

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Credit (Amendment) Bill 1994

**A BILL
FOR**

An Act to amend the *Credit Act 1985*

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

Short title

1. This Act may be cited as the *Credit (Amendment) Act 1994*.

5 Commencement

2. (1) Sections 1, 2, 3 and 16 commence on the day on which this Act is notified in the *Gazette*.

(2) Paragraph 4 (a) shall be taken to have commenced on 1 July 1992.

10 (3) Section 12 shall be taken to have commenced on 28 February 1985.

(4) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

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(5) If a provision referred to in subsection (4) 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 provision, by force of this subsection, commences on the first day after the end of that period.

5 Principal Act

3. In this Act, "Principal Act" means the *Credit Act 1985*.¹

Interpretation

4. Section 5 of the Principal Act is amended—

10 (a) by omitting paragraph (a) of the definition of "financial institution" in subsection (1) and substituting the following paragraphs:

"(a) a building society, a credit union, a foreign society, or a continuing foreign society, within the meaning of the Financial Institutions (ACT) Code;

15 (aa) a body (however described) registered or incorporated under a law of a State or another Territory corresponding to the Financial Institutions (ACT) Code;" and

(b) by inserting in subsection (1) the following definition:

" 'Financial Counselling Trust Fund' means the fund established by subsection 241AA (1);".

20 Contracts for hiring of goods

5. Section 13 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) "\$20,000" and substituting "the amount prescribed by the regulations for the purposes of subsection 30 (1)"; and

25 (b) by omitting from subsection (2) "\$20,000" and substituting "the amount prescribed by the regulations for the purposes of subsection 30 (1)".

Application of Part

30 6. Section 20 of the Principal Act is amended by omitting from paragraph (1) (a) "than \$20,000" and substituting the following:

"than—

(i) where the contract of sale is a regulated credit sale contract—the amount prescribed by the regulations for the purposes of subsection 30 (1);

- (ii) where there is a regulated loan contract made in relation to the contract of sale—the amount prescribed by the regulations for the purposes of paragraph 30 (2) (a); or
- (iii) in any other case—\$20,000;”.

5 Application of Part

7. Section 30 of the Principal Act is amended—

- (a) by omitting from subsection (1) “\$20,000” and substituting “the amount prescribed by the regulations”;
- 10 (b) by omitting from paragraph (2) (a) “\$20,000” and substituting “the amount prescribed by the regulations”;
- (c) by omitting from paragraph (2) (b) “14%” and substituting “the percentage rate prescribed by the regulations”; and
- (d) by omitting from paragraph (2) (c) “14%,” and substituting “the percentage rate prescribed by the regulations;”.

15 Unauthorised fees

8. Section 75 of the Principal Act is amended—

- (a) by omitting from subsection (1) “An” and substituting “Subject to section 75A, an”; and
- 20 (b) by omitting from subsection (2) “Any” and substituting “Subject to section 75A, any”.

Insertion

9. After section 75 of the Principal Act the following section is inserted:

Recoupment of financial institutions duty

25 “75A. (1) Notwithstanding anything in this Act, a regulated contract may impose an obligation on the debtor to reimburse the credit provider in respect of a liability incurred by the credit provider under the *Financial Institutions Duty Act 1987*.

30 “(2) Nothing in subsection (1) affects the operation of the *Financial Institutions Duty Act 1987*.”.

Insertion

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

Payment to Financial Counselling Trust Fund

"85AA. (1) Where an application is made in accordance with section 86 and subsection 85 (2) would otherwise apply, the Tribunal may make an order—

5 (a) in relation to some or all of the regulated contracts to which the application refers—that the debtor is liable to pay the whole of any amount that, but for the contravention or failure referred to in paragraph 85 (2) (a), (b) or (c), would have been payable by him or her under the contract; and

10 (b) that the credit provider is liable to pay a specified amount to the Territory.

"(2) The Tribunal shall not make an order under subsection (1) unless satisfied—

15 (a) that the contravention or failure referred to in paragraph 85 (2) (a), (b) or (c) has occurred and ought not to be excused;

(b) that, if the Tribunal were to make a determination under paragraph 85 (2) (a), (b) or (c) in respect of each regulated contract to which the order under subsection (1) would apply, the credit provider would incur costs in—

20 (i) identifying each contract;

(ii) altering its records to take account of any reduction in liability under each contract;

(iii) locating the debtor to whom a refund of moneys paid under each contract would be payable;

25 (iv) refunding to the debtor moneys paid under each contract; or

(v) otherwise giving effect to any reduction in liability under each contract; and

30 (c) that, in respect of the majority of those contracts, the costs referred to in subparagraph (b) (i), (ii), (iii) or (iv), or the sum of those costs, would be likely to be excessive having regard to the amount of the reduction in liability of the relevant debtor.

"(3) In deciding the quantum of the amount referred to in paragraph (1) (b), the Tribunal shall have regard—

(a) to—

35 (i) the number of contracts to which the determination under paragraph (1) (a) would apply; or

- (ii) if the credit provider has not identified each such contract—
an estimate of the number of such contracts; and
- (b) to the costs referred to in paragraph (2) (b) that would be, or
would be likely to be, incurred by the credit provider if the
Tribunal were to make a determination under paragraph 85 (2) (a),
(b) or (c) in respect of each contract.

“(4) Subsections 85 (4), (4A), (4B) and (5) apply to an order made
under this section as if the order were a determination made under section
85.”.

10 **Insertion**

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

“PART XVAA—FINANCIAL COUNSELLING TRUST FUND

Establishment

15 “241AA. (1) A fund called the Financial Counselling Trust Fund is
established.

“(2) The fund is a Trust Account for the purposes of section 85 of the
Audit Act 1989.

Payments in

20 “241AB. The following amounts shall be paid into the Financial
Counselling Trust Fund:

- (a) amounts paid to the Territory by credit providers pursuant to
orders under paragraph 85AA (1) (b);
- (b) amounts, and interest on those amounts, recovered as a result of
enforcing a judgment under section 206 relating to such an order;
- 25 (c) interest earned from the investment of money held in that Trust
Fund.

Payments out

“241AC. Moneys standing to the credit of the Financial Counselling
Trust Fund may be expended to provide funds for any of the following:

- 30 (a) consumer credit counselling;
- (b) credit and debt management education;
- (c) consumer credit research;
- (d) consumer credit litigation;

- (e) such other credit related activities as are determined by the Minister.”.

Exemptions from civil penalty

- 5 12. Section 241A of the Principal Act is amended by omitting from subsection (1) “before” and substituting “after”.

Linked credit provider—sale of land

13. Section 243 of the Principal Act is amended by omitting from paragraph (e) “\$20,000” and substituting “the amount prescribed by the regulations for the purposes of paragraph 30 (2) (a)”.

10 **Further amendments**

14. The Principal Act is amended as set out in the Schedule.

Application of new section 85AA

- 15 15. Section 85AA of the Principal Act as amended by this Act applies in relation to any application made in accordance with section 86 of the Principal Act that was pending immediately before the day on which section 10 of this Act commences.

Validation of registration

- 20 16. Where a financial institution referred to in paragraph 156 (1) (g) of the Principal Act as amended by this Act was purportedly registered as a credit provider in accordance with the regulations before the commencement of this section, that registration shall be taken to be for all purposes as valid and effective as it would have been if the amendment effected by paragraph 4 (a) of this Act had been in force at the time of that purported registration.

SCHEDULE
FURTHER AMENDMENTS

Section 14

Subsection 3 (4)—

Insert “or she” after “he”.

Subsection 5 (1) (definition of “Chairman”)—

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

SCHEDULE—continued

Subsection 5 (1) (definition of “commission charge”, paragraph (a))—

Omit “corporation within the meaning of the *Companies Act 1981* of the Commonwealth”, substitute “body corporate within the meaning of the Corporations Law”.

Subsection 5 (1) (definition of “credit”, paragraph (a))—

Insert “or her” after “him”.

Subsection 5 (1) (definition of “credit provider”)—

Omit “him”, substitute “that person”.

Subsection 5 (1) (definition of “default charge”, paragraph (b))—

Insert “or her” after “his” (wherever occurring).

Subsection 5 (1) (definition of “guarantor”)—

Insert “or her” after “his”.

Subsection 5 (1) (definition of “guarantor”, paragraph (a))—

(a) Omit “corporation within the meaning of the *Companies Act 1981* of the Commonwealth”, substitute “body corporate within the meaning of the Corporations Law”.

(b) Omit “corporation” (second occurring), substitute “body corporate”.

Subsection 5 (1) (definition of “loan contract”)—

Insert “or her” after “him”.

Subsection 5 (1) (definition of “officer”)—

Omit “corporation within the meaning of subsection 5 (1) of the *Companies Act 1981* of the Commonwealth”, substitute “body corporate within the meaning of section 9 of the Corporations Law”.

Subsection 5 (1) (definition of “services”, paragraph (c))—

Insert “or her” after “him”.

Paragraph 11 (1) (a)—

Insert “or her” after “his”.

Subsection 11 (3)—

Insert “or she” after “he”.

SCHEDULE—continued**Subparagraphs 13 (2) (b) (i) and (ii)—**

Insert “or her” after “him”.

Paragraph 13 (3) (f)—

Insert “or her” after “him”.

Subsection 13 (4)—

Insert “or her” after “him” (wherever occurring).

Subsection 21 (1)—

Insert “or she” after “he” (wherever occurring).

Paragraph 24 (2) (a)—

Insert “or her” after “him”.

Subparagraph 24 (2) (b) (i)—

(a) Insert “or she” after “he” (wherever occurring).

(b) Insert “or her” after “his”.

Subparagraph 24 (2) (b) (ii)—

Insert “or she” after “he”.

Subparagraph 24 (2) (b) (iii)—

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

Paragraph 24 (5) (c)—

Insert “or she” after “he”.

Paragraph 24 (10) (a)—

Insert “or her” after “his”.

Subsection 24 (13)—

Insert “or her” after “him”.

Paragraph 25 (3) (c)—

Insert “or her” after “him”.

Subsections 32 (5) and (7)—

Insert “or her” after “his”.

SCHEDULE—continued

Paragraph 32 (9) (b)—

Insert “or her” after “him”.

Subsection 42 (2)—

Insert “or she” after “he”.

Subsection 45 (3)—

Insert “or she” after “he”.

Subsection 46 (3)—

Insert “or she” after “he”.

Subsection 47 (1)—

Insert “or she” after “he”.

Paragraph 48 (2) (a)—

Insert “or her” after “him”.

Paragraph 49 (3) (a)—

Insert “or her” after “his”.

Section 56—

Insert “or she” after “he”.

Subsection 57 (1)—

Insert “or she” after “he”.

Paragraph 59 (3) (b)—

(a) Insert “or her” after “him”.

(b) Insert “or her” after “his”.

Paragraph 62 (1) (a)—

Insert “or her” after “him”.

Subsections 62 (1) and (3)—

Insert “or her” after “his”.

Paragraph 62 (4) (a)—

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

(c) Insert “or her” after “him”.

SCHEDULE—continued**Section 63—**

(a) Insert “or her” after “him”.

(b) Insert “or she” after “he”.

Paragraph 69 (1) (a)—

Insert “or her” after “his”.

Subsection 70 (6)—

Insert “or she” after “he”.

Subsection 74 (1)—

(a) Insert “or her” after “his” (wherever occurring).

(b) Insert “or she” after “he” (wherever occurring).

Subsection 74 (3)—

Omit “he”, substitute “the Director”.

Subsection 75 (2)—

Omit “creditor”, substitute “credit”.

Paragraph 81 (1) (a)—

Insert “or her” after “his”.

Paragraph 81 (1) (b)—

(a) Insert “or her” after “his” (wherever occurring).

(b) Insert “or she” after “he”.

Subsection 81 (5)—

Insert “or her” after “his”.

Paragraphs 81 (8) (a), (b) and (c)—

Insert “or her” after “his”.

Subsection 85 (1)—

Insert “or she” after “he”.

Subsection 94 (1)—

Insert “or her” after “his”.

Subsection 95 (1)—

Insert “or her” after “his”.

SCHEDULE—continued

Paragraph 96 (2) (b)—

Insert “or her” after “his”.

Subsection 98 (3)—

Insert “or her” after “him”.

Subsection 99 (1)—

Insert “or her” after “him”.

Paragraph 99 (3) (d)—

Insert “or her” after “him”.

Subsection 102 (2)—

Insert “or her” after “his”.

Subsection 102 (4)—

Insert “or she” after “he”.

Section 105—

Insert “or her” after “his”.

Paragraph 106 (4) (b)—

Insert “or her” after “him”.

Paragraph 107 (6) (a)—

Insert “or she” after “he”.

Subparagraph 107 (6) (b) (i)—

Insert “or she” after “he”.

Subsection 110 (1)—

Insert “or her” after “his”.

Subsection 111 (2)—

Insert “or her” after “him”.

Subsection 112 (3)—

(a) Insert “or her” after “him”.

(b) Insert “or she” after “he”.

Subsections 113 (1) and (2)—

Insert “or her” after “his”.

SCHEDULE—continued**Subsection 114 (1)—**

Insert “or she” after “he” (first occurring).

Paragraph 114 (1) (a)—

Insert “or she” after “he”.

Subsection 115 (1)—

Omit “his”, substitute “the mortgagee’s”.

Paragraphs 115 (3) (a) and (b)—

Insert “or she” after “he”.

Subsection 115 (5)—

Insert “or her” after “him” (first occurring).

Paragraph 115 (5) (b)—

Insert “or her” after “him”.

Subsection 115 (7)—

(a) Omit “he”, substitute “the mortgagee”.

(b) Insert “or her” after “his”.

Subsection 116 (1)—

Insert “or her” after “his”.

Subsection 116 (5)—

Insert “or her” after “him”.

Section 118—

Insert “or her” after “his”.

Subsection 121 (1)—

(a) Insert “or her” after “him”.

(b) Insert “or she” after “he”.

Paragraphs 121 (4) (a) and (b)—

Insert “or she” after “he” (wherever occurring).

Paragraph 121 (8) (c)—

Omit “and Television”.

SCHEDULE—continued

Paragraph 128 (2) (b)—

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “his”.

Paragraphs 128 (4) (a) and (b)—

Insert “or she” after “he”.

Subsection 131 (1)—

Insert “or her” after “him”.

Subsection 133 (2)—

Omit “given”, substitute “give”.

Section 136—

Insert “or she” after “he”.

Subsection 139 (2)—

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or she” after “he” (wherever occurring).

Subsection 139 (4)—

Insert “or she” after “he”.

Subsection 140 (1)—

Insert “or she” after “he”.

Subparagraph 147 (2) (e) (i)—

Insert “or her” after “his”.

Paragraph 147 (2) (e)—

Insert “or her” after “his” (last occurring).

Subsection 147 (3)—

Insert “or she” after “he”.

Section 154—

Insert “or she” after “he”.

Paragraph 156 (3) (c)—

Omit “*Companies Act 1981 of the Commonwealth*”, substitute “Corporations Law”.

SCHEDULE—continued**Subparagraphs 163 (1) (a) (i) and (iii)—**

Insert “or her” after “his” (wherever occurring).

Subparagraph 163 (1) (b) (i)—

Omit “is under official management”, substitute “that is dissolved, is under administration”.

Subparagraph 163 (1) (b) (ii)—

(a) Insert “that” before “is”.

(b) Omit “*Companies Act 1981 of the Commonwealth*”, substitute “Corporations Law”.

Paragraph 164 (3) (b)—

Omit “offencer”, substitute “offender”.

Subsection 172 (2)—

Omit “Chairman”, substitute “Chairperson”.

Paragraph 173 (2) (b)—

Omit “Chairman”, substitute “Chairperson”.

Subsections 173 (3), (4), (6) and (8)—

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

Subsection 174 (5)—

Insert “or her” after “his”.

Section 177—

Insert “or her” after “his”.

Subsection 179 (4)—

Insert “or her” after “him”.

Subsection 185 (3)—

Omit “Chairman”, substitute “Chairperson”.

Section 186—

(a) Insert “or her” after “his”.

(b) Insert “or her” after “him”.

SCHEDULE—continued

Paragraph 187 (2) (d)—

Insert “or she” after “he”.

Subsection 189 (1)—

Omit “Chairman” (first occurring), substitute “Chairperson”.

Paragraph 189 (1) (a)—

Omit “Chairman”, substitute “Chairperson”.

Paragraph 189 (1) (b)—

(a) Omit “Chairman”, substitute “Chairperson”.

(b) Insert “or her” after “his”.

Subsections 190 (3) and (4)—

Omit “Chairman”, substitute “Chairperson”.

Paragraphs 192 (1) (a) and (b)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 192 (3)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 192 (4)—

Omit “Chairman” (first occurring), substitute “Chairperson”.

Paragraphs 192 (4) (a), (b) and (c)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 192 (5)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 193 (1)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 194 (2)—

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

Subsection 196 (1)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 197 (3)—

(a) Insert “or her” after “him”.

SCHEDULE—continued

(b) Insert “or she” after “he”.

Subsection 197 (5)—

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

Subsection 198 (1)—

Omit “Chairman”, substitute “Chairperson”.

Subsections 200 (1), (3) and (4)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 201 (2)—

Omit “Chairman”, substitute “Chairperson”.

Paragraph 202 (a)—

Insert “or her” after “his” (wherever occurring).

Subsection 220 (6)—

Insert “or her” after “his” (wherever occurring).

Subsection 222 (3)—

Insert “or her” after “him”.

Paragraph 225 (b)—

Insert “or her” after “his”.

Paragraph 225 (e)—

Omit “Chairman”, substitute “Chairperson”.

Paragraph 225 (f)—

Insert “or her” after “his”.

Subsection 228 (2)—

Insert “or her” after “him”.

Section 230—

Omit “Chairman”, substitute “Chairperson”.

Paragraph 233 (2) (a)—

Insert “or she” after “he”.

SCHEDULE—continued

Section 234—

Insert “or she” after “he”.

Subsection 235 (1)—

Insert “or her” after “his”.

Subsection 236 (1)—

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

Subsection 236 (2)—

Insert “or she” after “he” (first occurring).

Paragraphs 236 (2) (a), (b) and (c)—

(a) Insert “or she” after “he” (wherever occurring).

(b) Insert “or her” after “his”.

Subsection 237 (4)—

Insert “or her” after “his” (wherever occurring).

Subsection 237 (6)—

Insert “or her” after “his”.

Paragraph 239 (a)—

Insert “or her” after “his”.

Paragraph 240 (2) (a)—

Insert “or her” after “him”.

Subsection 247 (1)—

Insert “or she” after “he”.

Paragraph 251 (1) (a)—

Insert “or her” after “his”.

Subsection 251 (3)—

(a) Insert “or her” after “his”.

(b) Insert “or she” after “he”.

Schedule 5 (paragraph 1 (c))—

Omit “(if any)”, substitute “(if any))”.

NOTE

1. Reprinted as at 31 January 1994.

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