



AUSTRALIAN CAPITAL TERRITORY

## **Credit (Amendment) Act 1991**

**No. 97 of 1991**

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### **An Act to amend the *Credit Act 1985***

*[Notified in ACT Gazette S155: 24 December 1991]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

1. This Act may be cited as the *Credit (Amendment) Act 1991*.

#### **Commencement**

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.  
(2) Section 6 commences on a day fixed by the Minister by notice in the *Gazette*.  
(3) If section 6 has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that section, by force of this subsection, commences on the first day after the end of that period.  
(4) The remaining sections shall be taken to have commenced on 28 February 1985.

#### **Principal Act**

3. In this Act, "Principal Act" means the *Credit Act 1985*.<sup>1</sup>

**Interpretation**

4. Section 5 of the Principal Act is amended—

- (a) by omitting “(not exceeding \$150)” from paragraph (a) of the definition of “account charge” in subsection (1) and substituting “(not exceeding \$150 or, where some other amount is prescribed, that other amount)”; and
- (b) by omitting “not exceeding \$75” from paragraph (b) of that definition and substituting “(not exceeding \$90 or, where some other amount is prescribed, that other amount)”.

**Tribunal may reduce credit provider’s loss**

5. Section 85 of the Principal Act is amended by inserting after subsection (4) the following subsections:

“(4A) The Tribunal may, when making a determination under this section of the amount that a debtor is liable to pay, give the parties to the proceedings such directions as the Tribunal considers appropriate relating to the payment of the amount owed by the debtor or by the credit provider as a result of the determination.

“(4B) A determination made by the Tribunal under this section of the liability of a debtor has effect only in respect of the contravention or failure to which the determination relates.”.

**Insertion**

6. After section 85 of the Principal Act the following section is inserted:

**Stay of civil penalty pending Tribunal’s decision**

“85A. (1) When an application is made for a determination under section 85, the civil penalty to which the application relates is stayed pending the disposal of the application by the Tribunal.

“(2) For the purposes of staying any such civil penalty, the application operates as an interim determination of the Tribunal in the terms sought by the application pending its disposal by the Tribunal.

“(3) Until the interim determination ceases to have effect, the credit provider shall not, in relation to an amount in excess of the amount financed under the relevant regulated contract—

- (a) take enforcement action against the debtor;
- (b) enter into an agreement under section 69 for the refinancing of the contract; or

(c) make a default charge under section 72.

“(4) When the application is disposed of by the Tribunal, the interim determination under this section ceases to have effect but, subject to any order of the Tribunal to the contrary, all actions taken pursuant to that interim determination while it had effect remain valid after it ceases to have effect.

“(5) The Tribunal may, before disposing of the application, give the applicant such directions as it considers appropriate to protect the interests of the debtors concerned, including directions relating to the payment of all or any of the relevant amounts into a trust account.

“(6) This section does not apply to an application for a determination if—

- (a) the determination cannot be made by the Tribunal under section 85; or
- (b) the Tribunal excludes the application from the operation of this section because a direction under subsection (5) has not been complied with or for any other reason.

“(7) For the purposes of this section, a reference to the disposal of an application shall be read as including a reference to the withdrawal of the application by the applicant.

“(8) In this section—

‘civil penalty’ means a penalty which is imposed on a credit provider by the operation of this Act and under which the debtor is not liable to pay to the credit provider an amount otherwise payable under a regulated contract.”.

### **General order varying civil penalty**

7. Section 86 of the Principal Act is amended—

- (a) by omitting from the end of paragraph (a) “and”; and
- (b) by adding at the end the following word, paragraph and subsections:

“; and (c) may make a determination under section 85 in relation to all regulated contracts of a specified class entered into by the credit provider during a specified period (for example, all regulated contracts entered into during a specified period which are affected by a specified contravention or failure).

“(2) The debtors affected by an application under this section need not be identified in the application, however the Tribunal may, if it considers that it is appropriate to do so, decline to deal with the application unless the application is amended to identify the debtors.

“(3) The Tribunal may authorise notice of an application under this section to be given by the publication of the notice in a daily newspaper published and circulating in the Territory if the Tribunal considers that because of the number of debtors and the other circumstances of the case it is appropriate to do so.

“(4) If the debtors affected by any such application are not identified in the notice, the following information must be included in the notice:

- (a) the name of the credit provider;
- (b) a general description of the regulated contracts concerned;
- (c) the period during which the contracts were entered into;
- (d) the nature of the contraventions or failures to which the application relates.

“(5) Each debtor who may be affected by any such application is taken to have been personally served with a notice so published and is not entitled to any other notice of the application.”.

### **Insertion**

8. After Part XV of the Principal Act the following Part is inserted:

### **“PART XVA—TRANSITIONAL**

#### **Exemptions from civil penalty**

“241A. (1) This section applies to credit sale contracts or loan contracts entered into before the commencement of section 8 of the *Credit (Amendment) Act 1991*.

“(2) Where a statement about an insurance commission charge payable in respect of a credit sale contract or a loan contract was included in written information given or shown to the debtor before or at the time that the debtor entered into the contract, section 42 does not operate, and is taken never to have operated, to relieve the debtor from liability to pay to the credit provider any credit charge under the contract merely because the contract does not include that statement.

“(3) Where—

- (a) an insurance commission charge was payable to the credit provider in respect of a credit sale contract or a loan contract; and
- (b) an insurance commission charge was also payable to a body with a name that is similar to, or a derivative of, the name of the credit provider and a statement about the insurance commission charge payable to that body was included in the contract or in written information referred to in subsection (2);

section 42 does not operate, and is taken never to have operated, to relieve the debtor from liability to pay to the credit provider any credit charge under the contract merely because the contract does not include a statement about the insurance commission charge payable to the credit provider.

“(4) Nothing in this section affects the liability of a person to be convicted of an offence under this Act.

“(5) This section does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the commencement of section 8 of the *Credit (Amendment) Act 1991*.

“(6) In this section, a reference to a statement about any insurance commission charge that is payable in respect of a credit sale contract or loan contract shall be read as a reference to a statement—

- (a) which relates to a commission charge for a contract of insurance entered into in connection with the credit sale contract or loan contract; and
- (b) which is required by paragraph 35 (1) (i) or 36 (1) (h) to be included in the credit sale contract or loan contract.

### **Operation of amendments relating to description of consumer credit insurance**

“241B. (1) The amendments made to Schedules 2, 4 and 7 by the *Credit (Amendment) Act 1991* apply to regulated contracts entered into before or after the commencement of section 9 of that Act.

“(2) A debtor who, before that commencement, was not liable (because of section 42, section 67 or any other provision of this Act) to pay to the credit provider any credit charge under a contract, but becomes so liable (because of subsection (1)) is taken always to have been liable to pay that charge.

“(3) This section does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the commencement of section 8 of the *Credit (Amendment) Act 1991*.

### **Operation of amendments to sections 85 and 86**

“241C. Sections 85 and 86, as amended by sections 5 and 7 of the *Credit (Amendment) Act 1991*, apply to proceedings in the Tribunal commenced before or after the commencement of those sections.

### **Operation of section 85A**

“241D. Section 85A does not apply to proceedings pending in the Tribunal on the commencement of section 6 of the *Credit (Amendment) Act 1991*, but applies to proceedings commenced after the commencement of that section even though the contraventions or failures to which the proceedings relate occurred before that commencement.”.

### **Amendment of Schedules**

**9. (1)** Schedule 2 to the Principal Act is amended—

- (a)** by inserting “or against unemployment of the debtor” after “the debtor” in subparagraph 1 (e) (iv);
- (b)** by omitting subparagraph 1 (e) (vi); and
- (c)** by inserting after clause 2 the following clause:

“3. If an amount payable in relation to a contract of life insurance is included in an amount disclosed under subparagraph 1 (e) (iv) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.”.

**(2)** Schedule 4 to the Principal Act is amended—

- (a)** by inserting “or against unemployment of the debtor” after “the debtor” in subparagraph 1 (b) (iii);
- (b)** by omitting subparagraph 1 (b) (v); and

(c) by inserting after clause 2 the following clause:

“3. If an amount payable in relation to a contract of life insurance is included in an amount disclosed under subparagraph 1 (b) (iii) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.”.

(3) Schedule 7 to the Principal Act is amended—

(a) by inserting “or against unemployment of the debtor” after “the debtor” in subparagraph 1 (k) (iii);

(b) by omitting subparagraph 1 (k) (v); and

(c) by inserting after clause 2 the following clause:

“3. If an amount payable in relation to a contract of life insurance is included in an amount disclosed under subparagraph 1 (k) (iii) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.”.

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**NOTE**

1. Ordinance No. 5, 1985 as amended by Nos. 39, 60 and 67, 1985; Nos. 29, 30, 56 and 72, 1986; No. 4, 1987; No. 76, 1988; Nos. 21, 38 and 50, 1989; Act No. 6, 1990.

*[Presentation speech made in Assembly on 21 November 1991]*

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