

CREDIT (AMENDMENT) ACT 1990 No. 97

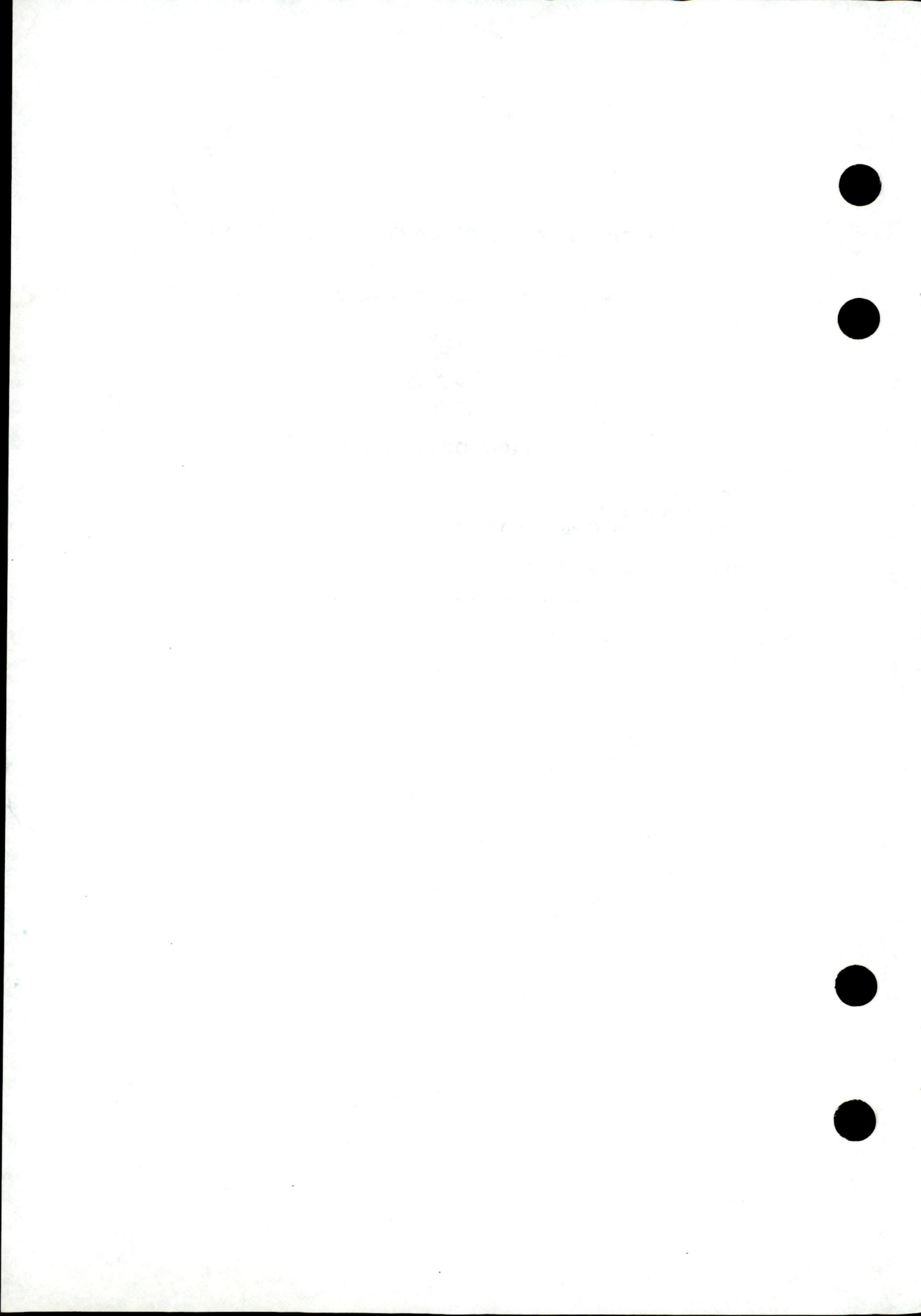
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Credit Act 1984 No. 94

SCHEDULE 1 - AMENDMENTS



CREDIT (AMENDMENT) ACT 1990 No. 97

NEW SOUTH WALES



Act No. 97, 1990

An Act to amend the Credit Act 1984 with respect to proceedings concerning civil penalties for contraventions of that Act and with respect to disclosures concerning insurance. [Assented to 12 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Credit (Amendment) Act 1990.

Commencement

2. This Act commences on the date of assent.

Amendment of Credit Act 1984 No. 94

3. The Credit Act 1984 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

- (1) Section 85 (**Tribunal may reduce credit provider's loss**):

After section 85 (4), 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.

(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.

- (2) Section 85A:

After section 85, insert:

Stay of civil penalty pending Tribunal's decision

85A. (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.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) 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.

(4) 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 enforcement of the debtors' obligations under the contracts 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 Tribunal under section 85; or
- (b) the Tribunal 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 or 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.

(3) Section 86 (**General order varying civil penalty**):

At the end of the section, 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

SCHEDULE 1 - AMENDMENTS - *continued*

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 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 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 the 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 Commercial Tribunal Act 1984 or the rules of the Tribunal) is not entitled to any other notice of the application.

(4) Section 86A:

After section 86, insert:

General order varying civil penalty for minor errors

86A. (1) In this section, "minor error" means a contravention of or failure to comply with this Act which is unlikely to disadvantage the debtors concerned in any significant respect.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) If a credit provider makes an application to the Tribunal under section 86 and requests the Tribunal to deal with the application under this section, the following provisions have effect:

- (a) notice of the application is required to be served on the Commissioner but (unless the Tribunal otherwise directs) is not required to be served on any other person;
- (b) if the Tribunal is satisfied that all the contraventions or failures to which the application relates are minor errors and ought reasonably to be excused, the Tribunal may make a determination under section 85 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 Tribunal is not so satisfied, the Tribunal must direct that notice of the application be given to the debtors concerned, either personally or in accordance with section 86.

(3) The Tribunal, when dealing with an application under this section, is to have regard to any report of the Commissioner to the Tribunal on the results of an investigation into the application under section 44 of the Credit (Administration) Act 1984.

(5) Section 173:

Before Schedule 1, insert:

Transitional and other special provisions

173. Schedule 8 has effect.

(6) Schedule 2 (**Statement of amount financed in relation to credit sale contract**):

- (a) In clause 1 (e) (iv), after "the debtor", insert "or against unemployment of the debtor".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit clause 1 (e) (vi).
- (7) Schedule 4 (**Statement of amount financed in relation to loan contract**):
 - (a) In clause 1 (b) (iii), after "the debtor", insert "or against unemployment of the debtor".
 - (b) Omit clause 1 (b) (v).
- (8) Schedule 7 (**Statement of account in relation to continuing credit contract**):
 - (a) In clause 1 (k) (iii), after "the debtor", insert "or against unemployment of the debtor".
 - (b) Omit clause 1 (k) (v).
- (9) Schedule 8:

After Schedule 7, insert:

**SCHEDULE 8 - TRANSITIONAL AND OTHER
SPECIAL PROVISIONS**

(Sec. 173)

**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 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.

SCHEDULE 1 - AMENDMENTS - *continued*

(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 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.

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

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

(6) 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 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

2. (1) The amendments made to Schedules 2, 4 and 7 by the Credit (Amendment) Act 1990 apply to regulated

SCHEDULE 1 - AMENDMENTS - *continued*

contracts entered into before as well as after the commencement of those amendments.

(2) A debtor who was, before the commencement of those amendments, 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 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 the Tribunal before the commencement of this clause.

(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.

(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.

Operation of amendments to sections 85 and 86

3. The amendments made to sections 85 and 86 by the Credit (Amendment) Act 1990 apply to proceedings in the Tribunal commenced before as well as after the commencement of those amendments.

Operation of sections 85A and 86A

4. Sections 85A and 86A do not apply to proceedings pending in the Tribunal on the commencement of those sections, but apply to proceedings commenced after the

SCHEDULE 1 - AMENDMENTS - *continued*

commencement of those sections even though the contraventions or failures to which the proceedings relate occurred before that commencement.

[*Minister's second reading speech made in -
Legislative Assembly on 20 November 1990
Legislative Council on 4 December 1990 a.m.*]



FIRST PRINT

CREDIT (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to facilitate the procedure for dealing with applications made to the Commercial Tribunal for the removal or limitation of the civil penalties imposed on credit providers for common breaches of the Credit Act 1984 (particularly minor breaches); and
- (b) to revise the description of consumer credit insurance which is required to be disclosed to debtors; and
- (c) to remove the imposition of civil penalties for certain past breaches of the Credit Act 1984 relating to the disclosure of insurance commission charges.

Under the Credit Act 1984, "civil penalties" imposed on credit providers for breaches of the Act comprise the removal of the liability of the debtor to pay credit charges under credit contracts involved in those breaches of the Act.

Clause 1. Short title of proposed Act.

Clause 2. Commencement of proposed Act on date of assent.

Clause 3. Formal provision giving effect to Schedule of amendments to the Credit Act 1984.

SCHEDULE 1 - AMENDMENTS

Procedure for dealing with applications for removal or limitation of civil penalties

Schedule 1 (1) inserts section 85 (4A) and (4B) into the Act.

Proposed section 85 (4A) ensures that the Commercial Tribunal may give ancillary directions relating to the payment of the amount that a debtor or credit

Credit (Amendment) 1990

provider is liable to pay as a result of a determination of the Tribunal to remove or vary a civil penalty for a breach of the Act.

Proposed section 85 (4B) makes it clear that if the Tribunal removes or varies a civil penalty for a breach of the Act and restores the liability of the debtor under a relevant credit contract, the liability is not restored if the liability has also been removed because of a civil penalty imposed for another breach of the Act which was not dealt with by the Tribunal.

Schedule 1 (2) inserts section 85A into the Act. The proposed section provides that (unless the Commercial Tribunal otherwise directs) an application for the restoration of the liability of a debtor operates to stay the civil penalty pending a decision by the Tribunal on the application. Provision is made for the Tribunal to give directions to protect the interests of the debtor while the application is being dealt with.

Schedule 1 (3) inserts section 86 (1) (c) and 86 (2) - (5) into the Act.

Proposed section 86 (1) (c) provides that when the Commercial Tribunal is dealing with an application for the restoration of the liability of a number of debtors despite a common breach of the Act by the credit provider, the Tribunal may restore the liability of debtors under a specified class of relevant credit contracts entered into during any period. At present if the Tribunal restores the liability of debtors under contracts entered into during a particular period it may do so only for all contracts entered into during that period.

Proposed section 86 (2) - (5) relates to the identification of the debtors affected by an application and the giving of notice of proceedings to debtors. If the Commercial Tribunal is dealing with an application for the restoration of the liability of a number of debtors for a breach of the Act, the proposed provisions enable the Commercial Tribunal to authorise notice of the application to be given by publication of a notice in a newspaper if the Tribunal considers it appropriate because of the number of debtors involved and the other circumstances of the case. The debtors would not be separately identified in any such notice.

Schedule 1 (4) inserts section 86A into the Act. The proposed section provides an alternative procedure for dealing with applications by credit providers to the Commercial Tribunal for the restoration of liability of a number of debtors despite a minor breach of the Act (particularly in cases in which a great number of credit contracts are involved). The proposed section provides that the application of the credit provider may be dealt with without the separate identification and notification of each debtor concerned.

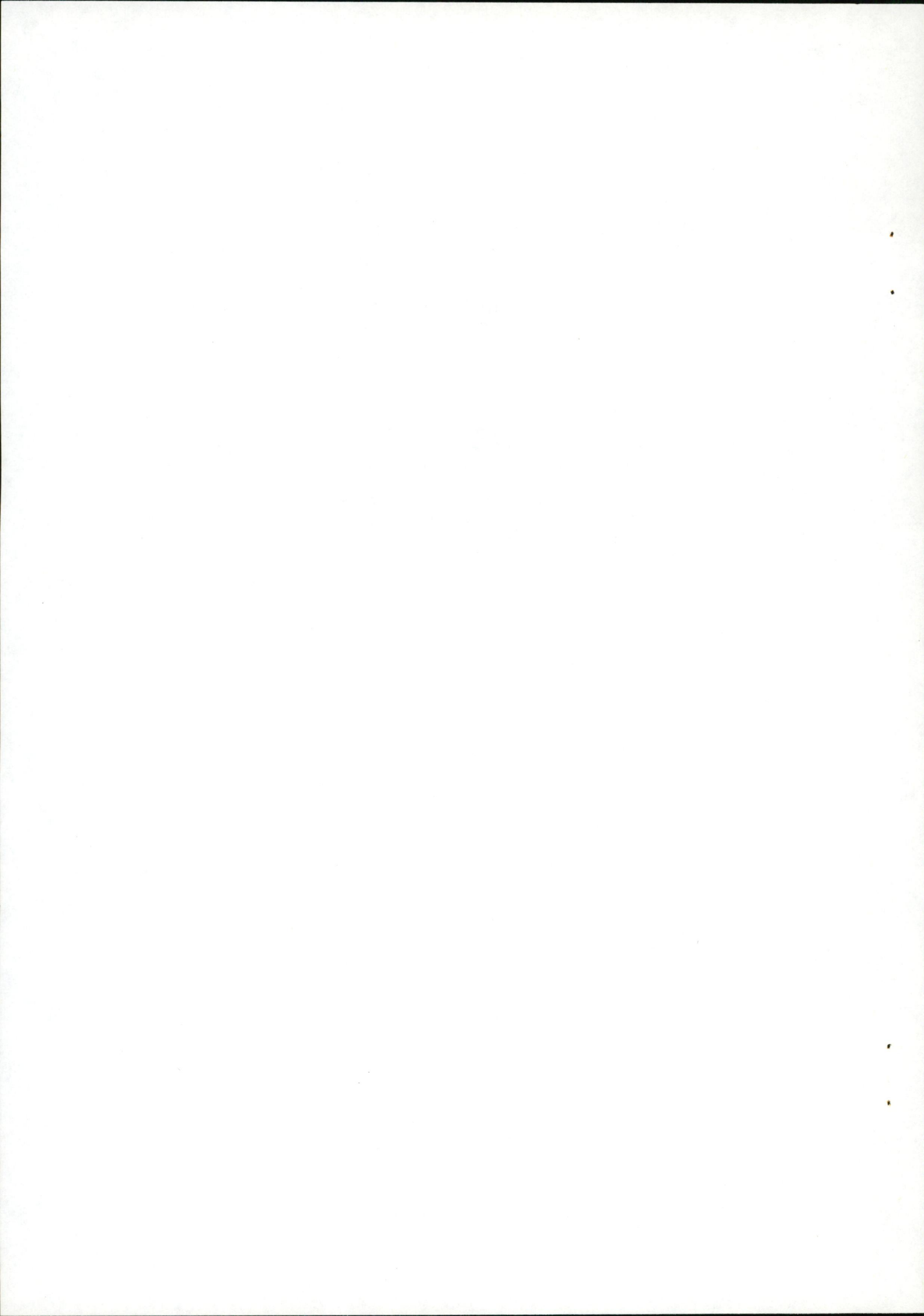
Description of consumer credit insurance

Schedule 1 (6) - (8) amend the provisions of the Act which require the separate disclosure in a relevant credit contract of various types of insurance obtained by the debtor in connection with the credit contract and financed under the credit contract. The amendments enable unemployment insurance to be included in the general description of "consumer credit insurance" which covers such things as accident and sickness insurance. The amended description is in line with the classes of insurance prescribed under Commonwealth legislation relating to insurance and insurance contracts.

Transitional and special provisions

Schedule 1 (5) and (9) insert section 173 and Schedule 8 into the Act containing certain transitional and special provisions. In particular:

- (a) clause 1 restores credit charges for certain past breaches of the Act relating to the failure to properly disclose in the credit contracts insurance commission charges payable in connection with insurance contracts financed under the credit contracts - generally where the disclosures were made in insurance certificates furnished or shown to the debtor in connection with the insurance contract or where the commission was in addition to other disclosed commission payable to a related company of the credit provider;
 - (b) clauses 2 and 3 apply to previous and pending proceedings of the Commercial Tribunal the amendments relating to the description of consumer credit insurance, the clarification of the operation of determinations of the Commercial Tribunal under section 85 of the Act and the new procedures for notice to debtors by newspaper advertisement;
 - (c) clause 4 gives prospective operation to the amendments relating to the new procedures of the Commercial Tribunal relating to applications for the restoration of credit charges for minor breaches and relating to the restoration of charges pending a decision of the Tribunal.
-



FIRST PRINT

CREDIT (AMENDMENT) BILL 1990

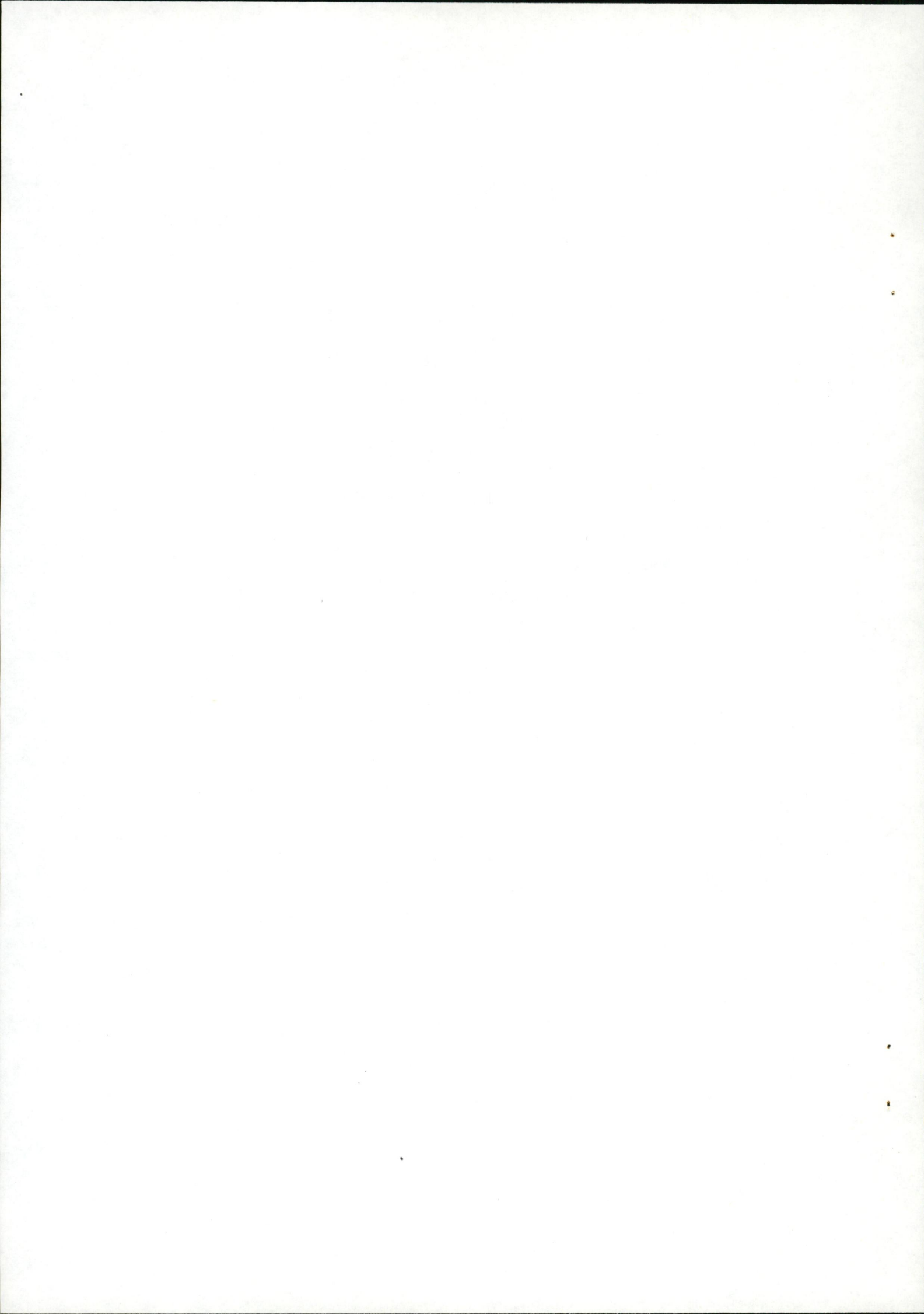
NEW SOUTH WALES



TABLE OF PROVISIONS

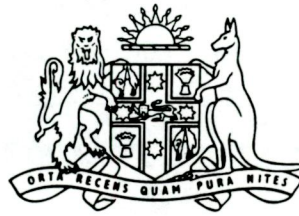
1. Short title
2. Commencement
3. Amendment of Credit Act 1984 No. 94

SCHEDULE 1 - AMENDMENTS



CREDIT (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Credit Act 1984 with respect to proceedings concerning civil penalties for contraventions of that Act and with respect to disclosures concerning insurance.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Credit (Amendment) Act 1990.

Commencement

2. This Act commences on the date of assent.

Amendment of Credit Act 1984 No. 94

3. The Credit Act 1984 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

- (1) Section 85 (**Tribunal may reduce credit provider's loss**):

After section 85 (4), 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.

(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.

- (2) Section 85A:

After section 85, insert:

Stay of civil penalty pending Tribunal's decision

85A (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.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) 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.

(4) 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 enforcement of the debtors' obligations under the contracts 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 Tribunal under section 85; or
- (b) the Tribunal 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 or 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.

(3) Section 86 (**General order varying civil penalty**):

At the end of the section, 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

SCHEDULE 1 - AMENDMENTS - *continued*

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 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 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 the 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 Commercial Tribunal Act 1984 or the rules of the Tribunal) is not entitled to any other notice of the application.

(4) Section 86A:

After section 86, insert:

General order varying civil penalty for minor errors

86A (1) In this section, "minor error" means a contravention of or failure to comply with this Act which is unlikely to disadvantage the debtors concerned in any significant respect.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) If a credit provider makes an application to the Tribunal under section 86 and requests the Tribunal to deal with the application under this section, the following provisions have effect:

- (a) notice of the application is required to be served on the Commissioner but (unless the Tribunal otherwise directs) is not required to be served on any other person;
- (b) if the Tribunal is satisfied that all the contraventions or failures to which the application relates are minor errors and ought reasonably to be excused, the Tribunal may make a determination under section 85 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 Tribunal is not so satisfied, the Tribunal must direct that notice of the application be given to the debtors concerned, either personally or in accordance with section 86.

(3) The Tribunal, when dealing with an application under this section, is to have regard to any report of the Commissioner to the Tribunal on the results of an investigation into the application under section 44 of the Credit (Administration) Act 1984.

(5) Section 173:

Before Schedule 1, insert:

Transitional and other special provisions

173. Schedule 8 has effect.

(6) Schedule 2 (**Statement of amount financed in relation to credit sale contract**):

- (a) In clause 1 (e) (iv), after "the debtor", insert "or against unemployment of the debtor".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit clause 1 (e) (vi).
- (7) **Schedule 4 (Statement of amount financed in relation to loan contract):**
 - (a) In clause 1 (b) (iii), after "the debtor", insert "or against unemployment of the debtor".
 - (b) Omit clause 1 (b) (v).
- (8) **Schedule 7 (Statement of account in relation to continuing credit contract):**
 - (a) In clause 1 (k) (iii), after "the debtor", insert "or against unemployment of the debtor".
 - (b) Omit clause 1 (k) (v).
- (9) **Schedule 8:**

After Schedule 7, insert:

**SCHEDULE 8 - TRANSITIONAL AND OTHER
SPECIAL PROVISIONS**

(Sec. 173)

**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 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.

SCHEDULE 1 - AMENDMENTS - *continued*

(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 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.

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

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

(6) 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 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

2. (1) The amendments made to Schedules 2, 4 and 7 by the Credit (Amendment) Act 1990 apply to regulated

SCHEDULE 1 - AMENDMENTS - *continued*

contracts entered into before as well as after the commencement of those amendments.

(2) A debtor who was, before the commencement of those amendments, 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 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 the Tribunal before the commencement of this clause.

(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.

(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.

Operation of amendments to sections 85 and 86

3. The amendments made to sections 85 and 86 by the Credit (Amendment) Act 1990 apply to proceedings in the Tribunal commenced before as well as after the commencement of those amendments.

Operation of sections 85A and 86A

4. Sections 85A and 86A do not apply to proceedings pending in the Tribunal on the commencement of those sections, but apply to proceedings commenced after the

SCHEDULE 1 - AMENDMENTS - *continued*

commencement of those sections even though the contraventions or failures to which the proceedings relate occurred before that commencement.
