

FIRST PRINT

**CREDIT (HOME FINANCE CONTRACTS) AMENDMENT  
BILL 1992**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Credit (Home Finance Contracts) Act 1984:

- (a) to extend the operation of the Act to a loan for a caravan or mobile home used as the borrower's principal place of residence;
- (b) to increase from \$100,000 to \$115,000 the maximum amount of a loan to which the Act applies;
- (c) to enable the interest rate on a home loan to be reduced in a case of hardship by reason of unemployment;
- (d) to enable the Commissioner for Consumer Affairs to vary the conditions of a home loan in a case of hardship by reason of unemployment (currently this requires an order of the Commercial Tribunal);
- (e) to enact transitional provisions and make consequential amendments.

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 gives effect to Schedule 1.

Clause 4 provides that the explanatory notes appearing in the Bill do not form part of the proposed Act.

Schedule 1 makes the amendments to the Credit (Home Finance Contracts) Act 1984 described above. Each amendment is explained in detail in the explanatory note relating to the amendment concerned.

---



FIRST PRINT

**CREDIT (HOME FINANCE CONTRACTS) AMENDMENT  
BILL 1992**

**NEW SOUTH WALES**

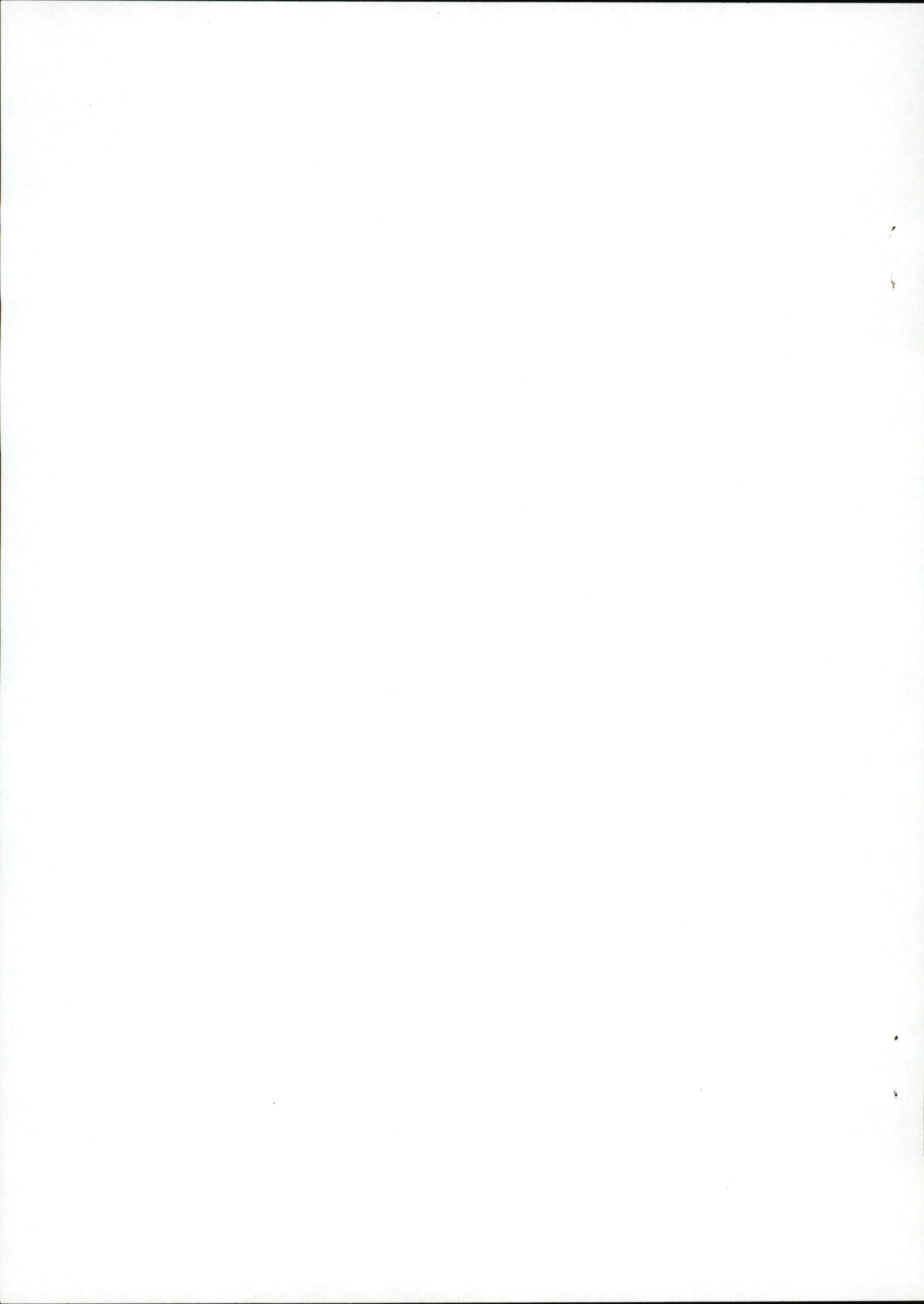


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Credit (Home Finance Contracts) Act 1984 No. 97
4. Explanatory notes

**SCHEDULE 1—AMENDMENTS**

---



**CREDIT (HOME FINANCE CONTRACTS) AMENDMENT  
BILL 1992**

NEW SOUTH WALES



No. , 1992

---

---

**A BILL FOR**

An Act to amend the Credit (Home Finance Contracts) Act 1984 to make further provision for the relief from hardship of unemployed persons in relation to home finance contracts; to extend the operation of the Act to caravans and mobile homes; to increase the monetary limit on contracts to which the Act applies; and for related purposes.

---

---

*Credit (Home Finance Contracts) Amendment 1992*

---

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Credit (Home Finance Contracts) Amendment Act 1992.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Credit (Home Finance Contracts) Act 1984 No. 97**

3. The Credit (Home Finance Contracts) Act 1984 is amended as set out in Schedule 1.

**Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**Amendment: extension of Act to mobile homes and caravans**

(1) Section 4 (**Definitions**):

At the end of paragraph (b) of the definition of "home", insert:

; or

(c) a caravan or mobile home that is so used;

**Explanatory note**

Item (1) extends the definition of "home" to include a caravan or mobile home used as a borrower's principal place of residence, thereby extending the protections afforded by the Act to such a borrower.

**Amendment: increase in limitation on loans to which Act applies**

(2) Section 4 (**Definitions**):

From the definition of "home finance contract", omit "\$67,500", insert instead "\$115,000".

*Credit (Home Finance Contracts) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

**Explanatory note**

Item (2) increases to \$115,000 the maximum amount of a loan to which the Act applies. The limit currently set by the Act is \$67,500 (although this has been increased by a regulation to \$100,000). The increase to \$115,000 is consistent with the maximum loan amount under the FANMAC Low Start home loan scheme.

**Amendments: variation of home loan commitments of unemployed persons**

(3) Section 5 (**Variation of commitments (home finance contract)**):

(a) From section 5 (1), omit “unemployment,”.

(b) After section 5 (10), insert:

(11) This section does not apply to a variation to which section 5A applies.

(4) Section 5A:

After section 5, insert:

**Variation of commitments of unemployed persons (home finance contract)**

5A. (1) If the debtor under a home finance contract by reason of unemployment is unable reasonably to discharge any obligations under the contract, the debtor may apply to the credit provider for a variation of the contract if the debtor reasonably expects to be able to meet any periodic commitments under the contract if the variation were to be made.

(2) The variations that can be applied for are as follows:

(a) extension of the term of the contract and a consequent reduction of each payment due under the contract (without a change being made to the interest rate);

(b) postponement of the dates on which payments are due under the contract during a specified period (without a change being made to the interest rate);

(c) extension of the term of the contract and postponement of the dates on which payments are due under the contract during a specified period (without a change being made to the interest rate);

(d) a reduction of the interest rate under the contract.

*Credit (Home Finance Contracts) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

(3) If the credit provider refuses to vary the home finance contract in accordance with the application, the debtor may apply to the Commissioner for assistance in negotiating a variation of the contract.

(4) When an application is made to the Commissioner, the Commissioner is to:

- (a) seek the views of the debtor, credit provider, any guarantor, any mortgagor and any other person who, in the opinion of the Commissioner, might be affected by a variation of the home finance contract concerned and give each of them a reasonable opportunity to be heard; and
- (b) make such other inquiries as the Commissioner thinks fit; and
- (c) determine whether or not to seek to arrange with the credit provider a variation of the home finance contract.

(5) If the Commissioner seeks such a variation and is unable to reach agreement with the credit provider, the Commissioner may order a variation of the contract.

(6) The duration of any postponement of payments under such a variation must not exceed 6 months but this is not to be taken to mean that 6 months postponement is appropriate only in a case of the most serious hardship.

(7) Without limiting the matters that the Commissioner may take into account in determining whether or not to make an order under this section, the Commissioner must take into account the relative hardship, as between the debtor and the credit provider, that would result from the making of such an order.

(8) The debtor or the credit provider may appeal to the Tribunal against the Commissioner's order but the appeal does not stay the operation of the order. On appeal the Tribunal may vary the operation of the order as it thinks fit or may refuse to vary the order.



*Credit (Home Finance Contracts) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

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

(10) When an application is made to the Commissioner under this section, the Commissioner may order the credit provider concerned not to institute proceedings, or exercise a right, under the contract concerned until the Commissioner certifies that the application has been dealt with by the Commissioner, and the credit provider must not contravene such an order.

**Explanatory note**

Items (3) and (4) make special provision for the variation of home loan conditions for unemployed persons suffering hardship. Existing provisions in the Act allow the term of the loan to be extended and payments to be postponed for up to 6 months in such a case. The Commissioner for Consumer Affairs acts as mediator but if the dispute cannot be resolved by negotiation, the Commissioner can refer the matter to the Commercial Tribunal which in turn can order the variation. Under the proposed new provisions, the interest rate will also be able to be reduced and the Commissioner will be able to order variation directly with provision for an appeal to the Tribunal. The Commissioner will also be able to order the lender not to enforce the loan until the Commissioner has considered the matter.

**Amendment: transitional arrangements**

(5) Section 24 and Schedule 1:

After section 23, insert:

**Savings and transitional provisions**

24. Schedule 1 has effect.

**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 24)

*Credit (Home Finance Contracts) Amendment Act 1992*

**Amendments apply to existing contracts**

1. The amendments made by the Credit (Home Finance Contracts) Amendment Act 1992 apply to home finance contracts entered into before or after the commencement of the amendments, except as provided by clause 2.

*Credit (Home Finance Contracts) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

**Pending applications to the Commercial Tribunal**

2. Section 5 as in force immediately before the commencement of the Credit (Home Finance Contracts) Amendment Act 1992 continues to apply to and in respect of an application pending before the Tribunal immediately before that commencement.

**Explanatory note**

Item (5) makes it clear that the new provisions to be inserted by the Bill apply to existing loans with the exception that matters pending before the Commercial Tribunal are to continue to be heard and dealt with on the basis of the current provisions.

---