

Credit (Further Amendment) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 7 May 1991

(Brought in by the Honourable B. W. Mier)

A BILL

to amend the **Credit Act 1984** and for other purposes.

Credit (Further Amendment) Act 1991

The Parliament of Victoria enacts as follows:

1. *Purpose*

5 The purposes of this Act are to amend the **Credit Act 1984** with respect to proceedings concerning civil penalties for contravention of that Act and with respect to disclosures concerning insurance and to make certain other amendments to that Act.

2. *Commencement*

10 This Act comes into operation on a day or days to be proclaimed.

3. *Principal Act*

In this Act, the **Credit Act 1984** is called the Principal Act.

No. 10097/
1984.

R printed t
No. 57/1989.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

4. *Linked credit provider—Tribunal to have jurisdiction*

In section 24 of the Principal Act, sub-section (14) is repealed.

5. *Applications to Tribunal in prescribed form*

In section 85 (1) of the Principal Act, after “Tribunal” insert “in the prescribed form”. 5

6. *Tribunal may reduce credit provider’s loss*

After section 85 (4) of the Principal Act, 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. 10 15

(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.”.

7. *New section 85A inserted* 20

After section 85 of the Principal Act, insert—

‘85A. *Stay of civil penalty pending Tribunal’s decision*

(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. 25

(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. 30

- 5
- (3) Until the interim determination ceases to have effect, the credit provider must not, in relation to an amount in excess of the amount financed under the regulated contract concerned—
- (a) take enforcement action against the debtor; or
- (b) enter into an agreement under section 69 for the refinancing of the contract; or
- (c) make a default charge under section 72.
- 10
- (4) 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.
- 15
- (5) 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 payment of all or any of the amounts concerned into a trust account.
- 20
- (6) 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
- 25
- (b) the Tribunal excludes the application from the operation of this section because a direction under sub-section (5) has not been complied with or for any other reason.
- 30
- (7) 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.
- 35
- (8) In this section, “**civil penalty**” means a penalty which is imposed on a credit provider by the operation of section 42, 67 or 81 and under which the debtor is not liable to pay to the credit

provider an amount otherwise payable under a regulated contract.’

8. General order varying civil penalty

- (1) In section 86 of the Principal Act, after “86.” insert “(1)”. 5
- (2) At the end of section 86 of the Principal Act, 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 which are affected by a specified contravention or failure). 10
- (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. 20
- (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 other circumstances of the case) it is impracticable to give notice to each debtor and it is otherwise appropriate to give notice by such publication. 25
- (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; 35

(c) the period during which the contracts were entered into;

(d) the nature of the contraventions or failures to which the application relates.

5 (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 **Credit (Administration) Act 1984** or regulations under that Act) is not entitled to any
10 other notice of the application.”

9. *New section 85B inserted*

Before section 86 of the Principal Act, **insert—**

“85B. *Declaration*

15 (1) A debtor, a credit provider or the Director may apply to the Tribunal for a declaration in relation to a regulated contract as to—

(a) whether, by reason of section 42 or 81 (6), the debtor is or is not liable to pay the credit charge;

20 (b) whether, by reason of section 67 or 81 (6), the debtor is or is not liable to pay the credit charge in respect of a billing cycle;

25 (c) whether, by reason of section 64 of the **Credit (Administration) Act 1984**, the debtor is or is not liable to pay the amount financed or the credit charge.

(2) A declaration under sub-section (1) is subject to any determination affecting the regulated contract made under section 85 or 86.”.

30 **10. *Matters to be considered by Tribunal***

In section 147 of the Principal Act, for sub-section (4) **substitute—**

“(4) In determining whether a contract or mortgage is unjust, the Tribunal—

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- (a) must not have regard to any injustice arising from circumstances that were not reasonably foreseeable at the time the contract or mortgage was entered into; and
- (b) may have regard to any conduct relating to the credit contract, guarantee or mortgage, whether or not the conduct constitutes or may constitute a contravention of this or any other Act.”. 5

11. *New Part XA inserted* 10

After Part X of the Principal Act, insert—

‘PART XA—TRANSITIONAL

167A. *Certain past non-disclosures about insurance commission not to incur civil penalty*

- (1) This section applies to credit sale contracts or loan contracts entered into before the commencement of section 11 of the **Credit (Further Amendment) Act 1991**. 15
- (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. 20 25
- (3) If— 30
 - (a) an insurance commission charge was payable to the credit provider in respect of a credit sale contract or a loan contract; and

5 (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 sub-section (2)—

10 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.

15 (4) Nothing in this section affects the liability of a person to be convicted of an offence under this Act.

20 (5) This section does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the commencement of section 11 of the **Credit (Further Amendment) Act 1991**.

25 (6) In this section, 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—

30 (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.

35 **167B. *Operation of amendments relating to description of consumer credit insurance***

(1) The amendments made to Schedules 2, 4 and 7 by the **Credit (Further Amendment) Act 1991**

apply to regulated contracts entered into before as well as after the commencement of section 13 of that Act.

- (2) A debtor who, before that commencement, was 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 subsection (1)) is taken always to have been liable to pay that charge. 5 10
- (3) This section does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the commencement of section 11 of the **Credit (Further Amendment) Act 1991**. 15
- (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. 20
- (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. 25 30

167C. Operation of amendments to sections 85 and 86 35

Sections 85 and 86, as amended by sections 6 and 8 of the **Credit (Further Amendment) Act 1991**, apply to proceedings in the Tribunal

commenced before as well as after the commencement of those sections.

167D. Operation of sections 85A and 86A

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Section 85A does not apply to proceedings pending in the Tribunal on the commencement of section 7 of the **Credit (Further Amendment) Act 1991**, but applies to proceedings commenced after the commencement of that section even though the contraventions or failures to which the proceedings relate occurred before that commencement.’

10

12. Loans under Money Lenders Act 1958

After section 168 (3) of the Principal Act insert—

“(4) A borrower or money lender under a transaction or contract for a loan to which sub-section (2) applies may apply to the Tribunal for a determination as to whether, under section 23 of the **Money Lenders Act 1958**—

- (a) interest is recoverable; or
- (b) a security is enforceable—

in respect of the transaction or contract.

- (5) A person who, under section 28 (3) of the **Money Lenders Act 1958**, may apply to a court for the re-opening of a transaction may apply to the Tribunal for the re-opening under section 28 of that Act of a transaction to which sub-section (2) applies.
- (6) The Tribunal may make a determination on an application under sub-section (4) or (5).
- (7) Section 6 of this Act and the **Credit (Administration) Act 1984** apply to an application to, and determination by, the Tribunal under this section with such modifications as are necessary and as if section 77 (2) of the **Credit (Administration) Act 1984** included a reference to this section.”

13. Amendment of Schedules

In the Principal Act—

(a) in Schedule 2—

- (i) in clause 1 (e) (iv), after “the debtor” insert “or against unemployment of the debtor”; 5
- (ii) in clause 1 (e), sub-paragraph (vi) is repealed;
- (iii) after clause 2 insert—

“3. If an amount payable in relation to a contract of life insurance is disclosed in connection with an amount disclosed under clause 1 (e) (iv) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.”; 10

(b) in Schedule 4— 15

- (i) in clause 1 (b) (iii), after “the debtor” insert “or against unemployment of the debtor”;
- (ii) in clause 1 (b), sub-paragraph (v) is repealed;
- (iii) after clause 2 insert—

“3. If an amount payable in relation to a contract of life insurance is disclosed in connection with an amount disclosed under clause 1 (b) (iii) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.”; 20 25

(c) in Schedule 7—

- (i) in clause 1 (k) (iii), after “the debtor” insert “or against unemployment of the debtor”;
- (ii) in clause 1 (k), sub-paragraph (v) is repealed; 30
- (iii) after clause 2 insert—

“3. If an amount payable in relation to a contract of life insurance is disclosed in connection with an amount disclosed under clause 1 (k) (iii) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.”. 35

14. Statute law revision

(1) In the Principal Act—

- (a) in section 5 (1), in paragraph (f) of the definition of “services” for “rights of” **substitute** “rights or”;
- 5 (b) in section 44 (1) (a), for “that \$75” **substitute** “than \$75”;
- (c) in section 61 (2) (a), for “section 8 of the **Chattel Securities Act 1981**” **substitute** “section 7 of the **Chattel Securities Act 1987**”;
- 10 (d) in section 130 (2) (a), for “contract or” **substitute** “contract of”;
- (e) in section 167 (1), for “with the respect” **substitute** “with respect”.

(2) In the **Credit (Administration) Act 1984**—

- 15 (a) in section 56 (5), for “statment” **substitute** “statement”;
- (b) in section 59 (3) (c), for “licensee in” **substitute** “licensee is”;
- 20 (c) in section 78 (b), for “a Magistrates’ ” **substitute** “the Magistrates’ ”;
- (d) in section 90 (1), for “provision” **substitute** “provisions”.

No. 10091/
1984.

Reprint d to
No. 57/1989.

