

(Reprint No. 3)

SOUTH AUSTRALIA

CONSUMER TRANSACTIONS ACT 1972

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 7 December 1997.

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**APPENDIX
LEGISLATIVE HISTORY**

CONSUMER TRANSACTIONS ACT 1972

being

Consumer Transactions Act 1972 No. 135 of 1972
[Assented to 7 December 1972]¹

as amended by

Consumer Transactions Act Amendment Act 1973 No. 8 of 1973 [Assented to 3 September 1973]²
Consumer Transactions Act Amendment Act 1979 No. 69 of 1979 [Assented to 22 November 1979]
Consumer Transactions Act Amendment Act 1980 No. 19 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
Consumer Transactions Act Amendment Act 1983 No. 1 of 1983 [Assented to 14 April 1983]⁴
Statutes Amendment (Commercial Tribunal—Credit Jurisdiction) Act 1983 No. 42 of 1983 [Assented to 16 June 1983]⁵
Consumer Transactions Act Amendment Act (No. 2) 1983 No. 49 of 1983 [Assented to 16 June 1983]⁶
Goods Securities Act 1986 No. 111 of 1986 [Assented to 18 December 1986]⁷
Statutes Amendment (Fair Trading) Act 1987 No. 43 of 1987 [Assented to 30 April 1987]⁸
Statutes Amendment (Consumer Credit and Transactions) Act 1987 No. 48 of 1987 [Assented to 30 April 1987]⁹
Consumer Transactions (Miscellaneous) Amendment Act 1995 No. 89 of 1995 [Assented to 7 December 1995]¹⁰

- ¹ Came into operation (except ss. 3, 4, 6-49, as amended by the Consumer Transactions 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. 1552.
- 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 21 November 1985: *Gaz.* 21 November 1985, p. 1542.
- ⁵ Came into operation 1 March 1984: *Gaz.* 1 March 1984, p. 445.
- ⁶ Came into operation 1 February 1985: *Gaz.* 10 January 1985, p. 50.
- ⁷ Came into operation 15 June 1987: *Gaz.* 11 June 1987, p. 1492.
- ⁸ Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.
- ⁹ Came into operation 1 July 1987: *Gaz.* 4 June 1987, p. 1430.
- ¹⁰ Came into operation (except new s. 6AA as inserted by s. 5) 1 November 1996: *Gaz.* 26 September 1996, p. 1209; **new s. 6AA came into operation 7 December 1997 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).**

N.B. The amendments effected to this Act by the *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996* have not been included in this reprint as the section it amended was subsequently repealed by Act No. 89 of 1995, s. 10.

NOTE:

- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

An Act to provide protection for consumers who enter consumer contracts; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

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

Interpretation

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

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

"**consumer**" means a person (other than a body corporate) who enters into a consumer contract with a view to purchasing, or acquiring the use or benefit of, goods or services, and includes a person to whom rights, interests or liabilities under the consumer contract are assigned;

"**consumer contract**" means a contract or agreement—

- (a) under which a person (other than a body corporate)—
 - (i) purchases goods or contracts for the performance of services; or
 - (ii) takes goods on hire (whether or not the contract purports to confer a right or option on the consumer to purchase the goods); or
 - (iii) acquires by other means the use or benefit of goods or services; and
- (b) under which the consideration to be paid or provided by or on behalf of the consumer in money or money's worth does not exceed \$40 000 (excluding any interest or fees or charges payable because credit is or is to be provided for the transaction),

but does not include—

- (c) a sale by auction; or
- (d) a contract or agreement for the sale, bailment, or disposition of goods to a person who trades in goods of that description; or
- (e) a contract or agreement that includes a provision conferring a right or licence to occupy land; or
- (f) a contract or agreement of a kind declared by regulation not to be a consumer contract for the purposes of this Act;

"**consumer lease**" means a consumer contract under which a supplier lets goods on hire to a consumer for a period exceeding four months, but which does not purport to confer on the consumer a right or option to purchase the goods subject to the lease;

"**goods**" has the same meaning as in the *Consumer Credit (South Australia) Code*;

"**Magistrates Court**" means the Civil (Consumer and Business) Division of the Magistrates Court;

"services" means any of the following services:

- (a) the cleaning, ironing or repair of articles of clothing or personal ornament; and
- (b) the repair or servicing of articles of household use or ornament; and
- (c) the repair, reinstatement or renovation of part of a dwellinghouse; and
- (d) the painting or decoration of the whole or part of a dwellinghouse; and
- (e) the performance in relation to a dwellinghouse or its curtilage of work of a kind usually performed by a plumber or electrician; and
- (f) the servicing, repair or painting of a motor vehicle; and
- (g) any other services that may be prescribed;

"supplier" in relation to a consumer contract means a person carrying on a business in the course of which—

- (a) the person enters into the consumer contract; or
- (b) negotiations leading to the formation of the consumer contract are carried out whether or not the person owns or personally supplies the goods or services subject to the contract; or
- (c) the person sells goods to another person with a view to that other person entering into a consumer lease with a consumer with whom the person (the vendor of the goods) has previously conducted negotiations in relation to the goods.

Application of Act

3. This Act applies to—

- (a) every consumer contract of which the law of this State is the proper law; or
- (b) every consumer contract under which goods or services are, or are to be, delivered or rendered in this State.

Application of Consumer Credit (South Australia) Code to certain consumer leases

4. Part 10 of the *Consumer Credit (South Australia) Code* extends in its application to a consumer lease within the meaning of this Act despite any provision of the Code to the contrary.

Administration of Act

5. (1) The Commissioner has the administration of this Act.

(2) In the administration of this Act, the Commissioner is subject to direction by the Minister.

Conditions and warranties to be implied in consumer contracts

6. (1) In every consumer contract for the sale of goods there is—

- (a) an implied condition on the part of the supplier that in the case of a sale the supplier has a right to sell the goods, and that in the case of an agreement to sell the supplier will have a right to sell the goods at the time when the property is to pass; and

- (b) an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party not declared or known to the consumer before or at the time when the contract is made.

(2) In every consumer contract for the sale or supply of goods there is an implied warranty that the consumer will have and enjoy quiet possession of the goods for so long as the consumer is not in default under the contract.

(3) In every consumer contract for the sale or supply of goods by description there is an implied condition that the goods will correspond with the description, and if the contract is made by reference to sample as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(4) In every consumer contract for the sale or supply of goods there is an implied condition that the goods are of merchantable quality but no such condition is implied—

- (a) as regards defects in goods of which the supplier or an agent of the supplier could not reasonably have been aware at the time the contract was made; or
- (b) if the consumer has examined the goods or a sample of the goods, as regards defects that the examination ought to have revealed.

(5) For the purposes of this section goods are of merchantable quality if they are as fit for the purpose for which goods of that description are ordinarily used as is reasonable to expect having regard to the following considerations:

- (a) the price of the goods and the terms and conditions of the relevant consumer contract and the circumstances surrounding the formation of the contract; and
- (b) the apparent condition of the goods.

(6) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier the particular purpose for which the goods are required, so as to show reliance on the supplier's skill or judgment and the goods are of a description which it is in the course of the supplier's business to supply, there is an implied condition in the consumer contract that the goods are reasonably fit for that purpose.

Implied warranty in consumer contract for the provision of services

7. (1) There is an implied warranty in every consumer contract for the provision of services that the services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

(2) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier, the particular purpose for which the services are required, or the result that the consumer desires the services to achieve, so as to show reliance on the supplier's skill and judgment and the services are of a description that it is in the course of the supplier's business to provide, there is an implied warranty in a consumer contract for the provision of the services that the services and any materials supplied in connection with the services will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

(3) This section does not apply to a consumer contract providing for the carrying out of domestic building work within the meaning of the *Building Work Contractors Act 1995*.

Exclusion, etc., of implied terms

8. (1) The conditions and warranties to be implied in a consumer contract under this Act may not be excluded, limited or modified by agreement.

(2) Any other condition or warranty to be implied in a consumer contract may (subject to any other enactment or rule of law) be excluded, limited or modified by agreement.

(3) In legal proceedings, a purported exclusion, limitation or modification of a condition or warranty that is capable of exclusion, limitation or modification will be regarded as ineffectual unless it is proved that before the formation of the contract the attention of the consumer was drawn specifically to that exclusion, limitation or modification.

Effect of this Act on other laws applicable to consumer contracts

9. This Act does not affect the operation of the *Sale of Goods Act 1895*, or of any other Act or law in relation to consumer contracts except to the extent that this Act is inconsistent with the provisions of the *Sale of Goods Act 1895*, or the other Act or law.

Joint and several liability of suppliers

10. If two or more persons are suppliers under or in respect of a consumer contract those suppliers are jointly and severally liable to the consumer in respect of a liability that the consumer may establish against either of them under or in respect of the consumer contract.

Representations, etc.

11. A statement or representation made in relation to goods and services that are, or subsequently become, subject to a consumer contract by an employee or a person acting on behalf of a supplier will be taken to be a statement or representation made by the supplier.

Rescission of consumer contract

12. (1) A consumer is entitled, within a reasonable time (not exceeding seven days) after the delivery of goods under a consumer contract, to rescind the contract on the ground of breach of condition on the part of the supplier.

(2) The contract may be rescinded by notice in writing served on the supplier.

(3) If the property in the goods has passed to a consumer under a contract, and the contract has been rescinded under this section, the property in the goods immediately re-vests in the supplier with whom the contract was made, and the consumer must return the goods to that supplier.

(4) In the event of rescission under this section, the consumer may recover from the supplier, as a debt, the amount or value of any consideration paid or provided by the consumer under the consumer contract.

(5) If—

(a) the goods are not returned to the supplier within a reasonable time after rescission; or

(b) the goods have been rendered unmerchantable after delivery to the consumer; or

(c) the goods have been damaged by abnormal use after delivery to the consumer; or

(d) the Magistrates Court on the application of the supplier made within 14 days of the date of the purported rescission declares the rescission invalid on the ground that rescission is not an appropriate remedy in view of the nature of the goods, the conduct of the parties, or any other circumstances of the transaction,

a purported rescission of a consumer contract under this section is void.

(6) The right of rescission conferred by this section is in addition to, and does not derogate from, a right of rescission under any other Act or law.

Powers of Magistrates Court in the event of rescission

13. (1) In a dispute arising out of the rescission of a consumer contract, the Magistrates Court may, on the application of a consumer or supplier, make such orders as may be necessary—

- (a) to give effect to, or to enforce, rights or liabilities consequent on the rescission arising under this Act; or
- (b) subject to such rights or liabilities, to restore the parties as nearly as practicable to their respective positions prior to the formation of the consumer contract.

(2) The jurisdiction conferred by this section is not exclusive of any other jurisdiction of a court.

Prosecutions

14. Proceedings for an offence against this Act may be commenced at any time within 12 months of the day on which the offence is alleged to have been committed.

Power of Magistrates Court to extend time

15. (1) A time prescribed by this Act for the giving of a notice or other document or for the commencement of proceedings may, on an application made to the Magistrates Court (either before or after the expiration of that time), be extended by the Court for such further period and on such conditions as the Court thinks fit.

(2) There is no appeal against an extension of time granted by the Magistrates Court under this section.

Invalidity of exclusion clauses

16. A provision in an agreement that purports to exclude, modify or restrict the operation of this Act is void (except where this Act permits such exclusion, modification or restriction).

Nature of writing

17. (1) A provision of a written consumer contract that—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type the dimensions of which do not comply with the regulations,

is not enforceable against the consumer by the supplier.

(2) If a consumer has been supplied with a copy of a consumer contract, the contract will not be regarded as being in conformity with subsection (1) unless that copy is in conformity with that subsection.

Relief against civil consequences of non-compliance with this Act

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

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

(3) If, on an application under subsection (1), the Magistrates Court is satisfied that the contravention or failure to comply with 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 relief should be granted, the Magistrates Court is to 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 on such conditions as the Magistrates 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 this section.

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

(9) Nothing in this section authorises the Magistrates Court to grant relief against any criminal liability or criminal penalty.

Service

19. A notice, process or document is validly served on a supplier if it is—

- (a) served personally on the supplier; or
- (b) left at a place at which the supplier carries on business with a person apparently responsible to the supplier; or
- (c) sent by certified mail addressed to the supplier at a place at which the supplier carries on business, or at the supplier's place of residence.

Regulations

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

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

- (a) prescribe any form for the purpose of this Act; and
- (b) 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; and
- (c) invest the Commissioner with power to intervene in disputes arising in transactions to which this Act applies with a view to obtaining early settlement of those disputes; and
- (d) for the purpose of promoting simplicity and uniformity of expression in consumer contracts, prescribe terminology and expressions that may be used in such contracts and provide that in the absence of evidence of a contrary intention that terminology or those expressions will, when appearing in any such contract, bear an interpretation stipulated in the regulations; and
- (e) prescribe penalties not exceeding \$2 500 for a contravention of, or non-compliance with, a regulation.

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APPENDIX**LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provisions from Consumer Transactions (Miscellaneous) Amendment Act 1995, Sched. 1)

1. (1) An order of the Commercial Tribunal in force under section 18 of the principal Act immediately before the commencement of this clause continues in force as if it were an order of the Magistrates Court subject to that section (renumbered as section 13 by this Act).

(2) An order of the Commercial Tribunal in force under section 48A of the principal Act immediately before the commencement of this clause continues in force as if it were an order of the Magistrates Court subject to that section (renumbered as section 18 by this Act).

Renumbering

(Renumbering provision from Consumer Transactions (Miscellaneous) Amendment Act 1995, s. 15)

15. (1) When all provisions of this amending Act have been brought into operation, the sections of the principal Act are to be renumbered in consecutive order.

(2) A reference in any Act or other instrument (whether of a legislative character or not) to a provision of the principal Act as numbered before the commencement of this Act will be taken to be a reference to the corresponding provision of the principal Act as renumbered by this Act.

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 29.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) (*entries in italic type indicate provisions that have been repealed and therefore not renumbered*) is as follows:

Long title:	amended by 89, 1995, s. 3
<i>Part 1 heading:</i>	<i>repealed by 89, 1995, Sched. 2</i>
<i>Sections 2 - 4:</i>	<i>repealed by 89, 1995, Sched. 2</i>
Section 2:	definition of "Commissioner" inserted by 89, 1995, s. 4(a)
(previously section 5)	definition of "consumer" substituted by 89, 1995, s. 4(a)
	definition of "consumer contract" amended by 43, 1982, s. 14(a); 48, 1987, s. 4(a); substituted by 89, 1995, s. 4(a)
	definition of "consumer credit contract" amended by 43, 1982, s. 14(b), (c); substituted by 48, 1987, s. 4(b); repealed by 89, 1995, s. 4(a)
	definition of "consumer lease" amended by 89, 1995, Sched. 2
	definitions of "consumer mortgage" and "credit" repealed by 89, 1995, s. 4(b)
	definition of "goods" substituted by 89, 1995, s. 4(b)
	definitions of "guarantee", "guarantor", "hire-purchase agreement", "linked consumer credit contract", "linked supplier" and "principal" repealed by 89, 1995, s. 4(b)
	definition of "Magistrates Court" inserted by 89, 1995, s. 4(b)
	definition of "services" amended by 89, 1995, Sched. 2
	definition of "statutory rebate" repealed by 89, 1995, s. 4(c)
	definition of "supplier" amended by 89, 1995, Sched. 2

	definition of "the Commissioner" amended by 43, 1982, s. 14(d); substituted by 43, 1987, s. 14(a); repealed by 89, 1995, s. 4(c)
	definition of "the Tribunal" substituted by 42, 1983, s. 14; repealed by 89, 1995, s. 4(c)
	substituted by 89, 1995, s. 5
Section 3: (previously section 6)	
Section 4: (previously section 6AA)	inserted by 89, 1995, s. 5
Section 5: (previously section 6A)	inserted by 43, 1987, s. 14(b)
<i>Part 2 heading:</i>	<i>repealed by 89, 1995, Sched. 2</i>
<i>Part 2 Division 1 heading:</i>	<i>repealed by 89, 1995, Sched. 2</i>
<i>Section 7:</i>	<i>repealed by 89, 1995, s. 6</i>
Section 6(1) - (4) and (6): (previously section 8(1) - (4) and (6))	amended by 89, 1995, Sched. 2
<i>Section 8(7):</i>	<i>repealed by 49, 1983, s. 3</i>
Section 7(1) and (2): (previously section 9(1) and (2))	amended by 89, 1995, Sched. 2
Section 7(3): (previously section 9(3))	inserted by 1, 1983, s. 3
Section 8(1) and (3): (previously section 10(1) and (3))	amended by 89, 1995, Sched. 2
Sections 9 and 10: (previously sections 11 and 12)	amended by 89, 1995, Sched. 2
<i>Section 13:</i>	<i>repealed by 89, 1995, s. 7</i>
Section 11: (previously section 14)	amended by 89, 1995, Sched. 2
Section 12(1) - (4): (previously section 15(1) - (4))	amended by 89, 1995, Sched. 2
Section 12(5): (previously section 15(5))	amended by 89, 1995, s. 8, Sched. 2
<i>Section 15(6):</i>	<i>repealed by 42, 1983, s. 15</i>
Section 12(6): (previously section 15(7))	amended by 89, 1995, Sched. 2; redesignated as s. 12(6) in pursuance of the <i>Acts Republication Act 1967</i>
Section 13: (previously section 16)	substituted by 89, 1995, s. 9
<i>Sections 17 - 19:</i>	<i>repealed by 89, 1995, s. 9</i>
	<i>Division 2 of Part 2 comprising ss. 20 - 23 and heading amended by 43, 1982, s. 15; repealed by 89, 1995, s. 10</i>
	<i>Division 3 of Part 2 comprising s. 24 and heading repealed by 89, 1995, s. 10</i>
	<i>Part 3 comprising ss. 25 - 30 and heading amended by 43, 1982, s. 16; repealed by 89, 1995, s. 11</i>
	<i>Part 4 comprising ss. 31 - 34 and heading repealed by 89, 1995, s. 11</i>
	<i>Part 5 comprising ss. 35 - 37 and heading amended by 69, 1979, s. 2; 43, 1982, s. 17; 111, 1986, Sched. 1; repealed by 89, 1995, s. 11</i>
	<i>Part 6 comprising s. 38 and heading repealed by 89, 1995, s. 11</i>
	<i>Part 7 comprising ss. 39 - 42 and heading repealed by 89, 1995, s. 11</i>

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Part 8 comprising ss. 43, 44 and heading repealed by 89, 1995, s. 11

Part 9 heading:

repealed by 89, 1995, Sched. 2

Section 45(1):

repealed by 89, 1995, s. 12

Section 14:

redesignated as s. 14 in pursuance of the Acts Republication

(previously section 45(2))

Act 1967

Section 45(3):

repealed by 89, 1995, s. 12

Sections 15 - 17:

substituted by 89, 1995, s. 13

(previously sections 46 - 48)

Section 18:

inserted by 19, 1980, s. 2; substituted by 89, 1995, s. 13

(previously section 48A)

Section 19:

substituted by 89, 1995, s. 13

(previously section 49)

Section 20(1):

amended by 89, 1995, Sched. 2

(previously section 50(1))

Section 20(2):

amended by 43, 1982, s. 18; 89, 1995, s. 14, Sched. 2

(previously section 50(2))

Section 50(2)(c):

repealed by 42, 1983, s. 16

Section 20(2)(c) and (d):

redesignated as s. 20(2)(c) and (d) respectively in pursuance

(previously section 50(2)(d) and (da))

of the Acts Republication Act 1967