



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 42 of 1983

An Act to amend the Consumer Credit Act, 1972-1982, the Consumer Transactions Act, 1972-1982, the Credit Unions Act, 1976-1982 and the Fair Credit Reports Act, 1974-1975.

[Assented to 16 June 1983]

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

Short title.

1. This Act may be cited as the "Statutes Amendment (Commercial Tribunal—Credit Jurisdiction) Act, 1983".

Commencement.

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

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Arrangement.

3. This Act is arranged as follows:

PART I—PRELIMINARY

PART II—AMENDMENT OF THE CONSUMER CREDIT ACT,
1972-1982

PART III—AMENDMENT OF THE CONSUMER TRANSACTIONS
ACT, 1972-1982

PART IV—AMENDMENT OF THE CREDIT UNIONS ACT, 1976-
1982

PART V—AMENDMENT OF THE FAIR CREDIT REPORTS ACT,
1974-1975

PART II

PART II

AMENDMENT OF THE CONSUMER CREDIT ACT, 1972-1982

4. (1) The Consumer Credit Act, 1972-1982, is referred to in this Part as “the principal Act”. Short titles.

(2) The principal Act, as amended by this Part, may be cited as the “Consumer Credit Act, 1972-1983”.

5. Section 3 of the principal Act is amended by striking out the item:

DIVISION II—THE CREDIT TRIBUNAL.

Amendment of
s. 3—
Arrangement.

6. Section 5 of the principal Act is amended—

(a) by striking out the definition of “nominated member”;

(b) by striking out from the definition of “the Commercial Registrar” the passage “under this Act” and substituting the passage “under the Commercial Tribunal Act, 1982”;

and

(c) by striking out the definition of “the Tribunal” and substituting the following definition:

“the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982”.

Amendment of
s. 5—
Interpretation.

7. Sections 13 to 27 (inclusive) of the principal Act and the heading immediately preceding those sections are repealed.

Repeal of
ss. 13 to 27
and heading.

8. Sections 29 to 31 (inclusive) of the principal Act are repealed and the following sections are substituted:

Repeal of
ss. 29 to 31
and substitution
of new sections.

29. (1) An application for a licence must—

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar shall—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner.

Application
for a licence.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period within which objections must be lodged.

(6) Subject to subsection (7), the Registrar shall serve the applicant and the Commissioner with a copy of an objection lodged under subsection (4).

(7) Where the Commissioner has lodged an objection, a copy of the objection need not be served upon the Commissioner.

(8) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner and any person who has lodged an objection at least seven days notice of the date for hearing of the application.

(9) Upon an application under this section, the Tribunal shall, subject to this Act, order that the applicant be granted a licence upon payment of the prescribed licence fee if the Tribunal is satisfied—

(a) that—

(i) where the applicant is a natural person—

(A) he is of or over the age of eighteen years;
and

(B) he is a fit and proper person to hold a licence;

or

(ii) where the applicant is a body corporate—every person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act;

and

(c) that the applicant has sufficient financial resources to carry on business in a proper manner under the licence.

30. (1) A licence shall, subject to this Act, remain in force until—

(a) the licence is surrendered;

or

(b) the holder of the licence dies or, in the case of a body corporate, is dissolved.

(2) The holder of a licence shall, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a holder of a licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing served on the holder of the licence, require him to make good his default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where the holder of a licence fails to comply with a notice under subsection (3) within fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence shall, by force of this subsection, be cancelled.

9. The following section is inserted after section 32 of the principal Act:

32a. Where a licence granted to a person is suspended or cancelled under this Act, that person shall, at the direction of the Tribunal or the Registrar, return the licence to the Registrar.

Penalty: One thousand dollars.

Insertion of new s. 32a.
Return of licences suspended or cancelled.

10. Sections 34 to 36 (inclusive) of the principal Act are repealed and the following sections are substituted:

34. For the purposes of this Division—

“licence” includes an authorization under section 6 (6) to provide credit by means of revolving charge accounts.

Repeal of ss. 34 to 36 and substitution of new sections.

Interpretation.

35. The Commissioner or the Commissioner of Police shall, at the request of the Registrar, cause his officers to investigate and report upon any matter relevant to the determination of—

(a) any application or other matter before the Tribunal;

or

(b) any matter that might constitute proper cause for disciplinary action under this Act.

Investigations.

36. (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action to be taken against a person who is, or has been, licensed under this Act.

Tribunal may exercise disciplinary powers.

(2) An inquiry shall not be held under this section except in relation to matters alleged in a complaint lodged pursuant to subsection

(3) or matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner or the Commissioner of Police) may lodge with the Tribunal a complaint in the prescribed form setting out matters that the person alleges constitute grounds for disciplinary action to be taken against a person referred to in subsection (1).

(4) Where a complaint has been lodged with the Tribunal pursuant to subsection (3), the Commissioner or the Commissioner of Police shall, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal shall give the person to whom the inquiry relates (in this section referred to as "the respondent") reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may exercise one or more of the following powers:

(a) it may reprimand the respondent;

(b) it may impose a fine not exceeding five thousand dollars on the respondent;

(c) where the respondent is the holder of a licence under this Act, it may—

(i) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order;

or

(ii) cancel the licence;

(d) it may disqualify the respondent permanently, for a specified period, until the fulfilment of stipulated conditions or until further order from holding a licence under this Act.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person shall not be liable to a fine under this section in respect of conduct giving rise to the offence.

(8) Where the Tribunal cancels a licence under subsection (6), the Tribunal may stipulate that the cancellation is to have effect at a future time specified by the Tribunal and impose conditions as to the conduct of the business of the respondent until that time.

(9) Where a condition is imposed by the Tribunal under subsection (8) as to the conduct of the business of the respondent, the respondent shall not contravene or fail to comply with the condition.

Penalty: Five thousand dollars.

(10) There shall be proper cause for disciplinary action under this section against the respondent if—

(a) he has improperly obtained a licence;

(b) while carrying on business as a credit provider, he, or any person acting with his authority, under his instructions or in his employment, has in the course of dealings with a consumer—

(i) been guilty of conduct that constituted a breach of this Act or any other Act or law;

or

(ii) acted negligently, fraudulently or unfairly to the prejudice of the rights or interests of a person dealing with him in that business;

(c) he has failed to comply with an order of the Tribunal;

(d) he has insufficient financial resources properly to carry on business as a credit provider;

or

(e) he has ceased to be a fit and proper person to hold a licence under this Act, or, in the case of a body corporate, a person who has gained or is in a position substantially to control or influence the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that holds a licence under this Act.

36a. Where the Tribunal takes disciplinary action against the holder of a licence, the Registrar shall—

Record of disciplinary action kept.

(a) make an entry on the register established under the Commercial Tribunal Act, 1982, recording the disciplinary action taken;

and

(b) by notice in writing advise the Commissioner of the name of the holder of the licence and the disciplinary action taken.

11. Section 58 of the principal Act is repealed.

Repeal of s. 58.

12. Section 61 of the principal Act is amended by striking out paragraphs (a), (ab) and (b) of subsection (2).

Amendment of s. 61—
Regulations.

PART III

PART III

AMENDMENT OF THE CONSUMER TRANSACTIONS ACT, 1972-1982

13. (1) The Consumer Transactions Act, 1972-1982, is referred to in this Part as “the principal Act”.

Short titles.

(2) The principal Act, as amended by this Part, may be cited as the “Consumer Transactions Act, 1972-1983”.

14. Section 5 of the principal Act is amended by striking out the definition of “the Tribunal” and substituting the following definition:

Amendment of s. 5—
Interpretation.

“the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982.

Amendment of
s. 15—
Rescission of
consumer
contract.

15. Section 15 of the principal Act is amended by striking out subsection (6).

Amendment of
s. 50—
Regulations.

16. Section 50 of the principal Act is amended by striking out paragraph (c) of subsection (2).

PART IV

PART IV

AMENDMENT OF THE CREDIT UNIONS ACT, 1976-1982

Short titles.

17. (1) The Credit Unions Act, 1976-1982, is referred to in this Part as “the principal Act”.

(2) The principal Act, as amended by this Part, may be cited as the “Credit Unions Act, 1976-1983”.

Amendment of
s. 5—
Interpretation.

18. Section 5 of the principal Act is amended by inserting after the definition of “share” the following definition:

“the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982.

Amendment of
s. 21—
Appeals.

19. Section 21 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “rules of the Credit Tribunal” and substituting the word “regulations”;

and

(b) by striking out the word “Credit” wherever it occurs in subsections (1) and (2).

Amendment of
s. 101—
Appeal to the
Tribunal.

20. Section 101 of the principal Act is amended by striking out the word “Credit” wherever it occurs in subsections (1) and (3).

Amendment of
s. 122—
Regulations.

21. Section 122 of the principal Act is amended by striking out from paragraph (j) of subsection (2) the word “Credit”.

PART V

PART V

AMENDMENT OF THE FAIR CREDIT REPORTS ACT, 1974-1975

Short titles.

22. (1) The Fair Credit Reports Act, 1974-1975, is referred to in this Part as “the principal Act”.

(2) The principal Act, as amended by this Part, may be cited as the “Fair Credit Reports Act, 1974-1983”.

Amendment of
s. 4—
Interpretation.

23. Section 4 of the principal Act is amended—

(a) by striking out from the definition of “the Commissioner” the passage “South Australian Commissioner for Prices and Con-

sumer Affairs under the Prices Act, 1948-1974” and substituting the passage “Commissioner for Consumer Affairs”;

and

(b) by striking out the definition of “the Tribunal” and substituting the following definition:

“the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982.

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

D. B. DUNSTAN, Governor