

Queensland



CREDIT AMENDMENT ACT 1991

Act No. 31 of 1991

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SCHEDULE 8

FURTHER TRANSITIONAL AND OTHER SPECIAL PROVISIONS

Queensland



Credit Amendment Act 1991

Act No. 31 of 1991

An Act to amend the Credit Act 1987

[Assented to 12 June 1991]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

Short title

1. This Act may be cited as the *Credit Amendment Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day this Act receives the Royal Assent.

(2) The remaining provisions commence on a day or days to be fixed by proclamation.

Amended Act

3. The *Credit Act 1987* is amended as set out in this Act.

Insertion of new s. 5A

4. After section 5—

insert—

'Further transitional and other special provisions

'5A. The further transitional and other special provisions set out in Schedule 8 have effect (including retrospective effect) as according to their tenor.'

Amendment of s. 86 (Credit provider may apply to court for reduction of loss for contravention of Act)

5. After section 86(4)—

insert—

'(4A) A court 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 court 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 a court under this section of the liability of a debtor has effect only in respect of the contravention or failure to which the determination relates.’.

Insertion of new s. 86A

6. After section 86—

insert—

‘Stay of civil penalty pending court’s decision

‘86A. (1) When an application is made for a determination under section 86, the civil penalty to which the application relates is stayed pending the disposal of the application by the court.

‘(2) For the purposes of staying any such civil penalty, the application operates as an interim determination of the court in the terms sought by the applicant pending its disposal by the court.

‘(3) When the application is disposed of by the court, the interim determination under this section ceases to have effect and (unless a determination in the same terms is made by the court) is taken never to have had effect.

‘(4) The court may, before disposing of the application give the applicant such directions as it considers appropriate to protect the interests of the debtor concerned, including directions relating to the enforcement of the debtor’s obligations under the contract or to the payment of all or any of the amounts concerned into a trust account.

‘(5) This section does not apply to an application for a determination if—

- (a) the determination cannot be made by the court under section 86;
or
- (b) the court excludes the application from the operation of this section because a direction under subsection (4) has not been complied with or for any other reason.

‘(6) 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.

‘(7) In this section—

“**civil penalty**” means a penalty which is imposed on a credit provider by the operation of this Act and under which the debtor is not liable to pay to the credit provider an amount otherwise payable under a regulated contract.’.

Amendment of s. 87 (General order varying civil penalty)

7. Section 87—

omit ‘period.’, insert—

‘period; and

- (c) may make a determination under section 86 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).

‘(2) The debtors affected by an application under this section need not be identified in the application. However, the court 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 court 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 court considers that (because of the number of debtors and other circumstances of the case) it is appropriate to do so.

‘(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;
- (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 rules of the court) is not entitled to any other notice of the application.’.

Insertion of new s. 87A

8. After section 87—

insert—

‘General order varying civil penalty for minor errors

‘87A.(1) In this section—

“minor error” means a contravention or failure to comply with this Act which is unlikely to disadvantage the debtors concerned in any significant respect.

‘(2) If a credit provider makes an application to a court under section 87 and requests the court to deal with the application under this section, the following provisions have effect—

- (a) notice of the application must be served on the Registrar but (unless the court otherwise directs) is not required to be served on any other person;
- (b) if the court is satisfied that all the contraventions or failures to which the application relates are minor errors and ought reasonably to be excused—the court may make a determination under section 86 that debtors under all regulated contracts entered into during the period concerned which are affected by those minor errors are liable to pay the whole of the credit charges under those contracts;
- (c) if the court is not so satisfied—the court must direct that notice of the application be given to the debtors concerned, either personally or in accordance with section 87.

‘(3) The Registrar may be represented by a duly qualified legal practitioner on the hearing of an application under this section for the purpose of making submissions to the court in relation to the application.’.

Amendment of Schedule 2 (STATEMENT OF AMOUNT FINANCED IN RELATION TO CREDIT SALE CONTRACT)

9. (1) Schedule 2, clause 1(e)(iv)—

after ‘the debtor’—

insert ‘or against unemployment of the debtor’.

(2) Schedule 2, clause 1(e)(vi)—

omit.

Amendment of Schedule 4 (STATEMENT OF AMOUNT FINANCED IN RELATION TO LOAN CONTRACT)

10. (1) Schedule 4, clause 1(b)(iii)—

after ‘the debtor’—

insert ‘or against unemployment of the debtor’.

(2) Schedule 4, clause 1(b)(v)—

omit.

Amendment of Schedule 7 (STATEMENT OF ACCOUNT IN RELATION TO CONTINUING CREDIT CONTRACT)

11. (1) Schedule 7, clause 1(k)(iii)—

after ‘the debtor’—

insert ‘or against unemployment of the debtor’.

(2) Schedule 7, clause 1(k)(v)—

omit.

Insertion of new Schedule 8

12. After Schedule 7—

insert—

‘SCHEDULE 8

FURTHER TRANSITIONAL AND OTHER SPECIAL PROVISIONS

section 5A

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

‘1. (1) This clause applies to credit sale contracts or loan contracts entered into before the commencement of this clause.

‘(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 44 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 or contains an inaccurate statement about the 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 subclause (2);

section 44 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 or contains an inaccurate statement about the insurance commission charge.

‘(4) If the name of an insurer under a contract of insurance entered into in relation to a credit sale contract or loan contract is disclosed in written information given or shown to the debtor before or at the time that the

debtor entered into the credit sale contract or loan contract, section 44 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 disclose the name of the insurer or contains an inaccurate statement of the name of the insurer.

‘(5) Nothing in this clause affects the liability of a person to be convicted of an offence under this Act.

‘(6) This clause does not apply to any liability to pay any credit charge which has been determined by a court before the commencement of this clause.

‘(7) In this clause, 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—

- (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 37(1)(i) or 38(1)(h) to be included in the credit sale contract or loan contract.

‘Operation of amendments relating to description of consumer credit insurance

‘2. (1) The amendments made to Schedules 2, 4 and 7 by the *Credit Amendment Act 1991* apply to regulated contracts entered into before as well as after the commencement of those amendments but a regulated contract entered into before the commencement of the amendments which complied with Schedule 2, 4 or 7, as the case may be, as in force prior to the commencement of the amendments and the other provisions of this Act, is to be taken to continue to comply with this Act.

‘(2) A debtor who was, before the commencement of those amendments, not liable (because of section 44, section 68 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 subclause (1)) is taken always to have been liable to pay that charge.

‘(3) This clause does not apply to any liability to pay any credit charge which has been determined by a court before the commencement of this

clause.

‘(4) A regulation under section 124 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 (as in force before the amendment of those provisions by the *Credit Amendment Act 1991*), 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.

‘(5) A regulation under section 124 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 despite the repeal of those provisions.

‘Operation of amendments to sections 86 and 87

‘3. The amendments made to sections 86 and 87 by the *Credit Amendment Act 1991* apply to proceedings in a court commenced before as well as after the commencement of those amendments.

‘Operation of sections 86A and 87A

‘4. Sections 86A and 87A do not apply to proceedings pending in a court on the commencement of those sections but apply to proceedings commenced after the commencement of those sections even though the contraventions or failures to which the proceedings relate occurred before that commencement.’