

South Australia

# Credit Administration Act 1995

An Act to regulate credit providers; and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Commissioner to be responsible for administration of Act

### Part 2—Control of credit providers

- 5 Basis of disciplinary action
- 6 Complaints
- 7 Hearing by Court
- 8 Participation of assessors in disciplinary proceedings
- 9 Disciplinary action
- 10 Contravention of prohibition order
- 11 Register of disciplinary action
- 12 Commissioner and proceedings before Court
- 13 Investigations

### Part 3—The Fund

- 14 Consumer Credit Fund

### Part 4—Miscellaneous

- 15 Liability for act or default of officer, employee or agent
- 16 Offences by bodies corporate
- 17 Prosecutions
- 18 Annual report
- 19 Regulations

### Schedule 1—Appointment and selection of assessors for Court

### Schedule 2—Transitional provisions

- 1 Interpretation
- 2 Orders under Part 3 of repealed Act

### Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Credit Administration Act 1995*.

### **3—Interpretation**

In this Act—

**Commissioner** means the Commissioner for Consumer Affairs;

**Court** means the Administrative and Disciplinary Division of the District Court of South Australia;

**credit** has the meaning given in the *Consumer Credit (South Australia) Code*;

**credit provider** means a person who provides credit and includes a prospective credit provider;

**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;

**Fund** means the *Consumer Credit Fund* established under Part 3.

### **4—Commissioner to be responsible for administration of Act**

The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

## **Part 2—Control of credit providers**

### **5—Basis of disciplinary action**

- (1) There is a proper basis 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) A proper basis for disciplinary action against a corporate credit provider is also a proper basis for disciplinary action against each of its directors.

- (3) However, disciplinary action may not be taken against a credit provider or a director for the act or default of another if the credit provider or director could not reasonably be expected to have prevented that act or default.
- (4) This section applies to conduct occurring before or after the commencement of this Act.

## 6—Complaints

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

Note—

- 1 Under Division 2 of Part 11 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 or a related Act (whether or not disciplinary proceedings have been instituted in respect of the conduct under this Act).

## 7—Hearing by Court

- (1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute a proper basis for disciplinary action under this Act.
- (2) Without limiting the usual powers of the 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 conditions about adjournment and notice to parties and other conditions that the Court thinks fit to impose.

## 8—Participation of assessors in disciplinary proceedings

In any proceedings under this Part, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with Schedule 1.

## 9—Disciplinary action

- (1) On the hearing of a complaint, the Court may, if satisfied on the balance of probabilities that there is a proper basis for disciplinary action against the defendant, make an order or orders exercising one or more of the following powers—
  - (a) reprimanding the defendant; or
  - (b) imposing a fine not exceeding \$8 000; or
  - (c) prohibiting the defendant from carrying on the business of a credit provider<sup>1</sup>; or
  - (d) prohibiting the defendant from being employed or otherwise engaged in the business of a credit provider; or
  - (e) prohibiting the defendant from being a director of a corporate credit provider.
- (2) The Court may—
  - (a) order that a prohibition is to apply—

- (i) permanently; or
  - (ii) for a specified period; or
  - (iii) until the fulfilment of stipulated conditions; or
  - (iv) until further order; or
- (b) impose conditions about the conduct of the person or the person's business until a time fixed in the order.
- (3) Before making an order against a credit provider, the Court must consider the effect the order would have on 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 for conduct giving rise to the offence.

**Note—**

- 1 This power must be construed in the context of constitutional limitations on the legislative power of the States. A bank (for example) is authorised to carry on the business of banking under the law of the Commonwealth. An order purporting to prevent a bank from carrying on business as a credit provider (a business that is an integral part of banking business) may well be inconsistent with the authority conferred by Commonwealth law (which prevails over inconsistent State law under section 109 of the Commonwealth Constitution). The power of prohibition must be read down so as not to exceed the legislative power of the State (See *Acts Interpretation Act 1915*, section 22A).

## **10—Contravention of prohibition order**

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

Maximum 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 corporate credit provider,

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

Maximum penalty: \$8 000.

## **11—Register of disciplinary action**

- (1) The Commissioner must keep a register of disciplinary action taken under this Act and must make a note on the register of any assurance given by a credit provider under the *Fair Trading Act 1987*.
- (2) A person may inspect the register on payment of the fee fixed by regulation.

## **12—Commissioner and proceedings before Court**

- (1) The Commissioner is entitled to be joined as a party to proceedings under this Part.

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

### **13—Investigations**

The Commissioner of Police must, at the request of the Commissioner, investigate and report on matters that might constitute a proper basis for disciplinary action under this Part.

## **Part 3—The Fund**

### **14—Consumer Credit Fund**

- (1) The *Consumer Credit Fund* is established for the purposes of section 106 of the *Consumer Credit (South Australia) Code*.
- (2) The Fund will be administered by the Commissioner and will consist of—
  - (a) money paid by a credit provider as a civil penalty under section 106 of the *Consumer Credit (South Australia) Code*; and
  - (b) interest accruing from investment of the fund; and
  - (c) money required to be paid into the fund under this or any other Act.
- (3) The Commissioner may invest money constituting, or forming part of, the Fund in accordance with the regulations.
- (4) Money standing to the credit of the Fund is to be applied by the Commissioner—
  - (a) in payment of the costs of administering the fund; and
  - (b) in making any other payment authorised by the Minister.

## **Part 4—Miscellaneous**

### **15—Liability for act or default of officer, employee or agent**

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

### **16—Offences by bodies corporate**

If a body corporate is guilty of an offence against this Act, each member of the governing body and the manager of the body corporate are guilty of an offence and liable to the same penalty as is imposed for the principal offence unless it is proved that the person could not by the exercise of reasonable diligence have prevented the commission of that offence.

### **17—Prosecutions**

- (1) 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.

- (2) A prosecution for an offence against this Act cannot be commenced except by—
  - (a) the Commissioner; or
  - (b) an authorised officer under the *Fair Trading Act 1987*; or
  - (c) a person who has the consent of the Minister to commence the prosecution.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

## 18—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

## 19—Regulations

The Governor may make regulations for the purposes of this Act.

## Schedule 1—Appointment and selection of assessors for 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 Court in proceedings under this Act, 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—Interpretation

In this Schedule—

*the repealed Act* means the *Consumer Credit Act 1972*.

## **2—Orders under Part 3 of repealed Act**

If an order is in force under Part 3 of the repealed 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 District Court under Part 2 of 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.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Repeal of Act

The *Credit Administration Act 1995* was repealed by Sch 1 cl 8 of the *Credit (Transitional Arrangements) Act 2010* on 1.7.2010.

### Principal Act

Year	No	Title	Assent	Commencement
1995	33	<i>Credit Administration Act 1995</i>	27.4.1995	1.11.1996 ( <i>Gazette 26.9.1996 p1209</i> )

### Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	