FIRST PRINT

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.

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(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.

(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.

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.

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.

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.

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.

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 corresonding 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
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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
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Sec. 18, No jurisdiction in certain cases	Cl. 10, Jurisdiction

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
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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
	Cl. 23, Taking of evidence
Sec. 32, Tribunal to act on evidence available	Cl. 24, Tribunal to act on available evidence
	Cl. 25, Rehearing of certain consumer claims
No corresponding provision	Cl. 26, Powers of tribunal with respect to frivolous etc. consumer claims
Sec. 33, No costs allowable	Cl. 27, No costs to be allowed
Sec. 34, Control of procedures	Cl. 17, Control of tribunal procedures
No corresponding provision	Cl. 37, Power of Commissioner to represent creditors in certain company winding up proceedings
Sec. 35, Contempt	Cl. 38, Offence to act in contempt of tribunal
Sec. 36, Contracting out prohibited	Cl. 39, Contracting out prohibited
Sec. 37, Mode of giving notice	Cl. 40, Service of notices
Sec. 38, Reports by referees	Cl. 41, Certain matters to be reported to senior referee or Minister
No corresponding provision	Cl. 42, Power of Commissioner to establish and maintain a list of unsatisfactory suppliers

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

CONSUMER CLAIMS TRIBUNALS BILL 1987

NEW SOUTH WALES



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CONSUMER CLAIMS TRIBUNALS BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to provide for the constitution of consumer claims tribunals, to define their jurisdiction and functions, to provide for related matters, and to repeal the Consumer Claims Tribunals Act 1974 and certain other enactments.

See also Credit (Consumer Claims Tribunals) Amendment Bill 1987.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Consumer Claims Tribunals Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—

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

"business" includes—

(a) a business not carried on for profit; and

(b) a trade or profession;

"claimant" means a consumer who has lodged a consumer claim in accordance with section 13 or who is joined as a claimant in accordance with section 14;

"Commissioner" means the Commissioner for Consumer Affairs holding office under section 6 of the Fair Trading Act 1987;

"consumer" means—

(a) a natural person;

(b) a firm;

(c) an exempt proprietary company;

(d) a body corporate constituted under the Strata Titles Act 1973 or under the Strata Titles (Leasehold) Act 1986;

(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;

(f) an incorporated association; or

(g) an unincorporated body whose members are associated for a common purpose,

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—

(a) a claim by a consumer for the payment of a specified sum of money;

(b) a claim by a consumer for the supply of specified services;

(c) a claim by a consumer for relief from payment of a specified sum of money;

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

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;

"deputy registrar" means a person who is holding office under this Act as a deputy registrar of consumer claims;

"firm" has the same meaning as it has in the Partnership Act 1892;

"goods" means any tangible thing, other than money, that is or may be the subject of trade or commerce;

"party", in relation to a consumer claim, means a claimant or a respondent to the claim;

"referee" means a person who is holding office under this Act as a referee of consumer claims tribunals;

"registrar" means the person who is holding office under this Act as the registrar of consumer claims tribunals;

"registry" means the registry of consumer claims tribunals established and maintained under this Act;

"repealed Act" means the Consumer Claims Tribunals Act 1974 as in force immediately before the commencement of this Act;

"respondent", in relation to a consumer claim, means a person on whom a notice of the claim has been served under section 14, other than a person joined as a claimant in accordance with that section;

"senior referee" means the person holding office under this Act as the senior referee of consumer claims tribunals or, if there is for the time being only one referee, means the person holding office as such;

"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—

(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;

(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;

(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; and

(h) subject to section 10 (4), 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;

"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

(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;

"trade or commerce" includes any business or professional activity;

"tribunal" means a consumer claims tribunal constituted under this Act.

(2) In this Act—

(a) a reference to supply in relation to goods includes a reference to resupply;

(b) a reference to the supply of goods includes a reference to agreeing to supply goods;

(c) a reference to the supply of services includes a reference to agreeing to supply services;

(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.

(3) In this Act, a reference to an exempt proprietary company, a foreign company or a recognised company is a reference to such a company as defined in section 5 of the Companies (New South Wales) Code.

(4) In this Act—

(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.

(5) For the purposes of this Act, a person who claims to be a consumer shall be presumed to be such until the contrary is proved and, in any legal proceedings (including proceedings before a 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.

PART 2—CONSUMER CLAIMS TRIBUNALS

Appointment of referees

4. (1) The Governor may appoint persons to be referees of tribunals.

(2) A person appointed under subsection (1) may be appointed as a full-time referee or as a part-time referee.

(3) If 2 or more persons hold or are to hold office as referees at the same time, the Governor must appoint one of them, either in the person's instrument of appointment or in a later instrument, to be the senior referee.

(4) Schedule 1 has effect with respect to referees.

Constitution of tribunals

5. (1) A tribunal is constituted by a referee sitting alone.

(2) The senior referee may constitute a tribunal to hear and determine consumer claims anywhere in New South Wales.

(3) If 2 or more persons hold office as referees at the same time, the senior referee has the duty of deciding which of those persons will constitute a tribunal to hear and determine a consumer claim.

Sittings of tribunals

6. A tribunal shall sit at such place and on such day or days as the senior referee decides.

Registry of consumer claims tribunals

7. For the purposes of this Act, there shall be established and maintained a registry of consumer claims tribunals.

Registrar, deputy registrars and staff of tribunals

8. **(1)** A registrar and deputy registrars of consumer claims tribunals and such other persons as may be required for the proper functioning of tribunals shall be appointed in accordance with the Public Service Act 1979.

(2) The registrar has, and deputy registrars have, such functions as are conferred or imposed on the registrar or deputy registrars by or under this or any other Act or by the senior referee.

(3) The registrar may delegate to a deputy registrar, with such limitations and on such conditions as the registrar thinks fit, the exercise of such functions as are conferred on the registrar by this or any other Act (other than the power of delegation conferred by this subsection).

(4) The senior referee may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

Records

9. **(1)** The official record of a tribunal in respect of a consumer claim that it has heard and determined consists of—

(a) the claim as lodged by the claimant;

(b) the notation of the nature of the issues in dispute as found and recorded by the tribunal in the course of the hearing of the claim;

(c) any ruling given by the tribunal with respect to its jurisdiction to hear and decide the claim; and

(d) any order made by the tribunal in respect of the claim.

(2) At any time while the registry is required to be open for business, each of the parties to a consumer claim is entitled—

(a) to inspect, without charge, the official record relating to the claim; and

(b) on payment of the prescribed fee (if any), to obtain a copy of that record or of any part of it.

(3) If, for any reason, an official record cannot be made available to a person who seeks to exercise a right conferred by subsection (2), the registrar must, if requested to do so by that person, take all practicable steps to obtain as soon as possible the record so as to enable that person to exercise the right.

(4) If any matter concerning a consumer claim comes before a court, the registrar must, if requested to do so by the court or any of the parties concerned, make the official record relating to the claim available for production to the court without charge.

(5) The Commissioner is entitled, without charge—

(a) to inspect the official record relating to a consumer claim;

(b) to obtain a copy of that record or of any part of it; and

(c) after a consumer claim has been finally determined by a tribunal, to inspect any document relating to the hearing or determination of the claim that is not included in the official record relating to the claim.

(6) The Commissioner is entitled to include in any report or other document that the Commissioner is required or permitted by law to prepare or publish any information obtained from a record or document inspected in accordance with subsection (5).

(7) A person is not entitled to inspect or obtain a copy of any official record or other document relating to a consumer claim except as provided by this section.

PART 3—JURISDICTION OF TRIBUNALS

Jurisdiction

10. (1) Subject to this Act, a tribunal has jurisdiction to hear and determine any consumer claim referred to it in accordance with this Act.

(2) Subject to subsections (3) and (4), a tribunal has jurisdiction in respect of a consumer claim whether or not the matter to which the claim relates arose before or after the commencement of this Act.

(3) A tribunal does not have jurisdiction in respect of a consumer claim if—

(a) in the case of a consumer claim relating to goods or services that have been supplied to or for the claimant, the date on which the supply was made or, if made in instalments, the date on which the supply was last made;

(b) in the case of a consumer claim relating to goods or services which 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, the date on or by which the supply was required under the contract to be made; or

(c) in the case of a consumer claim relating to—

(i) a contract for the supply of goods or services to which neither paragraph (a) or (b) applies; or

(ii) a collateral contract,

the date on which the contract was entered into,

was more than 3 years before the date on which the claim was lodged in accordance with section 13 of this Act or section 13 of the repealed Act.

(4) If a matter relating to the provision of credit arises or could be determined under the Credit Act 1984, that matter is not within the jurisdiction of a tribunal unless the provision of that Act under which the matter arises or could be determined is a provision prescribed for the purposes of this section.

Other jurisdictions excluded in some cases

11. (1) In this section, a reference to a court is a reference to a court, tribunal, board or other body or person which or who—

(a) is empowered under any other Act; or

(b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but such a reference does not include a reference—

(c) to a court, tribunal, board, body or person which or who, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter; or

(d) to a court, tribunal, board, body or person which or who is prescribed, or belongs to a class which or who is prescribed, for the purposes of this paragraph.

(2) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, no issue arising under the claim was the subject of a dispute in proceedings pending before a court,

a court has no jurisdiction to hear or determine such an issue, unless—

(c) the claim, or the part of the claim to which the issue relates—

(i) is withdrawn; or

(ii) is dismissed for want of jurisdiction; or

(d) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of a tribunal made in respect of the claim on the ground that the tribunal had no jurisdiction to hear and determine the issue.

(3) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, an issue arising under the claim was the subject of a dispute in proceedings pending before a court,

the tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue, unless—

(c) those proceedings, or the part of the proceedings relating to the issue, are or is—

(i) withdrawn; or

(ii) dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits; or

(d) a court of record has, on a judicial review, quashed or declared invalid—

(i) those proceedings or that part of those proceedings; or

(ii) any order, judgment or decision made in those proceedings in relation to the issue,

on the ground that the first-mentioned court had no jurisdiction to hear and determine the issue.

(4) For the purposes of subsection (2), an issue arises under a consumer claim made to a tribunal in accordance with this Act only if the existence of the issue is shown in the claim or is recorded in the record made by the tribunal in accordance with section 9 (1) (b).

(5) At a hearing of a consumer claim by a tribunal, a finding or decision made by a court, tribunal, board, body or person referred to in subsection (1) (c) or (d) is admissible as evidence of the finding or decision.

Tribunal to be immune from judicial review

12. (1) Except as provided by subsection (2), a court of record has no jurisdiction to grant relief or a remedy by way of—

(a) a judgment or order in the nature of prohibition, mandamus, certiorari or other prerogative writ;

(b) a declaratory judgment or order; or

(c) an injunction,

in respect of a consumer claim heard and determined or to be heard or determined by a tribunal in accordance with this Act or in respect of any ruling, order or other proceeding relating to such a claim.

(2) A court is not precluded from granting relief or a remedy of a kind referred to in subsection (1) if, in respect of a consumer claim—

(a) a tribunal has given a ruling under section 26 or refused or failed to give such a ruling after the jurisdiction of the tribunal to hear and determine the claim has been disputed by a party to the claim and the ground on which the relief or remedy is sought is that—

(i) the ruling was erroneous; or

(ii) the tribunal erred in refusing or failing to give the ruling after its jurisdiction was disputed; or

(b) a tribunal has made an order under section 30 and the ground on which the relief or remedy is sought is that—

(i) the tribunal had no jurisdiction to make the order; or

(ii) in relation to the hearing or determination of the claim, a party to the claim had been denied natural justice.

PART 4—PROCEEDINGS BEFORE TRIBUNALS

Division 1—Consumer claims

Making a consumer claim

13. **(1)** A consumer who wishes to have a consumer claim heard and determined by a tribunal must lodge with the registrar of consumer claim tribunals or the registrar of a Local Court a claim in the prescribed form, together with the prescribed fee.

(2) It is the duty of the registrar of consumer claims tribunals or the registrar of a Local Court to help a consumer who requests assistance in completing the prescribed claim form.

(3) As soon as practicable after a consumer claim is lodged with the registrar of a Local Court, that registrar must ensure that the claim is transmitted to the registrar of consumer claims tribunals.

Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings

14. **(1)** As soon as practicable after a consumer claim has been lodged with or transmitted to the registrar of consumer claims tribunals in accordance with section 13, the registrar must—

(a) subject to subsection (4), refer the claim to a tribunal for hearing and determination;

(b) fix a time for the initial hearing of the claim by the tribunal;

(c) cause notice of the claim to be served—

(i) on every person against whom the claim is made; and

(ii) on every other person (other than the claimant) who appears from the claim to have an interest in resolving the dispute to which the claim relates; and

(d) cause notice of the time and place fixed for the initial hearing of the claim to be served on the claimant and on each person on whom notice of the claim is required to be served in accordance with paragraph (c).

(2) If a referee, whether constituted as a tribunal or not, is of the opinion that a person has a sufficient interest in resolving the dispute to which a consumer claim relates but the person has not been served with notice of the claim in accordance with subsection (1) (c), the referee may make an order directing that the person be joined either as a claimant or as a respondent as appears to the referee to be appropriate.

(3) If an order under subsection (2) is made joining a person as a claimant or as a respondent to a consumer claim, the registrar must cause notice of the claim and notice of the time and place for the initial or further hearing of the claim to be served on the person as soon as practicable after the making of the order.

(4) Whenever it appears to the registrar that a consumer claim—

(a) is unusually complex; or

(b) may require special expertise or qualifications in order to determine it,

the registrar must bring the claim to the attention of the senior referee.

(5) When a consumer claim is brought to the attention of the senior referee in accordance with subsection (4), the senior referee must, if satisfied as to either of the matters referred to in subsection (4) (a) or (b), direct the registrar to refer the claim to a tribunal constituted by a referee who has the requisite expertise or qualifications for dealing with that kind of claim.

(6) Whenever the case so requires, whether before or after the time fixed in accordance with subsection (1) (b), the registrar may—

(a) fix another time for the initial hearing of a consumer claim; or

(b) refer the claim to another tribunal and fix a time for the initial hearing of the claim by that other tribunal.

(7) Whenever the power conferred by subsection (6) is exercised in relation to a consumer claim, the registrar must ensure that subsection (1) (d) is complied with in respect of that claim.

Parties to a consumer claim

15. (1) Every person on whom notice of a consumer claim has been served in accordance with section 14 (other than a person joined as a claimant in accordance with that section) is a respondent to the claim.

(2) If—

(a) a person beneficially entitled to property that is subject to a trust;

(b) a person in respect of whom an order made under the Protected Estates Act 1983 is in force; or

(c) a deceased person,

is or would have been eligible to lodge or be a respondent to a consumer claim, then—

(d) the trustee of that property;

(e) the manager of the estate of that person; or

(f) the executor or administrator of the estate of that deceased person,

may, on behalf of that person or the estate of that person, lodge, or become a respondent to, a consumer claim and exercise all the rights and functions of a claimant or respondent under this Act.

Withdrawal of claim

16. At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the claimant may withdraw the claim.

Division 2—Hearings of consumer claims

Control of tribunal procedures

17. (1) Except as expressly provided by this Act or the regulations, a tribunal has control of and responsibility for its own procedures, but in exercising its functions under this Act must conform to the rules of natural justice.

(2) If satisfied that 2 or more consumer claims are related, a tribunal may hear and determine those claims together.

Continuity of tribunal

18. (1) Subject to this section, a tribunal must, at all times throughout the hearing of a consumer claim, be constituted by the same referee.

(2) If, in the course of hearing a consumer claim, it becomes apparent to the referee who constitutes the tribunal concerned that, because of the complexity of the case or for any other valid reason, it would be desirable for the claim to be heard and determined by a tribunal constituted by another referee who has appropriate expertise or qualifications to deal with that kind of claim, the referee may adjourn the hearing of the claim and refer the claim back to the registrar.

(3) When a consumer claim has been referred back to the registrar under subsection (2), the registrar must make arrangements with the senior referee for the claim to be heard at another time, and at the same or another place, by a tribunal constituted by a referee who has appropriate expertise or qualifications to deal with that kind of claim.

(4) If the hearing of a consumer claim by a tribunal is, before the tribunal has determined the claim, interrupted by the death, incapacity or removal from office of the referee who constitutes the tribunal, the senior referee must, if the claimant wishes to proceed with the claim, make arrangements for the hearing and determination of the claim to be recommenced before a tribunal constituted by another referee.

(5) When arrangements have been made in accordance with subsection (3) or (4), the registrar must cause notice of the time and place for the further hearing of the claim to be served on the parties to the claim.

Power of tribunal to amend a consumer claim

19. (1) At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the tribunal may make such amendments to the claim as it considers necessary.

(2) Any such amendments may be made by the tribunal either at the request of the claimant or, with the approval of the claimant, of its own motion.

Adjournment of the hearing of a consumer claim

20. (1) A tribunal may from time to time adjourn the hearing of a consumer claim for such purposes as it considers necessary.

(2) If the hearing of a consumer claim is adjourned, the registrar must serve on each party to the claim a notice of the time and place to which the hearing is adjourned.

(3) If—

(a) at a time and place to which the hearing of a consumer claim is adjourned a referee is or was not present; or

(b) it appears that a referee will not be present at a time and place to which the hearing is adjourned,

the registrar must, by notice served on each of the parties to the claim, adjourn the hearing to another time either at the same place or at another place.

Presentation of cases before a tribunal

21. (1) Subject to this section, a party to a consumer claim has the carriage of the party's own case.

(2) A party to a consumer claim ("the party") is not entitled to be represented at the hearing of the claim unless—

(a) the party is a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code and the corporation is represented by one of the corporation's officers, as defined by section 5 (1) of that Code;

(b) the party is a body corporate constituted under the Strata Titles Act 1973 and the body corporate is represented by the proprietor or, if there is more than one proprietor, by one of the proprietors constituting the body corporate;

(c) the party is a body corporate constituted under the Strata Titles (Leasehold) Act 1986 and the body corporate is represented by the lessee or, if there is more than one lessee, by one of the lessees constituting the body corporate;

(d) the party is—

(i) a society, association or union registered under the Co-operation Act 1923;

(ii) a society or association registered under the Permanent Building Societies Act 1967; or

(iii) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the Credit Union Act 1969,

and the society, association or union is represented by one of its officers, as defined by section 5 of the Co-operation Act 1923, section 3 (1) of the Permanent Building Societies Act 1967 or section 3 (1) of the Credit Union Act 1969;

(e) the party is a foreign company, or a recognised company, in respect of which an exemption from compliance with—

(i) section 61 (1) of the Co-operation Act 1923;

(ii) section 35 (1) of the Permanent Building Societies Act 1967; or

(iii) section 28 (1) of the Credit Union Act 1969,

is for the time being in force and the company is represented by a person who would, if the company were a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code, be one of the corporation's officers, as defined by section 5 (1) of that Code;

(f) the party is a firm and the firm is represented by one of its partners;

(g) the party is an incorporated association registered under the Associations Incorporation Act 1984 and the association is represented by one of its officers, as defined by section 3 of that Act;

(h) the party is an unincorporated body of persons and the body is represented by—

(i) a secretary or treasurer of the body; or

(ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body;

(i) any other party to the claim is, or is represented by a person who is, entitled by law to practise as a legal practitioner, either in New South Wales or elsewhere;

(j) the tribunal, of its own motion, decides that the party would be placed at a disadvantage if not represented at the hearing; or

(k) in any other case, the representation is, on determination of an application made by or on behalf of the party, approved by the tribunal.

(3) A tribunal must not give an approval to an application referred to in subsection (2) (k) unless the tribunal is satisfied that—

(a) the representation should be permitted as a matter of necessity; or

(b) the party by whom or on whose behalf the application was made would otherwise be placed at a disadvantage.

(4) In dealing with an application for the representation of a party to a consumer claim, a tribunal—

(a) must not approve the application unless it is satisfied that the representative concerned—

(i) has sufficient personal knowledge of the issues in dispute to enable that representative to represent the applicant effectively at the hearing by the tribunal of the claim; and

(ii) is vested with sufficient authority to bind the applicant; and

(b) may make its approval of the application subject to such conditions as it considers necessary to ensure that any other party to the claim is not placed at a disadvantage by the representative of the applicant at the hearing of the claim by the tribunal.

(5) Whenever a tribunal makes its approval of such an application subject to conditions, the right of the representative concerned to represent the applicant at a hearing of a consumer claim is subject to compliance with those conditions by the applicant and the applicant's representative.

(6) Contravention of any provision of this section or a condition imposed by a tribunal does not of itself invalidate a tribunal's hearing of a consumer claim, nor does it invalidate any order made by a tribunal in respect of such a claim.

Consumer claims to be heard in private

22. (1) Except as provided by subsection (2), a tribunal must hear a consumer claim in private.

(2) If—

(a) a tribunal is satisfied that a person wishes, for educational, research or study purposes, to attend the hearing of a consumer claim that is before the tribunal; and

(b) none of the parties to the claim objects,

the tribunal may allow the person to attend the hearing.

Taking of evidence

23. **(1)** At the hearing of a consumer claim, evidence relevant to the determination of the claim may be given orally or in writing.

(2) If evidence at the hearing of a consumer claim is to be given orally, it must be given on oath.

(3) If evidence at the hearing of a consumer claim is to be given in writing, it must be given either on oath or by statutory declaration, as the giver of evidence prefers.

(4) A tribunal is not bound by the rules or practice of evidence and, subject to subsections (2) and (3), can inform itself on any matter in such manner as it considers appropriate.

Tribunal to act on available evidence

24. **(1)** Subject to section 25, if at the hearing of a consumer claim by a tribunal the case of a party to the claim is not presented to the tribunal—

(a) the tribunal must decide the issues in dispute on such evidence as is otherwise adduced before it; and

(b) an order made by the tribunal to determine the claim is just as effective as if that party had been fully heard.

(2) Subject to section 25, if none of the cases of the parties to a consumer claim is presented to the tribunal at the time and place fixed for the hearing of the claim, or at the time and place to which the hearing of the claim is adjourned, the tribunal must make an order dismissing the claim.

Rehearing of certain consumer claims

25. **(1)** If a tribunal has decided an issue in dispute in the absence of a party to a consumer claim or a consumer claim has been dismissed under section 24 (2), a referee may, on application in the prescribed form made to the registrar within 14 days after receiving notice of the decision or the order dismissing the claim, order the claim to be reheard if satisfied that there was sufficient reason for the party's absence.

(2) For the purposes of subsection (1), a party to a consumer claim shall not be taken to have been absent at the time when a tribunal decided an issue in dispute if, at that time—

(a) the party was represented before the tribunal; or

(b) the party's case with respect to the issue had been presented to the tribunal in writing.

(3) In making an order under subsection (1), a referee must make provision for fixing a time and a place for the rehearing.

(4) Whenever a consumer claim is ordered to be reheard—

(a) the registrar must serve on each of the parties to the claim a notice of the order and of the time and place of the rehearing; and

(b) the order of the tribunal made at the previous hearing ceases to have effect unless restored in accordance with subsection (5).

(5) If the party on whose application a rehearing is ordered does not appear—

(a) at the time and place fixed for the rehearing; or

(b) at the time and place to which a tribunal has adjourned the rehearing,

the tribunal may, if it thinks fit and without rehearing or further rehearing the claim, direct that the order made at the previous hearing of the claim be restored.

(6) If a tribunal gives a direction under subsection (5), the order to which the direction relates—

(a) is thereupon fully restored; and

(b) shall be regarded as having had effect at all times since it was made.

Procedure to be followed when a tribunal's jurisdiction is disputed

26. (1) If, before a tribunal has determined a consumer claim, the jurisdiction of the tribunal to hear and determine the claim is disputed by a party to the claim, the tribunal must not proceed to determine the claim without first giving a ruling as to whether or not it has that jurisdiction.

(2) A tribunal must not, of its own motion, make an order under section 30 (2) (a) dismissing a consumer claim for want of jurisdiction without first giving a ruling as to its jurisdiction to hear and determine the claim.

(3) If a tribunal has given a ruling under this section in respect of its jurisdiction to hear and determine a consumer claim, it must not determine the claim—

(a) until at least 14 days have elapsed since the day on which the ruling was given; or

(b) if, before it has determined the claim, it becomes aware that proceedings for relief or a remedy of a kind mentioned in section 12 have been instituted in a court in respect of the ruling—until those proceedings have been concluded.

Powers of tribunal with respect to frivolous etc. consumer claims

27. If, at the hearing of a consumer claim, a tribunal is satisfied that—

(a) the claim is frivolous, vexatious, misconceived or lacking in substance; or

(b) for any other reason it should not deal with the claim,

it may make an order dismissing the claim.

No costs to be allowed

28. A tribunal has no power to award costs to or against a party to a consumer claim.

Division 3—Determination of consumer claims

Tribunal to attempt to conciliate

29. (1) A tribunal must not make an order in respect of a consumer claim that is before it unless it has brought, or used its best endeavours to bring, the parties to the claim to a settlement acceptable to all of them.

(2) If such a settlement is reached, the tribunal must make an order under this Division that gives effect to the settlement to the extent permitted by this Division.

(3) A tribunal must ensure that any meeting or proceeding held for the purposes of subsection (1) is not held in public.

(4) Any statement or admission made before a tribunal at a meeting or proceeding held for the purposes of subsection (1) is not admissible at a hearing of the consumer claim concerned or in any other legal proceeding.

Tribunal orders

30. (1) In determining a consumer claim wholly or partly in favour of a claimant, a tribunal may, subject to sections 31 and 32, 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;

(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;

(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;

(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;

(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, a tribunal may make such one or more of the following orders as it considers appropriate:

(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, a 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.

(4) If, in the course of hearing a consumer claim, it appears to a tribunal desirable to do so, it may make an interim order under subsection (1) or (2) pending final determination of the claim.

(5) Whenever a tribunal makes an order under subsection (1), (2) or (4), it may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect.

(6) In making an order under this section, a tribunal may impose such conditions as it considers appropriate.

(7) If a tribunal has made an order under this section 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—

(a) for such reasons and for such period; or

(b) until the happening of such event or the fulfilment of such condition,

as the tribunal specifies in the further order.

(8) Section 97 (joint liability) of the Supreme Court Act 1970 applies to and in respect of an order of a tribunal as if such an order were a judgment of the Supreme Court.

Matters to be taken into account by tribunal when making orders under sec. 30

31. (1) When making an order or orders under section 30, a 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 a tribunal is considering whether or not to make an order or orders under section 30, 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;

(b) whether or not—

(i) any party to the claim was not reasonably able to protect the party's interests; 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,

because of the age or physical or mental capacity of that party or person;

(c) the relative economic circumstances, educational background and literacy of—

(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—

(i) by any other party to the claim;

(ii) by any person acting or appearing or purporting to act for or on behalf of any other party to the claim; or

(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;

(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;

(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;

(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;

(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;

(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

(vi) the commercial or other setting, purpose and effect of the contract.

(3) Without limiting subsection (1), when a 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

(b) where the Commissioner 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.

Limitation on tribunal's jurisdiction to make orders

32. (1) A 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 2 or more claimants, in favour of those claimants if the total of—

(a) the amount or amounts (if any) of money to be paid;

(b) the value or values (if any) of the work to be performed, or the services to be supplied;

(c) the amount or amounts (if any) of money to be declared not to be due or owing; and

(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 prescribed amount.

(2) A 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 2 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 prescribed amount.

Power to correct tribunal orders

33. If an order made by a tribunal contains—

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or

(d) a defect of form,

the tribunal, of its own motion or on the application of a party to the consumer claim in respect of which the order was made, or another tribunal, on the application of such a party, may correct the order.

Order of tribunal to be final

34. (1) Subject to section 36, an order of a tribunal is final and binding on all parties to a consumer claim that is heard and determined by the tribunal.

(2) No appeal lies in respect of an order of a tribunal.

(3) Subsection (2) does not affect the operation of section 12.

Division 4—Enforcement of tribunal orders

Enforcement of orders to pay money

35. (1) In this section, a reference to a Local Court does not include a reference to a Local Court specified in an order in force under section 77 (3) of the Local Courts (Civil Claims) Act 1970.

(2) Whenever a tribunal has made an order under section 30 requiring the payment of an amount of money to a party to a consumer claim—

(a) that party may enforce the order by filing in a Local Court a copy of the order, certified by the registrar of consumer claims tribunals to be a true copy, together with an affidavit executed by that party—

(i) specifying the amount then unpaid under the order; and

(ii) if the order is to take effect only when a default has occurred, specifying particulars of the default; or

(b) the registrar of consumer claims tribunals may, at the request and on behalf of that party, enforce the order either—

(i) by filing in a Local Court a copy of the order, together with a certificate, signed by that registrar, specifying the matters referred to in paragraph (a) (i) and (ii); or

(ii) by transmitting to the registrar of a Local Court in the prescribed manner the contents of the order and of the certificate referred to in subparagraph (i).

(3) When—

(a) a copy of an order of a tribunal and an affidavit or a certificate are filed in a Local Court in accordance with subsection (2) (a) or (b) (i); or

(b) the contents of an order of a tribunal and of a certificate are transmitted to the registrar of a Local Court in accordance with subsection 2 (b) (ii),

the order shall, for the purposes of the Local Courts (Civil Claims) Act 1970, be taken to be an unsatisfied judgment for the amount specified in the affidavit or certificate as being unpaid.

(4) If the registrar of consumer claims tribunals is requested to enforce an order of a tribunal requiring a party to a consumer claim to pay an amount of money, the registrar, before exercising the power conferred by subsection (2), must—

(a) serve on the party a notice requiring the party to comply with the order; and

(b) allow the party a further period of 7 days to comply with the requirement.

(5) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal has been filed in a Local Court; or

(b) the contents of such an order have been transmitted to the registrar of a Local Court,

any later filing of a copy of the order in that or another Local Court, or any later transmission of the contents of such an order to the registrar of that or another Local Court, is of no effect.

(6) No fee is payable for the filing in a Local Court of the documents referred to in subsection (2).

(7) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal and an affidavit or certificate have been filed in a Local Court; or

(b) the contents of an order of a tribunal and of a certificate have been transmitted to the registrar of a Local Court,

the Commissioner may, at the request or with the consent of the person in whose favour the order was made, exercise on behalf of that person any of the functions conferred on a judgment creditor by Division 2 of Part V of the Local Courts (Civil Claims) Act 1970 (Examination of judgment debtor).

Enforcement of other tribunal orders

36. **(1)** This section applies to an order of a tribunal made under section 30 (1) (b), (c), (e), (f) or (g) or (2) (c) but does not so apply if the operation of the order has been suspended under section 30 (7).

(2) An order of a tribunal to which this section applies is enforceable only as provided by this section.

(3) A tribunal that is determining a consumer claim may, when making an order to which this section applies or later, give leave to the person in whose favour the order is made to renew the claim if the order is not complied with within the period specified by the tribunal.

(4) If an order to which this section applies has not been complied with within the period specified by the tribunal, the person in whose favour the order was made may effect a renewal of the consumer claim to which the order relates by lodging with the registrar a notification in the prescribed form to the effect that the order has not been so complied with.

(5) The provisions of this Part apply to a notification lodged in accordance with subsection (4) as if the notification were a consumer claim lodged in accordance with section 13.

(6) When a consumer claim has been renewed in accordance with subsection (4), the tribunal concerned—

(a) may make such other appropriate order under section 30 as it could have made when the claim was originally determined; or

(b) may refuse to make such an order.

Power of Commissioner to represent creditors in certain company winding up proceedings

37. Whenever—

(a) a creditor of a company is, by virtue of section 363 of the Companies (New South Wales) Code, entitled to apply for the winding up of the company; and

(b) the debt, or part of the debt, that entitles the creditor to make that application is an amount that a tribunal has ordered to be paid to the creditor by an order made under section 30 of this Act or under section 23 of the repealed Act,

the Commissioner is, with the consent or at the request of the creditor, entitled to exercise all of the rights and functions conferred by that Code on the creditor with respect to the winding up of the company.

PART 5—MISCELLANEOUS MATTERS

Offence to act in contempt of a tribunal

38. **(1)** A person shall not—

(a) intentionally insult—

(i) a referee while constituted as a tribunal or while on his or her way to or from a hearing of the tribunal; or

(ii) any person while attending a hearing of a tribunal or while on his or her way to or from such a hearing;

(b) intentionally misbehave at a hearing of a tribunal;

(c) intentionally and without lawful excuse, interrupt a hearing of a tribunal;

(d) assault a person who is attending, or intentionally prevent or obstruct a person entitled or permitted to attend from attending, a hearing of a tribunal; or

(e) without lawful excuse, disobey a lawful direction given to the person by a tribunal during a hearing of the tribunal.

Penalty: 5 penalty units or imprisonment for 6 months.

(2) The reference in subsection (1) (e) to a direction does not include a reference to an order made under section 30.

(3) If at a hearing of a tribunal it appears to the tribunal that a person is committing or has committed a contravention of subsection (1), the tribunal may direct the person to leave the place at which the hearing is being held.

(4) A person shall not fail to comply with a direction given under subsection (3).

Penalty: 5 penalty units.

(5) Only a person who holds a prescribed office, or a person authorised by a person who holds such an office, may act as informant in proceedings for an offence under this section.

Contracting out prohibited

39. (1) This Act has effect despite any stipulation to the contrary in any contract, agreement, arrangement or understanding.

(2) No contract, agreement, arrangement or understanding made or entered into either before or after the commencement of this Act has the effect of nullifying, varying or excluding any of the provisions of this Act.

Service of notices

40. Where, by or under this Act, the registrar is required to serve a notice or other document on a person, the posting of the notice or document by pre-paid mail to that person at that person's usual address or the address of that person last known to the registrar shall be taken to be sufficient service for the purposes of this Act.

Certain matters to be reported to senior referee or Minister

41. (1) In subsection (2), a reference to a referee is a reference to a referee other than the senior referee.

(2) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal and the referee who constitutes the tribunal considers the matter to be of importance as regards the relationship of consumer and supplier; or

(b) a referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the senior referee,

the referee must make a report on the matter in writing to the senior referee.

(3) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal constituted by the senior referee and the senior referee considers the matter to be of importance as regards the relationship of consumer and supplier;

(b) the senior referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the Minister; or

(c) a referee reports a matter to the senior referee in accordance with subsection (1) and the senior referee is of the opinion that the matter is of a kind referred to in paragraph (a) or (b),

the senior referee must make a report on the matter to the Minister.

(4) If, in the course of, or as a result of, the hearing of a consumer claim by a 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 Commissioner, the tribunal may make a report in writing on that conduct and transmit it to the Commissioner.

(5) If a report transmitted to the Commissioner under subsection (4) relates to a supplier who appears to the Commissioner to be—

(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,

the Commissioner 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.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a communication made under this section.

Power of Commissioner to establish and maintain a list of unsatisfactory suppliers

42. (1) Subject to this section, the Commissioner may establish and maintain for the purposes of this Act a list to be known as the unsatisfactory suppliers list.

(2) The Commissioner 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 41;

(b) any supplier who has failed to comply with the requirements of an order of a 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 section 30 of this Act, or under section 23 of the repealed Act, during the period prescribed for the purposes of this paragraph.

(3) The Commissioner 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 Commissioner may allow.

(4) The Commissioner 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) The Commissioner may from time to time publish in such manner as the Commissioner thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5).

Publication of particulars of consumer claims

43. The registrar must publish, in such manner as the Minister directs or approves, such particulars in relation to consumer claims as the Minister specifies in the direction or approval.

Power of Minister to intervene in certain cases

44. **(1)** If any proceeding, order or ruling of a tribunal is challenged, reviewed or called into question in proceedings before a court, the Minister is entitled to intervene at any stage of the proceedings before the court, by counsel, solicitor or agent.

(2) If the Minister exercises the right conferred by subsection (1) to intervene in proceedings before a court, the Minister thereupon becomes a party to, and has all the rights of a party to, those proceedings, including the right to appeal against any order or judgment of the court.

Protection for things done under this Act

45. Except as expressly provided by this Act, neither the registrar, a deputy registrar, a referee, claimant, supplier nor any other person is liable in any legal proceeding on account of—

(a) any proceedings, publication or other thing—

(i) taken, made or done under the authority of this Act or the regulations; or

(ii) taken, made or done in good faith under the purported authority of this Act or the regulations; or

(b) any act or thing that in good faith has been omitted to be done in respect of the administration of this Act or the regulations.

Evidence in legal proceedings

46. In any legal proceedings, proof is not, until evidence is given to the contrary, required to be given of—

(a) the constitution of a tribunal; or

(b) the appointment of, or the holding of office by, any referee or the registrar or a deputy registrar.

Proceedings for offences

47. Proceedings for an offence against this Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Regulations

48. **(1)** 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 and, in particular, for or with respect to—

(a) if a party to a consumer claim is an unincorporated body of persons or a firm—the representation of, and the service of notices on, the party at hearings of the claim by a tribunal;

(b) the procedure and practice to be followed at hearings before a tribunal of consumer claims;

(c) the procedure and practice to be followed in the office of the registrar or any deputy registrar;

(d) empowering the registrar to give directions as to the steps to be taken in order to make a consumer claim ready for hearing by a tribunal;

(e) the duties of, and the records to be kept by, the registrar in relation to, or for the purposes of, the hearing of any claim before a tribunal;

(f) the maintenance and disposal of official records of tribunals and other documents relating to consumer claims;

(g) forms to be used for the purposes of this Act;

(h) the service of notices required for the purposes of this Act;

(i) fees to be paid under this Act;

(j) the waiver of fees to be so paid or, in the case of fees that have already been so paid, the refund of all or a part of those fees;

(k) the issue of summonses requiring parties to a consumer claim or other persons to give evidence before, or produce evidence to, the tribunal that is hearing the claim;

(l) the enforcement of orders of tribunals; and

(m) the transfer from the Commercial Tribunal to a consumer claims tribunal, in the prescribed circumstances, of proceedings relating to the provision of credit.

(2) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

Repeals

49. Each Act specified in Schedule 2 is, to the extent indicated, repealed.

Savings and transitional provisions

50. Schedule 3 has effect.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES

(Sec. 4 (4))

Age of referees

1. A person of or above the age of 72 years is not eligible to be appointed as a referee or to act as such.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Acting referees etc.

2. (1) The Governor may, from time to time, appoint a person to act in the office of a referee during the illness or absence from office of a referee, and the person, while so acting, has all the functions of, and shall be deemed to be, a referee.

(2) The Governor may, from time to time, appoint a referee to act in the office of senior referee during the illness or absence of the senior referee, and the referee, while so acting, has all the immunities and functions of the senior referee.

(3) The Governor may, at any time, remove a person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a referee or senior referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

(a) a vacancy in the office of a referee or the senior referee shall be regarded as an absence from office of the referee or senior referee; and

(b) a referee shall be regarded as absent from office as a referee during any period when the referee acts in the office of the senior referee pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a referee holds office—

(a) in the case of a full-time referee—for such period not exceeding 7 years; or

(b) in the case of a part-time referee—for such period not exceeding 3 years,

as may be specified in the referee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Full-time referees

4. A full-time referee must devote the whole of his or her time to the duties of the office of referee, except to the extent permitted by this Act or by the Minister.

Remuneration

5. (1) A full-time referee is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the referee.

(2) A part-time referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time referee.

Vacancy in office of referee

6. (1) The office of referee becomes vacant if the referee—

(a) dies;

(b) completes a term of office and is not re-appointed;

(c) resigns the office by instrument in writing addressed to the Minister;

(d) is removed or retired from office by the Governor under this clause;

(e) reaches the age of 72 years;

(f) being a full-time referee, is absent for a period of 28 consecutive days, except on leave granted, in the case of the senior referee, by the Minister or, in the case of any other referee, by the senior referee;

(g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

(i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or

(j) being a full-time referee, engages in any paid employment outside the duties of the office of referee, except with the consent of the Minister.

(2) The Governor may remove a referee from office for incapacity, incompetence or misbehaviour.

(3) A full-time referee may, after reaching the age of 60 years and before reaching the age of 72 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Filling of vacancy in office of referee

7. If the office of senior referee or referee becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) The Public Service Act 1979 does not apply to the appointment of a person as a referee or as the senior referee, but after appointment that Act and the regulations under that Act, except in so far as they are inconsistent with this Act, apply—

(a) to a full-time referee; and

(b) to a part-time referee while exercising the functions of a referee,

as if they had been appointed under the first-mentioned Act.

(2) If provision is made by or under any other Act—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of part-time referee.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Preservation of rights of a referee who was previously a public servant etc.

9. (1) This clause applies where a full-time referee was, immediately before being appointed as such a referee—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a proclaimed statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of appointment, a full-time referee—

(a) retains any rights accrued or accruing to him or her as such an officer, contributor or person;

(b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time referee; and

(c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time referee.

(3) Service as a full-time referee shall be regarded as service as an officer or employee for the purposes of any law—

(a) under which the rights referred to in subclause (2) accrued or were accruing;

(b) under which he or she continues to contribute; or

(c) by which that entitlement is conferred.

(4) A full-time referee shall be regarded as an officer or employee, and the Minister shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If a full-time referee would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive a payment, pension or gratuity under the scheme—

(a) he or she is not so entitled on becoming (whether on appointment as a referee or at any later time while holding office as a referee) a contributor to any other superannuation scheme; and

(b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Minister in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to a full-time referee (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A full-time referee is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

"superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Full-time referee entitled to re-appointment to former employment in certain cases

10. (1) A person who—

(a) ceases to be a full-time referee because the period for which the person was appointed has ended or because of resignation;

(b) was, immediately before being appointed as such a referee—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a proclaimed statutory body; and

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that proclaimed statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time referee.

(2) If subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time referee,

the person has, in the event of ceasing to be a full-time referee, such rights (if any) to appointment as such an officer or employee as are specified in the instrument of appointment as a full-time referee or as are agreed on by the person and by or on behalf of the Government.

(3) The Governor may, in the instrument of appointment of a referee or senior referee, insert terms that negate or vary the effect of this clause in relation to the referee or senior referee.

(4) In this clause—

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

SCHEDULE 2—REPEALS

(Sec. 49)

Consumer Claims Tribunals Act 1974 No. 16—the whole Act

Landlord and Tenant (Rental Bonds) Act 1977 No. 44—section 35

Consumer Claims Tribunals (Rental Bonds) Amendment Act 1985 No. 66—the whole Act

Residential Tenancies Act 1987 No. 26—section 136

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 50)

Definition

1. In this Schedule—

"commencement day" means the day appointed under section 2.

Referees

2. Any person who, immediately before the commencement day, held office under the repealed Act as a referee or as the senior referee continues on and after that day as a referee or as the senior referee under and subject to this Act on the terms and conditions on which the office was held immediately before that day.

Registry of consumer claims tribunals

3. The registry of consumer claims tribunals, as established by this Act, is a continuation of, and the same legal entity as, the registry of consumer claims tribunals established by section 11 (1) of the repealed Act.

Staff of the registry of consumer claims tribunals

4. A person who, immediately before the commencement day, held office under the Public Service Act 1979 as registrar of consumer claims tribunals or as a person required for the proper functioning of the registry of consumer claims tribunals maintained under the repealed Act continues on and after that day to hold that office subject to the Public Service Act 1979 and to the terms and conditions applicable to the holder of that office immediately before that day.

Consumer claims tribunals

5. If, immediately before the commencement day, a consumer claims tribunal has not determined a consumer claim that has been referred to it in accordance with the repealed Act, the tribunal—

(a) continues to be constituted as if it had been constituted under this Act; and

(b) shall hear and determine the claim as if the claim had been made under this Act.

Consumer Claims Regulation 1976

6. The Consumer Claims Regulation 1976 is repealed.

Effect of section 30 of Interpretation Act 1987 (Effect of amendments etc. of Acts and statutory rules)

7. Section 50 and this Schedule have effect in addition to, and do not derogate from the operation of, section 30 of the Interpretation Act 1987.

References to the repealed Act

8. A reference in any other Act or instrument to the repealed Act shall be construed as a reference to this Act.

General

9. (1) If—

(a) any order made or other thing done or begun under the repealed Act before the commencement day still has effect immediately before, or is not completed before, the commencement day; and

(b) that order or thing could have been made, done or begun under this Act if it had been in force when the order was made or the thing was done or begun,

the order made or the thing done continues to have effect, or the thing begun may be completed, as if it had been made, done or begun under this Act.

(2) Subclause (1) does not apply to any thing for which other provision is made by this Schedule.

Disposal of claims in respect of rental bonds

10. (1) In this clause—

(a) a reference to this Act is a reference to this Act excluding—

(i) section 10 (3);

(ii) section 30 (1) (b)–(g) and (2) (c);

(iii) section 36; and

(iv) section 41 (2) (a) and (3) (a);

(b) a reference to a lessor, lessee or rental bond is a reference to a lessor, lessee or rental bond as defined in the Landlord and Tenant (Rental Bonds) Act 1977; and

(c) a reference to the relevant day is a reference to the day on which section 83 (3) of the Residential Tenancies Act 1987 commences.

(2) Until the relevant day, this Act applies to a claim, whether made under section 13 of this Act or section 13 of the repealed Act, by a lessor or a lessee under a lease in relation to a rental bond, including a claim in relation to any matter which, under the terms or conditions of the lease, could, but for the Landlord and Tenant (Rental Bonds) Act 1977, have given rise to a claim against a rental bond deposited or paid in accordance with those terms or conditions, in the same way as it applies to a consumer claim.

(3) On the relevant day subclause (2) ceases to have effect.

(4) If a claim to which subclause (2) applies is lodged under section 13 of this Act or section 13 of the repealed Act before the relevant day and is not determined before that day, the hearing and determination of the claim may be completed as if that subclause had not ceased to have effect.

Regulations

11. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subcluase (1) may, if the regulations so provide, take effect from the commencement day or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

(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 that 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 that publication.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect despite any other clause of this Schedule.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987

CONSUMER CLAIMS TRIBUNALS BILL 1987

NEW SOUTH WALES



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I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE COUNCIL, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

Clerk of the Parliaments.

Legislative Council Chamber,
Sydney, , *1987*

NEW SOUTH WALES



Act No. , 1987

An Act to provide for the constitution of consumer claims tribunals, to define their jurisdiction and functions, to provide for related matters, and to repeal the Consumer Claims Tribunals Act 1974 and certain other enactments.

See also Credit (Consumer Claims Tribunals) Amendment Act 1987.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Consumer Claims Tribunals Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—

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

"business" includes—

(a) a business not carried on for profit; and

(b) a trade or profession;

"claimant" means a consumer who has lodged a consumer claim in accordance with section 13 or who is joined as a claimant in accordance with section 14;

"Commissioner" means the Commissioner for Consumer Affairs holding office under section 6 of the Fair Trading Act 1987;

"consumer" means—

(a) a natural person;

(b) a firm;

(c) an exempt proprietary company;

(d) a body corporate constituted under the Strata Titles Act 1973 or under the Strata Titles (Leasehold) Act 1986;

(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;

(f) an incorporated association; or

(g) an unincorporated body whose members are associated for a common purpose,

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—

(a) a claim by a consumer for the payment of a specified sum of money;

(b) a claim by a consumer for the supply of specified services;

(c) a claim by a consumer for relief from payment of a specified sum of money;

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

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;

"deputy registrar" means a person who is holding office under this Act as a deputy registrar of consumer claims;

"firm" has the same meaning as it has in the Partnership Act 1892;

"goods" means any tangible thing, other than money, that is or may be the subject of trade or commerce;

"party", in relation to a consumer claim, means a claimant or a respondent to the claim;

"referee" means a person who is holding office under this Act as a referee of consumer claims tribunals;

"registrar" means the person who is holding office under this Act as the registrar of consumer claims tribunals;

"registry" means the registry of consumer claims tribunals established and maintained under this Act;

"repealed Act" means the Consumer Claims Tribunals Act 1974 as in force immediately before the commencement of this Act;

"respondent", in relation to a consumer claim, means a person on whom a notice of the claim has been served under section 14, other than a person joined as a claimant in accordance with that section;

"senior referee" means the person holding office under this Act as the senior referee of consumer claims tribunals or, if there is for the time being only one referee, means the person holding office as such;

"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—

(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;

(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;

(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; and

(h) subject to section 10 (4), 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;

"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

(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;

"trade or commerce" includes any business or professional activity;

"tribunal" means a consumer claims tribunal constituted under this Act.

(2) In this Act—

(a) a reference to supply in relation to goods includes a reference to resupply;

(b) a reference to the supply of goods includes a reference to agreeing to supply goods;

(c) a reference to the supply of services includes a reference to agreeing to supply services;

(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.

(3) In this Act, a reference to an exempt proprietary company, a foreign company or a recognised company is a reference to such a company as defined in section 5 of the Companies (New South Wales) Code.

(4) In this Act—

(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.

(5) For the purposes of this Act, a person who claims to be a consumer shall be presumed to be such until the contrary is proved and, in any legal proceedings (including proceedings before a 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.

PART 2—CONSUMER CLAIMS TRIBUNALS

Appointment of referees

4. (1) The Governor may appoint persons to be referees of tribunals.

(2) A person appointed under subsection (1) may be appointed as a full-time referee or as a part-time referee.

(3) If 2 or more persons hold or are to hold office as referees at the same time, the Governor must appoint one of them, either in the person's instrument of appointment or in a later instrument, to be the senior referee.

(4) Schedule 1 has effect with respect to referees.

Constitution of tribunals

5. (1) A tribunal is constituted by a referee sitting alone.

(2) The senior referee may constitute a tribunal to hear and determine consumer claims anywhere in New South Wales.

(3) If 2 or more persons hold office as referees at the same time, the senior referee has the duty of deciding which of those persons will constitute a tribunal to hear and determine a consumer claim.

Sittings of tribunals

6. A tribunal shall sit at such place and on such day or days as the senior referee decides.

Registry of consumer claims tribunals

7. For the purposes of this Act, there shall be established and maintained a registry of consumer claims tribunals.

Registrar, deputy registrars and staff of tribunals

8. **(1)** A registrar and deputy registrars of consumer claims tribunals and such other persons as may be required for the proper functioning of tribunals shall be appointed in accordance with the Public Service Act 1979.

(2) The registrar has, and deputy registrars have, such functions as are conferred or imposed on the registrar or deputy registrars by or under this or any other Act or by the senior referee.

(3) The registrar may delegate to a deputy registrar, with such limitations and on such conditions as the registrar thinks fit, the exercise of such functions as are conferred on the registrar by this or any other Act (other than the power of delegation conferred by this subsection).

(4) The senior referee may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

Records

9. **(1)** The official record of a tribunal in respect of a consumer claim that it has heard and determined consists of—

(a) the claim as lodged by the claimant;

(b) the notation of the nature of the issues in dispute as found and recorded by the tribunal in the course of the hearing of the claim;

(c) any ruling given by the tribunal with respect to its jurisdiction to hear and decide the claim; and

(d) any order made by the tribunal in respect of the claim.

(2) At any time while the registry is required to be open for business, each of the parties to a consumer claim is entitled—

(a) to inspect, without charge, the official record relating to the claim; and

(b) on payment of the prescribed fee (if any), to obtain a copy of that record or of any part of it.

(3) If, for any reason, an official record cannot be made available to a person who seeks to exercise a right conferred by subsection (2), the registrar must, if requested to do so by that person, take all practicable steps to obtain as soon as possible the record so as to enable that person to exercise the right.

(4) If any matter concerning a consumer claim comes before a court, the registrar must, if requested to do so by the court or any of the parties concerned, make the official record relating to the claim available for production to the court without charge.

(5) The Commissioner is entitled, without charge—

(a) to inspect the official record relating to a consumer claim;

(b) to obtain a copy of that record or of any part of it; and

(c) after a consumer claim has been finally determined by a tribunal, to inspect any document relating to the hearing or determination of the claim that is not included in the official record relating to the claim.

(6) The Commissioner is entitled to include in any report or other document that the Commissioner is required or permitted by law to prepare or publish any information obtained from a record or document inspected in accordance with subsection (5).

(7) A person is not entitled to inspect or obtain a copy of any official record or other document relating to a consumer claim except as provided by this section.

PART 3—JURISDICTION OF TRIBUNALS

Jurisdiction

10. (1) Subject to this Act, a tribunal has jurisdiction to hear and determine any consumer claim referred to it in accordance with this Act.

(2) Subject to subsections (3) and (4), a tribunal has jurisdiction in respect of a consumer claim whether or not the matter to which the claim relates arose before or after the commencement of this Act.

(3) A tribunal does not have jurisdiction in respect of a consumer claim if—

(a) in the case of a consumer claim relating to goods or services that have been supplied to or for the claimant, the date on which the supply was made or, if made in instalments, the date on which the supply was last made;

(b) in the case of a consumer claim relating to goods or services which 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, the date on or by which the supply was required under the contract to be made; or

(c) in the case of a consumer claim relating to—

(i) a contract for the supply of goods or services to which neither paragraph (a) or (b) applies; or

(ii) a collateral contract,

the date on which the contract was entered into,

was more than 3 years before the date on which the claim was lodged in accordance with section 13 of this Act or section 13 of the repealed Act.

(4) If a matter relating to the provision of credit arises or could be determined under the Credit Act 1984, that matter is not within the jurisdiction of a tribunal unless the provision of that Act under which the matter arises or could be determined is a provision prescribed for the purposes of this section.

Other jurisdictions excluded in some cases

11. (1) In this section, a reference to a court is a reference to a court, tribunal, board or other body or person which or who—

(a) is empowered under any other Act; or

(b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but such a reference does not include a reference—

(c) to a court, tribunal, board, body or person which or who, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter; or

(d) to a court, tribunal, board, body or person which or who is prescribed, or belongs to a class which or who is prescribed, for the purposes of this paragraph.

(2) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, no issue arising under the claim was the subject of a dispute in proceedings pending before a court,

a court has no jurisdiction to hear or determine such an issue, unless—

(c) the claim, or the part of the claim to which the issue relates—

(i) is withdrawn; or

(ii) is dismissed for want of jurisdiction; or

(d) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of a tribunal made in respect of the claim on the ground that the tribunal had no jurisdiction to hear and determine the issue.

(3) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, an issue arising under the claim was the subject of a dispute in proceedings pending before a court,

the tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue, unless—

(c) those proceedings, or the part of the proceedings relating to the issue, are or is—

(i) withdrawn; or

(ii) dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits; or

(d) a court of record has, on a judicial review, quashed or declared invalid—

(i) those proceedings or that part of those proceedings; or

(ii) any order, judgment or decision made in those proceedings in relation to the issue,

on the ground that the first-mentioned court had no jurisdiction to hear and determine the issue.

(4) For the purposes of subsection (2), an issue arises under a consumer claim made to a tribunal in accordance with this Act only if the existence of the issue is shown in the claim or is recorded in the record made by the tribunal in accordance with section 9 (1) (b).

(5) At a hearing of a consumer claim by a tribunal, a finding or decision made by a court, tribunal, board, body or person referred to in subsection (1) (c) or (d) is admissible as evidence of the finding or decision.

Tribunal to be immune from judicial review

12. (1) Except as provided by subsection (2), a court of record has no jurisdiction to grant relief or a remedy by way of—

(a) a judgment or order in the nature of prohibition, mandamus, certiorari or other prerogative writ;

(b) a declaratory judgment or order; or

(c) an injunction,

in respect of a consumer claim heard and determined or to be heard or determined by a tribunal in accordance with this Act or in respect of any ruling, order or other proceeding relating to such a claim.

(2) A court is not precluded from granting relief or a remedy of a kind referred to in subsection (1) if, in respect of a consumer claim—

(a) a tribunal has given a ruling under section 26 or refused or failed to give such a ruling after the jurisdiction of the tribunal to hear and determine the claim has been disputed by a party to the claim and the ground on which the relief or remedy is sought is that—

(i) the ruling was erroneous; or

(ii) the tribunal erred in refusing or failing to give the ruling after its jurisdiction was disputed; or

(b) a tribunal has made an order under section 30 and the ground on which the relief or remedy is sought is that—

(i) the tribunal had no jurisdiction to make the order; or

(ii) in relation to the hearing or determination of the claim, a party to the claim had been denied natural justice.

PART 4—PROCEEDINGS BEFORE TRIBUNALS

Division 1—Consumer claims

Making a consumer claim

13. **(1)** A consumer who wishes to have a consumer claim heard and determined by a tribunal must lodge with the registrar of consumer claim tribunals or the registrar of a Local Court a claim in the prescribed form, together with the prescribed fee.

(2) It is the duty of the registrar of consumer claims tribunals or the registrar of a Local Court to help a consumer who requests assistance in completing the prescribed claim form.

(3) As soon as practicable after a consumer claim is lodged with the registrar of a Local Court, that registrar must ensure that the claim is transmitted to the registrar of consumer claims tribunals.

Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings

14. **(1)** As soon as practicable after a consumer claim has been lodged with or transmitted to the registrar of consumer claims tribunals in accordance with section 13, the registrar must—

(a) subject to subsection (4), refer the claim to a tribunal for hearing and determination;

(b) fix a time for the initial hearing of the claim by the tribunal;

(c) cause notice of the claim to be served—

(i) on every person against whom the claim is made; and

(ii) on every other person (other than the claimant) who appears from the claim to have an interest in resolving the dispute to which the claim relates; and

(d) cause notice of the time and place fixed for the initial hearing of the claim to be served on the claimant and on each person on whom notice of the claim is required to be served in accordance with paragraph (c).

(2) If a referee, whether constituted as a tribunal or not, is of the opinion that a person has a sufficient interest in resolving the dispute to which a consumer claim relates but the person has not been served with notice of the claim in accordance with subsection (1) (c), the referee may make an order directing that the person be joined either as a claimant or as a respondent as appears to the referee to be appropriate.

(3) If an order under subsection (2) is made joining a person as a claimant or as a respondent to a consumer claim, the registrar must cause notice of the claim and notice of the time and place for the initial or further hearing of the claim to be served on the person as soon as practicable after the making of the order.

(4) Whenever it appears to the registrar that a consumer claim—

(a) is unusually complex; or

(b) may require special expertise or qualifications in order to determine it,

the registrar must bring the claim to the attention of the senior referee.

(5) When a consumer claim is brought to the attention of the senior referee in accordance with subsection (4), the senior referee must, if satisfied as to either of the matters referred to in subsection (4) (a) or (b), direct the registrar to refer the claim to a tribunal constituted by a referee who has the requisite expertise or qualifications for dealing with that kind of claim.

(6) Whenever the case so requires, whether before or after the time fixed in accordance with subsection (1) (b), the registrar may—

(a) fix another time for the initial hearing of a consumer claim; or

(b) refer the claim to another tribunal and fix a time for the initial hearing of the claim by that other tribunal.

(7) Whenever the power conferred by subsection (6) is exercised in relation to a consumer claim, the registrar must ensure that subsection (1) (d) is complied with in respect of that claim.

Parties to a consumer claim

15. (1) Every person on whom notice of a consumer claim has been served in accordance with section 14 (other than a person joined as a claimant in accordance with that section) is a respondent to the claim.

(2) If—

(a) a person beneficially entitled to property that is subject to a trust;

(b) a person in respect of whom an order made under the Protected Estates Act 1983 is in force; or

(c) a deceased person,

is or would have been eligible to lodge or be a respondent to a consumer claim, then—

(d) the trustee of that property;

(e) the manager of the estate of that person; or

(f) the executor or administrator of the estate of that deceased person,

may, on behalf of that person or the estate of that person, lodge, or become a respondent to, a consumer claim and exercise all the rights and functions of a claimant or respondent under this Act.

Withdrawal of claim

16. At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the claimant may withdraw the claim.

Division 2—Hearings of consumer claims

Control of tribunal procedures

17. (1) Except as expressly provided by this Act or the regulations, a tribunal has control of and responsibility for its own procedures, but in exercising its functions under this Act must conform to the rules of natural justice.

(2) If satisfied that 2 or more consumer claims are related, a tribunal may hear and determine those claims together.

Continuity of tribunal

18. (1) Subject to this section, a tribunal must, at all times throughout the hearing of a consumer claim, be constituted by the same referee.

(2) If, in the course of hearing a consumer claim, it becomes apparent to the referee who constitutes the tribunal concerned that, because of the complexity of the case or for any other valid reason, it would be desirable for the claim to be heard and determined by a tribunal constituted by another referee who has appropriate expertise or qualifications to deal with that kind of claim, the referee may adjourn the hearing of the claim and refer the claim back to the registrar.

(3) When a consumer claim has been referred back to the registrar under subsection (2), the registrar must make arrangements with the senior referee for the claim to be heard at another time, and at the same or another place, by a tribunal constituted by a referee who has appropriate expertise or qualifications to deal with that kind of claim.

(4) If the hearing of a consumer claim by a tribunal is, before the tribunal has determined the claim, interrupted by the death, incapacity or removal from office of the referee who constitutes the tribunal, the senior referee must, if the claimant wishes to proceed with the claim, make arrangements for the hearing and determination of the claim to be recommenced before a tribunal constituted by another referee.

(5) When arrangements have been made in accordance with subsection (3) or (4), the registrar must cause notice of the time and place for the further hearing of the claim to be served on the parties to the claim.

Power of tribunal to amend a consumer claim

19. (1) At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the tribunal may make such amendments to the claim as it considers necessary.

(2) Any such amendments may be made by the tribunal either at the request of the claimant or, with the approval of the claimant, of its own motion.

Adjournment of the hearing of a consumer claim

20. (1) A tribunal may from time to time adjourn the hearing of a consumer claim for such purposes as it considers necessary.

(2) If the hearing of a consumer claim is adjourned, the registrar must serve on each party to the claim a notice of the time and place to which the hearing is adjourned.

(3) If—

(a) at a time and place to which the hearing of a consumer claim is adjourned a referee is or was not present; or

(b) it appears that a referee will not be present at a time and place to which the hearing is adjourned,

the registrar must, by notice served on each of the parties to the claim, adjourn the hearing to another time either at the same place or at another place.

Presentation of cases before a tribunal

21. (1) Subject to this section, a party to a consumer claim has the carriage of the party's own case.

(2) A party to a consumer claim ("the party") is not entitled to be represented at the hearing of the claim unless—

(a) the party is a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code and the corporation is represented by one of the corporation's officers, as defined by section 5 (1) of that Code;

(b) the party is a body corporate constituted under the Strata Titles Act 1973 and the body corporate is represented by the proprietor or, if there is more than one proprietor, by one of the proprietors constituting the body corporate;

(c) the party is a body corporate constituted under the Strata Titles (Leasehold) Act 1986 and the body corporate is represented by the lessee or, if there is more than one lessee, by one of the lessees constituting the body corporate;

(d) the party is—

(i) a society, association or union registered under the Co-operation Act 1923;

(ii) a society or association registered under the Permanent Building Societies Act 1967; or

(iii) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the Credit Union Act 1969,

and the society, association or union is represented by one of its officers, as defined by section 5 of the Co-operation Act 1923, section 3 (1) of the Permanent Building Societies Act 1967 or section 3 (1) of the Credit Union Act 1969;

(e) the party is a foreign company, or a recognised company, in respect of which an exemption from compliance with—

(i) section 61 (1) of the Co-operation Act 1923;

(ii) section 35 (1) of the Permanent Building Societies Act 1967; or

(iii) section 28 (1) of the Credit Union Act 1969,

is for the time being in force and the company is represented by a person who would, if the company were a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code, be one of the corporation's officers, as defined by section 5 (1) of that Code;

(f) the party is a firm and the firm is represented by one of its partners;

(g) the party is an incorporated association registered under the Associations Incorporation Act 1984 and the association is represented by one of its officers, as defined by section 3 of that Act;

(h) the party is an unincorporated body of persons and the body is represented by—

(i) a secretary or treasurer of the body; or

(ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body;

(i) any other party to the claim is, or is represented by a person who is, entitled by law to practise as a legal practitioner, either in New South Wales or elsewhere;

(j) the tribunal, of its own motion, decides that the party would be placed at a disadvantage if not represented at the hearing; or

(k) in any other case, the representation is, on determination of an application made by or on behalf of the party, approved by the tribunal.

(3) A tribunal must not give an approval to an application referred to in subsection (2) (k) unless the tribunal is satisfied that—

(a) the representation should be permitted as a matter of necessity; or

(b) the party by whom or on whose behalf the application was made would otherwise be placed at a disadvantage.

(4) In dealing with an application for the representation of a party to a consumer claim, a tribunal—

(a) must not approve the application unless it is satisfied that the representative concerned—

(i) has sufficient personal knowledge of the issues in dispute to enable that representative to represent the applicant effectively at the hearing by the tribunal of the claim; and

(ii) is vested with sufficient authority to bind the applicant; and

(b) may make its approval of the application subject to such conditions as it considers necessary to ensure that any other party to the claim is not placed at a disadvantage by the representative of the applicant at the hearing of the claim by the tribunal.

(5) Whenever a tribunal makes its approval of such an application subject to conditions, the right of the representative concerned to represent the applicant at a hearing of a consumer claim is subject to compliance with those conditions by the applicant and the applicant's representative.

(6) Contravention of any provision of this section or a condition imposed by a tribunal does not of itself invalidate a tribunal's hearing of a consumer claim, nor does it invalidate any order made by a tribunal in respect of such a claim.

Consumer claims to be heard in private

22. (1) Except as provided by subsection (2), a tribunal must hear a consumer claim in private.

(2) If—

(a) a tribunal is satisfied that a person wishes, for educational, research or study purposes, to attend the hearing of a consumer claim that is before the tribunal; and

(b) none of the parties to the claim objects,

the tribunal may allow the person to attend the hearing.

Taking of evidence

23. (1) At the hearing of a consumer claim, evidence relevant to the determination of the claim may be given orally or in writing.

(2) If evidence at the hearing of a consumer claim is to be given orally, it must be given on oath.

(3) If evidence at the hearing of a consumer claim is to be given in writing, it must be given either on oath or by statutory declaration, as the giver of evidence prefers.

(4) A tribunal is not bound by the rules or practice of evidence and, subject to subsections (2) and (3), can inform itself on any matter in such manner as it considers appropriate.

Tribunal to act on available evidence

24. (1) Subject to section 25, if at the hearing of a consumer claim by a tribunal the case of a party to the claim is not presented to the tribunal—

(a) the tribunal must decide the issues in dispute on such evidence as is otherwise adduced before it; and

(b) an order made by the tribunal to determine the claim is just as effective as if that party had been fully heard.

(2) Subject to section 25, if none of the cases of the parties to a consumer claim is presented to the tribunal at the time and place fixed for the hearing of the claim, or at the time and place to which the hearing of the claim is adjourned, the tribunal must make an order dismissing the claim.

Rehearing of certain consumer claims

25. (1) If a tribunal has decided an issue in dispute in the absence of a party to a consumer claim or a consumer claim has been dismissed under section 24 (2), a referee may, on application in the prescribed form made to the registrar within 14 days after receiving notice of the decision or the order dismissing the claim, order the claim to be reheard if satisfied that there was sufficient reason for the party's absence.

(2) For the purposes of subsection (1), a party to a consumer claim shall not be taken to have been absent at the time when a tribunal decided an issue in dispute if, at that time—

(a) the party was represented before the tribunal; or

(b) the party's case with respect to the issue had been presented to the tribunal in writing.

(3) In making an order under subsection (1), a referee must make provision for fixing a time and a place for the rehearing.

(4) Whenever a consumer claim is ordered to be reheard—

(a) the registrar must serve on each of the parties to the claim a notice of the order and of the time and place of the rehearing; and

(b) the order of the tribunal made at the previous hearing ceases to have effect unless restored in accordance with subsection (5).

(5) If the party on whose application a rehearing is ordered does not appear—

(a) at the time and place fixed for the rehearing; or

(b) at the time and place to which a tribunal has adjourned the rehearing,

the tribunal may, if it thinks fit and without rehearing or further rehearing the claim, direct that the order made at the previous hearing of the claim be restored.

(6) If a tribunal gives a direction under subsection (5), the order to which the direction relates—

(a) is thereupon fully restored; and

(b) shall be regarded as having had effect at all times since it was made.

Procedure to be followed when a tribunal's jurisdiction is disputed

26. (1) If, before a tribunal has determined a consumer claim, the jurisdiction of the tribunal to hear and determine the claim is disputed by a party to the claim, the tribunal must not proceed to determine the claim without first giving a ruling as to whether or not it has that jurisdiction.

(2) A tribunal must not, of its own motion, make an order under section 30 (2) (a) dismissing a consumer claim for want of jurisdiction without first giving a ruling as to its jurisdiction to hear and determine the claim.

(3) If a tribunal has given a ruling under this section in respect of its jurisdiction to hear and determine a consumer claim, it must not determine the claim—

(a) until at least 14 days have elapsed since the day on which the ruling was given; or

(b) if, before it has determined the claim, it becomes aware that proceedings for relief or a remedy of a kind mentioned in section 12 have been instituted in a court in respect of the ruling—until those proceedings have been concluded.

Powers of tribunal with respect to frivolous etc. consumer claims

27. If, at the hearing of a consumer claim, a tribunal is satisfied that—

(a) the claim is frivolous, vexatious, misconceived or lacking in substance; or

(b) for any other reason it should not deal with the claim,

it may make an order dismissing the claim.

No costs to be allowed

28. A tribunal has no power to award costs to or against a party to a consumer claim.

Division 3—Determination of consumer claims

Tribunal to attempt to conciliate

29. (1) A tribunal must not make an order in respect of a consumer claim that is before it unless it has brought, or used its best endeavours to bring, the parties to the claim to a settlement acceptable to all of them.

(2) If such a settlement is reached, the tribunal must make an order under this Division that gives effect to the settlement to the extent permitted by this Division.

(3) A tribunal must ensure that any meeting or proceeding held for the purposes of subsection (1) is not held in public.

(4) Any statement or admission made before a tribunal at a meeting or proceeding held for the purposes of subsection (1) is not admissible at a hearing of the consumer claim concerned or in any other legal proceeding.

Tribunal orders

30. (1) In determining a consumer claim wholly or partly in favour of a claimant, a tribunal may, subject to sections 31 and 32, 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;

(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;

(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;

(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;

(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, a tribunal may make such one or more of the following orders as it considers appropriate:

(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, a 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.

(4) If, in the course of hearing a consumer claim, it appears to a tribunal desirable to do so, it may make an interim order under subsection (1) or (2) pending final determination of the claim.

(5) Whenever a tribunal makes an order under subsection (1), (2) or (4), it may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect.

(6) In making an order under this section, a tribunal may impose such conditions as it considers appropriate.

(7) If a tribunal has made an order under this section 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—

(a) for such reasons and for such period; or

(b) until the happening of such event or the fulfilment of such condition,

as the tribunal specifies in the further order.

(8) Section 97 (joint liability) of the Supreme Court Act 1970 applies to and in respect of an order of a tribunal as if such an order were a judgment of the Supreme Court.

Matters to be taken into account by tribunal when making orders under sec. 30

31. (1) When making an order or orders under section 30, a 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 a tribunal is considering whether or not to make an order or orders under section 30, 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;

(b) whether or not—

(i) any party to the claim was not reasonably able to protect the party's interests; 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,

because of the age or physical or mental capacity of that party or person;

(c) the relative economic circumstances, educational background and literacy of—

(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—

(i) by any other party to the claim;

(ii) by any person acting or appearing or purporting to act for or on behalf of any other party to the claim; or

(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;

(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;

(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;

(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;

(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;

(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

(vi) the commercial or other setting, purpose and effect of the contract.

(3) Without limiting subsection (1), when a 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

(b) where the Commissioner 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.

Limitation on tribunal's jurisdiction to make orders

32. (1) A 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 2 or more claimants, in favour of those claimants if the total of—

(a) the amount or amounts (if any) of money to be paid;

(b) the value or values (if any) of the work to be performed, or the services to be supplied;

(c) the amount or amounts (if any) of money to be declared not to be due or owing; and

(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 prescribed amount.

(2) A 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 2 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 prescribed amount.

Power to correct tribunal orders

33. If an order made by a tribunal contains—

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or

(d) a defect of form,

the tribunal, of its own motion or on the application of a party to the consumer claim in respect of which the order was made, or another tribunal, on the application of such a party, may correct the order.

Order of tribunal to be final

34. (1) Subject to section 36, an order of a tribunal is final and binding on all parties to a consumer claim that is heard and determined by the tribunal.

(2) No appeal lies in respect of an order of a tribunal.

(3) Subsection (2) does not affect the operation of section 12.

Division 4—Enforcement of tribunal orders

Enforcement of orders to pay money

35. (1) In this section, a reference to a Local Court does not include a reference to a Local Court specified in an order in force under section 77 (3) of the Local Courts (Civil Claims) Act 1970.

(2) Whenever a tribunal has made an order under section 30 requiring the payment of an amount of money to a party to a consumer claim—

(a) that party may enforce the order by filing in a Local Court a copy of the order, certified by the registrar of consumer claims tribunals to be a true copy, together with an affidavit executed by that party—

(i) specifying the amount then unpaid under the order; and

(ii) if the order is to take effect only when a default has occurred, specifying particulars of the default; or

(b) the registrar of consumer claims tribunals may, at the request and on behalf of that party, enforce the order either—

(i) by filing in a Local Court a copy of the order, together with a certificate, signed by that registrar, specifying the matters referred to in paragraph (a) (i) and (ii); or

(ii) by transmitting to the registrar of a Local Court in the prescribed manner the contents of the order and of the certificate referred to in subparagraph (i).

(3) When—

(a) a copy of an order of a tribunal and an affidavit or a certificate are filed in a Local Court in accordance with subsection (2) (a) or (b) (i); or

(b) the contents of an order of a tribunal and of a certificate are transmitted to the registrar of a Local Court in accordance with subsection 2 (b) (ii),

the order shall, for the purposes of the Local Courts (Civil Claims) Act 1970, be taken to be an unsatisfied judgment for the amount specified in the affidavit or certificate as being unpaid.

(4) If the registrar of consumer claims tribunals is requested to enforce an order of a tribunal requiring a party to a consumer claim to pay an amount of money, the registrar, before exercising the power conferred by subsection (2), must—

(a) serve on the party a notice requiring the party to comply with the order; and

(b) allow the party a further period of 7 days to comply with the requirement.

(5) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal has been filed in a Local Court; or

(b) the contents of such an order have been transmitted to the registrar of a Local Court,

any later filing of a copy of the order in that or another Local Court, or any later transmission of the contents of such an order to the registrar of that or another Local Court, is of no effect.

(6) No fee is payable for the filing in a Local Court of the documents referred to in subsection (2).

(7) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal and an affidavit or certificate have been filed in a Local Court; or

(b) the contents of an order of a tribunal and of a certificate have been transmitted to the registrar of a Local Court,

the Commissioner may, at the request or with the consent of the person in whose favour the order was made, exercise on behalf of that person any of the functions conferred on a judgment creditor by Division 2 of Part V of the Local Courts (Civil Claims) Act 1970 (Examination of judgment debtor).

Enforcement of other tribunal orders

36. **(1)** This section applies to an order of a tribunal made under section 30 (1) (b), (c), (e), (f) or (g) or (2) (c) but does not so apply if the operation of the order has been suspended under section 30 (7).

(2) An order of a tribunal to which this section applies is enforceable only as provided by this section.

(3) A tribunal that is determining a consumer claim may, when making an order to which this section applies or later, give leave to the person in whose favour the order is made to renew the claim if the order is not complied with within the period specified by the tribunal.

(4) If an order to which this section applies has not been complied with within the period specified by the tribunal, the person in whose favour the order was made may effect a renewal of the consumer claim to which the order relates by lodging with the registrar a notification in the prescribed form to the effect that the order has not been so complied with.

(5) The provisions of this Part apply to a notification lodged in accordance with subsection (4) as if the notification were a consumer claim lodged in accordance with section 13.

(6) When a consumer claim has been renewed in accordance with subsection (4), the tribunal concerned—

(a) may make such other appropriate order under section 30 as it could have made when the claim was originally determined; or

(b) may refuse to make such an order.

Power of Commissioner to represent creditors in certain company winding up proceedings

37. Whenever—

(a) a creditor of a company is, by virtue of section 363 of the Companies (New South Wales) Code, entitled to apply for the winding up of the company; and

(b) the debt, or part of the debt, that entitles the creditor to make that application is an amount that a tribunal has ordered to be paid to the creditor by an order made under section 30 of this Act or under section 23 of the repealed Act,

the Commissioner is, with the consent or at the request of the creditor, entitled to exercise all of the rights and functions conferred by that Code on the creditor with respect to the winding up of the company.

PART 5—MISCELLANEOUS MATTERS

Offence to act in contempt of a tribunal

38. **(1)** A person shall not—

(a) intentionally insult—

(i) a referee while constituted as a tribunal or while on his or her way to or from a hearing of the tribunal; or

(ii) any person while attending a hearing of a tribunal or while on his or her way to or from such a hearing;

(b) intentionally misbehave at a hearing of a tribunal;

(c) intentionally and without lawful excuse, interrupt a hearing of a tribunal;

(d) assault a person who is attending, or intentionally prevent or obstruct a person entitled or permitted to attend from attending, a hearing of a tribunal; or

(e) without lawful excuse, disobey a lawful direction given to the person by a tribunal during a hearing of the tribunal.

Penalty: 5 penalty units or imprisonment for 6 months.

(2) The reference in subsection (1) (e) to a direction does not include a reference to an order made under section 30.

(3) If at a hearing of a tribunal it appears to the tribunal that a person is committing or has committed a contravention of subsection (1), the tribunal may direct the person to leave the place at which the hearing is being held.

(4) A person shall not fail to comply with a direction given under subsection (3).

Penalty: 5 penalty units.

(5) Only a person who holds a prescribed office, or a person authorised by a person who holds such an office, may act as informant in proceedings for an offence under this section.

Contracting out prohibited

39. (1) This Act has effect despite any stipulation to the contrary in any contract, agreement, arrangement or understanding.

(2) No contract, agreement, arrangement or understanding made or entered into either before or after the commencement of this Act has the effect of nullifying, varying or excluding any of the provisions of this Act.

Service of notices

40. Where, by or under this Act, the registrar is required to serve a notice or other document on a person, the posting of the notice or document by pre-paid mail to that person at that person's usual address or the address of that person last known to the registrar shall be taken to be sufficient service for the purposes of this Act.

Certain matters to be reported to senior referee or Minister

41. (1) In subsection (2), a reference to a referee is a reference to a referee other than the senior referee.

(2) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal and the referee who constitutes the tribunal considers the matter to be of importance as regards the relationship of consumer and supplier; or

(b) a referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the senior referee,

the referee must make a report on the matter in writing to the senior referee.

(3) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal constituted by the senior referee and the senior referee considers the matter to be of importance as regards the relationship of consumer and supplier;

(b) the senior referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the Minister; or

(c) a referee reports a matter to the senior referee in accordance with subsection (1) and the senior referee is of the opinion that the matter is of a kind referred to in paragraph (a) or (b),

the senior referee must make a report on the matter to the Minister.

(4) If, in the course of, or as a result of, the hearing of a consumer claim by a 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 Commissioner, the tribunal may make a report in writing on that conduct and transmit it to the Commissioner.

(5) If a report transmitted to the Commissioner under subsection (4) relates to a supplier who appears to the Commissioner to be—

(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,

the Commissioner 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.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a communication made under this section.

Power of Commissioner to establish and maintain a list of unsatisfactory suppliers

42. (1) Subject to this section, the Commissioner may establish and maintain for the purposes of this Act a list to be known as the unsatisfactory suppliers list.

(2) The Commissioner 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 41;

(b) any supplier who has failed to comply with the requirements of an order of a 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 section 30 of this Act, or under section 23 of the repealed Act, during the period prescribed for the purposes of this paragraph.

(3) The Commissioner 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 Commissioner may allow.

(4) The Commissioner 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) The Commissioner may from time to time publish in such manner as the Commissioner thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5).

Publication of particulars of consumer claims

43. The registrar must publish, in such manner as the Minister directs or approves, such particulars in relation to consumer claims as the Minister specifies in the direction or approval.

Power of Minister to intervene in certain cases

44. **(1)** If any proceeding, order or ruling of a tribunal is challenged, reviewed or called into question in proceedings before a court, the Minister is entitled to intervene at any stage of the proceedings before the court, by counsel, solicitor or agent.

(2) If the Minister exercises the right conferred by subsection (1) to intervene in proceedings before a court, the Minister thereupon becomes a party to, and has all the rights of a party to, those proceedings, including the right to appeal against any order or judgment of the court.

Protection for things done under this Act

45. Except as expressly provided by this Act, neither the registrar, a deputy registrar, a referee, claimant, supplier nor any other person is liable in any legal proceeding on account of—

(a) any proceedings, publication or other thing—

(i) taken, made or done under the authority of this Act or the regulations; or

(ii) taken, made or done in good faith under the purported authority of this Act or the regulations; or

(b) any act or thing that in good faith has been omitted to be done in respect of the administration of this Act or the regulations.

Evidence in legal proceedings

46. In any legal proceedings, proof is not, until evidence is given to the contrary, required to be given of—

(a) the constitution of a tribunal; or

(b) the appointment of, or the holding of office by, any referee or the registrar or a deputy registrar.

Proceedings for offences

47. Proceedings for an offence against this Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Regulations

48. **(1)** 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 and, in particular, for or with respect to—

(a) if a party to a consumer claim is an unincorporated body of persons or a firm—the representation of, and the service of notices on, the party at hearings of the claim by a tribunal;

(b) the procedure and practice to be followed at hearings before a tribunal of consumer claims;

(c) the procedure and practice to be followed in the office of the registrar or any deputy registrar;

(d) empowering the registrar to give directions as to the steps to be taken in order to make a consumer claim ready for hearing by a tribunal;

(e) the duties of, and the records to be kept by, the registrar in relation to, or for the purposes of, the hearing of any claim before a tribunal;

(f) the maintenance and disposal of official records of tribunals and other documents relating to consumer claims;

(g) forms to be used for the purposes of this Act;

(h) the service of notices required for the purposes of this Act;

(i) fees to be paid under this Act;

(j) the waiver of fees to be so paid or, in the case of fees that have already been so paid, the refund of all or a part of those fees;

(k) the issue of summonses requiring parties to a consumer claim or other persons to give evidence before, or produce evidence to, the tribunal that is hearing the claim;

(l) the enforcement of orders of tribunals; and

(m) the transfer from the Commercial Tribunal to a consumer claims tribunal, in the prescribed circumstances, of proceedings relating to the provision of credit.

(2) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

Repeals

49. Each Act specified in Schedule 2 is, to the extent indicated, repealed.

Savings and transitional provisions

50. Schedule 3 has effect.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES

(Sec. 4 (4))

Age of referees

1. A person of or above the age of 72 years is not eligible to be appointed as a referee or to act as such.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Acting referees etc.

2. (1) The Governor may, from time to time, appoint a person to act in the office of a referee during the illness or absence from office of a referee, and the person, while so acting, has all the functions of, and shall be deemed to be, a referee.

(2) The Governor may, from time to time, appoint a referee to act in the office of senior referee during the illness or absence of the senior referee, and the referee, while so acting, has all the immunities and functions of the senior referee.

(3) The Governor may, at any time, remove a person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a referee or senior referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

(a) a vacancy in the office of a referee or the senior referee shall be regarded as an absence from office of the referee or senior referee; and

(b) a referee shall be regarded as absent from office as a referee during any period when the referee acts in the office of the senior referee pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a referee holds office—

(a) in the case of a full-time referee—for such period not exceeding 7 years; or

(b) in the case of a part-time referee—for such period not exceeding 3 years,

as may be specified in the referee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Full-time referees

4. A full-time referee must devote the whole of his or her time to the duties of the office of referee, except to the extent permitted by this Act or by the Minister.

Remuneration

5. (1) A full-time referee is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the referee.

(2) A part-time referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time referee.

Vacancy in office of referee

6. (1) The office of referee becomes vacant if the referee—

(a) dies;

(b) completes a term of office and is not re-appointed;

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

(c) resigns the office by instrument in writing addressed to the Minister;

(d) is removed or retired from office by the Governor under this clause;

(e) reaches the age of 72 years;

(f) being a full-time referee, is absent for a period of 28 consecutive days, except on leave granted, in the case of the senior referee, by the Minister or, in the case of any other referee, by the senior referee;

(g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

(i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or

(j) being a full-time referee, engages in any paid employment outside the duties of the office of referee, except with the consent of the Minister.

(2) The Governor may remove a referee from office for incapacity, incompetence or misbehaviour.

(3) A full-time referee may, after reaching the age of 60 years and before reaching the age of 72 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Filling of vacancy in office of referee

7. If the office of senior referee or referee becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) The Public Service Act 1979 does not apply to the appointment of a person as a referee or as the senior referee, but after appointment that Act and the regulations under that Act, except in so far as they are inconsistent with this Act, apply—

(a) to a full-time referee; and

(b) to a part-time referee while exercising the functions of a referee,

as if they had been appointed under the first-mentioned Act.

(2) If provision is made by or under any other Act—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of part-time referee.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Preservation of rights of a referee who was previously a public servant etc.

9. (1) This clause applies where a full-time referee was, immediately before being appointed as such a referee—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a proclaimed statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of appointment, a full-time referee—

(a) retains any rights accrued or accruing to him or her as such an officer, contributor or person;

(b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time referee; and

(c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time referee.

(3) Service as a full-time referee shall be regarded as service as an officer or employee for the purposes of any law—

(a) under which the rights referred to in subclause (2) accrued or were accruing;

(b) under which he or she continues to contribute; or

(c) by which that entitlement is conferred.

(4) A full-time referee shall be regarded as an officer or employee, and the Minister shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If a full-time referee would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive a payment, pension or gratuity under the scheme—

(a) he or she is not so entitled on becoming (whether on appointment as a referee or at any later time while holding office as a referee) a contributor to any other superannuation scheme; and

(b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Minister in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to a full-time referee (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A full-time referee is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

"superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Full-time referee entitled to re-appointment to former employment in certain cases

10. (1) A person who—

(a) ceases to be a full-time referee because the period for which the person was appointed has ended or because of resignation;

(b) was, immediately before being appointed as such a referee—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a proclaimed statutory body; and

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that proclaimed statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time referee.

(2) If subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time referee,

the person has, in the event of ceasing to be a full-time referee, such rights (if any) to appointment as such an officer or employee as are specified in the instrument of appointment as a full-time referee or as are agreed on by the person and by or on behalf of the Government.

(3) The Governor may, in the instrument of appointment of a referee or senior referee, insert terms that negate or vary the effect of this clause in relation to the referee or senior referee.

(4) In this clause—

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

SCHEDULE 2—REPEALS

(Sec. 49)

Consumer Claims Tribunals Act 1974 No. 16—the whole Act

Landlord and Tenant (Rental Bonds) Act 1977 No. 44—section 35

Consumer Claims Tribunals (Rental Bonds) Amendment Act 1985 No. 66—the whole Act

Residential Tenancies Act 1987 No. 26—section 136

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 50)

Definition

1. In this Schedule—

"commencement day" means the day appointed under section 2.

Referees

2. Any person who, immediately before the commencement day, held office under the repealed Act as a referee or as the senior referee continues on and after that day as a referee or as the senior referee under and subject to this Act on the terms and conditions on which the office was held immediately before that day.

Registry of consumer claims tribunals

3. The registry of consumer claims tribunals, as established by this Act, is a continuation of, and the same legal entity as, the registry of consumer claims tribunals established by section 11 (1) of the repealed Act.

Staff of the registry of consumer claims tribunals

4. A person who, immediately before the commencement day, held office under the Public Service Act 1979 as registrar of consumer claims tribunals or as a person required for the proper functioning of the registry of consumer claims tribunals maintained under the repealed Act continues on and after that day to hold that office subject to the Public Service Act 1979 and to the terms and conditions applicable to the holder of that office immediately before that day.

Consumer claims tribunals

5. If, immediately before the commencement day, a consumer claims tribunal has not determined a consumer claim that has been referred to it in accordance with the repealed Act, the tribunal—

(a) continues to be constituted as if it had been constituted under this Act; and

(b) shall hear and determine the claim as if the claim had been made under this Act.

Consumer Claims Regulation 1976

6. The Consumer Claims Regulation 1976 is repealed.

Effect of section 30 of Interpretation Act 1987 (Effect of amendments etc. of Acts and statutory rules)

7. Section 50 and this Schedule have effect in addition to, and do not derogate from the operation of, section 30 of the Interpretation Act 1987.

References to the repealed Act

8. A reference in any other Act or instrument to the repealed Act shall be construed as a reference to this Act.

General

9. (1) If—

(a) any order made or other thing done or begun under the repealed Act before the commencement day still has effect immediately before, or is not completed before, the commencement day; and

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(b) that order or thing could have been made, done or begun under this Act if it had been in force when the order was made or the thing was done or begun,

the order made or the thing done continues to have effect, or the thing begun may be completed, as if it had been made, done or begun under this Act.

(2) Subclause (1) does not apply to any thing for which other provision is made by this Schedule.

Disposal of claims in respect of rental bonds

10. (1) In this clause—

(a) a reference to this Act is a reference to this Act excluding—

(i) section 10 (3);

(ii) section 30 (1) (b)–(g) and (2) (c);

(iii) section 36; and

(iv) section 41 (2) (a) and (3) (a);

(b) a reference to a lessor, lessee or rental bond is a reference to a lessor, lessee or rental bond as defined in the Landlord and Tenant (Rental Bonds) Act 1977; and

(c) a reference to the relevant day is a reference to the day on which section 83 (3) of the Residential Tenancies Act 1987 commences.

(2) Until the relevant day, this Act applies to a claim, whether made under section 13 of this Act or section 13 of the repealed Act, by a lessor or a lessee under a lease in relation to a rental bond, including a claim in relation to any matter which, under the terms or conditions of the lease, could, but for the Landlord and Tenant (Rental Bonds) Act 1977, have given rise to a claim against a rental bond deposited or paid in accordance with those terms or conditions, in the same way as it applies to a consumer claim.

(3) On the relevant day subclause (2) ceases to have effect.

(4) If a claim to which subclause (2) applies is lodged under section 13 of this Act or section 13 of the repealed Act before the relevant day and is not determined before that day, the hearing and determination of the claim may be completed as if that subclause had not ceased to have effect.

Regulations

11. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subcluase (1) may, if the regulations so provide, take effect from the commencement day or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

(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 that 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 that publication.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect despite any other clause of this Schedule.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987

CONSUMER CLAIMS TRIBUNALS ACT 1987 No. 206

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO REFEREES
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CONSUMER CLAIMS TRIBUNALS ACT 1987 No. 206

NEW SOUTH WALES



Act No. 206, 1987

An Act to provide for the constitution of consumer claims tribunals, to define their jurisdiction and functions, to provide for related matters, and to repeal the Consumer Claims Tribunals Act 1974 and certain other enactments. [Assented to 8 December 1987]

See also Credit (Consumer Claims Tribunals) Amendment Act 1987.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Consumer Claims Tribunals Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—

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

"business" includes—

(a) a business not carried on for profit; and

(b) a trade or profession;

"claimant" means a consumer who has lodged a consumer claim in accordance with section 13 or who is joined as a claimant in accordance with section 14;

"Commissioner" means the Commissioner for Consumer Affairs holding office under section 6 of the Fair Trading Act 1987;

"consumer" means—

(a) a natural person;

(b) a firm;

(c) an exempt proprietary company;

(d) a body corporate constituted under the Strata Titles Act 1973 or under the Strata Titles (Leasehold) Act 1986;

(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;

(f) an incorporated association; or

(g) an unincorporated body whose members are associated for a common purpose,

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—

(a) a claim by a consumer for the payment of a specified sum of money;

(b) a claim by a consumer for the supply of specified services;

(c) a claim by a consumer for relief from payment of a specified sum of money;

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

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;

"deputy registrar" means a person who is holding office under this Act as a deputy registrar of consumer claims;

"firm" has the same meaning as it has in the Partnership Act 1892;

"goods" means any tangible thing, other than money, that is or may be the subject of trade or commerce;

"party", in relation to a consumer claim, means a claimant or a respondent to the claim;

"referee" means a person who is holding office under this Act as a referee of consumer claims tribunals;

"registrar" means the person who is holding office under this Act as the registrar of consumer claims tribunals;

"registry" means the registry of consumer claims tribunals established and maintained under this Act;

"repealed Act" means the Consumer Claims Tribunals Act 1974 as in force immediately before the commencement of this Act;

"respondent", in relation to a consumer claim, means a person on whom a notice of the claim has been served under section 14, other than a person joined as a claimant in accordance with that section;

"senior referee" means the person holding office under this Act as the senior referee of consumer claims tribunals or, if there is for the time being only one referee, means the person holding office as such;

"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—

(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;

(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;

(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; and

(h) subject to section 10 (4), 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;

"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

(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;

"trade or commerce" includes any business or professional activity;

"tribunal" means a consumer claims tribunal constituted under this Act.

(2) In this Act—

(a) a reference to supply in relation to goods includes a reference to resupply;

(b) a reference to the supply of goods includes a reference to agreeing to supply goods;

(c) a reference to the supply of services includes a reference to agreeing to supply services;

(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.

(3) In this Act, a reference to an exempt proprietary company, a foreign company or a recognised company is a reference to such a company as defined in section 5 of the Companies (New South Wales) Code.

(4) In this Act—

(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.

(5) For the purposes of this Act, a person who claims to be a consumer shall be presumed to be such until the contrary is proved and, in any legal proceedings (including proceedings before a 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.

PART 2—CONSUMER CLAIMS TRIBUNALS

Appointment of referees

4. (1) The Governor may appoint persons to be referees of tribunals.

(2) A person appointed under subsection (1) may be appointed as a full-time referee or as a part-time referee.

(3) If 2 or more persons hold or are to hold office as referees at the same time, the Governor must appoint one of them, either in the person's instrument of appointment or in a later instrument, to be the senior referee.

(4) Schedule 1 has effect with respect to referees.

Constitution of tribunals

5. (1) A tribunal is constituted by a referee sitting alone.

(2) The senior referee may constitute a tribunal to hear and determine consumer claims anywhere in New South Wales.

(3) If 2 or more persons hold office as referees at the same time, the senior referee has the duty of deciding which of those persons will constitute a tribunal to hear and determine a consumer claim.

Sittings of tribunals

6. A tribunal shall sit at such place and on such day or days as the senior referee decides.

Registry of consumer claims tribunals

7. For the purposes of this Act, there shall be established and maintained a registry of consumer claims tribunals.

Registrar, deputy registrars and staff of tribunals

8. (1) A registrar and deputy registrars of consumer claims tribunals and such other persons as may be required for the proper functioning of tribunals shall be appointed in accordance with the Public Service Act 1979.

(2) The registrar has, and deputy registrars have, such functions as are conferred or imposed on the registrar or deputy registrars by or under this or any other Act or by the senior referee.

(3) The registrar may delegate to a deputy registrar, with such limitations and on such conditions as the registrar thinks fit, the exercise of such functions as are conferred on the registrar by this or any other Act (other than the power of delegation conferred by this subsection).

(4) The senior referee may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

Records

9. (1) The official record of a tribunal in respect of a consumer claim that it has heard and determined consists of—

(a) the claim as lodged by the claimant;

(b) the notation of the nature of the issues in dispute as found and recorded by the tribunal in the course of the hearing of the claim;

(c) any ruling given by the tribunal with respect to its jurisdiction to hear and decide the claim; and

(d) any order made by the tribunal in respect of the claim.

(2) At any time while the registry is required to be open for business, each of the parties to a consumer claim is entitled—

(a) to inspect, without charge, the official record relating to the claim; and

(b) on payment of the prescribed fee (if any), to obtain a copy of that record or of any part of it.

(3) If, for any reason, an official record cannot be made available to a person who seeks to exercise a right conferred by subsection (2), the registrar must, if requested to do so by that person, take all practicable steps to obtain as soon as possible the record so as to enable that person to exercise the right.

(4) If any matter concerning a consumer claim comes before a court, the registrar must, if requested to do so by the court or any of the parties concerned, make the official record relating to the claim available for production to the court without charge.

(5) The Commissioner is entitled, without charge—

(a) to inspect the official record relating to a consumer claim;

(b) to obtain a copy of that record or of any part of it; and

(c) after a consumer claim has been finally determined by a tribunal, to inspect any document relating to the hearing or determination of the claim that is not included in the official record relating to the claim.

(6) The Commissioner is entitled to include in any report or other document that the Commissioner is required or permitted by law to prepare or publish any information obtained from a record or document inspected in accordance with subsection (5).

(7) A person is not entitled to inspect or obtain a copy of any official record or other document relating to a consumer claim except as provided by this section.

PART 3—JURISDICTION OF TRIBUNALS

Jurisdiction

10. (1) Subject to this Act, a tribunal has jurisdiction to hear and determine any consumer claim referred to it in accordance with this Act.

(2) Subject to subsections (3) and (4), a tribunal has jurisdiction in respect of a consumer claim whether or not the matter to which the claim relates arose before or after the commencement of this Act.

(3) A tribunal does not have jurisdiction in respect of a consumer claim if—

(a) in the case of a consumer claim relating to goods or services that have been supplied to or for the claimant, the date on which the supply was made or, if made in instalments, the date on which the supply was last made;

(b) in the case of a consumer claim relating to goods or services which 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, the date on or by which the supply was required under the contract to be made; or

(c) in the case of a consumer claim relating to—

(i) a contract for the supply of goods or services to which neither paragraph (a) or (b) applies; or

(ii) a collateral contract,

the date on which the contract was entered into,

was more than 3 years before the date on which the claim was lodged in accordance with section 13 of this Act or section 13 of the repealed Act.

(4) If a matter relating to the provision of credit arises or could be determined under the Credit Act 1984, that matter is not within the jurisdiction of a tribunal unless the provision of that Act under which the matter arises or could be determined is a provision prescribed for the purposes of this section.

Other jurisdictions excluded in some cases

11. (1) In this section, a reference to a court is a reference to a court, tribunal, board or other body or person which or who—

(a) is empowered under any other Act; or

(b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but such a reference does not include a reference—

(c) to a court, tribunal, board, body or person which or who, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter; or

(d) to a court, tribunal, board, body or person which or who is prescribed, or belongs to a class which or who is prescribed, for the purposes of this paragraph.

(2) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, no issue arising under the claim was the subject of a dispute in proceedings pending before a court,

a court has no jurisdiction to hear or determine such an issue, unless—

(c) the claim, or the part of the claim to which the issue relates—

(i) is withdrawn; or

(ii) is dismissed for want of jurisdiction; or

(d) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of a tribunal made in respect of the claim on the ground that the tribunal had no jurisdiction to hear and determine the issue.

(3) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, an issue arising under the claim was the subject of a dispute in proceedings pending before a court,

the tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue, unless—

(c) those proceedings, or the part of the proceedings relating to the issue, are or is—

(i) withdrawn; or

(ii) dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits; or

(d) a court of record has, on a judicial review, quashed or declared invalid—

(i) those proceedings or that part of those proceedings; or

(ii) any order, judgment or decision made in those proceedings in relation to the issue,

on the ground that the first-mentioned court had no jurisdiction to hear and determine the issue.

(4) For the purposes of subsection (2), an issue arises under a consumer claim made to a tribunal in accordance with this Act only if the existence of the issue is shown in the claim or is recorded in the record made by the tribunal in accordance with section 9 (1) (b).

(5) At a hearing of a consumer claim by a tribunal, a finding or decision made by a court, tribunal, board, body or person referred to in subsection (1) (c) or (d) is admissible as evidence of the finding or decision.

Tribunal to be immune from judicial review

12. (1) Except as provided by subsection (2), a court of record has no jurisdiction to grant relief or a remedy by way of—

(a) a judgment or order in the nature of prohibition, mandamus, certiorari or other prerogative writ;

(b) a declaratory judgment or order; or

(c) an injunction,

in respect of a consumer claim heard and determined or to be heard or determined by a tribunal in accordance with this Act or in respect of any ruling, order or other proceeding relating to such a claim.

(2) A court is not precluded from granting relief or a remedy of a kind referred to in subsection (1) if, in respect of a consumer claim—

(a) a tribunal has given a ruling under section 26 or refused or failed to give such a ruling after the jurisdiction of the tribunal to hear and determine the claim has been disputed by a party to the claim and the ground on which the relief or remedy is sought is that—

(i) the ruling was erroneous; or

(ii) the tribunal erred in refusing or failing to give the ruling after its jurisdiction was disputed; or

(b) a tribunal has made an order under section 30 and the ground on which the relief or remedy is sought is that—

(i) the tribunal had no jurisdiction to make the order; or

(ii) in relation to the hearing or determination of the claim, a party to the claim had been denied natural justice.

PART 4—PROCEEDINGS BEFORE TRIBUNALS

Division 1—Consumer claims

Making a consumer claim

13. (1) A consumer who wishes to have a consumer claim heard and determined by a tribunal must lodge with the registrar of consumer claim tribunals or the registrar of a Local Court a claim in the prescribed form, together with the prescribed fee.

(2) It is the duty of the registrar of consumer claims tribunals or the registrar of a Local Court to help a consumer who requests assistance in completing the prescribed claim form.

(3) As soon as practicable after a consumer claim is lodged with the registrar of a Local Court, that registrar must ensure that the claim is transmitted to the registrar of consumer claims tribunals.

Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings

14. (1) As soon as practicable after a consumer claim has been lodged with or transmitted to the registrar of consumer claims tribunals in accordance with section 13, the registrar must—

(a) subject to subsection (4), refer the claim to a tribunal for hearing and determination;

(b) fix a time for the initial hearing of the claim by the tribunal;

(c) cause notice of the claim to be served—

(i) on every person against whom the claim is made; and

(ii) on every other person (other than the claimant) who appears from the claim to have an interest in resolving the dispute to which the claim relates; and

(d) cause notice of the time and place fixed for the initial hearing of the claim to be served on the claimant and on each person on whom notice of the claim is required to be served in accordance with paragraph (c).

(2) If a referee, whether constituted as a tribunal or not, is of the opinion that a person has a sufficient interest in resolving the dispute to which a consumer claim relates but the person has not been served with notice of the claim in accordance with subsection (1) (c), the referee may make an order directing that the person be joined either as a claimant or as a respondent as appears to the referee to be appropriate.

(3) If an order under subsection (2) is made joining a person as a claimant or as a respondent to a consumer claim, the registrar must cause notice of the claim and notice of the time and place for the initial or further hearing of the claim to be served on the person as soon as practicable after the making of the order.

(4) Whenever it appears to the registrar that a consumer claim—

(a) is unusually complex; or

(b) may require special expertise or qualifications in order to determine it,

the registrar must bring the claim to the attention of the senior referee.

(5) When a consumer claim is brought to the attention of the senior referee in accordance with subsection (4), the senior referee must, if satisfied as to either of the matters referred to in subsection (4) (a) or (b), direct the registrar to refer the claim to a tribunal constituted by a referee who has the requisite expertise or qualifications for dealing with that kind of claim.

(6) Whenever the case so requires, whether before or after the time fixed in accordance with subsection (1) (b), the registrar may—

(a) fix another time for the initial hearing of a consumer claim; or

(b) refer the claim to another tribunal and fix a time for the initial hearing of the claim by that other tribunal.

(7) Whenever the power conferred by subsection (6) is exercised in relation to a consumer claim, the registrar must ensure that subsection (1) (d) is complied with in respect of that claim.

Parties to a consumer claim

15. (1) Every person on whom notice of a consumer claim has been served in accordance with section 14 (other than a person joined as a claimant in accordance with that section) is a respondent to the claim.

(2) If—

(a) a person beneficially entitled to property that is subject to a trust;

(b) a person in respect of whom an order made under the Protected Estates Act 1983 is in force; or

(c) a deceased person,

is or would have been eligible to lodge or be a respondent to a consumer claim, then—

(d) the trustee of that property;

(e) the manager of the estate of that person; or

(f) the executor or administrator of the estate of that deceased person,

may, on behalf of that person or the estate of that person, lodge, or become a respondent to, a consumer claim and exercise all the rights and functions of a claimant or respondent under this Act.

Withdrawal of claim

16. At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the claimant may withdraw the claim.

Division 2—Hearings of consumer claims

Control of tribunal procedures

17. (1) Except as expressly provided by this Act or the regulations, a tribunal has control of and responsibility for its own procedures, but in exercising its functions under this Act must conform to the rules of natural justice.

(2) If satisfied that 2 or more consumer claims are related, a tribunal may hear and determine those claims together.

Continuity of tribunal

18. (1) Subject to this section, a tribunal must, at all times throughout the hearing of a consumer claim, be constituted by the same referee.

(2) If, in the course of hearing a consumer claim, it becomes apparent to the referee who constitutes the tribunal concerned that, because of the complexity of the case or for any other valid reason, it would be desirable for the claim to be heard and determined by a tribunal constituted by another referee who has appropriate expertise or qualifications to deal with that kind of claim, the referee may adjourn the hearing of the claim and refer the claim back to the registrar.

(3) When a consumer claim has been referred back to the registrar under subsection (2), the registrar must make arrangements with the senior referee for the claim to be heard at another time, and at the same or another place, by a tribunal constituted by a referee who has appropriate expertise or qualifications to deal with that kind of claim.

(4) If the hearing of a consumer claim by a tribunal is, before the tribunal has determined the claim, interrupted by the death, incapacity or removal from office of the referee who constitutes the tribunal, the senior referee must, if the claimant wishes to proceed with the claim, make arrangements for the hearing and determination of the claim to be recommenced before a tribunal constituted by another referee.

(5) When arrangements have been made in accordance with subsection (3) or (4), the registrar must cause notice of the time and place for the further hearing of the claim to be served on the parties to the claim.

Power of tribunal to amend a consumer claim

19. (1) At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the tribunal may make such amendments to the claim as it considers necessary.

(2) Any such amendments may be made by the tribunal either at the request of the claimant or, with the approval of the claimant, of its own motion.

Adjournment of the hearing of a consumer claim

20. (1) A tribunal may from time to time adjourn the hearing of a consumer claim for such purposes as it considers necessary.

(2) If the hearing of a consumer claim is adjourned, the registrar must serve on each party to the claim a notice of the time and place to which the hearing is adjourned.

(3) If—

(a) at a time and place to which the hearing of a consumer claim is adjourned a referee is or was not present; or

(b) it appears that a referee will not be present at a time and place to which the hearing is adjourned,

the registrar must, by notice served on each of the parties to the claim, adjourn the hearing to another time either at the same place or at another place.

Presentation of cases before a tribunal

21. (1) Subject to this section, a party to a consumer claim has the carriage of the party's own case.

(2) A party to a consumer claim ("the party") is not entitled to be represented at the hearing of the claim unless—

(a) the party is a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code and the corporation is represented by one of the corporation's officers, as defined by section 5 (1) of that Code;

(b) the party is a body corporate constituted under the Strata Titles Act 1973 and the body corporate is represented by the proprietor or, if there is more than one proprietor, by one of the proprietors constituting the body corporate;

(c) the party is a body corporate constituted under the Strata Titles (Leasehold) Act 1986 and the body corporate is represented by the lessee or, if there is more than one lessee, by one of the lessees constituting the body corporate;

(d) the party is—

(i) a society, association or union registered under the Co-operation Act 1923;

(ii) a society or association registered under the Permanent Building Societies Act 1967; or

(iii) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the Credit Union Act 1969,

and the society, association or union is represented by one of its officers, as defined by section 5 of the Co-operation Act 1923, section 3 (1) of the Permanent Building Societies Act 1967 or section 3 (1) of the Credit Union Act 1969;

(e) the party is a foreign company, or a recognised company, in respect of which an exemption from compliance with—

(i) section 61 (1) of the Co-operation Act 1923;

(ii) section 35 (1) of the Permanent Building Societies Act 1967; or

(iii) section 28 (1) of the Credit Union Act 1969,

is for the time being in force and the company is represented by a person who would, if the company were a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code, be one of the corporation's officers, as defined by section 5 (1) of that Code;

(f) the party is a firm and the firm is represented by one of its partners;

(g) the party is an incorporated association registered under the Associations Incorporation Act 1984 and the association is represented by one of its officers, as defined by section 3 of that Act;

(h) the party is an unincorporated body of persons and the body is represented by—

(i) a secretary or treasurer of the body; or

(ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body;

(i) any other party to the claim is, or is represented by a person who is, entitled by law to practise as a legal practitioner, either in New South Wales or elsewhere;

(j) the tribunal, of its own motion, decides that the party would be placed at a disadvantage if not represented at the hearing; or

(k) in any other case, the representation is, on determination of an application made by or on behalf of the party, approved by the tribunal.

(3) A tribunal must not give an approval to an application referred to in subsection (2) (k) unless the tribunal is satisfied that—

(a) the representation should be permitted as a matter of necessity; or

(b) the party by whom or on whose behalf the application was made would otherwise be placed at a disadvantage.

(4) In dealing with an application for the representation of a party to a consumer claim, a tribunal—

(a) must not approve the application unless it is satisfied that the representative concerned—

(i) has sufficient personal knowledge of the issues in dispute to enable that representative to represent the applicant effectively at the hearing by the tribunal of the claim; and

(ii) is vested with sufficient authority to bind the applicant; and

(b) may make its approval of the application subject to such conditions as it considers necessary to ensure that any other party to the claim is not placed at a disadvantage by the representative of the applicant at the hearing of the claim by the tribunal.

(5) Whenever a tribunal makes its approval of such an application subject to conditions, the right of the representative concerned to represent the applicant at a hearing of a consumer claim is subject to compliance with those conditions by the applicant and the applicant's representative.

(6) Contravention of any provision of this section or a condition imposed by a tribunal does not of itself invalidate a tribunal's hearing of a consumer claim, nor does it invalidate any order made by a tribunal in respect of such a claim.

Consumer claims to be heard in private

22. (1) Except as provided by subsection (2), a tribunal must hear a consumer claim in private.

(2) If—

(a) a tribunal is satisfied that a person wishes, for educational, research or study purposes, to attend the hearing of a consumer claim that is before the tribunal; and

(b) none of the parties to the claim objects,

the tribunal may allow the person to attend the hearing.

Taking of evidence

23. (1) At the hearing of a consumer claim, evidence relevant to the determination of the claim may be given orally or in writing.

(2) If evidence at the hearing of a consumer claim is to be given orally, it must be given on oath.

(3) If evidence at the hearing of a consumer claim is to be given in writing, it must be given either on oath or by statutory declaration, as the giver of evidence prefers.

(4) A tribunal is not bound by the rules or practice of evidence and, subject to subsections (2) and (3), can inform itself on any matter in such manner as it considers appropriate.

Tribunal to act on available evidence

24. (1) Subject to section 25, if at the hearing of a consumer claim by a tribunal the case of a party to the claim is not presented to the tribunal—

(a) the tribunal must decide the issues in dispute on such evidence as is otherwise adduced before it; and

(b) an order made by the tribunal to determine the claim is just as effective as if that party had been fully heard.

(2) Subject to section 25, if none of the cases of the parties to a consumer claim is presented to the tribunal at the time and place fixed for the hearing of the claim, or at the time and place to which the hearing of the claim is adjourned, the tribunal must make an order dismissing the claim.

Rehearing of certain consumer claims

25. (1) If a tribunal has decided an issue in dispute in the absence of a party to a consumer claim or a consumer claim has been dismissed under section 24 (2), a referee may, on application in the prescribed form made to the registrar within 14 days after receiving notice of the decision or the order dismissing the claim, order the claim to be reheard if satisfied that there was sufficient reason for the party's absence.

(2) For the purposes of subsection (1), a party to a consumer claim shall not be taken to have been absent at the time when a tribunal decided an issue in dispute if, at that time—

(a) the party was represented before the tribunal; or

(b) the party's case with respect to the issue had been presented to the tribunal in writing.

(3) In making an order under subsection (1), a referee must make provision for fixing a time and a place for the rehearing.

(4) Whenever a consumer claim is ordered to be reheard—

(a) the registrar must serve on each of the parties to the claim a notice of the order and of the time and place of the rehearing; and

(b) the order of the tribunal made at the previous hearing ceases to have effect unless restored in accordance with subsection (5).

(5) If the party on whose application a rehearing is ordered does not appear—

(a) at the time and place fixed for the rehearing; or

(b) at the time and place to which a tribunal has adjourned the rehearing,

the tribunal may, if it thinks fit and without rehearing or further rehearing the claim, direct that the order made at the previous hearing of the claim be restored.

(6) If a tribunal gives a direction under subsection (5), the order to which the direction relates—

(a) is thereupon fully restored; and

(b) shall be regarded as having had effect at all times since it was made.

Procedure to be followed when a tribunal's jurisdiction is disputed

26. (1) If, before a tribunal has determined a consumer claim, the jurisdiction of the tribunal to hear and determine the claim is disputed by a party to the claim, the tribunal must not proceed to determine the claim without first giving a ruling as to whether or not it has that jurisdiction.

(2) A tribunal must not, of its own motion, make an order under section 30 (2) (a) dismissing a consumer claim for want of jurisdiction without first giving a ruling as to its jurisdiction to hear and determine the claim.

(3) If a tribunal has given a ruling under this section in respect of its jurisdiction to hear and determine a consumer claim, it must not determine the claim—

(a) until at least 14 days have elapsed since the day on which the ruling was given; or

(b) if, before it has determined the claim, it becomes aware that proceedings for relief or a remedy of a kind mentioned in section 12 have been instituted in a court in respect of the ruling—until those proceedings have been concluded.

Powers of tribunal with respect to frivolous etc. consumer claims

27. If, at the hearing of a consumer claim, a tribunal is satisfied that—

(a) the claim is frivolous, vexatious, misconceived or lacking in substance; or

(b) for any other reason it should not deal with the claim,

it may make an order dismissing the claim.

No costs to be allowed

28. A tribunal has no power to award costs to or against a party to a consumer claim.

Division 3—Determination of consumer claims

Tribunal to attempt to conciliate

29. (1) A tribunal must not make an order in respect of a consumer claim that is before it unless it has brought, or used its best endeavours to bring, the parties to the claim to a settlement acceptable to all of them.

(2) If such a settlement is reached, the tribunal must make an order under this Division that gives effect to the settlement to the extent permitted by this Division.

(3) A tribunal must ensure that any meeting or proceeding held for the purposes of subsection (1) is not held in public.

(4) Any statement or admission made before a tribunal at a meeting or proceeding held for the purposes of subsection (1) is not admissible at a hearing of the consumer claim concerned or in any other legal proceeding.

Tribunal orders

30. (1) In determining a consumer claim wholly or partly in favour of a claimant, a tribunal may, subject to sections 31 and 32, 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;

(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;

(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;

(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;

(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, a tribunal may make such one or more of the following orders as it considers appropriate:

(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, a 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.

(4) If, in the course of hearing a consumer claim, it appears to a tribunal desirable to do so, it may make an interim order under subsection (1) or (2) pending final determination of the claim.

(5) Whenever a tribunal makes an order under subsection (1), (2) or (4), it may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect.

(6) In making an order under this section, a tribunal may impose such conditions as it considers appropriate.

(7) If a tribunal has made an order under this section 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—

(a) for such reasons and for such period; or

(b) until the happening of such event or the fulfilment of such condition,

as the tribunal specifies in the further order.

(8) Section 97 (joint liability) of the Supreme Court Act 1970 applies to and in respect of an order of a tribunal as if such an order were a judgment of the Supreme Court.

Matters to be taken into account by tribunal when making orders under sec. 30

31. (1) When making an order or orders under section 30, a 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 a tribunal is considering whether or not to make an order or orders under section 30, 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;

(b) whether or not—

(i) any party to the claim was not reasonably able to protect the party's interests; 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,

because of the age or physical or mental capacity of that party or person;

(c) the relative economic circumstances, educational background and literacy of—

(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—

(i) by any other party to the claim;

(ii) by any person acting or appearing or purporting to act for or on behalf of any other party to the claim; or

(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;

(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;

(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;

(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;

(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;

(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

(vi) the commercial or other setting, purpose and effect of the contract.

(3) Without limiting subsection (1), when a 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

(b) where the Commissioner 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.

Limitation on tribunal's jurisdiction to make orders

32. (1) A 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 2 or more claimants, in favour of those claimants if the total of—

(a) the amount or amounts (if any) of money to be paid;

(b) the value or values (if any) of the work to be performed, or the services to be supplied;

(c) the amount or amounts (if any) of money to be declared not to be due or owing; and

(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 prescribed amount.

(2) A 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 2 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 prescribed amount.

Power to correct tribunal orders

33. If an order made by a tribunal contains—

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or

(d) a defect of form,

the tribunal, of its own motion or on the application of a party to the consumer claim in respect of which the order was made, or another tribunal, on the application of such a party, may correct the order.

Order of tribunal to be final

34. (1) Subject to section 36, an order of a tribunal is final and binding on all parties to a consumer claim that is heard and determined by the tribunal.

(2) No appeal lies in respect of an order of a tribunal.

(3) Subsection (2) does not affect the operation of section 12.

Division 4—Enforcement of tribunal orders

Enforcement of orders to pay money

35. (1) In this section, a reference to a Local Court does not include a reference to a Local Court specified in an order in force under section 77 (3) of the Local Courts (Civil Claims) Act 1970.

(2) Whenever a tribunal has made an order under section 30 requiring the payment of an amount of money to a party to a consumer claim—

(a) that party may enforce the order by filing in a Local Court a copy of the order, certified by the registrar of consumer claims tribunals to be a true copy, together with an affidavit executed by that party—

(i) specifying the amount then unpaid under the order; and

(ii) if the order is to take effect only when a default has occurred, specifying particulars of the default; or

(b) the registrar of consumer claims tribunals may, at the request and on behalf of that party, enforce the order either—

(i) by filing in a Local Court a copy of the order, together with a certificate, signed by that registrar, specifying the matters referred to in paragraph (a) (i) and (ii); or

(ii) by transmitting to the registrar of a Local Court in the prescribed manner the contents of the order and of the certificate referred to in subparagraph (i).

(3) When—

(a) a copy of an order of a tribunal and an affidavit or a certificate are filed in a Local Court in accordance with subsection (2) (a) or (b) (i); or

(b) the contents of an order of a tribunal and of a certificate are transmitted to the registrar of a Local Court in accordance with subsection 2 (b) (ii),

the order shall, for the purposes of the Local Courts (Civil Claims) Act 1970, be taken to be an unsatisfied judgment for the amount specified in the affidavit or certificate as being unpaid.

(4) If the registrar of consumer claims tribunals is requested to enforce an order of a tribunal requiring a party to a consumer claim to pay an amount of money, the registrar, before exercising the power conferred by subsection (2), must—

(a) serve on the party a notice requiring the party to comply with the order; and

(b) allow the party a further period of 7 days to comply with the requirement.

(5) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal has been filed in a Local Court; or

(b) the contents of such an order have been transmitted to the registrar of a Local Court,

any later filing of a copy of the order in that or another Local Court, or any later transmission of the contents of such an order to the registrar of that or another Local Court, is of no effect.

(6) No fee is payable for the filing in a Local Court of the documents referred to in subsection (2).

(7) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal and an affidavit or certificate have been filed in a Local Court; or

(b) the contents of an order of a tribunal and of a certificate have been transmitted to the registrar of a Local Court,

the Commissioner may, at the request or with the consent of the person in whose favour the order was made, exercise on behalf of that person any of the functions conferred on a judgment creditor by Division 2 of Part V of the Local Courts (Civil Claims) Act 1970 (Examination of judgment debtor).

Enforcement of other tribunal orders

36. **(1)** This section applies to an order of a tribunal made under section 30 (1) (b), (c), (e), (f) or (g) or (2) (c) but does not so apply if the operation of the order has been suspended under section 30 (7).

(2) An order of a tribunal to which this section applies is enforceable only as provided by this section.

(3) A tribunal that is determining a consumer claim may, when making an order to which this section applies or later, give leave to the person in whose favour the order is made to renew the claim if the order is not complied with within the period specified by the tribunal.

(4) If an order to which this section applies has not been complied with within the period specified by the tribunal, the person in whose favour the order was made may effect a renewal of the consumer claim to which the order relates by lodging with the registrar a notification in the prescribed form to the effect that the order has not been so complied with.

(5) The provisions of this Part apply to a notification lodged in accordance with subsection (4) as if the notification were a consumer claim lodged in accordance with section 13.

(6) When a consumer claim has been renewed in accordance with subsection (4), the tribunal concerned—

(a) may make such other appropriate order under section 30 as it could have made when the claim was originally determined; or

(b) may refuse to make such an order.

Power of Commissioner to represent creditors in certain company winding up proceedings

37. Whenever—

(a) a creditor of a company is, by virtue of section 363 of the Companies (New South Wales) Code, entitled to apply for the winding up of the company; and

(b) the debt, or part of the debt, that entitles the creditor to make that application is an amount that a tribunal has ordered to be paid to the creditor by an order made under section 30 of this Act or under section 23 of the repealed Act,

the Commissioner is, with the consent or at the request of the creditor, entitled to exercise all of the rights and functions conferred by that Code on the creditor with respect to the winding up of the company.

PART 5—MISCELLANEOUS MATTERS

Offence to act in contempt of a tribunal

38. **(1)** A person shall not—

(a) intentionally insult—

(i) a referee while constituted as a tribunal or while on his or her way to or from a hearing of the tribunal; or

(ii) any person while attending a hearing of a tribunal or while on his or her way to or from such a hearing;

(b) intentionally misbehave at a hearing of a tribunal;

(c) intentionally and without lawful excuse, interrupt a hearing of a tribunal;

(d) assault a person who is attending, or intentionally prevent or obstruct a person entitled or permitted to attend from attending, a hearing of a tribunal; or

(e) without lawful excuse, disobey a lawful direction given to the person by a tribunal during a hearing of the tribunal.

Penalty: 5 penalty units or imprisonment for 6 months.

(2) The reference in subsection (1) (e) to a direction does not include a reference to an order made under section 30.

(3) If at a hearing of a tribunal it appears to the tribunal that a person is committing or has committed a contravention of subsection (1), the tribunal may direct the person to leave the place at which the hearing is being held.

(4) A person shall not fail to comply with a direction given under subsection (3).

Penalty: 5 penalty units.

(5) Only a person who holds a prescribed office, or a person authorised by a person who holds such an office, may act as informant in proceedings for an offence under this section.

Contracting out prohibited

39. (1) This Act has effect despite any stipulation to the contrary in any contract, agreement, arrangement or understanding.

(2) No contract, agreement, arrangement or understanding made or entered into either before or after the commencement of this Act has the effect of nullifying, varying or excluding any of the provisions of this Act.

Service of notices

40. Where, by or under this Act, the registrar is required to serve a notice or other document on a person, the posting of the notice or document by pre-paid mail to that person at that person's usual address or the address of that person last known to the registrar shall be taken to be sufficient service for the purposes of this Act.

Certain matters to be reported to senior referee or Minister

41. (1) In subsection (2), a reference to a referee is a reference to a referee other than the senior referee.

(2) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal and the referee who constitutes the tribunal considers the matter to be of importance as regards the relationship of consumer and supplier; or

(b) a referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the senior referee,

the referee must make a report on the matter in writing to the senior referee.

(3) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal constituted by the senior referee and the senior referee considers the matter to be of importance as regards the relationship of consumer and supplier;

(b) the senior referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the Minister; or

(c) a referee reports a matter to the senior referee in accordance with subsection (1) and the senior referee is of the opinion that the matter is of a kind referred to in paragraph (a) or (b),

the senior referee must make a report on the matter to the Minister.

(4) If, in the course of, or as a result of, the hearing of a consumer claim by a 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 Commissioner, the tribunal may make a report in writing on that conduct and transmit it to the Commissioner.

(5) If a report transmitted to the Commissioner under subsection (4) relates to a supplier who appears to the Commissioner to be—

(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,

the Commissioner 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.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a communication made under this section.

Power of Commissioner to establish and maintain a list of unsatisfactory suppliers

42. (1) Subject to this section, the Commissioner may establish and maintain for the purposes of this Act a list to be known as the unsatisfactory suppliers list.

(2) The Commissioner 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 41;

(b) any supplier who has failed to comply with the requirements of an order of a 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 section 30 of this Act, or under section 23 of the repealed Act, during the period prescribed for the purposes of this paragraph.

(3) The Commissioner 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 Commissioner may allow.

(4) The Commissioner 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) The Commissioner may from time to time publish in such manner as the Commissioner thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5).

Publication of particulars of consumer claims

43. The registrar must publish, in such manner as the Minister directs or approves, such particulars in relation to consumer claims as the Minister specifies in the direction or approval.

Power of Minister to intervene in certain cases

44. **(1)** If any proceeding, order or ruling of a tribunal is challenged, reviewed or called into question in proceedings before a court, the Minister is entitled to intervene at any stage of the proceedings before the court, by counsel, solicitor or agent.

(2) If the Minister exercises the right conferred by subsection (1) to intervene in proceedings before a court, the Minister thereupon becomes a party to, and has all the rights of a party to, those proceedings, including the right to appeal against any order or judgment of the court.

Protection for things done under this Act

45. Except as expressly provided by this Act, neither the registrar, a deputy registrar, a referee, claimant, supplier nor any other person is liable in any legal proceeding on account of—

(a) any proceedings, publication or other thing—

(i) taken, made or done under the authority of this Act or the regulations; or

(ii) taken, made or done in good faith under the purported authority of this Act or the regulations; or

(b) any act or thing that in good faith has been omitted to be done in respect of the administration of this Act or the regulations.

Evidence in legal proceedings

46. In any legal proceedings, proof is not, until evidence is given to the contrary, required to be given of—

(a) the constitution of a tribunal; or

(b) the appointment of, or the holding of office by, any referee or the registrar or a deputy registrar.

Proceedings for offences

47. Proceedings for an offence against this Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Regulations

48. **(1)** 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 and, in particular, for or with respect to—

(a) if a party to a consumer claim is an unincorporated body of persons or a firm—the representation of, and the service of notices on, the party at hearings of the claim by a tribunal;

(b) the procedure and practice to be followed at hearings before a tribunal of consumer claims;

(c) the procedure and practice to be followed in the office of the registrar or any deputy registrar;

(d) empowering the registrar to give directions as to the steps to be taken in order to make a consumer claim ready for hearing by a tribunal;

(e) the duties of, and the records to be kept by, the registrar in relation to, or for the purposes of, the hearing of any claim before a tribunal;

(f) the maintenance and disposal of official records of tribunals and other documents relating to consumer claims;

(g) forms to be used for the purposes of this Act;

(h) the service of notices required for the purposes of this Act;

(i) fees to be paid under this Act;

(j) the waiver of fees to be so paid or, in the case of fees that have already been so paid, the refund of all or a part of those fees;

(k) the issue of summonses requiring parties to a consumer claim or other persons to give evidence before, or produce evidence to, the tribunal that is hearing the claim;

(l) the enforcement of orders of tribunals; and

(m) the transfer from the Commercial Tribunal to a consumer claims tribunal, in the prescribed circumstances, of proceedings relating to the provision of credit.

(2) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

Repeals

49. Each Act specified in Schedule 2 is, to the extent indicated, repealed.

Savings and transitional provisions

50. Schedule 3 has effect.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES

(Sec. 4 (4))

Age of referees

1. A person of or above the age of 72 years is not eligible to be appointed as a referee or to act as such.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Acting referees etc.

2. (1) The Governor may, from time to time, appoint a person to act in the office of a referee during the illness or absence from office of a referee, and the person, while so acting, has all the functions of, and shall be deemed to be, a referee.

(2) The Governor may, from time to time, appoint a referee to act in the office of senior referee during the illness or absence of the senior referee, and the referee, while so acting, has all the immunities and functions of the senior referee.

(3) The Governor may, at any time, remove a person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a referee or senior referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

(a) a vacancy in the office of a referee or the senior referee shall be regarded as an absence from office of the referee or senior referee; and

(b) a referee shall be regarded as absent from office as a referee during any period when the referee acts in the office of the senior referee pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a referee holds office—

(a) in the case of a full-time referee—for such period not exceeding 7 years; or

(b) in the case of a part-time referee—for such period not exceeding 3 years,

as may be specified in the referee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Full-time referees

4. A full-time referee must devote the whole of his or her time to the duties of the office of referee, except to the extent permitted by this Act or by the Minister.

Remuneration

5. (1) A full-time referee is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the referee.

(2) A part-time referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time referee.

Vacancy in office of referee

6. (1) The office of referee becomes vacant if the referee—

(a) dies;

(b) completes a term of office and is not re-appointed;

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

(c) resigns the office by instrument in writing addressed to the Minister;

(d) is removed or retired from office by the Governor under this clause;

(e) reaches the age of 72 years;

(f) being a full-time referee, is absent for a period of 28 consecutive days, except on leave granted, in the case of the senior referee, by the Minister or, in the case of any other referee, by the senior referee;

(g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

(i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or

(j) being a full-time referee, engages in any paid employment outside the duties of the office of referee, except with the consent of the Minister.

(2) The Governor may remove a referee from office for incapacity, incompetence or misbehaviour.

(3) A full-time referee may, after reaching the age of 60 years and before reaching the age of 72 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Filling of vacancy in office of referee

7. If the office of senior referee or referee becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) The Public Service Act 1979 does not apply to the appointment of a person as a referee or as the senior referee, but after appointment that Act and the regulations under that Act, except in so far as they are inconsistent with this Act, apply—

(a) to a full-time referee; and

(b) to a part-time referee while exercising the functions of a referee,

as if they had been appointed under the first-mentioned Act.

(2) If provision is made by or under any other Act—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of part-time referee.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Preservation of rights of a referee who was previously a public servant etc.

9. (1) This clause applies where a full-time referee was, immediately before being appointed as such a referee—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a proclaimed statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of appointment, a full-time referee—

(a) retains any rights accrued or accruing to him or her as such an officer, contributor or person;

(b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time referee; and

(c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time referee.

(3) Service as a full-time referee shall be regarded as service as an officer or employee for the purposes of any law—

(a) under which the rights referred to in subclause (2) accrued or were accruing;

(b) under which he or she continues to contribute; or

(c) by which that entitlement is conferred.

(4) A full-time referee shall be regarded as an officer or employee, and the Minister shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If a full-time referee would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive a payment, pension or gratuity under the scheme—

(a) he or she is not so entitled on becoming (whether on appointment as a referee or at any later time while holding office as a referee) a contributor to any other superannuation scheme; and

(b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Minister in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to a full-time referee (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A full-time referee is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

"superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Full-time referee entitled to re-appointment to former employment in certain cases

10. (1) A person who—

(a) ceases to be a full-time referee because the period for which the person was appointed has ended or because of resignation;

(b) was, immediately before being appointed as such a referee—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a proclaimed statutory body; and

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that proclaimed statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time referee.

(2) If subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time referee,

the person has, in the event of ceasing to be a full-time referee, such rights (if any) to appointment as such an officer or employee as are specified in the instrument of appointment as a full-time referee or as are agreed on by the person and by or on behalf of the Government.

(3) The Governor may, in the instrument of appointment of a referee or senior referee, insert terms that negate or vary the effect of this clause in relation to the referee or senior referee.

(4) In this clause—

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

SCHEDULE 2—REPEALS

(Sec. 49)

Consumer Claims Tribunals Act 1974 No. 16—the whole Act

Landlord and Tenant (Rental Bonds) Act 1977 No. 44—section 35

Consumer Claims Tribunals (Rental Bonds) Amendment Act 1985 No. 66—the whole Act

Residential Tenancies Act 1987 No. 26—section 136

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 50)

Definition

1. In this Schedule—

"commencement day" means the day appointed under section 2.

Referees

2. Any person who, immediately before the commencement day, held office under the repealed Act as a referee or as the senior referee continues on and after that day as a referee or as the senior referee under and subject to this Act on the terms and conditions on which the office was held immediately before that day.

Registry of consumer claims tribunals

3. The registry of consumer claims tribunals, as established by this Act, is a continuation of, and the same legal entity as, the registry of consumer claims tribunals established by section 11 (1) of the repealed Act.

Staff of the registry of consumer claims tribunals

4. A person who, immediately before the commencement day, held office under the Public Service Act 1979 as registrar of consumer claims tribunals or as a person required for the proper functioning of the registry of consumer claims tribunals maintained under the repealed Act continues on and after that day to hold that office subject to the Public Service Act 1979 and to the terms and conditions applicable to the holder of that office immediately before that day.

Consumer claims tribunals

5. If, immediately before the commencement day, a consumer claims tribunal has not determined a consumer claim that has been referred to it in accordance with the repealed Act, the tribunal—

(a) continues to be constituted as if it had been constituted under this Act; and

(b) shall hear and determine the claim as if the claim had been made under this Act.

Consumer Claims Regulation 1976

6. The Consumer Claims Regulation 1976 is repealed.

Effect of section 30 of Interpretation Act 1987 (Effect of amendments etc. of Acts and statutory rules)

7. Section 50 and this Schedule have effect in addition to, and do not derogate from the operation of, section 30 of the Interpretation Act 1987.

References to the repealed Act

8. A reference in any other Act or instrument to the repealed Act shall be construed as a reference to this Act.

General

9. (1) If—

(a) any order made or other thing done or begun under the repealed Act before the commencement day still has effect immediately before, or is not completed before, the commencement day; and

(b) that order or thing could have been made, done or begun under this Act if it had been in force when the order was made or the thing was done or begun,

the order made or the thing done continues to have effect, or the thing begun may be completed, as if it had been made, done or begun under this Act.

(2) Subclause (1) does not apply to any thing for which other provision is made by this Schedule.

Disposal of claims in respect of rental bonds

10. (1) In this clause—

(a) a reference to this Act is a reference to this Act excluding—

(i) section 10 (3);

(ii) section 30 (1) (b)–(g) and (2) (c);

(iii) section 36; and

(iv) section 41 (2) (a) and (3) (a);

(b) a reference to a lessor, lessee or rental bond is a reference to a lessor, lessee or rental bond as defined in the Landlord and Tenant (Rental Bonds) Act 1977; and

(c) a reference to the relevant day is a reference to the day on which section 83 (3) of the Residential Tenancies Act 1987 commences.

(2) Until the relevant day, this Act applies to a claim, whether made under section 13 of this Act or section 13 of the repealed Act, by a lessor or a lessee under a lease in relation to a rental bond, including a claim in relation to any matter which, under the terms or conditions of the lease, could, but for the Landlord and Tenant (Rental Bonds) Act 1977, have given rise to a claim against a rental bond deposited or paid in accordance with those terms or conditions, in the same way as it applies to a consumer claim.

(3) On the relevant day subclause (2) ceases to have effect.

(4) If a claim to which subclause (2) applies is lodged under section 13 of this Act or section 13 of the repealed Act before the relevant day and is not determined before that day, the hearing and determination of the claim may be completed as if that subclause had not ceased to have effect.

Regulations

11. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subcluase (1) may, if the regulations so provide, take effect from the commencement day or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

(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 that 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 that publication.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect despite any other clause of this Schedule.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987

CONSUMER CLAIMS TRIBUNALS ACT 1987 No. 206

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO REFEREES
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CONSUMER CLAIMS TRIBUNALS ACT 1987 No. 206

NEW SOUTH WALES



Act No. 206, 1987

An Act to provide for the constitution of consumer claims tribunals, to define their jurisdiction and functions, to provide for related matters, and to repeal the Consumer Claims Tribunals Act 1974 and certain other enactments. [Assented to 8 December 1987]

See also Credit (Consumer Claims Tribunals) Amendment Act 1987.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Consumer Claims Tribunals Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—

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

"business" includes—

(a) a business not carried on for profit; and

(b) a trade or profession;

"claimant" means a consumer who has lodged a consumer claim in accordance with section 13 or who is joined as a claimant in accordance with section 14;

"Commissioner" means the Commissioner for Consumer Affairs holding office under section 6 of the Fair Trading Act 1987;

"consumer" means—

(a) a natural person;

(b) a firm;

(c) an exempt proprietary company;

(d) a body corporate constituted under the Strata Titles Act 1973 or under the Strata Titles (Leasehold) Act 1986;

(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;

(f) an incorporated association; or

(g) an unincorporated body whose members are associated for a common purpose,

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—

(a) a claim by a consumer for the payment of a specified sum of money;

(b) a claim by a consumer for the supply of specified services;

(c) a claim by a consumer for relief from payment of a specified sum of money;

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

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;

"deputy registrar" means a person who is holding office under this Act as a deputy registrar of consumer claims;

"firm" has the same meaning as it has in the Partnership Act 1892;

"goods" means any tangible thing, other than money, that is or may be the subject of trade or commerce;

"party", in relation to a consumer claim, means a claimant or a respondent to the claim;

"referee" means a person who is holding office under this Act as a referee of consumer claims tribunals;

"registrar" means the person who is holding office under this Act as the registrar of consumer claims tribunals;

"registry" means the registry of consumer claims tribunals established and maintained under this Act;

"repealed Act" means the Consumer Claims Tribunals Act 1974 as in force immediately before the commencement of this Act;

"respondent", in relation to a consumer claim, means a person on whom a notice of the claim has been served under section 14, other than a person joined as a claimant in accordance with that section;

"senior referee" means the person holding office under this Act as the senior referee of consumer claims tribunals or, if there is for the time being only one referee, means the person holding office as such;

"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—

(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;

(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;

(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; and

(h) subject to section 10 (4), 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;

"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

(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;

"trade or commerce" includes any business or professional activity;

"tribunal" means a consumer claims tribunal constituted under this Act.

(2) In this Act—

(a) a reference to supply in relation to goods includes a reference to resupply;

(b) a reference to the supply of goods includes a reference to agreeing to supply goods;

(c) a reference to the supply of services includes a reference to agreeing to supply services;

(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.

(3) In this Act, a reference to an exempt proprietary company, a foreign company or a recognised company is a reference to such a company as defined in section 5 of the Companies (New South Wales) Code.

(4) In this Act—

(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.

(5) For the purposes of this Act, a person who claims to be a consumer shall be presumed to be such until the contrary is proved and, in any legal proceedings (including proceedings before a 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.

PART 2—CONSUMER CLAIMS TRIBUNALS

Appointment of referees

4. (1) The Governor may appoint persons to be referees of tribunals.

(2) A person appointed under subsection (1) may be appointed as a full-time referee or as a part-time referee.

(3) If 2 or more persons hold or are to hold office as referees at the same time, the Governor must appoint one of them, either in the person's instrument of appointment or in a later instrument, to be the senior referee.

(4) Schedule 1 has effect with respect to referees.

Constitution of tribunals

5. (1) A tribunal is constituted by a referee sitting alone.

(2) The senior referee may constitute a tribunal to hear and determine consumer claims anywhere in New South Wales.

(3) If 2 or more persons hold office as referees at the same time, the senior referee has the duty of deciding which of those persons will constitute a tribunal to hear and determine a consumer claim.

Sittings of tribunals

6. A tribunal shall sit at such place and on such day or days as the senior referee decides.

Registry of consumer claims tribunals

7. For the purposes of this Act, there shall be established and maintained a registry of consumer claims tribunals.

Registrar, deputy registrars and staff of tribunals

8. (1) A registrar and deputy registrars of consumer claims tribunals and such other persons as may be required for the proper functioning of tribunals shall be appointed in accordance with the Public Service Act 1979.

(2) The registrar has, and deputy registrars have, such functions as are conferred or imposed on the registrar or deputy registrars by or under this or any other Act or by the senior referee.

(3) The registrar may delegate to a deputy registrar, with such limitations and on such conditions as the registrar thinks fit, the exercise of such functions as are conferred on the registrar by this or any other Act (other than the power of delegation conferred by this subsection).

(4) The senior referee may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

Records

9. (1) The official record of a tribunal in respect of a consumer claim that it has heard and determined consists of—

(a) the claim as lodged by the claimant;

(b) the notation of the nature of the issues in dispute as found and recorded by the tribunal in the course of the hearing of the claim;

(c) any ruling given by the tribunal with respect to its jurisdiction to hear and decide the claim; and

(d) any order made by the tribunal in respect of the claim.

(2) At any time while the registry is required to be open for business, each of the parties to a consumer claim is entitled—

(a) to inspect, without charge, the official record relating to the claim; and

(b) on payment of the prescribed fee (if any), to obtain a copy of that record or of any part of it.

(3) If, for any reason, an official record cannot be made available to a person who seeks to exercise a right conferred by subsection (2), the registrar must, if requested to do so by that person, take all practicable steps to obtain as soon as possible the record so as to enable that person to exercise the right.

(4) If any matter concerning a consumer claim comes before a court, the registrar must, if requested to do so by the court or any of the parties concerned, make the official record relating to the claim available for production to the court without charge.

(5) The Commissioner is entitled, without charge—

(a) to inspect the official record relating to a consumer claim;

(b) to obtain a copy of that record or of any part of it; and

(c) after a consumer claim has been finally determined by a tribunal, to inspect any document relating to the hearing or determination of the claim that is not included in the official record relating to the claim.

(6) The Commissioner is entitled to include in any report or other document that the Commissioner is required or permitted by law to prepare or publish any information obtained from a record or document inspected in accordance with subsection (5).

(7) A person is not entitled to inspect or obtain a copy of any official record or other document relating to a consumer claim except as provided by this section.

PART 3—JURISDICTION OF TRIBUNALS

Jurisdiction

10. (1) Subject to this Act, a tribunal has jurisdiction to hear and determine any consumer claim referred to it in accordance with this Act.

(2) Subject to subsections (3) and (4), a tribunal has jurisdiction in respect of a consumer claim whether or not the matter to which the claim relates arose before or after the commencement of this Act.

(3) A tribunal does not have jurisdiction in respect of a consumer claim if—

(a) in the case of a consumer claim relating to goods or services that have been supplied to or for the claimant, the date on which the supply was made or, if made in instalments, the date on which the supply was last made;

(b) in the case of a consumer claim relating to goods or services which 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, the date on or by which the supply was required under the contract to be made; or

(c) in the case of a consumer claim relating to—

(i) a contract for the supply of goods or services to which neither paragraph (a) or (b) applies; or

(ii) a collateral contract,

the date on which the contract was entered into,

was more than 3 years before the date on which the claim was lodged in accordance with section 13 of this Act or section 13 of the repealed Act.

(4) If a matter relating to the provision of credit arises or could be determined under the Credit Act 1984, that matter is not within the jurisdiction of a tribunal unless the provision of that Act under which the matter arises or could be determined is a provision prescribed for the purposes of this section.

Other jurisdictions excluded in some cases

11. (1) In this section, a reference to a court is a reference to a court, tribunal, board or other body or person which or who—

(a) is empowered under any other Act; or

(b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but such a reference does not include a reference—

(c) to a court, tribunal, board, body or person which or who, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter; or

(d) to a court, tribunal, board, body or person which or who is prescribed, or belongs to a class which or who is prescribed, for the purposes of this paragraph.

(2) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, no issue arising under the claim was the subject of a dispute in proceedings pending before a court,

a court has no jurisdiction to hear or determine such an issue, unless—

(c) the claim, or the part of the claim to which the issue relates—

(i) is withdrawn; or

(ii) is dismissed for want of jurisdiction; or

(d) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of a tribunal made in respect of the claim on the ground that the tribunal had no jurisdiction to hear and determine the issue.

(3) If—

(a) a consumer claim has been lodged in accordance with section 13; and

(b) at the time when the claim was so lodged, an issue arising under the claim was the subject of a dispute in proceedings pending before a court,

the tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue, unless—

(c) those proceedings, or the part of the proceedings relating to the issue, are or is—

(i) withdrawn; or

(ii) dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits; or

(d) a court of record has, on a judicial review, quashed or declared invalid—

(i) those proceedings or that part of those proceedings; or

(ii) any order, judgment or decision made in those proceedings in relation to the issue,

on the ground that the first-mentioned court had no jurisdiction to hear and determine the issue.

(4) For the purposes of subsection (2), an issue arises under a consumer claim made to a tribunal in accordance with this Act only if the existence of the issue is shown in the claim or is recorded in the record made by the tribunal in accordance with section 9 (1) (b).

(5) At a hearing of a consumer claim by a tribunal, a finding or decision made by a court, tribunal, board, body or person referred to in subsection (1) (c) or (d) is admissible as evidence of the finding or decision.

Tribunal to be immune from judicial review

12. (1) Except as provided by subsection (2), a court of record has no jurisdiction to grant relief or a remedy by way of—

(a) a judgment or order in the nature of prohibition, mandamus, certiorari or other prerogative writ;

(b) a declaratory judgment or order; or

(c) an injunction,

in respect of a consumer claim heard and determined or to be heard or determined by a tribunal in accordance with this Act or in respect of any ruling, order or other proceeding relating to such a claim.

(2) A court is not precluded from granting relief or a remedy of a kind referred to in subsection (1) if, in respect of a consumer claim—

(a) a tribunal has given a ruling under section 26 or refused or failed to give such a ruling after the jurisdiction of the tribunal to hear and determine the claim has been disputed by a party to the claim and the ground on which the relief or remedy is sought is that—

(i) the ruling was erroneous; or

(ii) the tribunal erred in refusing or failing to give the ruling after its jurisdiction was disputed; or

(b) a tribunal has made an order under section 30 and the ground on which the relief or remedy is sought is that—

(i) the tribunal had no jurisdiction to make the order; or

(ii) in relation to the hearing or determination of the claim, a party to the claim had been denied natural justice.

PART 4—PROCEEDINGS BEFORE TRIBUNALS

Division 1—Consumer claims

Making a consumer claim

13. (1) A consumer who wishes to have a consumer claim heard and determined by a tribunal must lodge with the registrar of consumer claim tribunals or the registrar of a Local Court a claim in the prescribed form, together with the prescribed fee.

(2) It is the duty of the registrar of consumer claims tribunals or the registrar of a Local Court to help a consumer who requests assistance in completing the prescribed claim form.

(3) As soon as practicable after a consumer claim is lodged with the registrar of a Local Court, that registrar must ensure that the claim is transmitted to the registrar of consumer claims tribunals.

Fixing of times for hearings of consumer claims and notification to parties of times and places of hearings

14. (1) As soon as practicable after a consumer claim has been lodged with or transmitted to the registrar of consumer claims tribunals in accordance with section 13, the registrar must—

(a) subject to subsection (4), refer the claim to a tribunal for hearing and determination;

(b) fix a time for the initial hearing of the claim by the tribunal;

(c) cause notice of the claim to be served—

(i) on every person against whom the claim is made; and

(ii) on every other person (other than the claimant) who appears from the claim to have an interest in resolving the dispute to which the claim relates; and

(d) cause notice of the time and place fixed for the initial hearing of the claim to be served on the claimant and on each person on whom notice of the claim is required to be served in accordance with paragraph (c).

(2) If a referee, whether constituted as a tribunal or not, is of the opinion that a person has a sufficient interest in resolving the dispute to which a consumer claim relates but the person has not been served with notice of the claim in accordance with subsection (1) (c), the referee may make an order directing that the person be joined either as a claimant or as a respondent as appears to the referee to be appropriate.

(3) If an order under subsection (2) is made joining a person as a claimant or as a respondent to a consumer claim, the registrar must cause notice of the claim and notice of the time and place for the initial or further hearing of the claim to be served on the person as soon as practicable after the making of the order.

(4) Whenever it appears to the registrar that a consumer claim—

(a) is unusually complex; or

(b) may require special expertise or qualifications in order to determine it,

the registrar must bring the claim to the attention of the senior referee.

(5) When a consumer claim is brought to the attention of the senior referee in accordance with subsection (4), the senior referee must, if satisfied as to either of the matters referred to in subsection (4) (a) or (b), direct the registrar to refer the claim to a tribunal constituted by a referee who has the requisite expertise or qualifications for dealing with that kind of claim.

(6) Whenever the case so requires, whether before or after the time fixed in accordance with subsection (1) (b), the registrar may—

(a) fix another time for the initial hearing of a consumer claim; or

(b) refer the claim to another tribunal and fix a time for the initial hearing of the claim by that other tribunal.

(7) Whenever the power conferred by subsection (6) is exercised in relation to a consumer claim, the registrar must ensure that subsection (1) (d) is complied with in respect of that claim.

Parties to a consumer claim

15. (1) Every person on whom notice of a consumer claim has been served in accordance with section 14 (other than a person joined as a claimant in accordance with that section) is a respondent to the claim.

(2) If—

(a) a person beneficially entitled to property that is subject to a trust;

(b) a person in respect of whom an order made under the Protected Estates Act 1983 is in force; or

(c) a deceased person,

is or would have been eligible to lodge or be a respondent to a consumer claim, then—

(d) the trustee of that property;

(e) the manager of the estate of that person; or

(f) the executor or administrator of the estate of that deceased person,

may, on behalf of that person or the estate of that person, lodge, or become a respondent to, a consumer claim and exercise all the rights and functions of a claimant or respondent under this Act.

Withdrawal of claim

16. At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the claimant may withdraw the claim.

Division 2—Hearings of consumer claims

Control of tribunal procedures

17. (1) Except as expressly provided by this Act or the regulations, a tribunal has control of and responsibility for its own procedures, but in exercising its functions under this Act must conform to the rules of natural justice.

(2) If satisfied that 2 or more consumer claims are related, a tribunal may hear and determine those claims together.

Continuity of tribunal

18. (1) Subject to this section, a tribunal must, at all times throughout the hearing of a consumer claim, be constituted by the same referee.

(2) If, in the course of hearing a consumer claim, it becomes apparent to the referee who constitutes the tribunal concerned that, because of the complexity of the case or for any other valid reason, it would be desirable for the claim to be heard and determined by a tribunal constituted by another referee who has appropriate expertise or qualifications to deal with that kind of claim, the referee may adjourn the hearing of the claim and refer the claim back to the registrar.

(3) When a consumer claim has been referred back to the registrar under subsection (2), the registrar must make arrangements with the senior referee for the claim to be heard at another time, and at the same or another place, by a tribunal constituted by a referee who has appropriate expertise or qualifications to deal with that kind of claim.

(4) If the hearing of a consumer claim by a tribunal is, before the tribunal has determined the claim, interrupted by the death, incapacity or removal from office of the referee who constitutes the tribunal, the senior referee must, if the claimant wishes to proceed with the claim, make arrangements for the hearing and determination of the claim to be recommenced before a tribunal constituted by another referee.

(5) When arrangements have been made in accordance with subsection (3) or (4), the registrar must cause notice of the time and place for the further hearing of the claim to be served on the parties to the claim.

Power of tribunal to amend a consumer claim

19. (1) At any time before a tribunal has finally completed its hearing of a consumer claim and before the tribunal has begun its determination of the claim, the tribunal may make such amendments to the claim as it considers necessary.

(2) Any such amendments may be made by the tribunal either at the request of the claimant or, with the approval of the claimant, of its own motion.

Adjournment of the hearing of a consumer claim

20. (1) A tribunal may from time to time adjourn the hearing of a consumer claim for such purposes as it considers necessary.

(2) If the hearing of a consumer claim is adjourned, the registrar must serve on each party to the claim a notice of the time and place to which the hearing is adjourned.

(3) If—

(a) at a time and place to which the hearing of a consumer claim is adjourned a referee is or was not present; or

(b) it appears that a referee will not be present at a time and place to which the hearing is adjourned,

the registrar must, by notice served on each of the parties to the claim, adjourn the hearing to another time either at the same place or at another place.

Presentation of cases before a tribunal

21. (1) Subject to this section, a party to a consumer claim has the carriage of the party's own case.

(2) A party to a consumer claim ("the party") is not entitled to be represented at the hearing of the claim unless—

(a) the party is a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code and the corporation is represented by one of the corporation's officers, as defined by section 5 (1) of that Code;

(b) the party is a body corporate constituted under the Strata Titles Act 1973 and the body corporate is represented by the proprietor or, if there is more than one proprietor, by one of the proprietors constituting the body corporate;

(c) the party is a body corporate constituted under the Strata Titles (Leasehold) Act 1986 and the body corporate is represented by the lessee or, if there is more than one lessee, by one of the lessees constituting the body corporate;

(d) the party is—

(i) a society, association or union registered under the Co-operation Act 1923;

(ii) a society or association registered under the Permanent Building Societies Act 1967; or

(iii) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the Credit Union Act 1969,

and the society, association or union is represented by one of its officers, as defined by section 5 of the Co-operation Act 1923, section 3 (1) of the Permanent Building Societies Act 1967 or section 3 (1) of the Credit Union Act 1969;

(e) the party is a foreign company, or a recognised company, in respect of which an exemption from compliance with—

(i) section 61 (1) of the Co-operation Act 1923;

(ii) section 35 (1) of the Permanent Building Societies Act 1967; or

(iii) section 28 (1) of the Credit Union Act 1969,

is for the time being in force and the company is represented by a person who would, if the company were a corporation within the meaning of section 5 (1) of the Companies (New South Wales) Code, be one of the corporation's officers, as defined by section 5 (1) of that Code;

(f) the party is a firm and the firm is represented by one of its partners;

(g) the party is an incorporated association registered under the Associations Incorporation Act 1984 and the association is represented by one of its officers, as defined by section 3 of that Act;

(h) the party is an unincorporated body of persons and the body is represented by—

(i) a secretary or treasurer of the body; or

(ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body;

(i) any other party to the claim is, or is represented by a person who is, entitled by law to practise as a legal practitioner, either in New South Wales or elsewhere;

(j) the tribunal, of its own motion, decides that the party would be placed at a disadvantage if not represented at the hearing; or

(k) in any other case, the representation is, on determination of an application made by or on behalf of the party, approved by the tribunal.

(3) A tribunal must not give an approval to an application referred to in subsection (2) (k) unless the tribunal is satisfied that—

(a) the representation should be permitted as a matter of necessity; or

(b) the party by whom or on whose behalf the application was made would otherwise be placed at a disadvantage.

(4) In dealing with an application for the representation of a party to a consumer claim, a tribunal—

(a) must not approve the application unless it is satisfied that the representative concerned—

(i) has sufficient personal knowledge of the issues in dispute to enable that representative to represent the applicant effectively at the hearing by the tribunal of the claim; and

(ii) is vested with sufficient authority to bind the applicant; and

(b) may make its approval of the application subject to such conditions as it considers necessary to ensure that any other party to the claim is not placed at a disadvantage by the representative of the applicant at the hearing of the claim by the tribunal.

(5) Whenever a tribunal makes its approval of such an application subject to conditions, the right of the representative concerned to represent the applicant at a hearing of a consumer claim is subject to compliance with those conditions by the applicant and the applicant's representative.

(6) Contravention of any provision of this section or a condition imposed by a tribunal does not of itself invalidate a tribunal's hearing of a consumer claim, nor does it invalidate any order made by a tribunal in respect of such a claim.

Consumer claims to be heard in private

22. (1) Except as provided by subsection (2), a tribunal must hear a consumer claim in private.

(2) If—

(a) a tribunal is satisfied that a person wishes, for educational, research or study purposes, to attend the hearing of a consumer claim that is before the tribunal; and

(b) none of the parties to the claim objects,

the tribunal may allow the person to attend the hearing.

Taking of evidence

23. (1) At the hearing of a consumer claim, evidence relevant to the determination of the claim may be given orally or in writing.

(2) If evidence at the hearing of a consumer claim is to be given orally, it must be given on oath.

(3) If evidence at the hearing of a consumer claim is to be given in writing, it must be given either on oath or by statutory declaration, as the giver of evidence prefers.

(4) A tribunal is not bound by the rules or practice of evidence and, subject to subsections (2) and (3), can inform itself on any matter in such manner as it considers appropriate.

Tribunal to act on available evidence

24. (1) Subject to section 25, if at the hearing of a consumer claim by a tribunal the case of a party to the claim is not presented to the tribunal—

(a) the tribunal must decide the issues in dispute on such evidence as is otherwise adduced before it; and

(b) an order made by the tribunal to determine the claim is just as effective as if that party had been fully heard.

(2) Subject to section 25, if none of the cases of the parties to a consumer claim is presented to the tribunal at the time and place fixed for the hearing of the claim, or at the time and place to which the hearing of the claim is adjourned, the tribunal must make an order dismissing the claim.

Rehearing of certain consumer claims

25. (1) If a tribunal has decided an issue in dispute in the absence of a party to a consumer claim or a consumer claim has been dismissed under section 24 (2), a referee may, on application in the prescribed form made to the registrar within 14 days after receiving notice of the decision or the order dismissing the claim, order the claim to be reheard if satisfied that there was sufficient reason for the party's absence.

(2) For the purposes of subsection (1), a party to a consumer claim shall not be taken to have been absent at the time when a tribunal decided an issue in dispute if, at that time—

(a) the party was represented before the tribunal; or

(b) the party's case with respect to the issue had been presented to the tribunal in writing.

(3) In making an order under subsection (1), a referee must make provision for fixing a time and a place for the rehearing.

(4) Whenever a consumer claim is ordered to be reheard—

(a) the registrar must serve on each of the parties to the claim a notice of the order and of the time and place of the rehearing; and

(b) the order of the tribunal made at the previous hearing ceases to have effect unless restored in accordance with subsection (5).

(5) If the party on whose application a rehearing is ordered does not appear—

(a) at the time and place fixed for the rehearing; or

(b) at the time and place to which a tribunal has adjourned the rehearing,

the tribunal may, if it thinks fit and without rehearing or further rehearing the claim, direct that the order made at the previous hearing of the claim be restored.

(6) If a tribunal gives a direction under subsection (5), the order to which the direction relates—

(a) is thereupon fully restored; and

(b) shall be regarded as having had effect at all times since it was made.

Procedure to be followed when a tribunal's jurisdiction is disputed

26. (1) If, before a tribunal has determined a consumer claim, the jurisdiction of the tribunal to hear and determine the claim is disputed by a party to the claim, the tribunal must not proceed to determine the claim without first giving a ruling as to whether or not it has that jurisdiction.

(2) A tribunal must not, of its own motion, make an order under section 30 (2) (a) dismissing a consumer claim for want of jurisdiction without first giving a ruling as to its jurisdiction to hear and determine the claim.

(3) If a tribunal has given a ruling under this section in respect of its jurisdiction to hear and determine a consumer claim, it must not determine the claim—

(a) until at least 14 days have elapsed since the day on which the ruling was given; or

(b) if, before it has determined the claim, it becomes aware that proceedings for relief or a remedy of a kind mentioned in section 12 have been instituted in a court in respect of the ruling—until those proceedings have been concluded.

Powers of tribunal with respect to frivolous etc. consumer claims

27. If, at the hearing of a consumer claim, a tribunal is satisfied that—

(a) the claim is frivolous, vexatious, misconceived or lacking in substance; or

(b) for any other reason it should not deal with the claim,

it may make an order dismissing the claim.

No costs to be allowed

28. A tribunal has no power to award costs to or against a party to a consumer claim.

Division 3—Determination of consumer claims

Tribunal to attempt to conciliate

29. (1) A tribunal must not make an order in respect of a consumer claim that is before it unless it has brought, or used its best endeavours to bring, the parties to the claim to a settlement acceptable to all of them.

(2) If such a settlement is reached, the tribunal must make an order under this Division that gives effect to the settlement to the extent permitted by this Division.

(3) A tribunal must ensure that any meeting or proceeding held for the purposes of subsection (1) is not held in public.

(4) Any statement or admission made before a tribunal at a meeting or proceeding held for the purposes of subsection (1) is not admissible at a hearing of the consumer claim concerned or in any other legal proceeding.

Tribunal orders

30. (1) In determining a consumer claim wholly or partly in favour of a claimant, a tribunal may, subject to sections 31 and 32, 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;

(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;

(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;

(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;

(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, a tribunal may make such one or more of the following orders as it considers appropriate:

(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, a 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.

(4) If, in the course of hearing a consumer claim, it appears to a tribunal desirable to do so, it may make an interim order under subsection (1) or (2) pending final determination of the claim.

(5) Whenever a tribunal makes an order under subsection (1), (2) or (4), it may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect.

(6) In making an order under this section, a tribunal may impose such conditions as it considers appropriate.

(7) If a tribunal has made an order under this section 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—

(a) for such reasons and for such period; or

(b) until the happening of such event or the fulfilment of such condition,

as the tribunal specifies in the further order.

(8) Section 97 (joint liability) of the Supreme Court Act 1970 applies to and in respect of an order of a tribunal as if such an order were a judgment of the Supreme Court.

Matters to be taken into account by tribunal when making orders under sec. 30

31. (1) When making an order or orders under section 30, a 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 a tribunal is considering whether or not to make an order or orders under section 30, 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;

(b) whether or not—

(i) any party to the claim was not reasonably able to protect the party's interests; 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,

because of the age or physical or mental capacity of that party or person;

(c) the relative economic circumstances, educational background and literacy of—

(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—

(i) by any other party to the claim;

(ii) by any person acting or appearing or purporting to act for or on behalf of any other party to the claim; or

(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;

(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;

(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;

(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;

(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;

(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

(vi) the commercial or other setting, purpose and effect of the contract.

(3) Without limiting subsection (1), when a 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

(b) where the Commissioner 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.

Limitation on tribunal's jurisdiction to make orders

32. (1) A 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 2 or more claimants, in favour of those claimants if the total of—

(a) the amount or amounts (if any) of money to be paid;

(b) the value or values (if any) of the work to be performed, or the services to be supplied;

(c) the amount or amounts (if any) of money to be declared not to be due or owing; and

(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 prescribed amount.

(2) A 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 2 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 prescribed amount.

Power to correct tribunal orders

33. If an order made by a tribunal contains—

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or

(d) a defect of form,

the tribunal, of its own motion or on the application of a party to the consumer claim in respect of which the order was made, or another tribunal, on the application of such a party, may correct the order.

Order of tribunal to be final

34. (1) Subject to section 36, an order of a tribunal is final and binding on all parties to a consumer claim that is heard and determined by the tribunal.

(2) No appeal lies in respect of an order of a tribunal.

(3) Subsection (2) does not affect the operation of section 12.

Division 4—Enforcement of tribunal orders

Enforcement of orders to pay money

35. (1) In this section, a reference to a Local Court does not include a reference to a Local Court specified in an order in force under section 77 (3) of the Local Courts (Civil Claims) Act 1970.

(2) Whenever a tribunal has made an order under section 30 requiring the payment of an amount of money to a party to a consumer claim—

(a) that party may enforce the order by filing in a Local Court a copy of the order, certified by the registrar of consumer claims tribunals to be a true copy, together with an affidavit executed by that party—

(i) specifying the amount then unpaid under the order; and

(ii) if the order is to take effect only when a default has occurred, specifying particulars of the default; or

(b) the registrar of consumer claims tribunals may, at the request and on behalf of that party, enforce the order either—

(i) by filing in a Local Court a copy of the order, together with a certificate, signed by that registrar, specifying the matters referred to in paragraph (a) (i) and (ii); or

(ii) by transmitting to the registrar of a Local Court in the prescribed manner the contents of the order and of the certificate referred to in subparagraph (i).

(3) When—

(a) a copy of an order of a tribunal and an affidavit or a certificate are filed in a Local Court in accordance with subsection (2) (a) or (b) (i); or

(b) the contents of an order of a tribunal and of a certificate are transmitted to the registrar of a Local Court in accordance with subsection 2 (b) (ii),

the order shall, for the purposes of the Local Courts (Civil Claims) Act 1970, be taken to be an unsatisfied judgment for the amount specified in the affidavit or certificate as being unpaid.

(4) If the registrar of consumer claims tribunals is requested to enforce an order of a tribunal requiring a party to a consumer claim to pay an amount of money, the registrar, before exercising the power conferred by subsection (2), must—

(a) serve on the party a notice requiring the party to comply with the order; and

(b) allow the party a further period of 7 days to comply with the requirement.

(5) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal has been filed in a Local Court; or

(b) the contents of such an order have been transmitted to the registrar of a Local Court,

any later filing of a copy of the order in that or another Local Court, or any later transmission of the contents of such an order to the registrar of that or another Local Court, is of no effect.

(6) No fee is payable for the filing in a Local Court of the documents referred to in subsection (2).

(7) If, in accordance with subsection (2)—

(a) a copy of an order of a tribunal and an affidavit or certificate have been filed in a Local Court; or

(b) the contents of an order of a tribunal and of a certificate have been transmitted to the registrar of a Local Court,

the Commissioner may, at the request or with the consent of the person in whose favour the order was made, exercise on behalf of that person any of the functions conferred on a judgment creditor by Division 2 of Part V of the Local Courts (Civil Claims) Act 1970 (Examination of judgment debtor).

Enforcement of other tribunal orders

36. **(1)** This section applies to an order of a tribunal made under section 30 (1) (b), (c), (e), (f) or (g) or (2) (c) but does not so apply if the operation of the order has been suspended under section 30 (7).

(2) An order of a tribunal to which this section applies is enforceable only as provided by this section.

(3) A tribunal that is determining a consumer claim may, when making an order to which this section applies or later, give leave to the person in whose favour the order is made to renew the claim if the order is not complied with within the period specified by the tribunal.

(4) If an order to which this section applies has not been complied with within the period specified by the tribunal, the person in whose favour the order was made may effect a renewal of the consumer claim to which the order relates by lodging with the registrar a notification in the prescribed form to the effect that the order has not been so complied with.

(5) The provisions of this Part apply to a notification lodged in accordance with subsection (4) as if the notification were a consumer claim lodged in accordance with section 13.

(6) When a consumer claim has been renewed in accordance with subsection (4), the tribunal concerned—

(a) may make such other appropriate order under section 30 as it could have made when the claim was originally determined; or

(b) may refuse to make such an order.

Power of Commissioner to represent creditors in certain company winding up proceedings

37. Whenever—

(a) a creditor of a company is, by virtue of section 363 of the Companies (New South Wales) Code, entitled to apply for the winding up of the company; and

(b) the debt, or part of the debt, that entitles the creditor to make that application is an amount that a tribunal has ordered to be paid to the creditor by an order made under section 30 of this Act or under section 23 of the repealed Act,

the Commissioner is, with the consent or at the request of the creditor, entitled to exercise all of the rights and functions conferred by that Code on the creditor with respect to the winding up of the company.

PART 5—MISCELLANEOUS MATTERS

Offence to act in contempt of a tribunal

38. **(1)** A person shall not—

(a) intentionally insult—

(i) a referee while constituted as a tribunal or while on his or her way to or from a hearing of the tribunal; or

(ii) any person while attending a hearing of a tribunal or while on his or her way to or from such a hearing;

(b) intentionally misbehave at a hearing of a tribunal;

(c) intentionally and without lawful excuse, interrupt a hearing of a tribunal;

(d) assault a person who is attending, or intentionally prevent or obstruct a person entitled or permitted to attend from attending, a hearing of a tribunal; or

(e) without lawful excuse, disobey a lawful direction given to the person by a tribunal during a hearing of the tribunal.

Penalty: 5 penalty units or imprisonment for 6 months.

(2) The reference in subsection (1) (e) to a direction does not include a reference to an order made under section 30.

(3) If at a hearing of a tribunal it appears to the tribunal that a person is committing or has committed a contravention of subsection (1), the tribunal may direct the person to leave the place at which the hearing is being held.

(4) A person shall not fail to comply with a direction given under subsection (3).

Penalty: 5 penalty units.

(5) Only a person who holds a prescribed office, or a person authorised by a person who holds such an office, may act as informant in proceedings for an offence under this section.

Contracting out prohibited

39. (1) This Act has effect despite any stipulation to the contrary in any contract, agreement, arrangement or understanding.

(2) No contract, agreement, arrangement or understanding made or entered into either before or after the commencement of this Act has the effect of nullifying, varying or excluding any of the provisions of this Act.

Service of notices

40. Where, by or under this Act, the registrar is required to serve a notice or other document on a person, the posting of the notice or document by pre-paid mail to that person at that person's usual address or the address of that person last known to the registrar shall be taken to be sufficient service for the purposes of this Act.

Certain matters to be reported to senior referee or Minister

41. (1) In subsection (2), a reference to a referee is a reference to a referee other than the senior referee.

(2) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal and the referee who constitutes the tribunal considers the matter to be of importance as regards the relationship of consumer and supplier; or

(b) a referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the senior referee,

the referee must make a report on the matter in writing to the senior referee.

(3) Whenever—

(a) a matter arises out of the hearing or determination of a consumer claim by a tribunal constituted by the senior referee and the senior referee considers the matter to be of importance as regards the relationship of consumer and supplier;

(b) the senior referee is of the opinion that a matter relevant to—

(i) the administration of this Act; or

(ii) the practices and procedures of tribunals,

should be brought to the attention of the Minister; or

(c) a referee reports a matter to the senior referee in accordance with subsection (1) and the senior referee is of the opinion that the matter is of a kind referred to in paragraph (a) or (b),

the senior referee must make a report on the matter to the Minister.

(4) If, in the course of, or as a result of, the hearing of a consumer claim by a 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 Commissioner, the tribunal may make a report in writing on that conduct and transmit it to the Commissioner.

(5) If a report transmitted to the Commissioner under subsection (4) relates to a supplier who appears to the Commissioner to be—

(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,

the Commissioner 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.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a communication made under this section.

Power of Commissioner to establish and maintain a list of unsatisfactory suppliers

42. (1) Subject to this section, the Commissioner may establish and maintain for the purposes of this Act a list to be known as the unsatisfactory suppliers list.

(2) The Commissioner 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 41;

(b) any supplier who has failed to comply with the requirements of an order of a 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 section 30 of this Act, or under section 23 of the repealed Act, during the period prescribed for the purposes of this paragraph.

(3) The Commissioner 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 Commissioner may allow.

(4) The Commissioner 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) The Commissioner may from time to time publish in such manner as the Commissioner thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.

(6) The Commissioner has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5).

Publication of particulars of consumer claims

43. The registrar must publish, in such manner as the Minister directs or approves, such particulars in relation to consumer claims as the Minister specifies in the direction or approval.

Power of Minister to intervene in certain cases

44. **(1)** If any proceeding, order or ruling of a tribunal is challenged, reviewed or called into question in proceedings before a court, the Minister is entitled to intervene at any stage of the proceedings before the court, by counsel, solicitor or agent.

(2) If the Minister exercises the right conferred by subsection (1) to intervene in proceedings before a court, the Minister thereupon becomes a party to, and has all the rights of a party to, those proceedings, including the right to appeal against any order or judgment of the court.

Protection for things done under this Act

45. Except as expressly provided by this Act, neither the registrar, a deputy registrar, a referee, claimant, supplier nor any other person is liable in any legal proceeding on account of—

(a) any proceedings, publication or other thing—

(i) taken, made or done under the authority of this Act or the regulations; or

(ii) taken, made or done in good faith under the purported authority of this Act or the regulations; or

(b) any act or thing that in good faith has been omitted to be done in respect of the administration of this Act or the regulations.

Evidence in legal proceedings

46. In any legal proceedings, proof is not, until evidence is given to the contrary, required to be given of—

(a) the constitution of a tribunal; or

(b) the appointment of, or the holding of office by, any referee or the registrar or a deputy registrar.

Proceedings for offences

47. Proceedings for an offence against this Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Regulations

48. **(1)** 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 and, in particular, for or with respect to—

(a) if a party to a consumer claim is an unincorporated body of persons or a firm—the representation of, and the service of notices on, the party at hearings of the claim by a tribunal;

(b) the procedure and practice to be followed at hearings before a tribunal of consumer claims;

(c) the procedure and practice to be followed in the office of the registrar or any deputy registrar;

(d) empowering the registrar to give directions as to the steps to be taken in order to make a consumer claim ready for hearing by a tribunal;

(e) the duties of, and the records to be kept by, the registrar in relation to, or for the purposes of, the hearing of any claim before a tribunal;

(f) the maintenance and disposal of official records of tribunals and other documents relating to consumer claims;

(g) forms to be used for the purposes of this Act;

(h) the service of notices required for the purposes of this Act;

(i) fees to be paid under this Act;

(j) the waiver of fees to be so paid or, in the case of fees that have already been so paid, the refund of all or a part of those fees;

(k) the issue of summonses requiring parties to a consumer claim or other persons to give evidence before, or produce evidence to, the tribunal that is hearing the claim;

(l) the enforcement of orders of tribunals; and

(m) the transfer from the Commercial Tribunal to a consumer claims tribunal, in the prescribed circumstances, of proceedings relating to the provision of credit.

(2) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

Repeals

49. Each Act specified in Schedule 2 is, to the extent indicated, repealed.

Savings and transitional provisions

50. Schedule 3 has effect.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES

(Sec. 4 (4))

Age of referees

1. A person of or above the age of 72 years is not eligible to be appointed as a referee or to act as such.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Acting referees etc.

2. (1) The Governor may, from time to time, appoint a person to act in the office of a referee during the illness or absence from office of a referee, and the person, while so acting, has all the functions of, and shall be deemed to be, a referee.

(2) The Governor may, from time to time, appoint a referee to act in the office of senior referee during the illness or absence of the senior referee, and the referee, while so acting, has all the immunities and functions of the senior referee.

(3) The Governor may, at any time, remove a person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a referee or senior referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

(a) a vacancy in the office of a referee or the senior referee shall be regarded as an absence from office of the referee or senior referee; and

(b) a referee shall be regarded as absent from office as a referee during any period when the referee acts in the office of the senior referee pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a referee holds office—

(a) in the case of a full-time referee—for such period not exceeding 7 years; or

(b) in the case of a part-time referee—for such period not exceeding 3 years,

as may be specified in the referee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Full-time referees

4. A full-time referee must devote the whole of his or her time to the duties of the office of referee, except to the extent permitted by this Act or by the Minister.

Remuneration

5. (1) A full-time referee is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the referee.

(2) A part-time referee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time referee.

Vacancy in office of referee

6. (1) The office of referee becomes vacant if the referee—

(a) dies;

(b) completes a term of office and is not re-appointed;

(c) resigns the office by instrument in writing addressed to the Minister;

(d) is removed or retired from office by the Governor under this clause;

(e) reaches the age of 72 years;

(f) being a full-time referee, is absent for a period of 28 consecutive days, except on leave granted, in the case of the senior referee, by the Minister or, in the case of any other referee, by the senior referee;

(g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

(i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or

(j) being a full-time referee, engages in any paid employment outside the duties of the office of referee, except with the consent of the Minister.

(2) The Governor may remove a referee from office for incapacity, incompetence or misbehaviour.

(3) A full-time referee may, after reaching the age of 60 years and before reaching the age of 72 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Filling of vacancy in office of referee

7. If the office of senior referee or referee becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) The Public Service Act 1979 does not apply to the appointment of a person as a referee or as the senior referee, but after appointment that Act and the regulations under that Act, except in so far as they are inconsistent with this Act, apply—

(a) to a full-time referee; and

(b) to a part-time referee while exercising the functions of a referee,

as if they had been appointed under the first-mentioned Act.

(2) If provision is made by or under any other Act—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of part-time referee.

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

Preservation of rights of a referee who was previously a public servant etc.

9. (1) This clause applies where a full-time referee was, immediately before being appointed as such a referee—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a proclaimed statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of appointment, a full-time referee—

(a) retains any rights accrued or accruing to him or her as such an officer, contributor or person;

(b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time referee; and

(c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time referee.

(3) Service as a full-time referee shall be regarded as service as an officer or employee for the purposes of any law—

(a) under which the rights referred to in subclause (2) accrued or were accruing;

(b) under which he or she continues to contribute; or

(c) by which that entitlement is conferred.

(4) A full-time referee shall be regarded as an officer or employee, and the Minister shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If a full-time referee would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive a payment, pension or gratuity under the scheme—

(a) he or she is not so entitled on becoming (whether on appointment as a referee or at any later time while holding office as a referee) a contributor to any other superannuation scheme; and

(b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Minister in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to a full-time referee (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A full-time referee is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

SCHEDULE 1—PROVISIONS RELATING TO REFEREES—*continued*

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

"superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Full-time referee entitled to re-appointment to former employment in certain cases

10. (1) A person who—

(a) ceases to be a full-time referee because the period for which the person was appointed has ended or because of resignation;

(b) was, immediately before being appointed as such a referee—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a proclaimed statutory body; and

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that proclaimed statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time referee.

(2) If subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time referee,

the person has, in the event of ceasing to be a full-time referee, such rights (if any) to appointment as such an officer or employee as are specified in the instrument of appointment as a full-time referee or as are agreed on by the person and by or on behalf of the Government.

(3) The Governor may, in the instrument of appointment of a referee or senior referee, insert terms that negate or vary the effect of this clause in relation to the referee or senior referee.

(4) In this clause—

"proclaimed statutory body" means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

SCHEDULE 2—REPEALS

(Sec. 49)

Consumer Claims Tribunals Act 1974 No. 16—the whole Act

Landlord and Tenant (Rental Bonds) Act 1977 No. 44—section 35

Consumer Claims Tribunals (Rental Bonds) Amendment Act 1985 No. 66—the whole Act

Residential Tenancies Act 1987 No. 26—section 136

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 50)

Definition

1. In this Schedule—

"commencement day" means the day appointed under section 2.

Referees

2. Any person who, immediately before the commencement day, held office under the repealed Act as a referee or as the senior referee continues on and after that day as a referee or as the senior referee under and subject to this Act on the terms and conditions on which the office was held immediately before that day.

Registry of consumer claims tribunals

3. The registry of consumer claims tribunals, as established by this Act, is a continuation of, and the same legal entity as, the registry of consumer claims tribunals established by section 11 (1) of the repealed Act.

Staff of the registry of consumer claims tribunals

4. A person who, immediately before the commencement day, held office under the Public Service Act 1979 as registrar of consumer claims tribunals or as a person required for the proper functioning of the registry of consumer claims tribunals maintained under the repealed Act continues on and after that day to hold that office subject to the Public Service Act 1979 and to the terms and conditions applicable to the holder of that office immediately before that day.

Consumer claims tribunals

5. If, immediately before the commencement day, a consumer claims tribunal has not determined a consumer claim that has been referred to it in accordance with the repealed Act, the tribunal—

(a) continues to be constituted as if it had been constituted under this Act; and

(b) shall hear and determine the claim as if the claim had been made under this Act.

Consumer Claims Regulation 1976

6. The Consumer Claims Regulation 1976 is repealed.

Effect of section 30 of Interpretation Act 1987 (Effect of amendments etc. of Acts and statutory rules)

7. Section 50 and this Schedule have effect in addition to, and do not derogate from the operation of, section 30 of the Interpretation Act 1987.

References to the repealed Act

8. A reference in any other Act or instrument to the repealed Act shall be construed as a reference to this Act.

General

9. (1) If—

(a) any order made or other thing done or begun under the repealed Act before the commencement day still has effect immediately before, or is not completed before, the commencement day; and

(b) that order or thing could have been made, done or begun under this Act if it had been in force when the order was made or the thing was done or begun,

the order made or the thing done continues to have effect, or the thing begun may be completed, as if it had been made, done or begun under this Act.

(2) Subclause (1) does not apply to any thing for which other provision is made by this Schedule.

Disposal of claims in respect of rental bonds

10. (1) In this clause—

(a) a reference to this Act is a reference to this Act excluding—

(i) section 10 (3);

(ii) section 30 (1) (b)–(g) and (2) (c);

(iii) section 36; and

(iv) section 41 (2) (a) and (3) (a);

(b) a reference to a lessor, lessee or rental bond is a reference to a lessor, lessee or rental bond as defined in the Landlord and Tenant (Rental Bonds) Act 1977; and

(c) a reference to the relevant day is a reference to the day on which section 83 (3) of the Residential Tenancies Act 1987 commences.

(2) Until the relevant day, this Act applies to a claim, whether made under section 13 of this Act or section 13 of the repealed Act, by a lessor or a lessee under a lease in relation to a rental bond, including a claim in relation to any matter which, under the terms or conditions of the lease, could, but for the Landlord and Tenant (Rental Bonds) Act 1977, have given rise to a claim against a rental bond deposited or paid in accordance with those terms or conditions, in the same way as it applies to a consumer claim.

(3) On the relevant day subclause (2) ceases to have effect.

(4) If a claim to which subclause (2) applies is lodged under section 13 of this Act or section 13 of the repealed Act before the relevant day and is not determined before that day, the hearing and determination of the claim may be completed as if that subclause had not ceased to have effect.

Regulations

11. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subcluase (1) may, if the regulations so provide, take effect from the commencement day or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

(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 that 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 that publication.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect despite any other clause of this Schedule.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987