

NORTHERN TERRITORY OF AUSTRALIA

CONSUMER AFFAIRS AND FAIR
TRADING AMENDMENT BILL 1995

TABLE OF PROVISIONS

Clause

1. Short title
2. Commencement
3. Principal Act
4. Long Title
5. Annual Report
6. Definitions for purposes of Part IX
7. Dealing from unlicensed premises
8. Definitions for purposes of Part XI
9. Repeal
10. New section:

"188A. DEALINGS WITH UNLICENSED TRAVEL
AGENTS"
11. Regulations for purposes of Part XI
12. New Part:

"PART XIA - CREDIT PROVIDERS
Division 1 - Preliminary
"225A. DEFINITIONS FOR PURPOSES OF PART XIA
Division 2 - Control of Credit Providers
"225B. ASSURANCES
"225C. BASIS OF DISCIPLINARY ACTION
"225D. COMPLAINTS
"225E. HEARING BY COURT
"225F. DISCIPLINARY ACTION
"225G. CONTRAVENTION OF PROHIBITION ORDER
"225H. REGISTER OF DISCIPLINARY ACTION
"225J. COMMISSIONER AND PROCEEDINGS BEFORE
COURT
"225K. INVESTIGATIONS
Division 3 - Consumer Credit Fund
"225L. CONSUMER CREDIT FUND
Division 4 - Miscellaneous
"225M. PROSECUTIONS"

13. New section:
"232A. LIABILITY FOR ACT OR DEFAULT OF
OFFICER, EMPLOYEE OR AGENT"
14. New section:
"236A. POWER TO GRANT EXEMPTIONS"
15. Repeal
16. Savings

SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Consumer Affairs and Fair Trading Act*, to provide for certain matters incidental to the *Consumer Credit Code*, to regulate credit providers, to make provisions relating to certain travel agents, to repeal certain Acts, and for related purposes

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Consumer Affairs and Fair Trading Amendment Act 1995*.

2. COMMENCEMENT

This Act shall come into operation on a date or dates to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Consumer Affairs and Fair Trading Act* is in this Act referred to as the Principal Act.

4. LONG TITLE

The Long Title of the Principal Act is amended by inserting after "credit reporting" the words ", credit providers".

Consumer Affairs and Fair Trading Amendment

5. ANNUAL REPORT

Section 12(2) of the Principal Act is amended by omitting "Parts X and XI" and substituting "Parts X, XI and XIA".

6. DEFINITIONS FOR PURPOSES OF PART IX

Section 123 of the Principal Act is amended by omitting paragraph (a) of the definition of "prohibited trading stamp" and substituting the following:

"(a) a third-party trading stamp which is provided, or intended to be provided, in connection with a third-party trading stamp scheme that does not comply with the prescribed conditions; or".

7. DEALING FROM UNLICENSED PREMISES

Section 129 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) Subject to subsection (2), a licensed dealer shall not -

(a) buy, sell or exchange a motor vehicle in the course of the dealer's business as a dealer, otherwise than at a place of business specified in the licence; or

(b) permit a motor vehicle which is offered for sale, or intended to be offered for sale, in the course of the dealer's business as a dealer, to be on land (including a public place) adjacent to the place of business specified in the licence.

Penalty: \$20,000."

8. DEFINITIONS FOR PURPOSES OF PART XI

Section 185 of the Principal Act is amended by omitting the definition of "exempted person" and substituting the following:

"'exempted person' means a person who is exempted from holding a licence by section 3(2) (the Crown), by a regulation made for the purposes of section 236A(1), or by a notice under section 236A(2);".

9. REPEAL

Section 187 of the Principal Act is repealed.

Consumer Affairs and Fair Trading Amendment

10. NEW SECTION

The Principal Act is amended by inserting after section 188 the following:

"188A. DEALINGS WITH UNLICENSED TRAVEL AGENTS

"(1) A person who carries on a business that supplies rights to travel in an aircraft, vessel or vehicle (including a train) of any kind owned or leased by the person (not being a prescribed aircraft, vessel or vehicle) shall ensure that -

- (a) rights to travel in the aircraft, vessel or vehicle are not sold by the person, or his or her agent, to a travel agent; or
- (b) arrangements to sell rights to travel in the aircraft, vessel or vehicle are not made by the person, or his or her agent, with a travel agent,

unless the travel agent holds a licence in force under this Part or is, under section 236A, exempted from the requirement to hold such a licence.

Penalty: \$2,000.

"(2) It is a defence to a prosecution for an offence against subsection (1) if it is proved that the person who supplied the travel -

- (a) made reasonable inquiries as to whether the travel agent held a licence in force under this Part or was an exempted person; and
- (b) had no reason to believe that the travel agent did not hold such a licence or was not an exempted person."

11. REGULATIONS FOR PURPOSES OF PART XI

Section 225 of the Principal Act is amended -

- (a) by omitting from paragraph (a) "licences; and" and substituting "licences;";
- (b) by omitting from paragraph (b) "manner." and substituting "manner;"; and
- (c) by adding at the end the following:
 - "(c) prescribe a procedure for the making of claims for compensation in relation to anything done or omitted to be done by a person exempted under section 236A from the application of section 221; and

Consumer Affairs and Fair Trading Amendment

- (d) provide for rights of appeal to the Local Court against decisions made in respect of such claims for compensation and the powers of the Local Court in relation to such appeals."

12. NEW PART

The Principal Act is amended by inserting after Part XI the following:

"PART XIA - CREDIT PROVIDERS

"Division 1 - Preliminary

"225A. DEFINITIONS FOR PURPOSES OF PART XIA

"In this Part, unless the contrary intention appears -

'Consumer Credit Code' means the Consumer Credit Code within the meaning of the Consumer Credit (Northern Territory) Act;

'Court' means the court established by the Local Court Act;

'credit' means credit provided under a contract where -

- (a) payment of a debt owed by one person (the debtor) to another (the credit provider) is deferred; or
- (b) one person (the debtor) incurs a deferred debt to another (the credit provider);

'credit provider' means a person who provides credit and includes a prospective credit provider;

'director' of a body corporate includes -

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

'Fund' means the Consumer Credit Fund established by Division 3.

Consumer Affairs and Fair Trading Amendment

"Division 2 - Control of Credit Providers

"225B. ASSURANCES

"(1) Where the Commissioner is of the opinion that a credit provider -

- (a) has engaged in conduct that constitutes a contravention of, or a failure to comply with, a provision of the *Consumer Credit Code* or a provision of this Act relating to the provision of credit; or
- (b) has acted improperly, negligently or unfairly in the course of conducting the business of the credit provider,

('unacceptable activity') the Commissioner may serve on the credit provider a notice specifying the unacceptable activity and requesting the credit provider to execute within a time specified in the notice a deed of assurance in terms approved by the Commissioner.

"(2) A deed executed under subsection (1) shall contain assurances by the credit provider as to -

- (a) his or her discontinuance of the unacceptable activity;
- (b) his or her future compliance with this Act;
- (c) his or her future compliance with the *Consumer Credit Code*; and
- (d) the action the person will take to rectify the consequences of his or her unacceptable activity,

or any of those matters.

"(3) A person who fails to observe an assurance given in a deed executed under subsection (2) is guilty of an offence.

Penalty: \$5,000.

"(4) Action against a credit provider who has given an assurance under this section shall not be taken in relation to the particular incident of unacceptable activity specified in the notice under subsection (1) served on the credit provider.

"(5) This section applies to conduct occurring before or after the commencement of this Part but a person shall not be held to be in breach of a deed of assurance by virtue of an activity that occurred before the deed of assurance was executed.

Consumer Affairs and Fair Trading Amendment

"225C. BASIS OF DISCIPLINARY ACTION

"(1) There is a proper basis for disciplinary action against a credit provider if -

- (a) the credit provider has acted contrary to an assurance accepted by the Commissioner under section 225B;
- (b) the credit provider or any other person has acted unlawfully, improperly, negligently or unfairly in the course of conducting, or being employed or otherwise engaged in, the business of the credit provider; or
- (c) the credit provider has failed to execute a deed of assurance as requested and within the time specified under section 225B(1) by the Commissioner.

"(2) A proper basis for disciplinary action against a corporate credit provider is also a proper basis for disciplinary action against each of its directors.

"(3) Notwithstanding subsection (1) or (2), disciplinary action may not be taken against a credit provider or a director for the act or default of another if the credit provider or director could not reasonably be expected to have prevented that act or default.

"(4) This section applies to conduct occurring before or after the commencement of this Part but a person shall not be held to be in breach of a deed of assurance by virtue of an activity that occurred before the deed of assurance was executed.

"225D. COMPLAINTS

"The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute a proper basis for disciplinary action under this Part.

"225E. HEARING BY COURT

"(1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute a proper basis for disciplinary action under this Act.

"(2) Without limiting the usual powers of the Court, the Court may during the hearing -

- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and

Consumer Affairs and Fair Trading Amendment

- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to such conditions as to adjournment and notice to parties and other conditions as the Court thinks fit.

"225F. DISCIPLINARY ACTION

"(1) On the hearing of a complaint, the Court may, if satisfied on the balance of probabilities that there is a proper basis for disciplinary action against the defendant, make an order or orders exercising one or more of the following powers:

- (a) reprimanding the defendant;
- (b) imposing a fine not exceeding \$8,000;
- (c) prohibiting the defendant from carrying on the business of a credit provider;
- (d) prohibiting the defendant from being employed or otherwise engaged in the business of a credit provider;
- (e) prohibiting the defendant from being a director of a corporate credit provider.

"(2) The Court may -

- (a) order that a prohibition is to apply -
 - (i) permanently;
 - (ii) for a specified period;
 - (iii) until the fulfilment of stipulated conditions; or
 - (iv) until further order; or
- (b) impose conditions about the conduct of the person or the person's business until a time fixed in the order.

"(3) Before making an order against a credit provider, the Court shall consider the effect the order would have on the prudential standing of the credit provider.

"(4) If -

- (a) a person has been found guilty of an offence; and

Consumer Affairs and Fair Trading Amendment

- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section for conduct giving rise to the offence.

"225G. CONTRAVENTION OF PROHIBITION ORDER

"(1) If a person carries on the business of a credit provider in contravention of an order of the Court, the person is guilty of an offence.

Penalty: \$30,000 or imprisonment for 6 months.

"(2) If a person -

- (a) is employed, or otherwise engages, in the business of a credit provider; or
- (b) becomes a director of a corporate credit provider,

in contravention of an order of the Court, that person and the credit provider are each guilty of an offence.

Penalty: \$8,000.

"225H. REGISTER OF DISCIPLINARY ACTION

"(1) The Commissioner shall keep a register of disciplinary action taken under this Act and shall make a note on the register of any assurance given by a credit provider under section 225B.

"(2) A person may inspect the register on payment of the prescribed fee.

"225J. COMMISSIONER AND PROCEEDINGS BEFORE COURT

"(1) The Commissioner is entitled to be joined as a party to proceedings under this Part.

"(2) The Commissioner may appear personally in the proceedings or may be represented at the proceedings by a legal practitioner or an employee, as defined in the *Public Sector Employment and Management Act*.

"225K. INVESTIGATIONS

"The Commissioner of Police shall, at the request of the Commissioner, investigate and report on matters that might constitute a proper basis for disciplinary action under this Part.

Consumer Affairs and Fair Trading Amendment

"Division 3 - Consumer Credit Fund

"225L. CONSUMER CREDIT FUND

"(1) The Consumer Credit Fund is established for the purposes of section 106 of the *Consumer Credit Code*.

"(2) The Fund will be administered by the Commissioner and will consist of -

- (a) money paid by a credit provider as a civil penalty under section 106 of the *Consumer Credit Code*;
- (b) interest accruing from investment of the Fund; and
- (c) money required to be paid into the Fund under this or any other Act.

"(3) The Commissioner may invest money constituting, or forming part of, the Fund, in accordance with the Regulations.

"(4) Money standing to the credit of the Fund is to be applied by the Commissioner -

- (a) in payment of the costs of administering the Fund; and
- (b) in making any other payment authorized by the Minister.

"Division 4 - Miscellaneous

"225M. PROSECUTIONS

"(1) Proceedings for an offence against this Part shall be commenced within 2 years after the date on which the offence is alleged to have been committed or, with the authorization of the Minister, at a later time within 5 years after the date on which the offence is alleged to have been committed.

"(2) A prosecution ~~for an~~ offence against this Part cannot be commenced except by -

- (a) the Commissioner;
- (b) an authorized officer; or
- (c) a person who has the consent of the Minister to commence the prosecution.

Consumer Affairs and Fair Trading Amendment

"(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorization of, or consent to, a prosecution for an offence against this Part will be accepted, in the absence of proof to the contrary, as proof of the authorization or consent."

13. NEW SECTION

The Principal Act is amended by inserting after section 232, the following:

"232A. LIABILITY FOR ACT OR DEFAULT OF OFFICER, EMPLOYEE OR AGENT

"For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority."

14. NEW SECTION

The Principal Act is amended by inserting after section 236, the following:

"236A. POWER TO GRANT EXEMPTIONS

"(1) Regulations may provide that a statutory body specified in the regulations is not required to hold a licence under Part XI.

"(2) The Minister may, by notice in the *Gazette*, exempt (conditionally or unconditionally) from the application of a specified provision of this Act -

- (a) a specified person or persons of a specified class or description;
- (b) specified goods or goods of a specified class or description; or
- (c) specified transactions or transactions of a specified class or description.

"(3) The Minister may, by instrument in writing, delegate to a named person or the holder from time to time of a specified designation, office or position, his or her power of exemption under subsection (2)."

15. REPEAL

(1) The Money-lenders Act, 1903 (No. 820 of 1903) of the State of South Australia, in its application to the Territory as a law of the Territory, is repealed.

Consumer Affairs and Fair Trading Amendment

(2) The Acts and Ordinances specified in the Schedule are repealed.

16. SAVINGS

A notice in force immediately before the commencement of this Act under section 187(2) of the Principal Act shall have effect as if it were a notice in force under section 236A(2) of the Principal Act as amended by this Act.

SCHEDULE

Section 15(2)

REPEALED ACTS AND ORDINANCES

<i>Money-lenders Ordinance 1970</i>	No. 68, 1970
<i>Mortgagors' Interest Reduction Ordinance 1931</i>	No. 7, 1931
<i>Hire-Purchase Ordinance 1961</i>	No. 30, 1961
<i>Hire-Purchase Ordinance 1965</i>	No. 46, 1965
<i>Hire-Purchase Ordinance 1974</i>	No. 16, 1974
<i>Hire-Purchase Act 1978</i>	No. 84, 1978
<i>Hire-Purchase Amendment Act 1989</i>	No. 82, 1989
