

(Reprint No. 1)

SOUTH AUSTRALIA

CONSUMER CREDIT ACT, 1972

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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CONSUMER CREDIT ACT, 1972

being

Consumer Credit Act, 1972, No. 134 of 1972 [Assented to 7 December 1972]¹

as amended by

Consumer Credit Act Amendment Act, 1973, No. 7 of 1973 [Assented to 3 September 1973]²

Consumer Credit Act Amendment Act, 1980, No. 20 of 1980 [Assented to 17 April 1980]

Statutes Amendment (Consumer Credit and Transactions) Act, 1982, No. 43 of 1982 [Assented to 22 April 1982]³

Statutes Amendment (Commercial Tribunal—Credit Jurisdiction) Act, 1983, No. 42 of 1983 [Assented to 16 June 1983]⁴

Statutes Amendment (Fair Trading) Act, 1987, No. 43 of 1987 [Assented to 30 April 1987]⁵

Statutes Amendment (Consumer Credit and Transactions) Act, 1987, No. 48 of 1987 [Assented to 30 April 1987]⁶

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to regulate and control the provision of credit; to repeal the Money-lenders Act, 1940-1971; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Consumer Credit Act, 1972*.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.
(2) Notwithstanding the provisions of subsection (1) of this section and notwithstanding that a proclamation has been made under that subsection the Governor may, by proclamation, suspend the operation of any specified provisions of this Act until a day fixed in the proclamation or a day to be fixed by subsequent proclamation.
(3) Any provisions whose operation has been suspended under subsection (2) of this section shall come into operation on the day fixed for the expiration of the suspension by the suspending proclamation, or if that proclamation provides for that day to be fixed by subsequent proclamation, on the day fixed by that subsequent proclamation.

¹Came into operation (except ss. 4(1), 40-44, 46-53, 55-58 and 60 as amended by the Consumer Credit Act Amendment Act, 1973) 3 September 1973: *Gaz.* 9 August 1973, p. 849; remainder of Act came into operation 1 November 1973: *Gaz.* 3 September 1973, p. 1551.

²Came into operation 3 September 1973: *Gaz.* 3 September 1973, p. 1551.

³Came into operation 1 July 1982: *Gaz.* 24 June 1982, p. 2033.

⁴Came into operation 1 March 1984: *Gaz.* 1 March 1984, p. 445.

⁵Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.

⁶Came into operation 1 July 1987: *Gaz.* 4 June 1987, p. 1430.

Arrangement

3. This Act is arranged as follows:—

PART I—Preliminary.

PART II—Administration.

Division I—The Commissioner, etc.

PART III—Control of Credit Providers.

Division I—Licensing of Credit Providers.

Division II—Powers of Investigation and Inquiry.

Division III—Conduct of business of Credit Providers.

PART IV—Credit Transactions.

PART V—Charges for the Procurement of Credit.

PART VI—Harsh and Unconscionable Terms.

PART VII—Miscellaneous.

Repeal and saving provision

4. (1) The following Acts are repealed:—

the *Money-lenders Act, 1940*;

the *Money-lenders Act Amendment Act, 1960*;

the *Money-lenders Act Amendment Act, 1966*;

the *Money-lenders Act Amendment Act, 1973*.

(2) A person by, or on behalf of, whom a licence was held under the repealed Act immediately before the commencement of this Act shall be deemed to be licensed as a credit provider under this Act until the expiration of the period for which the licence was granted or last renewed and shall, for the duration of that period, be entitled to carry on business as a credit provider at any place at which he was authorized by the licence to carry on business as a money-lender.

(3) A person carrying on a business immediately before the commencement of this Act in respect of which a licence was not required under the repealed Act, but is required under this Act, is not required to be licensed until the expiration of two months from the commencement of this Act.

(4) The business of a body corporate that is deemed to be licensed under subsection (2) of this section, or to which subsection (3) of this section applies, is not required to be managed under the personal supervision of a natural person approved by the Tribunal until the expiration of two months from the commencement of this Act.

(5) Notwithstanding the repeal effected by subsection (1) of this section, the provisions of the repealed Act shall continue to apply to any contract made before the commencement of this Act to which that Act applied immediately before the commencement of this Act.

(6) This Act shall not apply in respect of any contract made before the commencement of this Act.

Interpretation

5. In this Act, unless the contrary intention appears—

“authorized address” in relation to a licensed credit provider means any address at which a credit provider is authorized by this Act to carry on business:

“authorized name” in relation to a licensed credit provider means the name in which the credit provider is licensed:

“consumer” means any person (other than a body corporate) who enters into a credit contract with a view to obtaining credit or the use or benefit of credit:

“consumer contract” means a consumer contract, as defined in the *Consumer Transactions Act, 1972*:

“credit” means—

- (a) any advance of money or money’s worth made in expectation of repayment or any forbearance to require payment of any money owing made in expectation of subsequent payment;

and includes—

- (b) any provision of a contract or agreement for the sale of goods under which the purchaser is entitled to discharge his pecuniary obligations under the contract or agreement in three or more instalments:

“credit charge” —

- (a) in relation to a credit contract (other than a sale by instalment) means any interest or other amount (however it may be described), or the value of any other benefit, in excess of the principal, that has been, or is to be, paid or given in consideration of, or otherwise in respect of, the provision of credit but does not include—

- (i) any amount that has been, or is to be paid, on account of stamp duty, fees payable to the Registrar-General, or costs or fees payable to a legal practitioner or licensed land broker in respect of the transaction; or

- (ii) any other charges authorized for the purpose of this definition by regulation;

and

- (b) in relation to a sale by instalment, has the meaning assigned by section 41 of this Act:

“credit contract” means a contract or agreement (whatever its terms or form may be) under which credit is provided by a credit provider to, or for the use or benefit of, a person (other than a body corporate) and includes a sale by instalment:

“credit provider” means—

- (a) a person whose business is, or includes, the provision of credit, or who holds himself out in any way as carrying on that business;

and includes—

- (b) a person who, in the course of a business, enters as vendor into a contract of sale by instalment:

“guarantee” includes an indemnity:

“guarantor” means a person who guarantees the performance of obligations under a credit contract by a consumer and includes a person who undertakes to indemnify a credit provider for any loss that he might suffer in consequence of any failure to recover moneys from a consumer under a credit contract or purported credit contract (but does not include a person who gives any such guarantee or makes any such undertaking in the course of carrying on a business of insurance or any other business):

“instalment” in relation to a sale by instalment does not include any deposit paid or provided by a consumer before or at the time of the formation of the contract:

* * * * *

“officer” in relation to a corporation means any director, manager or secretary of the corporation:

“principal”—

(a) in relation to a credit contract (other than a sale by instalment), means the amount actually lent by the credit provider, or of which he forebears to require payment, under the credit contract;

and

(b) in relation to a sale by instalment, has the meaning assigned by section 41 of this Act:

“revolving charge account” means an account—

(a) to which an amount or amounts due under a contract or contracts are debited;

and

(b) upon which a credit charge is made from time to time on the outstanding balance of the account:

“sale by instalment” means a contract for the sale of goods under which the purchaser is entitled to discharge his pecuniary obligations under the contract in three or more instalments:

“statutory rebate” in relation to a credit charge—

(a) where it appears from a credit contract that the credit charge has been calculated on a simple interest basis at a rate specified in the contract on the amount outstanding at periodic intervals—means the amount of interest attributable to the number of complete intervals still remaining under the contract;

(b) in any other case, means the amount derived by multiplying the credit charge by the sum of all the whole numbers from one to the number of complete months in the period of the credit contract still remaining (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number of complete months in the period of the contract (both inclusive);

less any amount payable by the consumer to the credit provider, in respect of the transaction for which the statutory rebate is calculated, under the *Stamp Duties Act*:

“the Commercial Registrar” or “the Registrar” means the person for the time being holding, or acting in, the office of Commercial Registrar under the *Commercial Tribunal Act, 1982*:

“the Commissioner” means the Commissioner for Consumer Affairs:

“the repealed Act” means the *Money-lenders Act, 1940-1971*, repealed by this Act:

“the Tribunal” means the Commercial Tribunal established under the *Commercial Tribunal Act, 1982*.

Application of this Act

6. (1) Subject to subsection (2) of this section, and any other express provision of this Act, Parts II, III, IV and VII of this Act do not apply in respect of any credit provider or credit contract—

- (a) where the credit provider is the Crown or an agency or instrumentality of the Crown;
- (b) where the credit provider is a licensed pawn broker who provides the credit in the course of his business as such;
- (c) where the credit provider is a municipal or district council or a body corporate that is, by virtue of any Act, vested with the powers of a municipal or district council;
- (d) where the credit provider is a society registered under the *Friendly Societies Act*, the *Industrial and Provident Societies Act*, or the *Building Societies Act*;
- (e) where the credit provider is a body corporate whose principal business is insurance;
- (f) where the credit provider is a body corporate empowered by special Act of Parliament to provide credit in accordance with the special Act;
- (g) where the credit provider is a body corporate lawfully carrying on the business of banking;
- (h) where the business of the credit provider consists only in the provision of credit to bodies corporate;
- (i) where the credit provider is a person whose business does not involve the provision of credit at a rate of interest exceeding ten per centum per annum or such other rate as may be prescribed;

or

- (j) where the credit provider is a person who is, for the time being, exempted from the obligation to be licensed by proclamation under this Act.

(2) The provisions of Parts IV, VI and VII of this Act apply in respect of all sales by instalment.

(3) This Act does not apply to a credit contract—

(a) where—

- (i) the principal exceeds \$20 000;
- and
- (ii) the credit is not provided on the security of land;

(b) where—

- (i) the principal exceeds \$20 000;
 - (ii) the credit is provided on the security of land;
- and
- (iii) the consumer has made a statutory declaration that the land is not to be used as a place of residence for the consumer's own personal occupation;

or

(c) where the amount of the principal exceeds \$30 000.

(4) The Governor may, by proclamation—

(a) exempt, or provide for the exemption of—

(i) persons of a specified class from the provisions, or specified provisions, of this Act;

or

(ii) transactions of a specified class from the provisions, or specified provisions, of this Act,

and impose, or provide for the imposition of, conditions in respect of any such exemption;

or

(b) vary or revoke a proclamation previously made under this subsection.

(5) This Act does not apply in respect of any revolving charge account maintained on behalf of a consumer in accordance with the conditions prescribed by the Tribunal by a person authorized by the Tribunal to provide credit by means of such accounts.

(6) The Tribunal may, on the application of any person, authorize him to provide credit by means of revolving charge accounts, and such an authorization may be granted upon conditions—

(a) limiting the frequency with which credit charges may be made on any such account;

(b) limiting the amount of the credit charges that may be made on any such account,

and such other conditions as the Tribunal thinks fit.

PART II

ADMINISTRATION

DIVISION I—THE COMMISSIONER, ETC.

Administration of Act

7. (1) Subject to subsection (2) of this section, the Commissioner shall have the general administration of this Act.

(2) The Commissioner shall be subject to direction by the Minister in the administration of this Act.

* * * * *

Report

9. (1) As soon as practicable after the thirtieth day of June in each year, the Commissioner shall make a report in writing upon the administration of this Act and the *Consumer Transactions Act, 1972*, during the year ending on that day to the Minister.

(2) The Minister shall, as soon as practicable after receiving the report of the Commissioner, cause a copy of the report to be laid before each House of Parliament.

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PART III
CONTROL OF CREDIT PROVIDERS
DIVISION I—LICENSING OF CREDIT PROVIDERS

Obligation to be licensed

28. (1) A person shall not carry on business as a credit provider or hold himself out as carrying on business as a credit provider unless he is duly licensed as such under this Act.

Penalty: One thousand dollars.

(2) For the purposes of this section, a person acts as, or holds himself out as being, a credit provider whether he does so personally or through the agency or instrumentality of other persons.

(3) Subject to subsection (4) of this section, a credit provider who is required to be licensed under this Act shall not be entitled to recover or retain any credit charge in respect of credit provided by him at any time at which he is unlicensed.

(4) Where a credit charge, when reduced to a rate of interest in accordance with the regulations, does not exceed ten per centum per annum or such other rate as is, at the time the contract is made, prescribed for the purposes of section 6(1)(i) of this Act, that credit charge may, notwithstanding the provisions of subsection (3) of this section, be recovered and retained by the credit provider in pursuance of the credit contract.

Application for a licence

29. (1) An application for a licence must—

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar shall—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period within which objections must be lodged.

(6) Subject to subsection (7), the Registrar shall serve the applicant and the Commissioner with a copy of an objection lodged under subsection (4).

(7) Where the Commissioner has lodged an objection, a copy of the objection need not be served upon the Commissioner.

(8) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner and any person who has lodged an objection at least seven days notice of the date for hearing of the application.

(9) Upon an application under this section, the Tribunal shall, subject to this Act, order that the applicant be granted a licence upon payment of the prescribed licence fee if the Tribunal is satisfied—

(a) that—

(i) where the applicant is a natural person—

(A) he is of or over the age of eighteen years;

and

(B) he is a fit and proper person to hold a licence;

or

(ii) where the applicant is a body corporate—every person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act;

and

(c) that the applicant has sufficient financial resources to carry on business in a proper manner under the licence.

Duration of licences

30. (1) A licence shall, subject to this Act, remain in force until—

(a) the licence is surrendered;

or

(b) the holder of the licence dies or, in the case of a body corporate, is dissolved.

(2) The holder of a licence shall, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a holder of a licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing served on the holder of the licence, require him to make good his default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where the holder of a licence fails to comply with a notice under subsection (3) within fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence shall, by force of this subsection, be cancelled.

* * * * *

Surrender of licence

32. The holder of a licence under this Act may at any time, with the consent of the Tribunal, surrender his licence, and the licence shall thereupon cease to have any effect.

Return of licences suspended or cancelled

32a. Where a licence granted to a person is suspended or cancelled under this Act, that person shall, at the direction of the Tribunal or the Registrar, return the licence to the Registrar.

Penalty: One thousand dollars.

Licence not to be transferable

33. A licence shall not be transferable.

DIVISION II—POWERS OF INVESTIGATION AND INQUIRY

Interpretation

34. For the purposes of this Division—

“licence” includes an authorization under section 6(6) to provide credit by means of revolving charge accounts.

Investigations

35. The Commissioner or the Commissioner of Police shall, at the request of the Registrar, cause his officers to investigate and report upon any matter relevant to the determination of—

(a) any application or other matter before the Tribunal;

or

(b) any matter that might constitute proper cause for disciplinary action under this Act.

Tribunal may exercise disciplinary powers

36. (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action to be taken against a person who is, or has been, licensed under this Act.

(2) An inquiry shall not be held under this section except in relation to matters alleged in a complaint lodged pursuant to subsection (3) or matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner or the Commissioner of Police) may lodge with the Tribunal a complaint in the prescribed form setting out matters that the person alleges constitute grounds for disciplinary action to be taken against a person referred to in subsection (1).

(4) Where a complaint has been lodged with the Tribunal pursuant to subsection (3), the Commissioner or the Commissioner of Police shall, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal shall give the person to whom the inquiry relates (in this section referred to as "the respondent") reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may exercise one or more of the following powers:

- (a) it may reprimand the respondent;
- (b) it may impose a fine not exceeding five thousand dollars on the respondent;
- (c) where the respondent is the holder of a licence under this Act, it may—
 - (i) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order;or
 - (ii) cancel the licence;
- (d) it may disqualify the respondent permanently, for a specified period, until the fulfilment of stipulated conditions or until further order from holding a licence under this Act.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person shall not be liable to a fine under this section in respect of conduct giving rise to the offence.

(8) Where the Tribunal cancels a licence under subsection (6), the Tribunal may stipulate that the cancellation is to have effect at a future time specified by the Tribunal and impose conditions as to the conduct of the business of the respondent until that time.

(9) Where a condition is imposed by the Tribunal under subsection (8) as to the conduct of the business of the respondent, the respondent shall not contravene or fail to comply with the condition.

Penalty: Five thousand dollars.

(10) There shall be proper cause for disciplinary action under this section against the respondent if—

- (a) he has improperly obtained a licence;
- (b) while carrying on business as a credit provider, he, or any person acting with his authority, under his instructions or in his employment, has in the course of dealings with a consumer—
 - (i) been guilty of conduct that constituted a breach of this Act or any other Act or law;

or

- (ii) acted negligently, fraudulently or unfairly to the prejudice of the rights or interests of a person dealing with him in that business;
 - (c) he has failed to comply with an order of the Tribunal;
 - (d) he has insufficient financial resources properly to carry on business as a credit provider;
- or
- (e) he has ceased to be a fit and proper person to hold a licence under this Act, or, in the case of a body corporate, a person who has gained or is in a position substantially to control or influence the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that holds a licence under this Act.

Record of disciplinary action to be kept

36a. Where the Tribunal takes disciplinary action against the holder of a licence, the Registrar shall—

- (a) make an entry on the register established under the *Commercial Tribunal Act, 1982*, recording the disciplinary action taken;
- and
- (b) by notice in writing advise the Commissioner of the name of the holder of the licence and the disciplinary action taken.

DIVISION III—CONDUCT OF BUSINESS OF CREDIT PROVIDERS

Registered address

37. (1) A licence shall specify an address within the State which shall be the registered address of the licensed credit provider for the purposes of this Act.

(2) The Tribunal may, at any time, on the application of a licensed credit provider alter his registered address.

(3) A licensed credit provider shall at least seven days before he commences to carry on business as a credit provider at any address (other than his registered address) send to the Registrar a notice in writing informing him that he proposes to carry on the business of a credit provider at that address.

Penalty: Five hundred dollars.

(4) A licensed credit provider shall, not more than seven days after he ceases to carry on business as a credit provider at any address (other than his registered address), give notice in writing to the Registrar of the fact that he has ceased to carry on the business of a credit provider at that address.

Penalty: Five hundred dollars.

(5) The registered address of a licensed credit provider and any other address of which the credit provider has given notice under this section (not being an address in relation to which the credit provider has given a notice of cessation of business under subsection (4) of this section) is an authorized address for the purposes of this Act.

(6) A licensed credit provider shall not invite the public to deal with him other than at an authorized address.

Penalty: Five hundred dollars.

Name in which a licensed credit provider is to carry on business

38. A licensed credit provider shall not carry on business as a credit provider otherwise than in the name in which he is licensed.

Penalty: Five hundred dollars.

Corporation must employ licensed person as manager

39. (1) Where a body corporate holds a licence the business of the body corporate conducted in pursuance of that licence in this State must be managed under the personal supervision of a natural person, approved by the Tribunal.

(2) Where the business of a body corporate is not managed as required by subsection (1) of this section, the body corporate must, within twenty-eight days, or such longer period as may be allowed by the Tribunal, appoint a manager, approved by the Tribunal, to have the personal supervision of the business of the body corporate conducted in pursuance of the licence.

(3) A body corporate shall be deemed to be unlicensed for the duration of any period for which the body corporate is in default under the provisions of subsection (2) of this section.

PART IV
CREDIT TRANSACTIONS

Form of credit contract

40. (1) A credit contract (not being a sale by instalment)—

- (a) must be in writing and signed by or on behalf of the consumer;
- (b) must set out the terms and conditions upon which the credit is provided and in particular must show—
 - (i) the amount of the principal;
 - (ii) the person to whom and the place at which repayment is to be made by the consumer;
 - (iii) where the contract provides for repayment by instalment—
 - (A) the number of instalments to be paid by the consumer;
 - (B) the amount of each of those instalments;and
 - (C) either the time for payment of each of those instalments, or both the time at which the first instalment is to be paid and the interval between instalments;
 - (iv) the total amount of the credit charge to be paid;and
- (v) an itemized statement of any amounts paid or payable by the consumer on account of stamp duty, fees payable to the Registrar-General, costs or fees payable to a legal practitioner or licensed land broker in respect of the transaction or any other charges authorized by regulation;

and

- (c) must contain such information in relation to the rate at which the credit charge accrues upon the principal as may be required by regulation.

(2) Where the particular matters of which disclosure is required in a credit contract under subsection (1) of this section are not ascertainable by the credit provider before, or at the time of, the formation of the credit contract, the contract must—

- (a) set out those matters to the extent to which they are ascertainable;
- and
- (b) set out the terms and conditions upon which the credit is, or is to be, provided in a clear and concise manner so that the obligations of the consumer under the contract are explicitly stated and readily ascertainable.

(3) For the purposes of subsection (1) of this section if the contract provides for a number of advances of principal and the total amount of principal to be advanced in pursuance of the contract is not ascertainable at the time of execution of the contract, the amount of the principal first lent in pursuance of the contract shall be deemed to be the amount of the principal.

(4) A credit contract shall be deemed to comply with this section notwithstanding that there is an error or omission or an incorrect or insufficient description in the contract, if the Tribunal or court, before which the contract is in question, is satisfied that the error, omission, incorrect or insufficient description, is of a minor nature or is not of such a nature as to mislead or deceive any person to his prejudice or disadvantage.

(5) The credit provider shall, within fourteen days of the formation of a credit contract to which this section applies, serve upon the consumer a copy of the credit contract together with a notice in the prescribed form setting out the provisions of this Act and of the *Consumer Transactions Act* that afford protection to consumers.

Penalty: Five hundred dollars.

(6) If any credit is provided on the security of a negotiable instrument, it shall be sufficient compliance with the provisions of this section if—

(a) a note or memorandum in writing of the contract is made setting out the matters referred to in subsection (1) of this section;

(b) the note or memorandum is signed by or on behalf of the consumer;

and

(c) a copy of the note or memorandum together with the notice referred to in subsection (5) of this section is delivered or sent to the consumer in the manner provided by subsection (5) of this section.

(7) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(8) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall not be entitled to any amount in respect of the credit charge payable under that contract.

(9) Any such amount paid by or on behalf of the consumer in respect of a credit charge may be recovered back or deducted from any amount payable under the contract or payable in respect of any security given in respect of the contract, notwithstanding agreement to the contrary.

(10) Where the terms or conditions of a credit contract to which this section applies are varied in any manner the credit provider shall within fourteen days after the date of the variation serve on the consumer a notice—

(a) that sets out in a clear and concise manner the nature and extent of the variation to the consumer's rights and obligations under the contract;

and

(b) that contains such other information as may be prescribed.

Penalty: Five hundred dollars.

(11) This section does not apply to a credit contract under which credit is provided without any credit charge.

Form of contract that is a sale by instalment

41. (1) A credit contract that is a sale by instalment—

(a) must be in writing;

(b) must be signed by or on behalf of the consumer;

(c) must—

- (i) specify the number of instalments to be paid under the contract by the consumer;
- (ii) specify the amount of each of those instalments and the person to whom and the place at which the payment of those instalments is to be made;

and

- (iii) specify the time for payment of each instalment, or both the time at which payment of the instalments is to commence and the interval between each instalment;

(d) must contain a description of the goods subject to the contract sufficient to identify them;

(e) where any part of the consideration is, or is to be, provided otherwise than in cash, must contain a description of that part of the consideration;

(f) must set out—

- (i) the cash price of the goods;
- (ii) any amount payable under the contract on account of stamp duty;
- (iii) any amount payable under the contract by way of maintenance;
- (iv) any amount payable under the contract for delivery of the goods, or any of them, to or to the order of the consumer;
- (v) any amount payable under the contract to cover fees for registration or licensing of the goods so that they may be lawfully used by the consumer;

and

- (vi) any amount payable under the contract for insurance;

(g) must state the total amount paid or provided by way of deposit with a separate denotation of the amount paid in money, and of the value attributed to consideration provided otherwise than in money;

(h) must state the amount of the credit charge payable under the contract;

and

(i) must contain such information in relation to the rate at which the credit charge accrues upon the principal as may be required by regulation.

(2) For the purposes of subsection (1) of this section—

“cash price” in relation to goods means the price at which the consumer might, at the time of signing the contract, have purchased the goods for cash:

“credit charge” means the difference between—

- (a) the sum of the amounts referred to in paragraph (f) of subsection (1) of this section less the total amount referred to in paragraph (g) of that subsection;

and

- (b) the total amount payable under the contract:

“maintenance” means expenditure to be incurred in maintaining the condition of the goods:

“principal” means the sum of the amounts referred in paragraph (f) of subsection (1) of this section, less the total amount referred to in paragraph (g) of that subsection.

(3) A credit contract shall be deemed to comply with this section notwithstanding that there is an error or omission or incorrect or insufficient description in the contract, if the Tribunal or court, before which the contract is in question, is satisfied that the error, omission, incorrect or insufficient description, is of a minor nature or is not of such a nature as to mislead or deceive any person to his prejudice or disadvantage.

(4) The credit provider shall, within fourteen days after the formation of a credit contract to which this section applies, serve upon the consumer a copy of the credit contract together with a notice in the prescribed form setting out the provisions of this Act and of the *Consumer Transactions Act* that afford protection to consumers.

Penalty: Five hundred dollars.

(5) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(6) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall not be entitled to any amount in respect of the credit charge payable under that contract.

(6a) Any such amount paid by or on behalf of the consumer in respect of a credit charge may be recovered back or deducted from any amount payable under the contract or payable in respect of any security given in respect of the contract, notwithstanding agreement to the contrary.

(7) Where the terms or conditions of a credit contract to which this section applies are varied in any manner the credit provider shall within fourteen days after the date of the variation serve on the consumer a notice—

(a) that sets out in a clear and concise manner the nature and extent of the variation to the consumer's rights and obligations under the contract;

and

(b) that contains such other information as may be prescribed.

Penalty: Five hundred dollars.

Prohibition of compound interest

42. (1) Subject to subsection (2) of this section any credit contract shall be void in so far as it provides directly or indirectly for—

(a) payment of interest upon a credit charge;

or

(b) any increase in the rate at which a credit charge accrues by reason of any default in the payment of sums due under the contract, or by reason of any default in any other term or condition of the contract.

(2) Provision may be made in a credit contract that if default is made in the payment upon the due date of any sum payable to the credit provider under the contract (whether in respect of principal or credit charge), the credit provider shall be entitled to charge

simple interest on that sum from the date of the default until the sum is paid at a rate specified in the contract to be payable upon any sum in default, and any interest so charged shall not be regarded for the purposes of this Act as part of a credit charge.

(3) If default is made in the payment upon the due date of any sum payable to a credit provider under a credit contract, and that sum is subsequently paid or tendered to the credit provider by or on behalf of the consumer together with such further sums as would have become due and payable by the consumer under the contract up to the date of that payment or tender had there been no default, together with such costs, charges or expenses as have been properly incurred by the credit provider by reason of the default, then, notwithstanding anything in the contract to the contrary, there shall be deemed to have been no default in the payment of the sums due under the credit contract.

Provision for payment of credit charge on determination of contract on default or otherwise

43. (1) Where any credit contract is determined, either by reason of breach of contract by the consumer or pursuant to agreement between the parties, and any amount is outstanding under the contract, the total amount of credit charge that shall be payable under the credit contract shall be—

- (a) the amount provided by the credit contract in that event; or
- (b) the total amount of the credit charge provided by the contract, less the statutory rebate,

whichever is the lesser.

(2) If a credit provider receives any amount in respect of a credit charge, in excess of that allowed by subsection (1) of this section, he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) Any such excess amount is recoverable by the consumer from the credit provider, as a debt, in any court of competent jurisdiction.

Provision where credit provider enforces security

44. (1) If any security is taken to secure the payment of any amount due under a credit contract or a guarantee to a credit provider, the credit provider shall not be entitled to institute any proceedings, other than for the enforcement of the security, to recover any amount payable under the contract, or the guarantee unless the contract or guarantee, as the case may be, expressly and prominently provides on its face that the consumer or guarantor undertakes a personal liability to pay or guarantee the payment of that amount, and that the liability is additional to any liability under any security taken in respect of the credit contract or guarantee.

(2) In this section "security" means a mortgage, bill of sale, lien or charge upon any real or personal property and any assignment, conveyance, transfer or dealing with any real or personal property to secure repayment of any amount due under a credit contract or guarantee.

(3) The provisions of this section shall apply notwithstanding the provisions of any other Act or law.

PART V

CHARGES FOR THE PROCUREMENT OF CREDIT

Prohibition of procurement charges, etc.

45. (1) Any person who recovers or seeks to recover any fee or other consideration in respect of the procurement from any licensed credit provider of credit shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(2) Where a scale of procurement charges has been fixed by regulation and any person recovers or seeks to recover any fee or other consideration in respect of the procurement from any credit provider or other person of credit in excess of the amount allowed in that scale of procurement charges, he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) The Governor may, by regulation, fix a scale of procurement charges for the purposes of this section.

(4) A person from whom any amount has been recovered in contravention of this section may recover back that amount from the person to whom, or in whose benefit it was paid, as a debt, in any court of competent jurisdiction.

(5) For the purposes of this section, a person recovers a fee or other consideration in respect of the procurement of credit where he receives any fee, commission, or other consideration or benefit from a credit provider, consumer or other person—

(a) for the procurement of credit;

(b) for the negotiation of a contract for the provision of credit between a person who seeks to obtain, and a person who is prepared to provide, credit;

or

(c) for the referral of a person who seeks to obtain credit to a person who is prepared to provide credit.

(6) Notwithstanding the foregoing provisions of this section, where the vendor under a contract for the sale of chattels (not being a contract that includes provision for the sale of land), or any person who has negotiated any such contract, has referred to a credit provider a person who seeks credit in order to discharge his obligations under that contract, it shall be lawful for the credit provider to pay or provide a fee or other consideration to the person by whom the applicant for credit was so referred not exceeding in amount or value ten per centum of the total credit charge or interest to which the credit provider is entitled under a contract for the provision of that credit.

PART VI

HARSH AND UNCONSCIONABLE TERMS

Harsh and unconscionable terms

46. (1) Where any term or condition of a credit contract, a guarantee given in respect of a liability under a credit contract or an instrument creating a mortgage, charge or other security in respect of an amount due under a credit contract or a guarantee—

(a) provides for the payment of a credit charge or any other charge that is, in the circumstances of the case, excessive;

or

(b) is harsh or unconscionable or such that a court of equity would give relief in respect thereof,

a party to the contract, guarantee or instrument who is aggrieved thereby may apply to the Tribunal for relief under this section.

(2) In any proceedings instituted before the Tribunal under subsection (1) of this section, or in any proceedings instituted before a court for the enforcement of any such credit contract, guarantee, or instrument, or for the recovery of damages or other compensation for any breach thereof, the Tribunal or the court, as the case may be, may grant relief under this section.

(3) The Tribunal or the court may, in granting relief under this section—

(a) reduce any excessive credit charge or other charge that is due or secured under the credit contract, guarantee or instrument;

(b) avoid *ab initio* any term or condition of the credit contract, guarantee or instrument against which relief is sought;

(c) modify the terms or conditions of the credit contract, guarantee or instrument in such manner as it considers just;

(d) order the repayment to a consumer of any amount paid by him in pursuance of a term or condition that has been avoided or modified under this section.

(4) The powers conferred by subsection (3) of this section are exercisable notwithstanding any settlement of account, or any contract purporting to close previous dealings and create a new obligation.

(5) Proceedings before the Tribunal under this section must be instituted before, or within six months after, the transaction to which the proceedings relate is finally closed.

(6) Where it appears to the Tribunal or a court in any proceedings brought under this section, or to which this section is applicable, that any person has, or may have, shared in the profits of, or has, or may have any beneficial interest in the transaction in question, the Tribunal or court may cite that person as a party to the proceedings, and may make such orders against, or in respect of, that person as it considers just.

(7) For the purposes of effectually carrying out this section, all such orders may be made and directions given by the Tribunal or court as it considers necessary or expedient.

(8) This section shall apply in respect of every credit contract whether or not that credit contract is otherwise subject to the provisions of this Act.

PART VII
MISCELLANEOUS

Duty to supply information

47. (1) A credit provider shall upon receipt of the request in writing of any person for whom he has provided credit under a credit contract, or of any person who has entered into a guarantee in respect of such a credit contract and on payment of the prescribed fee, supply him with a statement showing—

(a) the amounts received by the credit provider under the credit contract and the dates on which those amounts were received;

(b) the amount of every sum that has fallen due under the credit contract, but is unpaid, and the date upon which it became due;

and

(c) the amount of every sum that is not yet due but remains outstanding, and the date upon which it will fall due.

(2) A credit provider shall upon receipt of the request in writing of any person for whom he has provided credit under a credit contract, or of any person who has entered into a guarantee in respect of such a contract, and on payment of the prescribed fee, supply him with a copy of the credit contract, or of any other document relating to the provision of credit that was signed by that person.

(3) Where a credit provider to whom a request has been made under this section fails without reasonable excuse to comply with the request within one month after the request was made, he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Assignment by credit provider

48. (1) Where any debt (consisting of principal or interest or both) arising under a credit contract or any interest in a contract, or security taken in respect of any such debt, is assigned the assignor (whether he is the credit provider by whom the credit was originally provided, or a person to whom the debt or interest has been previously assigned) shall supply to the assignee from time to time as occasion requires any information that the assignee may reasonably require for the purpose of supplying any person with information to which he is entitled under this Act.

Penalty: Five hundred dollars.

(2) A person who is in default under subsection (1) of this section shall indemnify any person who has suffered loss as a result of that default against the amount of the loss.

(3) This section does not apply in respect of an involuntary assignment that arises by operation of law.

Assignment of interest by credit provider

49. Where a credit provider assigns his rights or interest under a credit contract, guarantee or other security to any other person—

(a) the obligations (if any) of a person liable upon the contract, guarantee or security to the assignee shall be the same as his obligations to the assignor;

and

(b) the person so liable may raise any claim or defence against the assignee that he could have raised against the assignor.

Collateral security**50. Where—**

(a) a bill of exchange or promissory note has been given by a consumer or a guarantor under, or in respect of, a credit contract to the credit provider in respect of an amount payable under the contract;

and

(b) the payment in due course of the bill of exchange or promissory note would result in the payment of an amount in excess of the liability of the consumer or guarantor,

the credit provider shall be liable to pay to the consumer or guarantor the amount of the excess.

Assignment of certain interests

51. (1) No assignment by a consumer to a credit provider of any interest, actual or expectant, in the estate of a deceased person or under any deed of settlement or trust shall be of any force or effect unless the assignment is—

(a) in writing;

(b) executed in the presence of a legal practitioner instructed by the assignor;

and

(c) endorsed with a certificate under this section.

(2) The legal practitioner must examine the consumer concerning his understanding of the transaction and if satisfied that he fully understands the transaction and that he enters into it freely and voluntarily, he shall certify that he is so satisfied by endorsement on the instrument by which the assignment is effected.

(3) In this section—

“assignment” includes assurance, sale, mortgage, lien, charge, conveyance, transfer and declaration of trust.

Appropriation of payments under more than one credit contract

52. A consumer who is liable to make payments in respect of two or more credit contracts to the same credit provider shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the credit contracts that is not sufficient to discharge the total amount then due under all the credit contracts, to require the credit provider to appropriate the sums so paid by him in or towards the satisfaction of the sum due under any one of the credit contracts, or in or towards the satisfaction of the sums due under any two or more of the credit contracts in such proportions as he thinks fit, and if he fails to make any such requirement, the payment shall, subject to any agreement to the contrary, be appropriated in or towards the satisfaction of the sums due under the respective credit contracts in the order in which those contracts were entered into.

Manner in which credit is to be provided

53. (1) Subject to subsection (2) of this section, where a credit contract purports to provide for an advance of moneys the advance shall be made in cash or by cheque without deduction for interest or any other charge.

(2) This section shall not prevent the deduction in accordance with a credit contract of amounts—

- (a) on account of stamp duty, or fees payable to the Registrar-General in respect of the transaction between the credit provider and the consumer;
- (b) on account of fees payable to a legal practitioner or licensed land broker in respect of the transaction;
- or
- (c) on account of any other charges authorized by regulation.

Advertisements

54. (1) An advertisement to the effect that a person is prepared to provide, or to procure the provision of, credit to or on behalf of any other person must conform with any stipulations—

- (a) made by the Commissioner in respect of advertisements relating to the provision of credit.

* * * * *

(2) Where an advertisement is published in contravention of subsection (1) of this section, a person by or on behalf of whom the advertisement was published shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) It shall be a defence to a charge under subsection (2) of this section to prove that the advertisement was published without the authority of the defendant.

(3a) The Commissioner may, by notice published in the *Gazette*, make, vary or revoke stipulations for the purposes of this section.

(4) Upon production of a copy of the *Gazette* purporting to contain a stipulation made by the Commissioner under this section, it shall be presumed in any legal proceedings in which the *Gazette* is produced, in the absence of proof to the contrary, that a stipulation in the terms shown in the *Gazette* has been made and is in force.

(5) This section applies in respect of any person whether or not he is a credit provider and whether or not any other provisions of this Act are applicable to him.

Canvassing

55. (1) Where a credit provider canvasses, or employs any person for the purpose of canvassing at the place of dwelling or business of any person with a view to inducing that person to apply for or obtain credit, the credit provider and the canvasser shall each be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(2) This section does not apply where the principal object of the canvasser is to negotiate contracts for the sale of goods or the provision of services with those whom he canvasses, and the credit to which the canvassing relates is to be provided for the sole purpose of enabling or assisting those persons to discharge their obligations under those contracts.

Nature of writing

56. For the purposes of this Act, a document—

- (a) that is in handwriting that is not clear and legible;

or

- (b) that is printed in type the dimensions of which do not comply with the regulations,

shall be deemed not to be in writing.

False statements

57. (1) A person shall not make any statement or representation that is to his knowledge false or misleading in an application or offer to a credit provider in which credit is sought.

Penalty: One thousand dollars, or imprisonment for twelve months.

(2) Any person who by means of any statement or representation that is to his knowledge false or misleading induces, or attempts to induce, any person to enter into a credit contract, or to agree to proposed terms of a credit contract shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars, or imprisonment for twelve months.

(3) This section does not relieve any person from any criminal liability to which he may otherwise be subject in respect of any such false or misleading statement.

* * * * *

Proceedings

59. Proceedings for offences against this Act except offences against section 11 and section 57 of this Act shall be disposed of summarily.

Service

60. (1) A notice or document required or permitted to be served on a consumer under this Act shall be deemed to have been duly served if it has been—

- (a) given to the consumer personally;
- (b) left at his usual or last known place of abode;

or

- (c) sent by registered or certified mail to his usual or last known place of abode, or to an address for service stated in any notice given by him.

(2) The affidavit or oral evidence of any person as to the delivery or posting of any notice or document required or permitted to be served on a consumer under this Act shall be admissible as evidence of the due service of the notice or document if the deponent swears to the facts necessary to prove due service either to his own knowledge, or to his information and belief based on, and verified by, records kept in the ordinary course of business.

(3) Any notice, process or document shall be deemed to have been duly served upon a credit provider if it had been—

- (a) served on the credit provider personally;
- (b) left at an authorized address of the credit provider with a person apparently responsible to the credit provider;

or

- (c) sent by registered or certified mail to the credit provider addressed to him at an authorized address.

Relief against civil consequences of non-compliance with this Act

60a. (1) Where a person has made, or stands to make, a loss in consequence of contravention of or non-compliance with a provision of this Act, he may apply to the Tribunal for relief against the consequences of that contravention or non-compliance.

(2) An application may be made under subsection (1) of this section in respect of a series of acts or omissions of a similar character.

(3) Where, upon an application under subsection (1) of this section, the Tribunal is satisfied that the contravention or failure to comply with the provisions of this Act was not, in the circumstances of the case, such as to warrant the consequences prescribed by this Act, it may grant relief against those consequences to such extent as may be just.

(4) In determining whether it should make an order for relief against the consequences of contravention of, or non-compliance with a provision of this Act, and, if so, the terms on which the relief should be granted, the Tribunal shall have regard to—

- (a) the gravity of the contravention, or non-compliance;
- (b) the conduct of the applicant in relation to the transaction to which the application relates;

and

- (c) any prejudice that may result from the making of the order.

(5) An order for relief against the consequences of contravention of, or failure to comply with, a provision of this Act may be made upon such conditions as the Tribunal considers just.

(6) The Commissioner, and any person whose interests would be affected by an order under this section may appear and be heard in proceedings under this section.

(7) Relief may be granted against the consequences of contravention of, or non-compliance with, a provision of this Act whether the contravention or non-compliance occurred before or after the commencement of the *Consumer Credit Act Amendment Act, 1980*.

(8) An order under this section has effect in accordance with its terms notwithstanding any other provision of this Act.

(9) Nothing in this section authorizes the Tribunal to grant relief against any criminal liability or criminal penalty.

Regulations

61. (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

* * * * *

- (c) prescribe the manner in which applications for licences are to be made under this Act;
- (d) provide for the advertisement of applications for licences;
- (e) prescribe, and provide for the recovery of, any fee for the purposes of this Act;
- (f) prescribe methods and formulae by which credit charges may be reduced to rates of interest for the purpose of ascertaining whether a person is a credit provider subject to the provisions of this Act, or for any other purpose;
- (g) require the disclosure of rates of interest in credit contracts generally, or any class of credit contracts, and prescribe the manner in which those interest rates are to be calculated;

- (h) provide that charges that are made of a consumer under a credit contract upon default by the consumer in due compliance with the terms of the contract are not to be taken into account in determining rates of interest for the purposes of this Act;
 - (i) prescribe the powers, discretions and functions of the Registrar;
- and
- (j) prescribe penalties, not exceeding five hundred dollars for breach of, or non-compliance with, any regulation.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of The Public General Acts of South Australia 1837-1975 at page 1.

Section 3:	amended by 42, 1983, s. 5
Section 5:	definition of "the Commissioner" amended by 43, 1982, s. 5(b); substituted by 43, 1987, s. 13(a) definition of "nominated member" repealed by 42, 1983, s. 6(a) definition of "principal" amended by 43, 1982, s. 5(a) definition of "revolving charge account" amended by 20, 1980, s. 2(a) definition of "sale by instalment" amended by 20, 1980, s. 2(b) definition of "the Registrar" repealed and definition of "the Commercial Registrar" or "the Registrar" inserted in its place by 20, 1980, s. 2(c); amended by 42, 1983, s. 6(b) definition of "the Tribunal" substituted by 42, 1983, s. 6(c) substituted by 43, 1982, s. 6; 48, 1987, s. 3 substituted by 43, 1982, s. 6
Section 6(3):	repealed by 43, 1987, s. 13(b)
Section 6(4):	repealed by 43, 1987, s. 13(b)
Section 8:	repealed by 43, 1987, s. 13(b)
Sections 10 - 12:	repealed by 43, 1986, s. 13(c)
	Division II of Part II comprising ss. 13 - 27 and heading amended by 20, 1980, ss. 3 - 5; repealed by 42, 1983, s. 7
Section 28(3):	amended by 20, 1980, s. 6(a)
Section 28(4):	inserted by 20, 1980, s. 6(b)
Sections 29 and 30:	substituted by 42, 1983, s. 8
Section 31:	repealed by 42, 1983, s. 8
Section 32a:	inserted by 42, 1983, s. 9
Sections 34 - 36:	substituted by 42, 1983, s. 10
Section 36a:	inserted by 42, 1983, s. 10
Section 37(3):	amended by 43, 1982, s. 7(a), (b)
Section 37(4):	amended by 43, 1982, s. 7(c), (d)
Section 37(5):	amended by 43, 1982, s. 7(e)
Section 37(6):	amended by 43, 1982, s. 7(f)
Section 40(1):	amended by 43, 1982, s. 8(a), (b)
Section 40(10):	amended by 43, 1982, s. 8(c)
Section 41(1):	amended by 43, 1982, s. 9(a)
Section 41(6a):	inserted by 20, 1980, s. 7
Section 41(7):	amended by 43, 1982, s. 9(b)
Section 52:	amended by 43, 1982, s. 10
Section 54(1):	amended by 43, 1982, s. 11(a)
Section 54(1)(b):	repealed by 43, 1982, s. 11(a)
Section 54(3a):	inserted by 43, 1982, s. 11(b)
Section 58:	amended by 43, 1982, s. 12; repealed by 42, 1983, s. 11
Section 60a:	inserted by 20, 1980, s. 8
Section 61(2)(a), (ab) and (b):	repealed by 42, 1983, s. 12