

Western Australia

Credit Act 1984

Credit Act 1984

CONTENTS

Part I — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Application of Act and transitional provisions	2
4.	Act binds Crown	3
5.	Interpretation	3
6.	Jurisdiction of courts and Tribunal	21
7.	Credit contracts deemed to be regulated contracts	22
8.	Assignors, assignees, etc., of rights and obligations	23
9.	Contracts of employment excluded	23
10.	Annual percentage rate	24
11.	Credit charge	24
12.	Tied contracts	25
13.	Contracts for hiring of goods	26
14.	Certain contracts not credit sale contracts	29
15.	Loan contracts not to include certain credit	30
16.	Business of providing credit	30
17.	Recognised States	30
18.	Exceptions from application of Act	30
19.	Variation of application of Act	31
19A.	Act not to apply to new credit contracts	32
19B.	Act to continue to apply in certain cases	33

Part II — Contracts of sale

20.	Application of Part	35
21.	Contract of sale conditional on grant of credit	35

Contents

22.	Supplier not to require buyer to obtain credit from specified person	36
23.	Consequence of discharge of certain contracts	36
24.	Linked credit provider	37
25.	Consequential discharge of tied loan contract and mortgage	42
26.	Discharge of tied continuing credit contract on discharge or rescission of contract of sale	44
27.	Operation of sections 25 and 26	46
28.	Disputes	46
29.	Notice of rescission, etc., to linked credit provider	46

Part III — Regulated contracts

Division 1 — Credit sale contracts and loan contracts

30.	Application of Part	48
31.	Contracts to be in writing	49
32.	Form of offer	49
33.	Copy of accepted offer to be given	52
34.	Debtor to be given prescribed statement	52
35.	Disclosure in credit sale contracts	53
36.	Disclosure in loan contracts	55
37.	“Add-on” contracts	57
38.	Statement of annual percentage rate	59
39.	Acceptable rate of interest	59
40.	Inclusion of more than one rate of interest in contract	60
41.	Variation ineffective without notice	60
42.	Civil penalty	61
43.	Offence	62
44.	Minimum credit charge	62
45.	Statement for debtor or guarantor on request	62
46.	Copy of document for debtor or guarantor	63
47.	Tribunal may determine reasonable fees, etc.	64

Division 2 — Continuing credit contracts

48.	Interpretation	65
49.	Application of Part	66
50.	Billing cycle	68
51.	Payment on behalf of debtor	68
52.	Chargeable amount	69

53.	Amount payable under continuing credit contract	70
54.	Credit charge	70
55.	Annual percentage rate	72
56.	Billing cycle less than one month	73
57.	Non-business days	73
58.	Debtor to be given prescribed statement	74
59.	Notice of terms of continuing credit contract	74
60.	Variation of continuing credit contract ineffective without notice	75
61.	Statement of account	76
62.	Correction of billing errors	77
63.	Statement of account to be given before proceedings instituted	79
64.	Statement of account not to include opening balance in certain circumstances	79
65.	Statement of account not needed in certain circumstances	80
66.	Credit provider to pay amounts owing to debtor upon request	81
67.	Civil penalty	81
68.	Copy of notice to be given on request	82
	Division 3 — Operation of regulated contracts	
69.	Re-financing of credit contracts by the same parties	82
70.	Variation of credit sale contracts and loan contracts	83
71.	Deferral charge	86
72.	Default charges	88
73.	Variations generally	89
74.	Variation of commitments on account of hardship	90
	Division 4 — General	
75.	Unauthorised fees	92
76.	Enforcement expense	92
77.	Right to revoke offer is paramount	93
78.	Sufficient statement of annual percentage rate	93
79.	Sufficient statement of estimated credit charge	94
80.	Discrepancy between credit charge and annual percentage rate	94
81.	Assignment of rights by credit provider	95
82.	Loan to be in money or equivalent	97
83.	Application of payments	97

Contents

84.	Appropriation of payments between contracts	98
85.	Tribunal may reduce credit provider's loss	98
85A.	Application for declaration	101
85B.	Stay of civil penalty pending Tribunal's decision	101
86.	General order varying civil penalty	103
86A.	Order in respect of minor errors etc.	104
87.	Effect of civil penalty in relation to future liability	105
88.	Relief for minor errors	105

Part IV — Regulated mortgages

Division 1 — General

89.	Application of Part	107
90.	Obligations under mortgage not to exceed obligations under contract	107
91.	Mortgage of goods to be in writing, and to operate as security only	107
92.	Debtor entitled to copy of mortgage	108
93.	Enforcement expense	108
94.	Provision for entry of premises void in certain circumstances	109
95.	Order of court required before entry for repossession	109
96.	Disclosure of location of goods	110
97.	Time and place for delivery of goods	110
98.	Blanket securities over property or assets prohibited	110
99.	Restriction on mortgage of future property	111
100.	Mortgages and continuing credit contracts	111
101.	Fraudulent sale or disposal of property	112

Division 2 — Assignment, etc., of property

102.	Assignment by mortgagor	112
------	-------------------------	-----

Part V — Termination and enforcement of regulated contracts and regulated mortgages

103.	Calculation of net balance due	115
104.	Statement of net balance due	116
105.	Early termination of contract	117

106.	Mortgagor may compel sale of goods	117
107.	Notice required before rights exercised	118
108.	Proceedings prohibited where breach remedied	122
109.	Limit on amount recoverable	122
110.	Restriction on exercise of powers	122
111.	Court may order delivery of goods	123
112.	Taking possession of goods by mortgagee	123
113.	Right of mortgagor to redeem goods	125
114.	Mortgagee to account for proceeds of sale	126
115.	Moratorium — farmers, etc.	129
116.	Postponement of exercise of rights	131

Part VI — Regulated contracts and regulated mortgages — General

117.	Penalty for false representations etc.	134
118.	Court may approve removal of mortgaged goods	136
119.	Prohibition of assignment of wages, etc.	136
120.	Bills of exchange as security	136
121.	Advertisements offering credit	137
122.	Credit hawking	141
123.	Terminology in contracts, etc.	141
124.	Contracting by agents	142
125.	Contract or mortgage not illegal, etc., by reason of offence	142
126.	Notices to be given to all parties	142

Part VII — Contracts of insurance

127.	Insurance — regulated contracts	144
128.	Insurance — regulated mortgages	145
129.	Unauthorised insurance need not be maintained	146
130.	Content of contracts of insurance	147
131.	Premiums to be paid to insurer	148
132.	Action after rejection of insurance proposal	149
133.	No-claim bonus	150
134.	Saving as to unenforceability	150
135.	Limitation on exclusion clauses	151

Part VIII — Contracts of guarantee

136.	Guarantee to be in writing	153
137.	Extent of liability of guarantor	153

Contents

138.	Proceedings against guarantor	153
139.	Variation of commitments (guarantee relating to a regulated contract)	154
140.	Guarantee of obligations of minor	156
141.	Guarantor to receive copy of contract	156
142.	Guarantor to be given prescribed statement	157
143.	Discharge of guarantee	157
144.	Revocation of offer to guarantee	157

Part IX — Re-opening of contracts

145.	Interpretation	159
146.	Tribunal may re-open certain transactions	159
147.	Matters to be considered by Tribunal	160
148.	Joinder of parties	162
149.	Limitation on re-opening of transaction	162

Part X — General

150.	Assignment of interest under will etc.	164
151.	Legibility of documents	165
152.	Restriction on form of document	165
153.	Approval of form of document	166
154.	Offence	166
155.	Separation of documents	166
156.	Signature of documents	167
157.	“Contracting-out” of Act prohibited	167
158.	General penalty	167
159.	Limitation	167
160.	Offence by corporation	168
161.	Certain rights, etc., saved	168
162.	Computation of period	168
163.	Extensions of time	168
164.	Service of documents	168
165.	Service by post	169
167.	Regulations	170

Part XA — Transitional

167A.	Certain past non-disclosures about insurance commission not to incur civil penalty	172
167B.	Operation of amendments relating to description of consumer credit insurance	173

Part XI — Miscellaneous

168.	Notices by mortgagee	175
169.	Linked credit provider — sale of land	175
170.	Commissioner may fix maximum annual percentage rates	176

Schedule 1**Accrued credit charge**

1.	178
2.	178
3.	179

Schedule 2**Statement of amount financed in relation to credit sale contract**

1.	180
2.	182
3.	183

Schedule 3**Statement of credit charge in relation to credit sale contract**

1.	184
2.	184

Schedule 4**Statement of amount financed in relation to loan contract**

1.	185
2.	187
3.	187

Schedule 5**Statement of credit charge in relation to loan contract**

1.	188
2.	188

Contents

Schedule 6

Annual percentage rate

1.	189
2.	189
3.	190

Schedule 7

**Statement of account in relation to continuing
credit contract**

1.	191
2.	194
3.	195

Notes

Compilation table	196
Provisions that have not come into operation	197

Western Australia

Credit Act 1984

An Act relating to the provision of credit.

Part I — Preliminary

1. Short title

This Act may be cited as the *Credit Act 1984* ¹.

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation ¹.

3. Application of Act and transitional provisions

- (1) Except as otherwise expressly provided in or under this Act, this Act applies (notwithstanding anything to the contrary in any other Act or law) to and in respect of a contract of sale, credit contract or mortgage —

- (a) if the contract of sale, credit contract or mortgage is in writing and is signed in Western Australia by the buyer, debtor or mortgagor; or
- (b) where the contract of sale, credit contract or mortgage is not in writing or is in writing but is not signed by the buyer, debtor or mortgagor in Western Australia or in a recognised State —
 - (i) in the case of a contract of sale, if the goods or services are, or are to be, delivered or supplied in Western Australia;
 - (ii) in the case of a credit contract if the credit is, or is to be, provided to the debtor in Western Australia or the debtor has, or is to have, the use or benefit of the credit in Western Australia; or
 - (iii) in the case of a mortgage, if property subject to the mortgage is at the date of creation of the mortgage situated in Western Australia.

- (2) Subject to subsection (3), a provision of this Act that relates to a contract of sale, credit contract, mortgage or contract for the hiring of goods, does not apply to or in relation to a contract of

sale, credit contract, mortgage or contract for the hiring of goods, as the case may be, made before the commencement of the provision.

- (3) This Act (except sections 58, 59 and 67(1)(c) and Parts II, VII, VIII and IX) applies to and in relation to a continuing credit contract made before the commencement of Part III that, if it had been made after that commencement, would have been a continuing credit contract to which that Part applies but nothing in this Act applies to or in relation to a billing cycle that commenced before the commencement of that Part.
- (4) Where, by reason of subsection (3), this Act (except sections 58, 59 and 67(1)(c) and Parts II, VII, VIII and IX) applies to and in relation to a continuing credit contract, the credit provider shall, when he first gives a statement of account referred to in section 61 after the commencement of Part III, give to the debtor a statement in accordance with section 58 and a notice stating the matters required to be stated in a notice under section 59.

Penalty: \$1 000.

4. Act binds Crown

- (1) Except where otherwise expressly provided by this Act, this Act binds the Crown not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) This Act applies to and in respect of the Crown in any of its capacities to the same extent as if the Crown were, in that capacity, a body corporate.

5. Interpretation

- (1) In this Act, unless the contrary intention appears —
acceptable rate of interest, in relation to a loan contract or a continuing credit contract, means an annual percentage rate that

s. 5

the credit provider agrees to accept so long as the debtor duly observes and performs the terms of the contract;

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

- (a) in relation to the period of 12 months after the contract is made — the sum (not exceeding \$100 or, where some other amount is prescribed, that other amount) of —
 - (i) any amount that, under the contract, is payable by the debtor to the credit provider as the fixed fee or other charge for entering into the contract; and
 - (ii) any amount that, under the contract, is payable by the debtor to the credit provider as the fixed annual fee or other annual charge in respect of that period;

or

- (b) in relation to any other period of 12 months — any amount (not exceeding \$50 or, where some other amount is prescribed, that other amount) that, under the contract, is payable by the debtor to the credit provider as the fixed annual fee or other annual charge in respect of that period;

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

- (a) the minimum credit charge; or
- (b) the amount of any credit charge which, under the contract, has accrued at that time calculated as provided in section 11,

whichever is the greater;

actuarial method, in relation to a calculation for the purposes of a credit sale contract or a loan contract, means the method under which —

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

amount financed means —

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

s. 5

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

annual percentage rate means annual percentage rate within the meaning of section 10;

bank means —

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted by a law of a State, a Territory or the Commonwealth;

billing cycle means billing cycle as referred to in section 50;

body corporate does not, except in the case of a credit provider that is a body corporate, include —

- (a) a body corporate constituted under the *Strata Titles Act 1966*², by the proprietor or proprietors of lots within the meaning of that Act; or
- (b) a company owning an interest in land and having a memorandum or articles of association conferring on owners of shares in the company the right to occupy certain parts of a building erected on that land,

all or the majority of which lots or parts, as the case may be, are intended to be occupied as dwellings;

cash includes cheques;

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

- (a) unless the contract is one to which paragraph (b), (c) or (d) applies — means the price payable under the contract for the goods or services;
- (b) where, under the contract, credit for the payment for the goods or services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time at which the contract is made, the goods or services are available for purchase from the supplier for cash — means the lowest price at which at that time the buyer might have bought the goods or services from the supplier for cash;
- (c) where, under the contract, credit for the payment for the goods or services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time at which the contract is made, the goods or services are reasonably available for purchase for cash but are not available for purchase from the supplier for cash — means the price at which at that time the buyer might reasonably have bought goods or services of that kind for cash;
- (d) where, under the contract, credit for the payment for the goods or services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time at which the contract is made, the goods or services are not reasonably available for purchase for cash — means the amount that is —
 - (i) in the case of a sale of goods, the reasonable value of the goods at that time;
 - (ii) in the case of a sale of services, the reasonable value at that time of the services (whether or not they have been supplied); or

s. 5

- (iii) in the case of a contract of sale that is a contract of sale of both goods and services, the sum of the reasonable value of the goods at that time and the reasonable value at that time of the services (whether or not they have been supplied);

or

- (e) where some other price is prescribed in relation to the contract — means that price;

commercial vehicle means —

- (a) a motor vehicle within the meaning of the *Road Traffic Act 1974*, constructed or adapted principally for the carriage of goods but does not, include a motor vehicle of the kind known as a utility, a station wagon or a panel van; or
- (b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act;

commission charge, in relation to a regulated credit sale contract or a regulated loan contract, means an amount paid or payable (whether directly or indirectly and whether or not pursuant to an agreement or undertaking) by way of commission or as a payment in the nature of a commission (however described) being an amount —

- (a) that is paid or payable in respect of the introduction of the debtor to the credit provider and paid or payable by the credit provider or the spouse or de facto partner of the credit provider or, where the credit provider is a body corporate the credit provider or any other corporation that is a related body corporate of the credit provider for the purposes of the *Corporations Act 2001* of the Commonwealth; or

- (b) that is paid or payable in connection with a contract —
 - (i) that is connected with the regulated credit sale contract or regulated loan contract; and
 - (ii) the consideration for which is wholly or partly included within the amount financed;

Commissioner has the meaning given by section 4 of the *Credit (Administration) Act 1984*;

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

continuing credit contract means a continuing credit contract within the meaning of section 48;

contract for the hiring of goods includes a contract for the lease of goods or for the grant of a licence to use goods and any other contract for the bailment of goods;

credit includes any form of financial accommodation other than —

- (a) credit provided to a debtor, for the purposes of a business carried on by him, by —
 - (i) a documentary letter of credit;
 - (ii) discounting, or becoming a party to or the holder of, a bill of exchange or other negotiable instrument; or
 - (iii) becoming surety for a debtor;
- (b) credit provided for the purchase of goods for re-supply;
- (c) credit provided for the purchase of goods that —
 - (i) are raw materials; or
 - (ii) are ordinarily acquired for the purpose of treating or repairing other goods or fixtures on land or of being incorporated in other goods,

s. 5

for the purposes of transforming them, or incorporating them in other goods —

- (iii) in trade or commerce;
- (iv) in the course of a process of production or manufacture; or
- (v) in the course of repairing or treating other goods or fixtures on land;
- (d) credit provided for the purchase of services, where the buyer has contracted to provide those services, or goods and services that include those services, to a third person; or
- (e) any transaction prescribed as being a transaction that is not credit within the meaning of this Act;

credit charge means credit charge within the meaning of section 11(1);

credit contract means —

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

credit provider means —

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

credit sale contract means, subject to sections 13 and 14, a contract of sale of goods or services where in respect of the payment for the goods or services credit is, or is to be, provided to a debtor, being a buyer but not being a body corporate, by a supplier in the course of a business carried on by the supplier and, under the contract —

- (a) a charge is made for the provision of credit;

- (b) the amount payable by the debtor is not required to be paid within the period of 4 months after credit is provided under the contract; or
- (c) the amount payable by the debtor may be paid by 5 or more instalments or by a deposit and 4 or more instalments,

but does not include any contract of a class or description of contracts prescribed as being credit sale contracts that are not credit sale contracts within the meaning of this Act;

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

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

debtor means —

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

default charge means —

- (a) in relation to a regulated credit sale contract or a regulated loan contract, a charge made by a credit provider in accordance with section 72; or
- (b) in relation to any other credit contract, an amount payable under the contract by the debtor by reason of his failure to fulfil his obligations under the contract, other than an amount payable under the contract otherwise than by reason of that failure;

deferral charge means —

- (a) in relation to a regulated credit sale contract or a regulated loan contract, a charge made by a credit provider in respect of the deferral of the payment of an amount in accordance with section 71; or

s. 5

- (b) in relation to any other credit sale contract or loan contract, a charge made by a credit provider in respect of the deferral of the payment of an amount payable under the contract by the debtor;

Department has the meaning given by section 4 of the *Credit (Administration) Act 1984*;

deposit means —

- (a) in relation to a credit sale contract relating to goods — an amount that, under the contract, was paid or payable by the buyer to the supplier on or before the delivery of the goods or, where the delivery is not completed on one day, on or before the commencement of the delivery;
- (b) in relation to a credit sale contract relating to services — an amount that, under the contract, was paid or payable by the buyer to the supplier on or before the commencement of the supply of the services; or
- (c) in relation to a credit sale contract relating to goods and services — an amount that, under the contract, was paid or payable by the buyer to the supplier on or before the commencement of the delivery or supply of the goods and services,

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

determination, in relation to a court or the Tribunal, includes order, direction, decision and declaration;

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

enforcement expense means —

- (a) in relation to a regulated contract — an amount that, subject to section 76, the debtor is liable to pay to the credit provider in relation to the exercise of a right under the contract arising from the default of the debtor;
- (b) in relation to a regulated mortgage — an amount that, subject to section 93, the mortgagor is liable to pay to the mortgagee in relation to the exercise of a right under

the mortgage arising from the default of the mortgagor;
or

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

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

- (a) on the assumption that all amounts payable under the contract are paid on the respective dates on which, under the contract, they are required to be paid; or
- (b) in accordance with an applicable method prescribed for the purposes of calculating estimated credit charges;

exempt credit provider has the same meaning as it has in the *Credit (Administration) Act 1984*;

farm machinery means —

- (a) a harvester, binder, tractor, plough or other agricultural implement; or
- (b) any other goods of a class commonly used for the purposes of a farming undertaking that are prescribed as being farm machinery for the purposes of this Act,

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

farming undertaking includes —

- (a) any agricultural, agricultural, dairy farming, horticultural, orcharding, pastoral, poultry keeping, viticultural or other business involving the cultivation of

s. 5

the soil, the gathering of crops or the rearing of livestock;

- (b) the business of taking fish, crustacea, oysters or any other marine, estuarine or fresh-water animal life;
- (c) the cutting of timber for sale; and
- (d) any class of business prescribed as a farming undertaking;

goods includes —

- (a) all chattels personal other than things in action and money;
- (b) fixtures severable from the realty; and
- (c) any present or future product of a farming undertaking, including any agricultural or horticultural produce, wool and the increase or progeny of stock,

but does not include any goods of a class or description prescribed as being goods that are not goods within the meaning of this Act;

guarantee includes indemnity;

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

- (a) a person who is the supplier, or spouse or de facto partner of the supplier, of goods or services to which the contract or mortgage, relates or, where the supplier is a body corporate, any other corporation that is a related body corporate of the supplier for the purposes of the *Corporations Act 2001* of the Commonwealth or a person who is a director or officer of the body corporate or of such a related corporation or who is the spouse or de facto partner of such a director or officer; or

- (b) a person who enters into a contract of guarantee or a contract of indemnity —
 - (i) in respect of the obligations under a credit contract of a person who deals in goods or services of the kind to which the contract relates; or
 - (ii) in respect of the obligations of a debtor under a loan contract made for the purposes of the acquisition of goods of a kind in which the debtor deals;

instalment does not include a deposit;

judgment includes order;

land has the same meaning as it has in the *Transfer of Land Act 1893*;

licensed credit provider means the holder of a credit provider's licence for the time being in force under the *Credit (Administration) Act 1984*;

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

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

loan contract, subject to section 15, means a contract under which a person in the course of a business carried on by him provides or agrees to provide, whether on one or more

s. 5

occasions, credit to another person, not being a body corporate, in one or more of the following ways —

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

but does not include any contract of a class or description of contracts prescribed as being loan contracts that are not loan contracts within the meaning of this Act;

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

mortgage means an instrument or transaction by or under which a security interest is reserved or created or otherwise arises;

officer, in relation to a body corporate, includes a person who is an officer of the body corporate for the purposes of the *Corporations Act 2001* of the Commonwealth;

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

pre-determined credit charge, in relation to a credit contract that specifies a fixed amount as the whole or part of the credit

charge (not being a minimum credit charge), means that fixed amount;

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

recognised State means a State or Territory in respect of which a declaration referred to in section 17 is in force;

record includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

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

regulated continuing credit contract means a continuing credit contract to which Part III applies;

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

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

regulated loan contract means a loan contract to which Part III applies;

regulated mortgage means a mortgage to which Part IV applies;

rescission, in relation to a contract, means avoidance of the contract as from its beginning;

security interest means an interest or power —

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

by way of security for the payment of a debt or other pecuniary obligation or the performance of any other obligation but does

s. 5

not include an interest or a power reserved, created or otherwise arising under a contract for the hiring of goods that is not by section 13 deemed to be a credit sale contract;

services includes the rights and benefits that are, or are to be, supplied under —

- (a) a contract for or involving —
 - (i) the performance of work (including work of a professional nature); or
 - (ii) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, recreation or instruction;
- (b) a contract of insurance (including life assurance); or
- (c) a contract under which one person grants or confers, or purports to grant or confer, a franchise or other right, benefit or privilege to one or more other persons in consideration of the investment by that other person, or those other persons, of money and the performance by him or them of work associated with that investment,

whether the contract is express or implied and, if it is express, whether it is oral or in writing and whether the services are supplied to order or by making them available to potential users, but does not include —

- (d) the provision of credit;
- (e) any rights or benefits of a prescribed class or description that are prescribed as being rights or benefits that are not services within the meaning of this Act; or
- (f) any rights or benefits that are, or are to be, supplied under a contract of a prescribed class or description and are prescribed as being rights or benefits that are not services within the meaning of this Act;

statutory rebate means —

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

- (i) the amount of premium paid in respect of a period of the insurance contract not yet commenced; and
 - (ii) 90% of the proportion of the amount of the premium for insurance paid in respect of the current period of the insurance contract attributable to the unexpired portion of that period consisting of whole months;
- (b) in relation to prescribed insurance charges included in the amount financed under a regulated contract — the amount ascertained in the prescribed manner; and
- (c) in relation to maintenance charges included in the amount financed under a regulated contract in respect of maintenance of goods — the amount derived by multiplying the amount of maintenance charges by the number of whole months in the unexpired portion of the period for which maintenance is agreed to be provided and dividing the product so obtained by the number of whole months for which maintenance is agreed to be provided;

supplier—

- (a) in relation to a contract of sale, credit sale contract or contract for the hiring of goods, means a person who supplies goods or services; or
- (b) in relation to a continuing credit contract, means a person who supplies goods or services or cash;

supply includes —

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

tied continuing credit contract means tied continuing credit contract within the meaning of section 12(2);

s. 5

tied loan contract means tied loan contract within the meaning of section 12(1);

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

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

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

Tribunal means the State Administrative Tribunal.

- (2) In this Act, unless the contrary intention appears —
 - (a) a reference to goods or services includes a reference to goods and services; and
 - (b) a reference to the re-supply of goods bought from a person includes a reference to —
 - (i) a supply of the goods to another person in an altered form or condition; and
 - (ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.
- (3) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (4) Where a regulation made for the purposes of this section —

- (a) prescribes an amount other than \$20 000 as the monetary limit for the purposes of this Act, a reference in this Act (including this section) to \$20 000 shall be construed as a reference to the amount so prescribed; or
- (b) prescribes an annual percentage rate other than 14% as the annual percentage rate for the purposes of this Act, a reference in this Act (including this section) to a rate of 14% shall be construed as a reference to the annual percentage rate so prescribed.

[Section 5 amended by No. 57 of 1997 s. 39(10); No. 26 of 1999 s. 70(2); No. 10 of 2001 s. 53; No. 28 of 2003 s. 31; No. 55 of 2004 s. 173; No. 28 of 2006 s. 83.]

6. Jurisdiction of courts and Tribunal

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to a court in relation to any contract or other matter —
 - (a) where proceedings in relation to the contract or matter have been instituted in, or are before, a court — is a reference to that court;
 - (b) where proceedings in relation to that contract or matter have been instituted in, or are before, the Tribunal — is a reference to the Tribunal; or
 - (c) in any other case is a reference to —
 - (i) the Tribunal; or
 - (ii) the Magistrates Court.
- (2) Where a court and the Tribunal each have jurisdiction to determine the same matter, proceedings to determine the matter may be instituted before the court or the Tribunal but not before both.
- (3) Where proceedings are instituted in, or are before, a court in a matter for the determination of which the Tribunal and the court each have jurisdiction, the proceedings shall —

s. 7

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

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

- (4) Where proceedings are instituted in, or are before, the Tribunal in a matter for the determination of which the Tribunal and a court each have jurisdiction, the proceedings shall —
 - (a) if all the parties so agree; or
 - (b) if the Tribunal of its own motion or on the application of a party so directs,

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

[Section 6 amended by No. 59 of 2004 s. 141.]

7. Credit contracts deemed to be regulated contracts

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

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

it shall be presumed, unless the contrary is established, that Part II applies to the credit sale contract or loan contract or that Part III applies to the continuing credit contract.

8. Assignors, assignees, etc., of rights and obligations

- (1) This Act applies to a person to whom the rights and obligations of —
- (a) a credit provider under a credit contract;
 - (b) a debtor under a credit contract;
 - (c) a guarantor under a contract of guarantee;
 - (d) a credit provider under a contract of guarantee;
 - (e) a mortgagee; or
 - (f) a mortgagor,

have been assigned or transferred or have passed by operation of law in the same manner as this Act applies to the person by whom the rights and obligations were assigned or transferred or from whom the rights and obligations have passed by operation of law.

- (2) Nothing in subsection (1) operates to confer any rights under this Act on an assignee of a credit provider or mortgagee where the assignment is in contravention of this Act.
- (3) Subsection (1) does not apply where the rights and obligations referred to in subsection (1)(b), (c) or (f) are assigned or transferred, or pass by operation of law, to a body corporate.

9. Contracts of employment excluded

A reference in this Act to a contract or agreement in respect of the payment by a debtor for services supplied by another person does not include a reference to a contract or agreement that is solely a contract of service that creates the relationship of master and servant between the debtor and that other person or by reason of which that other person would be a worker within the meaning of the *Workers' Compensation and Injury Management Act 1981*.

[Section 9 amended by No. 42 of 2004 s. 174.]

s. 10

10. Annual percentage rate

For the purposes of this Act, unless the contrary intention appears, a reference to the annual percentage rate —

- (a) in relation to a credit sale contract or a loan contract in respect of which the annual percentage rate has not been disclosed to the debtor or has been so disclosed otherwise than in accordance with section 38, is a reference to the lowest percentage rate per annum that can be determined in accordance with that section in relation to the contract;
- (b) in relation to a credit sale contract or a loan contract under which the annual percentage rate has been disclosed in accordance with section 38, is a reference to the rate disclosed; and
- (c) in relation to a continuing credit contract, is a reference to the annual percentage rate within the meaning of section 55.

11. Credit charge

- (1) For the purposes of this Act, a reference to a credit charge —
 - (a) in relation to a credit sale contract or a loan contract is a reference to the amount by which the amount payable under the contract by the debtor to the credit provider or a person on his behalf (not including amounts of deferral charges, default charges or enforcement expenses) exceeds the amount financed; and
 - (b) in relation to a billing cycle of a continuing credit contract, is a reference to a credit charge within the meaning of section 54.
- (2) For the purposes of the definition of “accrued credit charge” in relation to a credit sale contract or a loan contract, the amount of the credit charge which has accrued at a particular time may be calculated —

- (a) by adding together the amounts ascertained by applying the daily percentage rate to the unpaid daily balances (being daily balances before that time) —
 - (i) in the case of a credit sale contract — of the amount financed; or
 - (ii) in the case of a loan contract — of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time;
 - (b) where Schedule 1 applies to the credit sale contract or loan contract — in accordance with the formula set out in that Schedule; or
 - (c) where an applicable method is prescribed for the purposes of this subsection — in accordance with that method.
- (3) In calculating the amount of a credit charge which has accrued under a credit sale contract or a loan contract, the credit provider may, if he so determines, apply a percentage rate per annum that is lower than the annual percentage rate disclosed under the contract.

12. Tied contracts

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

s. 13

provides credit under the continuing credit contract in respect of the payment by the debtor for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

13. Contracts for hiring of goods

- (1) A contract for the hiring of goods shall be deemed to be a credit sale contract if —
 - (a) the cash price of the goods at the time when the contract for the hiring is made is not more than \$20 000 or the goods are, or include, a commercial vehicle or farm machinery in relation to which the cash price is more than \$20 000; and
 - (b) under the contract the person to whom the goods are hired has a right, obligation or option to purchase the goods.
- (2) A contract for the hiring of goods shall be deemed to be a credit sale contract if the cash price of the goods at the time the contract is made is not more than \$20 000 or the goods are a commercial vehicle or farm machinery and —
 - (a) the contract provides, or it is reasonably likely having regard to the nature of the goods that the goods are, or are to be, affixed to land or to other goods and the goods are not, or when so affixed would not be, reasonably capable of being re-delivered to the supplier;
 - (b) before the contract is made, the supplier —
 - (i) acts in such a manner that the person to whom the goods are hired ought reasonably to infer that the supplier is willing, whether during or within a reasonable time after the period during which the contract is in force, to negotiate the sale to him of the goods or of goods of a value and description similar to the value and description of the goods to which the contract relates (being

a value and description as at the time the contract is made); and

- (ii) expects, or in the circumstances ought reasonably to expect, that the person to whom the goods are hired will negotiate the purchase by him of the goods or of goods of such a similar value and description;

or

- (c) before the contract is made, it is agreed that the person to whom the goods are hired may continue the contract for a nominal consideration for a period that exceeds, or for 2 or more periods that together exceed, the period of 2 years after the expiration of the original term of the contract for the hiring.

- (3) Where a contract for the hiring of goods is by this section deemed to be a credit sale contract —

- (a) the person from whom the goods are hired is the credit provider under the credit sale contract;
- (b) the person to whom the goods are hired is the debtor under the credit sale contract;
- (c) the cash price of the goods for the purposes of the credit sale contract is the cash price in relation to the contract for the hiring;
- (d) the instalments payable under the contract for the hiring are instalments payable under the credit sale contract;
- (e) the property of the supplier in the goods passes under the contract to the person to whom the goods are hired upon delivery of the goods or the making of the contract whichever last occurs;
- (f) a mortgage containing the prescribed terms and conditions shall be deemed to have been entered into in writing between the person to whom the goods are hired and the supplier as security for payment to the supplier

s. 13

of the amount payable to him by the person to whom the goods are hired under the contract; and

- (g) any provision in the contract for hiring by virtue of which the supplier is empowered to take possession, or dispose of, the goods to which the contract relates is void.
- (4) Subsection (2) does not apply to a contract for the hiring of goods that are or might reasonably be expected to be used by the person to whom they are hired for the purpose of a business carried on by him or by him and another person or other persons, where the whole or the greater part of the amount payable under the contract is, or might reasonably be expected to be, a loss or outgoing necessarily incurred in carrying on the business.
- (5) In this section —
 - (a) a reference to a contract for the hiring of goods does not include —
 - (i) a reference to a contract for the hiring of goods to a body corporate; or
 - (ii) a reference to a contract for the hiring of goods to the extent that the financial accommodation provided in relation to the goods is not credit within the meaning of this Act;
 - and
 - (b) **cash price**, in relation to a contract for the hiring of goods —
 - (i) where at the time the contract is made the goods are available for purchase for cash from the person from whom the goods are hired — means the lowest price at which the person to whom the goods are hired might have bought the goods from the first-mentioned person for cash;
 - (ii) where at the time the contract is made the goods are reasonably available for purchase for cash

but are not reasonably available for purchase for cash from the person from whom the goods are hired — means the price at which, at that time, the person to whom the goods are hired might reasonably have bought goods of that kind for cash; or

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

14. Certain contracts not credit sale contracts

- (1) For the purposes of this Act, a reference to a credit sale contract does not include —
- (a) a reference to a contract of sale of goods or services in respect of the payment for which credit is, or is to be, provided under a continuing credit contract; or
 - (b) a reference to a lay-by sale within the meaning of subsection (2).
- (2) A reference in subsection (1) to a lay-by sale is a reference to a sale of goods, or an agreement to sell goods, under conditions, express or implied, which provide that —
- (a) any of the goods sold or agreed to be sold will not be delivered to the purchaser until the purchase price is paid for the goods to be delivered, whether or not any charge is expressed to be payable for storage of the goods; and
 - (b) the purchase price or, where a deposit is paid, the balance of the purchase price —
 - (i) is to be payable by instalments (whether the number of instalments or the amount of all or any of the instalments is fixed by those conditions or is left at the option of the

s. 15

purchaser) payable over a fixed or ascertainable period; or

- (ii) is to be paid at the expiration of a fixed or ascertainable period with an option, express or implied, for the purchaser to make payments in respect of the purchase price during that period.

15. Loan contracts not to include certain credit

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

16. Business of providing credit

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

17. Recognised States

The Governor —

- (a) if he is satisfied that in another State or a Territory the law for the regulation of the provision of credit is such as to enable reciprocal arrangements to be made with this State in relation to the provision of credit may, by order published in the *Government Gazette* declare that other State or that Territory to be a recognised State; and
- (b) may, by order so published, vary or revoke a declaration under paragraph (a).

18. Exceptions from application of Act

- (1) The provisions of Parts III, IV, V, VI, VII and VIII do not apply to or with respect to a regulated contract where the credit provider is a bank, or a society registered under the *Housing Societies Act 1976*, and the credit provided is secured by a mortgage of real property.

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

[Section 18 amended by No. 47 of 1989 s. 3; No. 26 of 1999 s. 70(3); No. 12 of 2001 s. 51.]

19. Variation of application of Act

- (1) The Governor may, by order published in the *Government Gazette*, declare that the provisions of this Act, or such of those provisions as are specified in the order —
- (a) do not have effect in relation to a specified person or to a specified class of persons;
 - (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified;
 - (c) do not have effect in relation to a specified transaction or matter or class of transactions or matters;
 - (d) have effect in relation to a specified transaction or matter or class of transactions or matters to such extent as is specified;
 - (e) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons or in relation to specified associated matters; or
 - (f) have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.
- (2) An order made under subsection (1) —
- (a) may specify the period during which the order shall remain in force; or

s. 19A

- (b) may provide that its operation is subject to such terms and conditions as are specified in the order.
- (3) The Governor may, by order published in the *Government Gazette*, revoke or vary an order made under this section.
- (4) An order made under this section, including an order that is varied under this section, shall be deemed to be a regulation for the purposes of section 42 of the *Interpretation Act 1984* and the provisions of that section shall apply accordingly.
- (5) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.
- (6) A person to whom an order under this section applies, including an order that is varied under this section, shall comply with the terms and conditions (if any) to which the operation of the order is subject.

Penalty: \$5 000.

19A. Act not to apply to new credit contracts

- (1) Subject to subsection (2), this Act does not apply to a credit contract made on or after the commencement of section 13 of the *Consumer Credit (Western Australia) Act 1996* (in this section and section 19B called ***the commencement day***).
 - (2) This Act applies to —
 - (a) a credit contract, other than a continuing credit contract, and to a mortgage or guarantee relating to such a credit contract —
 - (i) made on or after the commencement day if the offer to enter into it was made before the commencement day; and
 - (ii) to which this Act would have applied if the credit contract had been made before the commencement day;
- and

- (b) a credit contract, other than a continuing credit contract, and to a mortgage or guarantee relating to such a credit contract made on or after the commencement day but not later than one month after that day if —
 - (i) the credit contract does not comply with the *Consumer Credit (Western Australia) Code*; and
 - (ii) had the credit contract been made before the commencement day, this Act would have applied to it and it would have complied with this Act.

[Section 19A inserted by No. 30 of 1996 s. 13.]

19B. Act to continue to apply in certain cases

- (1) Except as otherwise provided by this section, this Act continues to apply —
 - (a) to a continuing credit contract entered into before the commencement day, but only in respect of anything done or omitted to be done before the commencement day; and
 - (b) to a credit contract of any other kind entered into before the commencement day in respect of anything done or omitted to be done, whether before or after the commencement day; and
 - (c) to a mortgage or guarantee relating to a continuing contract referred to in paragraph (a), but only in respect of anything done or omitted to be done before the commencement day; and
 - (d) to a mortgage or guarantee relating to a credit contract referred to in paragraph (b) in respect of anything done or omitted to be done, whether before or after the commencement day.
- (2) If the credit provider under a contract to which this Act continues to apply acts in accordance with a provision of section 34, 35, 66 to 69, 78 to 99, 163, 171, 172 or 173 of the *Consumer Credit (Western Australia) Code*, the credit provider

s. 19B

is taken to have acted in accordance with the corresponding provision of this Act.

- (3) Despite anything to the contrary in subsection (2), section 112(1)(b) continues to apply in respect of goods subject to a regulated mortgage.

[Section 19B inserted by No. 30 of 1996 s. 13.]

Part II — Contracts of sale

20. Application of Part

- (1) In this Part, a reference to a contract of sale is a reference to —
 - (a) a contract of sale of goods or services where the cash price in relation to the sale is not more than \$20 000;
 - (b) a contract of sale of goods, being a commercial vehicle or farm machinery; or
 - (c) a contract of sale —
 - (i) of goods, being a commercial vehicle or farm machinery in relation to which the cash price is more than \$20 000; and
 - (ii) of other goods or services.
- (2) For the purposes of this Part, a reference to a buyer or a person who buys or proposes to buy goods or services does not include a reference to a body corporate.

21. Contract of sale conditional on grant of credit

- (1) Where a buyer, before entering into a contract of sale of goods or services, makes it known to the supplier that he requires credit to be provided in respect of the payment for the goods or services and the credit is not provided by the supplier, the buyer, if he takes reasonable steps to obtain the credit but does not obtain the credit, may within a reasonable period after the contract is made, by notice in writing given to the supplier, rescind the contract.
- (2) Where a buyer has purported to rescind a contract of sale as referred to in subsection (1), a court may, on the application of the supplier or the buyer, declare whether or not the purported rescission was valid and, if it declares that it was valid —
 - (a) may, on the application of the supplier or the buyer, where there is a dispute as to the return of the goods to

s. 22

the supplier, make an order relating to the return of the goods; and

- (b) may, where the contract of sale included terms relating to the compensation of the supplier for loss suffered by reason of the delivery of the goods to the buyer, make an order relating to the payment of compensation.

22. Supplier not to require buyer to obtain credit from specified person

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

Penalty: \$2 000.

23. Consequence of discharge of certain contracts

- (1) Where a regulated credit sale contract is rescinded or discharged (whether under this Act or any other Act or law), any mortgage or guarantee that relates to the contract is also discharged to the extent that it secures or guarantees the payment of a debt or other pecuniary obligation, or the performance of any other obligation, under the regulated credit sale contract.
- (2) Where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) —
 - (a) any regulated loan contract relating to the contract of sale and made by the buyer with the supplier is also discharged to the extent that it provides for the payment of a debt or other pecuniary obligation, or the performance of any other obligation, relating to the contract of sale; and
 - (b) any mortgage or guarantee relating to the regulated loan contract to the extent that the contract is discharged is also discharged to the extent that it secures or guarantees the payment of a debt or other pecuniary obligation, or

the performance of any other obligation, under the regulated loan contract.

- (3) Where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) and —

- (a) in respect of the contract of sale, there is a regulated continuing credit contract made by the buyer with the supplier; and
- (b) in relation to the regulated continuing credit contract there is a regulated mortgage or a guarantee,

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

24. Linked credit provider

- (1) Where a buyer who has entered into a tied loan contract or tied continuing credit contract with a linked credit provider of a supplier for the provision of credit in respect of the payment by the buyer for goods or services supplied by the supplier under a contract of sale is entitled to claim damages against or recover a sum of money from the supplier for misrepresentation, breach of contract or failure of consideration in relation to the contract of sale, the supplier and linked credit provider are, subject to this section, jointly and severally liable to the buyer for the damages or sum of money.
- (2) It is a defence to proceedings arising under subsection (1) against a linked credit provider of a supplier if the linked credit provider proves —
 - (a) that the credit provided by him to the buyer was provided as a result of an approach by the buyer to the credit provider that was not induced by the supplier;

s. 24

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

or

- (c) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider under an agreement of the kind referred to in section 48(2)(a)(ii) applies, that, having regard to —
- (i) the nature and volume of business carried on by the linked credit provider; and
 - (ii) such other matters as appear to be relevant in the circumstances of the case,

the linked credit provider, before becoming aware of the contract of sale or of proposals for the making of the contract of sale (whichever the linked credit provider first became aware of), did not suspect, and could not reasonably have been expected to suspect, that a person entering into such a contract with the supplier might be

entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract or failure of consideration as referred to in subsection (1).

- (3) Subject to subsection (4), a buyer may in any proceedings set up the liability of a linked credit provider for damages or a sum of money under subsection (1) in diminution or extinction of the buyer's liability upon any claim for damages or a sum of money made by the linked credit provider against the buyer in the proceedings.
- (4) Subject to subsection (5), a buyer may not —
 - (a) bring proceedings for damages or to recover a sum of money from a linked credit provider; or
 - (b) where proceedings are brought against the buyer by a linked credit provider, make a cross-claim or exercise a right referred to in subsection (3) against the linked credit provider,

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

- (5) Subsections (4) and (8)(a) do not apply where —
 - (a) the supplier —
 - (i) is a bankrupt or a person whose affairs are being dealt with under Part X of the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being;
 - (ii) being a body corporate, has been dissolved or has commenced to be wound up; or
 - (iii) being a natural person, has died;

s. 24

- (b) the court believes on reasonable grounds that it is not reasonably likely that any part of a judgment obtained against the supplier would be satisfied and has on the application of the buyer declared that subsections (4) and (8)(a) do not apply in that case; or
 - (c) the buyer satisfies the court that he has made reasonable efforts to locate the supplier but has been unable to do so and the court declares that subsections (4) and (8)(a) do not apply in that case.
- (6) A reference in subsection (5) to the commencement of winding up is a reference to commencement of winding up as determined under the law relating to companies in the place where the body corporate is being wound up.
- (7) The liability of a linked credit provider to a buyer for damages or a sum of money in respect of a contract of sale referred to in subsection (1) does not exceed the sum of —
 - (a) the amount financed under the tied loan contract or tied continuing credit contract in relation to the contract of sale;
 - (b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and
 - (c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.
- (8) Where in proceedings in respect of the liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, the judgment —
 - (a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and

- (b) may be enforced against the linked credit provider only to the extent of —
 - (i) the amount calculated in accordance with subsection (7); or
 - (ii) so much of the judgment debt as has not been satisfied by the supplier,whichever is the lesser.
- (9) Where, in proceedings in respect of the liability arising under subsection (1), a right referred to in subsection (3) is established against a linked credit provider, the buyer —
 - (a) shall not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider, a written demand has been made on the supplier for satisfaction of the judgment and the demand has remained unsatisfied for not less than 30 days; and
 - (b) may receive the benefit only to the extent of —
 - (i) the amount calculated in accordance with subsection (7); or
 - (ii) so much of the judgment debt as has not been satisfied by the supplier,whichever is the lesser.
- (10) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of his liability under subsection (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by him in defending the proceedings by reason of which the liability was incurred.
- (11) Notwithstanding anything to the contrary in any other Act, where in proceedings in respect of the liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, or against a linked credit provider, for damages

s. 25

or a sum of money, the court shall upon application by the buyer, unless good cause is shown to the contrary, allow or award interest to the buyer against the supplier and linked credit provider or against the linked credit provider, as the case may be, upon the whole or part of the damages or sum of money —

- (a) at the percentage rate per annum that is the annual percentage rate under the tied loan contract or tied continuing credit contract; or
- (b) at 8% per annum or, where some other percentage rate per annum is prescribed, that other rate,

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

- (12) In determining whether good cause is shown against allowing or awarding interest under subsection (11) on the whole or part of the damages or sum of money, the court shall take into account any payment made into court by the supplier or linked credit provider, as the case may be.
- (13) Where a judgment in respect of a liability arising under subsection (1) in relation to a contract of sale is enforced against a linked credit provider, the linked credit provider is subrogated to the extent of the judgment so enforced to any rights that the buyer would, but for the judgment, have had against any person in respect of the loss or damage suffered by him as a result of the misrepresentation, breach of contract or failure of consideration in relation to the contract of sale from which the liability arose.

[Section 24 amended by No. 58 of 1992 s. 4.]

25. Consequential discharge of tied loan contract and mortgage

- (1) Subject to section 27, where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) and there is a tied loan contract made with the buyer by a linked

credit provider of the supplier under the contract of sale, at the same time as the contract of sale is rescinded or discharged —

- (a) the tied loan contract is discharged to the extent that it was entered into for the purposes of the payment for the goods or services supplied under the contract of sale; and
 - (b) any mortgage relating to the tied loan contract is discharged to the extent that it secures the payment of a debt or other pecuniary obligation or performance of any other obligation under the tied loan contract.
 - (2) Subsection (1) does not apply where the credit is provided by a linked credit provider of a supplier to a buyer as a result of an approach by the buyer to the credit provider which was not induced by the supplier.
 - (3) Where, by reason of subsection (1), a tied loan contract is discharged when a contract of sale is rescinded or discharged —
 - (a) the credit provider is liable to the buyer for the amount (if any) paid by the buyer to the credit provider under the tied loan contract to the extent that it is discharged;
 - (b) the supplier is liable to the credit provider for —
 - (i) the amount (if any) paid under the tied loan contract, to the extent that it is discharged, by the credit provider to the supplier;
 - (ii) the amount paid under the tied loan contract, to the extent that it is discharged, by the credit provider to the buyer and paid by the buyer to the supplier; and
 - (iii) the amount of the loss (if any) suffered by the credit provider by reason of the discharge of the tied loan contract, being an amount not exceeding the amount of the accrued credit charge under the tied loan contract;
- and

s. 26

- (c) the buyer is liable to the credit provider for the amount (if any) paid under the tied loan contract, to the extent that it is discharged, to the buyer by the credit provider, other than amounts paid to the buyer and paid by him to the supplier,

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

- (d) if the goods are in the possession of the buyer —
 - (i) where, before the rescission or discharge of the contract of sale, there was not a mortgage relating to the tied loan contract, the buyer shall deliver the goods to the supplier; or
 - (ii) where, before the rescission or discharge of the contract of sale, there was a mortgage relating to the tied loan contract to the extent that it is discharged, the buyer shall deliver the goods to the credit provider;

and

- (e) if the goods are in the possession of the credit provider and no amounts are owed to the credit provider under paragraph (b), the credit provider shall deliver the goods to the supplier.
- (4) Where, under subsection (3)(d), goods are delivered to the credit provider, the credit provider is entitled to possession of the goods as against the supplier until the credit provider has been paid the amount for which the supplier is liable to the credit provider under subsection (3)(b).

26. Discharge of tied continuing credit contract on discharge or rescission of contract of sale

- (1) Subject to section 27, where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) and there is a tied continuing credit contract made with the buyer by a linked credit provider of the supplier under the contract of

sale, any mortgage relating to the tied continuing credit contract is discharged to the extent that it secures payment of the amount entered in relation to the contract of sale in an account of the debtor kept by the credit provider under the tied continuing credit contract and the amount (if any) of the credit charge so entered and attributable to the contract of sale and —

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

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

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

and

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

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

s. 27

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

27. Operation of sections 25 and 26

The provisions of sections 25 and 26 —

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

28. Disputes

Where there is a dispute arising out of the operation of section 23, 25 or 26, a court may, on the application of a buyer, supplier, credit provider, mortgagee or guarantor, or any other person (being a person claiming an interest in the goods), make an order declaring or adjusting rights or liabilities affected by the operation of that section —

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

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

A supplier who becomes aware that a contract of sale by him is rescinded or discharged, being a contract of sale in respect of

which the supplier knows a linked credit provider of the supplier has —

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

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

Penalty: \$1 000.

Part III — Regulated contracts

Division 1 — Credit sale contracts and loan contracts

30. Application of Part

- (1) In this Part, a reference to a credit sale contract does not include a reference to a credit sale contract relating to goods or services in relation to which the cash price is more than \$20 000, unless —
- (a) it is a contract relating to a commercial vehicle or farm machinery; or
 - (b) it is a contract relating to —
 - (i) a commercial vehicle or farm machinery in relation to which the cash price is more than \$20 000; and
 - (ii) other goods or services.
- (2) In this Part, a reference to a loan contract does not include a reference to a loan contract in respect of which —
- (a) the amount financed is more than \$20 000;
 - (b) there is no annual percentage rate or there is only one annual percentage rate and that rate does not exceed 14% or, in the case of a loan contract made after such date as may be prescribed by regulation following the coming into operation of section 5 of the *Credit Amendment Act 1992*¹, such lesser rate as is prescribed; or
 - (c) there is an acceptable rate of interest and a higher annual percentage rate that exceeds the acceptable rate by not more than 2% and that acceptable rate does not exceed 14% or, in the case of a loan contract made after such date as may be prescribed by regulation following the coming into operation of section 5 of the *Credit Amendment Act 1992*¹, such lesser rate as is prescribed,
- unless, when the contract is made, a mortgage relating to a commercial vehicle or farm machinery has been, or is agreed to

be, entered into to secure the payment of a debt or the performance of an obligation under the contract.

- (3) Where the annual percentage rate in respect of a loan contract may, at the option of the credit provider, be any rate less than, or not exceeding, an annual percentage rate specified by the credit provider, that specified rate shall, for the purposes of subsection (2)(b), be deemed to be the annual percentage rate in respect of the contract, whether or not the annual percentage rate applied under the contract is a lower rate than that specified rate.

[Section 30 amended by No. 58 of 1992 s. 5.]

31. Contracts to be in writing

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

Penalty: \$1 000.

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

32. Form of offer

- (1) A person who is —
- (a) a credit provider;
 - (b) an agent of a credit provider authorised to receive an offer to the credit provider to enter into a credit sale contract or a loan contract; or
 - (c) a supplier in relation to whom a credit provider is a linked credit provider,

shall not give to a person a document for signature by that person as an offer in writing to the credit provider to enter into a credit sale contract or a loan contract unless it includes a notice

that is in the form prescribed for the purposes of this subsection and is in a position so prescribed or, in particular case, in a position approved by the Tribunal.

Penalty: \$2 000.

- (2) A credit provider or an agent of a credit provider shall not give to a person an offer in writing signed by or on behalf of the credit provider to enter into a credit sale contract or a loan contract unless it includes a notice that is in the form prescribed for the purposes of this subsection and is in a position so prescribed or, in a particular case, in a position approved by the Tribunal.

Penalty: \$2 000.

- (3) Where —

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

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

Penalty: \$1 000.

- (4) Where a credit provider or an agent of a credit provider gives to a person an offer in writing signed by or on behalf of the credit provider to enter into a credit sale contract or a loan contract, the credit provider or agent shall, before that person accepts the offer, also give to that person a true copy of the offer for his

own use certified by the credit provider or agent as a true copy of the offer.

Penalty: \$1 000.

- (5) Where a person signs a document and thereby offers to enter into, or enters into, a credit sale contract or a loan contract, any subsequent alteration of, or addition to, the terms and conditions of the contract has no force or effect unless, after the alteration or addition has been made, the person has, opposite the alteration or addition, signed or initialled the margin of —
- (a) the document in which the terms and conditions of the contract are specified; and
 - (b) the copy of the document given to him pursuant to subsection (3) or (4).
- (6) Where a person signs a document and thereby offers to enter into, or enters into, a credit sale contract, or a loan contract —
- (a) the credit provider;
 - (b) an agent of the credit provider authorised to make or receive the offer to enter into the contract; or
 - (c) a supplier in relation to whom the credit provider is a linked credit provider,

shall not alter or add to the terms and conditions specified in the document with intent to deceive the debtor or, where the alteration or addition is made by the supplier, with intent to deceive the credit provider, whether or not the document in which those terms and conditions are specified has been signed or initialled as provided in subsection (5).

Penalty: \$5 000.

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

33. Copy of accepted offer to be given

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

Penalty: \$2 000.

- (2) Subsection (1) does not apply in relation to —
- (a) an offer to enter into a credit sale contract relating to goods that, in accordance with the offer, is accepted by delivery of the goods; or
 - (b) an offer to enter into a credit sale contract relating to services that, in accordance with the offer, is accepted by commencement of performance of the services.
- (3) In this section, *offer in writing* includes a document that, if signed by or on behalf of the credit provider and the debtor, would be a credit sale contract or a loan contract.

34. Debtor to be given prescribed statement

- (1) Where a credit sale contract or a loan contract is made, the credit provider shall, not later than 14 days after the contract is made, give to the debtor a statement in or to the effect of the form prescribed for the purposes of this section.

Penalty: \$2 000.

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

35. Disclosure in credit sale contracts

- (1) A credit sale contract relating to goods or services shall include —
- (a) the date on which the contract, or an offer to enter into the contract, was signed by the debtor;
 - (b) a description or identification of the goods or services;
 - (c) a statement of the amount financed in accordance with Schedule 2;
 - (d) a statement of the credit charge in accordance with Schedule 3;
 - (e) where, at the relevant date, it is possible to express the whole of the credit charge as an amount of money, a statement of the total of —
 - (i) the credit charge; and
 - (ii) the amount financed;
 - (f) a statement of the annual percentage rate in accordance with section 38;
 - (g) a statement of the person to whom, and the place at which, payments by the debtor are to be made;
 - (h) a statement whether payments are to be made by instalments and, if they are to be so made, a statement of such of the following as are known or can be calculated at the relevant date —
 - (i) where each instalment is the same amount, that amount;
 - (ii) where each instalment except the last is the same amount, that amount and the amount of the last instalment;
 - (iii) where neither subparagraph (i) nor subparagraph (ii) applies, the amount of each instalment;
 - (iv) the number of instalments; and

- (v) the time for the payment of each instalment or the time for the payment of the first instalment and the interval between each instalment and the subsequent instalment;
 - (i) if a commission charge is payable, a statement to that effect and, except in so far as the information is not known by the credit provider or is not readily available to the credit provider, a statement of the person to whom and the person by whom the commission charge is payable; and
 - (j) a statement whether any mortgage relating to the contract has been or is agreed to be entered into.
- (2) A credit provider shall not include in the amount financed under a credit sale contract —
 - (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance (not being compulsory insurance relating to goods) other than a risk specified in clause 1(d)(iv) or 1(e) of Schedule 2;
 - (b) where a mortgage relating to the contract has been entered into, an amount in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage by reason of any Act exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
 - (c) an amount in respect of the discharge of a liability of the debtor to the credit provider under a regulated contract that exceeds the amount of the net balance due to the credit provider calculated in accordance with section 103 immediately before the discharge of the liability.
- (3) Nothing in this section requires the inclusion in a credit sale contract of a statement referred to in this section that is not applicable to the contract.

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

36. Disclosure in loan contracts

- (1) A loan contract shall include —
- (a) the date on which the contract, or an offer to enter into the contract, was signed by the debtor;
 - (b) a statement of the amount financed in accordance with Schedule 4;
 - (c) a statement of the credit charge in accordance with Schedule 5;
 - (d) where, at the relevant date, it is possible to express the whole of the credit charge as an amount of money, a statement of the total of —
 - (i) the credit charge; and
 - (ii) the amount financed;
 - (e) a statement of the annual percentage rate in accordance with section 38;
 - (f) a statement of the person to whom and the place at which payments by the debtor are to be made;
 - (g) a statement whether payments are to be made by instalments and if they are to be so made, a statement of such of the following as are known or can be calculated at the relevant date —
 - (i) where each instalment is the same amount, that amount;
 - (ii) where each instalment except the last is the same amount, that amount and the amount of the last instalment;
 - (iii) where neither subparagraph (i) nor subparagraph (ii) applies, the amount of each instalment;

- (iv) the number of instalments; and
 - (v) the time for the payment of each instalment or the time for the payment of the first instalment and the interval between each instalment and the subsequent instalment;
 - (h) if a commission charge is payable, a statement to that effect and, except in so far as the information is not known by the credit provider or is not readily available to the credit provider, a statement of the person to whom and the person by whom the commission charge is payable; and
 - (i) a statement whether any mortgage relating to the contract has been or is agreed to be entered into.
- (2) A credit provider shall not include in the amount financed under a loan contract —
- (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance other than a risk specified in clause 1(b) of Schedule 4;
 - (b) where a mortgage relating to the contract has been entered into, an amount in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage by reason of any Act exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
 - (c) an amount in respect of the discharge of the liability of the debtor to the credit provider under a regulated contract that exceeds the amount of the net balance due to the credit provider calculated in accordance with section 103 immediately before the discharge of the liability.
- (3) Nothing in this section requires the inclusion in a loan contract of a statement referred to in this section that is not applicable to the contract.

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

37. “Add-on” contracts

- (1) This section applies to a credit sale contract that provides for the consolidation of the amount payable under the contract with the net balance due to the credit provider (at the time the contract is entered into) under another credit sale contract (not being a credit sale contract in relation to which there is a mortgage) that is discharged upon the entering into of the first-mentioned contract.
- (2) A credit sale contract to which this section applies does not fail to be in accordance with section 35 by reason only that the statements referred to in section 35(1)(c) to (h) are not included in the contract, but only if the conditions specified in subsection (3) are satisfied.
- (3) The conditions referred to in subsection (2) are that —
- (a) to the extent to which the statements referred to in section 35(1)(c), (d), (f), (g) and (h) were not included in the contract, they are included in a written notice given to the debtor within 28 days after the contract is entered into;
 - (b) if a statement of the total of the amount financed and the credit charge is not included in the contract, it is included in the notice referred to in paragraph (a); and
 - (c) the notice given under paragraph (a) is accompanied by a notice in or to the effect of the prescribed form.
- (4) At any time after a credit sale contract to which this section applies is entered into and before the expiration of 10 days after the day on which the notice referred to in subsection (3)(a) has been given, the debtor may rescind the contract by notice in writing given to the credit provider.

- (5) Upon rescission under subsection (4) by the debtor of a credit sale contract to which this section applies, the other credit sale contract referred to in subsection (1) shall, by force of this subsection, revive, and any payments made under the credit sale contract to which this section applies shall be deemed to have been made under the revived contract.
- (6) Where a credit sale contract revives by force of subsection (5), the debtor shall be deemed not to be or have been in breach of, or in default under, the revived contract in respect of the period during which the credit sale contract to which this section applies was in force, if the debtor was not in breach of, or in default under, the credit sale contract to which this section applies.
- (7) Where a credit sale contract to which this section applies is rescinded by the debtor, the debtor shall, on demand by the supplier, return any goods to which the contract relates, other than goods to which the revived contract applies.
Penalty: \$1 000.
- (8) Where there is a dispute arising out of the operation of this section, a court may, on the application of a debtor, credit provider or guarantor, make an order declaring or adjusting rights or liabilities affected by the operation of this section —
 - (a) to give effect to, or to enforce, any rights or liabilities consequent upon that operation; or
 - (b) subject to any such rights or liabilities, to restore the debtor, credit provider or guarantor, as nearly as practicable to their respective positions before the credit sale contract to which this section applies was entered into.
- (9) The reference in subsection (1) to the net balance due to the credit provider shall be construed in accordance with section 103, and as if that section were contained in this Part.

38. Statement of annual percentage rate

The annual percentage rate required under section 35 or 36 to be stated in a credit sale contract or a loan contract is —

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

whichever the credit provider determines.

39. Acceptable rate of interest

- (1) Where the payment of a debt or other pecuniary obligation or the performance of any other obligation under a loan contract is secured by a mortgage of land, the loan contract may, notwithstanding section 40, include an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2%.

- (2) Where, in accordance with subsection (1), a loan contract includes 2 annual percentage rates, the statement in accordance with section 38 of the annual percentage rate required under section 36 shall be made in respect of each rate.

40. Inclusion of more than one rate of interest in contract

- (1) Subject to section 39, a credit sale contract or a loan contract shall be deemed to be not in accordance with the provisions of this Division if it includes —
- (a) a statement of, or a reference to, more than one annual percentage rate for the purposes of the contract;
 - (b) a statement of, or a reference to, any other rate to the effect that the credit charge under the contract is or is to be determined by the application of that rate to the whole or any part of the amount financed; or
 - (c) a statement of, or a reference to, a right of the credit provider or any other person to increase, or take any action that results in the increase of, the annual percentage rate.
- (2) Where, in a credit sale contract or a loan contract, there is a statement of, or a reference to, more than one annual percentage rate for the purposes of the contract or a statement of, or a reference to, any other rate referred to in subsection (1), the annual percentage rate for the purposes of the contract shall be the lowest rate so stated or referred to.

41. Variation ineffective without notice

- (1) Where, in accordance with a provision in a credit sale contract or a loan contract, the credit provider exercises a right under the contract to vary the contract (otherwise than at the request of the debtor or in a manner referred to in section 37, 69, 70 or 71) the variation does not have effect until the prescribed period (or, where the contract provides for a longer period of notice of the variation, that longer period) has elapsed after notice of the variation has been given to the debtor.

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

42. Civil penalty

- (1) Subject to section 85, where —
- (a) a credit sale contract is not in writing signed by the debtor or is not in accordance with section 35;
 - (b) a loan contract is not in writing signed by the debtor or is not in accordance with section 36;
 - (c) the annual percentage rate under a credit sale contract, or a loan contract, is not disclosed in accordance with section 38 and, if applicable, section 39;
 - (d) a credit sale contract or a loan contract is deemed to be not in accordance with the provisions of this Division by reason of section 40(1); or
 - (e) a mortgage relating to a credit sale contract, or a loan contract, is entered into in contravention of section 91(1),
- the debtor is not liable to pay to the credit provider the credit charge under the contract.
- (2) An amount paid by a debtor in respect of the credit charge that, in accordance with subsection (1), he is not liable to pay may be set off by the debtor against the amount that is due or becomes due to the credit provider under the credit sale contract or the loan contract or, where there is not such an amount, is a debt due by the credit provider to the debtor.
- (3) Nothing in this section affects the liability of a person to be convicted of an offence under this Act.

43. Offence

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

Penalty: \$1 000.

44. Minimum credit charge

- (1) A provision in a credit sale contract or a loan contract to the effect that the minimum credit charge exceeds —
- (a) where the amount financed under the contract is not more than \$75 — \$5 or, where some other amount is prescribed for the purposes of this paragraph, that other amount; or
 - (b) where the amount financed under the contract is more than \$75 — \$7.50 or, where some other amount is prescribed for the purposes of this paragraph, that other amount,

is void.

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

Penalty: \$2 000.

45. Statement for debtor or guarantor on request

- (1) Where a credit provider receives a request in writing for a statement under this subsection, together with the prescribed fee (if any) from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a credit sale contract or a loan contract, the credit provider shall within 14 days after receiving the request give to the debtor or guarantor who made the request a statement in writing showing —
- (a) each amount received under the contract by the credit provider and the date on which it was received;

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

Penalty: \$1 000.

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

46. Copy of document for debtor or guarantor

- (1) Where a credit provider receives a request in writing for a copy of a document that he is required by this section to provide together with the prescribed fee (if any) from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a credit sale contract or a loan contract, the credit provider shall within 14 days after receiving the request give to the debtor or guarantor who made the request —
 - (a) a copy of the contract or of the offer or other document signed by the debtor or guarantor relating to the contract and to which the request relates; or
 - (b) where the request relates to a contract of insurance in relation to which an amount is included in the amount financed —
 - (i) a copy of the contract of insurance; or

- (ii) a statement of the terms and conditions of the contract of insurance which affect or concern the rights of the debtor.

Penalty: \$1 000.

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

47. Tribunal may determine reasonable fees, etc.

- (1) Where a credit provider enters into a credit sale contract or a loan contract that includes a statement of —
 - (a) the amount of fees payable to a duly qualified legal practitioner authorised to prepare documents for the contract or for a mortgage entered into in relation to the contract;
 - (b) the amount of any charge prescribed for the purposes of clause 1(g) of Schedule 2 or clause 1(d) of Schedule 4; or
 - (c) the value of any consideration of a kind prescribed for the purposes of clause 1(i) of Schedule 2 or clause 1(f) of Schedule 4,

and the debtor claims that the amount or value is not a reasonable amount or value he may apply to the Tribunal for determination of the amount or value.

- (2) Where an application is made under subsection (1), the Tribunal shall —
 - (a) determine the amount or value and make such orders as are necessary to give effect to its determination; or
 - (b) dismiss the application.

- (3) Where the Tribunal makes a determination under this section in relation to a credit sale contract or a loan contract, the contract as varied in accordance with the determination shall be deemed not to fail to comply with section 35 or 36 by reason only of the determination.

Division 2 — Continuing credit contracts

48. Interpretation

- (1) For the purposes of this section —
- (a) a reference to an agreement includes a reference to an arrangement, understanding or course of dealing; and
 - (b) a person shall be deemed to agree with another person with respect to a matter if the first-mentioned person has an agreement, arrangement or understanding with the other person, or is engaged in a course of dealing with the other person, with respect to the matter.
- (2) Where —
- (a) a person (in this section referred to as “the creditor”), in the course of a business carried on by him, agrees with another person (not being a body corporate) to provide credit to that other person in respect of —
 - (i) payment for goods or services or cash supplied by the creditor to that other person from time to time; or
 - (ii) payment by the creditor to a third person in respect of goods or services or cash supplied by that third person to that other person from time to time;
- and
- (b) the amounts owing to the creditor from time to time under the agreement are or are to be calculated on the basis that all amounts owing, and all payments made, by that other person under or in respect of the agreement

are entered in one or more accounts kept for the purpose of the agreement,

the agreement is, for the purposes of this Act, a continuing credit contract.

- (3) Where the creditor agrees to make payments to a third person in respect of goods or services or cash supplied by that third person to the other person, as referred to in subsection (2)(a)(ii), then, for the purposes of this Act, the creditor shall, in respect of any goods or services or cash so supplied, be deemed to have provided credit to that other person to the extent of any payments made or to be made by the creditor to that third person.
- (4) Where in respect of the provision of credit —
- (a) the only credit charge is a pre-determined credit charge; or
 - (b) the credit is, or is to be, provided by specified instalments,

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

- (5) This section does not apply to an agreement of a class or description of agreements prescribed as being continuing credit contracts that are not continuing credit contracts within the meaning of this section.

49. Application of Part

- (1) Subject to subsection (2), a reference in this Part (other than in section 48) to a continuing credit contract is a reference to a continuing credit contract under which —
- (a) where credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person (whether to the debtor or to another person) — a charge is or may be made for the provision of credit in respect of which the annual percentage rate exceeds 14%; or

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

amount exceeding \$20 000 is agreed as the maximum amount that at any time may be owed by the debtor under the contract where —

- (a) under the contract, the debtor may not, otherwise than by reason of his default, owe more than \$20 000 excluding any credit charge; or
 - (b) when the contract is made, it is probable, having regard to the terms of the contract and all other relevant considerations, that the amount owed by the debtor under the contract will not at any time exceed \$20 000 excluding any credit charge.
- (4) Where more than one account is maintained under a continuing credit contract, this Division (this section and sections 58, 59, 60 and 66 excepted) has effect as if separate continuing credit contracts in the same terms as the contract under which the accounts are maintained had been entered into in relation to each account.

50. Billing cycle

- (1) For the purposes of this Act, a reference to a billing cycle in relation to a continuing credit contract is a reference to the period applied from time to time in accordance with the contract as the billing cycle in relation to the contract.
- (2) A credit provider under a continuing credit contract shall not apply as a billing cycle for the purposes of section 61 or Schedule 7 a period exceeding 40 days.

51. Payment on behalf of debtor

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

52. Chargeable amount

- (1) Subject to this section, a reference in this Division to the chargeable amount in respect of a billing cycle of a continuing credit contract is a reference to the sum of such of the amounts included in the statement of account referred to in section 61 for that billing cycle as, under the contract, the credit provider determines constitutes the chargeable amount, being an amount not exceeding —
- (a) the amount that is the amount owed under the contract by the debtor immediately before the commencement of the billing cycle less amounts included in the statement of account in respect of payments by the debtor during the billing cycle; or
 - (b) the amount that is the sum of the balances owed under the contract by the debtor at the end of each day of the billing cycle, divided by the number of days in the billing cycle,
- whichever is the greater.
- (2) A credit provider shall not determine as an amount constituting the chargeable amount for a billing cycle of a continuing credit contract an amount that exceeds the greater of the amounts referred to in subsection (1)(a) and (b).
Penalty: \$1 000.
- (3) Where an amount determined as an amount constituting the chargeable amount for a billing cycle exceeds the greater of the amounts referred to in subsection (1)(a) and (b), the chargeable amount for that billing cycle shall be deemed, for the purposes of this Division, to be the lesser of the amounts referred to in subsection (1)(a) and (b).

53. Amount payable under continuing credit contract

- (1) A provision in a continuing credit contract which requires the debtor to pay to the credit provider an amount other than an amount that is —
- (a) the cash price of goods or services supplied by the credit provider or by another supplier in respect of payment for which credit is provided under the contract;
 - (b) an amount of cash supplied by the credit provider or by another supplier for the supply of which credit is provided under the contract;
 - (c) a credit charge;
 - (d) an amount of enforcement expenses;
 - (e) an amount of stamp duty in respect of or in relation to the contract payable by the debtor to the credit provider;
 - (f) an amount payable under the contract by the debtor to the credit provider that is a prescribed charge for the purposes of this section; or
 - (g) the amount of any consideration given to the debtor under the contract, being consideration that is of a kind prescribed for the purposes of this section,

is void.

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

Penalty: \$2 000.

54. Credit charge

- (1) For the purposes of this Act, a reference to a credit charge in relation to a billing cycle of a credit contract is a reference to the amount included in the statement of account for that billing

cycle in accordance with this Division other than any part of that amount that is —

- (a) the cash price of goods or services supplied by the credit provider or by another supplier in respect of payment for which credit is provided under the contract;
 - (b) an amount of cash supplied by the credit provider or by another supplier for the supply of which credit is provided under the contract;
 - (c) an amount of enforcement expenses;
 - (d) an amount of stamp duty in respect of or in relation to the contract payable by the debtor to the credit provider;
 - (e) an amount payable under the contract by the debtor to the credit provider that is a prescribed charge for the purposes of this section;
 - (f) the amount of any other consideration given to the debtor under the contract, being consideration that is of a kind prescribed for the purposes of this section; or
 - (g) the amount of a credit charge included in a statement of account for an earlier billing cycle of the contract.
- (2) A credit provider shall not include in a statement of account for a billing cycle a credit charge that exceeds the amount derived by the application of the annual percentage rate in respect of the contract to the chargeable amount for the billing cycle in the manner applicable under the contract.
- Penalty: \$1 000.
- (3) In ascertaining the credit charge in relation to a continuing credit contract made between a credit provider and a debtor, regard shall not be had to any amount by which the amount payable by the credit provider to any supplier of goods or services or of cash to the debtor or to another person under the contract is less than the cash price of the goods or services or the amount of the cash.

55. Annual percentage rate

- (1) For the purposes of this Act, a reference to the annual percentage rate in relation to a continuing credit contract is a reference to the percentage rate calculated in accordance with the following formula —

$$n = a \times b$$

where —

- “n” is the annual percentage rate to be calculated;
“a” is the percentage rate that, under the contract, is to be applied to the chargeable amount for each billing cycle of the contract to yield the credit charge; and
“b” is the number of those billing cycles that would occur during a period of one year if the contract were to continue in force for that period.

- (2) Where, under a continuing credit contract —
- (a) credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person; and
 - (b) the payment of a debt or other pecuniary obligation or the performance of any other obligation under the contract is secured by a mortgage of land,
- the contract may include an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2%.
- (3) Where, in accordance with subsection (2), a continuing credit contract includes 2 annual percentage rates, the statement in the notice under section 59 of the annual percentage rate shall be made in respect of each such rate.
- (4) Except as provided by subsection (2), a continuing credit contract shall not include more than one annual percentage rate in respect of the contract.

- (5) Where the annual percentage rate in respect of a continuing credit contract may, at the option of the credit provider, be any rate less than or not exceeding, an annual percentage rate specified by the credit provider, that specified rate shall, for the purposes of section 49(1)(a), be deemed to be the annual percentage rate in respect of the contract, whether or not the annual percentage rate applied under the contract is a lower rate than that specified rate.

56. Billing cycle less than one month

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

57. Non-business days

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

amount in the statement of account for a succeeding billing cycle.

58. Debtor to be given prescribed statement

A credit provider shall, before the debtor first incurs a debt under a continuing credit contract, give to the debtor a statement in or to the effect of the form prescribed for the purposes of this section.

Penalty: \$2 000.

59. Notice of terms of continuing credit contract

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

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

[(g) deleted]

- (h) particulars of any mortgage relating to the contract that, as a condition of the making of the contract has been or is agreed to be entered into;
- (i) the method (if any) by which, under the contract, provisions of the contract may be varied;
- (j) particulars of such other matters (if any) as are prescribed for the purposes of this section; and
- (k) the other terms and conditions (if any) to which the contract is subject.

Penalty: \$1 000.

- (2) It is sufficient compliance with subsection (1) if the continuing credit contract was made by the acceptance of an offer in writing by the debtor to the credit provider to enter into the contract (being an offer that includes the matters required to be stated in a notice under subsection (1)) and, before the debtor incurs a debt under the contract, a copy of that offer is given to him for his own use.
- (3) Nothing in this section requires the inclusion in a notice under subsection (1) of a statement that is not, or particulars that are not, applicable to the continuing credit contract.

[Section 59 amended by No. 12 of 2008 s. 52.]

60. Variation of continuing credit contract ineffective without notice

- (1) Where, in accordance with a provision in a continuing credit contract, the credit provider exercises a right under the contract to vary the operation of the contract (other than a right exercised at the request of the debtor), the variation does not have effect —
 - (a) in the case of a variation that increases the credit charge under the contract, or increases the amount of, or abridges the time for payment of, the amount standing to the debit of the account — until a period that is not

- shorter than 2 billing cycles has elapsed after notice of the variation has been given to the debtor in writing; or
- (b) in the case of any other variation — until a period of at least 7 clear days or, where the contract provides for a longer period of notice of the variation, that longer period has elapsed after notice of the variation has been given to the debtor in writing.
- (2) Where notice of the variation of a provision in a continuing credit contract is given in a common form by the credit provider and posted by bulk postage, the notice of the variation shall be deemed to have been given 21 days after the date on which the last of the bulk postages was made.

61. Statement of account

- (1) A credit provider under a continuing of account credit contract shall give to the debtor a statement of account in accordance with Schedule 7 in respect of each billing cycle applied under the continuing credit contract from time to time.
- (2) A credit provider shall not include in a statement of account referred to in subsection (1) —
- (a) where a mortgage relating to the contract has been entered into, an amount in respect of insurance against loss of the security interest of the mortgagee in any goods the subject of the mortgage by reason of any Act exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class;
- (b) an amount in respect of the discharge of a liability of the debtor to the credit provider under a regulated contract that exceeds the amount of the net balance due to the credit provider calculated in accordance with section 103 immediately before the discharge of the liability; or

- (c) a statement that is, or particulars that are, prescribed as a statement, or particulars that may not be included in the statement of account.
- (3) Nothing in this section requires the inclusion in a statement of account referred to in subsection (1) of a statement that is not, or particulars that are not, applicable to the continuing credit contract.
- (4) Where particulars of matters required to be included in the statement of account are included in documents attached to or accompanying the statement of account, the provisions of Schedule 7 requiring those particulars to be so included are sufficiently complied with.
- (5) Where an amount paid by a debtor is not included in the statement of account in respect of the billing cycle during which the amount was paid, the credit provider shall, within a reasonable time after the receipt of the amount, enter the amount in the account of the debtor kept by the credit provider.
- (6) A credit provider under a continuing credit contract shall not —
 - (a) fail to give a statement of account in accordance with this section in respect of each billing cycle applied under the contract from time to time;
 - (b) give a statement of account that does not comply with the provisions of this section;
 - (c) give a statement of account under this section in respect of a billing cycle the period of which exceeds 40 days; or
 - (d) include in a statement of account under this section an amount of deferral charges or default charges.

Penalty: \$1 000.

62. Correction of billing errors

- (1) Where —

- (a) the debtor under a continuing credit contract queries, by a written document given or sent to the credit provider, any amount or other matter (being matter that the debtor reasonably believes is incorrect as to the nature or extent of the liability of the debtor to the credit provider) shown in a statement of account given to him in accordance with section 61;
- (b) the document contains sufficient details to enable the credit provider to identify the statement of account;
- (c) the document is given or sent to the credit provider before payment under the contract is due in respect of the statement of account; and
- (d) the credit provider does not take such action as satisfies the query,

any right of action claimed by the credit provider in respect of the queried amount or other matter and any related credit charges, and any obligation on the part of the debtor to pay the queried amount and any related credit charges, are suspended until after the expiration of the 2 complete billing cycles that next succeed the giving by the credit provider to the debtor of a written notification setting out his decision in relation to the query.

- (2) If the credit provider corrects, in a manner that satisfies the query, the amount or other matter in the statement of account relating to the next billing cycle given to the debtor or a subsequent billing cycle, the credit provider may not impose any charge for the provision of credit, or otherwise, in respect of that next billing cycle and any such subsequent billing cycles, relating to the queried amount or other matter, and the imposition of any such charge is, without limiting subsection (4), void.
- (3) The debtor may apply to the Tribunal, before the expiration of the 2 complete billing cycles that next succeed the giving by the credit provider to the debtor of a written notification of his

decision in relation to the query, for a determination to be made with respect to the queried amount or other matter, and any right of action, and obligation to pay, referred to in subsection (1) are further suspended until the Tribunal makes its determination.

- (4) The determination of the Tribunal is conclusive as to the matters in dispute, and the Tribunal may make such orders as it thinks fit, including —
- (a) an order that the whole or a specified part of the credit or other charges that would have been payable by the debtor had he not made his query are payable by him; and
 - (b) an order removing the suspension imposed by subsection (1).
- (5) A credit provider shall not institute proceedings in respect of a right of action referred to in subsection (1) while the right of action is, by virtue of this section, suspended.

Penalty: \$2 000.

63. Statement of account to be given before proceedings instituted

A credit provider shall not institute proceedings for the recovery of an amount owed to him under a continuing credit contract unless, when giving the required notice under section 107, he gives the debtor a statement of account under section 61 that includes a request for payment of that amount.

Penalty: \$1 000.

64. Statement of account not to include opening balance in certain circumstances

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

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

Penalty: \$1 000.

- (2) Where a credit provider gives to debtors statements of account that are posted by bulk postage, and proceedings are brought against the credit provider for an offence under subsection (1) in respect of a continuing credit contract, proceedings for a like offence under subsection (1) may not be instituted against him in respect of another continuing credit contract in respect of which a statement of account was posted by the same bulk postage.

65. Statement of account not needed in certain circumstances

Nothing in section 61 or 64 requires a credit provider to give to a debtor a statement of account in respect of a billing cycle of a continuing credit contract where —

- (a) during the billing cycle an amount was not entered in the account of the debtor kept by the credit provider and at the end of the billing cycle there was not an amount entered in the account and owing by or to the debtor;
- (b) during the billing cycle —
 - (i) the credit provider wrote off the debt of the debtor under the contract; and
 - (ii) no other entries were made in the account of the debtor kept by the credit provider;

or

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

66. Credit provider to pay amounts owing to debtor upon request

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

67. Civil penalty

- (1) Subject to section 85, where, in relation to a billing cycle of a continuing credit contract —
 - (a) the credit provider has not given notice in writing to the debtor of the annual percentage rate in respect of the contract in accordance with section 3(4) or 59;
 - (b) the credit charge —
 - (i) is determined otherwise than in accordance with this Division; or
 - (ii) is not included in a statement of account for that billing cycle given to the debtor under section 61;
 - (c) the debtor incurs a debt under the contract before the credit provider has given a notice under section 59;
 - (d) the credit provider includes in the statement of account for that billing cycle an amount of deferral charges or default charges; or

- (e) a mortgage relating to the continuing credit contract is entered into in contravention of section 91(1),

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

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

68. Copy of notice to be given on request

- (1) Where a credit provider receives a request in writing together with the prescribed fee (if any) from a debtor under a continuing credit contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a continuing credit contract, the credit provider shall, within 14 days after receipt of the request, give to the debtor or guarantor who made the request a copy of any notice given under section 3(4), 59 or 60 in respect of the contract.

Penalty: \$1 000.

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

Division 3 — Operation of regulated contracts

69. Re-financing of credit contracts by the same parties

- (1) Where a credit provider agrees to discharge one or more regulated contracts to which the credit provider and the debtor are parties in consideration of the entering into of another credit contract by the debtor (whether or not a regulated contract), the credit provider shall, before entering into the other credit

contract, give to the debtor a statement in writing stating, in respect of each of the regulated contracts to be discharged —

- (a) the amount that would be due to the credit provider under section 105 if, immediately before the relevant date, the debtor were to discharge his obligations under the contract in accordance with that section; and
- (b) in the case of a regulated credit sale contract or a regulated loan contract, particulars of the calculation of that amount by setting out —
 - (i) the outstanding balance of the amount financed;
 - (ii) the outstanding balance of the accrued credit charge;
 - (iii) the outstanding balance of deferral charges (if any) charged in accordance with this Part;
 - (iv) the outstanding balance of default charges (if any) charged in accordance with this Part; and
 - (v) the outstanding balance of enforcement expenses (if any),

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

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

70. Variation of credit sale contracts and loan contracts

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

- (a) the outstanding balance of the amount financed at the date of the variation is not increased by the variation or is increased by the variation by reason only of the addition of an amount referred to in subsection (3);
 - (b) the annual percentage rate applicable to the contract as varied does not exceed the lesser of —
 - (i) the annual percentage rate applicable to the contract immediately before the variation; and
 - (ii) the annual percentage rate prescribed by the regulations for the purposes of this subparagraph;
 - (c) a deferral charge is not made in respect of the variation; and
 - (d) the agreement is in writing signed by the credit provider and the debtor and specifies (where applicable) —
 - (i) the varied terms of repayment;
 - (ii) the amount by which the amount financed is increased;
 - (iii) the amount by which the credit charge is increased by reason of the variation;
 - (iv) the amount of default charges and deferral charges outstanding at the date of the variation;
 - (v) the amount of legal fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) for preparation of the agreement;
 - (vi) the additional amount payable under the contract by reason of the variation; and
 - (vii) such other matters as may be prescribed.
- (2) The regulations may prescribe the manner in which matters required by subsection (1)(d) to be specified in an agreement are

to be so specified, whether by the use of a prescribed form or otherwise.

- (3) The following are the amounts by which the outstanding balance of the amount financed under a credit sale contract or a loan contract may be increased by a variation under subsection (1) —
- (a) where, under the credit sale contract or loan contract, the premium under a contract of insurance or compulsory insurance entered into in relation to the credit sale contract or loan contract or a regulated mortgage relating to the contract was included in the amount financed under the credit sale contract or loan contract — a premium payable under that contract of insurance or compulsory insurance in relation to a subsequent period not exceeding 12 months;
 - (b) where, under the credit sale contract or loan contract, registration fees relating to goods and in respect of a particular period were included in the amount financed under the credit sale contract or loan contract — registration fees relating to those goods in respect of a subsequent period; or
 - (c) such other amounts as may be prescribed.
- (4) Where a credit provider enters into an agreement referred to in subsection (1) he shall, not later than 14 days after the agreement is entered into, give the debtor a copy of the agreement.
- (5) Notwithstanding any other provision of this Act, an agreement to vary a contract in accordance with this section is not a loan contract.
- (6) Where a variation to which this section applies is made to the terms of a credit sale contract or a loan contract, a guarantor under a contract of guarantee in respect of the obligations of the debtor under the contract is not liable in respect of the contract for an amount exceeding the amount for which, but for the

variation, he would have been liable unless the credit provider, not later than 14 days after the variation was made, gave the guarantor a notice in writing of the variation.

- (7) This section does not apply to or in respect of a variation —
- (a) if section 37, 69 or 71 applies to or in respect of the variation; or
 - (b) by reason only that, as a result of a variation, the amount due to a credit provider is satisfied or reduced.

[Section 70 amended by No. 12 of 2008 s. 52.]

71. Deferral charge

- (1) Where a credit provider and a debtor agree to vary a credit sale contract, or a loan contract, by the deferral of the payment of an amount payable by the debtor under the contract, the credit provider shall not make a charge in respect of the deferral unless —
- (a) the payment is deferred —
 - (i) in accordance with a term in the contract to the effect that such a payment may be deferred; or
 - (ii) in accordance with the agreement of the credit provider and the debtor;
 - (b) the charge in respect of the deferral does not exceed the amount determined in accordance with subsection (2);
 - (c) a default charge is not made in respect of the deferral; and
 - (d) the deferral is made in accordance with subsection (4).
- (2) The amount of a charge in respect of the deferral of the payment of an amount payable under a credit sale contract or a loan contract determined in accordance with this subsection is —
- (a) the amount that is the sum of the amount determined by applying to the amount payment of which is deferred, in respect of the number of days for which it is deferred —

- (i) where a credit charge is payable under the contract — a rate not exceeding the daily percentage rate that applies to the contract; or
 - (ii) where a credit charge is not payable under the contract — the rate prescribed for the purposes of this section,
 - and the amounts (if any) payable in respect of charges mentioned in subsection (3) in relation to the deferral of the payment; or
 - (b) the amount agreed by the credit provider and the debtor as the charge,
- whichever is the lesser.
- (3) The charges in relation to the deferral of a payment referred to in subsection (2)(a) and subsection (4)(b) are charges in respect of —
- [(a) deleted]*
 - (b) fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the deferral.
- (4) Where a credit provider defers payment of an amount payable under a credit sale contract or a loan contract the deferral is in accordance with this subsection if, not later than 14 days after the credit provider agrees to defer or, where the deferral is made under a term of the contract, he defers the payment, the credit provider gives notice in writing to the debtor stating —
- (a) the amount of the payment deferred;
 - (b) the amounts (if any) payable in respect of charges mentioned in subsection (3) in relation to the deferral of the payment;
 - (c) the date on which the period for which the payment is deferred expires;

- (d) the amount of the charge, in dollars and cents; and
 - (e) if applicable, the rate applied to the amount payment of which is deferred in accordance with subsection (2)(a) to determine the amount of the charge.
- (5) A credit provider shall not make a charge —
 - (a) in respect of the deferral of the payment of an amount payable by the debtor under a credit sale contract or a loan contract, unless the whole or part of the credit charge under the contract is a pre-determined credit charge; or
 - (b) in respect of the deferral of the payment of an amount payable by the debtor under a regulated continuing credit contract.
- (6) Notwithstanding anything to the contrary in this Act, the deferral of the payment of an amount payable by a debtor under a credit sale contract or a loan contract in accordance with this section is not a loan contract.

Penalty: \$1 000.

[Section 71 amended by No. 12 of 2008 s. 52.]

72. Default charges

- (1) Where under a credit sale contract or a loan contract the debtor does not pay an amount payable under the contract when it is due, the credit provider shall not make a charge in respect of the failure to pay unless there is a term in the contract to the effect that such a charge may be made and the charge does not exceed —
 - (a) the amount determined by applying to the daily balance of the amount due and unpaid —
 - (i) where a credit charge is payable under a contract — the daily percentage rate under the contract; or

- (ii) where a credit charge is not payable under the contract — the rate prescribed for the purposes of this section;
 - or
 - (b) the amount determined by applying to the amount unpaid the rate specified in the contract for the purposes of such a charge,
 - whichever is the lesser.
 - (2) A credit provider shall not make a charge —
 - (a) in respect of the failure to pay an amount payable under a credit sale contract or a loan contract when it is due unless the whole or part of the credit charge under the contract is a pre-determined credit charge;
 - (b) in respect of the failure to pay an amount payable under a regulated continuing credit contract; or
 - (c) in respect of a charge under subsection (1) that is unpaid.
 - (3) Nothing in this section affects the right of a credit provider to make or require payment of an accrued credit charge, a deferral charge or an enforcement expense.
- Penalty: \$1 000.

73. Variations generally

Where the terms of a regulated contract are varied or a regulated contract is discharged in consideration of the debtor entering into another credit contract, whether in a manner referred to in section 37, 69, 70, 71 or 74 or in accordance with a provision in the contract or by agreement between the credit provider and the debtor, the contract as varied shall be deemed to continue to be, or the other contract shall be deemed to be, a regulated contract notwithstanding that, but for this section, it would not continue to be, or be, a regulated contract.

74. Variation of commitments on account of hardship

- (1) Where a debtor by reason of illness, unemployment or other reasonable cause is unable reasonably to discharge his obligations under a regulated contract, the debtor may, where he reasonably expects that he would be able to discharge his obligations —
 - (a) if the period of the contract were extended and the amount of each payment due under the contract accordingly reduced (without a change being made to the annual percentage rate);
 - (b) if the dates on which payments due under the contract during a specified period were postponed (without a change being made to the annual percentage rate); or
 - (c) if the period of the contract were extended and the dates on which payments due under the contract during a specified period were postponed (without a change being made to the annual percentage rate),apply to the credit provider for a variation of the contract.
- (2) Where a credit provider to whom application is made by a debtor under subsection (1) refuses to vary a regulated contract in accordance with the application, the debtor may apply to the Commissioner for assistance in negotiating a variation of the contract.

- (3) Where an application is made under subsection (2), the Commissioner shall seek the views of the credit provider and any mortgagee or guarantor and, after giving them a reasonable opportunity to be heard and making such other inquiries as the Commissioner thinks fit, determine whether or not to seek to arrange with the credit provider a variation of the regulated contract and, where he seeks such a variation and is unable to reach agreement with the credit provider, the Commissioner shall refer the application to the Tribunal.
 - (4) The Tribunal may, where it receives an application referred to it under subsection (3) and has given the applicant, the credit provider and any mortgagee or guarantor an opportunity to be heard, order, or refuse to order, a variation of the contract to which the application relates and, where it orders such a variation, may make such other orders as it thinks fit.
 - (5) Where an order of the Tribunal under subsection (4) is in force, a credit provider under a contract to which the order applies may apply to the Tribunal for a variation of the order.
 - (6) The Tribunal may, where it receives an application under subsection (5) make such variation of the order to which the application relates as it thinks fit or may refuse to vary the order.
 - (7) Where an application for variation of a regulated contract is referred to the Tribunal under subsection (3), the credit provider shall not institute proceedings, or exercise a right, under the contract, or a mortgage that relates to the contract, before the Tribunal has made or refused an order under subsection (4).
 - (8) An order in force under this section, including such an order as varied from time to time, has effect according to its tenor.
- Penalty: \$2 000.

Division 4 — General

75. Unauthorised fees

- (1) An agreement entered into by a credit provider whereby a debtor agrees to pay to, or on behalf of, the credit provider any costs, fees or charges incidental to, or relating to —
- (a) the provision of credit under a regulated contract;
 - (b) guaranteeing or securing repayment of any such credit; or
 - (c) negotiations for the provision of any such credit or for guaranteeing or securing repayment of any such credit,
- (other than costs, fees or charges permitted by this Act to be included as part of the amount financed under a regulated credit sale contract or a regulated loan contract or as part of the amount owing under a regulated continuing credit contract) is void.
- (2) Any amount that, notwithstanding subsection (1), is paid by a debtor to a credit provider in accordance with an agreement referred to in subsection (1) is recoverable by the debtor from the credit provider as a debt.
- (3) A credit provider shall not enter into an agreement that, by reason of subsection (1), is void.

Penalty: \$2 000.

76. Enforcement expense

- (1) A provision in a regulated contract to the effect that where the debtor makes default under the contract and the credit provider exercises a right in relation to the contract arising from the default, the debtor is, if the credit provider so determines, liable to pay to the credit provider an amount incurred or expended in the exercise of that right is void unless the provision limits the amount so payable to the reasonable amount reasonably

incurred or expended by the credit provider in the exercise of that right.

- (2) A credit provider shall not enter into a contract containing a provision that, by reason of subsection (1), is void.

Penalty: \$2 000.

- (3) Where there is a dispute between the debtor and the credit provider in relation to the liability of the debtor to pay a reasonable amount reasonably incurred or expended by the credit provider in the exercise of a right in relation to a regulated contract arising from the default of the debtor, the Tribunal, on the application of the debtor or credit provider, may determine the amount of that liability.

77. Right to revoke offer is paramount

- (1) A provision in an agreement to the effect that a person does not have a right to revoke an offer to enter into a regulated contract —

- (a) before the offer is accepted; or
- (b) in a case where, at the time of the acceptance, the person could not reasonably be expected to know that the offer had been accepted, before notice is given of the acceptance,

or that such a right is restricted or modified is void.

- (2) A credit provider shall not enter into an agreement that includes a provision that, by reason of subsection (1), is void.

Penalty: \$2 000.

78. Sufficient statement of annual percentage rate

It is sufficient compliance with the provisions of this Part that require the annual percentage rate to be stated in or in relation to a regulated contract under which the whole or any part of the credit charge is a predetermined credit charge if the annual percentage rate is —

- (a) stated as a rate greater than that required to be stated; or

- (b) stated as a rate less than that required to be stated by not more than 1 part in 50 of the rate required to be stated.

79. Sufficient statement of estimated credit charge

It is sufficient compliance with the provisions of this Part that require the estimated credit charge to be stated in or in relation to a regulated contract under which the whole or any part of the credit charge is an estimated credit charge if the estimated credit charge is —

- (a) stated as a charge less than that required to be stated; or
- (b) stated as a charge greater than that required to be stated by not more than 1 part in 100 of the charge required to be stated.

80. Discrepancy between credit charge and annual percentage rate

Where, under a credit sale contract or a loan contract, the whole of the credit charge is a pre-determined credit charge or an estimated credit charge and the amount of the credit charge stated in the contract differs from the amount determined by applying, according to the actuarial method, the annual percentage rate stated in the contract to the amount financed by an amount that exceeds 1% of the amount so stated in the contract, the liability of the debtor under the contract in respect of the credit charge is a liability —

- (a) where the amount so determined is less than the amount so stated — to pay the amount determined by applying the annual percentage rate to the unpaid balance of the amount financed; or
- (b) where the amount so determined exceeds the amount so stated — to pay the amount determined in accordance with the contract as if the annual percentage rate were the rate which, when applied to the unpaid balance of the amount financed, yields an amount equal to the amount so stated.

81. Assignment of rights by credit provider

- (1) A person —
- (a) being a credit provider, shall not assign the whole or any part of his rights as a credit provider under a regulated contract to a person other than a licensed credit provider or an exempt credit provider; and
 - (b) being a mortgagee under a mortgage relating to a regulated contract shall not, subject to subsection (2), assign the whole or any part of his rights as a mortgagee under the mortgage to a person other than a licensed credit provider or an exempt credit provider to whom he has assigned his rights under the credit contract,
- unless the assignment —
- (c) is an assignment made *bona fide* by way of security in respect of a liability incurred by the assignor; or
 - (d) is made with the consent of the Commissioner or the Tribunal.

Penalty: \$1 000.

- (2) Where a mortgage secures payment of a debt or other pecuniary obligation or the performance of any other obligation under a regulated contract and secures other moneys or the performance of any other obligation, subsection (1) does not apply to or in respect of an assignment of rights under the mortgage that do not relate to a regulated contract.
- (3) Subject to this section, where a credit provider or a mortgagee assigns his rights as a credit provider under a regulated contract or as a mortgagee under a regulated mortgage —
- (a) the debtor or mortgagor and, where there is a guarantee in relation to the contract or mortgage, the guarantor, have under the contract, mortgage or guarantee the same obligations to the assignee as they would have had to the credit provider or mortgagee if the assignment had not been made; and

- (b) subject to subsection (4), the debtor or mortgagor and any such guarantor have and may exercise the same rights in respect of the contract, mortgage or guarantee against the assignee as they have and may exercise against the credit provider or mortgagee.
- (4) An assignee under an assignment to which subsection (1) applies of the rights of a credit provider under a regulated contract or of a mortgagee under a mortgage relating to a regulated contract is not liable to the debtor or mortgagor under the contract or mortgage in respect of an amount exceeding the amount due to the assignee under the regulated contract at the date of the assignment.
- (5) The rights of a debtor, mortgagor or guarantor referred to in subsection (3)(b) in respect of a regulated contract or a regulated mortgage may not be exercised otherwise than by way of a defence or set off in respect of a claim by the assignee under the regulated contract.
- (6) Subject to section 85 —
 - (a) where a credit provider assigns the whole or any part of his rights under a credit sale contract or a loan contract otherwise than in accordance with subsection (1), the debtor is not liable to pay the amount of the credit charge under the contract;
 - (b) where a credit provider assigns the whole or any part of his rights under a regulated continuing credit contract otherwise than in accordance with subsection (1), the debtor is not liable to pay the amount of the credit charge for the billing cycle during which the assignment occurred; and
 - (c) where a credit provider assigns the whole or any part of his rights as mortgagee under a regulated mortgage otherwise than in accordance with subsection (1) —
 - (i) where the mortgage relates to a credit sale contract or a loan contract, the debtor is not

liable to pay the amount of the credit charge under the contract; and

- (ii) where the mortgage relates to a regulated continuing credit contract, the debtor is not liable to pay the amount of the credit charge for the billing cycle during which the assignment is made.

- (7) This section does not apply to or in respect of an assignment that occurs by operation of law.

82. Loan to be in money or equivalent

Subject to this Act, a credit provider shall not under a regulated loan contract make a payment of an amount to or in accordance with the instructions of the debtor unless the payment —

- (a) is in cash or money's worth; and
- (b) is made in full without deduction of an amount included in the credit charge in respect of the contract.

Penalty: \$1 000.

83. Application of payments

A credit provider shall, unless the credit provider and debtor otherwise agree, apply payments received under a regulated contract —

- (a) in the case of a regulated credit sale contract or a regulated loan contract —
 - (i) first in payment of default charges (if any);
 - (ii) secondly in payment of the accrued credit charge;
 - (iii) thirdly in payment of deferral charges (if any);
 - (iv) fourthly in payment of the outstanding balance of the amount financed; and
 - (v) fifthly in payment of enforcement expenses;
- and

- (b) in the case of a regulated continuing credit contract —
 - (i) first in payment of the credit charge; and
 - (ii) secondly in payment of any other amount owed under the contract by the debtor to the credit provider.

84. Appropriation of payments between contracts

A debtor who is liable to make payments in respect of 2 or more regulated contracts to the same credit provider shall, notwithstanding any agreement to the contrary, be entitled, on making a payment in respect of the contracts which is not sufficient to discharge the total amount then due under all the contracts, to require the credit provider to appropriate the amount so paid in or towards the satisfaction of the amount due under any one or more of the contracts, or in or towards the satisfaction of the amount due under any 2 or more of the contracts, in such proportions as the debtor specifies and, if the debtor fails to make such an appropriation, the payment shall, unless the debtor and the credit provider otherwise agree, be appropriated in or towards the satisfaction of the amounts due under the respective contracts in the order in which the contracts were entered into.

85. Tribunal may reduce credit provider's loss

- (1) Where, by reason of a contravention of or a failure to comply with this Act or the *Credit (Administration) Act 1984*, by a credit provider, a debtor is not liable to pay to the credit provider under a regulated contract an amount that, but for the contravention or failure, he would have been liable to pay under the contract, the credit provider may apply to the Tribunal in the prescribed form for an order increasing the liability of the debtor to the credit provider.
- (2) Where an application is made to the Tribunal under this section in relation to a regulated contract, the Tribunal, after consideration of the relevant circumstances, including the

conduct of the credit provider and the debtor and loss or damage (if any) suffered by the debtor —

- (a) in the case of a credit sale contract or a loan contract and a contravention of or failure to comply with the *Credit (Administration) Act 1984* —
 - (i) may, where it is satisfied that the contravention or failure has occurred and ought reasonably to be excused — determine that the debtor is liable to pay the amount financed under the contract and the whole or such part of the credit charge as it determines; or
 - (ii) may, where it is satisfied that the contravention or failure has occurred but ought not to be excused — determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part as it determines of the amount financed under the contract and the whole or such part of the credit charge as it determines;
- (b) in the case of a regulated continuing credit contract and a contravention of or failure to comply with the *Credit (Administration) Act 1984* —
 - (i) may, where it is satisfied that the contravention or failure has occurred and ought reasonably to be excused — determine that the debtor is liable to pay the whole or such part of the amount owing or the credit charge as it determines; or
 - (ii) may, where it is satisfied that the contravention or failure has occurred but ought not to be excused — determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part of the amount owing or the credit charge as it determines;

and

- (c) in the case of a regulated contract and a contravention of or failure to comply with this Act by a credit provider may, where it is satisfied that the contravention or failure has occurred — determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part of the credit charge under the contract as it determines.
- (3) Where, under this section, the Tribunal determines the amount that a debtor is liable to pay after a contravention of or failure to comply with this Act or the *Credit (Administration) Act 1984*, by a credit provider, the Tribunal shall ensure that, in determining that amount, the amount that the debtor would have been liable to pay but for the contravention or failure is reduced by an amount that is not less than the amount of loss or damage (if any) suffered by the debtor as a result of the contravention or failure.
- (4) Where, under this section, the Tribunal determines the liability of the debtor under a regulated contract in consequence of a contravention of or a failure to comply with this Act or the *Credit (Administration) Act 1984*, by the credit provider, the liability of the debtor to the credit provider under the contract is the liability determined by the Tribunal instead of the liability that, but for the determination, the debtor would have had to the credit provider under the contract.
- (4a) The Tribunal may, when making a determination under this section of the amount that a debtor is liable to pay, give the parties to the proceedings such directions as the Tribunal considers appropriate relating to the payment of the amount owed by the debtor or by the credit provider as a result of the determination.
- (4b) A determination made by the Tribunal under this section of the liability of a debtor has effect only in respect of the contravention or failure to which the determination relates.

- (4c) This section, as amended by section 9 of the *Credit Amendment Act 1992*, applies to proceedings in the Tribunal commenced before as well as after the coming into operation of that section.
- (5) Nothing in this section affects the liability of a person to be convicted of an offence under this Act or the *Credit (Administration) Act 1984*.
[Section 85 amended by No. 58 of 1992 s. 8 and 9.]

85A. Application for declaration

- (1) Where a debtor is not liable to pay —
- (a) the credit charge under a regulated contract by virtue of section 42; or
 - (b) a portion of the credit charge under a regulated continuing credit contract by virtue of section 67,
- the debtor or the Commissioner may apply to the Tribunal for a declaration to that effect in relation to the contract in question and the Tribunal may make such a declaration.
- (2) Any declaration made under subsection (1) is subject to any determination made under section 85, 86 or 86A that affects the regulated contract the subject of the declaration.
[Section 85A inserted by No. 47 of 1989 s. 4.]

85B. Stay of civil penalty pending Tribunal's decision

- (1) When an application is made for a determination under section 85, the civil penalty to which the application relates is stayed pending the disposal of the application by the Tribunal.
- (2) For the purposes of staying any such civil penalty, the application operates as an interim determination of the Tribunal in the terms sought by the application pending its disposal by the Tribunal.
- (3) Until the interim determination ceases to have effect, the credit provider must not, without the consent of the Tribunal, in

relation to an amount in excess of the amount financed under the regulated contract concerned —

- (a) take enforcement action against the debtor; or
 - (b) enter into an agreement under section 69 for the refinancing of the contract; or
 - (c) make a default charge under section 72.
- (4) When the application is disposed of by the Tribunal, the interim determination under this section ceases to have effect and (unless a determination in the same terms is made by the Tribunal) is taken never to have had effect.
- (5) The Tribunal may, before disposing of the application, give the applicant such directions as it considers appropriate to protect the interests of the debtors concerned, including directions relating to the payment of all or any of the amounts concerned in a trust account.
- (6) This section does not apply to an application for a determination if —
 - (a) the determination cannot be made by the Tribunal under section 85; or
 - (b) the Tribunal excludes the application from the operation of this section because a direction under subsection (5) has not been complied with or for any other reason.
- (7) For the purposes of this section, a reference to the disposal of an application includes a reference to the withdrawal of the application by the applicant.
- (8) In this section, **civil penalty** means a penalty which is imposed on a credit provider by the operation of section 42, 67 or 81 or of the *Credit (Administration) Act 1984* and under which the debtor is not liable to pay to the credit provider an amount otherwise payable under a regulated contract.

[Section 85B inserted by No. 58 of 1992 s. 10; amended by No. 55 of 2004 s. 174.]

86. General order varying civil penalty

- (1) Where a credit provider has contravened or failed to comply with this Act or the *Credit (Administration) Act 1984*, in respect of 2 or more regulated contracts, he may apply to the Tribunal for a determination under section 85 and the Tribunal, without affecting the liability of a person to be convicted of an offence under this Act or the *Credit (Administration) Act 1984* —
 - (a) may make a determination under section 85 in relation to one or more specified regulated contracts;
 - (b) may make a determination under section 85 in relation to all regulated contracts entered into by the credit provider during a specified period; and
 - (c) may make a determination under section 85 in relation to all regulated contracts of a specified class entered into by the credit provider during a specified period (for example, all regulated contracts entered into during a specified period which are affected by a specified contravention or failure).
- (2) The debtors affected by an application under this section need not be identified in the application but the Tribunal may (if it considers that it is appropriate to do so) decline to deal with the application unless the application is amended to identify the debtors.
- (3) The Tribunal may authorise notice of an application under this section to be given by the publication of the notice in a newspaper circulating within the State or Australia if the Tribunal considers that (because of the number of debtors and other circumstances of the case) it is impracticable to give notice to each debtor and is otherwise appropriate so to give notice of that application.
- (4) If the debtors affected by any such application are not identified in the notice, the following information must be included in the notice —
 - (a) the name of the credit provider;

- (b) a general description of the regulated contracts concerned;
 - (c) the period during which the contracts were entered into; and
 - (d) the nature of the contraventions or failures to which the application relates.
- (5) Each debtor who may be affected by any such application is taken to have been personally served with a notice so published and, despite anything to the contrary in the *State Administrative Tribunal Act 2004* or the rules of the Tribunal, is not entitled to any other notice of the application.

[Section 86 amended by No. 58 of 1992 s. 11; No. 55 of 2004 s. 175.]

86A. Order in respect of minor errors etc.

- (1) If on application made by a credit provider the Tribunal is of the opinion that —
- (a) any failure to include in any regulated contract any matter; or
 - (b) any error or misdescription in any regulated contract of any matter,
- required by this Act is of a minor nature and unlikely to mislead, deceive, or materially prejudice or disadvantage any debtor, the Tribunal may order that the contract shall be deemed to be a contract to which this section applies.
- (2) An application under subsection (1) shall specify the details and extent of the breach or breaches in any contract the subject of the application.
- (3) A contract that is the subject of an order under subsection (1) shall, to the extent of the matters specified in the order, be deemed to have complied with this Act as from the date of such contract.

- (4) The Tribunal may make an order under subsection (1) in relation to one or more specified regulated contracts.
- (5) Where an application is made under subsection (1) the applicant shall publish in a newspaper circulating throughout the State notice of the application as approved by the Tribunal.
- (6) Nothing in this section —
 - (a) prevents a credit provider from making a subsequent application under section 85 or 86 in relation to any contract the subject of an application under this section;
 - (b) affects the liability of a person to be convicted of an offence under this Act or the *Credit (Administration) Act 1984*.

[Section 86A inserted by No. 47 of 1989 s. 5.]

87. Effect of civil penalty in relation to future liability

Where under this Act the liability of a debtor to a credit provider is reduced —

- (a) the amount of the reduction shall be set off against amounts that, but for the reduction, would become payable by the debtor to the credit provider; and
- (b) where the amount of the reduction exceeds the amount that the debtor, but for the reduction, would have become liable to pay to the credit provider, the amount of the excess is a debt payable by the credit provider to the debtor.

88. Relief for minor errors

In a prosecution for a contravention of section 3(4), 43, 59, 61 or 64 the court may, without proceeding to conviction, dismiss the charge if it is satisfied —

- (a) that the contravention was unlikely to deceive or operate to the disadvantage of a party to the relevant contract; and

- (b) in the case of a contravention of section 3(4), 59 or 64 — that the required notice was given within a reasonable time after it should have been given in order to comply with this Act.

Part IV — Regulated mortgages

Division 1 — General

89. Application of Part

In this Part, a reference to a mortgage is reference to a mortgage given by a person other than a body corporate to the extent that it secures the payment of a debt or other pecuniary obligation, or the performance of any other obligation, under a regulated contract.

90. Obligations under mortgage not to exceed obligations under contract

- (1) A provision in a mortgage relating to a regulated contract that requires or purports to require or secures or purports to secure payment or performance under the contract by the debtor or by a guarantor of the debtor of a debt or other pecuniary obligation or any other obligation of an amount or to an extent that exceeds the payment or performance —
- (a) required by the contract or the contract of guarantee; or
 - (b) permitted by this Act,

is void.

- (2) A mortgagee shall not enter into a mortgage that includes a provision that, by reason of subsection (1), is void.

Penalty: \$2 000.

91. Mortgage of goods to be in writing, and to operate as security only

- (1) Subject to subsection (2), a mortgagee shall not enter into a mortgage that is not in writing if the property the subject of the mortgage is, or includes, goods.

Penalty: \$1 000.

- (2) Subsection (1) is not contravened if —
- (a) the mortgage was entered into by the acceptance of an offer in writing signed by the mortgagor to the mortgagee to enter into the mortgage;
 - (b) the mortgage arose pursuant to an agreement in writing or an agreement made by the acceptance of an offer in writing signed by the mortgagor to the mortgagee; or
 - (c) the mortgagee lawfully had possession of the goods that are subject to the mortgage before the mortgage was entered into otherwise than by reason only of being the supplier of the goods.

[(3) deleted]

[Section 91 amended by No. 8 of 2009 s. 44.]

92. Debtor entitled to copy of mortgage

Where a mortgage is entered into in relation to a regulated contract, the credit provider shall, within 14 days after the mortgage is entered into, give to the debtor a copy of the mortgage

Penalty: \$1 000.

93. Enforcement expense

- (1) A provision in a mortgage to the effect that where the mortgagor makes default under the mortgage and the mortgagee exercises a right in relation to the mortgage arising from the default, the mortgagor is, if the mortgagee so determines, liable to pay to the mortgagee an amount incurred or expended in the exercise of that right is void unless the provision limits the amount so payable to the reasonable amount reasonably incurred or expended by the mortgagee in the exercise of that right.
- (2) A mortgagee shall not enter into a mortgage containing a provision that, by reason of subsection (1), is void.

Penalty: \$2 000.

- (3) Where there is a dispute between the mortgagee and the mortgagor in relation to the liability of the mortgagor to pay a reasonable amount reasonably incurred or expended by the mortgagee in the exercise of a right in relation to a mortgage arising from the default of the mortgagor, the Tribunal may, on the application of the mortgagor or mortgagee, determine the amount of that liability.

94. Provision for entry of premises void in certain circumstances

- (1) A provision in a mortgage to the effect that the mortgagee or a person acting on his behalf is authorised to enter upon premises for the purpose of taking possession of goods subject to the mortgage otherwise than in accordance with an order of a court, or is relieved from liability for such an entry, is void.
- (2) A mortgagee shall not enter into a mortgage that includes a provision that, by reason of subsection (1), is void.
Penalty: \$2 000.

95. Order of court required before entry for repossession

- (1) Subject to subsection (2), a mortgagee shall not enter or authorise a person on his behalf to enter, and a person so authorised shall not enter, upon premises for the purpose of taking possession of goods subject to a mortgage otherwise than in accordance with an order of a court.
Penalty: \$2 000.
- (2) Subsection (1) does not apply where the mortgagor was aware of the provisions of this section and, before the entry was made, gave his consent to the entry upon the premises for the purpose of taking possession of the goods.
- (3) The onus of proving that, by reason of subsection (2), subsection (1) does not apply is on the person who makes the entry or gives the authority.

- (4) A document that is signed by a mortgagor and is to the effect that the mortgagor was aware of the provisions of this section and gave his consent to an entry referred to in subsection (1) is not of itself evidence of that awareness and consent.

96. Disclosure of location of goods

- (1) A mortgagee may at any time by notice in writing served on the mortgagor require the mortgagor to state in writing where goods subject to the mortgage are or, if the goods are not in the possession of the mortgagor, the name and address of the person to whom the mortgagor delivered the goods or the circumstances under which the mortgagor lost possession of them.
- (2) A mortgagor shall not —
- (a) fail to give to the mortgagee within 14 days after receiving a notice under subsection (1) a statement that complies with the requirement in the notice; or
 - (b) give a statement under subsection (1) containing information which to his knowledge is false.

Penalty: \$1 000.

97. Time and place for delivery of goods

A court may, on the application of the mortgagee or mortgagor, determine a time and place at which goods subject to a mortgage may be delivered by the mortgagor to the mortgagee.

98. Blanket securities over property or assets prohibited

- (1) Subject to subsection (2), a provision in a mortgage to the effect that the mortgagor charges all his property or assets or all his property and assets and that does not specify the property or assets is void.
- (2) Subsection (1) does not apply to a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him.

- (3) A mortgagee shall not enter into a mortgage that includes a provision that, by reason of subsection (1), is void.
Penalty: \$2 000.

99. Restriction on mortgage of future property

- (1) Subject to subsection (2), a provision in a mortgage to the effect that the mortgagor creates or agrees to create a mortgage over or in respect of property that is to be, or may be, acquired by him after the mortgage is entered into is void.
- (2) Subsection (1) does not apply to or in respect of —
- (a) a provision in a mortgage relating to property that is to be, or may be, acquired by the mortgagor with, or partly with, credit provided under the regulated contract to which the mortgage relates;
 - (b) a provision in a mortgage relating to property (whether or not ascertained) described or identified in the mortgage;
 - (c) a provision in a mortgage to the effect that goods subject to the mortgage include goods acquired by the mortgagor in replacement for, or as additions or accessories to, other goods that are subject to the mortgage; or
 - (d) a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him.
- (3) A mortgagee shall not enter into a mortgage that includes a provision that, by reason of subsection (1), is void.
Penalty: \$2 000.

100. Mortgages and continuing credit contracts

- (1) A provision in a regulated continuing credit contract to the effect that goods supplied under that or any other contract are,

as a result of the provision or of entering into the regulated continuing credit contract, subject to a mortgage is void.

- (2) A provision in a mortgage to the effect that goods supplied from time to time under a regulated continuing credit contract are subject to the mortgage is void.
- (3) Nothing in subsection (1) or (2) makes void a provision in a mortgage in respect of specified goods securing payment of a debt under a regulated continuing credit contract.
- (4) A credit provider shall not enter into a regulated continuing credit contract or a mortgage that includes a provision that, by reason of subsection (1) or (2), is void.

Penalty: \$2 000.

101. Fraudulent sale or disposal of property

A person shall not, by the assignment, disposal or sale or an attempted assignment, disposal or sale of an interest in property that is subject to a mortgage or by the removal of any part of the property that is goods or by any other means defraud or attempt to defraud the mortgagee.

Penalty: \$5 000 or imprisonment for 1 year.

Division 2 — Assignment, etc., of property

102. Assignment by mortgagor

- (1) A mortgagor shall not, except as provided in this section, assign or dispose of property subject to a mortgage without the consent of the mortgagee.
Penalty: \$1 000.
- (2) The consent of the mortgagee to an assignment or disposal of property referred to in subsection (1) shall not be unreasonably withheld and, except as provided in subsection (3), no payment or consideration shall be required by the mortgagee for his consent.

- (3) As a condition of granting consent to an assignment or disposal of property subject to a mortgage, the mortgagee may require any breaches of the regulated contract or contracts to which the mortgage relates and of the mortgage to be remedied and may require the mortgagor and the assignee —
- (a) to execute and deliver to the mortgagee an agreement relating to the assignment or disposal in a form approved by the mortgagee under which, without prejudicing or affecting the liability of the mortgagor, the assignee agrees with the mortgagee —
 - (i) to be personally liable to pay the amounts due or that become due under the mortgage; and
 - (ii) to perform and observe all other requirements and conditions of the mortgage;and
 - (b) to pay the reasonable costs (if any) incurred by the mortgagee in respect of —
 - [(i) deleted]*
 - (ii) fees payable to a duly qualified legal practitioner (not being the mortgagee or an employee of the mortgagee) authorised to prepare documents, in respect of or relating to the assignment agreement.
- (4) Where, in the opinion of a debtor or mortgagor, a mortgagee has unreasonably withheld consent to an assignment or disposal of property subject to a mortgage, the debtor or mortgagor may refer the matter to the Commissioner who, if he is of the same opinion and has sought but not obtained that consent, may apply to the Tribunal for a determination that the consent has been unreasonably withheld.
- (5) Where, on an application under subsection (4), the Tribunal determines that consent to an assignment or disposal has been unreasonably withheld, the assignment or disposal may be effected without that consent.

- (6) Where a mortgage relates to goods for the time being forming the whole or part of the trading stock of a business carried on by the mortgagor, this section does not apply to or in respect of an assignment or disposal of any such goods.
- (7) This section does not apply to or in respect of an assignment that occurs by operation of law.
- (8) An agreement to assign goods the subject of a mortgage does not operate to create a new mortgage relating to the goods.

[Section 102 amended by No. 12 of 2008 s. 52.]

Part V — Termination and enforcement of regulated contracts and regulated mortgages

103. Calculation of net balance due

- (1) For the purposes of this Part, a reference to the net balance due to a credit provider at a particular time —
 - (a) in relation to a regulated credit sale contract or a regulated loan contract, is a reference to the amount that, at that time, is the sum of —
 - (i) the amount financed;
 - (ii) the accrued credit charge;
 - (iii) the deferral charges (if any) charged in accordance with Part III;
 - (iv) the default charges (if any) charged in accordance with Part III; and
 - (v) the enforcement expenses (if any),less any payments received by the credit provider in relation to the contract and (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges; and
 - (b) in relation to a regulated continuing credit contract, is a reference to the amount owed under the contract by the debtor to the credit provider at that time less (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges.
- (2) For the purposes of this Part, a reference to the outstanding balance of an amount, charge or expense is a reference to the part of that amount, charge or expense that, at a particular time, is owed but unpaid, whether or not the whole or any part of that amount is due.

s. 104

104. Statement of net balance due

- (1) Where a credit provider receives a request in writing from a debtor under a regulated contract, or from a guarantor under a contract of guarantee that relates to that regulated contract, for a statement of the net balance due to the credit provider under the regulated contract, the credit provider shall, within 7 days after receiving the request, give to the debtor or guarantor a statement in writing —
- (a) stating the net balance due to the credit provider on the business day that last preceded the giving of the statement and, where the debtor or guarantor has also requested particulars of the calculation of that net balance, those particulars; and
 - (b) where the amount of the net balance increases until paid, stating that the amount so increases.

Penalty: \$1 000.

- (2) A credit provider is not required to comply with a request under subsection (1) —
- (a) by a debtor — if he has, within the period of 3 months that last preceded receipt of the request, complied with an earlier such request by the debtor in relation to the contract to which the later request relates; or
 - (b) by a guarantor — if he has, within the period of 3 months that last preceded receipt of the request, complied with an earlier such request by the guarantor in relation to the contract to which the later request relates.
- (3) Where, within 7 days after making a request referred to in subsection (1), a debtor or guarantor has not received the statement requested, he may apply to the Tribunal for a determination of the amount that, for the purposes of this Part, is the net balance due to which the request relates.
- (4) An amount determined by the Tribunal on an application under subsection (3) by a debtor or guarantor under a regulated

contract shall, for the purposes of this Part, be deemed to be the net balance due to the credit provider under the contract.

105. Early termination of contract

The debtor under a regulated contract may discharge his obligations under the contract by paying or tendering to the credit provider the net balance due to the credit provider at the time of payment or tender.

106. Mortgagor may compel sale of goods

- (1) Subject to this section, the mortgagor under a regulated mortgage may, unless the mortgage is also security for a debt or obligation arising otherwise than in relation to a regulated contract, by notice in writing given to the mortgagee, require the mortgagee to sell goods that are subject to the mortgage.
- (2) A notice given under subsection (1) is of no force or effect unless —
 - (a) the goods to which the notice relates are, when the notice is given, in the possession of the mortgagee; or
 - (b) the mortgagor delivers the goods to the mortgagee in accordance with subsection (3) not later than 7 days after the giving of the notice or such longer time as is agreed upon between the mortgagee and the mortgagor or as a court permits on application by the mortgagee or the mortgagor.
- (3) A mortgagor who gives a notice under subsection (1) may, unless the goods to which the notice relates are in the possession of the mortgagee, deliver the goods to the mortgagee during ordinary business hours at a place at which the mortgagee ordinarily carries on business or at a time and place agreed upon by the mortgagee and the mortgagor or, if the mortgagee and mortgagor fail to agree on a time and place, at a time and place determined by a court on application by the mortgagee or the mortgagor.

s. 107

(4) Where —

- (a) a notice has been given to a mortgagee under this section; and
- (b) any goods to which the notice relates are in the possession of the mortgagee or have been delivered to him in accordance with subsection (3),

the mortgagee shall, as soon as is reasonable and practicable in the circumstances, sell the goods for the best price reasonably obtainable and shall account to the mortgagor as provided by section 114.

Penalty: \$1 000.

107. Notice required before rights exercised

(1) A credit provider shall not —

- (a) institute proceedings against a debtor in respect of a matter arising under a regulated contract by reason of —
 - (i) a default by the debtor;
 - (ii) a failure by the debtor to observe provisions of the contract, being a failure that does not constitute a breach of the contract; or
 - (iii) the exercise of an option by the credit provider;or
 - (b) exercise, or purport to exercise, a right under a regulated contract arising by reason of —
 - (i) a default by the debtor;
 - (ii) a failure by the debtor to observe provisions of the contract, being a failure that does not constitute a breach of the contract;
 - (iii) the exercise of an option by the credit provider;or
 - (iv) any other fact, act or thing,
- by reason of which the whole or a part of the
outstanding balance of the amount financed or of the

amount owed has become due on a date earlier than the date on which it would have become due if the default, failure, exercise, fact, act or thing had not occurred or been done,

unless —

- (c) the debtor is in default under the contract;
 - (d) the credit provider has served on the debtor and, where there is a guarantor in respect of the contract, on the guarantor, a notice in accordance with subsection (3); and
 - (e) the notice referred to in paragraph (d) has not been complied with in accordance with subsection (4).
- (2) A mortgagee shall not institute proceedings in respect of a matter arising under a regulated mortgage or exercise, or purport to exercise, a right under a regulated mortgage unless —
- (a) the debtor under the regulated contract to which the mortgage relates is in default under the contract;
 - (b) the mortgagee has served on the mortgagor and, where there is a guarantor in respect of the mortgage, on the guarantor, a notice in accordance with subsection (3); and
 - (c) the notice referred to in paragraph (b) has not been complied with in accordance with subsection (4).
- (3) A notice referred to in subsection (1)(d) or (2)(b) is a notice —
- (a) specifying the default, as the case may be —
 - (i) of the debtor under the regulated contract; or
 - (ii) of the debtor under the regulated contract to which the regulated mortgage relates;
 - (b) stating the intention of the credit provider or mortgagee to exercise rights and remedies under the regulated contract or regulated mortgage unless, within a period of

s. 107

one month after service of the notice (or where a longer period is specified in the notice, that longer period) —

- (i) the default is remedied (except in so far as the default relates to a requirement to do a thing at or before a certain time or within a certain period, or is a default in payment of an amount that became payable earlier than would have been the case if there had been no other default);
 - (ii) the amounts that would be due to the credit provider under the contract if the default, failure, exercise, fact, act or thing had not occurred or been done, are paid; and
 - (iii) the enforcement expenses (if any) in relation to the exercise by the credit provider or mortgagee of any rights arising from the default of the debtor are paid;
 - (c) stating, if the notice refers to payment of amounts due under the contract that increase until paid, that the amount so increase; and
 - (d) containing the prescribed information.
- (4) The notice referred to in subsection (1)(d) or (2)(b) is complied with if within the period of one month after service of the notice (or where a longer period is specified in the notice, that longer period) the default is remedied to the extent referred to in subsection (3)(b)(i), the amounts referred to in subsection (3)(b)(ii) have been paid or tendered and the enforcement expenses referred to in subsection (3)(b)(iii) (if any) have been paid.
- (5) Where a mortgage secures payment of a debt or other pecuniary obligation or the performance of any other obligation under a regulated contract and secures payment of other moneys or the performance of any other obligation, subsection (2) does not apply to or in respect of the institution of proceedings, or the exercise, or purported exercise, of a right under the mortgage,

arising otherwise than by reason of a default of the debtor under the regulated contract.

- (6) Subsections (1) and (2) do not apply where —
- (a) in relation to a regulated contract, the credit provider believes on reasonable grounds that he was induced by fraudulent misrepresentation on the part of the debtor to enter into the contract;
 - (b) in relation to a regulated mortgage, the mortgagee believes on reasonable grounds —
 - (i) that he was induced by fraudulent misrepresentation on the part of the mortgagor to enter into the mortgage;
 - (ii) in the case of the exercise of a right to take possession of goods, that the goods will be or have been removed, concealed, damaged or disposed of by the mortgagor in breach of the mortgage; or
 - (iii) in the case of the exercise of a right under the mortgage in respect of property other than goods, that the property has been, or will be, damaged or prejudiced by the mortgagor in breach of the mortgage;
- or
- (c) the credit provider or mortgagee has, after making reasonable efforts to locate the debtor or mortgagor, been unable to do so.
- (7) The onus of proving that, by reason of subsection (6), subsection (1) or (2) does not apply is on the credit provider or mortgagee.
- (8) Where a credit provider or mortgagee fails to comply with subsection (1) or (2), as the case may be, a court may, on the application of the debtor or mortgagor, order the credit provider

s. 108

or mortgagee, as the case may be, to compensate the debtor or mortgagor for any loss suffered by him as a result of that failure.

Penalty: \$2 000.

108. Proceedings prohibited where breach remedied

Where a credit provider or mortgagee serves a notice referred to in section 107 on a debtor in relation to a regulated contract or on a mortgagor in relation to a regulated mortgage and the notice is complied with in accordance with section 107(4), the credit provider or mortgagee shall not, in relation to the default specified in the notice, institute proceedings or exercise, or purport to exercise, a right under the contract or mortgage or a contract of guarantee that relates to the contract.

Penalty: \$2 000.

109. Limit on amount recoverable

A credit provider who institutes proceedings or exercises a right referred to in section 107(1) in respect of a regulated contract is not entitled to recover from the debtor an amount that exceeds the net balance due to the credit provider at the time of recovery.

110. Restriction on exercise of powers

- (1) A mortgagee shall not, except with the consent of the Tribunal, take possession (otherwise than under section 106) of goods subject to a regulated mortgage or otherwise exercise his powers under such a mortgage in relation to property other than if the outstanding balance of the amount financed under the contract to which the mortgage relates is less than one-quarter of the total amount financed.

Penalty: \$2 000.

- (2) Subsection (1) does not apply where the mortgagee believes on reasonable grounds that the mortgagor has removed, concealed or damaged the property or attempted to remove, conceal, damage, sell, dispose of or part with possession of the property.

- (3) The onus of proving that, by reason of subsection (2), subsection (1) does not apply, is on the mortgagee.

111. Court may order delivery of goods

- (1) A court may, on the application of the mortgagee under a regulated mortgage and upon being satisfied —
- (a) that the mortgagee is entitled to take possession of goods subject to the mortgage; and
 - (b) that the mortgagor or another person in possession of the goods has without just cause refused or failed to deliver the goods after service of a notice under section 107,

order the mortgagor or other person in possession of the goods to deliver the goods to the mortgagee at or before a time specified in the order at a place so specified.

- (2) A person to whom an order made under subsection (1) applies shall comply with the order.

Penalty: \$1 000.

112. Taking possession of goods by mortgagee

- (1) Where the mortgagee takes possession (otherwise than under section 106) of goods subject to a regulated mortgage —
- (a) he shall not, without the consent in writing of the mortgagor given without inducement by the mortgagee, or the authority of a court, sell or otherwise dispose of or part with possession of the goods, or any of the goods, until the expiration of 21 days after the date of service on the mortgagor of a notice in the form prescribed for the purposes of this section relating to rights of the mortgagor in relation to the goods and specifying the estimated value of the goods; and
 - (b) where the mortgagor or the Commissioner has made application to a court in relation to the taking of possession of goods by the mortgagee or where the Commissioner has referred to the Tribunal an

s. 113

application by the mortgagor for a variation under section 74(3) or a postponement under section 116(4), the mortgagee shall not sell or otherwise dispose of or part with the possession of the goods or any of the goods —

- (i) before the court, or as the case may be, the Tribunal, has determined the matter;
- (ii) in contravention of a determination by the court or, as the case may be, the Tribunal; or
- (iii) where a determination of the court or the Tribunal is made against which an appeal may lie — until the time within which an appeal may be made has expired and an appeal has not been made or, where an appeal is made, until the appeal is withdrawn or has been determined in favour of the mortgagee.

Penalty: \$2 000.

- (2) Subject to section 114, a mortgagee who (otherwise than under section 106) takes possession of goods subject to a regulated mortgage shall, if the mortgagor requires him so to do by notice in writing served on the mortgagee before he sells or otherwise disposes of or parts with possession of the goods, offer the goods for sale to a person introduced by the mortgagor —

- (a) except as provided by paragraph (b) — for an amount equal to the estimated value specified in the notice under subsection (1)(a); or
- (b) where the mortgagee claims to be able to sell the goods for a specified amount that is greater than the amount referred to in paragraph (a) — for that specified greater amount.

Penalty: \$1 000.

113. Right of mortgagor to redeem goods

- (1) Where a mortgagee takes possession of goods subject to a regulated mortgage, the mortgagor may redeem the goods by discharging his obligations under the mortgage in accordance with subsection (2).
- (2) A mortgagor may exercise his right under subsection (1) to redeem goods subject to a mortgage by paying or tendering at any time before foreclosure or sale by the mortgagee
 - (a) where the mortgage relates to one or more regulated contracts — the net balance within the meaning of section 103 due to the credit provider under each contract at the time of payment or tender; and
 - (b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract, the amount payable to that person in respect of that debt or obligation at the time of payment or tender,

or the amount payable under and secured by the mortgage, whichever is the lesser, at the time of payment or tender.

- (3) Where a mortgagee takes possession of goods subject to a regulated mortgage and, at any time before foreclosure or sale by the mortgagee —
 - (a) where the mortgage relates to one or more regulated contracts under which the debtor is in default —
 - (i) the default under each such contract is remedied;
 - (ii) the amounts that would be due to the credit provider under each such contract if the default had not occurred, are paid; and
 - (iii) the enforcement expenses (if any) in relation to the exercise of the right to take possession of the goods are paid;
- and

s. 114

- (b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract, the amounts payable to that person in respect of that debt or obligation at the time of payment, are paid,
the mortgagee shall forthwith return the goods to the mortgagor.
- (4) Where a mortgagee returns goods to a mortgagor by reason of his compliance with subsection (3) —
 - (a) the goods are received and held by the mortgagor subject to the mortgage; and
 - (b) the mortgage and any contracts to which it relates continue in force as if the mortgagee's right to take possession of the goods had not arisen and had not been exercised.
- (5) In subsection (3)(a), *the default* does not include —
 - (a) a default in observance of the time at or within which a thing is required to be done; or
 - (b) a default in payment of an amount that became payable earlier than would have been the case if there had been no other default.

114. Mortgagee to account for proceeds of sale

- (1) A mortgagee exercises a power of sale in accordance with this subsection if he exercises it —
 - (a) as soon after he became entitled to exercise it as is reasonable and practicable in the circumstances; and
 - (b) so as to receive the best price reasonably obtainable.
- (2) Where a mortgage relates to one or more regulated contracts and the mortgagee sells goods subject to the mortgage otherwise than by offering the goods for sale as provided by section 112(2), the mortgagee is liable to the mortgagor —
 - (a) where the goods are sold pursuant to section 106(4) or by the mortgagee exercising a power of sale in

accordance with subsection (1) — for the amount received pursuant to the sale; or

- (b) where the goods are not sold as referred to in paragraph (a) — for the amount that, in the opinion of the court, would have been received if the goods had been sold by the mortgagee exercising a power of sale in accordance with subsection (1),

reduced by the amounts referred to in subsection (4).

- (3) Where a mortgagee offers goods for sale as provided by section 112(2), the mortgagee is liable to the mortgagor —
 - (a) where the offer is accepted — for the amount for which the goods are sold;
 - (b) where the offer is not accepted and the goods are sold by the mortgagee exercising a power of sale in accordance with subsection (1) —
 - (i) for the amount for which the goods would have been sold if the offer had been accepted; or
 - (ii) for the amount received from the sale,whichever is the greater; or
- (c) where the offer is not accepted and the goods are sold by the mortgagee exercising a power of sale otherwise than in accordance with subsection (1) —
 - (i) for the amount for which the goods would have been sold if the offer had been accepted; or
 - (ii) for the amount for which, in the opinion of the court, the goods would have been sold if the power of sale had been exercised in accordance with subsection (1),

whichever is the greater,

reduced by the amounts referred to in subsection (4).

s. 114

- (4) For the purposes of subsections (2) and (3), the amounts referred to in this subsection are —
- (a) where the goods sold were subject to a prior mortgage — the amount payable in discharge of the prior mortgage;
 - (b) where the mortgage secures the payment of a debt or other pecuniary obligation arising otherwise than under a regulated contract to which the mortgage relates — the amount payable in respect of that debt or obligation;
 - (c) an amount equal to —
 - (i) where the power of sale was exercised in accordance with subsection (1) — the net balance, or the sum of the net balances, within the meaning of section 103 due to the credit provider in respect of the regulated contract or contracts to which the mortgage related at the time of receipt of the proceeds of the sale; or
 - (ii) where the power of sale was not exercised in accordance with subsection (1) — the net balance, or the sum of the net balances, within the meaning of section 103 as was or were due at the time the mortgagee would reasonably have expected to receive the proceeds of sale if the power had been exercised in accordance with subsection (1);
 - (d) the reasonable expenses of the mortgagee incurred in selling the goods; and
 - (e) the amounts payable in successive discharge of any subsequent mortgages to which the goods were subject and of which the vendor mortgagee had notice.
- (5) The onus of proving that a power of sale was exercised in accordance with subsection (1) is on the mortgagee who exercised it.

- (6) Proceedings for the recovery of an amount due to a person in respect of the exercise of a power of sale by a mortgagee by reason of the operation of this section shall not be instituted after the expiration of 3 years after the exercise of the power.
- (7) Where the mortgagee exercises a power of sale over goods subject to a mortgage, a court may, on the application of —
 - (a) the mortgagor;
 - (b) the mortgagee under any prior mortgage to which the goods are subject; or
 - (c) the mortgagee under any subsequent mortgage to which the goods are subject and of which the vendor mortgagee has notice,

determine whether the vendor mortgagee has exercised the power of sale in accordance with subsection (1) and, where it determines that the power of sale was not so exercised, make an order requiring the vendor mortgagee to compensate the persons referred to in paragraphs (a), (b) and (c), or any one or more of them, for any loss suffered as a consequence of the power of sale not being so exercised.

115. Moratorium — farmers, etc.

- (1) Where the mortgagor under a regulated mortgage is a person whose sole or principal business is a farming undertaking and the mortgagee gives to the mortgagor notice under section 107 of his intention to exercise a right under the mortgage to take possession of goods comprising farm machinery used in connection with the farming undertaking or a commercial vehicle so used, the mortgagor may, unless the mortgagee has sold or otherwise parted with possession of the goods, apply to a court for an order under subsection (3).
- (2) Service on a mortgagee of notice of an application under subsection (1) operates —
 - (a) where the mortgagee has not taken possession of the goods to which the application relates — to suspend the

s. 115

power of the mortgagee to take possession of the goods;
or

- (b) where the mortgagee has taken possession of the goods to which the application relates but has not sold the goods or otherwise parted with possession of the goods — to suspend the power of the mortgagee to sell or otherwise part with possession of the goods,

until an order is made pursuant to the application or, as the case may be, the application is dismissed.

- (3) Where application is made for an order under this subsection and the court is satisfied that the mortgagor will have a reasonable prospect of being able to remedy the default specified in the notice under section 107 within 12 months after service of notice of the application on the mortgagee, the court may —

- (a) where, at the time the mortgagee was served with notice of the application, he had not taken possession of the goods to which the application relates — make an order suspending the power of the mortgagee to take possession of the goods (except under section 106) for such period, expiring not later than 12 months after service on the mortgagee of notice of the application, as is specified in the order; or
- (b) where, at the time the mortgagee was served with notice of the application, he had taken possession of the goods but had not sold the goods or otherwise parted with possession of the goods — make an order that the mortgagee restore the goods to the applicant and also make an order referred to in paragraph (a).

- (4) An order under subsection (3) may be made on such terms and conditions as the court thinks fit including a condition that the mortgagor pay to the mortgagee any enforcement expenses.
- (5) Where an order is made under subsection (3) and the applicant mortgagor complies with any terms and conditions of the order

that are applicable to him, the mortgagee the subject of the order shall not —

- (a) where the order is made under subsection (3)(a) — exercise the power to which the order relates during any period for which the power is suspended by the order; or
- (b) where the order is made under subsection (3)(b) — fail to comply with the order or the terms and conditions thereof that are applicable to him.

Penalty: \$2 000.

- (6) Where a mortgagee contravenes subsection (5), a court may, on the application of the mortgagor, make an order requiring the mortgagee — to compensate the mortgagor for any damage suffered by the mortgagor as a consequence of the contravention, whether or not he has been prosecuted for the contravention and without prejudice to his liability to be so prosecuted.

116. Postponement of exercise of rights

- (1) Where a credit provider or mortgagee has given notice under section 107 to a debtor or mortgagor of his intention to institute proceedings in respect of, or to exercise a right under, a regulated contract or a regulated mortgage, the debtor or mortgagor may —
 - (a) in the case of a right to take possession of goods — at any time before the expiration of the period specified in the notice under section 107(4); or
 - (b) in any other case — at any time before institution of the proceedings or exercise of the right,

negotiate with the credit provider or mortgagee a postponement of institution of the proceedings or of action to exercise the right or, where a right to take possession of goods has been exercised, a postponement of the right to sell or otherwise dispose of or part with possession of the goods.

s. 116

- (2) Where a postponement is negotiated under subsection (1) and a written statement of the conditions of the postponement is given to the debtor or mortgagor, the notice under section 107 shall, if the conditions of the postponement are complied with by the debtor or mortgagor, be deemed not to have been given.
- (3) Where a debtor or mortgagor is unable to negotiate a postponement under subsection (1), he may apply to the Commissioner for negotiation of such a postponement.
- (4) Where an application is made under subsection (3), the Commissioner shall seek the views of the credit provider or mortgagee and, after giving him a reasonable opportunity to be heard and making such other inquiries as the Commissioner thinks fit, determine whether or not to seek to negotiate the postponement to which the application relates and, where he seeks, but is unable to obtain, such a postponement, the Commissioner shall refer the application to the Tribunal.
- (5) Subsection (2) applies to and in respect of a postponement negotiated under subsection (4) in the same way as it applies to and in respect of a postponement negotiated under subsection (1).
- (6) The Tribunal may, where it receives an application referred to it under subsection (4), dismiss the application if it has determined similar issues under section 74 or may order or refuse to order the postponement to which the application relates and, where it orders a postponement, may make such other orders as it thinks fit.
- (7) Where an order under subsection (6) is in force, the credit provider or mortgagee under the contract or mortgage to which the application relates may apply to the Tribunal for a variation of the order.
- (8) The Tribunal may, where it receives an application under subsection (7), make such variation of the order to which the application relates as it thinks fit or may refuse to make such an order.

- (9) An order in force under this section, and such an order as varied from time to time, has effect according to its tenor.
- (10) Where a mortgagor commences negotiations under subsection (1) with a mortgagee after the mortgagee has taken possession of property subject to the mortgage, it is a condition of any postponement negotiated under that subsection or subsection (4) that the mortgagor pay the reasonable costs of the mortgagee incurred in taking possession of the property.
- (11) Where the Commissioner is unable to obtain a postponement under subsection (4) in relation to a regulated contract or a regulated mortgage, the credit provider or mortgagee shall not institute proceedings, or exercise a right, under the contract or mortgage before the Tribunal has under subsection (6), dismissed the application for postponement or has ordered, or refused to order, a postponement.

Penalty: \$2 000.

Part VI — Regulated contracts and regulated mortgages — General

117. Penalty for false representations etc.

- (1) A person shall not in, or in relation to, an offer to enter into a regulated contract or a regulated mortgage, make a representation that is false or misleading.
Penalty: \$1 000.
- (2) It is a defence to a prosecution of a person for an offence under subsection (1) if the person proves that when the offer was made he —
 - (a) believed on reasonable grounds that the false matter was true; or
 - (b) believed on reasonable grounds that the misleading matter was not misleading.
- (3) A supplier shall not, in or in relation to an offer by a person to a credit provider (not being the supplier) to enter into a regulated contract or a regulated mortgage, make a representation that is false or misleading by reason of the inclusion in the representation of false or misleading matter or of the omission from the representation of any material matter of which he had been informed by that person.
Penalty: \$5 000.
- (4) A supplier shall not induce, or attempt to induce, a person to make, in or in relation to an offer by that person to a credit provider (not being the supplier) to enter into a regulated contract, a representation that is false or misleading.
Penalty: \$5 000.
- (5) It is a defence to a prosecution of a supplier for an offence under subsection (3) or (4) or to a claim by a credit provider under

subsection (6) if the supplier proves that when the offer was made he —

- (a) believed on reasonable grounds that the false matter was true;
 - (b) believed on reasonable grounds that the misleading matter was not misleading;
 - (c) in the case of an omission, believed on reasonable grounds that no material matter of which he had been informed by the person by whom the offer was made had been omitted, being material matter the omission of which would make the representation false or misleading; or
 - (d) in the case of an omission, did not know that the omitted matter was material.
- (6) Where in or in relation to an offer by a person to a credit provider to enter into a regulated contract or a regulated mortgage —
- (a) a supplier makes a representation in contravention of subsection (3); and
 - (b) the credit provider suffers loss by reason of the representation,

the supplier is liable to the credit provider for the amount of the loss.

- (7) Subsection (6) —
- (a) does not affect the liability of a person to be convicted of an offence under subsection (3); and
 - (b) is in addition to all other rights of a credit provider exercisable against the supplier who made the representation in contravention of subsection (3) (whether under this Act or any other Act or law).

s. 118

118. Court may approve removal of mortgaged goods

Where under a regulated mortgage it is the duty of a mortgagor to keep goods subject to the mortgage in his possession or control at a particular place, or not to remove the goods from a particular place, a court may, on the application of the mortgagor, make an order approving the removal of the goods to some other place and that other place shall, for the purposes of the mortgage, be deemed to have been substituted for the first-mentioned place.

119. Prohibition of assignment of wages, etc.

- (1) A provision in a regulated contract or in a regulated mortgage to the effect that the debtor or mortgagor assigns or agrees to assign an amount of wages or salary or benefits under a superannuation scheme in payment of, or as security for the payment of, a debt or other pecuniary obligation or any other obligation under the contract or mortgage is void.
- (2) A credit provider or mortgagee shall not enter into a contract or mortgage that includes a provision that, by reason of subsection (1), is void.

Penalty: \$2 000.

120. Bills of exchange as security

- (1) Subject to subsection (2), a credit provider shall not take a bill of exchange, or a promissory note, as security for an amount payable by a debtor, mortgagor or guarantor under, or in relation to, a regulated contract or a regulated mortgage unless the face of the bill or note bears the prescribed notice and the notice complies with section 151.
- (2) A reference in subsection (1) to the taking of a bill of exchange or promissory note does not include a reference to the taking of a cheque dated on or before the date on which it is taken or an order addressed to a financial institution requesting payment of specified amounts at specified times to a credit provider.

- (3) Where a credit provider takes a bill of exchange or promissory note from a debtor, mortgagor or guarantor in discharge of or as security for an amount payable under, or in relation to, a regulated contract or a regulated mortgage and the payment in due course of the bill or note would result in the payment of an amount in excess of the amount for which the debtor, mortgagor or guarantor would have been liable if the bill or note had not been taken, the credit provider is liable, if the bill or note is paid, to pay to the debtor, mortgagor or guarantor the amount of the excess.

[Section 120 amended by No. 24 of 2000 s. 49.]

121. Advertisements offering credit

- (1) A person shall not publish, or cause to be published, an advertisement stating or implying that credit is available in respect of the payment for goods or services sold or supplied by him under a contract of sale to which Part II applies or that he provides credit under regulated contracts if —
- (a) the advertisement includes —
 - (i) a representation that is false, misleading or deceptive; or
 - (ii) a statement that is, or is to the effect of, a statement prescribed for the purposes of this section as a prohibited statement;
 - (b) the advertisement does not include a statement prescribed for the purposes of this section as a statement required to be included in the advertisement; or
 - (c) the advertisement includes a statement of the amount of a periodic payment in respect of the credit and does not also, in the advertisement —
 - (i) specify the amount that is the total of the amount financed and the credit charge to which that periodic payment relates;

s. 121

- (ii) describe that total as the amount repayable by those periodic payments and specify the period over which that total is payable; and
- (iii) specify the cash price of any such goods or services.

Penalty: \$5 000.

- (2) A reference in subsection (1) to a false representation includes a reference to a representation that states or implies that the rate of interest or charges payable under a credit contract is a rate other than the annual percentage rate that would be applicable to contracts of that kind.
- (3) In any proceedings for a contravention of subsection (1)(a)(i), if it is proved that the representation to which the proceedings relate was false, misleading or deceptive in a material particular, the person who published the representation, or caused it to be published, shall be deemed to have published it, or to have caused it to be published, with knowledge of its falsity, or misleading or deceptive character, as the case may be, unless he proves that, having taken all reasonable precautions against such a contravention, he had reasonable grounds to believe, and did believe, that the representation was true, and had no reason to suspect that the representation was false, misleading or deceptive.
- (4) Where —
 - (a) an advertisement is published in contravention of subsection (1);
 - (b) within 3 months after that publication, a debtor enters into a regulated contract to which, or into a regulated contract of a kind to which, the advertisement relates; and
 - (c) the debtor suffers loss by reason of entering into the contract as a result of the advertisement,the person who so published the advertisement or caused it to be published is liable to the debtor for the amount of the loss.

- (5) Subsection (4) —
- (a) does not affect the liability of a person to be convicted of an offence against this Act by reason of a contravention of subsection (1); and
 - (b) is in addition to all other rights (whether under this Act or any other Act or law) of a debtor against the person who published the advertisement or caused it to be published.
- (6) In any proceedings arising under this section —
- (a) where a name, business name, address, telephone number or post office box number specified in an advertisement is that of a person, or of the agent of a person, who —
 - (i) is the owner, whether alone or jointly with one or more other persons, of any goods;
 - (ii) is the supplier of any goods or services;
 - (iii) has an interest in goods otherwise than as an owner or has an interest in the supply of any services; or
 - (iv) provides credit under regulated contracts, being goods or services the supply of which, or credit the provision of which, the advertisement is intended or apparently intended to promote, that person or agent, as the case may be, shall be deemed, in the absence of proof to the contrary, to have caused the advertisement to be published; and
 - (b) a person who causes an advertisement to be published shall be deemed to have done so on any day on which the advertisement is published.
- (7) Proceedings for a contravention of a provision of this section or under subsection (4) do not lie against the printer, publisher or proprietor of a newspaper, or the licensee of a commercial broadcasting station or commercial television station, or the

s. 122

exhibitor of a film, or against any person acting under the authority of such a printer, publisher, proprietor, licensee or exhibitor, for the publication of a representation or statement in, or omission of a statement from, an advertisement unless —

- (a) the printer, publisher, proprietor, licensee or exhibitor was warned by the Commissioner —
 - (i) in the case of a representation referred to in subsection (1)(a)(i) — that publication of the representation, or of a representation substantially the same as that representation; or
 - (ii) in any other case — that publication or, as the case may require, omission of the statement, would be such a contravention; and
 - (b) the printer, publisher, proprietor, licensee or exhibitor, after receipt of the warning, published, or caused to be published or, as the case may be, omitted to publish, the representation or statement in an advertisement.
- (8) In this section —
- (a) **advertisement** includes, without affecting the generality of the expression, a notice, sign, label, circular and matter that is not writing but, by reason of the form or context in which it appears, conveys a message;
 - (b) a reference to the publishing of an advertisement is a reference to its publishing by any means, including publication in a newspaper or periodical, by radio, by television or in a film; and
 - (c) **licensee, commercial broadcasting station** and **commercial television station** have the same meanings as they have in the *Broadcasting and Television Act 1942*⁴ of the Commonwealth, as amended and in force for the time being.

122. Credit hawking

- (1) Subject to subsection (2), a credit provider shall not canvass, or employ a person for the purpose of canvassing, at the place of residence or business of another person with a view to inducing that other person to apply for or obtain credit under a regulated contract.
Penalty: \$5 000.
- (2) Subsection (1) does not apply to or in relation to an invitation by or on behalf of a credit provider in respect of the provision of credit for or in connection with —
 - (a) the purchase of goods of a particular kind by a supplier who deals in goods of that kind; or
 - (b) the purchase of goods or services from a supplier where the invitation and supply are made by the same person.
- (3) Where a debtor suffers loss by reason of entering into a regulated contract initiated by a person in contravention of subsection (1), the credit provider is liable to the debtor for the amount of that loss.
- (4) Subsection (3) —
 - (a) does not affect the liability of a person to be convicted of an offence against this section; and
 - (b) is in addition to all other rights of a debtor exercisable against the credit provider in relation to the contract (whether under this Act or any other Act or law).

123. Terminology in contracts, etc.

The regulations may require the use of specified descriptive terms in a regulated contract, a notice under section 59, a statement of account referred to in section 61 or any other document, or in an advertisement relating to the provision of credit or to the business of a credit provider.

s. 124

124. Contracting by agents

- (1) An agreement or arrangement to the effect that a credit provider or a mortgagee, or a person acting on behalf of, or who is associated with, a credit provider or a mortgagee —
 - (a) is authorised to enter into or to offer to enter into a regulated contract or a regulated mortgage on behalf of the debtor or mortgagor; or
 - (b) is to be treated as, or declared to be the agent of, the debtor or mortgagor in relation to entering into, or offering to enter into, a regulated contract or regulated mortgage,

is void.

- (2) A credit provider, a mortgagee or a person acting on behalf of, or associated with, a credit provider or mortgagee shall not enter into an agreement or arrangement that, by reason of subsection (1), is void.

Penalty: \$2 000.

125. Contract or mortgage not illegal, etc., by reason of offence

- (1) A regulated contract or a regulated mortgage is not illegal, void or unenforceable by reason only that the credit provider or mortgagee is guilty of an offence against this Act.
- (2) Where a credit provider or mortgagee commits an offence against this Act in relation to a regulated contract or a regulated mortgage, the debtor or mortgagor does not, by reason only of being or having been a party to the regulated contract or regulated mortgage, aid, abet, counsel or procure the commission of the offence.

126. Notices to be given to all parties

Where, under this Act, a credit provider or a mortgagee gives a notice or other document to, or serves a notice or other document on, a debtor, mortgagor or guarantor, being a debtor,

mortgagor or guarantor constituted by 2 or more persons, the credit provider or mortgagee shall be deemed not to have given the notice or other document to, or served the notice or other document on, the debtor, mortgagor or guarantor, as the case may be, unless he gives it to, or serves it on, each of the persons constituting the debtor, mortgagor or guarantor.

Part VII — Contracts of insurance

127. Insurance — regulated contracts

- (1) In this section, *condition* includes —
- (a) a condition that is express or implied, or oral or written; and
 - (b) a condition that is direct or indirect or the existence of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances,
- whether or not the condition has legal or equitable force.
- (2) A credit provider shall not, as a condition of his providing credit under a regulated contract (whether or not the condition is a term of the regulated contract) require the debtor to enter into a contract of insurance other than a contract of insurance or compulsory insurance in respect of a mortgage relating to the contract in accordance with section 128.
- Penalty: \$5 000.
- (3) A supplier shall not represent that it is a condition of the provision of credit under a regulated contract that the debtor enter into a contract of insurance other than a contract of insurance, or compulsory insurance, in respect of a mortgage relating to the contract in accordance with section 128.
- Penalty: \$5 000.
- (4) A court by which a credit provider is convicted of an offence under subsection (2) may, on the application of the debtor under the regulated contract concerned, order the credit provider to pay to the debtor an amount equal to the whole or part of any premium paid by the debtor under a contract of insurance entered into by the debtor in compliance with a condition imposed in breach of subsection (2).
- (5) A court by which a supplier is convicted of an offence under subsection (3) may, on the application of the debtor under the

regulated contract concerned, order the supplier to pay to the debtor an amount equal to the whole or part of any premium paid by the debtor under a contract of insurance entered into by the debtor pursuant to a representation referred to in subsection (3).

128. Insurance — regulated mortgages

- (1) Subject to this section, a mortgagee under a regulated mortgage —
- (a) may require the mortgagor to enter into a contract of compulsory insurance in respect of goods subject to the mortgage; and
 - (b) may require the mortgagor to enter into a contract of insurance (other than compulsory insurance) in respect of property subject to the mortgage in the names of, and for the respective rights and interests of, the mortgagee and the mortgagor against such risks as the mortgagee thinks fit,

at the expense of the mortgagor, subject to the amount financed under the regulated contract to which the mortgage relates not including any amount payable in respect of that insurance exceeding the amount payable to keep the insurance in force for a period of 12 months or the duration of the regulated contract, whichever is the lesser amount so payable.

- (2) Subsection (1) does not authorise or permit a mortgagee —
- (a) to require insurance by a particular insurer;
 - (b) to require insurance for a period, against risks or subject to terms, conditions or exceptions which the mortgagee would not reasonably require if he were to arrange the insurance at his own expense; or
 - (c) to require insurance for a period subsequent to that for which insurance is in force as referred to in subsection (1) against risks or subject to terms,

s. 129

conditions or exceptions which the mortgagee did not require in respect of the immediately preceding period.

- (3) A mortgagee shall not enter into a regulated mortgage that includes —
- (a) a condition that the mortgagor enter into a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1); or
 - (b) a condition that the mortgagor maintain in force a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1).

Penalty: \$2 000.

- (4) Where a mortgagor enters into a regulated mortgage, the mortgagor shall be deemed to have entered into the mortgage on the basis that it does not include —
- (a) a condition that he enter into a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1); or
 - (b) a condition that he maintain in force a contract of insurance in respect of the mortgage, not being a contract of insurance or compulsory insurance authorised by subsection (1).
- (5) Where a mortgagor enters into a regulated mortgage that includes a condition referred to in subsection (3), the condition is void.

129. Unauthorised insurance need not be maintained

- (1) Where a debtor or a mortgagor has, in relation to a regulated contract or a regulated mortgage, entered into a contract of insurance that is not a contract of insurance in accordance with the provisions of section 128, the credit provider or mortgagee shall not require, as a condition of the contract or mortgage, that

the debtor or mortgagor maintain the contract of insurance in force.

Penalty: \$2 000.

- (2) Where a regulated contract or a regulated mortgage includes a condition referred to in subsection (1), the condition is void.

130. Content of contracts of insurance

- (1) A contract of insurance (other than compulsory insurance) that is entered into in relation to a regulated contract and to which the debtor is a party shall be in writing and shall —
- (a) identify the subject-matter of the insurance;
 - (b) state the name and address of the insured person; and
 - (c) include a statement of —
 - (i) each amount for which insurance is or is to be provided or the manner in which each such amount may be determined;
 - (ii) the period for which insurance is or is to be provided;
 - (iii) the risks to which the insurance relates;
 - (iv) each amount payable under the contract of insurance in respect of the insurance of property to which the regulated contract relates;
 - (v) each amount payable under the contract of insurance in respect of insurance against a risk referred to in clause 1(e) of Schedule 2, clause 1(b) of Schedule 4 or clause 1(k) of Schedule 7; and
 - (vi) each other amount (if any) payable under the contract of insurance in respect of insurance of property subject to a mortgage relating to the regulated contract.

s. 131

- (2) Where a contract of insurance —
- (a) is entered into between the debtor and an insurer in relation to a regulated contract — the insurer shall, within 14 days after the contract of insurance is entered into, give to the debtor a copy of the contract of insurance; or
 - (b) has been or is entered into between the credit provider and an insurer in relation to a regulated contract and the debtor has a beneficial interest thereunder — the credit provider shall, within 14 days after the beneficial interest is acquired by the debtor, give to the debtor a written notice containing the prescribed particulars relating to the contract of insurance.
- (3) A provision with respect to the submission to arbitration of any matter arising out of a contract of insurance referred to in subsection (1) does not bind the insured except where the provision is contained in a contract or agreement entered into after a difference or dispute has arisen between the insurer and the insured, providing for the submission to arbitration of that difference or dispute.
- (4) A person, not being the insured, shall not enter into a contract of insurance that does not comply with subsection (1).
- Penalty: \$1 000.

131. Premiums to be paid to insurer

Where —

- (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract; or
- (b) under a regulated continuing credit contract an amount payable to an insurer is included in the amount owed under the contract by the debtor to the credit provider,

the credit provider shall hold the amount in trust for the insurer and shall not later than one month after the contract or entry in

the account of the debtor is made, pay to the insurer the whole of the amount payable to him.

Penalty: \$1 000.

132. Action after rejection of insurance proposal

(1) Where —

- (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract; and
- (b) the insurer rejects the proposal to which the amount so payable to the insurer relates,

the insurer shall, forthwith after rejecting the proposal, notify the debtor in writing of the rejection.

(2) Where —

- (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract;
- (b) the insurer rejects the proposal to which the amount so payable to the insurer relates; and
- (c) the amount so payable has not been paid to the insurer before or at the time the proposal is rejected,

the insurer shall, forthwith after rejecting the proposal, notify the debtor in writing that the amount has not been paid to the insurer.

(3) Where —

- (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract;
- (b) the insurer rejects the proposal to which the amount so payable to the insurer relates; and

s. 133

- (c) the amount so payable is paid to the insurer (whether before, at or after the time the proposal is rejected),

the insurer, forthwith after rejecting the proposal or receiving the amount (whichever is the later), pay an amount equal to that amount to the debtor.

- (4) It is a defence to a prosecution for an offence under subsection (1) or (2) if the accused proves that, at the time the proposal was rejected, he did not know, and would not reasonably have been expected to know, that the amount payable to the insurer was included in the amount financed under the relevant contract.

Penalty: \$2 000.

[Section 132 amended by No. 84 of 2004 s. 82.]

133. No-claim bonus

- (1) Where in respect of the insurance of property to which a regulated contract relates or of property subject to a regulated mortgage the insurer allows a no-claim rebate or a rebate of a similar nature, the debtor or mortgagor is entitled to the benefit of the rebate.
- (2) A credit provider or mortgagee who receives the benefit of a rebate referred to in subsection (1) to which a debtor or mortgagor is entitled shall give the benefit of the rebate to the debtor or mortgagor.

Penalty: \$1 000.

134. Saving as to unenforceability

A contract of insurance relating to a regulated contract or a regulated mortgage that is entered into, reinstated or renewed by the debtor or mortgagor under the regulated contract or regulated mortgage with an insurer who knew or ought reasonably to have known that the contract of insurance was

such a contract, is not void, voidable or otherwise rendered unenforceable —

- (a) by reason only of a false or misleading statement made in or in connection with the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the statement was material to the insurer in relation to the contract of insurance and —

- (i) the statement was fraudulent; or
 - (ii) the debtor or mortgagor knew or a reasonable person in the circumstances of the debtor or mortgagor ought to have known that the statement was material to the insurer in relation to the contract of insurance;

or

- (b) by reason only of an omission of matter from the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the matter omitted was material to the insurer in relation to the contract of insurance and —

- (i) the omission was deliberate; or
 - (ii) the debtor or mortgagor knew or a reasonable person in the circumstances of the debtor or mortgagor ought to have known that matter material to the insurer in relation to the contract of insurance had been omitted.

135. Limitation on exclusion clauses

- (1) Where by or under the provisions of a contract of insurance relating to a regulated contract or a regulated mortgage that is entered into, reinstated or renewed by the debtor or mortgagor under the regulated contract or regulated mortgage with an

s. 135

insurer who knew or ought reasonably to have known that the contract of insurance was such a contract —

- (a) the circumstances in which the insurer is bound to indemnify the debtor under the regulated contract or the mortgagor under the regulated mortgage are so defined as to exclude or limit the liability of the insurer to indemnify the debtor or mortgagor on the happening of particular events or on the existence of particular circumstances; and
- (b) the liability of the insurer has been so defined because the happening of those events or the existence of those circumstances was in the view of the insurer likely to increase the risk of loss occurring,

the debtor or mortgagor shall not be disentitled to be indemnified by the insurer by reason only of those provisions of the contract of insurance if, on the balance of probability, the loss in respect of which the debtor or mortgagor seeks to be indemnified was not caused or contributed to by the happening of those events or the existence of those circumstances unless in all the circumstances it is not reasonable for the insurer to be bound to indemnify the insured.

- (2) The onus of proving for the purposes of subsection (1) that, on the balance of probability, loss in respect of which a debtor or mortgagor seeks to be indemnified was not caused or contributed to by the happening of particular events or the existence of particular circumstances is on the debtor or mortgagor.

Part VIII — Contracts of guarantee

136. Guarantee to be in writing

A contract of guarantee between a guarantor and a credit provider in respect of the obligations of the debtor under a regulated contract is not enforceable against the guarantor unless —

- (a) it is in writing signed by the guarantor; or
- (b) it was made by the acceptance of an offer in writing signed by the guarantor to enter into the contract of guarantee,

and any copy of the regulated contract, or of any offer to enter into the regulated contract, that is required pursuant to this Act to be given to the debtor has been given to the guarantor before he enters into the contract of guarantee.

137. Extent of liability of guarantor

A guarantor under a contract of guarantee in respect of the obligations of a debtor under a regulated contract is not liable in respect of the regulated contract for an amount exceeding the sum of —

- (a) the amount for which the debtor is liable under the contract; and
- (b) the reasonable costs of and incidental to enforcing the contract of guarantee.

138. Proceedings against guarantor

- (1) A credit provider shall not bring proceedings to recover an amount from a guarantor in respect of a regulated contract unless the credit provider brings proceedings against both the debtor and the guarantor to recover that amount or unless the credit provider has obtained judgment against the debtor and a written demand made on the debtor for satisfaction of the judgment has remained unsatisfied for not less than 30 days.
- (2) Where, in proceedings to recover an amount in respect of a regulated contract, judgment is given against both a debtor and a

s. 139

guarantor, the judgment is not enforceable against the guarantor unless a written demand made on the debtor for satisfaction of the judgment has remained unsatisfied for not less than 30 days.

(3) Subsections (1) and (2) do not apply where —

- (a) the debtor is a bankrupt or a person whose affairs are being dealt with under Part X of the *Bankruptcy Act 1966* of the Commonwealth, as amended and in force for the time being;
- (b) the court believes on reasonable grounds that it is not reasonably likely that any part of a judgment obtained against the debtor would be satisfied and has, on the application of the credit provider, declared that subsections (1) and (2) do not apply in that case; or
- (c) the credit provider is unable to locate the debtor after having made reasonable inquiries (including inquiries of the guarantor) as to the whereabouts of the debtor and has given the guarantor 14 days notice in the prescribed form of the intention to bring proceedings against the guarantor.

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

139. Variation of commitments (guarantee relating to a regulated contract)

- (1) In this section, *contract of guarantee* means a contract of guarantee that relates to a regulated contract.
- (2) Where a guarantor under a contract of guarantee, by reason of illness, unemployment or other reasonable cause, is unable reasonably to discharge his obligations under the contract, the guarantor may, where he reasonably expects that he would be able to discharge his obligations —
 - (a) if the time for making a payment under the contract were postponed; or

- (b) if a payment required to be made under the contract were able to be made by instalments,

apply to the credit provider for a variation of the contract for that purpose.

- (3) Where a credit provider to whom application is made by a guarantor under subsection (2) refuses to vary a contract of guarantee in accordance with the application, the guarantor may apply to the Commissioner for assistance in negotiating a variation of the contract.
- (4) Where an application is made under subsection (3), the Commissioner shall seek the views of the credit provider and any mortgagee and, after giving them a reasonable opportunity to be heard and making such other inquiries as the Commissioner thinks fit, determine whether or not to seek to arrange with the credit provider a variation of the contract of guarantee, and where he seeks such a variation and is unable to reach agreement with the credit provider, the Commissioner shall refer the application to the Tribunal.
- (5) The Tribunal may, where it receives an application referred to it under subsection (4) and has given the applicant, the credit provider and any mortgagee an opportunity to be heard, order, or refuse to order, a variation of the contract to which the application relates and, where it orders such a variation, may make such other orders as it thinks fit.
- (6) Where an order of the Tribunal under subsection (5) is in force in relation to a contract of guarantee, a credit provider under the regulated contract to which the contract of guarantee relates may apply to the Tribunal for a variation of the order.
- (7) The Tribunal may, where it receives an application under subsection (6), make such variation of the order to which the application relates as it thinks fit or may refuse to vary the order.

s. 140

- (8) An order in force under this section, and such an order as varied from time to time, has effect according to its tenor.
- (9) Where the Commissioner and the credit provider are unable to reach agreement under subsection (4) in relation to a contract of guarantee, the credit provider shall not institute proceedings, or exercise a right, under the contract, or a mortgage that relates to the contract, before the Tribunal has made or refused an order under subsection (5).

Penalty: \$2 000.

140. Guarantee of obligations of minor

- (1) Subject to subsection (2), a guarantor of the obligations of a debtor under a regulated contract where the debtor is a minor is liable under the contract of guarantee to the same extent as he would be liable if the debtor had not been a minor when the regulated contract was made.
- (2) Subsection (1) does not apply with respect to a contract of guarantee unless, when it was made, it included a prominent statement appearing immediately above or below the place where the guarantor signed the contract to the effect that a person who enters into a contract of guarantee in respect of the obligations of a debtor who is a minor may not have a right to recover from the debtor amounts that the guarantor is liable to pay under the contract.

141. Guarantor to receive copy of contract

Where a contract of guarantee is made between a guarantor and a credit provider with respect to the obligations of a debtor under a regulated contract, the credit provider shall give to the guarantor a copy of the contract of guarantee not later than 14 days after it is signed by the guarantor.

Penalty: \$1 000.

142. Guarantor to be given prescribed statement

Where a contract of guarantee is made between a credit provider and a guarantor with respect to the obligations of a debtor under a regulated contract, the credit provider shall, not later than 14 days after the contract of guarantee is signed by the guarantor, give to the guarantor a statement in or to the effect of the form prescribed for the purposes of this section.

Penalty: \$1 000.

143. Discharge of guarantee

A guarantor under a contract of guarantee with a credit provider that relates or, but for the operation of this section, would relate to a regulated contract or a proposed regulated contract —

- (a) may, by notice in writing given to the credit provider and debtor before the regulated contract is made, discharge the contract of guarantee in so far as it relates or would relate to the obligations of the debtor under the regulated contract; and
- (b) in the case of a regulated continuing credit contract or regulated loan contract, may, by notice in writing given to the credit provider and debtor after the contract is made, discharge the contract of guarantee in so far as it relates or would relate to obligations of the debtor incurred under the contract after the notice is given.

144. Revocation of offer to guarantee

- (1) A provision in an agreement to the effect that a person does not have a right to revoke an offer to enter into a contract of guarantee —
 - (a) before the offer is accepted; or
 - (b) in a case where at the time of acceptance the person could not reasonably be expected to know that the offer had been accepted, before notice is given of the acceptance,

s. 144

or that such a right is restricted or modified is void.

- (2) A credit provider shall not enter into an agreement that includes a provision that, by reason of subsection (1), is void.

Penalty: \$2 000.

Part IX — Re-opening of contracts

145. Interpretation

For the purposes of this Part, a contract or mortgage is unjust if —

- (a) it is unconscionable, harsh or oppressive; or
- (b) the annual percentage rate is excessive, having regard to the risk, the value of any security, the amount of the consideration, the time for repayment, the amount financed and any other relevant circumstances.

146. Tribunal may re-open certain transactions

- (1) Subject to section 149, the Tribunal may, at any time, on the application of the debtor under a regulated contract, the mortgagor under a regulated mortgage or the guarantor of the performance of a regulated contract, re-open the transaction that gave rise to the contract or mortgage if it appears to the Tribunal that, in the circumstances relating to the contract or mortgage at the time it was entered into, it was unjust.
- (2) Where the Tribunal re-opens a transaction under subsection (1), the Tribunal may, notwithstanding any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, do any one or more of the following —
 - (a) re-open an account already taken between the parties;
 - (b) relieve the debtor or mortgagor and the guarantor (if any) from payment of any amount in excess of such amount as the Tribunal, having regard to the risk involved and all other circumstances, considers to be reasonably payable, in the case of a credit sale contract or a loan contract, in respect of the amount financed and the credit charge or, in the case of a continuing credit contract, the amount owed by the debtor to the credit provider under the contract;

s. 147

- (c) set aside either wholly or in part or revise or alter an agreement made or mortgage given in connection with the transaction;
- (d) give judgment for or make an order in favour of a party of such amount as, having regard to the relief (if any) which the Tribunal thinks fit to grant, is justly due to that party under the contract or mortgage;
- (e) give judgment or make an order against a person for delivery of goods to which the contract or mortgage relates and which are in the possession of that person.

147. Matters to be considered by Tribunal

- (1) In determining whether a regulated contract or a regulated mortgage is unjust in the circumstances relating to the contract or mortgage at the time it was entered into, the Tribunal shall have regard to the public interest and to all the circumstances of the case, including such consequences as those arising in the event of —
 - (a) compliance with all or any of the provisions of the contract or mortgage; or
 - (b) non-compliance with, or contravention of, all or any of the provisions of the contract or mortgage.
- (2) Without affecting the generality of subsection (1), the matters to which the Tribunal shall have regard include, to the extent that they are relevant in the circumstances —
 - (a) whether or not there was any material inequality in the bargaining powers of the parties to the contract or mortgage;
 - (b) whether or not, at the time the contract or mortgage was entered into, its provisions were the subject of negotiation;
 - (c) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the contract or mortgage;

- (d) whether or not any of the provisions of the contract or mortgage impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the contract or mortgage;
- (e) whether or not —
 - (i) the debtor or mortgagor was reasonably able to protect his interests; or
 - (ii) a person who represented the debtor or mortgagor was reasonably able to protect the interests of the debtor or mortgagor, because of his age or the state of his physical or mental capacity;
- (f) the form of the contract or mortgage and the intelligibility of the language in which it is expressed;
- (g) whether or not, and when, independent legal or other expert advice was obtained by the applicant;
- (h) the extent to which the provisions of the contract or mortgage and their legal and practical effect were accurately explained to the applicant and whether or not the applicant understood those provisions and their effect;
- (i) whether undue influence, unfair pressure or unfair tactics were exerted on or used against the applicant —
 - (i) by any other party to the contract;
 - (ii) by any person acting, or appearing or purporting to act, for any other party to the contract or mortgage; or
 - (iii) by any person to the knowledge (at the time the contract was made) of any other party to the contract or mortgage, or of any person acting, or appearing or purporting to act, for any other party to the contract;

s. 148

- (j) the conduct of the parties to the proceedings in relation to similar contracts or mortgages, or courses of dealing, to which any of them has been a party; and
 - (k) the commercial or other setting, purpose and effect of the contract or mortgage.
- (3) For the purposes of subsection (2), a person shall be deemed to have represented a debtor or mortgagor if he represented him, or assisted him to a significant degree, in negotiations prior to, or at, the time the contract or mortgage was entered into.
- (4) In determining whether a contract or mortgage is unjust, the Tribunal shall not have regard to any injustice arising from circumstances that were not reasonably foreseeable at the time the contract or mortgage was entered into.
- (5) In determining whether to grant relief in respect of a contract or mortgage that it finds to be unjust, the Tribunal may have regard to the conduct of the parties to the proceedings in relation to the contract or mortgage since it was entered into.

148. Joinder of parties

Where it appears to the Tribunal that a person other than a credit provider or mortgagee has shared in the profits of, or has a beneficial interest prospectively or otherwise in, a regulated contract or regulated mortgage that the Tribunal holds to be unjust, the Tribunal may join that person as a party to the proceedings and may make such order in respect of that person as it thinks fit.

149. Limitation on re-opening of transaction

- (1) Except as provided by subsection (2), a debtor, mortgagor or guarantor may not make an application under section 146 in respect of a regulated contract or a regulated mortgage —
 - (a) in the case of a regulated mortgage under which the mortgagee has exercised a right to take possession of the property to which the mortgage relates — after the

expiration of the period of 2 years after the time when the mortgagee served the notice referred to in section 107 on the mortgagor or guarantor; or

- (b) in any other case — after the expiration of the period of 2 years after the time when the contract or mortgage is terminated.
- (2) A debtor, mortgagor or guarantor may make an application under section 146 in respect of a regulated contract or a regulated mortgage during the period of pendency of maintainable proceedings arising out of or in relation to the contract or mortgage, being proceedings (including cross-claims) that are pending against the debtor, mortgagor or guarantor.

Part X — General

150. Assignment of interest under will etc.

- (1) An assignment to a credit provider whether absolute or by way of security or otherwise made by a natural person of or in respect of all or any part of his right, title or interest, whether actual or expectant, in possession, remainder or reversion, or contingent, or of any nature whatsoever, in or under any will, codicil or deed or in, under or to the estate of any deceased person, whether the decease of that person was before or after the making of the assignment or before or after the commencement of this section, shall not be of any force or validity unless the assignment is in writing and was executed by the person in the presence of a prescribed person and is certified by the prescribed person as provided in subsection (2).
- (2) The prescribed person shall read over and explain or cause to be read over and explained in his presence to the assignor the assignment and shall examine the assignor touching his knowledge of the assignment and if he thinks fit may so examine him separately and apart from any other person and if he is satisfied that the assignor understands the true purport and effect of the assignment and freely and voluntarily executes it he shall certify in writing upon the assignment that the assignment has been so read over and explained and that he has examined the assignor and is satisfied as required by this section and that the assignor has executed the assignment in his presence.
- (3) This section does not apply to an assignment made only for the purposes of vesting property in the person entitled to it under or by virtue of the provisions of a will, codicil or deed or as a person entitled to property as part of the estate of a deceased person, or to an assignment made by a person to whom that property has been actually conveyed, assigned or transferred.
- (4) An assignment executed in pursuance of this section shall not be impeached upon any ground whatsoever except in the case of fraud or any kind of imposition.

- (5) In this section —

assignment means any assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer or declaration of trust, and any contract, agreement or arrangement for assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer or declaration of trust, and any power of attorney, appointment of agent, licence or power to receive or other authority of a like nature;

deed means any instrument (other than a will or codicil) whether under seal or not whereby any property is settled, appointed, given or declared to be held in trust or is agreed to be settled, appointed, given or held in trust.

151. Legibility of documents

- (1) A document that, under this Act, is required to be in writing or to comply with the provisions of this section shall be readily legible.
- (2) For the purposes of this section, a document shall be deemed to be readily legible if it is —
 - (a) in clear hand writing; or
 - (b) in print or type, or otherwise reproduced in a form, that complies with the prescribed requirements.
- (3) For the purposes of this Act, a document that is not readily legible shall be deemed not to be in writing.

152. Restriction on form of document

Where the form of a document given or issued by a credit provider or mortgagee under or for the purposes of this Act is, in the opinion of the Tribunal —

- (a) expressed in language that is not readily comprehensible;
- (b) written or printed in a colour, or on paper of a colour, that detracts from the legibility of the document; or

s. 153

- (c) written or printed in a style or manner that detracts from the legibility of the document,

the Tribunal may direct the credit provider or mortgagee not to use documents in that form.

153. Approval of form of document

Where a credit provider or a mortgagee submits to the Tribunal for its opinion a form of document intended to be given or entered into under this Act, the credit provider or mortgagee shall not, by reason only that he gives or issues a document under this Act in that form, be guilty of an offence under section 154 if the Tribunal, before the document is given or issued, determines that in its opinion the form of the document is —

- (a) readily legible;
- (b) expressed in language that is readily comprehensible; and
- (c) written or printed —
 - (i) in a colour and on paper of a colour; and
 - (ii) in a style or manner,that does not detract from the legibility of the document.

154. Offence

A credit provider or mortgagee shall not —

- (a) give or issue a document under this Act that is not readily legible; or
- (b) give or issue a form of document in contravention of a direction in force under section 152.

Penalty: \$2 000.

155. Separation of documents

Except where this Act expressly otherwise provides, nothing in this Act requires an agreement, mortgage, contract, notice,

statement, form or other writing to be contained in or written on a document that is separate from any other agreement, mortgage, contract, notice, statement, form or writing.

156. Signature of documents

Subject to section 124, where, under this Act, a document is required to be signed by a person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written on the document by another person by or under his authority.

157. “Contracting-out” of Act prohibited

- (1) A provision in a credit contract or mortgage or any other agreement (whether in writing or not) under which, except as expressly provided by this Act, the operation of a provision of this Act is excluded, modified or restricted is void.
- (2) A credit provider or mortgagee shall not enter into a contract, mortgage or agreement that includes a provision that, by reason of subsection (1), is void.

Penalty: \$5 000.

158. General penalty

- (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.
- (2) A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by a provision of this Act other than this subsection is liable to a penalty not exceeding \$1 000.

159. Limitation

Notwithstanding anything in any Act, proceedings for an offence against this Act may be brought within the period of 3 years that next succeeds the commission of the offence or, with the consent of the Attorney General, at any later time.

s. 160

160. Offence by corporation

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

161. Certain rights, etc., saved

Except to the extent that this Act expressly provides otherwise, nothing in this Act excludes, modifies or restricts a right or remedy that a person would have had if this Act had not been enacted.

162. Computation of period

Where, for the purposes of this Act, any limited period less than 8 days from or after a date or event is appointed or allowed for giving a notice or doing any other Act or thing or for the taking effect of any Act or thing, Saturday, Sunday and any public or bank holiday throughout the State shall not be reckoned in the computation of that limited period.

163. Extensions of time

Where, under this Act, a court may extend a period, the court may extend the period notwithstanding that the period has elapsed.

164. Service of documents

- (1) Where, under this Act, a document or notice is required or permitted to be given to or served on a person, the document or notice may be given or served —
 - (a) where the person is a natural person, by giving it to or serving it personally on the person or by sending it by post to the person at his usual or last known place of abode or business; or

- (b) where the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation.
- (2) In subsection (1), **registered office** means —
 - (a) the office of the corporation that is the registered office or principal office in accordance with the law of the Commonwealth, State or Territory by or under which the corporation is incorporated;
 - (b) where the corporation is not incorporated in Australia, an office registered under a law of the Commonwealth, or a State or Territory, as a registered office of the corporation; or
 - (c) in the case of a corporation that has no such registered office or principal office, the principal place of business of the corporation in the State or, if it has no place of business in the State, its principal place of business in Australia.
- (3) Where the rights and obligations of a person under this Act have been assigned or have passed by operation of law to another person, a document or notice given to or served on the first-mentioned person at his usual or last known place of abode or business shall be deemed to have been given to or served on the second-mentioned person unless the person giving or serving the document or notice had before he gave or served the document or notice been given notice in writing that the rights and obligations of the first-mentioned person had been assigned or had so passed to the second-mentioned person.

[Section 164 amended by No. 10 of 2001 s. 54.]

165. Service by post

Subject to sections 41 and 60, for the purposes of this Act, where a document or notice is properly addressed, prepaid and posted to a person as a letter, the document or notice shall, unless the contrary is proved, be deemed to have been given to

the person at the time at which the letter would have been delivered in the ordinary course of post.

[166. Deleted by No. 12 of 2008 s. 52.]

167. 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 and, without affecting the generality of the foregoing, for or with respect to —
 - (a) the conversion to Australian currency of amounts to be shown in a statement of account, or in other documents of a kind referred to in this Act or the regulations, in respect of goods or services paid for in other than Australian currency or cash supplied in other than Australian currency;
 - (b) the making and retention of records relating to credit contracts and related contracts, including records relating to negotiations for and steps preliminary to the making of any such contracts;
 - (c) prescribing tables for the purposes of applying the formula in Schedule 1 in the calculation of the amount of a predetermined credit charge or estimated credit charge that has accrued at a particular time under a regulated credit sale contract, or regulated loan contract, to which that Schedule applies; and
 - (d) prescribing tables for the purposes of applying the formula in Schedule 6 to the determination of the annual percentage rate under a regulated credit sale contract, or regulated loan contract, to which that Schedule applies.
- (2) A regulation may impose a penalty not exceeding \$500 for a breach of the regulation.
- (3) A provision of a regulation may —

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

- (4) A regulation may be made to convey information by specifying hypothetical questions and answers.

Part XA — Transitional

[Heading inserted by No. 58 of 1992 s. 6.]

167A. Certain past non-disclosures about insurance commission not to incur civil penalty

- (1) This section applies to credit sale contracts or loan contracts entered into before the coming into operation of section 6 of the *Credit Amendment Act 1992*¹.
- (2) If a statement about an insurance commission charge payable in respect of a credit sale contract or a loan contract, or an insurance certificate that disclosed that a commission was payable with respect to the insurance and to whom the insurer paid the commission, was included in written information given or shown to the debtor before or at the time that the debtor entered into the contract, section 42 does not operate (and is to be taken never to have operated) to relieve the debtor from liability to pay to the credit provider any credit charge under the contract merely because the contract —
 - (a) does not include a statement about that insurance commission charge; or
 - (b) contains a misstatement about that insurance commission charge.
- (3) If —
 - (a) an insurance commission charge was payable to the credit provider in respect of a credit sale contract or a loan contract; and
 - (b) an insurance commission charge was also payable to a body with a name that is similar to (or a derivative of) the name of the credit provider and a statement about the insurance commission charge payable to that body was included in the contract or in written information referred to in subsection (2),section 42 does not operate (and is to be taken never to have operated) to relieve the debtor from liability to pay to the credit

provider any credit charge under the contract merely because the contract —

- (c) does not include a statement about the insurance commission charge payable to the credit provider; or
 - (d) contains a misstatement about that insurance commission charge.
- (4) Nothing in this section affects the liability of a person to be convicted of an offence under this Act.
- (5) This section does not apply to any liability to pay any credit charge which has been determined by the former Commercial Tribunal established under the *Commercial Tribunal Act 1984* before the coming into operation of section 6 of the *Credit Amendment Act 1992* ¹.
- (6) In this section, a reference to a statement about any insurance commission charge that is payable, or to an insurance certificate that discloses that a commission was payable, in respect of a credit sale contract or loan contract is a reference to a statement or certificate —
 - (a) which relates to a commission charge for a contract of insurance entered into in connection with the credit sale contract or loan contract; and
 - (b) contains information of the kind required by section 35(1)(i) or 36(1)(h) to be included in the credit sale contract or loan contract.

[Section 167A inserted by No. 58 of 1992 s. 6; amended by No. 55 of 2004 s. 176.]

167B. Operation of amendments relating to description of consumer credit insurance

- (1) The amendments made to Schedules 2, 4 and 7 by the *Credit Amendment Act 1992* ¹ apply to regulated contracts entered into before as well as after the coming into operation of section 6 of that Act.

s. 167B

- (2) A debtor who, before the coming into operation of section 6 of the *Credit Amendment Act 1992*¹, was not liable (because of section 42, section 67 or any other provision of this Act) to pay to the credit provider any credit charge under a contract, but who because of subsection (1) becomes so liable, is to be taken always to have been liable to pay that charge.
- (3) This section does not apply to any liability to pay any credit charge which has been determined by the former Commercial Tribunal established under the *Commercial Tribunal Act 1984* before the coming into operation of section 6 of the *Credit Amendment Act 1992*¹.
- (4) A regulation which, under section 123, prescribes the term “consumer credit insurance” to describe the insurance referred to in clause 1(e)(iv) of Schedule 2, clause 1(b)(iii) of Schedule 4 or clause 1(k)(iii) of Schedule 7 is to be taken to authorise (and always to have authorised) the use of that term to describe that insurance even though it included insurance against unemployment.
- (5) A regulation which, under section 123, prescribes the term “unemployment insurance” to describe the insurance referred to in clause 1(e)(vi) of Schedule 2, clause 1(b)(v) of Schedule 4 or clause 1(k)(v) of Schedule 7 (as in force before the repeal of those provisions) is to be taken to authorise (and always to have authorised) the use of that term to describe insurance against unemployment of the debtor despite the repeal of those provisions.

[Section 167B inserted by No. 58 of 1992 s. 6; amended by No. 55 of 2004 s. 177.]

Part XI — Miscellaneous

168. Notices by mortgagee

Where land is subject to a regulated mortgage and the provisions of any other Act require the mortgagee to give notice to the mortgagor before exercising in relation to the land a power or right conferred by the other Act or by the mortgage —

- (a) nothing in this Act derogates from the requirement to give the notice under the other Act; and
- (b) a notice required by this Act to be given before the exercise of the power or right does not fail to comply with this Act by reason only that it includes matter required to be specified in a notice required by the other Act to be given before exercise of the power or right.

169. Linked credit provider — sale of land

For the purposes of Part II —

- (a) the definition of “**linked credit provider**” in section 5(1) applies in relation to a vendor of land in the same way as it applies in relation to a supplier of goods or services;
- (b) a credit provider and a vendor of land have a trade or tie agreement if they have an agreement or arrangement, whether formal or informal, for the provision of credit to purchasers of land from that vendor;
- (c) section 12 applies to a loan contract entered into by a credit provider with a purchaser of land from a vendor in the same way as it applies to a loan contract entered into by a credit provider with a buyer of goods or services from a supplier;
- (d) sections 24 to 29 apply to a vendor of land and the provision of credit in respect of the payment by a purchaser under a contract for the purchase of land from that vendor in the same way as they apply to a supplier

s. 170

of goods or services and the provision of credit in respect of the payment by a buyer for goods or services supplied by that supplier;

- (e) a reference to a tied loan contract includes a reference to a loan contract under which the amount financed is not in excess of \$20 000 and is applied in making a payment under a contract for the purchase of land unless the credit provider did not know, and could not reasonably have known, that the amount financed was to be so applied; and
- (f) a reference to a tied continuing credit contract includes a reference to such a contract under which an amount that —
 - (i) does not exceed \$20 000; and
 - (ii) is in respect of a payment under a contract for the purchase of land,

is entered in an account of the debtor kept by the credit provider unless the credit provider did not know, and could not reasonably have known, that the amount was in respect of such a payment.

170. Commissioner may fix maximum annual percentage rates

- (1) If —
 - (a) the Commissioner, by order published in the *Government Gazette*, declares that the annual percentage rate in respect of a regulated contract or a class of regulated contracts shall not exceed a specified rate; and
 - (b) a regulated contract is entered into in respect of which the annual percentage rate exceeds the rate specified in relation to that contract in an order in force under paragraph (a),

the contract and any mortgage in so far as it relates to the contract are void.

- (2) Where, by the operation of subsection (1), a regulated contract is void, the debtor is entitled to recover from the credit provider as a debt an amount equal to the amount of any moneys paid by the debtor to the credit provider pursuant to the contract.
- (3) Nothing in this section affects the powers of the Tribunal under Part IX in relation to a contract or mortgage that is not, by reason of subsection (1), void.

[Section 170 amended by No. 55 of 2004 s. 178.]

Schedule 1

[Sec. 11]

Accrued credit charge

1.

This Schedule applies to a credit sale contract or a loan contract, where —

- (a) the whole or any part of the credit charge is a pre-determined credit charge or an estimated credit charge;
- (b) the whole of the amount financed was provided on the same day;
- (c) the amount financed and the credit charge are payable by not more than 260 equal instalments at equal intervals, the first interval commencing on the date on which the amount financed was provided and the last interval ending not more than 5 years after that date; and
- (d) the period of each interval is 1 month or does not exceed 4 weeks.

2.

Where this Schedule applies to a contract, the credit provider may, instead of accurately calculating the amount of the pre-determined credit charge or estimated credit charge which has accrued due under the contract at a particular time, calculate the amount in accordance with the formula —

$$\frac{CE}{T} \frac{(2T - E + 1)}{(T + 1)}$$

where —

- C is the amount of the pre-determined credit charge or estimated credit charge;
- E is the number of intervals between instalments (including a part of an interval as a whole interval) which has elapsed since the amount financed was provided under the contract; and

T is the number of intervals between instalments (excluding a part of an interval) in the period of the contract.

3.

For the purposes of this Schedule —

- (a) instalments shall be deemed to be equal if all the instalments except one are of the same amount and the difference between the amount of that one instalment and the amount of each of the other instalments is not more than \$5 or 5% of the amount of each of the other instalments whichever is the greater;
- (b) monthly intervals shall be deemed to be equal intervals; and
- (c) intervals shall be deemed to be equal if all the intervals except one are of the same length and the difference between the length of that one interval and the length of each of the other intervals is not more than 5% of the length of each of the other intervals.

Schedule 2

[Sec. 35]

Statement of amount financed in relation to credit sale contract

1.

A statement of the amount financed shall state —

- (a) the amount (if any) paid for provided, or to be paid or provided, by way of deposit, showing separately the amounts paid or to be paid in money, the amounts provided or to be provided by a consideration other than money, and the amount included in the deposit on account of a trade-in allowance (if any) and the person by whom the trade-in allowance was given;
- (b) the cash price of the goods or services; and
- (c) the balance of the cash price after deduction of the amount (if any) paid or provided, or to be paid or provided, by way of deposit,

and shall include statements showing separately such amounts (not being amounts included in paragraph (a) or (b)) as, under the contract, are payable by the debtor to the credit provider (otherwise than as part of the credit charge) whether or not the credit provider pays, or has paid, those amounts to another person and are —

- (d) where the contract relates to goods, amounts payable in respect of —
 - (i) charges for installation of the goods;
 - (ii) charges for maintenance of the goods;
 - (iii) charges for delivery of the goods to the debtor; or
 - (iv) where the goods are, or include, a motor vehicle, boat or other vehicle or thing required to be registered or licensed, registration fees and (unless included in the statement under paragraph (e)) amounts payable in respect of compulsory insurance;
- (e) amounts payable in respect of contracts of insurance (if any) entered into in relation to, the contract, showing separately, in respect of each such contract the name of the insurer and —

-
- (i) where the contract relates to goods that, are, or include, a motor vehicle, boat or other vehicle or thing required to be registered or licensed, amounts so payable in respect of compulsory insurance (unless those amounts are included in a statement under paragraph (d));
 - (ii) where there is a mortgage relating to the contract, amounts so payable in respect of insurance of property subject to the mortgage (other than compulsory insurance included in the statement under subparagraph (i) or under paragraph (d));
 - (iii) where there is a mortgage relating to the contract, amounts so payable in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage by reason of any Act;
 - (iv) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of, the debtor or against unemployment of the debtor or, where there is more than one debtor, amounts so payable in respect of such insurance in relation to the debtors;
 - (v) amounts so payable in respect of life insurance of the debtor or, where there is more than one debtor, amounts so payable in respect of life insurance of the debtors;
 - [(vi) *deleted*]
 - (vii) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and
 - (viii) amounts so payable in respect of insurance against such other risks (if any) as are prescribed,
- or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to one or more of the risks referred to in the preceding subparagraphs — that amount and a statement of the risks to which the amount relates;

- (f) amounts so payable in respect of —
 - (i) stamp duty payable in respect of or in relation to the contract;
 - (ii) stamp duty payable in respect of or in relation to any mortgage relating to the contract entered into on or before the relevant date; or
 - (iii) fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into at or before the time of the making of the contract;
- (g) amounts that are prescribed charges for the purposes of this paragraph;
- (h) amounts that are the consideration, or part of the consideration, for the discharge of the liability of the debtor to the credit provider under a contract in force before the relevant date, other than consideration referred to in a preceding paragraph;
- (i) amounts payable in respect of the value of any consideration provided by the credit provider to the debtor, being consideration of a kind prescribed for the purposes of this paragraph, other than consideration referred to in a preceding paragraph,

and shall state the amount financed, being the sum of the balance of the cash price referred to in paragraph (c) and the total of the amounts referred to in paragraphs (d) to (i).

[Clause 1 amended by No. 58 of 1992 s. 7(a)(i) and (ii).]

2.

In clause 1, **relevant date** means the date on which the credit sale contract is entered into or, if the credit sale contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

3.

If an amount payable in relation to a contract of life insurance is included in an amount disclosed under clause 1(e)(iv), nothing in this Schedule requires any further disclosure relating to that contract of life insurance.

[Clause 3 inserted by No. 58 of 1992 s. 7(a)(iii).]

Schedule 3

[Sec. 35]

Statement of credit charge in relation to credit sale contract

1.

A statement in a credit sale contract of the credit charge —

- (a) shall, where at the relevant date it is possible to express the whole or any part of the credit charge as an amount of money, state separately —
 - (i) the amount of the minimum credit charge (if any);
 - (ii) the amount of the pre-determined credit charge (if any); and
 - (iii) the amount of the estimated credit charge (if any) that can be so expressed at the relevant date;
 - (b) shall, where at the relevant date it is not possible to express the whole of the credit charge as an amount of money —
 - (i) state the method by which the amount of the estimated credit charge that cannot be so expressed is to be ascertained; and
 - (ii) include a statement that it is not possible at the relevant date to express the whole of the credit charge as an amount of money;
- and
- (c) shall include a statement that no part of the credit charge (other than the minimum credit charge (if any)) becomes due and payable unless it is an accrued credit charge.

2.

In clause 1, **relevant date** means the date on which the credit sale contract is entered into or, if the credit sale contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

Schedule 4

[Sec. 36]

Statement of amount financed in relation to loan contract

1.

A statement of the amount financed shall state —

- (a) the amount agreed under the contract to be lent (other than amounts referred to in paragraphs (b) to (f)) —

and shall include statements showing separately such amounts as, under the contract, are payable by the debtor to the credit provider (otherwise than as part of the credit charge) whether or not the credit provider pays, or has paid, those amounts to another person and are —

- (b) amounts payable in respect of contracts of insurance (if any), entered into in relation to the contract showing separately in respect of each contract the name of the insurer and —
 - (i) where there is a mortgage relating to the contract, amounts so payable in respect of insurance of property subject to the mortgage;
 - (ii) where there is a mortgage relating to the contract, amounts so payable in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage by reason of any Act;
 - (iii) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of, the debtor or against unemployment of the debtor, or, where there is more than one debtor, amounts so payable in respect of such insurance in relation to the debtors;
 - (iv) amounts so payable in respect of life insurance of the debtor or, where there is more than one debtor, amounts so payable in respect of life insurance of the debtors;
 - [(v) *deleted*]
 - (vi) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more

than one debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and

- (vii) amounts so payable in respect of insurance against such other risks (in any) as are prescribed,

or where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to one or more of the risks referred to in the preceding subparagraphs — that amount and a statement of the risks to which the amount relates;

- (c) amounts payable in respect of —

- (i) stamp duty payable in respect of or in relation to the contract;
- (ii) stamp duty payable in respect of or in relation to any mortgage relating to the contract entered into on or before the relevant date; or
- (iii) fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into at or before the time of the making of the contract;

- (d) amounts that are prescribed charges for the purposes of this paragraph;

- (e) amounts that are the consideration, or part of the consideration, for the discharge of the liability of the debtor to the credit provider under a contract in force before the relevant date, other than consideration referred to in a preceding paragraph; and

- (f) amounts payable in respect of the value of any consideration provided by the credit provider to the debtor, being consideration of a kind prescribed for the purposes of this paragraph, other than consideration referred to in a preceding paragraph,

and shall state the amount financed, being the sum of the amounts referred to in the preceding paragraphs.

[Clause 1 amended by No. 58 of 1992 s. 7(b)(i) and (ii).]

2.

In clause 1, ***relevant date*** means the date on which the loan contract is entered into or, if the loan contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

3.

If an amount payable in relation to a contract of life insurance is included in an amount disclosed under clause 1(b)(iii), nothing in this Schedule requires any further disclosure relating to that contract of life insurance.

[Clause 3 inserted by No. 58 of 1992 s. 7(b)(iii).]

Schedule 5

[Sec. 36]

Statement of credit charge in relation to loan contract

1.

A statement in a loan contract of the credit charge —

- (a) shall, where at the relevant date it is possible to express the whole or any part of the credit charge as an amount of money, state separately —
 - (i) the amount of the minimum credit charge (if any);
 - (ii) the amount of the pre-determined credit charge (if any); and
 - (iii) the amount of the estimated credit charge (if any) that can be so expressed at the relevant date;
 - (b) shall, where at the relevant date it is not possible to express the whole of the credit charge as an amount of money —
 - (i) state the method by which the amount of the estimated credit charge that cannot be so expressed is to be ascertained; and
 - (ii) include a statement that it is not possible at the relevant date to express the whole of the credit charge as an amount of money;
- and
- (c) shall include a statement that no part of the credit charge (other than the minimum credit charge (if any)) becomes due and payable unless it is an accrued credit charge.

2.

In clause 1, **relevant date** means the date on which the loan contract is entered into or, if the loan contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

Schedule 6

[Sec. 38]

Annual percentage rate

1.

This Schedule applies to a credit sale contract or a loan contract, where —

- (a) the whole of the credit charge is a pre-determined credit charge;
- (b) the whole of the amount financed is, or is to be, provided on the same day; and
- (c) the amount financed and the pre-determined credit charge are payable by equal instalments at equal intervals, the first interval commencing on the date on which the amount financed is provided.

2.

Where this Schedule applies to a contract, the annual percentage rate may be determined in accordance with the formula —

$$\frac{2NF \quad (300C + NF)}{2N^2F + 300C(N + 1)}$$

where —

- N is the total number of instalments;
- C is the number of instalments that, under the contract, will be paid in one year or, where the contract is to be completed in less than one year, the number of instalments that would be paid in one year if instalments continued to be paid at the same intervals; and
- F is an amount determined in accordance with the formula —

$$\frac{100C \times T}{N \times A}$$

where —

- C is the same number as in the first-mentioned formula;

T is the total amount of the pre-determined credit charge;

N is the total number of instalments; and

A is the amount financed.

3.

For the purposes of this Schedule —

- (a) instalments shall be deemed to be equal if all the instalments except one are of the same amount and the difference between the amount of that one instalment and the amount of each of the other instalments is not more than \$5 or 5% of the amount of each of the other instalments, whichever is the greater;
- (b) monthly intervals shall be deemed to be equal intervals; and
- (c) intervals shall be deemed to be equal if all the intervals except one are of the same length and the difference between the length of that one interval and the length of each of the other intervals is not more than 5% of the length of each of the other intervals.

Schedule 7

[Sec. 61]

Statement of account in relation to continuing credit contract

1.

A statement of account for a continuing credit contract shall include a statement of —

- (a) the date of the last day of the billing cycle;
- (b) the amount owed by the debtor under the contract on the first day of the billing cycle;
- (c) the amount owed by the debtor under the contract on the last day of the billing cycle;
- (d) the date of purchase and cash price of goods or services supplied by the credit provider during the billing cycle in respect of payment for which credit is provided under the contract and such a description of each transaction as will enable it to be identified;
- (e) particulars, including the amount, of each amount of cash supplied by the credit provider during the billing cycle in respect of the supply of which credit is provided under the contract;
- (f) particulars of each amount in respect of which, under the contract, credit is provided to the debtor during the billing cycle in respect of goods or services or cash supplied by a person other than the credit provider and in relation to each such amount particulars of the suppliers of the goods or services or of the cash to which the amount relates;
- (g) particulars of each amount paid by the debtor to the credit provider under the contract during the billing cycle;
- (h) each amount (not being a payment by the debtor to the credit provider) by way of refund or allowance given to the debtor during the billing cycle;
- (i) particulars of each amount (not being a payment by the debtor to the credit provider) by reason of which an amount included in an amount referred to in paragraph (d), (e), (f), (j),

(k) or (l) is cancelled or reduced by reason of an amount by way of refund or allowance given to the debtor during the billing cycle;

- (j) where the statement of account includes a statement under paragraph (d) of amounts relating to goods — particulars, so far as they are known or can be ascertained, of amounts included in that amount in respect of —

- (i) charges for installation of the goods;
- (ii) charges for maintenance of the goods; or
- (iii) charges for delivery of the goods to the debtor,

unless included in the cash price of the goods under paragraph (d);

- (k) particulars of amounts that, during the billing cycle, are added to the amount payable under the contract by the debtor to the credit provider, whether or not the credit provider pays, or has paid, those amounts to another person, in respect of contracts of insurance (if any) entered into in relation to the contract showing separately in respect of each such contract the name of the insurer and —

- (i) where there is a mortgage relating to the contract, amounts so payable in respect of insurance of property subject to the mortgage;
- (ii) where there is a mortgage relating to the contract, amounts so payable in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage by reason of any Act;
- (iii) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of, the debtor or against unemployment of the debtor or, where there is more than one debtor, amounts so payable in respect of such insurance in relation to the debtors;
- (iv) amounts so payable in respect of life insurance of the debtor or, where there is more than one debtor, amounts so payable in respect of life insurance of the debtors;

[(v) *deleted*]

- (vi) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more than one debtor, amounts so payable in respect of insurance against loss of profits, by the debtors; and
- (vii) amounts so payable in respect of insurance against such other risks (if any) as are prescribed,
or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to one or more of the risks referred to in the preceding subparagraphs — that amount and a statement of the risks to which the amount relates;
- (l) amounts that during the billing cycle are added to the amount payable under the contract by the debtor to the credit provider in respect of —
 - (i) stamp duty payable in respect of or in relation to the contract; or
 - (ii) stamp duty payable in respect of or in relation to any mortgage relating to the contract entered into during the billing cycle;
- (m) the amount of the credit charge in respect of the billing cycle;
- (n) the annual percentage rate in respect of the contract and the manner of its application to the contract;
- (o) where the statement of account includes a request for payment of an amount by the debtor —
 - (i) the amount payable or the manner in which it may be ascertained from the statement;
 - (ii) the person to whom and the place at which the amount is payable; and
 - (iii) the date before which the amount is to be paid;
- (p) particulars of amounts that during the billing cycle are added to the amount payable under the contract by the debtor to the credit provider and are the consideration, or part of the consideration, for the discharge of the liability of the debtor to the credit provider under a contract in force before the first day of the billing cycle other than consideration referred to in a preceding paragraph;

- (q) particulars of any amount transferred to or from the account to which the statement relates from or to any other account maintained under the contract; and
- (r) particulars of amounts that during the billing cycle are added to the amount payable under the contract by the debtor to the credit provider in respect of the value of any consideration provided by the credit provider to the debtor, being consideration of a kind prescribed for the purposes of this paragraph, other than consideration referred to in a preceding paragraph.

[Clause 1 amended by No. 58 of 1992 s. 7(c)(i) and (ii).]

2.

In clause 1 —

- (a) a reference to an amount paid, or owed by or supplied to, or in respect of which credit is provided to or given by way of refund or allowance to, a debtor under a continuing credit contract at a particular time or during a particular period —
 - (i) does not include a reference to an amount paid or owed by, or supplied to, or in respect of which credit is provided to, or given by way of refund or allowance to, the debtor at that time or during that period that is not at that time or during that period entered in an account of the debtor kept by the credit provider; and
 - (ii) includes a reference to an amount paid or owed by or supplied to, or in respect of which credit is provided to, or given by way of refund or allowance to, the debtor before that time or period that has not been included in an earlier statement of account under the contract;
- and
- (b) a reference to goods or services supplied to a debtor during a billing cycle —
 - (i) does not include a reference to goods or services supplied to a debtor during a billing cycle but in respect of which an amount is not during the billing

- cycle entered in an account of the debtor kept by the credit provider; and
- (ii) includes a reference to goods or services supplied before the commencement of the billing cycle but have not been included in an earlier statement of account under the contract.

3.

If an amount payable in relation to a contract of life insurance is included in an amount disclosed under clause 1(k)(iii), nothing in this Schedule requires any further disclosure relating to that contract of life insurance.

[Clause 3 inserted by No. 58 of 1992 s. 7(c)(iii).]

Notes

- ¹ This is a compilation of the *Credit Act 1984* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Credit Act 1984</i>	99 of 1984	27 Dec 1984	Act other than s. 91(3): 31 Mar 1985 (see s. 2 and <i>Gazette</i> 8 Mar 1985 p. 867); s. 91(3) deleted by No. 8 of 2009 s. 44(2)
<i>Acts Amendment (Credit) Act 1989 Pt. 2</i> ⁶	47 of 1989	9 Jan 1990	s. 4 and 5: 9 Jan 1990 (see s. 2(1)); s. 3: 31 Mar 1985 (see s. 2(2) and <i>Gazette</i> 8 Mar 1985 p. 867)
<i>Credit Amendment Act 1992</i>	58 of 1992	11 Dec 1992	11 Jan 1993 (see s. 2 and <i>Gazette</i> 8 Jan 1993 p. 25)
<i>Consumer Credit (Western Australia) Act 1996 s. 13</i>	30 of 1996	10 Sep 1996	1 Nov 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10)</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 70</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Statutes (Repeals and Minor Amendments) Act 2000 s. 49</i>	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Reprint of the <i>Credit Act 1984</i> as at 6 Apr 2001 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001 Pt. 17</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001 s. 51</i>	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 11</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 30 ⁷	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 2: The Credit Act 1984 as at 24 Jun 2005 (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 9 ⁹	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Duties Legislation Amendment Act 2008</i> s. 52	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 44	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Housing Societies Repeal Act 2005</i> s. 24 ⁸	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))

² Repealed by the *Strata Titles Act 1985*.

³ Footnote no longer applicable.

⁴ Now see the *Broadcasting Services Act 1992* of the Commonwealth.

⁵ Repealed by the *Revenue Laws Amendment and Repeal Act 2004* s. 37(1).

⁶ The *Acts Amendment (Credit) Act 1989* s. 5(2) reads as follows:

“

(2) Nothing in section 86A of the principal Act as enacted by subsection (1) —

- (a) applies to any failure, error or misdescription in any regulated contract as defined in the principal Act that is the subject of an application made under section 85 or 86 of the principal Act before the day that this section comes into operation and that is pending on the day;
- (b) affects any final order made under section 85 or 86 of the principal Act before the day that this section comes into operation.

”.

⁷ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁸ On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 24 had not come into operation. It reads as follows:

“

24. Credit Act 1984 amended

- (1) The amendment in this section is to the *Credit Act 1984*.
- (2) Section 18(1) is amended by deleting “, or a society registered under the *Housing Societies Act 1976*,”.

”.

⁹ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

“

Division 23 — Transitional provisions

151. Commissioner for Fair Trading

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the

Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —

- (a) the Associations Incorporation Act 1987;
 - (b) the *Business Names Act 1962*;
 - (c) the *Chattel Securities Act 1987*;
 - (d) the *Companies (Co-operative) Act 1943*;
 - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
 - (f) the *Consumer Affairs Act 1971*;
 - (g) the *Co-operative and Provident Societies Act 1903*;
 - (h) the *Credit Act 1984*;
 - (i) the *Credit (Administration) Act 1984*;
 - (j) the *Employment Agents Act 1976*;
 - (k) the *Hire-Purchase Act 1959*;
 - (l) the *Limited Partnerships Act 1909*;
 - (m) the *Motor Vehicle Dealers Act 1973*;
 - (n) the *Petroleum Products Pricing Act 1983*;
 - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
 - (p) the *Residential Tenancies Act 1987*;
 - (q) the *Retirement Villages Act 1992*;
 - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
 - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in

relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.

- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
 - (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
 - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

153. *Consumer Affairs Act 1971*

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. *Petroleum Products Pricing Act 1983*

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. **Interpretation**

In this Division —

commencement means the time at which this Division comes into operation;

Commissioner for Fair Trading means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

Prices Commissioner means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

”.