



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 135 of 1972

An Act to provide protection for consumers in certain classes of transaction ; to repeal the Hire-Purchase Agreements Act, 1960-1971 ; and for other purposes.

[Assented to 7th December, 1972]

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

PART I**PART I****PRELIMINARY**

1. This Act may be cited as the "Consumer Transactions Act, 1972". Short title.

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

3. This Act is arranged as follows:—

Arrangement
of this Act.

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PART I

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**Repeal and
transitional
provision.**

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 (1) The following Acts are repealed:—

Hire-Purchase Agreements Act, 1960;

Hire-Purchase Agreements Act Amendment Act, 1962;

Hire-Purchase Agreements Act Amendment Act, 1966;

Hire-Purchase Agreements Act Amendment Act, 1971.

(2) Notwithstanding the repeal of the Hire-Purchase Agreements Act, 1960-1971, that Act shall continue to apply in relation to contracts and agreements made before the commencement of this Act to which that Act applied immediately before the commencement of this Act.

(3) This Act shall not apply in relation to any contract, agreement, mortgage or other security made or given before the commencement of this Act.

Interpretation.

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

“consumer” means a person (other than a body corporate)—

(a) who enters into a consumer contract with a view to purchasing, or acquiring the use or benefit of, goods or services;

(b) who enters into a consumer credit contract with a view to obtaining credit, or the use or benefit of credit;

or

(c) who enters, as mortgagor, into a consumer mortgage, and includes a person to whom the rights, interest or liability of any such person under the consumer contract, consumer credit contract, or consumer mortgage is assigned:

“consumer contract” means a contract or agreement—

(a) under which a person (other than a body corporate)—

(i) purchases any goods or contracts for the performance of any services;

(ii) takes any goods on hire (whether or not the contract purports to confer any right or option upon the consumer to purchase the goods);

or

(iii) acquires by any other means the use or benefit of any 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 (excluding any credit charge) does not exceed ten thousand dollars;

but does not include—

(c) a sale by auction;

(d) a contract or agreement for the sale, bailment, or disposition of goods to a person who trades in goods of that description;

(e) a contract or agreement that includes a provision conferring any 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 credit contract” means a credit contract under which the amount of principal advanced to a consumer, or of which the consumer receives the benefit under the contract, does not exceed ten thousand dollars:

“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 any right or option to purchase the goods subject to the lease:

“consumer mortgage” or “mortgage” means any mortgage, charge or other security (including a bill of sale within the meaning of the Bills of Sale Act) taken over goods, by which the performance of any obligations by a consumer under a consumer credit contract is secured; and “mortgagee” and “mortgagor” have corresponding meanings:

“credit”, “credit charge”, “credit contract” and “credit provider” have the meanings respectively assigned to those terms under the Consumer Credit Act, 1972:

“goods” includes all chattels personal other than things in action and money:.

“guarantee” includes an indemnity:

“guarantor” means a person who guarantees the performance by a consumer of obligations under a consumer credit contract 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 consumer credit contract or purported consumer 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):

“hire-purchase agreement” means a consumer contract—

(a) that provides for the letting of goods on hire to a consumer and purports to confer on the consumer an express or implied right or option to purchase the goods;

or

(b) that provides for the purchase of goods by three or more instalments (whether the instalments are described as rent, or hire or otherwise),

but does not include a consumer contract that provides for the property in the goods to pass on, or before delivery:

“linked consumer credit contract” means a consumer credit contract made by a consumer with a credit provider in respect of a consumer contract with a supplier who is in relation to that credit provider a linked supplier:

“linked supplier” in relation to a credit provider means a supplier who introduces a consumer to a credit provider or who takes any part in negotiations leading to the formation of a credit contract between that credit provider and a consumer and, without limiting the generality of the foregoing, includes—

- (a) a supplier who by agreement or arrangement (whether formal or informal) with a credit provider refers applicants for credit to that credit provider;
- (b) a supplier who has available for use by those who may seek credit documents intended to be used as contracts with, or offers or applications to, the credit provider;

or

- (c) a supplier on whose premises any contract with, or offer or application to, the credit provider is signed by the consumer in pursuance of an arrangement between the supplier and the credit provider, or in circumstances from which the existence of such an arrangement between the credit provider and the supplier might reasonably be inferred,

and “linked credit provider” has a correlative meaning:

“principal” has the meaning assigned under the Consumer Credit Act, 1972:

“services” means any of the following services:—

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

“statutory rebate”—

- (a) in relation to a credit charge—
 - (i) 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 from month to month—
means the amount of interest attributable
to the period of complete months still
remaining under the contract;

- (ii) 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;

(b) in relation to insurance, means the sum of—

- (i) the total amount of premium paid in respect
of any annual period not yet com-
menced;

and

- (ii) ninety per centum of the proportion of the
amount of the premium for insurance in
respect of the current annual period
attributable to the unexpired portion of
that period consisting of whole months;

and

(c) in relation to maintenance, means the amount
derived by multiplying the amount charged for
maintenance by the number of complete months
in the period of the contract still remaining, and
by dividing the product so obtained by the
number of complete months in the period of the
contract:

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

- (a) he enters into the consumer contract;
- (b) negotiations leading to the formation of the consumer
contract are carried out whether or not he owns
or personally supplies the goods or services subject
to the contract:

or

(c) he sells goods to another person with a view to that other person entering into a consumer lease with a consumer with whom he (the vendor of the goods) has previously conducted negotiations in relation to the goods:

“the Commissioner” means the person for the time being holding, or acting in, the office of the South Australian Commissioner for Prices and Consumer Affairs under the Prices Act:

“the Tribunal” means the Credit Tribunal constituted under the Consumer Credit Act, 1972.

6. This Act shall apply to every consumer contract, consumer credit contract and consumer mortgage— Application of this Act.

(a) of which the law of this State is the proper law;

or

(b) that relates to goods or services that are delivered or rendered within this State.

PART II

PART II

CONSUMER TRANSACTIONS

DIVISION I

DIVISION I—CONSUMER CONTRACTS GENERALLY

Contract
conditional
upon credit.

7. (1) Where a consumer makes it known to a supplier that he intends to seek credit for the purposes of performing his obligations under a consumer contract that he proposes to enter into with the supplier, or circumstances exist from which that intention should be inferred by the supplier, the contract shall be subject to a condition that if the consumer, after taking all reasonable steps to obtain the requisite credit, is unsuccessful in doing so—

(a) the consumer may by notice in writing served on the supplier rescind the contract;

and

(b) in that event, the goods shall be returned to the supplier, and the consumer will be entitled to recover from the supplier any consideration or the value thereof, paid or given in pursuance of the contract.

(2) Any information communicated by a consumer to an employee of a supplier shall for the purposes of this section be deemed to have been communicated to the supplier.

(3) In the circumstances referred to in subsection (1) of this section, the supplier may contract with the consumer upon terms that the consumer will indemnify the supplier for any loss (in excess of any loss resulting from the normal use of goods) suffered by him in the event of the consumer not obtaining the requisite credit.

(4) A supplier shall not be entitled to recover any moneys in pursuance of an indemnity under subsection (3) of this section unless he has specifically drawn to the attention of the consumer the fact that the contract contains that indemnity.

Conditions and
warranties to be
implied in
consumer
contracts.

8. (1) In every consumer contract for the sale of goods there shall be—

(a) an implied condition on the part of the supplier that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he 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 any 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 shall be an implied warranty that the consumer shall have and enjoy quiet possession of the goods for so long as he is not in default under the contract.

(3) Where there is a consumer contract for the sale or supply of goods by description there shall be an implied condition that the goods shall 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 shall be an implied condition that the goods shall be of merchantable quality but no such condition shall be 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) where the consumer has examined the goods or a sample thereof, 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) Where 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 that he relies 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 shall be an implied condition in the consumer contract that the goods shall be reasonably fit for that purpose.

(7) Subsections (3), (4), (5) and (6) of this section do not apply to a consumer contract for the sale of a second-hand vehicle within the meaning of the Second-Hand Motor Vehicles Act, 1971.

PART II

DIVISION I

Implied warranty in consumer contract for the provision of services.

9. (1) There shall be 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 shall be reasonably fit for the purpose for which they are supplied.

(2) Where 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 he desires the services to achieve, so as to show that he relies 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 shall be an implied warranty in a consumer contract for the provision of the services that the services and any materials supplied in connection therewith shall be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

Exclusion, etc. of implied terms.

10. (1) The conditions and warranties to be implied in a consumer contract pursuant to the provisions of this Part 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 any legal proceedings, any purported exclusion, limitation or modification of a condition or warranty that is capable of exclusion, limitation or modification shall 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.

Affect of this Act on other laws applicable to consumer contracts.

11. This Act does not affect the operation of the Sale of Goods Act, 1895-1972, 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, or the other Act or law.

Joint and several liability of suppliers.

12. Where two or more persons are suppliers under or in respect of a consumer contract those suppliers shall be jointly and severally liable to the consumer in respect of any liability that he may establish against either of them under or in respect of the consumer contract.

Recovery of damages from supplier or credit provider.

13. (1) Where a consumer is entitled to recover damages against a supplier under or in respect of a consumer contract or any breach thereof, or any representation or warranty made in the course of, or in connection with, negotiations leading to the formation of the contract, he shall be entitled to recover those damages from—

(a) the supplier;

or

(b) subject to this section a linked credit provider (not being a supplier in respect of the consumer contract) who provided credit in respect of the consumer contract.

(2) Where judgment is sought against a credit provider for the recovery of damages in pursuance of this section, the action must be brought against the supplier and the credit provider unless the supplier is insolvent, or there is no reasonable prospect of serving process upon him, in which event the action may be brought against the credit provider alone.

(3) A judgment shall not be given against a credit provider under this section for an amount exceeding the amount of the principal advanced under the consumer credit contract and of the costs (if any) awarded against the credit provider.

(4) Where judgment is given in favour of the plaintiff in an action in which the supplier and the credit provider are joined as parties, the plaintiff shall not proceed to enforce the judgment against the credit provider unless he has by notice in writing served upon the supplier demanded satisfaction of the judgment and the supplier has not, at the expiration of thirty days from the date of service of the notice, satisfied the judgment.

(5) A credit provider against whom any amount has been recovered under this section, may recover that amount, as a debt due to him, from the supplier.

14. Any 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 shall be deemed to be a statement or representation made by the supplier.

Representations, etc.

15. (1) A consumer shall be entitled, within a reasonable time (not exceeding seven days) after the delivery of goods in pursuance of a consumer contract, to rescind the contract on the ground of any breach of condition on the part of the supplier.

Rescission of consumer contract.

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

(3) Where the property in the goods has passed to a consumer in pursuance of a contract, and the contract has been rescinded under this section, the property in the goods shall forthwith re-vest in the supplier with whom the contract was made, and the consumer shall return the goods to that supplier.

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(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 him under the consumer contract.

(5) Where—

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

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

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

or

(d) the Tribunal on the application of the supplier made within fourteen 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,

any purported rescission of a consumer contract under this section shall be void.

(6) There shall be no appeal against a declaration of the Tribunal under this section.

(7) The right of rescission conferred by this section shall be in addition to, and shall not derogate from, a right of rescission under any other act or law.

**Rescission of
credit contract.**

16. (1) Where a consumer rescinds a consumer contract (either in pursuance of this Act, or any other Act or law)—

(a) a consumer credit contract made in respect of the consumer contract by the supplier under that contract;

or

(b) a linked consumer credit contract made in respect of the consumer contract,

shall, by force of this section, be rescinded.

(2) Upon rescission of a consumer credit contract under this section—

(a) the consumer may recover, as a debt, from the credit provider any amount paid by the consumer under that consumer credit contract;

(b) the credit provider may recover, as a debt, from the supplier any amount paid by him to the supplier under the credit contract, and, in addition, the amount of any loss incurred by him as a result of the rescission.

and

(c) the credit provider may recover, as a debt, from the consumer, any amount paid to the consumer under the credit contract.

17. (1) The fact that goods to which a consumer contract relates are subject to a consumer mortgage shall not prevent the rescission of the consumer contract either under this Act or under any other Act or law.

Obligations of parties where goods are subject to consumer mortgage.

(2) Where a consumer contract is rescinded—

(a) the supplier under that contract shall assume and be bound by the obligation of the consumer to repay any principal amount secured by the mortgage (and the repayment of that amount shall fall due immediately upon return of the goods to the supplier);

and

(b) the amount (if any) that the consumer is entitled to recover back from the supplier upon rescission of the contract shall be reduced by the extent of the supplier's liability under paragraph (a) of this subsection.

18. (1) In any dispute arising out of the rescission of a consumer contract, consumer credit contract or consumer mortgage the Tribunal may, upon the application of a consumer, supplier, credit provider or mortgagee make such orders as may be necessary—

Powers of Tribunal in the event of rescission.

(a) to give effect to, or to enforce any rights or liabilities consequent upon the rescission arising under this Act;

or

(b) subject to any such rights or liabilities, to restore the parties as nearly as practicable to their respective positions prior to the formation of the consumer contract, consumer credit contract or consumer mortgage.

(2) The jurisdiction conferred by this section is in addition to, and does not derogate from, the jurisdiction of any court.

PART II**DIVISION I**

Proposal made to credit provider to be revocable until accepted.

19. Any offer or application under which credit is sought by a consumer from a credit provider for the purpose of enabling or assisting him to discharge his obligations under a consumer contract shall be revocable at the option of the consumer until the offer or application has been accepted by the credit provider.

DIVISION II**DIVISION II—CONSUMER LEASES**

Information to be included in a consumer lease.

20. (1) A consumer lease must be in writing and signed by the consumer and must contain the following information:—

- (a) a brief description or identification of the goods to which the lease applies;
 - (b) the amount or value of any consideration to be paid or provided by the consumer prior to the delivery of the goods subject to the lease;
 - (c) the amount of any stamp duty or other impost payable in respect of the lease;
 - (d) the amount of any other charges not included in the rental payable under the lease, and a brief description of those charges;
 - (e) the amount of each payment to be made by the consumer under the lease, the date on which the first payment is due and either—
 - (i) the dates upon which the subsequent payments are due;
 - or
 - (ii) the interval between payments;
 - (f) the number of periodic payments to be made by the consumer, and the total amount payable under the lease;
 - (g) a statement of the conditions upon which the consumer may terminate the lease;
- and
- (h) a statement of the liabilities (if any) of the consumer upon termination of the lease.

(2) The supplier shall, within fourteen days of the formation of a consumer lease, serve upon the consumer a copy of the lease together with a notice in the prescribed form setting out relevant provisions of this Act that afford protection to the consumer.

Penalty: Five hundred dollars.

(3) If a consumer lease does not comply with the provisions of this section, the supplier shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(4) A consumer lease shall be deemed to comply with this section notwithstanding that in the lease there is an omission or incorrect or insufficient description or misdescription in respect of the particulars to be contained in the lease, if the Tribunal or court, before which the lease is in question, is satisfied that the omission, incorrect or insufficient description or misdescription is not of such a nature as to mislead the consumer to his prejudice or disadvantage.

(5) A consumer lease that is not in writing shall not be enforceable by the supplier against the consumer.

21. (1) A supplier with whom a consumer has entered into a consumer lease shall not exercise any right under the lease to take possession of the goods subject to the lease (other than such a right arising under a lease granted for a fixed term at the expiration of that term) unless he has, at least seven days before he takes possession of the goods served upon the consumer a notice in writing in the prescribed form of his intention to exercise that right. Notice of repossession.

(2) The provisions of subsection (1) of this section shall not apply if—

(a) there are reasonable grounds for believing that the goods comprised in the lease will be, or have been, removed or concealed by the consumer contrary to the provisions of the lease;

or

(b) the supplier has been authorized by the Tribunal to take possession of the goods notwithstanding that the provisions of subsection (1) of this section have not been duly complied with.

22. (1) The Tribunal may, upon the application of a consumer, avoid or modify any term or condition of a consumer lease that is harsh or unconscionable, or such that a Court of Equity would give relief. Rights of consumer in respect of lease.

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(2) Where a consumer lease is granted for a fixed term, the consumer may at any time before the expiration of that term, terminate the lease by returning the goods subject thereto to the supplier at his place of business at any place fixed by agreement between the consumer and the supplier, or fixed on the application of the consumer by the Tribunal.

Amount payable on termination of lease.

23. The amount payable by the consumer upon termination of a consumer lease prior to the expiry of its term (by reason of breach of the provisions of the lease or otherwise) shall be—

(a) the amount that is in accordance with the terms of the lease to be paid in that event;

or

(b) the amount arrived at by the application of the principles established by regulation for the purposes of this section,

whichever is the lesser.

DIVISION III **DIVISION III—ABOLITION OF HIRE-PURCHASE IN CONSUMER TRANSACTIONS**

Abolition of Hire-Purchase.

24. (1) The property in any goods subject to a contract that constitutes, or to contracts that together constitute, a hire-purchase agreement, shall pass to the consumer upon delivery of the goods to him.

(2) Any provision of any such contract or contracts by virtue of which the supplier is empowered to take possession, or dispose of, the goods to which the contract or contracts relate shall be void.

(3) The rights of the supplier under any such contract or contracts shall be secured by a mortgage in terms prescribed by regulation.

(4) A hire-purchase agreement shall be deemed to be a sale by instalment within the meaning of the Consumer Credit Act, 1972, and the provisions of that Act shall apply in relation to any such agreement accordingly.

PART III

PART III

CONSUMER MORTGAGES

25. Where the obligations whose performance is secured by a consumer mortgage are contained in a consumer credit contract that is separate from the mortgage, then, unless the contrary intention appears, a reference in this Part to a "consumer mortgage" or "mortgage" includes that separate consumer credit contract. Interpretation.

26. (1) Subject to this section, a consumer may, if he has given notice in writing to the mortgagee of his intention to do so, on or before the day specified for that purpose in the notice, discharge his obligations under a consumer mortgage by tendering to the mortgagee the net balance due to him under the mortgage. Discharge of consumer liabilities under consumer mortgage.

(2) For the purposes of this section, the net balance due shall be the balance payable under the mortgage after deducting any amounts paid, by or on behalf of the consumer under the mortgage less—

- (a) the statutory rebate for the credit charge;
- (b) if the consumer requires the mortgagee to cancel any contract of insurance entered into by him in respect of the goods subject to the mortgage, the statutory rebate for insurance;

and

- (c) if the consumer requires the mortgagee to cancel any contract entered into by the mortgagee for the maintenance, servicing or repair of the goods subject to the mortgage, the statutory rebate for maintenance.

(3) Where the mortgagee has taken possession of the goods in pursuance of the mortgage, the consumer must tender, in addition to the net balance due—

- (a) the reasonable costs incurred by the mortgagee in taking possession of the goods and in incidental expenditure;

and

- (b) any amount properly expended by the mortgagee upon storage, repair or maintenance of the goods.

(4) Where a mortgagee has taken possession of goods in pursuance of a consumer mortgage, and has served upon the consumer the notice that he is required, by this Act, so to serve upon or after

taking possession of the goods, the rights conferred by this section shall not be exercisable by the consumer after the expiration of twenty-one days from the day on which that notice was served.

Notice to be given to consumer when goods repossessed.

27. (1) Subject to subsection (2) of this section, a mortgagee shall not exercise any right or power to take possession of the goods comprised in a consumer mortgage unless he has served on the consumer a notice in writing in the prescribed form, and the period fixed by the notice (being a period of not less than seven days from the service of the notice) has expired.

(2) A mortgagee shall not be required to comply with subsection (1) of this section if—

(a) there are reasonable grounds for believing that the goods comprised in the mortgage will be, or have been, removed or concealed by the consumer contrary to the provisions of the mortgage, (but the onus of proving the existence of such grounds shall lie upon the mortgagee);

or

(b) the mortgage has been authorized by the Commissioner or the Tribunal to take possession of the goods notwithstanding that the provisions of subsection (1) of this section have not been complied with.

(3) The mortgagee shall upon, or within twenty-one days after, taking possession of the goods in pursuance of a consumer mortgage, serve on the consumer, and every guarantor, a notice, in writing, in the prescribed form setting forth the rights of the consumer, or the guarantor, as the case may be, under this Act.

(4) If the notice required by subsection (3) of this section is not served on the consumer, the mortgagee shall not exercise any right or power to sell, dispose of, or part with his possession of the goods otherwise than—

(a) with the consent in writing of the consumer;

or

(b) with the authority of the Commissioner or the Tribunal.

(5) If the notice required by subsection (3) of this section is not served on a guarantor, the mortgagee shall not be entitled to enforce the guarantee.

(6) There shall be no appeal against a decision of the Tribunal to grant its authority for the purposes of subsection (2) or subsection (4) of this section.

Possession of goods to be retained for certain period.

28. (1) Where a mortgagee has taken possession of any goods in pursuance of a consumer mortgage he shall not, without the consent in writing of the consumer or the authority of the Tribunal, sell or dispose of the goods, or part with possession of the goods—

- (a) until after the expiration of twenty-one days from the date of service on the consumer of notice in the prescribed form setting forth the rights of the consumer under this Act;
- (b) where the consumer has given the mortgagee a notice pursuant to the provisions of this Part requiring him to re-deliver the goods, until after the time for payment or tender pursuant to that notice has expired;

or

- (c) where the consumer has made an application for relief under Part VI of this Act until the application has been disposed of by the Commissioner, or if he has referred the application to the Tribunal, until the application has been disposed of by the Tribunal.

(2) There shall be no appeal against a decision of the Tribunal to grant its authority for the sale or disposal of goods under subsection (1) of this section.

(3) This section does not apply where the consumer has voluntarily returned goods to a mortgagee pursuant to the provisions of this Part.

29. (1) Where a mortgagee has taken possession of any goods comprised in a consumer mortgage—

As to
consumer's
rights and
immunities
when goods
re-possessed.

- (a) the consumer may, before or within twenty-one days of the service on him of the notice setting forth his rights under this Act—

- (i) by notice in writing served upon the mortgagee, require the mortgagee to re-deliver to or to the order of the consumer (subject to compliance by the consumer with the provisions of subsection (4) of this section) the goods that have been re-possessed;

or

- (ii) require the mortgagee to sell the goods to any person introduced by the consumer who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the notice served upon the consumer;

- (b) the consumer may recover from the mortgagee, as a debt, the amount (if any) by which the value of the goods at the time the mortgagee took possession of them exceeds the net balance due, and the mortgagee, if entitled to assert a personal right of action against the consumer under the mortgage, may recover from the consumer, as a debt, the amount (if any) by which the value of the goods at that time is less than the net balance due;

(c) the mortgagee shall not be entitled to recover any sum (whether under a judgment or order or otherwise) which would together with the value of the goods at the time the mortgagee took possession of them exceed the net balance due.

(2) For the purposes of this section—

(a) the net amount due under a mortgage is the total amount outstanding less the statutory rebates for credit charges, insurance and maintenance as at the time the mortgagee took possession of the goods;

and

(b) the value of any goods at the time the mortgagee took possession thereof shall be—

(i) the best price that he could reasonably be expected to have obtained for the goods upon sale at that time;

or

(ii) if the consumer has introduced a person who has purchased the goods for cash, the amount paid by that person,

less—

(iii) the reasonable costs (including any legal costs) incurred by the mortgagee of and incidental to taking possession of the goods or awarded to the mortgagee against the consumer by order of the Tribunal or any court;

(iv) any amount properly expended by the mortgagee on the storage, repair, or maintenance of the goods;

and

(v) the reasonable cost of selling or otherwise disposing of the goods (whether or not the goods have in fact been sold or disposed of).

(3) Where the mortgagee has sold goods of which he has taken possession, the onus of proving that the price obtained by him for the goods was the best price which could be reasonably obtained by him at the time when he took possession of the goods shall be on the mortgagee.

(4) If, within fourteen days after giving notice requiring the mortgagee to re-deliver the goods, the consumer—

- (a) pays to the mortgagee all amounts that would have become due under the mortgage if there had been no breach thereof;
- (b) remedies all other breaches (if any) of the mortgage (and where he is unable to remedy any breach by reason of the fact that the mortgagee has taken possession of the goods, pays to the mortgagee the cost reasonably and actually incurred by the mortgagee in doing anything necessary to remedy that breach);

and

- (c) pays to the mortgagee the reasonable expenses incurred by the mortgagee in taking possession of the goods and returning them to, or to the order of, the consumer,

the mortgagee shall forthwith return the goods to the consumer and the goods shall be received and held by the consumer pursuant to the terms of the mortgage as if no breach of the mortgage had occurred.

(5) Where the goods are returned to the consumer and any breach has not been remedied, the mortgagee shall not have any right arising out of that breach to take possession of the goods unless—

- (a) by notice in writing given to the consumer at the time of the return of the goods he specifies the breach and requires it to be remedied;

and

- (b) the consumer fails to remedy the breach within fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice.

30. (1) A consumer may require the mortgagee under a consumer mortgage to exercise a right of sale under the mortgage in relation to any goods comprised in the mortgage by returning the goods to the mortgagee.

Consumer may require mortgagee to enforce consumer mortgage.

(2) The goods must be returned during ordinary business hours at a place at which the mortgagee ordinarily carries on business, or if it is impracticable so to return the goods—

- (a) at any place agreed upon by the parties to the mortgage;

or

- (b) at any place determined upon by the Commissioner or the Tribunal.

(3) There shall be no appeal against a determination of the Tribunal under subsection (2) of this section.

(4) Notice of a requirement under this section must be given in writing to the mortgagee by the consumer at least seven days before the goods are returned.

PART III

(5) Where a consumer returns goods pursuant to this section, the mortgagee shall be entitled to recover, as a debt, from the consumer—

(a) the amount (if any) required to be paid in such circumstances under the mortgage;

or

(b) the amount (if any) that the mortgagee would have been entitled to recover if he had taken possession of the goods in pursuance of the mortgage on the date of the return of those goods pursuant to this section,

whichever is the lesser and the consumer shall be entitled to recover, as a debt, from the mortgagee, any amount realized upon sale of goods in excess of the lesser of those amounts.

PART IV

PART IV

PROVISIONS GENERALLY APPLICABLE TO CONSUMER MORTGAGES AND CONSUMER LEASES

Statement of where goods are situated.

31. (1) A mortgagee under a consumer mortgage or a lessor under a consumer lease may at any time by notice in writing served upon the consumer require him to state in writing where the goods are, and if they are not in his possession—

(a) to take reasonable steps to ascertain the whereabouts of the goods and to inform the mortgagee or lessor of their whereabouts;

or

(b) to state to whom he delivered the goods or the circumstances in which he lost possession of them.

(2) Any consumer who fails to comply with a requirement under subsection (1) of this section or who furnishes a statement that is to his knowledge false shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for three months.

Power of Tribunal to allow goods to be removed.

32. (1) Where, by virtue of a consumer mortgage or consumer lease, it is the duty of the consumer to keep the goods comprised in the mortgage or lease in his possession or control at a particular place, or not to remove the goods from a particular place, the Tribunal may, on the application of the consumer, and subject to such terms and conditions as it thinks fit, make an order authorizing the removal of the goods to some other place.

(2) Where an order is made under subsection (1) of this section, no breach of the mortgage or lease shall be deemed to occur by reason of the goods being kept at the place appointed by the order of the Tribunal.

(3) There shall be no appeal against an order of the Tribunal under this section.

33. Goods subject to a consumer mortgage or consumer lease that were not at the time of the creation of the mortgage or lease fixtures to land, shall not in respect of the period for which the mortgage or lease remains in force be treated for the purposes of any Act or law as fixtures to land.

Fixtures.

34. (1) Upon application to the Tribunal by a mortgagee or lessor who is entitled to take possession of any goods comprised in a consumer mortgage or lease or by any person acting on behalf of that mortgagee or lessor, the Tribunal if satisfied—

Power to order delivery of goods unlawfully detained.

(a) that the consumer or a person acting on behalf of the consumer has failed to deliver up possession of the goods on the service upon him of a notice of demand made by or on behalf of the mortgagee or lessor;

and

(b) that the goods are being detained without just cause, the Tribunal may order that the goods be delivered up to the mortgagee or lessor at or before a time, and at a place, specified in the order.

(2) Any person who fails to comply with any order made under this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for three months.

PART V**PART V****DEALINGS WITH GOODS SUBJECT TO CONSUMER
LEASES AND CONSUMER MORTGAGES**

**Fraudulent sale
or disposal of
goods subject
to mortgage or
lease.**

35. (1) A person who, by the disposal or sale of any goods subject to a consumer lease or consumer mortgage, or by the removal of such goods, or by any other means, defrauds or attempts to defraud the supplier or the mortgagee, shall be guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or imprisonment for twelve months.

(2) This section does not derogate from any criminal liability to which a person may otherwise be subject in respect of an unlawful dealing with or disposition of, mortgaged goods.

**Bona fide
purchase for
value.**

36. (1) Subject to subsection (2) of this section, where a person, in good faith and for valuable consideration, purports to acquire title to goods subject to a consumer lease, or consumer mortgage, without actual notice of the interest of the lessor or mortgagee in the goods, from the lessee or mortgagor or a person who is, with the consent of the lessee or mortgagor, in possession of the goods in circumstances in which he appears to be the owner of the goods, that person shall acquire a good title to the goods in defeasance of the interest of the lessor or mortgagee in those goods.

(2) This section does not apply to the purported acquisition of title to goods by a person who carries on a trade or business in which he trades in goods of that description.

(3) In any proceedings the onus of proving that a person has acquired a good title to goods under subsection (1) of this section shall lie on the person asserting that title.

Lien.

37. (1) Subject to subsection (2) of this section, where a workman does work upon goods comprised in a consumer lease or consumer mortgage in such circumstances that if the goods were the property of the lessee or mortgagor, the workman would be entitled to a lien on the goods, he is entitled to the lien notwithstanding that—

(a) in the case of a consumer lease, the property in the goods is not vested in the lessee;

or

(b) in the case of a consumer mortgage, the property in the goods may not be vested in the mortgagor.

(2) The lien is not enforceable against the lessor or the mortgagee if the consumer lease or mortgage contains a provision prohibiting the creation of a lien by the lessee or the mortgagor and the workman had notice of that provision before commencing work upon the goods.

PART VI

PART VI

RELIEF AGAINST CONSEQUENCES OR BREACH
OF CONSUMER CREDIT CONTRACT, CONSUMER
LEASE, OR CONSUMER MORTGAGE

38. (1) Where by reason of any circumstances that were not reasonably foreseeable by a consumer at the time of entering into a consumer credit contract, consumer lease, or a consumer mortgage, he is temporarily unable to discharge his obligations under the contract, lease, or mortgage, the consumer may make an application under this section for relief against the consequences of breach of the contract, lease or mortgage.

Relief against
consequences
of breach.

(2) An application may be made before or after the goods have been seized in pursuance of a consumer mortgage, or have been re-possessioned under a consumer lease.

(3) An application under this section shall be made in the first instance to the Commissioner.

(4) The Commissioner, if satisfied that the application has been made upon proper grounds, shall, by negotiation with the credit provider, supplier or mortgagee attempt to obtain, on behalf of the consumer, a consensual variation of the consumer credit contract, consumer lease or consumer mortgage by virtue of which the consumer may be enabled to comply with the consumer credit contract, consumer lease or consumer mortgage.

(5) If the Commissioner is not successful in obtaining on behalf of the consumer any such consensual variation of the consumer credit contract, consumer lease or consumer mortgage, he shall refer the application to the Tribunal.

(6) The Tribunal may grant the relief sought by the consumer upon such terms and conditions as will, in the opinion of the Tribunal, do justice between the parties to the contract, lease, or mortgage.

(7) In granting relief under this section the Tribunal may—

(a) extend the time for payment of any instalment or other amount under the contract, lease, or mortgage;

and

(b) where the consumer has committed any breach of the contract, lease, or mortgage, order that the consumer be re-instated in the contract, lease or mortgage in all respects as if no breach had occurred.

(8) An order under this section shall have effect according to its terms.

(9) There shall be no appeal against an order of the Tribunal under this section.

PART VII

PART VII

CONTRACTS OF INSURANCE RELATING TO
CONSUMER TRANSACTIONS

Interpretation.

39. In this Part—

“prescribed contract of insurance” means a contract of insurance (not being a contract of third-party insurance) entered into in pursuance of a consumer contract, consumer credit contract or consumer mortgage.

As to insurance of goods in consumer transactions.

40. (1) Where a consumer contract, consumer credit contract, or consumer mortgage requires, or provides for, the insurance of goods, the following provisions shall apply—

(a) the consumer shall not be required to enter into a contract of insurance with any particular insurer;

and

(b) the consumer shall not be required to obtain insurance upon terms or conditions that the supplier, credit provider or the mortgagee would not insist upon if he were to arrange the insurance and pay the premium himself;

(2) Where—

(a) an insurer or other person pays or confers any commission or other benefit to or upon a supplier, credit provider, or other person in respect of a prescribed contract of insurance;

and

(b) the amount or value of the commission or benefit (or where separate commissions or benefits have been paid or conferred, the aggregate amount or value thereof) exceeds twenty per centum of the total amount payable by way of premium or premiums under the contract of insurance,

the insurer and the person to or upon whom the commission or other benefit was paid or conferred shall each be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Powers of court or Tribunal in relation to prescribed contracts of insurance.

41. (1) In any proceedings in respect of a prescribed contract of insurance if it appears to the court that a breach of, or failure to observe or perform, a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the breach or failure, the court may order that the failure be excused.

(2) Where a difference or dispute has arisen out of a prescribed contract of insurance, a party to the contract, or other interested person may apply to the Tribunal for an order that a breach of, or failure to observe or perform, a term or condition of the contract

of insurance be excused and if it appears to the Tribunal that the breach or failure may reasonably be excused on the ground that the insurer was not prejudiced by the breach or failure, the Tribunal may order that the breach or failure be excused.

(3) Where an order has been made under subsection (1) or (2) of this section, the rights and liabilities of all persons in respect of the contract of insurance shall be determined as if the breach or failure had not occurred.

42. (1) A prescribed contract of insurance shall—

(a) identify the goods or part of the goods to be insured;

and

(b) contain a statement of the amount or extent of the indemnity provided under the contract and period for which the goods are insured or are to be insured.

As to contents
of contracts
of insurance.

(2) Subject to subsection (3) of this section, any provision in any agreement or other document—

(a) requiring differences or disputes arising out of a prescribed contract of insurance to be referred to arbitration;

(b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration, or an award in arbitration proceedings has been first obtained;

(c) providing that arbitration is a condition precedent to any right of action or suit upon such a contract;

or

(d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

shall be void.

(3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration shall be valid and effective notwithstanding the provisions of subsection (2) of this section.

PART VIIIPART VIII
GUARANTEESProvisions as
to guarantors.

43. (1) No guarantor shall be liable to any further or other extent than the consumer whose obligations he has guaranteed.

(2) This section does not prevent a guarantor from binding himself to the performance of any obligation to the credit provider that is independent of the guarantee.

(3) Where a mortgagee has taken possession of goods subject to a consumer mortgage, any guarantor who has paid any moneys to the mortgagee in accordance with his guarantee shall have the same right to recover those moneys as he would have had if he had been the consumer.

Guarantor not
to be bound in
certain cases
unless
independently
advised.

44. (1) Where a guarantor enters into an agreement binding the guarantor—

- (a) to pay a credit provider an aggregate sum that is larger than the balance originally payable under the consumer credit contract to which the guarantee relates;
- (b) to perform an obligation that is not imposed upon the consumer;
- (c) to perform any obligation that could not be enforced against the consumer;
- (d) to permit a mortgagee or any person acting on behalf of the mortgagee to enter upon any premises for the purpose of taking possession of or inspecting goods subject to a mortgage;

or

- (e) to relieve a mortgagee or any person acting on behalf of the mortgagee from liability for any such entry,

the agreement so entered into by the guarantor shall be void unless the agreement is executed by the guarantor in the presence of a legal practitioner instructed and employed independently of the credit provider or mortgagee and the legal practitioner certifies in writing upon the agreement—

- (f) that he is satisfied that the guarantor understands the true purport and effect of the agreement;

and

- (g) that the guarantor has voluntarily executed the agreement in his presence.

PART IX

PART IX

MISCELLANEOUS

45. (1) Proceedings for an offence against this Act (except an Offences. indictable offence) shall be disposed of summarily.

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

(3) Where a person commits an offence against this Act for which no penalty is specifically prescribed in relation to the offence, he shall be liable, upon conviction, to a penalty not exceeding two hundred dollars.

46. (1) Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings (other than criminal proceedings) may, on an application made to the Tribunal (either before or after the expiration of that time) be extended by the Tribunal for such further period and upon such conditions as the Tribunal thinks fit. Power to extend times.

(2) There shall be no appeal against an extension of time granted by the Tribunal under this section.

47. Any provision in any agreement that purports to exclude, modify or restrict the operation of this Act shall (except where this Act permits of any such exclusion, modification or restriction) be void. Invalidity of exclusion clauses.

48. (1) Subject to subsection (3) of this section, any provision of a written consumer contract, consumer credit contract, or consumer mortgage— Nature of writing.

(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 not be enforceable against the consumer by the supplier, credit provider, or mortgagee as the case may be.

(2) Where a consumer has been supplied with a copy of a consumer contract, consumer credit contract or consumer mortgage, the contract or mortgage shall not be regarded as being in conformity with subsection (1) of this section unless that copy is in conformity with that subsection.

(3) The provisions of subsection (1) of this section shall not prevent a credit provider from enforcing a consumer credit contract or consumer mortgage in so far as it provides for the repayment of principal.

(4) Any notice or other document that is required or permitted by this Act to be served on a consumer shall not be regarded as having been duly given if any part thereof—

(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.

Service.

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

(a) given to the consumer personally;

(b) left at his usual or last known place of abode;

or

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

(2) The affidavit or oral evidence of any person as to the delivery or posting of any notice or document required or permitted to be served on a consumer under this Act shall be admissible as evidence of the due service of the notice or document if the deponent swears to the facts necessary to prove due service either to his own knowledge, or to his information and belief based on, or 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 supplier or credit provider or the mortgagee under a consumer mortgage if—

(a) served personally upon him;

(b) left at a place at which he carries on business with a person apparently responsible to him;

or

(c) sent by registered or certified mail addressed to him at a place at which he carries on business, or at his place of abode.

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

(2) Without limiting the generality of the foregoing those regulations may—

- (a) prescribe any form for the purpose of this Act;
- (b) exempt transactions of any class from the provisions of this Act;
- (c) prescribe the procedure of the Tribunal for the purposes of proceedings under this Act;
- (d) invest the Commissioner with power to intervene or arbitrate in disputes arising in transactions to which this Act applies with a view to obtaining early settlement of those disputes;

and

- (e) prescribe penalties, not exceeding two hundred dollars, for breach of, or non-compliance with, any regulation.

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

M. L. OLIPHANT, Governor