

South Australia



**CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT ACT 1995**

No. 8 of 1995

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A.D. 1995

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**No. 8 of 1995**

**An Act to amend the Consumer Credit Act 1972.**

*[Assented to 16 March 1995]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Consumer Credit (Credit Providers) Amendment Act 1995*.
- (2) The *Consumer Credit Act 1972* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 4—Repeal and saving provision**

3. Section 4 of the principal Act is amended by striking out subsections (2), (3) and (4).

**Amendment of s. 5—Interpretation**

4. Section 5 of the principal Act is amended—

- (a) by striking out the definition of "authorized address";
- (b) by striking out the definition of "authorized name";
- (c) by inserting after the definition of "credit provider" the following definition:

"director" of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position;

and

- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;;
- (d) by striking out the definition of "officer";
- (e) by striking out the definition of "the Commercial Registrar";
- (f) by striking out the definition of "the Tribunal".

**Amendment of s. 6—Application of this Act**

**5. Section 6 of the principal Act is amended—**

- (a) by striking out from subsection (1)(j) "obligation to be licensed" and substituting "operation of those Parts";
- (b) by striking out from subsection (5) "Tribunal", twice occurring, and substituting, in each case, "Commissioner";
- (c) by striking out from subsection (6) "Tribunal", twice occurring, and substituting, in each case, "Commissioner".

**Substitution of Part**

**6. Part III of the principal Act is repealed and the following Part is substituted:**

**PART III  
CONTROL OF CREDIT PROVIDERS**

**Definition**

**27. In this Part—**

**"District Court"** means the Administrative and Disciplinary Division of the District Court.

**Cause for disciplinary action**

**28. (1) There is proper cause for disciplinary action against a credit provider if—**

- (a) the credit provider has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;

or

- (b) the credit provider or any other person has acted unlawfully, improperly, negligently or unfairly in the course of conducting, or being employed or otherwise engaged in, the business of the credit provider.

(2) Disciplinary action may be taken against each director of a body corporate that is a credit provider if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.

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(4) This section applies in relation to conduct occurring before or after the commencement of the *Consumer Credit (Control of Credit Providers) Amendment Act 1995*.

**Complaints**

29. The Commissioner or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Act.<sup>1</sup>

**Hearing by Tribunal**

30. (1) On the lodging of a complaint, the District Court must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Act.

(2) Without limiting the usual powers of the District Court, the Court may during the hearing—

(a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates;

and

(b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

**Participation of assessors in disciplinary proceedings**

31. In any proceedings under this Part, the District Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the schedule.

**Disciplinary action**

32. (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

(a) reprimand the person;

(b) impose a fine not exceeding \$8 000 on the person;

(c) prohibit the person from carrying on the business of a credit provider;

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<sup>1</sup>Under Division II of Part XI of the *Fair Trading Act 1987* the Commissioner may seek an assurance in writing from a credit provider that the credit provider will refrain from engaging in conduct that contravenes this Act (whether or not disciplinary proceedings have been instituted in respect of the conduct under this Act).

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- (d) prohibit the person from being employed or otherwise engaged in the business of a credit provider;
- (e) prohibit the person from being a director of a body corporate that is a credit provider.

(2) The District Court may—

- (a) stipulate that a prohibition is to apply—
  - (i) permanently;
  - (ii) for a specified period;
  - (iii) until the fulfilment of stipulated conditions;or
  - (iv) until further order;
- (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(3) Before making an order in relation to a credit provider under this section, the District Court must consider the effect that the order would have upon the prudential standing of the credit provider.

(4) If—

- (a) a person has been found guilty of an offence;
- and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

**Contravention of prohibition order**

33. (1) If a person carries on the business of a credit provider in contravention of an order of the District Court, the person is guilty of an offence.

Penalty: \$30 000 or imprisonment for six months.

(2) If a person—

- (a) is employed or otherwise engages in the business of a credit provider;
- or
- (b) becomes a director of a body corporate that is a credit provider,

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in contravention of an order of the District Court, that person and the credit provider are each guilty of an offence.

Penalty: \$8 000.

**Register of disciplinary action**

34. (1) The Commissioner must keep a register of disciplinary action taken against a person under this Act and must make a note on the register of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a credit provider.

(2) A person may inspect the register on payment of the fee fixed by regulation.

**Commissioner and proceedings before Tribunal**

35. (1) The Commissioner is entitled to be joined as a party to any proceedings of the District Court under this Part.

(2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

**Investigations**

36. The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to a matter that might constitute proper cause for disciplinary action under this Part.

**Amendment of s. 40—Form of credit contract**

7. Section 40 of the principal Act is amended by striking out from subsection (4) "Tribunal or".

**Amendment of s. 41—Form of contract that is a sale by instalment**

8. Section 41 of the principal Act is amended by striking out from subsection (3) "Tribunal or".

**Amendment of s. 45—Prohibition on procurement charges, etc.**

9. Section 45 of the principal Act is amended by striking out subsection (1).

**Amendment of s. 46—Harsh and unconscionable terms**

10. Section 46 of the principal Act is amended—

(a) by striking out from subsection (1) "Tribunal" and substituting "District Court";

(b) by striking out subsection (2) and substituting the following subsection:

(2) In—

(a) proceedings before the District Court under subsection (1);

or

(b) proceedings before a court for the enforcement of a credit contract, guarantee or instrument to which this section applies, or for the recovery of damages or other compensation for the breach of such a contract, guarantee or instrument,

the court may grant relief under this section.;

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- (c) by striking out from subsection (3) "Tribunal or the";
- (d) by striking out from subsection (5) "Tribunal" and substituting "District Court";
- (e) by striking out from subsection (6) "Tribunal or a" and "Tribunal or";
- (f) by striking out from subsection (7) "Tribunal or".

**Substitution of s. 59**

11. Section 59 of the principal Act is repealed and the following section is substituted:

**Prosecutions**

59. Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

**Amendment of s. 60A—Relief against civil consequences of non-compliance with this Act**

12. Section 60A of the principal Act is amended—

- (a) by striking out from subsection (1) "to the Tribunal" and substituting "under this section";
- (b) by inserting after subsection (1) the following subsection:
  - (1a) An application may be made under subsection (1)—
    - (a) to the District Court;
    - (b) if the contravention or failure to comply with the provisions of this Act is the subject of disciplinary proceedings under Part III—to the Administrative and Disciplinary Division of the District Court as part of those proceedings.;
- (c) by striking out from subsection (3) "Tribunal" and substituting "District Court";
- (d) by striking out from subsection (4) "Tribunal" and substituting "District Court";
- (e) by striking out from subsection (5) "Tribunal" and substituting "District Court";
- (f) by striking out from subsection (9) "Tribunal" and substituting "District Court";

**Amendment of s. 61—Regulations**

13. Section 61 of the principal Act is amended by striking out paragraphs (c) and (d) of subsection (2).

**Insertion of schedule**

14. The schedule set out in schedule 1 is inserted after section 61 of the principal Act.

**SCHEDULE 1**

*Schedule to be inserted in principal Act*

**SCHEDULE**

*Appointment and Selection of Assessors for District Court*

- (1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of credit providers.
- (2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with credit providers.
- (3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under Part III, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.
- (6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.
- (7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.



**SCHEDULE 2**  
*Transitional Provisions*

1. Where an order is in force under Part III of the principal Act immediately before the commencement of this Act—

- (a) suspending a person's licence as a credit provider; or
- (b) disqualifying a person from holding a licence as a credit provider,

the order has effect as if it were an order of the Administrative and Disciplinary Division of the District Court under that Part as substituted by this Act prohibiting the person from carrying on, or from becoming a director of a body corporate carrying on, the business of a credit provider for the period of the suspension or disqualification.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor