

**CONSUMER CLAIMS TRIBUNALS (BUILDING DISPUTES)  
AMENDMENT ACT 1989 No. 148**

**NEW SOUTH WALES**



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Consumer Claims Tribunals Act 1987 No. 206

**SCHEDULE 1 - AMENDMENTS**

---



**CONSUMER CLAIMS TRIBUNALS (BUILDING DISPUTES)  
AMENDMENT ACT 1989 No. 148**

NEW SOUTH WALES



**Act No. 148, 1989**

An Act to amend the Consumer Claims Tribunal Act 1987 to make further provision for the hearing and determination of certain claims concerning building goods and services. [Assented to 7 November 1989]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Consumer Claims Tribunals (Building Disputes) Amendment Act 1989.

**Commencement**

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

**Amendment of Consumer Claims Tribunals Act 1987 No. 206**

3. The Consumer Claims Tribunals Act 1987 is amended as set out in Schedule 1.

---

**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

After the definition of "banker" in section 3 (1), insert:

**"building disputes tribunal"** means a consumer claims tribunal which hears and determines a building claim, as referred to in Part 3A;

(2) Section 4A:

After section 4, insert:

**Nomination of building dispute referees**

4A (1) At least one of the persons appointed as a referee is to be nominated as a building dispute referee.

(2) The nomination is to be made by the instrument of appointment of the person as a referee or by a subsequent instrument executed by the Governor.

(3) A person is not to be nominated as a building dispute referee except on the recommendation of the Minister and the Minister is not to recommend a person unless satisfied that the person has extensive experience in the building industry.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Before making such a recommendation, the Minister:

- (a) is to seek advice on the matter from the senior referee, the Building Services Corporation, the Master Builders' Association of New South Wales and the Housing Industry Association (New South Wales); and
- (b) is to take into consideration any advice received by the Minister within the period specified by the Minister when seeking the advice.

(5) A building claim referee is not prevented from hearing and determining a claim merely because it is not a building claim.

(3) Part 3A:

After Part 3, insert:

**PART 3A - BUILDING CLAIMS**

**Definitions**

12A. In this Part:

"BSC" means the Building Services Corporation constituted by the BSC Act;

"BSC Act" means the Building Services Corporation Act 1989;

"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 2 or more of the remedies referred to in paragraphs (a) - (d),

that arises from a supply of building goods or services, whether under a contract or not, or that arises under

SCHEDULE 1 - AMENDMENTS - *continued*

a contract that is collateral to a contract for the supply of building goods or services;

**"building goods or services"** means goods or services supplied for or in connection with the carrying out of residential building work or specialist work (within the meaning of the BSC Act) being goods or services:

- (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.

**Building claims to be considered to be consumer claims**

12B. (1) For the purposes of this Act, a building claim is to be considered to be a consumer claim and a person who makes a building claim is to be considered to be a consumer:

- (a) despite the definitions of "consumer" and "consumer claim" in section 3 (1); and
- (b) even when the claim is made by a supplier.

(2) A claim is not to be considered to be a building claim for the purposes of this Part if:

- (a) it is made by a person as the supplier of goods or services; and
- (b) at the time any contract for the supply of those goods or services was entered into, the person failed to hold any licence required by the BSC Act to be held to authorise the entering into of the contract.

**Regulations may provide that certain claims are not building claims**

12C. The regulations may make provision for circumstances in which a claim is not to be considered to be a building claim for the purposes of this Part.

**Tribunal to be known as building disputes tribunal**

12D. When it hears and determines a building claim, a tribunal is to be known as a building disputes tribunal.

SCHEDULE 1 - AMENDMENTS - *continued*

**Special qualifications required for referee constituting building disputes tribunal**

12E. The referee who constitutes a building disputes tribunal must be a referee who is nominated as a building disputes referee (section 4A).

**Preliminary referral of building claim to BSC**

12F. (1) If it appears to the registrar that a claim lodged is a building claim, the registrar must, despite section 14 (Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings), refer the claim to the BSC for consideration.

(2) The registrar may consult the senior referee if in doubt as to whether a claim is a building claim and should be dealt with under this section.

(3) If the claim has not been withdrawn within 1 month after it is referred to the BSC or the BSC advises that it proposes to take no action in the matter, the registrar is to proceed to deal with the claim under section 14.

(4) This section does not apply to a class of building claims prescribed as being exempt from this section.

**Referral of claim to BSC during hearing**

12G. (1) If a tribunal hearing a building claim thinks it appropriate to do so in the interests of settling the claim, it may adjourn the hearing and refer the claim to the BSC for consideration.

(2) The tribunal may further adjourn the hearing of the claim if it thinks it appropriate to do so for the purpose of enabling any action to be taken under the BSC Act which may result in settlement and withdrawal of the claim.

(3) Section 20 (Adjournment of the hearing of a consumer claim) applies to any such adjournment and this section does not limit the operation of section 20.

**BSC not prevented from taking action when claim pending**

12H. (1) The fact that a consumer claim is pending before a tribunal does not prevent the BSC from taking

SCHEDULE 1 - AMENDMENTS - *continued*

action under Part 4 (Dispute resolution and disciplinary provisions) of the BSC Act in respect of a matter even if the claim concerns that matter.

(2) If the BSC takes any such action in respect of a matter and is or becomes aware that a consumer claim pending before a tribunal concerns that matter, the BSC must inform the senior referee of the action taken.

**Power to make additional orders in favour of respondent**

12I. (1) In determining a building claim wholly or partly in favour of a respondent to the claim, a tribunal may make such one or more of the following orders as it considers appropriate:

- (a) any order it could make under section 30 (2);
- (b) an order that requires a claimant 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 claimant to supply to the respondent specified services other than work;
- (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 respondent to the claimant;
- (e) an order that requires a claimant to deliver to the respondent goods of a specified description;
- (f) an order that requires a claimant to replace goods to which the claim relates.

(2) This section does not affect the power of a building disputes tribunal to make an order under section 30 (1) (orders in favour of claimant).

**Excluded building claims not excluded from rest of Act**

12J. If a claim would be a building claim but for section 12B (2) or 12C, this Part does not prevent a person from bringing the claim before a consumer claims tribunal if it could be brought apart from this Part.



SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 36 (**Enforcement of other tribunal orders**):

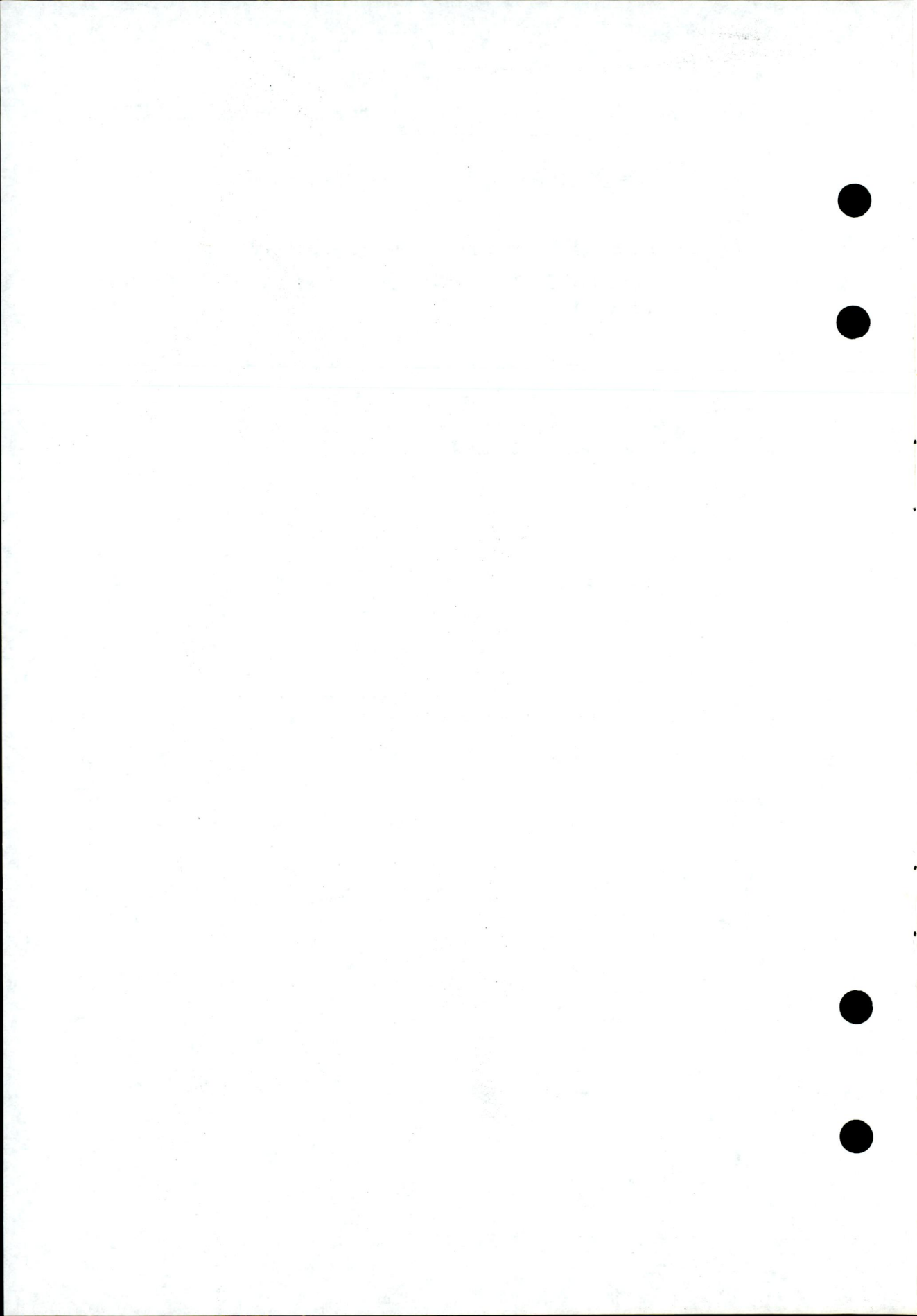
In section 36 (1), after "or (2) (c)", insert "or 12I (1) (b), (c), (e) or (f)".

---

[*Minister's second reading speech made in -  
Legislative Assembly on 18 October 1989  
Legislative Council on 25 October 1989*]

---

BY AUTHORITY  
G. J. COSTELLOE, ACTING GOVERNMENT PRINTER - 1989







FIRST PRINT

**CONSUMER CLAIMS TRIBUNALS (BUILDING DISPUTES)  
AMENDMENT BILL 1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Building Services Corporation Bill 1989.

The object of this Bill is to amend the Consumer Claims Tribunals Act 1987 to make further provision for the hearing and determination of claims ("building claims") arising under residential building contracts or arising from a supply of residential building goods or services in such other circumstances as may be prescribed by the regulations.

The amendments will make provision for the following:

- \* either the supplier or the consumer of the building goods or services will (subject to certain exceptions) be able to bring a building claim before a consumer claims tribunal (not just the consumer as at present);
- \* a consumer claims tribunal will be known as a building disputes tribunal when it hears a building claim and will be constituted by a referee with extensive experience in the building industry;
- \* when a building claim is lodged it will (subject to any prescribed exceptions) first be referred to the Building Services Corporation ("the BSC") for consideration for action under the proposed Building Services Corporation Act 1989 but if the claim is not settled as a result it will then be heard by a building disputes tribunal;
- \* at any time during the hearing of a building claim, the tribunal can refer the matter for consideration and possible action by the BSC;
- \* the BSC is not prevented from taking action under its Act merely because a claim is pending before a building disputes tribunal;
- \* a building disputes tribunal will be able to make the same orders when it finds in favour of the respondent as it can when it finds in favour of the

*Consumer Claims Tribunals (Building Disputes) Amendment 1989*

---

claimant (currently a consumer claims tribunal can only make a limited range of orders when it finds in favour of the respondent);

- \* the proposed new provisions do not prevent the making of a consumer claim that is a building claim excluded from the operation of the proposed new provisions if it could be made under the Act currently;
- \* the regulations will be able to exclude from the operation of the proposed new provisions claims that would otherwise be building claims.

---

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a proclaimed day or days.

**Clause 3** gives effect to the Schedule of amendments.

**Schedule 1** amends the Consumer Claims Tribunals Act 1987 to make provision as described above and makes consequential amendments.

---

FIRST PRINT

**CONSUMER CLAIMS TRIBUNALS (BUILDING DISPUTES)  
AMENDMENT BILL 1989**

NEW SOUTH WALES

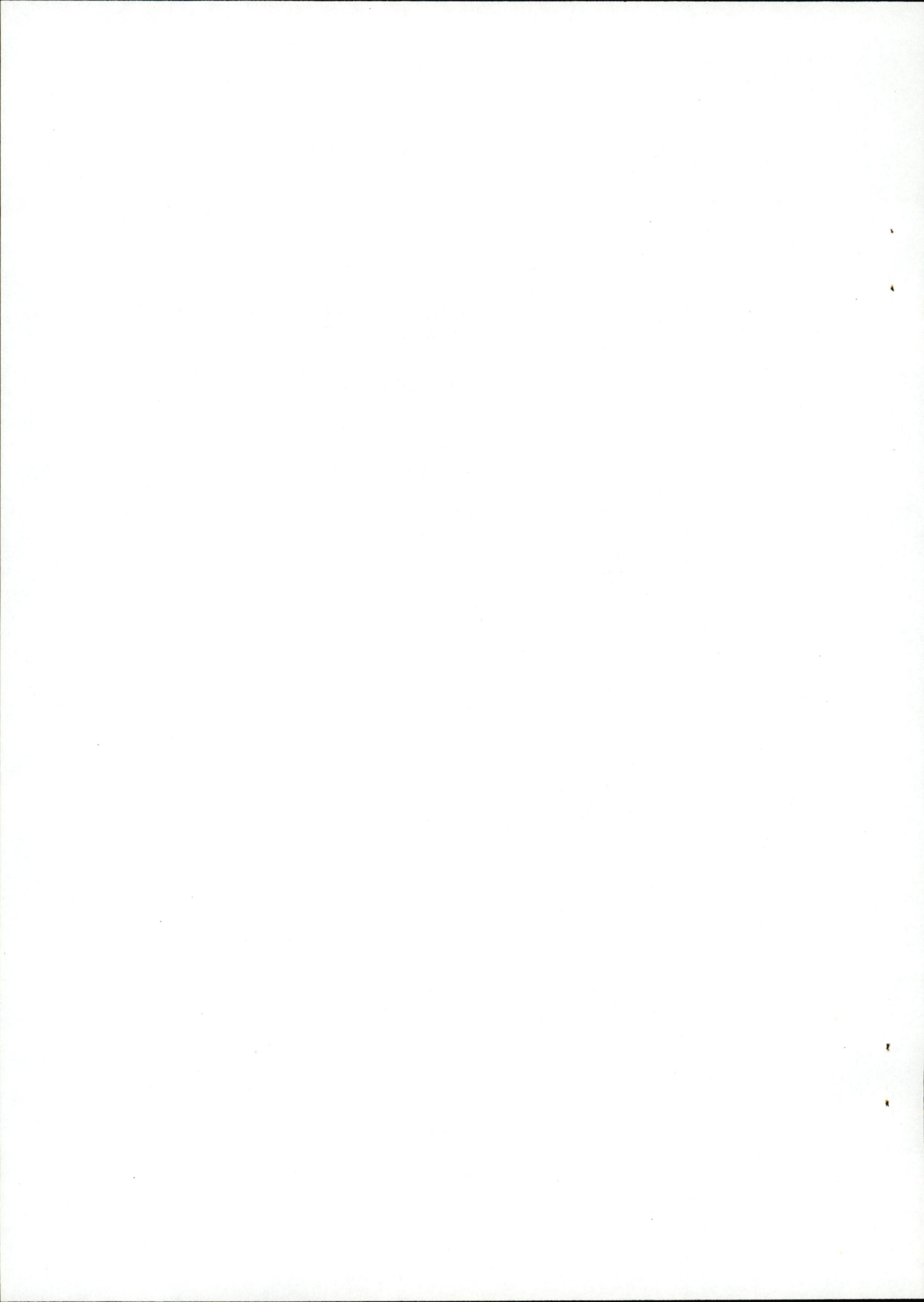


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Consumer Claims Tribunals Act 1987 No. 206

**SCHEDULE 1 - AMENDMENTS**

---





**CONSUMER CLAIMS TRIBUNALS (BUILDING DISPUTES)  
AMENDMENT BILL 1989**

NEW SOUTH WALES



No. , 1989

---

---

**A BILL FOR**

An Act to amend the Consumer Claims Tribunals Act 1987 to make further provision for the hearing and determination of certain claims concerning building goods and services.

---

---

*Consumer Claims Tribunals (Building Disputes) Amendment 1989*

---

The Legislature of New South Wales enacts:

**Short title**

1. This Act may be cited as the Consumer Claims Tribunals (Building Disputes) Amendment Act 1989.

**Commencement**

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

**Amendment of Consumer Claims Tribunals Act 1987 No. 206**

3. The Consumer Claims Tribunals Act 1987 is amended as set out in Schedule 1.

---

**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

After the definition of "banker" in section 3 (1), insert:

**"building disputes tribunal"** means a consumer claims tribunal which hears and determines a building claim, as referred to in Part 3A;

(2) Section 4A:

After section 4, insert:

**Nomination of building dispute referees**

4A. (1) At least one of the persons appointed as a referee is to be nominated as a building dispute referee.

(2) The nomination is to be made by the instrument of appointment of the person as a referee or by a subsequent instrument executed by the Governor.

(3) A person is not to be nominated as a building dispute referee except on the recommendation of the Minister and the Minister is not to recommend a person unless satisfied that the person has extensive experience in the building industry.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Before making such a recommendation, the Minister:

- (a) is to seek advice on the matter from the senior referee, the Building Services Corporation, the Master Builders' Association of New South Wales and the Housing Industry Association (New South Wales); and
- (b) is to take into consideration any advice received by the Minister within the period specified by the Minister when seeking the advice.

(5) A building claim referee is not prevented from hearing and determining a claim merely because it is not a building claim.

(3) Part 3A:

After Part 3, insert:

**PART 3A - BUILDING CLAIMS**

**Definitions**

12A. In this Part:

"BSC" means the Building Services Corporation constituted by the BSC Act;

"BSC Act" means the Building Services Corporation Act 1989;

"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 2 or more of the remedies referred to in paragraphs (a) - (d),

that arises from a supply of building goods or services, whether under a contract or not, or that arises under

SCHEDULE 1 - AMENDMENTS - *continued*

a contract that is collateral to a contract for the supply of building goods or services;

**"building goods or services"** means goods or services supplied for or in connection with the carrying out of residential building work or specialist work (within the meaning of the BSC Act) being goods or services:

- (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.

**Building claims to be considered to be consumer claims**

12B. (1) For the purposes of this Act, a building claim is to be considered to be a consumer claim and a person who makes a building claim is to be considered to be a consumer:

- (a) despite the definitions of "consumer" and "consumer claim" in section 3 (1); and
- (b) even when the claim is made by a supplier.

(2) A claim is not to be considered to be a building claim for the purposes of this Part if:

- (a) it is made by a person as the supplier of goods or services; and
- (b) at the time any contract for the supply of those goods or services was entered into, the person failed to hold any licence required by the BSC Act to be held to authorise the entering into of the contract.

**Regulations may provide that certain claims are not building claims**

12C. The regulations may make provision for circumstances in which a claim is not to be considered to be a building claim for the purposes of this Part.

**Tribunal to be known as building disputes tribunal**

12D. When it hears and determines a building claim, a tribunal is to be known as a building disputes tribunal.

SCHEDULE 1 - AMENDMENTS - *continued*

**Special qualifications required for referee constituting building disputes tribunal**

12E. The referee who constitutes a building disputes tribunal must be a referee who is nominated as a building disputes referee (section 4A).

**Preliminary referral of building claim to BSC**

12F. (1) If it appears to the registrar that a claim lodged is a building claim, the registrar must, despite section 14 (Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings), refer the claim to the BSC for consideration.

(2) The registrar may consult the senior referee if in doubt as to whether a claim is a building claim and should be dealt with under this section.

(3) If the claim has not been withdrawn within 1 month after it is referred to the BSC or the BSC advises that it proposes to take no action in the matter, the registrar is to proceed to deal with the claim under section 14.

(4) This section does not apply to a class of building claims prescribed as being exempt from this section.

**Referral of claim to BSC during hearing**

12G. (1) If a tribunal hearing a building claim thinks it appropriate to do so in the interests of settling the claim, it may adjourn the hearing and refer the claim to the BSC for consideration.

(2) The tribunal may further adjourn the hearing of the claim if it thinks it appropriate to do so for the purpose of enabling any action to be taken under the BSC Act which may result in settlement and withdrawal of the claim.

(3) Section 20 (Adjournment of the hearing of a consumer claim) applies to any such adjournment and this section does not limit the operation of section 20.

**BSC not prevented from taking action when claim pending**

12H. (1) The fact that a consumer claim is pending before a tribunal does not prevent the BSC from taking

SCHEDULE 1 - AMENDMENTS - *continued*

action under Part 4 (Dispute resolution and disciplinary provisions) of the BSC Act in respect of a matter even if the claim concerns that matter.

(2) If the BSC takes any such action in respect of a matter and is or becomes aware that a consumer claim pending before a tribunal concerns that matter, the BSC must inform the senior referee of the action taken.

**Power to make additional orders in favour of respondent**

12I. (1) In determining a building claim wholly or partly in favour of a respondent to the claim, a tribunal may make such one or more of the following orders as it considers appropriate:

- (a) any order it could make under section 30 (2);
- (b) an order that requires a claimant 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 claimant to supply to the respondent specified services other than work;
- (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 respondent to the claimant;
- (e) an order that requires a claimant to deliver to the respondent goods of a specified description;
- (f) an order that requires a claimant to replace goods to which the claim relates.

(2) This section does not affect the power of a building disputes tribunal to make an order under section 30 (1) (orders in favour of claimant).

**Excluded building claims not excluded from rest of Act**

12J. If a claim would be a building claim but for section 12B (2) or 12C, this Part does not prevent a person from bringing the claim before a consumer claims tribunal if it could be brought apart from this Part.

*Consumer Claims Tribunals (Building Disputes) Amendment 1989*

---

**SCHEDULE 1 - AMENDMENTS - *continued***

**(4) Section 36 (Enforcement of other tribunal orders):**

In section 36 (1), after "or (2) (c)", insert "or 12I (1) (b), (c), (e) or (f)".

---

