

South Australia



**CONSUMER TRANSACTIONS (MISCELLANEOUS) AMENDMENT
ACT 1995**

No. 89 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 89 of 1995

An Act to amend the Consumer Transactions Act 1972.

[Assented to 7 December 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Consumer Transactions (Miscellaneous) Amendment Act 1995*.

(2) The *Consumer Transactions Act 1972* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of long title

3. The long title of the principal Act is amended by striking out "in certain classes of transactions; to repeal the Hire-Purchase Agreements Act, 1960-1971" and substituting "who enter consumer contracts".

Amendment of s. 5—Interpretation

4. Section 5 of the principal Act is amended—

(a) by striking out the definitions of "consumer" to "consumer credit contract" (inclusive) and substituting the following definitions:

"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;;
- (b) by striking out the definitions of "consumer mortgage" to "principal" (inclusive) and substituting the following definitions:

"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;;

- (c) by striking out the definitions of "statutory rebate", "the Commissioner" and "the Tribunal".

Substitution of s. 6

5. Section 6 of the principal Act is repealed and the following sections are substituted:

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Application of Act

6. 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

6AA. 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.

Repeal of s. 7

6. Section 7 of the principal Act is repealed.

Repeal of s. 13

7. Section 13 of the principal Act is repealed.

Amendment of s. 15—Rescission of consumer contract

8. Section 15 of the principal Act is amended by striking out from subsection (5)(d) "Tribunal" and substituting "Magistrates Court".

Substitution of ss. 16 to 19

9. Sections 16 to 19 (inclusive) of the principal Act are repealed and the following section is substituted:

Powers of Magistrates Court in the event of rescission

16. (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.

Repeal of Part II Divisions II and III

10. Divisions II and III of Part II of the principal Act are repealed.

Repeal of Parts III to VIII

11. Parts III to VIII (inclusive) of the principal Act are repealed.

Amendment of s. 45—Prosecutions

12. Section 45 of the principal Act is amended by striking out subsections (1) and (3).

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Substitution of ss. 46 to 49

13. Sections 46 to 49 (inclusive) of the principal Act are repealed and the following sections are substituted:

Power of Magistrates Court to extend time

46. (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

47. 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

48. (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

48A. (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

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- (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

49. 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.

Amendment of s. 50—Regulations

14. Section 50 of the principal Act is amended by striking out paragraphs (da) and (e) of subsection (2) and substituting the following paragraphs:

- (da) 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.

Renumbering

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.

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(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.

SCHEDULE 1
Transitional Provisions

Transitional provisions

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).

SCHEDULE 2
Further Amendments of Principal Act

Provision Amended	How Amended
Part I heading	Strike out this heading.
Sections 2 to 4 (inclusive)	Strike out these sections.
Section 5	
definition of "consumer lease"	Strike out "any" and substitute "a".
definition of "services" paragraphs (a) to (d)	Strike out "any" wherever occurring.
definition of "supplier"	Strike out "he" wherever occurring and substitute, in each case, "the person".
Part II heading	Strike out this heading.
Division 1 heading	Strike out this heading.
Section 8(1)	Strike out "shall be" and substitute "is".
Section 8(1)(a)	Strike out "he" twice occurring and substitute, in each case, "the supplier".
Section 8(1)(b)	Strike out "any" second occurring and substitute "a".
Section 8(2)	Strike "shall be" and substitute "is".
	Strike out "shall have" and substitute "will have".
	Strike out "he" and substitute "the consumer".
Section 8(3)	Strike out "Where there is a" and substitute "In every".
	Strike out "shall be" and substitute "is".
	Strike out "shall" and substitute "will".
Section 8(4)	Strike out "shall be" first and third occurring and substitute, in each case, "is".
	Strike out "shall be" second occurring and substitute "are".
Section 8(4)(b)	Strike out "where" and substitute "if".
	Strike out "thereof" and substitute "of the goods".
Section 8(6)	Strike out "Where" and substitute "If".
	Strike out "that he relies" and substitute "reliance".
	Strike out "shall be" first occurring and substitute "is".
	Strike out "shall be" second occurring and substitute "are".
Section 9(1)	Strike out "shall be" first occurring and substitute "is".
	Strike out "shall be" second occurring and substitute "will be".

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SCHEDULE 2

- Section 9(2) Strike out "Where" and substitute "If".
Strike out "he" first occurring and substitute "the consumer".
Strike out "that he relies" and substitute "reliance".
Strike out "shall be" first occurring and substitute "is".
Strike out "therewith shall be" and substitute "with the services will be".
- Section 10(1) Strike out "pursuant to the provisions of this Part" and substitute "under this Act".
- Section 10(3) Strike out "any" first occurring.
Strike out "any" second occurring and substitute "a".
Strike out "shall" and substitute "will".
- Section 11 After "*Sale of Goods Act*" second occurring insert "1895".
- Section 12 Strike out "Where" and substitute "If".
Strike out "shall be" and substitute "are".
Strike out "any" and substitute "a".
Strike out "he" and substitute "the consumer".
- Section 14 Strike out "Any" and substitute "A".
Strike out "shall be deemed" and substitute "will be taken".
- Section 15(1) Strike out "shall be" and substitute "is".
Strike out "in pursuance of" and substitute "under".
Strike out "any".
- Section 15(2) Strike out "upon" and substitute "on".
- Section 15(3) Strike out "Where" and substitute "If".
Strike out "in pursuance of" and substitute "under".
Strike out "shall forthwith re-vest" and substitute "immediately re-vests".
Strike out "shall" and substitute "must".
- Section 15(4) Strike out "him" and substitute "the consumer".
- Section 15(5) Strike out "Where" and substitute "If".
Strike out "any purported rescission of a consumer contract under this section shall be void" and substitute "a purported rescission of a consumer contract under this section is void".
- Section 15(7) Strike out "shall be" and substitute "is".
Strike out "shall" and substitute "does".

Part IX heading	Strike out this heading.
Section 50(1)	Strike out "he considers" and substitute "are".
Section 50(2)	Strike out "the foregoing those" and substitute "subsection (1), the".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor