

FIRST PRINT

CREDIT (AMENDMENT) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Credit Act 1984 so as:

- (a) to provide for the establishment and administration of a financial counselling trust fund; and
- (b) to enable the Commercial Tribunal to require credit providers to pay money into the trust fund in cases where the credit provider has applied for the relaxation of a civil penalty arising from a contravention of the Credit Act 1984 or the Credit (Administration) Act 1984 in respect of 2 or more regulated contracts.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be proclaimed.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

The financial counselling trust fund

A trust fund, and a scheme for the administration of the trust fund, is to be set up in accordance with the regulations (Schedule 1 (1) and (4)). The regulations will be able to provide for the establishment of a fund or scheme by reference to a trust deed under which such a fund or scheme is established. The regulations will prescribe the purposes (being purposes connected with the provision of financial counselling to debtors or the education of the public in the management of personal finances) for which, and the manner in which, the trust fund is to be applied.

Directions for payments into the financial counselling trust fund

Various provisions of the Credit Act 1984 and the Credit (Administration) Act 1984 provide that certain contraventions of those Acts give rise to a "civil penalty". The civil

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penalty consists of the statutory waiving of the credit charges otherwise payable on contracts in respect of which the contraventions have occurred.

Section 85 of the Credit Act 1984 allows a credit provider to apply to the Commercial Tribunal for exemption from the civil penalty. The Commercial Tribunal may order the reinstatement of the whole, or of part only, of the credit charges.

Section 86 of that Act allows a credit provider to apply for a determination under section 85 in respect of a number of contracts. The section allows such an application to be made without the need to identify the debtors under the contracts concerned and sets out the procedures to be adopted for the notification of those debtors.

Proposed section 86B (Schedule 1 (3)) will allow the Commercial Tribunal, after making a determination arising from an application under section 86, to direct that the debtors concerned are to continue to pay the whole of the credit charges for which they would otherwise be liable but that the credit provider is to pay into the financial counselling trust fund an amount to be determined by the Commercial Tribunal. Such a direction is not to be given unless the Commercial Tribunal is satisfied that the contravention concerned, and the circumstances in which it occurred, are sufficiently serious to warrant the credit provider being penalised and that it would be unreasonable to require the credit provider to undertake the task of recalculating reduced credit charges for each of the debtors or making refunds to each of the debtors. The proposed section also provides that, if the financial counselling trust fund is not in existence, the amount is to be paid to the Minister for payment into the Consolidated Fund.

A consequential amendment (Schedule 1 (2)) is to be made to section 85 of the Act.

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CREDIT (AMENDMENT) BILL 1992

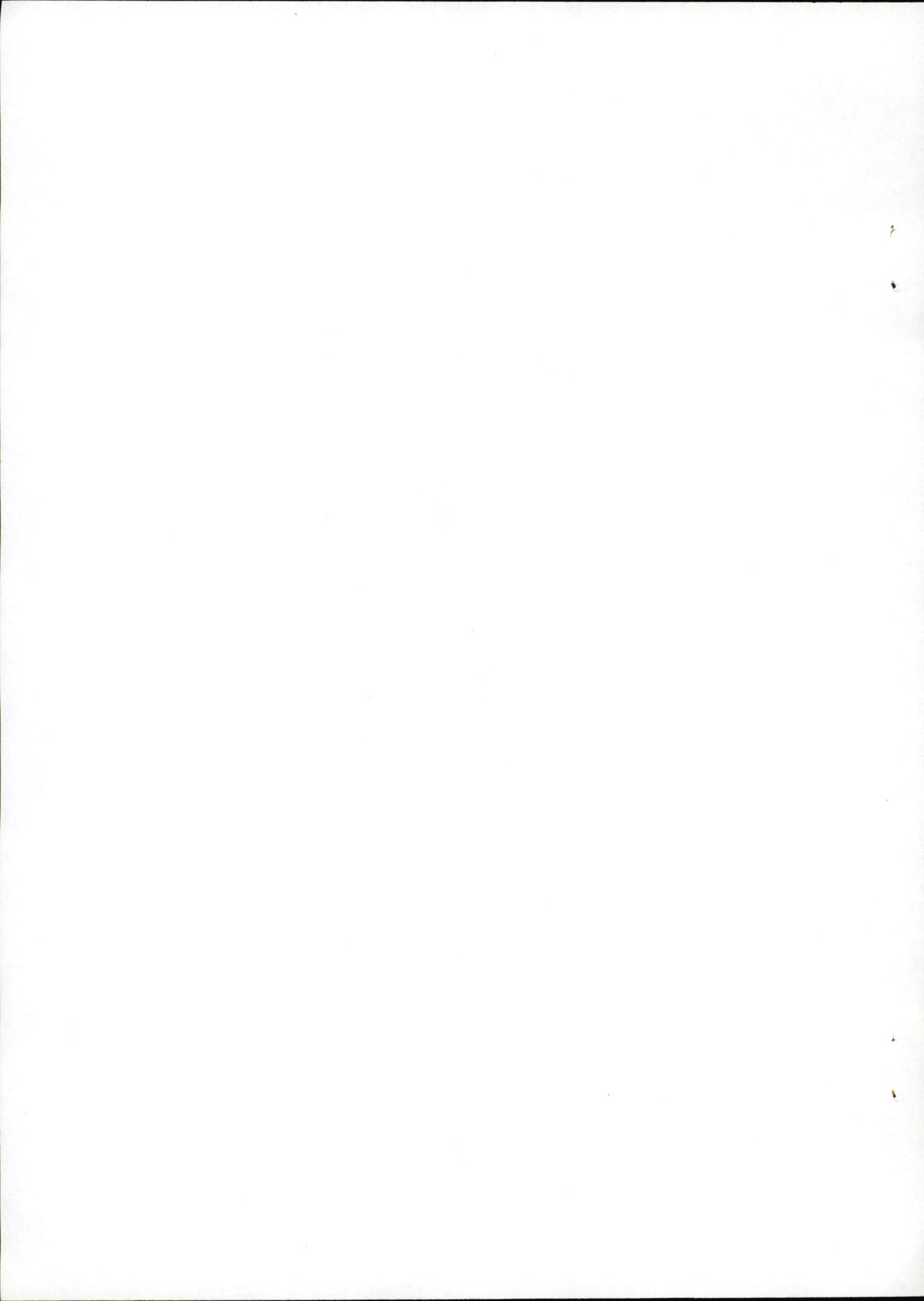
NEW SOUTH WALES



TABLE OF PROVISIONS

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

SCHEDULE 1—AMENDMENTS



CREDIT (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Credit Act 1984 with respect to civil penalties payable under that Act.

*Credit (Amendment) 1992***The Legislature of New South Wales enacts:****Short title**

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

Commencement

- 5 2. This Act commences on a day to be appointed by proclamation.

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)

- 10 (1) Section 5 (**Definitions**):

Insert in alphabetical order:

“financial counselling trust fund” means the fund established in accordance with the regulations as referred to in section 167 (1) (e);

- 15 (2) Section 85 (**Tribunal may reduce credit provider’s loss**):

After section 85 (5), insert:

(6) The provisions of this section are subject to the provisions of section 86B and, in particular, subsection (3) of this section does not apply to the determination of an amount under subsection (1) of that section.

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- (3) Section 86B:

After section 86A, insert:

Payments to the financial counselling trust fund

- 25 86B. (1) If the Tribunal makes a determination referred to in section 86 (1) (a), (b) or (c), it may, by its order under section 85, direct that each debtor is to remain liable to pay the whole of the credit charges under the relevant regulated contract but that the credit provider is to pay into the financial counselling trust fund such amount as the Tribunal may determine, having regard to the number of contracts to which the determination relates.
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*Credit (Amendment) 1992*SCHEDULE 1—AMENDMENTS—*continued*

- (2) If it is necessary to do so, the Tribunal may, for the purposes of this section, make an estimate of the number of contracts to which such a determination relates.
- (3) A direction under this section may not be given unless the Tribunal is satisfied: 5
- (a) that the contravention or failure giving rise to the application for the determination, and the relevant circumstances referred to in section 85 (2), are sufficiently serious to warrant the credit provider being penalised; and 10
- (b) that it would be unreasonable (whether because of the number of contracts concerned or otherwise) to require the credit provider to adjust the debtors' accounts, or to refund money to the debtors, to give effect to any reduction in liability that would occur if the credit charges were reduced. 15
- (4) A direction under this section may be given in respect of all regulated contracts to which the application for the determination relates or in respect of some only of those contracts. 20
- (5) Any amount payable under this section is, if the financial counselling trust fund is not in existence, to be paid to the Minister for payment into the Consolidated Fund.
- (4) Section 167 (**Regulations**): 25
- (a) From section 167 (1) (c), omit "applies; and", insert instead "applies;".
- (b) After section 167 (1) (d), insert:
- (e) providing for the establishment of a fund for the receipt of money the subject of a direction under section 86B and for the establishment of a scheme for administering such a fund; and 30
- (f) prescribing the purposes (being purposes connected with the provision of financial counselling to debtors or the education of the public in the management of personal finances) for which, and the manner in which, money in the fund referred to in paragraph (e) is to be applied. 35

Credit (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

(c) After section 167 (1), insert:

5 (1A) A regulation for the purposes of subsection (1) (e) may provide for the establishment of a fund or scheme by reference to a trust deed under which such a fund or scheme is established.

(5) Schedule 8 (Transitional and other special provisions):

(a) Before clause 1, insert:

10 **Part 1—Provisions consequent on the enactment of the Credit Act 1984**

(b) At the end of the Schedule, insert:

Part 2—Provisions consequent on the enactment of the Credit (Amendment) Act 1992

Application of amendments to existing proceedings

15 5. The amendments to this Act made by the Credit (Amendment) Act 1992 apply to proceedings commenced before the commencement of that Act in the same way as they apply to proceedings commenced on or after that commencement.

SECOND PRINT

CREDIT (AMENDMENT) BILL 1992

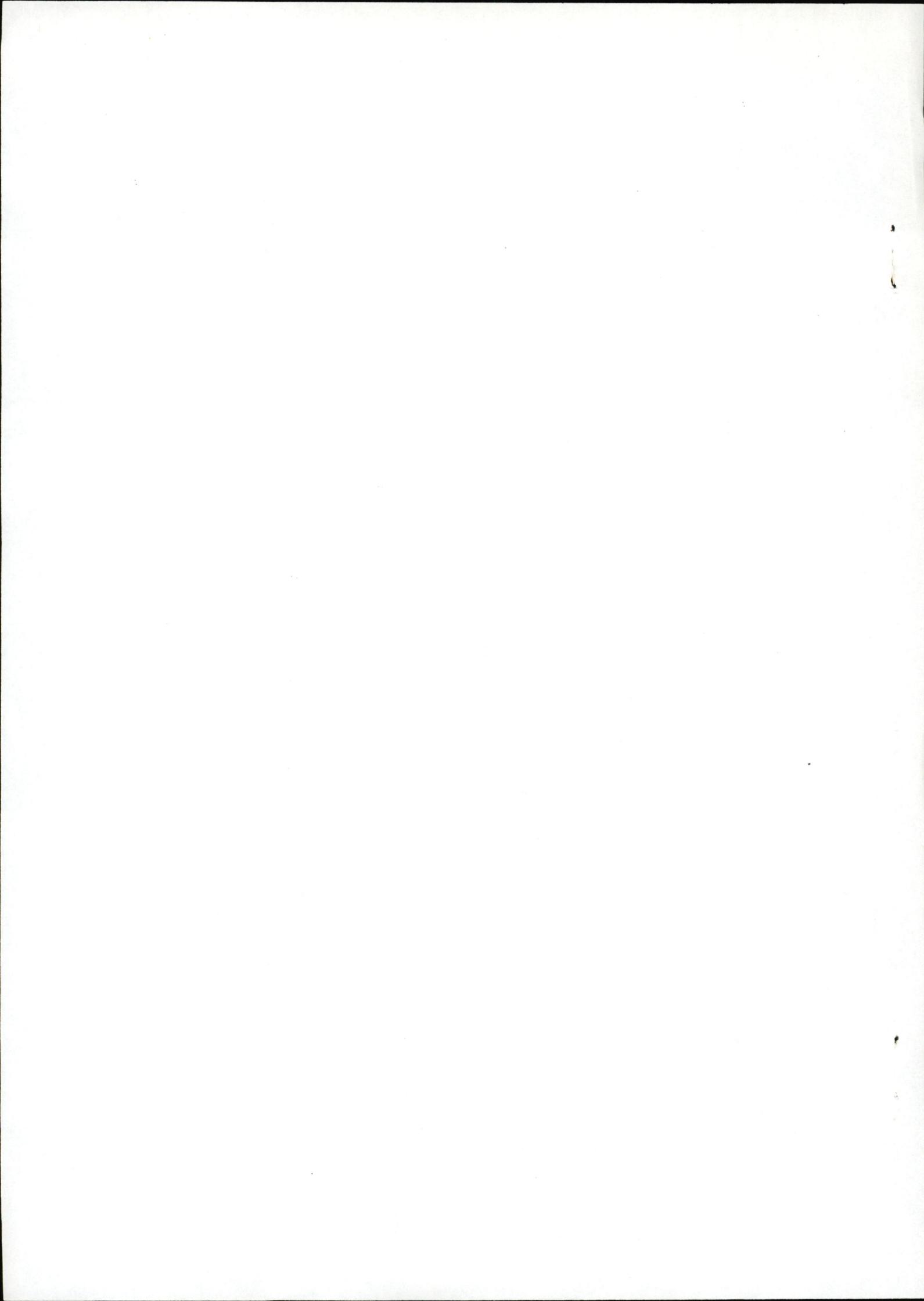
NEW SOUTH WALES



TABLE OF PROVISIONS

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3. Amendment of Credit Act 1984 No. 94

SCHEDULE 1—AMENDMENTS



This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

Legislative Assembly

NEW SOUTH WALES



Act No. , 1992

An Act to amend the Credit Act 1984 with respect to civil penalties payable under that Act.

*Credit (Amendment) 1992***The Legislature of New South Wales enacts:****Short title**

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

Commencement

2. This Act commences on a day to be appointed by proclamation.

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)

- 10 (1) Section 5 (**Definitions**):

Insert in alphabetical order:

“**financial counselling trust fund**” means the fund established in accordance with the regulations as referred to in section 167 (1) (e);

- 15 (2) Section 85 (**Tribunal may reduce credit provider’s loss**):

After section 85 (5), insert:

(6) The provisions of this section are subject to the provisions of section 86B and, in particular, subsection (3) of this section does not apply to the determination of an amount under subsection (1) of that section.

20

- (3) Section 86B:

After section 86A, insert:

Payments to the financial counselling trust fund

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86B. (1) If the Tribunal makes a determination referred to in section 86 (1) (a), (b) or (c), it may, by its order under section 85, direct that each debtor is to remain liable to pay the whole of the credit charges under the relevant regulated contract but that the credit provider is to pay into the financial counselling trust fund such amount as the Tribunal may determine, having regard to the number of contracts to which the determination relates.

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*Credit (Amendment) 1992*SCHEDULE 1—AMENDMENTS—*continued*

(2) If it is necessary to do so, the Tribunal may, for the purposes of this section, make an estimate of the number of contracts to which such a determination relates.

(3) A direction under this section may not be given unless the Tribunal is satisfied: 5

(a) that the contravention or failure giving rise to the application for the determination, and the relevant circumstances referred to in section 85 (2), are sufficiently serious to warrant the credit provider being penalised; and 10

(b) that it would be unreasonable (whether because of the number of contracts concerned or otherwise) to require the credit provider to adjust the debtors' accounts, or to refund money to the debtors, to give effect to any reduction in liability that would occur if the credit charges were reduced. 15

(4) A direction under this section may be given in respect of all regulated contracts to which the application for the determination relates or in respect of some only of those contracts. 20

(4) Section 167 (Regulations):

(a) From section 167 (1) (c), omit "applies; and", insert instead "applies;".

(b) After section 167 (1) (d), insert: 25

(e) providing for the establishment of a fund for the receipt of money the subject of a direction under section 86B and for the establishment of a scheme for administering such a fund; and

(f) prescribing the purposes (being purposes connected with the provision of financial counselling to debtors or the education of the public in the management of personal finances) for which, and the manner in which, money in the fund referred to in paragraph (e) is to be applied. 30
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Credit (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

(c) After section 167 (1), insert:

5 (1A) A regulation for the purposes of subsection (1) (e) may provide for the establishment of a fund or scheme by reference to a trust deed under which such a fund or scheme is established.

(5) Schedule 8 (Transitional and other special provisions):

(a) Before clause 1, insert:

10 **Part 1—Provisions consequent on the enactment of the Credit Act 1984**

(b) At the end of the Schedule, insert:

Part 2—Provisions consequent on the enactment of the Credit (Amendment) Act 1992

Application of amendments to existing proceedings

15 5. The amendments to this Act made by the Credit (Amendment) Act 1992 apply to proceedings commenced before the commencement of that Act in the same way as they apply to proceedings commenced on or after that commencement.

CREDIT (AMENDMENT) ACT 1992 No. 27

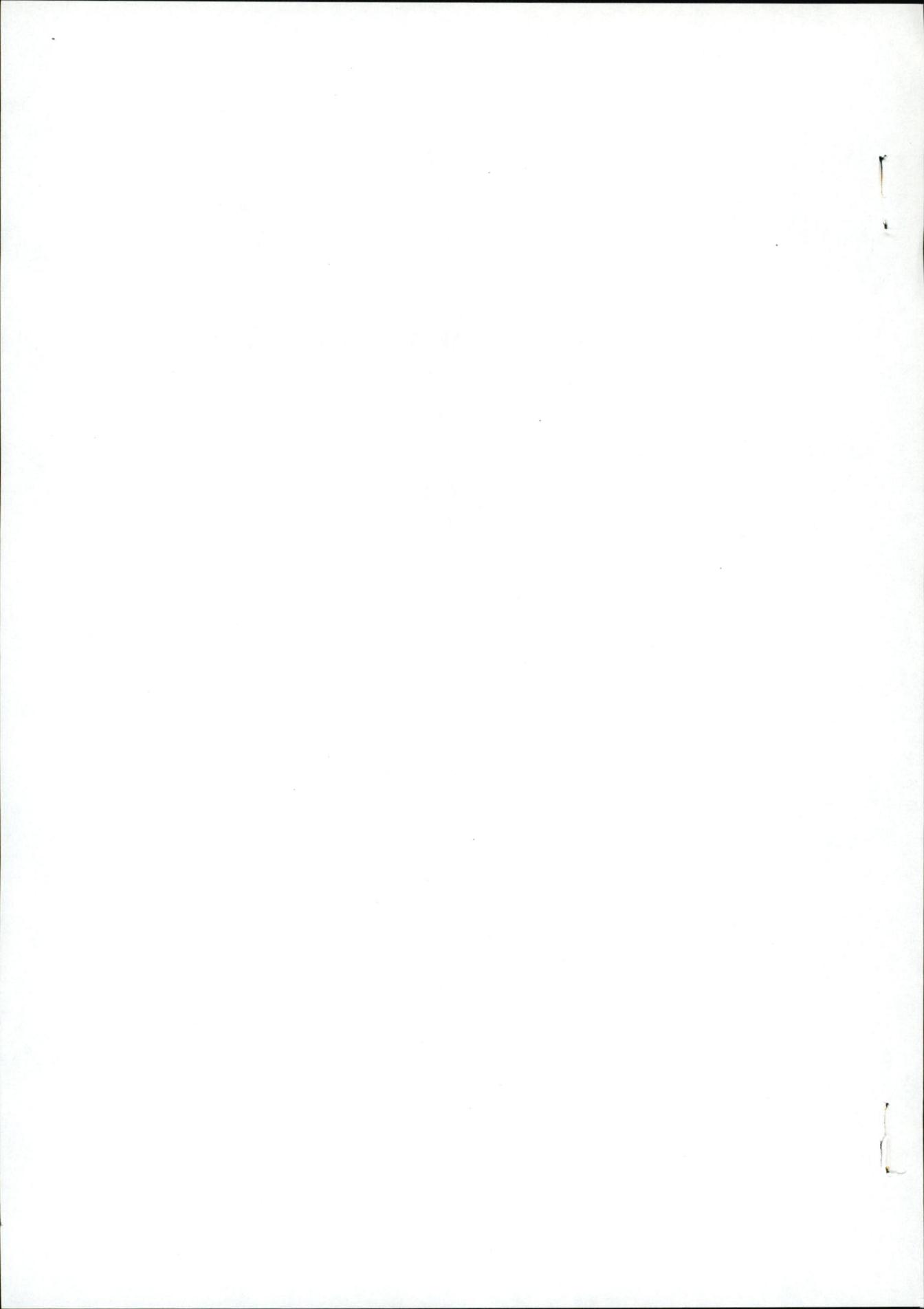
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
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SCHEDULE 1—AMENDMENTS



CREDIT (AMENDMENT) ACT 1992 No. 27

NEW SOUTH WALES



Act No. 27, 1992

An Act to amend the Credit Act 1984 with respect to civil penalties payable under that Act. [Assented to 18 May 1992]

Credit (Amendment) Act 1992 No. 27

The Legislature of New South Wales enacts:

Short title

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

Commencement

2. This Act commences on a day to be appointed by proclamation.

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 5 (**Definitions**):

Insert in alphabetical order:

“**financial counselling trust fund**” means the fund established in accordance with the regulations as referred to in section 167 (1) (e);

(2) Section 85 (**Tribunal may reduce credit provider’s loss**):

After section 85 (5), insert:

(6) The provisions of this section are subject to the provisions of section 86B and, in particular, subsection (3) of this section does not apply to the determination of an amount under subsection (1) of that section.

(3) Section 86B:

After section 86A, insert:

Payments to the financial counselling trust fund

86B. (1) If the Tribunal makes a determination referred to in section 86 (1) (a), (b) or (c), it may, by its order under section 85, direct that each debtor is to remain liable to pay the whole of the credit charges under the relevant regulated contract but that the credit provider is to pay into the financial counselling trust fund such amount as the Tribunal may determine, having regard to the number of contracts to which the determination relates.

Credit (Amendment) Act 1992 No. 27

SCHEDULE 1—AMENDMENTS—*continued*

(2) If it is necessary to do so, the Tribunal may, for the purposes of this section, make an estimate of the number of contracts to which such a determination relates.

(3) A direction under this section may not be given unless the Tribunal is satisfied:

(a) that the contravention or failure giving rise to the application for the determination, and the relevant circumstances referred to in section 85 (2), are sufficiently serious to warrant the credit provider being penalised; and

(b) that it would be unreasonable (whether because of the number of contracts concerned or otherwise) to require the credit provider to adjust the debtors' accounts, or to refund money to the debtors, to give effect to any reduction in liability that would occur if the credit charges were reduced.

(4) A direction under this section may be given in respect of all regulated contracts to which the application for the determination relates or in respect of some only of those contracts.

(4) Section 167 (**Regulations**):

(a) From section 167 (1) (c), omit "applies; and", insert instead "applies;".

(b) After section 167 (1) (d), insert:

(e) providing for the establishment of a fund for the receipt of money the subject of a direction under section 86B and for the establishment of a scheme for administering such a fund; and

(f) prescribing the purposes (being purposes connected with the provision of financial counselling to debtors or the education of the public in the management of personal finances) for which, and the manner in which, money in the fund referred to in paragraph (e) is to be applied.

Credit (Amendment) Act 1992 No. 27

SCHEDULE 1—AMENDMENTS—*continued*

(c) After section 167 (1), insert:

(1A) A regulation for the purposes of subsection (1) (e) may provide for the establishment of a fund or scheme by reference to a trust deed under which such a fund or scheme is established.

(5) Schedule 8 (Transitional and other special provisions):

(a) Before clause 1, insert:

**Part 1—Provisions consequent on the enactment of
the Credit Act 1984**

(b) At the end of the Schedule, insert:

**Part 2—Provisions consequent on the enactment of
the Credit (Amendment) Act 1992**

Application of amendments to existing proceedings

5. The amendments to this Act made by the Credit (Amendment) Act 1992 apply to proceedings commenced before the commencement of that Act in the same way as they apply to proceedings commenced on or after that commencement.

[Minister's second reading speech made in—
Legislative Assembly on 9 April 1992
Legislative Council on 7 May 1992]