

Western Australia

## **Credit (Administration) Act 1984**

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## Credit (Administration) Act 1984

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Western Australia

## **Credit (Administration) Act 1984**

**An Act to provide for the licensing of credit providers; to facilitate inquiries into matters relating to the provision of credit; and for certain other purposes.**

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Credit (Administration) Act 1984*<sup>1</sup>.

### 2. Commencement

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

[3. *Repealed by No. 55 of 2004 s. 180.*]

### 4. Interpretation

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

“**annual percentage rate**” has the same meaning as it has in the *Credit Act 1984* or in section 25(1) of the Code, as the case may require;

“**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;

“**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*<sup>2</sup>, 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;



**“Code”** means the *Consumer Credit (Western Australia) Code*;

**“cognate Acts”** means this Act, the *Credit Act 1984* and the Code;

**“Commissioner”** means the person for the time being designated as the Commissioner under section 53;

**“contract to which this Act applies”** means —

- (a) a regulated contract; and
- (b) a contract that is a credit contract, or is to be regarded as a credit contract, to which the Code applies;

**“credit”** has the same meaning as it has in the *Credit Act 1984* or in section 4(1) of the Code, or in both, as the case may require;

**“credit contract”** has the same meaning as it has in the *Credit Act 1984*;

**“credit provider”** has the same meaning as it has in the *Credit Act 1984* or in the Code, as the case may require;

**“Department”** means the department of the Public Service principally assisting in the administration of this Act;

**“exempt credit provider”** means a credit provider to whom, by reason of section 7 or an order under section 45, the provisions of section 6(1) and (2) do not apply;

**“licence”** means a credit provider’s licence under this Act;

**“loan contract”** has the same meaning as it has in the *Credit Act 1984*;

**“officer”**, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning 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;

**s. 5**

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**“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;

**“regulated contract”** has the same meaning as it has in the *Credit Act 1984*;

**“regulated mortgage”** has the same meaning as it has in the *Credit Act 1984*;

**“trade or tie agreement”** means —

- (a) a trade or tie agreement as defined in section 5(1) of the *Credit Act 1984*; and
- (b) a contract, arrangement or understanding of the kind described in section 117(1)(a) of the Code.

*[Section 4 amended by No. 47 of 1989 s. 7; No. 30 of 1996 s. 13; No. 57 of 1997 s. 39(10); No. 26 of 1999 s. 71(2); No. 10 of 2001 s. 56; No. 43 of 2003 s. 16(2); No. 55 of 2004 s. 181; No. 28 of 2006 s. 85.]*

**5. 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.

## Part II — Licences

### Division 1 — Requirement to be licensed

#### 6. Credit providers to be licensed

- (1) Subject to this Act, a person shall not carry on a business of providing credit unless the person is the holder of a credit provider's licence.  
Penalty: \$10 000.
- (2) Subject to this Act, a natural person shall not hold himself or herself out, and a body corporate shall not hold itself out, as carrying on a business of providing credit unless the person or body corporate, as the case may be, is the holder of a credit provider's licence.  
Penalty: \$5 000.

#### 7. Exemptions from licensing

- (1) The provisions of section 6 do not apply to —
  - (a) the Crown or a public or local body or authority constituted by or under an Act;
  - (b) a bank;
  - (c) a body corporate that is registered under the *Life Insurance Act 1945* of the Commonwealth<sup>3</sup> as amended and in force for the time being unless the only or principal business carried on by it is the business of providing credit;
  - (d) a body corporate authorised under the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being to carry on insurance business unless the only or principal business carried on by it is the business of providing credit;
  - (e) unless Part VII of the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being has ceased to have effect — a Lloyd's

underwriter, being an underwriter of the society known as Lloyd's incorporated by the Imperial Act known as *Lloyd's Act 1871*;

- (f) a person conducting business as a pawnbroker under a pawnbroker's licence held by or on behalf of the person under the *Pawnbrokers and Second-hand Dealers Act 1994*;
  - (g) a pastoral finance company;
  - (h) a society registered under the *Housing Societies Act 1976*;
  - [(i) deleted]*
  - (j) any other person empowered by an Act or an Act of the Commonwealth to lend money or provide credit, in respect of the lending of money or provision of credit in accordance with that Act or that Act of the Commonwealth.
- (2) A reference in section 6 to carrying on a business of providing credit does not include a reference to —
- (a) providing credit otherwise than under a contract to which this Act applies; or
  - (b) collecting money due to a person whose licence has been surrendered, is suspended or has been cancelled.

*[Section 7 amended by No. 47 of 1989 s. 8; No. 88 of 1994 s. 100; No. 30 of 1996 s. 13; No. 26 of 1999 s. 71(3); No. 12 of 2001 s. 51; No. 46 of 2006 s. 23.]*

*[8. Repealed by No. 30 of 1996 s. 13.]*

## **Division 2 — Licensing provisions**

### **9. Application for licence**

- (1) An application for a credit provider's licence may be made to the Commissioner —
- (a) by a natural person of or over the age of 18 years; or

- (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.
- (2) An application shall be in writing in a form approved by the Minister, shall be accompanied by the prescribed fee and shall be signed —
- (a) where the application is made by a natural person — by that person; or
  - (b) where the application is made —
    - (i) by a body corporate having only 2 directors — by those directors; or
    - (ii) by a body corporate having more than 2 directors — by not fewer than 2 of those directors.
- (3) An application shall specify —
- (a) the name and address —
    - (i) where the application is made by a natural person — of that person; or
    - (ii) where the application is made by a body corporate — of each director of the body corporate;
  - (b) where the application is made by a body corporate — the date and place of incorporation of the body corporate, its corporate name and the address of its registered office or, if it is not incorporated in Australia, the address of the principal office in Australia;
  - (c) the address of the principal place in the State at which, and the name or names under which, the applicant intends to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
  - (d) whether the applicant intends to carry on that business in partnership with another person;

- (e) such matters as may be prescribed relating to the financial standing of applicants; and
  - (f) such other matters as may be prescribed.
- (4) Where application is made for a licence and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (3), the applicant shall, within 14 days after the occurrence of the change, give to the Commissioner notice, in writing signed by the applicant or, where the applicant is a body corporate, by a director of the body corporate, specifying particulars of the change.  
Penalty: \$1 000.
- (5) An applicant for a licence shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in the application as the Commissioner requires.
- (6) A person shall not in, or in relation to, an application under this section, a notice under subsection (4) or any particulars provided under subsection (5), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.  
Penalty: \$5 000.
- (7) It is a defence to a prosecution of a person for an offence under subsection (6) if the person proves that, when the application was made, the notice given or the particulars provided, the person —
  - (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 had been omitted; or

- (d) in the case of an omission — did not know that the omitted matter was material.

*[Section 9 amended by No. 55 of 2004 s. 182 and 209(1).]*

**10. Investigation of application**

- (1) Where an application for a licence has been made in accordance with section 9, the Commissioner may make such inquiries with respect to the applicant and the application as the Commissioner considers necessary.

*[(2) repealed]*

- (3) The Commissioner of Police shall, if the Commissioner so requests, investigate an application received by the Commissioner under section 9 and, as soon as practicable after completing the investigation, make a report to the Commissioner on the investigation.
- (4) As soon as practicable after the Commissioner receives an application and has the results of any investigation under this section, the Commissioner shall publish in a newspaper circulating generally throughout Western Australia a notice giving particulars of the application.

*[Section 10 amended by No. 57 of 1997 s. 39(10); No. 55 of 2004 s. 183; No. 28 of 2006 s. 86.]*

**11. Objection to application**

- (1) At any time before the expiration of the period of 14 days that next succeeds publication of a notice under section 10(4) with respect to an application for a licence, or within such longer period as the Commissioner in a particular case allows, any person may lodge with the Commissioner an objection in writing to the granting of the application if the objection complies with subsection (2).
- (2) An objection complies with this subsection if —
- (a) it specifies the ground of the objection;

- (b) the ground of the objection is a ground on which the Commissioner is required to refuse an application for a licence; and
- (c) the person making the objection has, before the expiration of the period referred to in subsection (1), served on the applicant a copy of the objection.

*[Section 11 amended by No. 55 of 2004 s. 184 and 209(1).]*

**12. Grant or refusal of licence**

- (1) Unless subsection (2) or (4) requires it to be refused, the Commissioner shall grant an application for a licence as soon as practicable after the expiration of the period allowed by or under section 11(1) for the lodging of an objection to the granting of an application.
- (2) An application for a licence made by a natural person shall be refused if it appears to the Commissioner that the person —
  - (a) has not attained the age of 18 years;
  - (b) is disqualified from holding a licence;
  - (c) is an undischarged bankrupt;
  - (d) does not have, or is not likely to continue to have, sufficient financial resources to enable the person to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
  - (e) is not a person likely to carry on such a business honestly and fairly;
  - (f) does not have sufficient expertise to enable the person to carry on such a business; or
  - (g) is in any other way not a fit and proper person to be the holder of a licence.
- (3) Without affecting the generality of subsection (2)(g), the Commissioner may, in determining whether an applicant is not a



fit and proper person to be the holder of a licence, have regard (if such be the case) to the fact that the applicant —

- (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in Western Australia or elsewhere involving fraud or dishonesty;
  - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognisance; or
  - (c) had, at the time of the making of the application, a charge pending against the applicant in relation to such an offence.
- (4) An application for a licence made by a body corporate shall be refused if it appears to the Commissioner that —
- (a) a person concerned in the management of the body corporate has not attained the age of 18 years;
  - (b) the body corporate is disqualified from holding a licence;
  - (c) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
  - (d) the body corporate is not likely to carry on such a business honestly and fairly;
  - (e) the officers of the body corporate are such that it would not have sufficient expertise to enable it to carry on such a business;
  - (f) the reputation of the body corporate is such that it would not be a fit and proper person to be the holder of a licence;
  - (g) an officer of the body corporate is disqualified from being an officer of a body corporate that is the holder of a licence;

- (h) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if the director or person were to apply for the licence personally; or
  - (i) any person other than an officer of the body corporate who, in the opinion of the Commissioner, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly.
- (5) An application for a licence shall not be refused on a ground specified in subsection (2)(d) to (g) or (4)(c) to (i) unless the Commissioner —
  - (a) has informed the applicant of the ground; and
  - (b) has afforded the applicant and any person who, in accordance with section 11, has lodged an objection on that ground, an opportunity to make submissions and adduce evidence.
- (6) Where an application for a licence is refused, the Commissioner shall forthwith, by notice in writing, inform the applicant and each objector (if any) to the granting of the application of the refusal and of the ground on which the refusal is based and inform the applicant of the right to apply to the State Administrative Tribunal for a review of the refusal, and the Commissioner shall, as soon as practicable, refund to the applicant so much of the application fee as is appropriate to be refunded.
- (7) Where an application for a licence in respect of which an objection has been lodged in accordance with section 11 is granted, the Commissioner shall forthwith, by notice in writing, inform the person who lodged the objection of the granting of the application and the right to apply to the State Administrative Tribunal for a review of the decision to grant the application.

- (8) Where an application for a licence is granted —
- (a) the applicant shall be deemed to be the holder of the licence granted; and
  - (b) the Commissioner shall forthwith, by notice in writing, inform the applicant of the granting of the application and the right to apply to the State Administrative Tribunal for a review of any condition or restriction imposed.
- (9) Notwithstanding anything in this section, the Commissioner may refrain from granting an application for a licence unless —
- (a) where the applicant is not a body corporate — the applicant; or
  - (b) where the applicant is a body corporate — all of the directors and officers of the body corporate, or such of them as the Commissioner specifies or refers to,

has or have attended personally on the Commissioner and satisfied the Commissioner as to such relevant matters referred to in this section as the Commissioner thinks appropriate.

*[Section 12 amended by No. 55 of 2004 s. 185, 209(1) and 210.]*

### **13. Conditions of, and restrictions on, licence**

- (1) The Commissioner may —
- (a) upon the granting of an application for a licence and at any other time, impose conditions or restrictions subject to which the licence is to be held; and
  - (b) upon application or of its own motion, at any time vary or revoke any of those conditions or restrictions.
- (2) A licence is subject to —
- (a) any prescribed conditions and restrictions; and
  - (b) any conditions and restrictions in force under subsection (1).

- (3) The Commissioner shall not impose conditions or restrictions to which a licence is to be subject, or vary conditions or restrictions to which the licence is subject, unless the Commissioner has first afforded the applicant for, or, as the case may be, the holder of, the licence an opportunity to make written submissions with respect to the conditions or restrictions proposed to be imposed or varied.

*[Section 13 amended by No. 55 of 2004 s. 186 and 209(1).]*

**14. Name under which licensee may operate**

- (1) Subject to the *Business Names Act 1962*, a licence may authorise the holder to carry on business under a name or names in addition to or in substitution for the name of the licensee.
- (2) A licensee shall not —
- (a) carry on a business of providing credit;
  - (b) in the case of a natural person — hold himself or herself out as carrying on such a business; or
  - (c) in the case of a body corporate — hold itself out as carrying on such a business,

under a name or names other than the name of the licensee or the name or names under which the licensee is authorised so to do in accordance with subsection (1).

Penalty: \$5 000.

- (3) Upon application made in writing, the Commissioner may add or amend an endorsement referred to in section 16(1)(b).

*[Section 14 amended by No. 55 of 2004 s. 187.]*

**15. Partnerships**

The holder of a credit provider's licence shall not carry on a business of providing credit in partnership with a person who is not the holder of a credit provider's licence.

Penalty: \$5 000.

**16. Form of licence**

- (1) A licence shall be signed and issued by the Commissioner and —
  - (a) shall be in a form approved by the Minister; and
  - (b) where it authorises the holder to carry on business under a name or names in addition to, or in substitution for, the name of the holder, shall bear an endorsement to that effect.
- (2) Where the Commissioner is satisfied that a licence has been lost or destroyed, the Commissioner may, on payment of the prescribed fee, issue a duplicate of the licence.

*[Section 16 amended by No. 55 of 2004 s. 210.]*

**17. Change of address of licensee**

- (1) Where the principal place at which a licensee carries on, or intends to carry on, a business of providing credit is at an address other than an address specified in accordance with section 9(3)(c) or of which notice has been given under this section, the licensee shall, not later than 14 days after commencing to carry on the business at that other address, give to the Commissioner notice in writing of that other address.
- (2) A licensee shall, not later than 14 days after ceasing to carry on a business of providing credit at the address specified in accordance with section 9(3)(c) or, where a notice has been given under subsection (1), at the address specified in the notice, give to the Commissioner notice in writing that the licensee has ceased to carry on the business at that address.

Penalty: \$1 000.

**18. Register of licensees**

- (1) For the purposes of this Act, the Commissioner shall keep a register to be known as the Register of Licensed Credit Providers.

- (2) Subject to this Act, the register shall be kept in such form and manner as the Minister thinks fit.

*[Section 18 amended by No. 55 of 2004 s. 210.]*

**19. Inspection of register**

A person, on application in accordance with any regulations and on payment of any prescribed fee —

- (a) may inspect the register kept under section 18; and  
(b) may make a copy of, or take extracts from, the register.

**20. Term of, and authority conferred by, licence**

- (1) Except during any period while it is suspended, a licence continues in force until it is surrendered under section 22 or cancelled under section 21 or 23.
- (2) A credit provider's licence authorises the licensee to carry on a business of providing credit under the name or names specified in the licence, subject to and in accordance with this Act and the conditions and restrictions to which the licence is subject.
- (3) For the purposes of this Act, sections 21 and 22 excepted, a person whose licence is suspended under section 23 shall, while the suspension continues, be deemed to be a person who does not hold a licence.

**21. Annual fee and annual statement**

- (1) A licensee shall, before the expiration of one month after each anniversary of the date on which the licence was granted, pay to the Commissioner in respect of the year commencing on that anniversary the prescribed fee for the licence.
- (2) A person who is or was the holder of a licence during a year, or part of a year, commencing on the date, or an anniversary of the date, on which the licence was granted to the person, shall lodge with the Commissioner a statement in respect of that year or

part that is in a form approved by the Minister and is signed by or on behalf of the licensee.

- (3) A licensee or other person required under subsection (2) to lodge a statement shall lodge the statement within one month after the end of the year in respect of which, or part of which, the statement is lodged.
- (4) The Commissioner may, on the application of a person required to comply with subsection (1), or subsections (2) and (3), extend or further extend the time for compliance with the applicable subsection or subsections.
- (5) Where a licensee has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section, the Commissioner shall give notice in writing to the licensee that, unless the fee is paid or the statement lodged, or the fee is paid and the statement lodged, as the case may require, together with the prescribed late fee, before a day specified in the notice, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled.
- (6) The Commissioner shall cancel the licence of a licensee who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, as referred to in a notice given under subsection (5).
- (7) Subject to subsection (4), a person (not being a licensee) to whom subsections (2) and (3) apply shall comply with those subsections.  
Penalty: \$1 000.
- (8) If, while a licence is in force, there occurs —
  - (a) between the time the application for the licence was granted and the time the first statement is lodged under subsection (2) — a change in the particulars specified in, or in connection with, the application in accordance with section 9(3), (4) and (5); or

- (b) between the lodging of successive annual statements under subsection (2) — a change in the particulars specified in the earlier of those statements,

the licensee shall, within 14 days of the occurrence of the change, give to the Commissioner notice in writing specifying particulars of the change.

Penalty: \$1 000.

- (9) A person shall not, in or in relation to a statement required to be lodged under subsection (2) or a notice required to be given under subsection (8), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty: \$5 000.

- (10) It is a defence to a prosecution of a person for an offence under subsection (9) if the person proves that, when the statement was lodged, or the notice given, the person —
- (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 had been omitted; or
  - (d) in the case of an omission — did not know that the omitted matter was material.

## **22. Surrender of licence**

- (1) Subject to this section, a licensee may, by notice in writing given to the Commissioner and accompanied by the licence, surrender the licence.
- (2) Where the Commissioner makes an allegation under section 23 against the holder of a licence, the licence cannot be surrendered until after effect has been given to any order made by the State



Administrative Tribunal in disposing of the allegation or by the court dealing with an appeal from an order of the State Administrative Tribunal.

- (3) Where a licence is surrendered, the Commissioner shall refund to the former licensee so much of the fee for the licence last paid under section 21(1) as the Commissioner, upon application by the former licensee, specifies as appropriate to be refunded.

*[Section 22 amended by No. 55 of 2004 s. 188 and 209(1).]*

### **Division 3 — Disciplinary action**

#### **23. Disciplinary action against licensee**

- (1) Any person may, at any time, make to the Commissioner a written complaint about the holding of a licence by a specified licensee if the complaint complies with subsection (2).
- (2) For a complaint to comply with this subsection —
- (a) the complaint has to specify the licensee and the grounds of the complaint; and
  - (b) the grounds of the complaint have to be capable of reasonably giving rise to a belief described in subsection (4).

*[(3) repealed]*

- (4) The Commissioner may, on receiving a complaint under subsection (1) or on the Commissioner's own initiative, make any investigation or inquiry that the Commissioner considers necessary to decide whether there are grounds for believing that —
- (a) a licence may have been improperly obtained or, at the time a licence was granted, there may have been grounds for refusing to grant it;
  - (b) a licensee may have failed to comply with any provision of the cognate Acts, a condition or restriction to which

the licence is subject or an order under any of the cognate Acts applicable to the licensee;

- (c) a licensee may be unable, or is likely to become unable, to meet the licensee's liabilities;
- (d) a licensee has, within the period of 10 years that last preceded the grant of the licence, been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- (e) the holder of a credit provider's licence has provided credit at an interest rate that is excessive having regard to the risk involved, the value of any security, the time for repayment, the amount of credit provided and any other relevant circumstances;
- (f) the business to which a licence relates is being carried on in a dishonest or unfair manner;
- (g) the holder of a credit provider's licence has taken security for the performance of the debtor's obligations under a contract to which this Act applies that is excessive having regard to the risk involved, the value of the security, the time for repayment, the amount of credit provided, the annual percentage rate and any other relevant circumstances;
- (h) the holder of a credit provider's licence has taken security for the performance of the debtor's obligations under a contract to which this Act applies that, having regard to the nature and value of the security, the amount of credit provided and any other relevant circumstances, is unreasonable;
- (i) if a person were not the holder of a licence, the Commissioner would be required by section 12(2) or (4) to refuse an application by the person for a licence; or
- (j) the licensee is, for any other reason, not a fit and proper person to continue to hold a licence.

- (5) If the Commissioner decides that it is appropriate to do so, the Commissioner may make an allegation to the State Administrative Tribunal that there are reasonable grounds for a belief described in subsection (4) concerning a specified licensee.
- (6) If the Commissioner decides not to make an allegation concerning a licensee about whom a complaint was made to the Commissioner under subsection (1), the Commissioner is required to notify the person who made the complaint of that decision and the reason for it.

*[(7) repealed]*

- (8) If the State Administrative Tribunal, on dealing with an allegation under subsection (5), is satisfied that any ground for a belief referred to in subsection (4) has been made out, it may do any one or more of the following —
- (a) reprimand the licensee;
  - (b) impose on the licensee a fine not exceeding \$1 000 payable within a specified time;
  - (c) require the licensee to comply within a specified time with a requirement specified by the Tribunal;
  - (d) suspend the licence for a period not exceeding 12 months;
  - (e) disqualify the licensee or any person concerned in the direction, management or conduct of the business of the licensee from holding a licence or from being concerned in the direction, management or conduct of a business for the carrying on of which a licence is required either permanently or for such period as the Tribunal thinks fit;
  - (f) cancel the licence.

*[(9), (10) repealed]*

- (11) Where the Tribunal disqualifies a licensee under subsection (8)(e), the Commissioner shall cancel the licence.

- (12) Where the Tribunal —
- (a) suspends a licence — the licensee; or
  - (b) cancels a licence — the former licensee,
- shall return the licence to the Commissioner within a period specified by the Tribunal when suspending or cancelling the licence.
- Penalty: \$1 000.
- (13) A person disqualified under subsection (8)(e) shall not, while disqualified —
- (a) hold a licence; or
  - (b) be concerned in the direction, management or conduct of a business of providing credit.
- Penalty: \$5 000.
- (14) If a person has been convicted of an offence and the circumstances of the offence form, wholly or partly, the subject-matter of a proceeding before the State Administrative Tribunal upon an allegation under subsection (5), the person is not liable to a fine under this section in respect of the conduct giving rise to the offence.

*[Section 23 amended by No. 30 of 1996 s. 13; No. 55 of 2004 s. 189, 209(1) and 210.]*

#### **Division 4 — Review**

*[Heading inserted by No. 55 of 2004 s. 190.]*

#### **24. Application for review**

- (1) A person aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.
- (2) In subsection (1) —  
**“person aggrieved”** means —

- (a) a person upon whose application a reviewable decision is made or a person who lodged an objection to the application; or
- (b) the holder of the licence to which a reviewable decision relates;

**“reviewable decision”** means —

- (a) a decision under section 12 to grant or refuse an application for a licence;
  - (b) a decision under section 13 to impose or vary a condition or restriction; or
  - (c) a decision under section 25(3) to grant or refuse an application or impose a condition.
- (3) The making of an application under subsection (1) for a review of a decision to impose or vary a condition subject to which a licence is to be held operates to stay the decision in so far as it would have the effect of preventing the collection of payments by a credit provider, unless the State Administrative Tribunal orders otherwise.

*[Section 24 inserted by No. 55 of 2004 s. 191.]*

### **Division 5 — General**

#### **25. Death of licensee**

- (1) Where a licensee dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the licensee may, within 28 days after the death or such longer period as the Commissioner allows, apply to the Commissioner for authority to carry on, until the expiration of the period of 180 days that next succeeds the death, the business of the deceased licensee to which the licence relates.
- (2) The Commissioner may make any investigation or inquiry that the Commissioner considers necessary for the purpose of dealing with the application.

- (3) The Commissioner shall grant or refuse the application and, on granting the application, may impose conditions subject to which the business to which the application relates may be carried on.

*[(4) repealed]*

- (5) An applicant whose application is granted under this section shall, subject to this Act, the regulations and any conditions imposed under subsection (3), be deemed, until no later than the expiration of the period of 180 days that next succeeds the death of the licensee, to be the holder of the licence of the deceased licensee.

*[Section 25 amended by No. 55 of 2004 s. 192 and 210.]*

**26. Endorsement of condition, etc., of licence**

Where a licensee is required to comply with a requirement specified by the State Administrative Tribunal under section 23(8)(c) or to carry on the business to which the licence relates subject to conditions or restrictions imposed under section 13 or 25(3), the licensee shall, upon being required by the Commissioner so to do within a specified time, produce the licence to the Commissioner within that time for endorsement of the condition, restriction or requirement.

Penalty: \$1 000.

*[Section 26 amended by No. 55 of 2004 s. 209(2) and 210.]*

## **Part III — Unjust conduct by credit providers**

### **27. Interpretation**

For the purposes of this Part, conduct of a credit provider (whether or not the credit provider is the holder of a licence or is an exempt credit provider) is unjust if it is conduct —

- (a) that is dishonest or unfair;
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought; or
- (c) that consists of the contravention of any provision of the cognate Acts.

*[Section 27 amended by No. 30 of 1996 s. 13.]*

### **28. Undertakings by credit provider**

- (1) Where it appears to the Commissioner that a credit provider has, in the course of a business of providing credit, repeatedly engaged in unjust conduct, the Commissioner may, with the consent of the Minister —
  - (a) request the credit provider to execute a deed in terms approved by the Commissioner whereby the credit provider gives undertakings as to —
    - (i) the discontinuance of the unjust conduct;
    - (ii) the credit provider's future conduct; and
    - (iii) the action the credit provider will take to rectify the consequences of the credit provider's unjust conduct;
  - or
  - (b) apply to the State Administrative Tribunal for an order under section 30(1).
- (2) Where the Commissioner makes a request or application under subsection (1), it shall be presumed, unless the contrary is

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proved, that the Commissioner does so with the consent of the Minister.

- (3) Where a licensee executes a deed under subsection (1)(a) and observes the undertakings given in the deed —
- (a) the Commissioner cannot make an allegation under section 23 to the State Administrative Tribunal; and
  - (b) the Commissioner cannot apply for an order under section 30(1),

by reason of any conduct to which the undertakings relate.

*[Section 28 amended by No. 55 of 2004 s. 193 and 209(2).]*

**29. Register of Undertakings**

- (1) Where a credit provider executes a deed containing undertakings as referred to in section 28(1)(a), the Commissioner shall —
- [(a) deleted]*
  - (b) give a copy of the deed to the credit provider who executed it.
- (2) The Commissioner shall retain all deeds and shall register the deeds in a Register of Undertakings kept by the Commissioner and containing the prescribed particulars.
- (3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.
- (4) A credit provider shall observe undertakings given by the credit provider in a deed executed under section 28(1)(a).  
Penalty: \$10 000.
- (5) A prosecution for an offence under subsection (4) shall not be instituted except by the Commissioner with the leave of the State Administrative Tribunal given when making an order in accordance with section 30(2).

*[Section 29 amended by No. 55 of 2004 s. 194 and 209(2).]*



**30. Restraint of unjust conduct**

- (1) Where, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a credit provider has repeatedly engaged in unjust conduct, the Tribunal may order the credit provider to refrain from engaging in unjust conduct in the course of carrying on a business of providing credit and the credit provider shall comply with the order.

Penalty: \$10 000.

- (2) Where, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a credit provider has failed to observe an undertaking given by the credit provider in a deed executed under section 28(1)(a), the Tribunal may make an order under subsection (1) against the credit provider and, in the case of an undertaking referred to in section 28(1)(a)(iii), an order to observe that undertaking within a time specified by the Tribunal when making the order.

- (3) Where the Commissioner applies for an order under subsection (1) or (2) against a credit provider that is a body corporate and the State Administrative Tribunal is satisfied that the unjust conduct or breach of undertaking to which the application relates was engaged in with the consent or connivance of a person who, at the time of the conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Tribunal may, in addition to any other order it may make under this section, make an order prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under section 28(1)(a), by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned and the person to whom the order relates shall comply with the order.

Penalty: \$10 000.

- (4) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise)

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as the State Administrative Tribunal thinks fit including conditions as to the future conduct of the credit provider and conditions specifying the action to be taken by the credit provider to rectify the consequences of the credit provider's unjust conduct.

*[Section 30 amended by No. 55 of 2004 s. 195 and 209(2).]*

**31. Variation, etc., of restraining order**

The State Administrative Tribunal may, on the application of the Commissioner, vary or discharge an order made under section 30.

*[Section 31 amended by No. 55 of 2004 s. 209(2).]*

## **Part IV — Inquiries**

### **32. Minister may order inquiry**

- (1) The Minister may, by instrument in writing, appoint any person to inquire into matters specified in the instrument, being matters that relate to the provision of credit or consequences of the provision of credit, or both.
- (2) The Minister may, by instrument in writing, revoke an appointment made under subsection (1).
- (3) An appointment under subsection (1) may be made subject to such conditions or limitations as to the exercise or performance of a power, authority, duty or function, or as to time or circumstances, as may be specified in the instrument of appointment.
- (4) Subject to subsection (3), a person appointed under subsection (1) has, and may exercise the functions conferred by or under this Part.
- (5) An appointment under subsection (1) or a revocation under subsection (2) of such an appointment does not take effect until the terms of the instrument of appointment or revocation have been published in the *Gazette* and in such newspaper or newspapers as is or are specified in the instrument.
- (6) Where any matter purporting to be the terms of an instrument of appointment under subsection (1) or of revocation under subsection (2) is published in the *Gazette*, it shall be presumed, unless the contrary is proved, that the matter comprises the terms of such an instrument.
- (7) Where an inquiry is held under this Part, person conducting the inquiry shall, as soon as practicable, report to the Minister the results of the inquiry and make such recommendations with respect to those results as the person thinks fit.

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- (8) A person appointed under subsection (1) is not liable for any act or omission by or on the part of the person that occurred in good faith and in the performance or discharge or purported performance or discharge, of functions under this Part.

*[Section 32 amended by No. 55 of 2004 s. 196.]*

**33. Notice of inquiry**

A person shall, before commencing an inquiry under this Part, give notice by advertisement published on such day or days as the person thinks fit in the *Gazette* and in such newspaper or newspapers as the person thinks fit of —

- (a) the holding of the inquiry;
- (b) the matter that is to be the subject of the inquiry;
- (c) the time and place at which the inquiry is to be commenced; and
- (d) such other matters relating to the inquiry as the person thinks fit.

*[Section 33 amended by No. 55 of 2004 s. 197.]*

**34. Appearances at inquiry**

- (1) The person conducting an inquiry under this Part may grant leave to any person to appear at the inquiry if it is of the opinion that the person has a substantial interest in the matter the subject of the inquiry.
- (2) A person granted leave under subsection (1) to appear at an inquiry may appear at the inquiry in person or by counsel, solicitor or agent and may give evidence, call witnesses and make submissions at the inquiry.

*[Section 34 amended by No. 55 of 2004 s. 198.]*

**35. Procedure at inquiry**

- (1) An inquiry under this Part shall be held in public and, subject to this section —
  - (a) evidence at the inquiry shall be given on oath in public; and
  - (b) submissions at the inquiry shall be made in public.
- (2) At an inquiry under this Part, the person conducting the inquiry may permit a witness to give evidence by tendering a written statement verified on oath and, where the evidence is so given, the person conducting the inquiry shall, subject to this section, make the statement available to the public in such manner as the person thinks fit.
- (3) Where a witness giving evidence under subsection (1) or (2) objects to any part of the evidence being made public and the person conducting the inquiry is satisfied that the part of the evidence to which the objection relates is of a confidential nature, that part of the evidence shall not be taken in public under subsection (1) or made public under subsection (2).
- (4) At an inquiry under this Part, the person conducting the inquiry may require or permit a person entitled to make submissions to make them in writing and, where submissions are so made, the person conducting the inquiry shall make them public in such manner as the person thinks fit.
- (5) In conducting an inquiry under this Part, the person conducting the inquiry is not bound by the rules of evidence.

*[Section 35 amended by No. 55 of 2004 s. 199.]*

**36. Powers of person conducting inquiry**

- (1) For the purposes of an inquiry under this Part, the person conducting the inquiry may —
  - (a) issue a summons to a witness to give evidence or produce a record, or both, at the inquiry;

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- (b) administer an oath; and
  - (c) take evidence on oath.
- (2) Where, pursuant to this section, a person is required by a summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require the person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.
- (3) A witness summoned to attend or appearing at an inquiry has the same protection and, without affecting any penalty that may be imposed pursuant to this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court.
- (4) A witness summoned under subsection (1) is entitled to be paid such fees and allowances as are prescribed.

*[Section 36 amended by No. 55 of 2004 s. 200.]*

**37. Failure to appear at inquiry**

A person who, pursuant to section 36(1)(a), has been summoned as a witness shall not, without lawful excuse, fail to appear in obedience to the summons.

Penalty: \$6 000.

*[Section 37 amended by No. 50 of 2003 s. 50(2).]*

**38. Refusal to be sworn, etc.**

A person who appears as a witness at an inquiry under this Part, whether summoned or not, shall not, without lawful excuse, refuse to be sworn, or to produce a record or statement in accordance with a summons, or to answer a question after being required to answer it.

Penalty: \$6 000.

*[Section 38 amended by No. 50 of 2003 s. 50(2).]*

**39. Power to obtain information**

- (1) For the purposes of an inquiry under this Part, the person conducting the inquiry or a person authorised by that person for the purposes of this section (in this section referred to as the **“authorised person”**) may require any person —
  - (a) to give information; or
  - (b) to answer any question,in relation to the subject-matter of the inquiry.
- (2) The person conducting the inquiry or authorised person may require information to be given, or a question to be answered, on oath either orally or in writing and, for the purposes of such a requirement, may administer an oath.
- (3) The person conducting the inquiry or authorised person may, by notice in writing, require information to be given, or a question to be answered, in writing at a place specified in the notice.
- (4) A person shall not —
  - (a) fail to comply with a requirement under subsection (1), (2) or (3); or
  - (b) give, pursuant to such a requirement, information or an answer that to the person’s knowledge is false or misleading in any particular.Penalty: \$6 000.
- (5) A person is not obliged to give information or answer a question which the person has, pursuant to subsection (1), been required to give or answer unless the person has first been informed by the person conducting the inquiry or authorised person that the person is required and obliged by this section to give the information or answer the question.
- (6) A person shall not refuse to comply with a requirement under subsection (1) on the ground that compliance with a requirement

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might incriminate the person or render the person liable to a penalty.

Penalty: \$6 000.

- (7) Information and answers given by a person pursuant to a requirement under subsection (1) are not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under subsection (4).
- (8) A certificate signed by a person appointed under section 32(1) to the effect that a person specified therein was, on a day or during a period so specified, an authorised person for the purposes of this section is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

*[Section 39 amended by No. 50 of 2003 s. 50(2); No. 55 of 2004 s. 201.]*



## **Part V — Functions of Commissioner in relation to proceedings**

*[40. Repealed by No. 55 of 2004 s. 202.]*

### **41. Commissioner may proceed for another**

- (1) Where a person, not being a body corporate, has made a complaint to the Commissioner in respect of a matter to which this section applies and the Commissioner, after investigating the complaint, is satisfied that —
  - (a) the complainant may, with respect to that matter, have a right to take proceedings before a court or the State Administrative Tribunal or a defence to proceedings taken before a court or the State Administrative Tribunal by another person against the complainant in respect of that matter; and
  - (b) it is in the public interest that the Commissioner should take or, as the case may be, defend those proceedings on behalf of the complainant,

the Commissioner may, with the consent in writing of the Minister and the complainant, take or defend those proceedings on behalf of and in the name of the complainant.

- (2) Where a complainant has given a consent to the taking or defending by the Commissioner of proceedings before a court or the State Administrative Tribunal on behalf of the complainant, that consent is not, after the Commissioner has taken steps in those proceedings, revocable except with the concurrence of the Commissioner.
- (3) This section applies to a matter arising under or in relation to —
  - (a) a contract to which this Act applies;
  - (b) a regulated mortgage; and

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- (c) a mortgage that comes within section 8 of the Code.

*[Section 41 amended by No. 30 of 1996 s. 13; No. 55 of 2004 s. 209(2).]*

**42. Conduct of proceedings taken by Commissioner**

Where, under section 41, the Commissioner takes or defends proceedings before a court or the State Administrative Tribunal on behalf of a complainant —

- (a) the Commissioner shall have the conduct of those proceedings on behalf of the complainant, may (notwithstanding anything in any Act) appear personally or by counsel, solicitor or agent and may do all such things as are necessary or expedient to give effect to an order or decision of the court or the State Administrative Tribunal;
- (b) the Commissioner is liable to pay the costs of the complainant; and
- (c) the complainant is liable to pay any amount (other than costs for which the Commissioner is liable under paragraph (b)), that the court or the State Administrative Tribunal orders the complainant to pay.

*[Section 42 amended by No. 55 of 2004 s. 209(2).]*

**43. Intervention by Minister or Commissioner**

- (1) Without limiting section 41, the Minister or the Commissioner with the consent of the Minister, if the Minister or the Commissioner, as the case may be, thinks that it would be in the public interest to do so, may intervene, and has a right to be heard personally or by counsel, solicitor or agent, in any proceedings (other than proceedings for an offence) arising under the cognate Acts before a court or the State Administrative Tribunal.
- (2) Where the Commissioner intervenes in any proceedings under subsection (1) or takes or defends proceedings in accordance

with section 41(1), it shall be presumed, unless the contrary is proved, that the Minister has consented to the intervention or the taking or defending of proceedings, as the case may be.

- (3) The Minister or the Commissioner, on intervening under subsection (1) in any proceedings, becomes a party to the proceedings and has all the rights, including rights of appeal, of such a party.

*[Section 43 amended by No. 55 of 2004 s. 203 and 209(2).]*

**44. Investigation of application to Tribunal**

Where application is made to the State Administrative Tribunal by a credit provider under section 86 of the *Credit Act 1984* or section 105 of the Code, the Commissioner shall, if required so to do by the President of the Tribunal before the Tribunal hears the application, investigate the application and report to the Tribunal on the results of the investigation.

*[Section 44 amended by No. 30 of 1996 s. 13; No. 55 of 2004 s. 204 and 209(2).]*

## **Part VA — Consumer Credit Fund**

*[Heading inserted by No. 69 of 2006 s. 11.]*

### **44A. Establishment of Consumer Credit Fund**

- (1) There is hereby established a fund to be called the Consumer Credit Fund.
- (2) The Consumer Credit Fund is —
  - (a) to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
  - (b) with the approval of the Treasurer, to be kept at a bank.
- (3) If subsection (2)(b) applies, moneys standing to the credit of the Consumer Credit Fund that are not immediately required for the purposes of section 44C may, if approved by the Treasurer, be invested in any manner that moneys in the Public Bank Account may be invested under section 38 of the *Financial Administration and Audit Act 1985*.

*[Section 44A inserted by No. 69 of 2006 s. 11.]*

### **44B. Payments to Consumer Credit Fund**

- (1) The Consumer Credit Fund is the fund established and operated for the purpose of section 106 of the *Consumer Credit (Western Australia) Code*.
- (2) The Consumer Credit Fund is to be credited with —
  - (a) any amount paid to the fund by a credit provider;
  - (b) income derived from the investment, under section 44A, of moneys standing to the credit of the Consumer Credit Fund;
  - (c) any moneys received by, made available to or payable to the Consumer Credit Fund;
  - (d) costs awarded to the Commissioner in a proceeding under this Act; and

- (e) costs awarded to the Commissioner in a proceeding under the *Credit Act 1984*.

*[Section 44B inserted by No. 69 of 2006 s. 11.]*

**44C. Payments from Consumer Credit Fund**

The Consumer Credit Fund is to be applied by the Commissioner for —

- (a) the payment of such moneys as are approved by the Minister, on the terms approved by the Minister, for the following purposes —
  - (i) providing financial counselling services to consumers;
  - (ii) giving legal advice to consumers about consumer credit;
  - (iii) providing information about consumer credit;
  - (iv) providing research about the use of credit;
- (b) the administration of this Act;
- (c) legal fees incurred by the Commissioner, or costs awarded against the Commissioner, in a proceeding under this Act; and
- (d) legal fees incurred by the Commissioner, or costs awarded against the Commissioner, in a proceeding under the *Credit Act 1984*.

*[Section 44C inserted by No. 69 of 2006 s. 11.]*

**44D. Report on operations of Consumer Credit Fund**

For the purposes of section 52 of the *Financial Administration and Audit Act 1985*, the administration of the Consumer Credit Fund is to be taken to be a service of the department principally assisting the Minister in the administration of this Act.

*[Section 44D inserted by No. 69 of 2006 s. 11.]*

## **Part VI — Miscellaneous**

### **45. Variation of application of Act**

- (1) The Governor may, by order published in the *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;
  - (b) may provide that its operation is subject to such terms and conditions as are specified in the order; and
  - (c) may specify the circumstances under which a person to whom the order applies is, by reason of the order, to be deemed to be an exempt credit provider.
- (3) The Governor may, by order published in the *Gazette*, revoke or vary an order made under this section.

- (4) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.
- (5) 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.

**46. 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.

**47. 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.

**48. Offence by body corporate**

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

**49. Who may take proceedings for offences**

- (1) Proceedings for an offence against any provision of the cognate Acts may be taken and prosecuted by any person acting with the authority of —
  - (a) the Minister; or

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- (b) a prescribed officer.
- (2) An authority to prosecute purporting to have been signed by the Minister or a prescribed officer is evidence of that authority without proof of the signature of the Minister or the prescribed officer.
- (3) In proceedings for an offence against any provision of the cognate Acts, the informant may conduct his or her case personally, or by counsel or attorney, or by an agent authorised by the informant in writing.

*[Section 49 amended by No. 30 of 1996 s. 13.]*

**50. Offences to be dealt with by magistrate**

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

*[Section 50 inserted by No. 59 of 2004 s. 141.]*

**51. Evidence**

- (1) A certificate signed by the Commissioner to the effect that a person specified therein was or was not, on a day or during a period so specified, the holder of a licence so specified is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.
- (2) A certificate signed by the Commissioner to the effect that a person specified therein was, on a day or during a period so specified, authorised for the purposes of section 54 or 55 is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.
- (3) Where it is alleged in any proceedings under this Act, or in any other proceeding in relation to a matter arising under this Act,



that a contract is a contract to which this Act applies, it shall be presumed, unless the contrary is established, that the credit contract is a regulated contract.

*[Section 51 amended by No. 30 of 1996 s. 13; No. 55 of 2004 s. 210.]*

**52. Certain rights, etc., saved**

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

**53. Commissioner**

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of the cognate Acts.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) Without limiting any other functions of the Commissioner for the purposes of the cognate Acts, the Commissioner has the following functions —
  - (a) to investigate and conduct research into matters relating to the cognate Acts;
  - (b) to publish reports and disseminate information on matters relating to the cognate Acts;
  - (c) to give advice to consumers on the provisions of the cognate Acts;
  - (d) to investigate and attempt to resolve complaints arising under the cognate Acts and to take action by negotiation, prosecution of any offence or otherwise;
  - (e) to make reports to the Minister on matters of importance investigated by the Commissioner, whether or not referred to the Commissioner by the Minister.

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- (4) In this section —  
“**executive officer**” has the meaning given by section 3(1) of  
the *Public Sector Management Act 1994*.

*[Section 53 inserted by No. 28 of 2006 s. 87.]*

**53A. Delegation by Commissioner**

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of the cognate Acts.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

*[Section 53A inserted by No. 28 of 2006 s. 87.]*

**53B. Judicial notice**

All courts, judges and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been the Commissioner and of the fact that such person holds or has held such office.

*[Section 53B inserted by No. 28 of 2006 s. 87.]*

**54. Power of entry**

- (1) For the purpose of ascertaining whether the provisions of any of the cognate Acts are being or have been complied with by a credit provider or for the purpose of enabling the Commissioner

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to prepare a report for the State Administrative Tribunal, the Commissioner, or any other person authorised in writing in that behalf by the Commissioner may —

- (a) enter premises where the business of the credit provider or the business of a person with whom the credit provider has a trade or tie agreement, is being carried on;
  - (b) require the production of records;
  - (c) inspect and require explanations of any record; and
  - (d) take notes, copies and extracts of or from any record or statement produced pursuant to this section.
- (2) Where the Commissioner or an authorised person referred to in subsection (1), requires production under that subsection of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.
- (3) A person shall not —
- (a) wilfully delay or obstruct the Commissioner, an authorised person or any other person in the exercise of powers under this section;
  - (b) refuse or fail to produce, or conceal or attempt to conceal, any record or statement the person is required under subsection (1) or (2) to produce;
  - (c) being a credit provider or, where the credit provider is a body corporate, an officer of the credit provider refuses or fails to answer a question or give an explanation relating to any such record or statement put to or required of, him or her by a person entitled to require production of the record or statement who first informs him or her that he or she is required and obliged by this

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section to answer the question or give the explanation;  
or

- (d) being a credit provider or, where the credit provider is a body corporate, an officer of the credit provider gives to a question relating to any record or statement an answer that he or she knows is false or misleading or gives an explanation of any record or statement that he or she knows is a false or misleading explanation.

Penalty: \$2 000.

*[Section 54 amended by No. 55 of 2004 s. 209(2); No. 28 of 2006 s. 88.]*

**55. Production of records**

- (1) In this section —  
“**authorised person**” means the Commissioner or a person authorised in writing by the Commissioner to exercise the powers conferred by this section on an authorised person;  
“**credit provider**” includes a person who was at any time a credit provider to whom a provision of a cognate Act applied as a credit provider.
- (2) For the purpose of ascertaining whether the provisions of any of the cognate Acts are being or have been complied with by a credit provider, an authorised person may, by instrument in writing, require the credit provider to produce specified records, or records of a specified class or description, to a specified authorised person at a specified place at a specified time or within a specified period.
- (3) Where an authorised person requires production under subsection (2) of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a

statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

- (4) A person shall not refuse or fail to produce any record or statement in accordance with a requirement made of the person under subsection (2).

Penalty: \$2 000.

- (5) An authorised person may inspect and take notes, copies and extracts of or from any record or statement produced pursuant to this section.

- (6) Nothing in this section limits the operation of section 54 and nothing in section 54(1) limits the operation of this section.

*[Section 55 amended by No. 47 of 1989 s. 9.]*

## **56. Secrecy**

- (1) This section applies to every person who is or has been —
- (a) a member of, or the Registrar of, the former Commercial Tribunal that existed under the *Commercial Tribunal Act 1984* before that Act was repealed;
  - (b) a person appointed under section 32(1);
  - (c) the Commissioner or a delegate of the Commissioner;
  - (d) an authorised person under section 55(1); or
  - [(e) deleted]*
  - (f) a member of the staff assisting the Commissioner.
- (2) A person to whom this section applies shall not misuse information obtained by reason of any function that person has, or at any time had, in the administration of the cognate Acts.  
Penalty: \$20 000.
- (3) A person misuses information if it is, directly or indirectly, recorded, used or disclosed to another person, other than —
- (a) in the course of duty;

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- (b) under —
    - (i) the cognate Acts, the *Consumer Affairs Act 1971*, the *State Administrative Tribunal Act 2004*; or
    - (ii) the corresponding Acts, or proposed laws, of the legislature of the Commonwealth or of another State or of a Territory;
  - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
  - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
  - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.
- (4) In this section —  
**“information”** means information concerning the affairs of a person.

*[Section 56 amended by No. 55 of 2004 s. 205; No. 28 of 2006 s. 89.]*

**56A. Protection from liability for wrongdoing**

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 56A inserted by No. 28 of 2006 s. 90.]*

**57. Extensions of time**

Where, under this Act, the State Administrative Tribunal or the Commissioner may extend a period, the State Administrative Tribunal or the Commissioner, as the case may be, may extend the period notwithstanding that the period has elapsed.

*[Section 57 amended by No. 55 of 2004 s. 206.]*

**58. 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 the person's 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 of the Commonwealth 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 of the Commonwealth, 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.

*[Section 58 amended by No. 10 of 2001 s. 57.]*

**59. Service by post**

For the purposes of this Act, where a document or notice is properly addressed, prepaid and posted as a letter, the document or notice shall, unless the contrary is proved, be deemed to have been given to the person to whom it is addressed at the time at which the letter would be delivered in the ordinary course of post.

**60. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the department of the Public Service of the State principally assisting the Minister in the administration of this Act, and its operations under the cognate Acts.
- (2) The annual report of the department in which the Commissioner is employed is to include details of —
  - (a) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken by, or at the direction of, the Commissioner for the purposes of this Act; and
    - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Commissioner in performing functions under this Act in the year after the year to which the report relates; and
  - (e) any proposals for improving the performance of the Commissioner's functions under this Act.



*[Section 60 inserted by No. 98 of 1985 s. 3; amended by No. 55 of 2004 s. 207; No. 77 of 2006 s. 17.]*

**61. Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) The regulations may provide that the fee referred to in section 9(2), 21(1) or 21(5) is to be —
  - (a) a specified amount; or
  - (b) an amount calculated in a specified manner.
- (3) A regulation may impose a penalty not exceeding \$500 for a breach of the regulation.
- (4) 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.

*[Schedule 1 repealed by No. 55 of 2004 s. 208.]*

### Notes

- <sup>1</sup> This is a compilation of the *Credit (Administration) Act 1984* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Credit (Administration) Act 1984</i>	100 of 1984	19 Dec 1984	Act other than s. 6-8: 1 Mar 1985 (see s. 2 and <i>Gazette</i> 22 Feb 1985 p. 657); s. 6-8: 30 Apr 1985 (see s. 2 and <i>Gazette</i> 19 Apr 1985 p. 1381)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Credit) Act 1989 Pt. 3</i>	47 of 1989	9 Jan 1990	s. 7 and 9: 1 Mar 1985 (see s. 2(3) and <i>Gazette</i> 22 Feb 1985 p. 657); s. 8: 30 Apr 1985 (see s. 2(4) and <i>Gazette</i> 19 Apr 1985 p. 1381); s. 6: 9 Jan 1990 (see s. 2(1))
<i>Pawnbrokers and Second-hand Dealers Act 1994 s. 100</i>	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
<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. 71</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<b>Reprint of the <i>Credit (Administration) Act 1984</i> as at 5 May 2000</b> (includes amendments listed above)			

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Corporations (Consequential Amendments) Act 2001 Pt. 18</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth 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>Consumer Credit (Western Australia) Amendment Act 2003 s. 16</i>	43 of 2003	30 Jun 2003	9 Jul 2003 (see s. 2 and <i>Gazette</i> 9 Jul 2003 p. 2735)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 50</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 40(4)</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<b>Reprint 2: The Credit (Administration) Act 1984 as at 6 Aug 2004</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	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 Pt. 2 Div. 31<sup>4,5</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 4 Div. 10<sup>6</sup></i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 3: The Credit (Administration) Act 1984 as at 4 Aug 2006</b> (includes amendments listed above)			
<i>Pawnbrokers and Second-hand Dealers Amendment Act 2006 s. 23</i>	46 of 2006	4 Oct 2006	1 May 2007 (see s. 2 and <i>Gazette</i> 30 Apr 2007 p. 1833)
<i>Consumer Protection Legislation Amendment and Repeal Act 2006 Pt. 4</i>	69 of 2006	13 Dec 2006	14 Jul 2007 (see s. 2 and <i>Gazette</i> 13 Jul 2007 p. 3453)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

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- <sup>1a</sup> 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**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Housing Societies Repeal Act 2005</i> s. 23 <sup>8</sup>	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))

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- <sup>2</sup> Repealed by the *Strata Titles Act 1985*.
- <sup>3</sup> Repealed by the *Life Insurance (Consequential Amendments and Repeals) Act 1995* of the Commonwealth.
- <sup>4</sup> 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.
- <sup>5</sup> The *State Administrative Tribunal Regulations 2004* r. 30 and 45 read as follows:
- “

#### **30. Credit (Administration) Act 1984**

- (1) In this regulation —  
“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 31 comes into operation.
- (2) If —
- (a) before the commencement day a matter was being dealt with by the Commercial Tribunal of Western Australia under the *Credit (Administration) Act 1984* section 23; and
  - (b) that matter is transferred to the Tribunal under the Act section 167(4)(b),

despite the Act section 32(2) and (3), the *Evidence Act 1906* and the rules of evidence continue to apply to the matter when it is being dealt with by the Tribunal.

**45. Credit (Administration) Act 1984**

- (1) In this regulation —  
“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 31 comes into operation.
- (2) If before the commencement day an objection has been lodged with the Commercial Tribunal of Western Australia in accordance with the *Credit (Administration) Act 1984* section 11 and the matter in respect of which the objection was lodged has not been dealt with by that Tribunal, on or after the commencement day the objection is to be taken to be an objection lodged with the Commissioner for Fair Trading under that section.
- (3) If before the commencement day an objection has been lodged with the Commercial Tribunal of Western Australia in accordance with the *Credit (Administration) Act 1984* section 23(1) and the matter in respect of which the objection was lodged has not been dealt with by that Tribunal, on or after the commencement day the objection is to be taken to be a written complaint under that subsection to the Commissioner for Fair Trading about the holding of a licence by a specified licensee.
- (4) If immediately before the commencement day the Commercial Tribunal of Western Australia is conducting an inquiry under the *Credit (Administration) Act 1984* Part IV, on or after the commencement day that inquiry is to be conducted by a person appointed by the Minister under section 32(1) of that Act to conduct that inquiry as if that person, and not the Tribunal, had been appointed to conduct the inquiry.

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<sup>6</sup> 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.

”.

<sup>7</sup> Footnote no longer applicable.

<sup>8</sup> On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 23 had not come into operation. It reads as follows:

“

**23. Credit (Administration) Act 1984 amended**

(1) The amendment in this section is to the *Credit (Administration) Act 1984*.

(2) Section 7(1)(h) is deleted.

”.