the Tribunal concerning: 5
 - (a) any matter that arises out of the hearing or determination of a consumer claim by the Tribunal (constituted by those members) that they consider to be of importance as regards the relationship of consumer and supplier, or
 - (b) any matter that, in their opinion, is relevant to the administration of this Act and should be brought to the attention of the Chairperson of the Tribunal. 10
- (2) The Chairperson of the Tribunal may submit a written report to the Minister concerning:
 - (a) any matter that arises out of the hearing or determination of a consumer claim by the Tribunal (constituted by the Chairperson) that the Chairperson considers to be of importance as regards the relationship of consumer and supplier, or 15
 - (b) any matter that, in the opinion of the Chairperson, is relevant to the administration of this Act and should be brought to the attention of the Minister, or 20
 - (c) any matter reported to the Chairperson by a member or members of the Tribunal in accordance with subsection (1) and which the Chairperson considers should be brought to the attention of the Minister. 25
- (3) If, in the course of, or as a result of, the hearing of a consumer claim by the Tribunal, it appears to the Tribunal that a supplier has, in the course of the supplier's dealings with the claimant, engaged in conduct that should be brought to the attention of the Director-General, the Tribunal may make a report in writing on that conduct and transmit it to the Director-General. 30
- (4) If a report transmitted to the Director-General under subsection (3) relates to a supplier who appears to the Director-General to be: 35

- (a) as a supplier of goods or services, required by law to be the holder of a licence, certificate of registration, practising certificate, permit or other authority, or
- (b) a member of a trade organisation comprised of persons or mostly of persons who supply goods or services of the kind supplied by the supplier, 5

the Director-General may transmit a copy of the report, or any information contained in the report, to the authority responsible for the administration of the law or that trade organisation.

- (5) The Director-General has qualified privilege in proceedings for defamation arising out of a communication made under this section. 10

16 Power of Director-General to establish and maintain list of unsatisfactory suppliers (cf Act No 206 of 1987, sec 42)

- (1) Subject to this section, the Director-General may establish and maintain for the purposes of this Act a list to be known as the unsatisfactory suppliers list. 15
- (2) The Director-General may enter in the unsatisfactory suppliers list the name and other prescribed particulars (if any) of:
 - (a) any supplier who has been the subject of an adverse report made under section 15, 20
 - (b) any supplier who has failed to comply with the requirements of an order of the Tribunal within the period specified in the order, or
 - (c) any supplier against whom more than the prescribed number of orders has been made under this Act during the period prescribed for the purposes of this paragraph. 25
- (3) The Director-General must not enter the name and other particulars of a supplier in the unsatisfactory suppliers list unless the supplier has first been given an opportunity to show cause as to why the name and particulars of the supplier should not be entered in the list and, having been given such an opportunity, has not shown cause within such period (being not less than 7 days after the opportunity was given) as the Director-General may allow. 30 35

- (4) The Director-General must remove the name and other prescribed particulars of a supplier from the unsatisfactory suppliers list at the end of the prescribed period, on the happening of a prescribed event or on fulfilment of prescribed conditions. 5
- (5) The Director-General may from time to time publish in such manner as the Director-General thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.
- (6) The Director-General has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5). 10

17 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15

18 Repeal of Consumer Claims Tribunals Act 1987 No 206

The *Consumer Claims Tribunals Act 1987* is repealed.

19 Savings and transitional provisions 20

Schedule 1 has effect.

20 Consequential amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

21 Review of Act 25

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of section 6. 30
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings and transitional provisions

(Section 19)

Part 1 Regulations**1 Regulations may contain savings and transitional provisions**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 5
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 10
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 15

Part 2 Provisions consequent on enactment of this Act**2 Definitions 20**

- (1) In this Part, *former Act* means the *Consumer Claims Tribunals Act 1987*.
- (2) A reference in this Part to a consumer claims tribunal includes a reference to such a tribunal under the name "building disputes tribunal". 25

3 Phasing out of consumer claims tribunals

- (1) On the date of commencement of this Schedule:
 - (a) no application may be made to bring any matter before a consumer claims tribunal, and

- (b) the consumer claims tribunals continue to exist, and any person holding office as a member of such a tribunal immediately before that date continues to hold office as such, only for the purpose of the exercise by the tribunals of their functions under clause 5, and of winding up their affairs. 5

4 Members of consumer claims tribunals

- (1) On a date specified in a notice served on a member of a consumer claims tribunal by the Director-General, the member ceases to hold office as such a member. 10
- (2) A member served with such a notice is not entitled to any compensation by reason of ceasing to hold office as a member of a consumer claims tribunal, but is eligible (if otherwise qualified) to be appointed as a member of the Fair Trading Tribunal established under the *Fair Trading Tribunal Act 1998*. 15

5 Pending proceedings

Proceedings before a consumer claims tribunal that:

- (a) were instituted before the commencement of this Schedule, and
- (b) have not been finally determined by the consumer claims tribunal before the commencement of this Schedule, 20
- may be continued and determined as if this Act had not been enacted, and for that purpose the provisions of any Act, statutory rules or other law that would have applied to or in respect of the proceedings had this Act not been enacted continue to apply. 25

6 Orders

An order made under the *Consumer Claims Tribunals Act 1987* or another Act by a consumer claims tribunal, being an order:

- (a) having effect at the date of commencement of this Schedule, or 30
- (b) made after that date in order to determine proceedings under this clause,

is taken to be an order made by the Tribunal under the corresponding provision of this Act or the *Fair Trading Tribunal Act 1998* and may be enforced accordingly. 35

7 References to consumer claims tribunals

A reference in another Act, in an instrument made under an Act or in any other document to a consumer claims tribunal is to be read as a reference to the Fair Trading Tribunal.

8 Unsatisfactory suppliers list

5

- (1) A list compiled under section 42 of the former Act is taken (as it stood immediately before the repeal of that section) to form part of any list compiled for the purposes of section 16 of this Act.
- (2) A reference in section 16 (2) (a) to a report made under section 15 includes a reference to a report made under section 41 of the former Act.
- (3) A reference in section 16 (2) (b) or (c) to orders made under this Act includes a reference to orders made by a consumer claims tribunal under the former Act.

10

Schedule 2 Consequential amendment of other Acts

(Section 20)

2.1 Credit Act 1984 No 94

[1] Section 5 Definitions

5

Omit the definition of *consumer claims tribunal* from section 5 (1).

[2] Section 6 Jurisdiction of courts and Tribunal

Omit section 6 (5) and (6).

2.2 Consumer Credit (New South Wales) Act 1995 No 7

Section 8 Conferral of judicial functions

10

Omit section 8 (1) (c) and (4).

2.3 Electricity Supply Act 1995 No 94

Section 96 Customers may appeal against certain decisions

Omit section 96 (4). Insert instead:

- (4) This section does not apply to any matter in respect of which the Fair Trading Tribunal has jurisdiction under the *Consumer Claims Act 1998*. 15

2.4 Home Building Act 1989 No 147

[1] Section 84 Definitions

Omit the definitions of *building claim* and *building disputes tribunal*.

Insert instead:

5

building claim means a claim for:

- (a) the payment of a specified sum of money, or
- (b) the supply of specified services, or
- (c) relief from payment of a specified sum of money,
or
- (d) the delivery, return or replacement of specified
goods or goods of a specified description, or
- (e) a combination of two or more of the remedies
referred to in paragraphs (a)–(d),

10

that arises from a supply of building goods or services,
whether under a contract or not, or that arises under a
contract that is collateral to a contract for the supply of
building goods or services, but does not include a claim
that the regulations declare not to be a building claim.

15

building goods or services means goods or services
supplied for or in connection with the carrying out of
residential building work or specialist work, being goods
or services:

20

- (a) supplied by the person who contracts to do that
work, or
- (b) supplied in such circumstances as may be
prescribed to the person who contracts to do that
work.

25

[2] Section 84 (2)-(4)

Insert at the end of section 84:

- (2) Without limiting the definition of *building claim*, a building claim includes the following:
 - (a) an appeal against a decision of an insurer under a contract of insurance required to be entered into under this Act, 5
 - (b) a claim for compensation for loss arising from a breach of a statutory warranty implied under Part 2C. 10
- (3) A word or expression:
 - (a) that is used in a definition in subsection (1), and
 - (b) that is defined in the *Consumer Claims Act 1998*, has in the definition the same meaning as in that Act.
- (4) For the purposes of subsection (3), a reference in section 3 of the *Consumer Claims Act 1998* to a consumer is to be read as a reference to any person. 15

[3] Part 5, Division 1

Insert after the heading to Part 5:

Division 1 Appeals 20

[4] Part 5, Division 2

Omit sections 89A-89C. Insert instead:

Division 2 Building claims

89A Application for determination

Any person may apply to the Tribunal, in accordance with the regulations, for determination of a building claim. 25

89B Jurisdiction relating to building claims

- (1) Subject to this Division, the Tribunal has jurisdiction to hear and determine any building claim brought before it in accordance with this Division, whether or not the matter to which the claim relates arose before or after the commencement of this Division, except as provided by this section. 5
- (2) The Tribunal does not have jurisdiction in respect of a consumer claim relating to goods or services that have been supplied to or for the claimant if the date on which the claim was lodged is more than 3 years after the date on which the supply was made (or, if made in instalments, the date on which the supply was last made). 10
- (3) The Tribunal does not have jurisdiction in respect of a consumer claim relating to goods or services that are required under a contract to be supplied to or for the claimant on or by a specified date or within a specified period but which have not been so supplied if the date on which the claim was lodged is more than 3 years after the date on or by which the supply was required under the contract to be made. 15 20
- (4) The Tribunal does not have jurisdiction in respect of a building claim arising out of a contract of insurance required to be entered into under this Act if the date on which the claim was lodged is more than 10 years after the date on which the residential building work the subject of the claim was completed. 25
- (5) The Tribunal does not have jurisdiction in respect of a building claim arising from a breach of a statutory warranty implied under Part 2C if the date on which the claim was lodged is more than 7 years after: 30
- (a) the date on which the residential building work the subject of the claim was completed, or
 - (b) if the work is not completed:
 - (i) the date for completion of the work specified or determined in accordance with the contract, or 35
 - (ii) if there is no such date, the date of the contract.

-
- (6) The Tribunal does not have jurisdiction in respect of a consumer claim relating to:
- (a) a contract for the supply of goods or services to which none of subsections (2)–(5) applies, or
 - (b) a collateral contract, 5
- if the date on which the claim was lodged is more than 3 years after the date on which the contract was entered into.

89C Powers of the Tribunal

- (1) In determining a building claim, the Tribunal is empowered to make such one or more of the following orders as it considers appropriate: 10
- (a) an order that one party to the proceedings pay money to another party or to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person, 15
 - (b) an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings, 20
 - (c) an order that a party to the proceedings:
 - (i) do any specified work or perform any specified service or any obligation arising under this Act or the terms of any agreement, or 25
 - (ii) do or perform, or refrain from doing or performing, any specified act, matter or thing. 30
- (2) The provisions of sections 9–13 of the *Consumer Claims Act 1998* apply, with any necessary modifications, to and in respect of the determination of a building claim.

[5] Part 5, Division 3

Insert before section 89D:

Division 3 Unjust contracts

[6] Section 89D Jurisdiction relating to unjust contracts

Omit all words after “specialist work” in section 89D (1).

5

2.5 Motor Dealers Act 1974 No 52

Section 30 Definitions

Omit the definition of *tribunal* from section 30 (1).

2.6 Motor Vehicle Repairs Act 1980 No 71

Section 51 Definitions

10

Omit the definition of *tribunal* from section 51 (1).

2.7 Water Board (Corporatisation) Act 1994 No 88

[1] Section 58 Consumer claims

Omit “a consumer claims tribunal”.

Insert instead “the Fair Trading Tribunal”.

15

Consumer Claims Bill 1998

Schedule 2 Consequential amendment of other Acts

[2] Section 58

Omit "*Consumer Claims Tribunals Act 1987*".
Insert instead "*Consumer Claims Act 1998*".