

First print



New South Wales

Fair Trading Amendment Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Fair Trading Act 1987*:

- to make it clear that the Commissioner may grant legal assistance to consumers for appeals and proceedings for judicial review arising out of legal proceedings for which legal assistance may currently be granted under Division 2 of Part 2 of the Act
 - to make it clear that the provisions relating to the grant of legal assistance by the Commissioner apply to proceedings in tribunals as well as courts.
-

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on the date of assent.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Fair Trading Act 1987*.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 11A into the *Fair Trading Act 1987*, which makes it clear that the provisions relating to the grant of legal assistance to consumers apply to tribunals as well as courts.

Schedule 1 [2] amends section 12 of the Principal Act, as a consequence of the amendment made by Schedule 1 [5], to make it clear that legal assistance may only be granted for civil proceedings.

Schedule 1 [3] amends section 12 of the Principal Act to make it clear that a person may apply for legal assistance in an appeal or application for judicial review relating to legal proceedings arising out of the supply to the person of goods or services or the disposal to the person of an interest in land. An example of a possible application for judicial review is an administrative law challenge to a decision of a consumer claims tribunal on the basis of denial of natural justice.

Schedule 1 [5] removes the requirement that legal assistance can only be granted for the recovery of a liquidated or unliquidated amount.

Schedule 1 [4] and **[6]** make consequential amendments.

Schedule 1 [7] inserts proposed clause 11B into Schedule 5. The new clause enables legal assistance to be granted under the amended provisions in relation to matters arising and proceedings commenced before the amendments commence. However, this will not apply if an application has previously been refused.

Schedule 1 [8] extends the power to make transitional regulations to cover the amendments made by the proposed Act.

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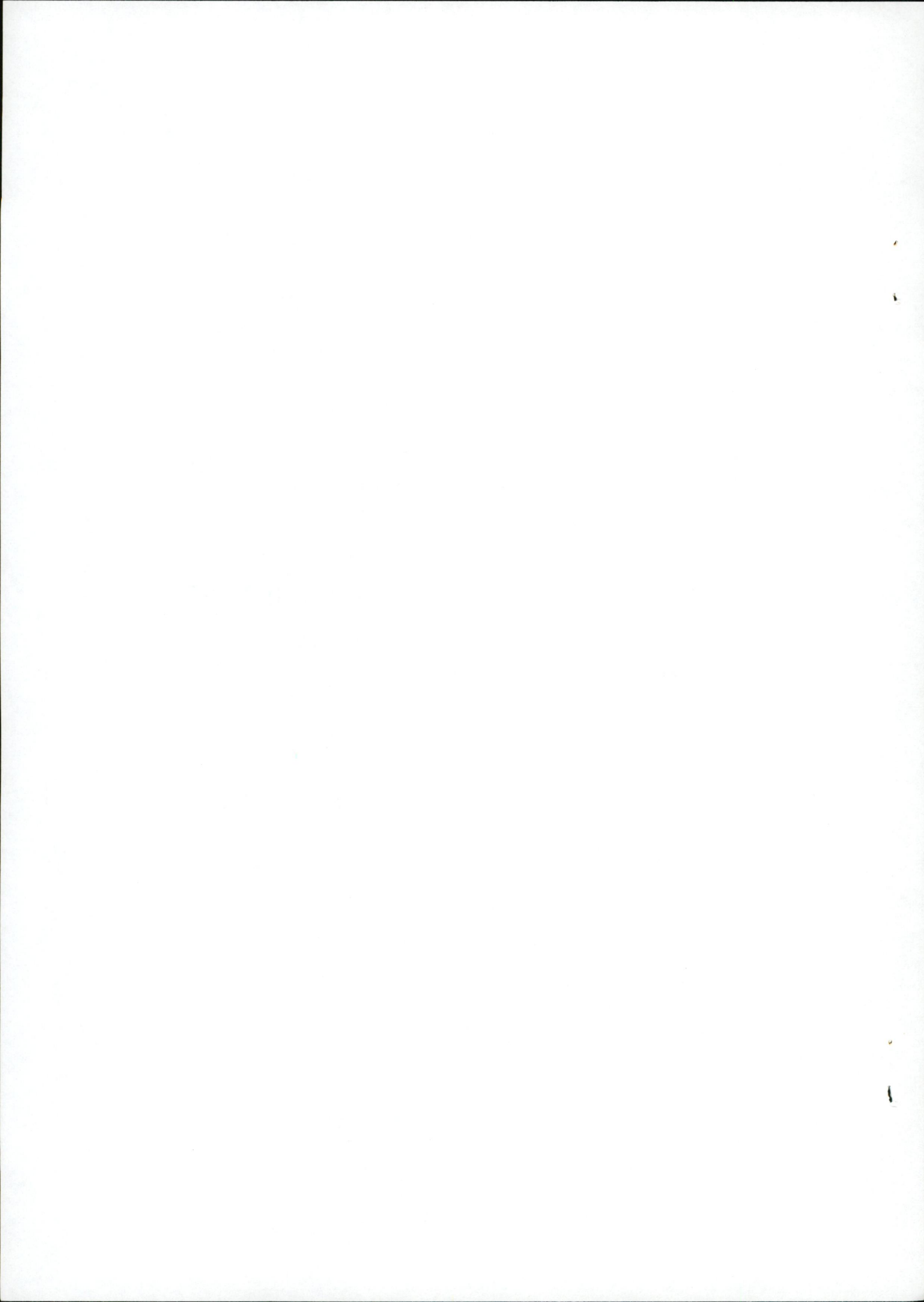


New South Wales

Fair Trading Amendment Bill 1995

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Fair Trading Act 1987 No 68	2
 Schedule 1 Amendments	 3





New South Wales

Fair Trading Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Fair Trading Act 1987* with respect to the provision of legal assistance to consumers and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Amendment Act 1995*.

2 Commencement

This Act commences on the date of assent.

5

3 Amendment of Fair Trading Act 1987 No 68

The *Fair Trading Act 1987* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 11A

Insert before section 12:

11A Definition of court

5

In this Division:

court includes a tribunal.

[2] Section 12 Making of application for legal assistance

Insert “(other than criminal proceedings)” after “proceedings” in section 12 (1) (a).

10

[3] Section 12 (1) (b)

Omit the paragraph. Insert instead:

(b) wishes to make an appeal or seek judicial review in relation to legal proceedings of a kind referred to in paragraph (a), or

15

(c) is a party to legal proceedings or proceedings relating to an appeal or review referred to in paragraph (a) or (b),

[4] Section 13 Grant of legal assistance

Insert “and” at the end of section 13 (1) (b).

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[5] Section 13 (1) (c)

Omit the paragraph.

[6] Part 2, Division 2

Omit “Court” wherever occurring. Insert instead “court”.

[7] Schedule 5 Savings and transitional provisions

Insert after clause 11A:

11B Fair Trading Amendment Act 1995

- (1) A person may make an application under section 12, and the Commissioner may grant an application under section 13, as amended by the *Fair Trading Amendment Act 1995*, in relation to acts, matters or things arising, and legal proceedings commenced but not completed, before the commencement of that Act. 5
- (2) However, a person may not apply for, and the Commissioner may not grant, legal assistance in relation to any such act, matter or thing or proceedings if the Commissioner has previously refused to grant the legal assistance. 10

[8] Schedule 5, clause 12 (1) 15

Insert after “or the *Fair Trading (Lay-by) Amendment Act 1993*”:

or the following Acts:

Fair Trading Amendment Act 1995

**FAIR TRADING AMENDMENT BILL 1995
SECOND READING SPEECH
LEGISLATIVE COUNCIL**

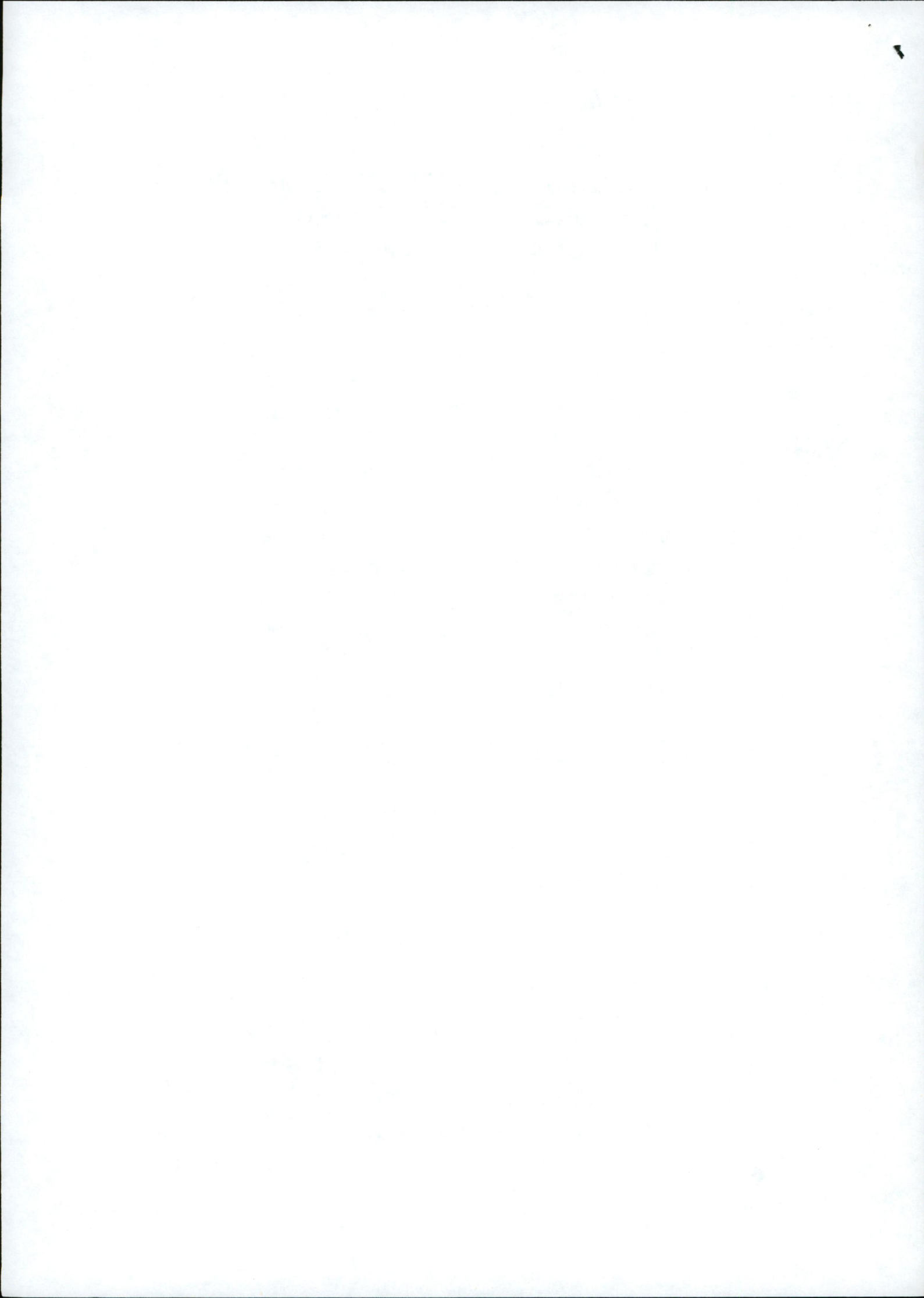
Mr President

I move that this Bill be now read a second time.

The Fair Trading Act 1987 makes provision for consumers to apply for legal assistance to conduct legal proceedings where the matter arises out of the supply of goods or services. Section 13(1) sets out the criteria for the grant of legal assistance. Section 13(1) states that the Commissioner may grant legal assistance if:

- there are reasonable grounds for the action;
- assistance is desirable in the public interest;
- the proceedings are for the recovery of a liquidated or unliquidated amount that will not exceed the prescribed amount; and
- the Minister has given approval.

The Legal Assistance Program has been used to assist consumers in civil litigation matters. In the past this program was utilised to assist consumers who were parties to appeals from the Consumer Claims Tribunals (CCT) and (BDT) decisions are made in the Supreme



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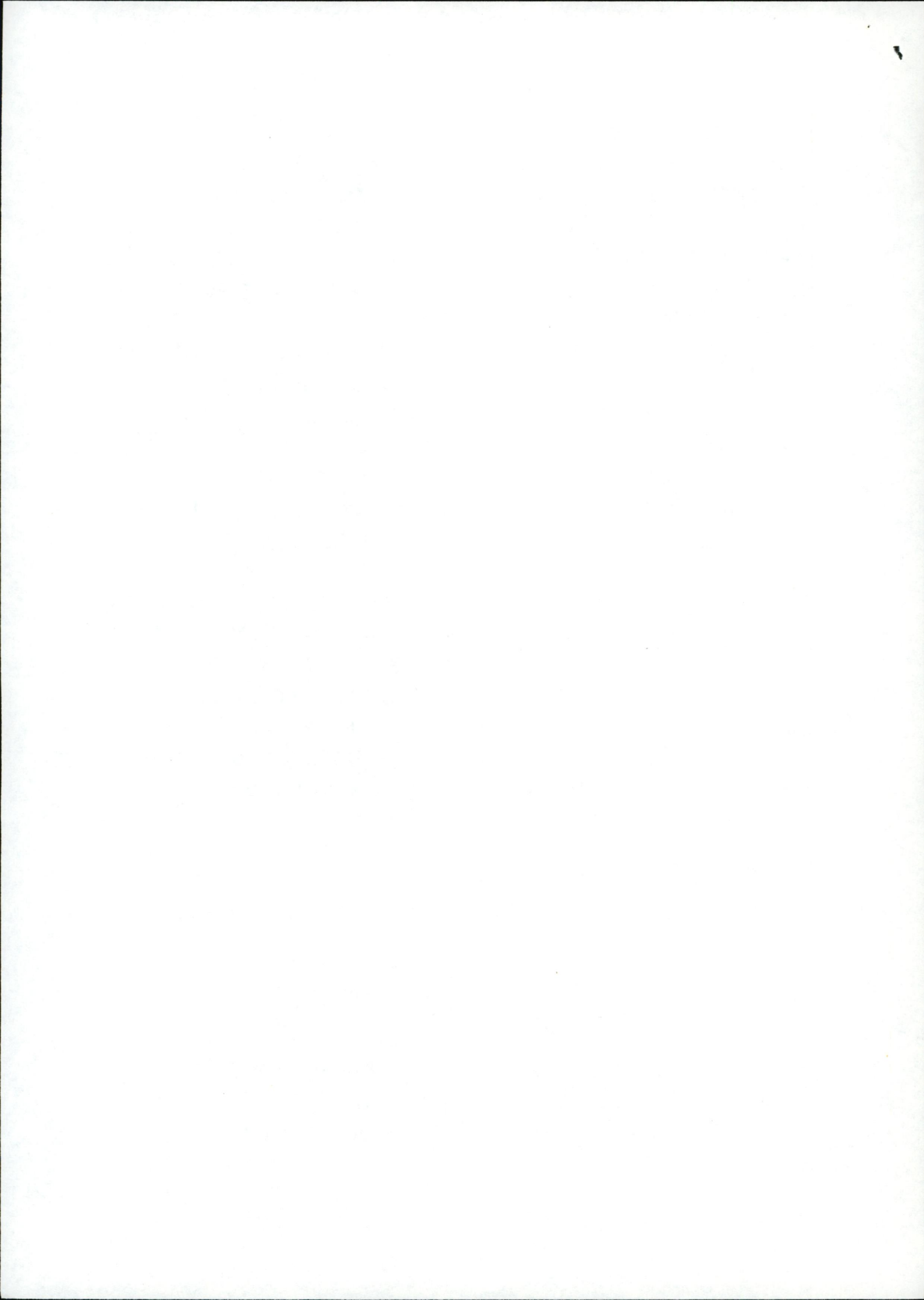
Court and are restricted by section 12(2) of the Consumer Claims Tribunals Act 1987 to matters of jurisdiction and natural justice. The basis for such action is a mistake by a referee and does not reflect the merits of the claim. Consequently, a consumer who has sought a low cost resolution to a dispute, often at the advice of Consumer Affairs, may be subject to expensive Court proceedings due to an alleged mistake of the Tribunal. It has been accepted that it is within the general consumer interest for legal assistance to be granted in these cases so as to protect the consumer against excessive cost and to permit the Commissioner to provide legal input on matters which involve judicial interpretation of consumer protection legislation.

The Department of Consumer Affairs received advice from the NSW Solicitor General in April 1995 that legal assistance cannot be granted in proceedings for judicial review of decisions of courts or tribunals. This is because section 13(1)(c) of the Fair Trading Act limits the Commissioner to granting legal assistance where the proceedings involve recovery of a liquidated or unliquidated amount.

The Bill seeks to clarify the criteria for which legal assistance may be granted under the Fair Trading Act 1987.

I turn now to the provisions of the Bill.

Schedule 1(1) of the Bill inserts a new section 11A. Section 11A will state that "court" includes "tribunal". This will ensure that, where legal representation is



permitted, the Commissioner may grant legal assistance in proceedings before a tribunal.

Schedule 1(2) and (5) amend sections 12 and 13 to provide that legal assistance can only be granted in civil proceedings and to remove the requirement that proceedings must be for a liquidated or unliquidated amount.

Schedule 1(3) amends section 12(1) to make it clear that legal assistance can be granted for judicial review or appeals. Section 12(1)(b) will permit applications for legal assistance for judicial review or appeal proceedings where the originating action arose out of the supply of goods or services. Section 12(1)(c) will ensure that assistance can be granted whether the consumer is the plaintiff or defendant.

Schedule 1(7) provides some transitional provisions. Proposed clause 11B of Schedule 5 to the Act will allow the Commissioner to grant legal assistance in proceedings which arose before or after the commencement of the amendment. However, any application that was refused prior to the amendment cannot be re-made. This will not unfairly affect any party to proceedings, because any person who would have received assistance under these provisions in relation to CCT or BDT appeals would have benefitted from intervention of the Minister under section 44(1) of the Consumer Claims Tribunals Act 1987.

I commend the Bill to the House.

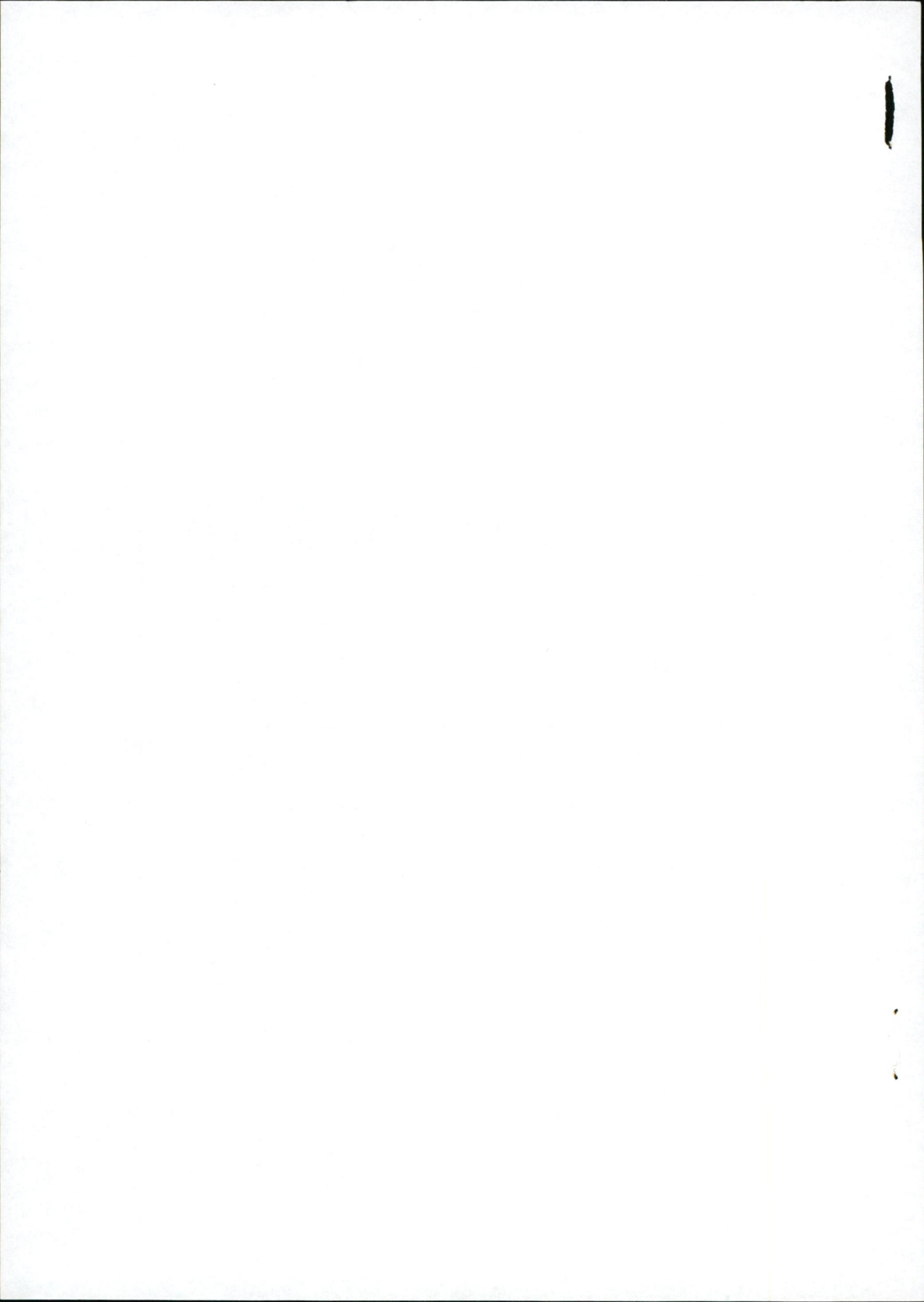


New South Wales

Fair Trading Amendment Act 1995 No 58

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Fair Trading Act 1987 No 68	2
 Schedule 1 Amendments	 3





New South Wales

Fair Trading Amendment Act 1995 No 58

Act No 58, 1995

An Act to amend the *Fair Trading Act 1987* with respect to the provision of legal assistance to consumers and for other purposes. [Assented to 30 November 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Amendment Act 1995*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Fair Trading Act 1987 No 68

The *Fair Trading Act 1987* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 11A

Insert before section 12:

11A Definition of court

In this Division:

court includes a tribunal.

[2] Section 12 Making of application for legal assistance

Insert “(other than criminal proceedings)” after “proceedings” in section 12 (1) (a).

[3] Section 12 (1) (b)

Omit the paragraph. Insert instead:

- (b) wishes to make an appeal or seek judicial review in relation to legal proceedings of a kind referred to in paragraph (a), or
- (c) is a party to legal proceedings or proceedings relating to an appeal or review referred to in paragraph (a) or (b),

[4] Section 13 Grant of legal assistance

Insert “and” at the end of section 13 (1) (b).

[5] Section 13 (1) (c)

Omit the paragraph.

[6] Part 2, Division 2

Omit “Court” wherever occurring. Insert instead “court”.

[7] Schedule 5 Savings and transitional provisions

Insert after clause 11A:

11B Fair Trading Amendment Act 1995

- (1) A person may make an application under section 12, and the Commissioner may grant an application under section 13, as amended by the *Fair Trading Amendment Act 1995*, in relation to acts, matters or things arising, and legal proceedings commenced but not completed, before the commencement of that Act.
- (2) However, a person may not apply for, and the Commissioner may not grant, legal assistance in relation to any such act, matter or thing or proceedings if the Commissioner has previously refused to grant the legal assistance.

[8] Schedule 5, clause 12 (1)

Insert after "or the *Fair Trading (Lay-by) Amendment Act 1993*":

or the following Acts:

Fair Trading Amendment Act 1995

[Minister's second reading speech made in—
Legislative Assembly on 10 October 1995
Legislative Council on 22 November 1995]

BY AUTHORITY