

## CREDIT (RURAL CONTRACTS) BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to provide relief for persons engaged in farming undertakings (as defined in the proposed Act) from the effects of credit contracts—

- (a) which are unjust (that is, unconscionable, harsh or oppressive or, having regard to all relevant circumstances, subject to an excessive interest rate); and
- (b) in circumstances where, because of illness, unemployment, increase in interest rates, reduction in commodity prices, a delay in the payment of money, natural disaster or other reasonable cause, a person so engaged experiences hardship in fulfilling the terms of the contract.

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#### PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 contains definitions for the purposes of the proposed Act. Many of the definitions correspond to or are substantially similar to definitions contained in the Credit Act 1984.

Clause 4 deals with the general application of the proposed Act. It provides that the proposed Act applies to credit contracts entered into by an individual, a partnership or an exempt proprietary company whose sole or principal business is a farming undertaking, and so applies whether those contracts were entered into before or after the commencement of the proposed Act. The proposed Act is not to apply to credit contracts enabling the purchase of land.

Clause 5 applies the proposed Act equally to guarantors as to debtors.

Clause 6 preserves corresponding remedies under the Contracts Review Act 1980 and the Credit Act 1984, but does not allow a duplication of proceedings.

Clause 7 provides that the proposed Act binds the Crown.

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## PART 2—UNJUST CONTRACTS

The provisions of the proposed Part are similar to those found in Part IX of the Credit Act 1984 and sections 9 (2) and 10 of the Contracts Review Act 1980.

Clause 8 provides that a credit contract is unjust if it is unconscionable, harsh or oppressive or is, having regard to all relevant circumstances, subject to an excessive interest rate.

Clause 9 enables the Commercial Tribunal of New South Wales, on the application of a debtor under a credit contract, to re-open the transaction that gave rise to the contract if it appears to be unjust. The clause also enables the Tribunal to grant certain forms of relief.

Clause 10 specifies the matters to be considered by the Tribunal in determining whether a credit contract is unjust.

Clause 11 enables the Tribunal to join as a party to proceedings any person, other than the credit provider, who has benefited or may benefit from the credit contract.

Clause 12 imposes limits on the time in which a debtor may make an application under the proposed Part.

Clause 13 empowers the Supreme Court, on the application of the Minister administering the proposed Act or the Attorney General, to regulate the conduct of a person who has formed or is likely to form unjust credit contracts.

## PART 3—HARDSHIP

The provisions of the proposed Part are similar to those found in sections 74 and 115 of the Credit Act 1984.

Clause 14 enables a debtor to apply to a credit provider for a variation of a credit contract on the ground of hardship. Hardship occurs in the cases of illness, unemployment, increase in interest rates, reduction in commodity prices, a delay in the payment of money to the debtor, natural disaster or other reasonable cause. If the credit provider refuses to vary the contract, the debtor may apply to the Tribunal or a Local Court for a variation. The Tribunal or Local Court may make such orders as it thinks fit. An application to the Tribunal or Local Court acts as a stay of proceedings under the contract.

Clause 15 generally limits the duration of orders under clause 14 to 12 months.

Clause 16 enables a debtor under a credit contract to apply to the Tribunal or a Local Court for an order to restrain the taking of possession or sale by the credit provider of goods comprising farm machinery used in connection with the debtor's farming undertaking or a commercial vehicle so used. Service on the credit provider of a copy of the debtor's application acts as a stay of proceedings under the contract. The Tribunal or Local Court may make or refuse to make the order accordingly.

Clause 17 enables the Supreme Court or District Court, on the application of a debtor, to exercise the powers of the Tribunal or a Local Court under the proposed Part if the credit provider seeks to enforce the credit contract in the Supreme Court or District Court.

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## PART 4—MISCELLANEOUS

Clause 18 enables the Minister administering the proposed Act or the Commissioner for Consumer Affairs, with the Minister's consent, to intervene, in the public interest, in any proceedings (other than proceedings for an offence) arising under the proposed Act before the Tribunal or a Local Court.

Clause 19 provides for the jurisdiction under the proposed Act of the Tribunal and Local Courts and enables proceedings to be transferred between the Tribunal and Local Courts.

Clause 20 provides for the effect, variation and cancellation of orders under the proposed Act of the Tribunal and Local Courts.

Clause 21 enables the Tribunal and a Local Court to make certain orders as to costs.

Clause 22 enables the Governor-in-Council, by order, to vary the application of the provisions of the proposed Act.

Clause 23 prohibits persons from contracting out of the provisions of the proposed Act.

Clause 24 renders a director, manager, secretary or other officer of a body corporate liable for an offence committed under the proposed Act by the body corporate if it is proved that any such person consented to or connived in the commission of the offence.

Clause 25 provides for proceedings for offences under the proposed Act to be dealt with summarily before a Local Court.

Clause 26 extends to 3 years from the date of commission of an offence (or longer with the Attorney General's consent) the period within which proceedings for an offence under the proposed Act may be brought.

Clause 27 prevents proceedings for an offence under the proposed Act from being taken except by the Commissioner or a person acting with the Commissioner's authority.

Clause 28 enables the making of regulations for the purposes of the proposed Act.

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