

CREDIT CONTRACTS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Credit Contracts Act 1981.

Clause 1 relates to the Short Title and commencement of the new Act. The new Act is to come into force on 1 June 1982, the date of commencement of the principal Act.

Clause 2: Subclause (1) amends, in relation to certain kinds of credit contract, the definition of the term "credit". The most common kind of contract in relation to which the definition is amended is a hire purchase agreement. As enacted the definition defines "credit", in relation to such a contract, as being the cash price of the goods sold or bailed under the contract. The proposed amendment alters that definition so that credit, in relation to such a contract, will be that cash price, less the following amounts:

- (a) The amount of any deposit paid at or before the time of the making of the contract;
- (b) The amount of any trade-in allowance agreed on.

It is also made clear that amounts, such as amounts provided by the creditor for insurance, are to be included in determining the amount of credit provided pursuant to a contract even though the amounts are disbursed or deducted direct by the creditor.

The amendments will, among other things, make the definition consistent with the form set out in the Third Schedule to the Credit Contracts Act 1981.

Subclause (2) inserts a definition of the term "incidental services" into the principal Act. The term is used in section 3 (3) of the principal Act and is relevant to—

- (a) The determination of the question whether a contract is a credit contract within the meaning of the principal Act; and
- (b) The definition of the term "total cost of credit" as defined by section 5 of the principal Act. See, in particular, section 5 (1) (b).

The principal effect of the proposed amendment is to make it clear that, in relation to a mortgage, reasonable amounts payable by a mortgagor for incidental services such as—

- (a) Mortgage repayment insurance (not being insurance under which the insurer has recourse against the mortgagor);
- (b) Life insurance;
- (c) Fire insurance;
- (d) Insurance allowed or required under section 39 of the Unit Titles Act 1972;
- (e) Services that would be undertaken for the protection, preservation, or maintenance of the property subject to the mortgage by a prudent owner of that property,—

will not be part of the total cost of credit.

Subclause (3) makes a consequential amendment to section 5 (1) of the principal Act.

Clause 3 amends the manner in which the "finance rate" is calculated where the creditor stands ready, by agreement of the debtor or at the request of the debtor, to provide credit on a particular date but that credit is not uplifted by the debtor.

In that case the finance rate may be calculated—

- (a) As if the credit had been provided on that date; and
- (b) Where, after the time when the creditor so stands ready, the credit to be provided earns interest or any other benefit for the debtor, without crediting that interest or benefit against the total cost of credit.

Clause 4 substitutes a new subsection (2) in section 40 of the principal Act (which relates to penalty rates). Under the subsection as enacted a credit contract may provide for the finance rate to be increased to a specified rate in respect of any specified period if the debtor fails to comply with any specified term of the contract by a specified time.

The proposed new subsection will allow the finance rate or the interest rate to be increased.

In addition provision is made for the case where the debtor has paid no instalment under the contract. In that case the specified period, in respect of which the finance rate or the interest rate may be increased to a specified rate, may begin on a date not earlier than the date on which the creditor provided or stood ready to provide the credit.

Clause 5 repeals, as redundant, the Hire Purchase Amendment Act 1972.

Hon. Mr McLay

CREDIT CONTRACTS AMENDMENT

ANALYSIS

Title	3. Definition of "finance rate"
1. Short Title and commencement	4. Penalty rates
2. Interpretation	5. Repeal

A BILL INTITULED

An Act to amend the Credit Contracts Act 1981

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Credit Contracts Amendment Act 1982, and shall be read together with and deemed part of the Credit Contracts Act 1981* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of June 1982.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term "credit", and substituting the following definition:

“ ‘Credit’ means—

“(a) In relation to a credit contract of the kind specified in section 3 (1) (a) of this Act (other than a contract to which paragraph (c) of this definition applies), the money or money's worth provided or agreed to be provided:

“(b) In relation to a credit contract of the kind specified in section 3 (1) (b) of this Act, the money, payment of which is forborne or agreed to be forborne:

*1981, No. 27

“(c) In relation to a credit contract of the kind specified in paragraph (d) or paragraph (e) of section 3 (1) of this Act, the cash price of the property, services, or goods, less the following amounts: 5

“(i) The amount of any deposit paid at or before the time of the making of the contract:

“(ii) The amount of any trade-in allowance agreed on;

and ‘amount of credit’ includes any amount 10 (coming within section 3 (3) (b) of this Act) which is not provided directly to the debtor but which is disbursed or deducted by the creditor:”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term 15 “holding company”, the following definition:

“‘Incidental services’, in relation to a contract, means benefits (not being benefits that consist of the provision of credit) such as, in the case of a contract providing for the security of money or money’s 20 worth by a mortgage, benefits that consist of the provision of—

“(a) Mortgage repayment insurance paid for by the mortgagor (not being insurance under which the insurer has recourse against the mortgagor): 25

“(b) Life insurance:

“(c) Fire insurance:

“(d) Insurance allowed or required under section 39 of the Unit Titles Act 1972:

“(e) Services that would be undertaken for the 30 protection, preservation, or maintenance of the property subject to the mortgage by a prudent owner of that property:”.

(3) Section 5 (1) of the principal Act is hereby consequentially amended by inserting, after paragraph (a), 35 the following paragraph:

“(aa) Any amounts referred to in subparagraphs (i) and (ii) of paragraph (c) of the definition of the term ‘credit’ in section 2 (1) of this Act:”.

3. Definition of “finance rate”—Section 6 of the 40 principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Without limiting subsection (2) of this section, it is hereby declared that where the creditor under a credit contract stands ready to provide the whole or part of the credit to the debtor, subject only to the debtor first satisfying
5 all security and other requirements of the credit contract, the finance rate may be calculated, in relation to the credit that the creditor stands ready to advance,—

“(a) As if that credit had been provided to the debtor on the date on which the creditor, with the agreement
10 of the debtor or at the request of the debtor, so stands ready; and

“(b) Where, after the time when the creditor so stands ready, that credit earns interest or any other benefit for the debtor, without crediting that
15 interest or benefit against the total cost of credit.”

4. Penalty rates—Section 40 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Notwithstanding any other enactment or rule of law, a
20 credit contract may contain a term to the effect that, if a debtor fails to comply with any specified term of the contract by a specified time, the finance rate or interest rate payable under the contract in respect of any specified period may be increased to a specified rate:

25 “Provided that—

“(a) The specified time shall be not earlier than 14 days after the date compliance was due; and

“(b) The specified period shall be a period beginning—

30 “(i) Where the debtor has paid no instalment under the contract, not earlier than the date on which the creditor provided or stood ready to provide the credit; and

35 “(ii) In any other case, not earlier than the due date of the last instalment that, at the time the rate is increased, has been paid by the debtor.”

5. Repeal—The Hire Purchase Amendment Act 1972 is hereby repealed.