

CREDIT (AMENDMENT) ACT 1990 No. 97

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Credit Act 1984 No. 94

SCHEDULE 1 - AMENDMENTS

CREDIT (AMENDMENT) ACT 1990 No. 97

NEW SOUTH WALES



Act No. 97, 1990

An Act to amend the Credit Act 1984 with respect to proceedings concerning civil penalties for contraventions of that Act and with respect to disclosures concerning insurance. [Assented to 12 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Credit (Amendment) Act 1990.

Commencement

2. This Act commences on the date of assent.

Amendment of Credit Act 1984 No. 94

3. The Credit Act 1984 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

- (1) **Section 85 (Tribunal may reduce credit provider's loss):**

After section 85 (4), insert:

(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.

- (2) **Section 85A:**

After section 85, insert:

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.

SCHEDULE 1 - AMENDMENTS - continued

(3) When the application is disposed of by the Tribunal, the interim determination under this section ceases to have effect and (unless a determination in the same terms is made by the Tribunal) is taken never to have had effect.

(4) 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 enforcement of the debtors' obligations under the contracts or to the payment of all, or any of the amounts concerned into a trust account.

(5) 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 (4) has not been complied with or for any other reason.

(6) For the purposes of this section, a reference to the disposal of an application includes a reference to the withdrawal of the application by the applicant.

(7) In this section, "civil penalty" means a penalty which is imposed on a credit provider by the operation of this Act or the Credit (Administration) Act 1984 and under which the debtor is not liable to pay to the credit provider an amount otherwise payable under a regulated contract.

(3) Section 86 (**General order varying civil penalty**):

At the end of the section, insert:

; 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

SCHEDULE 1 - AMENDMENTS - *continued*

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 newspaper circulating within the State or Australia 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 (despite anything to the contrary in the Commercial Tribunal Act 1984 or the rules of the Tribunal) is not entitled to any other notice of the application.

(4) Section 86A:

After section 86, insert:

General order varying civil penalty for minor errors

86A. (1) In this section, "**minor error**" means a contravention of or failure to comply with this Act which is unlikely to disadvantage the debtors concerned in any significant respect.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) If a credit provider makes an application to the Tribunal under section 86 and requests the Tribunal to deal with the application under this section, the following provisions have effect:

- (a) notice of the application is required to be served on the Commissioner but (unless the Tribunal otherwise directs) is not required to be served on any other person;
- (b) if the Tribunal is satisfied that all the contraventions or failures to which the application relates are minor errors and ought reasonably to be excused, the Tribunal may make a determination under section 85 that debtors under all regulated contracts entered into during the period concerned which are affected by those minor errors are liable to pay the whole of the credit charges under those contracts;
- (c) if the Tribunal is not so satisfied, the Tribunal must direct that notice of the application be given to the debtors concerned, either personally or in accordance with section 86.

(3) The Tribunal, when dealing with an application under this section, is to have regard to any report of the Commissioner to the Tribunal on the results of an investigation into the application under section 44 of the Credit (Administration) Act 1984.

(5) Section 173:

Before Schedule 1, insert:

Transitional and other special provisions

173. Schedule 8 has effect.

(6) Schedule 2 (**Statement of amount financed in relation to credit sale contract**):

- (a) In clause 1 (e) (iv), after "the debtor", insert "or against unemployment of the debtor".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit clause 1 (e) (vi).
- (7) Schedule 4 (Statement of amount financed in relation to loan contract):
 - (a) In clause 1 (b) (iii), after "the debtor", insert "or against unemployment of the debtor".
 - (b) Omit clause 1 (b) (v).
- (8) Schedule 7 (Statement of account in relation to continuing credit contract):
 - (a) In clause 1 (k) (iii), after "the debtor", insert "or against unemployment of the debtor".
 - (b) Omit clause 1 (k) (v).
- (9) Schedule 8:

After Schedule 7, insert:

**SCHEDULE 8 - TRANSITIONAL AND OTHER
SPECIAL PROVISIONS**

(Sec. 173)

**Certain past non-disclosures about insurance commission
not to incur civil penalty**

1. (1) This clause applies to credit sale contracts or loan contracts entered into before the commencement of this clause.

(2) If 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,

SCHEDULE 1 - AMENDMENTS - *continued*

(3) If:

- (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 subclause (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 clause affects the liability of a person to be convicted of an offence under this Act.

(5) This clause does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the commencement of this clause.

(6) In this clause, a reference to a statement about any insurance commission charge that is payable in respect of a credit sale contract or loan contract is 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 section 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

2. (1) The amendments made to Schedules 2, 4 and 7 by the Credit (Amendment) Act 1990 apply to regulated

SCHEDULE 1 - AMENDMENTS - *continued*

contracts entered into before as well as after the commencement of those amendments.

(2) A debtor who was, before the commencement of those amendments, 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 subclause (1)) is taken always to have been liable to pay that charge.

(3) This clause does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the commencement of this clause.

(4) A regulation under section 123 which prescribes the term "consumer credit insurance" to describe the insurance referred to in clause 1 (e) (iv) of Schedule 2, clause 1 (b) (iii) of Schedule 4 or clause 1 (k) (iii) of Schedule 7 is taken to authorise (and always to have authorised) the use of that term to describe that insurance even though it included insurance against unemployment.

(5) A regulation under section 123 which prescribes the term "unemployment insurance" to describe the insurance referred to in clause 1 (e) (vi) of Schedule 2, clause 1 (b) (v) of Schedule 4 or clause 1 (k) (v) of Schedule 7 (as in force before the repeal of those provisions) is taken to authorise (and always to have authorised) the use of that term to describe insurance against unemployment of the debtor despite the repeal of those provisions.

Operation of amendments to sections 85 and 86

3. The amendments made to sections 85 and 86 by the Credit (Amendment) Act 1990 apply to proceedings in the Tribunal commenced before as well as after the commencement of those amendments.

Operation of sections 85A and 86A

4. Sections 85A and 86A do not apply to proceedings pending in the Tribunal on the commencement of those sections, but apply to proceedings commenced after the

SCHEDULE 1 - AMENDMENTS - *continued*

commencement of those sections even though the contraventions or failures to which the proceedings relate occurred before that commencement.

*[Minister's second reading speech made in -
Legislative Assembly on 20 November 1990
Legislative Council on 4 December 1990 a.m]*