

CREDIT UNIONS.

No. 82 of 1984.

AN ACT to amend the Credit Unions Act 1979.

[Assented to 7 December 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Credit Unions Amendment Act 1984*. Short title and principal Act.

(2) In this Act the Credit Unions Act 1979 is referred to as the principal Act. Act No. 54 of 1979 as amended by Act No. 10 of 1982.

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

Section 3
repealed.

3. Section 3 of the principal Act is repealed.

Section 4
amended.

4. Section 4 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting before the definition of “corporation” the following definition—

“ “continuing credit arrangement” means an agreement whereby a credit union agrees with a member to provide credit to that member in respect of payment by the member to the credit union of amounts owing from time to time to the credit union in respect of—

(a) cash (including cheques) supplied by the credit union to that member from time to time; or

(b) the satisfaction by the credit union of liabilities of the member to other persons in respect of payment for goods, services or cash (including cheques) supplied by those other persons to the member from time to time,

and agrees to calculate the amount owing to it from time to time under the agreement on the basis that all amounts owing and all

payments made by the member under or in respect of the agreement are entered in the same account; ”;

- (ii) by inserting before the definition of “credit union” the following definition—

“ “credit limit”, in relation to a continuing credit arrangement, means the amount which, under that arrangement, the outstanding balance of the account kept for the purposes of that arrangement is not to exceed; ”; and

- (iii) by inserting before the definition of “member” the following definition—

“ “loan” does not include the provision of credit under a continuing credit arrangement; ”; and

- (b) by inserting after subsection (1) the following subsection—

“ (1a) A reference in this Act to borrowing from a credit union is a reference to receiving a loan from a credit union or to being provided with credit by a credit union under a continuing credit arrangement. ”.

5. Section 6 of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph—

Section 6
amended.

- “ (b) to apply that fund, subject to this Act and the rules of the credit union, in making loans to members and providing credit to members; ”.

Section 10
amended.

6. Section 10 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting “or” at the end of paragraph (a);
- (ii) by deleting the comma at the end of paragraph (b) and substituting the following—
“ ; or ”; and
- (iii) by inserting after paragraph (b) the following paragraph—
“ (c) raise money by the issue of promissory notes, ”;

(b) in subsection (4)—

- (i) by inserting after “exchange” where it first occurs the following—
“ or by issue of promissory notes ”; and
- (ii) by inserting after “negotiated by it” the following—
“ and all promissory notes issued by it ”;

(c) in subsection (5)—

- (i) by inserting after “exchange” where it first occurs the following—
“ or by issue of promissory notes ”; and
- (ii) by inserting after “exchange” where it occurs in paragraph (b) (iv) the following—
“ or by issue of promissory notes ”; and

(d) by repealing subsection (7).

7. Section 15 of the principal Act is amended in subsection (1)— Section 15 amended.

- (a) by inserting after “member” in the second place where it occurs the following—

“ or for credit provided to a member ”;
and

- (b) by deleting “under any” where it first occurs and substituting the following—

“ upon the making of a continuing credit arrangement or under any other ”.

8. Section 19 of the principal Act is amended in subsection (2) by deleting “and” at the end of paragraph (e) and inserting after paragraph (e) the following paragraph— Section 19 amended.

- “ (ea) a feasibility study of the commercial viability of the proposed credit union prepared in accordance with such requirements as are prescribed and signed by each of the directors and the proposed secretary; and ”.

9. Section 20 of the principal Act is amended in subsection (1)— Section 20 amended.

- (a) by inserting after paragraph (b) the following paragraph—

“ (ba) that there are reasonable grounds for believing that the credit union, if registered, will have available to it by way of share subscriptions or deposits, within 30 days of the issue of a certificate of incorporation, not less than \$1 000 000 or such greater amount as may be prescribed; ”; and

(b) in paragraph (c), by inserting after “will be” the following—

“commercially viable and ”.

Section 41
amended.

10. Section 41 of the principal Act is amended by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) When a credit union makes a loan to, or a continuing credit arrangement with, a member who is under the age of 18 years and is married, the member shall, in respect of his agreement to repay or pay his indebtedness under the loan or arrangement and in respect of any security for repayment or payment of his indebtedness given by him to the credit union, be subject to the same liabilities and obligations as he would have been subject to, and shall have the same rights as he would have had, if he had been of the full age of 18 years at the time the loan or arrangement was made.

(3) Any guarantee or surety by any person in respect of a loan or continuing credit arrangement referred to in subsection (2) shall be as binding and effectual as if the person who borrowed the money or made the continuing credit arrangement had been of the full age of 18 years when the guarantee or surety was given or entered into. ”.

Section 45
amended.

11. Section 45 of the principal Act is amended by repealing subsections (3) and (4) and substituting the following subsections—

“ (3) The shares may be of one or more classes or denominations and shall be issued either as shares fully paid up or as shares to be paid for by periodical or other subscription, as may be specified by the rules.

(4) The rules of a credit union may provide—

- (a) for the withdrawal by a member of his share capital;
- (b) for the payment of differential rates of dividend or interest in respect of varying classes of shares; and
- (c) for rights entitling the holder of any class of shares to receive, instead of a dividend, interest on the shares of a class which are fully paid up at such rate as is determined by the board.

(4a) The rules of a credit union shall not provide for share capital to be repaid in priority to funds of the credit union consisting of deposits made with the credit union.

(4b) The rules of a credit union may provide for the cancellation of shares, or the withdrawal of share capital, but no such rules shall be registered unless the Registrar approves of the provisions governing the cancellation of shares or the withdrawal of share capital. ”.

12. Section 46 of the principal Act is amended by deleting “shares” and substituting the following—

Section 46
amended.

“ subscribed capital ”.

13. Section 48 of the principal Act is amended in subsection (2) by inserting after “loan” in both places where it occurs the following—

Section 48
amended.

“ or continuing credit arrangement ”.

Section 51
amended.

14. Section 51 of the principal Act is amended in subsection (1) by inserting after paragraph (h) the following paragraph—

“ (ha) with the consent of the Registrar, in a loan to a corporation in the shares of which the credit union has invested by virtue of paragraph (f), but a condition of such a loan shall be that no part of the loan moneys shall be on-lent to a person who is ineligible for a loan from the credit union; ”.

Section 52
amended.

15. Section 52 of the principal Act is amended by inserting after subsection (9) the following subsection—

“ (9a) The proper allowance for contingent liability for loss referred to in subsection (7) in respect of a continuing credit arrangement made by a credit union shall be not less than the prescribed percentage of the outstanding balance of the account under the arrangement at the time the allowance is made. ”.

Heading to
Part V,
Division 4
amended.

16. Part V of the principal Act is amended in the heading to Division 4 by inserting after “*Loans*” the following—

“ *and Continuing Credit Arrangements* ”.

Section 54
amended.

17. Section 54 of the principal Act is amended—

(a) in subsection (1) by inserting after “to” the following—

“ , or a continuing credit arrangement with, ”;

(b) in subsection (13) by inserting after “application” the following—

“ for a loan ”;

- (c) in subsection (17) by inserting after "union", where it first occurs, the following—

“ who has received a loan from the credit union ”; and

- (d) by inserting after subsection (17) the following subsections—

“ (18) A member desiring a continuing credit arrangement shall make application to the credit union in the manner provided by the rules and such application shall state—

(a) the credit limit required; and

(b) such other particulars as the board, or the rules of the credit union may require.

(19) Subsections (4) to (12) apply, subject to any necessary modifications, to and in relation to applications for continuing credit arrangements and credit provided under such arrangements.

(20) Where a member's application for a continuing credit arrangement is approved with a credit limit or upon terms and conditions otherwise than as sought by the member, the member shall be notified in writing of the decision and of the credit limit of the arrangement and the terms and conditions upon which the arrangement was approved and if acceptable to him he shall endorse his acceptance on the notification and execute the credit agreement, if any, containing those terms and conditions enclosed with the notification and return it, or them, to the credit union.

(21) Where a continuing credit arrangement with a member is approved pursuant to this section, the credit union shall before any credit is provided to the member under the arrangement—

- (a) obtain from the member, in a case to which subsection (20) applies, his written acceptance of the notification given to him in pursuance of that subsection;
- (b) obtain from the member, where a credit agreement was enclosed with a notification given to him in pursuance of subsection (20) or was otherwise required by the credit union, the agreement duly executed by the member;
- (c) where the arrangement was approved subject to giving of a specified security for the payment of the indebtedness of the member from time to time under the arrangement, obtain the security that shall to the satisfaction of the board in the circumstances then obtaining and to the extent required be adequate to secure payment of the indebtedness together with interest thereon in the event of the realization or enforcement of the security;
- (d) otherwise do all such acts and things as may be necessary to be done to ensure that, if default is made in payment of any amount due and payable under the arrangement, the

credit union may forthwith institute and may thereafter prosecute proceedings for recovery of the debt and may proceed to realize upon or enforce any security given.

(22) A credit union may by notice in writing to a member with whom it has made a continuing credit arrangement—

- (a) subject to sections 55 (2), 56 (3a), 167 (2) and 169 (6) increase the credit limit of the arrangement; or
- (b) decrease the credit limit of the arrangement to an amount not less than the outstanding balance of the account under the arrangement. ”.

18. Section 55 of the principal Act is amended— Section 55
amended.

(a) in subsection (1)—

- (i) by deleting the full stop at the end of paragraph (e) and substituting a semicolon; and
- (ii) by inserting after paragraph (e) the following paragraphs—
 - “ (f) the maximum credit limit that may be approved by the credit union in respect of any unsecured continuing credit arrangement;
 - (g) the maximum credit limit that may be approved by the credit union in respect of any secured continuing credit arrangement. ”; and

(b) in subsection (2)—

- (i) by deleting the full stop at the end of paragraph (b) and substituting a semicolon; and
- (ii) by inserting after paragraph (b) the following paragraphs—

“ (c) approve a credit limit in respect of an unsecured continuing credit arrangement if the amount of that credit limit together with the credit limits of all other unsecured continuing credit arrangements (if any) with that member exceeds in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (1) (f);

(d) approve a credit limit in respect of a secured continuing credit arrangement if the amount of that credit limit together with the credit limits of all other secured continuing credit arrangements (if any) with that member exceeds in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (1) (g). ”.

Section 56
amended.

19. Section 56 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsection—

“ (1) The terms or conditions providing for the repayment or payment of

the indebtedness of a member under a loan or continuing credit arrangement shall include such terms or conditions as are required by the regulations. ”;

(b) in subsection (2)—

(i) by inserting after “loan to” the following—

“ , or a continuing credit arrangement with, ”; and

(ii) by deleting “of that indebtedness and the servicing of the loan” and substituting the following—

“ or payment, and servicing, of the indebtedness of the member under the loan or arrangement ”;

(c) by inserting after subsection (3) the following subsection—

“ (3a) A credit union shall not approve a credit limit in respect of a continuing credit arrangement made with 2 or more members jointly if the amount of that credit limit would exceed an amount that would if approval had been sought in respect of continuing credit arrangements with each of those members individually, be the larger or largest of the credit limits that could have been approved in respect of those arrangements. ”; and

(d) in subsection (4) by inserting after “loan” in both places where it occurs the following—

“ or continuing credit arrangement ”.

Section 57
amended.

20. Section 57 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection—

“ (1a) The Minister may, by order published in the *Gazette* upon the recommendation of the Advisory Committee, fix a maximum rate of interest in respect of continuing credit arrangements and a credit union shall not, in respect of any continuing credit arrangement made by it, charge a rate of interest in excess of the rate so fixed by the Minister under an order for the time being in force. ”;

and

- (b) by repealing subsection (2) and substituting the following subsections—

“ (2) The Minister, having first sought the advice of the Advisory Committee, may from time to time by order published in the *Gazette*—

(a) fix the maximum charges of any kind that may be imposed or demanded by credit unions directly or indirectly in connection with or incidentally to loans to or continuing credit arrangements with members;

(b) prohibit the imposing or demanding by credit unions of any charge of a kind referred to in paragraph (a);

(c) vary or revoke any order under this subsection.

(3) In this section “charge of any kind” includes additional interest expressed to be payable upon the early

discharge of a loan or the early discharge of an outstanding balance under a continuing credit arrangement, but does not otherwise include interest. ”.

21. Section 58 of the principal Act is amended— Section 58 amended.

(a) by inserting after subsection (1) the following subsection—

“ (1a) The whole of the outstanding balance of the account under a continuing credit arrangement, and interest and any other amount that may lawfully be added thereto, shall forthwith become due and payable in such circumstances as are specified in the rules. ”;

(b) in subsection (2)—

(i) by deleting “a loan becomes repayable as referred to in subsection (1)” and substituting the following—

“ moneys become due and payable as referred to in subsection (1) or (1a) ”; and

(ii) by deleting “loan”, where it last occurs, and substituting the following—

“ moneys ”;

(c) in subsection (4) by inserting after “loan” the following—

“ or continuing credit arrangement ”;
and

- (d) by repealing subsection (6) and substituting the following subsection—

“ (6) A credit union may insure against default by members in respect of loans made to them or credit provided to them under continuing credit arrangements but nothing in this Act requires the credit union so to do. ”.

Section 59
amended.

22. Section 59 of the principal Act is amended—

- (a) by inserting after the section designation “59.” the subsection designation “(1)”; and
- (b) by inserting after subsection (1) the following subsection—

“ (2) A person with whom a credit union has made a continuing credit arrangement shall be liable not only for the payment of the outstanding balance of his account under the arrangement and interest thereon, but also for any proper charges and costs of collection of that amount and interest. ”.

Section 60
amended.

23. Section 60 of the principal Act is amended—

- (a) in subsection (2), by inserting after subparagraph (iv) of paragraph (a) the following subparagraph—

“ (iva) the value of any investment in any security or class of security approved for the time being by the Registrar for the purposes of this section; ”; and

- (b) in subsection (4), by inserting after “month,” where it first occurs the following—

“ approve, undertake or offer to ”.

24. Section 61 of the principal Act is repealed and the following section is substituted—

Section 61
repealed and
substituted.

“ 61. (1) Subject to this section, a credit union shall, during the whole of each financial year, maintain a reserve account amounting to not less than 2½%, or such other percentage as may be prescribed, of the aggregate assets of the credit union as at the beginning of the last preceding financial year.

Reserves.

(2) Notwithstanding subsection (1), if a credit union is unable to comply with that subsection in respect of a financial year, the credit union shall forthwith notify the Registrar of the reasons for its inability so to comply.

(3) The Registrar may, by notice in writing served on a credit union, direct that the amount to be maintained in the reserve account of the credit union during a financial year shall be such lesser amount than that required under subsection (1) as the Registrar specifies in the notice and may, by subsequent notice or notices, vary or revoke any direction given under this subsection.

(4) No amount shall be transferred to the reserve account required to be maintained by this section other than a realised amount out of the surplus arising from the business of the credit union.

(5) Any amount maintained in a reserve account under this section—

(a) shall not be distributed amongst members of the credit union except upon its winding up; and

(b) may be applied to any other purpose to which the capital of the credit union may be applied. ”.

Section 64
amended.

25. Section 64 of the principal Act is amended in subsection (11) by deleting “, after the coming into operation of this Act, be” in paragraph (a) and substituting the following—

“ be elected or ”.

Section 66
amended.

26. Section 66 of the principal Act is amended in subsection (1) by deleting “accountant (otherwise than as accountant exclusively to the credit union) solicitor, valuer or” in paragraph (j).

Section 72
amended.

27. Section 72 of the principal Act is amended in subsection (1) by inserting before “directors” the following—

“ or continuing credit arrangements with ”.

Section 78
amended.

28. Section 78 of the principal Act is amended in subsection (1)—

(a) in paragraph (a) by deleting “out of a loan by” and substituting the following—

“ by borrowing from ”;

(b) in paragraph (b) by deleting “out of a loan made by” and substituting the following—

“ by borrowing from ”; and

(c) in paragraph (c) by deleting “the whole or part of any loan made by the credit union to” and substituting the following—

“ any moneys borrowed from the credit union by ”.

Section 79
amended.

29. Section 79 of the principal Act is amended by deleting “three” wherever it occurs in subsections (1), (2) and (3) and substituting in each case the following—

“ 4 ”.

30. Section 82 of the principal Act is amended Section 82 amended.
by—

(a) inserting after the section designation “82.” the subsection designation “(1)”;

(b) by inserting after subsection (1) the following subsections—

“ (2) For the purposes of this Division and Division 4, an incorporated body is a subsidiary of a credit union if the credit union—

(a) controls the composition of the board of directors of that body;

(b) controls or is in a position to control not less than 50% of the voting power at a general meeting of that body; or

(c) holds not less than 50%, or such smaller percentage as may be determined from time to time by the Registrar by notice published in the *Gazette*, of the issued share capital of the body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(3) Without limiting by implication the circumstances in which the composition of the board of directors of an incorporated body is to be taken to be controlled by a credit union, the composition of such a board of directors shall be taken to be controlled by a credit union if that credit union, by

the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that credit union, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, that credit union shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that credit union of such a power;

or

- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that credit union.

(4) For the purposes of this Division and Divisions 4 and 5, in the case of a credit union that has a subsidiary or subsidiaries, all references in those Divisions to accounts, income and expenditure accounts and balance sheets shall be taken to refer, subject to any necessary modifications, to consolidated accounts, consolidated income and expenditure accounts and consolidated balance sheets. ”.

Section 83
amended.

31. Section 83 of the principal Act is amended by inserting after subsection (2) the following subsection—

- “ (3) The directors of a credit union shall take such action, if any, as is necessary to ensure that the financial year of each subsidiary of the credit union coincides with the financial year of the credit union. ”.

32. Section 85 of the principal Act is amended by inserting after subsection (3) the following subsections—

Section 85
amended.

“ (3a) Where at the end of a financial year a credit union has a subsidiary or subsidiaries, the directors of the credit union shall, in addition to other obligations imposed on them by this section, cause to be made out and laid before the members of the credit union at its annual general meeting consolidated accounts dealing with—

(a) the income and expenditure of the credit union and its subsidiaries for the same period as that for which the account required by subsection (1) is made up; and

(b) the state of affairs of the credit union and its subsidiaries as at the end of their respective financial years last ended prior to the annual general meeting in question.

(3b) The consolidated accounts required to be made up under subsection (3a) shall give a true and fair view of the state of affairs and income and expenditure of the credit union and its subsidiaries dealt with as a whole, so far as concerns members of the credit union. ”.

33. Section 124 of the principal Act is amended in paragraph (a) of subsection (1) by inserting after “loan from” the following—

Section 124
amended.

“ or continuing credit arrangement with ”.

34. Section 140 of the principal Act is amended—

Section 140
amended.

(a) by inserting after “deposit” where it first occurs the following—

“ or making or varying any continuing credit arrangement ”;

- (b) by inserting after “deposit” in the second place where it occurs the following—

“ or moneys outstanding under the continuing credit arrangement ”;

and

- (c) by inserting after “deposit” in the third place where it occurs the following—

“ or moneys outstanding ”.

Section 150
amended.

35. Section 150 of the principal Act is amended in subsection (1) by deleting “September” and substituting the following—

“ June ”.

Section 152
amended.

36. Section 152 of the principal Act is amended—

- (a) in subsection (1)—

(i) by deleting “and” at the end of paragraph (a);

(ii) by deleting the full stop at the end of paragraph (b) and substituting a semicolon;

and

(iii) by inserting after paragraph (b) the following paragraphs—

“ (c) books, kept by, or by a person in respect of, a corporation in the shares of which a credit union has invested any of its funds by virtue of section 51 (1) (f) (whether or not the corporation has been dissolved) insofar as such books record affairs relating to the credit union; and

(d) banker's books kept by a banker who acts or has acted as banker to a corporation in the shares of which a credit union has invested any of its funds by virtue of section 51 (1) (f) in so far as the banker's books relate to the corporation (whether or not the corporation has been dissolved) and record affairs relating to the credit union. ”;

(b) in subsection (3), by inserting after “question” the following—

“ or a corporation in the shares of which a credit union has invested any of its funds by virtue of a provision similar to section 51 (1) (f) ”; and

(c) in subsection (8), by inserting after “so registered,” the following—

“ an officer of a corporation of the kind referred to in subsection (1) (c) or a person who keeps any books in respect of such a corporation, ”.

37. Section 167 of the principal Act is amended in subsection (2) by inserting after paragraph (a) the following paragraph—

Section 167
amended.

“ (aa) make a continuing credit arrangement with a member or increase the credit limit in respect of an existing continuing credit arrangement; ”.

Section 169
amended.

38. Section 169 of the principal Act is amended in subsection (6) by deleting “lend or borrow any money whether by way of loan or on deposit” and substituting the following—

“ make or receive any loan, or make or accept any deposit, or make any continuing credit arrangement, or increase the credit limit in respect of an existing continuing credit arrangement ”.

Second
Schedule
amended.

39. The Second Schedule to the principal Act is amended by inserting after paragraph (r) the following paragraph—

“ (s) The circumstances in which the whole of the outstanding balance of the account under a continuing credit arrangement made by the credit union with a member, and interest and any other amount that may lawfully be added thereto, shall forthwith become due and payable. ”.
