

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Consumer Credit (Administration)
(Consequential Provisions) Bill 1996**

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**Consumer Credit (Administration)
(Consequential Provisions) Bill 1996**

**A BILL
FOR**

**An Act to amend certain laws, and to make certain
transitional arrangements, consequent upon the
enactment of the *Consumer Credit (Administration)
Act 1996***

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

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Consumer Credit (Administration)
(Consequential Provisions) Act 1996*.

Commencement

2. (1) Section 1, this section and Division 1 of Part II commence on the day on which this Act is notified in the *Gazette*.

5 (2) The remaining provisions commence on the day on which section 3 of the *Consumer Credit (Administration) Act 1996* commences.

PART II—AMENDMENTS OF LAWS

Division 1—Consumer Credit Act 1995

Principal Act

10 3. In this Division, “Principal Act” means the *Consumer Credit Act 1995*.

Commencement

4. Section 2 of the Principal Act is amended by omitting subsection (3).

Interpretation

15 5. Section 3 of the Principal Act is amended by omitting “established by the *Credit Act 1985*” from the definition of “Credit Tribunal”.

Division 2—Credit Act 1985

Principal Act

6. In this Division, “Principal Act” means the *Credit Act 1985*.

Interpretation

7. Section 5 of the Principal Act is amended—

- (a) by omitting from the definition of “proceedings” in subsection (1) “, other than a matter arising under Part XIII”;
- 25 (b) by omitting from the definition of “Registrar” in subsection (1) “under section 190” and substituting “of the Tribunal”;
- (c) by omitting from the definition of “Tribunal” or “Credit Tribunal” in subsection (1) “established under section 184”;
- (d) by omitting from subsection (1) the definition of “exempt credit provider” and substituting the following definition:
- 30 “ ‘exempt credit provider’ means a credit provider who is exempt from registration by virtue of Division 1 of Part II of the Administration Act;”;

(e) by omitting from subsection (1) the definitions of “Financial Counselling Trust Fund”, “licence”, “licensee” and “register”; and

(f) by inserting in subsection (1) the following definitions:

5 “ ‘Administration Act’ means the *Consumer Credit (Administration) Act 1996*;

‘registered credit provider’ means a credit provider who is registered under section 11 of the Administration Act;”.

Assignment of rights by credit provider

8. Section 81 of the Principal Act is amended—

10 (a) by omitting from paragraphs (1) (a) and (b) “licensed” and substituting “registered”; and

(b) by omitting paragraph (3) (a) and substituting the following paragraph:

15 “(a) if the person who would be the assignee under the assignment is disqualified from registration as a credit provider or as a finance broker under the Administration Act; or”.

Tribunal may reduce credit provider’s loss

9. Section 85 of the Principal Act is amended—

20 (a) by omitting from subsection (1) “or a failure to comply with this Act” and substituting “this Act or the Administration Act”;

(b) by omitting from subsection (1) “or failure”;

(c) by omitting from paragraphs (2) (a) and (b) “155 (1)” and substituting “6 (1) of the Administration Act”; and

25 (d) by omitting from paragraph (2) (c) “or failure to comply with a provision of this Act other than subsection 155 (1)” and substituting “this Act or a provision of the Administration Act, other than subsection 6 (1) of that Act”.

Repeal

30 10. Parts XI, XII, XIII, XIV, XV and XVAA and sections 251, 252 and 253 of the Principal Act are repealed.

Contracting out of Act prohibited

11. Section 254 of the Principal Act is amended by omitting paragraphs (2) (a) and (b) and substituting the following paragraphs:

35 “(a) if the offender is a natural person—50 penalty units; or

(b) if the offender is a body corporate—250 penalty units.”.

Repeal

12. Sections 255 to 262 (inclusive) and section 265 of the Principal Act are repealed.

5 **Regulations**

13. Section 266 of the Principal Act is amended—

(a) by omitting subparagraphs (1) (b) (i) and (ii) and substituting the following subparagraphs:

10 “(i) if the offender is a natural person—10 penalty units; or

(ii) if the offender is a body corporate—50 penalty units;”; and

(b) by omitting subsection (2).

Division 3—Credit Regulations

15 **Principal Regulations**

14. In this Division, “Principal Regulations” means the Credit Regulations.

Interpretation

20 15. Regulation 3 of the Principal Regulations is amended by omitting from subregulation (1) the definitions of “certificate of registration” and “registered credit provider”.

Repeal

16. Regulations 26, 27, 28 and 29 of the Credit Regulations are repealed.

25 **PART III—TRANSITIONAL PROVISIONS**

Interpretation

17. (1) In this Part, unless the contrary intention appears—

“Administration Act” means the *Consumer Credit (Administration) Act 1996*;

30 “commencement day” means the day on which this Part commences;

“Credit Act” means the *Credit Act 1985* as in force immediately before the commencement day;

“Tribunal” means the Australian Capital Territory Credit Tribunal.

(2) The Administration Act shall be construed in accordance with this Part.

Repealed Part XI—licensing and registration

5 18. (1) A person who, immediately before the commencement day, held a licence as a credit provider or finance broker under the Credit Act, or was registered as a credit provider under the Credit Regulations, is, on and after that day, to be taken to be registered as a credit provider or finance broker (as the case may be) under the Administration Act.

10 (2) A reference in the Administration Act to a registration certificate issued to a credit provider is to be taken to include a reference to—

(a) a licence (including a duplicate of a licence) issued to a credit provider under the Credit Act, being a credit provider’s licence referred to in subsection (1); and

15 (b) a certificate of registration (including a duplicate of a certificate) issued to a registered credit provider under the Credit Regulations, being a registered credit provider under the Credit Regulations referred to in subsection (1).

20 (3) A reference in the Administration Act to a registration certificate issued to a finance broker is to be taken to include a reference to a licence issued to a finance broker under the Credit Act, being a finance broker’s licence referred to in subsection (1).

25 (4) If a licence under the Credit Act referred to in subsection (1) was, immediately before the commencement day, subject to a condition or restriction under section 162 of that Act, the corresponding registration by virtue of subsection (1) is not subject to that condition or restriction.

30 (5) A person who is deemed by virtue of subsection 174 (6) of the Credit Act to be the holder of a deceased person’s licence as a credit provider or a finance broker is, on and after the commencement day, deemed to be registered under the Administration Act as a credit provider or finance broker (as the case may be) until the expiration of the period of 6 months after the death of the deceased licensee.

35 (6) If a credit provider’s licence or finance broker’s licence under the Credit Act was suspended, and that suspension was current immediately before the commencement day—

(a) the licensee is to be taken to have been registered as a credit provider or finance broker (as the case may be) under the Administration Act; and

(b) subject to subsection (7)—that registration is to be taken to have been suspended until the expiration of the period of suspension under the Credit Act.

5 (7) If a licence referred to in subsection (6) was suspended under subsection 163 (2) of the Credit Act, subsection 163 (2) of the Credit Act continues to apply so as to enable the Tribunal to remove the suspension at any time before the expiration of the period of suspension.

10 (8) If a person was disqualified as a credit provider or finance broker under the Credit Act, and that disqualification was current immediately before the commencement day—

(a) that person is to be taken to have been disqualified from registration as a credit provider or finance broker (as the case may be) under the Administration Act; and

15 (b) that disqualification is to be taken to extend until the expiration of the period of disqualification under the Credit Act.

Repealed Part XI—transitional processes

20 19. (1) If, immediately before the commencement day, an application for the grant of a credit provider's licence or finance broker's licence had been made in accordance with the Credit Act, or an application for registration as a credit provider had been made under the Credit Regulations, but no decision had yet been made in relation to the application—

25 (a) where the application is for the grant of a credit provider's licence, or for registration as a credit provider—section 11 of the Administration Act applies in relation to the application as if it were an application in accordance with section 10 of that Act for registration as a credit provider; or

30 (b) where the application is for the grant of a finance broker's licence—section 42 of the Administration Act applies in relation to the application as if it were an application in accordance with section 41 of that Act for registration as a finance broker.

35 (2) If, immediately before the commencement day, an objection had been lodged in accordance with subsection 173 (1) of the Credit Act to the holding of a licence by a credit provider or finance broker, but the Chairperson of the Tribunal had not decided whether to arrange for the Tribunal to hold an inquiry as a result of the objection, the objection is to be taken to be a complaint under section 21 or 52 of the Administration Act in relation to the registration (by virtue of this Act) of the credit provider or finance broker.

(3) If, immediately before the commencement day, the Chairperson of the Tribunal had arranged for the Tribunal to hold an inquiry in relation to a licensed credit provider or finance broker under subsection 173 (4) of the Credit Act, and that inquiry had not been concluded—

- 5 (a) section 173 of the Credit Act continues to apply in relation to that inquiry;
- (b) the Tribunal and the Registrar of the Tribunal may exercise any power under that section in relation to the credit provider or finance broker; and
- 10 (c) section 173 of the Credit Act continues to apply in relation to the licensed credit provider or finance broker as if the references in that section to the person's licence were references to that person's registration under the Administration Act by virtue of subsection 18 (1) of this Act.
- 15 (4) If, immediately before the commencement day, a person had applied under subsection 174 (1) of the Credit Act for authority to carry on the business of a deceased licensee, but no decision had been made in relation to the application—
- 20 (a) in the case of a credit provider's licence—section 24 of the Administration Act applies to that application as if it were an application in relation to the registration of a credit provider; or
- (b) in the case of a finance broker's licence—section 55 of the Administration Act applies to that application as if it were an application in relation to the registration of a finance broker.
- 25 (5) Subsection 229 (2) of the Credit Act continues to apply in relation to any objection lodged by the Director under section 160 or 173 of the Credit Act before the commencement day.
- (6) Section 262 of the Credit Act continues to apply in relation to—
- 30 (a) a decision made under Part XI of the Credit Act before the commencement day; and
- (b) a decision made by the Tribunal under section 173 of the Credit Act in its application under subsection (3) of this section.

Repealed Part XII—Credit Tribunal

35 20. (1) A person who immediately before the commencement day held an appointment as a member of the Tribunal under section 185 of the Credit Act shall, on and after that day, be taken to have been appointed as such a member under section 62 of the Administration Act.

(2) A person who immediately before the commencement day held an appointment to act as a member of the Tribunal under section 189 of the

Credit Act shall, on and after that day, be taken to have been appointed to so act under section 67 of the Administration Act.

(3) On and after the commencement day, a member of the Tribunal shall continue to be entitled to be paid—

5 (a) the remuneration that the member was entitled to be paid immediately before the commencement day until a determination is made for the purposes of paragraph 63 (2) (a) of the Administration Act; and

10 (b) the allowances that the member was entitled to be paid immediately before that day until a determination is made for the purposes of paragraph 63 (2) (b) of the Administration Act.

(4) Anything done or omitted to be done under a provision of Part XII of the Credit Act in relation to a proceeding of the Tribunal that had not been completed before the commencement day shall, on and after that day, be taken to have been done or omitted to be done under the corresponding provision of Part IV of the Administration Act.

(5) Part IV of the Administration Act applies in respect of anything done or omitted to be done on or after the commencement day in relation to—

20 (a) a proceeding of the Tribunal under the Credit Act, other than an inquiry under Part XIII of that Act, that had not been completed before the commencement day; or

(b) a decision of a court or the Tribunal in force under the Credit Act immediately before the commencement day.

25 (6) In subsection (5)—

“decision” includes a determination, judgment or order.

Repealed Part XIII—inquiries

30 21. (1) An appointment that immediately before the commencement day was in force under subsection 213 (1) of the Credit Act shall, on and after that day, be taken to be an appointment under subsection 99 (1) of the Administration Act.

35 (2) An inquiry that immediately before the commencement day was being conducted by the Tribunal or a person under Part XIII of the Credit Act shall, on and after that day, be taken to be an inquiry being conducted under Part V of the Administration Act.

(3) Anything done or omitted to be done under a provision of Part XIII of the Credit Act in relation to an inquiry under that Part that had not been completed before the commencement day shall, on and after that day,

be taken to have been done or omitted to be done under the corresponding provision of Part V of the Administration Act.

Repealed Part XIV—unjust conduct by credit providers

22. (1) In this section—

5 “repealed Part” means Part XIV of the Credit Act.

(2) An undertaking in force under the repealed Part immediately before the commencement day has effect under the Administration Act as if it were an undertaking under Part VI of that Act.

10 (3) An order of the Tribunal in force under the repealed Part immediately before the commencement day has effect under the Administration Act as if it were an order under Part VI of that Act.

(4) A proceeding of the Tribunal under a provision of the repealed Part that had not been completed before the commencement day may be completed under the Administration Act as if it were a proceeding under the corresponding provision of that Act.

Repealed Part XV—powers and functions of Director

20 23. (1) An investigation that immediately before the commencement day was being conducted for the purposes of paragraph 225 (a) or (b) of the Credit Act shall, on and after that day, be taken to be an investigation being conducted for the purposes of paragraph 108 (a) or (b) of the Administration Act, as the case may be.

25 (2) Proceedings that immediately before the commencement day were being taken or defended by the Director under section 227 of the Credit Act shall, on and after that day, be taken to be proceedings being taken or defended by the Director under section 111 of the Administration Act.

30 (3) Where, immediately before the commencement day, the Minister or the Director was a party to proceedings by virtue of section 229 of the Credit Act, on and after that day, the Minister or the Director shall be taken to be a party to those proceedings by virtue of section 113 of the Administration Act.

(4) An investigation that immediately before the commencement day was being conducted by the Director under section 230 of the Credit Act shall, on and after that day, be taken to be an investigation being conducted by the Director under section 115 of the Administration Act.

35 (5) An authorisation that immediately before the commencement day was in force under paragraph 232 (1) (b) of the Credit Act shall, on and after that day, be taken to be an authorisation given under subsection 116 (1) of the Administration Act.

(6) A certificate that immediately before the commencement day was in force under subsection 232 (2) of the Credit Act shall, on and after that day, be taken to be a certificate issued under subsection 116 (2) of the Administration Act.

5 (7) A search warrant that immediately before the commencement day was in force under subsection 235 (1) of the Credit Act shall, on and after that day, be taken to be a search warrant issued under subsection 119 (1) of the Administration Act.

10 (8) A notice under section 237 of the Credit Act that immediately before the commencement day had not been complied with, shall on and after that day, be taken to be a notice given under section 120 of the Administration Act.

15 (9) A document that immediately before the commencement day was in the possession of the Director or an investigating officer under section 238 of the Credit Act shall, on and after that day, be taken to be in the possession of an investigating officer under section 121 of the Administration Act.

NOTES

Penalty units

See section 33AA of the *Interpretation Act 1967*

Section heading

On the day on which the *Credit Act 1985* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, the heading to section 85AA of the Principal Act is omitted and the following heading substituted: "**Payment to Territory**".