

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The section was originally enacted to supplement section 4 of the Statute of Frauds 1677 (Imp) which required contracts of guarantee to be in writing, but which was to a degree circumvented by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.

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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.
