

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 **31 August 1995**.*

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
Statutes Amendment (Commercial Licences) Act 1992 No. 55 of 1992 [Assented to 29 October 1992]⁷
Consumer Credit (Credit Providers) Amendment Act 1995 No. 8 of 1995 [Assented to 16 March 1995]⁸

¹ Came 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.

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

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

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

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

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

⁷ Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.

⁸ Came into operation 31 August 1995: *Gaz.* 3 August 1995, p. 346.

N.B. The amendments effected to this Act by the *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996* had not been brought into operation at the date of, and have not been included in, this reprint.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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

The Parliament of South Australia enacts as follows:

**PART 1
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.

Arrangement

3. This Act is arranged as follows:—

PART 1—Preliminary.

PART 2—Administration.

Division 1—The Commissioner, etc.

PART 3—Control of Credit Providers.

Division 1—Licensing of Credit Providers.

Division 2—Powers of Investigation and Inquiry.

Division 3—Conduct of business of Credit Providers.

PART 4—Credit Transactions.

PART 5—Charges for the Procurement of Credit.

PART 6—Harsh and Unconscionable Terms.

PART 7—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*.

* * * * *

(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.

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(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—

"**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 authorised 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;

"director" of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

"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;

"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;

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"**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 Commissioner**" means the Commissioner for Consumer Affairs;

"**the repealed Act**" means the *Money-lenders Act 1940-1971* repealed by this Act.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Application of this Act

6. (1) Subject to subsection (2) of this section, and any other express provision of this Act, Parts 2, 3, 4 and 7 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; or
- (b) where the credit provider is a licensed pawn broker who provides the credit in the course of his business as such; or
- (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; or
- (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*; or
- (e) where the credit provider is a body corporate whose principal business is insurance; or
- (f) where the credit provider is a body corporate empowered by special Act of Parliament to provide credit in accordance with the special Act; or
- (g) where the credit provider is a body corporate lawfully carrying on the business of banking; or
- (h) where the business of the credit provider consists only in the provision of credit to bodies corporate; or

- (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 operation of those Parts by proclamation under this Act.
- (2) The provisions of Parts 4, 6 and 7 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; or
 - (b) where—
 - (i) the principal exceeds \$20 000; and
 - (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 Commissioner by a person authorised by the Commissioner to provide credit by means of such accounts.

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(6) The Commissioner may, on the application of any person, authorise him to provide credit by means of revolving charge accounts, and such an authorisation 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 Commissioner thinks fit.

**PART 2
ADMINISTRATION**

DIVISION 1—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.

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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 3
CONTROL OF CREDIT PROVIDERS**

Definition

27. In this Part—

"**District Court**" means the Administrative and Disciplinary Division of the District Court.

Cause for disciplinary action

28. (1) There is proper cause for disciplinary action against a credit provider if—

- (a) the credit provider has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (b) the credit provider or any other person has acted unlawfully, improperly, negligently or unfairly in the course of conducting, or being employed or otherwise engaged in, the business of the credit provider.

(2) Disciplinary action may be taken against each director of a body corporate that is a credit provider if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.

(4) This section applies in relation to conduct occurring before or after the commencement of the *Consumer Credit (Credit Providers) Amendment Act 1995*.

Complaints

29. The Commissioner or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Act.¹

¹ Under Division 2 of Part 11 of the *Fair Trading Act 1987* the Commissioner may seek an assurance in writing from a credit provider that the credit provider will refrain from engaging in conduct that contravenes this Act (whether or not disciplinary proceedings have been instituted in respect of the conduct under this Act).

Hearing by Tribunal

30. (1) On the lodging of a complaint, the District Court must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Act.

(2) Without limiting the usual powers of the District Court, the Court may during the hearing—

- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

Participation of assessors in disciplinary proceedings

31. In any proceedings under this Part, the District Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the schedule.

Disciplinary action

32. (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

- (a) reprimand the person;
- (b) impose a fine not exceeding \$8 000 on the person;
- (c) prohibit the person from carrying on the business of a credit provider;
- (d) prohibit the person from being employed or otherwise engaged in the business of a credit provider;
- (e) prohibit the person from being a director of a body corporate that is a credit provider.

(2) The District Court may—

- (a) stipulate that a prohibition is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of stipulated conditions; or
 - (iv) until further order;
- (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(3) Before making an order in relation to a credit provider under this section, the District Court must consider the effect that the order would have upon the prudential standing of the credit provider.

(4) If—

- (a) a person has been found guilty of an offence; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

Contravention of prohibition order

33. (1) If a person carries on the business of a credit provider in contravention of an order of the District Court, the person is guilty of an offence.

Penalty: \$30 000 or imprisonment for six months.

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(2) If a person—

(a) is employed or otherwise engages in the business of a credit provider; or

(b) becomes a director of a body corporate that is a credit provider,

in contravention of an order of the District Court, that person and the credit provider are each guilty of an offence.

Penalty: \$8 000.

Register of disciplinary action

34. (1) The Commissioner must keep a register of disciplinary action taken against a person under this Act and must make a note on the register of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a credit provider.

(2) A person may inspect the register on payment of the fee fixed by regulation.

Commissioner and proceedings before Tribunal

35. (1) The Commissioner is entitled to be joined as a party to any proceedings of the District Court under this Part.

(2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

Investigations

36. The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to a matter that might constitute proper cause for disciplinary action under this Part.

**PART 4
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; and
- (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; and
 - (ii) the person to whom and the place at which repayment is to be made by the consumer; and
 - (iii) where the contract provides for repayment by instalment—
 - (A) the number of instalments to be paid by the consumer; and
 - (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; and
 - (iv) the total amount of the credit charge to be paid; and
 - (v) an itemised 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 authorised 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.

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(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 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; and
- (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; and
- (b) must be signed by or on behalf of the consumer; and
- (c) must—
 - (i) specify the number of instalments to be paid under the contract by the consumer; and
 - (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; and
- (d) must contain a description of the goods subject to the contract sufficient to identify them; and
- (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; and
- (f) must set out—
 - (i) the cash price of the goods; and
 - (ii) any amount payable under the contract on account of stamp duty; and
 - (iii) any amount payable under the contract by way of maintenance; and
 - (iv) any amount payable under the contract for delivery of the goods, or any of them, to or to the order of the consumer; and
 - (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; and
- (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; and
- (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.

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(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 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.

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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 5
CHARGES FOR THE PROCUREMENT OF CREDIT

Prohibition of procurement charges, etc.

45. * * * * *

(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; or
- (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.

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**PART 6
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 District Court for relief under this section.

(2) In—

- (a) proceedings before the District Court under subsection (1); or
- (b) proceedings before a court for the enforcement of a credit contract, guarantee or instrument to which this section applies, or for the recovery of damages or other compensation for the breach of such a contract, guarantee or instrument,

the court may grant relief under this section.

(3) 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 District Court 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 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 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 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 7
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; and
- (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; and
- (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.

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(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; or
- (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 authorised 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.

* * * * *

Prosecutions

59. Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

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; or
- (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; or

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- (b) left at an authorised 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 authorised 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 under this section for relief against the consequences of that contravention or non-compliance.

(1a) An application may be made under subsection (1)—

- (a) to the District Court;
- (b) if the contravention or failure to comply with the provisions of this Act is the subject of disciplinary proceedings under Part 3—to the Administrative and Disciplinary Division of the District Court as part of those proceedings.

(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 District Court 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 District Court shall have regard to—

- (a) the gravity of the contravention, or non-compliance; and
- (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 District Court 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 authorises the District Court 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—

* * * * *

* * * * *

- (e) prescribe, and provide for the recovery of, any fee for the purposes of this Act; and
- (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; and
- (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; and
- (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; and
- (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.

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SCHEDULE

Appointment and Selection of Assessors for District Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of credit providers.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with credit providers.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under Part 3, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

*(Transitional provisions from Consumer Credit (Credit Providers)
Amendment Act 1995, Sched. 2)*

1. Where an order is in force under Part 3 of the principal Act immediately before the commencement of this Act—

- (a) suspending a person's licence as a credit provider; or
- (b) disqualifying a person from holding a licence as a credit provider,

the order has effect as if it were an order of the Administrative and Disciplinary Division of the District Court under that Part as substituted by this Act prohibiting the person from carrying on, or from becoming a director of a body corporate carrying on, the business of a credit provider for the period of the suspension or disqualification.

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.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 3:	amended by 42, 1983, s. 5
Section 4(2) - (4):	repealed by 8, 1995, s. 3
Section 5:	definition of "authorized address" repealed by 8, 1995, s. 4(a) definition of "authorized name" repealed by 8, 1995, s. 4(b) definition of "the Commissioner" amended by 43, 1982, s. 5(b); substituted by 43, 1987, s. 13(a) definition of "director" inserted by 8, 1995, s. 4(c) definition of "nominated member" repealed by 42, 1983, s. 6(a) definition of "officer" repealed by 8, 1995, s. 4(d) 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); repealed by 8, 1995, s. 4(e) definition of "the Tribunal" substituted by 42, 1983, s. 6(c); repealed by 8, 1995, s. 4(f)
Section 6(1):	amended by 8, 1995, s. 5(a)
Section 6(3):	substituted by 43, 1982, s. 6; 48, 1987, s. 3
Section 6(4):	substituted by 43, 1982, s. 6
Section 6(5):	amended by 8, 1995, s. 5(b)
Section 6(6):	amended by 8, 1995, s. 5(c)
Section 8:	repealed by 43, 1987, s. 13(b)
Sections 10 - 12:	repealed by 43, 1986, s. 13(c)
	Division 2 of Part 2 comprising ss. 13 - 27 and heading amended by 20, 1980, ss. 3 - 5; repealed by 42, 1983, s. 7
	Part 3 comprising ss. 28 - 39 and headings amended by 20, 1980, s. 6; 43, 1982, s. 7; 42, 1983, ss. 8 - 10; 55, 1992, ss. 9, 10; repealed and ss. 27 - 36 and heading inserted in its place by 8, 1995, s. 6
Section 40(1):	amended by 43, 1982, s. 8(a), (b)
Section 40(4):	amended by 8, 1995, s. 7

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Section 40(10):	amended by 43, 1982, s. 8(c)
Section 41(1):	amended by 43, 1982, s. 9(a)
Section 41(3):	amended by 8, 1995, s. 8
Section 41(6a):	inserted by 20, 1980, s. 7
Section 41(7):	amended by 43, 1982, s. 9(b)
Section 45(1):	repealed by 8, 1995, s. 9
Section 46(1):	amended by 8, 1995, s. 10(a)
Section 46(2):	substituted by 8, 1995, s. 10(b)
Section 46(3):	amended by 8, 1995, s. 10(c)
Section 46(5):	amended by 8, 1995, s. 10(d)
Section 46(6):	amended by 8, 1995, s. 10(e)
Section 46(7):	amended by 8, 1995, s. 10(f)
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 59:	substituted by 8, 1995, s. 11
Section 60A:	inserted by 20, 1980, s. 8
Section 60A(1):	amended by 8, 1995, s. 12(a)
Section 60A(1a):	inserted by 8, 1995, s. 12(b)
Section 60A(3):	amended by 8, 1995, s. 12(c)
Section 60A(4):	amended by 8, 1995, s. 12(d)
Section 60A(5):	amended by 8, 1995, s. 12(e)
Section 60A(9):	amended by 8, 1995, s. 12(f)
Section 61(2)(a), (ab) and (b):	repealed by 42, 1983, s. 12
Section 61(2)(c) and (d):	repealed by 8, 1995, s. 13
Schedule:	inserted by 8, 1995, s. 14

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25