

Credit (Administration) (Amendment) Bill

No.

TABLE OF PROVISIONS

Clause

1. Purpose.
2. Commencement.
3. Principal Act.
4. Definitions.
5. Appeals against determination of Authority.
6. New Part V substituted—

PART V—CREDIT TRIBUNAL

66. Establishment of Credit Tribunal.
 67. Qualifications for appointment as Chairperson or Deputy Chairperson.
 68. Terms and conditions of appointment.
 69. Allowances.
 70. Resignation and termination.
 71. Acting Chairperson or Deputy Chairperson.
 72. Acting members.
 73. Proceedings of Tribunal not invalid by reason of vacancy etc.
 74. Chairperson to give directions.
 75. Use of experts.
 76. Fixing time and place for hearings.
 77. Constitution of Tribunal.
 78. Applications to the Tribunal.
 79. Determination of questions before the Tribunal.
 80. Determination of questions of law.
 81. Appearance.
 82. Evidence before the Tribunal.
 83. Costs.
 84. Hearings to be in public unless special circumstances.
 85. Correction of errors.
 - 85A. Procedure of Tribunal.
 - 85B. Reasons for determination.
 - 85C. Director to give effect to determination.
 - 85D. Enforcement of orders.
 - 85E. Director to investigate matters.
 - 85F. Extension of time.
 - 85G. Contempt of Tribunal.
 - 85H. Certain judgments not to be given.
 - 85I. Appeals to Supreme Court.
 - 85J. Registrar and staff of Tribunal.
 - 85K. Secrecy.
 - 85L. Protection for things done under Part.
7. Consequential amendments.
 8. Consequential amendments to other Acts.
 9. Transitional provisions.

By Authority Jean Gordon Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 2 November 1988

(Brought in by Mr Roper and Mr Spyker)

A BILL

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

Credit (Administration) (Amendment) Act 1988

The Parliament of Victoria enacts as follows:

Purpose.

5 1. The purpose of this Act is to establish a Credit Tribunal under the *Credit (Administration) Act* 1984 and to amend the provision dealing with appeals from the Credit Licensing Authority to the Supreme Court.

Commencement.

2. (1) Sections 1, 2, 3 and 5 come into operation on the day on which this Act receives the Royal Assent.

10 (2) Sections 4, 6, 7, 8 and 9 come into operation on a day to be proclaimed.

Principal Act.

3. In this Act the *Credit (Administration) Act* 1984 is called the Principal Act.

No 10091
Amended by
Nos. 10246,
110/1986,
119/1986 and
45/1987.

Definitions.

- 4. Section 4 of the Principal Act is amended as follows:
 - (a) For the definition of “Credit Registrar” substitute—
 - ‘ “Chairperson” in Part V means the Chairperson of the Tribunal and includes a person acting as Chairperson. 5
 - “Credit Registrar” means the Credit Registrar of the Tribunal.
 - “Deputy Chairperson” in Part V means the Deputy Chairperson of the Tribunal and includes a person acting as a deputy chairperson.’;
 - (b) For the definition of “Member” substitute— 10
 - ‘ “Member”—
 - (a) in Part III in relation to the Authority, includes a person appointed to act as a member; and
 - (b) in Part V in relation to the Tribunal, includes a person appointed to act as a member.’; 15
 - (c) The definitions of “Referee” and “Senior Referee” are repealed;
 - (d) For the definition of “Tribunal” substitute—
 - ‘ “Tribunal” means the Credit Tribunal established under Part V.’. 20

Appeals against determination of Authority.

- 5. After section 61 (2) of the Principal Act insert—
 - “(2A) An appeal under this section is an appeal in the strict sense.
 - (2B) If the Supreme Court allows an appeal under this section, the Supreme Court— 25
 - (a) must set aside the determination of the Authority, either wholly or in part; and
 - (b) must remit the proceedings back to the Authority for further hearing, subject to such directions as the Supreme Court thinks fit.”. 30

New Part V substituted.

- 6. For Part V of the Principal Act substitute—

“PART V—CREDIT TRIBUNAL”

Establishment of Credit Tribunal.

- “66. (1) There is established a Credit Tribunal which shall consist of— 35
 - (a) a Chairperson appointed by the Governor in Council; and
 - (b) such number of Deputy Chairpersons as are appointed by the Governor in Council; and

(c) such number of persons who represent the interests of the regulated credit industry as are appointed by the Governor in Council; and

5 (d) such number of persons who represent the interests of consumers as are appointed by the Governor in Council.

(2) The Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires.

(3) The Deputy Chairperson may be referred to as the Deputy Chairman or the Deputy Chairwoman, as the case requires.”

10 **Qualifications for appointment as Chairperson or Deputy Chairperson.**

“67. A person must not be appointed as the Chairperson or a Deputy Chairperson unless the person is a barrister and solicitor of not less than 7 years standing.”

15 **Terms and conditions of appointment.**

“68. (1) A person who is the Chairperson holds office for a period of 5 years and upon such terms and conditions as the Governor in Council determines but is eligible for re-appointment.

20 (2) A person who is a Deputy Chairperson holds office for a period not exceeding 5 years and upon such terms and conditions as the Governor in Council determines but is eligible for re-appointment.

25 (3) A member of the Tribunal, other than the Chairperson or a Deputy Chairperson, holds office for a period of 3 years and upon such terms and conditions as the Governor in Council determines but is eligible for re-appointment.

(4) A member of the Tribunal is not, in respect of the office of member, subject to the *Public Service Act 1974*.”

Allowances.

30 “69. A member of the Tribunal, other than a member who is an officer of the public service, must be paid such travelling and other allowances as are fixed for the time being by the Governor in Council.”

Resignation and termination.

35 “70. (1) A member of the Tribunal may, by notice in writing signed by the member and delivered to the Governor in Council, resign the office of member.

(2) The Governor in Council may remove a member of the Tribunal from office.

(3) The Governor in Council must remove a member of the Tribunal from office if the member—

40 (a) becomes bankrupt; or

- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with creditors; or
- (d) makes an assignment of remuneration for the benefit of creditors; or 5
- (e) is convicted of an offence punishable by imprisonment for 12 months or more.”

Acting Chairperson or Deputy Chairperson.

“71. (1) If—

- (a) there is a vacancy in the office of Chairperson or Deputy Chairperson; or 10
- (b) the Chairperson or Deputy Chairperson is or is about to be absent or for any reason is unable to perform the functions of the office—

the Governor in Council may appoint a Deputy Chairperson or a person who is not a member of the Tribunal to act as the Chairperson or Deputy Chairperson until the filling of the vacancy or during the absence or inability. 15

(2) The Governor in Council—

- (a) may, subject to this Act, determine the terms and conditions of appointment of an acting chairperson or deputy chairperson of the Tribunal; and 20
- (b) may at any time terminate such an appointment.

(3) The appointment of an acting chairperson or deputy chairperson of the Tribunal made in anticipation of the absence or inability of the Chairperson or a Deputy Chairperson has effect from and including the day on which the absence or inability commences. 25

(4) The appointment of an acting chairperson or deputy chairperson of the Tribunal ceases to have effect if the acting chairperson or deputy chairperson resigns the appointment by writing signed by the acting chairperson or deputy chairperson and delivered to the Governor in Council. 30

(5) While the appointment of an acting chairperson or deputy chairperson of the Tribunal remains in force, the acting chairperson or deputy chairperson has and may exercise all the powers and perform all the functions of the Chairperson or Deputy Chairperson, as the case may be.” 35

Acting members.

“72. (1) If a member (other than the Chairperson or a Deputy Chairperson) of the Tribunal is or is about to be absent or for any reason is unable to perform the duties of the office, the Minister may appoint a person qualified to be appointed as that member to act as the member during the absence or inability. 40

(2) Where a person has been appointed under this section to act as a member during the absence or inability of a member and that member ceases to hold office without having resumed duty, the period of appointment of the person so appointed is deemed to continue until it is terminated by the Minister or until the expiration of 12 months from the date on which the absent member ceases to hold office, whichever first happens.”

Proceedings of Tribunal not invalid by reason of vacancy etc.

“73. Subject to section 77, an act or determination of the Tribunal is not invalid by reason only—

- (a) of a vacancy in the office of Chairperson or Deputy Chairperson or of any other member; or
- (b) of a defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of a person appointed to act as Chairperson, Deputy Chairperson or a member, that the occasion for so acting had not arisen or had ceased.”

Chairperson to give directions.

“74. The Chairperson may, subject to any decision of the Tribunal, give directions and do whatever is necessary for the expeditious and just hearing and determination of any proceedings before the Tribunal.”

Use of experts.

“75. The Chairperson may, subject to the approval of the Minister, retain experts to advise the Tribunal in respect of any proceedings before the Tribunal.”

Fixing time and place for hearings.

“76. (1) The Chairperson must fix the time and place for the hearing of the proceedings.

(2) The Credit Registrar must give notice to each party to proceedings of the time and place for the hearing of the proceedings.”

Constitution of Tribunal.

“77. (1) An application to the Tribunal, other than an application under section 74 or 85 of the *Credit Act* 1984, shall be determined by the Chairperson or a Deputy Chairperson alone.

(2) An application under section 74 or 85 of the *Credit Act* 1984 may be determined by the Chairperson or a Deputy Chairperson alone if all the parties agree.

(3) Subject to sub-section (2), an application under section 74 or 85 of the *Credit Act* 1984 shall be determined by the Tribunal constituted by—

- (a) the Chairperson or a Deputy Chairperson; and

- (b) at least one member selected by the Chairperson who is a person referred to in section 66 (1) (c); and
- (c) at least one member selected by the Chairperson who is a person referred to in section 66 (1) (d); and
- (d) such other members of the Tribunal (if any) as the Chairperson determines.” 5

Applications to the Tribunal.

“78. An application to the Tribunal may be made—

- (a) to the Credit Registrar; or
- (b) to the clerk of a Magistrates’ Court outside the metropolitan area within the meaning of section 201 of the *Melbourne and Metropolitan Board of Works Act 1958*.” 10

Determination of questions before the Tribunal.

“79. (1) A question before the Tribunal, other than a question of law, must be decided according to the opinion of a majority of the members constituting the Tribunal. 15

(2) A question of law before the Tribunal, unless it is referred to the Supreme Court under section 80, must be decided by the Chairperson or a Deputy Chairperson.”

Determination of questions of law. 20

“80. (1) If a question of law arises in an application to, or proceedings before, the Tribunal, the Chairperson or a Deputy Chairperson may, if he or she thinks fit, reserve the question in the form of a special case for the opinion of the Supreme Court.

(2) The Supreme Court sitting as the Full Court must give its opinion on a question referred to it under sub-section (1). 25

(3) If a question of law arising in an application to, or proceedings before, the Tribunal has been reserved for the opinion of the Supreme Court under sub-section (1), the Tribunal must not proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question of law.” 30

Appearance.

“81. (1) A party to an application to or proceedings before the Tribunal may appear and be heard—

- (a) personally; or 35
- (b) by a duly qualified legal practitioner; or
- (c) if the party is a body corporate, by a director, secretary or other officer of the body corporate; or
- (d) if the Tribunal determines that there are special circumstances in a particular case, by a person specified by the Tribunal. 40

(2) The Director, either personally, by an officer or by a duly qualified legal practitioner, may appear in any proceedings before the Tribunal or in any proceedings before a court that could have been brought before the Tribunal.

5 (3) The Director, either personally, by an officer or by a duly qualified legal practitioner, may appear for a natural person who is a party to proceedings before the Tribunal.

10 (4) A person may be summoned at the direction of the Tribunal or at the request of a party to proceedings before the Tribunal to appear before the Tribunal to give evidence at a hearing and to produce such records (if any) as are referred to in the summons.

(5) A summons to appear before the Tribunal shall be issued by the Credit Registrar and may be served upon the person to whom it is directed—

- 15 (a) by delivering a true copy of the summons to that person; or
(b) by leaving a true copy for that person at that person's last or most usual place of residence or of business with a person who appears to reside at that residence or to be employed at that place of business and to be not less than 16 years of age.
- 20

(6) A person summoned to appear before the Tribunal shall be paid such fees and allowances as are prescribed.

(7) A party to proceedings before the Tribunal may call evidence and may examine, cross-examine and re-examine witnesses.”

25 **Evidence before the Tribunal.**

“82. (1) Evidence at a hearing by the Tribunal—

- (a) may be given orally or in writing; and
(b) if the Tribunal so requires, must be given on oath or on affirmation or declaration instead of an oath where permitted by law.
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(2) The Chairperson or a Deputy Chairperson may administer an oath, take an affirmation or receive a declaration for the purpose of taking and receiving evidence at a hearing.”

Costs.

35 “83. (1) Subject to sub-section (2), costs must not be allowed to or against a person who appears at a hearing by or as a party to proceedings before the Tribunal.

(2) If an application to, or proceedings before, the Tribunal involves a claim exceeding \$3000, costs, not exceeding an amount determined in accordance with the prescribed scale of fees, may be allowed to or against a person appearing at a hearing by, or as a party to proceedings before, the Tribunal.”

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Hearings to be in public unless special circumstances.

“84. (1) Subject to this section, proceedings before the Tribunal must take place in public.

(2) If the Tribunal is satisfied that it is desirable to do so by reason of the existence of special circumstances, the Tribunal may direct that the proceedings before the Tribunal take place in private. 5

(3) The Tribunal may order that the name of a person who is a party to or gives evidence in proceedings before the Tribunal must not be published.

(4) The Tribunal may proceed in the absence of a party or interested person who has had reasonable notice of the proceedings.” 10

Correction of errors.

“85. (1) If the Tribunal makes an order on an application or in proceedings, the Tribunal may, at any time, on its own motion or on an application under sub-section (2), by order amend the first-mentioned order to correct— 15

(a) a clerical mistake or an error arising from an accidental slip or omission; or

(b) an evident material miscalculation of figures or an evident material mistake in the description of a person, thing or property referred to in the order. 20

(2) An application for the purposes of sub-section (1) may be made by the applicant under the application or a party to the proceedings to which the order relates within 14 days after the applicant or party receives notice of the order and must be accompanied by the prescribed fee. 25

(3) If the Tribunal grants an application under this section, the Tribunal must refund to the applicant the amount of the prescribed fee paid by the applicant.”

Procedure of Tribunal. 30

“85A. Subject to this Part and the regulations—

(a) the procedure of the Tribunal is in its discretion; and

(b) the manner of convening, conducting and adjourning the proceedings of the Tribunal is in its discretion.”

Reasons for determination. 35

“85B. (1) Any person may request a copy in writing of the reasons for a determination of the Tribunal—

(a) before or within 14 days after the Tribunal made the determination in a matter; and

(b) on payment to the Credit Registrar of the prescribed fee (if any). 40

(2) The Tribunal must comply with a request made under sub-section (1).”

Director to give effect to determination.

5 “85C. The Director must take such action (if any) as is necessary to give effect to a determination of the Tribunal.”

Enforcement of orders.

10 “85D. (1) If a determination of the Tribunal is an order for the payment of money to a person, that person may enforce the order by filing, free of charge, in the office of the Clerk of the Magistrates’ Court for the place where the person required by the order to make payment resides or has a place of business, or where the person to whom payment is to be made resides—

(a) a copy of the order certified by the Credit Registrar to be a true copy; and

15 (b) an affidavit by the first-mentioned person as to the person to whom payment is to be made in the order and the amount not paid under the order—

20 and, upon that filing, the order is deemed to be an order duly made by a Magistrates’ Court requiring the payment of money and may be enforced accordingly.

(2) In sub-section (1), a reference to a determination of the Tribunal includes a reference to a determination of a Small Claims Tribunal made under this Act as in force at any time before the commencement of section 6 of the *Credit (Administration) (Amendment) Act 1988*.”

25 **Director to investigate matters.**

“85E. The Tribunal may request the Director to investigate a matter that has arisen in or in relation to proceedings before the Tribunal and, if the Minister consents, the Director must investigate that matter.”

Extension of time.

30 “85F. The Tribunal—

(a) on the application of—

(i) the Director; or

(ii) a party; or

(b) on its own motion—

35 may extend any time limit fixed by the Tribunal, this Act or the *Credit Act 1984* for doing any act or taking any proceeding or waive compliance with any procedural requirement.”

Contempt of Tribunal.

“85G. A person must not—

- (a) insult a member in the performance of functions or the exercise of powers as a member at a hearing before the Tribunal; or 5
- (b) interrupt a hearing before the Tribunal; or
- (c) create a disturbance before or take part in creating or continuing a disturbance, in or near a place where the Tribunal is holding a hearing; or
- (d) do any other act that would, if the Tribunal were a court of record, constitute contempt of that court. 10

Penalty: 10 penalty units or imprisonment for three months.”

Certain judgments not to be given.

“85H. If an application to, proceedings before or order of the Tribunal involves a claim that does not exceed \$3000, a judgment or order granting relief or remedy in the nature of *certiorari*, prohibition or other similar relief or remedy or a declaratory judgment shall not be given in respect of the application, proceedings or order unless the court before which such a judgment or order is sought is satisfied that— 15

- (a) the Tribunal did not have, or does not have, jurisdiction under this Act to hear or determine the application or proceedings or to make the order; or 20
- (b) there has been a denial of natural justice to the applicant or a party to the proceedings.”

Appeals to Supreme Court. 25

“85I. If an application to, proceedings before or order of the Tribunal involves a claim that exceeds \$3000, a person aggrieved by a determination of the Tribunal in the matter may appeal to the Supreme Court against the determination as if the determination were a determination of the County Court.” 30

Registrar and staff of Tribunal.

‘85J. (1) Subject to the *Public Service Act* 1974, there is appointed a Credit Registrar of the Tribunal and such number of Deputy Credit Registrars and other staff as are necessary for the purposes of this Act and the *Credit Act* 1984. 35

(2) The Credit Registrar must keep a register in the prescribed form containing the prescribed particulars of all applications to and proceedings before the Tribunal under this Act or the *Credit Act* 1984 and of the determinations made by the Tribunal under this Act or the *Credit Act* 1984. 40

(3) The Tribunal may from time to time delegate to the Credit Registrar such functions and powers of the Tribunal as may under this

Part be performed or exercised by the Chairperson or a Deputy Chairperson alone.

5 (4) The Credit Registrar may from time to time delegate to one or more Deputy Credit Registrars such functions and powers of the Credit Registrar (other than this power of delegation) as may under this Part be performed or exercised by the Credit Registrar.

10 (5) A delegation under sub-section (3) or (4) may be made either generally or in relation to specified functions and powers and either for a specified period or until revoked by the Tribunal or Credit Registrar, as the case may be.

(6) A certificate under the hand of the Credit Registrar certifying as to any matter relating to particulars of a determination of the Tribunal recorded in a register kept under this section is to be received in all courts as evidence of the matter certified.

15 (7) All courts must take judicial notice of the official signature of a person who is or has been the Credit Registrar and of the fact that that person is or was the Credit Registrar.

(8) In this section, “court” includes a person authorised by law or by consent of parties to receive evidence.’

20 **Secrecy.**

“85K. (1) This section applies to every person who is or has been a member of the Tribunal, the Credit Registrar, a Deputy Credit Registrar or a member of the other staff assisting the Tribunal.

25 (2) Subject to this section, a person to whom this section applies must not either directly or indirectly, except in legal proceedings or in the performance of a duty under or in connection with this Act or the *Credit Act* 1984, make a record of, or divulge or communicate to any person, any information concerning the affairs of any person acquired by reason of the office or employment under or for the purposes of this
30 Act or the *Credit Act* 1984.

Penalty: 5 penalty units.”

Protection for things done under Part.

35 “85L. An action does not lie against a member of the Tribunal, the Credit Registrar, a Deputy Credit Registrar, an applicant or any other person on account of any proceedings taken, any publication made or anything done under the authority of this Part or taken, made or done, in good faith purportedly under the authority of this Part or on account of any omission made in good faith in the administration of this Part.”.

Consequential amendments.

40 7. The Principal Act is amended as follows:

(a) In section 89, for “a Tribunal” substitute “the Tribunal”;

(b) In section 95 (1)—

- (i) in paragraph (d), for “Tribunals” substitute “the Tribunal”; and
- (ii) in paragraph (f), for “a Tribunal” substitute “the Tribunal”; and
- (iii) paragraphs (g) and (h) are repealed. 5

Consequential amendments to other Acts.

No. 9234.
Reprinted to No.
110/1986 and
amended by No.
63/1987.

8. (1) The *Administrative Law Act 1978* is amended as follows:

- (a) In section 4 (3), for “a Tribunal within the meaning of the *Credit Administration Act 1984*” substitute “the Credit Tribunal,”; 10
- (b) In section 8 (2), for “a Tribunal within the meaning of the *Credit Administration Act 1984*” substitute “the Credit Tribunal,”.

No. 15/1987.

(2) In section 3 (1) of the *Chattel Securities Act 1987*, for the definition of “Tribunal” substitute— 15

“‘Tribunal’ means the Credit Tribunal established under Part V of the *Credit Administration Act 1984*.’.

No. 10097.
Amended by
Nos. 10191,
127/1986 and
15/1987.

(3) In section 5 of the *Credit Act 1984*—

- (a) in sub-section (1), the definition of “Tribunal” is repealed; and 20
- (b) after sub-section (1) insert—

“(1A) In this Act a reference to a Tribunal is a reference to the Credit Tribunal established under Part V of the *Credit Administration Act 1984*.”.

(4) The *Motor Car Traders Act 1986* is amended as follows: 25

(a) In section 3 (1), after the definition of “Committee” insert—
“‘Credit Tribunal’ means the Credit Tribunal established under Part V of the *Credit Administration Act 1984*.’;

- (b) In section 45 (2), for “a Small Claims Tribunal” substitute “the Credit Tribunal”; 30
- (c) In section 45 (3), for “a Small Claims Tribunal” substitute “the Credit Tribunal”;
- (d) Section 46 is repealed;
- (e) In section 47 (1)—

- (i) for “a Small Claims Tribunal” substitute “the Credit Tribunal”; and 35
- (ii) for “a Tribunal” substitute “the Tribunal”;

No. 104/1986.
Amended by
Nos. 15/1987
and 55/1987.

(f) In section 47 (2), for “a Tribunal” substitute “the Tribunal”;

(g) In section 47 (3), for “a Tribunal” substitute “the Tribunal”.

(5) In section 2 (3A) of the *Small Claims Tribunals Act 1973*, for “a Tribunal” substitute “the Credit Tribunal”.

No. 8486.
Reprinted to No.
9696 and
amended by Nos.
9902, 9954,
10018, 10097,
16/1986
104/1986 and
45/1987

5 Transitional provisions.

9. (1) If, before the commencement of this section, an application to a Small Claims Tribunal constituted under the *Small Claims Tribunal Act 1973* had been made under the Principal Act or the *Credit Act 1984* but a hearing had not been commenced, the application shall be deemed to be an application to the Credit Tribunal as constituted by the Principal Act as amended by this Act.

(2) The Principal Act as in force immediately before the commencement of this section continues to apply to and in relation to an application to a Small Claims Tribunal the hearing of which had commenced but had not been determined before the commencement of this section as if this Act had not been enacted.

