

CREDIT (AMENDMENT) ACT 1992 No. 27

NEW SOUTH WALES



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CREDIT (AMENDMENT) ACT 1992 No. 27

NEW SOUTH WALES



Act No. 27, 1992

An Act to amend the Credit Act 1984 with respect to civil penalties payable under that Act. [Assented to 18 May 1992]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Credit (Amendment) Act 1992.

Commencement

2. This Act commences on a day to be appointed by proclamation.

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 5 (Definitions):

Insert in alphabetical order:

“financial counselling trust fund” means the fund established in accordance with the regulations as referred to in section 167 (1) (e);

(2) Section 85 (Tribunal may reduce credit provider’s loss):

After section 85 (5), insert:

(6) The provisions of this section are subject to the provisions of section 86B and, in particular, subsection (3) of this section does not apply to the determination of an amount under subsection (1) of that section.

(3) Section 86B:

After section 86A, insert:

Payments to the financial counselling trust fund

86B. (1) If the Tribunal makes a determination referred to in section 86 (1) (a), (b) or (c), it may, by its order under section 85, direct that each debtor is to remain liable to pay the whole of the credit charges under the relevant regulated contract but that the credit provider is to pay into the financial counselling trust fund such amount as the Tribunal may determine, having regard to the number of contracts to which the determination relates.

SCHEDULE 1—AMENDMENTS—*continued*

(2) If it is necessary to do so, the Tribunal may, for the purposes of this section, make an estimate of the number of contracts to which such a determination relates.

(3) A direction under this section may not be given unless the Tribunal is satisfied:

- (a) that the contravention or failure giving rise to the application for the determination, and the relevant circumstances referred to in section 85 (2), are sufficiently serious to warrant the credit provider being penalised; and
- (b) that it would be unreasonable (whether because of the number of contracts concerned or otherwise) to require the credit provider to adjust the debtors' accounts, or to refund money to the debtors, to give effect to any reduction in liability that would occur if the credit charges were reduced.

(4) A direction under this section may be given in respect of all regulated contracts to which the application for the determination relates or in respect of some only of those contracts.

(4) Section 167 (**Regulations**):

- (a) From section 167 (1) (c), omit “applies; and”, insert instead “applies;”.
- (b) After section 167 (1) (d), insert:
 - (e) providing for the establishment of a fund for the receipt of money the subject of a direction under section 86B and for the establishment of a scheme for administering such a fund; and
 - (f) prescribing the purposes (being purposes connected with the provision of financial counselling to debtors or the education of the public in the management of personal finances) for which, and the manner in which, money in the fund referred to in paragraph (e) is to be applied.

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SCHEDULE 1—AMENDMENTS—*continued*

(c) After section 167 (l), insert:

(1A) A regulation for the purposes of subsection (1) (e) may provide for the establishment of a fund or scheme by reference to a trust deed under which such a fund or scheme is established.

(5) Schedule 8 (**Transitional and other special provisions**):

(a) Before clause 1, insert:

Part 1—Provisions consequent on the enactment of the Credit Act 1984

(b) At the end of the Schedule, insert:

Part 2—Provisions consequent on the enactment of the Credit (Amendment) Act 1992

Application of amendments to existing proceedings

5. The amendments to this Act made by the Credit (Amendment) Act 1992 apply to proceedings commenced before the commencement of that Act in the same way as they apply to proceedings commenced on or after that commencement.

*[Minister's second reading speech made in—
Legislative Assembly on 9 April 1992
Legislative Council on 7 May 1992]*