

CONCURRENCE COPY

CONSUMER CREDIT (AMENDMENT) BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to make transitional arrangements relating to applications for licences under the Consumer Credit Act, 1981 (“the Principal Act”) (Schedule 1);
- (b) under those transitional arrangements, to enable applications for licences under the Principal Act to be made before the penalties for carrying on business without a licence come into force (Schedule 1);
- (c) to establish a procedure for negotiating a variation of a home finance loan, or a deferral of payments thereunder, in certain cases of difficulty in meeting commitments (Schedule 2);
- (d) to enable the Minister to approve the form of application for a licence (Schedule 3 (1));
- (e) to require the Registrar of the Credit Tribunal to advertise an application for a licence after the Commissioner for Consumer Affairs (“the Commissioner”) has completed his inquiries, instead of on receipt of the application (Schedule 3 (2));
- (f) to provide for a refund of an application fee where the application is refused (Schedule 3 (4));
- (g) to confer on the Credit Tribunal a discretion, in certain circumstances, to vary or revoke a condition of a licence without first holding a hearing (Schedule 3 (5));
- (h) to equate the procedures relating to an application to extend the authority conferred by a credit provider’s licence more closely to those relating to an application for such a licence (Schedule 3 (6));
- (i) to confer on the Registrar of the Credit Tribunal authority to sign and issue licences and to issue a duplicate of a lost or destroyed licence (Schedule 3 (7));
- (j) to require the holder of a licence to notify the Commissioner of changes in certain recorded particulars and changes in circumstances materially affecting his financial standing (Schedule 3 (8));

- (k) to authorise a partial refund of licence fee where a licence is surrendered (Schedule 3 (9));
 - (l) in certain circumstances, to convert to a discretionary power the present mandatory duty of the Credit Tribunal to hold an inquiry as to whether a person should continue to hold a licence (Schedule 3 (10));
 - (m) to provide for an appeal from a refusal to extend the authority conferred by a credit provider's licence (Schedule 3 (11));
 - (n) to make it clear that the Commissioner may object to the granting of an application to carry on the business of a deceased licensee (Schedule 3 (12));
 - (o) to make certain adjustments to the notional application to a finance broker's licence of the provisions of the Act relating to a credit provider's licence (Schedule 3 (13)); and
 - (p) to make provisions consequential upon or ancillary to the foregoing.
-

CONSUMER CREDIT (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Consumer Credit Act, 1981, to provide for the relief of certain cases of hardship in relation to home finance contracts; and for other purposes.

[MR WHELAN—29 MARCH, 1983.]

Consumer Credit (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 **Short title.**

1. This Act may be cited as the "Consumer Credit (Amendment) Act, 1983".

Principal Act.

2. The Consumer Credit Act, 1981, is referred to in this Act as the
10 Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSITIONAL MATTERS.

15 SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
HOME FINANCE CONTRACTS.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL
ACT.

Amendment of Act No. 124, 1981.

20 4. The Principal Act is amended in the manner set forth in Schedules
1-3.

Consumer Credit (Amendment).

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO TRANSITIONAL
MATTERS.

5 (1) (a) Section 2 (2)—

Omit “subsection (1)”, insert instead “subsections (1) and (3)”.

(b) Section 2 (3)—

After section 2 (2), insert:—

10 (3) Section 3A and Schedule 8 shall be deemed to have commenced on the date of assent to the Consumer Credit (Amendment) Act, 1983.

(2) Section 3A—

After section 3, insert:—

15 **Transitional provisions.**

3A. Schedule 8 has effect.

(3) Section 163 (8), (9)—

Omit the subsections.

(4) Section 186 (4), (5)—

20 Omit the subsections.

Consumer Credit (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO TRANSITIONAL
MATTERS—*continued.*

(5) Schedule 8—

5 After Schedule 7, insert:—

SCHEDULE 8.

(Sec. 3A.)

TRANSITIONAL PROVISIONS.

Interpretation.

10 1. In this Schedule, "appointed day" means—

(a) in relation to a credit provider's licence—the day on which section 163 commences; or

(b) in relation to a finance broker's licence—the day on which section 186 commences.

15 **Grant or refusal of application for licence.**

2. (1) Where an application for a licence under Part X is made and granted before the appointed day, the licence takes effect on that day and shall be signed and issued by the Registrar.

20 (2) Where application for a licence under Part X is made before the appointed day but the application is not determined until that day or a later day, the applicant shall, subject to clause 3, be deemed to be the holder of a licence (being a licence of the class applied for) between the commencement of that day and the granting or, as the case may be, the refusal of the application.

25 (3) Where an application for a credit provider's licence referred to in subclause (2) is granted, an additional fee is payable in respect of the licence, being a fee that bears to the application fee the same proportion as the period between the commencement of the appointed day and the grant of the licence bears to 1 year.

30 (4) Where an application for a licence under Part X made before the appointed day is granted or refused, the Registrar shall notify the applicant and any objector of the granting or refusal and, where the application is granted and an additional fee is payable under subclause (3), shall serve a written notice on the licensee specifying the amount of the additional fee and requiring the licensee to pay the amount on or before a day so specified, being a day that is
35 not earlier than 14 days after the grant of the licence.

Consumer Credit (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO TRANSITIONAL
MATTERS—*continued.*

5 (5) If a notice under subclause (4) is not complied with, the licence to which the notice relates lapses.

(6) Where an application referred to in subclause (1) or (2) is refused, the Commissioner shall refund to the applicant so much of the application fee as is specified by the Tribunal as appropriate to be refunded.

10 (7) Where, pursuant to subclause (5), a licence lapses, the Commissioner shall refund to the former licensee an amount determined by the Tribunal, being such proportion of the application fee for the licence as the Tribunal considers appropriate having regard to the period that elapsed between the commencement of the appointed day and the granting of the application for the licence.

15 **Tribunal may give certain directions.**

3. If the Tribunal, upon cause shown, so directs, clause 2 (2) ceases to apply to a person to whom, but for this clause and the direction, it would apply.

SCHEDULE 2.

(Sec. 5.)

20 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO HOME FINANCE
CONTRACTS.

(1) Section 3—

After the matter relating to Part IX, insert:—

PART IXA.—HOME FINANCE CONTRACTS—ss. 162A–162F.

25 (2) Part IXA—

After Part IX, insert:—

PART IXA.

HOME FINANCE CONTRACTS.

Interpretation: Part IXA.

30 162A. (1) In this Part—

“credit provider” means, in relation to a home finance contract, the person for the time being entitled to receive any payment of interest under the contract;

Consumer Credit (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO HOME FINANCE
CONTRACTS—*continued.*

“home” means principal place of residence, being—

- 5 (a) a building that is used, or is used principally, as a
 separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is
 so used;

“home finance contract” means a contract under which—

- 10 (a) credit was provided for—
- (i) the acquisition by the debtor of his present
 home;
- (ii) the carrying out by the debtor of structural
 alterations or additions to his present home;
15 or
- (iii) the acquisition by the debtor of land on which
 to erect that which is to become his home; and
- (b) the amount financed does not exceed \$67,500 or,
20 where some other amount is prescribed, that other
 amount.

(2) Words and expressions used in this Part in relation to
a home finance contract apply to and in respect of the contract in the
same way as, in other Parts of this Act, they apply to and in respect
of a credit contract.

25 **Variation of commitments.**

162B. (1) Where the debtor under a home finance contract by
reason of illness, unemployment, variation of the annual percentage
rate under the contract or other reasonable cause is unable reason-

Consumer Credit (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO HOME FINANCE
CONTRACTS—*continued.*

5 ably to discharge his obligations under the contract, he may, where
he reasonably expects that he would be able to meet his periodic
commitments under the contract—

10 (a) if the term of the contract were extended and the amount of
each payment due under the contract accordingly reduced
(without a change being made to the annual percentage
rate);

(b) the dates on which payments due under the contract during a
specified period were deferred (without a change being made
to the annual percentage rate); or

15 (c) if the term of the contract were extended and the dates on
which payments due under the contract during a specified
period were postponed (without a change being made to the
annual percentage rate),

apply to the credit provider for a variation of the contract or deferral
of payments thereunder.

20 (2) Where a credit provider to whom application is made
under subsection (1) refuses to vary a home finance contract, or
grant a deferral, in accordance with the application, the debtor may
apply to the Commissioner for assistance in negotiating a variation
of the contract or such a deferral.

25 (3) Where an application is made under subsection (2),
the Commissioner shall seek the views of the credit provider and,
after giving him a reasonable opportunity to be heard and making
such other inquiries as he thinks fit, determine whether or not to seek
30 to arrange with the credit provider a variation of, or deferral of pay-
ments under, the home finance contract to which the application
relates and, where he seeks such a variation or deferral and is
unable to reach agreement with the credit provider, the Commis-
sioner shall refer the application to the Tribunal.

Consumer Credit (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO HOME FINANCE
CONTRACTS—*continued.*

5 (4) The Tribunal may, where it receives an application referred to it under subsection (3) and has given the applicant and the credit provider an opportunity to be heard, order, or refuse to order, a variation of the contract to which the application relates or a deferral of payments thereunder for a period not exceeding 6 months and, where it orders a variation or deferral, may make such other
10 orders as it thinks fit.

(5) Without limiting the matters that the Tribunal may take into account in determining whether or not to make an order under subsection (4), the Tribunal shall take into account the relative hardship, as between the debtor and the credit provider, that would
15 result from the making of such an order.

(6) Where an order of the Tribunal under subsection (4) is in force, the credit provider, or the debtor, under the contract to which the order relates may apply to the Tribunal for a variation of the order.

20 (7) The Tribunal may, where it receives an application under subsection (6), vary the order to which the application relates as it thinks fit or refuse to vary the order.

(8) An order in force under this section, and such an order as varied from time to time, has effect according to its tenor.

25 (9) Where the Commissioner and the credit provider are unable to reach agreement under subsection (3) in relation to a home finance contract, the credit provider shall not institute proceedings, or exercise a right, under the contract, or a mortgage that relates to the contract, before the Tribunal has made or refused an
30 order under subsection (4).

(10) Where the Tribunal exercises its jurisdiction under this Part, it shall make no order as to costs.

Consumer Credit (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO HOME FINANCE
CONTRACTS—*continued.***Notice by credit provider.**

5 162C. Without prejudice to the operation of section 162B (9),
where, but for this section, the credit provider under a home
finance contract would be entitled to institute proceedings, or
exercise a right, under the contract or a mortgage that relates to the
10 contract, he may not institute the proceedings or exercise the right
until after the expiration of 1 month after service on the debtor of a
written notice in the prescribed form.

Constitution of Tribunal.

15 162D. (1) For the purpose of enabling the Tribunal to be con-
stituted under subsection (3), the Minister shall appoint a panel
of such number of persons as he from time to time considers to be
appropriate, each of those persons, in the opinion of the Minister,
having had experience in relation to the provision of credit under
home finance contracts.

20 (2) Each person appointed to the panel referred to in
subsection (1) shall, subject to subsection (4), be deemed to be a
part-time member of the Tribunal.

25 (3) For the purpose of enabling the Tribunal to exercise
the jurisdiction conferred upon it by this Part, section 207 (4) (a)
shall be deemed to have been amended by omitting the words
“member referred to in section 196 (3) (a) or (b)” and by inserting
instead the words “person deemed by section 162D (2) to be a
part-time member”.

30 (4) Division 1 of Part XI (sections 196 (5) and (7), 197,
198, 199 and 200 (2) excepted) does not apply to or in respect of
the appointment of a person under subsection (1) or to his office
as a part-time member.

Consumer Credit (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO HOME FINANCE
CONTRACTS—*continued.***Commissioner may represent debtor.**

- 5 162E. In any proceedings before the Tribunal under this Part, a debtor may be represented by the Commissioner or by counsel, solicitor or agent for the Commissioner.

Penalty.

- 10 162F. A credit provider who contravenes a provision of this Part or an order of the Tribunal made under this Part is liable to a penalty not exceeding—
- (a) where the credit provider is a body corporate—\$10,000; or
 - (b) in any other case—\$5,000.

SCHEDULE 3.

15

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 165 (1) (b)—
- Omit the paragraph, insert instead:—
- (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.
- (b) Section 165 (2)—
- Omit “the prescribed form”, insert instead “a form approved by the Minister and”.

20

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) Section 165 (2) (b)—
Omit the paragraph, insert instead:—
- 5 (b) where the application is made—
(i) by a body corporate having only 2 directors—
by those directors; or
(ii) by a body corporate having more than 2 directors—
by not fewer than 2 of those directors.
- 10 (d) Section 165 (3)—
Omit “specify”, insert instead “include”.
- (e) Section 165 (3) (f), (g)—
Omit “are” wherever occurring, insert instead “may be”.
- (f) Section 165 (3) (f)—
15 Omit “the applicant”, insert instead “applicants”.
- (g) Section 165 (3)—
Omit “fee prescribed for such an application”, insert instead
“fee for such an application, calculated and verified as
prescribed”.
- 20 (h) Section 165 (4)—
At the end of the subsection, insert:—

Penalty: \$1,000.
- (i) Section 165 (5)—
25 After “Tribunal” where firstly and thirdly occurring, insert “or
the Registrar”.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(j) Section 165 (5)—

5 Omit “further particulars in relation to”, insert instead
“particulars additional to those provided in”.

(2) (a) Section 166 (1)—

Omit the subsection, insert instead:—

10 (1) Where an application for a credit provider’s licence has
been made in accordance with section 165, the Registrar shall
send a copy of the application to the Commissioner with a
request in writing that the Commissioner make such inquiries
with respect to the applicant and the application as the Registrar
specifies in the request.

(b) Section 166 (2), (3)—

15 Omit “(b)” wherever occurring.

(c) Section 166 (4)—

After section 166 (3), insert:—

20 (4) Where, under subsection (2), the Commissioner submits
to the Tribunal a report on an application, the Registrar shall
publish in a newspaper circulating generally throughout New
South Wales a notice giving particulars of the application.

(3) (a) Section 167 (1)—

Omit “28”, insert instead “14”.

(b) Section 167 (1)—

25 Omit “166 (1) (a)”, insert instead “166 (4)”.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) (a) Section 168 (1)—

Omit “(3)”, insert instead “(4)”.

5 (b) Section 168 (4) (a)—

Omit “a director of, or a person concerned in the management of, the”, insert instead “a person concerned in the management of the”.

(c) Section 168 (6)—

10 After “based”, insert “and the Commissioner shall, as soon as practicable, refund to the applicant so much of the application fee as is specified by the Tribunal as appropriate to be refunded”.

(d) Section 168 (8)—

After section 168 (7), insert:—

15 (8) Where an application for a credit provider’s licence is granted—

(a) the applicant shall be deemed to be the holder of the licence granted; and

20 (b) the Registrar shall forthwith, by notice in writing, inform the applicant of the granting of the application.

(5) (a) Section 169 (1) (b)—

Before “at”, insert “upon application or of its own motion,”.

(b) Section 169 (3)—

Omit “The”, insert instead “Subject to subsection (4), the”.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 169 (4)—

After section 169 (3), insert:—

5 (4) The Tribunal may determine not to hold a hearing before it imposes or revokes a condition or restriction to which a licence is subject upon application by the licensee.

(6) (a) Section 170 (3) (c)—

10 Omit “fee prescribed for such an application”, insert instead “fee for such an application, calculated and verified as prescribed”.

(b) Section 170 (3A), (3B), (3C)—

After section 170 (3), insert:—

15 (3A) The provisions of section 166 (1), (2) and (3) apply to and in respect of an application under subsection (2) in the same way as they apply to and in respect of an application under section 165.

20 (3B) When submitting to the Tribunal his report on inquiries made pursuant to subsection (3A) with respect to an application, the Commissioner may, with the consent of the Minister, lodge with the Tribunal an objection in writing to the application that complies with subsection (3C).

(3C) An objection complies with this subsection if—

- 25 (a) it specifies the ground of the objection;
- (b) the ground of the objection is a ground on which, pursuant to subsection (5), the Tribunal is required to refuse the application; and
- 30 (c) the Commissioner has, before the expiration of the period within which his objection may be lodged, served on the applicant a copy of the objection.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 170 (6) (b)—

Omit the paragraph, insert instead:—

- 5 (b) has afforded the applicant and, if the Commissioner has lodged an objection under subsection (3A), the Commissioner, an opportunity to appear and to make submissions and adduce evidence at the hearing.

(d) Section 170 (7)—

- 10 After “based”, insert “and the Commissioner shall, as soon as practicable, refund to the applicant so much of the application fee as is specified by the Tribunal as appropriate to be refunded”.

(e) Section 170 (8)—

- 15 After section 170 (7), insert:—

(8) Where an application under subsection (1) or (2) is granted—

- (a) the applicant shall be deemed to have the authority applied for; and
- 20 (b) the Registrar shall forthwith, by notice in writing, inform the applicant of the granting of the application.

(7) (a) Section 173 (1)—

After “licence” where firstly occurring, insert “shall be signed and issued by the Registrar and”.

- 25 (b) Section 173 (1) (a), (b), (c)—

Omit “or to the effect of the prescribed form” wherever occurring, insert instead “a form approved by the Minister”.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 173 (3)—

After section 173 (2), insert:—

5 (3) Where the Registrar is satisfied that a credit provider's licence has been lost or destroyed, he may, on payment of the prescribed fee, issue a duplicate of the licence.

(8) (a) Section 178 (1)—

Omit "the prescribed annual fee".

10 (b) Section 178 (1)—

After "anniversary" where secondly occurring, insert "a fee for the licence calculated and verified as prescribed".

(c) Section 178 (8)—

After section 178 (7), insert:—

15 (8) If, while a credit provider's licence is in force, there occurs—

20 (a) between the time the application for the licence was granted and the time the first annual statement is lodged under subsection (2)—a change in the particulars specified in, or in connection with, the application in accordance with section 165 (3) (a), (b), (d) or (e), (4) and (5) or a change materially affecting the financial standing of the licensee as so specified; or

25 (b) between the lodging of successive annual statements under subsection (2)—a change in the particulars prescribed for the purposes of this paragraph and specified in the earlier of those statements or a change materially affecting the financial standing of the licensee as so specified,

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 the licensee shall, within 14 days of the occurrence of the change, give to the Commissioner notice in writing specifying particulars of the change.

Penalty: \$1,000.

(9) Section 179 (3)—

After section 179 (2), insert:—

10 (3) Where a licence is surrendered, the Commissioner shall refund to the former licensee so much of the licence fee last paid by him as the Tribunal, upon application by the former licensee, specifies as appropriate to be refunded.

(10) Section 180 (4)—

Omit “shall”, insert instead “may”.

15 (11) (a) Section 181 (1)—

Omit “169 or”, insert instead “169, or refuses an application under section 170 (1) or (2), or imposes”.

(b) Section 181 (1)—

20 After “licence” where secondly occurring, insert “or extension of authority”.

(c) Section 181 (2)—

Omit “28 days after the refusal, cancellation, suspension or disqualification to which his appeal relates”, insert instead “7 days after lodging his appeal”.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(12) (a) Section 182 (2) (a)—

5 After “Commissioner”, insert “who may, within 7 days, lodge with the Registrar an objection to the application in writing that specifies the ground of the objection and, where such an objection is lodged, the Commissioner shall serve a copy thereof on the applicant”.

(b) Section 182 (2) (b)—

10 Omit the paragraph, insert instead:—

(b) if an objection to the application is lodged and served as provided by paragraph (a)—shall refer the application to the Tribunal; and

(13) (a) Section 187—

15 Omit “165–169”, insert instead “165 (subsection (3) excepted), 166–169”.

(b) Section 187—

Omit “(a) and (d)”, insert instead “(1) (a), (1) (d) and (3)”.

(c) Section 187—

20 After “respectively”, insert “and as if references in those provisions to providing credit and carrying on a business of providing credit were references to carrying on business as a finance broker”.

(d) Section 187 (2), (3)—

25 At the end of section 187 insert:—

(2) An application for a finance broker’s licence shall be accompanied by the prescribed fee.

Consumer Credit (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5

(3) For the purposes of subsection (1), the reference in section 178 (1) to a fee calculated and verified as prescribed shall be constructed as a reference to the prescribed fee.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(80c)





