No. 11 of 1975

An Act to confer on consumers certain rights in relation to accumulated information that might be used to their detriment; and for other purposes.

[Assented to 20th March, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Fair Credit Reports Act, 1974-1975".

2. This Act shall come into operation on a day to be fixed by proclamation.

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—REPORTING AGENCIES

PART III—MISCELLANEOUS.

4. In this Act, unless the contrary intention appears—

"authorized officer" means a person who is an authorized officer within the meaning of the Prices Act, 1948-1974:

"the Commissioner" means the person for the time being holding, or acting in, the office of the South Australian Commissioner for Prices and Consumer Affairs under the Prices Act, 1948-1974:

"consumer report" means a communication of credit information or personal information (or both):

"credit information" means information in relation to the creditworthiness of any person:
“file” means any repository or record in which information relating to any person is recorded and retained (in any manner or form) by a reporting agency:

“personal information” means information other than credit information in relation to any person:

“prescribed benefit” means—

(a) a benefit of a commercial nature;

(b) a benefit in or affecting employment;

or

(c) a lease of land or premises or a licence conferring a right to occupy land or premises:

“reporting agency” or “agency” means—

(a) a person or body of persons that, for fee or reward, furnishes consumer reports to traders;

or

(b) a person or body of persons—

(i) that carries on the business of banking;

or

(ii) whose only or principal business is the lending of money, declared by regulation to be a reporting agency for the purposes of this Act:"

“trader” means any person or firm that—

(a) carries on trade or commerce;

or

(b) lets any land or premises:

“the Tribunal” means the Credit Tribunal established under the Consumer Credit Act, 1972-1973.

5. (1) This Act applies in relation to a reporting agency where—

(a) the agency supplies a consumer report to a person carrying on business in this State;

and

(b) the person to whom the report relates is domiciled or resident in this State.

(2) This Act applies notwithstanding any agreement or waiver to the contrary.
PART II
REPORTING AGENCIES

6. (1) A reporting agency shall adopt all procedures reasonably practicable for ensuring accuracy and fairness in the contents of its consumer reports.

(2) A reporting agency shall not include in any consumer report made to a trader—

(a) any information based upon evidence that is not the best evidence reasonably available;

or

(b) any unfavourable personal information based upon hearsay evidence unless it has made reasonable efforts to substantiate the evidence on which the personal information is based and, where the information is unsubstantiated, the lack of substantiation is stated in any report in which the information is given.

(3) A reporting agency shall not include in any consumer report made to a trader information as to the race, colour or religious or political belief or affiliation of any person.

7. Where any trader—

(a) denies a prescribed benefit sought by a person;

or

(b) grants a prescribed benefit sought by a person but upon terms that are not as favourable as those upon which he grants similar benefits to other persons in the course of his business,

and he has, or has had during the last preceding period of six months, in his possession a consumer report made by a reporting agency in relation to that person, the trader shall, at the request of the person to whom the report relates, notify him of the fact that he is, or has been, in possession of the report, and of the name and address of the reporting agency which provided the consumer report.

8. (1) A reporting agency shall, on the written application of a person in relation to whom the agency has recorded information disclose, without charge—

(a) all information in its files relating to that person at the time of the request;

(b) the names and addresses of any persons to whom a consumer report relating to that person has been furnished within one year preceding the date of the request;

and

(c) copies of any consumer report made to any such person, or where the report was made orally, particulars of the contents of that report.

(2) A reporting agency may require any person seeking disclosure of information under this section to produce reasonable evidence of his identity.
(3) A reporting agency shall take reasonable steps to ensure that information to which a person is entitled under this section is disclosed in a form that is readily intelligible to that person and shall permit him to make a copy of, or to take an extract from, the information so disclosed.

(4) A reporting agency shall not require a person to give any undertaking, or to waive any right that he may have, as a condition of disclosing information under this section.

9. (1) A person who disputes the accuracy or completeness of any information compiled by a reporting agency in relation to himself may, by notice in writing served personally or by post upon the agency, object to the inaccuracy or incompleteness of the information.

(2) Where, in pursuance of subsection (1) of this section, a person disputes the accuracy or completeness of any information recorded in the files of a reporting agency the agency shall, within a reasonable time, use its best endeavours to verify or supplement the information in accordance with good practice.

(3) A reporting agency upon which a notice of objection is served under this section shall, within thirty days after the date of the service of the notice, inform the person by whom the objection was made—

(a) whether the agency has made any amendment, supplementation or deletion to the information recorded in relation to that person; and

(b) if so, the nature of the amendment, supplementation or deletion.

(4) Where a reporting agency amends, supplements or deletes information, the agency shall notify in writing—

(a) all persons who have been supplied with a consumer report based on the information within sixty days before the amendment, supplementation or deletion is made; and

(b) any persons to whom the reporting agency has furnished reports and whom the person who is the subject of the report requires the agency to notify of the amendment, supplementation or deletion.

(5) A person by whom any objection has been made under this section may appeal to the Tribunal against any failure on the part of a reporting agency to make any deletion, amendment or supplementation to information compiled in relation to that person.

(6) The Commissioner may represent any such appellant upon an appeal.

(7) Upon the hearing of an appeal under this section, the Tribunal may make such orders as it considers just.

(8) Where an objection or appeal has been made or instituted under this section, and a consumer report is made by the reporting agency before the determination by the agency or the Tribunal of the matters raised in the objection or appeal, the agency shall include in the consumer report a statement to the effect that those matters are subject to an objection or appeal under this Act.
PART III

MISCELLANEOUS

10. (1) Subject to subsection (2) of this section any communication of credit information to a reporting agency, or by a reporting agency to a trader, is protected by qualified privilege.

(2) Subsection (1) of this section does not apply where information is communicated in contravention of an order made under this Act.

11. (1) For the purpose of ascertaining whether a reporting agency or trader has contravened or failed to comply with any provision of this Act, the Commissioner may require the agency or trader to permit him, or an authorized officer, to examine the files or records of the agency or trader.

(2) If an agency or trader—

(a) fails to permit the Commissioner or an authorized officer to conduct an examination after being required to permit such an examination under this section;

or

(b) fails to comply with any reasonable request by the Commissioner or an authorized officer made for the purpose of facilitating such an examination or enabling or assisting him to interpret any code in which information may be recorded in any file or record,

the agency or trader shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

12. Subject to this Act, a person who—

(a) contravenes, or fails to comply with, any provision of this Act;

(b) fails to comply with any order made under this Act;

(c) knowingly supplies false or misleading information to another person who is engaged in compiling information for a consumer report;

(d) divulges information from the files of a reporting agency without proper authority to do so;

or

(e) obtains information from a reporting agency by false pretences,

shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

13. (1) The Tribunal may, upon the application of the Commissioner, make such orders against a reporting agency as may be necessary or expedient in the opinion of the Tribunal to ensure that the reporting agency complies with this Act, or any provision of this Act.
(2) Where a reporting agency—
   (a) commits an offence against this Act;
   or
   (b) does any act that, in the opinion of the Tribunal, shows the agency
       to be unfit to furnish consumer reports,
the Tribunal may, on the application of the Commissioner make an order
prohibiting the agency from furnishing consumer reports.

(3) An order under subsection (2) of this section shall be effective for such
period as may be specified in the order, or until further order of the Tribunal.

(4) Where a reporting agency contravenes a prohibition under subsection
(2) of this section—
   (a) the agency shall be guilty of a misdemeanour and liable to a penalty
       not exceeding ten thousand dollars or imprisonment for two
years;
   and
   (b) where the agency is a body corporate, any director or member of the
governing body of the agency shall be guilty of a misdemeanour
and liable to a penalty not exceeding ten thousand dollars or
imprisonment for two years unless he proves that he had no
knowledge of, or could not by the exercise of reasonable diligence
have prevented, the contravention of the prohibition.

14. Subject to this Act, where a body corporate is convicted, or guilty, of
an offence against this Act any director, or member of the board of manage-
ment, of the body corporate shall be guilty of an offence and liable to the same
penalty as prescribed for the principal offence unless he proves that he had no
knowledge of, or could not by the exercise of reasonable diligence have
prevented, the commission of the offence.

15. Subject to any express provision of this Act to the contrary, proceedings
for offences against this Act shall be disposed of summarily.

16. The Governor may make such regulations as he considers necessary
or expedient for the purposes of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

W. R. CROCKER, Governor's Deputy