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**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**CREDIT (AMENDMENT) BILL 1991**

**EXPLANATORY MEMORANDUM**

Circulated by authority of the  
Attorney-General  
Terry Connolly, MLA

EXPLANATORY MEMORANDUMCredit (Amendment) Bill 1991

## GENERAL OUTLINE

This Bill amends the *Credit Act 1985*, referred to in the amending Bill as the Principal Act and in this Memorandum as the Act. The *Credit Act 1985* is part of a uniform scheme of legislation for the regulation of consumer credit transactions. NSW, VIC and WA have enacted similar legislation.

The amendment is necessary because difficulties have arisen from the operation of section 42, the civil penalty provision, of the Act. This provision prevents a credit provider, who has breached the financial disclosure requirements of the Act, from recovering credit charges (interest) due under the contract.

To regain the right to collect charges, a credit provider must apply to the Credit Tribunal for an order restoring the debtor's liability to pay the charge.

In late 1990/early 1991 two national credit providers were found to have breached the disclosure provisions of the Act in relation to at least 650,000 contracts Australia-wide.

Some of the breaches were merely technical involving a failure to disclose insurance commissions in contract documentation as required by the Act. However, the information was provided in Insurance Certificates attached to, but not forming part of, the contracts. Because these breaches did not cause any consumer detriment, the uniform Credit jurisdictions agreed to amend their Acts to validate these transactions retrospectively, thereby restoring credit providers' rights to collect credit charges.

A substantial number of contracts involved more serious breaches which have yet to be determined by the Tribunal. This Bill provides the Tribunal with the necessary procedural measures to facilitate the hearing of applications involving a large number of contracts.

The Bill also contains related amendments which widen the scope of the descriptive term 'consumer credit insurance'; bring ACT account charges into line with other uniform credit states; and clarify the powers of the Tribunal when hearing section 85 applications.

#### FINANCIAL IMPACT

This Bill has no revenue or cost implications.

#### NOTES ON CLAUSES

##### Short Title

Clause 1 provides for the short title of this amending Act to be the *Credit (Amendment) Act 1991*.

##### Commencement

Clause 2 sets out the way in which the changes made by the Bill will occur after it has been passed by the Legislative Assembly.

Except for section 6, all provisions of the Bill will commence on the day that the passing of the Bill is notified in the *Gazette*. However, clauses 4, 5, 7, 8 and 9 are to operate as if they had always been in the Act.

Section 6 will commence automatically, six months after the passing of the Bill is notified in the *Gazette*, unless the Minister notifies an earlier date for commencement in the *Gazette*.

##### Principal Act

Clause 3 states that in this Act the *Credit Act 1985* is referred to as the Principal Act.

##### Interpretation

Clause 4 amends the definition of 'account charge' in subsection 5(1)(b) of the Act. It provides that the maximum annual fixed fee that a credit provider may charge a debtor after the first year of the credit contract is increased from \$75 to \$90. This brings ACT charges into line with other uniform Credit jurisdictions.

This amendment also allows the Minister to amend the account charges in the future by regulation rather than by amending the Act.

##### Tribunal may reduce credit provider's loss

Clause 5 clarifies the procedures for handling applications under section 85 for the removal or limitation of the civil penalty.

The proposed subsection 4A gives the Tribunal power to make directions as to the method for paying amounts that a debtor or credit provider is liable to pay as a result of the Tribunal's determination.

The proposed subsection 4B provides that a determination by the Tribunal will only effect the breach to which it relates.

Clause 5 applies to Tribunal proceedings instituted before or after the commencement of these subsections.

#### Insertion

Clause 6 inserts a new section 85A into the Act. This provides that where a credit provider makes an application to the Tribunal under section 85, any civil penalties involved will be suspended until the Tribunal makes its decision.

During this interim period, the credit provider may not enforce or refinance the contract or impose default charges. The Tribunal is also empowered to give directions to protect the interests of the debtor.

This provision will only apply to applications made to the Tribunal after this provision commences.

#### General order varying civil penalty

Clause 7 amends subsection 86(1) of the Act to allow the Tribunal to make a determination covering all contracts of a specified class entered into during a specified period. This provision will assist the Tribunal to handle applications involving a large number of contracts. Presently the Tribunal cannot make determinations for 'classes' of contracts entered into in a specified period.

This amendment also adds new subsections 86(2) - (5). These deal with the procedures for identifying debtors affected by an application and giving them notice of the proceedings. Where the Tribunal is dealing with applications involving a large number of contracts and it is impractical to give each debtor personal notice, the Tribunal may authorise the credit provider to give notice of an application by newspaper advertisement.

Debtors need not be identified individually in the notice. However, notices must include the name of the credit provider; a description of the contract; the dates contracts were made; and the nature of the breach of the Act.

These amendments will apply to Tribunal proceedings instituted before or after the commencement of this section.

#### Insertion

Clause 8 adds four new sections to the Act. The proposed section 241A affects contracts entered into before the commencement of this Act. Credit providers will not incur the civil penalty for failing to disclose insurance commission charges in the contract, if these charges were disclosed in written information given or shown to the debtor before or when the contract was made. Similarly, credit providers will not be penalised for failing to disclose insurance commission charges payable to themselves, if commission charges payable to a body with a name similar to that of the credit provider were made known to the debtor at the time of making the contract.

The proposed sections 241B, 241C and 241D are transitional, and provide for the operation of clauses 9; 5 and 7; and 6 respectively.

#### Amendment of Schedules

Clause 9 amends Schedules 2, 4 and 7 of the Act. These Schedules set out the information to be included in a Statement of Amount Financed to be given to a debtor who makes a credit sale, credit loan or continuing credit contract respectively.

Each Schedule is amended so that unemployment insurance is included with insurance against sickness, accident, disability and death, as a type of insurance for which a credit provider is required must disclose commission charges in the Statement of Amount Financed.

This amendment, together with a consequential amendment to the Credit regulations, enables credit providers to use the descriptive term 'consumer credit insurance' in Statements of Amount Financed to describe an insurance contract which provides cover for all or any of the above-mentioned risks. Similarly, where the insurance includes a component for life insurance, no separate disclosure is required in the Statement.

This provision applies to contracts made before or after the commencement of this amending Act and validates Statements which used the term 'consumer credit insurance' to cover insurance against unemployment and life insurance.