



Australian Capital Territory

## **Credit Act 1985**

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## **About this republication**

### **The republished law**

This is a republication of the *Credit Act 1985* effective 27 August 1993 to 30 May 1994.

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Australian Capital Territory  
**CREDIT ACT 1985**

*Reprinted as at 31 January 1994*

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Australian Capital Territory

## **CREDIT ACT 1985**

An Act relating to the provision of credit, the regulation of contracts providing credit and the licensing of persons in connection with the provision of credit

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Credit Act 1985*.<sup>1</sup>

#### **Commencement**

2. (1) This section and section 1 shall come into operation on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act shall come into operation on such date as is, or such dates as respectively are, fixed by the Minister for Territories by notice in the *Gazette*.

#### **Application of Act and transitional provisions**

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

- (a) where the contract of sale, credit contract or mortgage is in writing and is signed in the Territory by the buyer, debtor or mortgagor; or
- (b) where the contract of sale, credit contract of mortgage is not in writing or is in writing but is not signed by the buyer, debtor or mortgagor in the Territory or in a recognized State—
  - (i) in the case of a contract of sale—if the goods and services are, or are to be, delivered or supplied in the Territory;

- (ii) in the case of a credit contract—if the credit is, or is to be, provided to the debtor in the Territory or the debtor has, or is to have, the use or benefit of the credit in the Territory; 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 the Territory.

(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, entered into or made before the commencement of the provision.

(3) This Act (except sections 58 and 59, paragraph 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 and 59, paragraph 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.

(5) A credit provider who or which fails to comply with subsection (4) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Act binds Crown**

#### **4.**

(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.

### **Interpretation**

5. (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 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 \$150 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 \$90 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 contract other than a continuing credit 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) where 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) where 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—
  - (i) the balance of the cash price required to be stated in accordance with paragraph 1 (c) of Schedule 2; and
  - (ii) the total of the amounts required to be stated in accordance with paragraphs 1 (d) to (i) (inclusive) of Schedule 2;
- (b) in relation to any other credit sale contract, the sum of—
  - (i) the cash price (less any deposit); and
  - (ii) 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 paragraphs 1 (d) to (i) (inclusive) of Schedule 2;
- (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—
  - (i) the amount agreed under the contract to be lent; and
  - (ii) 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 paragraphs 1 (b) to (f) (inclusive) of Schedule 4;

“bank” means a bank within the meaning of the *Banking Act 1959* of the Commonwealth or a bank constituted by any other law of the Commonwealth or by a law of the Territory or a State;



“body corporate” does not, except in the case of a credit provider or finance broker that is a body corporate, include—

- (a) a body corporate constituted under the *Unit Titles Act 1970* by the proprietor or proprietors of units within the meaning of that Act, all or the majority of which units are intended to be dwellings;
- (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 parts are intended to be dwellings;
- (c) when acting under the *Bankruptcy Act 1966* of the Commonwealth in relation to the affairs of a debtor, guarantor or mortgagor—the trustee within the meaning of that Act; or
- (d) when acting as executor, administrator or trustee of the estate of a debtor, guarantor or mortgagor—
  - (i) the Curator within the meaning of the *Administration and Probate Act 1929*;
  - (ii) the Public Trustee within the meaning of the *Public Trustee Act 1985*; and
  - (iii) a trustee company within the meaning of the *Trustee Companies Act 1947*;

“cash” includes cheques;

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

- (a) unless the contract is one to which paragraph (b), (c) or (d) applies—the price payable under the contract for the goods and services;
- (b) where, under the contract, credit for the payment for the goods and services is, or is to be, provided by the supplier or by a linked credit provider of the supplier and, at the time when the contract is made, the goods and services are available for purchase from the supplier for cash—the lowest price at which at that time the buyer might have bought the goods and services from the supplier for cash;

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

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

“commercial vehicle” means—

- (a) a motor vehicle within the meaning of the *Motor Traffic Act 1936* 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; and
- (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 of the credit provider or, where the credit provider is a body corporate, the credit provider or a related corporation within the meaning of the *Companies Act 1981* 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;

“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;

“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,

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

- (iii) in trade or commerce;
  - (iv) in a process of production or manufacture; or
  - (v) in the course of treating or repairing 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 prescribed transaction;

“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; and
- (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 and services where, in respect of the payment for the goods and 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 buyer is not required to be paid within the period of 4 months after the date on which credit is provided under the contract; or
- (c) the amount payable by the buyer may be paid by 5 or more instalments or by a deposit and 4 or more instalments,

other than a contract included in a class of contracts prescribed as being contracts that are not credit sale contracts within the meaning of this Act;

“cross-claim” has the same meaning as in the *Magistrates Court (Civil Jurisdiction) Act 1982*;

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

“deposit” means—

- (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;

“determined fee” means the fee determined under section 263 for the purposes of the provision in which the expression occurs;

“Director” means the Director of Consumer Affairs for the Australian Capital Territory appointed under subsection 12 (3) of the *Consumer Affairs Act 1973* and includes a person appointed under section 13 of that Act to act as the Director;

“discharge”, in relation to a contract, means discharge of the contract, so far as it is executory, otherwise than by agreement or 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 by the mortgagee of a right under the mortgage arising from the default of the mortgagor; and
- (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 predetermined 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” means a credit provider to whom, by reason of section 156 or a notice under section 19, subsections 155 (1) and (2) do not apply;

“farm machinery” means—

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

being an implement or goods acquired for the purposes of a farming undertaking;

“farming undertaking” includes—

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

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

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

“financial institution” means—

- (a) a building society, or a credit union, within the meaning of the Financial Institutions (ACT) Code;
- (b) a trading society, or a housing and services society, registered under the *Co-operative Societies Act 1939*; or
- (c) a body (however described) registered or incorporated under a law of a State or another Territory corresponding to the *Co-operative Societies Act 1939*;

“Financial Institutions (ACT) Code” means the provisions applying because of section 8 of the *Financial Institutions (Application of Laws) Act 1992*;

“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 of the supplier, of goods and services to which the contract or mortgage relates or, where the supplier is a body corporate, a person who is a director or officer of the body corporate or is a related corporation within the meaning of the *Companies Act 1981* of the Commonwealth or a director or officer of such a related corporation or spouse 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 and 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 in the Conveyancing Acts, 1919-1954 of the State of New South Wales as applied by the *Trustee Act 1957*;

“licence” means a licence under this Act;

“licensee” means the holder under Part XI of a licence as a credit provider or as a finance broker;

“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 credit to another person, not being a body corporate, in any of the following ways:

- (a) by paying an amount to, or in accordance with the instructions of, that other person;
- (b) by paying an amount in satisfaction or reduction of an amount owed to the person by that other person;
- (c) by varying the terms of a contract under which money owed to the person by that other person is payable;
- (d) by deferring an obligation of that other person to pay an amount to the person; or

- (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;

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

“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 a corporation within the meaning of subsection 5 (1) of the *Companies Act 1981* 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 applies;

“predetermined 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;

“proceedings”, in relation to the Tribunal, includes any matter arising for determination by the Tribunal under this Act, other than a matter arising under Part XIII;

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

“recognized 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;

“register” means the Register of Licensed Credit Providers, or the Register of Licensed Finance Brokers, under section 168, as the case requires;

- “Registrar” means Registrar of the Tribunal;
- “registration fee”, 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;
- “rescind”, in relation to a contract, means avoid the contract as from its beginning;
- “security interest” means an interest or a 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 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, not being 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” means—

- (a) in relation to a contract of sale, a credit sale contract or a contract for the hiring of goods—a person who supplies goods and services; or
- (b) in relation to a continuing credit contract—a person who makes cash advances or supplies goods and 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; and
- (b) in relation to services, provide, grant or confer;

“the Bureau” means the Consumer Affairs Bureau within the meaning of the *Consumer Affairs Act 1973*;

“trade-in allowance”, in relation to a contract of sale of goods and 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 and services in which the supplier deals;
- (b) the business of supplying goods and services carried on by the supplier; or
- (c) the provision of credit to purchasers in respect of the payment for goods and services supplied by the supplier;

“Tribunal” or “Credit Tribunal” means the Australian Capital Territory Credit Tribunal established under section 184.

(2) In this Act, unless the contrary intention appears—

- (a) a reference to goods and services shall be read as including a reference to goods or services; and

- (b) a reference to the re-supply of goods bought from a person shall be read as including 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.

### **Jurisdiction of courts and Tribunal**

**6. (1)** In this Act, unless the contrary intention appears, 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; or
- (b) in any other case—is a reference to the Tribunal.

**(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—

- (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 the 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 in the court.

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

**8. (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 paragraph (1) (b), (c) or (f) are assigned or transferred, or pass by operation of law, to a body corporate.

**Contracts of employment excluded**

**9.** A reference in this Act to a contract or agreement in respect of the payment by a debtor for services supplied by another person shall not be read as including 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 Act 1951*.

**Annual percentage rate**

**10.** 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 annual percentage rate that can be determined in relation to the contract in accordance with that section;

- (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 percentage 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.

### **Credit charge**

**11. (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—shall be read as 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—shall be read as 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, if he so determines, may apply a percentage rate per annum that is lower than the annual percentage rate disclosed under the contract.

### **Tied contracts**



**12. (1)** For the purposes of this Act, where a credit provider enters into a loan contract with a person who is a buyer of goods and 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 and services; and
- (b) at the time the loan contract is entered into, the credit provider is a linked credit provider of the supplier,

that loan contract shall be taken to be a tied loan contract.

**(2)** For the purposes of this Act, where a credit provider provides credit under a continuing credit contract in respect of the payment by the debtor for goods and services supplied by a supplier in relation to whom the credit provider is a linked credit provider, that continuing credit contract shall be taken to be a tied continuing credit contract.

### **Contracts for hiring of goods**

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

- (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; 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, or include, 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 redelivered 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 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 reasonable 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;
- (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.

#### **Certain contracts not credit sale contracts**

**14. (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 and 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 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.

#### **Loan contracts not to include certain credit**

15. For the purposes of this Act, a reference to credit in relation to a loan contract shall not be read as including a reference to credit provided under a credit sale contract or a continuing credit contract.

#### **Business of providing credit**

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

#### **Recognised States**

17. Where the Chief Minister is satisfied that in a State or another Territory the law for the regulation of the provision of credit is such as to enable reciprocal arrangements to be made with the Territory in relation to the provision of credit, the Chief Minister may, by order published in the *Gazette*, declare that State or other Territory to be a recognized State.

#### **Exceptions from application of Act**

18. (1) Parts III to VIII (inclusive) do not apply in relation to a regulated contract where the credit provider is a financial institution.

(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.

### **Variation of application of Act**

**19. (1)** The Minister may, by instrument, declare that the provisions of this Act, or such of those provisions as are specified in the instrument—

- (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;
- (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; or
- (g) have effect subject to any exemption or exception that has been declared under a corresponding law.

**(2)** An instrument made under subsection (1)—

- (a) may specify the period during which the declaration shall remain in force; and
- (b) may provide that the operation of the declaration is subject to such terms and conditions as are specified in the instrument.

**(3)** In this section “corresponding law” means a law for the regulation of the provision of credit, being a law of a State or Territory declared under section 17 to be a recognized State.

**(4)** Where a person to whom or which a declaration under subsection (1) applies fails to comply with any terms and conditions to which the operation of the declaration is subject, that person is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

### **Publication, tabling and disallowance of instruments of variation**

**19A.** An instrument made under subsection 19 (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

## **PART II—CONTRACTS OF SALE**

### **Application of Part**

**20. (1)** In this Part, a reference to a contract of sale shall be read as a reference to—

- (a) a contract of sale of goods and 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; and
  - (ii) of other goods and services.

**(2)** For the purposes of this Part, a reference to a buyer or a person who buys or proposes to buy goods and services shall not be read as including a reference to a body corporate.

### **Contract of sale conditional on grant of credit**

**21. (1)** Where a buyer, before entering into a contract of sale of goods and services, makes known to the supplier that he requires credit to be provided in respect of payment for the goods and 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), the 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 the rescission was valid, may—

- (a) on the application of the supplier or the buyer, where there is a dispute as to the return of the goods to the supplier, make an order relating to the return of the goods; and
- (b) 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.

**Supplier not to require buyer to obtain credit from specified person**

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

**(2)** A supplier who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**Consequence of discharge of certain contracts**

**23. (1)** Where a regulated credit sale contract is rescinded or discharged (whether under this Act or any other law in force in the Territory), 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 law in force in the Territory)—

- (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 law in force in the Territory) 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.

### **Linked credit provider**

**24. (1)** Where a buyer who has entered into a tied loan contract or tied continuing credit contract with a linked credit provider of a supplier for the provision of credit in respect of the payment by the buyer for good and 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;
- (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 to recover a sum of money from, the supplier for a misrepresentation, breach of contract or failure of consideration 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 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 subparagraph 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 reduction 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—

- (c) the buyer brings the proceedings against the supplier and linked credit provider jointly; or
- (d) in the case of a cross claim or right referred to in subsection (3)—the buyer claims in the proceedings against the supplier in respect of the liability.

**(5)** Subsection (4), paragraph (8) (a) and subsection (9) 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;
  - (ii) being a body corporate, has been dissolved or has commenced to be wound up; or
  - (iii) being a natural person, has died;
- (b) the court—
- (i) believes on reasonable grounds that it is not reasonably likely that any part of a judgment obtained against the supplier would be satisfied; and
  - (ii) declares on the application of the buyer that subsection (4) and paragraph (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 subsection (4) and paragraph (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) any amount of interest or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and
- (c) any amount of costs 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 remains 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 is 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—

- (a) 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
- (b) unless the court otherwise determines, the amount of any costs reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

**(11)** Notwithstanding the provisions of any other law of the Territory, where in proceedings in respect of a liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, or against a linked credit provider, for damages or a sum of money, the court shall upon application by the buyer, unless 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 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 day on which the judgment is given.

(12) In determining whether cause is shown against allowing or awarding interest under subsection (11), 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.

(14) In this section, a reference to a court shall not be read as including a reference to the Tribunal.

### **Consequential discharge of tied loan contract and mortgage**

25. (1) Subject to section 27, where a contract of sale is rescinded or discharged (whether under this Act or any other law in force in the Territory) 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 and 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 any amount 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
- (c) the buyer is liable to the credit provider for any amount 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 and 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 paragraph (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 paragraph (3) (b).

**Discharge of tied continuing credit contract on discharge or rescission of contract of sale**

**26. (1)** Subject to section 27, where a contract of sale is rescinded or discharged (whether under this Act or any other law in force in the Territory) 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 and 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 paragraph (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 paragraph (1) (b).

**(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.

**Operation of sections 25 and 26**

**27.** 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 law in force in the Territory); 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 the supplier.

**Disputes**

**28.** Where there is a dispute arising out of the operation of section 23, 25 or 26, the 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.

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

**29. (1)** As soon as a supplier knows that a contract of sale by the supplier 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 the linked credit provider under a tied continuing credit contract in relation to the contract of sale,

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

**(2)** A supplier who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**PART III—REGULATED CONTRACTS*****Division 1—Credit sale contracts and loan contracts*****Application of Part**

**30. (1)** In this Part, a reference to a credit sale contract shall not be read as including a reference to a credit sale contract relating to goods and services in respect of 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; and
  - (ii) other goods and services.

**(2)** In this Part, a reference to a loan contract shall not be read as including 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
- (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%,

unless, when the contract is entered into, 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 paragraph (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.

**Contracts to be in writing**

**31. (1)** A credit provider who or which enters into a credit sale contract or a loan contract that is not in writing signed by the debtor is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$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.

### **Form of offer**

**32. (1)** A person who or which is—

- (a) a credit provider;
- (b) an agent of a credit provider authorized 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 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 the document includes a notice that is—

- (d) in the form prescribed for the purposes of this subsection; and
- (e) in a position so prescribed or, in a particular case, in a position approved by the Tribunal, on that document.

(2) A credit provider, agent of a credit provider or supplier who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) 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 the document includes a notice that is—

- (a) in the form prescribed for the purposes of this subsection; and
- (b) in a position so prescribed or, in a particular case, in a position approved by the Tribunal, on that document.

(4) A credit provider or an agent of a credit provider who or which contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or

(b) if the offender is a natural person—\$1,000.

**(5)** Where—

(a) a credit provider;

(b) an agent of a credit provider authorized 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 document.

**(6)** A credit provider, agent of a credit provider or supplier who or which fails to comply with subsection (5) is guilty of an offence punishable, on conviction, by a fine not exceeding—

(a) if the offender is a body corporate—\$5,000; or

(b) if the offender is a natural person—\$1,000.

**(7)** 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 for his own use a true copy of the offer certified by the credit provider or agent as a true copy of the offer.

**(8)** A credit provider or an agent of a credit provider who or which fails to comply with subsection (7) is guilty of an offence punishable, on conviction, by a fine not exceeding—

(a) if the offender is a body corporate—\$5,000; or

(b) if the offender is a natural person—\$1,000.

**(9)** 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 is of no force or effect unless, after the alteration or addition has been made, that person has, opposite the alteration or addition, signed or initialled the margin of—

- (a) the document in which the terms and conditions of the contract are specified; and
- (b) the copy of the document given to him pursuant to subsection (5) or (7).

**(10)** 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 authorized 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 (9).

**(11)** A credit provider, agent or supplier who or which contravenes subsection (10) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

**(12)** 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.

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

**33. (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.

**(2)** A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

**(3)** 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.

(4) 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.

#### **Debtor to be given prescribed statement**

**34. (1)** Where a credit sale contract or a loan contract is made, the credit provider shall, not later than 14 days after the date on which the contract is made, give to the debtor the statement prescribed for the purposes of this section.

(2) A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(3) 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.

#### **Disclosure in credit sale contracts**

**35. (1)** A credit sale contract relating to goods and 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 and 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;
    - (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 subparagraph 1 (d) (iv) or paragraph 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 law in force in the Territory 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 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.

#### **Disclosure in loan contracts**

**36. (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;
  - (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) where 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 paragraph 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 law in force in the Territory 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.

#### **“Add-on” contracts**

**37. (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 paragraphs 35 (1) (c) to (h) (inclusive) 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 paragraphs 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 paragraph (3) (a) has been given, the debtor may rescind the contract by notice in writing 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.



(8) A debtor who or which fails to comply with subsection (7) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(9) Where there is a dispute arising out of the operation of this section, the 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 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.

(10) 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.

### **Statement of annual percentage rate**

38. 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.

#### **Acceptable rate of interest**

**39. (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.

#### **Inclusion of more than one rate of interest in contract**

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

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

#### **Variation ineffective without notice**

**41. (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.

### **Civil penalty**

**42. (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 subsection 40 (1); or
- (e) a mortgage relating to a credit sale contract or a loan contract is entered into in contravention of subsection 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.

### **Offence**

**43.** A credit provider who or which enters into a credit sale contract or a loan contract that is in writing but is otherwise not in accordance with this

Division is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

#### **Minimum credit charge**

**44. (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 who or which enters into a credit sale contract or a loan contract that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

#### **Statement for debtor or guarantor on request**

**45. (1)** Where a credit provider receives a request in writing for a statement under this subsection, together with the determined fee (if any), from a debtor under a contract that is 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.

(2) Subject to subsection (3), a credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) A credit provider is not required to comply with a request under subsection (1) from a debtor or a guarantor where, 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 relevant credit sale contract, loan contract or contract of guarantee.

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

46. (1) Where a credit provider receives a request in writing for a copy of a document that the credit provider is required by this section to provide, together with the determined 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.

(2) Subject to subsection (3), a credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) A credit provider is not required to comply with a request under subsection (1) from a debtor or a guarantor 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 relevant credit sale contract, loan contract or contract of guarantee.

**Tribunal may determine reasonable fees etc.**

47. (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 authorized 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 paragraph 1 (g) of Schedule 2 or paragraph 1 (d) of Schedule 4; or
- (c) the value of any consideration of a kind prescribed for the purposes of paragraph 1 (i) of Schedule 2 or paragraph 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 determinations; 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 by 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*

**Interpretation**

48. (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 and 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 and 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 and services or cash supplied by that third person to the other person, as referred to in subparagraph (2) (a) (ii), then, for the purposes of this Act, the creditor shall, in respect of any goods and 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 predetermined 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.

### **Application of Part**

**49. (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 by 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 and services supplied by the credit provider or by 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 paragraph (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 (other than this section and sections 58, 59, 60 and 66) 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.

### **Billing cycle**

**50. (1)** In this Act, a reference to a billing cycle in relation to a continuing credit contract shall be read as 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 who or which applies as a billing cycle for the purposes of section 61 or Schedule 7 a period exceeding 40 days is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Payment on behalf of debtor**

**51.** 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 and 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.

### **Chargeable amount**

**52. (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, are determined by the credit provider to constitute 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 who or which determines 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 paragraphs (1) (a) and (b) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$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 paragraphs (1) (a) and (b), the chargeable amount for the billing cycle shall be deemed, for the purposes of this Division, to be the lesser of the amounts referred to in paragraphs (1) (a) and (b).

### **Amount payable under continuing credit contract**

**53. (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 and 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 payable 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 other consideration given to the debtor under the contract, being consideration of a kind prescribed for the purposes of this section,

is void.

(2) A credit provider who or which enters into a continuing credit contract that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

### **Credit charge**

**54. (1)** For the purposes of this Act, a reference to a credit charge in relation to a billing cycle of a continuing credit contract shall be read as 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 and 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 who or which includes 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 is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$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 and services or of cash to the debtor or to another person under the contract is less than the cash price of the goods and services or the amount of the cash.

### **Annual percentage rate**

**55. (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 credit provider who or which includes more than one annual percentage rate in respect of a continuing credit contract is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(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 paragraph 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.

#### **Billing cycle less than one month**

**56.** 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.

#### **Non-business days**

**57. (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 two or more days each of which is, a Saturday, a Sunday or a public or bank holiday in the Territory or throughout a recognized 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.

### **Debtor to be given prescribed statement**

**58.** A credit provider who or which, before the debtor first incurs a debt under a continuing credit contract, fails to give to the debtor a statement in or to the effect of the form prescribed for the purposes of this section is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

### **Notice of terms of continuing credit contract**

**59. (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) any amount 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 for each billing cycle is to be determined;
- (c) the terms and conditions (if any) upon which, under the contract, a credit charge for a billing cycle may be made;
- (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) particulars of stamp duty (if any) payable in respect of or in relation to the contract or a mortgage payable under the contract by the debtor;
- (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.

(2) Subject to subsection (3), a credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) It is sufficient compliance with subsection (1) if—

- (a) 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 including the matters required to be stated in a notice under subsection (1); and
- (b) before the debtor incurs a debt under the contract, a copy of that offer is given to him for his own use.

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

#### **Variation of continuing credit contract ineffective without notice**

60. (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.

### **Statement of account**

**61. (1)** A credit provider under a continuing credit contract shall give to the debtor a statement of account in accordance with Schedule 7 for each billing cycle applied under the continuing 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 law in force in the Territory exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
- (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)** It is sufficient compliance with Schedule 7 if particulars of matters required to be included in the statement of account are included in documents attached to or accompanying the statement of account.

**(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, a credit provider who or which fails, within a reasonable time after the receipt of the amount, to enter the amount in the account of the debtor kept by the credit provider is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(6)** A credit provider under a continuing credit contract who or which—



- (a) fails 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) gives a statement of account that does not comply with the provisions of this section; or
- (c) includes in a statement of account under this section an amount of deferral charges or default charges,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (d) if the offender is a body corporate—\$5,000; or
- (e) if the offender is a natural person—\$1,000.

### **Correction of billing errors**

#### **62. (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 referred to in subsection (1), the amount or other matter in the statement of account given to the debtor relating to the next billing cycle 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 cycle, relating to the queried amount or other matter, and the imposition of any such charge is, without limiting the generality of 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 referred to in subsection (1), 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) For the purposes of subsection (3), 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 who or which institutes 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 is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

#### **Statement of account to be given before proceedings instituted**

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

#### **Statement of account not to include opening balance in certain circumstances**

64. (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) the credit provider has given to the debtor a statement of account in respect of the billing cycle immediately preceding the first-mentioned billing cycle; and
- (b) the credit provider 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.

(2) A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) 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 the credit provider in respect of another continuing credit contract in respect of which a statement of account was posted by the same bulk postage.

#### **Statement of account not needed in certain circumstances**

**65.** 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 two 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.

### **Credit provider to pay amounts owing to debtor upon request**

**66.** 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.

### **Civil penalty**

**67. (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 subsection 3 (4) or section 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 subsection 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.

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

**68. (1)** Where a credit provider receives a request in writing together with the determined 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) a copy of any notice given under subsection 3 (4) or section 59 or 60; and
- (b) where the request relates to a contract referred to in subsection 59 (3)—a copy of the offer referred to in that subsection,

in respect of the contract.

(2) Subject to subsection (3), a credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) 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, the credit provider 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*

#### **Re-financing of credit contracts by the same parties**

**69. (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 setting out, 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 any statutory rebates of insurance charges and maintenance charges deducted from the sum of the amounts referred to in subparagraphs (i) to (v) (inclusive).

**(2)** A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(3)** In subsection (1), “relevant date” means—

- (a) the date on which the new credit contract is entered into; or
- (b) if that 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.

### **Variation of credit sale contracts and loan contracts**

**70. (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 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 and deferral charges outstanding at the date of the variation;
  - (v) the amount of stamp duty and 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 paragraph (1) (d) to be specified in an agreement are to be so specified.

**(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 to 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;
- (c) such other amounts as may be prescribed.

**(4)** A credit provider who or which—

- (a) enters into an agreement referred to in subsection (1); and
- (b) fails to give to the debtor a copy of the agreement within 14 days after the agreement is entered into,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$5,000; or
- (d) if the offender is a natural person—\$1,000.

(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 is made, gives to the guarantor notice in writing of the variation.

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

- (a) where section 37, 69 or 71 applies to or in relation to 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.

### **Deferral charge**

**71. (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 in accordance with—
  - (i) a term in the contract to the effect that such a payment may be deferred; or
  - (ii) 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 (3);
- (c) a default charge is not made in respect of the deferral;
- (d) the deferral is made in accordance with subsection (5); and



- (e) the relevant credit sale contract or loan contract is a credit sale contract or a loan contract where the whole or part of the credit charge under the contract is a predetermined credit charge.

**(2)** A credit provider who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(3)** 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 in regard to which payment 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 referred to in subsection (4) 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.

**(4)** The charges in relation to the deferral of a payment referred to in paragraphs (3) (a) and (5) (b) are charges in respect of—

- (a) stamp duty payable in respect of or in relation to the deferral; and
- (b) fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) authorized to prepare documents for the deferral.

**(5)** 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, the credit provider 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 referred to in subsection (4) in relation to the deferral;
- (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 in respect of which payment is deferred in accordance with paragraph (3) (a) for the purpose of determining the amount of the charge.

(6) A credit provider who or which makes a charge in respect of the deferral of the payment of an amount payable by the debtor under a regulated continuing credit contract is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(7) Notwithstanding any other provision of this Act, the deferral in accordance with this section of the payment of an amount payable by a debtor under a credit sale contract or a loan contract is not a loan contract.

### **Default charges**

**72. (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—

- (a) there is a term in the contract to the effect that such a charge may be made and the charge does not exceed—
  - (i) the amount determined by applying to the daily balance of the amount due and unpaid—
    - (A) where a credit charge is payable under the contract—the daily percentage rate under the contract; or
    - (B) where a credit charge is not payable under the contract—the rate prescribed for the purposes of this section; or
  - (ii) 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; and

- (b) the relevant sale contract or loan contract is a credit sale contract or loan contract where the whole or part of the credit charge under the contract is a predetermined credit charge.

(2) A credit provider who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

(3) A credit provider who or which makes a charge in respect of—

- (a) the failure to pay an amount payable under a regulated continuing credit contract; or
- (b) a charge under subsection (1) that is unpaid,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$5,000; or
- (d) if the offender is a natural person—\$1,000.

(4) 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.

### **Variations generally**

**73.** 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.

### **Variation of commitments on account of hardship**

**74. (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 for payment of amounts due under the contract during a specified period were varied (without a change being made to the annual percentage rate); or
- (c) if the period of the contract were extended and the dates for payment of amounts due under the contract during a specified period were varied (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 Director for assistance in negotiating a variation of the contract.

(3) Where an application is made under subsection (2), the Director 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 Director 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 Director 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 is not entitled to 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.

#### *Division 4—General*

##### **Unauthorised fees**

**75. (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 creditor 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 who or which enters into an agreement that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

##### **Enforcement expense**

**76. (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 who or which enters into a contract containing a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$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 may, on the application of the debtor or credit provider, determine the amount of that liability.

#### **Right to revoke offer is paramount**

77. (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 who or which enters into an agreement including a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

#### **Sufficient statement of annual percentage rate**

78. 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 stated as a rate—

- (a) greater than that required to be stated; or
- (b) less than that required to be stated by not more than one part in 50 of the rate required to be stated.

**Sufficient statement of estimated credit charge**

**79.** 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 stated as a charge—

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

**Discrepancy between credit charge and annual percentage rate**

**80.** Where, under a credit sale contract or a loan contract—

- (a) the whole of the credit charge is a predetermined credit charge or an estimated credit charge; and
- (b) 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 one per cent of the amount so stated in the contract,

the liability of the debtor under the contract in respect of the credit charge is a liability—

- (c) 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
- (d) where the amount so determined exceeds the amount so stated—to pay the amount determined in accordance with the contract as if the annual percentage rate were the rate which, when applied to the unpaid balance of the amount financed, yields an amount equal to the amount so stated.

**Assignment of rights by credit provider**

**81. (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 (3), 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 Tribunal.

**(2)** A person, being a credit provider or mortgagee referred to in subsection (1), who or which contravenes that subsection is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(3)** For the purposes of paragraph (1) (d), where, in relation to a proposed assignment—

- (a) if the person who would be the assignee under the assignment were an applicant for a licence under Part XI as a credit provider, the licence would not be granted; or
- (b) the proposed assignment would, or would be likely to, prejudice the rights or interests of any person (other than the assignor) under the relevant regulated contract or mortgage or under a contract of guarantee relating to the regulated contract,

the Tribunal shall refuse consent to the assignment.

**(4)** 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 money 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.

**(5)** 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 (6), 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.

(6) 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.

(7) The rights of a debtor, mortgagor or guarantor referred to in paragraph (5) (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.

(8) 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.

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

### **Loan to be in money or equivalent**

**82. (1)** 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.

**(2)** A credit provider who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Application of payments**

**83. (1)** 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.

**(2)** A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Appropriation of payments between contracts**

**84.** Where a debtor—

- (a) is liable to make payments to the same credit provider in respect of 2 or more regulated contracts; and
- (b) makes a payment in respect of the contracts which is insufficient to discharge the total amount then due under all the contracts,

then—

- (c) notwithstanding any agreement to the contrary, the debtor is entitled to require the credit provider to appropriate the amount so paid in or towards the satisfaction of the amount due under any number of those contracts, in such proportions as the debtor specifies; and
- (d) 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.

**Tribunal may reduce credit provider's loss**

**85. (1)** Where, by reason of a contravention of or a failure to comply with this Act by a credit provider, a debtor is not liable to pay to the credit provider under a regulated contract an amount that, but for the contravention or failure, he would have been liable to pay under the contract, the credit provider may apply to the Tribunal for an order increasing the liability of the debtor to the credit provider.

**(2)** Where an application is made to the Tribunal under this section in relation to a regulated contract, the Tribunal may, 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 subsection 155 (1)—
  - (i) where the Tribunal is satisfied that the contravention 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) where the Tribunal is satisfied that the contravention has occurred but ought not to be excused—determine not to

increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part as it determines of the amount financed under the contract and the 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 subsection 155 (1)—
  - (i) where the Tribunal is satisfied that the contravention has occurred and ought reasonably to be excused—determine that the debtor is liable to pay the whole or such part of the amount owing or the credit charge as it determines; or
  - (ii) where the Tribunal is satisfied that the contravention has occurred but ought not to be excused—determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part of the 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 a provision of this Act other than subsection 155 (1)—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 a failure to comply with this Act 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 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.

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

**Stay of civil penalty pending Tribunal’s decision**

**85A. (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 shall not, in relation to an amount in excess of the amount financed under the relevant regulated contract—

- (a) take enforcement action against the debtor;
- (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 but, subject to any order of the Tribunal to the contrary, all actions taken pursuant to that interim determination while it had effect remain valid after it ceases to have 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 relevant amounts into 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 shall be read as including 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 this Act and under which the debtor is not liable to pay to the credit provider an amount otherwise payable under a regulated contract.

### **General order varying civil penalty**

**86. (1)** Where a credit provider has contravened, or failed to comply with, this Act in respect of 2 or more regulated contracts, the credit provider 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—

- (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, however 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 daily newspaper published and circulating in the Territory if the Tribunal considers that because of the number of debtors and the other circumstances of the case it is appropriate to do so.

(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;
- (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 is not entitled to any other notice of the application.

#### **Effect of civil penalty in relation to future liability**

**87.** 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.

#### **Relief for minor errors**

**88.** In a prosecution for a contravention of subsection 3 (5) or section 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 to operate to the disadvantage of a party to the relevant contract; and
- (b) in the case of a contravention of subsection 3 (5) or section 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*

#### **Application of Part**

**89.** In this Part, a reference to a mortgage shall be read as a 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.

#### **Obligations under mortgage not to exceed obligations under contracts**

**90. (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 that payment or performance—

- (a) required by the contract or the contract of guarantee; or
- (b) permitted by this Act,

is void.

**(2)** A mortgagee who or which enters into a mortgage that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

#### **Mortgage of goods to be in writing**

**91. (1)** Subject to subsection (3), 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.

**(2)** A mortgagee who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(3)** Subsection (1) is not contravened where—

- (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 subject to the mortgage before the mortgage was entered into otherwise than by reason only of being the supplier of the goods.

#### **Debtor entitled to copy of mortgage**

**92. (1)** 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.



(2) A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Enforcement expense**

**93. (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 who or which enters into a mortgage containing a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$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.

### **Provision for entry on premises void in certain circumstances**

**94. (1)** A provision in a mortgage to the effect that the mortgagee or a person acting on his behalf is authorized to enter on premises for the purpose of taking possession of goods subject to the mortgage otherwise than in accordance with an order of the Tribunal, or is relieved from liability for such an entry, is void.

(2) A mortgagee who or which enters into a mortgage including a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

### **Order of Tribunal required before entry for repossession**

**95. (1)** A mortgagee shall not enter, or authorize another person on his behalf to enter, and a person so authorized shall not enter, on premises for the purpose of taking possession of goods subject to a mortgage otherwise than with the consent of the mortgagor or in accordance with an order of the Tribunal.

**(2)** A person, being a mortgagee or other person referred to in subsection (1), who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

#### **Disclosure of location of goods**

**96. (1)** A mortgagee may at any time by notice in writing served on the mortgagor require the mortgagor to state in writing the location of goods subject to the mortgage 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 the goods.

**(2)** A mortgagor who—

- (a) fails 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) gives a statement under subsection (1) containing information which to his knowledge is false,

is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

#### **Time and place for delivery of goods**

**97.** 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.

#### **Blanket securities over property or assets prohibited**

**98. (1)** A provision in a mortgage to the effect that the mortgagor charges all the property or assets of the mortgagor and that does not specify the property or assets is void.

(2) A mortgagee who or which enters into a mortgage that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(3) Subsection (1) does not apply to a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him.

### **Restriction on mortgage of future property**

**99. (1)** Subject to subsection (2), a provision in a mortgage to the effect that the mortgagor creates or agrees to give a mortgage over or in respect of property that is to be, or may be, acquired by him after the mortgage is entered into is void.

(2) A mortgagee who or which enters into a mortgage that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(3) 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.

### **Mortgages and continuing credit contracts**

**100. (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 who or which enters into a regulated continuing credit contract or takes a mortgage that includes a provision that is void by reason of subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

### **Fraudulent sale or disposal of property**

**101. (1)** 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 mean defraud or attempt to defraud the mortgagee.

(2) A person who or which contravenes subsection (1) is guilty of an offence punishable, on conviction—

- (a) if the offender is a body corporate—by a fine not exceeding \$10,000; or
- (b) if the offender is a natural person—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year, or both.

### ***Division 2—Assignment, &c., of property***

#### **Assignment by mortgagor**

**102. (1)** A mortgagor who, except as provided in this section, assigns or disposes of property subject to a mortgage without the consent of the mortgagee is guilty of an offence punishable, on conviction, by a fine not exceeding \$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 any reasonable costs incurred by the mortgagee in respect of—
  - (i) stamp duty; and
  - (ii) fees payable to a duly qualified legal practitioner, not being the mortgagee or an employee of the mortgagee, authorized 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 Director 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)** On an application under subsection (4), the Tribunal may determine that consent to an assignment or disposal has been unreasonably withheld and, upon such determination, 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 in relation to an assignment, disposal or parting with possession of any such goods.

(7) This section does not apply in relation to 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.

## **PART V—TERMINATION AND ENFORCEMENT OF REGULATED CONTRACTS AND REGULATED MORTGAGES**

### **Calculation of net balance due**

**103. (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, shall be read as 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 of the contract and (where the relevant insurance and maintenance contracts are discharged) the amounts of any statutory rebates of insurance charges and maintenance charges; and

- (b) in relation to a regulated continuing credit contract, shall be read as 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 any statutory rebates of insurance charges and maintenance charges.

(2) For the purposes of this Part, a reference to the outstanding balance of an amount, charge or expense shall be read as 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 the amount is due.

### **Statement of net balance due**

**104. (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.

**(2)** Subject to subsection (3), a credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(3)** A credit provider is not required to comply with a request under subsection (1)—

- (a) by a debtor—if the credit provider 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 the credit provider 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.

**(4)** Where, within 7 days after making a request referred to in subsection (1), a debtor or guarantor has not received the statement requested, the debtor or guarantor 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.

**(5)** An amount determined by the Tribunal on an application under subsection (4) 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.

### **Early termination of contract**

**105.** 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.

### **Mortgagor may compel sale of goods**

**106. (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—

- (a) during ordinary business hours at a place at which the mortgagee ordinarily carries on business;
- (b) at a time and place agreed upon by the mortgagee and the mortgagor;
- (c) where the mortgagee and mortgagor fail to agree on a time and place—at a time and place determined by the court on application by the mortgagee or the mortgagor.

**(4)** Where—

- (a) a notice has been given to a mortgagee under this section; and
- (b) any goods to which the notice relates are in the possession of the mortgagee or have been 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.



(5) A mortgagee who or which fails to comply with subsection (4) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**Notice required before rights exercised**

**107. (1)** A credit provider is not entitled to—

- (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 is not entitled to 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 paragraph (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 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) any enforcement expenses 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 amounts so increase; and
- (d) containing the prescribed information.

(4) The notice referred to in paragraph (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)—

- (a) the default is remedied to the extent referred to in subparagraph (3) (b) (i);
- (b) the amounts referred to in subparagraph (3) (b) (ii) have been paid or tendered; and
- (c) the enforcement expenses referred to in subparagraph (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 money 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, the court may, on the application of the debtor or mortgagor, order the credit provider or mortgagee, as the case may be, to compensate the debtor or mortgagor for any loss suffered by the debtor or mortgagor as a result of that failure.

### **Proceedings prohibited where breach remedied**

**108. (1)** Where a credit provider or a 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 subsection 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.

(2) A credit provider or mortgagee who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

### **Limit on amount recoverable**

**109.** A credit provider who institutes proceedings or exercises a right referred to in subsection 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.

### **Restriction on exercise of powers**

**110. (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 land if the outstanding balance of the amount financed under the contract to which the mortgage relates is less than one-quarter of the total amount financed.

(2) A mortgagee who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or

(b) if the offender is a natural person—\$2,000.

(3) 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.

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

### **Court may order delivery of goods**

**111. (1)** A court may, on the application of the mortgagee under a regulated mortgage and on 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 up 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 who or which fails to comply with an order made under subsection (1) that is applicable to him is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Taking possession of goods by mortgagee**

**112. (1)** Where the mortgagee takes possession (otherwise than under section 106) of goods subject to a regulated mortgage—

- (a) the mortgagee shall not, without the consent in writing of the mortgagor given without inducement by the mortgagee, or the authority of the 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 prescribed form 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 Director has made application to the court in relation to the taking of possession of goods by the mortgagee or where the Director has referred to the Tribunal—
- (i) under subsection 74 (3)—an application by the mortgagor for a variation; or
  - (ii) under subsection 116 (5)—an application by the mortgagor for a postponement,

the mortgagee shall not sell or otherwise dispose of or part with the possession of the goods or any of the goods—

- (iii) before the court or, as the case may be, the Tribunal has determined the matter;
- (iv) in contravention of a decision by the court or, as the case may be, a determination by the Tribunal; or
- (v) where a decision of the court or a determination of 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.

**(2)** A mortgagee who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

**(3)** 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 to do so 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.

**(4)** A mortgagee who or which fails to comply with subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or

- (b) if the offender is a natural person—\$1,000.

**Right of mortgagor to redeem goods**

**113. (1)** Where a mortgagee takes possession of goods subject to a regulated mortgage, the mortgagor may redeem the goods by discharging his obligation 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 a regulated contract or regulated contracts—the net balance within the meaning of section 103 due to the credit provider under each contract at the time of payment of 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 a regulated contract or 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) any enforcement expenses in relation to the exercise of the right to take possession of the goods are paid; and
- (b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract—the amounts payable to that person in respect of that debt or obligation at the time of payment are paid,

the mortgagee shall forthwith return the goods to the mortgagor.

**(4)** A mortgagee who or which fails to comply with subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(5)** Where a mortgagee returns goods to a mortgagor pursuant to 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.

**(6)** In paragraph (3) (a), “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.

### **Mortgagee to account for proceeds of sale**

**114. (1)** A mortgagee exercises a power of sale in accordance with this subsection if he exercises the power—

- (a) as soon after he became entitled to exercise the power 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 a regulated contract or regulated contracts and the mortgagee sells goods subject to the mortgage otherwise than by offering the goods for sale as provided by subsection 112 (3), the mortgagee is, subject to subsection (5), liable to the mortgagor for the amount received pursuant to the sale reduced by the amounts referred to in subsection (4).

**(3)** Where a mortgagee offers goods for sale as provided by subsection 112 (3), 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 (whether or not in accordance with subsection (1)), subject to subsection (5)—



- (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,

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

**(4)** For the purposes of subsections (2), (3) and (5), 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 a court does not make a decision under subsection (5)—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 a court makes a decision under subsection (5)—the net balance, or the sum of the net balances, as determined by the court under subsection (6);
- (d) the amount of 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)** Where, by application to a court, a mortgagor claims that a power of sale in relation to goods has not been exercised in accordance with subsection (1) and the court considers that the claim is justified, the court may determine that the liability of the mortgagee is 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), reduced by the amounts referred to in subsection (4).

(6) Where a court makes a decision under subsection (5), the court shall also determine the net balance, or the sum of the net balances, due at the time the mortgagee would reasonably have expected to receive the proceeds of sale if the power of sale had been exercised in accordance with subsection (1).

(7) The onus of proving that a power of sale was exercised in accordance with subsection (1) is on the mortgagee who exercised the power.

(8) Proceedings for the recovery of an amount due to a person in respect of the exercise of a power of sale by a mortgagee pursuant to this section shall not be instituted after the expiration of 6 years after the exercise of the power.

(9) 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 the court determines that the power of sale was not so exercised, make a decision 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.

(10) In this section, “decision” includes judgment or order.

#### **Moratorium—farmers etc.**

**115. (1)** Where the mortgagor under a regulated mortgage is a person whose whole 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 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 paragraph (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 paragraph (3) (b)—fail to comply with the order or such terms and conditions of the order as are applicable to him.

(6) A mortgagee who or which contravenes subsection (5) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(7) 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.

### **Postponement of exercise of rights**

**116. (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 subsection 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 the possession of the goods.

(2) Where—

- (a) a credit provider fails to give to the relevant debtor; or
- (b) a mortgagee fails to give to the relevant mortgagor,

a written statement of the conditions of a postponement negotiated in accordance with subsection (1), that credit provider or mortgagee is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$5,000; or

(d) if the offender is a natural person—\$1,000.

(3) 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.

(4) A debtor or mortgagor who is unable to negotiate a postponement under subsection (1) may apply to the Director for negotiation of such a postponement.

(5) Where an application is made under subsection (4), the Director 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 Director thinks fit, determine whether or not to seek to negotiate the postponement to which the application relates and, where the Director seeks, but is unable to obtain, such a postponement, the Director shall refer the application to the Tribunal.

(6) Subsection (3) applies to and in respect of a postponement negotiated under subsection (5) in the same way as it applies to and in respect of a postponement negotiated under subsection (1).

(7) The Tribunal may, where it receives an application referred to it under subsection (5), 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.

(8) Where an order under subsection (7) 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.

(9) The Tribunal, where it receives an application under subsection (8), may make such variation of the order to which the application relates as it thinks fit or may refuse to make such an order.

(10) An order in force under this section, or such an order as varied from time to time, has effect according to its tenor.

(11) 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 (5) that the mortgagor pay the reasonable costs of the mortgagee incurred in taking possession of the property.

(12) Where the Director is unable to obtain a postponement under subsection (5) in relation to a regulated contract or a regulated mortgage, a credit provider or a mortgagee is not entitled to institute proceedings, or exercise a right, under the contract or mortgage before the Tribunal has, under subsection (7), dismissed the application for postponement or has ordered, or refused to order, a postponement.

## **PART VI—REGULATED CONTRACTS AND REGULATED MORTGAGES—GENERAL**

### **Penalty for false representations etc.**

**117. (1)** A person who or which, in or in relation to an offer to enter into a regulated contract or a regulated mortgage, makes a representation that is false or misleading by reason of—

- (a) the inclusion in the representation of false or misleading matter which the person knew to be misleading or not to be true, or had no reasonable grounds for believing to be true or not to be misleading; or
- (b) except in a case where the person believed on reasonable grounds that such an omission would not make the representation false or misleading—the omission from the representation of any material matter which the person knew to be material,

is guilty of an offence punishable, on conviction—

- (c) if the offender is a body corporate—by a fine not exceeding \$10,000; or
- (d) if the offender is a natural person—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(2) A supplier who or which, 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, makes a representation that is false or misleading by reason of—

- (a) the inclusion in the representation of false or misleading matter which the supplier knew to be misleading or not to be true, or had no reasonable grounds for believing to be true or not to be misleading; or

- (b) except in a case where the supplier believed on reasonable grounds that such an omission would not make the representation false or misleading—the omission from the representation of any material matter which the supplier knew to be material,

is guilty of an offence punishable, on conviction—

- (c) if the offender is a body corporate—by a fine not exceeding \$25,000; or
- (d) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

**(3)** A supplier who or which induces, or attempts 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 by reason of—

- (a) the inclusion in the representation of false or misleading matter which the supplier knew to be misleading or not be true, or had no reasonable grounds for believing to be true or not to be misleading; or
- (b) except in a case where the supplier believed on reasonable grounds that such an omission would not make the representation false or misleading—the omission from the representation of any material matter which the supplier knew to be material,

is guilty of an offence punishable, on conviction—

- (c) if the offender is a body corporate—by a fine not exceeding \$25,000; or
- (d) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

**(4)** 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 (2); 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.

**(5)** Subsection (4)—

- (a) does not affect the liability of a person to be convicted of an offence under subsection (2); 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 (2), whether under this Act or any other law in force in the Territory.

### **Tribunal may approve removal of mortgaged goods**

**118.** 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, the Tribunal 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.

### **Prohibition of assignment of wages etc.**

**119. (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 who or which enters into a contract or mortgage containing a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

### **Bills of exchange as security**

**120. (1)** Subject to subsection (3), 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 245.

**(2)** A credit provider who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.



(3) A reference in subsection (1) to the taking of a bill of exchange or promissory note shall not be read as including 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 banker requesting payment of specified amounts at specified times to a credit provider.

(4) 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.

#### **Advertisements offering credit**

**121. (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 and 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 in a material particular; 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;
  - (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 and services.

(2) A person who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

(3) A reference in subsection (1) to a false representation shall be read as including 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.

(4) A person shall not be convicted of an offence in relation to a representation referred to in subparagraph (1) (a) (i) unless it is proved that—

- (a) at the time he published the representation or caused it to be published, he knew or had reasonable cause to suspect that the representation was false, misleading or deceptive; or
- (b) if, in relation to the publication of the advertisement that included the representation, he had taken reasonable precautions against such a contravention, he would have known or had reasonable cause to suspect that the representation was false, misleading or deceptive.

(5) Where—

- (a) an advertisement is published in contravention of subsection (1);
- (b) within 3 months after the date of 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.

(6) Subsection (5)—

- (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) operates in addition to all other rights (whether under this Act or any other law in force in the Territory) of a debtor against the person who published the advertisement or caused it to be published.

(7) Proceedings for a contravention of a provision of this section or under subsection (5) do not lie against the printer, publisher or proprietor of a

newspaper, or the licensee of a commercial broadcasting station or commercial television station, or the exhibitor of a film, or against any person acting under the authority of such a printer, publisher, proprietor, licensee or exhibitor, for the publication of a 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 Director—
  - (i) in the case of a representation referred to in subparagraph (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 limiting 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 shall be read as 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 in the *Broadcasting and Television Act 1942* of the Commonwealth.

### **Credit hawking**

**122. (1)** Subject to subsection (3), 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.

**(2)** A person who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or

(b) if the offender is a natural person—\$5,000.

(3) Subsection (1) does not apply to or in relation to an invitation by or on behalf of a credit provider in respect of the provision of credit for or in connection with—

- (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 and services from a supplier where the invitation and supply are made by the same person.

(4) Where a debtor suffers loss by reason of entering into a regulated contract initiated by a person in contravention of subsection (1), the credit provider is liable to the debtor for the amount of that loss.

(6) Subsection (4)—

- (a) does not affect the liability of a person to be convicted of an offence against this section; and
- (b) is in addition to all other rights of a debtor exercisable against the credit provider in relation to the contract (whether under this Act or any other law in force in the Territory).

### **Contracting by agents**

**124. (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 authorized 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 person, being a credit provider or a mortgagee or person acting on behalf of, or associated with, a credit provider or mortgagee who or which enters into an agreement or arrangement that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

**Contract or mortgage not illegal etc. by reason of offence**

**125. (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 a mortgagee commits an offence against this Act in relation to a regulated contract or a regulated mortgage, the debtor or mortgagor does not, by reason only of having been a party to the regulated contract or regulated mortgage, aid, abet, counsel or procure the commission of the offence.

**Notices to be given to all parties**

**126.** 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 the credit provider or mortgagee gives the notice or document to, or serves the notice or document on, each of the persons constituting the debtor, mortgagor or guarantor.

**PART VII—CONTRACTS OF INSURANCE****Insurance—regulated contracts**

**127. (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 who or which, as a condition of providing credit under a regulated contract (whether or not the condition is a term of the regulated contract) requires 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, is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or

(b) if the offender is a natural person—\$5,000.

(3) A supplier who or which represents 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 is guilty of an offence punishable, on conviction, by a fine not exceeding—

(a) if the offender is a body corporate—\$25,000; or

(b) if the offender is a natural person—\$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 relevant regulated contract, 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 that subsection.

(5) A court by which a supplier is convicted of an offence under subsection (3) may, on the application of the debtor under the relevant regulated contract, 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 that subsection.

### **Insurance—regulated mortgages**

**128. (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 authorize 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, conditions or exceptions which the mortgagee did not require in respect of the immediately preceding period.

(3) A mortgagee who or which enters 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 authorized 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 authorized by subsection (1),

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$10,000; or
- (d) if the offender is a natural person—\$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 authorized 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 authorized 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.

### **Unauthorised insurance need not be maintained**

**129. (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.

(2) A credit provider or mortgagee who or which contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

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

### **Content of contracts of insurance**

**130. (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 paragraph 1 (e) of Schedule 2, paragraph 1 (b) of Schedule 4 or paragraph 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.

(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 under the contract of insurance—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, who or which enters into a contract of insurance that does not comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Premiums to be paid to insurer**

**131. (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; 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.

(2) A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Action after rejection of insurance proposal**

**132. (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
- (c) the amount so payable is paid to the insurer (whether before, at or after the time the proposal is rejected),

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

**(4)** An insurer who or which fails to comply with subsection (1), (2) or (3) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(5) In proceedings for an offence under subsection (1) or (2), the prosecution is required to prove that the defendant, at the time when the proposal was rejected, knew, or could reasonably have been expected to know, that the amount payable to the insurer was included in the amount financed under the relevant contract.

### **No-claim bonus**

**133. (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.

(3) A credit provider or mortgagee who or which fails to comply with subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Saving as to unenforceability**

**134.** A contract of insurance relating to a regulated contract or a regulated mortgage that is entered into, reinstated or renewed by the debtor or mortgagor under the regulated contract or regulated mortgage with an insurer who knew or ought reasonably to have known that the contract of insurance was such a contract, is not void or 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.

### **Limitation on exclusion clauses**

**135. (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 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**

### **Guarantee to be in writing**

**136.** 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.

#### **Extent of liability of guarantor**

**137.** 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.

#### **Proceedings against guarantor**

**138. (1)** A credit provider shall not bring proceedings to recover an amount from a guarantor in respect of a regulated contract unless the credit provider brings the proceedings against 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 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;
- (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.

**Variation of commitments (guarantee relating to a regulated contract)**

**139. (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 Director for assistance in negotiating a variation of the contract.

**(4)** Where an application is made under subsection (3), the Director 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 Director 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 Director 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.

(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 Director and the credit provider are unable to reach agreement under subsection (4) in relation to a contract of guarantee, the credit provider is not entitled to 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).

### **Guarantee of obligations of minor**

**140. (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.

### **Guarantor to receive copy of contract**

**141. (1)** 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.

(2) A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Guarantor to be given prescribed statement**

**142. (1)** 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.

(2) A credit provider who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Discharge of guarantee**

**143.** 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.

### **Revocation of offer to guarantee**

**144. (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,

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

(2) A credit provider who or which enters into an agreement that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.



## PART IX—REOPENING OF CONTRACTS

### Interpretation

**145.** 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.

### Tribunal may reopen certain transactions

**146. (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, reopen 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 reopens 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) reopen 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, of the amount owed by the debtor to the credit provider under the contract;
- (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.

**Matters to be considered by Tribunal**

**147. (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 limiting 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;
- (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 the debtor or mortgagor, or assisted the debtor or mortgagor to a significant degree, in negotiations before, 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.

### **Joinder of parties**

**148.** 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.

### **Limitation on reopening of transaction**

**149. (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 6 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 6 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—HOME FINANCE CONTRACTS**

### **Interpretation**

**150.** In this Part—

“contract of guarantee” means a contract of guarantee or indemnity that relates to a home finance contract;

“credit” includes any form of financial accommodation other than any transaction prescribed as being a transaction that is not credit within the meaning of this Part;

“credit provider” means, in relation to a home finance contract—

- (a) the person who provided the credit under the contract; and
- (b) any person to whom the rights under the contract of the person referred to in paragraph (a) pass, whether by operation of law or otherwise;

“debtor” means, in relation to a home finance contract—

- (a) a natural person to whom the credit was provided under the contract;
- (b) any natural person to whom the obligations under the contract pass, whether by operation of law or otherwise; and
- (c) the executor or administrator of the estate of a debtor;

“guarantor” means—

- (a) a natural person who enters into a contract of guarantee in respect of the performance by a debtor of the obligations of the debtor under a home finance contract; and
- (b) the executor or administrator of the estate of a person referred to in paragraph (a);

“home” means principal place of residence of the debtor under a home finance contract, being—

- (a) a building that is used, or is used principally, as a separate residence; or
- (b) an apartment, flat or other part of a building that is so used;

“home finance contract” means a contract under which credit not exceeding \$67,500 (or, where some other amount is prescribed, that other amount) was provided—

- (a) for the acquisition or erection of the debtor’s home;
- (b) for the provision of additional accommodation in, or the carrying out of structural alterations to, the debtor’s home;
- (c) for the acquisition of land on which to erect that which is to become the debtor’s home;
- (d) to discharge the liability of the debtor in respect of a credit contract for a purpose referred to in paragraph (a), (b) or (c); or
- (e) to discharge the liability of the debtor under a credit contract referred to in paragraph (d) or a credit contract that was one of a series of 2 or more credit contracts, where—
  - (i) the series commenced with a contract referred to in paragraph (d);

- (ii) the debtor under each contract in the series was the same; and
- (iii) credit was provided under each contract in the series (other than the first contract) to discharge the liability of the debtor under the immediately preceding contract in the series.

**Variation of commitments (home finance contract)**

**151. (1)** Where the debtor under a home finance contract by reason of illness, unemployment, increase of an interest rate under the contract or other reasonable cause is unable reasonably to discharge any obligations under the contract, the debtor may, where the debtor reasonably expects to be able to meet any periodic commitments under the contract—

- (a) if the term of the contract were extended and the amount of each payment due under the contract accordingly reduced (without a change being made to the interest rate);
- (b) if the dates for payment of amounts due under the contract during a specified period were varied (without a change being made to the interest rate); or
- (c) if the term of the contract were extended and the dates for payment of amounts due under the contract during a specified period were varied (without a change being made to the interest rate),

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

**(2)** Where a credit provider to whom application is made under subsection (1) refuses to vary a home finance contract in accordance with the application, the debtor may apply to the Director for assistance in negotiating a variation of the contract.

**(3)** Where an application is made under subsection (2), the Director shall seek the views of the debtor, credit provider, any guarantor, any mortgagor and any other person who, in the opinion of the Director, might be affected by a variation of the home finance contract to which the application relates and, after giving them a reasonable opportunity to be heard and making such other inquiries as the Director thinks fit, determine whether or not to seek to arrange with the credit provider a variation of the home finance contract and, where the Director seeks such a variation and is unable to reach agreement with the credit provider, the Director 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 person whose views were sought by the Director under that subsection an opportunity to be heard, order, or refuse to order, a variation of the home finance contract to which the application relates (subject to the duration of any postponement of payments under such a variation not exceeding 6 months) and, where it orders such a variation, may make such other orders as it thinks fit.

(5) Without limiting the matters that the Tribunal may take into account in determining whether or not to make an order under subsection (4), the Tribunal shall take into account the relative hardship, as between the debtor and the credit provider, that would result from the making of such an order.

(6) Where an order of the Tribunal under subsection (4) is in force, the credit provider, or the debtor, under the home finance contract to which the order relates may apply to the Tribunal for a variation of the order.

(7) The Tribunal may, where it receives an application under subsection (6), vary the order to which the application relates as it thinks fit or refuse to vary the order.

(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 Director and the credit provider are unable to reach agreement under subsection (3) in relation to a home finance contract, the credit provider is not entitled to institute proceedings, or exercise a right, under the contract, or a mortgage or guarantee that relates to the contract, before the Tribunal has made or refused an order under subsection (4).

(10) Where the Tribunal exercises its jurisdiction under this section, it shall make no order as to costs.

#### **Variation of commitments (guarantee relating to a home finance contract)**

**152. (1)** Where the guarantor under a contract of guarantee, by reason of illness, unemployment or other reasonable cause, is unable reasonably to discharge any obligations under the contract, the guarantor may, where the guarantor reasonably expects to be able to discharge those 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 under the home finance contract to which the contract of guarantee relates for a variation of the contract of guarantee for that purpose.

(2) Where a credit provider to whom application is made by a guarantor under subsection (1) refuses to vary a contract of guarantee in accordance with the application, the guarantor may apply to the Director for assistance in negotiating a variation of the contract.

(3) Where an application is made under subsection (2), the Director shall seek the views of the credit provider and any other person who, in the opinion of the Director, might be affected by a variation of the contract of guarantee to which the application relates and, after giving them a reasonable opportunity to be heard and making such other inquiries as the Director thinks fit, determine whether or not to seek to arrange with the credit provider a variation of the contract of guarantee and, where the Director seeks such a variation and is unable to reach agreement with the credit provider, the Director 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 persons whose views were sought by the Director under that subsection an opportunity to be heard, order, or refuse to order, a variation of the contract of guarantee 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 in relation to a contract of guarantee, the credit provider under the home finance contract to which the contract of guarantee relates, or the guarantor, may apply to the Tribunal for a variation of the order.

(6) The Tribunal may, where it receives an application under subsection (5) vary the order to which the application relates as it thinks fit or may refuse to vary the order.

(7) An order in force under this section, and such an order as varied from time to time, has effect according to its tenor.

(8) Where the Director and the credit provider are unable to reach agreement under subsection (3) in relation to a contract of guarantee, the credit provider is not entitled to institute proceedings, or exercise a right, under the contract before the Tribunal has made or refused an order under subsection (4).

(9) Where the Tribunal exercises its jurisdiction under this section, it shall make no order as to costs.



**Notice by credit provider**

**153. (1)** A credit provider under a home finance contract is not entitled to institute proceedings, or exercise a right, under the contract, or a mortgage or guarantee that relates to the contract (being proceedings that may be instituted, or a right that may be exercised, as a consequence of a default under the contract) until after the expiration of one month after service in accordance with subsection (2) of a notice in the prescribed form that specifies the proceedings or right.

**(2)** A notice referred to in subsection (1) that relates to a home finance contract is served in accordance with this subsection if it is served on—

- (a) the debtor; and
- (b) the guarantor under any contract of guarantee that relates to the home finance contract.

**(3)** Where a credit provider fails to comply with subsection (1), the Tribunal may, on the application of the debtor, order the credit provider to compensate the debtor for any loss suffered by the debtor as a result of that failure.

**(4)** Where there is a mortgage relating to a home finance contract and the provisions of any other law in force in the Territory require the mortgagee to give notice to the mortgagor before instituting proceedings, or exercising a right, under the contract or mortgage—

- (a) nothing in this Act derogates from the requirement to give the notice under the other law; and
- (b) a notice required by this Act to be given before the proceedings are instituted, or the right exercised, 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 law to be given before the proceedings are instituted or the right exercised.

**Proof of offence**

**154.** In proceedings under this Part, a person shall not be convicted of an offence unless it is proved that the person knew or had reason to suspect or, if he had made reasonable inquiries, would have known or had reason to suspect, that the contract to which the proceedings relate was a home finance contract.

**PART XI—LICENCES**

***Division 1—Requirement to be licensed*****Credit providers and finance brokers to be licensed**

**155. (1)** Subject to this Act, a person, not being the holder of a credit provider's licence, who or which carries on a business of providing credit is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$50,000; or
- (b) if the offender is a natural person—\$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.

**(3)** A person who or which contravenes subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

**(4)** Subject to this Act, a person, not being the holder of a finance broker's licence, who or which carries on business as a finance broker is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

**(5)** 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 business as a finance broker unless the person or body corporate, as the case may be, is the holder of a finance broker's licence.

**(6)** A person who or which contravenes subsection (5) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$12,500; or
- (b) if the offender is a natural person—\$2,500.

**Exemptions from licensing**

**156. (1)** The provisions of subsections 155 (1) and (2) do not apply to—

- (a) the Crown or a public authority or body constituted by or under an Act or Ordinance;

- (b) a bank;
  - (c) a body corporate registered under the *Life Insurance Act 1945* of the Commonwealth unless the only or principal business carried on by it is the business of providing credit;
  - (d) a body corporate authorized under the *Insurance Act 1973* of the Commonwealth 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 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 pastoral finance company;
  - (g) a financial institution; or
  - (h) any other person empowered by a law in force in the Territory to lend money or provide credit, in respect of the lending of money or provision of credit in accordance with that law.
- (2) A reference in subsection 155 (1) or (2) to carrying on a business of providing credit does not include a reference to—
- (a) providing credit otherwise than under a regulated contract; or
  - (b) collecting money due to a person whose licence has been surrendered, is suspended or has been cancelled.
- (3) The provisions of subsections 155 (4) and (5) do not apply to—
- (a) a person who carries on a *bona fide* business of selling land or supplying goods and services (whether as principal or agent) but only while the person negotiates or acts as intermediary to obtain, or advertises or holds himself, herself or itself out in any way as being willing to negotiate, or act as intermediary to obtain, credit exclusively for persons who deal with the person in the ordinary course of that business and who have authorized in writing the application of that credit in payment for the land, goods and services;
  - (b) a duly qualified legal practitioner, while acting in the ordinary course of the profession of legal practitioner;
  - (c) a registered company auditor within the meaning of the *Companies Act 1981* of the Commonwealth, while acting in the ordinary course of the profession of a public accountant;

- (d) a bank;
- (e) a body corporate registered under the *Life Insurance Act 1945* of the Commonwealth;
- (f) a body corporate authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business;
- (g) unless Part VII of the *Insurance Act 1973* of the Commonwealth 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;
- (h) a dealer under, or a recognized dealer pursuant to, the *Securities Industry Act 1980* while acting in the ordinary course of the business of a dealer within the meaning of that Act;
- (i) the Curator of Estates of Deceased Persons appointed under section 8 of the *Administration and Probate Act 1929*;
- (j) the Public Trustee within the meaning of the *Public Trustee Act 1985*;
- (k) a trustee company within the meaning of the *Trustee Companies Act 1947*; or
- (m) a financial institution.

**(4)** A person, other than a bank, to whom the provisions of subsections 155 (1) and (2) do not apply by virtue of subsection (1) is, notwithstanding any other provision of this Act—

- (a) required to be registered as a credit provider in accordance with the regulations; and
- (b) liable to pay, in accordance with the regulations, such fees as are equivalent to the fees that would be payable by the person under sections 158 and 171 had this section not been enacted.

**(5)** Such provisions of this Act (except sections 159, 160, 161, 162, 164 and 173) as may be prescribed apply, with such variations or modifications, if any, as may be prescribed, to and in respect of a person registered or required to be registered under subsection (4), and so apply as if references (however expressed) in those provisions to a licensee or the holder of a licence or a person required to be licensed were references to a person so registered or required to be registered, as the case may be.

**(6)** The provisions of subsections 155 (1) and (2) and section 157 and such other provisions of this Act as may be prescribed apply, with such variations or

modifications, if any, as may be prescribed, to and in respect of a person referred to in subsection (4) who is not registered as required by that subsection, and so apply as if subsection (1) had not been enacted.

### **Civil penalty**

**157. (1)** Subject to section 85, where a person provides credit under a regulated contract in contravention of subsection 155 (1) and—

- (a) the contract is a credit sale contract or a loan contract—the debtor is not liable to pay to the credit provider the amount financed, or the credit charge, under the contract; or
- (b) the contract is a continuing credit contract—the debtor is not liable to pay to the credit provider the amount owing under the contract, or the credit charge, applicable in respect of the billing cycle during which the credit was provided.

**(2)** Where a debtor pays to a credit provider an amount that, in accordance with subsection (1), the debtor is not liable to pay, the 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 against this Act.

## ***Division 2—Licensing provisions***

### **Application for licence**

**158. (1)** An application for a credit provider's licence or a finance broker's licence may be made to the Tribunal—

- (a) by a natural person of or over the age of 18 years; or
- (b) by a body corporate 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 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) whether the application is an application for—
  - (i) a credit provider’s licence; or
  - (ii) a finance broker’s licence;
- (d) the address of the principal place and the address or addresses of any other place or places in the Territory 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;
- (e) whether the applicant intends to carry on that business in partnership with another person;
- (f) such matters as may be prescribed relating to the financial standing of applicants; and
- (g) such other matters as may be prescribed,

and shall be accompanied by the determined fee.

**(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, not later than 14 days after the occurrence of the change, give to the Tribunal notice, in writing signed by the applicant or, where the applicant is a body corporate, by a director of the body corporate, specifying particulars of the change.

**(5)** An applicant for a licence who or which fails to comply with subsection (4) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or

(b) if the offender is a natural person—\$1,000.

(6) An applicant for a licence shall, if required to do so by the Tribunal or the Registrar, provide the Tribunal with such particulars additional to those included in the application as the Tribunal or the Registrar requires.

(7) A person who or which, in or in relation to an application under this section, a notice under subsection (4) or any particulars provided under subsection (6), makes a statement that is false or misleading by reason of—

- (a) the inclusion in the statement of false or misleading matter which the person knew to be misleading or not to be true, or had no reasonable grounds for believing to be true or not to be misleading; or
- (b) except in a case where the person believed on reasonable grounds that such an omission would not make the statement false or misleading—the omission from the statement of any material matter which the person knew to be material,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$25,000; or
- (d) if the offender is a natural person—\$5,000.

### **Investigation of application**

**159. (1)** Where an application for a licence has been made in accordance with section 158, the Registrar shall send a copy of the application to the Director with a request in writing that the Director make such inquiries with respect to the applicant and the application as the Registrar specifies in the request.

(2) The Director shall make such inquiries as are specified in the request sent to the Director under subsection (1) and such other inquiries as the Director considers necessary and shall, as soon as practicable after making the inquiries, prepare a report on the results of the inquiries and submit the report to the Tribunal.

(3) The Commissioner of Police shall, if the Director so requests, investigate an application a copy of which is sent to the Director under subsection (1) and, as soon as practicable after completing the investigation, make a report to the Director on the investigation.

(4) As soon as practicable after the Director submits to the Tribunal a report on an application the Registrar shall publish, in a newspaper circulating generally in the Territory, a notice giving particulars of the application.

**Objection to application**

**160. (1)** At any time before the expiration of the period of 14 days immediately following publication of a notice under subsection 159 (4) with respect to an application for a licence, or within such longer period as the Tribunal in a particular case allows, the Director may, with the consent of the Minister, and any other person may, lodge with the Tribunal an objection in writing to the granting of the application if the objection complies with subsection (2).

**(2)** An objection complies with this subsection if—

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

**Grant or refusal of licence**

**161. (1)** Subject to subsections (2) and (4), the Tribunal shall grant an application for a licence—

- (a) except where a hearing is required to be held in respect of the application as provided by subsection (5)—as soon as practicable after the expiration of the period allowed by or under subsection 160 (1) for the lodging of an objection to the granting of an application; or
- (b) if a hearing is, pursuant to subsection (5), required to be held with respect to the application—as soon as practicable after the conclusion of the hearing.

**(2)** An application for a licence made by a natural person shall be refused if it appears to the Tribunal that—

- (a) the person has not attained the age of 18 years;
- (b) the person is disqualified from holding a licence;
- (c) the person is an undischarged bankrupt;
- (d) the person 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) the person does not have sufficient expertise to enable the person to carry on such a business; or
- (f) having regard to the circumstances of any involvement of the person in any other business undertaking or commercial venture, and to any other matter the Tribunal considers relevant, the granting of the licence would not be in the interests of persons who deal with credit providers or finance brokers, as the case may be.

**(3)** In determining pursuant to paragraph (2) (f) whether the granting of a licence would not be in the interests of persons who deal with credit providers or finance brokers, the Tribunal may 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 the Territory or elsewhere involving fraud or dishonesty;
- (b) was, at the time of the making of the application at liberty on bail in respect of an offence, or alleged offence, in the Territory or elsewhere involving fraud or dishonesty; 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 Tribunal 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 officers of the body corporate are such that it would have sufficient expertise to enable it to carry on such a business;
- (e) an officer of the body corporate is disqualified from being an officer of a body corporate that is the holder of a licence; or
- (f) having regard to the circumstances of any involvement of—
  - (i) the body corporate;

- (ii) a director of, or person concerned in the management of, the body corporate; or
- (iii) any person other than an officer of the body corporate who, in the opinion of the Tribunal, has control, or substantial control, of the body corporate,

in any other business undertaking or commercial venture, and to any other matter the Tribunal considers relevant, the granting of the licence would not be in the interests of persons who deal with credit providers or finance brokers, as the case may be.

(5) An application for a licence shall not be refused on a ground specified in paragraphs (2) (d) to (f) (inclusive) or (4) (c) to (f) (inclusive) unless the Tribunal is satisfied that the ground has been made out after it—

- (a) has informed the applicant of the ground and has held a hearing with respect to the application; and
- (b) has afforded the applicant and any person who, in accordance with section 160, has lodged an objection on that ground, an opportunity to appear at the hearing and to make submissions and adduce evidence.

(6) Where an application for a licence is refused, the Registrar shall forthwith, by notice in writing served on the applicant and each objector (if any) to the granting of the application, inform the applicant and each such objector of the refusal and of the ground on which the refusal is based and the Registrar shall, as soon as practicable, refund to the applicant so much of the application fee as is specified by the Tribunal as appropriate to be refunded.

(7) Where an application for a licence in respect of which an objection has been lodged in accordance with section 160 is granted, the Registrar shall forthwith, by notice in writing, inform the person who lodged the objection of the granting of 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 Registrar shall forthwith, by notice in writing, inform the applicant of the granting of the application.

(9) Notwithstanding anything in this section, the Tribunal 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 Tribunal specifies or refers to,

has or have appeared personally before the Tribunal and satisfied the Tribunal as to such relevant matters referred to in this section as the Tribunal thinks appropriate.

### **Conditions of, and restriction on, licence**

**162. (1)** Subject to this section, the Tribunal 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)** For the purposes of subsection (1), the conditions or restrictions imposed by the Tribunal shall be only such conditions or restrictions as are reasonably necessary to protect the interests of persons who deal with credit providers or finance brokers, as the case may be.

**(3)** A licence is subject to—

- (a) any prescribed conditions and restrictions; and
- (b) any conditions and restrictions in force under subsection (1).

**(4)** Subject to subsection (5), the Tribunal 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 Tribunal has first held a hearing with respect to the conditions and restrictions that are proposed to be imposed or varied and has afforded the applicant for, or, as the case may be, the holder of, the licence an opportunity to appear at the hearing and to make submissions and adduce evidence with respect to the conditions or restrictions proposed to be imposed or varied.

**(5)** The Tribunal may determine not to hold a hearing before it imposes or revokes a condition or restriction to which a licence is subject upon application by the licensee.

### **Cancellation and suspension of licences**

**163. (1)** Where—

- (a) the holder of a licence, being a natural person—

- (i) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or any part of his property for their benefit;
  - (ii) is convicted, either within the Territory or elsewhere, of an offence involving fraud or dishonesty punishable, on conviction, by imprisonment for 3 months or more; or
  - (iii) becomes incapable through mental infirmity of managing his affairs; or
- (b) the holder of a licence, being a body corporate—
- (i) is under official management, is commenced to be wound up or has ceased to carry on business;
  - (ii) is a body corporate in respect of the property, or part of the property, of which a receiver, or a receiver and manager, has been appointed under the *Companies Act 1981* of the Commonwealth or under the corresponding law of a State or of another Territory; or
  - (iii) has entered into a compromise or scheme of arrangement with its creditors,

the Tribunal may cancel the licence.

(2) If, in a case to which paragraph (1) (a) or (b) applies, the Tribunal considers it desirable to do so, the Tribunal may, instead of cancelling a licence, suspend the licence for a specified period and may at any time remove such a suspension.

#### **Name under which licensee may operate**

**164. (1)** Subject to the *Business Names Act 1963*, a licence may authorize the licensee 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) where the licence is a credit provider's licence—
  - (i) carry on a business of providing credit;
  - (ii) in the case of a natural person—hold himself or herself out as carrying on such a business; or

- (iii) in the case of a body corporate—hold itself out as carrying on such a business; or
- (b) where the licence is a finance broker's licence—
  - (i) carry on business as a finance broker;
  - (ii) in the case of a natural person—hold himself or herself out as so carrying on business; or
  - (iii) in the case of a body corporate—hold itself out as so carrying on business,

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

**(3)** A licensee who or which contravenes subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

**(4)** Upon application made to the Tribunal in writing, the Tribunal may add or amend an endorsement referred to in paragraph 166 (1) (b).

### **Partnerships**

**165. (1)** The holder of a credit provider's licence who or which carries on a business of providing credit in partnership with a person who or which is not the holder of a credit provider's licence is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

**(2)** The holder of a finance broker's licence who or which carries on business as a finance broker in partnership with a person who or which is not the holder of a finance broker's licence is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$12,500; or
- (b) if the offender is a natural person—\$2,500.

### **Form of licence**

**166. (1)** A licence shall be signed and issued by the Registrar and—

- (a) shall be in a form approved by the Minister; and
- (b) where the licence authorizes 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 Registrar is satisfied that a licence has been lost or destroyed, the Registrar may, on payment of the determined fee, issue a duplicate of the licence.

### **Change of address of licensee**

**167. (1)** Where the principal place or any other place at which a licensee carries on, or intends to carry on, a business of providing credit or, as the case may be, business as a finance broker is at an address other than an address specified in accordance with paragraph 158 (3) (d) 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 Director 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 or, as the case may be, business as a finance broker at the address specified in accordance with paragraph 158 (3) (d) or, where a notice has been given under subsection (1), at the address specified in the notice, give to the Director notice in writing that the licensee has ceased to carry on the business at that address.

(2A) A notice under subsection (1) or (2) shall be in a form approved by the Director and shall be accompanied by the determined fee.

(3) A licensee who or which fails to comply with subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### **Registers of licensees**

**168. (1)** For the purposes of this Act, the Director shall keep registers to be known as the Register of Licensed Credit Providers and the Register of Licensed Finance Brokers.

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

### **Inspection of register**

**169.** A person, on application to the Registrar in writing and on payment of the determined fee (if any)—

- (a) may inspect a register kept under section 168; and
- (b) may make a copy of, or take extracts from, such a register.

### **Term of, and authority conferred by, licence**

**170. (1)** Except during any period while it is suspended, a licence continues in force until it is surrendered under section 172 or cancelled under section 163, 171 or 173.

**(2)** A credit provider's licence authorizes 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 any conditions and restrictions to which the licence is subject.

**(3)** A finance broker's licence authorizes the licensee to carry on business as a finance broker 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.

**(4)** For the purposes of this Act other than sections 171 and 172, a person whose licence is suspended under subsection 163 (2) or 173 (8) shall, while the suspension continues, be deemed to be a person who does not hold a licence.

### **Annual fee and annual statement**

**171. (1)** A licensee shall, before the expiration of one month after each anniversary of the commencement of this Part, pay to the Director in respect of the year commencing on that anniversary the determined 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 of the commencement of this Part, or an anniversary of that date, shall lodge with the Director 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 Director 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 Director 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 requires, together with the determined 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 Director 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 who fails to comply with those subsections is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$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 subsections 158 (3), (4) and (6); 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 after the occurrence of the change, give to the Director notice in writing specifying particulars of the change.

(9) A person who, in or in relation to a statement required to be lodged under subsection (2), or a notice required to be given under subsection (8), makes a statement that is false or misleading by reason of—

- (a) the inclusion in the statement of false or misleading matter which the person knew to be misleading or not to be true, or had no reasonable grounds for believing to be true or not to be misleading; or



- (b) except in a case where the person believed on reasonable grounds that such an omission would not make the statement false or misleading—the omission from the statement of any material matter which the person knew to be material,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$25,000; or
- (d) if the offender is a natural person—\$5,000.

**(10)** Where—

- (a) an applicant for a licence under this Part pays the determined fee for the licence in accordance with subsection 158 (3);
- (b) the licence is granted to the applicant under section 161; and
- (c) the licensee is required, in accordance with this section, before the expiration of a period of 12 months from the date on which that licence is granted, to pay another determined fee in respect of the licence,

the licensee is entitled to a refund of an amount that bears the same proportion to the amount of the first-mentioned determined fee as the number of months in the unexpired part of that period bears to 12 months.

### **Surrender of licence**

**172. (1)** Subject to this section, a licensee may, by notice in writing given to the Director and accompanied by the licence, surrender the licence.

**(2)** Where, pursuant to subsection 173 (4), the Chairman has arranged for the Tribunal to hold an inquiry under section 173 in relation to the holding of a licence, the licence may not be surrendered until after a determination is made by the Tribunal as a result of the inquiry.

**(3)** Where a licence is surrendered, the Registrar shall return to the former licensee so much of the fee for the licence last paid under subsection 171 (1) as the Tribunal, upon application by the former licensee, specifies as appropriate to be refunded.

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

#### **Disciplinary action against licensee**

**173. (1)** The Director may with the consent of the Minister, and any other person may, at any time lodge with the Tribunal an objection in writing to the holding of a licence by a specified licensee if the objection complies with subsection (2).

(2) An objection complies with this subsection if—

- (a) it specifies the licensee and the grounds of the objection to the holding of a licence by the licensee; and
- (b) the grounds of the objection are such that they could reasonably give rise to a belief on the part of the Chairman sufficient to require the Tribunal to hold an inquiry under subsection (4).

(3) The Chairman may refer to the Director an objection lodged by a person other than the Director, and the Director, shall investigate, and report to the Tribunal upon, the objection.

(4) Where it appears to the Chairman, whether or not pursuant to an objection under subsection (1), that 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 this Act or the regulations, a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the licensee;
- (c) a licensee may be unable, or is likely to become unable, to meet the licensee's liabilities; or
- (d) by reason of events that have occurred, or information coming to the knowledge of the Tribunal, since a licence was granted, if the licensee were to apply for a licence of that kind, the licence would not be granted,

the Chairman may arrange for the Tribunal to hold an inquiry to determine whether or not to take action under subsection (8) in relation to the licence.

(5) An objection to the holding of a licence may be dismissed by the Tribunal if the Tribunal is of the opinion, whether before, during or after an inquiry—

- (a) that the objection is frivolous, vexatious, misconceived or lacking in substance; or
- (b) that none of the grounds referred to in subsection (4) has been, or can be, made out.

(6) Where, pursuant to subsection (4), the Chairman has arranged for the Tribunal to hold an inquiry in relation to a licence, the Registrar shall—

- (a) send to the licensee a notice specifying the grounds for the belief on the part of the Chairman referred to in subsection (4) and a copy of any objection in writing to the holding of the licence lodged with the Tribunal; and
- (b) give notice in writing of the day appointed for the inquiry to the licensee and to each person by whom any such objection has been lodged with the Tribunal before the day on which the Registrar gives the notice.

**(7)** In relation to an inquiry under subsection (4), the Tribunal shall give to the licensee and each other person referred to in paragraph (6) (b) an opportunity to appear at the inquiry and be heard.

**(8)** If, after holding an inquiry in relation to a licence, the Tribunal is satisfied that any ground for a belief on the part of the Chairman referred to in subsection (4) has been made out, the Tribunal may do any one or more of the following:

- (a) reprimand the licensee;
- (b) impose on the licensee a fine payable within a specified time, being a fine not exceeding—
  - (i) in the case of a body corporate—\$5,000; or
  - (ii) in the case of a natural person—\$1,000;
- (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)** Where, under subsection (8), the Tribunal—

- (a) imposes a fine on a licensee; or
- (b) requires a licensee to comply with a requirement specified by the Tribunal,

the licensee shall pay the fine or comply with the requirement within the time specified by the Tribunal under that subsection.

**(10)** A licensee who or which refuses or fails to comply with subsection (9) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

**(11)** Where the Tribunal disqualifies a licensee under paragraph (8) (e), the Tribunal 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 Registrar within a period specified by the Tribunal when suspending or cancelling the licence.

**(13)** A person, being a licensee or former licensee referred to in subsection (12) who or which fails to comply with that subsection is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is natural person—\$1,000.

**(14)** A person disqualified under paragraph (8) (e) who or which, while disqualified—

- (a) holds a licence; or
- (b) is concerned in the direction, management or conduct of a business of providing credit or a business of finance broking,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$25,000; or
- (d) if the offender is natural person—\$5,000.

**(15)** Where a person has been convicted of an offence and the circumstances of the offence form, wholly or partly, the subject matter of an inquiry under this section, the person is not liable to a find under this section in respect of the conduct giving rise to the offence.

#### ***Division 4—General***

**Death of licensee**

**174. (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 Registrar allows, apply to the Registrar for authority to carry on, until the expiration of the period of 6 months that next succeeds the death, the business of the deceased licensee to which the licence relates.

**(2)** The Registrar—

- (a)** shall give a copy of an application under subsection (1) to the Director who, subject to subsection (7), may, within 7 days, lodge with the Registrar an objection to the granting of the application in writing that specifies the ground of the objection and, where such an objection is lodged, the Director shall serve a copy of the objection on the applicant;
- (b)** if an objection to the granting of the application is lodged and served as provided by paragraph (a)—shall refer the application to the Tribunal; and
- (c)** if no such objection is so lodged and served—shall grant the application.

**(3)** Where an application is, pursuant to paragraph (2) (b), referred to the Tribunal, the Tribunal shall grant or, subject to subsection (7), refuse the application and, where it grants the application, may impose such conditions as it thinks fit, being conditions subject to which the business to which the application relates may be carried on.

**(4)** A decision of the Tribunal under subsection (3) shall be made at a hearing at which the applicant and the Director are given an opportunity to appear and be heard.

**(5)** For the purposes of subsection (3), the conditions imposed by the Tribunal shall be only such conditions as are reasonably necessary to protect the interests of persons who may deal with the applicant in the course of his carrying on the business to which the application relates.

**(6)** An applicant whose application is granted under this section shall, subject to this Act, the regulations and any conditions imposed under subsection (3), be deemed, until no later than the expiration of the period of 6 months that next succeeds the death of the licensee, to be the holder of the licence of the deceased licensee.

**(7)** For the purposes of this section—

- (a) the Director shall not lodge an objection under paragraph (2) (a); and
- (b) the Tribunal shall not, under subsection (3), refuse an application,

unless the Director or Tribunal, as the case requires, is satisfied that, if the applicant under subsection (1) were an applicant for a licence under section 158, that licence would not be granted.

### **Endorsement of condition etc. of licence**

**175. (1)** Where a licensee is required to comply with a requirement specified by the Tribunal under paragraph 173 (8) (c) or to carry on the business to which the licence relates subject to conditions or restrictions imposed under section 162 or subsection 174 (3), the licensee shall, upon being required by the Registrar so to do within a specified time, produce the licence to the Registrar within that time for endorsement of the condition, restriction or requirement.

**(2)** A licensee who or which fails to comply with subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

### ***Division 5—Finance brokers***

#### **Interpretation**

**176. (1)** In this Division—

“housing loan” means credit the whole or any part of which is, or is intended to be, applied for the purpose of—

- (a) enabling the debtor to acquire a private dwelling house or land on which to erect a private dwelling house;
- (b) providing the debtor with funds for the erection of a private dwelling house or for the provision of additional accommodation in, or the carrying out of structural alterations to, a private dwelling house;
- (c) discharging the liability of the debtor in respect of a credit contract for a purpose referred to in paragraph (a) or (b); or
- (d) discharging the liability of the debtor under a credit contract referred to in paragraph (c) or a credit contract that is one of a series of 2 or more credit contracts, where—

- (i) the series commenced with a contract referred to in paragraph (c);
- (ii) the debtor under each contract in the series is the same; and
- (iii) credit is provided under each contract in the series (other than the first contract) to discharge the liability of the debtor under the immediately preceding contract in the series,

except where—

- (e) the debtor is a person who carries on a business as a building contractor;
- (f) the debtor is a person whose business involves or includes the erection of private dwelling houses or the carrying out of alterations or additions to private dwelling houses; or
- (g) the debtor is a person whose business involves or includes the acquisition or disposal of land,

and the credit is, or is intended to be, used for the purpose of that business or in the course of carrying on that business.

“private dwelling-house” means—

- (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is so designed.

**(2)** This Act applies to and in respect of a finance broker only in so far as credit to which the business of the finance broker relates is, or includes, credit to be provided—

- (a) under a regulated contract; or
- (b) by way of a housing loan.

**(3)** This Act does not apply to or in respect of a finance broker who, pursuant to subsection 156 (3), is not required to be licensed under this Act.

**Advertising by finance brokers**

**177.** A finance broker who or which publishes, or causes to be published, whether in a newspaper or otherwise, an advertisement relating to or in connection with his business as a finance broker, without specifying in that advertisement—

- (a) a name appearing in the Register of Licensed Finance Brokers, being the name of the finance broker or a name under which the finance broker carries on business; and
- (b) the address of a place of business in respect of that name,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is body corporate—\$10,000; or
- (d) if the offender is a natural person—\$2,000.

**Records of finance broker**

**178. (1)** A finance broker who or which, immediately after entering into a transaction as a finance broker, fails to make, or cause to be made, a record containing full particulars of that transaction is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is a natural person—\$1,000.

**(2)** A finance broker who fails to preserve a record made under subsection (1) until the expiration of the period of 3 years immediately following the date of the transaction to which the record relates is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$5,000; or
- (b) if the offender is natural person—\$1,000.

**Payment of commission to finance broker**

**179. (1)** A finance broker shall not demand, receive or accept any commission in respect of negotiating, or acting as intermediary for the obtaining of, credit on behalf of another person unless the relevant engagement or appointment to act as finance broker—

- (a) is in writing signed by the person charged, or to be charged, with the payment of the commission; and



- (b) contains particulars of the amount of the credit to be obtained, the term of the credit and the maximum amount of interest or other charges to be paid in respect of the credit.
- (2) A finance broker shall not—
- (a) demand, receive or accept any commission not authorized by the regulations in respect of negotiating, or acting as intermediary for the obtaining of, credit on behalf of another person;
  - (b) demand, receive or accept any commission before securing the credit in respect of which the commission is charged; or
  - (c) demand, receive or accept any commission in respect of any credit that—
    - (i) is for an amount less than the amount specified in the terms of the written engagement or appointment as a finance broker;
    - (ii) is at a rate of interest, or for a charge, greater than the rate or charge specified in the terms of the written engagement or appointment as a finance broker; or
    - (iii) is for a term less than the term specified in the written engagement or appointment.

(3) A finance broker who or which contravenes a provision of subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(4) In any proceedings for an offence under subsection (3) the court may, if it finds the finance broker guilty of the offence and whether or not it proceeds to conviction, order the finance broker to refund any amount received or accepted by him in contravention of subsection (1) or (2) together with interest at such rate as is fixed by the court, not exceeding the prescribed rate, from the time of the receipt or acceptance of the amount until the time it is refunded.

### **Valuation fees**

**180.** Nothing in section 179 prohibits a finance broker who or which has been engaged or appointed in writing to act as a finance broker from demanding, receiving or accepting at any time an amount equal to the estimated cost (estimated on the basis of the fees, if any, prescribed as the maximum fees

for valuations) of obtaining a valuation of any security offered for any proposed credit and any amount so paid shall be held in trust by the finance broker to pay the costs of that valuation and to repay the balance of any such amount to the person who paid the amount.

**Penalty for false statements etc.**

**181.** A finance broker shall not—

- (a) by making a statement or representation that is false or misleading by reason of—
  - (i) the inclusion in the statement or representation of a false or misleading matter which the finance broker knew to be misleading or not to be true, or had no reasonable grounds for believing to be true or not to be misleading; or
  - (ii) except in a case where the finance broker believed on reasonable grounds that such an omission would not make the statement or representation false or misleading—the omission from the statement or representation of any material matter which the finance broker knew to be material; or
- (b) by dishonestly making a promise or concealing any fact,

induce, or attempt to induce, a person to enter into an agreement or contract for or with respect to the provision of credit.

**(2)** A finance broker who contravenes subsection (1) is guilty of an offence punishable, on conviction—

- (a) if the offender is a body corporate—by a fine not exceeding \$25,000; or
- (b) if the offender is a natural person—by a fine not exceeding \$5,000 or by imprisonment for a period not exceeding one year, or both.

**Requirements as to proof**

**182.** A finance broker shall not be convicted of a contravention of this Division, and a transaction shall not be reopened under section 183, unless it is proved that—

- (a) the finance broker knew or had reasonable cause to suspect that the credit to which the proceedings relate was, or if provided would be, wholly or in part credit provided—
  - (i) by way of a housing loan;

- (ii) under a regulated contract; or
  - (iii) for the purchase of a commercial vehicle or farm machinery; or
- (b) if the finance broker had made reasonable inquiries, the finance broker would have known or had reasonable cause to suspect that the credit was or would be wholly or in part such a loan or such credit.

### **Excessive commission**

#### **183. (1) Where—**

- (a) proceedings are taken in a court by a finance broker for the recovery of money in respect of a transaction entered into by the finance broker in the course of business as a finance broker; or
- (b) a person who has entered into a transaction with a finance broker, in the course of the business of the finance broker as such, applies to a court in which proceedings might be taken for the recovery of an amount not exceeding the amount of the commission of the finance broker in the course of the transaction,

and it appears to the court that the commission charged by the finance broker in respect of the transaction is excessive, the court may reopen the transaction.

(2) A court reopening a transaction under this section may, notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation, reopen an account already taken by the parties to the transaction and relieve the person liable under the contract to pay the commission and any guarantor of that person of any liability in excess of such amount as the court adjudges to be fairly and reasonably payable for the services rendered or to be rendered by the finance broker (including any expenses reasonably and necessarily incurred) and may—

- (a) set aside either wholly or in part or revise or alter any agreement or contract made or security given in connection with the transaction;
- (b) give a verdict or judgment for any party for such amount as, having regard to the relief, if any, that the court thinks fit to grant, is justly due to that party; and
- (c) make such other orders as the court thinks necessary or proper for the purposes of this section.

#### **(3) A reference—**

- (a) in paragraph (1) (b) to a court in which proceedings might be taken for the recovery of an amount not exceeding the amount of the commission of a finance broker includes a reference to the Tribunal; and
- (b) in subsection (2) to a court includes a reference to the Tribunal.

## **PART XII—CREDIT TRIBUNAL**

### ***Division 1—Constitution of the Tribunal***

#### **Establishment of Credit Tribunal**

**184. (1)** There is established by this Act a tribunal by the name of the Australian Capital Territory Credit Tribunal.

**(2)** The Tribunal shall have such jurisdiction, powers and functions as are conferred by or under this Act.

#### **Membership of Tribunal**

**185. (1)** The Tribunal shall consist of—

- (a) a member who is a Magistrate or a person enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years;
- (b) a member qualified to represent the interests of credit providers and finance brokers; and
- (c) a member qualified to represent the interests of persons who deal with credit providers and finance brokers.

**(2)** The members of the Tribunal shall be appointed by the Minister to serve in a part-time capacity.

**(3)** The member referred to in paragraph (1) (a) shall be the Chairman of the Tribunal.

**(4)** Subject to this Act, a member holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment and is eligible for reappointment.

#### **Resignation**

**186.** A member may resign his office by writing signed by him and delivered to the Minister.

**Termination of appointment**

**187. (1)** The Minister may remove a member from office by reason of misbehaviour or physical or mental incapacity.

**(2)** If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the member's remuneration for their benefit;
- (b) is convicted in Australia of an offence punishable by imprisonment for one year or longer;
- (c) except on leave granted under section 187A, is unreasonably absent from proceedings of the Tribunal; or
- (d) ceases to have the qualifications by virtue of which he was appointed,

the Minister shall remove the member from office.

**Leave of absence**

**187A.** The Minister may grant leave of absence to a member, or to a person appointed to act as a member, upon such terms and conditions as to remuneration or otherwise as the Minister determines.

**Remuneration and allowances**

**188. (1)** A member shall be paid such remuneration and allowances as are prescribed.

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

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to a member; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to a member.

**(3)** In subsection (2), “determination” means a determination of the Remuneration Tribunal.

**Acting appointments**

**189. (1)** The Minister may, in writing, appoint a person who is eligible for appointment as the member referred to in paragraph 185 (1) (a) to act as that member and as Chairman—

- (a) during a vacancy in the office of Chairman; or

- (b) during any period, or during all periods, when the Chairman is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(1A) The Minister may, in writing, appoint a person to act as a member referred to in paragraph 185 (1) (b) or (c)—

- (a) during a vacancy in the office of the member; or
- (b) during any period, or during all periods, when the member is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(1B) A person is not eligible to be appointed to act as the member referred to in paragraph 185 (1) (b) unless the person is eligible for appointment as that member.

(1C) A person is not eligible to be appointed to act as the member referred to in paragraph 185 (1) (c) unless the person is eligible for appointment as that member.

(8) The validity of any thing done by a person appointed under this section shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the action had not arisen or had ceased.

### *Division 2—Registrar and Deputy Registrar*

#### **Registrar, Deputy Registrar etc. of Credit Tribunal**

**190. (1)** The Minister may, by instrument, appoint a public servant to be the Registrar of the Credit Tribunal.

(2) The Minister may, by instrument, appoint a public servant to be the Deputy Registrar of the Credit Tribunal.

(3) Subject to any direction given by the Chairman, the Registrar has power to do all things necessary or convenient to be done for or in connection with the powers and functions conferred on the Registrar by this Act.

(4) Subject to this Act and any direction given by the Chairman or the Registrar, the Deputy Registrar has all the powers, and is entitled to perform any function, of the Registrar.

### **Delegation to Registrar**

**191. (1)** The Tribunal may, either generally or as otherwise provided by the instrument of delegation, by writing signed by each member of the Tribunal, delegate to the Registrar any power or function of the Tribunal under Division 1, 2, 3 or 4 of Part XI.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Tribunal.

(3) A delegation under this section does not prevent the exercise of a power by the Tribunal.

### ***Division 3—Proceedings before the Tribunal***

#### **Constitution of Tribunal in particular matters**

**192. (1)** The Tribunal shall, for the purpose of the exercise of the jurisdiction and powers and the performance of the functions referred to in subsection 184 (2), be constituted by—

- (a) the Chairman alone; or
- (b) the Chairman and 2 other members.

(2) In the exercise of a power or performance of a function conferred on the Tribunal by Division 1, 2, 3 or 4 of Part XI, the Tribunal shall be constituted in accordance with paragraph (1) (b).

(3) Subject to this section, the Chairman may give directions as to the arrangement of the business of the Tribunal and as to the persons who are to constitute the Tribunal for the purposes of particular proceedings.

(4) Subject to subsection (2) proceedings before the Tribunal may be heard and determined by the Chairman sitting alone—

- (a) where there is only one party to the proceedings and the proceedings relate to a matter which, in the opinion of the Chairman, does not, and is not likely to, involve 2 or more parties;
- (b) where there are 2 or more parties to the proceedings and both or, as the case may be, all of the parties agree to the proceedings being heard and determined by the Chairman sitting alone; or

- (c) where the proceedings are included in a class of proceedings that may, in accordance with the regulations, be heard and determined by the Chairman sitting alone.

(5) At any sitting in proceedings before the Tribunal, the Chairman shall preside.

### **Manner in which questions to be decided**

**193. (1)** Subject to section 196, a question of law arising in proceedings before the Tribunal (including the question whether a particular question is one of law) shall be decided in accordance with the opinion of the Chairman.

(2) Subject to subsection (1), where the members constituting the Tribunal for the purposes of particular proceedings are divided in opinion as to the decision to be made on any question, the question shall be decided according to the opinion of the majority.

### **Proceedings before Tribunal**

**194. (1)** In proceedings before the Tribunal—

- (a) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate;
- (b) the procedure of the Tribunal is, subject to this Act and any other law in force in the Territory, within the discretion of the Tribunal; and
- (c) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and the substantial merits of the case permit.

(2) In relation to proceedings before the Tribunal, the Chairman—

- (a) may give directions relating to procedure that, in the opinion of the Chairman, will enable costs to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties to the proceedings; and
- (b) may request a report from, or other assistance by, the Director.

### **Hearing in private**

**195. (1)** Where, in relation to proceedings before the Tribunal, the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matters or for any other reason, the Tribunal may, by instrument in writing—



- (a) direct that a hearing or part of a hearing before the Tribunal take place in private and give directions as to the persons who may be present; and
- (b) give directions prohibiting or restricting the publication or other disclosure of evidence given before the Tribunal and of any submission made to, or other document received in evidence by, the Tribunal in relation to the proceedings.

(2) A person who or which fails to comply with a direction given by the Tribunal under paragraph (1) (b) is guilty of an offence punishable, on conviction—

- (a) if the offender is a body corporate—by a fine not exceeding \$5,000; or
- (b) if the offender is a natural person—by a fine not exceeding \$1,000 or imprisonment for 6 months, or both.

### **Reference of question of law to Supreme Court**

**196. (1)** At the request of a party to proceedings before the Tribunal, the Chairman may state, in the form of a special case, for the opinion of the Supreme Court any question of law that arises in the proceedings.

(2) Jurisdiction is vested in the Supreme Court to hear and determine a case stated under this section.

(3) Where a question of law arising in proceedings before the Tribunal is stated for the opinion of the Supreme Court under this section, the Tribunal shall not, in those proceedings—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the decision of the Supreme Court on the question.

### **Parties**

**197. (1)** Subject to this Act or any other law in force in the Territory, where a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having joint liability in relation to those proceedings, it shall be sufficient if any one or more of those persons is or are served with process, and a decision in the proceedings may be given or entered and enforced against the person or persons so served notwithstanding that other persons jointly liable were not served, were not parties to the proceedings or are not within the Territory.

**(2)** Where—

- (a) a decision is given or entered against a party or parties to proceedings referred to in subsection (1);
- (b) another person is, or other persons are, jointly liable with that party or those parties in relation to the proceedings in respect of which the decision is given or entered,

then—

- (c) that liability of that other person or those other persons is not discharged by the decision or by any step taken to enforce the decision;
- (d) that party or those parties and that other person or those other persons are, as between that party or those parties on the one hand and that other person or those other persons on the other hand, liable severally but not jointly;
- (e) if there are 2 or more such persons, they are, as between themselves, jointly liable; and
- (f) if, pursuant to the decision, the joint liability referred to in subsection (1) is satisfied wholly or in part, the liability of that other person or those other persons is discharged to the extent of the amount paid or recovered under the decision.

**(3)** Subsection (2) does not affect the right of a person to contribution or indemnity in respect of the satisfaction by him, wholly or in part, of a liability that he has jointly or severally, or jointly and severally, with another person or other persons.

**(4)** A legal personal representative may bring or defend proceedings before the Tribunal in the same manner as if he or she were bringing or defending proceedings in his or her own right.

**(5)** Where, before the holding of proceedings before the Tribunal, or at any stage during the holding of any such proceedings, the Chairman is of the opinion that a person ought to be joined as a party to the proceedings, the Chairman may, by notice in writing given to the person or by oral direction given during the holding of the proceedings, join the person as a party to the proceedings.

**(6)** Where proceedings have been instituted before the Tribunal, a person, not being a party to the proceedings, whose interests may be affected by a decision in those proceedings, may apply in writing to the Tribunal to be made

a party to the proceedings, and the Tribunal may, in its discretion, by order, make that person a party to the proceedings.

(7) In this section, “decision” includes judgment, or order.

### **Notice and conduct of proceedings**

**198. (1)** The Chairman shall fix a time and place for the holding of proceedings before the Tribunal and the Registrar shall thereupon serve on each party to the proceedings a notice specifying the time and place so fixed and the matters to which the proceedings relate and directing the party to attend at that time and place.

(2) The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(3) If a party to proceedings before the Tribunal on whom a notice has been served in accordance with subsection (1) fails to attend at the time and place specified in the notice, the proceedings may be held in the absence of the party.

### **Right of appearance and representation**

**199. (1)** A party to proceedings before the Tribunal—

- (a) may appear personally in the proceedings or, except as provided by subparagraph (b) (ii), be represented by solicitor or counsel; and
- (b) may not, except by leave of the Tribunal, be represented in the proceedings—
  - (i) otherwise than by solicitor or counsel; or
  - (ii) by solicitor or counsel if the proceedings are proceedings, or are within a class of proceedings, prescribed for the purposes of this subparagraph.

(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party in proceedings before the Tribunal.

### **Summons and examination of witnesses**

**200. (1)** The Registrar shall, at the direction of the Chairman in relation to proceedings before the Tribunal or at the request of a party to any such proceedings, issue a summons requiring any person to attend the proceedings at a time and place specified in the summons and then and there to give evidence

and produce any record in the person's custody or under the person's control that the person is required by the summons to produce.

(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, concerning the whole of the information in the record.

(3) The Chairman may administer an oath or affirmation to any person appearing as a witness before the Tribunal, whether or not the witness has been summoned, and allow the witness to be examined and cross-examined by oath or affirmation.

(4) A witness summoned under subsection (1) at the direction of the Chairman is entitled to be paid such fees and allowances as are payable to a witness before the Supreme Court.

(5) A summons issued under subsection (1) at the request of a party does not have effect, unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons, tender is made of an amount in respect of reasonable expenses of complying with the requirements of the summons.

#### **Failure to comply with summons etc.**

**201.** A person summoned under subsection 200 (1) to attend proceedings before the Tribunal shall not refuse or fail—

- (a) to comply with the summons; or
- (b) to produce a record in accordance with the summons.

(2) A person appearing as a witness before the Tribunal, whether or not the person has been summoned as a witness, shall not refuse or fail to take an oath or make an affirmation when so required by the Chairman under subsection 200 (3).

Penalty: \$1,000 or imprisonment for 6 months, or both.

#### **Contempt etc.**

**202.** A person shall not—

- (a) wilfully insult a member in relation to the exercise of his powers or the performance of his functions;

- (b) wilfully interrupt proceedings of the Tribunal;
- (c) wilfully create, or be instrumental in creating, a disturbance in a place where the Tribunal is sitting; or
- (d) do any other act or thing that would, if the Tribunal were a court, constitute a contempt in the face of that court.

Penalty: \$1,000 or imprisonment for 6 months or both.

### **Inspection and retention of records**

**203. (1)** The Tribunal may inspect any record or statement produced before it and may retain the record or statement for such period as the Tribunal thinks necessary for the purposes of the proceedings in relation to which it was produced and may make copies of the record or statement or any part of the record or statement.

**(2)** Where a record or statement is produced before, and retained by, the Tribunal, the person otherwise entitled to possession of the record or statement is, on request, entitled to be supplied, as soon as practicable, with a copy certified by the Registrar to be a true copy and a record or statement so certified is admissible as evidence in all courts as if it were the original record or statement.

**(3)** Where, pursuant to subsection (2), a person is entitled to be supplied with a copy of a record or statement, the person, or a person authorized by the person, may, at such times and places as the Registrar directs, inspect, make copies of, or take extracts from, the record or statement.

### **Dismissal of frivolous etc. proceedings**

**204. (1)** Where, at any stage of proceedings before the Tribunal, the Tribunal is satisfied that the proceedings are frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may dismiss the proceedings.

**(2)** Where the Tribunal dismisses proceedings under subsection (1), it may order the person who brought the proceedings to pay the costs of the proceedings.

### **Costs**

**205.** Subject to this Act, the Tribunal may award costs against a party to proceedings before it and may determine the amount of costs to be so awarded.

### **Orders for payment of money**

**206. (1)** Where an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs) the order shall, upon the filing

of the prescribed documents in the office or registry of a court having jurisdiction to order the payment of such an amount of money, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the Tribunal.

(2) For the purposes of subsection (1), the prescribed documents are—

- (a) a copy of the order of the Tribunal certified by the Registrar to be a true copy; and
- (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, where the order is to take effect upon any default, as to the making of the default.

(3) Notwithstanding anything in any other law in force in the Territory, no fee is payable for the filing of documents under subsection (1).

#### **Reasons for decision of Tribunal**

207. (1) Where the Tribunal does not give reasons in writing for its decision, a party to the proceedings may, within 28 days after the day on which a copy of the decision of the Tribunal is served on that party, request the Tribunal to furnish to that party a statement in writing of the reasons of the Tribunal for its decision, and the Tribunal shall, within 28 days after receiving the request, furnish that party with such a statement.

(2) Where the Tribunal gives in writing the reasons for its decision, those reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The Tribunal shall cause a copy of its decision to be served on each party to the proceedings.

(4) A reference in this section to a party to the proceedings shall be read as including a reference to a person, not being such a party, who has lodged an objection under Part XI concerning the matter to which the proceedings relate.

#### **Adjournments**

208. (1) The Tribunal may adjourn any proceedings before it in such manner as it thinks fit.

(2) At any stage of proceedings before it, the Tribunal may order that the proceedings be stayed.

#### ***Division 4—General***

#### **Protection of members, persons appearing and witnesses**

**209. (1)** A member has, in the performance of the duties of a member, the same protection and immunity as a Judge of the Supreme Court.

**(2)** The Registrar or Deputy Registrar has, in the exercise of jurisdiction or the performance of duties delegated to the Registrar under section 191, the same protection and immunity as a Judge of the Supreme Court.

**(3)** A barrister, solicitor or other person appearing to represent a party in proceedings before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

**(4)** A witness summoned to attend or appearing before the Tribunal 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 Supreme Court.

### **Right of appeal**

**210. (1)** Where, in proceedings before the Tribunal, the Tribunal makes a decision, not being—

- (a) a decision of the Tribunal under Part XI other than under section 183; or
- (b) a decision referred to in subsection 262 (1),

a party to those proceedings may, subject to this section, appeal to the Supreme Court from that decision.

**(2)** Jurisdiction to hear and determine appeals under subsection (1) is vested in the Supreme Court.

**(3)** Subject to subsection (4), the provisions of Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* apply to and in relation to an appeal under subsection (1) as if—

- (a) a reference in that Part to the Magistrates Court were a reference to the Tribunal;
- (b) a reference in that Part to the Registrar of the Magistrates Court were a reference to the Registrar of the Tribunal;
- (c) a reference in that Part to a judgment or order of the Magistrates Court were a reference to a decision of the Tribunal; and
- (d) a reference in that Part to the *Magistrates Court (Civil Jurisdiction) Act 1982* were a reference to this Act.

**(4)** For the purposes of subsection (3), a judgment or order of the Supreme Court made in proceedings remitted under paragraph 282J (1) (d) of the

*Magistrates Court (Civil Jurisdiction) Act 1982* shall have effect as if it were a decision of the Tribunal and may be enforced as provided under section 206 of this Act.

(5) An appeal lies to the Supreme Court from a decision of the Magistrates Court made under this Act.

(6) The provisions of Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* apply to and in relation to an appeal under subsection (5) as if the appeal were an appeal from a judgment or order, entered or made in proceedings that the Magistrates Court has jurisdiction to hear and determine under that Act.

(9) In subsections (1) and (5), “decision” includes judgment, order or determination.

### **Fees**

211. There shall be payable to the Registrar, in relation to proceedings before the Tribunal, such fees as are determined under section 263.

## **PART XIII—INQUIRIES**

### **Interpretation**

212. In this Part, “inquiry” means an inquiry under subsection 213 (1).

### **Minister may order inquiry**

213. (1) The Minister may, by instrument in writing, appoint the Tribunal (constituted as specified in the instrument) or any person to inquire into matters specified in the instrument, being matters that relate to the provision of credit or consequences of the provision of credit, or both.

(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), the Tribunal or person appointed under subsection (1) has, and may exercise, the powers and functions conferred on the Tribunal 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, the Tribunal or person conducting the inquiry shall, as soon as practicable, report to the Minister the results of the inquiry and make such recommendations with respect to those results as the Tribunal or that person thinks fit.

(8) The protection and immunity conferred by section 209 on a member of the Tribunal extend to a person appointed under subsection (1).

#### **Notice of inquiry**

**214.** The Tribunal shall, before commencing an inquiry, give notice by advertisement published on such day or days as it thinks fit in the *Gazette* and in such newspaper or newspapers as it 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 it thinks fit.

#### **Appearances at inquiry**

**215. (1)** The Tribunal may, at an inquiry, 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.

#### **Procedure at inquiry**

**216. (1)** An inquiry 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, the Tribunal may, if it thinks fit, permit a witness to give evidence by tendering a written statement verified on oath or affirmation and, where the evidence is so given, the Tribunal shall, subject to this section, make the statement available to the public in such manner as the Tribunal thinks fit.

(3) Where a witness giving evidence under subsection (1) or (2) objects to any part of the evidence being made public and the Tribunal is satisfied that the part of the evidence to which 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, the Tribunal may require or permit a person entitled to make submissions to make them in writing and, where submissions are so made, the Tribunal shall make them public in such manner as it thinks fit.

(5) In conducting an inquiry, the Tribunal is not bound by the rules of evidence.

### **Powers of Tribunal at inquiry**

**217. (1)** For the purposes of an inquiry, the Tribunal may—

- (a) issue a summons to a witness to give evidence or produce a record, or both, at the inquiry;
- (b) administer an oath or affirmation; and
- (c) take evidence on oath or affirmation.

(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 before the Tribunal 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 Supreme Court.

(4) A witness summoned under subsection (1) is entitled to be paid such fees and allowances as are prescribed.

### **Failure to appear at inquiry**

**218.** A person who, pursuant to paragraph 217 (1) (a), has been summoned as a witness shall not, without lawful excuse, fail to appear in obedience to the summons.

Penalty: \$1,000 or imprisonment for 6 months, or both.

### **Refusal to be sworn etc.**

**219.** A person who appears as a witness at an inquiry, 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: \$1,000 or imprisonment for 6 months, or both.

### **Power to obtain information**

**220. (1)** For the purposes of an inquiry, the Tribunal or a person authorized by the Tribunal for the purposes of this section (in this section referred to as an “authorized person”) may require any person—

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

in relation to the subject matter of the inquiry.

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

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

**(4)** A person who, without reasonable excuse—

- (a) fails to comply with a requirement under subsection (1), (2) or (3); or
- (b) gives, pursuant to such a requirement, information or an answer that to the person’s knowledge is false or misleading in a material particular,

is guilty of an offence punishable, on conviction—

- (c) if the offender is a body corporate—by a fine not exceeding \$5,000; or
- (d) if the offender is a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

**(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 Tribunal or authorized person that the person is required and obliged by this section to give the information or answer the question.

(6) A person is not excused from furnishing information, or answering a question, in accordance with a requirement under this section on the ground that the information or answer would incriminate, or would tend to incriminate, the person or his spouse or would tend to expose the person or his spouse to proceedings for an offence against a law in force in Australia or elsewhere.

(7) Information and answers given by a person pursuant to a requirement under subsection (1), or any information, document or things obtained as a direct or indirect consequence of such information or answers given, 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 member of the Tribunal or a person appointed under subsection 213 (1) to the effect that a person specified in the certificate was, on a day or during a period so specified, an authorized person for the purposes of this section is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

## **PART XIV—UNJUST CONDUCT BY CREDIT PROVIDERS**

### **Interpretation**

**221.** 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 this Act or the regulations.

### **Undertakings by credit provider**

**222. (1)** Where it appears to the Director that a credit provider has, in the course of a business of providing credit, repeatedly engaged in unjust conduct, the Director may, with the consent of the Minister—

- (a) request the credit provider to execute a deed in terms approved by the Director 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 unjust conduct; or

(b) apply to the Tribunal for an order under section 224.

(2) Where a licensee executes a deed under paragraph (1) (a) and observes the undertakings given in the deed—

(a) proceedings may not be instituted under section 173; and

(b) the Director may not apply for an order under subsection 224 (1),

by reason of any conduct to which the undertakings relate.

(3) A credit provider who or which refuses or fails to observe undertakings given by him in a deed executed under paragraph (1) (a) is guilty of an offence punishable, on conviction, by a fine not exceeding—

(a) if the offender is a body corporate—\$25,000; or

(b) if the offender is a natural person—\$5,000.

(4) A prosecution for an offence under subsection (3) shall not be instituted except by the Director with the leave of the Tribunal given when making an order in accordance with subsection 224 (3).

### **Register of Undertakings**

**223. (1)** Where a credit provider executes a deed containing undertakings as referred to in paragraph 222 (1) (a), the Director shall—

(a) lodge a copy of the deed with the Registrar; and

(b) give a copy of the deed to the credit provider who executed it.

(2) The Director shall retain all deeds and shall register the deeds in a Register of Undertakings kept by the Director and containing the prescribed particulars.

(3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.

### **Restraint of unjust conduct**

**224. (1)** Where, on the application of the Director, the Tribunal is satisfied after inquiry 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.

(2) A credit provider who refuses or fails to comply with an order made under subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$50,000; or
- (b) if the offender is a natural person—\$10,000.

(3) Where, on the application of the Director, the Tribunal is satisfied that a credit provider has failed to observe an undertaking given by the credit provider in a deed executed under paragraph 222 (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 subparagraph 222 (1) (a) (iii), an order to observe that undertaking within a time specified by the Tribunal when making the order.

(4) Where the Director applies for an order under subsection (1) or (2) against a credit provider that is a body corporate and the 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, in addition to any other order it may make under this section, may make an order prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under paragraph 222 (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.

(5) A person who fails to comply with an order made with respect to that person under subsection (4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000.

(6) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Tribunal thinks fit including conditions as to the 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.

## **PART XV—POWERS AND FUNCTIONS OF DIRECTOR**

### *Division 1—General*

#### **Powers of Director**

**225.** For the purposes of this Act, the Director may—

- (a) receive and investigate a complaint from a credit provider, debtor or other person who might reasonably be taken to have an interest in the subject matter of the complaint, upon any matter relating to this Act, and advise the credit provider, debtor or other person in relation to that complaint;
- (b) conduct, of his own motion, other investigations or research;
- (c) confer and exchange information with any person having functions similar to those of the Director under the law of a State or another Territory;
- (d) commence and conduct proceedings for an offence against this Act or the regulations;
- (e) prepare reports for, and give assistance to, the Tribunal at the request of the Chairman or the Registrar;
- (f) do all things necessary or convenient to be done for or in connection with the performance of his functions under this Act.

***Division 2—Functions of Director in relation to proceedings***

**Director may represent debtor etc.**

**226.** In any proceedings before the Tribunal, a person may, notwithstanding any other provision of this Act, be represented by the Director or by counsel, solicitor or agent for the Director.

**Director may proceed for another**

**227. (1)** Where a person, not being a body corporate, has made a complaint to the Director in respect of a matter arising under or in relation to a regulated contract or regulated mortgage and the Director, 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 Tribunal or a defence to proceedings taken before a court or the Tribunal by another person against the complainant in respect of that matter; and
- (b) it is in the public interest that the Director should take or, as the case may be, defend those proceedings on behalf of the complainant,

the Director 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 Director of proceedings before a court or the Tribunal on behalf of the complainant, that consent is not, after the Director has taken steps in those proceedings, revocable except with the concurrence of the Director.

### **Conduct of proceedings taken by Director**

**228. (1)** Where, under section 227, the Director takes or defends proceedings before a court or the Tribunal on behalf of a complainant—

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

(2) The Director is not personally liable as a result of proceedings instituted or defended by him pursuant to this Division but an amount that the Director becomes liable to pay by virtue of subsection (1) shall be paid by the Territory.

### **Intervention by Director**

**229. (1)** Without limiting the generality of section 227, the Minister or the Director with the consent of the Minister, if the Minister or the Director, 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 this Act before a court or the Tribunal.

(2) Where the Director intervenes in any proceedings under subsection (1), lodges an objection under section 160 or 173 or takes or defends proceedings in accordance with subsection 227 (1), it shall be presumed, unless the contrary is



provided, that the Minister has consented to the intervention, the lodging of the objection or the taking or defending of proceedings, as the case may be.

(3) The Minister or the Director, 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.

### **Investigation of application to Tribunal**

**230.** Where application is made to the Tribunal by a credit provider under section 86 the Director shall, if required to do so by the Chairman before the Tribunal hears the application, investigate the application and report to the Tribunal on the results of the investigation.

### ***Division 3—Investigations***

#### **Interpretation**

**231.** In this Division—

“investigating officer” means a person, being an officer of the Bureau, authorized in writing by the Director pursuant to subsection 232 (1);

“investigation” means an investigation conducted pursuant to subsection 232 (1) for the purposes of paragraph 225 (a) or (b);

“premises” means any place where business is conducted by—

- (a) a licensee, debtor, guarantor, mortgagee or mortgagor under this Act;
- (b) a supplier in relation to a trade or tie agreement; or
- (c) any other person who has, or whom the Director believes on reasonable grounds to have, entered into a transaction to which this Act applies.

#### **Investigating officer**

**232. (1)** An investigation may be conducted by—

- (a) the Director personally; or
- (b) any officer of the Bureau authorized in writing by the Director for the purposes of this Division.

(2) The Director shall issue to an investigating officer a certificate, being a certificate bearing a recent photograph of that officer, stating that the holder is an investigating officer under this Act.

**Powers of entry upon premises**

**233. (1)** The Director or an investigating officer may, for the purposes of this Division, at any reasonable hour of the day or night, with such assistance as the Director or investigating officer thinks necessary, enter upon or into any premises other than residential premises, without the authority of a warrant issued under section 235, for the purpose of ensuring that the provisions of this Act or the regulations are being complied with.

**(2)** Where a person, being the Director or an investigating officer, enters upon or into premises pursuant to subsection (1), that person is not authorized to remain on the premises if, on request by or on behalf of the occupier or person apparently in charge of the premises, the person does not produce—

- (a) in the case of the Director—written evidence that he is the holder of the office of Director; or
- (b) in the case of an investigating officer—a certificate issued to the officer pursuant to subsection 232 (2).

**(3)** Where the Director or an investigating officer enters upon or into premises in accordance with subsection (1), the Director or an investigating officer may—

- (a) inspect any record found on the premises;
- (b) take copies of, and make extracts from, any such record; and
- (c) require any person on the premises to make available any record kept on the premises, to furnish information and to answer questions.

**Restriction upon powers of entry**

**234.** The Director or an investigating officer may enter upon or into any premises and may search for, and exercise all or any of the powers under subsection 233 (3) in relation to, any thing which he believes on reasonable grounds to be connected with an offence against this Act that is found on those premises if, and only if, the search is made and those powers are exercised—

- (a) pursuant to subsection 233 (1);
- (b) pursuant to a warrant issued under section 235; or
- (c) after obtaining the consent of the occupier or other person apparently in charge of the premises.

**Search warrants**

**235. (1)** Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon or in any premises a thing or things of a particular kind connected with a particular offence against a provision of this Act, and the information sets out those grounds, the Magistrate may issue a search warrant authorizing the Director, or an investigating officer named in the warrant, with such assistance as is necessary and reasonable and by such force as is necessary and reasonable, to enter upon or into those premises, to search those premises and to exercise all or any of his powers under subsection 233 (3) in regard to such a thing.

**(2)** A Magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**(3)** There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which entry, search and exercise of the powers under subsection 233 (3) are authorized;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things in relation to which the powers under subsection 233 (3) may be exercised; and
- (d) a day, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

### **Consent to entry**

**236. (1)** Before obtaining the consent of a person for the purposes of section 234, the Director or an investigating officer shall inform the person that he may refuse to give his consent.

**(2)** Where the Director or an investigating officer obtains the consent of a person for the purposes of section 234, he shall ask the person to sign a written acknowledgment—

- (a) of the fact that he has been informed that he may refuse to give his consent;

- (b) of the fact that he has voluntarily given his consent; and
- (c) of the day on which, and the time at which, he gave his consent.

(3) An entry by the Director or an investigating officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 234 and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

### **Power to require information or document**

**237. (1)** The Director or an investigating officer conducting an investigation may, by notice in writing, require a person to furnish information, in such manner as the notice specifies, or to produce a document, to the Director or an investigating officer, at a place and within or at a time that the notice specifies.

(2) A notice given to a body corporate under subsection (1) may specify an officer of that body corporate for the purposes of compliance with the notice by the body corporate.

(3) A person is not required to comply with a requirement made under subsection (1) unless, upon the giving of the notice, the Director or investigating officer warns the person, orally or in writing, that the person is obliged to comply with the requirement.

(4) A person is not excused from furnishing information, or producing a document, in accordance with a requirement under this section on the ground that the information or document would incriminate, or would tend to incriminate, the person or his spouse or would tend to expose the person or his spouse to proceedings for an offence against a law in force in Australia or elsewhere.

(5) Where a person is required to furnish information or to produce a document under subsection (1), the information or document, or any information, document or thing obtained as a direct or indirect consequence of that information furnished or document produced, shall not be admissible in evidence against the person in any civil or criminal proceedings in any court other than proceedings for perjury or for an offence under section 239.

(6) A person is excused from furnishing information, or producing a document, in accordance with a requirement under this section if, in proceedings in the Supreme Court by or against the person, the information or document would have been privileged by reason that the information or document was a communication that passed in professional confidence between a person and his legal adviser or patent attorney.

(7) A reference in this section to information or a document specified in a notice under this section shall be construed as a reference to information or a document, as the case may be, reasonably required for the purposes of this Act.

### **Copying of documents produced under section 237**

**238. (1)** The Director or an investigating officer may—

- (a) make copies of a document produced in accordance with a notice under subsection 237 (1); and
- (b) retain possession of the document for as long as is necessary to make those copies.

(2) The Director or an investigating officer who, for the purposes of subsection (1), is in possession of a document shall comply with a request made by the person who or which produced the document, or a duly authorized request made on behalf of the person, to be afforded reasonable opportunity to inspect and make copies of the document.

### **Obstruction of Director or investigating officer**

**239.** A person who or which, without reasonable excuse—

- (a) obstructs or hinders the Director or an investigating officer in the exercise of his powers under this Division; or
- (b) fails to comply with a reasonable requirement of the Director or an investigating officer under subsection 233 (3) or 237 (1),

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$5,000; or
- (d) if the offender is a natural person—\$1,000.

### **Secrecy**

**240. (1)** This section applies to every person who is, or has been, a person engaged in the administration of this Act and a person who receives information or a document from the Director in pursuance of the powers of the Director under the *Consumer Affairs Act 1973*.

(2) Subject to any other law in force in the Territory, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under, or in connection with, this Act—

- (a) make a record of, or divulge or communicate to a person, information concerning the affairs of another person acquired by him; or
- (b) produce to a person a document produced,

for the purposes of an investigation.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(3) Subsection (2) does not apply to the communication of information, or the production of a document, to a court for the purposes of civil proceedings.

#### *Division 4—Miscellaneous*

#### **Annual report**

**241.** The Director shall, after 30 June in each year, prepare a report on the administration of this Act during the period of 12 months ending on that date and submit the report to the Minister for presentation to the Legislative Assembly.

### **PART XVA—TRANSITIONAL**

#### **Exemptions from civil penalty**

**241A.** (1) This section applies to credit sale contracts or loan contracts entered into before the commencement of section 8 of the *Credit (Amendment) Act 1991*.

(2) Where a statement about an insurance commission charge payable in respect of a credit sale contract or a loan contract 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 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 does not include that statement.

(3) Where—

- (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 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 does not include a statement about the insurance commission charge payable to the credit provider.

(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 Tribunal before the commencement of section 8 of the *Credit (Amendment) Act 1991*.

(6) In this section, a reference to a statement about any insurance commission charge that is payable in respect of a credit sale contract or loan contract shall be read as a reference to a statement—

- (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) which is required by paragraph 35 (1) (i) or 36 (1) (h) to be included in the credit sale contract or loan contract.

### **Operation of amendments relating to description of consumer credit insurance**

**241B.** (1) The amendments made to Schedules 2, 4 and 7 by the *Credit (Amendment) Act 1991* apply to regulated contracts entered into before or after the commencement of section 9 of that Act.

(2) A debtor who, before that commencement, 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 becomes so liable (because of subsection (1)) is 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 Tribunal before the commencement of section 8 of the *Credit (Amendment) Act 1991*.

### **Operation of amendments to sections 85 and 86**

**241C.** Sections 85 and 86, as amended by sections 5 and 7 of the *Credit (Amendment) Act 1991*, apply to proceedings in the Tribunal commenced before or after the commencement of those sections.

**Operation of section 85A**

**241D.** Section 85A does not apply to proceedings pending in the Tribunal on the commencement of section 6 of the *Credit (Amendment) Act 1991*, but applies to proceedings commenced after the commencement of that section even though the contraventions or failures to which the proceedings relate occurred before that commencement.

**PART XVI—MISCELLANEOUS****Notices by mortgagee**

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

- (a) nothing in this Act derogates from the requirement to give the notice under the other law; 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 law to be given before the exercise of the power or right.

**Linked credit provider—sale of land**

**243.** For the purposes of Part II—

- (a) the definition of “linked credit provider” in subsection 5 (1) applies in relation to a vendor of land in the same way as it applies in relation to a supplier of goods and 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 and services from a supplier;
- (d) sections 24 to 29 (inclusive) 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 those sections apply to a supplier of goods and services and the



provision of credit in respect of the payment by a buyer for goods and 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.

### **Mortgage operates as security only**

**244.** A regulated mortgage of chattels personal has effect as a security but does not operate to pass the property in the chattels.

### **Legibility of documents**

**245. (1)** A document given or issued by a credit provider or mortgagee for the purposes of this Act 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 handwriting; 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.

### **Restriction on form of document**

**246.** 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
- (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.

### **Approval of form of document**

**247. (1)** 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 248 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.

**(2)** 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 submit the document to the Tribunal accompanied by the determined fee (if any).

### **Offence in relation to document**

**248.** A credit provider or mortgagee who or which—

- (a) gives or issues a document under this Act that is not readily legible; or
- (b) gives or issues a form of document in contravention of a direction in force under section 246,

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) if the offender is a body corporate—\$10,000; or
- (d) if the offender is a natural person—\$2,000.

### **Separation of documents**

**249.** Except as expressly provided by this Act, 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.

### **Signature of documents**

**250. (1)** Subject to section 124, where, under this Act, a document is required to be signed by a person, it is sufficient if the document is signed by another person for and on behalf of the person first referred to.

**(3)** Where a person other than a debtor, for and on behalf of the debtor, signs a document—

- (a) containing an offer by the debtor to a credit provider to enter into a credit sale contract, or a loan contract, with the credit provider; or
- (b) containing an acceptance by the debtor of an offer by a credit provider to enter into a credit sale contract, or a loan contract, with the debtor,

the person shall do so in the presence of a witness, other than the debtor or credit provider, and shall indicate on the document that he or she signs for and on behalf of the debtor.

**(4)** A witness referred to in subsection (3) shall—

- (a) sign the document referred to in that subsection; and
- (b) indicate on that document that he or she is signing the document as a witness to the signature of the person who signed the document for and on behalf of the debtor.

**(5)** Where a witness referred to in subsection (3) is the credit provider or a person acting on behalf of, or associated with, the credit provider, a credit sale contract or loan contract formed by an acceptance of the offer contained in the document signed by the witness, or formed by the acceptance contained in that document, as the case requires, is void.

**(6)** A credit provider or a person acting on behalf of, or associated with, a credit provider who signs as a witness a document referred to in subsection (3) containing an offer to, or an acceptance of an offer by, the credit provider is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

(7) Where the signature of a person written for and on behalf of the debtor on a document referred to in subsection (3), is not witnessed in accordance with this section or where—

- (a) a witness referred to in subsection (3); or
- (b) the person first referred to in subsection (3),

fails to comply with a provision of subsection (3) or (4) in relation to the relevant document, a credit sale or loan contract formed by an acceptance of the offer contained in the document, or formed by the acceptance contained in that document, as the case requires, is void.

### **Service of documents**

**251.** (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 residence 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 State or Territory by or under which the corporation was incorporated;
- (b) where the corporation is not incorporated in Australia, an office registered under the law of 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 Territory or, if it has no place of business in the Territory, 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 residence 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.

### **Service by post**

**252.** 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.

### **Proof of service**

**253.** Proof that a document or notice has been given to or served on a person in accordance with section 251 may be made by the oath or affirmation of the person who gave or served the document or notice, by affidavit, by production of the completed certificate of postal service or otherwise.

### **“Contracting-out” of Act prohibited**

**254. (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 who or which enters into a contract, mortgage or agreement that includes a provision that is void by reason of subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a body corporate—\$25,000; or
- (b) if the offender is a natural person—\$5,000.

### **Limitation**

**255.** Notwithstanding any other law in force in the Territory, proceedings for an offence against this Act may be brought within the period of 3 years immediately following the commission of the offence or, with the consent of the Minister, at any later time.

### **Offence by corporation**

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

**Certain rights etc. saved**

**257.** Except as this Act otherwise expressly provides, nothing in this Act excludes, modifies or restricts a right or remedy that a person would have had if this Act had not been made.

**Computation of period**

**258.** Where, for the purposes of this Act, any limited period less than 8 days from or after a day 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, Sunday, Saturday and any public or bank holiday throughout the Territory shall not be reckoned in the computation of that limiting period.

**Extensions of time**

**259.** Where, under this Act, a court, the Tribunal, the Director or the Registrar may extend a period, the court, Tribunal, Director or Registrar, as the case may be, may extend the period notwithstanding that the period has elapsed.

**Jurisdiction**

**260. (1)** Subject to subsection (2), where the penalty for an offence under this Act is a fine exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000,

that offence shall be triable on indictment.

**(2)** An offence which, by virtue of subsection (1), is triable on indictment may be prosecuted summarily—

- (a) where the court considers appropriate; and
- (b) with the consent of the accused.

**(3)** The penalty for an offence that is prosecuted summarily by virtue of subsection (2) is a fine not exceeding—

- (a) if the offender is a body corporate—\$10,000; or
- (b) if the offender is a natural person—\$2,000.

**Evidence**

**261.** A certificate signed by the Director to the effect that a person specified in the certificate 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.

### Review of decisions

**262. (1)** Where the Tribunal makes a decision—

- (a) granting or refusing to grant an application for a licence;
- (b) cancelling or suspending a licence;
- (c) imposing a condition or restriction under section 162;
- (d) revoking or varying, or not to revoke or vary, a condition or restriction under paragraph 162 (1) (b);
- (e) removing the suspension of a licence under subsection 163 (2);
- (f) granting, or refusing to grant, an application referred to in subsection 174 (3);
- (g) imposing a condition for the granting of an application referred to in subsection 174 (3);
- (h) taking disciplinary action pursuant to subsection 173 (8) against—
  - (i) a licensee, being a natural person; or
  - (ii) a natural person, being a person concerned in conducting the business of a licensee that is a body corporate; or
- (i) not to take disciplinary action under section 173 upon an objection under subsection 173 (1) to the holding of a licence,

the Tribunal shall, by notice in writing given not later than 30 days after the date of the decision, inform the person or persons whose interests are affected by the decision of the making of the decision and of the grounds for the decision.

**(2)** An application may be made to the Australian Capital Territory Administrative Appeals Tribunal for review of a decision referred to in subsection (1).

**(3)** A notice referred to in subsection (1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Australian Capital Territory Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

(4) A failure to comply with the requirements of subsection (3) in relation to a decision shall not be taken to affect the validity of the decision.

#### **Power of Minister to determine fees**

**263. (1)** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

(2) A determined fee may be—

- (a) a specified amount; or
- (b) an amount calculated in a specified manner.

#### **Repeal**

**265.** The following Ordinances are repealed:

*Money Lenders Ordinance 1936*

*Money Lenders Ordinance 1938*

*Money Lenders Ordinance (No. 2) 1938*

*Money Lenders Ordinance 1956*

*Money Lenders (Amendment) Ordinance 1977*

*Money Lenders (Amendment) Ordinance 1978*

*Money Lenders (Amendment) Ordinance 1981*

*Money Lenders (Amendment) Ordinance 1982*

*Money Lenders (Amendment) Ordinance 1983*

*Money Lenders (Amendment) Ordinance (No. 2) 1983*

*Hire-purchase Ordinance 1961*

*Hire-purchase Ordinance 1964*

*Hire-purchase Ordinance 1969*

*Hire-purchase (Amendment) Ordinance 1981.*

#### **Regulations**

**266. (1)** The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular—

- (a) for 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; and
- (b) for prescribing penalties not exceeding a fine of—



- (i) if the offender is a body corporate—\$5,000; or
- (ii) if the offender is a natural person—\$1,000,

for offences against the regulations.

(2) The regulations may provide for the regulations to come into operation on the date on which this Act, or a specified Part of this Act, comes into operation, and where the regulations so provide, the regulations shall come into operation on that date.

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**SCHEDULE 1**

Section 11

**ACCRUED CREDIT CHARGE UNDER CREDIT CONTRACT**

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 predetermined 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 one 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 predetermined credit charge or estimated credit charge which has accrued due under the contract at a particular time, calculate the amount in accordance with the formula—

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

where—

- C is the amount of the predetermined 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**

Section 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 or provided, or to be paid or provided, by way of deposit, showing separately the amounts paid or to be paid in money, the amounts provided or to be provided by a consideration other than money, and the amount included in the deposit on account of a trade-in allowance (if any) and the person by whom the trade-in allowance was given;

**SCHEDULE 2—continued**

- (b) the cash price of the goods and 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; and
  - (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 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 law in force in the Territory;
  - (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;
  - (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;

**SCHEDULE 2—continued**

- (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) authorized 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 credited 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) (inclusive).

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 subparagraph 1 (e) (iv) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.

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**SCHEDULE 3**

Section 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 predetermined 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**

Section 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) (inclusive)),

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 law in force in the Territory;
  - (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;
  - (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;

- (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) authorized 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

**SCHEDULE 4—continued**

- (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.

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 subparagraph 1 (b) (iii) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.

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**SCHEDULE 5**

Section 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 predetermined 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.

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**SCHEDULE 6**

Section 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 predetermined 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 predetermined 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—

**SCHEDULE 6**—continued

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

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—

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

where—

- C is the same number as in the first-mentioned formula;
  - T is the total amount of the predetermined 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.

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**SCHEDULE 7**

Section 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 and 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 and services or cash supplied by a person other than the credit provider and in relation to each such amount

**SCHEDULE 7—continued**

- particulars of the suppliers of the goods and 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 a 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; and
  - (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 law in force in the Territory;
  - (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;
  - (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



**SCHEDULE 7—continued**

- (ii) stamp duty payable 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 by which the payment is requested;
  - (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.
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

**SCHEDULE 7—continued**

- (b) a reference to goods and services supplied to a debtor during a billing cycle—
  - (i) does not include a reference to goods and 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 and services supplied before the commencement of the billing cycle but that 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 subparagraph 1 (k) (iii) of this Schedule, nothing in this Schedule requires any further disclosure relating to that contract of life insurance.

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## NOTE

1. The *Credit Act 1985* as shown in this reprint comprises Act No. 5, 1985 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1  
Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Credit Ordinance 1985</i>	5, 1985	26 Feb 1985	Ss. 1 and 2: 26 Feb 1985 Ss. 3-155, 156 (1)-(3), 157-178, 179 (1), (2) (b), (c), (3), (4), 180-243 and 245-266: 28 Feb 1985 (see <i>Gazette</i> 1985, No. S59) Ss. 156 (4)-(6): 10 June 1987 (see <i>Gazette</i> 1987, No. GN6, p. 231) S. 179 (2) (a): 1 Nov 1987 (see <i>Gazette</i> 1987, No. S295) S. 244: (a) 21 Aug 1985	
<i>Credit (Amendment) Ordinance 1985</i>	39, 1985	20 Aug 1985	21 Aug 1985	—
<i>Credit (Amendment) Ordinance (No. 2) 1985</i>	60, 1985	14 Nov 1985	14 Nov 1985	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Credit (Amendment) Ordinance 1986</i>	29, 1986	31 July 1986	1 Sept 1986 (see <i>Gazette</i> 1986, No. S423)	S. 9
<i>Credit (Amendment) Ordinance (No. 2) 1986</i>	30, 1986	31 July 1986	1 Sept 1986 (see <i>Gazette</i> 1986, No. S423)	—
<i>Credit (Amendment) Ordinance (No. 3) 1986</i>	56, 1986	26 Sept 1986	26 Sept 1986	—
<i>Credit (Amendment) Ordinance (No. 4) 1986</i>	72, 1986	30 Oct 1986	1 Mar 1987 (see <i>Gazette</i> 1987, No. G6, p. 518)	—
<i>Credit (Amendment) Ordinance 1987</i>	4, 1987	24 Feb 1987	24 Feb 1987	—
<i>Credit (Amendment) Ordinance 1988</i>	76, 1988	9 Nov 1988	9 Nov 1988	—

## Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—
<i>Remuneration (Miscellaneous Amendments) Ordinance 1989</i>	50, 1989	10 May 1989	10 May 1989	—

## Self-Government day 11 May 1989

Table 2

## Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Credit (Amendment) Act 1990</i>	6, 1990	9 Apr 1990	Ss. 4 and 5: 28 Feb 1985 Remainder: 9 Apr 1990	S. 6
<i>Magistrates and Coroner's Courts (Registrar) Act 1991</i>	44, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 2)	—
<i>Credit (Amendment) Act 1991</i>	97, 1991	24 Dec 1991	Ss. 1-3: 24 Dec 1991 S. 6: 24 Dec 1991 (see s. 2 and <i>Gazette</i> 1991, No. S155, p. 3) Remainder: 28 Feb 1985	—
<i>Workers' Compensation (Consequential Amendments) Act 1991</i>	106, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Remainder: 22 Jan 1992 (see s. 2 (2) and <i>Gazette</i> 1991, No. S9)	—

**NOTE**—continued**Table of Acts**—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Bail (Consequential Amendments) Act 1992</i>	9, 1992	28 May 1992	Ss. 1 and 2: 28 May 1992 Remainder: 28 Nov 1992	S. 3
<i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i>	23, 1992	4 June 1992	4 June 1992	—
<i>Financial Institutions (Consequential Amendments) Act 1992</i>	30, 1992	1 July 1992	1 July 1992 (see s. 2 (2) and <i>Gazette</i> 1992, No. S92, p. 2)	—
<i>Statute Law Revision (Miscellaneous Provisions) Act 1993</i>	1, 1993	1 Mar 1993	1 Mar 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—

(a) Pursuant to subsection 2 (2), no date had been fixed for the commencement of section 244 as at 31 January 1994.

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 4	am. Act No. 44, 1993
S. 5	am. No. 67, 1985; Nos. 29 and 30, 1986; No. 38, 1989; Act No. 97, 1991; No. 30, 1992
S. 9	am. Act No. 106, 1991
S. 17	am. No. 38, 1989
S. 18	am. Act No. 6, 1990; No. 30, 1992
S. 19	am. No. 60, 1985; No. 4, 1987; No. 38, 1989
S. 19A	ad. No. 4, 1987 rs. No. 38, 1989
S. 29	am. No. 60, 1985
S. 85	am. Act No. 97, 1991
S. 85A	ad. Act No. 97, 1991
S. 86	am. Act No. 97, 1991
S. 107	am. No. 29, 1986
S. 116	am. No. 76, 1988
S. 134	am. No. 29, 1986
S. 156	am. No. 29, 1986; Act No. 6, 1990; No. 30, 1992
S. 158	am. No. 30, 1986
S. 161	am. Act No. 9, 1992
S. 167	am. No. 30, 1986
S. 176	am. No. 29, 1986

**NOTE**—continued**Table of Amendments**—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 185 .....	am. Act No. 1, 1993
S. 187 .....	am. No. 50, 1989
S. 187A .....	ad. No. 50, 1989
S. 188 .....	rs. No. 50, 1989
S. 189 .....	am. No. 56, 1986; Act No. 23, 1992
S. 190 .....	am. No. 38, 1989
S. 210 .....	am. No. 67, 1985; Act No. 44, 1991
S. 228 .....	am. No. 38, 1989
S. 235 .....	am. No. 60, 1985
S. 241 .....	am. No. 38, 1989
Part XVA (ss. 241A-241D)	ad. Act No. 97, 1991
Ss. 241A-241D .....	ad. Act No. 97, 1991
S. 247 .....	am. No. 39, 1985
S. 250 .....	am. No. 72, 1986; No. 76, 1988
S. 255 .....	am. No. 38, 1989
S. 262 .....	am. No. 38, 1989
S. 263 .....	am. No. 30, 1986
S. 264 .....	rep. Act No. 23, 1992
S. 266 .....	am. No. 38, 1989
Schedule 2 .....	am. Act No. 97, 1991
Schedule 4 .....	am. Act No. 97, 1991
Schedule 7 .....	am. Act No. 97, 1991

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