

CREDIT ACT 1985

DECLARATION NO. 132 of 1994

EXPLANATORY STATEMENT

This Declaration exempts credit providers from the *Credit Act 1985* (the Act) in relation to novated lease arrangements.

The Act provides for the protection of consumers by requiring lenders to disclose all the basic information that borrowers should know about their loan documentation for credit contracts. It protects consumers against various unfair lending practices and, through the ACT Credit Tribunal, provides them with a forum for the settlement of disputes arising under regulated contracts. The Act also regulates the form of documentation for credit contracts which may be used by lenders.

Section 19(1) of the Act provides that the Minister may by instrument declare that the provisions of the Act or such of those provisions as are specified in the instrument do not have effect in relation to a specified person or transaction, or class thereof.

On 1 July 1993, Australian Finance Conference wrote to the Attorney-General requesting an exemption under section 19 of the Act to exclude novated lease arrangements from the operation of the Act.

It would appear that section 13 of the Act has the effect of converting some lease agreements including novated lease arrangements into credit sale contracts and hence are subject to regulation under the Act. However, section 13(4) of the Act would exempt these leases from the operation of section 13 of the Act if the goods are used for the purpose of a business and the rent instalments are incurred as a business expense.

The exemption under section 13(4) would not apply to novated leasing agreements because under the novated lease, rent payments will not be an allowable deduction for the employee as they will not have been incurred in the course of a business.

The exemption is granted on the basis that novated leasing arrangement is not the type of transaction which the Act would seek to regulate, notwithstanding that it is technically a private arrangement as the employee is ultimately liable under the primary lease.

The other uniform credit jurisdictions have or will be exempting novated leasing arrangements under the Act.

This Declaration will commence on the day that it is notified in the Gazette.