

CONSUMER CLAIMS TRIBUNALS BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Credit (Consumer Claims Tribunals) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to consolidate and amend the law relating to the hearing and determination of consumer claims. The Bill, which will repeal the Consumer Claims Tribunals Act 1974, will change the existing law relating to the hearing and determination of consumer claims in the following respects:

- (a) The definition of "consumer" is being expanded to include such persons or groups as firms, exempt proprietary companies and certain unincorporated bodies and a person who claims to be a consumer will be regarded as such unless the contrary is proved.
- (b) The definition of "consumer claim" is being expanded to include claims by persons who are carrying on business activities.
- (c) The Bill will apply to the supply of goods or services (as defined) whether or not there in fact exists a contract for the supply of the goods or services.
- (d) The Bill will also apply to contracts that are collateral to contracts for the supply of goods or services.
- (e) The definition of "services" is being expanded to include the letting of premises for holiday purposes and, with certain limitations, the provision of credit.
- (f) The Bill will not, with the exception of claims that may be made before and are pending at the commencement of section 83 (3) of the Residential Tenancies Act 1987, apply to claims in respect of rental bonds paid in respect of residential tenancies.
- (g) Provision will be made for the appointment of deputy registrars of consumer claims tribunals and for the delegation of functions of the registrar of consumer claims tribunals to deputy registrars.

Consumer Claims Tribunals 1987

- (h) The time within which a consumer claim may be lodged will be extended to 3 years from the date of supply of the goods or services or the date on which they ought to have been supplied. Under the existing Act claims must be lodged within 2 years after the contract for the supply of the goods or services concerned is entered into.
- (i) The Commissioner for Consumer Affairs will, in limited circumstances, be permitted access to documents concerning consumer claims, whether those documents form part of the official record or not.
- (j) A consumer claims tribunal will, if it considers that a consumer claim would, in view of its particular complexity, be better dealt with by another consumer claims tribunal, be able to adjourn the hearing before the tribunal and refer the claim to the registrar of consumer claims tribunals to enable it to be referred to another tribunal.
- (k) In addition to its jurisdiction to make orders requiring the payment of money or the performance of specified work or relieving a claimant from the payment of a specified sum of money, a consumer claims tribunal will be able to make orders for the delivery, return or replacement of goods. A tribunal will be empowered to order the supply of services other than the performance of work and will also be able to make a combination of orders in respect of a particular consumer claim. At present, a tribunal may make only one order in respect of a consumer claim. A tribunal will be further empowered to make interim orders, ancillary orders and orders suspending the operation of principal orders.
- (l) Provision is made for a consumer claims tribunal to have regard to factors which affect the relative bargaining powers of parties to a consumer claim and to certain codes of practice, including codes of practice established under the Fair Trading Act 1987.
- (m) A consumer claims tribunal will be empowered to dismiss a consumer claim that is frivolous, vexatious, misconceived or lacking in substance.
- (n) The scope for a party to a consumer claim to be represented at the hearing of the claim is being expanded slightly to remove some cases of unfairness.
- (o) It will be possible for a consumer claims tribunal to receive written evidence by statutory declaration as well as on oath as at present.
- (p) It will no longer be possible for a party to a consumer claim who fails to attend the hearing of the claim, but who is represented at the hearing, to obtain a rehearing of the claim on account of the party's absence from the hearing.
- (q) However, if a consumer claims tribunal has not dealt with a consumer claim because neither the claimant nor the respondent attended the hearing of the claim, either of the parties will be able to obtain a rehearing of the claim.
- (r) The time limit for a party to a consumer claim to apply for a rehearing of the claim will be extended to 14 days from the time when the party received notice of the tribunal's decision in respect of the claim instead of 7 days under the existing law.
- (s) It will be possible in certain circumstances for persons other than the referee, parties and witnesses to attend proceedings of a consumer claims tribunal.
- (t) In some circumstances it will be possible to bring the conduct of a supplier of goods or services to the attention of the Commissioner for Consumer Affairs who will, in turn, be empowered to notify any relevant licensing or certification authority or trade organisation of the supplier's conduct.

Consumer Claims Tribunals 1987

- (u) The Commissioner for Consumer Affairs will be empowered to establish a list of unsatisfactory suppliers and will be authorised to publish the list, or information derived from the list.
- (v) The registrar of consumer claims tribunals will be empowered to register orders for the payment of money made by consumer claims tribunals in a Local Court on behalf of consumers in whose favour the orders have been made.
- (w) If a supplier is a company and an order made by a consumer claims tribunal requiring the supplier to pay a sum of money is unpaid, the Commissioner for Consumer Affairs will be able to apply under the Companies (New South Wales) Code, on behalf of the consumer as a creditor of the supplier, for an order of the Supreme Court to wind up the company.
- (x) The Commissioner for Consumer Affairs will, in a case where a consumer claims tribunal order made against a supplier for the payment of money to a consumer is registered in a Local Court, be empowered to carry out on behalf of the consumer an examination of the supplier in accordance with the Local Courts (Civil Claims) Act 1970.
- (y) Offences under the Bill will be dealt with before Local Courts and not before industrial magistrates as is the case under existing law.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day to be appointed by proclamation.

Clause 3 defines certain expressions for the purposes of the proposed Act. Of the more important expressions, the expression "consumer" will be defined to include not only natural persons but also certain firms, bodies corporate and unincorporated bodies to which goods or services are supplied or with which contracts, collateral to contracts for the supply of goods or services, are entered into. The expression "consumer claim" will be defined to include claims, not only for orders for the payment of money, the performance of work and for relief from the payment of money, but also for the performance of other kinds of services and for the delivery, return or replacement of goods. The definition of "services" is being expanded to cover the letting of premises for holiday purposes and, with certain limitations, the provision of credit. The clause defines "supplier" as a person who supplies goods or services in the course of carrying on or purporting to carry on a business. "Supply" is defined as including, in relation to goods, a sale, exchange, lease, hire or hire-purchase of the goods and, in relation to services, the provision, grant or rendering of services for a valuable consideration. The clause also makes it clear that in the proposed Act a reference to a supply of goods includes a reference to a supply of goods together with services and a reference to a supply of services includes a reference to a supply of services together with goods. A person claiming to be a consumer for the purposes of the proposed Act will be presumed to be such until the contrary is proved.

PART 2—CONSUMER CLAIMS TRIBUNALS

Clause 4 provides for the appointment of referees. Provision is made for the appointment of both full-time and part-time referees. The clause also gives effect to Schedule 1 to the proposed Act, which contains detailed provisions concerning referees, their terms of office, re-appointment and other matters.

Consumer Claims Tribunals 1987

Clause 5 provides for a consumer claims tribunal to be constituted by a referee sitting alone. The clause also provides that a tribunal may be constituted by the senior referee to hear and determine consumer claims anywhere in New South Wales. If there are 2 or more referees holding office under clause 4, the question of which of the referees will constitute a tribunal will be decided by the senior referee.

Clause 6 provides that sittings of a tribunal are to be held on such day or days as the senior referee decides.

Clause 7 provides for there to be a registry of consumer claims tribunals.

Clause 8 provides for the appointment, in accordance with the Public Service Act 1979, of a registrar, deputy registrars and other staff required for the functioning of consumer claims tribunals. The clause also enables the functions of the registrar to be delegated and for the senior referee to arrange for the use of services of staff or facilities of a government department, administrative office or public authority.

Clause 9 makes provision for the keeping of records of consumer claims tribunals and for the inspection of those records. Under the clause, the Commissioner for Consumer Affairs will be able to inspect documents relating to a consumer claim after the claim has been finally determined even if those documents do not form part of the official record.

PART 3—JURISDICTION OF TRIBUNALS

Clause 10 provides that a consumer claims tribunal will have jurisdiction to hear and determine any consumer claim referred to it in accordance with the proposed Act. Normally, a tribunal will not have jurisdiction to hear a consumer claim arising out of a supply of goods or services made more than 3 years before the date on which the goods or services were supplied or, if in the case of a contract for the supply of goods or services which are not actually supplied, the date on which the goods ought under the contract to have been supplied or, in any other case, the date of the contract. Certain matters which could be dealt with under the Credit Act 1984 will not be within a tribunal's jurisdiction unless they are prescribed by regulation for the purposes of the clause.

Clause 11 provides that a court will have no jurisdiction in respect of a matter that is the subject of a consumer claim lodged in accordance with clause 13 unless the claim is withdrawn or dismissed for want of jurisdiction or unless a court of record has quashed or declared invalid an order, determination or ruling made by a consumer claims tribunal in relation to the claim on the ground that the tribunal had no jurisdiction in respect of that matter.

Clause 12 provides that proceedings before a consumer claims tribunal are not to be subject to judicial review unless the tribunal has, in making a ruling under clause 26, erred in making the ruling or has—

- (a) made an order under clause 30 that it had no jurisdiction to make; or
- (b) denied natural justice to a party to the proceedings.

PART 4—PROCEEDINGS BEFORE TRIBUNALS

Division 1—Consumer claims

Clause 13 prescribes the procedure for making a consumer claim. A person will be able to lodge a claim either with the registrar of consumer claims tribunals or the registrar of a Local Court.

Consumer Claims Tribunals 1987

Clause 14 provides for the fixing of times and places for the initial hearings of consumer claims by consumer claims tribunals and for the service of notices on parties to consumer claims relating to those hearings.

Clause 15 provides that any person who is served with a notice of a consumer claim in accordance with clause 14 is to be regarded as a respondent to the claim. The clause will also enable a trustee, manager of the estate of a protected or incapable person or an executor or administrator of a deceased's estate to lodge, or be a respondent to, a consumer claim in certain cases.

Clause 16 will enable a claimant who has made a consumer claim to withdraw the claim in certain circumstances.

Division 2—Hearings of consumer claims

Clause 17 will make a consumer claims tribunal responsible for its own procedures except that it will be required to conform to the rules of natural justice.

Clause 18 provides that, as a general rule, a consumer claims tribunal will be required to continue with the hearing and determination of a consumer claim until it is completed. However, in circumstances where a tribunal considers that it would be appropriate for the claim to be heard and determined by another tribunal which has appropriate expertise, the tribunal will be able to adjourn the hearing of the claim and refer the matter back to the registrar of consumer claims tribunals for reallocation to another tribunal. The clause also makes special provision for dealing with a consumer claim that is interrupted by the death, incapacity or removal from office of the referee who constitutes the tribunal appointed to hear and determine the claim.

Clause 19 will enable a consumer claims tribunal to amend a consumer claim.

Clause 20 will enable a consumer claims tribunal to adjourn the hearing of a consumer claim.

Clause 21 provides that, as a general rule, parties will be required to conduct their own cases before a consumer claims tribunal. However, there are a number of exceptions to this. One of them is that a party may be represented where one of the other parties is, or is to be represented by, a person who is entitled to practise as a legal practitioner.

Clause 22 provides that, as a general rule, a consumer claims tribunal will be required to hear a consumer claim in private. However, a person will, with the consent of the tribunal, be able to attend a hearing before a tribunal for educational, research or study purposes so long as none of the parties objects.

Clause 23 provides for the taking of evidence before a consumer claims tribunal. In future, a witness will have the option of being able to give written evidence either by statutory declaration or on oath. A tribunal will not be bound by the rules or practice of evidence.

Clause 24 will require a consumer claims tribunal to act on the available evidence if, at the hearing of the tribunal, the case of a party to a consumer claim is not presented.

Clause 25 provides that if a consumer claims tribunal has decided an issue or dismissed a consumer claim in the absence of a party or the parties, it will, in certain circumstances, be possible to have the claim reheard.

Clause 26 prescribes the procedure required to be followed by a consumer claims tribunal when the tribunal's jurisdiction is disputed. In such a case, a tribunal will not be able to continue to hear a consumer claim without first giving a ruling as to whether or not it has that jurisdiction.

Consumer Claims Tribunals 1987

Clause 27 will empower a consumer claims tribunal to dismiss a consumer claim if satisfied that the claim is frivolous, vexatious, misconceived or lacking in substance.

Clause 28 makes it clear that a consumer claims tribunal will have no power to award costs.

Division 3—Determination of consumer claims

Clause 29 will prohibit a consumer claims tribunal from making an order in respect of a consumer claim unless it has first attempted to get the parties to settle the claim.

Clause 30 will empower a consumer claims tribunal to make orders in respect of a consumer claim. In addition to being able to make orders for the payment of money, requiring a respondent 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, a tribunal will 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. A tribunal will be able to make interim orders and ancillary orders and will, in certain circumstances, be able to suspend the operation of orders that have not yet been implemented.

Clause 31 requires a consumer claims tribunal to act fairly and equitably in making orders under clause 30. The clause also specifies the factors that are relevant in making such orders. One of those factors is whether or not there was any material inequality in bargaining power between the parties to a consumer claim. The clause also makes provision for certain codes of practice to be taken into account where these are relevant to determining a consumer claim.

Clause 32 provides that a consumer claims tribunal will not have jurisdiction to make an order or orders in respect of a consumer claim in favour of a claimant if the total of the amounts specified in the order or orders and of the value of the goods or services to which the order or orders relate would exceed the prescribed amount (which is expected to be \$3,000 in the first instance). Similarly, a tribunal will not have jurisdiction to make an order or orders in respect of a consumer claim in favour of a respondent if the total of the amounts specified in the order or orders would exceed that amount.

Clause 33 will enable a consumer claims tribunal to correct certain kinds of mistakes, errors and defects in tribunal orders.

Clause 34 declares that an order of a consumer claims tribunal will be final and binding on all the parties. The clause will not affect the operation of clause 12.

Division 4—Enforcement of tribunal orders

Clause 35 provides for the enforcement in a Local Court of orders of a consumer claims tribunal for the payment of money. The clause will also enable the Commissioner for Consumer Affairs to exercise the functions of a judgment creditor under the Local Courts (Civil Claims) Act 1970 on behalf of a person in whose favour a tribunal has made an order requiring the payment of a sum of money.

Clause 36 provides for the enforcement of orders of a consumer claims tribunal, other than orders for the payment of money or relief from being required to pay for a supply of goods or services. If such an order is not complied with, the tribunal will be able to substitute for the order an order for the payment of money which will then be enforceable in accordance with clause 35.

Consumer Claims Tribunals 1987

Clause 37 will empower the Commissioner for Consumer Affairs to represent a creditor in proceedings to wind up a company where the creditor is seeking to enforce an order under clause 30 for the payment of money that has not been complied with by the company.

PART 5—MISCELLANEOUS MATTERS

Clause 38 will make it an offence to act in contempt of a consumer claims tribunal. Contempt includes insulting the referee who constitutes a tribunal, misbehaving at a tribunal hearing, interrupting a tribunal hearing without lawful excuse and disobeying a tribunal direction. The maximum penalty for such an offence will be 5 penalty units (\$500) or imprisonment for 6 months.

Clause 39 will prohibit a person from entering into a contract, agreement, understanding or arrangement which will have the effect of excluding the operation of the proposed Act.

Clause 40 provides for the service of documents required under the proposed Act.

Clause 41 will require a referee to report specified matters to the senior referee and in certain cases for the senior referee to report specified matters to the Minister. Provision is also made for reporting the conduct of a supplier to the Commissioner for Consumer Affairs. If the supplier is the holder of a licence or other authorisation issued or conferred by or under law or is a member of some trade organisation, the Commissioner will be able to send a copy of the report, or information derived from the report, to the authority responsible for administering that law or, as the case may be, to that trade organisation.

Clause 42 will empower the Commissioner to establish and maintain a list of unsatisfactory suppliers and to publish the list or particulars contained in the list.

Clause 43 will require the registrar of consumer claims tribunals to publish particulars relating to consumer claims in certain cases.

Clause 44 will empower the Minister to intervene in litigation arising out of proceedings, orders or rulings of a consumer claims tribunal.

Clause 45 will confer on referees and others immunity from legal proceedings for anything done or omitted to be done in good faith under or in connection with the proposed Act.

Clause 46 makes it clear that in any legal proceedings it will not normally be necessary to prove the constitution of a consumer claims tribunal or the appointment of a referee or the registrar or a deputy registrar of consumer claims tribunals.

Clause 47 will require proceedings for an offence under the proposed Act to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Clause 48 will empower the Governor-in-Council to make regulations for the purposes of the proposed Act.

Clause 49 provides for the repeal of the Consumer Claims Tribunals Act 1974 and certain other enactments specified in Schedule 2 to the proposed Act.

Clause 50 will give effect to Schedule 3 to the proposed Act, which contains certain savings and transitional provisions.

Consumer Claims Tribunals 1987

Schedule 1 contains provisions relating to referees. The age limit for holding office as a referee will continue to be 72 years. The maximum term of office will be 7 years for a full-time referee and 3 years for a part-time referee. Provision is also made for acting appointments, vacation of office, the filling of vacancies and the preservation of certain accrued rights of a person appointed as a full-time referee. A person who ceases to be a full-time referee will be entitled to re-appointment to the person's former employment in certain cases.

Schedule 2 specifies the enactments to be repealed by clause 49.

Schedule 3 sets out the requisite savings and transitional provisions. Referees holding office under the Consumer Claims Tribunals Act 1974 immediately before the commencement of the proposed Act will continue in office, as will staff of the registry of consumer claims tribunals.

APPENDIX

TABLE OF CORRESPONDING PROVISIONS

Section, Consumer Claims Tribunals Act 1974	Clause, Consumer Claims Tribunals Bill 1987
Sec. 1, Short title	Cl. 1, Short title
Sec. 2, Commencement	Cl. 2, Commencement
Sec. 3, Division of Act	No corresponding provision
Sec. 4, Interpretation	Cl. 3, Definitions
Sec. 4A, Act applies to certain claims by lessees	No corresponding provision but see Sch. 3, cl. 10
Sec. 5, Constitution of consumer claims tribunal	Cl. 5, Constitution of tribunals
Sec. 6, Appointment of referees	Cl. 4, Appointment of referees
Sec. 7, Casual vacancy	Sch. 1, cl. 6, Vacancy in office of referee
Sec. 8, Preservation of certain rights of referees previously public servants etc.	Sch. 1, cl. 9, Preservation of rights of a referee who was previously a public servant etc.
Sec. 9, Referee entitled to re-appointment to Public Service in certain cases	Sch. 1, cl. 10, Full-time referee entitled to re-appointment to former employment in certain cases
Sec. 10, Venue	Cl. 6, Sittings of tribunals
Sec. 11, Registry	Cl. 7, Registry of consumer claims tribunals
	Cl. 8, Registrar, deputy registrars and staff of tribunals
Sec. 12, Records of consumer claims tribunals	Cl. 9, Records
Sec. 13, Reference of claims to consumer claims tribunal	Cl. 13, Making a consumer claim
Sec. 14, Notice of claim and proceeding	Cl. 14, Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings
Sec. 15, Parties to proceedings	Cl. 15, Parties to a consumer claim
Sec. 16, Withdrawal of claim	Cl. 16, Withdrawal of claim
Sec. 17, Jurisdiction	
Sec. 18, No jurisdiction in certain cases	Cl. 10, Jurisdiction

Consumer Claims Tribunals 1987

Section, Consumer Claims Tribunals Act 1974	Clause, Consumer Claims Tribunals Bill 1987
Sec. 19, Exclusion of other jurisdictions	Cl. 11, Other jurisdictions excluded in some cases
No corresponding provision	Cl. 33, Power to correct tribunal orders
Sec. 20, Order of tribunal to be final	Cl. 34, Order of tribunal to be final
Sec. 20A, Procedure where jurisdiction disputed	Cl. 26, Procedure to be followed when a tribunal's jurisdiction is disputed
Sec. 21, Immunity from judicial supervision	Cl. 12, Tribunal to be immune from judicial review
Sec. 22, Tribunal to attempt to conciliate	Cl. 29, Tribunal to attempt to conciliate
Sec. 23, Orders of consumer claims tribunal	Cl. 30, Tribunal orders
No corresponding provision	Cl. 31, Matters to be taken into account by tribunal when making orders under sec. 30
Sec. 24, Enforcement of orders to rectify defects	Cl. 36, Enforcement of other tribunal orders
Sec. 25, Enforcement of orders to pay money	Cl. 35, Enforcement of orders to pay money
Sec. 26, Limit of amount of order	Cl. 32, Limitation on tribunal's jurisdiction to make orders
Sec. 27, Continuity of consumer claims tribunal	Cl. 18, Continuity of tribunal
Sec. 28, Amendment of claim	Cl. 19, Power of tribunal to amend a consumer claim
Sec. 29, Adjournment of proceeding	Cl. 20, Adjournment of the hearing of a consumer claim
Sec. 30, Presentation of cases	Cl. 21, Presentation of cases before a tribunal
Sec. 31, Taking of evidence before a consumer claims tribunal	Cl. 22, Consumer claims to be heard in private
Sec. 32, Tribunal to act on evidence available	Cl. 23, Taking of evidence
No corresponding provision	Cl. 24, Tribunal to act on available evidence
Sec. 33, No costs allowable	Cl. 25, Rehearing of certain consumer claims
Sec. 34, Control of procedures	Cl. 26, Powers of tribunal with respect to frivolous etc. consumer claims
No corresponding provision	Cl. 27, No costs to be allowed
Sec. 35, Contempt	Cl. 17, Control of tribunal procedures
Sec. 36, Contracting out prohibited	Cl. 37, Power of Commissioner to represent creditors in certain company winding up proceedings
Sec. 37, Mode of giving notice	Cl. 38, Offence to act in contempt of tribunal
Sec. 38, Reports by referees	Cl. 39, Contracting out prohibited
No corresponding provision	Cl. 40, Service of notices
	Cl. 41, Certain matters to be reported to senior referee or Minister
	Cl. 42, Power of Commissioner to establish and maintain a list of unsatisfactory suppliers

Consumer Claims Tribunals 1987

Section, Consumer Claims Tribunals Act 1974	Clause, Consumer Claims Tribunals Bill 1987
Sec. 39, Publication of particulars of reference	Cl. 43, Publication of particulars of consumer claims
Sec. 39A, Minister may intervene	Cl. 44, Power of Minister to intervene in certain cases
Sec. 40, Protection for things done under Act	Cl. 45, Protection for things done under this Act
No corresponding provision	Cl. 46, Evidence in legal proceedings
Sec. 41, Proceedings	Cl. 47, Proceedings for offences
Sec. 42, Regulations	Cl. 48, Regulations
No corresponding provision	Cl. 49, Repeals
No corresponding provision	Cl. 50, Savings and transitional provisions
No corresponding provision	Schedule 1, Provisions relating to referees
No corresponding provision	Schedule 2, Repeals
No corresponding provision	Schedule 3, Savings and transitional provisions