



ANNO VICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1980

No. 20 of 1980

An Act to amend the Consumer Credit Act, 1972-1973.

[Assented to 17th April, 1980]

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

1. (1) This Act may be cited as the "Consumer Credit Act Amendment Act, 1980". Short titles.

(2) The Consumer Credit Act, 1972-1973, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Consumer Credit Act, 1972-1980".

2. Section 5 of the principal Act is amended—

(a) by striking out from paragraph (a) of the definition of "revolving charge account" the passage "consumer contract or consumer contracts" and inserting in lieu thereof the passage "contract or contracts";

(b) by striking out from the definition of "sale by instalment" the word "consumer";

and

(c) by striking out the definition of "the Registrar" and inserting after the definition of "statutory rebate" the following definition:—

"the Commercial Registrar" or "the Registrar" means the person for the time being holding, or acting in, the office of Commercial Registrar under this Act:.

Amendment of
principal Act,
s. 5—
Interpretation.

3. Section 18 of the principal Act is amended by striking out subsections (3) and (4) and inserting in lieu thereof the following subsections:—

(3) The Chairman may, with the approval of the Minister responsible for the administration of the department of the Public Service to which special magistrates are assigned, delegate a jurisdiction conferred upon him by regulation to a special magistrate.

Amendment of
principal Act,
s. 18—
How Tribunal
is to be
constituted.

- (4) A delegation under this section—
- (a) is revocable at will;
 - (b) does not prevent the chairman from acting personally in any matters;
- and
- (c) may be subjected to such conditions and limitations as the Chairman thinks fit and specifies in the instrument of delegation.

(5) A special magistrate to whom any jurisdiction has been delegated under this section may exercise the delegated jurisdiction in accordance with the instrument of delegation but if any party, at or before the commencement of proceedings before the special magistrate, objects to the exercise of jurisdiction by the special magistrate, he shall refer those proceedings to the Chairman for hearing and determination.

Amendment of principal Act, s. 21—
Powers of the Tribunal.

4. Section 21 of the principal Act is amended by striking out from paragraphs (a) and (b) of subsection (1) the passage “the Registrar” wherever it occurs and inserting in lieu thereof, in each case, the passage “the Commercial Registrar”.

Repeal of s. 27 of principal Act and enactment of section in its place.

Commercial Registrar.

5. Section 27 of the principal Act is repealed and the following section is enacted and inserted in its place:—

27. (1) There shall be a Commercial Registrar.

(2) The Commercial Registrar must be a legal practitioner.

(3) The Commercial Registrar shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967-1978, and the office of the Commercial Registrar may be held in conjunction with any other office in the Public Service of the State.

(4) The Commercial Registrar shall exercise such powers, discretions and functions—

(a) as may be conferred on, or assigned to, him by or under this Act or any other Act;

or

(b) as may be delegated to him by the Chairman in pursuance of subsection (5) of this section.

(5) The Chairman may delegate to the Commercial Registrar any of his powers, discretions and functions that he is authorized by regulation to delegate to the Commercial Registrar.

(6) The Commercial Registrar may delegate to any person approved by the Chairman of the Tribunal any functions of a clerical nature assigned (by delegation or otherwise) to him.

(7) A delegation under subsection (5) or (6) of this section—

(a) is revocable at will;

and

(b) does not prevent the Chairman or the Commercial Registrar (as the case may require) from acting personally in any matter.

6. Section 28 of the principal Act is amended—

- (a) by striking out from subsection (3) the passage “A credit provider” and inserting in lieu thereof the passage “Subject to subsection (4) of this section, a credit provider”;

and

- (b) by inserting after subsection (3) the following subsection:—

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

Amendment of principal Act, s. 28—
Obligation to be licensed.

7. Section 41 of the principal Act is amended by inserting after subsection (6) the following subsection:—

(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.

Amendment of principal Act, s. 41—
Form of a contract that is a sale by instalment.

8. The following section is enacted and inserted in the principal Act after section 60 thereof:—

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

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

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

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

(a) the gravity of the contravention, or non-compliance;

(b) the conduct of the applicant in relation to the transaction to which the application relates;

and

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

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

Enactment of s. 60a of principal Act.

Relief against civil consequences of non-compliance with this Act.

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

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

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

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

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

K. D. SEAMAN, Governor