

**USURY, BILLS OF LADING, AND WRITTEN
MEMORANDA (AMENDMENT) ACT 1989 No. 37**

NEW SOUTH WALES



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**USURY, BILLS OF LADING, AND WRITTEN MEMORANDA
(AMENDMENT) ACT 1989 No. 37**

NEW SOUTH WALES



Act No. 37, 1989

An Act to amend the Usury, Bills of Lading, and Written Memoranda Act 1902 so as to omit provisions relating to representations as to credit.
[Assented to 10 May 1989]

Usury, Bills of Lading, and Written Memoranda (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Usury, Bills of Lading, and Written Memoranda (Amendment) Act 1989.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Principal Act

3. The Usury, Bills of Lading, and Written Memoranda Act 1902 is referred to in this Act as the Principal Act.

Amendment of Principal Act

4. The Principal Act is amended by omitting sections 10 and 12 and the italicised headings following sections 8A and 12.

Transitional

5. (1) The repeal of section 10 of the Principal Act does not allow an action to be brought against a person in respect of any representation or assurance that was made or given before the commencement of this Act and that is not in writing or was not signed by that person.

(2) The repeal of section 12 of the Principal Act does not have the effect of making any instrument liable to stamp duty or inadmissible in evidence because of failure to pay stamp duty.

[*Minister's second reading speech made in—
Legislative Assembly on 4 April 1989
Legislative Council on 2 May 1989*]

FIRST PRINT

USURY, BILLS OF LADING, AND WRITTEN MEMORANDA (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill gives effect to the report of the New South Wales Law Reform Commission entitled "Representations as to Credit" (LRC 57, 1988), which is the Fourteenth Report of the Commission under the Community Law Reform Program.

The object of this Bill is to repeal sections 10 and 12 of the Usury, Bills of Lading, and Written Memoranda Act 1902.

Section 10 provides that no action may be brought on a representation as to the credit of a third person which is made in order that the third person may obtain credit unless the representation is in writing.

The section was originally enacted to supplement section 4 of the Statute of Frauds 1677 (Imp) which required contracts of guarantee to be in writing, but which was to a degree circumvented by courts holding that a plaintiff could bring an action in tort at common law for a fraudulent oral representation even if there was no writing. As a consequence of the repeal of the relevant provisions of the Statute of Frauds in New South Wales in 1971, it is not appropriate to retain section 10.

Judicial interpretation has restricted the application of the section to fraudulent misrepresentations. Thus, the section does not afford a defence to an action based on negligence. On the repeal of the section, a defendant who makes a fraudulent misrepresentation that is not in writing will no longer have an advantage over a defendant who makes a negligent misrepresentation.

Section 12 provides that any written instrument required by section 10 is not liable to stamp duty and is not inadmissible in evidence because of failure to pay stamp duty. It is therefore not necessary to retain section 12 on the repeal of section 10.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day.

Usury, Bills of Lading, and Written Memoranda (Amendment) 1989

Clause 3 defines the expression "Principal Act".

Clause 4 repeals sections 10 and 12 of the Principal Act as mentioned above.

Clause 5 provides that the repeal of sections 10 and 12 does not affect any representations made before their repeal.

USURY, BILLS OF LADING, AND WRITTEN MEMORANDA (AMENDMENT) BILL 1989

NEW SOUTH WALES

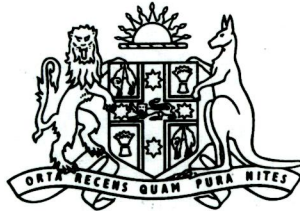


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**USURY, BILLS OF LADING, AND WRITTEN
MEMORANDA (AMENDMENT) BILL 1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Usury, Bills of Lading, and Written Memoranda Act 1902 so as to omit provisions relating to representations as to credit.

Usury, Bills of Lading, and Written Memoranda (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Usury, Bills of Lading, and Written Memoranda (Amendment) Act 1989.

5 Commencement

2. This Act commences on a day to be appointed by proclamation.

Principal Act

3. The Usury, Bills of Lading, and Written Memoranda Act 1902 is referred to in this Act as the Principal Act.

10 Amendment of Principal Act

4. The Principal Act is amended by omitting sections 10 and 12 and the italicised headings following sections 8A and 12.

Transitional

15 5. (1) The repeal of section 10 of the Principal Act does not allow an action to be brought against a person in respect of any representation or assurance that was made or given before the commencement of this Act and that is not in writing or was not signed by that person.

20 (2) The repeal of section 12 of the Principal Act does not have the effect of making any instrument liable to stamp duty or inadmissible in evidence because of failure to pay stamp duty.

