

First print



New South Wales

Consumer Credit Administration Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide for the administration of certain consumer credit legislation (including the *Consumer Credit (New South Wales) Act 1995* and the *Credit Act 1984*). In particular, the Bill:

- establishes a procedure for the discipline of credit providers and finance brokers who engage in unjust conduct,
- empowers the Commercial Tribunal (or a person appointed by the Minister) to inquire into credit related matters,
- sets out the functions of the Director-General of the Department of Fair Trading in relation to certain court proceedings about the provision of credit and the conduct of participants in the credit industry.

The Bill will replace the *Credit (Administration) Act 1984*. Under that Act, credit providers and finance brokers were required to be licensed. Licences will no longer be required. Instead, the Bill creates a scheme for monitoring the conduct of credit providers and finance brokers and for dealing with any unjust conduct.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 defines certain terms used in the proposed Act. *Consumer credit* is defined so as to make it clear that the proposed Act applies to the provision of credit whether it is regulated under the *Credit Act 1984* or the *Consumer Credit (New South Wales) Code*. *Unjust conduct* is defined to include conduct that involves the contravention of any of the consumer credit legislation.

Clause 4 provides that the conduct of an officer, employee or agent of a credit provider or finance broker will be imputed to the credit provider or finance broker, and taken to be their conduct, if the agent is acting with their actual or ostensible authority.

Part 2 Supervision of the provision of consumer credit

Clause 5 provides that the powers of entry and inspection contained in the proposed Part may only be exercised for the purpose of determining whether or not a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in relation to the provision of consumer credit or finance broking. The powers can be used to investigate the conduct of any person (including an employee or agent of a credit provider or finance broker), even though the disciplinary powers in proposed Part 3 can only be used against a credit provider or a finance broker.

Clause 6 empowers an official (who is authorised by the Director-General) to require a person to answer questions or produce documents for the purposes of the proposed Part. An official may also inspect any document, or remove it for the purposes of examining or copying it.

Clause 7 provides that failure to give information, or to furnish a document, in response to a demand is an offence. The giving of information that is false or misleading in a material particular is also an offence.

Clause 8 empowers an official authorised by the Director-General to enter and inspect premises for the purposes of the proposed Part.

Clause 9 provides for an official to apply for the issue of a search warrant to empower an official to enter premises (including premises used for residential purposes).

Clause 10 imposes limitations on the exercise of the powers of entry and inspection contained in the proposed Part.

Part 3 Discipline for unjust conduct

Division 1 Complaints

Clause 11 sets out the object of the proposed Part.

Clause 12 provides that any person may make a complaint to the Director-General about the conduct of a credit provider or finance broker.

Clause 13 makes it clear that the Director-General may use the investigative powers set out in proposed Part 2 to investigate a complaint against a credit provider or finance broker.

Division 2 Disciplinary action

Clause 14 provides that, if it appears to the Director-General that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct, the Director-General may request the credit provider or finance broker to give certain undertakings about its conduct.

Clause 15 sets out the action that the Director-General may take if an undertaking has not been, or would not be, effective in stopping unjust conduct. The proposed section requires the Director-General to give a credit provider or finance broker a chance to avoid further disciplinary action.

Clause 16 gives a credit provider or finance broker an opportunity to make a written submission in response to a notice to show cause why further disciplinary action should not be taken.

Clause 17 empowers the Director-General to conduct investigations in relation to the matters to which the notice relates or any submission made by the credit provider or finance broker in response to the notice.

Clause 18 provides that, after considering any submission or the results of any investigation made, the Director-General may reprimand the credit provider or finance broker or may order the credit provider or finance broker to take certain action, including action to rectify the consequences of the unjust conduct.

Division 3 Prohibition orders

Clause 19 provides for the issue of a prohibition order, that is, an order that a credit provider not be involved in providing consumer credit or that a finance broker not be involved in finance broking. The order may be permanent, or may operate for a specified time only. A prohibition order may be made only if the Director-General is satisfied that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct.

Clause 20 empowers a credit provider or finance broker to make an application for the variation or revocation of any prohibition order.

Clause 21 permits a credit provider or finance broker to take certain action, in relation to existing credit contracts, despite being the subject of a prohibition order.

Clause 22 provides a civil penalty for contravention of a prohibition order by a credit provider or finance broker. If a credit provider provides consumer credit in contravention of a prohibition order the debtor will generally not be liable to pay any amount under the credit contract. Similarly, if a finance broker is involved in finance broking in contravention of a prohibition order, a person the party to any contract entered into for that purpose is not liable to pay any amount under the contract.

Clause 23 sets out the maximum criminal penalty for the contravention of a prohibition order.

Division 4 Administration

Clause 24 requires the Director-General to notify a credit provider or finance broker of any disciplinary action taken in relation to the credit provider or finance broker.

Clause 25 requires the Director-General to keep a register of disciplinary action taken.

Clause 26 provides for the awarding of costs against a credit provider or finance broker who has been found to have engaged in unjust conduct.

Clause 27 creates a right to appeal to the Commercial Tribunal against a disciplinary order.

Part 4 Inquiries

Clause 28 provides that the Minister may appoint the Commercial Tribunal, or any person, to inquire into matters relating to the provision of consumer credit or the consequences of the provision of consumer credit, or both.

Clause 29 requires the Tribunal to give public notice of the inquiry.

Clause 30 gives any person with a substantial interest in the matter the subject of a Tribunal inquiry the right to appear at the inquiry.

Clause 31 sets out the procedure at a Tribunal inquiry.

Clause 32 sets out the powers of the Tribunal at an inquiry, including the power to issue a summons, administer an oath and take evidence on oath.

Clause 33 creates an offence of failure to appear at a Tribunal inquiry after having been summoned.

Clause 34 creates an offence relating to the refusal to be sworn at a Tribunal inquiry and the refusal to produce a document or to answer a question.

Clause 35 empowers the Tribunal or an authorised person to require a person to give information, or answer any question, in relation to the subject matter of an inquiry.

Part 5 Functions of Director-General in relation to proceedings

Clause 36 provides that the Director-General may represent a debtor or another person in any proceedings before the Tribunal.

Clause 37 empowers the Director-General to take or defend certain proceedings for another person.

Clause 38 provides for the Director-General to have the conduct of those proceedings.

Clause 39 provides for the intervention of the Minister, or the Director-General, in any proceedings arising under the consumer credit legislation before a court or the Tribunal where the Minister or Director-General thinks it is in the public interest to intervene.

Clause 40 provides for the investigation of certain applications made to the Tribunal relating to the imposition of civil penalties on credit providers.

Part 6 Offences

Clause 41 provides that if a corporation commits an offence, each officer of the corporation is taken to have committed the offence if the officer knowingly authorised or permitted the contravention.

Clause 42 provides for the taking of proceedings for an offence against the proposed Act.

Clause 43 provides for the disposal of proceedings for an offence against the proposed Act by a Local Court or, with the consent of the Minister, by the Supreme Court.

Clause 44 imposes a 3 year limitation period on the commencement of proceedings for an offence under the proposed Act.

Part 7 Miscellaneous

Clause 45 imposes an obligation on certain persons to keep secret certain information concerning the affairs of a person if acquired for the purposes of the consumer credit legislation.

Clause 46 provides for the service of documents.

Clause 47 provides that the Crown is to be bound by the proposed Act.

Clause 48 empowers the Governor to make regulations.

Clause 49 repeals the *Credit (Administration) Act 1984* and the regulation made under that Act.

Clause 50 gives effect to the Schedule of consequential amendments to other Acts.

Clause 51 gives effect to the Schedule of savings and transitional provisions.

Clause 52 provides for the review of the proposed Act 5 years after its date of assent.

Schedules

Schedule 1 makes consequential amendments to certain Acts regulating consumer credit.

Schedule 2 makes savings and transitional provisions consequent on the repeal of the *Credit (Administration) Act 1984*.

First print



New South Wales

Consumer Credit Administration Bill 1995

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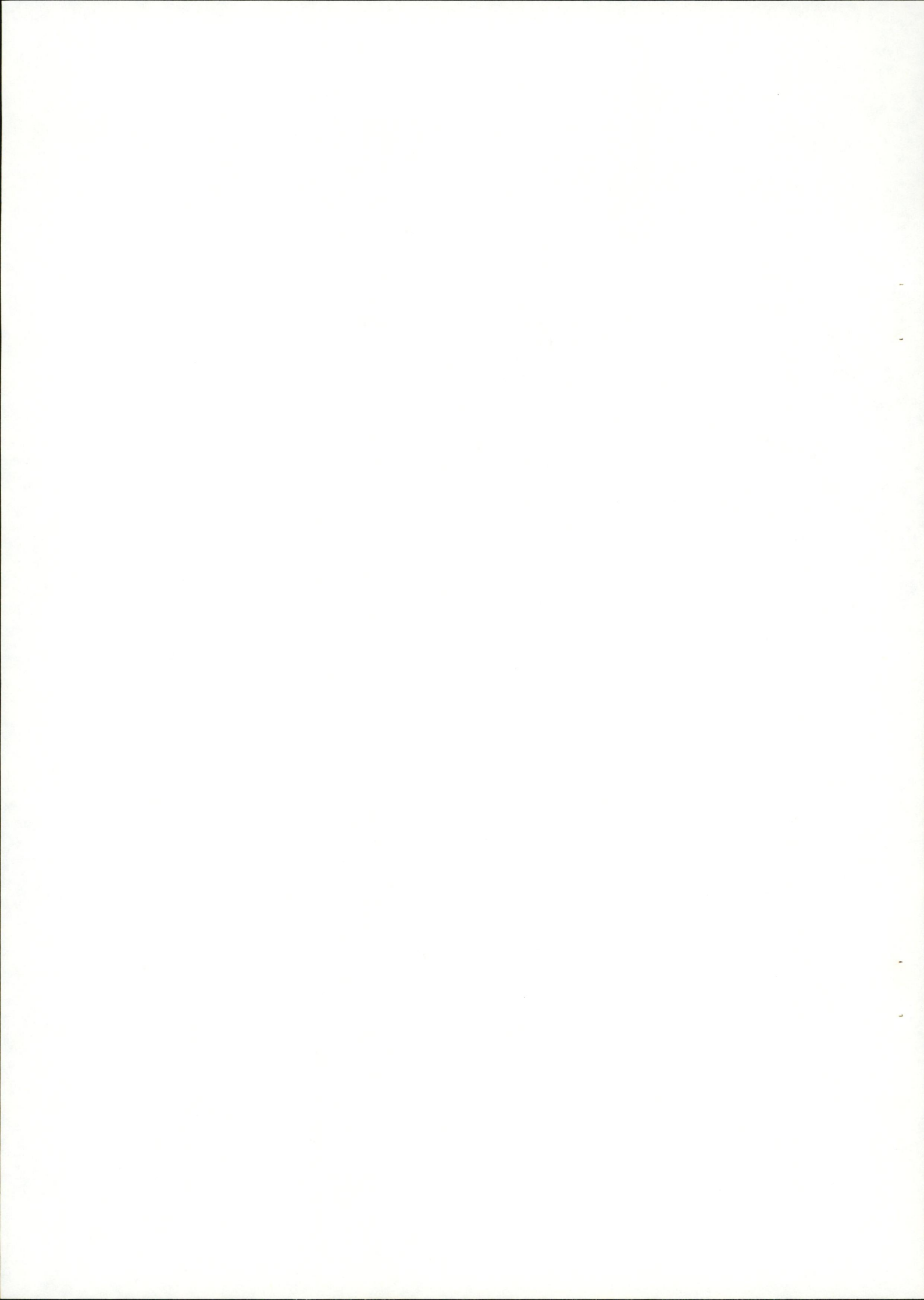
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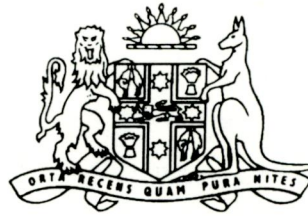
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New South Wales

Consumer Credit Administration Bill 1995

No. , 1995

A Bill for

An Act to provide for the supervision of the consumer credit industry; to provide for the making of inquiries into matters relating to the provision of credit; to repeal the *Credit (Administration) Act 1984*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Consumer Credit Administration Act 1995*.

2 Commencement

5

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

3 Definitions

(1) In this Act:

consumer credit means credit to which any consumer credit legislation applies, and includes arrangements under a consumer lease as defined in the *Consumer Credit (New South Wales) Code*. 10

consumer credit legislation means the following Acts and the regulations made under them: 15

- (a) this Act,
- (b) the *Consumer Credit (New South Wales) Act 1995* (including the *Consumer Credit (New South Wales) Code*),
- (c) the *Credit Act 1984*,
- (d) the *Credit (Finance Brokers) Act 1984*, 20
- (e) the *Credit (Home Finance Contracts) Act 1984*.

credit provider means a credit provider under any consumer credit legislation and include a prospective credit provider.

debtor means a debtor under any consumer credit legislation and includes a prospective debtor. 25

director of a corporation has the same meaning as it has in the *Corporations Law*.

Director-General means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*. 30

disciplinary action means any of the following actions the Director-General is empowered to take:

- (a) requesting that a credit provider or finance broker execute a deed giving undertakings (under section 14),
- (b) issuing a notice to show cause (under section 15), 5
- (c) reprimanding a credit provider or finance broker (under section 18 (2) (a)),
- (d) ordering a credit provider or finance broker to rectify the consequences of unjust conduct within a specified period (under section 18 (2) (b)), 10
- (e) ordering a credit provider or finance broker to comply with a requirement within a specified period (under section 18 (2) (c)),
- (f) making a prohibition order (under section 19 or 20).

exercise a function includes perform a duty. 15

finance broker means a person who, whether or not carrying on any other business, carries on the business of finance broking.

finance broking means negotiating, or acting as intermediary to obtain, consumer credit for persons other than an employer or principal of the person so negotiating or acting. 20

function includes a power, authority or duty.

officer of a corporation has the same meaning as it has in the *Corporations Law*.

official means:

- (a) a public servant, or 25
- (b) a person of a class prescribed by the regulations.

premises means any place, vehicle or vessel.

prohibition order means a prohibition order made under Division 3 of Part 3 and in force.

Tribunal means the Commercial Tribunal of New South Wales. 30

unjust conduct means conduct:

- (a) that is unfair, dishonest or fraudulent, or
 - (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 5
 - (c) that consists of a contravention of any consumer credit legislation.
- (2) For the purposes of this Act, a person provides consumer credit if the person:
- (a) provides the credit in the course of a business of providing consumer credit or as part of or incidentally to any other business of the person, or 10
 - (b) is involved in the taking of a mortgage, or the taking of a guarantee, to which any consumer credit legislation applies. 15

4 Conduct of agents

For the purposes of this Act, the conduct of an officer, employee or agent of a credit provider or finance broker acting within his or her actual or ostensible authority will be imputed to the credit provider or finance broker and taken to be the conduct of the credit provider or finance broker. 20

Part 2 Supervision of the provision of consumer credit

5 Application

- (1) The functions in this Part may be exercised only for the purpose of determining whether a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking. 5
- (2) The powers may be used to investigate a complaint made under Part 3 or to conduct any other investigation for supervisory purposes. 10

6 Requiring information

- (1) For the purposes of this Part, an official authorised by the Director-General may do any of the following:
- (a) require a person to answer in writing any question,
 - (b) require a person to state the person's full name and place of residence, 15
 - (c) require a person to produce any document,
 - (d) inspect and take extracts from or copies of any document,
 - (e) remove and retain any document in order to examine or copy it. 20
- (2) The power may be used only to make a requirement of, or to inspect, extract or remove the documents of, a credit provider or finance broker (or an officer, employee or agent of a credit provider or finance broker).
- (3) Such a requirement is not duly made unless, at the time of making the requirement, the person of whom the requirement is made has been informed by the official that a refusal or failure to furnish the answer or document, as the case may be, constitutes an offence. 25
- (4) A person is not excused from answering a question, or producing a document, in response to a requirement duly made under this section on the ground that the answer or document may tend to incriminate the person. 30

- (5) Any information or document obtained from a natural person in response to a requirement duly made under this section is inadmissible against the person in criminal proceedings other than proceedings under section 7.

7 Failure to give information is an offence 5

- (1) A person who, without reasonable excuse, fails to comply with any requirement under section 6 is guilty of an offence.
Maximum penalty: 20 penalty units.
- (2) A person who gives information in response to any requirement under section 6 knowing it to be false or misleading in a material particular is guilty of an offence. 10
Maximum penalty: 20 penalty units.
- (3) A person who, without reasonable excuse, hinders or obstructs an official in the exercise of any of the official's powers under section 6 is guilty of an offence. 15
Maximum penalty: 20 penalty units.

8 Entry and inspection

- (1) For the purposes of this Part, an official authorised by the Director-General may enter and inspect any premises of a credit provider or finance broker (or of an officer, employee or agent of a credit provider or finance broker). 20
- (2) A power of entry is not exercisable in relation to such part of any premises as is used for residential purposes except:
- (a) with the consent of the occupier of that part of the premises, or 25
- (b) under the authority conferred by a search warrant.

9 Search warrants

- (1) An official may apply to an authorised justice for a search warrant if the official is of the opinion that it is necessary to enter and inspect any premises for the purposes of this Part. 30

-
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an official named in the warrant to enter and inspect the premises for the purposes of this Part.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section. 5
- (4) In this section, *authorised justice* has the same meaning as it has in the *Search Warrants Act 1985*.

10 Standards for entry and inspection

- (1) A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the official proposing to exercise the power: 10
- (a) has been authorised to do so by the Director-General, and
 - (b) is in possession of a certificate of authority, and
 - (c) gives reasonable notice to the occupier of the premises of the official's intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and 15
 - (d) exercises the power at a reasonable time, and
 - (e) produces the certificate of authority if required to do so by a person apparently in occupation of the premises, and 20
 - (f) uses no more force than is reasonably necessary to effect the entry or make the inspection.
- (2) A certificate of authority must: 25
- (a) state that it is issued under this Act, and
 - (b) give the name of the official to whom it is issued, and
 - (c) describe the nature of the powers conferred and the source of the powers, and
 - (d) state the date (if any) on which it expires, and
 - (e) state that the powers do not extend to premises used for residential purposes, and 30
 - (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

- (3) A certificate signed by the Director-General to the effect that a person specified in the certificate was, on a day or during a period so specified, authorised to exercise specified powers for the purposes of this Part is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified. 5
- (4) If damage is caused by an official exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the employer of the official to the owner of the premises unless the occupier obstructed the official in the exercise of the power. 10
- (5) If a document is taken from premises by an official who exercises a power to enter the premises, a person otherwise entitled to possession of the document is, as far as is practicable, to be allowed access to the document and the document is to be returned to that person within a reasonable time. 15
- (6) In this section, *certificate of authority* means a certificate that, to enable an official to exercise a power conferred by this Act, is issued to the official by the Director-General. 20

Part 3 Discipline for unjust conduct

Division 1 Complaints

11 Object of Part

- (1) The general object of this Part is to ensure compliance by credit providers and finance brokers with the consumer credit legislation, and with the appropriate standards of honesty, fairness, competence and diligence. 5
- (2) The Director-General may take disciplinary action under this Part whether or not there has been a complaint made against a credit provider or finance broker. 10

12 Complaints about a credit provider or finance broker

- (1) Any person may make a complaint to the Director-General about the conduct of a credit provider or finance broker.
- (2) The grounds on which a complaint may be made against a credit provider are that the person has engaged in, or is engaging in, unjust conduct in the provision of consumer credit. 15
- (3) The grounds on which a complaint may be made against a finance broker are that the person has engaged in, or is engaging in, unjust conduct in finance broking.

13 Investigation of complaints

- (1) The powers in Part 2 may be exercised to investigate a complaint against a credit provider or finance broker. 20
- (2) The Director-General may exercise those powers personally or may direct an official authorised in accordance with Part 2 to exercise the powers. 25

Division 2 Disciplinary action

14 Undertakings

- (1) This section applies where it appears to the Director-General that a credit provider or finance broker, in the course of providing consumer credit or finance broking, has engaged in, or is engaging in, unjust conduct. 30

- (2) The Director-General may request the credit provider or finance broker to execute a deed in terms approved by the Director-General whereby the credit provider or finance broker gives undertakings as to:
- (a) the discontinuance of the unjust conduct, and 5
 - (b) the credit provider's or finance broker's future conduct, and
 - (c) the action the credit provider or finance broker will take to rectify the consequences of the credit provider's or finance broker's unjust conduct. 10
- (3) Where a credit provider or finance broker executes a deed under this section and observes the undertakings given in the deed, the Director-General may not take further disciplinary action under this Part against the credit provider or finance broker by reason of any conduct to which the undertaking relates. 15

15 Notice to show cause

- (1) This section applies only if the Director-General is of the opinion:
- (a) that there are reasonable grounds for believing that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking, and 20
 - (b) that requiring the credit provider or finance broker to give an undertaking would not stop that unjust conduct, has not been effective in stopping that conduct or would not prevent its recurrence. 25
- (2) The Director-General may, by notice in writing served on the credit provider or finance broker, call upon the credit provider or finance broker to show cause why the credit provider or finance broker should not, for the reason specified in the notice, be subject to further disciplinary action (including the making of a prohibition order). 30
- (3) The notice must specify the period in which the credit provider or finance broker may show cause. That period must be at least 14 days after the notice is served. 35

16 Person may make submission

The credit provider or finance broker on whom a notice to show cause has been served may, within the period specified in the notice, make a written submission in respect of the matters to which the notice relates.

5

17 Director-General may make further inquiries

(1) The Director-General may conduct such inquiry or make such investigation as the Director-General thinks fit in relation to:

- (a) the matters to which the notice to show cause relates, or
- (b) any written submissions made by or on behalf of the credit provider or finance broker in relation to those matters.

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(2) The Director-General may, by written notice, require a credit provider or finance broker who has made a written submission to appear before the Director-General to answer questions at a place, and at a date and time, specified in the notice

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(3) A person who has been given a written notice to appear before the Director-General must appear and must answer any question put by the Director-General.

Maximum penalty: 20 penalty units.

(4) A person who gives an answer to any question put by the Director-General, knowing it to be false or misleading in a material particular, is guilty of an offence.

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Maximum penalty: 20 penalty units.

(5) A person is not excused from answering a question in response to a notice duly given under this section on the ground that the answer may tend to incriminate the person.

25

(6) Any information obtained from a natural person in response to a requirement duly made under this section is inadmissible against the person in criminal proceedings other than proceedings under subsection (3) or (4).

30

18 Director-General may take further disciplinary action

- (1) This section applies only if the Director-General:
- (a) has issued a notice to show cause to a credit provider or finance broker under section 15, and
 - (b) has considered any submissions made in relation to it, and 5
 - (c) is of the opinion that the credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking.
- (2) The Director-General, in any such case, may do any one or more of the following: 10
- (a) reprimand the credit provider or finance broker,
 - (b) order the credit provider or finance broker to rectify the consequences of the unjust conduct within a specified period,
 - (c) order the credit provider or finance broker to comply 15
within a specified period with a specified requirement (if the Director-General is satisfied that compliance with such a requirement will avoid further unjust conduct).
- (3) Where the Director-General orders a credit provider or finance broker to rectify the consequences of its conduct, or to comply 20
with a requirement specified by the Director-General, the credit provider or finance broker must rectify those consequences, or comply with the requirement, within the period specified by the Director-General.
- Maximum penalty: 100 penalty units. 25

Division 3 Prohibition orders

19 Prohibition orders

- (1) This section applies:
- (a) if other disciplinary action has been unsuccessful, namely when: 30
 - (i) the Director-General has made an order requiring a credit provider or finance broker to rectify the consequences of unjust conduct or to comply with a requirement specified by the Director-General (under section 18), and 35

-
- (ii) the Director-General is satisfied that the credit provider or finance broker has not complied with the order within the time specified by the Director-General, or
- (b) if more serious disciplinary action is warranted, namely 5
when:
- (i) the Director-General has issued a notice to show cause to a credit provider or finance broker (under section 15), and
- (ii) the Director-General has considered any 10
submissions made in relation to it, and
- (iii) the Director-General is satisfied that a prohibition order is the only type of disciplinary action that will stop unjust conduct, or prevent further unjust conduct, by the credit provider or finance broker in the course of providing consumer credit or finance broking. 15
- (2) If the Director-General is satisfied that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking, the Director-General may order the credit provider or finance broker not to be involved in providing consumer credit or finance broking: 20
- (a) in any way, or
- (b) in a way stated in the order, or 25
- (c) otherwise than in a way stated in the order.
- (3) A prohibition order may be made to operate for an indefinite period or for a stated period only.
- 20 Application for variation or revocation of a prohibition order**
- (1) Application for variation or revocation of a prohibition order may be made to the Director-General by the person the subject of the order. 30

- (2) On application, the Director-General may:
 - (a) vary or revoke a prohibition order, or
 - (b) revoke the order and make a different prohibition order, or
 - (c) refuse to vary or revoke the order.

21 Powers of credit provider or finance broker 5

- (1) A prohibition order does not operate so as to prevent a credit provider the subject of the prohibition order from:
 - (a) receiving money under and enforcing contracts entered into before the order takes effect, or
 - (b) providing consumer credit in accordance with a contract (other than a continuing credit contract) entered into before the order takes effect, or 10
 - (c) providing consumer credit in the course of a variation or deferral of a contract entered into with the credit provider before the order takes effect if: 15
 - (i) the debtor so requests, and
 - (ii) the debtor informs the credit provider that the variation or deferral is necessary to enable the debtor to comply with the contract.
- (2) A prohibition order does not operate so as to prevent a finance broker the subject of the order from receiving money under and enforcing contracts entered into before the order takes effect. 20

22 Civil penalty

- (1) If a credit provider provides consumer credit in contravention of a prohibition order, the debtor is not liable to pay any amount under the credit contract. 25
- (2) If a finance broker is involved in finance broking in contravention of a prohibition order and for that purpose enters into a contract, a person who is a party to that contract is not liable to pay any amount under the contract. 30

-
- (3) If a person who is not liable to do so pays an amount to a person the subject of a prohibition order, the amount is recoverable by the person as a debt due and payable by the credit provider or finance broker the subject of the order.
- (4) This section does not affect any liability of a person to be convicted of an offence. 5

23 Criminal penalty

A person who contravenes a prohibition order is guilty of an offence.

Maximum penalty: 200 penalty units. 10

Division 4 Administration**24 Notification of decisions of Director-General**

- (1) The Director-General must cause any decision to take disciplinary action, together with the reasons for the decision, to be notified in writing to the credit provider or finance broker against whom the action is taken. 15
- (2) The notice should include a statement about the right to appeal against an order made by the Director-General.
- (3) Where a credit provider or finance broker has executed a deed containing undertakings under this Part, the Director-General must give a copy of the deed to the credit provider or finance broker who executed it. 20

25 Register of disciplinary action taken

- (1) The Director-General must keep a register of all disciplinary action taken under this Part. 25
- (2) Where the disciplinary action results in a credit provider or finance broker executing a deed containing undertakings under this Part, the entry in the register must contain the following particulars:

- (a) the name of the credit provider or finance broker,
 - (b) the address of the principal place of business of the credit provider or finance broker,
 - (c) the date on which the deed was executed by the credit provider or finance broker, 5
 - (d) brief particulars of the circumstances and unjust conduct that led to the execution of the deed containing the undertakings,
 - (e) a summary of the undertakings given by the credit provider or finance broker in the deed, 10
 - (f) such other particulars as the Director-General thinks appropriate.
- (3) The register may, at any reasonable time, be inspected by any person free of charge.
- (4) If a credit provider or finance broker has executed a deed containing undertakings under this Part, the Director-General must retain the deed. 15

26 Award of costs by Director-General

- (1) This section applies to a credit provider or finance broker who:
- (a) has been found by the Director-General to have engaged in, or to be engaging in, unjust conduct in the course of providing consumer credit or finance broking, and 20
 - (b) has been the subject of disciplinary action under this Part (and, if an appeal has been made against the disciplinary action, the action has been upheld). 25
- (2) The Director-General may make orders requiring such a credit provider or finance broker to pay such amounts by way of costs (including the costs of the Director-General in relation to the disciplinary action) as the Director-General determines.
- (3) An order of the Director-General under this section is to be filed in the Tribunal and is enforceable in the same way as a judgment or order of the Tribunal. 30

27 Appeal against order

- (1) A person who is the subject of any order made by the Director-General under this Part may appeal to the Tribunal against the order.
- (2) An appeal must be made within 28 days of the making of the order. 5
- (3) In determining an appeal, the Tribunal may make any order that the Director-General may make.
- (4) An appeal does not operate to stay a prohibition order unless the Tribunal so orders and any conditions imposed by the Tribunal when ordering the stay are complied with. 10
- (5) Despite subsection (2), an appeal may, with the leave of the Tribunal, be lodged with the Registrar of the Tribunal after the end of the period referred to in that subsection, but only if:
 - (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and 15
 - (b) the Tribunal grants that leave.
- (6) The Tribunal must grant leave applied for under this section if satisfied that: 20
 - (a) there is a sufficient explanation as to why the appeal was not lodged in time, and
 - (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

Part 4 Inquiries

28 Minister may order inquiry

- (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 either matters that relate to the provision of consumer credit or to the consequences of the provision of consumer credit, or both. 5
- (2) The Minister may, by instrument in writing, terminate an appointment.
- (3) An appointment may be made subject to such conditions or limitations as to the exercise of a function, or as to time or circumstances, as may be specified in the instrument of appointment. 10
- (4) The Tribunal or person appointed under this section has the functions conferred on the Tribunal or person by or under this Part. 15
- (5) An appointment, or a termination 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 or newspapers as is or are specified in the instrument. 20
- (6) If any matter purporting to be the terms of an instrument of appointment or of termination is published in the Gazette, it is to be presumed, unless the contrary is proved, that the matter comprises the terms of such an instrument.
- (7) If an inquiry is held under this Part, the Tribunal or person conducting the inquiry must, as soon as practicable, report to the Minister the results of the inquiry and make such recommendations with respect to those results as the Tribunal or that person thinks fit. 25
- (8) The protection and immunity conferred by section 8 of the *Commercial Tribunal Act 1984* on a member of the Tribunal extend to a person appointed under this section. 30

- (9) A reference in the *Commercial Tribunal Act 1984* to proceedings before the Tribunal does not include a reference to an inquiry under this Part.

29 Notice of inquiry

Before commencing an inquiry under this Part, the Tribunal is to give notice, by advertisements published in the Gazette and in a newspaper or newspapers, of:

- (a) the holding of the inquiry, and
- (b) the matter that is to be the subject of the inquiry, and
- (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.

30 Appearances at inquiry

- (1) The Tribunal may, at an inquiry under this Part, 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 to appear at an inquiry may appear at the inquiry in person or by a legal practitioner or agent and may give evidence, call witnesses and make submissions at the inquiry.

31 Procedure at inquiry

- (1) Unless the Tribunal in special circumstances otherwise orders:
 - (a) an inquiry under this Part is to be heard in public, and
 - (b) evidence at the inquiry is to be given on oath in public, and
 - (c) submissions at the inquiry are to be made in public.
- (2) At an inquiry under this Part, the Tribunal may permit a witness to give evidence by tendering a written statement verified on oath and, if the evidence is so given, the Tribunal is to make the statement available to the public in such manner as the Tribunal decides.

- (3) If a witness giving evidence under this section objects to any part of the evidence being made public and the Tribunal is satisfied that the part of the evidence to which the objection relates is of a confidential nature, that part of the evidence may not be taken in public or made public. 5
- (4) At an inquiry under this Part, the Tribunal may require or permit a person entitled to make submissions to make them in writing and, if submissions are so made, the Tribunal may make them public in such manner as the Tribunal decides.
- (5) In conducting an inquiry under this Part, the Tribunal is not bound by the rules of evidence. 10

32 Powers of Tribunal at inquiry

- (1) For the purposes of an inquiry under this Part, the Tribunal may:
- (a) issue a summons to a witness to give evidence or produce a document, or both, at the inquiry, and 15
 - (b) administer an oath, and
 - (c) take evidence on oath.
- (2) If a person is required by summons to produce a document that is not written in the English language or is not decipherable on sight, the summons is to be taken to require the person also to produce a statement, written in the English language and decipherable on sight, that contains all of the information in the document to be produced. 20
- (3) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court. 25
- (4) A witness summoned under this section is, in accordance with the regulations, entitled to be paid such fees and allowances as are prescribed. 30

33 Failure to appear at inquiry

A person who has been summoned as a witness and fails to appear in obedience to the summons is guilty of an offence unless it is proved that there was a lawful excuse for the failure.

Maximum penalty: 50 penalty units.

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34 Refusal to be sworn, produce document or answer question

A person who appears as a witness at an inquiry under this Part (whether summoned or not) and refuses to be sworn, or to produce a document in accordance with a summons, or to answer a question after being required to answer it, is guilty of an offence unless there is a lawful excuse for the refusal.

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Maximum penalty: 50 penalty units.

35 Power to obtain information

(1) For the purposes of an inquiry under this Part, the Tribunal or a person authorised by the Tribunal (in this section referred to as the *authorised person*) may require any person:

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- (a) to give information, or
- (b) to answer any question,

in relation to the subject-matter of the inquiry.

(2) The Tribunal or authorised person may require information to be given, or a question to be answered, on oath either orally or in writing and, for the purposes of such a requirement, may administer an oath.

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(3) The Tribunal or authorised person may, by notice in writing, require information to be given, or a question to be answered, in writing at a place specified in the notice.

25

(4) A person who:

- (a) fails to comply with a requirement under subsection (1), (2) or (3), or

- (b) in compliance with such a requirement, gives information or an answer that to the person's knowledge is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

5

- (5) A person is not obliged to give information or answer a question that the person has under subsection (1) been required to give or answer unless the person has first been informed by the Tribunal or authorised person that the person is required by this section to give the information or answer the question.

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- (6) Information and answers given by a person in compliance with a requirement under subsection (1) are not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or making a false statement on oath, or for an offence under subsection (4).

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- (7) A certificate signed by a member of the Tribunal or a person appointed under section 28 (1) to the effect that a person named in the certificate was, on a stated day or during a stated period, an authorised person for the purposes of this section is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

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Part 5 Functions of Director-General in relation to proceedings

36 Director-General may represent debtor or other person

- (1) In any proceedings before the Tribunal arising under the consumer credit legislation, a person may be represented by the Director-General or by a legal practitioner or agent for the Director-General. 5
- (2) This section overrides any provision of the *Commercial Tribunal Act 1984* dealing with representation.

37 Director-General may proceed for another 10

- (1) This section applies if a person (other than a corporation) has made a complaint to the Director-General about a matter arising under the consumer credit legislation.
- (2) If the Director-General inquires into the complaint and is satisfied that: 15
- (a) the complainant may, with respect to that matter, have a right to take proceedings before a court or the Tribunal or a defence to proceedings taken before a court or the Tribunal by another person against the complainant in respect of the matter, and 20
- (b) it is in the public interest that the Director-General should take or, as the case may be, defend those proceedings on behalf of the complainant,
- the Director-General may take or defend those proceedings on behalf of and in the name of the complainant. 25
- (3) The Director-General may only take or defend the proceedings with the written consent of the Minister and the complainant.
- (4) Once the Director-General has taken steps in those proceedings, the consent of a complainant is not revocable except with the concurrence of the Director-General. 30

38 Conduct of proceedings taken by Director-General

If the Director-General takes or defends proceedings before a court or the Tribunal on behalf of a complainant:

- (a) the Director-General is to have the conduct of those proceedings on behalf of the complainant and may (despite anything in any Act) appear personally or by a legal practitioner or agent, and 5
- (b) the Director-General may do all such things as are necessary or expedient to give effect to an order or decision of the court or the Tribunal, and 10
- (c) the Director-General is liable to pay the costs of the complainant, and
- (d) the complainant is liable to pay any amount (other than costs for which the Director-General is liable), that the court or the Tribunal orders the complainant to pay. 15

39 Intervention by Minister or Director-General

- (1) The Minister or the Director-General may intervene and be heard personally or by a legal practitioner or agent, in any proceedings (other than proceedings for an offence) arising under the consumer credit legislation before a court or the Tribunal. 20
- (2) The Minister may intervene only if the Minister thinks it would be in the public interest to do so.
- (3) The Director-General may intervene only if:
 - (a) the Director-General thinks it would be in the public interest to do so, and 25
 - (b) the Minister has consented in writing to the intervention.
- (4) If the Director-General intervenes in any proceedings under this section or takes or defends proceedings in accordance with section 37, it is to be presumed, unless the contrary is proved, that the Minister has consented to the intervention or the taking or defending of proceedings, as the case may be. 30

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- (5) The Director-General, on intervening in any proceedings, becomes a party to the proceedings and has all the rights, including rights of appeal, of such a party.
- (6) Nothing in this section limits the power of the Director-General to take or defend proceedings under section 37. 5

40 Investigation of application to Tribunal

- (1) This section applies if an application has been made to the Tribunal by a credit provider under section 86 of the *Credit Act 1984* or section 101 of the *Consumer Credit (New South Wales) Code*. 10
- (2) The Chairman of the Tribunal may direct the Director-General to investigate the application, and report to the Tribunal on the results of the investigation, before the Tribunal hears the application.
- (3) The Director-General must comply with any such direction. 15

Part 6 Offences

41 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the corporation is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention. 5
- (2) An officer of a corporation may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision. 10
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

42 Persons who may take proceedings

- (1) Proceedings for an offence against this Act may be taken and prosecuted only by a person acting with the authority of the Minister, or a prescribed officer. 15
- (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 prescribed officer. 20
- (3) In proceedings for an offence against this Act, the informant may conduct his or her case personally, or by a legal practitioner or an agent authorised by the informant in writing.

43 Disposal of proceedings for offence

- (1) Proceedings for an offence against this Act are to be disposed of summarily before:
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) with the written consent of the Minister, the Supreme Court in its summary jurisdiction. 30

(2) Proceedings for an offence under the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(3) The maximum penalty that may be imposed by a Local Court in proceedings for an offence under this Act is 100 penalty units or the maximum penalty provided by this Act for the offence, whichever is the lesser.

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44 Limitation

Proceedings for an offence under this Act may be commenced within 3 years after the alleged commission of the offence.

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Part 7 Miscellaneous

45 Secrecy

- (1) This section applies to every person who is or has been:
- (a) a member of the Tribunal, or
 - (b) a person appointed to make an inquiry under section 28 (1), or 5
 - (c) the Director-General, or
 - (d) an official authorised to conduct an investigation under section 6, or
 - (e) the Registrar of the Tribunal, or 10
 - (f) a member of the staff assisting the Director-General or the Registrar of the Tribunal, or
 - (g) a person employed or appointed under section 28 of the *Commercial Tribunal Act 1984*.
- (2) A person to whom this section applies must not make a record of information concerning the affairs of a person if the information was acquired by the person to whom this section applies under or for the purposes of any consumer credit legislation and by reason of the person's office or employment. 15
- Maximum penalty: 20 penalty units. 20
- (3) A person to whom this section applies must not, whether directly or indirectly, divulge or communicate any such information.
- Maximum penalty: 20 penalty units.
- (4) It is not an offence to make a record or divulge or communicate information if the record is made, or the information is divulged or communicated, in legal proceedings or in the exercise or performance of a function under or in connection with any consumer credit legislation. 25
- (5) In this section, *consumer credit legislation* includes the *Fair Trading Act 1987*, in so far as it relates to the provision of credit, and the corresponding Acts of the legislature of the Commonwealth or of another State or Territory. 30

46 Service of documents

Any document or notice that is authorised, required or permitted by or under this Act to be given to or served on any person may be given or served:

- (a) personally, or 5
- (b) by sending it by post to the person at the person's usual or last known business or residential address, or
- (c) if the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation.

47 Crown to be bound

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This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

48 Regulations

- (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 necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15
- (2) A regulation may impose a penalty not exceeding 10 penalty units for a breach of the regulation. 20

49 Repeals

- (1) The *Credit (Administration) Act 1984* is repealed.
- (2) The *Credit (Administration) Regulation 1984* is repealed.

50 Amendment of other Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule. 25

51 Savings and transitional provisions

Schedule 2 has effect.

52 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 5
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of other Acts

(Section 50)

1.1 Credit Act 1984 No 94

[1] Section 5 Definitions

Omit the definitions of *exempt credit provider* and *licensed credit provider* from section 5 (1). 5

[2] Section 81 Assignment of rights by credit provider

Omit "other than a licensed credit provider or an exempt credit provider" from section 81 (1) (a) and (b) wherever occurring.

[3] Section 85 Tribunal may reduce credit provider's loss 10

Omit "*Credit (Administration) Act 1984*" wherever occurring.
Insert instead "*Consumer Credit Administration Act 1995*".

[4] Section 85A Stay of civil penalty pending Tribunal's decision

Omit "*Credit (Administration) Act 1984*" from section 85A (7).
Insert instead "*Consumer Credit Administration Act 1995*". 15

[5] Section 86 General order varying civil penalty

Omit "*Credit (Administration) Act 1984*" from section 86 (1) wherever occurring.
Insert instead "*Consumer Credit Administration Act 1995*".

[6] Section 86A General order varying civil penalty for minor errors 20

Omit "section 44 of the *Credit (Administration) Act 1984*" from section 86A (3).
Insert instead "section 40 of the *Consumer Credit Administration Act 1995*".

[7] Sections 159A and 159B

Insert after section 159:

159A Persons who may take proceedings

- (1) Proceedings for an offence against this Act may be taken and prosecuted only by any person acting with the authority of the Minister, or a prescribed officer. 5
- (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 prescribed officer. 10
- (3) In proceedings for an offence against this Act, the informant may conduct his or her case personally, or by a legal practitioner, or by an agent authorised by the informant in writing.

159B Proceedings for offence 15

- (1) Proceedings for an offence against this Act are to be disposed of summarily before:
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) with the written consent of the Minister, the Supreme Court in its summary jurisdiction. 20
- (2) Proceedings for an offence under the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (3) The maximum penalty that may be imposed by a Local Court in proceedings for an offence under this Act is 100 penalty units or the maximum penalty provided by this Act for the offence, whichever is the lesser. 25

[8] Section 166A

Insert after section 166:

166A Evidence

If it is alleged in any proceedings under this Act, or in any another proceedings in relation to a matter arising under this Act, that a credit contract is a regulated contract, it is presumed unless the contrary is proved, that the credit contract is a regulated contract.

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1.2 Credit (Finance Brokers) Act 1984 No 96

Section 4 Definitions

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Omit section 4 (3). Insert instead:

- (3) This Act does not apply to or in respect of a finance broker of a class prescribed by the regulations.

1.3 Commercial Tribunal Act 1984 No 98

Section 18 Jurisdiction and functions of Tribunal

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Omit "*Credit (Administration) Act 1984*" from the note to section 18 (1) (inserted by the *Commercial Tribunal Legislation Amendment Act 1995*).

Insert in alphabetical order "*Consumer Credit Administration Act 1995*".

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1.4 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert "section 10 of the *Consumer Credit Administration Act 1995*," in alphabetical order of Acts in the definition of *search warrant*.

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Schedule 2 Savings and transitional provisions

(Section 51)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts: 5
- *Consumer Credit Administration Act 1995.*
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the relevant Act or on a later date. 10
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

Part 2 Provisions consequent on enactment of Consumer Credit Administration Act 1995

2 Definition

In this Schedule:

repealed Act means the *Credit (Administration) Act 1984*. 25

3 Previous conduct

Part 3 of this Act applies to conduct occurring before or after the commencement of that Part (including unjust conduct that occurred before the commencement of that Part).

4 Licence condition imposed under repealed Act

- (1) A decision by the Tribunal under section 13 of the repealed Act to impose any conditions on the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies otherwise than in accordance with those conditions. 5
- (2) A decision by the Tribunal under section 13 of the repealed Act to impose any conditions on the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies otherwise than in accordance with those conditions. 10
15

5 Disciplinary action taken under repealed Act

- (1) A decision by the Tribunal under section 23 (8) (c) of the repealed Act to require a credit provider or finance broker that held a licence under that Act to comply within a specified time with a requirement specified by the Tribunal is taken to be a decision by the Director-General under section 18 (2) (c) of this Act to require the credit provider or finance broker to comply within that specified time with a requirement specified by the Director-General. 20
- (2) A decision by the Tribunal under section 23 (8) (d) of the repealed Act to suspend the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies for the period of the suspension. 25
30
- (3) A decision by the Tribunal under section 23 (8) (d) of the repealed Act to suspend the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies for the period of the suspension. 35

Schedule 2 Savings and transitional provisions

- (4) A decision by the Tribunal under section 23 (8) (e) of the repealed Act to disqualify the holder of a credit provider's licence (or any person concerned in the direction, management or conduct of the business of a holder of such a licence) from holding the licence (or being so concerned) is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies. 5
- (5) A decision by the Tribunal under section 23 (8) (e) of the repealed Act to disqualify the holder of a finance broker's licence (or any person concerned in the direction, management or conduct of the business of a holder of such a licence) from holding the licence (or being so concerned) is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies. 10
15
- (6) A decision by the Tribunal under section 23 (8) (f) of the repealed Act to cancel the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies. 20
- (7) A decision by the Tribunal under section 23 (8) (f) of the repealed Act to cancel the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broking prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies. 25
30
- (8) A decision by the Commissioner under section 21 (6) of the repealed Act to cancel the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies. 35

-
- (9) A decision by the Commissioner under section 21 (6) of the repealed Act to cancel the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies. 5

6 Civil penalties imposed by repealed Act

The repeal of the *Credit (Administration) Act 1984* does not affect any right that a person had (under sections 85 or 86 of the *Credit Act 1984*) to apply to the Tribunal in respect of a contravention of or a failure to comply with the *Credit (Administration) Act 1984* before its repeal by the amending Act, and does not affect the power of the Tribunal to make any order that the Tribunal could have made in relation to such an application (under section 86A of the *Credit Act 1984*). 10
15

7 Inquiry commenced under repealed Act

The repeal of the *Credit (Administration) Act 1984* does not affect any inquiry pending under Part 4 of that Act immediately before its repeal.

CONSUMER CREDIT ADMINISTRATION BILL 1995
SECOND READING SPEECH

I move that this Bill be now read a second time.

The purpose of this Bill is to provide for the administration of consumer credit legislation. It provides a disciplinary regime for credit providers and finance brokers who engage in unjust conduct, and empowers the Commercial Tribunal or a person appointed by the Minister to enquire into credit related matters. The Bill will replace the Credit (Administration) Act 1984.

Honourable members will be aware that the new uniform Consumer Credit Code is to commence next year. It is necessary to apply an administrative regime to the new legislation as well as to the Credit Act 1984 while it remains in force. It seemed opportune therefore to review the current administration regime and bring it into line with Labor Government policy which gives the community the protection it deserves without imposing an unnecessary regulatory burden on industry.

Mr President, this legislation fulfils that purpose. The current legislation imposes a licensing regime on credit providers and finance brokers. The Commercial Tribunal of NSW is the licensing authority and the Tribunal requires the Director-General of Fair Trading to make inquiries as to the applicant's fitness to be a licence holder.

Honourable members will be aware that such a system commits considerable Departmental and Tribunal resources to a process which has no bearing on the

conduct of the licensee in providing credit or finance broking and which imposes an administrative and financial burden on all parties.

What this legislation does Mr President is to remove barriers to entry, and release compliance resources to focus on conduct instead of bureaucratic functions. While there is certainly a place for licensing where health and safety matters are involved this is not relevant to the provision of credit. The essential element of a credit administration scheme is the ability to discipline those people who act unfairly. This Bill proposes an effective disciplinary regime which I will now outline for the Honourable Members.

Part 1 of the Bill includes definition of the principal terms of legislation. Consumer credit legislation is defined to mean the Consumer Credit Administration Act 1995; the Consumer Credit (New South Wales) Act 1995 which includes the Consumer Credit (New South Wales) Code; the Credit Act 1984; the Credit (Finance Brokers) Act 1984 and the Credit (Home Finance Contracts) Act 1984.

The Bill applies the unjust conduct provisions in respect of all those Acts. Unjust conduct is defined to mean conduct that is unfair, dishonest or fraudulent or that consists of anything done or omitted to be done in breach of contract, whether or not proceedings in respect of a breach have been brought, or that consists of a contravention of any consumer credit legislation. The conduct of a person acting with the authority of the credit provider or finance broker will be taken to be the conduct of the credit provider or finance broker.

Part 2 of the Bill gives powers to the Director-General to supervise the provision of consumer credit and includes powers of entry and inspection that are

- 3 -

consistent with the powers adopted as a standard by the Government. The powers may be used to investigate complaints or for supervisory purposes.

Clause 6 gives government officials power to require information and the production of documents and includes a power to remove documents from premises in order to streamline administrative processes. The credit provider or finance broker would be given copies of such documents. Failure to comply with this clause is an offence.

Part 3 of the Bill contains the disciplinary scheme. The object of this Part is to ensure compliance by credit providers and finance brokers with the consumer credit legislation and with the appropriate standards of honesty, fairness, competence and diligence. It provides that the Director-General may take disciplinary action whether or not there has been a complaint made against a credit provider or finance broker.

Clause 12 allows complaints to be made to the Director-General on the ground that a credit provider or finance broker has engaged in or is engaging in unjust conduct. Clause 13 allows the powers in Part 2 to be used to investigate the complaint.

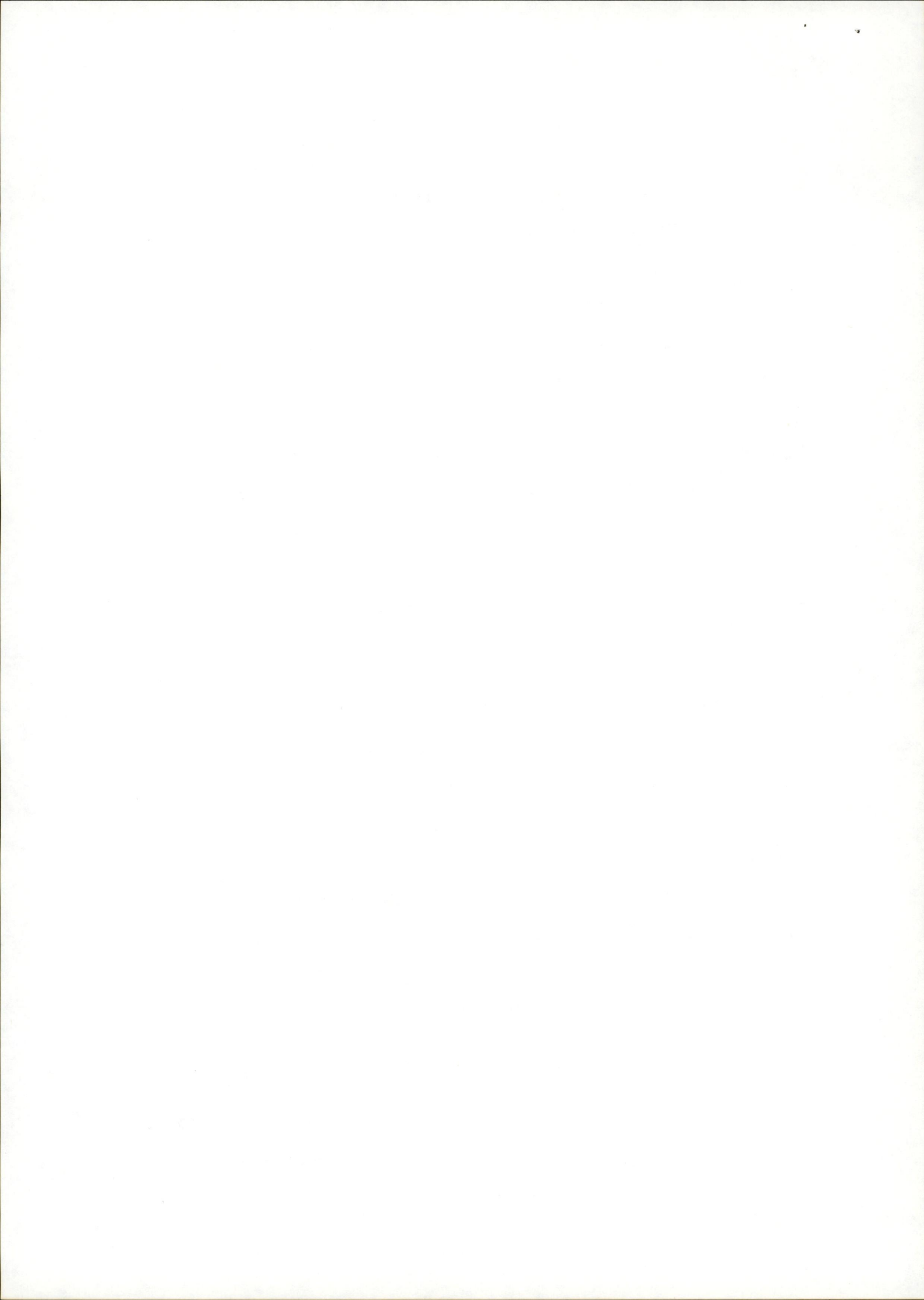
Division 2 sets out the disciplinary action that may be taken by the Director-General. It is a scheme that provides a range of options that can be applied according to the severity of the breach. If the misconduct is not major the Director-General may request that the credit provider or finance broker give undertakings as to future conduct, and the action the credit provider or finance broker will take to rectify the consequences of the unjust conduct. This is similar to the current Credit (Administration) Act.

If the Director-General believes that undertakings would not be effective or have not been effective in stopping the unjust conduct, a notice may be served which requires the credit provider or finance broker to show cause why further disciplinary action should not be taken. A minimum of 14 days will be given to the credit provider or finance broker to make a written submission in respect of the matters detailed in the notice.

If, after consideration of any submission and the results of any further inquiries, the Director-General considers that there has been unjust conduct, orders may be made which include a reprimand; orders to rectify the consequences of the unjust conduct and orders for specific requirements according to the nature of the unjust conduct. There is a maximum penalty of \$10,000 for breaching these orders.

Mr President, the legislation also provides the ultimate sanction of an order which prohibits a credit provider or finance broker from trading. This would only be applied in the most major cases of unjust conduct and may be arrived at by going through all the options of undertakings and orders that have proved not to have achieved a change in the conduct, or, if the Director-General believes that more urgent and serious disciplinary action is warranted and the credit provider or finance broker has had the opportunity to respond to a show cause notice, the Director-General may order that organisation not to be involved in the provision of credit or finance broking in any way, or in a way stated in the order, or otherwise than in a way stated in the order.

That order may be varied or revoked by the Director-General on consideration of an application, and the credit provider or finance broker can continue to receive money and enforce contracts entered into before the order takes effect.



If an organisation trades in contravention of a prohibition order, a civil penalty applies which prevents the credit provider or finance broker from keeping any money from contracts entered into in breach of the order. There is also a criminal penalty of \$20,000 for a breach of a prohibition order.

The Director-General is required under clause 25 of the legislation to keep a register of disciplinary action taken. This can be inspected by any person free of charge and will act as a deterrent to unfair practices.

The Bill contains an additional disincentive for credit providers and finance brokers to act unjustly. Clause 26 allows the Director-General to require those organisations whose conduct is found to be unjust to pay the Director-General's costs in relation to the disciplinary action. This new provision is in keeping with the aim of the legislation to move the burden of financing the disciplinary regime to those whose conduct is such as to require disciplinary action.

A person who is the subject of a disciplinary order may appeal to the Commercial Tribunal against the order. The Tribunal can make any order that the Director-General can make. The fact of an appeal does not stay a prohibition order unless the Tribunal specifically orders a stay and any conditions applied by the Tribunal are complied with.

Part 4 of the Bill reproduces the inquiry powers currently contained in the Credit (Administration) Act 1984. These powers allow the Minister to appoint the Commercial Tribunal or any person to inquire into a credit related matter. I shall not detail the powers here since they follow the existing regime with only one substantive change. The power to order a goal sentence for failing to appear

when summonsed has been removed, that being a draconian measure more suited to Royal Commission powers than inquiries of this nature. These powers have previously been used to inquire into rural credit and maximum interest rates and, I believe, continue to be useful in a substantially deregulated environment.

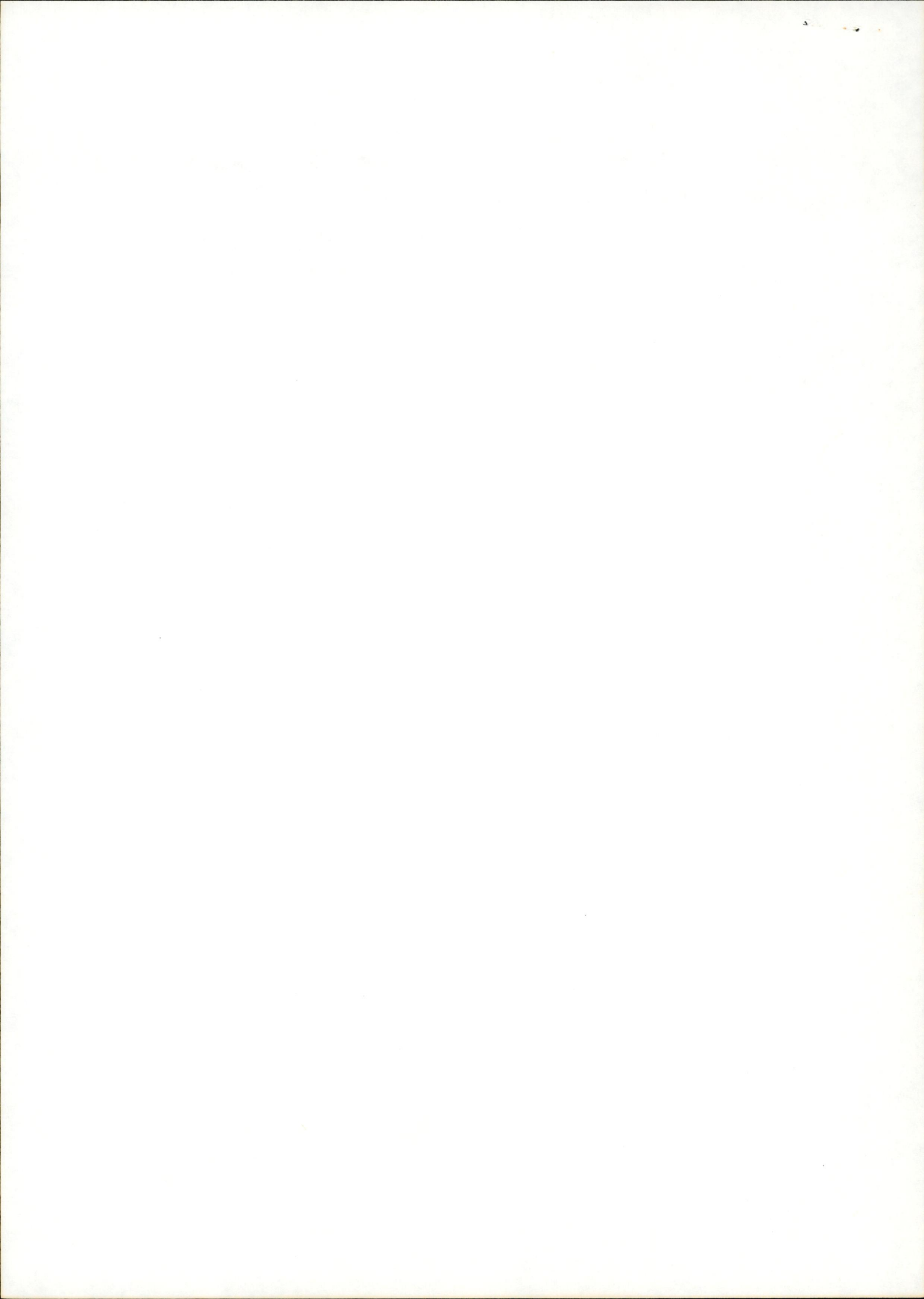
Part 5 of the Bill empowers the Director-General to act in relation to proceedings before the Court or Tribunal under consumer credit legislation. The Director-General may represent a person in any proceedings or defend a person with the consent of the Minister if it is in the public interest to do so. The Minister or the Director-General may also intervene in any proceedings before the Court or Tribunal. Again, Mr President, these powers simply reproduce current powers so that it is not necessary to address them in detail.

Parts 6 and 7 of the Bill, repeat the powers of the Credit (Administration) Act 1984 in relation to offences and miscellaneous provisions. These are essentially machinery provisions which I will not recount here, except to state that clause 49 repeals the Credit (Administration) Act 1984 and its Regulation.

Schedule 1 amends other Acts and Schedule 2 makes savings and transitional provisions which allow orders made under the Credit (Administration) Act 1984 to run their course and become orders under the Consumer Credit Administration Act 1995. Civil penalties imposed under the current legislation and inquiries commenced under the legislation but not completed are not affected by its replacement with this Bill.

In summary Mr President, this Bill puts in place a disciplinary regime which only inconveniences those who flout the laws. I believe it is appropriately targeted and sufficient to deal with the range of conduct encountered in the consumer credit marketplace. It is administratively efficient and commits resources where they are most useful.

I commend the Bill to the House.





New South Wales

Consumer Credit Administration Act 1995 No 69

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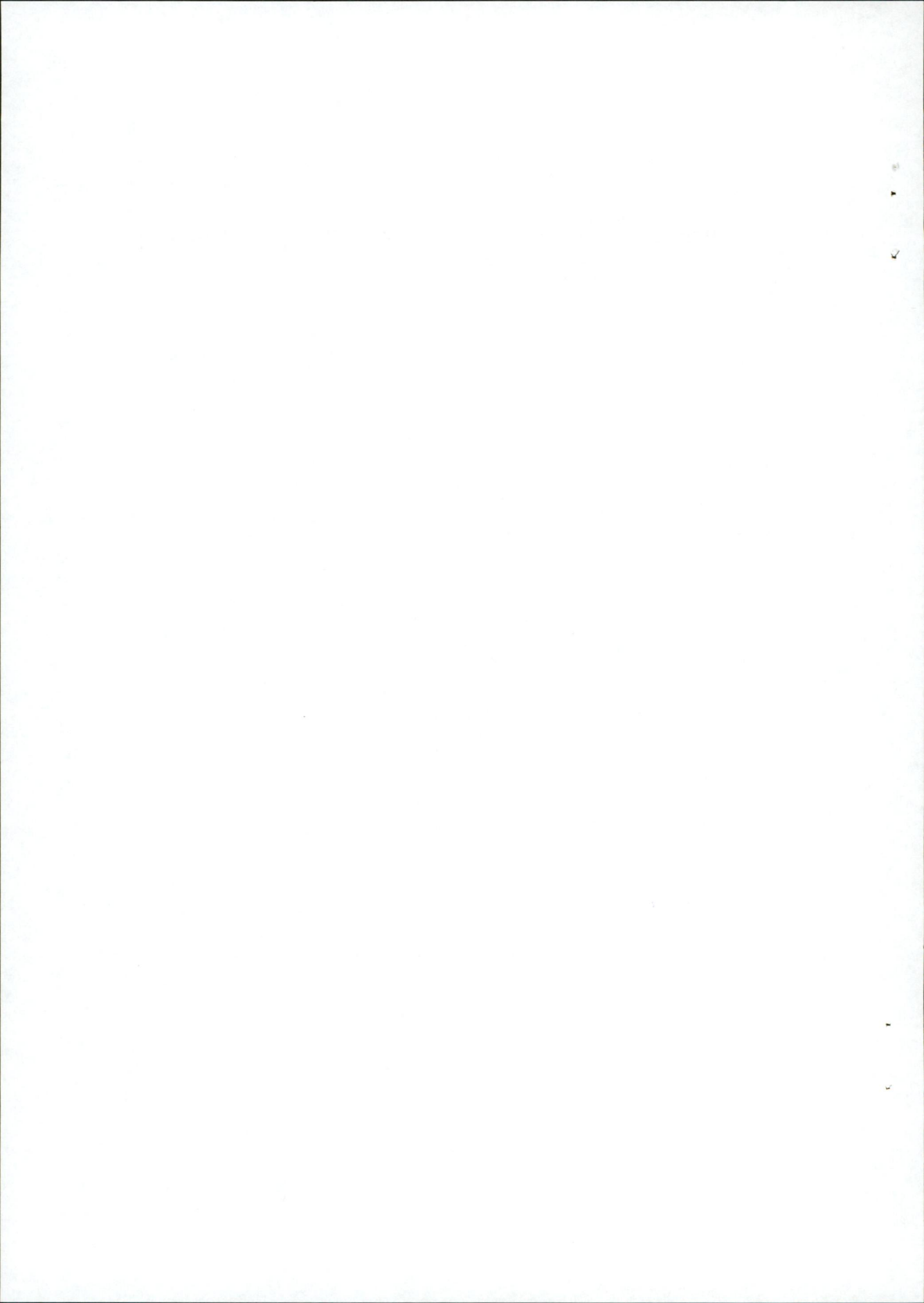
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New South Wales

Consumer Credit Administration Act 1995 No 69

Act No 69, 1995

An Act to provide for the supervision of the consumer credit industry; to provide for the making of inquiries into matters relating to the provision of credit; to repeal the *Credit (Administration) Act 1984*; and for other purposes. [Assented to 12 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Consumer Credit Administration Act 1995*.

2 Commencement

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

3 Definitions

(1) In this Act:

consumer credit means credit to which any consumer credit legislation applies, and includes arrangements under a consumer lease as defined in the *Consumer Credit (New South Wales) Code*.

consumer credit legislation means the following Acts and the regulations made under them:

- (a) this Act,
- (b) the *Consumer Credit (New South Wales) Act 1995* (including the *Consumer Credit (New South Wales) Code*),
- (c) the *Credit Act 1984*,
- (d) the *Credit (Finance Brokers) Act 1984*,
- (e) the *Credit (Home Finance Contracts) Act 1984*.

credit provider means a credit provider under any consumer credit legislation and include a prospective credit provider.

debtor means a debtor under any consumer credit legislation and includes a prospective debtor.

director of a corporation has the same meaning as it has in the *Corporations Law*.

Director-General means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*.

disciplinary action means any of the following actions the Director-General is empowered to take:

- (a) requesting that a credit provider or finance broker execute a deed giving undertakings (under section 14),
- (b) issuing a notice to show cause (under section 15),
- (c) reprimanding a credit provider or finance broker (under section 18 (2) (a)),
- (d) ordering a credit provider or finance broker to rectify the consequences of unjust conduct within a specified period (under section 18 (2) (b)),
- (e) ordering a credit provider or finance broker to comply with a requirement within a specified period (under section 18 (2) (c)),
- (f) making a prohibition order (under section 19 or 20).

exercise a function includes perform a duty.

finance broker means a person who, whether or not carrying on any other business, carries on the business of finance broking.

finance broking means negotiating, or acting as intermediary to obtain, consumer credit for persons other than an employer or principal of the person so negotiating or acting.

function includes a power, authority or duty.

officer of a corporation has the same meaning as it has in the *Corporations Law*.

official means:

- (a) a public servant, or
- (b) a person of a class prescribed by the regulations.

premises means any place, vehicle or vessel.

prohibition order means a prohibition order made under Division 3 of Part 3 and in force.

Tribunal means the Commercial Tribunal of New South Wales.

unjust conduct means conduct:

- (a) that is unfair, dishonest or fraudulent, or
 - (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 a contravention of any consumer credit legislation.
- (2) For the purposes of this Act, a person provides consumer credit if the person:
- (a) provides the credit in the course of a business of providing consumer credit or as part of or incidentally to any other business of the person, or
 - (b) is involved in the taking of a mortgage, or the taking of a guarantee, to which any consumer credit legislation applies.

4 Conduct of agents

For the purposes of this Act, the conduct of an officer, employee or agent of a credit provider or finance broker acting within his or her actual or ostensible authority will be imputed to the credit provider or finance broker and taken to be the conduct of the credit provider or finance broker.

Part 2 Supervision of the provision of consumer credit

5 Application

- (1) The functions in this Part may be exercised only for the purpose of determining whether a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking.
- (2) The powers may be used to investigate a complaint made under Part 3 or to conduct any other investigation for supervisory purposes.

6 Requiring information

- (1) For the purposes of this Part, an official authorised by the Director-General may do any of the following:
 - (a) require a person to answer in writing any question,
 - (b) require a person to state the person's full name and place of residence,
 - (c) require a person to produce any document,
 - (d) inspect and take extracts from or copies of any document,
 - (e) remove and retain any document in order to examine or copy it.
- (2) The power may be used only to make a requirement of, or to inspect, extract or remove the documents of, a credit provider or finance broker (or an officer, employee or agent of a credit provider or finance broker).
- (3) Such a requirement is not duly made unless, at the time of making the requirement, the person of whom the requirement is made has been informed by the official that a refusal or failure to furnish the answer or document, as the case may be, constitutes an offence.
- (4) A person is not excused from answering a question, or producing a document, in response to a requirement duly made under this section on the ground that the answer or document may tend to incriminate the person.

- (5) Any information or document obtained from a natural person in response to a requirement duly made under this section is inadmissible against the person in criminal proceedings other than proceedings under section 7.

7 Failure to give information is an offence

- (1) A person who, without reasonable excuse, fails to comply with any requirement under section 6 is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) A person who gives information in response to any requirement under section 6 knowing it to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

- (3) A person who, without reasonable excuse, hinders or obstructs an official in the exercise of any of the official's powers under section 6 is guilty of an offence.

Maximum penalty: 20 penalty units.

8 Entry and inspection

- (1) For the purposes of this Part, an official authorised by the Director-General may enter and inspect any premises of a credit provider or finance broker (or of an officer, employee or agent of a credit provider or finance broker).

- (2) A power of entry is not exercisable in relation to such part of any premises as is used for residential purposes except:

(a) with the consent of the occupier of that part of the premises, or

(b) under the authority conferred by a search warrant.

9 Search warrants

- (1) An official may apply to an authorised justice for a search warrant if the official is of the opinion that it is necessary to enter and inspect any premises for the purposes of this Part.

- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an official named in the warrant to enter and inspect the premises for the purposes of this Part.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, *authorised justice* has the same meaning as it has in the *Search Warrants Act 1985*.

10 Standards for entry and inspection

- (1) A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the official proposing to exercise the power:
 - (a) has been authorised to do so by the Director-General, and
 - (b) is in possession of a certificate of authority, and
 - (c) gives reasonable notice to the occupier of the premises of the official's intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
 - (d) exercises the power at a reasonable time, and
 - (e) produces the certificate of authority if required to do so by a person apparently in occupation of the premises, and
 - (f) uses no more force than is reasonably necessary to effect the entry or make the inspection.
- (2) A certificate of authority must:
 - (a) state that it is issued under this Act, and
 - (b) give the name of the official to whom it is issued, and
 - (c) describe the nature of the powers conferred and the source of the powers, and
 - (d) state the date (if any) on which it expires, and
 - (e) state that the powers do not extend to premises used for residential purposes, and
 - (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

- (3) A certificate signed by the Director-General to the effect that a person specified in the certificate was, on a day or during a period so specified, authorised to exercise specified powers for the purposes of this Part is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.
- (4) If damage is caused by an official exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the employer of the official to the owner of the premises unless the occupier obstructed the official in the exercise of the power.
- (5) If a document is taken from premises by an official who exercises a power to enter the premises, a person otherwise entitled to possession of the document is, as far as is practicable, to be allowed access to the document and the document is to be returned to that person within a reasonable time.
- (6) In this section, *certificate of authority* means a certificate that, to enable an official to exercise a power conferred by this Act, is issued to the official by the Director-General.

Part 3 Discipline for unjust conduct

Division 1 Complaints

11 Object of Part

- (1) The general object of this Part is to ensure compliance by credit providers and finance brokers with the consumer credit legislation, and with the appropriate standards of honesty, fairness, competence and diligence.
- (2) The Director-General may take disciplinary action under this Part whether or not there has been a complaint made against a credit provider or finance broker.

12 Complaints about a credit provider or finance broker

- (1) Any person may make a complaint to the Director-General about the conduct of a credit provider or finance broker.
- (2) The grounds on which a complaint may be made against a credit provider are that the person has engaged in, or is engaging in, unjust conduct in the provision of consumer credit.
- (3) The grounds on which a complaint may be made against a finance broker are that the person has engaged in, or is engaging in, unjust conduct in finance broking.

13 Investigation of complaints

- (1) The powers in Part 2 may be exercised to investigate a complaint against a credit provider or finance broker.
- (2) The Director-General may exercise those powers personally or may direct an official authorised in accordance with Part 2 to exercise the powers.

Division 2 Disciplinary action

14 Undertakings

- (1) This section applies where it appears to the Director-General that a credit provider or finance broker, in the course of providing consumer credit or finance broking, has engaged in, or is engaging in, unjust conduct.

- (2) The Director-General may request the credit provider or finance broker to execute a deed in terms approved by the Director-General whereby the credit provider or finance broker gives undertakings as to:
 - (a) the discontinuance of the unjust conduct, and
 - (b) the credit provider's or finance broker's future conduct, and
 - (c) the action the credit provider or finance broker will take to rectify the consequences of the credit provider's or finance broker's unjust conduct.
- (3) Where a credit provider or finance broker executes a deed under this section and observes the undertakings given in the deed, the Director-General may not take further disciplinary action under this Part against the credit provider or finance broker by reason of any conduct to which the undertaking relates.

15 Notice to show cause

- (1) This section applies only if the Director-General is of the opinion:
 - (a) that there are reasonable grounds for believing that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking, and
 - (b) that requiring the credit provider or finance broker to give an undertaking would not stop that unjust conduct, has not been effective in stopping that conduct or would not prevent its recurrence.
- (2) The Director-General may, by notice in writing served on the credit provider or finance broker, call upon the credit provider or finance broker to show cause why the credit provider or finance broker should not, for the reason specified in the notice, be subject to further disciplinary action (including the making of a prohibition order).
- (3) The notice must specify the period in which the credit provider or finance broker may show cause. That period must be at least 14 days after the notice is served.

16 Person may make submission

The credit provider or finance broker on whom a notice to show cause has been served may, within the period specified in the notice, make a written submission in respect of the matters to which the notice relates.

17 Director-General may make further inquiries

- (1) The Director-General may conduct such inquiry or make such investigation as the Director-General thinks fit in relation to:
 - (a) the matters to which the notice to show cause relates, or
 - (b) any written submissions made by or on behalf of the credit provider or finance broker in relation to those matters.
- (2) The Director-General may, by written notice, require a credit provider or finance broker who has made a written submission to appear before the Director-General to answer questions at a place, and at a date and time, specified in the notice
- (3) A person who has been given a written notice to appear before the Director-General must appear and must answer any question put by the Director-General.

Maximum penalty: 20 penalty units.

- (4) A person who gives an answer to any question put by the Director-General, knowing it to be false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 20 penalty units.

- (5) A person is not excused from answering a question in response to a notice duly given under this section on the ground that the answer may tend to incriminate the person.
- (6) Any information obtained from a natural person in response to a requirement duly made under this section is inadmissible against the person in criminal proceedings other than proceedings under subsection (3) or (4).

18 Director-General may take further disciplinary action

- (1) This section applies only if the Director-General:
 - (a) has issued a notice to show cause to a credit provider or finance broker under section 15, and
 - (b) has considered any submissions made in relation to it, and
 - (c) is of the opinion that the credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking.
- (2) The Director-General, in any such case, may do any one or more of the following:
 - (a) reprimand the credit provider or finance broker,
 - (b) order the credit provider or finance broker to rectify the consequences of the unjust conduct within a specified period,
 - (c) order the credit provider or finance broker to comply within a specified period with a specified requirement (if the Director-General is satisfied that compliance with such a requirement will avoid further unjust conduct).
- (3) Where the Director-General orders a credit provider or finance broker to rectify the consequences of its conduct, or to comply with a requirement specified by the Director-General, the credit provider or finance broker must rectify those consequences, or comply with the requirement, within the period specified by the Director-General.

Maximum penalty: 100 penalty units.

Division 3 Prohibition orders

19 Prohibition orders

- (1) This section applies:
 - (a) if other disciplinary action has been unsuccessful, namely when:
 - (i) the Director-General has made an order requiring a credit provider or finance broker to rectify the consequences of unjust conduct or to comply with a requirement specified by the Director-General (under section 18), and

-
- (ii) the Director-General is satisfied that the credit provider or finance broker has not complied with the order within the time specified by the Director-General, or
 - (b) if more serious disciplinary action is warranted, namely when:
 - (i) the Director-General has issued a notice to show cause to a credit provider or finance broker (under section 15), and
 - (ii) the Director-General has considered any submissions made in relation to it, and
 - (iii) the Director-General is satisfied that a prohibition order is the only type of disciplinary action that will stop unjust conduct, or prevent further unjust conduct, by the credit provider or finance broker in the course of providing consumer credit or finance broking.
 - (2) If the Director-General is satisfied that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking, the Director-General may order the credit provider or finance broker not to be involved in providing consumer credit or finance broking:
 - (a) in any way, or
 - (b) in a way stated in the order, or
 - (c) otherwise than in a way stated in the order.
 - (3) A prohibition order may be made to operate for an indefinite period or for a stated period only.

20 Application for variation or revocation of a prohibition order

- (1) Application for variation or revocation of a prohibition order may be made to the Director-General by the person the subject of the order.

- (2) On application, the Director-General may:
- (a) vary or revoke a prohibition order, or
 - (b) revoke the order and make a different prohibition order, or
 - (c) refuse to vary or revoke the order.

21 Powers of credit provider or finance broker

- (1) A prohibition order does not operate so as to prevent a credit provider the subject of the prohibition order from:
- (a) receiving money under and enforcing contracts entered into before the order takes effect, or
 - (b) providing consumer credit in accordance with a contract (other than a continuing credit contract) entered into before the order takes effect, or
 - (c) providing consumer credit in the course of a variation or deferral of a contract entered into with the credit provider before the order takes effect if:
 - (i) the debtor so requests, and
 - (ii) the debtor informs the credit provider that the variation or deferral is necessary to enable the debtor to comply with the contract.
- (2) A prohibition order does not operate so as to prevent a finance broker the subject of the order from receiving money under and enforcing contracts entered into before the order takes effect.

22 Civil penalty

- (1) If a credit provider provides consumer credit in contravention of a prohibition order, the debtor is not liable to pay any amount under the credit contract.
- (2) If a finance broker is involved in finance broking in contravention of a prohibition order and for that purpose enters into a contract, a person who is a party to that contract is not liable to pay any amount under the contract.

- (3) If a person who is not liable to do so pays an amount to a person the subject of a prohibition order, the amount is recoverable by the person as a debt due and payable by the credit provider or finance broker the subject of the order.
- (4) This section does not affect any liability of a person to be convicted of an offence.

23 Criminal penalty

A person who contravenes a prohibition order is guilty of an offence.

Maximum penalty: 200 penalty units.

Division 4 Administration

24 Notification of decisions of Director-General

- (1) The Director-General must cause any decision to take disciplinary action, together with the reasons for the decision, to be notified in writing to the credit provider or finance broker against whom the action is taken.
- (2) The notice should include a statement about the right to appeal against an order made by the Director-General.
- (3) Where a credit provider or finance broker has executed a deed containing undertakings under this Part, the Director-General must give a copy of the deed to the credit provider or finance broker who executed it.

25 Register of disciplinary action taken

- (1) The Director-General must keep a register of all disciplinary action taken under this Part.
- (2) Where the disciplinary action results in a credit provider or finance broker executing a deed containing undertakings under this Part, the entry in the register must contain the following particulars:

- (a) the name of the credit provider or finance broker,
 - (b) the address of the principal place of business of the credit provider or finance broker,
 - (c) the date on which the deed was executed by the credit provider or finance broker,
 - (d) brief particulars of the circumstances and unjust conduct that led to the execution of the deed containing the undertakings,
 - (e) a summary of the undertakings given by the credit provider or finance broker in the deed,
 - (f) such other particulars as the Director-General thinks appropriate.
- (3) The register may, at any reasonable time, be inspected by any person free of charge.
- (4) If a credit provider or finance broker has executed a deed containing undertakings under this Part, the Director-General must retain the deed.

26 Award of costs by Director-General

- (1) This section applies to a credit provider or finance broker who:
- (a) has been found by the Director-General to have engaged in, or to be engaging in, unjust conduct in the course of providing consumer credit or finance broking, and
 - (b) has been the subject of disciplinary action under this Part (and, if an appeal has been made against the disciplinary action, the action has been upheld).
- (2) The Director-General may make orders requiring such a credit provider or finance broker to pay such amounts by way of costs (including the costs of the Director-General in relation to the disciplinary action) as the Director-General determines.
- (3) An order of the Director-General under this section is to be filed in the Tribunal and is enforceable in the same way as a judgment or order of the Tribunal.

27 Appeal against order

- (1) A person who is the subject of any order made by the Director-General under this Part may appeal to the Tribunal against the order.
- (2) An appeal must be made within 28 days of the making of the order.
- (3) In determining an appeal, the Tribunal may make any order that the Director-General may make.
- (4) An appeal does not operate to stay a prohibition order unless the Tribunal so orders and any conditions imposed by the Tribunal when ordering the stay are complied with.
- (5) Despite subsection (2), an appeal may, with the leave of the Tribunal, be lodged with the Registrar of the Tribunal after the end of the period referred to in that subsection, but only if:
 - (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and
 - (b) the Tribunal grants that leave.
- (6) The Tribunal must grant leave applied for under this section if satisfied that:
 - (a) there is a sufficient explanation as to why the appeal was not lodged in time, and
 - (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

Part 4 Inquiries

28 Minister may order inquiry

- (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 either matters that relate to the provision of consumer credit or to the consequences of the provision of consumer credit, or both.
- (2) The Minister may, by instrument in writing, terminate an appointment.
- (3) An appointment may be made subject to such conditions or limitations as to the exercise of a function, or as to time or circumstances, as may be specified in the instrument of appointment.
- (4) The Tribunal or person appointed under this section has the functions conferred on the Tribunal or person by or under this Part.
- (5) An appointment, or a termination 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 or newspapers as is or are specified in the instrument.
- (6) If any matter purporting to be the terms of an instrument of appointment or of termination is published in the Gazette, it is to be presumed, unless the contrary is proved, that the matter comprises the terms of such an instrument.
- (7) If an inquiry is held under this Part, the Tribunal or person conducting the inquiry must, as soon as practicable, report to the Minister the results of the inquiry and make such recommendations with respect to those results as the Tribunal or that person thinks fit.
- (8) The protection and immunity conferred by section 8 of the *Commercial Tribunal Act 1984* on a member of the Tribunal extend to a person appointed under this section.

- (9) A reference in the *Commercial Tribunal Act 1984* to proceedings before the Tribunal does not include a reference to an inquiry under this Part.

29 Notice of inquiry

Before commencing an inquiry under this Part, the Tribunal is to give notice, by advertisements published in the Gazette and in a newspaper or newspapers, of:

- (a) the holding of the inquiry, and
- (b) the matter that is to be the subject of the inquiry, and
- (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.

30 Appearances at inquiry

- (1) The Tribunal may, at an inquiry under this Part, 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 to appear at an inquiry may appear at the inquiry in person or by a legal practitioner or agent and may give evidence, call witnesses and make submissions at the inquiry.

31 Procedure at inquiry

- (1) Unless the Tribunal in special circumstances otherwise orders:
 - (a) an inquiry under this Part is to be heard in public, and
 - (b) evidence at the inquiry is to be given on oath in public, and
 - (c) submissions at the inquiry are to be made in public.
- (2) At an inquiry under this Part, the Tribunal may permit a witness to give evidence by tendering a written statement verified on oath and, if the evidence is so given, the Tribunal is to make the statement available to the public in such manner as the Tribunal decides.

- (3) If a witness giving evidence under this section objects to any part of the evidence being made public and the Tribunal is satisfied that the part of the evidence to which the objection relates is of a confidential nature, that part of the evidence may not be taken in public or made public.
- (4) At an inquiry under this Part, the Tribunal may require or permit a person entitled to make submissions to make them in writing and, if submissions are so made, the Tribunal may make them public in such manner as the Tribunal decides.
- (5) In conducting an inquiry under this Part, the Tribunal is not bound by the rules of evidence.

32 Powers of Tribunal at inquiry

- (1) For the purposes of an inquiry under this Part, the Tribunal may:
 - (a) issue a summons to a witness to give evidence or produce a document, or both, at the inquiry, and
 - (b) administer an oath, and
 - (c) take evidence on oath.
- (2) If a person is required by summons to produce a document that is not written in the English language or is not decipherable on sight, the summons is to be taken to require the person also to produce a statement, written in the English language and decipherable on sight, that contains all of the information in the document to be produced.
- (3) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court.
- (4) A witness summoned under this section is, in accordance with the regulations, entitled to be paid such fees and allowances as are prescribed.

33 Failure to appear at inquiry

A person who has been summoned as a witness and fails to appear in obedience to the summons is guilty of an offence unless it is proved that there was a lawful excuse for the failure.

Maximum penalty: 50 penalty units.

34 Refusal to be sworn, produce document or answer question

A person who appears as a witness at an inquiry under this Part (whether summoned or not) and refuses to be sworn, or to produce a document in accordance with a summons, or to answer a question after being required to answer it, is guilty of an offence unless there is a lawful excuse for the refusal.

Maximum penalty: 50 penalty units.

35 Power to obtain information

- (1) For the purposes of an inquiry under this Part, the Tribunal or a person authorised by the Tribunal (in this section referred to as the *authorised person*) may require any person:
 - (a) to give information, or
 - (b) to answer any question,in relation to the subject-matter of the inquiry.
- (2) The Tribunal or authorised person may require information to be given, or a question 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 authorised person may, by notice in writing, require information to be given, or a question to be answered, in writing at a place specified in the notice.
- (4) A person who:
 - (a) fails to comply with a requirement under subsection (1), (2) or (3), or

- (b) in compliance with such a requirement, gives information or an answer that to the person's knowledge is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

- (5) A person is not obliged to give information or answer a question that the person has under subsection (1) been required to give or answer unless the person has first been informed by the Tribunal or authorised person that the person is required by this section to give the information or answer the question.
- (6) Information and answers given by a person in compliance with a requirement under subsection (1) are not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or making a false statement on oath, or for an offence under subsection (4).
- (7) A certificate signed by a member of the Tribunal or a person appointed under section 28 (1) to the effect that a person named in the certificate was, on a stated day or during a stated period, an authorised person for the purposes of this section is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

Part 5 Functions of Director-General in relation to proceedings

36 Director-General may represent debtor or other person

- (1) In any proceedings before the Tribunal arising under the consumer credit legislation, a person may be represented by the Director-General or by a legal practitioner or agent for the Director-General.
- (2) This section overrides any provision of the *Commercial Tribunal Act 1984* dealing with representation.

37 Director-General may proceed for another

- (1) This section applies if a person (other than a corporation) has made a complaint to the Director-General about a matter arising under the consumer credit legislation.
- (2) If the Director-General inquires into the complaint and is satisfied that:
 - (a) the complainant may, with respect to that matter, have a right to take proceedings before a court or the Tribunal or a defence to proceedings taken before a court or the Tribunal by another person against the complainant in respect of the matter, and
 - (b) it is in the public interest that the Director-General should take or, as the case may be, defend those proceedings on behalf of the complainant,

the Director-General may take or defend those proceedings on behalf of and in the name of the complainant.

- (3) The Director-General may only take or defend the proceedings with the written consent of the Minister and the complainant.
- (4) Once the Director-General has taken steps in those proceedings, the consent of a complainant is not revocable except with the concurrence of the Director-General.

38 Conduct of proceedings taken by Director-General

If the Director-General takes or defends proceedings before a court or the Tribunal on behalf of a complainant:

- (a) the Director-General is to have the conduct of those proceedings on behalf of the complainant and may (despite anything in any Act) appear personally or by a legal practitioner or agent, and
- (b) the Director-General may do all such things as are necessary or expedient to give effect to an order or decision of the court or the Tribunal, and
- (c) the Director-General is liable to pay the costs of the complainant, and
- (d) the complainant is liable to pay any amount (other than costs for which the Director-General is liable), that the court or the Tribunal orders the complainant to pay.

39 Intervention by Minister or Director-General

- (1) The Minister or the Director-General may intervene and be heard personally or by a legal practitioner or agent, in any proceedings (other than proceedings for an offence) arising under the consumer credit legislation before a court or the Tribunal.
- (2) The Minister may intervene only if the Minister thinks it would be in the public interest to do so.
- (3) The Director-General may intervene only if:
 - (a) the Director-General thinks it would be in the public interest to do so, and
 - (b) the Minister has consented in writing to the intervention.
- (4) If the Director-General intervenes in any proceedings under this section or takes or defends proceedings in accordance with section 37, it is to be presumed, unless the contrary is proved, that the Minister has consented to the intervention or the taking or defending of proceedings, as the case may be.

- (5) The Director-General, on intervening in any proceedings, becomes a party to the proceedings and has all the rights, including rights of appeal, of such a party.
- (6) Nothing in this section limits the power of the Director-General to take or defend proceedings under section 37.

40 Investigation of application to Tribunal

- (1) This section applies if an application has been made to the Tribunal by a credit provider under section 86 of the *Credit Act 1984* or section 101 of the *Consumer Credit (New South Wales) Code*.
- (2) The Chairman of the Tribunal may direct the Director-General to investigate the application, and report to the Tribunal on the results of the investigation, before the Tribunal hears the application.
- (3) The Director-General must comply with any such direction.

Part 6 Offences

41 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the corporation is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) An officer of a corporation may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

42 Persons who may take proceedings

- (1) Proceedings for an offence against this Act may be taken and prosecuted only by a person acting with the authority of the Minister, or 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 prescribed officer.
- (3) In proceedings for an offence against this Act, the informant may conduct his or her case personally, or by a legal practitioner or an agent authorised by the informant in writing.

43 Disposal of proceedings for offence

- (1) Proceedings for an offence against this Act are to be disposed of summarily before:
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.

- (2) Proceedings for an offence under the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (3) The maximum penalty that may be imposed by a Local Court in proceedings for an offence under this Act is 100 penalty units or the maximum penalty provided by this Act for the offence, whichever is the lesser.

44 Limitation

Proceedings for an offence under this Act may be commenced within 3 years after the alleged commission of the offence.

Part 7 Miscellaneous

45 Secrecy

- (1) This section applies to every person who is or has been:
 - (a) a member of the Tribunal, or
 - (b) a person appointed to make an inquiry under section 28 (1), or
 - (c) the Director-General, or
 - (d) an official authorised to conduct an investigation under section 6, or
 - (e) the Registrar of the Tribunal, or
 - (f) a member of the staff assisting the Director-General or the Registrar of the Tribunal, or
 - (g) a person employed or appointed under section 28 of the *Commercial Tribunal Act 1984*.
- (2) A person to whom this section applies must not make a record of information concerning the affairs of a person if the information was acquired by the person to whom this section applies under or for the purposes of any consumer credit legislation and by reason of the person's office or employment.

Maximum penalty: 20 penalty units.
- (3) A person to whom this section applies must not, whether directly or indirectly, divulge or communicate any such information.

Maximum penalty: 20 penalty units.
- (4) It is not an offence to make a record or divulge or communicate information if the record is made, or the information is divulged or communicated, in legal proceedings or in the exercise or performance of a function under or in connection with any consumer credit legislation.
- (5) In this section, *consumer credit legislation* includes the *Fair Trading Act 1987*, in so far as it relates to the provision of credit, and the corresponding Acts of the legislature of the Commonwealth or of another State or Territory.

46 Service of documents

Any document or notice that is authorised, required or permitted by or under this Act to be given to or served on any person may be given or served:

- (a) personally, or
- (b) by sending it by post to the person at the person's usual or last known business or residential address, or
- (c) if the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation.

47 Crown to be bound

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

48 Regulations

- (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 necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may impose a penalty not exceeding 10 penalty units for a breach of the regulation.

49 Repeals

- (1) The *Credit (Administration) Act 1984* is repealed.
- (2) The *Credit (Administration) Regulation 1984* is repealed.

50 Amendment of other Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

51 Savings and transitional provisions

Schedule 2 has effect.

52 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of other Acts

(Section 50)

1.1 Credit Act 1984 No 94

[1] Section 5 Definitions

Omit the definitions of *exempt credit provider* and *licensed credit provider* from section 5 (1).

[2] Section 81 Assignment of rights by credit provider

Omit "other than a licensed credit provider or an exempt credit provider" from section 81 (1) (a) and (b) wherever occurring.

[3] Section 85 Tribunal may reduce credit provider's loss

Omit "*Credit (Administration) Act 1984*" wherever occurring.
Insert instead "*Consumer Credit Administration Act 1995*".

[4] Section 85A Stay of civil penalty pending Tribunal's decision

Omit "*Credit (Administration) Act 1984*" from section 85A (7).
Insert instead "*Consumer Credit Administration Act 1995*".

[5] Section 86 General order varying civil penalty

Omit "*Credit (Administration) Act 1984*" from section 86 (1) wherever occurring.
Insert instead "*Consumer Credit Administration Act 1995*".

[6] Section 86A General order varying civil penalty for minor errors

Omit "section 44 of the *Credit (Administration) Act 1984*" from section 86A (3).
Insert instead "section 40 of the *Consumer Credit Administration Act 1995*".

[7] Sections 159A and 159B

Insert after section 159:

159A Persons who may take proceedings

- (1) Proceedings for an offence against this Act may be taken and prosecuted only by any person acting with the authority of the Minister, or 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 prescribed officer.
- (3) In proceedings for an offence against this Act, the informant may conduct his or her case personally, or by a legal practitioner, or by an agent authorised by the informant in writing.

159B Proceedings for offence

- (1) Proceedings for an offence against this Act are to be disposed of summarily before:
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence under the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (3) The maximum penalty that may be imposed by a Local Court in proceedings for an offence under this Act is 100 penalty units or the maximum penalty provided by this Act for the offence, whichever is the lesser.

[8] Section 166A

Insert after section 166:

166A Evidence

If it is alleged in any proceedings under this Act, or in any another proceedings in relation to a matter arising under this Act, that a credit contract is a regulated contract, it is presumed unless the contrary is proved, that the credit contract is a regulated contract.

1.2 Credit (Finance Brokers) Act 1984 No 96

Section 4 Definitions

Omit section 4 (3). Insert instead:

- (3) This Act does not apply to or in respect of a finance broker of a class prescribed by the regulations.

1.3 Commercial Tribunal Act 1984 No 98

Section 18 Jurisdiction and functions of Tribunal

Omit "*Credit (Administration) Act 1984*" from the note to section 18 (1) (inserted by the *Commercial Tribunal Legislation Amendment Act 1995*).

Insert in alphabetical order "*Consumer Credit Administration Act 1995*".

1.4 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert "section 10 of the *Consumer Credit Administration Act 1995*," in alphabetical order of Acts in the definition of *search warrant*.

Schedule 2 Savings and transitional provisions

(Section 51)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:
 - *Consumer Credit Administration Act 1995.*
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the relevant Act or on a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Consumer Credit Administration Act 1995

2 Definition

In this Schedule:

repealed Act means the *Credit (Administration) Act 1984*.

3 Previous conduct

Part 3 of this Act applies to conduct occurring before or after the commencement of that Part (including unjust conduct that occurred before the commencement of that Part).

4 Licence condition imposed under repealed Act

- (1) A decision by the Tribunal under section 13 of the repealed Act to impose any conditions on the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies otherwise than in accordance with those conditions.
- (2) A decision by the Tribunal under section 13 of the repealed Act to impose any conditions on the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies otherwise than in accordance with those conditions.

5 Disciplinary action taken under repealed Act

- (1) A decision by the Tribunal under section 23 (8) (c) of the repealed Act to require a credit provider or finance broker that held a licence under that Act to comply within a specified time with a requirement specified by the Tribunal is taken to be a decision by the Director-General under section 18 (2) (c) of this Act to require the credit provider or finance broker to comply within that specified time with a requirement specified by the Director-General.
- (2) A decision by the Tribunal under section 23 (8) (d) of the repealed Act to suspend the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies for the period of the suspension.
- (3) A decision by the Tribunal under section 23 (8) (d) of the repealed Act to suspend the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies for the period of the suspension.

Schedule 2 Savings and transitional provisions

- (4) A decision by the Tribunal under section 23 (8) (e) of the repealed Act to disqualify the holder of a credit provider's licence (or any person concerned in the direction, management or conduct of the business of a holder of such a licence) from holding the licence (or being so concerned) is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies.
- (5) A decision by the Tribunal under section 23 (8) (e) of the repealed Act to disqualify the holder of a finance broker's licence (or any person concerned in the direction, management or conduct of the business of a holder of such a licence) from holding the licence (or being so concerned) is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies.
- (6) A decision by the Tribunal under section 23 (8) (f) of the repealed Act to cancel the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies.
- (7) A decision by the Tribunal under section 23 (8) (f) of the repealed Act to cancel the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broking prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies.
- (8) A decision by the Commissioner under section 21 (6) of the repealed Act to cancel the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies.

- (9) A decision by the Commissioner under section 21 (6) of the repealed Act to cancel the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies.

6 Civil penalties imposed by repealed Act

The repeal of the *Credit (Administration) Act 1984* does not affect any right that a person had (under sections 85 or 86 of the *Credit Act 1984*) to apply to the Tribunal in respect of a contravention of or a failure to comply with the *Credit (Administration) Act 1984* before its repeal by the amending Act, and does not affect the power of the Tribunal to make any order that the Tribunal could have made in relation to such an application (under section 86A of the *Credit Act 1984*).

7 Inquiry commenced under repealed Act

The repeal of the *Credit (Administration) Act 1984* does not affect any inquiry pending under Part 4 of that Act immediately before its repeal.

[Minister's second reading speech made in—
Legislative Assembly on 15 November 1995
Legislative Council on 6 December 1995]

