

WESTERN AUSTRALIA

CREDIT AMENDMENT ACT 1992

No. 58 of 1992

AN ACT to amend the *Credit Act 1984*.

[Assented to 11 December 1992.]

The Parliament of Western Australia enacts as follows:

Short title

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

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Credit Act 1984** is referred to as the principal Act.

[* *Act No. 99 of 1984.*

For subsequent amendments see 1991 Index to Legislation of Western Australia, p. 48.]

**Licensed credit provider —
Tribunal to have jurisdiction
(section 24 amended)**

4. Section 24 of the principal Act is amended by repealing subsection (14).

**Minimum interest rate of
loan contracts
(section 30 (2) amended)**

5. Section 30 (2) of the principal Act is amended, in paragraph (b) and paragraph (c), by inserting after "14 per centum" the following —

“ or, in the case of a loan contract made after such date as may be prescribed by regulation following the coming into operation of section 5 of the *Credit Amendment Act 1992*, such lesser rate as is prescribed ”.

New Part XA inserted

6. After Part X of the principal Act, the following Part is inserted —

“ **PART XA — TRANSITIONAL**

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

167A. (1) This section applies to credit sale contracts or loan contracts entered into before the coming into operation of section 6 of the *Credit Amendment Act 1992*.

(2) If a statement about an insurance commission charge payable in respect of a credit sale contract or a loan contract, or an insurance certificate that disclosed that a commission was payable with respect to the insurance and to whom the insurer paid the commission, 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 to be 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 —

- (a) does not include a statement about that insurance commission charge; or
 - (b) contains a misstatement about that insurance commission charge.
- (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 subsection (2),

section 42 does not operate (and is to be 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 —

- (c) does not include a statement about the insurance commission charge payable to the credit provider; or
- (d) contains a misstatement about that insurance commission charge.

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

(5) This section does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the coming into operation of section 6 of the *Credit Amendment Act 1992*.

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

- (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) contains information of the kind 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**

167B. (1) The amendments made to Schedules 2, 4 and 7 by the *Credit Amendment Act 1992* apply to regulated contracts entered into before as well as after the coming into operation of section 6 of that Act.

(2) A debtor who, before the coming into operation of section 6 of the *Credit Amendment Act 1992*, 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 who because of subsection (1) becomes so liable, is to be taken always to have been liable to pay that charge.

(3) This section does not apply to any liability to pay any credit charge which has been determined by the Tribunal before the coming into operation of section 6 of the *Credit Amendment Act 1992*.

(4) A regulation which, under section 123, 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 to be taken to authorize (and always to have authorized) the use of that term to describe that insurance even though it included insurance against unemployment.

(5) A regulation which, under section 123, 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 to be taken to authorize (and always to have authorized) the use of that term to describe insurance against unemployment of the debtor despite the repeal of those provisions. ”.

Amendment of Schedules

7. The principal Act is amended —

(a) in Schedule 2 —

- (i) in clause 1 (e) (iv), by inserting after “the debtor” the following —

“ or against unemployment of the debtor ”;

- (ii) in clause 1 (e), by repealing subparagraph (vi);

- (iii) after clause 2, by inserting the following clause —

“ 3. If an amount payable in relation to a contract of life insurance is included in 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. ”;

(b) in Schedule 4 —

- (i) in clause 1 (b) (iii), by inserting after “the debtor” the following —

“ or against unemployment of the debtor ”;

- (ii) in clause 1 (b), by repealing subparagraph (v);
- (iii) after clause 2, by inserting the following clause —

“ 3. If an amount payable in relation to a contract of life insurance is included in 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. ”;

- (c) in Schedule 7 —

- (i) in clause 1 (k) (iii), by inserting after “the debtor” the following —

“ or against unemployment of the debtor ”;

- (ii) in clause 1 (k), by repealing subparagraph (v); and

- (iii) after clause 2, by inserting the following clause —

“ 3. If an amount payable in relation to a contract of life insurance is included in 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. ”.

**Applications to Tribunal
in prescribed form
(Section 85 amended)**

8. The principal Act is amended, in section 85 (1), by inserting after "Tribunal" the following —

“ in the prescribed form ”.

**Tribunal may reduce credit
provider's loss
(Section 85 further amended)**

9. The principal Act is amended, in section 85, by inserting after subsection (4) the following subsections —

“ (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.

(4c) This section, as amended by section 9 of the *Credit Amendment Act 1992*, applies to proceedings in the Tribunal commenced before as well as after the coming into operation of that section.

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New section 85B inserted

10. After section 85A of the principal Act, the following section is inserted —

“ **Stay of civil penalty
pending Tribunal’s decision**

85B. (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.

(3) Until the interim determination ceases to have effect, the credit provider must not, without the consent of the Tribunal, 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.

(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.

(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 in a trust account.

(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
- (b) the Tribunal excludes the application from the operation of this section because a direction under subsection (5) has not been complied with or for any other reason.

(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.

(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 or of 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.

(9) This section does not apply to proceedings pending in the Tribunal on the coming into operation of section 10 of the *Credit Amendment Act 1992*, but applies to proceedings commenced after the coming into operation of that section even though the contraventions or failures to which the proceedings relate occurred before.

**General order varying civil penalty
(Section 86 amended)**

11. The principal Act is amended in section 86 —

(a) by inserting after the section designation “86.” the subsection designation —

“ (1) ”;

(b) in paragraph (a), by deleting “and”; and

(c) in paragraph (b), by deleting the full stop and substituting the following —

“ ; 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).

”;

and

(d) by adding the following subsections —

“ (2) The debtors affected by an application under this section need not be identified in the application but 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 authorize 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 is otherwise appropriate so to give notice of that application.

(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; and
- (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.

(6) This section, as amended by section 11 of the *Credit Amendment Act 1992*, applies to proceedings in the Tribunal commenced before as well as after the coming into operation of that section.

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