

## CONSUMER CREDIT BILL, 1981

### EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:—

- Moneylending (Repeal) Bill, 1981;
- Credit-sale Agreements (Repeal) Bill, 1981;
- Hire-Purchase Repeal Bill, 1981.

The object of this Bill is to regulate the provision of credit to persons other than corporations, being credit given to pay for goods or services where the credit given or cash price—

- (a) does not exceed \$15,000; or
- (b) exceeds \$15,000 but is applied in the purchase of a motor vehicle (other than a motor vehicle for carrying goods) or farm machinery,

**unless, in the case of a loan, the annual percentage rate does not exceed 14 per cent.**

The credit contracts dealt with by the Bill and referred to therein as “regulated” contracts are—

- (a) credit sale contracts where the purchase price is not required to be paid within 4 months and may be paid by 5 or more instalments or by a deposit and 4 or more instalments;
- (b) loan contracts (including loans made by the issue of store currency);
- (c) continuing credit contracts such as store charge accounts and the like.

Where the performance of a regulated contract is secured by a goods mortgage (in the Bill referred to as a “regulated” goods mortgage) the Bill regulates the exercise of the powers of the mortgagee.

The Bill introduces the new concept of the “linked credit provider” which is explained by the following definitions in clause 5:—

“linked credit provider”, in relation to a supplier, means a credit provider—

- (a) with whom the supplier has a trade or tie agreement;
- (b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit;
- (c) whose forms of contract or forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or

- (d) with whom the supplier has an agreement or arrangement, whether formal or informal, under which contracts or applications or offers for credit from the credit provider may be signed by persons at the premises of the supplier;

"trade or tie agreement", in relation to a credit provider and a supplier, means an agreement or arrangement, whether formal or informal, relating to—

- (a) the supply to the supplier of goods or services in which he deals;
- (b) the business of supplying goods or services carried on by the supplier; or
- (c) the provision of credit to purchasers in respect of the payment for goods or services supplied by the supplier.

The Bill does not affect hire-purchase agreements with bodies corporate or, except in the case of the hire of a commercial vehicle or the hire of farm machinery, hire purchase agreements under which the cash price of the goods hired exceeds \$15,000. All other hire-purchase agreements are, however, converted by the Bill into credit sale contracts under which the property in the goods passes to the purchaser (hirer) and the rental payments become instalments payable under the credit sale contract.

The Bill contains the following provisions:—

#### PART I.—PRELIMINARY.

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4. Application of the Act whereby a provision of the Act does not affect a transaction entered into before the commencement of the provision.

Clause 5. Interpretation.

Clause 6 operates, except where otherwise expressly provided, to confer on certain courts and the Credit Tribunal constituted by the Act ("the Tribunal") co-extensive jurisdiction in matters arising under the Act and makes provision for the transfer of a matter from one to the other with the consent of the parties or by direction.

Clause 7 enables regulations to be made to alter the \$15,000 and 14 per cent limits referred to above.

Clause 8 introduces a rebuttable presumption of the truth of an averment in proceedings arising under the Act that a particular credit contract is a regulated contract.

Clause 9 provides for the proposed Act to apply to an assignee under an assignment in accordance with the proposed Act, or by operation of law, of the rights and obligations under a credit contract, contract of guarantee or mortgage in the same way as it applied to the assignor.

Clause 10 excludes from the operation of the proposed Act services supplied under a contract of service that gives rise to the relationship of master and servant or whereby a person is to be deemed to be a worker for the purposes of the Workers' Compensation Act, 1926.



Clause 11 provides for the manner in which the annual percentage rate applicable to a transaction is to be calculated for the purposes of the proposed Act.

Clause 12 relates to the manner of calculating a credit charge for the purposes of the proposed Act.

Clause 13 explains the concept of a "tied" loan contract or continuing credit contract where the credit obtained is used to purchase goods or pay for services, and there is a link between the supplier of the goods or services and the credit provider ("linked credit provider").

Clause 14 operates to convert to a credit sale contract a hire-purchase agreement relating to the hire of—

- (a) goods (including a motor vehicle to be used for any purpose and farm machinery) of which the cash price does not exceed \$15,000; or
- (b) a commercial vehicle or farm machinery where, in either case, the cash price exceeds \$15,000,

to a person other than a body corporate.

Clause 15 is an interpretation provision.

Clause 16 is an interpretation provision.

Clause 17 is an interpretation provision.

Clause 18 enables the Governor to declare another State or a Territory of the Commonwealth to be a recognised State if he is satisfied that reciprocal arrangements relating to the provision of credit may be made between this State and the other State or the Territory.

Clause 19 excludes from the operation of certain specified parts of the proposed Act corporations, credit unions and overdrafts with banks and pastoral finance companies and enables the Governor to effect other exemptions from the operation of the proposed Act.

## PART II.

### CONTRACTS OF SALE.

Clause 20 specifies the monetary and other limitations applicable in determining the contracts to which Part II applies and extends the concept of the linked credit provider to sales of land where the credit provided, whether for a deposit or otherwise, does not exceed \$15,000.

Clause 21 enables the buyer to rescind a contract for the sale to him of goods or services if he makes it known to the supplier that he requires credit to pay for the goods or services and takes reasonable steps to obtain the necessary credit but is unable to do so.

Clause 22 makes it an offence for a supplier to require a buyer from him to obtain credit from a person specified by the supplier.

Clause 23 operates to discharge a collateral contract and any collateral mortgage where a regulated credit contract is rescinded or discharged.

Clause 24 imposes, in certain circumstances, joint and several liability on a supplier and a linked credit provider of the supplier, subject to certain defences.

Clause 25 operates to discharge a tied loan contract and any mortgage securing repayment of the loan where the tied loan contract is with a linked credit provider of the supplier under a contract of sale that is rescinded or discharged, and specifies the ensuing liabilities and obligations of the buyer, supplier and linked credit provider.

Clause 26 operates in relation to a tied continuing credit contract in the same way as clause 25 operates in relation to a tied loan contract.

Clause 27 provides for clauses 25 and 26 to operate in addition to all other rights of a buyer against a supplier and a linked credit provider and enables a supplier and his linked credit provider to vary, as between themselves, rights conferred on them under those clauses.

Clause 28 provides for the giving by a supplier of notice to his linked credit provider of the rescission or discharge of a contract of sale in respect of which the linked credit provider has given credit under a tied loan contract or a tied continuing credit contract.

### **PART III.**

#### **REGULATED CONTRACTS.**

Clause 29 specifies, by reference to a monetary limit of \$15,000 and the type of goods (commercial vehicle or farm machinery) the credit sale contracts and loan contracts to which Part III applies.

Clause 30 requires a credit sale contract and a loan contract to be in writing.

Clause 31 requires a copy of a form of offer to enter into a credit sale contract or a loan contract to be given to the buyer or debtor for his own use before he makes or accepts the offer.

Clause 32 requires a credit provider to give to a prospective buyer or debtor who has offered to enter into a credit sale contract, or a loan contract, with the credit provider notice of acceptance of the offer and a copy of the accepted offer.

Clause 33 requires the credit provider under a credit sale contract or a loan contract to give to the buyer or debtor, within 14 days after entering into the contract, the prescribed summary of the rights of the buyer or debtor under the proposed Act.

Clause 34 specifies the matters that must be included in a credit sale contract and those that may not.

Clause 35 specifies the matters that must be included in a loan contract and those that may not.

Clause 36 deals with the consolidation of a credit sale contract with another credit sale contract and the consolidation of a loan contract with another loan contract.



Clause 37 provides for the determination of the annual percentage rate to be specified in a credit sale contract and a loan contract.

Clause 38 authorises the specification in a loan contract secured by a mortgage of land of an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2 per cent.

Clause 39 provides that, except in the case of a credit sale contract, or a loan contract, secured by a mortgage of land, such a contract is not in accordance with the proposed Act if it specifies more than one annual percentage rate.

Clause 40 authorises a credit provider to enter into a loan contract pursuant to an agreement to supply the debtor with store credit certificates ("store currency").

Clause 41 prohibits a credit provider from agreeing to issue store credit certificates unless the agreement is in writing and in accordance with the proposed Act.

Clause 42 prescribes the documentation required in relation to a loan contract made pursuant to an agreement to issue store credit certificates.

Clause 43 specifies the matters that must be included in an agreement for the provision of store credit certificates, requires any such certificate to specify that no liability is incurred if the certificate is returned to the credit provider unused and makes other provision with respect to those certificates.

Clause 44 makes provision with respect to the terms of a loan contract entered into pursuant to an agreement for the provision of store credit certificates and the variation of such a contract by the return of unused certificates.

Clause 45 requires a demand for payment under a loan contract entered into pursuant to an agreement for the provision of store credit certificates to include a notice to the effect that no liability is incurred in respect of unused certificates returned to the credit provider.

Clause 46 prescribes certain circumstances in which a debtor is not liable to pay the credit charge under a credit sale contract or a loan contract.

Clause 47 prohibits a credit provider from entering into a credit sale contract, or a loan contract that, although it is in writing, is not otherwise in accordance with the proposed Act.

Clause 48 renders void a minimum credit charge under a credit sale contract or a loan contract that exceeds a specified amount.

Clause 49 requires a credit provider to give to the debtor under a credit sale contract or a loan contract a copy of any mortgage that secures performance of the contract and certain information relating to insurance.

Clause 50 requires a credit provider to supply, upon the request of the debtor under a credit sale contract or a loan contract, or of the guarantor of the performance of such a contract, a statement relating to amounts paid, amounts due but unpaid and amounts not yet due, under the contract.

Clause 51 requires a credit provider to comply with a request by the debtor under a credit sale contract or a loan contract, or of the guarantor of the performance of such a contract, to be supplied with a copy of the contract and certain information relating to insurance.

Clause 52 enables the debtor under a credit sale contract or a loan contract to apply to a court to determine whether certain fees and charges under the contract are reasonable.

Clause 53 explains the circumstances in which a contract is, for the purposes of the proposed Act, a continuing credit contract.

Clause 54 specifies, by reference to a monetary limit and other criteria, the continuing credit contracts to which the proposed Act is to apply.

Clause 55 prescribes 40 days as the maximum permissible period for a billing cycle under a continuing credit contract.

Clause 56 equates payment to a supplier by the credit provider under a continuing credit contract to payment by the debtor to the supplier.

Clause 57 explains references to the "chargeable amount" in respect of a billing cycle of a continuing credit contract.

Clause 58 renders void a provision of a continuing credit contract that requires the debtor to pay the credit provider any amount other than the amounts prescribed by the clause.

Clause 59 limits the credit charge applicable during the billing cycle of a continuing credit contract to the amount derived by applying the annual percentage rate for the contract to the chargeable amount for that billing cycle.

Clause 60 explains references to the annual percentage rate relating to a continuing credit contract.

Clause 61 provides for the application of the annual percentage rate to a continuing credit contract with a billing cycle of less than 1 month.

Clause 62 provides for the exclusion of non-business days occurring at the end of a billing cycle when calculating the length of the billing cycle.

Clause 63 requires the credit provider under a continuing credit contract to give to the debtor, before a debt is incurred under the contract, a statement containing a **summary of the rights of the debtor under the proposed Act.**

Clause 64 requires the credit provider under a continuing credit contract to give to the debtor, before a debt is incurred under the contract, a notice in writing specifying certain particulars in relation to the contract.

Clause 65 requires notice to be given of a variation in a continuing credit contract.

Clause 66 requires the credit provider under a continuing credit contract to give to the debtor in relation to each billing cycle under the contract a statement of account containing the prescribed particulars.



Clause 67 prohibits a credit provider from instituting proceedings under a continuing credit contract unless he gives a statement of account when giving the notice referred to in clause 111.

Clause 68 regulates the inclusion of an opening balance in a statement of account under a continuing credit contract.

Clause 69 specifies the circumstances in which a credit provider is relieved from the obligation to provide a statement of account under a continuing credit contract.

Clause 70 requires the credit provider under a continuing credit contract to pay to the debtor, upon request, any credit balance in the account.

Clause 71 specifies the circumstances in which the credit provider under a continuing credit contract forfeits the credit charge under the contract.

Clause 72 requires the credit provider under a continuing credit contract the performance of which is secured by a mortgage to give the debtor a copy of the mortgage and certain information relating to insurance.

Clause 73 provides for the giving by the credit provider under a continuing credit contract, upon request by the debtor or guarantor, of a copy of certain notices.

Clause 74 requires certain statements to be given where a regulated contract is discharged upon the debtor's entering into a new credit contract (whether or not it is a regulated contract).

Clause 75 prescribes the manner in which the terms of a regulated contract may be varied.

Clause 76 regulates an agreement to defer payment of an amount due under a credit sale contract or a loan contract.

Clause 77 regulates the making of a default charge under a credit sale contract or a loan contract.

Clause 78 deals with the period of notice to be given where a regulated contract is varied otherwise than in accordance with the proposed Act and also provides that, where a regulated contract is varied (whether or not in accordance with the proposed Act) or a regulated contract is discharged in consideration of the debtor entering into a new contract, the contract as varied, or the new contract, as the case may be, is a regulated contract.

Clause 79 enables a debtor under a credit sale contract, or a loan contract, who, through illness, unemployment or other reasonable cause, is unable to discharge his obligations under the contract to apply to the credit provider for a variation of the contract and, if unsuccessful, to apply to the Commissioner for Consumer Affairs ("the Commissioner") who, if unable to negotiate a variation with the credit provider, is required to refer the application to the Tribunal for determination.

Clause 80 regulates the charging of expenses incurred in the exercise by a credit provider of a right arising upon default under a credit sale contract or a loan contract.

Clause 81 renders void an agreement that removes, restricts or modifies the right of a person to revoke before acceptance or, in certain circumstances, to revoke before receiving notice of acceptance, an offer to enter into a regulated contract.

Clause 82 permits the annual percentage rate in a regulated contract to be over-stated or, by not more than 1 part in 50, to be under-stated.

Clause 83 permits an estimated credit charge in a regulated contract to be under-stated or, by not more than 1 part in 100, to be over-stated.

Clause 84 deals with the liability of the debtor under a regulated credit sale contract or a regulated loan contract where the credit charge under the contract exceeds by more than 1 per cent the amount of the credit charge calculated as provided by the clause.

Clause 85 deals with the effect of an assignment by the credit provider under a regulated contract or the mortgagee under a regulated mortgage of all or any rights under the contract or mortgage.

Clause 86 requires the credit provider under a regulated loan contract to make payments in accordance with the instructions of the debtor by cash or cheque, or in money's worth, without deduction of the credit charge or any part thereof.

Clause 87 prescribes the manner in which a credit provider is to apply payments received from a debtor.

Clause 88 prescribes the manner in which a payment made by the debtor to the same credit provider under 2 or more regulated contracts is to be appropriated by the credit provider.

Clause 89 empowers the Tribunal to make, or to refuse to make, certain orders where the credit provider under a regulated contract applies to the Tribunal to re-impose, wholly or partly, a liability of the debtor from which the debtor has been relieved by reason of a contravention of, or failure to comply with, the proposed Act by the credit provider.

Clause 90 enables the Tribunal, on the application of a credit provider who has contravened the proposed Act in relation to 2 or more regulated contracts, to make a general order of the kind referred to in clause 89 in relation to all regulated contracts entered into by the credit provider during a specified period.

Clause 91 provides that where, by the proposed Act, the liability of a debtor to a credit provider is reduced, the amount of the reduction shall be set off against any remaining liability of the debtor to the credit provider or, where it is greater than that remaining liability, is a debt due by the credit provider to the debtor.

Clause 92 enables a court to give relief from the adverse effect of minor errors in certain contracts, notices and statements of account and from a failure to give within time certain notices relating to a continuing credit contract.

#### PART IV.

##### REGULATED MORTGAGES.

Clause 93 limits the application of Part IV to mortgages given by a person other than a corporation to secure performance of a regulated contract.



Clause 122 enables a court to approve the removal of goods subject to a mortgage to a place other than the place at which, pursuant to the mortgage, the mortgagor is required to keep them.

Clause 123 renders void a provision in a regulated contract or a regulated mortgage whereby the debtor or mortgagor assigns wages, salary or benefits under a superannuation scheme in payment of, or as security for the payment of, a debt under the contract.

Clause 124 regulates the taking in discharge of, or as security for payment of, a debt under a regulated contract or a regulated mortgage of a bill of exchange or promissory note other than a cheque, bank draft or an order on a banker for the payment of regular instalments.

Clause 125 prohibits false and deceptive advertising of credit and requires advertisements relating to credit to comply with certain requirements.

Clause 126 prohibits the hawking of credit.

Clause 127 enables the terminology to be used for certain purposes in a credit sale contract or a loan contract to be prescribed by the regulations.

Clause 128 renders void an agreement or arrangement whereby a credit provider or mortgagee or his agent or associate is authorised as the agent of the debtor or mortgagor for the purpose of entering into, or offering to enter into, a regulated contract or mortgage.

Clause 129—

- (a) saves a regulated contract or mortgage from illegality by reason only that, by being a party thereto, the credit provider or mortgagee is guilty of an offence against the proposed Act; and
- (b) provides that, where a credit provider or mortgagee commits an offence against the proposed Act in relation to a regulated contract or mortgage, the debtor or mortgagor does not aid, abet, counsel or procure the commission of the offence by reason only that he is a party thereto.

Clause 130 prescribes the procedure for service of a notice on a debtor, mortgagor or guarantor consisting of 2 or more persons.

## PART VII.

### CONTRACTS OF INSURANCE.

Clause 131 prohibits a credit provider from entering into a regulated contract that includes a condition requiring the debtor to enter into a contract of insurance other than—

- (a) insurance required by law; and
- (b) insurance that is in accordance with clause 132.

Clause 132 prescribes the class of insurance contracts that may be required by a mortgagee in relation to property subject to the mortgage.

Clause 133 prohibits a credit provider or mortgagee from requiring the debtor or mortgagor to keep in force a contract of insurance that is not in accordance with clause 136.

Clause 134 prescribes certain requirements in relation to a contract of insurance relating to a regulated contract.

Clause 135 requires a credit provider to pay to the appropriate insurer any amount included in the amount financed or owed under a regulated contract in relation to insurance.

Clause 136 provides that the debtor or mortgagor under a regulated contract or mortgage is entitled to any no-claim bonus given by an insurer of goods or other property to which the contract or mortgage relates.

Clause 137 preserves, in certain circumstances, certain contracts of insurance that would otherwise be void or unenforceable.

Clause 138 imposes certain limitations on exclusion clauses in certain insurance contracts.

## PART VIII.

### CONTRACTS OF GUARANTEE.

Clause 139 requires a contract that guarantees the performance of a regulated contract to be in writing signed by the guarantor.

Clause 140 prescribes the extent of the liability of the guarantor of the performance of a regulated contract.

Clause 141 prevents a credit provider from recovering an amount from a guarantor in relation to a regulated contract unless he has failed to recover from the debtor.

Clause 142 imposes liability on the guarantor of the performance of a regulated contract entered into by a minor where the contract of guarantee includes adequate warning of the liability.

Clause 143 requires the credit provider under a regulated contract to give to a guarantor of the performance of the contract a copy of the regulated contract and of the contract of guarantee.

Clause 144 requires the credit provider under a regulated contract to give to a guarantor of the performance of the contract the prescribed notice of his rights and obligations under the contract of guarantee.

Clause 145 prescribes the circumstances in which the guarantor of the performance of a regulated contract may discharge the contract of guarantee.

Clause 146 renders void an agreement to the effect that a person may not revoke an offer to enter into a contract of guarantee before the offer is accepted or, in certain circumstances, before notice of acceptance is given.



**PART IX.**

**GENERAL.**

Clause 147 is an interpretation provision.

Clause 148 enables the Tribunal to re-open a transaction that gave rise to an unjust contract or mortgage.

Clause 149 specifies matters to which the Tribunal is to have regard when re-opening a transaction.

Clause 150 enables the Tribunal to join certain parties when re-opening a transaction.

Clause 151 prescribes the time within which proceedings to re-open a transaction must be instituted.

Clause 152 prohibits the assignment to a credit provider of an interest, or prospective interest, in the estate of a deceased person unless a stipendiary magistrate, clerk of petty sessions or independent solicitor certifies that he is satisfied that the assignor understands the true purpose and effect of the assignment.

Clause 153 excludes from the operation of clause 152 a vesting in a beneficiary.

Clause 154 regulates the legibility of documents used for the purposes of the proposed Act.

Clause 155 enables the Tribunal to direct a credit provider or mortgagee to cease using a form of document that, in the opinion of the Tribunal, is illegible.

Clause 156 enables the Tribunal to give a binding opinion on the legibility of a form of document submitted to it by a credit provider or mortgagee.

Clause 157 makes it an offence for a credit provider to issue a document that, within the meaning of clause 154, is not readily legible or in respect of which the Tribunal has issued a direction under clause 155.

Clause 158 rebuts any implication that might be read into the proposed Act to require any document to be separate from any other document.

Clause 159 permits a person to affix to a document the signature of another person who has authorised the action except where prohibited by clause 128.

Clause 160 prohibits (except where the proposed Act expressly provides otherwise) any agreement whereby the operation of the proposed Act is excluded, modified or restricted.

Clause 161 prohibits a credit provider or mortgagee from entering into a contract, mortgage or agreement referred to in clause 160.

Clause 162 authorises the Commissioner to publish tables or charts for the calculation of credit charges and annual percentage rates.

## PART X.

## LICENCES.

Clause 163 requires a person who carries on a business of providing credit to be licensed.

Clause 164 excludes certain persons from the licensing requirements of clause 163 and excludes from the operation of clause 163—

- (a) the provision of credit otherwise than under a regulated contract;
- (b) the provision of credit to a corporation; and
- (c) the provision of credit at an annual percentage rate not exceeding 14 per cent.

Clause 165 deals with applications for a credit provider's licence.

Clause 166 provides for the advertising of an application for a credit provider's licence and for the making of inquiries in connection with the application.

Clause 167 provides for the making of objections to the grant of an application for a credit provider's licence.

Clause 168 confers jurisdiction on the Tribunal to grant or refuse an application for a credit provider's licence.

Clause 169 authorises the Tribunal, in certain circumstances, to impose, on the granting of, or during the currency of, a credit provider's licence, conditions or restrictions subject to which it is to be held.

Clause 170 enables an applicant for, or the holder of, a credit provider's licence to apply for authority to carry on a business of providing credit under continuing credit contracts or pursuant to agreements for the provision of store credit certificates, or both.

Clause 171 enables a credit provider's licence to authorise the carrying on of business under a name or names other than the name of the licensee.

Clause 172 prohibits the holder of a credit provider's licence from carrying on a business of providing credit in partnership with a person who is not the holder of such a licence.

Clause 173 deals with the form of a credit provider's licence.

Clause 174 requires the holder of a credit provider's licence to notify the Tribunal of any change in the address of his business and of any cessation of business at a particular address.

Clause 175 requires the Commissioner to keep a Register of Licensed Credit Providers.

Clause 176 makes provision for public inspection of the Register of Licensed Credit Providers.

Clause 177 specifies the term of, and the authority conferred by, a credit provider's licence.



Clause 178 requires the holder of a credit provider's licence to pay an annual fee and to lodge an annual statement containing prescribed information.

Clause 179 deals with the surrender of a credit provider's licence.

Clause 180 enables the Commissioner (with the consent of the Minister) or any other person to object to the holding of a credit provider's licence by a specified licensee and provides for the grounds of, and the manner of dealing with, such an objection.

Clause 181 provides for an appeal to the Supreme Court by way of re-hearing from a decision of the Tribunal to refuse to grant a credit provider's licence, or to cancel or suspend, or disqualify a person from holding, a credit provider's licence, or to impose a condition or restriction on the holding of a credit provider's licence.

Clause 182 enables the personal representative of a deceased holder of a credit provider's licence to apply for authority to carry on, for a period expiring not later than 6 months after the death of the licensee, the business to which the licence relates.

Clause 183 requires the holder of a credit provider's licence to produce it for endorsement of a condition or requirement to which it is subject.

Clause 184 deprives a credit provider of any money falling due under a regulated contract entered into by the credit provider while he was not the holder of, and not exempt from holding, a credit provider's licence.

Clause 185 is an interpretation provision.

Clause 186 prohibits a person from carrying on business as a finance broker unless he is licensed and carries on the business in accordance with the authority conferred by the licence.

Clause 187 provides for clauses 165–169, 171, 173 (a) and (b), 174 and 177–183 to apply to a finance broker and a finance broker's licence in the same way as they apply to a credit provider and a credit provider's licence.

Clause 188 requires the Commissioner to keep a Register of Licensed Finance Brokers and provides for public inspection of the Register.

Clause 189 regulates advertising by a finance broker.

Clause 190 requires a finance broker to keep certain records.

Clause 191 regulates the payment of commission to a finance broker.

Clause 192 authorises a finance broker to receive valuation fees and to hold them in trust.

Clause 193 penalises dishonest conduct by a finance broker.

Clause 194 provides a defence in relation to an offence committed by reason of credit being applied for certain purposes.

Clause 195 enables a court to re-open a transaction involving the payment of excessive commission to a finance broker.

## PART XI.

## CREDIT TRIBUNAL OF NEW SOUTH WALES.

Clause 196 constitutes the Credit Tribunal of New South Wales consisting of not more than 9 members appointed by the Governor of whom 1, being a Judge of the District Court of New South Wales, is appointed as Chairman of the Tribunal and the others are appointed as part-time members.

Clause 197 specifies the term of office of a member of the Tribunal.

Clause 198 excludes the operation of the Public Service Act, 1979, in relation to a member of the Tribunal and his appointment.

Clause 199 authorises payment of subsistence and travelling allowances determined by the Minister to all the members of the Tribunal, to be in addition, in the case of the Chairman, to remuneration as a Judge of the District Court and, in the case of the other members, to remuneration determined by the Minister.

Clause 200 prescribes the circumstances in which a member of the Tribunal vacates his office.

Clause 201 deals with the filling of casual vacancies in the membership of the Tribunal.

Clause 202 enables the Governor to appoint an acting Chairman of the Tribunal.

Clause 203 enables the Governor to appoint an acting part-time member of the Tribunal.

Clause 204 preserves for the Chairman, and an Acting Chairman of the Tribunal his rank, title, status, precedence, rights and privileges as a Judge of the District Court and his rights under the Judges' Pensions Act, 1953.

Clause 205 authorises the appointment and employment, subject to the Public Service Act, 1979, of a Registrar of the Tribunal and such officers and employees as are necessary for the administration of the proposed Act.

Clause 206 deals with the powers and jurisdiction of the Tribunal, the Chairman of the Tribunal and the Registrar.

Clause 207 deals with sittings of the Tribunal and the manner in which it is to be constituted to deal with specified matters.

Clause 208 requires matters of procedure arising in proceedings before the Tribunal to be decided by the Chairman and provides that a matter of law arising in proceedings before the Tribunal (not being proceedings by way of hearing an application for a licence or by way of an inquiry into an objection to the holding of a licence) may be referred by the Chairman to the Supreme Court for decision or may be decided by him subject to a right of appeal to the Supreme Court by a party aggrieved by his decision.

Clause 209 deals with matters relating to persons proceeded against in the Tribunal in respect of a joint liability, entry of judgment against 1 or more, but not all, persons having joint liability, the right of an executor or administrator to bring or defend proceedings before the Tribunal and the joinder of parties in any such proceedings.



Clause 210 provides for the giving of notice of proceedings before the Tribunal.

Clause 211 specifies the persons who may appear before the Tribunal as of right or by leave.

Clause 212 deals with the application of the rules of evidence in proceedings before the Tribunal.

Clause 213 empowers the Chairman of the Tribunal to summon a witness to appear before the Tribunal and to administer an oath to a witness before the Tribunal.

Clause 214 authorises the Tribunal to inspect and copy any record produced before it and to retain the record for a reasonable period.

Clause 215 authorises the Chairman to issue a warrant for the apprehension of a witness who fails to comply with a summons to attend before the Tribunal.

Clause 216 provides that, in any proceedings before the Tribunal (other than the hearing of an application for a licence or an inquiry into an objection to the holding of a licence) a witness is not entitled to refuse to answer a question, or to produce a document, on the ground of possible self-incrimination.

Clause 217 prescribes the powers of the Chairman of the Tribunal to punish contempt of, or disobedience to an order or summons made or issued by, the Tribunal.

Clause 218 applies certain provisions of the Royal Commissions Act, 1923, to and in relation to proceedings before the Tribunal.

Clause 219 authorises the Tribunal to dismiss with costs proceedings that, in its opinion, are frivolous, vexatious, misconceived or lacking in substance.

Clause 220 authorises the Tribunal to award costs and to determine the amount thereof.

Clause 221 provides for the enforcement of a judgment of the Tribunal for the payment of money.

Clause 222 provides a procedure whereby a party to proceedings before the Tribunal may obtain from the Tribunal its reasons, if not already given, for an order or decision made in the proceedings.

Clause 223 authorises the Tribunal to adjourn or stay proceedings before it and to give directions for the orderly transaction of the business of the Tribunal.

Clause 224 prescribes the method of service of a document for the purpose of proceedings before the Tribunal.

Clause 225 gives effect to directions as to procedure given by the Tribunal where the procedure has not been prescribed by or under the proposed Act or by the practice of the Tribunal.

Clause 226 confers a rule-making power on the Tribunal.

Clause 227 provides that, where he considers it to be in the public interest to do so, the Commissioner may take or defend proceedings before the Tribunal on behalf of a person other than a corporation.

Clause 228 prescribes certain rights and obligations of the Commissioner and a person on whose behalf he has, as provided by clause 227, taken or defended proceedings before the Tribunal.

Clause 229 authorises the Minister, or the Commissioner with the consent of the Minister, if he considers it to be in the public interest to do so, to intervene in proceedings before the Tribunal.

## PART XII.

### MISCELLANEOUS.

Clause 230 enables the Minister to institute an inquiry by the Tribunal (or other person appointed by the Minister) into matters relating to the provision of credit, or the consequences of the provision of credit, or both.

Clause 231 requires the advertisement of an inquiry and certain particulars in relation thereto.

Clause 232 deals with appearances at an inquiry.

**Clause 233 deals with the procedure in relation to an inquiry.**

Clause 234 deals with a summons to a witness to appear at an inquiry and the giving of evidence on oath.

Clause 235 penalises a witness who fails, without lawful excuse, to respond to a summons to appear before an inquiry.

Clause 236 penalises a witness before an inquiry who, without lawful excuse, refuses to be sworn, to produce a record in accordance with a summons, or to answer a question.

Clause 237 confers power to obtain information for the purposes of an inquiry.

Clause 238 defines conduct by a credit provider that is unjust.

Clause 239 authorises the Commissioner (subject to the consent of the Minister) if he thinks that a credit provider has repeatedly engaged in unjust conduct to—

- (a) request the credit provider to enter into certain undertakings; or
- (b) apply to the Tribunal for an order restraining the credit provider from engaging in unjust conduct.

Clause 240 provides that, where a credit provider enters into an undertaking referred to in clause 239, the Registrar is to register the undertaking in a register open to public inspection, and a credit provider is liable to a penalty if he fails to observe an undertaking given by him.

Clause 241 enables the Tribunal to restrain unjust conduct by a credit provider.

Clause 242 empowers the Tribunal to vary or discharge an order restraining a credit provider from engaging in unjust conduct.

Clause 243 is a general penalty provision.



Clause 244 imposes an ordinary limitation period of 3 years for the bringing of proceedings for an offence against the Act but, if the Attorney General consents, allows any such proceedings to be brought at any time.

Clause 245 imposes vicarious liability on a director of, or a person concerned in the management of, a corporation that offends against the Act if he connived at, or consented to, commission of the offence.

Clause 246 specifies the persons authorised to take proceedings for an offence against the proposed Act.

Clause 247 provides that proceedings for an offence against the proposed Act are to be disposed of summarily before a stipendiary magistrate sitting alone or, with the consent of the Minister, before the Supreme Court.

Clause 248 saves existing rights and remedies not expressly affected by the proposed Act.

Clause 249 brings the proposed Act within the area of operation of the Consumer Affairs Council constituted under the Consumer Protection Act, 1969, and the general functions of the Commissioner for Consumer Affairs.

Clause 250 confers certain powers of entry for the purposes of the proposed Act.

Clause 251 preserves the confidentiality of information acquired in the administration of the proposed Act.

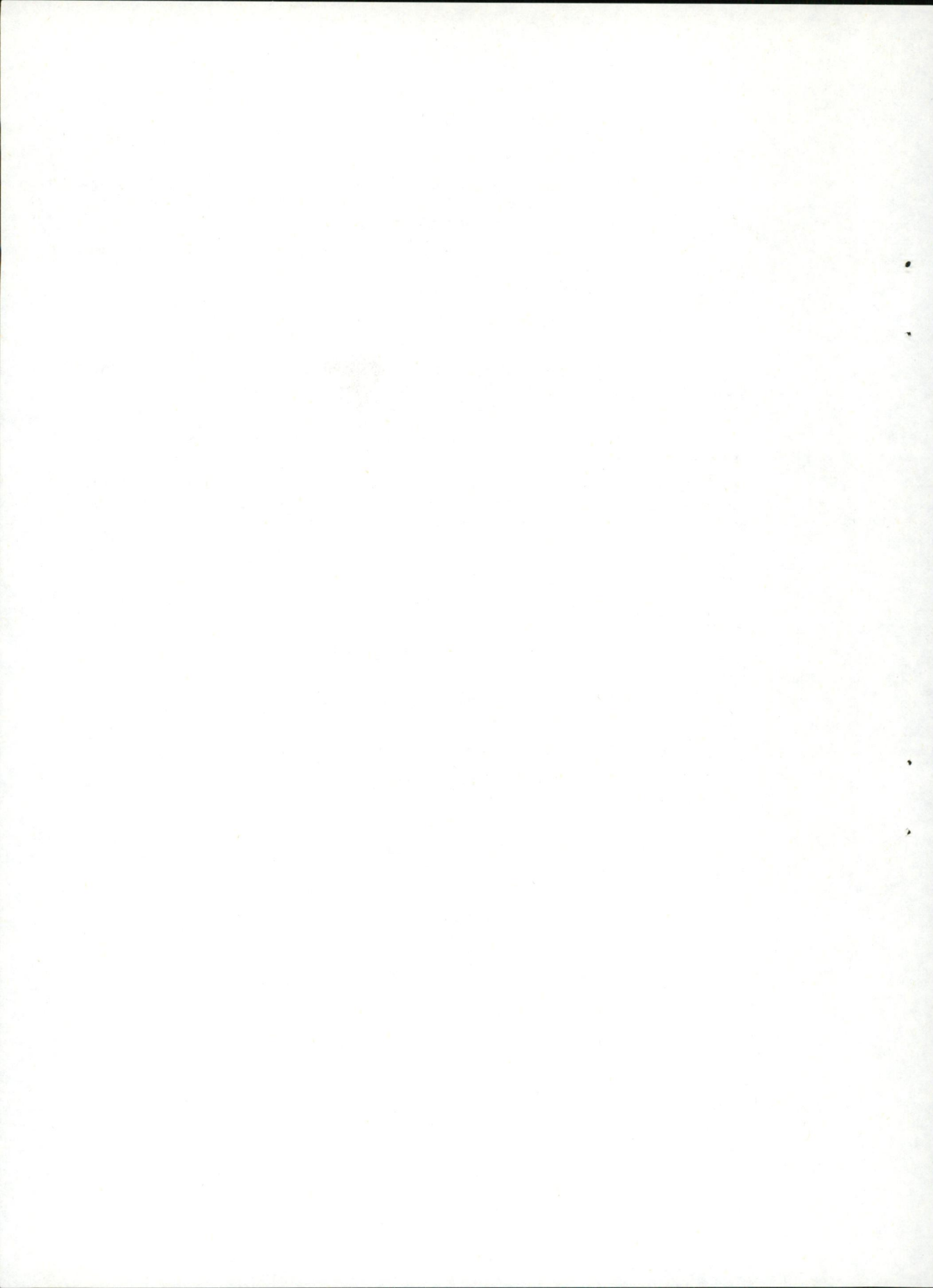
Clause 252 enables a court to extend a period notwithstanding that the period has elapsed.

Clause 253 prescribes the method of service of a notice or document for the purposes of the proposed Act.

**Clause 254 prescribes the time of delivery of a document served by post.**

Clause 255 requires the Commissioner to prepare and submit to the Minister for presentation to Parliament an annual report on the administration of the proposed Act.

Clause 256 enables the Governor to make regulations for the purposes of the proposed Act.





**CONSUMER CREDIT BILL, 1981**

**PROOF**

No.           , 1981.

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**A BILL FOR**

An Act relating to the provision of credit and the licensing of  
certain persons in connection with the provision of credit.

[MR EINFELD—26 August, 1981.]

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*Consumer Credit.*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5

PART I.

PRELIMINARY.

**Short title.**

1. This Act may be cited as the "Consumer Credit Act, 1981".

**Commencement.**

10 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may  
15 be notified by proclamation published in the Gazette.

**Arrangement.**

3. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–19.

PART II.—CONTRACTS OF SALE—ss. 20–28.

20 PART III.—REGULATED CONTRACTS—ss. 29–92.

DIVISION 1.—*Credit Sale Contracts and Loan Contracts*—  
ss. 29–52.

DIVISION 2.—*Continuing Credit Contracts*—ss. 53–73.

25 DIVISION 3.—*Operation of Regulated Contracts*—ss. 74–  
79.

DIVISION 4.—*General*—ss. 80–92.



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PART IV.—REGULATED MORTGAGES—ss. 93–106.

DIVISION 1.—*General*—ss. 93–104.

DIVISION 2.—*Assignment, etc., of Goods*—ss. 105, 106.

5 PART V.—TERMINATION AND ENFORCEMENT OF  
REGULATED CONTRACTS AND MORTGAGES—ss. 107–  
120.

PART VI.—REGULATED CONTRACTS AND MORTGAGES—  
GENERAL—ss. 121–130.

PART VII.—CONTRACTS OF INSURANCE—ss. 131–138.

10 PART VIII.—CONTRACTS OF GUARANTEE—ss. 139–146.

PART IX.—GENERAL—ss. 147–162.

DIVISION 1.—*Credit Contracts Generally*—ss. 147–153.

DIVISION 2.—*Miscellaneous*—ss. 154–162.

PART X.—LICENCES—ss. 163–195.

15 DIVISION 1.—*Credit Providers' Licences*—ss. 163–184.

DIVISION 2.—*Finance Brokers' Licences*—ss. 185–195.

PART XI.—CREDIT TRIBUNAL OF NEW SOUTH WALES—ss.  
196–229.

DIVISION 1.—*Constitution of the Tribunal*—ss. 196–205.

20 DIVISION 2.—*Jurisdiction of, and Proceedings before, the  
Tribunal*—ss. 206–226.

DIVISION 3.—*Functions of Commissioner in Relation to  
Proceedings before the Tribunal*—ss. 227–229.

PART XII.—MISCELLANEOUS—ss. 230–256.

25 DIVISION 1.—*Inquiries*—ss. 230–237.

DIVISION 2.—*Unjust Conduct by Credit Providers*—ss.  
238–242.

DIVISION 3.—*General*—ss. 243–256.

SCHEDULES.

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**Application of Act.**

4. (1) Except as otherwise expressly provided in or under this Act, this Act applies (notwithstanding anything to the contrary in any other Act or law) to and in respect of a contract of sale, credit contract, agreement for the provision of store credit certificates or goods mortgage—

(a) if the contract of sale, credit contract, agreement or goods mortgage is in writing and is signed in New South Wales by the buyer, debtor or mortgagor; or

10 (b) where the contract of sale, credit contract, agreement or goods mortgage is not in writing or is in writing but is not signed by the buyer, debtor or mortgagor in New South Wales or in a recognised State—

15 (i) in the case of a contract of sale, if the goods or services are, or are to be, delivered or supplied in New South Wales;

20 (ii) in the case of a credit contract or an agreement for the provision of store credit certificates, if the credit is provided to the debtor in New South Wales or the debtor has the use or benefit of the credit in New South Wales; or

(iii) in the case of a goods mortgage, if the goods subject to the mortgage are at the date of creation of the mortgage situated in New South Wales.

25 (2) Subject to subsection (5), a provision of this Act that relates to a contract for the hiring of goods, contract of sale, credit contract or mortgage does not apply to or in relation to a contract for the hiring of goods, contract of sale, credit contract or mortgage, as the case may be, entered into before the com-  
30 mencement of the provision.

(3) Subject to subsection (4), nothing in sections 40–45 applies to or with respect to a store credit certificate provided to a person before the commencement of those sections.



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(4) Where a store credit certificate provided to a person before the commencement of sections 40–45 is returned after that commencement to the person by whom it was provided and has not been used by the first-mentioned person for the purchase of goods or services, the person by whom it was provided is liable to the first-mentioned person for any amount paid by him in respect of that certificate.

(5) Division 2 of Part III, except sections 63, 64 and 71 (1) (c), applies to and in relation to a continuing credit contract made before the commencement of that Division that, if it had been made after that commencement, would have been a continuing credit contract to which that Division applies but nothing in that Division applies to or in respect of a billing cycle that commenced before the commencement of that Division.

(6) Where, by reason of subsection (5), Division 2 of Part III applies to and in relation to a continuing credit contract, the credit provider shall, when he first gives a statement of account under section 66 after the commencement of that Division, give to the debtor a notice stating the matters required to be stated in a notice under section 64.

Penalty applying to this subsection : \$1,000.

**Interpretation.**

5. (1) In this Act, except to the extent that the context or subject-matter otherwise indicates or requires—

25 “acceptable rate of interest”, in relation to a loan contract or continuing credit contract, means an annual percentage rate that the credit provider agrees to accept so long as the debtor duly observes and performs the terms of the contract;

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"account charge", in relation to a continuing credit contract, means—

(a) in relation to the period of 12 months that next succeeds the making of the contract—

(i) the sum of any amount that, under the contract, is payable by the debtor to the credit provider as the fixed fee or other charge for entering into the contract and any amount that, under the contract, is payable by the debtor to the credit provider as the fixed annual fee or other annual charge in respect of that period; or

(ii) \$100,

whichever is the lesser; and

(b) in relation to any other period of 12 months—

(i) any amount that, under the contract, is payable by the debtor to the credit provider as the fixed annual fee or other annual charge in respect of that period; or

(ii) \$50,

whichever is the lesser;

"accrued credit charge", in relation to a credit sale contract or a loan contract at a particular time, means—

(a) the minimum credit charge; or

(b) the amount of any credit charge which, under the contract, has accrued at that time calculated as provided in section 12,

whichever is the greater;



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“actuarial method”, in relation to a calculation for the purposes of a credit contract other than a continuing credit contract, means the method under which—

- 5 (a) it is assumed that all payments by the debtor under the contract will be made on the respective dates on which they fall due and that credit will be provided at the time or times determined under the contract; and
- 10 (b) **payments by the debtor under the contract are allocated between the amount of the credit charge and the amount financed so that each payment is applied first to the accrued credit charge at the date on which the payment is due and—**
- 15 (i) **if the amount of the payment is greater than the amount of the unpaid accrued credit charge on the date on which the payment is made, the remaining amount of the payment is applied to the unpaid balance of the amount financed; or**
- 20 (ii) **if the amount of the payment is less than the amount of the accrued credit charge on the date on which the payment is made, the amount of the difference between the payment and the accrued credit charge is added to the unpaid**
- 25 **balance of the amount financed;**

“amount financed” means—

- 30 (a) in relation to a regulated credit sale contract—the sum of the balance of the cash price required to be stated in accordance with clause 1 (c) of Schedule 2 and the total of the amounts required to be stated in accordance with clause 1 (d)—(i) of Schedule 2;
- 35 (b) in relation to any other credit sale contract—the sum of the cash price (less the deposit, if any) and amounts payable under the contract by the debtor to the credit provider that, if the contract

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were a regulated credit sale contract, would be required to be stated in accordance with clause 1 (d)–(i) of Schedule 2;

5 (c) in relation to a regulated loan contract—the sum of the amounts required to be stated in accordance with clause 1 of Schedule 4;

10 (d) in relation to any other loan contract—the sum of the amount agreed under the contract to be lent and amounts payable under the contract by the debtor to the credit provider that, if the contract were a regulated loan contract, would be required to be stated in accordance with clause 1 (b)–(f) of Schedule 4;

15 “annual percentage rate” means annual percentage rate within the meaning of section 11;

“bank” means a bank within the meaning of the Banking Act 1959 of the Parliament of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth;

20 “cash” includes cheques;

“cash price”, in relation to a contract of sale of, or credit sale contract relating to, goods or services—

25 (a) (unless the contract is one to which paragraph (b), (c) or (d) applies)—means the price payable under the contract for the goods or services;

30 (b) where, under the contract, credit for the payment for the goods or services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time at which the contract is made, the goods or services are available for purchase from the supplier for cash—means the lowest price at which at that time the buyer might have bought the goods or  
35 services from the supplier for cash;



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- 5 (c) where, under the contract, credit for the payment for the goods or services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time at which the contract is made, the goods or services are reasonably available for purchase for cash but are not available for purchase from the supplier for cash—means the price at which at that time the buyer might reasonably have bought goods or services of that kind for cash; or
- 10
- 15 (d) where, under the contract, credit for the payment for the goods or services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time at which the contract is made, the goods or services are not reasonably available for purchase for cash—means the amount that is—
- 20 (i) in the case of a sale of goods, the reasonable value at that time of the goods;
- (ii) in the case of a sale of services, the reasonable value at that time of the services (whether or not they have been supplied); or
- 25 (iii) in the case of a contract of sale that is a contract of sale of both goods and services, the sum of the reasonable value at that time of the goods and the reasonable value at that time of the services (whether or not they have been supplied);
- 30

“Chairman” means Chairman of the Tribunal and includes an acting Chairman;

“commercial vehicle” means—

- 35 (a) a motor vehicle constructed or adapted principally for the carriage of goods but does not include a motor car of the kind known as a utility, a station wagon or a panel van; and

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(b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle.

5 "commission charge", in relation to a regulated credit sale  
contract or a regulated loan contract, means an amount  
paid or payable, or received, whether directly or  
indirectly, by way of commission or otherwise, and  
10 whether or not in pursuance of an agreement or under-  
taking in respect of the introduction of the debtor to  
the credit provider, being an amount paid or payable by,  
the credit provider or the spouse of the credit provider  
or, where the credit provider is a body corporate, a  
15 related corporation within the meaning of the  
Companies Act, 1961;

"Commissioner" means the Commissioner for Consumer  
Affairs appointed under section 13 of the Consumer  
Protection Act, 1969, and any person appointed under  
section 14 of that Act to act as Commissioner;

20 "compulsory insurance", in relation to goods, means any  
insurance in relation to liability in respect of death or  
bodily injury caused by or arising out of the use of the  
goods, being insurance required by the law of the place  
where the goods are or are being or are to be used;

25 "continuing credit contract" means a continuing credit  
contract within the meaning of section 53 (1);

"court of petty sessions" means a court of petty sessions con-  
stituted by a stipendiary magistrate sitting alone;

30 "credit" includes any form of financial accommodation other  
than—

(a) credit provided to a debtor, for the purposes of a  
business carried on by him, by—

(i) a documentary letter of credit;

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*Consumer Credit.*

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- (ii) discounting, or becoming a party to or the holder of, a bill of exchange or other negotiable instrument; or
  - (iii) becoming surety for a debtor;
- 5 (b) credit provided for the purchase of goods for re-supply;
- (c) credit provided for the purchase of goods that—
- (i) are raw materials; or
  - 10 (ii) are ordinarily acquired for the purpose of treating or repairing other goods or fixtures on land or of being incorporated in other goods,  
for the purposes of transforming them, or incorporating them in other goods,
  - 15 (iii) in trade or commerce;
  - (iv) in the course of a process of production or manufacture; or
  - (v) in the course of repairing or treating other goods or fixtures on land;
- 20 (d) credit provided for the purchase of services, where the buyer has contracted to provide those services, or goods and services that include those services, to a third person; or
- 25 (e) any transaction prescribed as not being credit within the meaning of this Act;

“credit charge” means credit charge within the meaning of section 12 (1);

“credit contract” means—

- (a) a credit sale contract;
- 30 (b) a loan contract; or
- (c) a continuing credit contract;



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**"credit provider" means—**

- (a) in relation to a credit contract, the person providing credit under the contract in the course of a business carried on by him; and
- 5 (b) in relation to a proposed credit contract, the person by whom credit is to be provided under the contract in the course of a business carried on by him;

10 **"credit sale contract" means, subject to sections 14 and 15, a contract of sale of goods or services where in respect of the payment for the goods or services credit is, or is to be, provided to a buyer, not being a body corporate, by a supplier in the course of a business carried on by the supplier and, under the contract—**

- 15 (a) a charge is made for the provision of credit;
- (b) the amount payable by the buyer is not required to be paid, or no credit charge is made if that amount is not paid, within the period of 4 months after credit is provided under the contract; or
- 20 (c) the amount payable by the buyer may be paid by 5 or more instalments or by a deposit and 4 or more instalments;

25 **"cross claim" includes counter-claim, set-off and third party claim;**

**"daily percentage rate", in relation to a credit sale contract or a loan contract, means the rate determined by dividing the annual percentage rate under the contract by 365;**

30 **"debtor" means—**

- (a) in relation to a credit contract, the person to whom credit is provided under the contract; and

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*Consumer Credit.*

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- (b) in relation to a proposed credit contract, the person to whom credit is to be provided under the contract;

**"default charge"** means—

- 5 (a) in relation to a regulated credit sale contract or a regulated loan contract, a charge made by a credit provider in accordance with section 77; and
- 10 (b) in relation to any other credit contract, an additional amount payable under the contract by the debtor by reason of his failure to fulfil his obligations under the contract;

**"deferral charge"** means—

- 15 (a) in relation to a regulated credit sale contract or a regulated loan contract, a charge made by a credit provider in respect of the deferral of the payment of an amount in accordance with section 76; and
- 20 (b) in relation to any other credit sale contract or loan contract, a charge made by a credit provider in respect of the deferral of the payment of an amount payable under the contract by the debtor;

**"deposit"** means—

- 25 (a) in relation to a credit sale contract relating to goods, an amount paid or payable in relation to the contract by the buyer to the supplier or another person on or before the delivery of the goods or, where the delivery is not completed
- 30 on one day, on or before the commencement of the delivery;

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*Consumer Credit.*

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5 (b) in relation to a credit sale contract relating to services, an amount paid or payable in relation to the contract by the buyer to the supplier or another person on or before the commencement of the supply of the services; and

10 (c) in relation to a credit sale contract relating to goods and services, an amount paid or payable in relation to the contract by the buyer or another person to the supplier on or before the commencement of the delivery or supply of the goods and services,

and, where there is a trade-in allowance, includes the trade-in allowance;

15 "discharge", in relation to a contract, means discharge of the contract, so far as it is executory, otherwise than by agreement or frustration;

"District Court" means the District Court of New South Wales;

"enforcement expense" means—

20 (a) in relation to a regulated credit contract or a regulated mortgage—an expense charged by the credit provider or mortgagee to the debtor or mortgagor in accordance with section 80 or 96; and

25 (b) in relation to any other credit contract or mortgage—an amount expended, or the amount of a liability incurred, by the credit provider or mortgagee under the contract or mortgage to remedy a default of the debtor or mortgagor or in the exercise of rights of the credit provider or mortgagee under the contract or mortgage arising  
30 by reason of the default;



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“estimated credit charge”, in relation to a credit sale contract or a loan contract under which the whole or a part of the credit charge is a credit charge other than a pre-determined credit charge or a minimum credit charge, means the amount of that whole or part that, when the contract is made, is an amount that can be calculated—

5

(a) on the assumption that all amounts payable under the contract are paid on the respective dates on which, under the contract, they are required to be paid; or

10

(b) in accordance with an applicable method prescribed for the purposes of calculating estimated credit charges;

“exempt credit provider” means a credit provider referred to in section 164 (1) or a person who pursuant to section 19, is deemed to be an exempt credit provider;

15

“farm machinery” means—

(a) a harvester, binder, tractor, plough or other agricultural implement or a motor truck; or

20

(b) any other goods of a class commonly used for the purposes of a farming undertaking that are prescribed as being farm machinery for the purposes of this Act,

where the goods are acquired for the purposes of a farming undertaking;

25

“farming undertaking” includes any agricultural, pastoral, horticultural, orcharding, poultry keeping, apicultural, viticultural, dairy farming or other business involving the cultivation of the soil, the gathering in of crops or the rearing of livestock;

30

“goods” includes all chattels personal other than money and things in action;

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5 “goods mortgage” means an instrument or transaction by or under which a security interest is reserved or created or otherwise arises, whether or not any other interest, or interest in property other than goods, is reserved or created or otherwise arises under the instrument or transaction;

“guarantee” includes indemnity;

10 “guarantor” means a person who enters into a contract of guarantee in respect of the performance by a debtor or mortgagor of his obligations under a credit contract or mortgage or a person who enters into a contract of indemnity in relation to a credit contract or mortgage but does not include—

15 (a) a person who is the supplier, or spouse of the supplier, of goods or services to which the contract or mortgage relates or, where the supplier is a body corporate, a person who is a director or officer of the body corporate or is a related corporation within the meaning of the Companies Act, 1961, or a director or officer of a related corporation or spouse of such a director or officer; or

20 (b) a person who enters into a contract of guarantee—

25 (i) in respect of the obligations under a credit contract of a person who deals in goods or services of the kind to which the contract relates; or

30 (ii) in respect of the obligations of a debtor under a loan contract made for the purposes of the acquisition of goods of a kind in which the debtor deals;

“instalment” does not include a deposit;

35 “land” has the same meaning as it has in the Conveyancing Act, 1919;



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“linked credit provider”, in relation to a supplier, means a credit provider—

- (a) with whom the supplier has a trade or tie agreement;
- 5 (b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit;
- (c) whose forms of contract or forms of application or offers for credit are, by arrangement with the  
10 credit provider, made available to persons by the supplier; or
- (d) with whom the supplier has an agreement or arrangement, whether formal or informal, under  
15 which contracts or applications or offers for credit from the credit provider may be signed by persons at the premises of the supplier;

“loan contract”, subject to section 16, means a contract under which a person in the course of a business carried on by  
20 him provides or agrees to provide, whether on one or more occasions, credit to another person, not being a body corporate, in one or more of the following ways:—

- (a) by paying an amount to or in accordance with the instructions of that other person;
- 25 (b) by paying an amount in satisfaction or reduction of an amount owed by that other person;
- (c) by varying the terms of a contract under which money owed to him by that other person is payable;
- (d) by deferring an obligation of that other person  
30 to pay an amount to him;
- (e) by taking from that other person a bill of exchange or other negotiable instrument on which that other person (whether alone or with  
35 another person or other persons) is liable as drawer, acceptor or endorser;



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**"member"** means member of the Tribunal and includes an acting member;

5 **"minimum credit charge"**, in relation to a credit contract, means the amount (if any) that, under the contract, is the minimum amount payable to the credit provider by the debtor under the contract as a credit charge;

**"mortgage"** includes a goods mortgage and a mortgage within the meaning of the Conveyancing Act, 1919;

10 **"motor vehicle"** has the same meaning as it has in the Motor Traffic Act, 1909;

**"officer"**, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 5 (1) of the Companies Act, 1961;

15 **"pastoral finance company"** means a person carrying on a business of financing pastoral pursuits or a business of stock or station agents to whom an order in force under section 11 of the Banking Act 1959 of the Parliament of the Commonwealth as amended and in force for the time being applies;

20 **"pre-determined credit charge"**, in relation to a credit contract that specifies a fixed amount as the whole or part of the credit charge (not being a minimum credit charge), means that fixed amount;

25 **"property"** includes any thing in action and any interest in real or personal property;

**"recognised State"** means a State or a Territory of the Commonwealth in respect of which a declaration referred to in section 18 is in force;

30 **"record"** includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic

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process, or in any other manner or by any other means and any statement of the nature referred to in section 213 (2);

“Registrar” means Registrar of the Tribunal;

5 “registration fees”, in relation to goods, means an amount payable under the law of a State or Territory of the Commonwealth in connection with the registration or use of the goods including any amount payable for compulsory insurance;

10 “regulated continuing credit contract” means a continuing credit contract to which Division 2 of Part III applies;

“regulated contract” means a regulated credit sale contract, regulated loan contract or regulated continuing credit contract;

15 “regulated credit sale contract” means a credit sale contract to which Part III applies;

“regulated goods mortgage” means a goods mortgage to which Part IV applies;

20 “regulated loan contract” means a loan contract to which Part III applies;

“regulated mortgage” means a mortgage to which Part IV applies;

“rescind”, in relation to a contract, means avoid the contract as from its beginning;

25 “rules” means rules made under section 226;

“security interest” means an interest or a power—

(a) reserved in or over an interest in goods; or



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(b) created or otherwise arising in or over an interest in goods under a bill of sale, mortgage, charge, lien, pledge, trust or power,

5 by way of security for the payment of a debt or other pecuniary obligation or the performance of any other obligation but does not include an interest or a power reserved, created or otherwise arising under a lease of goods or a contract for the hiring of goods that is not by section 14 deemed to be a credit sale contract;

10 “statutory rebate” means—

(a) in relation to insurance charges included in the amount financed under a regulated contract, the sum of—

15 (i) the amount of premium paid in respect of a period of the insurance contract not yet commenced; and

20 (ii) 90 per cent of the proportion of the amount of the premium for insurance paid in respect of the current period of the insurance contract attributable to the unexpired portion of that period consisting of whole months; and

25 (b) in relation to prescribed insurance charges included in the amount financed under a regulated contract—the amount ascertained in the prescribed manner; and

30 (c) in relation to maintenance charges included in the amount financed under a regulated contract in respect of maintenance of goods—the amount derived by multiplying the amount of maintenance charges by the number of whole months in the unexpired portion of the term for which maintenance is to be provided and dividing the product so obtained by the number of whole months in the period of that contract;

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5 "store credit certificate" means a certificate, voucher, card or other document or thing bearing a nominal value that is provided to a person by a supplier and may be used to the extent of its nominal value for the purchase of goods or services at a place of business of the supplier or of a corporation that is a related corporation of the supplier within the meaning of the Companies Act, 1961, but does not include a bill of exchange;

"supplier"—

- 10 (a) in relation to a contract of sale, a credit sale contract or a contract for the hiring of goods, means a person who supplies goods or services; and
- 15 (b) in relation to a continuing credit contract, means a person who makes cash advances or supplies goods or services to payment for which the contract relates;

"supply" includes—

- 20 (a) in relation to goods, supply (including re-supply within the meaning of subsection (2) (c)) by way of sale or exchange; and
- (b) in relation to services, provide, grant or confer;

"tied continuing credit contract" means tied continuing credit contract within the meaning of section 13 (2);

25 "tied loan contract" means tied loan contract within the meaning of section 13 (1);

30 "trade-in allowance", in relation to a contract of sale of goods or services, means an amount by which the cash price or amount payable under the contract is, or is to be, reduced in respect of an interest in property sold or transferred or agreed to be sold or transferred to the supplier or another person;

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“trade or tie agreement”, in relation to a credit provider and a supplier, means an agreement or arrangement, whether formal or informal, relating to—

- 5 (a) the supply to the supplier of goods or services in which he deals;
- (b) the business of supplying goods or services carried on by the supplier; or
- 10 (c) the provision of credit to purchasers in respect of the payment for goods or services supplied by the supplier;

“Tribunal” means the Credit Tribunal of New South Wales.

(2) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

- 15 (a) a reference to goods or services includes a reference to goods and services;
- (b) a reference to services does not include a reference to services supplied by a bank; and
- (c) a reference to the re-supply of goods bought from a person includes a reference to—
  - 20 (i) a supply of the goods to another person in an altered form or condition; and
  - (ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.

25 (3) In this Act, a reference to a credit contract to which a mortgage relates is a reference to a credit contract the performance of which, or any part of which, is secured by the mortgage, whether or not the contract and the mortgage are included in the same document.

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**Jurisdiction of courts and Tribunal.**

6. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to a court in relation to any contract or other matter—

- 5 (a) where proceedings in relation to the contract or matter have been instituted in, or are before, a court—is a reference to that court;
- (b) where proceedings in relation to that contract or matter have been instituted in, or are before, the Tribunal—is a reference to the Tribunal; or
- 10 (c) in any other case is a reference to—
- (i) the Tribunal; or
- (ii) a court of petty sessions other than a court of petty sessions in respect of which an order under section 77 (3) of the Courts of Petty Sessions (Civil Claims) Act, 1970, is in force.
- 15

(2) Where a court and the Tribunal each have jurisdiction to determine the same matter, proceedings to determine the matter may be instituted before the court or the Tribunal but not before both.

20

(3) Where proceedings are instituted before a court other than the Tribunal in a matter for the determination of which the Tribunal and a court other than the Tribunal each have jurisdiction, the proceedings shall—

- 25 (a) if all the parties to the proceedings so agree; or
- (b) if the court of its own motion or on the application of a party so directs,

be transferred to the Tribunal in accordance with rules of the Tribunal and shall continue before the Tribunal as if they had been instituted there.

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(4) Where proceedings are instituted before the Tribunal in a matter for the determination of which the Tribunal and a court other than the Tribunal each have jurisdiction, the proceedings shall—

- 5 (a) if all the parties so agree; or  
(b) if the Tribunal of its own motion or on the application of a party so directs,

be transferred to the court in accordance with rules of the court or, if the court is not empowered to make those rules, as prescribed  
10 and shall continue before the court as if they had been instituted there.

**Variation of monetary limit.**

7. To the extent to which a regulation made for the purposes of this section so provides—

- 15 (a) a reference in this Act (including this section) to \$15,000 shall be construed as a reference to a different amount specified in the regulation; and  
(b) a reference in this Act (including this section) to a  
20 rate of 14 per cent shall be construed as a reference to a different rate specified in the regulation.

**Presumptions.**

8. Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that—

- 25 (a) a credit sale contract or a loan contract is a credit sale contract or loan contract to which Part III applies; or  
(b) a continuing credit contract is a continuing credit contract to which Division 2 of Part III applies,

it shall be presumed, unless the contrary is established, that Part  
30 III, or Division 2 of Part III, as the case may be, applies to the credit sale contract or loan contract or to the continuing credit contract.

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**Assignors and assignees.**

**9.** This Act applies to a person to whom the rights and obligations of—

- (a) a credit provider under a credit contract;
- 5 (b) a debtor under a credit contract;
- (c) a guarantor under a contract of guarantee;
- (d) a credit provider under a contract of guarantee;
- (e) a mortgagee; or
- (f) a mortgagor,

10 **have, in accordance with this Act, been assigned or transferred or have passed by operation of law in the same way as this Act applies to the person by whom the rights and obligations were assigned or transferred or from whom the rights and obligations have passed by operation of law.**

15 **Certain contracts excluded.**

**10.** A reference in this Act to a contract or agreement in respect of the payment by a debtor for services supplied by another person does not include a contract or agreement that is solely a contract of service that creates the relationship of master and  
20 **servant between the debtor and that other person or by reason of which that other person would be a worker within the meaning of the Workers' Compensation Act, 1926.**

**Annual percentage rate.**

**11.** For the purposes of this Act, except in so far as the context  
25 **or subject-matter otherwise indicates or requires, a reference to the annual percentage rate—**

- (a) **in relation to a credit sale contract or a loan contract in respect of which the annual percentage rate has not been disclosed to the debtor or has been so disclosed other-**  
30 **wise than in accordance with section 37, is a reference**



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to the lowest percentage rate per annum that can be determined in relation to the contract in accordance with that section;

- 5 (b) in relation to a credit sale contract or a loan contract under which the annual percentage rate has been disclosed in accordance with section 37, is a reference to the rate disclosed; and
- 10 (c) in relation to a continuing credit contract, is a reference to the annual percentage rate within the meaning of section 60.

**Credit charge.**

**12. (1)** For the purposes of this Act, a reference to a credit charge—

- 15 (a) in relation to a credit sale contract or a loan contract, is a reference to the amount by which the amount payable under the contract by the debtor to the credit provider or a person on his behalf (not including amounts of deferral charges, default charges or enforcement expenses) exceeds the amount financed; and
- 20 (b) in relation to a billing cycle of a continuing credit contract, is a reference to a credit charge within the meaning of section 59.

**(2)** For the purposes of the definition of “accrued credit charge” in relation to a credit sale contract or a loan contract, the 25 amount of the credit charge which has accrued at a particular time may be calculated—

- (a) by adding together the amounts ascertained by applying the daily percentage rate to the unpaid daily balances (being daily balances before that time)—
  - 30 (i) in the case of a credit sale contract—of the amount financed; or



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- (ii) in the case of a loan contract—of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time;
- 5 (b) where Schedule 1 applies to the credit sale contract or loan contract—in accordance with the formula set out in that Schedule; or
- (c) where an applicable method is prescribed for the purposes of this section for use in the case of a pre-determined credit charge—in accordance with that
- 10 method.
- (3) In calculating the amount of a credit charge which has accrued under a credit sale contract or a loan contract, the credit provider may, if he so determines, apply a percentage rate
- 15 per annum that is lower than the annual percentage rate disclosed under the contract.

**Tied contracts.**

13. (1) For the purposes of this Act, a loan contract is a tied loan contract where the credit provider enters into the loan
- 20 contract with a person who is a buyer of goods or services supplied by a supplier and—
- (a) the credit provider knows or ought reasonably to know that the buyer enters into the loan contract wholly or partly for the purposes of payment for the goods or
- 25 services; and
- (b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier.
- (2) For the purposes of this Act, a continuing credit contract is a tied continuing credit contract where the credit
- 30 provider provides credit under the continuing credit contract in respect of the payment by the debtor for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

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**Contracts for hiring of goods.**

**14. (1) A contract for the hiring of goods shall be deemed to be a credit sale contract if—**

5           **(a) the cash price of the goods at the time when the contract for the hiring is made is not more than \$15,000 or the goods are, or include, a commercial vehicle or farm machinery in relation to which the cash price is more than \$15,000; and**

10           **(b) under the contract the person to whom the goods are hired has a right, obligation or option to purchase the goods.**

**(2) Subsection (1) does not apply to a contract for the hiring of goods that is a transaction, or is included in a class of transactions, specified in an order relating to this section in force 15 under section 19.**

**(3) Except in the case of goods that are or might reasonably be expected to be used by the person to whom they are hired for the purpose of a business carried on by him or by him and another person or persons and the whole or the greater part 20 of the amount payable under the contract is, or might reasonably be expected to be, a loss or outgoing necessarily incurred in carrying on the business, a contract for the hiring of goods under which the person to whom the goods are hired does not have a right, obligation or option to purchase the goods shall be deemed to be a 25 credit sale if, but for the lack of such a right, obligation or option, the goods would be goods referred to in subsection (1) and—**

30           **(a) the contract provides, or it is reasonably likely having regard to the nature of the goods that the goods are, or are to be, affixed to land or to other goods and the goods are not, or when so affixed would not be, reasonably capable of being redelivered to the supplier;**

**(b) before the contract is made, the supplier—**

35           **(i) acts in such a manner that the person to whom the goods are hired ought reasonably to infer that the supplier is willing, whether during or within a reasonable time after the period during**

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- 5                   which the contract is in force, to negotiate the sale to him of the goods or of goods of a value and description similar to the value and description of the goods to which the contract relates (being a value and description as at the time the contract is made); and
- 10                   (ii) expects, or in the circumstances ought reasonably to expect, that the person to whom the goods are hired will negotiate the purchase by him of the goods or of goods of such a similar value and description; or
- 15                   (c) before the contract is made, it is agreed that the person to whom the goods are hired may continue the contract for a nominal consideration for a period that exceeds, or for 2 or more periods that together exceed, the period of 2 years after the expiration of the original term of the contract for the hiring.
- (4) Where a contract for the hiring of goods is by this section deemed to be a credit sale contract—
- 20                   (a) the person from whom the goods are hired is the credit provider under the credit sale contract;
- (b) the person to whom the goods are hired is the debtor under the credit sale contract;
- 25                   (c) the cash price of the goods for the purposes of the credit sale contract is the cash price in relation to the contract for the hiring; and
- (d) the instalments payable under the contract for the hiring are instalments payable under the credit sale contract;
- 30                   (e) the property of the supplier in the goods passes under the contract to the person to whom the goods are hired upon delivery of the goods or the making of the contract whichever last occurs;



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5 (f) a goods mortgage shall be deemed to have been made between the person to whom the goods are hired and the supplier as security for payment to the supplier of the amount payable to him by the person to whom the goods are hired under the contract.

(5) In this section—

(a) a reference to a contract for the hiring of goods does not include a reference to a contract for the hiring of goods to a body corporate; and

10 (b) “cash price”, in relation to a contract for the hiring of goods—

15 (i) where at the time the contract is made the goods are available for purchase for cash from the person from whom the goods are hired—means the lowest price at which the person to whom the goods are hired might have bought the goods from the first-mentioned person for cash;

20 (ii) where at the time the contract is made the goods are reasonably available for purchase for cash but are not reasonably available for purchase for cash from the person from whom the goods are hired—means the price at which, at that time, the person to whom the goods are hired might reasonably have bought goods of that kind for cash; or

25 (iii) where at the time the contract is made the goods are not reasonably available for purchase for cash—means the amount that is the reasonable value of the goods at that time.

30

**Certain contracts not credit sale contracts.**

15. (1) For the purposes of this Act, a reference to a credit sale contract does not include—

35 (a) a reference to a contract of sale of goods or services in respect of the payment for which credit is, or is to be, provided under a continuing credit contract; or

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(b) a lay-by sale within the meaning of the Lay-by Sales Act, 1943.

(2) For the purposes of this Act, a lay-by sale ceases to be a lay-by sale upon delivery to the buyer of the goods to which the sale relates.

**Certain contracts not loan contracts.**

16. For the purposes of this Act, a reference to credit in relation to a loan contract does not include a reference to credit provided under a continuing credit contract.

**10 Business of providing credit.**

17. In this Act, a reference to carrying on a business of providing credit includes a reference to carrying on the provision of credit in the course of or as part of or as incidental to or in connection with the carrying on of another business.

**15 Recognised States.**

18. The Governor may, if he is satisfied that in another State or a Territory of the Commonwealth the law for the regulation of the provision of credit is such as to enable reciprocal arrangements to be made with this State in relation to the provision of credit, may by order declare that other State or that Territory to be a recognised State.

**Exemptions.**

19. (1) The provisions of Parts II, III, IV, V, VI, VII and VIII do not apply to or with respect to a regulated contract or a regulated mortgage where the debtor or mortgagor is a body corporate.

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(2) The provisions of Parts III, V, VI and VII do not apply to or with respect to a regulated contract where the credit provider is a society registered under the Co-operation Act, 1923, or specified in the Second Schedule to that Act, or a society registered 5 under the Permanent Building Societies Act, 1967, or a credit union registered under the Credit Union Act, 1969.

(3) The provisions of Parts III, IV and VII do not apply to or with respect to the provision of credit by a bank or a pastoral finance company where the credit is provided by way of overdraft 10 or otherwise than by way of a credit sale contract, continuing credit contract or term loan.

(4) The Governor may, by order published in the Gazette, declare that the provisions of this Act, or such provisions as are specified in the order—

- 15 (a) do not have effect in relation to a specified person or to a specified class of persons;
- (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified;
- 20 (c) do not have effect in relation to a specified transaction or class of transactions;
- (d) have effect in relation to a specified transaction or class of transactions to such extent as is specified;
- (e) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons; or
- 25 (f) have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons to such extent as is specified.

(5) An order made under subsection (4)—

- 30 (a) may specify the period during which the order shall remain in force;
- (b) may be made subject to such terms and conditions as are specified in the order; and



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(c) may specify the circumstances under which a person to whom the order applies is, by reason of the order, to be deemed to be an exempt credit provider for the purposes of this Act.

5           (6) An order in force under subsection (4), and such an order as altered or varied from time to time, has effect according to its tenor.

          (7) A person to whom an order under subsection (4) applies, or to whom such an order as altered or varied from time  
10 to time applies, shall comply with the terms and conditions (if any) to which the order is subject.

Penalty applying to this subsection : \$5,000.

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**PART II.**

**CONTRACTS OF SALE.**

**15 Application of Part.**

20           **20. (1)** In this Part, a reference to a contract of sale is a reference to—

- (a) a contract of sale of goods or services where the cash price in relation to the sale is not more than \$15,000;
- 20           (b) a contract of sale of goods, being a commercial vehicle or farm machinery; or
- (c) a contract of sale—
  - (i) of goods, being a commercial vehicle or farm machinery in relation to which the cash price is  
25           more than \$15,000; and
  - (ii) of other goods, or of services, or of other goods and services.

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(2) For the purposes of this Part—

- 5 (a) the definition of “linked credit provider” in section 5  
(1) applies in relation to a vendor of land in the same  
way as it applies in relation to a supplier of goods or  
services;
- (b) a credit provider and a vendor of land have a trade or  
tie agreement if they have an agreement or arrangement,  
whether formal or informal, for the provision of credit  
to purchasers of land from that vendor;
- 10 (c) section 13 applies to a loan contract entered into by a  
credit provider with a purchaser of land from a vendor  
in the same way as it applies to a loan contract entered  
into by a credit provider with a buyer of goods or services  
from a supplier;
- 15 (d) sections 24–28 apply to a vendor of land and the  
provision of credit in respect of the payment by a  
purchaser under a contract for the purchase of land  
from that vendor in the same way as they apply to a  
supplier of goods or services and the provision of credit  
20 in respect of the payment by a buyer for goods or services  
supplied by that supplier;
- 25 (e) a reference to a tied loan contract includes a reference  
to a loan contract under which the amount financed is  
not in excess of \$15,000 and is applied in making a  
payment under a contract for the purchase of land unless  
the credit provider did not know, and could not reason-  
ably have ascertained, that the amount financed was to  
be so applied; and
- 30 (f) a reference to a tied continuing credit contract includes a  
reference to such a contract under which an amount  
that—
- (i) does not exceed \$15,000; and
  - (ii) is in respect of a payment under a contract for  
the purchase of land,

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5 is entered in the account of the debtor kept by the credit provider unless the credit provider did not know, had no reason to believe and could not reasonably have ascertained, that the amount was in respect of such a payment.

**Contract conditional on credit.**

21. (1) Where a buyer, before entering into a contract of sale of goods or services, makes it known to the supplier that he requires credit to be provided in respect of the payment for the  
10 goods or services and the credit is not provided by the supplier, the buyer may, if he takes reasonable steps to obtain the credit but does not obtain it, rescind the contract by notice in writing given to the supplier within a reasonable period after entering into the contract.

15 (2) Where a buyer has purported to rescind a contract of sale as referred to in subsection (1), a court may, on the application of the supplier or the buyer, declare whether or not the purported rescission was valid and, if it declares that it was valid—

20 (a) may, on the application of the supplier or the buyer, where there is a dispute as to the return of the goods to the supplier, make such order as it thinks fit relating to the return of the goods; and

25 (b) may, where the contract of sale included terms relating to the compensation of the supplier for loss suffered by reason of the delivery of the goods to the buyer, make such order as it thinks fit relating to the payment of compensation.

**Restriction of source of credit prohibited.**

22. A supplier shall not require a person who, under a contract  
30 of sale, buys or proposes to buy goods or services supplied by him to obtain credit from a specified person in respect of payment for the goods or services.

**Penalty : \$1,000.**



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**Consequence of discharge of certain contracts.**

23. (1) Subject to section 24, where a contract of sale is rescinded or discharged (whether under this Act or under any other Act or law) and—

5 (a) a regulated credit sale contract or regulated loan contract relating to the contract of sale made by the buyer with the supplier is discharged; and

(b) in relation to the regulated credit sale contract or regulated loan contract, there is a regulated mortgage,

10 that mortgage is, at the same time as the regulated credit sale contract or regulated loan contract is discharged, discharged to the extent that it secures the payment of a debt or other pecuniary obligation or the performance of any other obligation under the regulated credit sale contract or regulated loan contract.

15 (2) Subject to section 24, where a contract of sale is rescinded or discharged (whether under this Act or under any other Act or law) and—

20 (a) in respect of the contract of sale, there is a regulated continuing credit contract made by the buyer with the supplier; and

(b) in relation to the regulated continuing credit contract there is a regulated mortgage,

that mortgage is, at the same time as the contract of sale is rescinded or discharged, discharged to the extent that it secures  
25 the payment of the amount entered in the account of the debtor kept by the credit provider under the contract in relation to the contract of sale and the amount (if any) of credit charges so entered and attributable to the contract of sale.

**Linked credit provider.**

30 24. (1) Where a buyer who has entered into a tied loan contract or tied continuing credit contract with a linked credit provider of a supplier for the provision of credit in respect of the payment by the buyer for goods or services supplied by the supplier

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under a contract of sale is entitled to claim damages against or recover a sum of money from the supplier for misrepresentation, breach of contract or failure of consideration in relation to the contract of sale, the supplier and linked credit provider are, subject  
5 to this section, jointly and severally liable to the buyer for the damages or sum of money.

(2) It is a defence to proceedings arising under subsection (1) against a linked credit provider of a supplier if the linked credit provider proves—

- 10 (a) that the credit provided by him to the buyer was provided as a result of an approach by the buyer to the credit provider that was not induced by the supplier; or
- (b) that—
- 15 (i) after due inquiry before he became such a linked credit provider, he was satisfied that the supplier was of good reputation in respect of his financial standing and ethical standards of trading;
- 20 (ii) since becoming such a linked credit provider, but before the tied loan contract or tied continuing credit contract to which the proceedings relate was entered into, he had not had cause to suspect, and had not suspected, that the buyer might be entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract or failure of consideration as referred to in subsection (1); and
- 25 (iii) since becoming such a linked credit provider, but before the tied loan contract or tied continuing credit contract to which the proceedings relate was entered into, he had not had any
- 30 cause to suspect, and had not suspected, that the supplier might be unable to meet his liabilities as and when they fell due.

(3) Subject to subsection (4), a buyer may in any  
35 proceedings set up the liability of a linked credit provider for damages or a sum of money under subsection (1) in diminution or



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extinction of the buyer's liability upon any claim for damages or a sum of money made by the linked credit provider against the buyer in the proceedings.

(4) Subject to subsection (5), a buyer may not—

- 5 (a) bring proceedings for damages or to recover a sum of money from a linked credit provider; or
- (b) where proceedings are brought against the buyer by a linked credit provider, make a cross claim or exercise a right referred to in subsection (3) against the linked credit provider,

10 in respect of a liability for which, by reason of this section, a supplier and a linked credit provider are jointly and severally liable unless he brings the proceedings against the supplier and linked credit provider jointly or, in the case of a cross claim or  
15 right referred to in subsection (3), claims in the proceedings against the supplier in respect of the liability.

(5) Subsection (4) does not apply where—

(a) the supplier—

- 20 (i) is a bankrupt or a person whose affairs are being dealt with under Part X of the Bankruptcy Act 1966 of the Parliament of the Commonwealth as amended and in force for the time being;
- (ii) being a body corporate, has been dissolved or has commenced to be wound up; or
- 25 (iii) being a natural person, has died; or

(b) in a particular case, the court believes on reasonable grounds that it is not reasonably likely that any part of a judgment obtained against the supplier would be satisfied and has on the application of the buyer declared  
30 that subsection (4) does not apply in that case.

(6) A reference in subsection (5) to the commencement of winding up is a reference to commencement of winding up as determined under the law relating to companies in the place where the body corporate is being wound up.



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(7) The liability of a linked credit provider to a buyer for damages or a sum of money in respect of a contract of sale referred to in subsection (1) does not exceed the sum of—

- 5 (a) the amount financed under the tied loan contract or tied continuing credit contract in relation to the contract of sale;
- (b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and
- 10 (c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

(8) Where in proceedings in respect of the liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, the judgment—

- 15 (a) is not enforceable against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and
- 20 (b) is enforceable against the linked credit provider only to the extent that the buyer has not received satisfaction from the supplier equal to the liability of the linked credit provider.

(9) Where in proceedings in respect of the liability arising under subsection (1) a right referred to in subsection (3) is 25 established against a linked credit provider, the buyer—

- (a) shall not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider and a written demand made on the supplier for satisfaction of the judgment has remained 30 unsatisfied for not less than 30 days; and
- (b) may receive the benefit only to the extent that the buyer has not received satisfaction from the supplier equal to the liability of the linked credit provider.

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(10) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of his liability under subsection (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by him in defending the proceedings by reason of which the liability was incurred.

(11) Notwithstanding anything to the contrary in any other Act, where in proceedings in respect of the liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, or against a linked credit provider, for damages or a sum of money, the court shall upon application by the buyer, unless good cause is shown to the contrary, allow or award interest to the buyer against the supplier and linked credit provider or against the linked credit provider, as the case may be, upon the whole or part of the damages or sum of money—

(a) at the percentage rate per annum that is the annual percentage rate under the tied loan contract or tied continuing credit contract; or

(b) at 8 per cent per annum,

whichever is the greater, from the time when the buyer became entitled to recover the damages or sum of money until the date on which the judgment is given.

(12) In determining whether good cause is shown against allowing or awarding interest under subsection (11) upon the whole or part of the damages or sum of money, the court shall take into account any payment made into court by the supplier or linked credit provider, as the case may be.

(13) Where a judgment in respect of a liability arising under subsection (1) in relation to a contract of sale is enforced against a linked credit provider, the linked credit provider is subrogated to the extent of the judgment so enforced to any rights that the buyer would have had but for the judgment against any person in respect of the loss or damage suffered by him as a result of the misrepresentation, breach of contract or failure of consideration in relation to the sale from which the liability arose.



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(14) Subsection (1) does not apply with respect to a tied continuing credit contract where the linked credit provider of the supplier entered into the tied continuing credit contract with the buyer under an agreement of a kind referred to in section 53 (1) 5 (b).

(15) In this section, a reference to a court does not include a reference to the Tribunal.

**Consequential discharge of tied loan contract.**

25. (1) Subject to sections 24 and 27, where a contract of 10 sale is rescinded or discharged (whether under this Act or any other Act or law) and there is a tied loan contract made with the buyer by a linked credit provider of the supplier under the contract of sale, at the same time as the contract of sale is rescinded or discharged—

15 (a) the tied loan contract is discharged to the extent that it was entered into for the purposes of the payment for the goods or services supplied under the contract of sale; and

20 (b) any mortgage relating to the tied loan contract is discharged to the extent that it secures the payment of a debt or other pecuniary obligation or performance of any other obligation under the tied loan contract.

(2) Subsection (1) does not apply where the credit is 25 provided by a linked credit provider of a supplier to a buyer as a result of an approach by the buyer to the credit provider which was not induced by the supplier.

(3) Where, by reason of subsection (1), a tied loan contract is discharged when a contract of sale is rescinded or discharged—

30 (a) the credit provider is liable to the buyer for any amount paid by the buyer to the credit provider under the tied loan contract;



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(b) the supplier is liable to the credit provider for—

(i) the amount (if any) paid under the tied loan contract by the credit provider to the supplier;

5 (ii) the amount paid under the tied loan contract by the credit provider to the buyer and paid by the buyer to the supplier; and

10 (iii) the amount of the loss (if any) suffered by the credit provider by reason of the discharge of the tied loan contract, being an amount not exceeding the amount of the accrued credit charge under the tied loan contract; and

15 (c) the buyer is liable to the credit provider for any amount paid under the tied loan contract to the buyer by the credit provider, other than amounts paid to the buyer and paid by him to the supplier,

and, where the contract of sale is for, or includes, a sale of goods—

(d) if the goods are in the possession of the buyer—

20 (i) where, before the termination of the contract of sale, the goods were not subject to a goods mortgage relating to the tied loan contract, the buyer shall deliver the goods to the supplier; or

25 (ii) where, before the termination of the contract of sale, the goods were subject to a goods mortgage relating to the tied loan contract, the buyer shall deliver the goods to the credit provider; and

(e) if the goods are in the possession of the credit provider and no amounts are owed to the credit provider under paragraph (b), the credit provider shall deliver the goods to the supplier.

30 (4) Where, under subsection (3) (d), goods are delivered to the credit provider, the credit provider is entitled to possession of the goods as against the supplier until the credit provider has been paid the amount for which the supplier is liable to the credit provider under subsection (3) (b).

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(5) Where there is a dispute arising out of the operation of this section, a court may, on the application of a buyer, supplier, credit provider or mortgagee, make such orders as it thinks fit declaring or adjusting rights or liabilities affected by the operation of this section—

- (a) to give effect to, or to enforce any rights or liabilities consequent upon that operation; or
- (b) subject to any such rights or liabilities, to restore the buyer, supplier and credit provider and any mortgagee as nearly as practicable to their respective positions before the tied loan contract to which the dispute relates was entered into.

**Discharge of tied continuing credit contract on discharge of contract of sale.**

26. (1) Subject to sections 24 and 27, where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) and there is a tied continuing credit contract made with the buyer by a linked credit provider of the supplier under the contract of sale, any mortgage relating to the tied continuing credit contract is discharged to the extent that it secures payment of the amount entered in relation to the contract of sale in the account of the debtor kept by the credit provider under the continuing credit contract and the amount (if any) of credit charges so entered and attributable to the contract of sale and—

- (a) the credit provider shall enter in that account an amount by way of refund to the debtor equal to the first-mentioned amount; and
- (b) the supplier is liable to the credit provider for an amount equal to the first-mentioned amount,

and, where the contract of sale is for or includes a sale of goods—

- (c) if the goods are in the possession of the buyer—
  - (i) where, before the rescission or discharge the goods were not subject to a goods mortgage relating to the tied continuing credit contract, the buyer shall deliver the goods to the supplier; or

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5 (ii) where, before the rescission or discharge the goods were subject to a goods mortgage relating to the tied continuing credit contract, the buyer shall deliver the goods to the credit provider; and

(d) if the goods are in the possession of the credit provider and no amounts are owed to the credit provider under paragraph (b), the credit provider shall deliver the goods to the supplier.

10 (2) Where, under subsection (1) (c), goods are delivered to the credit provider, the credit provider is entitled to possession of the goods as against the supplier until the credit provider has been paid the amount for which the supplier is liable to the credit provider under subsection (1) (b).

15 (3) Subsection (1) does not apply where the credit is provided by a linked credit provider of a supplier to a buyer as a result of an approach by the buyer to the credit provider which was not induced by the supplier.

20 (4) Where there is a dispute arising out of the operation of this section, a court may, on the application of a buyer, supplier, credit provider or mortgagee make such orders as it thinks fit declaring or adjusting rights or liabilities affected by the operation of this section—

25 (a) to give effect to, or to enforce, any rights or liabilities consequential upon that operation; or

30 (b) subject to any such rights or liabilities to restore the buyer, supplier and credit provider and any mortgagee as nearly as practicable to their respective positions before the tied continuing credit contract to which the dispute relates was entered into.



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**Operation of sections 25 and 26.**

**27. The provisions of sections 25 and 26—**

- 5       **(a) are in addition to all other rights of a buyer exercisable against a linked credit provider or supplier (whether under this Act or under any other Act or law); and**
- (b) in so far as they relate to the rights between themselves of a linked credit provider and a supplier, may be varied by agreement between the credit provider and supplier.**

**Notice of rescission, etc., to linked credit provider.**

- 10   **28. A supplier who becomes aware that a contract of sale by him is rescinded or discharged, being a contract of sale in respect of which the supplier knows a linked credit provider of the supplier has—**

- (a) entered into a tied loan contract with the buyer; or**
- 15       **(b) entered an amount in the account of the buyer kept by him under a tied continuing credit contract in relation to the contract of sale,**

**shall forthwith give notice of the rescission or discharge to the linked credit provider.**

- 20   **Penalty : \$500.**
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**PART III.**

**REGULATED CONTRACTS.**

**DIVISION 1.—*Credit Sale Contracts and Loan Contracts.***

**Application of Part.**

5 **29. (1)** In this Part, a reference to a credit sale contract does not include a reference to a contract of sale of goods or services in relation to which the cash price is more than \$15,000, unless—

(a) it is a contract for the sale of a commercial vehicle or farm machinery; or

10 (b) it is a contract for the sale—

(i) of a commercial vehicle or farm machinery in relation to which the cash price is more than \$15,000; and

(ii) of other goods or of other goods and services.

**15 Application of Part to loan contract.**

(2) In this Part a reference to a loan contract does not include a reference to a loan contract in respect of which—

(a) the amount financed is more than \$15,000;

20 (b) there is only one annual percentage rate and that rate does not exceed 14 per cent; or

(c) there is an acceptable rate of interest and a higher annual percentage rate that exceeds the acceptable rate by not more than 2 per cent and that acceptable rate does not exceed 14 per cent.

25 unless, when the contract is entered into, a goods mortgage relating to a commercial vehicle or farm machinery has been, or is agreed to be, entered into to secure the payment of a debt or the performance of an obligation under the contract.

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**Offers to be in writing.**

30. (1) Subject to subsection (2), a credit provider shall not enter into a credit sale contract, or a loan contract that is not in writing.

5 Penalty: \$1,000.

(2) Subsection (1) is not contravened if a credit sale contract, or a loan contract, is entered into by the acceptance of an offer to enter into the contract made to the credit provider in writing signed by the debtor.

10 (3) Subsection (1) does not apply in respect of a loan contract entered into pursuant to an agreement in accordance with section 43 of the provision of store credit certificates.

**Copy of offer to be given.**

31. (1) A person who is—

15 (a) a credit provider;

(b) an agent of a credit provider authorised to receive an offer to the credit provider to enter into a credit sale contract or a loan contract; or

20 (c) a supplier in relation to whom a credit provider is a linked credit provider,

shall not give to a person a form for signature by that person as an offer in writing to the credit provider to enter into a credit sale contract or a loan contract unless the first matter appearing on the form, other than a heading, is a notice in the form prescribed for  
25 the purposes of this subsection.

Penalty: \$1,000.

(2) A credit provider or an agent of a credit provider shall not give to a person an offer in writing signed by or on behalf of the credit provider to enter into a credit sale contract or a loan



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contract unless the first matter appearing on the document, other than a heading, is the notice in a form prescribed for the purposes of this subsection.

Penalty: \$1,000.

5 (3) Where—

(a) a credit provider;

(b) an agent of a credit provider authorised to receive an offer to the credit provider to enter into a credit sale contract or a loan contract; or

10 (c) a supplier in relation to whom a credit provider is a linked credit provider,

gives to a person a form for signature by that person as an offer in writing to the credit provider to enter into a credit sale contract or a loan contract, the credit provider, agent or supplier, as the case  
15 may be, shall, before that person signs the form also give to that person for his own use a form certified by the credit provider, agent or supplier as a true copy of the form to be given for signature.

Penalty: \$1,000.

(4) Where a credit provider or an agent of a credit pro-  
20 vider gives to a person for acceptance by that person an offer in writing signed by or on behalf of the credit provider to enter into a credit sale contract or a loan contract, the credit provider or agent shall, before that person accepts the offer, also give to that  
25 person for his own use a form certified by the credit provider or agent as a true copy of the offer.

Penalty: \$1,000.

(5) Where a person signs a document and thereby offers to enter into, or enters into, a credit sale contract or a loan contract, any subsequent alteration of, or addition to, the terms and con-  
30 ditions of the contract has no force or effect unless, after the alteration or addition has been made, that person has, opposite the alteration or addition, signed or initialled the margin of—

(a) the document in which the terms and conditions of the contract are specified; and

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(b) the copy of the document given to him pursuant to subsection (1) or (2).

(6) Where a person signs a document and thereby offers to enter into, or enters into, a credit sale contract, or a loan contract—

- 5 (a) the credit provider;
- (b) an agent of the credit provider authorised to make or receive the offer to enter into the contract; or
- (c) a supplier in relation to whom the credit provider is a linked credit provider,

10 shall not alter or add to the terms and conditions specified in the document with intent to deceive the debtor or, where the alteration or addition is made by the supplier, with intent to deceive the credit provider, whether or not the document in which those terms and conditions are specified has been signed or initialled as provided in 15 subsection (3).

**Penalty: \$1,000.**

(7) In this section, “offer in writing” includes a document that if signed by or on behalf of the credit provider and the debtor, would be a credit sale contract or a loan contract.

20 (8) This section, subsections (5) and (6) excepted, does not apply in respect of a loan contract entered into pursuant to an agreement in accordance with section 43 for the provision of store credit certificates.

**Copy of accepted offer to be given.**

25 32. (1) Where a person has signed an offer in writing to a credit provider to enter into a credit sale contract or a loan contract, the credit provider shall, not later than 14 days after accepting the offer, give to the debtor notice in writing of the acceptance endorsed on, or accompanied by, a copy of the accepted 30 offer.

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(2) Subsection (1) does not apply in relation to—

- (a) an offer to enter into a credit sale contract relating to goods that, in accordance with the offer, is accepted by delivery of the goods; or
- 5 (b) an offer to enter into a credit sale contract relating to services that, in accordance with the offer, is accepted by commencement or performance of the services.

(3) In this section, “offer in writing” includes a document that, if signed by or on behalf of the credit provider and the  
10 debtor, would be a credit sale contract or a loan contract.

(4) This section does not apply in respect of a loan contract entered into pursuant to an agreement in accordance with section 43 for the provision of store credit certificates.

**Summary of rights to be given.**

15 33. (1) Where a credit sale contract or a loan contract is entered into, the credit provider shall, not later than 14 days after the contract is entered into, give to the debtor a statement in or to the effect of the form prescribed for the purposes of this section containing a summary of the rights and obligations of the debtor  
20 under this Act.

Penalty: \$1,000.

(2) Subsection (1) does not apply if the credit provider, an agent of the credit provider or a supplier in relation to whom the credit provider is a linked credit provider gives to the debtor at  
25 or before the time when the credit sale contract or loan contract is entered into the statement referred to in that subsection.

(3) This section does not apply in respect of a loan contract entered into pursuant to an agreement in accordance with section 43 for the provision of store credit certificates.



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**Credit sale contract to include certain matters.**

**34. (1)** A credit sale contract relating to goods or services shall include—

- 5 (a) the date on which the contract, or an offer to enter into the contract, was signed by the debtor;
- (b) a description or identification of the goods or services;
- (c) a statement of the amount financed in accordance with Schedule 2;
- 10 (d) a statement of the credit charge in accordance with Schedule 3;
- (e) where, at the relevant date, it is possible to express the whole of the credit charge as an amount of money, a statement of the total of—
  - 15 (i) the credit charge; and
  - (ii) the amount financed;
- (f) a statement of the annual percentage rate in accordance with section 37;
- (g) a statement of the person to whom, and the place at which, payments by the debtor are to be made;
- 20 (h) a statement whether payments are to be made by instalments and, if they are to be so made, a statement of such of the following as are known or can be calculated at the relevant date—
  - 25 (i) where each instalment is the same amount, that amount;
  - (ii) where each instalment except the last is the same amount, that amount and the amount of the last instalment;
  - 30 (iii) where neither subparagraph (i) nor subparagraph (ii) applies, the amount of each instalment;
  - (iv) the number of instalments; and

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- (v) the time for the payment of each instalment or the time for the payment of the first instalment and the interval between each instalment and the subsequent instalment;
  - 5 (i) if a commission charge is payable, a statement to that effect; and
  - (j) a statement whether any mortgage relating to the contract has been or is agreed to be entered into.
- (2) A credit provider shall not include in the amount  
10 financed under a credit sale contract—
- (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance (not being compulsory insurance) other than a risk specified in clause 1 (d) (iv) or 1 (e) of Schedule 2;
  - 15 (b) where a goods mortgage relating to the contract has been entered into, an amount in respect of insurance against loss by the operation of section 105 of the security interest of the mortgagee in goods subject to the mortgage exceeding an amount calculated by applying  
20 the prescribed rate for title insurance in relation to goods of that class; or
  - (c) an amount in respect of the discharge of a liability of the debtor to the credit provider that exceeds—
    - 25 (i) where the liability arose under an earlier credit sale contract or a loan contract, the amount that would have been due to the credit provider under section 109 if, immediately before the making of the later credit sale contract, the debtor were to discharge his obligations under the earlier  
30 credit sale contract, or the loan contract, in accordance with section 109; or
    - (ii) where the liability arose under a regulated continuing credit contract, the amount that would  
35 have been due to the credit provider under the continuing credit contract if, immediately before the making of the credit sale contract, the

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debtor were to discharge his obligations under the continuing credit contract in accordance with Division 2 of Part III.

(3) Nothing in this section requires the inclusion in a credit sale contract of a statement that is not applicable to the contract.

(4) In this section, "relevant date" means the date on which the credit sale contract is entered into or, if the credit sale contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

**Loan contract to include certain matters.**

35. (1) A loan contract shall include—

- (a) the date on which the contract, or an offer to enter into the contract, was signed by the debtor;
- 15 (b) a statement of the amount financed in accordance with Schedule 4;
- (c) a statement of the credit charge in accordance with Schedule 5;
- 20 (d) where, at the relevant date, it is possible to express the whole of the credit charge as an amount of money, a statement of the total of—
  - (i) the credit charge; and
  - (ii) the amount financed;
- 25 (e) a statement of the annual percentage rate in accordance with section 37;
- (f) a statement of the person to whom and the place at which payments by the debtor are to be made;
- 30 (g) a statement whether payments are to be made by instalments and if they are to be so made, a statement of such of the following as are known or can be calculated at the relevant date—
  - (i) where each instalment is the same amount, that amount;



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- 5                   (ii) where each instalment except the last is the same amount, that amount and the amount of the last instalment;
- (iii) where neither subparagraph (i) nor subparagraph (ii) applies, the amount of each instalment;
- (iv) the number of instalments; and
- 10                  (v) the time for the payment of each instalment or the time for the payment of the first instalment and the interval between each instalment and the subsequent instalment;
- (h) if a commission charge is payable, a statement to that effect; and
- 15                  (i) a statement whether any mortgage relating to the contract has been or is agreed to be entered into.
- (2) A credit provider shall not include in the amount financed under a loan contract—
- 20                  (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance other than a risk specified in clause 1 (b) of Schedule 4;
- 25                  (b) where a goods mortgage relating to the contract has been entered into, an amount in respect of insurance against loss by the operation of section 105 of the security interest of the mortgagee in goods subject to the mortgage exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
- 30                  (c) an amount in respect of the discharge of the liability of the debtor to the credit provider that exceeds—
- 35                    (i) where the liability arose under a credit sale contract or an earlier loan contract, the amount that would have been due to the credit provider under section 109 if, immediately before the making of the later loan contract, the debtor were to discharge his obligations under the credit sale contract, or the earlier loan contract, in accordance with section 109; or

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(ii) where the liability arose under a regulated continuing credit contract, the amount that would have been due to the credit provider under the continuing credit contract, if immediately before the making of the loan contract, the debtor were to discharge his obligations under the continuing credit contract in accordance with Division 2 of Part III.

5  
10 (3) Nothing in this section requires the inclusion in a loan contract of a statement that is not applicable to the contract.

(4) In this section "relevant date" means the date on which the loan contract is entered into or, if the loan contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

15 **"Add-on" contracts.**

36. (1) This section applies—

20 (a) to a credit sale contract contained in or made pursuant to an agreement in writing that provides for the consolidation of the amount payable under the credit sale contract with the unpaid balance payable under another credit sale contract or loan contract (not being a credit sale contract or loan contract in relation to which there is a mortgage) that is discharged by agreement upon the entering into of the first-mentioned credit sale contract;  
25 and

30 (b) to a loan contract contained in or made pursuant to an agreement in writing that provides for the consolidation of the amount payable under the loan contract with the unpaid balance payable under another loan contract or credit sale contract (not being a loan contract or credit sale contract in relation to which there is a mortgage) that is discharged by agreement upon the entering into of the first-mentioned loan contract,

35 where in respect of the credit sale contract or loan contract to which this section applies—

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- (c) the credit charge does not exceed the credit charge calculated in accordance with a method specified in the agreement;
- 5 (d) the amount of each instalment payable under the credit sale contract or loan contract does not exceed the amount of each instalment calculated in accordance with a method specified in the agreement; and
- 10 (e) the annual percentage rate does not exceed the maximum annual percentage rate specified in the agreement or exceeds that maximum rate by not more than 1 part in 50 of that maximum rate.

(2) A credit sale contract, or a loan contract, to which this section applies does not fail to be in accordance with section 34 or 35 by reason only that—

- 15 (a) in the case of a credit sale contract, the statements referred to in—
  - (i) section 34 (2) (c)–(i);
  - (ii) clause 1 (d)–(j) of Schedule 2; or
  - (iii) clause 1 of Schedule 3,
- 20 are not included in the contract; or
- (b) in the case of a loan contract, the statements referred to in—
  - (i) section 35 (2) (b)–(h);
  - (ii) clause 1 (b)–(g) of Schedule 4; or
  - 25 (iii) clause 1 of Schedule 5,
- are not included in the contract,

if—

- (c) each such statement—
  - 30 (i) is given in writing to the debtor within 28 days after the credit sale contract or loan contract is made; or
  - (ii) is included partly in writing so given and partly in the contract; or



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(d) in the case of the statement referred to in section 34 (2) (i) and 35 (2) (h), the statement is included in the agreement pursuant to which the contract is made.

(3) Where the statement of the amount financed in respect of a credit sale contract or a loan contract to which this section applies is required under clause 1 (h) of Schedule 2 or 1 (e) of Schedule 3 to include an amount in respect of the discharge of the liability of the debtor under a previous credit sale contract or loan contract in respect of which it was possible to express the credit charge as an amount of money, the credit provider shall be deemed not to have failed to comply with clause 1 (h) of Schedule 2 or 1 (e) of Schedule 3 by reason only that the statement of the amount financed includes an amount as the consideration for the discharge that exceeds the amount that in accordance with clause 1 (h) of Schedule 2 or 1 (e) of Schedule 3 may be so included if the amount of the consideration for the discharge is expressed as the sum of—

(a) the amount that would be due to the credit provider under section 109 if immediately before the discharge the debtor were to discharge his obligations under the previous credit sale contract or loan contract in accordance with that section; and

(b) the amount of the credit charge in respect of the previous credit sale contract or loan contract less the amount of the accrued credit charge in respect of that credit sale contract or loan contract,

and the statement includes particulars of the calculation of that amount of consideration by stating—

(c) separately the amounts referred to in paragraphs (a) and (b);

(d) the outstanding balance of deferral charges (if any) charged in accordance with this Part in respect of the previous credit sale contract or loan contract;

(e) the outstanding balance of default charges (if any) charged in accordance with this Part in respect of the previous credit sale contract or loan contract; and

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- (f) the outstanding balance of enforcement expenses (if any) in respect of the previous credit sale contract or loan contract,

and (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges deducted from the sum of the amounts referred to in paragraphs (c)–(f).

**Statement of annual percentage rate.**

37. The annual percentage rate required under section 34 or 35 and the regulations to be stated in a credit sale contract or a loan contract is—

- (a) where, under the contract, the whole of the credit charge would be determined by the application of a percentage rate per annum to the daily unpaid balance of the amount financed—that percentage rate; and
- (b) where under the contract the whole of the credit charge would not be so determined—
- (i) the percentage rate per annum which when applied to the daily unpaid balance of the amount financed calculated according to the actuarial method will yield a sum equal to the amount which under the contract would be the credit charge if all payments under the contract were paid on the respective days on which under the contract they would be required to be paid;
- (ii) the percentage rate per annum determined according to the method set out in Schedule 6, if applicable; or
- (iii) where an applicable method has been prescribed for the purposes of this section, the percentage rate per annum determined according to that method,

whichever the credit provider determines.



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**Lower acceptable interest rate.**

38. (1) Where the payment of a debt or other pecuniary obligation or the performance of any other obligation under a loan contract is bona fide secured by a mortgage of land the loan contract may, notwithstanding section 39, include an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2 per cent.

(2) Where, in accordance with subsection (1), a loan contract includes 2 annual percentage rates, the statement in accordance with section 37 of the annual percentage rate required under section 34 shall be made in respect of each rate.

**Generally, only one interest rate to be stated.**

39. (1) Subject to section 38, a credit sale contract or a loan contract shall be deemed to be not in accordance with the provisions of this Division if it includes—

- (a) a statement of, or a reference to, more than one annual percentage rate for the purposes of the contract; or
- (b) a statement of, or a reference to, any other rate to the effect that the credit charge under the contract is or is to be determined by the application of that rate to the whole or any part of the amount financed.

(2) Where, in a credit sale contract or a loan contract, there is a statement of, or a reference to, more than one annual percentage rate for the purposes of the contract or a statement of, or a reference to, any other rate referred to in subsection (1), the annual percentage rate for the purposes of the contract shall be the lowest rate so stated or referred to.

**Store credit agreement—loan contract.**

40. (1) Subject to sections 41–45, a loan contract may be entered into by a credit provider pursuant to an agreement for the provision by him, being a supplier of goods or services, of store credit certificates to another person.



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(2) An agreement for the provision of store credit certificates that is in writing and is in accordance with section 42 is not a loan contract.

**Store credit agreement to be in writing.**

5 41. (1) Subject to subsection (2), a credit provider shall not enter into a loan contract pursuant to an agreement for the provision of store credit certificates unless—

(a) the agreement is in writing and is in accordance with section 43; and

10 (b) the loan contract is in writing and is in accordance with section 44.

**Penalty : \$1,000.**

(2) Subsection (1) is not contravened if—

(a) the agreement is in accordance with section 43; and

15 (b) the loan contract is in accordance with section 44,

and the agreement and loan contract are made by the acceptance of an offer in writing signed by the debtor to the credit provider to enter into the agreement and loan contract.

**Store credit agreement—documentation.**

20 42. Where a loan contract is entered into pursuant to an agreement for the provision of store credit certificates, the credit provider shall, not later than the date on which store credit certificates are first provided to the debtor under the agreement, give to the debtor—

25 (a) a copy of the agreement and the loan contract;

(b) a statement in a separate document from the agreement and the loan contract in or to the effect of the form prescribed for the purposes of this section containing a summary of the provisions of section 43 relating to  
30 the return of store credit certificates; and

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- (c) a statement in or to the effect of the form prescribed for the purposes of section 33 containing a summary of the rights and obligations of the debtor under this Act.

**Terms of store credit agreement.**

- 5   **43. (1)** An agreement for the provision of store credit certificates pursuant to which a loan contract is entered into shall include—
- (a) the date of the agreement;
- 10       (b) a statement of the nominal value of store credit certificates provided or agreed to be provided before a date specified in the agreement for the purposes of this paragraph;
- (c) a statement that a loan contract is made pursuant to the agreement in accordance with section 44;
- 15       (d) a statement of the first date on which an amount payable to the credit provider under the loan contract becomes due, being a date not earlier than 14 days after the date specified in the agreement for the purposes of paragraph (b);
- 20       (e) a statement that—
- (i) where a store credit certificate is returned to the credit provider before the first date referred to in paragraph (d), the debtor incurs no liability to the credit provider under the loan contract in respect of the nominal value of the certificate;
- 25           (ii) where a store credit certificate is returned to the credit provider on or after the first date referred to in paragraph (d), the credit provider is liable to the debtor for the amount (if any) paid by the debtor under the loan contract in respect of the nominal value of the certificate;
- 30           (iii) where, before the first date referred to in paragraph (d), the debtor pays the nominal value of a store credit certificate to the credit provider,

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the debtor incurs no further liability to the credit provider under the loan contract in respect of the nominal value of the certificate; and

5 (iv) unless, before the first date referred to in paragraph (d), a store credit certificate is returned to the credit provider or the debtor pays the nominal value of a store credit certificate to the credit provider, the liability of the debtor to the credit provider under the loan contract in respect of the nominal value of the certificate is the liability incurred in accordance with the loan contract;

15 (f) a statement of the place or places at which the debtor may return a store credit certificate to the credit provider or address to which he may return it by post to the credit provider; and

20 (g) a statement that a store credit certificate may not be used for the purchase of goods or services except at a place of business of the credit provider or of a corporation that is a related corporation of the credit provider within the meaning of the Companies Act, 1961,

and shall be accompanied by a copy of the loan contract entered into pursuant to the agreement in accordance with section 44.

25 (2) A credit provider shall not provide a store credit certificate to a debtor under an agreement pursuant to which a loan contract is made unless the certificate contains a statement in writing that complies with the provisions of section 154 to the effect that no liability is incurred in respect of the nominal value of the certificate if it is not used and is returned to the credit provider.

30 **Penalty : \$500.**



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**(3)** Where a store credit certificate provided under an agreement pursuant to which a loan contract is entered into is used for the purchase of goods or services and the nominal value of the certificate exceeds the cash price of the goods or services, the credit provider shall provide the debtor with—

- (a)** store credit certificates of a nominal value equal to the amount of that part of the excess that consists of whole dollars; and
- (b)** cash to the value of the remainder of the excess.

10 **(4)** A store credit certificate given to the debtor in accordance with subsection (3) shall be deemed to have been provided under the agreement.

**(5)** Nothing in this section prevents—

- 15 **(a)** an agreement for the provision of store credit certificates including terms for the provision of further store credit certificates after the date specified in the agreement for the purposes of subsection (1) (b); or
- 20 **(b)** the credit provider and the debtor varying such an agreement to provide for the provision of further store credit certificates under the agreement,

but where an agreement so provides or is so varied, an amount is not payable to the credit provider under the loan contract made pursuant to the agreement in relation to the nominal value of a store credit certificate so provided until there has elapsed after the provision of the certificate a period equal to the period ascertained under the agreement in accordance with subsection (1) (d).

**(6)** Notwithstanding subsection (5), a credit provider shall not, otherwise than under section 36 or by a variation in a manner referred to in section 74, 75 or 76 or by agreement between the credit provider and the debtor—

- (a)** increase the amount of an instalment under a loan contract made pursuant to an agreement for the provision of store credit certificates; or
- 35 **(b)** increase the frequency at which instalments under such a loan contract are payable,

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or, otherwise than under section 36 or by a variation in the manner referred to in section 74 or by agreement between the credit provider and the debtor, increase the annual percentage rate applicable to an agreement for the provision of store credit certificates.

Penalty: \$1,000.

(7) For the purposes of this section, a store credit certificate is returned to the credit provider if—

- 10 (a) it is not used by the debtor for the purchase of goods or services from the credit provider or from a corporation that is a related corporation of the credit provider within the meaning of the Companies Act, 1961; and
- 15 (b) it is received by the credit provider at his principal place of business or at a place that, under the agreement, is a place at which the certificate may be returned.

**Store credit agreement—conditions of loan contract.**

44. (1) Where a loan contract is entered into pursuant to an agreement referred to in section 43—

- 20 (a) the loan contract is a loan contract in respect of which the whole of the credit charge (if any) is a pre-determined credit charge; and
- (b) subject to subsection (2), the loan contract shall be in accordance with section 35.

(2) For the purposes of subsection (1)—

- 25 (a) the loan contract shall specify as the date on which the contract, or an offer to enter into the contract, was signed by the debtor the date on which the agreement, or an offer to enter into the agreement, was signed by the debtor;



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- 5 (b) the amount agreed under the contract to be lent shall be the total nominal value of store credit certificates provided, or agreed to be provided, under the agreement whether before or after the date specified in the agreement for the purposes of section 43 (1) (b); and
- 10 (c) the relevant date for purposes related to the expression of the credit charge shall be the date on which the agreement was entered into or if the agreement was entered into by the acceptance of an offer in writing signed by the debtor to the credit provider, the date on which the offer was made.
- 15 (3) The debtor under a loan contract entered into pursuant to an agreement for the provision of store credit certificates is not liable to pay to the credit provider an amount under the contract before the first date stated in the agreement in accordance with section 43 (1) (d).
- (4) A loan contract entered into pursuant to an agreement for the provision of store credit certificates is varied—
- 20 (a) where a store credit certificate provided under the agreement is returned to the credit provider—
- (i) by reducing the amount agreed under the loan contract to be lent by the nominal value of the certificate; and
- 25 (ii) by reducing the amount of the credit charge by the same proportion as the nominal value of the certificate bears to the amount agreed under the loan contract to be lent being the amount before it is reduced under subparagraph (i) by that nominal value;
- 30 (b) where the loan contract is varied by the operation of paragraph (a)—to the extent necessary as a consequence of that variation; and
- 35 (c) where the agreement pursuant to which the loan contract is made is varied (otherwise than under section 36) to provide for the provision of further store credit certificates under the agreement—to the extent necessary to give effect to the variation of the agreement.



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**(5) A credit provider may make such other variations to a loan contract as he considers necessary by reason of any variation having effect under subsection (4) but shall not, otherwise than under section 36 or by a variation in a manner referred to in section 74, 75 or 76 or by agreement between the credit provider and the debtor—**

(a) increase the amount of an instalment under the contract;  
**or**

10 (b) increase the frequency at which instalments under the contract are payable,

or, otherwise than under section 36 or by a variation in the manner referred to in section 74 or by agreement between the credit provider and the debtor, increase the annual percentage rate applicable to the contract.

15 **Penalty: \$1,000.**

**(6) Where a loan contract has been varied under subsection (4) or (5), the credit provider shall, not later than 7 days after the contract is so varied, give to the debtor a copy of the contract as so varied.**

20 **Penalty : \$500.**

**(7) A reference in subsection (4) (a) to a store credit certificate is a reference to a store credit certificate—**

(a) provided under the agreement pursuant to which the loan contract is entered into; or

25 (b) given to the debtor in accordance with section 43 (3).

**(8) For the purposes of this section, a store credit certificate is returned to the credit provider if—**

30 (a) it is not used by the debtor for the purchase of goods or services from the credit provider or from a corporation that is a related corporation of the credit provider within the meaning of the Companies Act, 1961; and

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**(b) it is received by the credit provider at his principal place of business or at a place that, under the agreement, is a place at which the certificate may be returned.**

**Notice of right to return unused certificates.**

5 **45.** A credit provider under a loan contract entered into pursuant to an agreement for the provision of store credit certificates shall not give a notice to the debtor that includes a demand for payment by the debtor of an amount under the loan contract unless he includes in the notice a statement to the effect that no  
10 liability is incurred in respect of the nominal value of a store credit certificate if it is not used for the purchase of goods or services and is returned, within the meaning of section 44 (8), to the credit provider.

**Penalty : \$500.**

**15 Forfeiture of credit charge.**

**46. (1) Subject to section 89, where—**

**(a) a credit sale contract is not in writing or is not in accordance with section 34;**

20 **(b) a loan contract is not in writing or is not in accordance with section 35;**

**(c) the annual percentage rate under a credit sale contract, or a loan contract, is not disclosed in accordance with section 37 and, if applicable, section 38; or**

25 **(d) a goods mortgage relating to a credit sale contract, or a loan contract, is entered into in contravention of section 95 (1),**

**the debtor is not liable to pay to the credit provider the credit charge under the contract.**

30 **(2) Subject to section 89, an amount paid by a debtor in respect of the credit charge that, in accordance with subsection (1), he is not liable to pay may be set off by the debtor against the**

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amount that is due or becomes due to the credit provider under the credit sale contract or the loan contract or, where there is no amount so due, is a debt due by the credit provider to the debtor.

(3) Nothing in this section affects the liability of a person  
5 to be convicted of an offence.

**Offence.**

47. A credit provider shall not enter into a credit sale contract, or a loan contract, that is in writing but is otherwise not in accordance with this Division.

10 **Penalty : \$1,000.**

**Minimum credit charge.**

48. (1) A provision in a credit sale contract or a loan contract to the effect that the minimum credit charge exceeds—

15 (a) where the amount financed under the contract is not more than \$75—\$5; or

(b) where the amount financed under the contract is more than \$75—\$7.50,

is void.

(2) A credit provider shall not enter into a credit sale  
20 contract or a loan contract that includes a provision that by reason of subsection (1) is void.

Penalty applying to this subsection : \$1,000.

**Debtor entitled to copy of mortgage, etc.**

49. Where—

25 (a) a property mortgage is entered into in relation to a credit sale contract or a loan contract—the credit provider shall as soon as practicable after the mortgage is entered into give to the debtor a copy of the mortgage; or



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- 5 (b) there is included in the amount financed under a credit sale contract or a loan contract an amount payable in respect of a contract of insurance—the credit provider shall, as soon as practicable after the credit sale contract or loan contract is entered into, give to the debtor a copy of the contract of insurance or a statement of the terms and conditions of the contract of insurance which affect or concern the rights of the debtor.

**Statement for debtor or guarantor.**

10 50. (1) Where a credit provider receives a request in writing for a statement under this subsection, together with the prescribed fee (if any) from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of  
15 guarantee with the credit provider in respect of the obligations of the debtor under a credit sale contract or a loan contract, the credit provider shall within 14 days after receiving the request give to the debtor or guarantor who made the request a statement in writing showing—

- 20 (a) each amount received under the contract by the credit provider and the date on which it was received;
- (b) each amount due under the contract and payable to the credit provider that has not been received by the credit provider and the date on which it became due; and
- 25 (c) each amount payable under the contract to the credit provider that has not become due and the date on which it becomes due.

Penalty: \$1,000.

(2) A credit provider is not required to comply with a  
30 request under subsection (1) from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of guarantee if, within the period of 3 months immediately preceding the receipt of the request, he has complied with an earlier request from that debtor or guarantor in relation  
35 to the credit sale contract, loan contract or contract of guarantee.

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**Copy of document for debtor or guarantor.**

51. (1) Where a credit provider receives a request in writing for a copy of a document that he is required by this section to provide together with the prescribed fee (if any) from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a credit sale contract or a loan contract, the credit provider shall within 14 days after receiving the request give to the debtor or guarantor who made the request—

- (a) a copy of the contract or of the offer or other document signed by the debtor or guarantor relating to the contract and to which the request relates; or
- (b) where the request relates to a contract of insurance in relation to which an amount is included in the amount financed—
  - (i) a copy of the contract of insurance; or
  - (ii) a statement of the terms and conditions of the contract of insurance which affect or concern the rights of the debtor.

Penalty: \$500.

(2) A credit provider is not required to comply with a request under subsection (1) from a debtor under a credit sale contract or a loan contract or from a guarantor under a contract of guarantee if, within the period of 3 months immediately preceding the receipt of the request, he has complied with an earlier request from that debtor or guarantor in relation to that credit sale contract, loan contract or contract of guarantee.

**Court may determine reasonable fees, etc.**

52. (1) Where a credit provider enters into a credit sale contract or a loan contract that includes a statement of—

- (a) the amount of fees payable to a legal practitioner authorised to prepare documents for the contract or for a mortgage entered into in relation to the contract;



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- (b) the amount of any charge prescribed by the regulations for the purposes of this section; or
  - (c) the value of any consideration provided by the credit provider to the debtor and so prescribed,
- 5 and the debtor claims that the amount or value is not a reasonable amount or value he may apply to a court for determination of the amount or value.

(2) Where an application is made under subsection (1), the court shall—

- 10 (a) determine the amount or value and make such orders as are necessary to give effect to its determination; or
- (b) dismiss the application.

(3) Where a court makes a determination under this section in relation to a credit sale contract or a loan contract, the credit sale contract or loan contract is varied in accordance with the determination.

15

**DIVISION 2.—Continuing Credit Contracts.**

**Interpretation: Div. 2.**

- 20 53. (1) Where a person, in the course of a business carried on by him—
- (a) agrees with another person, not being a body corporate, to provide credit to that other person in respect of payment for goods or services or cash supplied by him to that other person from time to time; or
  - 25 (b) agrees with another person, not being a body corporate—
    - 30 (i) to satisfy on behalf of that other person liabilities of that other person to a third person in respect of payment for goods or services or cash supplied by that third person to that other person from time to time; and



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5 (ii) to provide credit to that other person in respect of payment by that other person of amounts owing from time to time to him in respect of the satisfaction by him of those liabilities on behalf of that other person,

and agrees to calculate the amount owing to him from time to time under the agreement on the basis that all amounts owing and all payments made by the other person under or in respect of the agreement are entered in the same account, that agreement is, for 10 the purposes of this Act, a continuing credit contract.

(2) Where in respect of the provision of credit—

- (a) the credit charge is a pre-determined credit charge;
- (b) the credit is, or is to be, provided by instalments; or
- 15 (c) the person providing the credit and the person to whom the credit is provided agree that the amount of credit provided is not to be entered in the same account as amounts relating to any other provision of credit,

the provision of credit is not, and does not form part of, the provision of credit under a continuing credit contract.

20 (3) The provision of credit under a loan contract made pursuant to an agreement in accordance with section 43 for the provision of store credit certificates is not, and does not form part of, the provision of credit under a continuing credit contract.

**Application of Division.**

25 54. (1) Subject to subsection (2), a reference in this Division (other than in section 53) to a continuing credit contract is a reference to a continuing credit contract under which—

- 30 (a) where credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person (whether to the debtor or to another person)—a charge is or may be made for the provision of credit in respect of which the annual percentage rate exceeds 14 per cent; or

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- (b) where credit is or may be provided to the debtor by the credit provider in respect of payment for goods or services supplied by the credit provider or any other person (whether to the debtor or to another person)—
- 5           (i) a charge, other than an account charge, is or may be made for the provision of credit;
- (ii) an amount, other than an account charge, owing at any time by the debtor is not required to be paid within the period of 4 months after it is first
- 10           owed; or
- (iii) an amount, other than an account charge, owing at any time by the debtor is or will become payable by 5 or more instalments or by a deposit and 4 or more instalments.
- 15           (2) This Division does not apply to a continuing credit contract under which—
- (a) where credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person (whether to the debtor or to another
- 20           person)—a charge is or may be made for the provision of credit in respect of which, where the payment of a debt or other pecuniary obligation or the performance of any other obligation under the continuing credit contract is bona fide secured by a mortgage of land—there
- 25           is an acceptable rate of interest that does not exceed 14 per cent and a higher annual percentage rate that exceeds 14 per cent but does not exceed the acceptable rate by more than 2 per cent;
- (b) subject to subsection (3), an amount exceeding
- 30           \$15,000 is agreed as the maximum amount that at any time may be owed by the debtor under the contract; or
- (c) a bank or a pastoral finance company provides credit to a person by overdraft on current account.

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(3) For the purposes of subsection (2) (b), a continuing credit contract shall be deemed not to be a contract under which an amount exceeding \$15,000 is agreed as the maximum amount that at any time may be owed by the debtor under the contract  
5 where—

- (a) under the contract, the debtor may not, otherwise than by reason of his default, owe more than \$15,000 excluding any credit charge; or
- 10 (b) when the contract is made, it is probable, having regard to the terms of the contract and all other relevant considerations, that the amount owed by the debtor under the contract will not at any time exceed \$15,000 excluding any credit charge.

**Billing cycle.**

15 55. (1) In this Act, a reference to a billing cycle in relation to a continuing credit contract is a reference to the period applied from time to time in accordance with the contract as the billing cycle in relation to the contract.

20 (2) A credit provider under a continuing credit contract shall not apply as a billing cycle for the purposes of section 66 or Schedule 7 a period exceeding 40 days.

**Payment on behalf of debtor.**

25 56. Where, under a continuing credit contract, the credit provider satisfies the amount payable by the debtor to a supplier in respect of the supply of goods or services or cash, the credit provider shall, for the purposes of this Division, be deemed to have paid to the supplier the amount (whether or not it is the same as the first-mentioned amount) that would have been payable by the debtor to satisfy the amount so payable.



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**Chargeable amount.**

57. (1) Subject to this section, a reference in this Act to the chargeable amount in respect of a billing cycle of a continuing credit contract is a reference to the sum of such of the amounts included in the statement of account under section 66 for that billing cycle as, under the contract, the credit provider determines constitutes the chargeable amount, being an amount not exceeding—

10 (a) the amount that is the amount owed under the contract by the debtor immediately before the commencement of the billing cycle less amounts included in the statement of account in respect of payments by the debtor during the billing cycle; or

15 (b) the amount that is the sum of the balances owed under the contract by the debtor at the end of each day of the billing cycle, divided by the number of days in the billing cycle,

whichever is the greater.

(2) A credit provider shall not determine as an amount constituting the chargeable amount for a billing cycle of a continuing credit contract an amount that exceeds the greater of the amounts referred to in subsection (1) (a) and (b).

Penalty : \$1,000.

(3) Where an amount determined as an amount constituting the chargeable amount for a billing cycle exceeds the greater of the amounts referred to in subsection (1) (a) and (b), the chargeable amount for that billing cycle shall be deemed, for the purposes of this Division, to be the lesser of the amounts referred to in subsection (1) (a) and (b).

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**Amount payable—continuing credit contract.**

**58. (1)** A provision in a continuing credit contract which requires the debtor to pay to the credit provider an amount other than an amount that is—

- 5       (a) the cash price of goods or services supplied by the credit provider or by another supplier in respect of payment for which credit is provided under the contract;
- (b) an amount of cash supplied by the credit provider or by another supplier for the supply of which credit is provided under the contract;
- 10       (c) a credit charge;
- (d) an amount of enforcement expenses;
- (e) an amount of stamp duty payable in respect of or in relation to the contract payable by the debtor to the credit provider;
- 15       (f) an amount payable under the contract by the debtor to the credit provider that is a prescribed charge for the purposes of this section; or
- (g) the amount of any other consideration given to the debtor under the contract,
- 20

is void.

**(2)** A credit provider shall not enter into a continuing credit contract that includes a provision that by reason of subsection (1) is void.

25   Penalty applying to subsection (2): \$1,000.

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**Credit charge.**

- 59. (1)** For the purposes of this Act, a reference to a credit charge in relation to a billing cycle of a continuing credit contract is a reference to the amount included in the statement of account<sup>5</sup> for that billing cycle in accordance with this Division other than any part of that amount that is—
- (a) the cash price of goods or services supplied by the credit provider or by another supplier in respect of payment for which credit is provided under the contract;
  - 10 (b) an amount of cash supplied by the credit provider or by another supplier for the supply of which credit is provided under the contract;
  - (c) an amount of enforcement expenses;
  - 15 (d) an amount of stamp duty payable in respect of or in relation to the contract payable by the debtor to the credit provider;
  - (e) an amount payable under the contract by the debtor to the credit provider that is a prescribed charge for the purposes of this section;
  - 20 (f) the amount of any other consideration given to the debtor under the contract; or
  - (g) the amount of a credit charge included in a statement of account for an earlier billing cycle of the contract.
- (2)** A credit provider shall not include in a statement of<sup>25</sup> account for a billing cycle a credit charge that exceeds the amount derived by the application of the annual percentage rate in respect of the contract to the chargeable amount for the billing cycle in the manner applicable under the contract.

**Penalty : \$1,000.**



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(3) A credit provider shall not include in a statement of account for a billing cycle a minimum credit charge that exceeds—

- 5 (a) where the amount owing under the continuing credit contract at the end of the billing cycle is not more than \$75—\$5; or
- (b) where that amount is more than \$75—\$7.50.

(4) In ascertaining the credit charge in relation to a continuing credit contract made between a credit provider and a debtor, regard shall not be had to any amount by which the  
10 amount payable by the credit provider to any supplier of goods or services or of cash to the debtor or to another person under the contract is less than the cash price of the goods or services or the amount of the cash.

**Annual percentage rate.**

15 **60. (1)** For the purposes of this Act, a reference to the annual percentage rate in relation to a continuing credit contract is a reference to the percentage rate per annum that, under the contract, is to be applied to the chargeable amount for each billing cycle of the contract to yield the credit charge.

20 (2) Where, under a continuing credit contract—

- (a) credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person; and
- 25 (b) the payment of a debt or other pecuniary obligation or the performance of any other obligation under the contract is bona fide secured by a mortgage of land,

the contract may include an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2 per cent.

30 (3) Where, in accordance with subsection (2), a continuing credit contract includes 2 annual percentage rates, the statement in the notice in accordance with section 4 (6) or 64 of the annual percentage rate shall be made in respect of each such rate.

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(4) Except as provided by subsection (2), a continuing credit contract shall not include more than one annual percentage rate in respect of the contract.

**Billing cycle less than 1 month.**

5 61. A credit provider does not fail to comply with the provisions of this Division relating to the stating of the annual percentage rate in relation to a continuing credit contract or the credit charge in relation to a billing cycle by reason only that he applies a percentage rate under the contract to the whole or part of the  
10 chargeable amount to yield the credit charge or part of the credit charge in respect of a billing cycle, the period of which is not less than 24 days, as if the period of that billing cycle were 1 month.

**Non-business days.**

62. (1) A credit provider does not fail to comply with the  
15 provisions of this Division relating to the application of a period as a billing cycle or the inclusion of a credit charge in a statement of account by reason only that he includes in the credit charge in a statement of account for a billing cycle the amount that would be the credit charge in respect of a day that is, or 2 or more days  
20 each of which is, a Saturday, a Sunday or a public or bank holiday throughout the State immediately following the last day of the billing cycle if no other amounts were entered on that day or on those days in the account of the debtor kept by the credit provider.

(2) Subsection (1) does not apply where a credit provider  
25 includes the amount of credit charge to which that subsection relates in a statement of account for a billing cycle and includes that amount in the statement of account for a succeeding billing cycle.

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**Notice of rights to be given.**

**63.** Where a person enters into a continuing credit contract with a credit provider—

- 5 (a) where the contract is in writing the credit provider shall, before a debt is incurred under the contract, give to that person a statement in or to the effect of the form prescribed for the purposes of this section for use in relation to continuing credit contracts of the same class as the first-mentioned contract containing a summary of  
10 his rights and obligations under this Act in relation to the contract; or
- (b) where the contract is not in writing the credit provider shall give to that person such a statement when he gives the notice under section 64.

15 **Penalty : \$1,000.**

**Notice of terms of continuing credit contract.**

**64. (1)** A credit provider shall, before the debtor first incurs a debt under a continuing credit contract, give a notice in writing to the debtor stating—

- 20 (a) the amount (if any) that, under the contract, is agreed as the maximum amount in respect of which, at any time, credit may be provided to the debtor under the contract;
- 25 (b) the method by which the chargeable amount for each billing cycle is to be determined;
- (c) the terms and conditions (if any) upon which, under the contract, a credit charge for a billing cycle may be made;
- 30 (d) the method by which the amount of the credit charge for a billing cycle is to be determined;
- 35 (e) the period after the expiration of a billing cycle within which the amount owed by the debtor at the expiration of the billing cycle is payable including particulars of provisions requiring payment at a time or times during that period of any part or parts of that amount;



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- (f) the annual percentage rate in respect of the contract and the manner of its application to the contract;
  - 5 (g) particulars of stamp duty, if any, payable under the contract by the debtor in respect of or in relation to the contract or a mortgage;
  - (h) particulars of any mortgage relating to the contract that, as a condition of the making of the contract has been or is agreed to be entered into;
  - 10 (i) the method (if any) by which, under the contract, provisions of the contract may be varied;
  - (j) particulars of such other matters (if any) as are prescribed for the purposes of this section; and
  - (k) the other terms and conditions (if any) to which the contract is subject.
- 15 **Penalty : \$1,000.**

(2) It is sufficient compliance with subsection (1) if the continuing credit contract was made by the acceptance of an offer in writing by the debtor to the credit provider to enter into the contract being an offer that includes the matters required to be  
20 stated in a notice under subsection (1).

(3) Nothing in this section requires the inclusion in a notice under subsection (1) of a statement that is not, or particulars that are not, applicable to the continuing credit contract.

**Variation of continuing credit contract.**

- 25 **65. (1)** Where, in accordance with a provision in a continuing credit contract, the credit provider exercises a right under the contract to vary the operation of the contract (other than a right exercised at the request of the debtor), the variation does not have effect until the expiration of 7 days or such longer period as the  
30 contract permits after notice of the variation has been given to the debtor.

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(2) Where notice of the variation of a provision in a continuing credit contract is given in a common form by the credit provider and posted by bulk postage, the notice of the variation shall be deemed to have been given 21 days after the date on 5 which the last of the bulk postages was made.

**Statement of account.**

66. (1) A credit provider under a continuing credit contract shall give to the debtor a statement of account in accordance with Schedule 7 for each billing cycle applied under the continuing 10 credit contract from time to time.

(2) A credit provider shall not include in a statement of account referred to in subsection (1)—

- 15 (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance other than a risk specified in clause 1 (k) of Schedule 7; or
- 20 (b) where a goods mortgage relating to the contract has been entered into, an amount in respect of insurance against loss by the operation of section 105 of the security interest of the mortgagee in goods subject to the mortgage exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
- 25 (c) an amount in respect of the discharge of a liability of the debtor to the credit provider that exceeds—
- 30 (i) where the liability arose under a regulated credit sale contract or a regulated loan contract, the amount that would have been due to the credit provider under section 109 if, immediately before the giving of the statement, the debtor were to discharge his obligations under the credit sale contract or the loan contract in accordance with section 109;

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- 5                   (ii) where the liability arose under a regulated continuing credit contract, the amount that would have been due to the credit provider under the contract if, immediately before the giving of the statement, the debtor were to discharge his obligations under the contract in accordance with this Division; or
- 10                   (d) a statement that is, or particulars that are, prescribed as a statement, or particulars that may not be included in the statement of account.
- (3) Nothing in this section requires the inclusion in a statement of account referred to in subsection (1) of a statement that is not, or particulars that are not, applicable to the continuing credit contract.
- 15                   (4) Where particulars of matters required to be included in the statement of account are included in documents attached to or accompanying the statement of account, the provisions of Schedule 7 requiring those particulars to be so included are sufficiently complied with.
- 20                   (5) Where an amount paid by a debtor is not included in the statement of account in respect of the billing cycle during which the amount was paid, the credit provider shall, within a reasonable time after the receipt of the amount enter the amount in the account of the debtor kept by the credit provider.
- 25                   **Penalty : \$1,000.**
- (6) A credit provider under a continuing credit contract shall not—
- 30                   (a) fail to give a statement of account in accordance with this section in respect of each billing cycle applied under the contract from time to time;
- (b) give a statement of account that does not comply with the provisions of this section;
- (c) give a statement of account under this section in respect of a billing cycle the period of which exceeds 40 days; or



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- (d) include in a statement of account under this section an amount of deferral charges or default charges.

Penalty applying to this subsection : \$1,000.

**Account to be rendered before proceedings.**

- 5   **67.** A credit provider shall not institute proceedings for the recovery of an amount owed to him under a continuing credit contract unless, when giving the required notice under section 111, he gives the debtor a statement of account under section 66 that includes a request for payment of that amount.

**10 Opening balance.**

**68. (1)** A credit provider shall not give to a debtor a statement of account relating to a billing cycle of a continuing credit contract that includes in the chargeable amount an amount owed by the debtor under the contract immediately before the first 15 day of the billing cycle unless—

- (a) he has given to the debtor a statement of account in respect of the billing cycle immediately preceding the first-mentioned billing cycle; and
- (b) he gave that statement to the debtor not later than—
- 20           (i) where the first-mentioned billing cycle is 14 days or more—8 days before the end of that billing cycle; or
- (ii) where the first-mentioned billing cycle is less than 14 days—4 days before the end of that
- 25           billing cycle.

Penalty : \$1,000.

- (2) Where a credit provider gives to debtors statements of accounts that are posted by bulk postage, and proceedings are brought against the credit provider for an offence under subsection 30 (1) in respect of a continuing credit contract, proceedings for a

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like offence under subsection (1) may not be instituted against him in respect of another continuing credit contract in respect of which a statement of account was posted by the same bulk postage.

**Certain statements unnecessary.**

5 69. Nothing in section 66 or 68 requires a credit provider to give to a debtor a statement of account in respect of a billing cycle of a continuing credit contract where—

10 (a) during the billing cycle an amount was not entered in the account of the debtor kept by the credit provider and at the end of the billing cycle there was not an amount entered in the account and owing by or to the debtor;

(b) during the billing cycle—

15 (i) the credit provider wrote off the debt of the debtor under the contract; and

(ii) no other entries were made in the account of the debtor kept by the credit provider; or

20 (c) during the whole of the billing cycle and the 2 immediately preceding billing cycles, the debtor was in default under the contract and, before the commencement of the first-mentioned billing cycle, the credit provider, in accordance with the contract, exercised a right not to provide further credit under the contract and did not, during the billing cycle, provide further credit.

25 **Debtor's right to be paid amount at credit.**

70. Where at any time there is an amount owing to the debtor by the credit provider under a continuing credit contract that exceeds the amount owing at that time by the debtor to the credit provider, the credit provider shall, upon request by the debtor, pay 30 that amount to the debtor.

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**Forfeiture of credit charge.**

**71. (1) Subject to section 89, where, in relation to a billing cycle of a continuing credit contract—**

- 5       **(a) the credit provider has not given notice in writing to the debtor of the annual percentage rate in respect of the contract in accordance with section 4 (6) or 64;**
- (b) the credit charge—**
  - 10       **(i) is determined otherwise than in accordance with this Division; or**
  - (ii) is not included in a statement of account for that billing cycle given to the debtor under section 66;**
- (c) the debtor incurs a debt under the contract before the credit provider has given a notice under section 64;**
- 15       **(d) the credit provider includes in the statement of account for that billing cycle an amount of deferral charges or default charges; or**
- (e) a goods mortgage relating to the continuing credit contract is entered into in contravention of section 95**  
20       **(1),**

**the debtor is not liable to pay to the credit provider the credit charge in respect of that billing cycle.**

**(2) Nothing in this section affects the liability of a person to be convicted of an offence under this Division.**

**25 Debtor entitled to copy of mortgage, etc.**

**72. Where—**

- 30       **(a) a property mortgage relating to a continuing credit contract is entered into, the credit provider shall, as soon as practicable after the mortgage is entered into, give to the debtor a copy of the mortgage; and**



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5 (b) there is included in the amount payable under a continuing credit contract an amount in respect of a contract of insurance, the credit provider shall, as soon as practicable after the continuing credit contract is entered into, give to the debtor a copy of the contract of insurance or a statement of the terms and conditions of the contract of insurance which affect or concern the rights of the debtor.

**Copy of notice to be given on request.**

10 73. (1) Where a credit provider receives a request in writing together with the prescribed fee (if any) from a debtor under a continuing credit contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a continuing credit contract,  
15 the credit provider shall give to the debtor or guarantor who made the request a copy of the notice (if any) given under section 4 (6) or 64 in respect of the contract.

**Penalty : \$1,000.**

20 (2) A credit provider is not required to comply with a request under subsection (1) from a debtor under a continuing credit contract or from a guarantor under a contract of guarantee if, within the period of 14 days immediately preceding the receipt of the request, he has complied with an earlier request from that debtor or guarantor in relation to that contract or contract of  
25 guarantee.

**DIVISION 3.—Operation of Regulated Contracts.**

**Discharge of obligations by new contract.**

74. (1) Where a credit provider agrees to discharge one or more regulated contracts in consideration of the debtor's entering  
30 into another credit contract (whether or not a regulated contract),

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the credit provider shall, before entering into the other credit contract, give to the debtor a statement in writing stating, in respect of each of the regulated contracts to be discharged—

5           **(a) the amount that would be due to the credit provider under section 109 if, immediately before the relevant date, the debtor were to discharge his obligations under the contract in accordance with that section; and**

**(b) in the case of a regulated credit sale contract or a regulated loan contract—**

10           **(i) the outstanding balance of the amount financed;**

**(ii) the outstanding balance of the accrued credit charge;**

**(iii) the outstanding balance of any deferral charges charged in accordance with this Part;**

15           **(iv) the outstanding balance of any default charges charged in accordance with this Part; and**

**(v) the outstanding balance of any enforcement expenses,**

20           and (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges deducted from the sum of the amounts referred to in subparagraphs (i)–(v).

25           **(2) In subsection (1), “relevant date” means the date on which the new credit contract is entered into or, if the new credit contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.**

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**Variation of contract.**

**75. (1)** The credit provider and the debtor under a credit sale contract or a loan contract may agree to vary the terms of the contract in relation to, or to payment of, the amount owing under the contract if—

- (a) the outstanding balance of the amount financed at the date of the variation is not increased by the variation or is increased by the variation by reason only of the addition of an amount referred to in subsection (3);
- 10 (b) the annual percentage rate applicable to the contract as varied does not exceed the lesser of—
  - (i) the annual percentage rate applicable to the contract immediately before the variation; and
  - 15 (ii) the annual percentage rate prescribed by the regulations for the purposes of this subparagraph;
- (c) a deferral charge is not made in respect of the variation; and
- 20 (d) the agreement is in writing signed by the credit provider and the debtor and specifies—
  - (i) the varied terms of repayment;
  - (ii) any amount by which the amount financed is increased;
  - 25 (iii) the amount by which the credit charge is increased by reason of the variation;
  - (iv) the amount of any default and deferral charges outstanding at the date of the variation; and
  - (v) where applicable, the amount of any stamp duty and any legal fees payable to a legal practitioner (not being the credit provider or an employee of the credit provider) for preparation of the agreement;
  - 30 (vi) the additional amount payable under the contract by reason of the variation including any amounts referred to in subparagraph (iii); and
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(vii) such other matters as may be prescribed.

**(2)** The regulations may prescribe the manner in which matters required by subsection (1) (d) to be specified in an agreement are to be so specified, whether by the use of a prescribed form or otherwise.

**(3)** The following are the amounts by which the outstanding balance of the amount financed under a credit sale contract or a loan contract may be increased by a variation under subsection (1)—

- 10 (a) where, under the credit sale contract or loan contract, the premium under a contract of insurance or compulsory insurance entered into in relation to the credit sale contract or loan contract or a regulated mortgage relating to the contract was included in the amount  
15 financed under the credit sale contract or loan contract—a premium payable under that contract of insurance or compulsory insurance in relation to a subsequent period not exceeding 12 months;
- 20 (b) where, under the credit sale contract or loan contract, registration fees relating to goods and in respect of a particular period were included in the amount financed under the credit sale contract or loan contract—registration fees relating to those goods in respect of a subsequent period; or
- 25 (c) such other amounts as may be prescribed.

**(4)** Where a credit provider enters into an agreement referred to in subsection (1) he shall, not later than 14 days after the agreement is entered into, give the debtor a copy of the agreement.

30 **(5)** Notwithstanding any other provision of this Act, an agreement to vary a contract in accordance with this section is not a loan contract.

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(6) Where a variation to which this section applies is made to the terms of a regulated contract, a guarantor under a contract of guarantee in respect of the obligations of the debtor under the regulated contract is not liable in respect of the contract for an amount exceeding the amount for which, but for the variation, he would have been liable unless the credit provider, not later than 14 days after the variation was made, gave the guarantor a notice in writing of the variation.

(7) This section does not apply to or in respect of a variation—

- (a) if section 36, 74 or 76 applies to or in respect of the variation; or
- (b) by reason only that, as a result of a variation, the amount due to a credit provider is satisfied or reduced.

**15 Deferral of payment.**

76. (1) Where a credit provider and a debtor agree to vary a credit sale contract, or a loan contract, by deferral of the payment of an amount payable by the debtor under the contract, the credit provider shall not make a charge in respect of the deferral unless—

- 20 (a) the payment is deferred—
  - (i) in accordance with a term in the contract to the effect that such a payment may be deferred; or
  - (ii) in accordance with the agreement of the credit provider and the debtor;
- 25 (b) the charge in respect of the deferral does not exceed the amount determined in accordance with subsection (2);
- (c) a default charge is not made in respect of the period for which payment is deferred; and
- (d) the deferral is made in accordance with subsection (4).
- 30 Penalty: \$1,000.

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(2) The amount of a charge in respect of the deferral of the payment of an amount payable under a credit sale contract or a loan contract determined in accordance with this subsection is—

5 (a) the amount that is the sum of the amount determined by applying to the amount payment of which is deferred, in respect of the number of days for which it is deferred—

10 (i) where a credit charge is payable under a contract—a rate not exceeding the daily percentage rate that applies to the contract; or

(ii) where a credit charge is not payable under the contract—the rate prescribed for the purposes of this section,

15 and the amounts (if any) payable in respect of charges mentioned in subsection (3) in relation to the deferral of the payment; or

(b) the amount agreed by the credit provider and the debtor as the charge,

whichever is the lesser.

20 (3) The charges in relation to the deferral of a payment referred to in subsection (2) (a) and subsection (4) (b) are charges in respect of—

(a) stamp duty payable in respect of or in relation to the deferral; and

25 (b) fees payable to a legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the deferral.

(4) Where a credit provider defers payment of an amount payable under a credit sale contract or a loan contract the deferral is in accordance with this subsection if, not later than 14 days after the credit provider agrees to defer or, where the deferral is made under a term of the contract, he defers, the payment, the credit provider gives notice in writing to the debtor stating—

(a) the amount of the payment deferred;



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(b) the amounts (if any) payable in respect of charges mentioned in subsection (3) in relation to the deferral of the payment;

5 (c) the date on which the period for which the payment is deferred expires;

(d) the amount of the charge, in dollars and cents; and

(e) if applicable, the rate applies to the amount payment of which is deferred in accordance with subsection (2) (a) to determine the amount of the charge.

10 (5) A credit provider shall not make a charge—

(a) in respect of the deferral of the payment of an amount payable by the debtor under a credit sale contract or a loan contract, unless the whole or part of the credit charge under the contract is a predetermined credit charge; or

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(b) in respect of the deferral of the payment of an amount payable by the debtor under a regulated continuing credit contract.

Penalty: \$1,000.

20 (6) Notwithstanding anything to the contrary in this Act, the deferral of the payment of an amount payable by a debtor under a credit sale contract or a loan contract is not a loan contract.

**Default charge.**

25 77. (1) Where under a credit sale contract or a loan contract the debtor does not pay an amount payable under the contract when it is due, the credit provider shall not make a charge in

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respect of the failure to pay unless there is a term in the contract to the effect that such a charge may be made and the charge does not exceed—

- 5 (a) the amount determined by applying to the daily balance of the amount due and unpaid—
- (i) where a credit charge is payable under a contract—the daily percentage rate under the contract; or
- 10 (ii) where a credit charge is not payable under the contract—the rate prescribed for the purposes of this section; or
- (b) the amount determined by applying to the amount unpaid the rate specified in the contract for the purposes of such a charge,

15 whichever is the lesser.

**Penalty : \$1,000.**

(2) A credit provider shall not make a charge—

- 20 (a) in respect of the failure to pay an amount payable under a credit sale contract or a loan contract when it is due unless the whole or part of the credit charge under the contract is a pre-determined credit charge;
- (b) in respect of the failure to pay an amount payable under a regulated continuing credit contract; or
- (c) in respect of a charge under subsection (1) that is unpaid.

25 **Penalty : \$1,000.**

(3) Nothing in this section affects the right of a credit provider to make or require payment of an accrued credit charge, a default charge or an enforcement expense.

**Variation ineffective without notice.**

- 30 78. (1) Where, in accordance with a provision in a regulated credit sale contract or loan contract, the credit provider exercises a right under the contract to vary the contract (otherwise than in



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a manner referred to in section 36, 74, 75 or 76), the variation does not have effect until the credit provider has given notice of the variation to the debtor and the prescribed period (if any) has expired after the notice is given.

- 5           (2) Where the terms of a regulated contract are varied or a regulated contract is discharged in consideration of the debtor entering into another credit contract, whether in a manner referred to in section 36, 74, 75 or 76 or in accordance with a provision in the contract or by agreement between the credit provider and  
10 the debtor, the contract as varied shall be deemed to continue to be, or the other contract shall be deemed to be, a regulated contract notwithstanding that, but for this subsection, it would not continue to be, or be, a regulated contract.

**Variation of commitments.**

- 15   **79. (1)** Where a debtor by reason of illness, unemployment or other reasonable cause is unable reasonably to discharge his obligations under a credit sale contract or a loan contract, the debtor may, where he reasonably expects that he would be able to discharge his obligations—

- 20           (a) if the term of the contract were extended and the amount of each payment due under the contract accordingly reduced (without a change being made to the annual percentage rate);
- 25           (b) if the dates on which payments due under the contract during a specified period were postponed (without a change being made to the annual percentage rate); or
- 30           (c) if the term of the contract were extended and the dates on which payments due under the contract during a specified period were postponed (without a change being made to the annual percentage rate),

apply to the credit provider for a variation of the contract.



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(2) Where a credit provider to whom application is made by a debtor under subsection (1) refuses to vary a credit sale contract or a loan contract in accordance with the application, the debtor may apply to the Commissioner for variation of the  
5 contract.

(3) Where an application is made under subsection (2), the Commissioner shall seek the views of the credit provider and after giving him a reasonable opportunity to be heard and making such other inquiries as the Commissioner thinks fit, determine  
10 whether or not to seek to arrange with the credit provider a variation of the credit sale contract or loan contract and where he seeks such a variation and is unable to reach agreement with the credit provider, the Commissioner shall refer the application to the Tribunal.

15 (4) The Tribunal may, where it receives an application referred to it under subsection (3), order or refuse to order a variation and, where it orders a variation, may make such other orders as it thinks fit.

(5) Where an order of the Tribunal under subsection  
20 (4) is in force, a credit provider under a credit sale contract or a loan contract to which the order applies may apply to the Tribunal for a variation of the order.

(6) The Tribunal may, where it receives an application  
25 under subsection (5), make such variation of the order to which the application relates as it thinks fit or may refuse to vary the order.

(7) An order in force under this section, and such an order as altered or varied from time to time, has effect according to its tenor.

30 (8) Where the Commissioner and the credit provider are unable to reach agreement under subsection (3) in relation to a credit sale contract, or a loan contract, the credit provider shall

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not institute proceedings, or exercise a right, under the contract, or a mortgage that relates to the contract, before the Tribunal has made or refused an order under subsection (4).

Penalty applying to this subsection: \$1,000.

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**DIVISION 4.—General.****Enforcement expense.**

80. (1) A provision in a regulated contract to the effect that where the debtor makes default under the contract and the credit provider exercises a right in relation to the contract arising from the default, the debtor is, if the credit provider so determines, liable to pay to the credit provider an amount incurred or expended in the exercise of that right is void unless the provision limits the amount so payable to the reasonable amount reasonably incurred or expended by the credit provider in the exercise of that right.

15 (2) Where there is a dispute between the debtor and the credit provider in relation to the liability of the debtor to pay a reasonable amount reasonably incurred or expended by the credit provider in the exercise of a right in relation to a regulated contract arising from the default of the debtor, a court, on the application  
20 of the debtor or credit provider, may determine the amount of that liability.

**Right to revoke contract is paramount.**

81. (1) A provision in an agreement to the effect that a person does not have a right to revoke an offer to enter into a regulated  
25 contract—

(a) before the offer is accepted; or

(b) in a case where, at the time of the acceptance, the person could not reasonably be expected to know that the offer had been accepted, before notice is given of the  
30 acceptance,

or that such a right is restricted or modified is void.

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(2) A credit provider shall not enter into an agreement that includes a provision that, by subsection (1), is void.

Penalty applying to this subsection: \$1,000.

**Permissible variation—annual percentage rate.**

- 5 **82.** It is sufficient compliance with the provisions of this Part that require the annual percentage rate to be stated in or in relation to a regulated contract under which the whole or any part of the credit charge is a pre-determined credit charge if the annual percentage rate is—
- 10 (a) stated as a rate greater than that required to be stated; or  
(b) stated as a rate less than that required to be stated by not more than 1 part in 50 of the rate required to be stated.

**Permissible variation—estimated credit charge.**

- 15 **83.** It is sufficient compliance with the provisions of this Part that require the estimated credit charge to be stated in or in relation to a regulated contract under which the whole or any part of the credit charge is an estimated credit charge, if the estimated credit charge is—
- 20 (a) stated as a charge less than that required to be stated; or  
(b) stated as a charge greater than that required to be stated by not more than 1 part in 100 of the charge required to be stated.

**Credit charge and annual percentage rate.**

- 25 **84.** Where, under a credit sale contract or a loan contract, the whole of the credit charge is a predetermined credit charge or an estimated credit charge and the amount of the credit charge stated in the contract differs from the amount determined by applying, according to the actuarial method, the annual percentage  
30 rate stated in the contract to the amount financed by an amount



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that exceeds 1 per cent of the amount so stated in the contract, the liability of the debtor under the contract in respect of the credit charge is a liability—

- 5       **(a) where the amount so determined is less than the amount so stated—to pay the amount determined by applying the annual percentage rate to the unpaid balance of the amount financed; or**
- 10       **(b) where the amount so determined exceeds the amount so stated—to pay the amount determined in accordance with the contract as if the annual percentage rate were the rate which, when applied to the unpaid balance of the amount financed, yields an amount equal to the amount so stated.**

**Assignment by credit provider.**

- 15   **85. (1) Subject to this section, where a credit provider or a mortgagee assigns his rights as a credit provider under a regulated contract or as a mortgagee under a regulated mortgage—**
- 20       **(a) the debtor or mortgagor and, where there is a guarantor in relation to the contract or mortgage, the guarantor, have under the contract, mortgage or guarantee the same obligations to the assignee as they would have had to the credit provider or mortgagee if the assignment had not been made; and**
- 25       **(b) the debtor and mortgagor and any such guarantor have the same rights in respect of the contract, mortgage or guarantee against the assignee as they would have had against the credit provider or mortgagee if the assignment had not been made.**
- 30       **(2) An assignee of the rights of a credit provider under a regulated contract or of a mortgagee under a mortgage relating to a regulated contract is not liable to the debtor or mortgagor under the contract or mortgage in respect of an amount exceeding the amount due to the assignee under the regulated contract at the date of the assignment.**

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(3) This section does not apply to or in respect of an assignment that occurs by operation of law.

**Loan to be in money.**

86. Subject to this Act, a credit provider shall not under a regulated loan contract make a payment of an amount to or in accordance with the instructions of the debtor unless the payment—

(a) is in cash or money's worth; and

(b) is made in full without deduction of an amount included in the credit charge in respect of the loan.

10 Penalty : \$1,000.

**Application of payments.**

87. A credit provider shall, unless the credit provider and debtor otherwise agree, apply payments received under a regulated contract—

15 (a) in the case of a regulated credit sale contract or a regulated loan contract—

(i) firstly in payment of any default charges;

(ii) secondly in payment of the accrued credit charge;

(iii) thirdly in payment of any deferral charges;

20 (iv) fourthly in payment of the outstanding balance of the amount financed; and

(v) fifthly in payment of enforcement expenses; and

(b) in the case of a regulated continuing credit contract—

(i) firstly in payment of the credit charge; and

25 (ii) secondly in payment of any other amount owed under the contract by the debtor to the credit provider.



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**Appropriation of payments between contracts.**

88. A debtor who is liable to make payments in respect of 2 or more regulated contracts to the same credit provider shall, notwithstanding any agreement to the contrary, be entitled, on 5 making a payment in respect of the contracts which is not sufficient to discharge the total amount then due under all the contracts, to require the credit provider to appropriate the amount so paid in or towards the satisfaction of the amount due under any one or more of the contracts, or in or towards the satisfaction of the 10 amount due under any 2 or more of the contracts, in such proportions as the debtor specifies and, if the debtor fails to make such an appropriation, the payment shall, unless the debtor and the credit provider otherwise agree, be appropriated in or towards the satisfaction of the amounts due under the respective contracts in 15 the order in which the contracts were entered into.

**Tribunal may vary civil penalty.**

89. (1) Where, by reason of a contravention of or a failure to comply with this Act by a credit provider, a debtor is not liable to pay to the credit provider under a regulated contract an amount 20 that, but for the contravention or failure, he would have been liable to pay under the contract, the credit provider may apply to the Tribunal for an order increasing the liability of the debtor to the credit provider.

(2) Where an application is made to the Tribunal under 25 this section in relation to a regulated contract, the Tribunal, after consideration of the relevant circumstances, including the conduct of the credit provider and the debtor and any loss or damage suffered by the debtor—

(a) in the case of a regulated credit sale contract or a 30 regulated loan contract and a contravention of section 163—

(i) may, where it is satisfied that the contravention has occurred and ought reasonably to be excused—determine that the debtor is liable



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to pay the amount financed under the contract and the whole or such part of the credit charge as it determines; or

- 5           (ii) may, where it is satisfied that the contravention has occurred but ought not to be excused—  
determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part as it determines of the amount financed under the contract and the  
10           whole or such part (if any) of the credit charge as it determines;
- (b) in the case of a regulated continuing credit contract and a contravention of section 163—
- 15           (i) may, where it is satisfied that the contravention has occurred and ought reasonably to be excused—determine that the debtor is liable to pay the whole or such part of the credit charge as it determines; or
- 20           (ii) may, where it is satisfied that the contravention has occurred but ought not to be excused—determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part of the credit charge as it determines; and
- 25           (c) in the case of a regulated contract and any other contravention of or failure to comply with this Act by a credit provider may, where it is satisfied that the contravention or failure has occurred—determine not to increase the liability of the debtor or determine that the debtor is  
30           liable to pay such part (if any) of the credit charge under the contract as it determines.

(3) Where, under this section, the Tribunal determines the amount that a debtor is liable to pay after a contravention of or a failure to comply with this Act by a credit provider, the Tribunal  
35 shall ensure that, in determining that amount, the amount that the debtor would have been liable to pay but for the contravention or failure is reduced by an amount that is not less than the amount of any loss or damage suffered by the debtor as a result of the contravention or failure.

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(4) Where, under this section, the Tribunal determines the liability of the debtor under a regulated contract in consequence of a contravention of or a failure to comply with this Act by the credit provider, the liability of the debtor to the credit provider under the contract is the liability determined by the Tribunal instead of the liability that, but for the determination, the debtor would have had to the credit provider under the contract.

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

**10 General order varying civil penalty.**

90. (1) Where a credit provider has contravened this Act in respect of 2 or more regulated contracts, he may apply to the Tribunal for a determination under section 89 and the Tribunal, without affecting the liability of a person to be convicted of an offence under this Act—

- (a) may make a determination under section 89 in relation to one or more specified regulated contracts; and
- (b) may make a determination under section 89 in relation to all regulated contracts entered into by the credit provider during a specified period.

(2) The Commissioner shall, if required by the Tribunal so to do before it hears an application under subsection (1), investigate the application and report to the Tribunal on the results of the investigation.

**25 Civil penalty to be set-off.**

91. Where under this Act the liability of a debtor to a credit provider is reduced—

- (a) the amount of the reduction shall be set off against amounts that, but for the reduction, would become payable by the debtor to the credit provider; and

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- 5 (b) where the amount of the reduction exceeds the amount that the debtor, but for the reduction, would have become liable to pay to the credit provider, the amount of the excess is a debt payable by the credit provider to the debtor.

**Relief for minor errors.**

92. In a prosecution for a contravention of section 4 (6), 47, 64 or 66 the court may, without proceeding to conviction, dismiss the charge if it is satisfied—

- 10 (a) that the departure from the requirements of this Act was a minor departure unlikely to deceive or operate to the disadvantage of a party to the relevant contract; and
- 15 (b) in the case of a contravention of section 4 (6) or 64— that the required notice was given within a reasonable time after it should have been given in order to comply with this Act.

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**PART IV.**

**REGULATED MORTGAGES.**

**DIVISION 1.—General.**

**20 Application of Part.**

93. In this Part, a reference to a mortgage or a goods mortgage is a reference to a mortgage or a goods mortgage given by a person other than a body corporate to the extent that it secures the payment of a debt or other pecuniary obligation, or the performance of any other obligation, under a regulated contract.

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**Excessive performance under mortgage.**

94. (1) A provision in a mortgage relating to a regulated contract that requires or purports to require or secures or purports to secure payment or performance under the contract by the debtor or by a guarantor of the debtor of a debt or other pecuniary obligation or any other obligation of an amount or to an extent that exceeds the payment or performance—

(a) required by the contract or the contract of guarantee; or

(b) permitted by this Act,

10 is void.

(2) A mortgagee shall not enter into a mortgage that includes a provision that by reason of subsection (1) is void.

Penalty applying to this subsection : \$1,000.

**Goods mortgage to be in writing.**

15 95. (1) Subject to subsection (2), a mortgagee shall not enter into a goods mortgage that is not in writing.

Penalty : \$1,000.

(2) Subsection (1) is not contravened if—

20 (a) the goods mortgage was entered into by the acceptance of an offer in writing signed by the mortgagor to the mortgagee to enter into the mortgage;

(b) the goods mortgage arose pursuant to an agreement in writing or an agreement made by the acceptance of an offer in writing signed by the mortgagor to the mortgagee; or

25 (c) the mortgagee lawfully had possession of the goods that are subject to the mortgage before the mortgage was entered into otherwise than by reason only of being the supplier of the goods.

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**Enforcement expenses.**

96. (1) A provision in a mortgage to the effect that where the mortgagor makes default under the mortgage and the mortgagee exercises a right in relation to the mortgage arising from the default, the mortgagor is, if the mortgagee so determines, liable to pay to the mortgagee an amount incurred or expended in the exercise of that right is void unless the provision limits the amount payable to the reasonable amount reasonably incurred or expended by the mortgagee in the exercise of that right.

10 (2) Where there is a dispute between the mortgagee and the mortgagor in relation to the liability of the mortgagor to pay a reasonable amount reasonably incurred or expended by the mortgagee in the exercise of a right in relation to a mortgage arising from the default of the mortgagor, a court may, on the  
15 application of the mortgagor or mortgagee, determine the amount of that liability.

**Authority to enter premises.**

97. (1) A provision in a goods mortgage to the effect that the mortgagee or a person acting on his behalf is authorised to enter  
20 upon premises for the purpose of taking possession of goods subject to the mortgage otherwise than in accordance with an order of a court, or is relieved from liability for such an entry, is void.

(2) A mortgagee shall not enter into a goods mortgage that includes a provision that by reason of subsection (1) is void.  
25 Penalty applying to this subsection : \$1,000.

**Certain entries on premises prohibited.**

98. (1) Subject to subsection (2), a mortgagee shall not enter or authorise a person on his behalf to enter, and a person so authorised shall not enter, upon premises for the purpose of taking  
30 possession of goods subject to a goods mortgage otherwise than in accordance with an order of a court.

Penalty : \$1,000.



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(2) Subsection (1) does not apply where the mortgagor was aware of the provisions of this section and, before the entry was made, gave his consent to the entry upon the premises for the purpose of taking possession of the goods.

5 (3) The onus of proving that, by reason of subsection (2), subsection (1) does not apply is on the person who makes the entry or gives the authority.

(4) A document that is signed by a person who is the mortgagor under a goods mortgage and is to the effect that the  
10 mortgagor was aware of the provisions of this section and gave his consent to an entry referred to in subsection (1) is not of itself evidence of that awareness and consent.

**Location of mortgaged goods.**

99. (1) A mortgagee may at any time by notice in writing  
15 served on the mortgagor require the mortgagor to state in writing where goods subject to the mortgage are or, if the goods are not in the possession of the mortgagor, to whom the mortgagor delivered the goods or the circumstances under which the mortgagor lost possession of them.

20 (2) A mortgagor shall not—

(a) fail to give to the mortgagee within 14 days after receiving a notice under subsection (1) a statement that complies with the requirement in the notice; or

25 (b) give a statement under subsection (1) containing information which to his knowledge is false.

Penalty applying to this subsection : \$500.

**Time and place for return of goods.**

100. A court may, on the application of the mortgagee or mortgagor, determine a time or place or a time and place as  
30 a time or place or time and place at which goods subject to a mortgage may be returned by the mortgagor to the mortgagee.



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**Restriction on mortgage of unspecified property.**

101. (1) Subject to subsection (2), a provision in a mortgage to the effect that the mortgagor charges all his property or assets or all his property and assets and that does not specify the property or assets is void.

(2) Subsection (1) does not apply to a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him.

**Restriction on mortgage of after-acquired property.**

10 102. Subject to section 103, a provision in a mortgage to the effect that the mortgagor creates or agrees to give a mortgage over or in respect of property that is to be, or may be, acquired by him after the mortgage is entered into is void.

**Exemptions from sec. 102.**

15 103. Section 102 does not apply to or in respect of—

- (a) a provision in a mortgage relating to property that is to be, or may be, acquired by the mortgagor with, or partly with, credit provided under the regulated contract to which the mortgage relates;
- 20 (b) a provision in a mortgage relating to property (whether or not ascertained) described or identified in the mortgage;
- (c) a provision in a goods mortgage to the effect that goods subject to the mortgage include goods acquired by the mortgagor in replacement for, or as additions or accessories to, other goods that are subject to the mortgage; or
- 25 (d) a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him.
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**Mortgages and continuing credit contracts.**

104. (1) Where goods are supplied to a debtor under a regulated continuing credit contract, a provision in the contract to the effect that goods supplied by the credit provider under the contract are subject to a mortgage is void.

(2) A provision in a mortgage to the effect that goods supplied from time to time by the credit provider under a regulated continuing credit contract are subject to the mortgage is void.

(3) Nothing in subsection (1) or (2) makes void a provision in a mortgage in respect of specified goods securing payment of a debt under a regulated continuing credit contract.

(4) A credit provider shall not enter into a regulated continuing credit contract or take a mortgage that by reason of this section is void.

15 Penalty applying to this subsection : \$1,000.

*DIVISION 2.—Assignment, etc., of Goods.*

**Purchase of mortgaged goods.**

105. (1) Subject to this section, where the mortgagee under a goods mortgage is not in possession of goods that are subject to the mortgage and a person who does not carry on a trade or business of dealing in goods of the same class or kind purchases (otherwise than at a sale in execution of a judgment or order of a court, whether or not it is a court of petty sessions) an interest in the goods from—

25 (a) the mortgagor; or

(b) a person other than the mortgagor who is in possession of the goods in circumstances where the mortgagor has lost his right to possession of the goods or is estopped from asserting his title to the goods against the purchaser,

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for value, in good faith and, when he pays the purchase price or first pays any part of the purchase price, without notice of the security interest of the mortgagee in the goods, the purchaser acquires the interest purchased free from that security interest.

5           (2) For the purposes of subsection (1), a purchase of an interest in goods is not a purchase of that interest for value, in good faith and without the notice referred to in that subsection where—

10           (a) the purchaser and the seller are members of the same household;

             (b) the purchaser and the seller are corporations that, by section 6 (5) of the Companies Act, 1961, are, for the purposes of that Act, deemed to be related to each other; or

15           (c) either the purchaser or the seller is a corporation and the other of them is a natural person who, within the meaning of the Companies Act, 1961, is a director or officer of the corporation,

             unless it is proved beyond reasonable doubt that it is such a  
20 purchase.

             (3) The reference in subsection (1) to payment of the purchase price or part of the purchase price includes a reference to the giving of any valuable consideration in satisfaction of the purchase price or part of the purchase price.

25           (4) The regulations may establish a system for registering the interest of a mortgagee under a goods mortgage and may prescribe the circumstances in which, in relation to that system, a person has, or is to be deemed to have, notice of such an interest.



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**Assignment by mortgagor.**

**106. (1)** A person shall not, by the assignment, disposal or sale or an attempted assignment, disposal or sale of an interest in goods that are subject to a regulated goods mortgage or by the  
5 removal of any part of the goods or by any other means defraud or attempt to defraud the mortgagee.

**Penalty : \$5,000 or imprisonment for 1 year.**

(2) Where a goods mortgage relating to a regulated contract is in force, the mortgagor shall not, except as provided in  
10 this section, assign, dispose of or otherwise part with possession of goods subject to the mortgage without the consent of the credit provider under the contract and, if the mortgagee is not the credit provider, the mortgagee.

**Penalty : \$1,000.**

15 (3) The consent of the credit provider and mortgagee to an assignment, disposal or parting with the possession of goods referred to in subsection (2) shall not be unreasonably withheld and, except as provided in subsection (4), no payment or consideration shall be required by the credit provider or mortgagee for  
20 his consent.

(4) As a condition of granting consent to an assignment, disposal or parting with possession of goods subject to a mortgage relating to one or more regulated contracts, the mortgagee may require any breaches of each such contract and of the mortgage  
25 to be remedied and may require the mortgagor and the assignee—

(a) to execute and deliver to the mortgagee an agreement relating to the assignment, disposal or parting with possession in a form approved by the mortgagee under which, without prejudicing or affecting the liability of  
30 the mortgagor, the assignee agrees with the mortgagee—

- (i) to be personally liable to pay the amounts due or that become due under the mortgage; and
- (ii) to perform and observe all other requirements and conditions of the mortgage; and

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(b) to pay the reasonable costs (if any) incurred by the mortgagee in respect of—

(i) stamp duty; and

5 (ii) fees payable to a legal practitioner (not being the mortgagee or an employee of the mortgagee) authorised to prepare documents,

in respect of or relating to the assignment agreement.

(5) Where, in the opinion of a debtor or mortgagor, a credit provider or mortgagee has unreasonably withheld consent  
10 to an assignment, disposal or parting with possession of goods subject to a goods mortgage, the debtor or mortgagor may refer the matter to the Commissioner who, if he is of the same opinion and has sought but not obtained that consent, may apply to a court for a determination that the consent has been unreasonably  
15 withheld.

(6) Where, on an application under subsection (5), a court determines that consent to an assignment, disposal or parting with possession has been unreasonably withheld, the assignment, disposal or parting with possession may be effected without that  
20 consent.

(7) Where a goods mortgage relates to goods for the time being forming the whole or part of the trading stock of a business carried on by the mortgagor, this section does not apply to or in respect of an assignment, disposal or parting with  
25 possession of any such goods.

(8) This section does not apply to or in respect of an assignment by operation of law.

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PART V.

TERMINATION AND ENFORCEMENT OF REGULATED CONTRACTS  
AND MORTGAGES.

**Calculation of net balance due.**

5 **107. (1)** For the purposes of this Part, a reference to the net balance due to a credit provider at a particular time—

(a) in relation to a regulated credit sale contract or a regulated loan contract, is a reference to the amount that, at that time, is the sum of—

- 10 (i) the outstanding balance of the amount financed;
- (ii) the outstanding balance of the accrued credit charge;
- (iii) the outstanding balance of any deferral charges charged in accordance with Part III;
- 15 (iv) the outstanding balance of any default charges charged in accordance with Part III; and
- (v) the outstanding balance of any enforcement expenses,

20 less (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of amounts of insurance charges and maintenance charges; and

25 (b) in relation to a regulated continuing credit contract, is a reference to the amount owed under the contract by the debtor to the credit provider at that time less (where the contract is discharged) the amounts of any statutory rebates of insurance charges and maintenance charges.

(2) For the purposes of this Part, a reference to the outstanding balance of an amount, charge or expense is a reference to the part of that amount, charge or expense that, at a particular time, is owed but unpaid, whether or not the whole or any part of that amount is due.

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**Statement of net balance due.**

108. (1) Where a credit provider receives a request in writing from a debtor under a regulated contract for a statement of the net balance due to the credit provider under the contract, the credit provider shall, within 7 days after receiving the request, give to the debtor a statement in writing—

(a) stating the net balance due to the credit provider on the date on which he gives the statement and, where the debtor has also requested particulars of the calculation of that net balance, those particulars; and

(b) where the amount of the net balance increases until paid, stating that the amount so increases.

**Penalty : \$1,000.**

(2) A credit provider is not required to comply with a request under subsection (1) from a debtor in relation to a regulated contract if, within the period of 3 months immediately preceding the receipt of the request, he has complied with an earlier request from that debtor in relation to that contract.

(3) Where, within 7 days after making a request referred to in subsection (1), a debtor has not received the statement requested, he may apply to a court for a determination of the amount that, for the purposes of this Part, is the net balance due to which the request relates.

(4) An amount determined by a court on an application under subsection (3) by a debtor under a regulated contract shall be deemed to be the net balance due to the credit provider under the contract.

**Early termination of contract.**

109. The debtor under a regulated contract may discharge his obligations under the contract by paying or tendering to the credit provider the net balance due to the credit provider at the time of payment or tender.

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**Mortgagor may compel sale.**

110. (1) Subject to this section, the mortgagor under a regulated goods mortgage may, unless the mortgage is also security for a debt or obligation arising otherwise than in relation to a regulated contract, by notice in writing given to the mortgagee, require the mortgagee to sell goods that are subject to the mortgage.

(2) A notice given under subsection (1) is of no force or effect unless the goods to which the notice relates are, when the notice is given, in the possession of the mortgagee or the mortgagor returns the goods to the mortgagee in accordance with subsection (3) not later than 7 days after the giving of the notice or such longer time as is agreed upon between the mortgagee and the mortgagor, or a court permits on application by either the mortgagee or the mortgagor.

(3) A mortgagor who gives a notice under subsection (1) may, unless the goods to which the notice relates are in the possession of the mortgagee, return the goods to the mortgagee during ordinary business hours at a place at which the mortgagee ordinarily carries on business or at a time and place agreed upon by the mortgagee and the mortgagor or, if the mortgagee and mortgagor fail to agree on a time and place, at a time and place determined by a court on application by either the mortgagee or the mortgagor.

(4) Where—

(a) a notice has been given to a mortgagee under this section; and

(b) any goods to which the notice relates are in the possession of the mortgagee or have been returned to him in accordance with subsection (3),

the mortgagee shall, as soon as is reasonable and practicable in the circumstances, sell the goods for the best price reasonably obtainable and shall account to the mortgagor as provided by section 118.

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**Notice required before rights exercised.**

111. (1) A credit provider shall not—

- (a) institute proceedings in respect of a matter arising under a regulated contract; or
- 5 (b) exercise, or purport to exercise, a right under a regulated credit sale contract or a regulated loan contract arising by reason of—
  - (i) a default by the debtor;
  - 10 (ii) a failure by the debtor to observe provisions of the contract, being a failure that does not constitute a breach of the contract;
  - (iii) the exercise of an option by the credit provider; or
  - (iv) any other fact, act or thing,

15 by reason of which the whole or a part of the outstanding balance of the amount financed has become due on a date earlier than the date on which it would have become due if the default, failure, exercise, fact, act or thing had not occurred or been done,

20 unless—

- (c) the debtor is in default under the contract;
- (d) the credit provider has served on the debtor and, where there is a guarantor in respect of the contract, on the guarantor, a notice in accordance with subsection (3); and
- 25 (e) the notice referred to in paragraph (d) has not been complied with in accordance with subsection (4).

**Penalty : \$1,000.**

30 (2) A mortgagee shall not, under a regulated goods mortgage, institute proceedings or exercise, or purport to exercise, a right unless—

- (a) the debtor under the regulated contract to which the mortgage relates is in default under the contract;



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- (b) the mortgagee has served on the mortgagor and, where there is a guarantor in respect of the mortgage, on the guarantor, a notice in accordance with subsection (3); and
- 5 (c) the notice referred to in paragraph (b) has not been complied with in accordance with subsection (4).

Penalty: \$1,000.

- (3) A notice referred to in paragraph (d) of subsection (1) (d) or (2) (b) is a notice—
- 10 (a) specifying the default, as the case may be—
- (i) of the debtor under the regulated contract; or
  - (ii) of the debtor under the regulated contract to which the regulated goods mortgage relates;
- 15 (b) stating the intention of the credit provider or mortgagee to exercise rights and remedies under the regulated contract or regulated goods mortgage unless, within a period of 14 days after service of the notice (or where a longer period is specified in the notice, that longer period)—
- 20 (i) the default is remedied (except insofar as the default relates to a requirement to do a thing at or before a certain time, or within a certain period or is a default in payment of an amount that became payable earlier than would have been the case if there had been no other default);
  - 25 (ii) the amounts that would be due to the credit provider under the contract if the default, failure, exercise, fact, act or thing had not occurred or been done, are paid; and
  - 30 (iii) the enforcement expenses (if any) in relation to the exercise by the credit provider or mortgagee of any rights arising from the default of the debtor are paid;
- 35 (c) stating, if the notice refers to payment of amounts due under the contract that increase until paid, that the amounts so increase; and

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(d) containing the prescribed information.

(4) The notice referred to in subsection (1) (d) or (2) (b) is complied with if within the period of 14 days after service of the notice (or where a longer period is specified in the notice, that longer period) the default has been remedied (except as referred to in subsection (3) (b) (i)) the amounts referred to in subsection (3) (b) (ii) have been paid or tendered and the enforcement expenses referred to in subsection (3) (b) (iii) (if any) have been paid.

10 (5) Where a goods mortgage secures payment of a debt  
or other pecuniary obligation or the performance of any other  
obligation under a regulated contract and secures payment of other  
money or the performance of any other obligation, subsection (2)  
15 does not apply to or in respect of the institution of proceedings,  
or the exercise, or purported exercise, of a right under the mort-  
gage, arising otherwise than by reason of a default of the debtor  
under the regulated contract.

(6) Subsections (1) and (2) do not apply where—

20 (a) in relation to proceedings under a regulated contract, the  
credit provider believes on reasonable grounds that he  
was induced by fraudulent misrepresentation on the part  
of the debtor to enter into the contract; or

(b) in relation to proceedings under a regulated goods mort-  
25 gagee, the mortgagee believes on reasonable grounds—

(i) that he was induced by fraudulent misrepresenta-  
tion on the part of the mortgagor to enter into  
the mortgage; or

30 (ii) in the case of the exercise of a right to take  
possession of goods, that the goods will be or  
have been removed, concealed or damaged by  
the mortgagor in breach of the mortgage.

(7) The onus of proving that, by reason of subsection  
(6), subsection (1) or (2) does not apply is on the credit provider  
or mortgagee.



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(8) A credit provider or a mortgagee may apply to a court for a determination that subsection (1) or (2), as the case may require, does not apply in relation to a regulated contract or a regulated goods mortgage.

5 (9) Where an application is made under subsection (6) in relation to a regulated contract or a regulated goods mortgage, the court—

(a) may determine—

10 (i) that subsection (1) does not apply in relation to the contract or that subsection (2) does not apply in relation to the mortgage; and

15 (ii) if it thinks fit, that the credit provider or mortgagee in instituting proceedings or exercising, or purporting to exercise, a right to which, but for a determination of the court under this subsection, subsection (1) or (2) would apply, shall comply with such conditions as the court specifies in the determination; or

(b) may dismiss the application.

20 (10) Where a court makes a determination under subsection (9) (a) in relation to a regulated contract or a regulated goods mortgage, subsection (1) or (2), as the case may be, does not apply to or in relation to the contract or mortgage.

25 (11) A credit provider or mortgagee who institutes proceedings or exercises or purports to exercise a right to which, but for a determination of the court under subsection (9), subsection (1) or (2) would apply, shall comply with any conditions specified by the court in the determination.

Penalty applying to this subsection: \$1,000.

**30 Proceedings prohibited where breach remedied.**

112. Where a credit provider or a mortgagee serves a notice referred to in section 111 on a debtor in relation to a regulated contract or on a mortgagor in relation to a regulated goods



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mortgage and the notice is complied with in accordance with section 111 (4), the credit provider or mortgagee shall not, in relation to the default specified in the notice, institute proceedings or exercise, or purport to exercise, a right under the contract or 5 mortgage.

**Limit on recoverable amount.**

113. A credit provider who institutes proceedings or exercises a right referred to in section 111 (1) in respect of a regulated contract is not entitled to recover from the debtor an amount that 10 exceeds the net balance due to the credit provider at the time of recovery.

**Restriction on repossession of goods.**

114. (1) A mortgagee shall not, except with the consent of the Tribunal, take possession (otherwise than under section 110) of 15 goods subject to a regulated goods mortgage or otherwise exercise his powers under such a mortgage if the outstanding balance of the amount financed under the contract to which the mortgage relates is less than one-quarter of the total amount financed.

(2) Subsection (1) does not apply where the mortgagee 20 believes on reasonable grounds that the mortgagor has removed, concealed or damaged the goods or attempted to remove, conceal, damage, sell, dispose of or part with possession of the goods.

(3) The onus of proving that, by reason of subsection (2), subsection (1) does not apply, is on the mortgagee.

25 **Court may order delivery of goods.**

115. (1) A court may, on the application of the mortgagee under a regulated goods mortgage and upon being satisfied—

(a) that the mortgagee is entitled to take possession of goods the subject of the mortgage; and

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(b) that the mortgagor or another person in possession of the goods subject to the mortgage has without just cause refused or failed to deliver up the goods after service of a notice under section 111,

5 order the mortgagor or other person in possession of the goods to deliver up the goods to the mortgagee at or before a time specified in the order at a place so specified.

(2) A person to whom an order made under subsection (1) applies shall comply with the order.

10 Penalty applying to this subsection: \$1,000.

**Repossession of goods by mortgagee.**

**116. (1)** Where the mortgagee takes possession (otherwise than under section 110) of goods subject to a regulated mortgage—

15 (a) he shall not, without the consent in writing of the mortgagor given without inducement by the mortgagee, or the authority of a court, sell or otherwise dispose of or part with possession of the goods until the expiration of 21 days after the date of service on the mortgagor of a notice in the form prescribed for the purposes of this section relating to rights of the mortgagor in relation to the goods and specifying the estimated value of the goods; and

20 (b) where the mortgagor or the Commissioner has made application to a court in relation to the taking of possession of goods by the mortgagee or where the Commissioner has sought a variation under section 79 (3) or a postponement under section 120 (4), or has, under either of those subsections, referred to the Tribunal an application by the mortgagor for such a

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variation or postponement, the mortgagee shall not sell or otherwise dispose of or part with the possession of the goods—

- 5 (i) where the Commissioner has sought a variation under section 79 (3) or a postponement under section 120 (4)—unless the Commissioner informs the mortgagee that he has determined not to refer the matter to the Tribunal;
- 10 (ii) before the court, or as the case may be, the Tribunal, has determined the matter;
- (iii) in contravention of a determination by the court or, as the case may be, the Tribunal; or
- 15 (iv) where a determination of the court or the Tribunal is made against which an appeal may lie—until the time within which an appeal may be made has expired and an appeal has not been made or, where an appeal is made, until the appeal is withdrawn or has been determined in favour of the mortgagee.

20 (2) Subject to section 118, a mortgagee who (otherwise than under section 110) takes possession of goods subject to a regulated mortgage shall, if the mortgagor requires him so to do by notice in writing served on the mortgagee before he sells or otherwise disposes of or parts with the possession of the goods,  
25 offer the goods for sale to a person introduced by the mortgagor—

- (a) except as provided by paragraph (b)—for an amount equal to the estimated value specified in the notice under subsection (1) (a); or
- 30 (b) where the mortgagee claims to be able to sell the goods for a specified amount that is greater than the amount referred to in paragraph (a)—for that specified greater amount.

**Penalty applying to this subsection : \$1,000.**



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**Right of mortgagor to redeem goods.**

117. (1) Where a mortgagee takes possession of goods subject to a regulated goods mortgage, the mortgagor may redeem the goods by discharging his obligations under the mortgage in accordance with subsection (2).

(2) A mortgagor may exercise his right under subsection (1) to redeem goods subject to a goods mortgage by paying or tendering at any time before foreclosure or sale by the mortgagee—

10 (a) where the mortgage relates to one or more regulated contracts—the net balance within the meaning of section 107 due to the credit provider under each contract at the time of payment or tender; and

15 (b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract, the amount payable to that person in respect of that debt or obligation at the time of payment or tender,

or the amount payable under or secured by the mortgage, whichever is the lesser, at the time of payment or tender.

20 (3) Where a mortgagee takes possession of goods subject to a regulated mortgage and, at any time before sale by the mortgagee—

(a) where the mortgage relates to one or more regulated contracts—

25 (i) the default under each such contract is remedied;  
(ii) the amounts that would be due to the credit provider under each such contract if the default had not occurred, are paid; and

30 (iii) the enforcement expenses (if any) in relation to the exercise of the right to take possession of the goods are paid; and

(b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract, the amounts payable to that person in respect of that debt or obligation at the time of payment, are paid,

the mortgagor shall forthwith return the goods to the mortgagor.

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(4) Where a mortgagee returns goods to a mortgagor by reason of his compliance with subsection (3)—

- (a) the goods are received and held by the mortgagor subject to the mortgage; and
- 5 (b) the mortgage and any contracts to which it relates continue in force as if the mortgagee's right to take possession of the goods had not arisen and had not been exercised.

(5) In subsection (2) "default" does not include—

- 10 (a) a default in observance of the time at or within which a thing is required to be done; or
- (b) a default in payment of an amount that became payable earlier than would have been the case if there had been no other default.

**15 Mortgagee to account for proceeds of sale.**

**118. (1)** For the purposes of this section, a mortgagee exercises a power of sale as prescribed if he exercises it—

- (a) as soon after he became entitled to exercise it as is reasonable and practicable in the circumstances; and
- 20 (b) so as to receive the highest amount reasonably obtainable by the sale,

or if he exercises it as provided by section 110 (4) or 116 (2).

(2) Where, for the purpose of exercising his power of sale under a goods mortgage that relates to one or more regulated  
25 contracts, a mortgagee offers goods the subject of the mortgage for sale as provided by section 116 (2), the mortgagee is liable to the mortgagor—

- (a) where the offer is accepted—for the amount for which the goods are sold;

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- (b) where the offer is not accepted and the goods are otherwise sold as prescribed—
- (i) for the amount for which the goods would have been sold if the offer had been accepted; or
  - (ii) for the amount received from the sale,
- whichever is the greater; or
- (c) where the offer is not accepted and the power of sale is exercised otherwise than as prescribed—
- (i) for the amount for which the goods would have been sold if the offer had been accepted; or
  - (ii) for the amount for which, in the opinion of the court, the goods would have been sold if the power of sale had been exercised as prescribed,
- whichever is the greater,
- reduced by the amounts referred to in subsection (1).

(3) Where a mortgagee exercises his power of sale under a goods mortgage that relates to one or more regulated contracts without having offered the goods for sale as provided by section 116 (2), the mortgagee is liable to the mortgagor—

- (a) where the power is exercised as prescribed—for the amount received pursuant to the exercise of the power; or
- (b) where the power is not exercised as prescribed—for the amount that, in the opinion of the court, would have been received pursuant to the exercise of the power if it had been exercised as prescribed,

reduced by the amounts referred to in subsection (4).

(4) For the purposes of subsections (2) and (3), the amounts referred to in this subsection are—

- (a) where the goods sold were subject to a prior mortgage—the amount payable in discharge of that prior mortgage;



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- (b) where the mortgage secures the payment of a debt or other pecuniary obligation arising otherwise than under a regulated contract to which the mortgage relates—the amount payable in respect of that debt or obligation;
- 5 (c) an amount equal to—
- (i) where the power of sale was exercised as prescribed—the net balance, or the sum of the net balances, within the meaning of section 107 due to the credit provider in respect of the regulated
- 10 contract or contracts to which the mortgage related at the time of receipt of the proceeds of the sale; or
- (ii) where the power of sale was not exercised as prescribed—the net balance, or the sum of the net balances, within the meaning of section 107
- 15 as was or were due at the time the mortgagee would reasonably have expected to receive the proceeds of sale if the power had been exercised as prescribed; and
- 20 (d) where the power of sale was exercised as provided by section 110 (4)—the reasonable expenses of the mortgagee incurred in selling the goods.

(5) The onus of proving that a power of sale was exercised as prescribed is on the mortgagee who exercised it.

- 25 (6) Proceedings for the recovery of an amount due to a person in respect of the exercise of a power of sale by a mortgagee by reason of the operation of this section shall not be instituted after the expiration of 3 years after the exercise of the power.

**Moratorium—farmers.**

- 30 **119. (1)** Where the mortgagor under a regulated goods mortgage is a farmer and the mortgagee gives to the mortgagor notice under section 111 of his intention to exercise a right under the mortgage to take possession of goods comprising a harvester, binder, tractor, plough or other agricultural implement or a motor

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truck, the mortgagor may, unless the mortgagee has sold or otherwise parted with possession of the goods, apply to a court for an order under subsection (3).

(2) Service on a mortgagee of notice of an application  
5 under subsection (1) operates—

- (a) where the mortgagee has not taken possession of the goods to which the application relates—to suspend the power of the mortgagee to take possession of the goods; or
- 10 (b) where the mortgagee has taken possession of the goods to which the application relates but has not sold the goods or otherwise parted with possession of the goods—to suspend the power of the mortgagee to sell or otherwise part with possession of the goods,

15 until an order is made pursuant to the application or, as the case may be, the application is dismissed.

(3) Where application is made for an order under this subsection and the court is satisfied that the mortgagor will have a reasonable prospect of being able to remedy the default specified in  
20 the notice under section 111 within 12 months after service of notice of the application on the mortgagee, the court may—

- (a) where, at the time the mortgagee was served with notice of the application, he had not taken possession of the goods to which the application relates—make an order  
25 suspending the power of the mortgagee to take possession of the goods (except under section 110) for such period, expiring not later than 12 months after service on the mortgagee of notice of the application, as is specified in the order; or
- 30 (b) where, at the time the mortgagee was served with notice of the application, he had taken possession of the goods but had not sold the goods or otherwise parted with possession of the goods—make an order that the mortgagee restore the goods to the applicant and also make  
35 an order referred to in paragraph (a).

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(4) An order under subsection (3) may be made on such terms and conditions as the court thinks fit including a condition that the mortgagor pay to the mortgagee any enforcement expenses.

(5) Where an order is made under subsection (3) and 5 the applicant mortgagor complies with any terms and conditions of the order that are applicable to him, the mortgagee the subject of the order shall not—

10 (a) where the order is made under subsection (3) (a)—  
exercise the power to which the order relates during any  
period for which the power is suspended by the order;  
or

(b) where the order is made under subsection (3) (b)—  
fail to comply with the order or the terms and conditions  
thereof that are applicable to him.

15 Penalty: \$1,000.

(6) Where a mortgagee contravenes subsection (5), he  
is liable to the mortgagor for any damage suffered by the  
mortgagor as a consequence of the contravention, whether or not  
he has been prosecuted for the contravention and without prejudice  
20 to his liability to be so prosecuted.

(7) In this section, “farmer” means a person whose sole  
or main business is the business of agriculture, pasturage, horti-  
culture, viticulture, poultry farming, dairy farming or any other  
business consisting of the cultivation of soil, the gathering in of  
25 crops or the rearing of livestock.

**Postponement of exercise of rights.**

120. (1) Where a credit provider or mortgagee has given  
notice under section 111 to a debtor or mortgagor of his intention  
to institute proceedings in respect of, or to exercise a right under,  
30 a regulated contract or a regulated goods mortgage, the debtor or  
mortgagor may—

(a) in the case of a right to take possession of goods—at  
any time before the expiration of the period of 14 days  
referred to in section 111 (4); or



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(b) in any other case—at any time before institution of the proceedings or exercise of the right,

negotiate with the credit provider or mortgagee a postponement of institution of the proceedings or of action to exercise the right or, where a right to take possession of goods has been exercised, a postponement of the right to sell or otherwise dispose of or part with the possession of the goods.

(2) Where a postponement is negotiated under subsection (1) and a written statement of the conditions of the postponement is given to the debtor or mortgagor, the notice under section 111 shall, if the conditions of the postponement are complied with by the debtor or mortgagor, be deemed not to have been given.

(3) Where a debtor or mortgagor is unable to negotiate a postponement under subsection (1), he may apply to the Commissioner for negotiation of such a postponement.

(4) Where an application is made under subsection (3), the Commissioner shall seek the views of the credit provider or mortgagee and, after giving him a reasonable opportunity to be heard and making such other inquiries as the Commissioner thinks fit, determine whether or not to seek to negotiate the postponement to which the application relates and, where he seeks, but is unable to obtain, such a postponement, the Commissioner shall refer the application to the Tribunal.

(5) Subsection (2) applies to and in respect of a postponement negotiated under subsection (4) in the same way as it applies to and in respect of a postponement negotiated under subsection (1).

(6) The Tribunal may, where it receives an application referred to it under subsection (4), order or refuse to order the postponement to which the application relates and, where it orders a postponement, may make such other orders as it thinks fit.

(7) Where an order under subsection (6) is in force, the credit provider or mortgagee under the contract or mortgage to which the application relates may apply to the Tribunal for a variation of the order.

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(8) The Tribunal may, where it receives an application under subsection (7), make such variation of the order to which the application relates as it thinks fit or may refuse to make such an order.

5 (9) An order in force under this section, and such an order as varied from time to time, has effect according to its tenor.

(10) Where a mortgagor commences negotiations under subsection (1) with a mortgagee after the mortgagee has taken possession of goods subject to the mortgage, it is a condition of  
10 any postponement negotiated under that subsection or subsection (4) that the mortgagor pay the reasonable costs of the mortgagee incurred in taking possession of the goods.

(11) Where the Commissioner is unable to obtain a postponement under subsection (4) in relation to a regulated  
15 contract or a regulated goods mortgage, the credit provider or mortgagee shall not institute proceedings, or exercise a right, under the contract or mortgage before the Tribunal has made or refused an order under subsection (6).

Penalty applying to this subsection: \$1,000.

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**PART VI.**

**REGULATED CONTRACTS AND MORTGAGES—GENERAL.**

**Penalty for false statements, etc.**

121. (1) A person shall not in, or in relation to, an offer to enter into a regulated contract or a regulated mortgage, make a  
25 statement that is false or misleading by reason of the inclusion in the statement of false or misleading matter or of the omission from the statement of any material matter.

Penalty : \$1,000.

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(2) It is a defence to a prosecution of a person for an offence under subsection (1) if the person proves that when the offer was made he—

- 5 (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading;
- 10 (c) in the case of an omission, believed on reasonable grounds that no material matter had been omitted, being material matter the omission of which would make the statement false or misleading; or
- (d) in the case of an omission, did not know that the omitted matter was material.

(3) A supplier shall not, in or in relation to an offer by  
15 a person to a credit provider (not being the supplier) to enter into a regulated contract, make a statement that is false or misleading by reason of the inclusion in the statement of false or misleading matter or of the omission from the statement of any material matter of which he had been informed by that person.

20 Penalty : \$1,000.

(4) It is a defence to a prosecution of a supplier for an offence under subsection (3) or to a claim by a credit provider under subsection (5) if the supplier proves that when the offer was made he—

- 25 (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading;
- 30 (c) in the case of an omission, believed on reasonable grounds that no material matter of which he had been informed by the person by whom the offer was made had been omitted, being material matter the omission of which would make the statement false or misleading; or



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(d) in the case of an omission, did not know that the omitted matter was material.

(5) Where in or in relation to an offer by a person to a credit provider to enter into a regulated contract—

- 5 (a) a supplier makes a statement in contravention of subsection (3); and
- (b) the credit provider suffers loss by reason of the statement,

the supplier is liable to the credit provider for the amount of the  
10 loss.

(6) Subsection (5)—

- (a) does not affect the liability of a person to be convicted of an offence under subsection (3); and
- 15 (b) is in addition to all other rights of a credit provider exercisable against the supplier who made the statement in contravention of subsection (3) (whether under this or any other Act or law).

**Court may approve removal of mortgaged goods.**

20 **122.** Where, under a regulated contract or regulated goods mortgage it is the duty of a debtor or a mortgagor to keep the goods to which the contract or mortgage relates in his possession or control at a particular place, or not to remove the goods from a particular place, a court may, on the application of the debtor or mortgagor, make an order approving the removal of the goods to  
25 some other place and that other place shall, for the purposes of the contract or mortgage, be deemed to have been substituted for the first-mentioned place.

**Prohibition of assignment of wages, etc.**

30 **123.** (1) Subject to subsection (2), a provision in a regulated contract or in a mortgage relating to a regulated contract to the effect that the debtor or mortgagor assigns or agrees to assign an

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amount of wages or salary or benefits under a superannuation scheme in payment of, or as security for the payment of, a debt or other pecuniary obligation under the contract is void.

(2) A credit provider or mortgagee shall not enter into a contract or mortgage that includes a provision that, by the operation of subsection (1), is void.

Penalty applying to this subsection: \$1,000.

**Bills of exchange as security.**

124. (1) Subject to subsection (2), a credit provider shall not take a bill of exchange, or a promissory note, in discharge of, or as security for, an amount payable by a debtor, mortgagor or guarantor under, or in relation to, a regulated contract or a regulated mortgage unless the face of the bill or note bears the prescribed notice and the notice complies with section 154.

15 Penalty: \$1,000.

(2) A reference in subsection (1) to the taking of a bill of exchange or promissory note does not include a reference to the taking of a bank draft, a cheque dated on or before the date on which it is taken or an order addressed to a banker requesting payment of specified amounts at specified times to a credit provider.

(3) Where, in breach of subsection (1), a credit provider takes a bill of exchange or promissory note from a debtor, mortgagor or guarantor in discharge of or as security for an amount payable under, or in relation to, a regulated contract or a regulated goods mortgage and the payment in due course of the bill or note would result in the payment of an amount in excess of the amount for which the debtor, mortgagor or guarantor would have been liable if the bill or note had not been taken, the credit provider is liable, if the bill or note is paid, to pay to the debtor, mortgagor or guarantor the amount of the excess.



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**Advertising availability of credit.**

125. (1) A person shall not publish, or cause to be published, an advertisement stating or implying that credit is available in respect of the payment for goods or services sold or supplied by him under a contract of sale to which Part II applies or that he provides credit under regulated contracts if—

- (a) the advertisement includes a statement—
  - (i) that is false, misleading or deceptive; or
  - 10 (ii) that is, or is to the effect of, a statement prescribed for the purposes of this section as a prohibited statement;
- (b) the advertisement does not include a statement prescribed for the purposes of this section as a statement required to be included in the advertisement; or
- 15 (c) the advertisement includes a statement of the amount of a periodic payment in respect of the credit and does not also, in the advertisement—
  - 20 (i) specify the amount that is the total of the amount financed and the credit charge to which that periodic payment relates; and
  - (ii) describe that total as the amount repayable by those periodic payments.

Penalty : \$1,000.

25 (2) For the purposes of subsection (1), a statement is a false statement if it states or implies that the rate of interest or charges payable under a credit contract is a rate other than the annual percentage rate that would be applicable to contracts of that kind.

30 (3) In any proceedings for a contravention of subsection (1) (a) (i), if it is proved that the statement to which the proceedings relate was false, misleading or deceptive in a material particular, the person who published the statement, or caused it to be published, shall be deemed to have published it, or to have caused it to be published, with knowledge of its falsity, or mis-  
35 leading or deceptive character, as the case may be, unless he proves



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that, having taken all reasonable precautions against such a contravention, he had reasonable grounds to believe, and did believe, that the statement was true, and had no reason to suspect that the statement was false, misleading or deceptive.

5           **(4)** Where—

- (a) an advertisement is published in contravention of subsection (1);
- (b) within 3 months after that publication, a debtor enters into a regulated contract to which, or into a regulated contract of a kind to which, the advertisement relates; and
- (c) the debtor suffers loss by reason of his entering into the contract as a result of the advertisement,

15 the person who so published the advertisement or caused it to be published is liable to the debtor for the amount of the loss.

**(5)** Subsection (4)—

- (a) does not affect the liability of a person to be convicted of an offence against this Act by reason of a contravention of subsection (1); and
- 20           (b) operates in addition to all other rights (whether under this or any other Act or law) of a debtor against the person who published the advertisement or caused it to be published.

**(6)** A person shall not publish, or cause to be published, 25 an advertisement relating to the provision of credit under a regulated contract in respect of the sale or supply of goods or services, being an advertisement that includes a statement of a specified amount and states or implies that that amount would be from time to time payable to the credit provider under such a 30 contract unless the advertisement also states—

- (a) the cash price of the goods or services;
- (b) the total amount payable under such a contract; and

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(c) the period within which that total amount is payable.

Penalty : \$1,000.

(7) Proceedings for a contravention of a provision of this section or under subsection (4) do not lie against the printer, publisher or proprietor of a newspaper, or the licensee of a commercial broadcasting station or commercial television station, or the exhibitor of a film, or against any person acting under the authority of such a printer, publisher, proprietor, licensee or exhibitor, for the publication of a statement in, or omission of a statement from, an advertisement unless—

(a) the printer, publisher, proprietor, licensee or exhibitor was warned by an inspector appointed under the Consumer Protection Act, 1969—

15 (i) in the case of a statement referred to in subsection (1) (a) (i)—that publication of the statement, or of a statement substantially the same as that statement; or

(ii) in any other case—that publication or, as the case may require, omission of the statement,

20 would be such a contravention; and

(b) the printer, publisher, proprietor, licensee or exhibitor, after receipt of the warning, published, or caused to be published or, as the case may be, omitted to publish, the statement in an advertisement.

25 (8) In this section—

(a) “advertisement” includes, without affecting the generality of the expression, a notice, sign, label, circular and matter that is not writing but, by reason of the form or context in which it appears, conveys a message;

30 (b) a reference to the publishing of an advertisement is a reference to its publishing by any means, including publication in a newspaper or periodical, by radio broadcasting, by televising, or in a film; and

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- 5 (c) "licensee", "commercial broadcasting station" and "commercial television station" have the same meanings as they have in the Broadcasting and Television Act 1942 of the Parliament of the Commonwealth, or any Act amending or replacing that Act.

**Credit hawking.**

10 **126. (1)** Subject to this section, a person shall not, whether on his own behalf or otherwise and whether by appointment or otherwise, go from place to place inviting, or employ another person to go from place to place inviting, persons to apply for the provision of credit from a credit provider under a regulated contract or to enter into a transaction involving the provision of credit under a regulated contract by a credit provider whether or not in so going from place to place he does any other act or thing.

15 Penalty: \$1,000.

(2) Subsection (1) does not apply to a person in so far as he employs another person as his agent for the purpose of inviting a person to apply for credit from a credit provider or to enter into a transaction involving the provision of credit by a credit provider where the invitation is made—

- 20 (a) at a place other than the place of residence or business of the person to whom the invitation is made; or
- (b) by telephone, unless the telephone call was made by a person other than the person to whom the invitation is made.
- 25

(3) Subsection (1) does not apply to or in relation to an invitation by or on behalf of a credit provider in respect of the provision of credit for or in connection with—

- 30 (a) the purchase of goods of a particular kind by a supplier who deals in goods of that kind; or
- (b) the purchase of goods or services from, or the provision of store credit certificates by, a supplier where the invitation and supply are made by the same person.



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(4) Where a debtor suffers loss by reason of entering into a regulated contract initiated by a person in contravention of subsection (1), the credit provider is liable to the debtor for the amount of that loss.

5 (5) Subsection (4)—

(a) does not affect the liability of a person to be convicted of an offence against this section; and

(b) is in addition to all other rights of a debtor exercisable against the credit provider in relation to the contract  
10 (whether under this or any other Act or law).

**Terminology.**

127. The regulations may require the use in a regulated contract, a notice under section 64 or a statement of account referred to in section 66 of specified descriptive terms.

15 **Contracting by agents.**

128. (1) An agreement or arrangement to the effect that a credit provider or a mortgagee, or a person acting on behalf of, or who is associated with, a credit provider or a mortgagee—

20 (a) is authorised to enter into or to offer to enter into a regulated contract or a regulated mortgage on behalf of the debtor or mortgagor; or

(b) is to be treated as, or declared to be the agent of, the debtor or mortgagor in relation to entering into, or offering to enter into, a regulated contract or regulated mortgage,  
25

is void.

(2) A credit provider, a mortgagee or a person acting on behalf of, or associated with, a credit provider or mortgagee shall not enter into an agreement or arrangement that, by subsection  
30 (1), is void.

Penalty applying to this subsection: \$1,000.

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**Saving of certain contracts.**

**129. (1)** A regulated contract or a regulated mortgage is not illegal, void or unenforceable by reason only that by being a party to the contract or mortgage the credit provider or mortgagee is guilty of an offence against this Act.

**(2)** Where a credit provider or mortgagee commits an offence against this Act in relation to a regulated contract or a regulated mortgage, the debtor or mortgagor does not, by reason only of having been a party to the regulated contract or regulated mortgage, aid, abet, counsel or procure the commission of the offence.

**Notices to be given to all parties.**

**130.** Where, under this Act, a credit provider or a mortgagee gives a notice to, or serves a notice on, a debtor, mortgagor or guarantor constituted by 2 or more persons, the credit provider or mortgagee shall be deemed not to have given the notice to, or served the notice on, the debtor, mortgagor or guarantor, as the case may be, unless he gives it to, or serves it on, each of the persons constituting the debtor, mortgagor or guarantor.

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**PART VII.**

**CONTRACTS OF INSURANCE.**

**Insurance—regulated contracts.**

**131.** A credit provider shall not enter into a regulated contract that includes a condition that the debtor enter into a contract of insurance other than a contract of insurance or compulsory insurance in respect of a mortgage relating to the contract in accordance with section 132.

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**Insurance—regulated mortgages.**

**132. (1)** Subject to this section, a mortgagee under a regulated mortgage—

5 (a) may require the mortgagor to enter into a contract of compulsory insurance in respect of property subject to the mortgage; and

10 (b) may require the mortgagor to enter into a contract of insurance, other than compulsory insurance, in respect of property subject to the mortgage in the names of, and for the respective rights and interests of, the mortgagee and the mortgagor against such risks as the mortgagee thinks fit,

at the expense of the mortgagor—

15 (c) for such period, not exceeding 12 months after the mortgage is made, as the mortgagee determines, or where the term of the mortgage is a shorter period, that shorter period; and

20 (d) for such subsequent periods during the term of the mortgage, none of which shall exceed 12 months, as the mortgagee determines.

(2) Subsection (1) does not authorise or permit a mortgagee—

(a) to require insurance (other than compulsory insurance) by a particular insurer;

25 (b) to require insurance for a period, against risks or subject to terms, conditions or exceptions which the mortgagee would not require if he were to arrange the insurance at his own expense; or

30 (c) to require insurance for a subsequent period referred to in subsection (1) against risks or subject to terms, conditions or exceptions which the mortgagee did not require in respect of the immediately preceding period.



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(3) Subject to subsection (5), a mortgagee shall not enter into a regulated mortgage that includes—

5 (a) a condition that the mortgagor enter into a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1); or

10 (b) a condition that the mortgagor maintain in force a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1).

**Penalty : \$1,000.**

(4) Where a mortgagor enters into a regulated mortgage, the mortgagor shall be deemed to have entered into the mortgage on the basis that it does not include—

15 (a) a condition that he enter into a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1); or

20 (b) a condition that he maintain in force a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1).

(5) Where a mortgagor enters into a regulated mortgage that includes a condition referred to in subsection (1), the condition is void.

25

(6) Where the premium under a contract of insurance entered into by a mortgagor in relation to a regulated mortgage is included in the amount financed under a regulated credit sale contract or a regulated loan contract or in the amount owed by the debtor to the credit provider under a regulated continuing credit contract, the mortgagee may include in the mortgage a condition that the mortgagor maintain in force the contract of insurance during the period to which the premium relates or, where the premium relates to a period exceeding 12 months, during a period not exceeding 12 months.

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**Unauthorised insurance need not be maintained.**

5 **133. (1)** Subject to subsection (3), where a debtor or a mortgagor has, in relation to a regulated contract or a regulated goods mortgage, entered into a contract of insurance that is not a contract of insurance in accordance with the provisions of section 132, the credit provider or mortgagee shall not require, as a condition of the contract or mortgage, that the debtor or mortgagor maintain the contract of insurance in force.

Penalty : \$1,000.

10 **(2)** A condition of a contract or mortgage required in contravention of subsection (1) is void.

**(3)** Where the premium under a contract of insurance entered into by a debtor or mortgagor in relation to a regulated contract or a regulated mortgage is included in the amount  
15 financed under a regulated credit sale contract or a regulated loan contract or in the amount owed by the debtor to the credit provider under a regulated continuing credit contract, the credit provider may require as a condition of the contract that the debtor maintain the contract of insurance in force during the period to  
20 which the premium relates or, where the premium relates to a period exceeding 12 months, during a period not exceeding 12 months.

**Content of insurance contract.**

**134. (1)** A contract of insurance (other than compulsory  
25 insurance) entered into in relation to a regulated contract shall—

- (a) identify the subject-matter of the insurance;
- (b) state the name and address of the insured person; and
- (c) include a statement of—

- 30 (i) each amount for which insurance is or is to be provided or the manner in which each such amount may be determined;
- (ii) the period for which insurance is or is to be provided;

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- (iii) **the risks to which the insurance relates;**
- (iv) each amount payable under the contract of insurance in respect of the insurance of goods to which the regulated contract relates;
- 5 (v) each amount payable under the contract of insurance in respect of insurance against a risk referred to in clause 1 (e) of Schedule 2, clause 1 (b) of Schedule 4 or clause 1 (k) of Schedule 7; and
- 10 (vi) each other amount (if any) payable under the contract of insurance in respect of insurance of property subject to a mortgage relating to the regulated contract.

(2) A provision in a contract of insurance referred to in  
 15 subsection (1) or other contract or agreement, being a provision  
 with respect to the submission to arbitration of any matter arising  
 out of the contract of insurance does not bind the insured except  
 where the provision is contained in a contract or agreement entered  
 into after a difference or dispute has arisen between the insurer  
 20 and the insured, providing for the submission to arbitration of that  
 difference or dispute.

**Premiums to be paid to insurer.**

135. Where—

- 25 (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract; or
  - (b) under a regulated continuing credit contract an amount payable to an insurer is included in the amount owed under the contract by the debtor to the credit provider,
- 30 the credit provider shall hold the amount in trust for the insurer and shall before, or forthwith after, the contract or entry in the account of the debtor is made pay to the insurer the whole of the amount payable to him.

**Penalty : \$500.**



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**No-claim bonus.**

136. (1) Where in respect of the insurance of goods to which a regulated contract relates or of property subject to a regulated mortgage the insurer allows a no-claim rebate or a rebate of a similar nature, the debtor or mortgagor is entitled to the benefit of the rebate.

(2) A credit provider or mortgagee who receives the benefit of a rebate referred to in subsection (1) to which a debtor or mortgagor is entitled shall give the benefit of the rebate to the debtor or mortgagor.

Penalty applying to this subsection : \$500.

**Saving as to unenforceability.**

137. A contract of insurance relating to a regulated contract or a regulated mortgage that is entered into, reinstated or renewed by the debtor or mortgagor under the regulated contract or regulated mortgage with an insurer who knew or ought reasonably to have known that the contract of insurance was such a contract, is not void or unenforceable—

(a) by reason only of a false or misleading statement made in or in connection with the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the statement was material to the insurer in relation to the contract of insurance and—

- (i) the statement was fraudulent; or
- (ii) the debtor or mortgagor knew or ought reasonably to have known that the statement was material to the insurer in relation to the contract of insurance; or

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- 5 (b) by reason only of an omission of matter from the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the matter omitted was material to the insurer in relation to the contract of insurance and—
- (i) the omission was deliberate; or
- 10 (ii) the debtor or mortgagor knew or ought reasonably to have known that matter material to the insurer in relation to the contract of insurance had been omitted.

**Limitation on exclusion clauses.**

138. (1) Where by or under the provisions of a contract of insurance relating to a regulated contract or a regulated mortgage that is entered into, reinstated or renewed by the debtor or  
15 mortgagor under the regulated contract or regulated mortgage with an insurer who knew or ought reasonably to have known that the contract of insurance was such a contract—

- 20 (a) the circumstances in which the insurer is bound to indemnify the debtor under the regulated contract or the mortgagor under the regulated mortgage are so defined as to exclude or limit the liability of the insurer to indemnify the debtor or mortgagor on the happening of particular events or on the existence of particular circumstances; and
- 25 (b) the liability of the insurer has been so defined because the happening of those events or the existence of those circumstances was in the view of the insurer likely to increase the risk of loss occurring,

30 the debtor or mortgagor shall not be disentitled to be indemnified by the insurer by reason only of those provisions of the contract of insurance if, on the balance of probability, the loss in respect of which the debtor or mortgagor seeks to be indemnified was not caused or contributed to by the happening of those events or the existence of those circumstances.



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(2) The onus of proving for the purposes of subsection (1) that on the balance of probability loss in respect of which a debtor or mortgagor seeks to be indemnified was not caused or contributed to by the happening of particular events or the  
5 existence of particular circumstances is on the debtor or mortgagor.

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**PART VIII.**

**CONTRACTS OF GUARANTEE.**

**Guarantee to be in writing.**

10 **139.** A contract of guarantee between a guarantor and a credit provider in respect of the obligations of the debtor under a regulated contract is not enforceable against the guarantor unless—

- (a) it is in writing signed by the guarantor; or
- 15 (b) it was made by the acceptance of an offer in writing signed by the guarantor to enter into the contract of guarantee.

**Extent of liability of guarantor.**

20 **140.** A guarantor under a contract of guarantee in respect of the obligations of a debtor under a regulated contract is not liable in respect of an amount exceeding the sum of—

- (a) the amount for which the debtor is liable under the contract; and
- (b) the reasonable costs of and incidental to enforcing the contract of guarantee.



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**Recovery against guarantor.**

141. (1) A credit provider shall not bring proceedings to recover an amount from a guarantor in respect of a regulated contract unless the credit provider brings the proceedings against  
5 the debtor and the guarantor jointly to recover that amount or unless he has obtained judgment against the debtor and a written demand made on the debtor for satisfaction of the judgment has remained unsatisfied for not less than 30 days.

(2) Where, in proceedings to recover an amount in respect  
10 of a regulated contract, judgment is given against a debtor and a guarantor jointly, the judgment is not enforceable against the guarantor unless a written demand made on the debtor for satisfaction of the judgment has remained unsatisfied for not less than 30 days.

15 (3) Subsections (1) and (2) do not apply where—

- (a) the debtor is a bankrupt or a person whose affairs are being dealt with under Part X of the Bankruptcy Act 1966 of the Parliament of the Commonwealth, as amended and in force for the time being; or
- 20 (b) in a particular case, a court believes on reasonable grounds that it is not reasonably likely that any part of a judgment obtained against the debtor would be satisfied and has, on the application of the credit provider, declared that subsections (1) and (2) do not  
25 apply in that case.

(4) In this section, a reference to a court does not include a reference to the Tribunal.

**Guarantee of obligations of minor.**

142. (1) Subject to subsection (2), a guarantor of the obliga-  
30 tions of a debtor under a regulated contract where the debtor is a minor is liable under the contract of guarantee to the same extent as he would be liable if the debtor had not been a minor when the regulated contract was made.

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(2) Subsection (1) does not apply with respect to a contract of guarantee unless, when it was made, it included a prominent statement appearing immediately above or below the place where the guarantor signed the contract to the effect that a person who enters into a guarantee in respect of the obligations of a debtor who is a minor may not have a right to recover from the debtor amounts that the guarantor is liable to pay under the contract.

**Guarantor to receive copy of contract.**

10 **143.** Where a contract of guarantee is made between a guarantor and a credit provider with respect to the obligations of a debtor under a regulated contract, the credit provider shall give to the guarantor—

15 (a) a copy of the contract of guarantee not later than 14 days after it is signed by the guarantor; and

(b) a copy of the regulated contract not later than 14 days after the contract of guarantee is signed by the guarantor or, where the regulated contract is not made until after that time, not later than 14 days after the time when the regulated contract is made.

20 Penalty : \$500.

**Guarantor to receive statement of rights, etc.**

25 **144.** Where a contract of guarantee is made between a credit provider and a guarantor with respect to the obligations of a debtor under a regulated contract, the credit provider shall, not later than 14 days after the contract of guarantee is signed by the guarantor, give to the guarantor a statement of his rights and obligations in relation to the contract of guarantee in or to the effect of the form prescribed for the purposes of this section for use in relation to contracts of guarantee of the same class as the first-mentioned contract of guarantee.

30 Penalty : \$500.

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**Discharge of guarantee by notice.**

**145.** A guarantor under a contract of guarantee with a credit provider that relates to a regulated contract or a proposed regulated contract—

- 5       (a) may, by notice in writing given to the credit provider and debtor before the regulated contract is made, discharge the contract of guarantee in so far as it would relate to the obligations of the debtor under the regulated contract; and
- 10       (b) in the case of a regulated continuing credit contract or regulated loan contract, may, by notice in writing given to the credit provider and debtor after the contract is made, discharge the contract of guarantee in so far as it relates to obligations of the debtor incurred under the
- 15       contract after the notice is given.

**Revocation of offer to guarantee.**

**146 (1)** A provision in an agreement to the effect that a person does not have a right to revoke an offer to enter into a contract of guarantee—

- 20       (a) before the offer is accepted; or
- (b) in a case where at the time of acceptance the person could not reasonably be expected to know that the offer had been accepted, before notice is given of the acceptance,
- 25 or that such a right is restricted or modified is void.

**(2)** A credit provider shall not enter into an agreement that includes a provision that, by subsection (1), is void.

Penalty applying to this subsection: \$1,000.

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PART IX.

GENERAL.

DIVISION 1.—*Credit Contracts Generally.*

**Application and interpretation: Part IX, Div. 1.**

5 **147. (1)** Nothing in this Division affects the operation of the Contracts Review Act, 1980.

(2) For the purposes of this Division, a contract or mortgage is unjust if—

- (a) it is unconscionable, harsh or oppressive; or
- 10 (b) the annual percentage rate is excessive, having regard to the risk, the value of any security, the amount of the consideration, the time for repayment, the amount financed and any other relevant circumstances.

**Tribunal may re-open certain transactions.**

15 **148. (1)** Subject to section 151, the Tribunal may, at any time, on the application of the debtor under a regulated contract, the mortgagor under a regulated goods mortgage or the guarantor of the performance of a regulated contract, re-open the transaction that gave rise to the contract or mortgage if it appears to the  
20 Tribunal that, in the circumstances relating to the contract or mortgage at the time it was entered into, it was unjust.

(2) Where the Tribunal re-opens a transaction under subsection (1), the Tribunal may, notwithstanding any settlement of accounts or any agreement purporting to close previous dealings  
25 and create a new obligation, do any one or more of the following :—

- (a) re-open an account already taken between the parties;
- (b) relieve the debtor or mortgagor and the guarantor (if  
30 any) from payment of any amount in excess of such amount as the Tribunal, having regard to the risk

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- involved and all other circumstances, considers to be reasonably payable, in the case of a credit sale contract or a loan contract, in respect of the amount financed and the credit charge or, in the case of a continuing credit contract, in respect of the amount owed by the debtor to the credit provider under the contract;
- 5
- (c) set aside either wholly or in part or revise or alter an agreement made or mortgage given in connection with the transaction;
- 10 (d) give judgment for or make an order in favour of a party of such amount as, having regard to the relief (if any) which the Tribunal thinks fit to grant, is justly due to that party under the contract or mortgage;
- 15 (e) give judgment or make an order against a person for delivery of goods to which the contract or mortgage relates and which are in the possession of that person.

**Matters to be considered by Tribunal.**

149. (1) In determining whether a regulated contract or a regulated goods mortgage is unjust in the circumstances relating to the contract or mortgage at the time it was entered into, the Tribunal shall have regard to the public interest and to all the circumstances of the case, including such consequences as those arising in the event of—

20

- 25 (a) compliance with all or any of the provisions of the contract or mortgage; or
- (b) non-compliance with, or contravention of, all or any of the provisions of the contract or mortgage.

(2) Without affecting the generality of subsection (1), the matters to which the Tribunal shall have regard include, to the extent that they are relevant in the circumstances—

30

- (a) whether or not there was any material inequality in the bargaining powers of the parties to the contract or mortgage;

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- (b) whether or not, at the time the contract or mortgage was entered into, its provisions were the subject of negotiation;
- 5 (c) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the contract or mortgage;
- 10 (d) whether or not any of the provisions of the contract or mortgage impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the contract or mortgage;
- (e) whether or not—
- 15 (i) the debtor or mortgagor was reasonably able to protect his interests; or
- (ii) a person who represented the debtor or mortgagor was reasonably able to protect the interests of the debtor or mortgagor,
- because of his age or the state of his physical or mental capacity;
- 20 (f) the form of the contract or mortgage and the intelligibility of the language in which it is expressed;
- (g) whether or not, and when, independent legal or other expert advice was obtained by the applicant;
- 25 (h) the extent to which the provisions of the contract or mortgage and their legal and practical effect were accurately explained to the applicant and whether or not the applicant understood those provisions and their effect;
- 30 (i) whether undue influence, unfair pressure or unfair tactics were exerted on or used against the applicant—
- (i) by any other party to the contract;
- (ii) by any person acting, or appearing, or purporting, to act for any other party to the contract or mortgage; or



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- 5 (iii) by any person to the knowledge (at the time the contract was made) of any other party to the contract or mortgage, or of any person acting or appearing or purporting to act for any other party to the contract;
- (j) the conduct of the parties to the proceedings in relation to similar contracts or mortgages, or courses of dealing, to which any of them has been a party; and
- 10 (k) the commercial or other setting, purpose and effect of the contract or mortgage.

(3) For the purposes of subsection (2), a person shall be deemed to have represented a debtor or mortgagor if he represented him, or assisted him to a significant degree, in negotiations prior to, or at, the time the contract or mortgage was entered  
15 into.

(4) In determining whether a contract or mortgage is unjust, the Tribunal shall not have regard to any injustice arising from circumstances that were not reasonably foreseeable at the time the contract or mortgage was entered into.

20 (5) In determining whether to grant relief in respect of a contract or mortgage that it finds to be unjust, the Tribunal may have regard to the conduct of the parties to the proceedings in relation to the contract or mortgage since it was entered into.

**Joinder of parties.**

25 **150.** Where it appears to the Tribunal that a person other than a credit provider or mortgagee has shared in the profits of, or has a beneficial interest prospectively or otherwise in, a regulated credit contract or regulated goods mortgage that the court holds to be  
30 and may make such order in respect of that person as it thinks fit.

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**Limitation on re-opening of transaction.**

**151.** A debtor, mortgagor or guarantor is not entitled to institute proceedings under section 148 in respect of a credit contract or goods mortgage—

- 5 (a) in the case of a contract or goods mortgage under which the credit provider or mortgagee has exercised a right to take possession of the goods to which the contract or mortgage relates—after the expiration of the period of 6 months after the time when the credit provider or
- 10 mortgagee served the notice referred to in section 111 on the debtor, mortgagor or guarantor; and
- (b) in any other case—after the expiration of the period of 6 months after the time when the contract or mortgage is terminated.

**15 Assignment of interest under will, etc.**

**152. (1)** An assignment to a credit provider whether absolute or by way of security or otherwise made by a natural person of or in respect of all or any part of his right title or interest, whether actual or expectant, in possession, remainder or reversion, or con-

20 tingent, or of any nature whatsoever, in or under any will, codicil or deed or in, under or to the estate of any deceased person, whether the decease of such last-mentioned person was before or after the making of the assignment or before or after the commencement of this section, shall not be of any force or validity

25 unless the assignment is in writing and was executed by the person in the presence of a stipendiary magistrate or clerk of petty sessions or solicitor instructed and employed independently of the credit provider and is certified by the stipendiary magistrate or clerk or solicitor as provided in subsection (2).

30 (2) The stipendiary magistrate or clerk or solicitor shall read over and explain or cause to be read over and explained in his presence to the assignor the assignment and shall examine the assignor touching his knowledge of the assignment and if he thinks fit may so examine him separately and apart from any other

35 person and if he is satisfied that the assignor understands the true

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purport and effect of the assignment and freely and voluntarily executes it he shall certify in writing upon the assignment that the assignment has been so read over and explained and that he has examined the assignor and is satisfied as required by this section  
5 and that the assignor has executed the assignment in his presence.

(3) An assignment executed in pursuance of this section shall not be impeached upon any ground whatsoever except in the case of fraud or any kind of imposition.

(4) In this section—

10 “assignment” means any assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer or declaration of trust, and any contract, agreement or arrangement for assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer or declaration of trust, and  
15 any power of attorney, appointment of agent, licence or power to receive or other authority of a like nature;

“deed” means any instrument (other than a will or codicil) whether under seal or not whereby any property is settled, appointed, given or declared to be held in trust  
20 or is agreed to be settled, appointed, given or held in trust.

Vesting pursuant to will, etc.

153. Section 152 does not apply to an assignment made only for the purpose of vesting property in the person entitled to it  
25 under or by virtue of the provisions of a will, codicil or deed or as a person entitled to property as part of the estate of a deceased person, or to an assignment made by a person to whom that property has been actually conveyed, assigned or transferred.

DIVISION 2.—*Miscellaneous.*

30 Legibility of documents.

154. (1) A document that, under this Act, is required to be in writing or to comply with the provisions of this section shall be readily legible.



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(2) For the purposes of this section, a document shall be deemed to be readily legible if it is—

- (a) in clear hand writing; or
- (b) in clear print or type—
  - 5 (i) produced directly or indirectly by a typewriter that produces not more than 12 characters to each 25 millimetres;
  - 10 (ii) produced directly or indirectly by a computer that produces not more than 12 characters to each 25 millimetres;
  - (iii) produced by a method of printing that produces not more than 12 characters to each 25 millimetres;
  - 15 (iv) that is or is included in, a class of print or type prescribed for the purposes of this section; or
  - (v) the average dimensions of which are not less than the average dimensions of print or type that complies with subparagraph (i), (ii), (iii) or (iv).

20 (3) A photograph, reproduction or copy of print or type that complies with subsection (2) (b) shall be deemed to be readily legible unless the average dimensions of the print or type in the photograph, reproduction or copy are more than 5 per cent less than the average dimensions of print or type of a kind referred  
25 to in paragraph (b) (i), (ii), (iii) or (iv).

**Restriction on form of document.**

155. Where the form of a document given or issued by a credit provider or mortgagee that, under this Act, is required to be in writing, or if in writing to comply with the provisions of this  
30 section, in the opinion of the Tribunal—

- (a) is expressed in language that is not readily comprehensible;
- (b) is written or printed in a colour, or on paper of a colour, that detracts from the legibility of the document; or

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(c) is written or printed on a page in a style or manner that detracts from the legibility of the document,  
the Tribunal may direct the credit provider or mortgagee to cease to give or enter into documents in that form.

**5 Approval of form of document.**

**156.** Where a credit provider or a mortgagee submits to the Tribunal for its opinion a form of document intended to be given or entered into under this Act, the credit provider or mortgagee shall not, by reason only that he gives or issues a document under this Act in that form, be guilty of an offence under section 157 if the Tribunal, before the document is given or issued, determines that in its opinion the form of the document is—

- (a) readily legible;
- (b) expressed in language that is readily comprehensible; and
- 15 (c) written or printed—
  - (i) in a colour and on paper of a colour; and
  - (ii) on a page in a style or manner,  
that does not detract from the legibility of the document.

**Offence.**

20 **157.** A credit provider or mortgagee shall not—

- (a) give or issue a document under this Act that is not readily legible; or
- (b) give or issue a form of document in respect of which the Tribunal has given a direction under section 155.

25 Penalty: \$500.

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**Separation of documents.**

**158.** Except where this Act expressly otherwise provides, nothing in this Act requires an agreement, mortgage, contract, notice, statement, form or other writing to be contained in or  
5 written on a document that is separate from any other agreement, mortgage, contract, notice, statement, form or writing.

**Signature of documents.**

**159.** Subject to section 128, where, under this Act, a document is required to be signed by a person, it is not necessary that  
10 he should sign it with his own hand, but it is sufficient if his signature is written on the document by another person by or under his authority.

**“Contracting-out” of Act prohibited.**

**160.** A provision in a credit contract or mortgage or any  
15 other agreement (whether in writing or not) under which, except as expressly provided by this Act, the operation of a provision of this Act is excluded, modified or restricted is void.

**Offence.**

**161.** A credit provider or mortgagee shall not enter into a  
20 contract, mortgage or agreement that includes a provision that, under section 160, is void.

**Penalty : \$500.**

**Commissioner may publish tables.**

**162. (1)** The Commissioner may, by order published in the  
25 Gazette—

- (a) prescribe tables for the purpose of applying the formula in Schedule 1 in the calculation of the amount of a pre-determined credit charge or estimated credit charge



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that has accrued at a particular time under a regulated credit sale contract or regulated loan contract to which that Schedule applies; and

- 5 (b) prescribe tables for the purpose of applying the formula in Schedule 6 in the determination of the annual percentage rate under a regulated credit sale contract or a regulated loan contract to which that Schedule applies.

(2) Where, in relation to a regulated credit sale contract or a regulated loan contract to which Schedule 1 applies, the  
10 amount of the pre-determined credit charge or estimated credit charge that has accrued under the contract at a particular time is calculated by applying a relevant table prescribed for the time being under subsection (1) (a), the amount so calculated shall  
15 be deemed to be the amount that has accrued due at that time calculated in accordance with the formula set out in that Schedule.

(3) Where, in relation to a regulated credit sale contract or a regulated loan contract to which Schedule 6 applies, the amount of the annual percentage rate is determined by applying a relevant table prescribed for the time being under subsection (1)  
20 (b), the amount so determined shall be deemed to be the amount of the annual percentage rate determined in accordance with the formula set out in that Schedule.

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**PART X.****LICENCES.****25 DIVISION 1.—Credit Providers' Licences.****Credit providers to be licensed.**

**163. (1)** Subject to this Act, a person shall not carry on a business of providing credit unless he is the holder of a credit provider's licence.

**30 Penalty : \$10,000.**

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(2) Subject to this Act, a person shall not hold himself out as a person who carries on a business of providing credit unless he is the holder of a credit provider's licence.

Penalty : \$5,000.

5 (3) Subject to this Act, a person shall not carry on a business of providing credit under continuing credit contracts unless he is the holder of a credit provider's licence authorising the holder to provide credit under continuing credit contracts.

Penalty : \$5,000.

10 (4) Subject to this Act, a person shall not hold himself out as a person who carries on a business of providing credit under continuing credit contracts unless he is the holder of a credit provider's licence authorising the holder to provide credit under continuing credit contracts.

15 Penalty : \$5,000.

(5) Subject to this Act, a person shall not carry on a business of providing credit pursuant to agreements for the provision of store credit certificates unless he is the holder of a credit provider's licence authorising the holder to provide credit pursuant  
20 to those agreements.

Penalty : \$5,000.

(6) Subject to this Act, a person shall not hold himself out as a person who carries on a business of providing credit pursuant to agreements for the provision of store credit certificates  
25 unless he is the holder of a credit provider's licence authorising the holder to provide credit pursuant to those agreements.

Penalty : \$5,000.

(7) A person shall not carry on a business of providing credit otherwise than in accordance with the authority conferred  
30 by a credit provider's licence of which he is the holder.

Penalty : \$5,000.

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(8) A credit provider who, immediately before the day appointed and notified under section 2 (2) of the Money-lending (Repeal) Act, 1981, held a licence in force under Part II of the Moneylending Act, 1941, is not, by reason only of his entering into a credit contract on or before the day appointed for him by subsection (9), liable to a penalty under this section or liable, under section 184, to be deprived of any part of the amount owing under the contract.

(9) The day appointed by this subsection is—

- 10 (a) in relation to a credit provider who applies for a credit provider's licence on or before the day appointed and notified under section 2 (2) of the Moneylending (Repeal) Act, 1981—
  - 15 (i) the day upon which he is granted such a licence; or
  - (ii) the day upon which his application is refused, as the case may be; or
- 20 (b) in relation to a credit provider who fails to apply for such a licence on or before the day so appointed and notified—that day.

**Exemptions from licensing.**

**164. (1)** Section 163 does not apply to—

- 25 (a) the Crown or a public or local body or authority constituted by or under an Act;
- (b) a bank;
- (c) a body corporate registered under the Life Insurance Act 1945 of the Commonwealth as amended and in force for the time being;
- 30 (d) a body corporate authorised under the Insurance Acts 1973 of the Commonwealth as amended and in force for the time being to carry on insurance business;



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- 5 (e) unless Part VII of the Insurance Acts 1973 of the Commonwealth as amended and in force for the time being has ceased to have effect—a Lloyd's underwriter, being an underwriter of the society known as Lloyd's incorporated by the Imperial Act known as Lloyd's Act 1871;
- 10 (f) the holder of a pawnbroker's licence issued under the Pawnbrokers Act, 1902, in respect of the business of a pawnbroker carried on by him in accordance with that Act;
- (g) a pastoral finance company;
- (h) a society registered under the Co-operation Act, 1923, or specified in the Second Schedule to that Act;
- 15 (i) a society registered under the Permanent Building Societies Act, 1967;
- (j) a credit union registered under the Credit Union Act, 1969; or
- 20 (k) any other person empowered by an Act or an Act of the Parliament of the Commonwealth to lend money or provide credit, in respect of the lending of money or provision of credit in accordance with that Act or Act of the Parliament of the Commonwealth.

(2) A reference in section 163 to providing credit does not include a reference to—

- 25 (a) providing credit otherwise than under a regulated contract;
- (b) providing credit to a body corporate;
- (c) providing credit under a loan contract in respect of which—
- 30 (i) except in a case to which subparagraph (ii) applies—there is not an annual percentage rate that exceeds 14 per cent; or
- (ii) where the payment of a debt or other pecuniary obligation or the performance of any other
- 35 obligation under the loan contract is bona fide

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- 5 secured by a mortgage of land—there is an acceptable rate of interest that does not exceed 14 per cent and a higher annual percentage rate that exceeds 14 per cent but does not exceed the acceptable rate by more than 2 per cent;
- (d) providing credit under a continuing credit contract (otherwise than in respect of the payment for goods or services under a continuing credit contract) in respect of which—
- 10 (i) except in a case to which subparagraph (ii) applies—there is not an annual percentage rate that exceeds 14 per cent; or
- 15 (ii) where the payment of a debt or other pecuniary obligation under the continuing credit contract is bona fide secured by a mortgage of land—there is an acceptable rate of interest that does not exceed 14 per cent and a higher annual percentage rate that exceeds 14 per cent but does not exceed the acceptable rate by more than
- 20 2 per cent; or
- (e) collecting money due to a person whose licence as a credit provider is suspended or has been cancelled.

**Application for licence.**

25 **165. (1)** An application for a credit provider's licence may be made to the Tribunal—

- (a) by a natural person of or over the age of 18 years; or
- (b) by a body corporate of or in respect of which the directors and any persons concerned in the management of the body corporate are of or over the age of 18 years.
- 30 **(2)** An application shall be in writing in the prescribed form signed—
- (a) where the application is made by a natural person, by that person; or

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- (b) where the application is made by a body corporate, by not less than 2 directors of the body corporate or, if there is only 1 director, by that director.
- (3) An application shall specify—
- 5 (a) the name and address—
- (i) where the application is made by a natural person—of that person; or
  - (ii) where the application is made by a body corporate—of each director of the body corporate;
- 10 (b) where the applicant is a body corporate—the date and place of incorporation of the body corporate and the address of its registered office or, if it is not incorporated in Australia, the address of the principal office in Australia;
- 15 (c) whether the application is an application for—
- (i) a credit provider's licence without either of the authorities referred to in subparagraph (ii) or (iii);
  - 20 (ii) a credit provider's licence with authority to provide credit under continuing credit contracts;
  - (iii) a credit provider's licence with authority to provide credit pursuant to agreements for the provision of store credit certificates; or
  - 25 (iv) a credit provider's licence with the authorities referred to in subparagraphs (ii) and (iii);
- (d) the address of the principal place in the State at which, and the name or names under which, the applicant carries on or intends to carry on a business of providing credit;
- 30 (e) whether the applicant intends to carry on the business of providing credit in partnership with another person;
- (f) such matters as are prescribed relating to the financial standing of the applicant; and



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(g) such other matters as are prescribed,  
and shall be accompanied by the fee prescribed for such an application.

(4) Where application is made for a credit provider's licence and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (3) (a), (b), (d) or (e) or a change occurs materially affecting the financial standing of the applicant as specified in the application, the applicant shall, within 14 days after the occurrence of the change, give to the Tribunal notice, in writing signed by the applicant or, where the applicant is a body corporate, by a director of the body corporate, specifying particulars of the change.

(5) An applicant for a credit provider's licence shall, if required by the Tribunal so to do, provide the Tribunal with such further particulars in relation to the application as the Tribunal requires.

(6) A person shall not in, or in relation to, an application under this section, a notice under subsection (4) or any particulars provided under subsection (5), make a statement that is false or misleading by reason of the inclusion in the statement, notice or particulars of false or misleading matter or the omission from the statement of any material matter.

Penalty : \$5,000.

(7) It is a defence to a prosecution of a person for an offence under subsection (6) if he proves that, when the application was made, the notice given or the particulars provided—

- (a) he believed on reasonable grounds that the false matter was true;
- (b) he believed on reasonable grounds that the misleading matter was not misleading;
- (c) in the case of an omission, he believed on reasonable grounds that no material matter had been omitted; or

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- (d) in the case of an omission, he did not know that the omitted matter was material.

**Investigation of application.**

5 **166. (1)** Where an application for a credit provider's licence has been made in accordance with section 165, the Registrar shall—

- (a) publish in a newspaper circulating generally in New South Wales a notice giving particulars of the application; and
- 10 (b) send a copy of the application to the Commissioner with a request in writing to him to make such inquiries with respect to the application and the applicant as the Registrar specifies in the request.

(2) The Commissioner shall make such inquiries as are  
15 specified in the request sent to him under subsection (1) (b) and such other inquiries as he consider necessary and shall, as soon as practicable after making the inquiries, prepare a report on the results of the inquiries and submit the report to the Tribunal.

(3) The Commissioner of Police shall, if the Com-  
20 sioner for Consumer Affairs so requests, investigate an application a copy of which is sent to the Commissioner for Consumer Affairs under subsection (1) (b) and, as soon as practicable after completing the investigation, make a report to the Commissioner for Consumer Affairs on the investigation.

25 **Objection to application.**

**167. (1)** At any time before the expiration of the period of 28 days that next succeeds publication of a notice under section 166 (1) (a) with respect to an application for a credit provider's licence, or within such longer period as the Tribunal in a particular  
30 case allows, the Commissioner with the consent of the Minister may, and any other person may, lodge with the Tribunal an objection in writing to the granting of the application if the objection complies with subsection (2).

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(2) An objection complies with this subsection if—

- (a) it specifies the ground of the objection;
- (b) the ground of the objection is a ground on which the Tribunal is required to refuse an application for a licence; and
- (c) the Commissioner or other person making the objection has, before the expiration of the period referred to in subsection (1), served on the applicant a copy of the objection.

**10 Grant or refusal of licence.**

**168. (1)** Subject to subsections (2) and (3), the Tribunal shall grant an application for a credit provider's licence—

- (a) except where a hearing is required to be held in respect of the application as provided by subsection (4)—as soon as practicable after—
  - (i) the submission of a report under section 166 (2) with respect to the application; or
  - (ii) the expiration of the period allowed under section 167 (1) for the lodging of objections to the granting of the application,
 whichever is the later; or
- (b) if a hearing is, pursuant to subsection (4), required to be held in respect of the application—as soon as practicable after the conclusion of the hearing.

(2) An application made by a person other than a body corporate for a credit provider's licence shall be refused if it appears to the Tribunal that the person—

- (a) has not attained the age of 18 years;
- (b) is disqualified from holding a credit provider's licence;
- (c) is an undischarged bankrupt;



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- (d) does not have, or is not likely to continue to have, **sufficient financial resources to enable him to carry on a business of providing credit;**
- 5 (e) is not a person likely to carry on such a business honestly **and fairly;**
- (f) does not have sufficient expertise to enable him to carry **on such a business; or**
- (g) is in any other way not a fit and proper person to be the holder of a credit provider's licence.
- 10 (3) Without prejudice to the generality of subsection (2) (g), the Tribunal may, in determining whether an applicant for a credit provider's licence is not a fit and proper person to be the holder of such a licence, have regard (if such be the case) to the fact that the applicant—
- 15 (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in New South Wales or elsewhere involving fraud or dishonesty;
- 20 (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance, with or without sureties, for keeping the peace or to be of good behaviour, or both; or
- 25 (c) had, at the time of making the application, a charge pending against him in relation to such an offence.

(4) An application made by a body corporate for a **credit provider's licence shall be refused if it appears to the Tribunal that—**

- 30 (a) a director of, or a person concerned in the management of, the body corporate has not attained the age of 18 years;
- (b) the body corporate is disqualified from holding a credit provider's licence;

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- (c) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on a business of providing credit;
- 5 (d) the body corporate is not likely to carry on such a business honestly and fairly;
- (e) the officers of the body corporate are such that it would not have sufficient expertise to carry on such a business;
- 10 (f) the reputation of the body corporate is such that it would not be a fit and proper person to be the holder of a credit provider's licence;
- (g) an officer of the body corporate is disqualified from being an officer of a body corporate that is the holder of a credit provider's licence;
- 15 (h) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a credit provider's licence if he were to apply for such a licence himself; or
- 20 (i) any person other than an officer of the body corporate who, in the opinion of the Tribunal, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly.

(5) An application for a credit provider's licence shall  
25 not be refused on a ground specified in subsection (2) (d)–(g) or (4) (c)–(i) unless the Tribunal is satisfied that the ground has been made out after it—

- (a) has informed the applicant of the ground and has held a hearing with respect to the application; and
- 30 (b) has afforded the applicant and any person who, in accordance with section 167, has lodged an objection on that ground, an opportunity to appear and to make submissions and adduce evidence at the hearing.

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(6) Where an application for a credit provider's licence is refused, the Registrar shall forthwith, by notice in writing served on the applicant and each objector (if any) to the granting of the application, inform him of the refusal and of the ground on which  
5 the refusal is based.

(7) Where an application for a credit provider's licence in respect of which an objection has been lodged in accordance with section 167 is granted, the Registrar shall forthwith, by notice in writing, inform the person who lodged the objection of the  
10 granting of the application.

**Conditions of, and restrictions on, licence.**

**169. (1)** Subject to subsection (3), the Tribunal may—

- 15 (a) upon the granting of an application for a credit provider's licence and at any other time, impose conditions or restrictions subject to which the licence is to be held; and
- (b) at any time vary or revoke any of those conditions or restrictions.

(2) A licence is subject to—

- 20 (a) any prescribed conditions and restrictions; and
- (b) any conditions and restrictions in force under subsection (1).

(3) The Tribunal shall not impose conditions or restrictions to which a credit provider's licence is to be subject, or  
25 vary conditions or restrictions to which such a licence is subject, unless the Tribunal has first held a hearing with respect to the conditions and restrictions that are proposed to be imposed or varied and has afforded the applicant for or, as the case may be, the holder of, the licence an opportunity to appear at the hearing and  
30 to make submissions and adduce evidence with respect to the conditions or restrictions proposed to be imposed or varied.



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**Extension of authority conferred by licence.**

170. (1) An applicant for a credit provider's licence may, in his application, make an application for authority to carry on a business of providing credit under continuing credit contracts  
5 or pursuant to agreements for the provision of store credit certificates, or both.

(2) The holder of a credit provider's licence may make an application to the Tribunal for authority to carry on a business of providing credit under continuing credit contracts or pursuant  
10 to agreements for the provision of store credit certificates, or both.

(3) An application under subsection (2) shall—

- (a) be in or to the effect of the prescribed form and contain the prescribed information;
- (b) be made in the prescribed manner; and
- 15 (c) be accompanied by the fee prescribed for such an application.

(4) Where—

- (a) an application is made for the authority referred to in subsection (1) and the Tribunal grants the application for a credit provider's licence so referred to; or
- 20 (b) an application is made under subsection (2) and the application complies with subsection (3),

the Tribunal shall grant the application for such an authority or refuse it under subsection (5).

25 (5) An application made under subsection (1) or (2) shall be refused if it appears to the Tribunal that the applicant—

- (a) is not likely to carry on the business to which the application relates honestly and fairly; or
- (b) does not have sufficient expertise to enable him to carry  
30 on such a business.

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(6) An application made under subsection (1) or (2) shall not be refused on a ground specified in subsection (5) unless the Tribunal—

- 5 (a) has first held a hearing with respect to the application;  
and  
(b) has afforded the applicant an opportunity to appear and to make submissions and adduce evidence at the hearing.

(7) Where an application made under subsection (1) or (2) is refused (otherwise than for the reason that the applicant's application for a credit provider's licence is refused), the Registrar  
10 shall forthwith, by notice in writing served on the applicant, inform him of the refusal and of the ground on which the refusal is based.

**Name under which licensee may operate.**

15 **171. (1)** Subject to the Business Names Act, 1962, a credit provider's licence may authorise the holder to carry on business under a name or names in addition to or in substitution for the name of the licensee.

(2) The holder of a credit provider's licence shall not—

- 20 (a) carry on business as a credit provider; or  
(b) hold himself out as a credit provider or as a person carrying on business as a credit provider,

under a name or names other than the name or names under which he is authorised so to do in accordance with subsection (1).

Penalty applying to this subsection: \$1,000.

**25 Partnerships.**

**172.** The holder of a credit provider's licence shall not carry on a business of providing credit in partnership with a person who is not the holder of a credit provider's licence that confers authority to carry on that business.

30 Penalty : \$1,000.

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**Form of licence.**

**173. (1)** A credit provider's licence—

- (a) shall be in or to the effect of the prescribed form;
- 5 (b) shall, in the case of a credit provider's licence with authority to provide credit under continuing credit contracts, bear an endorsement in or to the effect of the prescribed form;
- 10 (c) shall, in the case of a credit provider's licence with authority to provide credit pursuant to agreements for the provision of store credit certificates, bear an endorsement in or to the effect of the prescribed form; and
- 15 (d) where it authorises the holder to carry on business under a name or names in addition to, or in substitution for, his own name, shall bear an endorsement to that effect.

(2) Upon application made in accordance with the rules the Tribunal may add or amend an endorsement referred to in subsection (1).

**20 Change of address of licensee.**

**174. (1)** Where the principal place at which the holder of a credit provider's licence carries on, or intends to carry on, a business of providing credit is at an address other than an address specified in accordance with section 165 (3) (d) or of which  
25 notice has been given under this section, he shall, not later than 21 days after commencing to carry on business at that other address, give to the Commissioner notice in writing of that other address.

(2) The holder of a credit provider's licence shall, not  
30 later than 21 days after ceasing to carry on a business of providing credit at the address specified in accordance with section 165 (3)



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(d) or, where a notice has been given under subsection (1), at the address specified in the notice, give to the Commissioner notice in writing that he has ceased to carry on business at that address.

Penalty : \$500.

**5 Register of Licensed Credit Providers.**

**175. (1)** For the purposes of this Act, the Commissioner shall keep a register to be known as the Register of Licensed Credit Providers.

**(2)** Subject to this Act and the regulations, the register  
10 shall be kept in such form and manner as the Commissioner thinks fit.

**Inspection of register.**

**176.** A person, on application in accordance with any regulations and on payment of any prescribed fee—

- 15 (a) may inspect the Register of Licensed Credit Providers;  
and  
(b) may make a copy of, or take extracts from, the register.

**Term of, and authority conferred by, licence.**

**177. (1)** Except during any period while it is suspended, a  
20 credit provider's licence continues in force until it is surrendered under section 179 or cancelled under section 178 or 180.

**(2)** A credit provider's licence authorises the licensee to carry on business as a credit provider and—

- 25 (a) where the licence is a licence endorsed with authority to provide credit under continuing credit contracts, as a credit provider with that authority; and

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(b) where the licence is a licence endorsed with authority to provide credit pursuant to agreements for the provision of store credit certificates, as a credit provider with that authority,

5 under the name or names specified in the licence, subject to and in accordance with this Act, the regulations and the conditions and restrictions to which the licence is subject.

(3) For the purposes of this Act, a person whose licence is suspended under section 180 shall, while the suspension continues, be deemed to be a person who does not hold a licence.

10

**Annual fee and annual statement.**

178. (1) The holder of a credit provider's licence shall, before the expiration of 1 month after each anniversary of the date on which his licence was granted, pay to the Commissioner the prescribed annual fee in respect of the year commencing on that anniversary.

15

(2) A person who is or was the holder of a credit provider's licence during a year, or part of a year, commencing on the date, or an anniversary of the date, on which the licence was granted to him, shall lodge with the Commissioner a statement in respect of that year or part containing such information as is prescribed.

20

(3) The holder of a credit provider's licence or other person required under subsection (2) to lodge a statement shall lodge the statement within 1 month after the end of the year in respect of which, or part of which, the statement is lodged.

25

(4) The Commissioner may, on the application of a person required to comply with subsection (1), or subsections (2) and (3), extend or further extend the time for compliance with the applicable subsection or subsections.

30

(5) Where the holder of a credit provider's licence has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section, the Commissioner may

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give notice in writing to the licensee that, unless the fee is paid or the statement lodged, or the fee is paid and the statement lodged, as the case may require, before a day specified in the notice, being a day that is not earlier than 14 days after the giving  
5 of the notice, the licence will be cancelled.

(6) The Commissioner shall cancel the licence of a licensee who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, as referred to in a notice given under subsection (5).

10 (7) Subject to subsection (4), a person (not being the holder of a credit provider's licence) to whom subsections (2) and (3) apply shall comply with those subsections.

Penalty applying to this subsection: \$1,000.

**Surrender of licence.**

15 **179. (1)** Subject to this section, the holder of a credit provider's licence may, by notice in writing given to the Commissioner and accompanied by his licence, surrender the licence.

(2) Where the Tribunal has decided to hold an inquiry under section 180 in relation to the holding of a licence, the licence  
20 may not be surrendered until after a determination is made by the Tribunal as a result of the inquiry.

**Disciplinary action against licensee.**

**180. (1)** The Commissioner with the consent of the Minister may, and any other person may, at any time lodge with the  
25 Tribunal an objection in writing to the holding of a credit provider's licence by a specified licensee if the objection complies with subsection (2).

(2) An objection complies with this subsection if—

30 (a) it specifies the licensee and the ground of the objection to his holding a credit provider's licence; and



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- (b) the ground of the objection is such that it could reasonably give rise to a belief on the part of the Tribunal sufficient to require the Tribunal to hold an inquiry under subsection (4).

5           **(3)** The Tribunal may refer to the Commissioner an objection lodged by a person other than the Commissioner, and the Commissioner shall investigate, and report to the Tribunal upon, the objection.

10           **(4)** Where it appears to the Tribunal, whether or not pursuant to an objection to the holding of a credit provider's licence by the licensee lodged with the Tribunal, that there are grounds for believing that—

- 15           **(a)** the licence may have been improperly obtained or, at the time the licence was granted there may have been grounds for refusing to grant it;
- 20           **(b)** the licensee may have failed to comply with this Act, the regulations, a condition or restriction to which the licence is subject, a condition or requirement imposed by the Tribunal under subsection (8) (c) or an order of the Tribunal applicable to him;
- 25           **(c)** the licensee may be unable, or is likely to become unable, to meet his liabilities;
- (d)** the licensee has, within the period of 10 years that last preceded the grant of the licence, been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- 30           **(e)** the licensee has provided credit at an annual percentage rate that is excessive having regard to the risk, the value of any security, the time for repayment, the amount financed and any other relevant circumstances;
- (f)** the business to which the licence relates is being carried on in a dishonest or unfair manner;
- 35           **(g)** the licensee is, for any other reason, not a fit and proper person to continue to hold a credit provider's licence; or

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(h) the licensee has taken security for the performance of the debtor's obligations under a regulated contract that, having regard to the risk involved, the value of the security, the time for repayment, the amount financed, the annual percentage rate and any other relevant circumstances, is excessive,

the Tribunal shall hold an inquiry to determine whether or not to take action under subsection (8).

(5) An objection to the holding of a credit provider's licence by a licensee may be dismissed by the Tribunal if it is of the opinion whether before, during or after an inquiry—

(a) that the objection is frivolous, vexatious, misconceived or lacking in substance; or

(b) that none of the grounds referred to in subsection (3) has been, or can be, made out.

(6) Where the Tribunal decides to hold an inquiry in relation to a credit provider's licence, the Registrar shall—

(a) send to the licensee a copy of any objection in writing to the holding of the licence received by the Tribunal; and

(b) give notice in writing of the day appointed for the inquiry to the licensee and to each person from whom any such objection has been received by the Tribunal before the day on which the Registrar gives the notice.

(7) The Tribunal shall give to the licensee and each other person referred to in subsection (6) (b) an opportunity to appear and be heard at the inquiry.

(8) If, after holding an inquiry in relation to a credit provider's licence, the Tribunal is satisfied that any of the grounds referred to in subsection (4) has been made out, the Tribunal may do any one or more of the following:—

(a) reprimand the licensee;

(b) impose a fine not exceeding \$1,000 on the licensee;



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- (c) require the licensee to comply with a condition or requirement specified by the Tribunal;
- (d) suspend the licence for a period not exceeding 12 months;
- 5 (e) disqualify the licensee or any person responsible for the direction, management or conduct of the business of the licensee from obtaining a credit provider's licence or from being concerned in the direction, management or conduct of a business of providing credit, either permanently or for such period as the Tribunal thinks fit;
- 10 (f) cancel the licence.

(9) Where, under subsection (8), the Tribunal—

- (a) imposes a fine on a licensee; or
  - (b) requires a licensee to comply with a condition or requirement specified by the Tribunal,
- 15

the licensee shall comply with the condition or requirement.

Penalty: \$1,000.

(10) A fine imposed under subsection (8) (b) is a debt due to the Crown.

20 **Appeals.**

181. (1) Where the Tribunal refuses to grant, or cancels or suspends, a credit provider's licence or imposes a condition or restriction under section 169 or a disqualification referred to in section 180 (8) (e), the applicant for the licence, the holder of the licence  
25 or the person disqualified, as the case may be, may appeal to the Supreme Court.

(2) An appellant under subsection (1) shall, within 28 days after the refusal, cancellation, suspension or disqualification to which his appeal relates, give notice in writing of the appeal,  
30 together with the grounds of the appeal, to the Commissioner and



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to each party, or a person representing each party, who appeared before the Tribunal in opposition to the appellant in the proceedings from which the appeal lies.

(3) An appeal under this section is in the nature of a re-hearing and the decision of the Supreme Court on the appeal is final and without appeal.

(4) An appeal under this section does not, except in relation to the collection of payments, operate as a stay of the cancellation, suspension or disqualification unless the Tribunal or the Supreme Court otherwise orders and any conditions imposed by the Tribunal or the Supreme Court when ordering the stay are complied with.

**Death of licensee.**

**182.** (1) Where the holder of a credit provider's licence dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the licensee may, within 28 days after the death or such longer period as the Registrar allows, apply to the Registrar for authority to carry on, until the expiration of the period of 6 months that next succeeds the death, the business of the deceased licensee to which the licence relates.

**(2) The Registrar—**

- (a) shall give a copy of an application under subsection (1) to the Commissioner;
- (b) if, before the application is granted he receives an objection in writing to the grant of the application—shall refer the application to the Tribunal; and
- (c) if no such objection is so made shall grant the application.

(3) Where an application is, pursuant to subsection (2) (b), referred to the Tribunal, the Tribunal shall grant or refuse the application and, where it grants the application, may impose such conditions as it thinks fit, being conditions subject to which the business to which the application relates may be carried on.

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(4) A decision of the Tribunal under subsection (3) shall be made at a hearing at which the applicant and the objector are given an opportunity to appear and be heard.

(5) An applicant whose application is granted under this section shall, subject to this Act, the regulations and any conditions imposed under subsection (3), be deemed, until no later than the expiration of the period of 6 months that next succeeds the death of the licensee, to be the holder of the licence of the deceased licensee.

**10 Endorsement of condition of licence.**

**183.** Where a licensee is required to comply with a condition or requirement specified by the Tribunal under section 180 (8) (c) or to carry on business subject to conditions imposed under section 182 (3), the licensee shall, upon being required by the Registrar so to do within a specified time, produce the licence to the Registrar within that time for endorsement of the condition or requirement.

Penalty : \$500.

**Money lent by unlicensed credit provider.**

**20 184. (1)** Subject to sections 89 and 163 (8), where a credit provider at any time carries on a business of providing credit and—

- (a) is not, at that time, an exempt credit provider;
- (b) is not, at that time, the holder of a credit provider's licence; or
- (c) is, at that time, a person under disqualification pursuant to section 180 (8) (e),

a debtor under a regulated credit sale contract, or a regulated loan contract, made with the credit provider at that time is not liable to pay to the credit provider the amount financed or the credit charge under the contract.

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(2) Subject to section 89, an amount paid by a debtor in respect of the amount financed or a credit charge that, in accordance with subsection (1), he is not liable to pay, is a debt due by the credit provider to the debtor.

5 (3) Subject to section 89, where a credit provider during any period carries on a business of providing credit under continuing credit contracts and—

(a) is not, during the whole of that period, an exempt credit provider;

10 (b) is not, during the whole of that period, the holder of a credit provider's licence authorising the holder to provide credit under continuing credit contracts; or

(c) is, during the whole of that period, a person under disqualification pursuant to section 180 (8) (e),

15 a debtor under a continuing credit contract made with the credit provider and in force during that period is not liable to pay to the credit provider the amount of the credit charge in respect of a billing cycle under the contract that falls within, or partly within, that period.

20 (4) Subject to section 89, an amount paid by a debtor in respect of a credit charge that, in accordance with subsection (3), he is not liable to pay, may be set off by the debtor against the amount that is due or becomes due to the credit provider under the continuing credit contract or, where there is no such  
25 amount, is a debt due by the credit provider to the debtor.

(5) Nothing in this section affects the liability of a person to be convicted of an offence against this Act.

(6) In this section, a reference to providing credit does not include a reference to providing credit as referred to in section  
30 164 (2).



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**DIVISION 2.—Finance Brokers' Licences.**

**Interpretation: Division 2.**

**185. (1)** In this Division—

“exempt person” means—

- 5 (a) a person who, in association with a bona fide  
business of selling land or supplying goods or  
services (whether as principal or agent) carried  
on by him, negotiates or acts as intermediary to  
10 obtain, or advertises or announces or holds him-  
self out in any way as being willing to negotiate,  
or act as intermediary to obtain, credit exclu-  
sively for persons who deal with him in the  
ordinary course of that business and who have  
15 authorised in writing the application of the  
credit in payment for the land, goods or services;
- (b) a solicitor acting in the ordinary course of the  
profession of a solicitor;
- (c) a registered company auditor within the meaning  
of the Companies Act, 1961, acting in the  
20 ordinary course of the profession of a public  
accountant;
- (d) a bank;
- (e) a corporation authorised under a law of the Com-  
monwealth to carry on the business of insurance;
- 25 (f) a person acting in the ordinary course of the  
business of a dealer within the meaning of the  
Securities Industry Act, 1975, being a person  
who is the holder of a dealer's licence under, or  
is a recognised dealer within the meaning of, that  
30 Act;
- (g) the Public Trustee and a trustee company within  
the meaning of the Trustee Companies Act,  
1964;

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5 (h) a society registered under the Friendly Societies Act, 1912, a building society registered under the Co-operation Act, 1923, a society or association registered under the Permanent Building Societies Act, 1967, and a society specified in the Second Schedule to the Co-operation Act, 1923; and

10 (i) a person who is an employee of a person referred to in paragraphs (a)-(h) and is acting in the ordinary course of his employment with that person;

15 "finance broker" means, subject to subsection (2), a person (other than an exempt person) who, whether or not he carries on any other business, carries on, or advertises or announces or holds himself out as in any way carrying on, the business of negotiating, or acting as intermediary to obtain, credit (including home finance loans) for persons other than himself or his employer or a principal;

20 "home finance loan" means a loan the whole or any part of which is, or is intended to be, applied for the purpose of—

25 (a) enabling the borrower to acquire a private dwelling-house or land on which to erect such a house; or

(b) providing the borrower with funds for the erection of a private dwelling-house or for the carrying out of structural improvements or additions to a private dwelling-house,

30 except where—

(c) the borrower is a person who carries on a business as a building contractor;

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5 (d) the borrower is a person whose business involves or includes the erection of private dwelling-houses or the carrying out of structural improvements or additions to private dwelling-houses; or

(e) the borrower is a person whose business involves or includes the acquisition or disposal of land, and the loan is, or is intended to be, used for the purpose of that business or in the course of carrying on that business;

“private dwelling-house” means—

- 15 (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is so designed;

“register” means the Register of Licensed Finance Brokers.

(2) A person is not a finance broker in relation to particular credit if, in the course of carrying on a business, he negotiates, or acts as intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate, or act as an intermediary to obtain, the credit and—

- 25 (a) he does so for or on behalf of a corporation;
- (b) the credit is not a home finance loan and is not, or is not to be, provided for the purchase of a commercial vehicle or farm machinery and is, or if provided would be, for an amount exceeding \$15,000;
- 30 (c) the credit is not a home finance loan and is, or is to be, made available pursuant to an agreement to finance the erection of a building by a series of advances made, or to be made, during the erection of the building and secured, or to be secured, on the land on which the building is being, or is to be, erected and the aggregate of those advances exceeds, or would if provided exceed,
- 35 \$15,000;



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- (d) the credit is, or is to be, made available at only one annual percentage rate of interest and that rate does not exceed 14 per cent;
- 5 (e) the credit is, or is to be, made available at an acceptable annual percentage rate of interest that does not exceed 14 per cent and another annual percentage rate of interest that exceeds the acceptable rate by not more than 2 per cent and its repayment is, or is to be, secured by a mortgage of land; or
- 10 (f) the credit is, or is to be, offered or made available by a pastoral finance company.

**Finance brokers to be licensed.**

**186. (1)** A person shall not carry on business as a finance broker unless he is the holder of a finance broker's licence.

15 Penalty : \$5,000 and, in the case of a continuing offence, a further penalty of \$500 for every day during which the offence continues.

20 (2) A person shall not carry on business as a finance broker otherwise than in accordance with the authority conferred by a finance broker's licence of which he is the holder.

Penalty : \$5,000 and, in the case of a continuing offence, a further penalty of \$500 for every day during which the offence continues.

25 (3) The holder of a finance broker's licence shall not carry on business as a finance broker in partnership with a person who is not the holder of a finance broker's licence.

Penalty : \$1,000 and, in the case of a continuing offence, a further penalty of \$100 for every day during which the offence continues.

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(4) A person who, immediately before the day appointed and notified under section 2 (2) of the Moneylending (Repeal) Act, 1981, was carrying on business as a finance broker in compliance with section 66 of the Moneylending Act, 1941, is not, by reason only of his carrying on the business of a finance broker on or before the day appointed for him by subsection (5), liable to a penalty under this section.

(5) The day appointed by this subsection is—

10 (a) in relation to a person who applies for a finance broker's licence on or before the day appointed and notified under section 2 (2) of the Moneylending (Repeal) Act, 1981—

(i) the day upon which he is granted such a licence;  
or

15 (ii) the day upon which his application is refused,  
as the case may be; or

(b) in relation to a person who fails to apply for such a licence on or before the day so appointed and notified—that day.

20 **Application of Act to finance brokers.**

187. The provisions of sections 165–169, 171, 173 (a) and (d), 174 and 177–183 apply in respect of finance brokers and finance brokers' licences and so apply as if references in those provisions to a credit provider and a credit provider's licence were  
25 references to a finance broker and a finance broker's licence respectively.

**Register of Licensed Finance Brokers.**

188. (1) For the purposes of this Act, the Commissioner shall keep a register to be known as the Register of Licensed Finance  
30 Brokers.

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(2) Subject to this Act and the regulations, the register shall be kept in such form and manner as the Commissioner thinks fit.

(3) Subject to any regulations and subject to payment  
5 of any prescribed fee, a person—

(a) may inspect the register; and

(b) may make copies of, or take extracts from, any entries  
therein.

**Advertising by finance brokers.**

10 **189.** A finance broker shall not publish, or cause to be  
published, whether in a newspaper or otherwise, an advertisement  
relating to or in connection with his business as a finance broker  
without specifying therein—

15 (a) a name appearing in the register, being his name, the  
name of the partnership of which he is a member or a  
name under which he carries on business and which  
is registered under any Act for the time being in force  
relating to the registration of business names; and

20 (b) the address of a place of business appearing in the  
register in respect of that name.

Penalty : \$1,000.

**Finance broker to keep records.**

190. (1) A finance broker shall, not later than the time that  
is immediately after he enters into a transaction as a finance broker,  
25 make, or cause to be made, in a legible manner a written record  
containing full particulars of that transaction.

Penalty : \$500.

(2) A finance broker shall preserve a record made by  
him under subsection (1) for a period of at least 3 years after  
30 the date of the transaction to which the record relates.

Penalty : \$500.



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(3) A finance broker shall, upon being requested so to do by the Commissioner, a person authorised by the Commissioner in writing generally or in a particular case or an inspector under the Consumer Protection Act, 1969, produce to the Commissioner, 5 authorised person or inspector for inspection any record made by the finance broker under subsection (1).

Penalty : \$500.

(4) An entry in any written record kept at the place of business of a finance broker shall, unless the contrary is proved, 10 be presumed to have been made by, or with the authority of, the finance broker.

**Payment of commission to finance broker.**

191. (1) A finance broker shall not demand, receive or accept any commission in respect of negotiating, or acting as inter- 15 mediary for the obtaining of, credit on behalf of another person unless—

- (a) his engagement or appointment to act as a finance broker is in writing signed by the person charged, or to be charged, with the payment of the commission; and
- 20 (b) that written engagement or appointment contains particulars of the amount of the credit to be obtained, the maximum amount of interest or other charges to be paid in respect of the credit and the term of the credit.

Penalty : \$1,000.

25 (2) A finance broker shall not—

- (a) demand, receive or accept any commission not authorised by the regulations in respect of negotiating, or acting as intermediary for the obtaining of, credit on behalf of another person;

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- (b) demand, receive or accept any commission before he secures the credit in respect of which the commission is charged; or
- 5 (c) demand, receive or accept any commission in respect of any credit that—
- (i) is for an amount less than the amount specified in the terms of his written engagement or appointment;
- 10 (ii) is at an annual percentage rate of interest, or for a charge, greater than the rate or charge specified in the terms of his written engagement or appointment; or
- (iii) is for a term less than the term specified in the written engagement or appointment.

15 **Penalty : \$1,000.**

(3) In any proceedings for an offence arising under subsection (1) or (2) the court may, if it finds the finance broker guilty of the offence and whether or not it proceeds to conviction, order the finance broker to refund any amount received or accepted  
20 by him in contravention of subsection (1) or (2) together with interest at such annual rate as is fixed by the court, not exceeding 8 per cent, from the time of the receipt or acceptance of the amount until the time it is refunded.

**Valuation fees.**

25 **192.** Nothing in section 191 prohibits a finance broker who has been engaged or appointed in writing to act as a finance broker from demanding, receiving or accepting at any time an amount equal to the estimated cost (estimated on the basis of the fees prescribed as the maximum fees for valuations) of obtaining  
30 a valuation of any security offered for any proposed credit and any amount so paid shall be held in trust by the finance broker to pay the costs of that valuation and to repay the balance of any such amount to the person who paid the amount to him.

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**Penalty for false statements, etc.**

193. A finance broker shall not by any false, misleading or deceptive statement, representation or promise or by any dishonest concealment of material facts induce, or attempt to induce, a person to enter into an agreement or contract for or with respect to the provision of credit.

Penalty : \$1,000 or imprisonment for 6 months, or both.

**Defence for certain contraventions.**

194. For the purpose of any proceedings in respect of a contravention of a provision of this Division, or of proceedings under section 195, credit that, but for this section, would be a home finance loan or credit provided wholly or partly for the purchase of a commercial vehicle or farm machinery shall be deemed not to be a home finance loan or credit wholly or partly provided for such a purchase if—

- (a) it is proved that the defendant in the case of proceedings for such a contravention, or the finance broker in the case of proceedings under section 195, did not know, and had no reason to believe, that the credit was, or if provided would be, a home finance loan or credit wholly or partly provided for such a purchase and that he had made reasonable inquiries as to how the loan was to be applied; and
- (b) the amount of the credit exceeds \$15,000.

**25 Excessive commission.**

195. (1) Where—

- (a) proceedings are taken in a court by a finance broker for the recovery of money in respect of a transaction entered into by him in the course of his business as a finance broker; or



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5 (b) a person who has entered into a transaction with a finance broker, in the course of the business of the finance broker as such, applies to a court in which proceedings might be taken for the recovery of an amount not exceeding the amount of the commission of the finance broker in the course of the transaction,

and it appears to the court that the commission charged by the finance broker in respect of the transaction is excessive, the court may re-open the transaction.

10 (2) In any proceedings under subsection (1), the onus of proving that the commission charged by the finance broker in respect of the transaction concerned is not excessive lies on the finance broker unless the commission is at a rate equal to or less than that prescribed by the regulations in respect of that  
15 transaction.

(3) A court re-opening a transaction under this section may, notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation, re-open an account already taken by the parties  
20 to the transaction and relieve the person liable under the contract to pay the commission and any guarantor of that person of any liability in excess of such amount as the court adjudges to be fairly and reasonably payable for the services rendered or to be rendered by the finance broker (including any expenses reasonably  
25 and necessarily incurred) and may—

- (a) set aside either wholly or in part or revise or alter any agreement or contract made or security given in connection with the transaction;
  - 30 (b) give a verdict or judgment for any party for such amount as, having regard to the relief, if any, that the court thinks fit to grant, is justly due to that party; and
  - (c) make such other orders as the court thinks necessary or proper for the purposes of this section.
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**PART XI.**

**CREDIT TRIBUNAL OF NEW SOUTH WALES.**

**DIVISION 1.—*Constitution of the Tribunal.***

**Constitution of Tribunal.**

- 5   **196.** (1) The Credit Tribunal of New South Wales is constituted by the appointment by the Governor of not less than 6 nor more than 9 persons as the members of the Tribunal, those members being a Chairman and not more than 8 part-time members.
- 10       (2) A person is not qualified to be appointed as Chairman of the Tribunal unless he is a Judge of the District Court.
- (3) Of the part-time members—
- 15       (a) 2 shall be persons who, in the opinion of the Minister, have experience in the business of providing credit in connection with the supply of goods or services;
- (b) 2 shall be persons who, in the opinion of the Minister, have experience in the business of supplying goods or services; and
- 20       (c) not more than 4 shall be persons who, in the opinion of the Minister, have knowledge of, and expertise in, matters relating to the interests of consumers gained otherwise than pursuant to experience referred to in paragraphs (a) and (b).
- (4) The instrument of appointment of a part-time member shall specify whether he is appointed pursuant to sub-section (3) (a), (b) or (c).
- (5) A person is not qualified to be appointed as a part-time member if—
- (a) he has attained the age of 70 years; or

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(b) he is a member of the Legislative Council or the Legislative Assembly or a member of the legislature of the Commonwealth, another State or a Territory of the Commonwealth.

5 (6) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

(7) In the exercise of his powers, and the performance of his functions, as a member of the Tribunal, a person who is such a member has the same protection and immunity as a Judge of  
10 the District Court in the exercise of his powers, and the performance of his functions, as such a Judge.

**Term of office of member.**

197. (1) Subject to this Part, a member holds office for such period, not exceeding 5 years, as is specified in the instrument of  
15 his appointment and is, from time to time, eligible for re-appointment as a member.

(2) A part-time member shall, before he first sits as a member, take an oath in the prescribed form that he will faithfully and impartially discharge the duties of his office.

20 **Act No. 89, 1979, does not apply to member.**

198. The Public Service Act, 1979, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to the provisions of that Act.

**Remuneration and allowances.**

25 199. (1) The Chairman is entitled to be paid, in addition to the remuneration to which he is entitled in accordance with the Statutory and Other Offices Remuneration Act, 1975, by virtue of his holding office as a Judge of the District Court, such travelling and subsistence allowances as are determined in respect of  
30 him by the Minister.



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(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as is determined in respect of him by the Minister.

**Vacation of office of member.**

5   **200.** (1) The Chairman shall be deemed to have vacated his office as a member if he ceases to be a Judge of the District Court.

(2) A part-time member shall be deemed to have vacated his office as a member if—

- (a) he dies;
- 10   (b) he is unavailable for duty as a member for a period of 28 consecutive days except on leave granted by the Chairman before, during or after that period;
- 15   (c) he is nominated for election as a member of the Legislative Council or Legislative Assembly or as a member of the legislature of the Commonwealth, another State or a Territory of the Commonwealth;
- 20   (d) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of any part of his remuneration or estate for their benefit;
- 25   (e) he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 30   (f) he is convicted in New South Wales of a crime or offence that is punishable by imprisonment for a term of 12 months or more or is convicted elsewhere of a crime or offence that, if committed in New South Wales would be a crime or offence so punishable or is convicted in New South Wales or elsewhere of a crime or offence for which he is sentenced to imprisonment;

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- (g) he is removed from office by the Governor under subsection (3); or
  - (h) he resigns his office by notice in writing given to the Minister and the Governor accepts the resignation.
- 5           (3) The Governor may remove a part-time member from office for misbehaviour or incompetence.

**Filling of vacancy.**

201. Where a vacancy in the office of a member occurs otherwise than by the expiration of the term for which he was appointed, the Governor may fill the vacancy by appointing a person who has the same qualification and eligibility for appointment as that member had when he was appointed and that person shall, in the case of a part-time member, hold office as a member for the residue of his predecessor's term of office.

**15 Acting Chairman.**

202. (1) Where—
- (a) there is a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
  - 20   (b) the Chairman is or is about to be absent or for any reason is or is about to become unable to perform the functions of his office,

the Governor may appoint a person who is a Judge of the District Court to act as the Chairman until the vacancy is filled or, as the case may be, during the absence or inability.

25           (2) The appointment of an acting Chairman made in anticipation of the absence or inability of the Chairman has effect on and from the day on which that absence or inability begins.



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(3) The appointment of an acting Chairman ceases to have effect—

- (a) when the vacancy in the office of Chairman is filled or, as the case may be, the absence or inability comes to an end;
- (b) when it is terminated under subsection (4); or
- (c) if he resigns his office by notice in writing given to the Minister and the Governor accepts the resignation.

(4) The Governor may, at any time, terminate the appointment of an acting Chairman.

(5) While the appointment of an acting Chairman continues in force, the person holding the appointment has and shall perform the functions, has and may exercise the powers, and is entitled to the rights and privileges, attaching to the office of Chairman.

**Acting part-time member.**

203. (1) Where—

- (a) there is a vacancy in the office of a part-time member; or
- (b) a part-time member is or is about to be absent or for any reason is or is about to become unable to perform the functions of his office,

the Governor may, subject to subsection (2), appoint a person to act as a part-time member until the vacancy is filled or, as the case may be, during the absence or inability.

(2) A person shall not be appointed under subsection (1) unless he has the same qualification and eligibility for appointment as the member who vacated his office, or, as the case may be, the member who is absent or unable to perform the functions of his office, was required to have when he was appointed as a part-time member and the instrument of his appointment shall specify whether the member in whose place he is appointed was appointed pursuant to section 196 (3) (a), (b) or (c).



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(3) The appointment of an acting part-time member made in anticipation of the absence or inability of a part-time member has effect on and from the day on which that absence or inability begins.

5 (4) The appointment of an acting part-time member ceases to have effect—

(a) when the vacancy in the office of the part-time member is filled or, as the case may be, the absence or inability comes to an end;

10 (b) when it is terminated under subsection (5); or

(c) if he resigns his office by notice in writing given to the Minister and the Governor accepts the resignation.

(5) The Governor may, at any time, terminate the appointment of an acting part-time member.

15 (6) While the appointment of an acting part-time member continues in force, the person holding the appointment has and shall perform the functions, has and may exercise the powers, and is entitled to the rights and privileges, attaching to the office of a part-time member.

**20 Saving of status, rights, etc., of Chairman.**

25 **204.** The fact that a person is appointed as Chairman or acting Chairman does not affect his appointment, rank, title, status, precedence, rights and privileges as a Judge of the District Court and any period during which he serves as Chairman or acting Chairman is, for the purposes of the Judges' Pensions Act, 1953, part of his service as a Judge of the District Court.

**Registrar, officers and employees.**

**205.** (1) A Registrar of the Tribunal shall be appointed and employed under and subject to the Public Service Act, 1979.

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(2) The Registrar shall perform such functions and may exercise such powers as are conferred on him by or under this Act or by the Tribunal in the exercise of its powers and functions.

(3) Such officers and employees as may be necessary to  
5 enable the Tribunal and the Registrar to perform their functions and exercise their powers under this Act shall be appointed and employed under and subject to the Public Service Act, 1979.

**DIVISION 2.—*Jurisdiction of, and Proceedings before, the Tribunal.***

**10 Jurisdiction of Tribunal.**

**206.** (1) The Tribunal has such jurisdiction as is, and such functions and powers as are, conferred on it by this or any other Act.

(2) Subject to this Act, the Tribunal, wherever sitting,  
15 has jurisdiction throughout New South Wales.

(3) Without derogating from any powers conferred on him by this Act, the Chairman, while acting as Chairman, has the same powers as are conferred by the District Court Act, 1973, and by law, on a Judge of that Court when acting as such a Judge.

(4) Subject to section 221, a judgment or order of the  
20 Tribunal has the same effect as, and may be enforced in the same way as, a judgment or order of the District Court.

(5) The Chairman may, by instrument in writing, delegate to the Registrar, with such limitations, and upon such  
25 conditions, as he thinks fit—

(a) any part of the jurisdiction of the Tribunal that is exercisable by the Chairman sitting alone; and

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(b) such other powers and functions (other than the powers conferred by sections 215 and 217 and this power of delegation) as are conferred by this Act on the Chairman,

5 and may, by instrument in writing, revoke any such delegation.

(6) Notwithstanding the delegation under this section of the exercise of jurisdiction or a power or the performance of a function, the Chairman may continue to exercise the jurisdiction and power and perform the function.

10 (7) Any jurisdiction exercised or thing done by the Registrar pursuant to a delegation under this section shall be deemed to have been exercised or done by the Chairman.

**Proceedings before Tribunal.**

15 **207.** (1) Proceedings before the Tribunal shall be held as in open court except to the extent that the rules provide for the prohibition by the Tribunal of publication of any part of proceedings before it.

(2) Sittings of the Tribunal shall be arranged by the Chairman.

20 (3) Proceedings before the Tribunal shall be heard and decided by the Chairman sitting alone—

25 (a) where there is only 1 party to the proceedings and the proceedings relate to a matter which, in the opinion of the Chairman, does not, and is not likely to, involve 2 or more parties;

(b) where there are 2 or more parties to the proceedings and both or, as the case may be, all of the parties agree to the proceedings being heard and decided by the Chairman sitting alone; or

30 (c) where the proceedings are included in a class of proceedings that may, in accordance with the regulations, be heard and decided by the Chairman sitting alone.



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(4) Except as provided in subsection (3), proceedings before the Tribunal shall be heard and decided by the Chairman and 2 part-time members, selected by the Chairman, of whom—

- 5 (a) 1 shall be a member referred to in section 196 (3) (a) or (b); and
- (b) the other shall be a member referred to in section 196 (3) (c),

and the decision of the majority of the members hearing the proceedings is the decision of the Tribunal.

**10 Questions of procedure and law.**

**208. (1)** In this section, subsection (2) excepted, a reference to proceedings before the Tribunal does not include a reference to a hearing under Part X with respect to an application under that Part or to an inquiry under section 180.

15 **(2)** Any question with respect to procedure that arises in proceedings before the Tribunal shall be decided by the Chairman.

20 **(3)** Where, in proceedings before the Tribunal, a question arises with respect to a matter of law, the Chairman may decide the question or may, in accordance with rules of court of the Supreme Court, refer it to the Supreme Court for decision.

**(4)** Where a question of law is referred to the Supreme Court under subsection (3)—

- 25 (a) the Tribunal shall not make an order or decision to which the question is relevant until the Supreme Court has decided the question;
- (b) upon deciding the question, the Supreme Court shall remit its decision to the Tribunal; and
- 30 (c) the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court.

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(5) Where, in proceedings before the Tribunal, the Chairman decides a question with respect to a matter of law, a party to the proceedings who is dissatisfied with the decision may, in accordance with rules of court of the Supreme Court, appeal 5 to the Supreme Court against the decision of the Chairman.

(6) After deciding the question the subject of an appeal under subsection (5), the Supreme Court may, unless it affirms the decision of the Chairman on the question—

10 (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal; or

(b) remit its decision on the question to the Tribunal and order a re-hearing of the proceedings before the Tribunal.

15 (7) Where a re-hearing is held pursuant to an order under subsection (6) (b), the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court remitted to the Tribunal.

20 (8) Where a party to proceedings before the Tribunal has appealed to the Supreme Court under subsection (5) against a decision of the Chairman, either the Tribunal or the Supreme Court may suspend, until the appeal is determined, the operation of any order or decision made in the proceedings.

25 (9) Where, under subsection (8), the Tribunal suspends the operation of an order or decision, the Tribunal or the Supreme Court may terminate the suspension or, where the Supreme Court has suspended the operation of an order or decision, the Supreme Court may terminate the suspension.

30 (10) For the purposes of this section, a reference to a matter of law includes a matter relating to the jurisdiction of the Tribunal and a matter as to the admission or rejection of evidence.

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**Parties.**

209. (1) Subject to this Act and the rules, where a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having a joint liability, it is sufficient if 5 any one or more of those persons is or are served with process in the proceedings, and a decision in the proceedings may be given or entered up and enforced against the person or persons subject to the liability.

(2) Section 97 of the Supreme Court Act, 1970, applies 10 to and in respect of a decision given or entered up in proceedings before the Tribunal in the same way as it applies to and in respect of a judgment given in proceedings before the Supreme Court.

(3) An executor or administrator may bring or defend proceedings before the Tribunal in the same manner as he could 15 if he were bringing or defending proceedings in his own right.

(4) Where, before the holding of proceedings before the Tribunal, or at any stage during the holding of any such proceedings, the Tribunal is of the opinion that a person ought to be joined as a party to the proceedings, it may, by notice in 20 writing given to the person, join the person as a party to the proceedings.

**Notice and conduct of proceedings.**

210. (1) The Chairman shall fix a time and place for the holding of proceedings before the Tribunal and the Registrar shall 25 thereupon serve on each party to the proceedings, other than a person to whom the Chairman grants leave to appear as a party to the proceedings, a notice specifying the time and place so fixed and the matters to which the proceedings relate and directing the party to attend at that time and place.

30 (2) The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.



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(3) If a party to proceedings before the Tribunal on whom a notice has been served in accordance with subsection (1) fails to attend at the time and place specified in the notice, the proceedings may be held in the absence of the party.

**5 Right of appearance and representation.**

211. (1) A party to proceedings before the Tribunal—

- (a) is entitled to appear personally or by his solicitor or counsel; and
- 10 (b) may, by leave of the Tribunal, be represented by a person other than a solicitor or counsel.

(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party in proceedings before the Tribunal.

**Evidence before Tribunal.**

15 212. (1) In proceedings before the Tribunal, the Tribunal may, in its discretion—

- 20 (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal, whether constituted in New South Wales or elsewhere, and draw any conclusions of fact from that transcript that it considers proper;
- (b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the proceedings; and
- 25 (c) receive in evidence any report of the Commissioner that may be relevant to the proceedings but only if a copy of that report has been made available to every party to the proceedings.

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**(2) The Tribunal—**

- (a) in any proceedings before it other than an inquiry under section 180 or a hearing held under Part X in respect of an application made under that Part—
- 5 (i) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and
- (ii) shall act according to equity, good conscience and the substantial merits of the case without  
10 regard to technicalities or legal forms;
- (b) may in any proceedings before it give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties to  
15 those proceedings; and
- (c) may, in relation to any proceedings before it, request a report from, or other assistance by, the Commissioner.

**Summons and examination of witnesses.**

20 **213. (1)** The Chairman may issue a summons requiring any person to attend proceedings before the Tribunal at a time and place specified in the summons and then and there to give evidence and produce any record in his custody or under his control that he is required by the summons to produce.

25 **(2)** Where, pursuant to this section, a person is required by a summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require that person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English  
30 language and decipherable on sight, containing the whole of the information in the record.

**(3)** The Chairman may administer an oath to any person appearing as a witness before the Tribunal, whether or not the witness has been summoned, and allow the witness to be examined  
35 on oath.

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(4) Subject to section 216, a witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed on him pursuant to this Act, is subject to the same liabilities, as a witness  
5 would have or be subject to in proceedings before the District Court.

(5) A witness summoned under subsection (2) is entitled to be paid such fees and allowances as are prescribed.

**Inspection and retention of records.**

10 **214.** (1) The Tribunal may inspect any record produced before it and may retain it for such period as it thinks necessary for the purposes of the proceedings in relation to which it was produced and may make copies of the record or any part of the record.

(2) Where a record is produced before, and retained by,  
15 the Tribunal and the person otherwise entitled to possession of the record requests that he be supplied with a copy thereof, he is entitled to be supplied, as soon as practicable, with a copy certified by the Registrar to be a true copy and a record so certified is admissible as evidence in all courts as if it were the original record.

20 (3) Where, pursuant to subsection (3), a person is entitled to be supplied with a copy of the record, he, or a person authorised by him, may, at such times and places as the Tribunal directs, inspect, make copies of, or take extracts from, the record.

(4) The Tribunal may employ any person to give such  
25 assistance as it considers necessary to enable it to arrive at a decision in any proceedings before it and may, by notice in writing, authorise any person so employed to inspect and report to it on any record that it considers relevant to the subject-matter of the proceedings.



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**Witness may be apprehended.**

215. (1) If any person served with a notice summoning him to attend before the Tribunal fails to comply with the notice, the Chairman may, on proof of the service of the notice, issue a 5 warrant for the apprehension of that person.

(2) A warrant issued under subsection (1) authorises the apprehension of the witness, his being brought before the Tribunal and his detention in custody for that purpose until he is released by order of the Chairman.

10 (3) The apprehension of any witness under this section does not relieve him from any liability incurred by him by reason of his non-compliance with the notice summoning him to attend before the Tribunal.

**Answers to questions and production of records.**

15 216. (1) In any proceedings before the Tribunal other than an inquiry under section 180 or a hearing held under Part X in respect of an application made under that Part, a witness summoned to attend or appearing before the Tribunal is not excused from answering a question or producing a record or a 20 statement referred to in section 213 (2) on the ground that the answer or production might incriminate him or render him liable to a penalty.

(2) A question asked of, or an answer given or record produced by, a witness before the Tribunal is not, except as 25 provided by subsection (3), admissible in evidence against him in any civil or criminal proceedings.

(3) Subsections (1) and (2) do not render inadmissible—

30 (a) any question, answer or record in proceedings for perjury or for an offence referred to in Part III of the Royal Commissions Act, 1923, as applied by section 218; or

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- (b) any record in civil proceedings for or in respect of any right or liability imposed by the record.

**Contempt of Tribunal, etc.**

217. In respect of proceedings before the Tribunal, the Chairman shall, subject to this Act but without limiting any of the powers, rights and privileges conferred on the Tribunal or the Chairman under any other provision of this Act, have all such powers, rights and privileges as are conferred on the District Court, or on a Judge of the District Court, in or in relation to proceedings before that Court, or before a Judge of that Court, for punishing persons guilty of contempt of, or of disobedience of any order or summons made or issued by, the Tribunal.

**Application of Act No. 29, 1923.**

218. Part III of the Royal Commissions Act, 1923, applies to and in relation to proceedings before the Tribunal in the same way as it applies to and in relation to an inquiry held under that Act, and for the purpose of that application—

- (a) a reference in that Part to a commission shall be construed as a reference to the Tribunal;
- 20 (b) a reference in that Part to an inquiry shall be construed as a reference to proceedings before the Tribunal; and
- (c) a reference in that Part to a book, document, writing or record shall be construed as a reference to a record within the meaning of this Act.

**25 Dismissal of frivolous, etc., proceedings.**

219. (1) Where, at any stage of proceedings before the Tribunal, the Tribunal is satisfied that the proceedings are frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may dismiss the proceedings.

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(2) Where the Tribunal dismisses proceedings under subsection (1), it may order the person who brought the proceedings to pay the costs of the proceedings.

**Costs.**

5 **220.** The Tribunal may award costs against a party to proceedings before it and may determine the amount of costs to be so awarded.

**Orders for payment of money.**

10 **221. (1)** Where an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs) the order shall, upon the filing of the prescribed documents in the office or registry of a court having jurisdiction to order the payment of such an amount of money, being the office or registry of the court at or nearest the place of abode or business of the person  
15 ordered to make the payment, be deemed to be a judgment of that court for the payment of that amount in accordance with the order of the Tribunal.

(2) For the purposes of subsection (1), the prescribed documents are—

- 20 (a) a copy of the order of the Tribunal certified by the Registrar to be a true copy; and
- (b) an affidavit by the person to whom the money was ordered to be paid specifying the amount unpaid under the order and, where the order is to take effect upon  
25 any default, as to the making of the default.

**Reasons for decision of Tribunal.**

**222. (1)** Where the Tribunal does not state its reasons for any order or decision made in relation to proceedings before it, any party to the proceedings may, by notice in writing served on



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the Tribunal within 7 days after the date on which the order or decision was made, request the Tribunal to state its reasons for the order or decision.

(2) The Tribunal shall, within 14 days after the service of a notice under subsection (1), state its reasons for the order or decision referred to in the notice.

(3) Subsections (1) and (2) do not apply to or in respect of an order or a decision made by the Tribunal under Part X or at an inquiry under section 180.

**10 Adjournments.**

**223.** (1) The Tribunal may, on terms, adjourn any proceeding before it in such manner as it thinks fit.

(2) The Tribunal may give directions as to the orderly transaction of business of the Tribunal in relation to proceedings before it.

(3) At any stage of proceedings before it, the Tribunal may order that the proceedings be stayed.

**Service of documents.**

**224.** Service of a document for the purposes of or in relation to proceedings before the Tribunal shall be effected by a person prescribed by the rules in respect of the class of document to which that document belongs, and may be effected by delivering a copy of the document to the person on whom the document is to be served or in such manner as may be prescribed in the rules.

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**Procedure.**

**225.** If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by or under this Act or by the practice of the Tribunal, the Tribunal may  
5 direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall, for the purposes of the proceedings, be regular and sufficient.

**Rules of the Tribunal.**

**226. (1)** Subject to this Part, the Tribunal may make rules  
10 for or with respect to—

- 15 (a) the procedure and practice to be followed in proceedings before the Tribunal (including the procedure and practice to be followed in the office of the Registrar) and any matters incidental or relating to any such procedure or practice;
- (b) the continuance of proceedings on death or bankruptcy of any party;
- 20 (c) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairman or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing;
- 25 (d) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal; and
- (e) any matters relating to costs of proceedings before the Tribunal.

(2) The rules may be made to apply differently according to such factors, or according to such limitations or conditions,  
30 whether as to time or circumstance or otherwise, as may be prescribed in the rules.





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**Conduct of proceedings taken by Commissioner.**

**228.** Where, under section 227, the Commissioner takes or defends proceedings before the Tribunal on behalf of a complainant—

- 5 (a) the Commissioner shall have the conduct of those proceedings on behalf of the complainant, may appear personally or by counsel, solicitor or agent and may do all such things as are necessary or expedient to give effect to an order or decision of the Tribunal;
- 10 (b) the Commissioner is liable to pay the costs of the complainant; and
- (c) the complainant is liable to pay any amount (other than costs for which the Commissioner is liable under paragraph (b)) that the Tribunal orders the complainant to pay.
- 15

**Intervention by Commissioner.**

**229. (1)** Without limiting section 227, the Minister or the Commissioner with the consent of the Minister, if he thinks that it would be in the public interest to do so, may intervene, and has a  
20 right to be heard personally or by counsel, solicitor or agent, in any proceedings arising under this Act before a court or the Supreme Court (not being proceedings for an offence).

**(2)** Where the Commissioner intervenes in any proceedings under subsection (1) or lodges an objection under section 167  
25 or 180, it shall be presumed, unless the contrary is proved, that the Minister has consented to the intervention or, as the case may be, the lodging of the objection.

**(3)** Where the Minister or the Commissioner intervenes under subsection (1) in any proceedings, he becomes a party to  
30 the proceedings and has all the rights, including rights of appeal, of such a party.

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**PART XII.**

**MISCELLANEOUS.**

**DIVISION 1.—*Inquiries.***

**Minister may order inquiry.**

5     **230. (1)** The Minister may, by instrument in writing, appoint the Tribunal (constituted as specified in the instrument) or any person to inquire into matters specified in the instrument, being matters that relate to the provision of credit or consequences of the provision of credit, or both.

10           **(2)** The Minister may, by instrument in writing, revoke an appointment made under subsection (1).

**(3)** An appointment under subsection (1) may be made subject to such conditions, or such limitations as to the exercise or performance of a power, authority, duty or function or as to  
15 time or circumstance, as may be specified in the instrument of appointment.

**(4)** Subject to subsection (3), the Tribunal or other person appointed under subsection (1) has, and may exercise and perform, the powers, authorities, duties and functions conferred or  
20 imposed on the Tribunal by or under this Division.

**(5)** An appointment under subsection (1) or a revocation under subsection (2) of such an appointment does not take effect until the terms of the instrument of appointment or revocation have been published in the Gazette and in such newspaper  
25 or newspapers as is or are specified in the instrument.

**(6)** Where any matter purporting to be the terms of an instrument of appointment under subsection (1) or of revocation under subsection (2) is published in the Gazette, it shall be presumed, unless the contrary is proved, that the matter comprises  
30 the terms of such an instrument.

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(7) Where an inquiry is held under this Division, the Tribunal or person conducting the inquiry shall, as soon as practicable, report to the Minister the results of the inquiry and make such recommendations with respect to those results as it or he  
5 thinks fit.

(8) A reference in this Act, sections 223–226 excepted, to proceedings before the Tribunal does not include a reference to an inquiry under this Division.

**Notice of inquiry.**

10 **231.** The Tribunal shall, before commencing an inquiry under this Division, give notice by advertisement published on such day or days as it thinks fit in the Gazette and such newspaper or newspapers as it thinks fit of—

- (a) the holding of the inquiry;
- 15 (b) the matter that is to be the subject of the inquiry;
- (c) the time and place at which the inquiry is to be commenced; and
- (d) such other matters relating to the inquiry as it thinks fit.

**Appearances at inquiry.**

20 **232. (1)** The Tribunal may, at an inquiry under this Division, grant leave to any person to appear at the inquiry if it is of the opinion that the person has a substantial interest in the matter the subject of the inquiry.

(2) A person granted leave under subsection (1) to  
25 appear at an inquiry may appear at the inquiry in person or by his counsel, solicitor or agent and may give evidence, call witnesses and make submissions at the inquiry.



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**Procedure at inquiry.**

233. (1) An inquiry under this Division shall be held in public and, subject to this section—

5 (a) evidence at the inquiry shall be given on oath in public;  
and

(b) submissions at the inquiry shall be made in public.

(2) At an inquiry under this Division, the Tribunal may, if it thinks fit, permit a witness to give evidence by tendering a written statement verified on oath and, where evidence is so given,  
10 the Tribunal shall, subject to this section, make the statement available to the public in such manner as the Tribunal thinks fit.

(3) Where a witness giving evidence under subsection (1) or (2) objects to any part of the evidence being made public and the Tribunal is satisfied that the part of the evidence to which  
15 the objection relates is of a confidential nature, that part of the evidence shall not be taken in public under subsection (1) or made public under subsection (2).

(4) At an inquiry under this Division, the Tribunal may require or permit a person entitled to make submissions to make  
20 them in writing and, where submissions are so made, the Tribunal shall make them public in such manner as it thinks fit.

(5) In conducting an inquiry under this Division, the Tribunal is not bound by the rules of evidence.

**Powers of Tribunal at inquiry.**

25 234. (1) For the purposes of an inquiry under this Division, the Tribunal may—

(a) summon a witness to give evidence or produce a record, or both, at the inquiry;

(b) administer an oath; and

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(c) take evidence on oath.

(2) Section 213 (2) applies in relation to a summons under this section in the same way as it applies in relation to a summons under section 213 (1).

5 (3) A witness summoned under subsection (1) is entitled to be paid such fees and allowances as are prescribed.

**Failure to appear at inquiry.**

235. A person who, pursuant to section 234 (1) (a), has been summoned as a witness shall not, without lawful excuse,  
10 fail to appear in obedience to the summons.

Penalty : \$1,000 or imprisonment for 6 months, or both.

**Refusal to be sworn, etc.**

236. A person who appears as a witness at an inquiry under this Division, whether summoned or not, shall not, without lawful  
15 excuse, refuse to be sworn, or to produce a record in accordance with a summons, or to answer a question he is required to answer.

Penalty : \$1,000 or imprisonment for 6 months, or both.

**Power to obtain information.**

237. (1) For the purposes of an inquiry under this Division,  
20 the Tribunal or a person authorised by the Tribunal for the purposes of this section may require any person—

(a) to furnish it or him with such information as it or he requires; or

(b) to answer any question put to him,  
25 in relation to the subject-matter of the inquiry.

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(2) The Tribunal or person authorised under subsection (1) may require information referred to in that subsection to be given, or a question so referred to to be answered, on oath either orally or in writing and, for the purposes of such a requirement, may administer an oath.

(3) The Tribunal or person authorised under subsection (1) may, by notice in writing, require information referred to in that subsection to be given, or a question so referred to to be answered, in writing at a place specified in the notice.

10 (4) A person shall not—

(a) fail to comply with a requirement under subsection (1), (2) or (3); or

(b) give, pursuant to such a requirement, information or an answer that to his knowledge is false in any particular.

15 Penalty : \$1,000 or imprisonment for 6 months, or both.

(5) A person is not obliged to furnish information or answer a question which he has, pursuant to subsection (1), been required to furnish or answer unless he has first been informed by the Tribunal or person requiring the information or asking the  
20 question that he is required and obliged by this section to furnish the information or answer the question.

(6) A person shall not refuse to comply with a requirement under subsection (1) on the ground that his compliance with the requirement might incriminate him or render him liable to a  
25 penalty.

Penalty : \$1,000 or imprisonment for 6 months, or both.

(7) Information furnished and an answer given by a person pursuant to a requirement under subsection (1) after he is informed as referred to in subsection (5) are not admissible in  
30 evidence against him in any proceedings civil or criminal other than proceedings for perjury or for an offence under subsection (4).



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**DIVISION 2.—Unjust Conduct by Credit Providers.**

**Interpretation: Div. 2.**

**238.** For the purposes of this Division, conduct of a credit provider (whether or not he is the holder of, or is exempt from being required to hold, a credit provider's licence) is unjust if it is conduct—

- (a) that is dishonest or unfair;
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought; or
- (c) that consists of the contravention of this Act or a regulation.

**Undertakings by credit provider.**

**239. (1)** Where it appears to the Commissioner that a credit provider has, in the course of a business of providing credit, repeatedly engaged in unjust conduct, the Commissioner may, with the consent of the Minister—

- (a) request the credit provider to execute a deed in terms approved by the Commissioner whereby the credit provider gives undertakings as to—
  - (i) the discontinuance of the unjust conduct;
  - (ii) his future conduct; and
  - (iii) the action he will take to rectify the consequences of his unjust conduct; or
- (b) apply to the Tribunal for an order under section 241.

**(2)** Where the Commissioner makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that he does so with the consent of the Minister.

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(3) Where the holder of a credit provider's licence executes a deed under subsection (1) (a) and observes the undertakings given in the deed—

- (a) the Tribunal may not suspend or cancel the licence; and
- 5 (b) the Commissioner may not apply for an order under section 241 (1),

by reason of any conduct to which the undertakings relate.

**Register of Undertakings.**

240. (1) Where a credit provider executes a deed containing  
10 undertakings as referred to in section 239 (1) (a), the Commissioner shall—

- (a) lodge a copy of the deed with the Registrar; and
- (b) give a copy of the deed to the credit provider who executed it.

15 (2) The Commissioner shall retain all deeds and shall register the deeds in a Register of Undertakings kept by him and containing the prescribed particulars.

(3) The Register of Undertakings may, at reasonable times, be inspected by any person free of charge.

20 (4) A credit provider shall observe undertakings given by him in a deed executed under section 239 (1) (a).

Penalty : \$5,000.

(5) A prosecution for an offence under subsection (4) shall not be instituted except by the Commissioner with the leave  
25 of the Tribunal given when making an order under section 241 (2).

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**Restraint of unjust conduct.**

241. (1) Where, on the application of the Commissioner, the Tribunal is satisfied after inquiry that a credit provider has repeatedly engaged in unjust conduct, the Tribunal may order the  
5 credit provider to refrain from engaging in unjust conduct in the course of carrying on a business of providing credit.

(2) Where, on the application of the Commissioner, the Tribunal is satisfied that a credit provider has failed to observe an undertaking given by him in a deed executed under section 239  
10 (1) (a), the Tribunal may make an order under subsection (1) against the credit provider and, in the case of an undertaking referred to in section 239 (1) (a) (iii), an order to observe that undertaking within a time specified by the Tribunal when making the order.

15 (3) Where the Commissioner applies for an order under subsection (1) or (2) against a credit provider that is a corporation and the Tribunal is satisfied that the unjust conduct or breach of undertaking to which the application relates was engaged in  
20 with the consent or connivance of a person who is a director of, or is concerned in the management of, the corporation, the Tribunal may, in addition to any other order it may make under this section, make an order prohibiting that person from consenting to, or conniving at, engagement in unfair conduct, or a breach of an  
25 undertaking under section 239 (1) (a), by the corporation of any other corporation of which he is a director or in the management of which he is concerned.

(4) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Tribunal thinks fit including conditions as to the  
30 future conduct of the credit provider and conditions specifying the action to be taken by the credit provider to rectify the consequences of his unjust conduct.



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**Variation, etc., of restraining order.**

**242.** The Tribunal may, on the application of the Commissioner, vary or discharge an order made under section 241.

**DIVISION 3.—General.**

**5 General penalty.**

**243. (1)** A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

**(2)** A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by a provision of this Act other than this subsection is liable to a penalty not exceeding \$200.

**Limitation.**

**244.** Notwithstanding anything in any Act, proceedings for an offence against this Act may be brought within the period of 3 years that next succeeds the commission of the offence or, with the consent of the Attorney General, at any later time.

**Offence by corporation.**

**245.** Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

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**Who may take proceedings for offences.**

246. (1) Proceedings for an offence against this Act or for a breach of the regulations may be taken and prosecuted by any person acting with the authority of—

- 5       (a) the Minister; or  
         (b) a prescribed officer.

(2) An authority to prosecute purporting to have been signed by the Minister or a prescribed officer is evidence of that authority without proof of the signature of the Minister or the  
10 prescribed officer.

(3) In proceedings for an offence against this Act or for a breach of the regulations, the informant may conduct his case personally, or by counsel or attorney, or by an agent authorised by him in writing.

**15 Disposal of proceedings.**

247. (1) Proceedings for an offence against this Act shall be disposed of summarily before—

- (a) a court of petty sessions constituted by a stipendiary magistrate sitting alone; or  
20       (b) with the written consent of the Minister—the Supreme Court in its summary jurisdiction.

(2) Proceedings for a breach of the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

25       (3) A monetary penalty imposed by a court of petty sessions for an offence against this Act shall not exceed \$2,000 notwithstanding that, but for this subsection, the maximum monetary penalty that could be imposed would exceed \$2,000.

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**Certain rights, etc., saved.**

**248.** Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been  
5 enacted.

**Application of Act No. 28, 1969.**

**249. (1)** For the purposes of sections 12 and 16 of the Consumer Protection Act, 1969, matters arising under this Act are matters relating to the interests of consumers and this Act is an Act  
10 designed to protect the interests of consumers.

**(2)** The Commissioner has, in relation to his functions and powers under this Act, the same power of delegation as is conferred on him by section 15A of the Consumer Protection Act, 1969, in relation to his functions and powers under that Act.

**15 Power of entry.**

**250. (1)** For the purpose of ascertaining whether the provisions of this Act are being or have been complied with by a credit provider or a mortgagee in relation to a credit contract or a goods mortgage, the Commissioner, an inspector appointed under  
20 the Consumer Protection Act, 1969, or any other person authorised in writing in that behalf by the Commissioner may enter premises where the business of the credit provider or mortgagee, or the business of a person with whom the credit provider has a trade or tie agreement, is being carried on and may require the production  
25 of and may inspect records and may take notes, copies and extracts of or from any record.

**(2)** A person shall not—

**(a)** wilfully delay or obstruct the Commissioner, an inspector  
30 or any other person in the exercise of powers under this section;



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- (b) refuse or fail to produce, or conceal or attempt to conceal, any record he is required under subsection (1) to produce;
- 5 (c) being a credit provider or a mortgagee or, where the credit provider or mortgagee is a body corporate, an officer of the credit provider or mortgagee, refuse or fail to answer a question relating to any record put to him by a person entitled to require production of the record who first informs him that he is required and
- 10 obliged by this section to answer the question; or
- (d) being a credit provider or mortgagee or, where the credit provider or mortgagee is a body corporate, an officer of the credit provider or mortgagee, give an answer to a question relating to any record that he knows
- 15 is false or misleading.

Penalty : \$1,000.

(3) In this section and section 251, a reference to a record includes in the case of a record that is not in writing, or is not written in the English language, or is not decipherable on sight,

20 a reference to a statement, written in the English language and decipherable on sight, of the information contained in the record.

**Secrecy.**

**251. (1)** This section applies to every person who is or has been—

- 25 (a) the Commissioner;
- (b) the Registrar;
- (c) a member of the staff assisting the Commissioner or the Registrar.

(2) Subject to this section and to section 247, a person

30 to whom this section applies shall not, either directly or indirectly, except in legal proceedings or in the performance of a function under or in connection with this Act, make a record of, or divulge

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or communicate to any person, any information concerning the affairs of any person acquired by him by reason of his office or employment under or for the purposes of this Act.

Penalty applying to this subsection : \$2,000.

**5 Extensions of time.**

**252.** Where, under this Act, a court may extend a period, the court may extend the period notwithstanding that the period has elapsed.

**Service of documents.**

**10 253. (1)** Subject to section 224, where, under this Act, a document or notice is required or permitted to be given to or served on a person, the document or notice may be given or served—

**15 (a)** where the person is a natural person, by giving it to or serving it personally on the person or by sending it by post to the person at his usual or last known place of abode or business; or

**20 (b)** where the person is a body corporate, by leaving it at or sending it by post to the registered office of the body corporate.

**(2)** In subsection (1), "registered office" means—

**25 (a)** the office of the body corporate that is the registered office or principal office in accordance with the law of the State or Territory by or under which the body corporate is incorporated;

**(b)** where the body corporate is not incorporated in Australia, an office registered under the law of a State or Territory as a registered office of the body corporate; or

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(c) in the case of a body corporate that has no such registered office or principal office, the principal place of business of the body corporate in the State or, if it has no place of business in the State, its principal place of business in Australia.

5

(3) Where the rights and obligations of a person under this Act have been assigned or have passed by operation of law to another person, a document or notice given to or served on the first-mentioned person at his usual or last known place of abode or address shall be deemed to have been given to or served on the second-mentioned person unless the person giving or serving the document or notice had before he gave or served the document or notice been given notice in writing that the rights and obligations of the first-mentioned person had been assigned or had so passed to the second-mentioned person.

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**Service by post.**

254. Subject to section 65, for the purposes of this Act, where a document is properly addressed prepaid and posted to a person as a letter, the document shall be deemed to have been given to the person at the time at which the letter would be delivered in the ordinary course of post.

20

**Annual report.**

255. (1) The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report on the administration of this Act during that period of 12 months and submit the report to the Minister for presentation to Parliament.

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(2) The report referred to in subsection (1) may form part of the report submitted to the Minister in accordance with section 18 of the Consumer Protection Act, 1969.

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*Consumer Credit.***Regulations.**

**256. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is  
5 necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

**(2)** A regulation may impose a penalty not exceeding \$200 for a breach of the regulation.

**(3)** A provision of a regulation may—

- 10 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- 15 (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

**(4)** A regulation may be made to convey information as to rights and obligations by specifying hypothetical questions and  
20 answers thereto.

## SCHEDULE 1.

(Sec. 12.)

## AMOUNT ACCRUED DUE UNDER CREDIT CONTRACT.

1. This Schedule applies to a credit sale contract or a loan contract,  
25 where—

- (a) the whole or any part of the credit charge is a pre-determined credit charge or an estimated credit charge;
- (b) the whole of the amount financed was provided on the same day;

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SCHEDULE 1—*continued.*

AMOUNT ACCRUED DUE UNDER CREDIT CONTRACT—*continued.*

5 (c) the amount financed and the credit charge are payable by not more than 260 equal instalments at equal intervals, the first interval commencing on the date on which the amount financed was provided and the last interval ending not more than 5 years after that date; and

(d) the period of each interval is 1 month or does not exceed 4 weeks.

10 2. Where this Schedule applies to a contract, the credit provider may, instead of accurately calculating the amount of the pre-determined credit charge or estimated credit charge which has accrued due under the contract at a particular time calculate the amount in accordance with the formula—

$$\frac{CE(2T - E + 1)}{T(T + 1)}$$

15 where—

C is the amount of the pre-determined credit charge or estimated credit charge;

20 E is the number of intervals between instalments (including a part of an interval as a whole interval) which has elapsed since the amount financed was provided under the contract; and

T is the number of intervals between instalments (excluding a part of an interval) in the period of the contract.

3. For the purposes of clause 2—

25 (a) instalments shall be deemed to be equal if all the instalments except 1 are of the same amount and the difference between the amount of that 1 instalment and the amount of each of the other instalments is not more than \$5 or 5 per cent of the amount of each of the other instalments, whichever is the greater; and

30 (b) intervals shall be deemed to be equal if all the intervals except 1 are of the same length and the difference between the length of that 1 interval and the length of each of the other intervals is not more than 5 per cent of the length of each of the other intervals.

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## SCHEDULE 2.

(Sec. 34.)

STATEMENT OF AMOUNT FINANCED IN RELATION TO CREDIT SALE  
CONTRACT RELATING TO GOODS OR SERVICES.5 **Credit sale contract—amount financed.**

1. A statement of the amount financed shall state—

- 10 (a) the amount (if any) paid or provided, or to be paid or provided, by way of deposit, showing separately the amounts paid or to be paid in money, the amounts provided or to be provided by a consideration other than money, and the amount included in the deposit on account of a trade-in allowance (if any) and the person by whom the trade-in allowance was given;
- (b) the cash price of the goods or services; and
- 15 (c) the balance of the cash price after deduction of the amount (if any) paid or provided, or to be paid or provided, by way of deposit,

and shall include statements showing separately such amounts (not being amounts included in paragraph (a) or (b)) as, under the contract, are payable by the debtor to the credit provider (otherwise than as part of the 20 credit charge) whether or not the credit provider pays, or has paid, those amounts to another person and are—

- (d) where the contract relates to goods, amounts payable by the debtor to the credit provider in respect of—
- 25 (i) charges for installation of the goods;
- (ii) charges for maintenance of the goods; and
- (iii) charges for delivery of the goods to the debtor, unless included in the cash price under paragraph (b); and
- 30 (iv) where the goods are, or include, a motor vehicle, boat or other vehicle or thing required to be registered or licensed, registration fees and (unless included in the statement under paragraph (e)) amounts payable in respect of compulsory insurance;
- (e) amounts so payable in respect of contracts of insurance (if any) entered into in relation to the contract, showing separately, in 35 respect of each such contract the name of the insurer and—
- (i) where the contract relates to goods that are or include a motor vehicle, boat or other vehicle or thing required to be registered or licensed, amounts so payable in respect of compulsory insurance (unless those amounts are included 40 in a statement under paragraph (d));



*Consumer Credit.*SCHEDULE 2—*continued.*STATEMENT OF AMOUNT FINANCED IN RELATION TO CREDIT SALE  
CONTRACT RELATING TO GOODS OR SERVICES—*continued.*

- 5 (ii) where there is a mortgage relating to the contract, amounts so payable in respect of insurance of property subject to the mortgage (other than compulsory insurance included in the statement under subparagraph (i) or under paragraph (d));
- 10 (iii) where there is a goods mortgage relating to the contract, amounts so payable in respect of insurance against loss by the operation of section 105 of the security interest of the mortgagee in the goods subject to the mortgage;
- 15 (iv) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of, the debtor or, where there is more than one debtor, amounts so payable in respect of such insurance in relation to the debtors;
- 20 (v) amounts so payable in respect of life insurance of the debtor or where there is more than one debtor, amounts so payable in respect of life insurance of the debtors;
- (vi) amounts so payable in respect of insurance against unemployment of the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against unemployment of the debtors;
- 25 (vii) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and
- 30 (viii) amounts so payable in respect of insurance against such other risks (if any) as are prescribed,
- 35 or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to one or more of the risks referred to in the preceding subparagraphs—that amount and a statement of the risks to which the amount relates;
- (f) any amounts so payable in respect of—
- 40 (i) stamp duty payable in respect of or in relation to the contract;
- (ii) stamp duty payable in respect of or in relation to any mortgage relating to the contract entered into on or before the relevant date; or

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SCHEDULE 2—*continued.*

STATEMENT OF AMOUNT FINANCED IN RELATION TO CREDIT SALE  
CONTRACT RELATING TO GOODS OR SERVICES—*continued.*

- 5 (iii) fees payable to a legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into at or before the time of the making of the contract;
- 10 (g) amounts that are prescribed charges for the purposes of this clause;
- (h) amounts that are the consideration, or part of the consideration, for the discharge of the liability of the debtor to the credit provider under a contract in force before the relevant date, other than consideration referred to in a preceding paragraph;
- 15 (i) amounts payable in respect of the value of any consideration provided by the credit provider to the debtor other than consideration referred to in a preceding paragraph; and
- (j) the amount financed, being the sum of—
- 20 (i) the amount referred to in paragraph (c); and
- (ii) the amounts referred to in paragraphs (d)–(i).

**Interpretation: clause 1.**

2. In clause 1, "relevant date" means the date on which the credit sale contract is entered into or, if the credit sale contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date  
25 on which the offer is made.

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SCHEDULE 3.

(Sec. 34.)

STATEMENT OF CREDIT CHARGE IN RELATION TO CREDIT SALE CONTRACT  
RELATING TO GOODS.

5 **Credit sale contract—credit charge.**

1. A statement in a credit sale contract of the credit charge—

- (a) shall, where at the relevant date it is possible to express the whole or any part of the credit charge as an amount of money, state separately—
- 10 (i) the amount of the minimum credit charge (if any);
- (ii) the amount of the pre-determined credit charge (if any); and
- (iii) the amount of the estimated credit charge (if any) that can be so expressed at the relevant date;
- 15 (b) shall, where at the relevant date it is not possible to express the whole of the credit charge as an amount of money—
- (i) state the method by which the amount of the estimated credit charge that cannot be so expressed is to be ascertained; and
- 20 (ii) include a statement that it is not possible at the relevant date to express the whole of the credit charge as an amount of money; and
- (c) shall include a statement that no part of the credit charge (other than the minimum credit charge (if any)) becomes due and payable unless it is an accrued credit charge.
- 25

**Interpretation: clause 1.**

2. In clause 1, "relevant date" means the date on which the credit sale contract is entered into or, if the credit sale contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.
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*Consumer Credit.***SCHEDULE 4.**

(Sec. 35.)

**STATEMENT OF AMOUNT FINANCED IN RELATION TO LOAN CONTRACT.****Loan contract—amount financed.**

- 5 1. A statement of the amount financed shall state—
- (a) the amount agreed under the contract to be lent (other than amounts referred to in paragraphs (b)-(g));
- 10 (b) amounts payable by the debtor to the credit provider, whether or not the credit provider pays, or has paid, those amounts to another person, in respect of contracts of insurance (if any), entered into in relation to the contract showing separately in respect of each contract the name of the insurer and—
- 15 (i) where there is a mortgage relating to the contract, amounts so payable in respect of insurance of property subject to the mortgage;
- (ii) where there is a goods mortgage relating to the contract, amounts so payable in respect of insurance against loss by the operation of section 105 of the security interest of the mortgagee in the goods subject to the mortgage;
- 20 (iii) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of, the debtor or, where there is more than one debtor, amounts so payable in respect of such insurance in relation to the debtors;
- 25 (iv) amounts so payable in respect of life insurance of the debtor or, where there is more than one debtor, amounts so payable in respect of life insurance of the debtors;
- (v) amounts so payable in respect of insurance against unemployment of the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against unemployment of the debtors;
- 30 (vi) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and
- 35 (vii) amounts so payable in respect of insurance against such other risks (if any) as are prescribed,
- 40 or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to one or more of the risks referred to in the preceding subparagraphs— that amount and a statement of the risks to which the amount relates;

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*Consumer Credit.*

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SCHEDULE 4—*continued.*STATEMENT OF AMOUNT FINANCED IN RELATION TO  
LOAN CONTRACT—*continued.*

- (c) amounts so payable in respect of—
- 5 (i) stamp duty payable in respect of or in relation to the contract;
- (ii) stamp duty payable in respect of or in relation to any mortgage relating to the contract entered into on or before the relevant date; or
- 10 (iii) fees payable to a legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into at or before the time of the making of the contract;
- 15 (d) amounts that are prescribed charges for the purposes of this clause;
- (e) amounts that are the consideration, or part of the consideration, for the discharge of the liability of the debtor to the credit provider under a contract in force before the relevant date, other
- 20 than consideration referred to in a preceding paragraph;
- (f) amounts payable in respect of the value of any consideration provided by the credit provider to the debtor other than consideration referred to in a preceding paragraph; and
- 25 (g) the amount financed, being the sum of the amounts referred to in paragraphs (a)–(f).

**Interpretation: clause 1.**

2. In clause 1, “relevant date” means the date on which the loan contract is entered into or, if the loan contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the

30 offer is made.

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*Consumer Credit.*

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SCHEDULE 5.

(Sec. 35.)

STATEMENT OF CREDIT CHARGE IN RELATION TO LOAN CONTRACT.

**Loan contract—credit charge.**

- 5 1. A statement in a loan contract of the credit charge—
- (a) shall, where at the relevant date it is possible to express the whole or any part of the credit charge as an amount of money, state separately—
- 10 (i) the amount of the minimum credit charge (if any);
- (ii) the amount of the pre-determined credit charge (if any); and
- (iii) the amount of the estimated credit charge (if any) that can be so expressed at the relevant date;
- 15 (b) shall, where at the relevant date it is not possible to express the whole of the credit charge as an amount of money—
- (i) state the method by which the amount of the estimated credit charge that cannot be so expressed is to be ascertained; and
- 20 (ii) include a statement that it is not possible at the relevant date to express the whole of the credit charge as an amount of money; and
- (c) shall include a statement that no part of the credit charge (other than the minimum credit charge (if any)) becomes due and payable unless it is an accrued credit charge.

**25 Interpretation: clause 1.**

2. In clause 1, "relevant date" means the date on which the loan contract is entered into or, if the loan contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

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*Consumer Credit.*

## SCHEDULE 6.

(Sec. 37.)

## ANNUAL PERCENTAGE RATE UNDER CREDIT CONTRACT.

1. This Schedule applies to a credit sale contract or a loan contract,  
5 where—

- (a) the whole of the credit charge is a pre-determined credit charge;
- (b) the whole of the amount financed is, or is to be, provided on the same day; and
- 10 (c) the amount financed and the pre-determined credit charge are payable by equal instalments at equal intervals, the first interval commencing on the date on which the amount financed is provided.

2. Where this Schedule applies to a contract, the annual percentage rate may be determined in accordance with the formula—

15 
$$\frac{2NF(300C + NF)}{2N^2F + 300C(N + 1)}$$

where—

- N is the total number of instalments;
- 20 C is the number of instalments that, under the contract, will be paid in 1 year or, where the contract is to be completed in less than 1 year, the number of instalments that would be paid in 1 year if instalments continued to be paid at the same intervals; and
- F is an amount determined in accordance with the formula—

25 
$$\frac{100C \times T}{N \times A}$$

where—

- C is the same number as in the first-mentioned formula;
- T is the total amount of the pre-determined credit charge;
- N is the total number of instalments; and
- 30 A is the amount financed.

3. For the purposes of clause 2—

- (a) instalments shall be deemed to be equal if all the instalments except 1 are of the same amount and the difference between the amount of that 1 instalment and the amount of each of the other instalments is not more than \$5 or 5 per cent of the amount of each of the other instalments, whichever is the greater; and
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*Consumer Credit.*

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SCHEDULE 6—*continued.*

ANNUAL PERCENTAGE RATE UNDER CREDIT CONTRACT—*continued.*

- 5 (b) intervals shall be deemed to be equal if all the intervals except 1 are of the same length and the difference between the length of that 1 interval and the length of each of the other intervals is not more than 5 per cent of the length of each of the other intervals.

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SCHEDULE 7.

(Sec. 66.)

STATEMENT OF ACCOUNT IN RELATION TO CONTINUING CREDIT CONTRACT.

10 **Continuing credit contract—statement of account.**

1. A statement of account for a continuing credit contract shall include a statement of—
- (a) the date of the last day of the billing cycle;
  - 15 (b) the amount owed by the debtor under the contract on the first day of the billing cycle;
  - (c) the amount owed by the debtor under the contract on the last day of the billing cycle;
  - 20 (d) the date of purchase and cash price of goods or services supplied by the credit provider during the billing cycle in respect of payment for which credit is provided under the contract and such a description of each transaction as will enable it to be identified;
  - (e) particulars, including the amount, of each amount of cash supplied by the credit provider during the billing cycle in respect of the supply of which credit is provided under the contract;
  - 25 (f) particulars of each amount in respect of which, under the contract, credit is provided to the debtor during the billing cycle in respect of goods or services or cash supplied by a person other than the credit provider and in relation to each such amount particulars of the suppliers of the goods or services or of the cash to which the amount relates;
  - 30 (g) particulars of each amount paid by the debtor to the credit provider under the contract during the billing cycle;

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*Consumer Credit.*

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SCHEDULE 7—*continued.*STATEMENT OF ACCOUNT IN RELATION TO CONTINUING  
CREDIT CONTRACT—*continued.*

- 5 (h) each amount (not being a payment by the debtor to the credit provider) by way of a refund or allowance given to the debtor during the billing cycle;
- 10 (i) particulars of each amount (not being a payment by the debtor to the credit provider) by reason of which an amount included in an amount referred to in paragraph (d), (e), (f), (j), (k) or (l) is cancelled or reduced by reason of an amount by way of refund or allowance given to the debtor during the billing cycle;
- 15 (j) where the statement of account includes a statement under paragraph (d) of amounts relating to goods—particulars, so far as they are known or can be ascertained, of amounts included in that amount in respect of—
- (i) charges for installation of the goods;
  - (ii) charges for maintenance of the goods; and
  - (iii) charges for delivery of the goods to the debtor,
- 20 unless included in the cash price of the goods under paragraph (d);
- 25 (k) particulars of amounts that, during the billing cycle, are added to the amount payable under the contract by the debtor to the credit provider, whether or not the credit provider pays, or has paid, those amounts to another person, in respect of contracts of insurance (if any) entered into in relation to the contract showing separately in respect of each such contract the name of the insurer and—
- 30 (i) where there is a mortgage relating to the contract, amounts so payable in respect of insurance of property subject to the mortgage;
  - (ii) where there is a goods mortgage relating to the contract, amounts so payable in respect of insurance against loss by the operation of section 105 of the security interest of the mortgagee in the goods subject to the mortgage;
  - 35 (iii) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of, the debtor or, where there is more than one debtor, amounts so payable in respect of such insurance in relation to the debtors;
  - 40 (iv) amounts so payable in respect of life insurance of the debtor or where there is more than one debtor, amounts so payable in respect of life insurance of the debtors;



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*Consumer Credit.*

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SCHEDULE 7—*continued.*STATEMENT OF ACCOUNT IN RELATION TO CONTINUING  
CREDIT CONTRACT—*continued.*

- 5 (v) amounts so payable in respect of insurance against unemployment of the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against unemployment of the debtors;
- 10 (vi) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and
- 15 (vii) amounts so payable in respect of insurance against such other risks (if any) as are prescribed,  
or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to one or more of the risks referred to in the preceding subparagraphs— that amount and a statement of the risks to which the amount relates;
- 20 (l) amounts that during the billing cycle are added to the amount payable under the contract by the debtor to the credit provider in respect of—
- 25 (i) stamp duty payable in respect of or in relation to the contract; or
- (ii) stamp duty payable in respect of or in relation to any mortgage relating to the contract entered into during the billing cycle;
- (m) the amount of the credit charge in respect of the billing cycle;
- (n) the annual percentage rate in respect of the contract and the manner of its application to the contract;
- 30 (o) where the statement of account includes a request for payment of an amount by the debtor—
- 35 (i) the amount payable or the manner in which it may be ascertained from the statement;
- (ii) the person to whom and the place at which the amount is payable; and
- (iii) the date before which the amount is to be paid;
- 40 (p) particulars of amounts that during the billing cycle are added to the amount payable under the contract by the debtor to the credit provider and are the consideration, or part of the consideration, for the discharge of the liability of the debtor to the

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*Consumer Credit.*

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SCHEDULE 7—*continued.*

STATEMENT OF ACCOUNT IN RELATION TO CONTINUING  
CREDIT CONTRACT—*continued.*

5 credit provider under a contract in force before the first day of  
the billing cycle other than consideration referred to in a pre-  
ceding paragraph; and

10 (q) particulars of amounts that during the billing cycle are added to  
the amount payable under the contract by the debtor to the credit  
provider in respect of the value of any consideration provided by  
the credit provider to the debtor other than consideration referred  
to in a preceding paragraph.

**Interpretation: clause 1.**

**2. In clause 1—**

15 (a) a reference to an amount paid or owed by, or supplied to or in  
respect of which credit is provided to or given by way of refund or  
allowance to a debtor under a continuing credit contract at a  
particular time or during a particular period—

20 (i) does not include a reference to an amount paid or owed  
by or supplied to or in respect of which credit is provided  
to or given by way of refund or allowance to the debtor  
at that time or during that period that is not at that time  
or during that period entered in an account of the debtor  
kept by the credit provider; and

25 (ii) includes a reference to an amount paid or owed by or  
supplied to or in respect of which credit is provided to or  
given by way of refund or allowance to the debtor before  
that time or period that has not been included in an earlier  
statement of account under the contract; and

30 (b) a reference to goods or services supplied to a debtor during a  
billing cycle—

(i) does not include a reference to goods or services supplied  
to a debtor during a billing cycle but in respect of which  
an amount is not during the billing cycle entered in an  
account of the debtor kept by the credit provider; and

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*Consumer Credit.*

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SCHEDULE 7—*continued.*

STATEMENT OF ACCOUNT IN RELATION TO CONTINUING  
CREDIT CONTRACT—*continued.*

- 5 (ii) includes a reference to goods or services supplied before the commencement of the billing cycle but that have not been included in an earlier statement of account under the contract.