



Australian Capital Territory

Credit Act 1985 (repealed)

A1985-5

Republication No 12

Effective: 7 October 2010

Republication date: 7 October 2010

As repealed by A2010-40 s 4 (1)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Credit Act 1985* (repealed) (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)). It also includes any commencement, amendment, repeal or expiry affecting the republished law to 7 October 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Credit Act 1985 (repealed)

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 1 Preliminary

1 Name of Act

This Act is the *Credit Act 1985*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*billing cycle*—see section 50 (1).' means that the term 'billing cycle' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act s 127 (1), (4) and (5) for the legal status of notes.

3 Application of Act and transitional provisions

- (1) Except as otherwise expressly provided in or under this Act, this Act applies (notwithstanding any other Territory law) to and in relation to a contract of sale, credit contract or mortgage—
 - (a) if the contract of sale, credit contract or mortgage is in writing and is signed in the ACT by the buyer, debtor or mortgagor; or
 - (b) if 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 ACT or in a recognised State—

- (i) for a contract of sale—if the goods and services are, or are to be, delivered or supplied in the ACT; or
 - (ii) for a credit contract—if the credit is, or is to be, provided to the debtor in the ACT or the debtor has, or is to have, the use or benefit of the credit in the ACT; or
 - (iii) for a mortgage—if property subject to the mortgage is at the date of creation of the mortgage situated in the ACT.
- (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 entered into or made before the commencement of the provision.
- (3) This Act (except sections 58, 59, 67 (1) (c) and Parts 2, 7, 8 and 9), applies to and in relation to a continuing credit contract made before the commencement of part 3 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 began before the commencement of that part.
- (4) If, because of subsection (3), this Act (except sections 58, 59, 67 (1) (c) and Parts 2, 7, 8 and 9) applies to and in relation to a continuing credit contract, the credit provider shall, when he or she first gives a statement of account referred to in section 61 after the commencement of part 3, 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 that fails to comply with subsection (4) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

4 Act binds Crown

This Act applies to and in relation to the Crown in any of its capacities to the same extent as if the Crown were, in that capacity, a body corporate.

6 Jurisdiction of courts and ACAT

- (1) In this Act, a reference to a court in relation to any contract or other matter is—
 - (a) if a proceeding in relation to the contract or matter has been begun in, or is before, a court—a reference to the court; or
 - (b) in any other case—a reference to the ACAT.
- (2) If a court and the ACAT each have jurisdiction to determine the same matter, a proceeding to determine the matter may be begun before the court or ACAT, but not before both.

7 Removing proceedings from ACAT to Magistrates Court

- (1) This section applies to a proceeding begun in the ACAT if the subject matter of the proceeding is within the jurisdiction of the Magistrates Court.
- (2) On joint application by the parties to the proceeding, the ACAT must order the application be removed to the Magistrates Court.
- (3) The ACAT may order the application be removed to the Magistrates Court on application by a party to the proceeding or on its own initiative.

Note Removal of applications from the ACAT to the Supreme Court is dealt with under the *ACT Civil and Administrative Tribunal Act 2008*, s 83.

8 Assignors, assignees etc of rights and obligations

- (1) This Act applies to a person to whom the rights and obligations of—
 - (a) a credit provider under a credit contract; or

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

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

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

9 Contracts of employment excluded

A reference in this Act to a *contract* or *agreement* in relation to the payment by a debtor for services supplied by another person does not include a reference to a contract or agreement that is solely a contract of service that creates the relationship of master and servant between the debtor and that other person or because of which that other person would be a worker within the meaning of the *Workers Compensation Act 1951*.

10 Annual percentage rate

For this Act, a reference to the *annual percentage rate*—

- (a) in relation to a credit sale contract or a loan contract in relation to 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; and

- (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.

11 Credit charge

- (1) For this Act, a reference to a *credit charge*—
 - (a) in relation to a credit sale contract or a loan contract—includes 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 or her behalf (other than 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—includes a reference to a credit charge within the meaning of section 54.
- (2) For the dictionary, definition of *accrued credit charge* in relation to a credit sale contract or a loan contract, the amount of the credit charge that 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) for a credit sale contract—of the amount financed; or
 - (ii) for 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) if schedule 1 applies to the credit sale contract or loan contract—in accordance with the formula set out in that schedule; or
 - (c) if an applicable method is prescribed for this subsection—in accordance with that method.
- (3) In calculating the amount of a credit charge that has accrued under a credit sale contract or a loan contract, the credit provider, if he or she so determines, may apply a percentage rate per annum that is lower than the annual percentage rate disclosed under the contract.

12 Tied contracts

- (1) For this Act, if 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 this Act, if a credit provider provides credit under a continuing credit contract in relation to 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*.

13 Contracts for hiring of goods

- (1) A contract for the hiring of goods shall be deemed to be a credit sale contract if—
- (a) the cash price of the goods at the time when the contract for the hiring is made is not more than the amount prescribed by the

regulations for section 30 (1) 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 the amount prescribed by the regulations for section 30 (1) 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, attached to land or to other goods and the goods are not, or when so attached would not be, reasonably capable of being redelivered to the supplier; or
 - (b) before the contract is made, the supplier—
 - (i) acts in such a way 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 or her 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 or her 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 end of the original term of the contract for the hiring.

- (3) If 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; and
 - (b) the person to whom the goods are hired is the debtor under the credit sale contract; and
 - (c) the cash price of the goods for the purposes of the credit sale contract is the cash price in relation to the contract for the hiring; and
 - (d) the instalments payable under the contract for the hiring are instalments payable under the credit sale contract; and
 - (e) the property of the supplier in the goods passes under the contract to the person to whom the goods are hired on delivery of the goods or the making of the contract, whichever last occurs; and
 - (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 or her by the person to whom the goods are hired under the contract; and
 - (g) any provision in the contract for hiring because 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 her or by him or her and another person or other persons, if the whole or the greater part of the amount payable under the contract is, or might reasonably be expected to be, a loss or outgoing necessarily incurred in carrying on the business.

- (5) In this section—
- (a) a reference to a **contract** for the hiring of goods does not include—
 - (i) a reference to a contract for the hiring of goods to a body corporate; or
 - (ii) a reference to a contract for the hiring of goods to the extent that the financial accommodation provided in relation to the goods is not credit within the meaning of this Act;
 - (b) **cash price**, in relation to a contract for the hiring of goods—
 - (i) if 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 firstmentioned person for cash; or
 - (ii) if 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) if at the time the contract is made the goods are not reasonably available for purchase for cash—means the amount that is the reasonable value of the goods at that time.

14 Certain contracts not credit sale contracts

- (1) For 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 relation to 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, that 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, if 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 end of a fixed or ascertainable period with an option, express or implied, for the purchaser to make payments in relation to the purchase price during that period.

15 Loan contracts not to include certain credit

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

16 Business of providing credit

In this Act, a reference to *carrying on a business of providing credit* includes a reference to carrying on 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.

17 Recognised States

- (1) If 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, in writing, declare that State or other Territory to be a recognised State.
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

18 Exceptions from application of Act

- (1) Parts 3 to 8 do not apply in relation to a regulated contract if the credit provider is a financial institution.
- (2) The provisions of parts 3, 4, 5, 6, 7 and 8 do not apply to or in relation to the provision of credit by a bank or a pastoral finance company if the credit is provided by way of overdraft or otherwise than by way of a credit sale contract, continuing credit contract or term loan.

19 Variation of application of Act

- (1) The Minister may, in writing, declare that this Act—
 - (a) does not apply to a person mentioned in the declaration; or
 - (b) applies to a person mentioned in the declaration to the extent stated in the declaration; or
 - (c) does not apply to a transaction or matter mentioned in the declaration; or
 - (d) applies to a transaction or matter mentioned in the declaration to the extent stated in the declaration; or

- (e) does not apply, to the extent stated in the declaration—
 - (i) to a transaction mentioned in the declaration that is entered into by a person mentioned in the declaration; or
 - (ii) to an associated matter mentioned in the declaration;
 - (f) applies subject to any exemption or exception under a corresponding law.
- (2) A declaration 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 the terms and conditions specified in the declaration.
- (3) A declaration under subsection (1) is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (4) 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 recognised State.
- (5) If 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 commits an offence.

Maximum penalty:

- (a) for an individual—\$5 000; and
- (b) for a corporation—\$25 000.

19B Act not to apply to new credit contracts

- (1) Subject to subsection (2), this Act does not apply to a credit contract made on or after the commencement of the provisions referred to in the *Consumer Credit Act 1995*, section 2 (2).
- (2) This Act applies to—
 - (a) a credit contract (other than a continuing credit contract) and a mortgage or guarantee relating to such a credit contract—
 - (i) made on or after the commencement of the provisions referred to in the *Consumer Credit Act 1995*, section 2 (2) if the offer to enter into it was made before that commencement; and
 - (ii) to which this Act would have applied if the credit contract had been made before that commencement; and
 - (b) a credit contract (other than a continuing credit contract) and a mortgage or guarantee relating to such a credit contract made on or after that commencement, but not later than 1 month after that commencement, if—
 - (i) the credit contract does not comply with the Consumer Credit (Australian Capital Territory) Code; and
 - (ii) had the credit contract been made before that commencement, this Act would have applied to it and it would have complied with this Act.

19C Act to continue to apply in certain cases

- (1) Except as otherwise provided by this section, this Act continues to apply—
 - (a) to a continuing credit contract entered into before the commencement of the provisions referred to in the *Consumer Credit Act 1995*, section 2 (2), but only in relation to anything done or omitted to be done before that commencement; and

- (b) to a credit contract of any other kind entered into before that commencement in relation to anything done or omitted to be done, whether before or after that commencement; and
 - (c) to a mortgage or guarantee relating to a continuing contract referred to in paragraph (a), but only in relation to anything done or omitted to be done before that commencement; and
 - (d) to a mortgage or guarantee relating to a credit contract referred to in paragraph (b) in relation to anything done or omitted to be done, whether before or after that commencement.
- (2) If the credit provider under a contract to which this Act continues to apply acts in accordance with a provision of section 34, 35, 66 to 69, 78 to 99, 163, 171, 172 or 173 of the Consumer Credit (Australian Capital Territory) Code, the credit provider is taken to have acted in accordance with the corresponding provision of this Act.
- (3) Notwithstanding subsection (2), section 112 (1) (b) continues to apply in relation to goods subject to a regulated mortgage.

Part 2 Contracts of sale

20 Application of pt 2

- (1) In this part, a reference to a *contract of sale* is a reference to—
 - (a) a contract of sale of goods and services if the cash price in relation to the sale is not more than—
 - (i) if the contract of sale is a regulated credit sale contract—the amount prescribed by the regulations for section 30 (1); or
 - (ii) if there is a regulated loan contract made in relation to the contract of sale—the amount prescribed by the regulations for section 30 (2) (a); or
 - (iii) in any other case—\$20 000; or
 - (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 this part, a reference to a *buyer* or a *person who buys or proposes to buy goods and services* does not include a reference to a body corporate.

21 Contract of sale conditional on grant of credit

- (1) If a buyer, before entering into a contract of sale of goods and services, makes known to the supplier that he or she requires credit to be provided in relation to payment for the goods and services and the credit is not provided by the supplier, the buyer, if he or she

takes reasonable steps to obtain the credit but does not obtain the credit may, within a reasonable period after the contract is made, by written notice given to the supplier, rescind the contract.

- (2) If 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, if there is a dispute about the return of the goods to the supplier, make an order relating to the return of the goods; and
 - (b) if the contract of sale included terms relating to the compensation of the supplier for loss suffered because of the delivery of the goods to the buyer—make an order relating to the payment of compensation.

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

- (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 relation to payment for the goods and services.
- (2) A supplier that contravenes subsection (1) commits an offence.

Maximum penalty:

 - (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.

23 Consequence of discharge of certain contracts

- (1) If 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) If 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) If a contract of sale is rescinded or discharged (whether under this Act or any other law in force in the Territory) and—
- (a) in relation to the contract of sale, there is a regulated continuing credit contract made by the buyer with the supplier; and
 - (b) in relation to the regulated continuing credit contract there is a regulated mortgage or a guarantee;

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

24 Linked credit provider

- (1) If 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 relation to the payment by the buyer for goods 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 or her to the buyer was provided as a result of an approach by the buyer to the credit provider that was not induced by the supplier; or
 - (b) if the proceedings relate to a contract of sale in relation to which a tied loan contract applies, that—
 - (i) after due inquiry before he or she became such a linked credit provider, he or she was satisfied that the supplier was of good reputation in relation to his or her financial standing and ethical standards of trading; and
 - (ii) since becoming such a linked credit provider, but before the tied loan contract was entered into, he or she 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 or she had not had cause to suspect, and had not suspected, that the

supplier might be unable to meet his or her liabilities as and when they fell due; or

- (c) if the proceedings relate to a contract of sale in relation to which a tied continuing credit contract entered into by the linked credit provider under an agreement of the kind referred to in section 48 (2) (a) (ii) applies, that, having regard to—
- (i) the nature and volume of business carried on by the linked credit provider; and
 - (ii) any other matters that 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 on 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) if 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 relation to a liability for which, because 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) for a cross-claim or right referred to in subsection (3)—the buyer claims in the proceedings against the supplier in relation to the liability.
- (5) Subsections (4), (8) (a) and (9) do not apply if—
- (a) the supplier—
 - (i) is a bankrupt or a person whose affairs are being dealt with under the *Bankruptcy Act 1966* (Cwlth), part 10; or
 - (ii) being a body corporate, has been dissolved or has begun to be wound up; or
 - (iii) being an individual, has died; or
 - (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 subsections (4) and (8) (a) do not apply in that case; or
 - (c) the buyer satisfies the court that he or she has made reasonable efforts to locate the supplier but has been unable to do so and the court declares that subsections (4) and (8) (a) do not apply in that case.
- (6) A reference in subsection (5) to the beginning of winding-up is a reference to beginning of winding-up as determined under the law relating to companies in the place if 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 relation to 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; and
 - (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) If, in proceedings in relation to 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) If in proceedings in relation to 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 or her 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 because of which the liability was incurred.

(11) Notwithstanding the provisions of any other Territory law, if in proceedings in relation to 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 on 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, on 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, if 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 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.
- (13) If a judgment in relation to 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, apart from the judgment, have had against any person in relation to the loss or damage suffered by him or her 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:
court does not include the ACAT.

25 Consequential discharge of tied loan contract and mortgage

- (1) Subject to section 27, if a contract of sale is rescinded or discharged (whether under this Act or any other law in force in the ACT) 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 if 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 that was not induced by the supplier.
- (3) If, because 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; and
 - (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; and
 - (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 because 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 or her to the supplier;
- and, if 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) if, 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) if, 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) If, under subsection (3) (d), goods are delivered to the credit provider, the credit provider is entitled to possession of the goods as against the supplier until the credit provider has been paid the amount for which the supplier is liable to the credit provider under subsection (3) (b).

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

- (1) Subject to section 27, if a contract of sale is rescinded or discharged (whether under this Act or any other law in force in the ACT) 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 firstmentioned amount; and
 - (b) the supplier is liable to the credit provider for an amount equal to the firstmentioned amount;

and, if 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) if, 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) if, 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) If, under subsection (1) (c), goods are delivered to the credit provider, the credit provider is entitled to possession of the goods as against the supplier until the credit provider has been paid the amount for which the supplier is liable to the credit provider under subsection (1) (b).
- (3) Subsection (1) does not apply if 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 that was not induced by the supplier.

27 Operation of s 25 and s 26

The provisions of sections 25 and 26—

- (a) are in addition to all other rights of a buyer exercisable against a linked credit provider or supplier (whether under this Act or any other law in force in the ACT); and
- (b) 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.

28 Disputes

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

29 Notice of rescission etc to linked credit provider

- (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 relation to 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 that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

Part 3 **Regulated contracts**

Division 3.1 **Credit sale contracts and loan contracts**

30 **Application of pt 3**

- (1) In this part, a reference to a *credit sale contract* does not include a reference to a credit sale contract relating to goods and services in relation to which the cash price is more than the amount prescribed by the regulations, 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* does not include a reference to a loan contract in relation to which—
- (a) the amount financed is more than the amount prescribed by the regulations;
 - (b) there is no annual percentage rate or there is only 1 annual percentage rate and that rate does not exceed the percentage rate prescribed by the regulations; 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 the percentage rate prescribed by the regulations;

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) If the annual percentage rate in relation to 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 subsection (2) (b), be deemed to be the annual percentage rate in relation to the contract, whether or not the annual percentage rate applied under the contract is a lower rate than that specified rate.

31 Contracts to be in writing

- (1) A credit provider that enters into a credit sale contract or a loan contract that is not in writing signed by the debtor commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.
- (2) Subsection (1) is not contravened if a credit sale contract or a loan contract is made by the acceptance of an offer in writing signed by the debtor to the credit provider to enter into the contract.

32 Form of offer

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

shall not give 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 approved under section 256 (Approved forms) for this subsection; and
- (e) in the prescribed position or, in a particular case, in a position approved by the ACAT, on the document.

- (2) A credit provider, agent of a credit provider or supplier that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

- (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 approved under section 256 (Approved forms) for this subsection; and
- (b) in the prescribed position or, in a particular case, in a position approved by the ACAT, on the document.

- (4) A credit provider or an agent of a credit provider that contravenes subsection (3) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

- (5) If—

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

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

gives to a person a document for signature by that person as an offer in writing to the credit provider to enter into a credit sale contract or a loan contract, the credit provider, agent or supplier, as the case may be, shall, before that person signs the document, also give to that person a true copy of the document for his or her 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 that fails to comply with subsection (5) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

(7) If 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 or her 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 that fails to comply with subsection (7) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

(9) If 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 or her under subsection (5) or (7).
- (10) If 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; or
 - (b) an agent of the credit provider authorised to make or receive the offer to enter into the contract; or
 - (c) a supplier in relation to whom the credit provider is a linked credit provider;

shall not alter or add to the terms and conditions specified in the document with intent to deceive the debtor or, if 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 that contravenes subsection (10) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$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.

33 Copy of accepted offer to be given

- (1) If 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 written notice of the acceptance endorsed on, or accompanied by, a copy of the offer.
- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
 - (b) for a corporation—\$10 000.
- (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 the beginning 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.

34 Debtor to be given prescribed statement

- (1) If a credit sale contract or a loan contract is made, the credit provider shall, not later than 14 days after the date when the contract is made, give to the debtor the statement in the form approved for this section.

- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.
- (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.

35 Disclosure in credit sale contracts

- (1) A credit sale contract relating to goods and services shall include—
- (a) the date when the contract, or an offer to enter into the contract, was signed by the debtor; and
- (b) a description or identification of the goods and services; and
- (c) a statement of the amount financed in accordance with schedule 2; and
- (d) a statement of the credit charge in accordance with schedule 3; and
- (e) if, 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; and
- (f) a statement of the annual percentage rate in accordance with section 38; and
- (g) a statement of the person to whom, and the place where, payments by the debtor are to be made; and

- (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) if each instalment is the same amount—that amount;
 - (ii) if each instalment except the last is the same amount—that amount and the amount of the last instalment;
 - (iii) if 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; and
 - (i) if a commission charge is payable—a statement to that effect and, except 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 relation to a risk under a contract of insurance (other than compulsory insurance relating to goods) other than a risk specified in schedule 2, clause 1 (d) (iv) or (e);
 - (b) if a mortgage relating to the contract has been entered into—an amount in relation to insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage

because of any law in force in the ACT exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or

(c) an amount in relation to 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 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 the offer is made.

36 Disclosure in loan contracts

(1) A loan contract shall include—

(a) the date the contract, or an offer to enter into the contract, was signed by the debtor; and

(b) a statement of the amount financed in accordance with schedule 4; and

(c) a statement of the credit charge in accordance with schedule 5; and

(d) if, 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; and

- (e) a statement of the annual percentage rate in accordance with section 38; and
 - (f) a statement of the person to whom, and the place where, payments by the debtor are to be made; and
 - (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) if each instalment is the same amount—that amount;
 - (ii) if each instalment except the last is the same amount—that amount and the amount of the last instalment;
 - (iii) if 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; and
 - (h) if a commission charge is payable—a statement to that effect and, except 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 relation to a risk under a contract of insurance other than a risk specified in schedule 4, clause 1 (b);

- (b) if a mortgage relating to the contract has been entered into, an amount in relation to insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any law in force in the ACT exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
 - (c) an amount in relation to 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 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 the offer is made.

37 'Add-on' contracts

- (1) This section applies to a credit sale contract that provides for the consolidation of the amount payable under the contract with the net balance due to the credit provider (at the time the contract is entered into) under another credit sale contract (other than a credit sale contract in relation to which there is a mortgage) that is discharged on the entering into of the firstmentioned contract.
- (2) A credit sale contract to which this section applies does not fail to be in accordance with section 35 only because that the statements referred to in sections 35 (1) (c) to (h) are not included in the contract, but only if the conditions specified in subsection (3) are satisfied.

- (3) The conditions referred to in subsection (2) are that—
- (a) to the extent to which the statements referred to in section 35 (1) (c), (d), (f), (g) and (h) were not included in the contract, they are included in a written notice given to the debtor within 28 days after the contract is entered into; and
 - (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 the form approved under section 256 (Approved forms) for this section.
- (4) At any time after a credit sale contract to which this section applies is entered into and before the end of 10 days after the day when the notice referred to in subsection (3) (a) has been given, the debtor may rescind the contract by written notice to the credit provider.
- (5) On 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) If 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 relation to 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) If 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 that fails to comply with subsection (7) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

- (9) If 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 on 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.

38 Statement of annual percentage rate

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

- (a) if, 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) if, under the contract, the whole of the credit charge is not so determined—
(i) the percentage rate per annum that 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 that under the contract would be the credit charge if all payments under the contract were paid on the respective days when under the contract they are required to be paid; or

- (ii) if 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) if an applicable method has been prescribed for this section—the percentage rate per annum determined according to that method;

whichever the credit provider determines.

39 Acceptable rate of interest

- (1) If 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) If, 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 relation to each rate.

40 Inclusion of more than 1 rate of interest in contract

- (1) Subject to section 39, a credit sale contract or a loan contract shall be deemed to be not in accordance with this division if it includes—
 - (a) a statement of, or a reference to, more than 1 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) If, in a credit sale contract or a loan contract, there is a statement of, or a reference to, more than 1 annual percentage rate for the purposes of the contract or a statement of, or a reference to, any other rate referred to in subsection (1), the annual percentage rate for the purposes of the contract shall be the lowest rate so stated or referred to.

41 Variation ineffective without notice

- (1) If, 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 way referred to in section 37, 69, 70 or 71) the variation does not have effect until the prescribed period, (or, if 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) If 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 when the last of the bulk postages was made.

42 Civil penalty

- (1) Subject to section 85, if—
- (a) a credit sale contract is not in writing signed by the debtor or is not in accordance with section 35; or

- (b) a loan contract is not in writing signed by the debtor or is not in accordance with section 36; or
- (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; or
- (d) a credit sale contract or a loan contract is deemed to be not in accordance with the provisions of this division because of section 40 (1); or
- (e) a mortgage relating to a credit sale contract or a loan contract is entered into in contravention of section 91 (1);

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

- (2) An amount paid by a debtor in relation to the credit charge that, in accordance with subsection (1), he or she 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, if 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 against this Act.

43 Offence

A credit provider that enters into a credit sale contract or a loan contract that is in writing but is otherwise not in accordance with this division commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

44 Minimum credit charge

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

is void.

- (2) A credit provider that enters into a credit sale contract or a loan contract that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

45 Statement for debtor or guarantor on request

- (1) If a credit provider receives a written request for a statement under this subsection 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 relation to 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 written statement showing—
- (a) each amount received under the contract by the credit provider and the date it was received; and

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

Note A fee may be determined under s 255 (Determination of fees) for a request under this subsection.

- (2) Subject to subsection (3), a credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (3) A credit provider is not required to comply with a request under subsection (1) from a debtor or a guarantor if, within 3 months immediately before the receipt of the request, he or she 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.

46 Copy of document for debtor or guarantor

- (1) If a credit provider receives a written request for a copy of a document that the credit provider is required by this section to provide 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 relation to 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) if 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 that affect or concern the rights of the debtor.

Note A fee may be determined under s 255 (Determination of fees) for a request under this subsection.

(2) Subject to subsection (3), a credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

(3) A credit provider is not required to comply with a request under subsection (1) from a debtor or a guarantor if, within 3 months immediately before the receipt of the request, he or she 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.

47 ACAT may determine reasonable fees etc

(1) If 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 lawyer authorised to prepare documents for the contract or for a mortgage entered into in relation to the contract; or
- (b) the amount of any charge prescribed for schedule 2, clause 1 (g) or schedule 4, clause 1 (d); or
- (c) the value of any consideration of a kind prescribed for schedule 2, clause 1 (i) or schedule 4, clause 1 (f);

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

- (2) If an application is made under subsection (1), the ACAT shall—
 - (a) determine the amount or value and make any orders that are necessary to give effect to its determinations; or
 - (b) dismiss the application.
- (3) If the ACAT 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 only because of the determination.

Division 3.2 Continuing credit contracts

48 Interpretation for div 3.2

- (1) For 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 in relation to a matter if the firstmentioned person has an agreement, arrangement or understanding with the other person, or is engaged in a course of dealing with the other person, in relation to the matter.
- (2) If—
 - (a) a person (*the creditor*), in the course of a business carried on by him or her, agrees with another person (other than a body corporate) to provide credit to that other person in relation to—
 - (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 relation to 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 relation to the agreement are entered in 1 or more accounts kept for the purpose of the agreement;
- the agreement is, for this Act, a *continuing credit contract*.
- (3) If the creditor agrees to make payments to a third person in relation to goods and services or cash supplied by that third person to the other person, as referred to in subsection (2) (a) (ii), then, for this Act, the creditor shall, in relation to 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) If in relation to 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.

49 Application of pt 3 to continuing credit contracts

- (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) if 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 relation to which the annual percentage rate exceeds 14%; or
 - (b) if credit is or may be provided to the debtor by the credit provider in relation to 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; or
 - (ii) an amount, other than an account charge, owing at any time by the debtor is not required to be paid within 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) if 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 relation to which, if 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%; or
 - (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 subsection (2) (b), a continuing credit contract shall be deemed not to be a contract under which an amount exceeding \$20 000 is agreed as the maximum amount that at any time may be owed by the debtor under the contract if—
- (a) under the contract, the debtor may not, otherwise than because of his or her 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) If more than 1 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.

50 Billing cycle

- (1) In this Act, a reference to a *billing cycle* in relation to a continuing credit contract is a reference to the period applied from time to time in accordance with the contract as the billing cycle in relation to the contract.
- (2) A credit provider under a continuing credit contract that applies as a billing cycle for section 61 or schedule 7 a period exceeding 40 days commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

51 Payment on behalf of debtor

If, under a continuing credit contract, the credit provider satisfies the amount payable by the debtor to a supplier in relation to the supply of goods and services or cash, the credit provider shall, for this division, be deemed to have paid to the supplier the amount (whether or not it is the same as the firstmentioned amount) that would have been payable by the debtor to satisfy the amount so payable.

52 Chargeable amount

- (1) Subject to this section, a reference in this division to the *chargeable amount* in relation to a billing cycle of a continuing credit contract is a reference to the sum of any 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 beginning of the billing cycle less amounts included in the statement of account in relation to 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 that 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 subsection (1) (a) and (b) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

- (3) If an amount determined as an amount constituting the chargeable amount for a billing cycle exceeds the greater of the amounts referred to in subsections (1) (a) and (b), the chargeable amount for the billing cycle shall be deemed, for this division, to be the lesser of the amounts referred to in subsections (1) (a) and (b).

53 Amount payable under continuing credit contract

- (1) A provision in a continuing credit contract that 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 relation to payment for which credit is provided under the contract; or
 - (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; or
 - (c) a credit charge; or
 - (d) an amount of enforcement expenses; or
 - (e) an amount of stamp duty payable in relation to or in relation to the contract payable by the debtor to the credit provider; or
 - (f) an amount payable under the contract by the debtor to the credit provider that is a prescribed charge for this section; or
 - (g) the amount of any other consideration given to the debtor under the contract, being consideration of a kind prescribed for this section;

is void.

- (2) A credit provider that enters into a continuing credit contract that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and

- (b) for a corporation—\$10 000.

54 Credit charge

- (1) For this Act, a reference to a *credit charge* in relation to a billing cycle of a continuing credit contract is a reference to the amount included in the statement of account 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 relation to payment for which credit is provided under the contract; or
 - (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; or
 - (c) an amount of enforcement expenses; or
 - (d) an amount of stamp duty in relation to or in relation to the contract payable by the debtor to the credit provider; or
 - (e) an amount payable under the contract by the debtor to the credit provider that is a prescribed charge for this section; or
 - (f) the amount of any other consideration given to the debtor under the contract, being consideration that is of a kind prescribed for 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 that 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 relation to the contract to the chargeable amount for the billing cycle in the way applicable under the contract commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (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.

55 Annual percentage rate

- (1) For 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 means the annual percentage rate to be calculated.

A means 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.

B means the number of those billing cycles that would occur during a period of 1 year if the contract were to continue in force for that period.

- (2) If, 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) If, 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 relation to each rate.
- (4) Except as provided by subsection (2), a credit provider that includes more than 1 annual percentage rate in relation to a continuing credit contract commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (5) If the annual percentage rate in relation to 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 section 49 (1) (a), be deemed to be the annual percentage rate in relation to the contract, whether or not the annual percentage rate applied under the contract is a lower rate than that specified rate.

56 Billing cycle less than 1 month

A credit provider does not fail to comply with the provisions of this division relating to the stating of the annual percentage rate in relation to a continuing credit contract or the credit charge in relation to a billing cycle only because that he or she 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 relation to a billing cycle, the period of which is not less than 24 days, as if the period of that billing cycle were 1 month.

57 Non-business days

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

58 Debtor to be given prescribed statement

A credit provider that, before the debtor first incurs a debt under a continuing credit contract, fails to give to the debtor a statement in the form approved under section 256 (Approved forms) for this section commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

59 Notice of terms of continuing credit contract

- (1) A credit provider shall, before the debtor first incurs a debt under a continuing credit contract, give a written notice to the debtor stating—
 - (a) any amount that, under the contract, is agreed as the maximum amount in relation to which, at any time, credit is agreed to be provided to the debtor under the contract; and

- (b) the method by which the chargeable amount for each billing cycle is to be determined; and
 - (c) the terms and conditions (if any) on which, under the contract, a credit charge for a billing cycle may be made; and
 - (d) the method by which the amount of the credit charge for each billing cycle is to be determined; and
 - (e) the period after the end of a billing cycle within which the amount owed by the debtor at the end 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; and
 - (f) the annual percentage rate in relation to the contract and the manner of its application to the contract; and
 - (g) particulars of stamp duty (if any) payable in relation to or in relation to the contract or a mortgage payable under the contract by the debtor; and
 - (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; and
 - (i) the method (if any) by which, under the contract, provisions of the contract may be varied; and
 - (j) particulars of any other matters (if any) that are prescribed for 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 that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and

- (b) for a corporation—\$5 000.
- (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 or her for his or her 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.

60 Variation of continuing credit contract ineffective without notice

- (1) If, 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) for 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 ended after notice of the variation has been given to the debtor in writing; or
 - (b) for any other variation—until a period of at least 7 clear days or, if the contract provides for a longer period of notice of the variation, that longer period has ended after notice of the variation has been given to the debtor in writing.
- (2) If 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 when the last of the bulk postages was made.

61 Statement of account

- (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) if a mortgage relating to the contract has been entered into—an amount in relation to insurance against loss of the security interest of the mortgagee in any goods the subject of the mortgage because of any law in force in the ACT exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
 - (b) an amount in relation to 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) If an amount paid by a debtor is not included in the statement of account in relation to the billing cycle during which the amount was paid, a credit provider that 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 commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

- (6) A credit provider under a continuing credit contract that—

- (a) fails to give a statement of account in accordance with this section in relation to each billing cycle applied under the contract from time to time; or
- (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;

commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

62 Correction of billing errors

- (1) If—
- (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 about the nature or extent of the liability of the debtor to the credit provider) shown in a statement of account given to him or her in accordance with section 61; and

- (b) the document contains sufficient details to enable the credit provider to identify the statement of account; and
- (c) the document is given or sent to the credit provider before payment under the contract is due in relation to the statement of account; and
- (d) the credit provider does not take the action that satisfies the query;

any right of action claimed by the credit provider in relation to 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 end 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 or her decision in relation to the query.

- (2) If the credit provider corrects, in a way 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 relation to 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 subsection (4), void.
- (3) The debtor may apply to the ACAT, before the end of the 2 complete billing cycles after the giving by the credit provider to the debtor of a written notification of his or her decision in relation to the query referred to in subsection (1), for a determination to be made in relation 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 ACAT makes its determination.
- (4) For subsection (3), the ACAT may make any orders that it considers appropriate, 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 or she not made his or her query are payable by him or her; and
 - (b) an order removing the suspension imposed by subsection (1).
- (5) A credit provider that institutes proceedings in relation to a right of action referred to in subsection (1) while the right of action is, under this section, suspended commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

63 Statement of account to be given before proceedings instituted

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

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

- (1) A credit provider shall not give to a debtor a statement of account relating to a billing cycle of a continuing credit contract that includes in the chargeable amount an amount owed by the debtor under the contract immediately before the first day of the billing cycle unless—
- (a) the credit provider has given to the debtor a statement of account in relation to the billing cycle immediately before the firstmentioned billing cycle; and
 - (b) the credit provider gave that statement to the debtor not later than—

- (i) if the firstmentioned billing cycle is 14 days or more—
8 days before the end of that billing cycle; or
 - (ii) if the firstmentioned billing cycle is less than 14 days—
4 days before the end of that billing cycle.
- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (3) If 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 against subsection (1) in relation to a continuing credit contract, proceedings for a like offence against subsection (1) may not be instituted against the credit provider in relation to another continuing credit contract in relation to which a statement of account was posted by the same bulk postage.

65 Statement of account not needed in certain circumstances

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

- (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; or
- (b) during the billing cycle—
 - (i) the credit provider wrote off the debt of the debtor under the contract; and

- (ii) no other entries were made in the account of the debtor kept by the credit provider; or
- (c) during the whole of the billing cycle and the 2 immediately previous billing cycles the debtor was in default under the contract and, before the beginning of the firstmentioned billing cycle, the credit provider, in accordance with the contract, exercised a right not to provide further credit under the contract and did not, during the billing cycle, provide further credit.

66 Credit provider to pay amounts owing to debtor on request

If 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, on request by the debtor, pay that amount to the debtor.

67 Civil penalty

- (1) Subject to section 85, if, in relation to a billing cycle of a continuing credit contract—
 - (a) the credit provider has not given written notice to the debtor of the annual percentage rate in relation to the contract in accordance with section 3 (4) or 59; or
 - (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; or
 - (c) the debtor incurs a debt under the contract before the credit provider has given a notice under section 59; or

(d) the credit provider includes in the statement of account for that billing cycle an amount of deferral charges or default charges; or

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

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

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

68 Copy of notice to be given on request

(1) If a credit provider receives a written request 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 relation to 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 section 3 (4), 59 or 60; and

(b) if the request relates to a contract referred to in section 59 (3)—a copy of the offer referred to in that subsection;

in relation to the contract.

Note A fee may be determined under s 255 (Determination of fees) for a request under this subsection.

(2) Subject to subsection (3), a credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

(a) for an individual—\$1 000; and

(b) for a corporation—\$5 000.

- (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 before 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 3.3 Operation of regulated contracts

69 Refinancing of credit contracts by the same parties

- (1) If a credit provider agrees to discharge 1 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 written statement setting out, in relation to 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 or her obligations under the contract in accordance with that section; and
 - (b) for 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; and
 - (ii) the outstanding balance of the accrued credit charge; and
 - (iii) the outstanding balance of deferral charges (if any) charged in accordance with this part; and
 - (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 (if 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).

- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

- (3) In subsection (1):

relevant date means—

- (a) the date when 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 when the offer is made.

70 Variation of credit sale contracts and loan contracts

- (1) The credit provider and the debtor under a credit sale contract or a loan contract may agree to vary the terms of the contract in relation to, or to payment of, the amount owing under the contract if—
- (a) the outstanding balance of the amount financed at the date of the variation is not increased by the variation or is increased by the variation only because of the addition of an amount referred to in subsection (3); and
- (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 this subparagraph; and
- (c) a deferral charge is not made in relation to the variation; and
- (d) the agreement is in writing signed by the credit provider and the debtor and specifies (if applicable)—
 - (i) the varied terms of repayment; and
 - (ii) the amount by which the amount financed is increased; and
 - (iii) the amount by which the credit charge is increased because of the variation; and
 - (iv) the amount of default and deferral charges outstanding at the date of the variation; and
 - (v) the amount of stamp duty and legal fees payable to a duly qualified lawyer (other than the credit provider or an employee of the credit provider) for preparation of the agreement; and
 - (vi) the additional amount payable under the contract because of the variation; and
 - (vii) any other matters that may be prescribed.
- (2) The regulations may prescribe how matters required by subsection (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) if, 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) if, under the credit sale contract or loan contract, registration fees relating to goods and in relation to a particular period were included in the amount financed under the credit sale contract or loan contract—registration fees relating to those goods in relation to a subsequent period;
 - (c) any other amounts that may be prescribed.
- (4) A credit provider that—
- (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;

commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (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) If 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 relation to the obligations of the debtor under the contract is not liable in relation to the contract for an amount exceeding the amount for which, apart from the variation, he or she would have been liable unless the credit provider, not later than 14 days after the variation is made, gives to the guarantor written notice of the variation.
- (7) This section does not apply to or in relation to a variation—

- (a) if section 37, 69 or 71 applies to or in relation to the variation;
or
- (b) only because that, as a result of a variation, the amount due to a credit provider is satisfied or reduced.

71 Deferral charge

- (1) If 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 relation to 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; and
 - (b) the charge in relation to the deferral does not exceed the amount determined in accordance with subsection (3); and
 - (c) a default charge is not made in relation to the deferral; and
 - (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 if the whole or part of the credit charge under the contract is a predetermined credit charge.
- (2) A credit provider that contravenes subsection (1) commits an offence.
Maximum penalty:
 - (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (3) The amount of a charge in relation to 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 relation to the number of days for which it is deferred—
 - (i) if a credit charge is payable under the contract—a rate not exceeding the daily percentage rate that applies to the contract; or
 - (ii) if a credit charge is not payable under the contract—the rate prescribed for this section;

and the amounts (if any) payable in relation to 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 subsections (3) (a) and (5) (b) are charges in relation to—
 - (a) stamp duty payable in relation to or in relation to the deferral; and
 - (b) fees payable to a duly qualified lawyer (other than the credit provider or an employee of the credit provider) authorised to prepare documents for the deferral.
- (5) If 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, if the deferral is made under a term of the contract, the credit provider defers the payment, the credit provider gives written notice to the debtor stating—
 - (a) the amount of the payment deferred; and
 - (b) the amounts (if any) payable in relation to charges referred to in subsection (4) in relation to the deferral; and

- (c) the date when the period for which the payment is deferred ends; and
 - (d) the amount of the charge, in dollars and cents; and
 - (e) if applicable, the rate applied to the amount in relation to which payment is deferred in accordance with subsection (3) (a) for the purpose of determining the amount of the charge.
- (6) A credit provider that makes a charge in relation to the deferral of the payment of an amount payable by the debtor under a regulated continuing credit contract commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (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.

72 Default charges

- (1) If 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 relation to 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) if a credit charge is payable under the contract—the daily percentage rate under the contract; or
 - (B) if a credit charge is not payable under the contract—the rate prescribed for 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 if the whole or part of the credit charge under the contract is a predetermined credit charge.

(2) A credit provider that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

(3) A credit provider that makes a charge in relation to—

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

commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

(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.

73 Variations generally

If 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 way 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, apart from this section, it would not continue to be, or be, a regulated contract.

74 Variation of commitments on account of hardship

- (1) If a debtor because of illness, unemployment or other reasonable cause is unable reasonably to discharge his or her obligations under a regulated contract, the debtor may, if he or she reasonably expects that he or she would be able to discharge his or her 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); or
 - (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) If a credit provider to whom application is made by a debtor under subsection (1) refuses to vary a regulated contract in accordance with the application, the debtor may apply to the commissioner for assistance in negotiating a variation of the contract.
- (3) If an application is made under subsection (2), the commissioner shall seek the views of the credit provider and any mortgagee or guarantor and, after giving them a reasonable opportunity to be heard and making any other inquiries that the commissioner considers appropriate, determine whether or not to seek to arrange

with the credit provider a variation of the regulated contract and, if the commissioner seeks such a variation and is unable to reach agreement with the credit provider, the commissioner shall refer the application to the ACAT.

- (4) The ACAT may, if 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, if it orders such a variation, may make any other orders that it considers appropriate.
- (5) If an order of the ACAT under subsection (4) is in force, a credit provider under a contract to which the order applies may apply to the ACAT for a variation of the order.
- (6) The ACAT may, if it receives an application under subsection (5), make any variation of the order to which the application relates that it considers appropriate or may refuse to vary the order.
- (7) If an application for variation of a regulated contract is referred to the ACAT 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 ACAT 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 3.4 General

75 Unauthorised fees

- (1) An agreement entered into by a credit provider under which 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; or

- (b) guaranteeing or securing repayment of any such credit; or
- (c) negotiations for the provision of any such credit or for guaranteeing or securing repayment of any such credit;

(other than costs, fees or charges permitted by this Act to be included as part of the amount financed under a regulated credit sale contract or a regulated loan contract or as part of the amount owing under a regulated continuing credit contract) is void.

- (2) Any amount that, notwithstanding subsection (1), is paid by a debtor to a credit provider in accordance with an agreement referred to in subsection (1) is recoverable by the debtor from the credit provider as a debt.
- (3) A credit provider that enters into an agreement that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

76 Enforcement expense

- (1) A provision in a regulated contract to the effect that if 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 that enters into a contract containing a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

- (3) If 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 ACAT may, on the application of the debtor or credit provider, determine the amount of that liability.

77 Right to revoke offer is paramount

- (1) A provision in an agreement to the effect that a person does not have a right to revoke an offer to enter into a regulated contract—
- (a) before the offer is accepted; or
 - (b) if, 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 that enters into an agreement including a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

78 Sufficient statement of annual percentage rate

It is sufficient compliance with the provisions of this part that require the annual percentage rate to be stated in or in relation to a regulated contract under which the whole or any part of the credit charge is a predetermined credit charge if the annual percentage rate is 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 1 part in 50 of the rate required to be stated.

79 Sufficient statement of estimated credit charge

It is sufficient compliance with the provisions of this part that require the estimated credit charge to be stated in or in relation to a regulated contract under which the whole or any part of the credit charge is an estimated credit charge if the estimated credit charge is 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 1 part in 100 of the charge required to be stated.

80 Discrepancy between credit charge and annual percentage rate

If, 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 1% of the amount so stated in the contract;

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

- (c) if 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) if 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 that, when applied to the unpaid balance of the amount financed, yields an amount equal to the amount so stated.

81 Assignment of rights by credit provider

- (1) A person—
- (a) being a credit provider, shall not assign the whole or any part of his or her rights as a credit provider under a regulated contract to a person other than a registered 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 or her rights as a mortgagee under the mortgage to a person other than a registered credit provider or an exempt credit provider to whom he or she has assigned his or her rights under the credit contract;

unless the assignment—

- (c) is an assignment made bona fide by way of security in relation to a liability incurred by the assignor; or
 - (d) is made with the consent of the ACAT.
- (2) A person, being a credit provider or mortgagee referred to in subsection (1), that contravenes that subsection commits an offence:
- Maximum penalty:
- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (3) For subsection (1) (d), if, in relation to a proposed assignment—
- (a) the person who would be the assignee under the assignment is disqualified from registration as a credit provider or as a finance broker under the Administration Act; 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 ACAT shall refuse consent to the assignment.
- (4) If 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 relation to an assignment of rights under the mortgage that do not relate to a regulated contract.
- (5) Subject to this section, if a credit provider or a mortgagee assigns his or her rights as a credit provider under a regulated contract or as a mortgagee under a regulated mortgage—
- (a) the debtor or mortgagor and, if 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 relation to 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 relation to 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 subsection (5) (b) in relation to a regulated contract or a regulated mortgage may not be exercised otherwise than by way of a defence or set-off in relation to a claim by the assignee under the regulated contract.
- (8) Subject to section 85—
- (a) if a credit provider assigns the whole or any part of his or her 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; and
 - (b) if a credit provider assigns the whole or any part of his or her 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) if a credit provider assigns the whole or any part of his or her rights as mortgagee under a regulated mortgage otherwise than in accordance with subsection (1)—
 - (i) if 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) if 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 relation to an assignment that occurs by operation of law.

82 Loan to be in money or equivalent

- (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 relation to the contract.
- (2) A credit provider that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

83 Application of payments

- (1) A credit provider shall, unless the credit provider and debtor otherwise agree, apply payments received under a regulated contract—
- (a) for a regulated credit sale contract or a regulated loan contract—
 - (i) first, in payment of default charges (if any); and
 - (ii) second, in payment of the accrued credit charge; and
 - (iii) third, in payment of deferral charges (if any); and
 - (iv) fourth, in payment of the outstanding balance of the amount financed; and
 - (v) fifth, in payment of enforcement expenses; and
 - (b) for a regulated continuing credit contract—
 - (i) first, in payment of the credit charge; and

- (ii) second, in payment of any other amount owed under the contract by the debtor to the credit provider.
- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

84 Appropriation of payments between contracts

If a debtor—

- (a) is liable to make payments to the same credit provider in relation to 2 or more regulated contracts; and
(b) makes a payment in relation to the contracts that 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 the proportions 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.

85 ACAT may reduce credit provider's loss

- (1) If, because of a contravention of this Act or the Administration Act by a credit provider, a debtor is not liable to pay to the credit provider under a regulated contract an amount that, apart from the contravention, he or she would have been liable to pay under the

contract, the credit provider may apply to the ACAT for an order increasing the liability of the debtor to the credit provider.

- (2) If an application is made to the ACAT under this section in relation to a regulated contract, the ACAT 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) for a credit sale contract or a loan contract and a contravention of the Administration Act, section 7 (1)—
 - (i) if the ACAT 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 any part of the credit charge that it determines; or
 - (ii) if the ACAT 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 any part that it determines of the amount financed under the contract and the whole or any part of the credit charge that it determines;
 - (b) for a regulated continuing credit contract and a contravention of the Administration Act, section 7 (1)—
 - (i) if the ACAT is satisfied that the contravention has occurred and ought reasonably to be excused—determine that the debtor is liable to pay the whole or any part of the amount owing or the credit charge that it determines; or
 - (ii) if the ACAT 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 any part of the amount owing or the credit charge that it determines; and

- (c) for a regulated contract and a contravention of this Act or a provision of the Administration Act, other than the Administration Act, section 7 (1)—determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or any part of the credit charge under the contract that it determines.
- (3) If, under this section, the ACAT 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 ACAT shall ensure that, in determining that amount, the amount that the debtor would have been liable to pay apart from 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) If, under this section, the ACAT 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 ACAT instead of the liability that, apart from the determination, the debtor would have had to the credit provider under the contract.
- (5) The ACAT may, when making a determination under this section of the amount that a debtor is liable to pay, give the parties to the proceedings any directions that the ACAT considers appropriate relating to the payment of the amount owed by the debtor or by the credit provider as a result of the determination.
- (6) A determination made by the ACAT under this section of the liability of a debtor has effect only in relation to the contravention or failure to which the determination relates.
- (7) Nothing in this section affects the liability of a person to be convicted of an offence against this Act.

85AA Payment to financial counselling trust fund

- (1) If an application is made in accordance with section 86 and section 85 (2) would otherwise apply, the ACAT may make an order—
 - (a) in relation to some or all of the regulated contracts to which the application refers—that the debtor is liable to pay the whole of any amount that, apart from the contravention or failure referred to in section 85 (2) (a), (b) or (c), would have been payable by him or her under the contract; and
 - (b) that the credit provider is liable to pay a specified amount to the Territory.
- (2) The ACAT shall not make an order under subsection (1) unless satisfied—
 - (a) that the contravention or failure referred to in section 85 (2) (a), (b) or (c) has occurred and ought not to be excused; and
 - (b) that, if the ACAT were to make a determination under section 85 (2) (a), (b) or (c) in relation to each regulated contract to which the order under subsection (1) would apply, the credit provider would incur costs in—
 - (i) identifying each contract; or
 - (ii) altering its records to take account of any reduction in liability under each contract; or
 - (iii) locating the debtor to whom a refund of money paid under each contract would be payable; or
 - (iv) refunding to the debtor money paid under each contract; or
 - (v) otherwise giving effect to any reduction in liability under each contract; and

- (c) that, in relation to the majority of those contracts, the costs referred to in paragraph (b) (i), (ii), (iii) or (iv), or the sum of those costs, would be likely to be excessive having regard to the amount of the reduction in liability of the relevant debtor.
- (3) In deciding the quantum of the amount referred to in subsection (1) (b), the ACAT shall have regard—
 - (a) to—
 - (i) the number of contracts to which the determination under subsection (1) (a) would apply; or
 - (ii) if the credit provider has not identified each such contract—an estimate of the number of such contracts; and
 - (b) to the costs referred to in subsection (2) (b) that would be, or would be likely to be, incurred by the credit provider if the ACAT were to make a determination under section 85 (2) (a), (b) or (c) in relation to each contract.
- (4) Section 85 (4), (5), (6) and (7) apply to an order made under this section as if the order were a determination made under section 85.

85A Stay of civil penalty pending ACAT's decision

- (1) When an application is made for a determination under section 85, the civil penalty to which the application relates is stayed pending the disposal of the application by the ACAT.
- (2) For the purposes of staying any such civil penalty, the application operates as an interim determination of the ACAT in the terms sought by the application pending its disposal by the ACAT.
- (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; or

- (b) enter into an agreement under section 69 for the refinancing of the contract; or
 - (c) make a default charge under section 72.
- (4) When the application is disposed of by the ACAT, the interim determination under this section ceases to have effect but, subject to any order of the ACAT to the contrary, all actions taken under that interim determination while it had effect remain valid after it ceases to have effect.
- (5) The ACAT may, before disposing of the application, give the applicant any directions that 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 ACAT under section 85; or
 - (b) the ACAT 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 this section, a reference to the *disposal* of an application includes a reference to the withdrawal of the application by the applicant.
- (8) In this section:
civil penalty means a penalty that 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.

86 General order varying civil penalty

- (1) If a credit provider has contravened, or failed to comply with, this Act in relation to 2 or more regulated contracts, the credit provider may apply to the ACAT for a determination under section 85 and the ACAT, without affecting the liability of a person to be convicted of an offence against this Act—
 - (a) may make a determination under section 85 in relation to 1 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 that 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 ACAT 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 ACAT may authorise notice of an application under this section to be given by the publication of the notice in a daily newspaper if the ACAT 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.

87 Effect of civil penalty in relation to future liability

If, 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, apart from the reduction, would become payable by the debtor to the credit provider; and
- (b) if the amount of the reduction exceeds the amount that the debtor, apart from the reduction, would have become liable to pay to the credit provider, the amount of the excess is a debt payable by the credit provider to the debtor.

88 Relief for minor errors

In a prosecution for a contravention of section 3 (5), 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) for a contravention of section 3 (5), 59 or 64—that the required notice was given within a reasonable time after it should have been given order to comply with this Act.

Part 4 Regulated mortgages

Division 4.1 General

89 Application of pt 4

In this part, a reference to a *mortgage* is 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.

90 Obligations under mortgage not to exceed obligations under contracts

- (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 that enters into a mortgage that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

91 Mortgage of goods to be in writing

- (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 that contravenes subsection (1) commits an offence.
Maximum penalty:
 - (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (3) Subsection (1) is not contravened if—
 - (a) the mortgage was entered into by the acceptance of an offer in writing signed by the mortgagor to the mortgagee to enter into the mortgage; or
 - (b) the mortgage arose under 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 only because of being the supplier of the goods.

92 Debtor entitled to copy of mortgage

- (1) If 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 that fails to comply with subsection (1) commits an offence.
Maximum penalty:
 - (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.

93 Enforcement expense

- (1) A provision in a mortgage to the effect that if 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 that enters into a mortgage containing a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
 - (b) for a corporation—\$10 000.
- (3) If 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 ACAT may, on the application of the mortgagor or mortgagee, determine the amount of that liability.

94 Provision for entry on premises void in certain circumstances

- (1) A provision in a mortgage to the effect that the mortgagee or a person acting on his or her behalf is authorised 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 ACAT, or is relieved from liability for such an entry, is void.

- (2) A mortgagee that enters into a mortgage including a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.

95 Order of ACAT required before entry for repossession

- (1) A mortgagee shall not enter, or authorise another person on his or her behalf to enter, and a person so authorised 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 ACAT.
- (2) A person, being a mortgagee or other person referred to in subsection (1), that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.

96 Disclosure of location of goods

- (1) A mortgagee may at any time by written notice 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 that to his or her knowledge is false;

commits an offence.

Maximum penalty: \$1 000.

97 Time and place for delivery of goods

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

98 Blanket securities over property or assets prohibited

- (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 that enters into a mortgage that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.

- (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 or her.

99 Restriction on mortgage of future property

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

- (2) A mortgagee that enters into a mortgage that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.

- (3) Subsection (1) does not apply to or in relation to—

- (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; or
(b) a provision in a mortgage relating to property (whether or not ascertained) described or identified in the mortgage; or
(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 or her.

100 Mortgages and continuing credit contracts

- (1) A provision in a regulated continuing credit contract to the effect that goods supplied under that or any other contract are, as a result of the provision or of entering into the regulated continuing credit contract, subject to a mortgage is void.
- (2) A provision in a mortgage to the effect that goods supplied from time to time under a regulated continuing credit contract are subject to the mortgage is void.

- (3) Nothing in subsection (1) or (2) makes void a provision in a mortgage in relation to specified goods securing payment of a debt under a regulated continuing credit contract.
- (4) A credit provider that enters into a regulated continuing credit contract or takes a mortgage that includes a provision that is void because of subsection (1) or (2) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

101 Fraudulent sale or disposal of property

- (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 that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000, imprisonment for 1 year or both; and
- (b) for a corporation—\$10 000.

Division 4.2 Assignment etc of property

102 Assignment by mortgagor

- (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 commits an offence.

Maximum penalty: \$1 000.

- (2) The consent of the mortgagee to an assignment or disposal of property referred to in subsection (1) shall not be unreasonably

withheld and, except as provided in subsection (3), no payment or consideration shall be required by the mortgagee for his or her 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 relation to—
 - (i) stamp duty; and
 - (ii) fees payable to a duly qualified lawyer, other than the mortgagee or an employee of the mortgagee, authorised to prepare documents;
- in relation to or relating to the assignment agreement.
- (4) If, in the opinion of a debtor or mortgagor, a mortgagee has unreasonably withheld consent to an assignment or disposal of property subject to a mortgage, the debtor or mortgagor may refer the matter to the commissioner who, if he or she is of the same opinion and has sought but not obtained that consent, may apply to the ACAT for a determination that the consent has been unreasonably withheld.

- (5) On an application under subsection (4), the ACAT may determine that consent to an assignment or disposal has been unreasonably withheld and, on such determination, the assignment or disposal may be effected without that consent.
- (6) If 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 5

Termination and enforcement of regulated contracts and regulated mortgages

103 Calculation of net balance due

- (1) For this part, a reference to the *net balance* due to a credit provider at a particular time—
- (a) in relation to a regulated credit sale contract or a regulated loan contract—is a reference to the amount that, at that time, is the sum of—
 - (i) the amount financed; and
 - (ii) the accrued credit charge; and
 - (iii) the deferral charges (if any) charged in accordance with part 3; and
 - (iv) the default charges (if any) charged in accordance with part 3; and
 - (v) the enforcement expenses (if any);less any payments received by the credit provider in relation of the contract and (if 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—is reference to the amount owed under the contract by the debtor to the credit provider at that time less (if the relevant insurance and maintenance contracts are discharged) the amounts of any statutory rebates of insurance charges and maintenance charges.

- (2) For this part, a reference to the *outstanding balance* of an amount, charge or expense is a reference to the part of that amount, charge or expense that, at a particular time, is owed but unpaid, whether or not the whole or any part of the amount is due.

104 Statement of net balance due

- (1) If a credit provider receives a written request 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 written statement—
- (a) stating the net balance due to the credit provider on the business day that last preceded the giving of the statement and, if the debtor or guarantor has also requested particulars of the calculation of that net balance, those particulars; and
- (b) if the amount of the net balance increases until paid, stating that the amount so increases.
- (2) Subject to subsection (3), a credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.
- (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 3 months before 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 3 months before 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) If, 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 ACAT for a determination of the amount that, for this part, is the net balance due to which the request relates.
- (5) An amount determined by the ACAT on an application under subsection (4) by a debtor or guarantor under a regulated contract shall, for this part, be deemed to be the net balance due to the credit provider under the contract.

105 Early termination of contract

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

106 Mortgagor may compel sale of goods

- (1) Subject to this section, the mortgagor under a regulated mortgage may, unless the mortgage is also security for a debt or obligation arising otherwise than in relation to a regulated contract, by written notice 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 any longer time agreed on between the

mortgagee and the mortgagor or 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 where the mortgagee ordinarily carries on business; or
 - (b) at a time and place agreed on by the mortgagee and the mortgagor; or
 - (c) if 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) If—
- (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 or her 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 that fails to comply with subsection (4) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

107 Notice required before rights exercised

- (1) A credit provider is not entitled to—
- (a) institute proceedings against a debtor in relation to a matter arising under a regulated contract because of—
 - (i) a default by the debtor; or
 - (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 because of—
 - (i) a default by the debtor; or
 - (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
 - (iv) any other fact, act or thing;because 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 when 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; and
 - (d) the credit provider has served on the debtor and, if there is a guarantor in relation to 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 relation to 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; and
 - (b) the mortgagee has served on the mortgagor and, if there is a guarantor in relation to the mortgage, on the guarantor, a notice in accordance with subsection (3); and
 - (c) the notice referred to in paragraph (b) has not been complied with in accordance with subsection (4).
- (3) A notice referred to in subsection (1) (d) or (2) (b) is a notice—
- (a) specifying the default—
 - (i) of the debtor under the regulated contract; or
 - (ii) of the debtor under the regulated contract to which the regulated mortgage relates; and
 - (b) stating the intention of the credit provider or mortgagee to exercise rights and remedies under the regulated contract or regulated mortgage unless, within 1 month after service of the notice (or, if a longer period is specified in the notice, that longer period)—
 - (i) the default is remedied (except 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); and
 - (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; and
 - (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 subsection (1) (d) or (2) (b) is complied with if, within 1 month after service of the notice (or, if a longer period is specified in the notice, that longer period)—
 - (a) the default is remedied to the extent referred to in subsection (3) (b) (i); and
 - (b) the amounts referred to in subsection (3) (b) (ii) have been paid or tendered; and
 - (c) the enforcement expenses referred to in subsection (3) (b) (iii) (if any) have been paid.
- (5) If 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 relation to the institution of proceedings, or the exercise, or purported exercise, of a right under the mortgage, arising otherwise than because of a default of the debtor under the regulated contract.
- (6) Subsections (1) and (2) do not apply if—
 - (a) in relation to a regulated contract, the credit provider believes on reasonable grounds that he or she was induced by fraudulent misrepresentation on the part of the debtor to enter into the contract; or
 - (b) in relation to a regulated mortgage, the mortgagee believes on reasonable grounds—

- (i) that he or she was induced by fraudulent misrepresentation on the part of the mortgagor to enter into the mortgage; or
 - (ii) for 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) for the exercise of a right under the mortgage in relation to 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, because of subsection (6), (1) or (2) does not apply is on the credit provider or mortgagee.
- (8) If a credit provider or mortgagee fails to comply with subsection (1) or (2) the court may, on the application of the debtor or mortgagor, order the credit provider or mortgagee to compensate the debtor or mortgagor for any loss suffered by the debtor or mortgagor as a result of that failure.

108 Proceedings prohibited if breach remedied

- (1) If 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 section 107 (4), the credit provider or mortgagee shall not, in relation to the default specified in the notice, institute proceedings or exercise, or purport to exercise, a right under the contract or mortgage or a contract of guarantee that relates to the contract.

- (2) A credit provider or mortgagee that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.

109 Limit on amount recoverable

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

110 Restriction on exercise of powers

- (1) A mortgagee shall not, except with the consent of the ACAT, take possession (otherwise than under section 106) of goods subject to a regulated mortgage or otherwise exercise his or her 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 $\frac{1}{4}$ of the total amount financed.
- (2) A mortgagee that contravenes subsection (1) commits an offence.
- Maximum penalty:
- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.
- (3) Subsection (1) does not apply if 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, because of subsection (3), subsection (1) does not apply is on the mortgagee.

111 Court may order delivery of goods

- (1) A court may, on the application of the mortgagee under a regulated mortgage and 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 that fails to comply with an order made under subsection (1) that applies to him or her commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

112 Taking possession of goods by mortgagee

- (1) If the mortgagee takes possession (otherwise than under section 106) of goods subject to a regulated mortgage—
- (a) the mortgagee shall not, without the written consent 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 end of 21 days after the date of service on the mortgagor of a notice in the form approved under section 256 (Approved forms) for this paragraph relating to rights of the mortgagor in relation to the goods and specifying the estimated value of the goods; and

- (b) if the mortgagor or the commissioner has made application to the court in relation to the taking of possession of goods by the mortgagee or if the commissioner has referred to the ACAT—
- (i) under section 74 (3)—an application by the mortgagor for a variation; or
 - (ii) under section 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 the ACAT has determined the matter; or
 - (iv) in contravention of a decision by the court or a determination by the ACAT; or
 - (v) if a decision of the court or a determination of the ACAT is made against which an appeal may lie—until the time within which an appeal may be made has ended and an appeal has not been made or, if an appeal is made, until the appeal is withdrawn or has been determined in favour of the mortgagee.
- (2) A mortgagee that contravenes subsection (1) commits an offence.
- Maximum penalty:
- (a) for an individual—\$2 000; and
 - (b) for a corporation—\$10 000.
- (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 or her to do so by written notice served on the mortgagee before he or she 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) if 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 that fails to comply with subsection (3) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

113 Right of mortgagor to redeem goods

- (1) If a mortgagee takes possession of goods subject to a regulated mortgage, the mortgagor may redeem the goods by discharging his or her obligation under the mortgage in accordance with subsection (2).
- (2) A mortgagor may exercise his or her 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) if 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) if 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 relation to 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) If a mortgagee takes possession of goods subject to a regulated mortgage and, at any time before foreclosure or sale by the mortgagee—
- (a) if 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; and
 - (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) if 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 relation to that debt or obligation at the time of payment are paid;
- the mortgagee shall forthwith return the goods to the mortgagor.
- (4) A mortgagee that fails to comply with subsection (3) commits an offence.
- Maximum penalty:
- (a) for an individual—\$1 000; and
 - (b) for a corporation—\$5 000.
- (5) If a mortgagee returns goods to a mortgagor under 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 subsection (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.

114 Mortgagee to account for proceeds of sale

- (1) A mortgagee exercises a power of sale in accordance with this subsection if he or she exercises the power—
 - (a) as soon after he or she 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) If 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 section 112 (3), the mortgagee is, subject to subsection (5), liable to the mortgagor for the amount received under the sale reduced by the amounts referred to in subsection (4).
- (3) If a mortgagee offers goods for sale as provided by section 112 (3), the mortgagee is liable to the mortgagor—
 - (a) if the offer is accepted—for the amount for which the goods are sold;
 - (b) if 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 subsections (2), (3) and (5), the amounts referred to in this subsection are—
- (a) if the goods sold were subject to a prior mortgage—the amount payable in discharge of the prior mortgage; and
 - (b) if 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 relation to that debt or obligation; and
 - (c) an amount equal to—
 - (i) if 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 relation to the regulated contract or contracts to which the mortgage related at the time of receipt of the proceeds of the sale; or
 - (ii) if 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); and
 - (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) If, 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) If 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 relation to the exercise of a power of sale by a mortgagee under this section shall not be instituted after the end of 6 years after the exercise of the power.
- (9) If the mortgagee exercises a power of sale over goods subject to a mortgage, a court may, on the application of—
 - (a) the mortgagor; or
 - (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, if 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 1 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.

115 Moratorium—farmers etc

- (1) If 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 the mortgagee's 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) if 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) if 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 under the application or the application is dismissed.
- (3) If 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) if, at the time the mortgagee was served with notice of the application, he or she 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 the period, ending not later than 12 months after service on the mortgagee of notice of the application, specified in the order; or
 - (b) if, at the time the mortgagee was served with notice of the application, he or she 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 the terms and conditions that the court considers appropriate, including a condition that the mortgagor pay to the mortgagee any enforcement expenses.
- (5) If 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 or her, the mortgagee the subject of the order shall not—
- (a) if the order is made under subsection (3) (a)—exercise the power to which the order relates during any period for which the power is suspended by the order; or
 - (b) if the order is made under subsection (3) (b)—fail to comply with the order or the terms and conditions of the order that are applicable to him or her.
- (6) A mortgagee that contravenes subsection (5) commits an offence.
- Maximum penalty:
- (a) for an individual—\$2 000; and
 - (b) for a corporation—\$10 000.

- (7) If 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 the mortgagee has been prosecuted for the contravention and without prejudice to his or her liability to be so prosecuted.

116 Postponement of exercise of rights

- (1) If a credit provider or mortgagee has given notice under section 107 to a debtor or mortgagor of his or her intention to institute proceedings in relation to, or to exercise a right under, a regulated contract or a regulated mortgage, the debtor or mortgagor may—

- (a) for a right to take possession of goods—at any time before the end of the period specified in the notice under section 107 (4);
or
(b) in any other case—at any time before institution of the proceedings or exercise of the right;

negotiate with the credit provider or mortgagee a postponement of institution of the proceedings or of action to exercise the right or, if 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) If—
- (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 commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

- (3) If 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 commissioner for negotiation of such a postponement.
- (5) If an application is made under subsection (4), the commissioner shall seek the views of the credit provider or mortgagee and, after giving him or her a reasonable opportunity to be heard and making any other inquiries that the commissioner considers appropriate, determine whether or not to seek to negotiate the postponement to which the application relates and, if the commissioner seeks, but is unable to obtain, such a postponement, the commissioner shall refer the application to the ACAT.
- (6) Subsection (3) applies to and in relation to a postponement negotiated under subsection (5) in the same way as it applies to and in relation to a postponement negotiated under subsection (1).
- (7) The ACAT may, if 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, if it orders a postponement, may make any other orders that it considers appropriate.

- (8) If 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 ACAT for a variation of the order.
- (9) The ACAT, if it receives an application under subsection (8), may make any variation of the order to which the application relates that it considers appropriate 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) If a mortgagor begins 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) If the commissioner 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 ACAT has, under subsection (7), dismissed the application for postponement or has ordered, or refused to order, a postponement.

Part 6 Regulated contracts and regulated mortgages—general

117 Penalty for false representations etc

- (1) A person that, 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 because of—
- (a) the inclusion in the representation of false or misleading matter that 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 if 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 that the person knew to be material;

commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000, imprisonment for 1 year or both; and
 - (b) for a corporation—\$10 000.
- (2) A supplier that, in or in relation to an offer by a person to a credit provider (other than the supplier) to enter into a regulated contract or a regulated mortgage, makes a representation that is false or misleading because of—
- (a) the inclusion in the representation of false or misleading matter that 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 if 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;

commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000, imprisonment for 1 year or both; and
 - (b) for a corporation—\$10 000.
- (3) A supplier that induces, or attempts to induce, a person to make, in or in relation to an offer by that person to a credit provider (other than the supplier) to enter into a regulated contract, a representation that is false or misleading because of—
- (a) the inclusion in the representation of false or misleading matter that 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 if 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 that the supplier knew to be material;

commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000, imprisonment for 1 year or both; and
 - (b) for a corporation—\$10 000.
- (4) If, 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 because 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 against 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 ACT.

118 ACAT may approve removal of mortgaged goods

If, under a regulated mortgage, it is the duty of a mortgagor to keep goods subject to the mortgage in his or her possession or control at a particular place, or not to remove the goods from a particular place, the ACAT 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 firstmentioned place.

119 Prohibition of assignment of wages etc

(1) A provision in a regulated contract or in a regulated mortgage to the effect that the debtor or mortgagor assigns or agrees to assign an amount of wages or salary or benefits under a superannuation scheme in payment of, or as security for the payment of, a debt or other pecuniary obligation or any other obligation under the contract or mortgage is void.

- (2) A credit provider or mortgagee that enters into a contract or mortgage containing a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.

120 Bills of exchange as security

- (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 a notice in the form approved under section 256 (Approved forms) for this subsection and the notice complies with section 245.

- (2) A credit provider that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

- (3) A reference in subsection (1) to the *taking* of a bill of exchange or promissory note does not include a reference to the taking of a cheque dated on or before the date when it is taken or an order addressed to a banker requesting payment of specified amounts at specified times to a credit provider.

- (4) If 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.

121 Advertisements offering credit

- (1) A person shall not publish, or cause to be published, an advertisement stating or implying that credit is available in relation to the payment for goods and services sold or supplied by him or her under a contract of sale to which part 2 applies or that he or she 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 this section as a prohibited statement; or
 - (b) the advertisement does not include a statement prescribed for 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 relation to 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; and
 - (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 that contravenes subsection (1) commits an offence.
- Maximum penalty:
- (a) for an individual—\$5 000; and
 - (b) for a corporation—\$25 000.
- (3) A reference in subsection (1) to a *false representation* includes a reference to a representation that states or implies that the rate of interest or charges payable under a credit contract is a rate other than the annual percentage rate that would be applicable to contracts of that kind.
- (4) A person shall not be convicted of an offence in relation to a representation referred to in subsection (1) (a) (i) unless it is proved that—
- (a) at the time he or she published the representation or caused it to be published, he or she 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 or she had taken reasonable precautions against such a contravention, he or she would have known or had reasonable cause to suspect that the representation was false, misleading or deceptive.
- (5) If—
- (a) an advertisement is published in contravention of subsection (1); and
 - (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 because 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 because 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 ACT) 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 commissioner—
 - (i) for a representation referred to in subsection (1) (a) (i)—that publication of the representation, or of a representation substantially the same as that representation; or
 - (ii) in any other case—that publication or, as the case may require, omission of the statement;would be such a contravention; and

(b) the printer, publisher, proprietor, licensee or exhibitor, after receipt of the warning, published or caused to be published or, as the case may be, omitted to publish, the representation or statement in an advertisement.

(8) In this section:

advertisement includes a notice, sign, label, circular and matter that is not writing but conveys a message because of the form or context in which it appears.

publish, an advertisement, means publish by any means, including in a newspaper or periodical, by radio or television or in a film.

122 Credit hawking

(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 that contravenes subsection (1) commits an offence.

Maximum penalty:

(a) for an individual—\$5 000; and

(b) for a corporation—\$25 000.

(3) Subsection (1) does not apply to or in relation to an invitation by or on behalf of a credit provider in relation to 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 if the invitation and supply are made by the same person.

(4) If a debtor suffers loss because 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 ACT).

124 Contracting by agents

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

is void.

- (2) A 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 because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

125 Contract or mortgage not illegal etc because of offence

- (1) A regulated contract or a regulated mortgage is not illegal, void or unenforceable only because that the credit provider or mortgagee is guilty of an offence against this Act.

- (2) If 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, only because of having been a party to the regulated contract or regulated mortgage, aid, abet, counsel or procure the commission of the offence.

126 Notices to be given to all parties

If, 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 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 7 Contracts of insurance

127 Insurance—regulated contracts

- (1) In this section:

condition includes—

- (a) a condition that is express or implied, or oral or written; and
- (b) a condition that is direct or indirect or the existence of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;

whether or not the condition has legal or equitable force.

- (2) A credit provider that, 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 relation to a mortgage relating to the contract in accordance with section 128, commits an offence.

Maximum penalty:

- (a) for an individual—\$5 000; and
- (b) for a corporation—\$25 000.

- (3) A supplier that 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 relation to a mortgage relating to the contract in accordance with section 128 commits an offence.

Maximum penalty:

- (a) for an individual—\$5 000; and
- (b) for a corporation—\$25 000.

- (4) A court by which a credit provider is convicted of an offence against 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 against 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 under a representation referred to in that subsection.

128 Insurance—regulated mortgages

- (1) Subject to this section, a mortgagee under a regulated mortgage—
 - (a) may require the mortgagor to enter into a contract of compulsory insurance in relation to goods subject to the mortgage; and
 - (b) may require the mortgagor to enter into a contract of insurance (other than compulsory insurance) in relation to property subject to the mortgage in the names of, and for the respective rights and interests of, the mortgagee and the mortgagor against the risks that the mortgagee considers appropriate;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 relation to that insurance exceeding the amount payable to keep the insurance in force for 12 months or the duration of the regulated contract, whichever is the lesser amount so payable.
- (2) Subsection (1) does not authorise or permit a mortgagee—
 - (a) to require insurance by a particular insurer; or

- (b) to require insurance for a period, against risks or subject to terms, conditions or exceptions, that the mortgagee would not reasonably require if he or she were to arrange the insurance at his or her own expense; or
 - (c) to require insurance for a period after to that for which insurance is in force as referred to in subsection (1) against risks or subject to terms, conditions or exceptions that the mortgagee did not require in relation to the immediately previous period.
- (3) A mortgagee that enters into a regulated mortgage that includes—
- (a) a condition that the mortgagor enter into a contract of insurance in relation to the mortgage, other than a contract of insurance or compulsory insurance authorised by subsection (1); or
 - (b) a condition that the mortgagor maintain in force a contract of insurance in relation to the mortgage, other than a contract of insurance or compulsory insurance authorised by subsection (1);
- commits an offence.
- Maximum penalty:
- (a) for an individual—\$2 000; and
 - (b) for a corporation—\$10 000.
- (4) If 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 or she enter into a contract of insurance in relation to the mortgage, other than a contract of insurance or compulsory insurance authorised by subsection (1); or
 - (b) a condition that he or she maintain in force a contract of insurance in relation to the mortgage, other than a contract of

insurance or compulsory insurance authorised by subsection (1).

- (5) If a mortgagor enters into a regulated mortgage that includes a condition referred to in subsection (3), the condition is void.

129 Unauthorised insurance need not be maintained

- (1) If 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 that contravenes subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
(b) for a corporation—\$10 000.
- (3) If a regulated contract or a regulated mortgage includes a condition referred to in subsection (1), the condition is void.

130 Content of contracts of insurance

- (1) A contract of insurance (other than compulsory insurance) that is entered into in relation to a regulated contract and to which the debtor is a party shall be in writing and shall—
- (a) identify the subject matter of the insurance; and
(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 how each such amount may be determined; and
(ii) the period for which insurance is or is to be provided; and

- (iii) the risks to which the insurance relates; and
 - (iv) each amount payable under the contract of insurance in relation to the insurance of property to which the regulated contract relates; and
 - (v) each amount payable under the contract of insurance in relation to insurance against a risk referred to in schedule 2, clause 1 (e), schedule 4, clause 1 (b) or schedule 7, clause 1 (k); and
 - (vi) each other amount (if any) payable under the contract of insurance in relation to insurance of property subject to a mortgage relating to the regulated contract.
- (2) If 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 in relation 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 if 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, other than the insured, that enters into a contract of insurance that does not comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

131 Premiums to be paid to insurer

- (1) If—
- (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 1 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 or her.

- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

132 Action after rejection of insurance proposal

- (1) If—
- (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) If—

- (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; 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) If—

- (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; 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 that fails to comply with subsection (1), (2) or (3) commits an offence

Maximum penalty:

- (a) for an individual—\$2 000; and
 - (b) for a corporation—\$10 000.
- (5) In proceedings for an offence against 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.

133 No-claim bonus

- (1) If, in relation to 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 that fails to comply with subsection (2) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
- (b) for a corporation—\$5 000.

134 Saving about unenforceability

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

- (a) only because 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) only because of an omission of matter from the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the matter omitted was material to the insurer in relation to the contract of insurance and—
- (i) the omission was deliberate; or
 - (ii) the debtor or mortgagor knew or a reasonable person in the circumstances of the debtor or mortgagor ought to have known that matter material to the insurer in relation to the contract of insurance had been omitted.

135 Limitation on exclusion clauses

- (1) If, 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 only because of those provisions of the contract of insurance if, on the balance of probability, the loss in relation to 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 subsection (1) that, on the balance of probability, loss in relation to 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 8 Contracts of guarantee

136 Guarantee to be in writing

A contract of guarantee between a guarantor and a credit provider in relation to 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 under this Act to be given to the debtor has been given to the guarantor before he or she enters into the contract of guarantee.

137 Extent of liability of guarantor

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

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

138 Proceedings against guarantor

- (1) A credit provider shall not bring proceedings to recover an amount from a guarantor in relation to 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) If, in proceedings to recover an amount in relation to 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 if—
 - (a) the debtor is a bankrupt or a person whose affairs are being dealt with under the *Bankruptcy Act 1966* (Cwlth), part 10; or
 - (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) about the whereabouts of the debtor and has given the guarantor 14 days notice, in the form approved under section 256 (Approved forms) for this paragraph, of the intention to bring proceedings against the guarantor.

139 Variation of commitments—guarantee relating to regulated contract

- (1) In this section:

contract of guarantee means a contract of guarantee that relates to a regulated contract.
- (2) If a guarantor under a contract of guarantee, because of illness, unemployment or other reasonable cause, is unable reasonably to discharge his or her obligations under the contract, the guarantor

may, if he or she reasonably expects that he or she would be able to discharge his or her 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) If a credit provider to whom application is made by a guarantor under subsection (2) refuses to vary a contract of guarantee in accordance with the application, the guarantor may apply to the commissioner for assistance in negotiating a variation of the contract.
- (4) If an application is made under subsection (3), the commissioner shall seek the views of the credit provider and any mortgagee and, after giving them a reasonable opportunity to be heard and making any other inquiries that the commissioner considers appropriate, determine whether or not to seek to arrange with the credit provider a variation of the contract of guarantee, and if he or she seeks such a variation and is unable to reach agreement with the credit provider, the commissioner shall refer the application to the ACAT.
- (5) The ACAT may, if 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, if it orders such a variation, may make any other orders that it considers appropriate.
- (6) If an order of the ACAT 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 ACAT for a variation of the order.

- (7) The ACAT may, if it receives an application under subsection (6), make any variation of the order to which the application relates that it considers appropriate 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) If the commissioner 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 ACAT has made or refused an order under subsection (5).

140 Guarantee of obligations of child

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

141 Guarantor to receive copy of contract

- (1) If a contract of guarantee is made between a guarantor and a credit provider in relation 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 that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

142 Guarantor to be given prescribed statement

- (1) If a contract of guarantee is made between a credit provider and a guarantor in relation 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 approved under section 256 (Approved forms) for this subsection.

- (2) A credit provider that fails to comply with subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$1 000; and
(b) for a corporation—\$5 000.

143 Discharge of guarantee

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

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

guarantee so far as it relates or would relate to obligations of the debtor incurred under the contract after the notice is given.

144 Revocation of offer to guarantee

- (1) A provision in an agreement to the effect that a person does not have a right to revoke an offer to enter into a contract of guarantee—
- (a) before the offer is accepted; or
 - (b) if 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 that enters into an agreement that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

Part 9 Reopening of contracts

145 Interpretation for pt 9

For this part, a contract or mortgage is *unjust* if—

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

146 ACAT may reopen certain transactions

- (1) Subject to section 149, the ACAT 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 ACAT that, in the circumstances relating to the contract or mortgage at the time it was entered into, it was unjust.
- (2) If the ACAT reopens a transaction under subsection (1), the ACAT may, notwithstanding any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, do any 1 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 the amount that the ACAT, having regard to the risk involved and all other circumstances, considers to be reasonably payable, for a credit sale contract or a loan contract, in relation to the amount financed and the credit charge or, for 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 the amount that, having regard to the relief (if any) that the ACAT considers appropriate 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 that are in the possession of that person.

147 Matters to be considered by ACAT

- (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 ACAT 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) noncompliance with, or contravention of, all or any of the provisions of the contract or mortgage.
- (2) Without limiting subsection (1), the matters to which the ACAT 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; and
 - (b) whether or not, at the time the contract or mortgage was entered into, its provisions were the subject of negotiation; and

- (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; and
- (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; and
- (e) whether or not—
 - (i) the debtor or mortgagor was reasonably able to protect his or her 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 or her age or the state of his or her physical or mental capacity; and
- (f) the form of the contract or mortgage and the intelligibility of the language in which it is expressed; and
- (g) whether or not, and when, independent legal or other expert advice was obtained by the applicant; and
- (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; and
- (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; or
 - (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; and
 - (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 subsection (2), a person shall be deemed to have represented a debtor or mortgagor if he or she 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 ACAT 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 relation to a contract or mortgage that it finds to be unjust, the ACAT may have regard to the conduct of the parties to the proceedings in relation to the contract or mortgage since it was entered into.

148 Joinder of parties

If it appears to the ACAT 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 ACAT holds to be unjust, the ACAT may join that person as a party to the proceedings and may make any order in relation to that person that it considers appropriate.

149 Limitation on reopening of transaction

- (1) Except as provided by subsection (2), a debtor, mortgagor or guarantor may not make an application under section 146 in relation to a regulated contract or a regulated mortgage—
 - (a) for a regulated mortgage under which the mortgagee has exercised a right to take possession of the property to which the mortgage relates—after the end 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 end 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 relation to 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 10 Home finance contracts

150 Definitions for pt 10

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, in relation to a home finance contract, means—

- (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, in relation to a home finance contract, means—

- (a) an individual to whom the credit was provided under the contract; and
- (b) any individual 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) an individual who enters into a contract of guarantee in relation to 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, if some other amount is prescribed, that other amount) was provided—

- (a) for the acquisition or erection of the debtor's home; or
- (b) for the provision of additional accommodation in, or the carrying out of structural alterations to, the debtor's home; or
- (c) for the acquisition of land on which to erect that which is to become the debtor's home; or
- (d) to discharge the liability of the debtor in relation to 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 1 of a series of 2 or more credit contracts, if—
 - (i) the series began with a contract referred to in paragraph (d); and
 - (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 previous contract in the series.

151 Variation of commitments—home finance contract

- (1) If the debtor under a home finance contract because 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, if 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); or
 - (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) If 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 commissioner for assistance in negotiating a variation of the contract.
- (3) If an application is made under subsection (2), the commissioner shall seek the views of the debtor, credit provider, any guarantor, any mortgagor and any other person who, in the opinion of the commissioner, 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 any other inquiries that the commissioner considers appropriate, determine whether or not to seek to arrange with the credit provider a variation of the home finance contract and, if the commissioner seeks such a

variation and is unable to reach agreement with the credit provider, the commissioner shall refer the application to the ACAT.

- (4) The ACAT may, if it receives an application referred to it under subsection (3) and has given the person whose views were sought by the commissioner 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, if it orders such a variation, may make any other orders that it considers appropriate.
- (5) Without limiting the matters that the ACAT may take into account in determining whether or not to make an order under subsection (4), the ACAT 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) If an order of the ACAT 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 ACAT for a variation of the order.
- (7) The ACAT may, if it receives an application under subsection (6), vary the order to which the application relates that it considers appropriate 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) If the commissioner 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 ACAT has made or refused an order under subsection (4).
- (10) If the ACAT exercises its jurisdiction under this section, it shall make no order about costs.

152 Variation of commitments—guarantee relating to home finance contract

- (1) If the guarantor under a contract of guarantee, because of illness, unemployment or other reasonable cause, is unable reasonably to discharge any obligations under the contract, the guarantor may, if 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) If 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 commissioner for assistance in negotiating a variation of the contract.
- (3) If an application is made under subsection (2), the commissioner shall seek the views of the credit provider and any other person who, in the opinion of the commissioner, 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 any other inquiries that the commissioner considers appropriate, determine whether or not to seek to arrange with the credit provider a variation of the contract of guarantee and, if the commissioner seeks such a variation and is unable to reach agreement with the credit provider, the commissioner shall refer the application to the ACAT.
- (4) The ACAT may, if it receives an application referred to it under subsection (3) and has given the persons whose views were sought

by the commissioner 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, if it orders such a variation, may make any other orders that it considers appropriate.

- (5) If an order of the ACAT 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 ACAT for a variation of the order.
- (6) The ACAT may, if it receives an application under subsection (5) vary the order to which the application relates that it considers appropriate 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) If the commissioner 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 ACAT has made or refused an order under subsection (4).
- (9) If the ACAT exercises its jurisdiction under this section, it shall make no order about costs.

153 Notice by credit provider

- (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 end of 1 month after service in accordance with subsection (2) of a notice, in the form approved under section 256 (Approved forms) for this subsection, 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) If a credit provider fails to comply with subsection (1), the ACAT 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) The provisions of this Act relating to the giving of notices before beginning a proceeding, or the exercise of a right, under a home finance contract, or a mortgage relating to a home finance contract, are in addition to the requirements of any other law.

154 Proof of offence

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 or she 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 15A Transitional

241A Exemptions from civil penalty

- (1) This section applies to credit sale contracts or loan contracts entered into after the commencement of the *Credit (Amendment) Act 1991*, section 8.
- (2) If a statement about an insurance commission charge payable in relation to 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) If—
 - (a) an insurance commission charge was payable to the credit provider in relation to 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 against this Act.

- (5) This section does not apply to a liability to pay a credit charge determined by the Australian Capital Territory Credit Tribunal before the commencement of the *Credit (Amendment) Act 1991*, section 8.
- (6) In this section, a reference to a *statement* about any insurance commission charge that is payable in relation to a credit sale contract or loan contract is a reference to a statement—
- (a) that relates to a commission charge for a contract of insurance entered into in connection with the credit sale contract or loan contract; and
 - (b) that is required by section 35 (1) (i) or 36 (1) (h) to be included in the credit sale contract or loan contract.

241B Operation of amendments relating to description of consumer credit insurance

- (1) The amendments made to schedules 2, 4 and 7 by the *Credit (Amendment) Act 1991* apply to regulated contracts entered into before or after the commencement of that Act, section 9.
- (2) A debtor who, before that commencement, was not liable (because of section 42 or 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 a liability to pay a credit charge determined by the Australian Capital Territory Credit Tribunal before the commencement of the *Credit (Amendment) Act 1991*, section 8.

241C Operation of amendments of s 85 and s 86

Section 85 and section 86, as amended by the *Credit (Amendment) Act 1991*, section 5 and section 7, apply to a proceeding in the Australian Capital Territory Credit Tribunal begun before or after the commencement of the sections.

241D Operation of s 85A

Section 85A does not apply to a proceeding pending in the Australian Capital Territory Credit Tribunal on the commencement of the *Credit (Amendment) Act 1991*, section 6, but applies to a proceeding begun after the commencement of the section even if the contraventions or failures to which the proceeding relate occurred before the commencement.

Part 16 Miscellaneous

242 Notices by mortgagees

The provisions of this Act relating to the giving of notices before the exercise by a mortgagee of a right in relation to land that is subject to a regulated mortgage are in addition to the requirements of any other law.

243 Linked credit provider—sale of land

For part 2—

- (a) the dictionary, definition of *linked credit provider* applies in relation to a vendor of land in the same way as it applies in relation to a supplier of goods and services; and
- (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; and
- (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; and
- (d) sections 24 to 29 apply to a vendor of land and the provision of credit in relation to 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 relation to the payment by a buyer for goods and services supplied by that supplier; and

- (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 the amount prescribed by the regulations for section 30 (2) (a) 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 relation to 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 relation to such a payment.

245 Legibility of documents

- (1) A document given or issued by a credit provider or mortgagee for this Act shall be readily legible.
- (2) For 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 this Act, a document that is not readily legible shall be deemed not to be in writing.

246 Restriction on form of document

- (1) This section applies to a form of document given by a credit provider or mortgagee under this Act.
- (2) The ACAT may direct the credit provider or mortgagee not to use a document in the form of the document given if the document is—
 - (a) expressed in language that is not readily comprehensible; or
 - (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 way that detracts from the legibility of the document.

247 Approval of form of document by ACAT

- (1) If a credit provider or a mortgagee submits to the ACAT for its opinion a form of document intended to be given or entered into under this Act, the credit provider or mortgagee shall not, only because that he or she gives or issues a document under this Act in that form, commit an offence against section 248 if the ACAT, before the document is given or issued, determines that in its opinion the form of the document is—
 - (a) readily legible; and
 - (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 way;that does not detract from the legibility of the document.

- (2) If a credit provider or a mortgagee submits to the ACAT 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 ACAT.

Note A fee may be determined under s 255 (Determination of fees) for this section.

248 Offence in relation to document

A credit provider or mortgagee that—

- (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;

commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

249 Separation of documents

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.

250 Signature of documents

- (1) Subject to section 124, if, 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) If 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) If 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 commits an offence.

Maximum penalty:

- (a) for an individual—\$2 000; and
- (b) for a corporation—\$10 000.

(7) If 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 if—

(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.

254 Contracting out of Act prohibited

(1) A provision in a credit contract or mortgage or any other agreement (whether in writing or not) under which, except as expressly provided by this Act, the operation of a provision of this Act is excluded, modified or restricted is void.

(2) A credit provider or mortgagee that enters into a contract, mortgage or agreement that includes a provision that is void because of subsection (1) commits an offence.

Maximum penalty: 50 penalty units.

255 Determination of fees

(1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

256 Approved forms

(1) The commissioner may, in writing, approve forms for this Act.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) For subsection (2), if a note in an approved form suggests or requires the insertion of information in a blank space, the form is properly completed only if the information is inserted as suggested or required.

- (5) In this section:

form includes a form of words.

257 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to the use of particular descriptive terms—

(a) in a regulated contract, a notice under section 59 (Notice of terms of continuing credit contract), a statement of account mentioned in section 61 (Statement of account) or any other document; or

(b) in an advertisement relating to the provision of credit or to the business of a credit provider.

- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Schedule 1

(see s 11)

- 1 This schedule applies to a credit sale contract or a loan contract, if—
 - (a) the whole or any part of the credit charge is a predetermined credit charge or an estimated credit charge; and
 - (b) the whole of the amount financed was provided on the same day; and
 - (c) the amount financed and the credit charge are payable by not more than 260 equal instalments at equal intervals, the first interval beginning on the date when the amount financed was provided and the last interval ending not more than 5 years after that date; and
 - (d) the period of each interval is 1 month or does not exceed 4 weeks.
- 2 If 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 that 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 means the amount of the predetermined credit charge or estimated credit charge.

E means the number of intervals between instalments (including a part of an interval as a whole interval) that has elapsed since the amount financed was provided under the contract.

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

- 3 For this schedule—
- (a) instalments shall be deemed to be equal if all the instalments except 1 are of the same amount and the difference between the amount of that 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; and
 - (b) monthly intervals shall be deemed to be equal intervals; and
 - (c) intervals shall be deemed to be equal if all the intervals except 1 are of the same length and the difference between the length of that 1 interval and the length of each of the other intervals is not more than 5% of the length of each of the other intervals.

Schedule 2

(see s 35)

- 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; and
 - (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 the amounts (other than amounts included in paragraph (a) or (b)) that, 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) if the contract relates to goods, amounts payable in relation to—
 - (i) charges for installation of the goods; and
 - (ii) charges for maintenance of the goods; and
 - (iii) charges for delivery of the goods to the debtor; and
 - (iv) if 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 relation to compulsory insurance; and

-
- (e) amounts payable in relation to contracts of insurance (if any) entered into in relation to the contract, showing separately, in relation to each such contract the name of the insurer and—
- (i) if 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 relation to compulsory insurance (unless those amounts are included in a statement under paragraph (d)); and
 - (ii) if there is a mortgage relating to the contract—amounts so payable in relation to insurance of property subject to the mortgage (other than compulsory insurance included in the statement under subparagraph (i) or under paragraph (d)); and
 - (iii) if there is a mortgage relating to the contract—amounts so payable in relation to insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any law in force in the ACT; and
 - (iv) amounts so payable in relation to insurance against sickness of, accidental injury to, or disability or death of, the debtor or against unemployment of the debtor or, if there is more than 1 debtor, amounts so payable in relation to such insurance in relation to the debtors; and
 - (v) amounts so payable in relation to life insurance of the debtor or, if there is more than 1 debtor, amounts so payable in relation to life insurance of the debtors; and
 - (vii) amounts so payable in relation to insurance against loss of profits by the debtor or, if there is more than 1 debtor, amounts so payable in relation to insurance against loss of profits by the debtors; and
 - (viii) amounts so payable in relation to insurance against such other risks (if any) as are prescribed;

or, if an amount is payable in relation to a contract of insurance entered into in relation to the contract relating to 1 or more of the risks referred to in subparagraphs (i) to (viii)—that amount and a statement of the risks to which the amount relates; and

- (f) amounts so payable in relation to—
 - (i) stamp duty payable in relation to or in relation to the contract; or
 - (ii) stamp duty payable in relation to 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 lawyer (other than the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into at or before the time of the making of the contract; and
- (g) amounts that are prescribed charges for this paragraph; and
- (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 any of paragraphs (a) to (g); and
- (i) amounts payable in relation to the value of any consideration provided by the credited provider to the debtor, being consideration of a kind prescribed for this paragraph, other than consideration referred to in any of paragraphs (a) to (h);

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).

2 In clause 1:

relevant date means the date when 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 when the offer is made.

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

Schedule 3

(see s 35)

- 1 A statement in a credit sale contract of the credit charge—
 - (a) shall, if 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); and
 - (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; and
 - (b) shall, if 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 when 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 when the offer is made.

Schedule 4

(see s 36)

- 1 A statement of the amount financed shall state—
 - (a) the amount agreed under the contract to be lent (other than amounts referred to in paragraphs (b) to (f));

and shall include statements showing separately such amounts as, under the contract, are payable by the debtor to the credit provider (otherwise than as part of the credit charge) whether or not the credit provider pays, or has paid, those amounts to another person and are—
 - (b) amounts payable in relation to contracts of insurance (if any), entered into in relation to the contract, showing separately in relation to each contract the name of the insurer and—
 - (i) if there is a mortgage relating to the contract—amounts so payable in relation to insurance of property subject to the mortgage; and
 - (ii) if there is a mortgage relating to the contract—amounts so payable in relation to insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any law in force in the ACT; and
 - (iii) amounts so payable in relation to insurance against sickness of, accidental injury to, or disability or death of, the debtor or against unemployment of the debtor or, if there is more than 1 debtor, amounts so payable in relation to such insurance in relation to the debtors; and
 - (iv) amounts so payable in relation to life insurance of the debtor or, if there is more than 1 debtor, amounts so payable in relation to life insurance of the debtors; and

- (vi) amounts so payable in relation to insurance against loss of profits by the debtor or, if there is more than 1 debtor, amounts so payable in relation to insurance against loss of profits by the debtors; and
 - (vii) amounts so payable in relation to insurance against the other risks (if any) as are prescribed;
or, if an amount is payable in relation to a contract of insurance entered into in relation to the contract relating to 1 or more of the risks referred to in subparagraphs (i) to (vii)—that amount and a statement of the risks to which the amount relates; and
- (c) amounts payable in relation to—
- (i) stamp duty payable in relation to or in relation to the contract; or
 - (ii) stamp duty payable in relation to 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 lawyer (other than the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into at or before the time of the making of the contract;
- (d) amounts that are prescribed charges for this paragraph; and
- (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 any of paragraphs (a) to (d); and
- (f) amounts payable in relation to the value of any consideration provided by the credit provider to the debtor, being consideration of a kind prescribed for this paragraph, other than consideration referred to in any of paragraphs (a) to (e);

and shall state the amount financed, being the sum of the amounts referred to in paragraphs (a) to (f).

2 In clause 1:

relevant date means the date when 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 when the offer is made.

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

Schedule 5

(see s 36)

- 1 A statement in a loan contract of the credit charge—
 - (a) shall, if 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); and
 - (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; and
 - (b) shall, if 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 when 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 when the offer is made.

Schedule 6

(see s 38)

- 1 This schedule applies to a credit sale contract or a loan contract, if—
 - (a) the whole of the credit charge is a predetermined credit charge; and
 - (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 beginning on the date when the amount financed is provided.
- 2 If this schedule applies to a contract, the annual percentage rate may be determined in accordance with the formula—

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

where:

N means the total number of instalments.

C means the number of instalments that, under the contract, will be paid in 1 year or, if the contract is to be completed in less than 1 year, the number of instalments that would be paid in 1 year if instalments continued to be paid at the same intervals.

F means an amount determined in accordance with the formula—

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

where:

C means the same number as in the firstmentioned formula.

Schedule 6

T means the total amount of the predetermined credit charge.

N means the total number of instalments.

A means the amount financed.

3 For this schedule—

- (a) instalments shall be deemed to be equal if all the instalments except 1 are of the same amount and the difference between the amount of that 1 instalment and the amount of each of the other instalments is not more than \$5 or 5% of the amount of each of the other instalments, whichever is the greater; and
- (b) monthly intervals shall be deemed to be equal intervals; and
- (c) intervals shall be deemed to be equal if all the intervals except 1 are of the same length and the difference between the length of that 1 interval and the length of each of the other intervals is not more than 5% of the length of each of the other intervals.

Schedule 7

(see s 61)

- 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; and
 - (b) the amount owed by the debtor under the contract on the first day of the billing cycle; and
 - (c) the amount owed by the debtor under the contract on the last day of the billing cycle; and
 - (d) the date of purchase and cash price of goods and services supplied by the credit provider during the billing cycle in relation to payment for which credit is provided under the contract and such a description of each transaction as will enable it to be identified; and
 - (e) particulars, including the amount, of each amount of cash supplied by the credit provider during the billing cycle in relation to the supply of which credit is provided under the contract; and
 - (f) particulars of each amount in relation to which, under the contract, credit is provided to the debtor during the billing cycle in relation to goods and services or cash supplied by a person other than the credit provider and in relation to each such amount particulars of the suppliers of the goods and services or of the cash to which the amount relates; and
 - (g) particulars of each amount paid by the debtor to the credit provider under the contract during the billing cycle; and
 - (h) each amount (other than a payment by the debtor to the credit provider) by way of a refund or allowance given to the debtor during the billing cycle; and

- (i) particulars of each amount (other than a payment by the debtor to the credit provider) because of which an amount included in an amount referred to in paragraph (d), (e), (f), (j), (k) or (l) is cancelled or reduced because of an amount by way of refund or allowance given to the debtor during the billing cycle; and
- (j) if 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 relation to—
 - (i) charges for installation of the goods; and
 - (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); and
- (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 relation to contracts of insurance (if any) entered into in relation to the contract showing separately in relation to each such contract the name of the insurer and—
 - (i) if there is a mortgage relating to the contract—amounts so payable in relation to insurance of property subject to the mortgage; and
 - (ii) if there is a mortgage relating to the contract—amounts so payable in relation to insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any law in force in the ACT; and
 - (iii) amounts so payable in relation to insurance against sickness of, accidental injury to, or disability or death of, the debtor or against unemployment of the debtor or, if

there is more than 1 debtor, amounts so payable in relation to such insurance in relation to the debtors; and

- (iv) amounts so payable in relation to life insurance of the debtor or, if there is more than 1 debtor, amounts so payable in relation to life insurance of the debtors; and
- (vi) amounts so payable in relation to insurance against loss of profits by the debtor or, if there is more than 1 debtor, amounts so payable in relation to insurance against loss of profits by the debtors; and
- (vii) amounts so payable in relation to insurance against such other risks (if any) as are prescribed;

or, if an amount is payable in relation to a contract of insurance entered into in relation to the contract relating to 1 or more of the risks referred to in subparagraphs (i) to (vii)—that amount and a statement of the risks to which the amount relates; and

- (l) amounts that during the billing cycle are added to the amount payable under the contract by the debtor to the credit provider in relation to—
 - (i) stamp duty payable in relation to or in relation to the contract; or
 - (ii) stamp duty payable in relation to any mortgage relating to the contract entered into during the billing cycle; and
- (m) the amount of the credit charge in relation to the billing cycle; and
- (n) the annual percentage rate in relation to the contract and the manner of its application to the contract; and
- (o) if the statement of account includes a request for payment of an amount by the debtor—
 - (i) the amount payable or how it may be ascertained from the statement; and

- (ii) the person to whom and the place where the amount is payable; and
 - (iii) the date by which the payment is requested; and
 - (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 any of paragraphs (a) to (o); and
 - (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 relation to the value of any consideration provided by the credit provider to the debtor, being consideration of a kind prescribed for this paragraph, other than consideration referred to in any of paragraphs (a) to (q).
- 2 In clause 1—
- (a) a reference to an amount paid, or owed by, or supplied to, or in relation to 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 relation to 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 relation to which credit is provided to, or given by way of refund or allowance to, the debtor before that time or period that has not been included in an earlier statement of account under the contract; and
 - (b) a reference to goods 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 relation to 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 beginning 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 clause 1 (k) (iii), nothing in this schedule requires any further disclosure relating to that contract of life insurance.

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- bank
- Chief Minister
- corporation
- Corporations Act
- daily newspaper
- disallowable instrument
- Executive
- individual
- lawyer
- notifiable instrument
- person
- prescribed
- State.

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 12 months after the contract is made—the sum (not exceeding \$150 or, if 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 relation to that period; or
- (b) in relation to any other period of 12 months—any amount (not exceeding \$90 or, if 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 relation to 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 that, 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 when 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 when the payment is due and—
 - (i) if the amount of the payment is greater than the amount of the accrued credit charge on the date when the payment is

made—the remaining amount of the payment is applied to the unpaid balance of the amount financed; or

- (ii) if the amount of the payment is less than the amount of the accrued credit charge on the date when 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.

Administration Act means the *Consumer Credit (Administration) Act 1996*.

agreement, in relation to the payment by a debtor for services supplied by another person—see section 9.

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 schedule 2, clause 1 (c); and
 - (ii) the total of the amounts required to be stated in accordance with schedule 2, clause 1 (d) to (i); or
- (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 schedule 2, clause 1 (d) to (i); or
- (c) in relation to a regulated loan contract, the sum of the amounts required to be stated in accordance with schedule 4, clause 1; 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 schedule 4, clause 1 (b) to (f).

annual percentage rate—

- (a) for this Act generally—see section 10; and
- (b) in relation to a continuing credit contract—see section 55 (1).

billing cycle—see section 50 (1).

body corporate does not, except for a credit provider or finance broker that is a body corporate, include—

- (a) an owners corporation within the meaning of the *Unit Titles Act 2001*, if all or a majority of the units are intended to be homes; or
- (b) a company owning an interest in land and having a memorandum or articles of association conferring on owners of shares in the company the right to occupy certain parts of a building erected on that land, all or the majority of which parts are intended to be dwellings; or
- (c) when acting under the *Bankruptcy Act 1966* (Cwlth) 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*; and
 - (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*.

buyer, for part 2 (Contracts of sale)—see section 20 (2).

carrying on business of providing credit—see section 16.

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; or
- (b) if, 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; or
- (c) if, 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; or
- (d) if, 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) for a sale of goods—the reasonable value at that time of the goods; or

-
- (ii) for a sale of services—the reasonable value at that time of the services (whether or not they have been supplied); or
 - (iii) for 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) if some other price is prescribed in relation to the contract—that price.

chargeable amount, for division 3.2 (Continuing credit contracts)—see section 52 (1).

commercial vehicle means—

- (a) a motor vehicle within the meaning of the *Road Transport (General) Act 1999* 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 under 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 relation to the introduction of the debtor to the credit provider and paid or payable by the credit provider or the domestic partner of the credit provider or, if the credit provider is a body corporate, the credit provider or a related body corporate within the meaning of the Corporations Act; 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.

Note For the meaning of **domestic partner**, see Legislation Act, s 169.

commissioner means the commissioner for fair trading.

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

continuing credit contract—

- (a) for this Act generally—see section 48 (2); and
- (b) for part 3 (Regulated contracts)—see section 49.

contract, in relation to the payment by a debtor for services supplied by another person—see section 9.

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.

contract of guarantee, for part 10 (Home finance contracts)—see section 150.

contract of sale, for part 2 (Contracts of sale)—see section 20 (1).

court, in relation to a contract or other matter—see section 6 (1).

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 or her, by—
 - (i) a documentary letter of credit; or
 - (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; or
- (b) credit provided for the purchase of goods for resupply; or
- (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; or
- (iv) in a process of production or manufacture; or
- (v) in the course of treating or repairing other goods or fixtures on land; or
- (d) credit provided for the purchase of services, if the buyer has contracted to provide those services, or goods and services that include those services, to a third person; or
- (e) in relation to a loan contract—see section 15; or
- (f) any prescribed transaction.

Note **Credit**, for part 10 (Home finance contracts)—see s 150.

credit charge—

- (a) for this Act generally—see section 11; and
- (b) in relation to a billing cycle of a continuing credit contract—see section 54 (1).

credit contract means—

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

credit provider means—

- (a) in relation to a credit contract—the person who provides credit under the contract in the course of a business carried on by that person; and
- (b) in relation to a proposed credit contract—the person who is to provide credit under the contract in the course of a business carried on by that person; and
- (c) in relation to a home finance contract, for part 10 (Home finance contracts)—see section 150.

credit sale contract means, subject to sections 13, 14 and 30 (1), a contract of sale of goods and services if, in relation to the payment for the goods and services, credit is, or is to be, provided to a debtor, being a buyer but other than 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; or
- (b) the amount payable by the buyer is not required to be paid within 4 months after the date 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 means a claim (whether by way of counterclaim, set-off or otherwise) included in a defence or other document filed by a defendant in a proceeding.

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; and
- (c) in relation to a home finance contract, for part 10 (Home finance contracts)—see section 150.

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 because of his or her failure to fulfil his or her obligations under the contract, other than an amount payable under the contract otherwise than because 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 relation to 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 relation to 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,

if the delivery is not completed on 1 day, on or before the beginning of the delivery; or

- (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 beginning 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 beginning of the delivery or supply of the goods and services;

and, if there is a trade-in allowance, includes the trade-in allowance.

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; and
- (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 because 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 when, 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 who is exempt from registration under the Administration Act, division 2.1.

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; and
- (b) the business of taking fish, crustacea, oysters or any other marine, estuarine or freshwater animal life; and
- (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 credit union; or
- (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*.

goods includes—

- (a) all chattels personal other than things in action and money; and
- (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.

goods and services includes—

- (a) goods; or
- (b) services.

guarantee includes indemnity.

guarantor means a person who enters into a contract of guarantee in relation to the performance by a debtor or mortgagor of his or her 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 domestic partner of the supplier, of goods and services to which the contract or mortgage relates or, if the supplier is a body corporate, a person who is a director or officer of the body corporate or is a related body corporate within the meaning of the Corporations Act or a director or officer of such a related body corporate or domestic partner of such a director or officer; or
- (b) a person who enters into a contract of guarantee or a contract of indemnity—
 - (i) in relation to 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 relation to 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.

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

guarantor, for part 10 (Home finance contracts)—see section 150.

home, for part 10 (Home finance contracts)—see section 150.

home finance contract, for part 10 (Home finance contracts)—see section 150.

instalment does not include a deposit.

judgment includes order.

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

- (a) with whom the supplier has a trade or tie agreement; or
- (b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit; or

- (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 sections 15 and 30 (2), means a contract under which a person in the course of a business carried on by him or her provides or agrees to provide credit to another person, other than 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;
- (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.

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.

mortgage, for part 4 (Regulated mortgages)—see section 89.

net balance, due to a credit provider at a particular time, for part 5 (Termination and enforcement of regulated contracts and regulated mortgages)—see section 103 (1).

officer, in relation to a body corporate, includes a person who is an officer of a body corporate within the meaning of the Corporations Act, section 9.

outstanding balance, of an amount, charge or expense, for part 5 (Termination and enforcement of regulated contracts and regulated mortgages)—see section 103 (2).

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 the *Banking Act 1959* (Cwlth), section 11 applies.

person who buys or proposes to buy goods and services, for part 2 (Contracts of sale)—see section 20 (2).

predetermined credit charge, in relation to a credit contract that specifies a fixed amount as the whole or part of the credit charge (other than a minimum credit charge), means that fixed amount.

proceeding, in relation to the ACAT, includes any matter arising for determination by the ACAT under this Act.

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

recognised State means a State or Territory in relation to 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 way or by any other means.

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 3 applies.

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

registered credit provider means a credit provider who is registered under the Administration Act, section 12.

regulated credit sale contract means a credit sale contract to which part 3 applies.

regulated loan contract means a loan contract to which part 3 applies.

regulated mortgage means a mortgage to which part 4 applies.

rescind, in relation to a contract, means avoid the contract as from its beginning.

resupply, in relation to goods bought from a person, includes—

- (a) a supply of the goods to another person in an altered form or condition; and
- (b) a supply to another person of goods in which the firstmentioned goods have been incorporated.

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; or
- (b) a contract of insurance (including life assurance); or
- (c) a contract under which 1 person grants or confers, or purports to grant or confer, a franchise or other right, benefit or privilege to 1 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 her 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; or
- (e) any rights or benefits of a prescribed class or description that are prescribed as being rights or benefits that are not services within the meaning of this Act; or
- (f) any rights or benefits that are, or are to be, supplied under a contract of a prescribed class or description and are prescribed as being rights or benefits that are not services within the meaning of this Act.

statutory rebate means—

- (a) in relation to insurance charges, other than prescribed insurance charges, included in the amount financed under a regulated contract, the sum of—
 - (i) the amount of premium paid in relation to a period of the insurance contract not yet begun; and
 - (ii) 90% of the proportion of the amount of the premium for insurance paid in relation to the current period of the insurance contract attributable to the unexpired part of that period consisting of whole months; and
- (b) in relation to prescribed insurance charges included in the amount financed under a regulated contract—the amount ascertained in the prescribed way; and
- (c) in relation to maintenance charges included in the amount financed under a regulated contract in relation to maintenance of goods—the amount derived by multiplying the amount of maintenance charges by the number of whole months in the unexpired part 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 resupply) by way of sale or exchange; and

Note **Resupply**—see the dictionary.

(b) in relation to services, provide, grant or confer.

tied continuing credit contract—see section 12 (2).

tied loan contract—see section 12 (1).

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 relation to 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; or
- (b) the business of supplying goods and services carried on by the supplier; or
- (c) the provision of credit to purchasers in relation to the payment for goods and services supplied by the supplier.

unjust, for a contract or mortgage, for part 9 (Reopening of contracts)—see section 145.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Credit Ordinance 1985* No 5 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

Credit Act 1985 No 5

notified 26 February 1985

s 1, s 2 commenced 26 February 1985 (s 2 (1))

ss 3-155, 156 (1)-(3), 157-178, 179 (1), (2) (b), (c), (3), (4), 180-243 and 245-266 commenced 28 February 1985 (s 2 (2) and Cwlth Gaz 1985 No S59)

ss 156 (4)-(6) commenced 10 June 1987 (s 2 (2) and Cwlth Gaz 1987 No GN6 p 231)

s 179 (2) (a) commenced 1 November 1987 (s 2 (2) and Cwlth Gaz 1987 No S295)

s 244 (never commenced and om 2001 No 56 amdt 3.238)

as amended by

Credit (Amendment) Ordinance 1985 No 39

notified 20 August 1985

commenced 21 August 1985 (s 2)

Credit (Amendment) Ordinance (No 2) 1985 No 60

notified 14 November 1985

commenced 14 November 1985

Endnotes

3 Legislation history

Magistrates Court Ordinance 1985 No 67 sch pt 1

notified 19 December 1985

commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

Credit (Amendment) Ordinance 1986 No 29

notified 31 July 1986

commenced 1 September 1986 (Cwlth Gaz 1986 No S423)

Credit (Amendment) Ordinance (No 2) 1986 No 30

notified 31 July 1986

commenced 1 September 1986 (Cwlth Gaz 1986 No S423)

Credit (Amendment) Ordinance (No 3) 1986 No 56

notified 26 September 1986

commenced 26 September 1986

Credit (Amendment) Ordinance (No 4) 1986 No 72

notified 30 October 1986

commenced 1 March 1987 (Cwlth Gaz 1987 No G6 p 518)

Credit (Amendment) Ordinance 1987 No 4

notified 24 February 1987

commenced 24 February 1987

Credit (Amendment) Ordinance 1988 No 76

notified 9 November 1988

commenced 9 November 1988

**Self-Government (Consequential Amendments) Ordinance 1989
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989
No S164)

**Remuneration (Miscellaneous Amendments) Ordinance 1989 No 50
sch**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

commenced 10 May 1989

Legislation after becoming Territory enactment**Credit (Amendment) Act 1990 No 6**

notified 9 April 1990 (Gaz 1990 No S14)
s 4, s 5 commenced 28 February 1985 (s 2 (2))
remainder commenced 9 April 1990 (s 2 (1))

Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 7 (2), sch 1

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
s 7 (2), sch 1 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Credit (Amendment) Act 1991 No 97

notified 24 December 1991 (Gaz 1991 No S155)
ss 1-3 commenced 24 December 1991 (s 2 (1))
s 6 commenced 24 December 1991 (s 2 (2) and Gaz 1991 No S155)
remainder commenced 28 February 1985 (s 2 (4))

Workers' Compensation (Consequential Amendments) Act 1991 No 106 sch

notified 15 January 1992 (Gaz 1992 No S3)
s 1, s 2 commenced 15 January 1992 (s 2 (1))
sch commenced 22 January 1992 (s 2 (2) and see Gaz 1992 No S9)

Bail (Consequential Amendments) Act 1992 No 9 sch

notified 28 May 1992 (Gaz 1992 No S59)
s 1, s 2 commenced 28 May 1992 (s 2 (1))
sch commenced 28 November 1992 (s 2 (3))

Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23 sch 1

notified 4 June 1992 (Gaz 1992 No S71)
commenced 4 June 1992

Financial Institutions (Consequential Amendments) Act 1992 No 30 sch 1

notified 1 July 1992 (Gaz 1992 No S92)
commenced 1 July 1992 (s 2 and see Gaz 1992 No S92)

Endnotes

3 Legislation history

Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1

notified 1 March 1993 (Gaz 1993 No S23)
commenced 1 March 1993

Acts Revision (Position of Crown) Act 1993 No 44 sch 1

notified 27 August 1993 (Gaz 1993 No S165)
commenced 27 August 1993 (s 2 and see Gaz 1993 No S165))

Statute Law Revision Act 1994 No 26 sch

notified 31 May 1994 (Gaz 1994 No S93)
commenced 31 May 1994 (s 2)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 20

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 20 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Credit (Amendment) Act 1994 No 50

notified 5 October 1994 (Gaz 1994 No S196)
ss 1-3, s 16 commenced 5 October 1994 (s 2 (1))
s 4 (a) commenced 1 July 1992 (s 2 (2))
s 12 commenced 28 February 1985 (s 2 (3))
remainder commenced 5 October 1994 (s 2 (4) and Gaz 1994 No S209)

Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1

notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1

notified 15 December 1994 (Gaz 1994 No S280)
s 1, s 2 commenced 15 December 1994 (s 2 (1))
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

Consumer Credit (Consequential Provisions) Act 1995 No 19 s 3

notified 5 September 1995 (Gaz 1995 No S212)
s 1, s 2 commenced 5 September 1995 (s 2 (1))
s 3 commenced 1 November 1996 (s 2 (2) and see Gaz 1996
No S273)

Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch

notified 5 September 1995 (Gaz 1995 No S212)
commenced 5 September 1995 (s 2)

Statute Law Revision Act 1995 No 46 sch

notified 18 December 1995 (Gaz 1995 No S306)
amds commenced 18 December 1995 (s 2)

Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 7

notified 1 July 1996 (Gaz 1996 No S130)
commenced 1 July 1996 (s 2)

Consumer Credit (Administration) (Consequential Provisions) Act 1996 No 42 pt 2 div 2

notified 2 September 1996 (Gaz 1996 No S223)
s 1, s 2 commenced 2 September 1996 (s 2 (1))
pt 2 div 2 commenced 1 November 1996 (s 2 (2) and Gaz 1996 No
S272)

Financial Sector Reform (ACT) Act 1999 No 33 sch

notified 25 June 1999 (Gaz 1999 No S34)
s 1, s 2, dict commenced 25 June 1999 (s 2 (1))
sch commenced 1 July 1999 (s 2 (2) and Cwlth Gaz 1999 No S283)

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
commenced 10 November 1999 (s 2)

Justice and Community Safety Legislation Amendment Act 2000 (No 2) No 2 sch

notified 9 March 2000 (Gaz 2000 No 10)
commenced 9 March 2000 (s 2)

Endnotes

3 Legislation history

**Justice and Community Safety Legislation Amendment Act 2000
(No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)
commenced 1 June 2000 (s 2)

Unit Titles Consequential Amendments Act 2001 No 17 sch 2

notified 5 April 2001 (Gaz 2001 No 14)
s 1, s 2 commenced 5 April 2001 (IA s 10B)
sch 2 commenced 5 October 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 86

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 86 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.11

notified 5 September 2001 (Gaz 2001 No S65)
s 1, s 2 commenced 5 September 2001 (IA s 10B)
amdt 3.237 commenced 12 September 2001 (s 2 (2))
pt 3.11 remainder commenced 5 September 2001 (s 2 (1))

**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2
sch 1 pt 1.4**

notified LR 18 February 2004
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))
sch 1 pt 1.4 commenced 22 March 2004 (s 2 and CN2004-4)

Revenue Legislation Repeal Act 2005 A2005-2 ss 6-8

notified LR 22 February 2005
s 1, s 2 commenced 22 February 2005 (LA s 75 (1))
ss 6-8 commenced 23 February 2005 (s 2)

Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.8

notified LR 20 June 2007
s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))
sch 3 pt 3.8 commenced 11 July 2007 (s 2 (1))

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.17

notified LR 4 September 2008
 s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
 sch 1 pt 1.17 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.21

notified LR 1 September 2009
 s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
 sch 3 pt 3.21 commenced 22 September 2009 (s 2)

as repealed by

Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 s 4 (1)

notified LR 5 October 2010
 s 1, s 2 commenced 5 October 2010 (LA s 75 (1))
 s 4 (1) commenced 6 October 2010 (s 2 (1))

4 Amendment history

Dictionary

s 2 sub 2001 No 44 amdt 1.934
 om 2001 No 56 amdt 3.237
 ins A2007-16 amdt 3.26

Notes

s 2A ins A2007-16 amdt 3.26

Application of Act and transitional provisions

s 3 am 1994 No 50 sch

Act binds Crown

s 4 am 1993 No 44 sch 1; ss renum R5 LA

Interpretation for Act

s 5 am 1985 No 67; 1986 No 29; 1986 No 30
 defs reloc to dict A2007-16 amdt 3.37
 om A2007-16 amdt 3.38
 def **bank** am 1989 No 38 sch 1
 om 1999 No 66 sch 3
 def **chairperson** am 1994 No 50 sch
 om 2000 No 2 sch
 def **determined fee** om 2001 No 44 amdt 1.935
 def **director** sub 1994 No 97 sch pt 1; 1999 No 66 sch 3

Endnotes

4 Amendment history

om 2000 No 17 sch 1
def **financial counselling trust fund** ins 1994 No 50 s 4
om 1996 No 42 s 7
def **Financial Institutions (ACT) Code** ins 1992 No 30 sch 1
om 1999 No 33 sch
def **land** om 2000 No 2 sch
def **licence** om 1996 No 42 s 7
def **licensee** om 1996 No 42 s 7
def **member** om 2000 No 2 sch
def **office** ins 1999 No 66 sch 3
om 2000 No 17 sch 1
def **register** om 1996 No 42 s 7
def **registrar** sub 1994 No 97 sch pt 1
am 1996 No 42 s 7
om A2007-16 amdt 3.35
def **the bureau** om 1999 No 66 sch 3
def **tribunal** or **credit tribunal** am 1996 No 42 s 7
om 2000 No 2 sch

Jurisdiction of courts and ACAT

s 6 sub A2008-36 amdt 1.222

Removing proceedings from ACAT to Magistrates Court

s 7 ins A2008-36 amdt 1.222

Contracts of employment excluded

s 9 am 1991 No 106 sch

Credit charge

s 11 am 1994 No 50 sch; A2007-16 amdt 3.39

Contracts for hiring of goods

s 13 am 1994 No 26 sch; 1994 No 50 s 5, sch

Recognised States

s 17 am 1989 No 38 sch 1; 2001 No 44 amdts 1.936-1.938

Exceptions from application of Act

s 18 am 1990 No 6 s 4; 1992 No 30 sch 1

Variation of application of Act

s 19 am 1985 No 60; 1987 No 4; 1989 No 38 sch 1; 2001 No 44
amdts 1.939-1.943

Publication, tabling and disallowance of instruments of variation

s 19A ins 1987 No 4
sub 1989 No 38 sch 1
om 2001 No 44 amdt 1.944

Act not to apply to new credit contracts

s 19B ins 1995 No 19 s 3

Act to continue to apply in certain cases

s 19C ins 1995 No 19 s 3

Application of pt 2

s 20 am 1994 No 50 s 6

Contract of sale conditional on grant of credit

s 21 am 1994 No 50 sch

Linked credit provider

s 24 am 1994 No 26 sch; 1994 No 50 sch; A2008-36 amdt 1.223

Consequential discharge of tied loan contract and mortgage

s 25 am 1994 No 50 sch

Notice of rescission etc to linked credit provider

s 29 am 1985 No 60

Credit sale contracts and loan contracts

div 3.1 hdg (prev pt 3 div 1 hdg) renum R5 LA

Application of pt3

s 30 am 1994 No 26 sch; 1994 No 50 s 7

Form of offer

s 32 am 1994 No 50 sch; 2001 No 44 amdt 1.945; A2008-36 amdt 1.224, amdt 1.225

Debtor to be given prescribed statement

s 34 am 2001 No 44 amdt 1.946

'Add-on' contracts

s 37 am 2001 No 44 amdt 1.947

Civil penalty

s 42 am 1994 No 50 sch

Statement for debtor or guarantor on request

s 45 am 1994 No 50 sch; 2001 No 44 amdt 1.948, amdt 1.949

Copy of document for debtor or guarantor

s 46 am 1994 No 50 sch; 2001 No 44 amdt 1.950, amdt 1.951

ACAT may determine reasonable fees etc

s 47 hdg am A2008-36 amdt 1.234

s 47 am 1994 No 50 sch; A2008-36 amdt 1.234

Continuing credit contracts

div 3.2 hdg (prev pt 3 div 2 hdg) renum R5 LA

Interpretation for div 3.2

s 48 am 1994 No 50 sch

Endnotes

4 Amendment history

Application of pt 3 to continuing credit contracts

s 49 am 1994 No 50 sch

Billing cycle less than 1 month

s 56 am 1994 No 50 sch

Non-business days

s 57 am 1994 No 50 sch

Debtor to be given prescribed statement

s 58 am 2001 No 44 amdt 1.952

Notice of terms of continuing credit contract

s 59 am 1994 No 50 sch

Correction of billing errors

s 62 am 1994 No 50 sch; A2008-36 amdt 1.234

Statement of account to be given before proceedings instituted

s 63 am 1994 No 50 sch

Copy of notice to be given on request

s 68 am 2001 No 44 amdt 1.953, amdt 1.954

Operation of regulated contracts

div 3.3 hdg (prev pt 3 div 3 hdg) renum R5 LA

Refinancing of credit contracts by the same parties

s 69 am 1994 No 50 sch

Variation of credit sale contracts and loan contracts

s 70 am 1994 No 50 sch

Variation of commitments on account of hardship

s 74 am 1994 No 50 sch; 2000 No 17 sch 1; A2008-36 amdt 1.234

General

div 3.4 hdg (prev pt 3 div 4 hdg) renum R5 LA

Unauthorised fees

s 75 am 1994 No 50 s 8, sch; A2005-2 s 6, s 7

Recoupment of financial institutions duty

s 75A ins 1994 No 50 s 9
om A2005-2 s 8

Enforcement expense

s 76 am A2008-36 amdt 1.234

Assignment of rights by credit provider

s 81 am 1994 No 50 sch; 1996 No 42 s 8; A2008-36 amdt 1.234

ACAT may reduce credit provider's loss

s 85 hdg am A2008-36 amdt 1.234

-
- s 85 am 1991 No 97 s 5; 1994 No 50 sch; 1996 No 42 s 9; ss
renum R5 LA; A2008-36 amdt 1.234
- Payment to financial counselling trust fund**
- s 85AA ins 1994 No 50 s 10
am A2008-36 amdt 1.234
- Stay of civil penalty pending ACAT's decision**
- s 85A hdg am A2008-36 amdt 1.226
s 85A ins 1991 No 97 s 6
am A2008-36 amdt 1.234
- General order varying civil penalty**
- s 86 am 1991 No 97 s 7; A2008-36 amdt 1.234; A2009-20
amdt 3.51
- General**
- div 4.1 hdg (prev pt 4 div 1 hdg) renum R5 LA
- Enforcement expense**
- s 93 am A2008-36 amdt 1.234
- Provision for entry on premises void in certain circumstances**
- s 94 am 1994 No 50 sch; A2008-36 amdt 1.234
- Order of ACAT required before entry for repossession**
- s 95 hdg am A2008-36 amdt 1.234
s 95 am 1994 No 50 sch; A2008-36 amdt 1.234
- Disclosure of location of goods**
- s 96 am 1994 No 50 sch
- Blanket securities over property or assets prohibited**
- s 98 am 1994 No 50 sch
- Restriction on mortgage of future property**
- s 99 am 1994 No 50 sch
- Assignment etc of property**
- div 4.2 hdg (prev pt 4 div 2 hdg) renum R5 LA
- Assignment by mortgagor**
- s 102 am 1994 No 50 sch; 2000 No 17 sch 1; A2008-36 amdt 1.234
- Statement of net balance due**
- s 104 am A2008-36 amdt 1.234
- Early termination of contract**
- s 105 am 1994 No 50 sch
- Mortgagor may compel sale of goods**
- s 106 am 1994 No 50 sch

Endnotes

4 Amendment history

Notice required before rights exercised

s 107 am 1986 No 29; 1994 No 50 sch

Restriction on exercise of powers

s 110 am 1994 No 50 sch; A2008-36 amdt 1.234

Court may order delivery of goods

s 111 am 1994 No 50 sch

Taking possession of goods by mortgagee

s 112 am 1994 No 50 sch; 2000 No 17 sch 1; 2001 No 44
amdt 1.955; A2008-36 amdt 1.234

Right of mortgagor to redeem goods

s 113 am 1994 No 50 sch

Mortgagee to account for proceeds of sale

s 114 am 1994 No 50 sch

Moratorium—farmers etc

s 115 am 1994 No 50 sch

Postponement of exercise of rights

s 116 am 1988 No 76; 1994 No 50 sch; 2000 No 17 sch 1; A2008-36
amdt 1.234

ACAT may approve removal of mortgaged goods

s 118 hdg am A2008-36 amdt 1.234

s 118 am 1994 No 50 sch; A2008-36 amdt 1.234

Bills of exchange as security

s 120 am 2001 No 44 amdt 1.956

Advertisements offering credit

s 121 am 1994 No 50 sch; 2000 No 17 sch 1; 2001 No 44
amdt 1.957; A2007-16 amdt 3.40

Insurance—regulated mortgages

s 128 am 1994 No 50 sch

Premiums to be paid to insurer

s 131 am 1994 No 50 sch

No-claim bonus

s 133 am 1994 No 50 sch

Saving about unenforceability

s 134 am 1986 No 29

Guarantee to be in writing

s 136 am 1994 No 50 sch

Proceedings against guarantor

s 138 am 2001 No 44 amdt 1.958

Variation of commitments—guarantee relating to regulated contract

s 139 am 1994 No 50 sch; 2000 No 17 sch 1; A2008-36 amdt 1.234

Guarantee of obligations of child

s 140 am 1994 No 50 sch

Guarantor to be given prescribed statement

s 142 am 2001 No 44 amdt 1.959

ACAT may reopen certain transactions

s 146 hdg am A2008-36 amdt 1.234

s 146 am A2008-36 amdt 1.234

Matters to be considered by ACAT

s 147 hdg am A2008-36 amdt 1.234

s 147 am 1994 No 50 sch; 1995 No 46 sch; A2008-36 amdt 1.234

Joinder of parties

s 148 am A2008-36 amdt 1.234

Variation of commitments—home finance contract

s 151 am 2000 No 17 sch 1; A2008-36 amdt 1.234

Variation of commitments—guarantee relating to home finance contract

s 152 am 2000 No 17 sch 1; A2008-36 amdt 1.234

Notice by credit provider

s 153 am 2001 No 44 amdt 1.960, amdt 1.961; A2008-36
amdt 1.234

Proof of offence

s 154 am 1994 No 50 sch

Licences

pt 11 hdg om 1996 No 42 s 10

Requirement to be licensed

pt 11 div 1 hdg om 1996 No 42 s 10

Credit providers and finance brokers to be licensed

s 155 om 1996 No 42 s 10

Exemptions from licensing

s 156 am 1986 No 29; 1990 No 6 s 5; 1992 No 30 sch 1; 1994 No 38
sch 1 pt 20; 1994 No 50 sch
om 1996 No 42 s 10

Civil penalty

s 157 om 1996 No 42 s 10

Licensing provisions

pt 11 div 2 hdg om 1996 No 42 s 10

Endnotes

4 Amendment history

Application for licence

s 158 am 1986 No 30
om 1996 No 42 s 10

Investigation of application

s 159 om 1996 No 42 s 10

Objection to application

s 160 om 1996 No 42 s 10

Grant or refusal of licence

s 161 am 1992 No 9 sch
om 1996 No 42 s 10

Conditions of, and restrictions on, licence

s 162 om 1996 No 42 s 10

Cancellation and suspension of licences

s 163 am 1994 No 50 sch
om 1996 No 42 s 10

Name under which licensee may operate

s 164 am 1994 No 50 sch
om 1996 No 42 s 10

Partnerships

s 165 om 1996 No 42 s 10

Form of licence

s166 om 1996 No 42 s 10

Change of address of licensee

s 167 am 1986 No 30
om 1996 No 42 s 10

Registers of licensees

s 168 om 1996 No 42 s 10

Inspection of register

s 169 om 1996 No 42 s 10

Term of, and authority conferred by, licence

s 170 om 1996 No 42 s 10

Annual fee and annual statement

s 171 om 1996 No 42 s 10

Surrender of licence

s 172 am 1994 No 50 sch
om 1996 No 42 s 10

Disciplinary action

pt 11 div 3 hdg om 1996 No 42 s 10

Disciplinary action against licensee

s 173 am 1994 No 50 sch
om 1996 No 42 s 10

General

pt 11 div 4 hdg om 1996 No 42 s 10

Death of licensee

s 174 am 1994 No 50 sch
om 1996 No 42 s 10

Endorsement of condition etc of licence

s 175 om 1996 No 42 s 10

Finance brokers

pt 11 div 5 hdg om 1996 No 42 s 10

Interpretation

s 176 am 1986 No 29
om 1996 No 42 s 10

Advertising by finance brokers

s 177 am 1994 No 50 sch
om 1996 No 42 s 10

Records of finance brokers

s 178 om 1996 No 42 s 10

Payment of commission to finance broker

s 179 am 1994 No 50 sch
om 1996 No 42 s 10

Valuation fees

s 180 om 1996 No 42 s 10

Penalty for false statements etc

s 181 om 1996 No 42 s 10

Requirements as to proof

s 182 om 1996 No 42 s 10

Excessive commission

s 183 om 1996 No 42 s 10

Credit tribunal

pt 12 hdg om 1996 No 42 s 10

Constitution of the tribunal

pt 12 div 1 hdg om 1996 No 42 s 10

Establishment of credit tribunal

s 184 om 1996 No 42 s 10

Endnotes

4 Amendment history

Membership of tribunal

s 185 am 1993 No 1 sch 1; 1994 No 50 sch
om 1996 No 42 s 10

Resignation

s 186 am 1994 No 50 sch
om 1996 No 42 s 10

Termination of appointment

s 187 am 1989 No 50 sch; 1994 No 50 sch
om 1996 No 42 s 10

Leave of absence

s 187A ins 1989 No 50 sch
om 1996 No 42 s 10

Remuneration and allowances

s 188 sub 1989 No 50 sch
om 1996 No 42 s 10

Acting appointments

s 189 am 1986 No 56; 1992 No 23 sch 1; 1994 No 50 sch
om 1996 No 42 s 10

Registrar and deputy registrar

pt 12 div 2 hdg om 1996 No 42 s 10

Registrar of the credit tribunal

s 190 am 1989 No 38 sch 1; 1994 No 50 sch
sub 1994 No 97 sch pt 1
om 1996 No 42 s 10

Deputy registrar of the credit tribunal

s 190A ins 1994 No 97 sch pt 1
om 1996 No 42 s 10

Delegation to registrar

s 191 om 1996 No 42 s 10

Proceedings before the tribunal

pt 12 div 3 hdg om 1996 No 42 s 10

Constitution of the tribunal in particular matters

s 192 am 1994 No 50 sch
om 1996 No 42 s 10

Manner in which questions to be decided

s 193 am 1994 No 50 sch
om 1996 No 42 s 10

Proceedings before tribunal

s 194 am 1994 No 50 sch
om 1996 No 42 s 10

Hearing in private

s 195 om 1996 No 42 s 10

Reference of question of law to Supreme Court

s 196 am 1994 No 50 sch
om 1996 No 42 s 10

Parties

s 197 am 1994 No 50 sch
om 1996 No 42 s 10

Notice and conduct of proceedings

s 198 am 1994 No 50 sch
om 1996 No 42 s 10

Right of appearance and representation

s 199 om 1996 No 42 s 10

Summons and examination of witnesses

s 200 am 1994 No 50 sch
om 1996 No 42 s 10

Failure to comply with summons etc

s 201 am 1994 No 50 sch
om 1996 No 42 s 10

Contempt etc

s 202 am 1994 No 50 sch
om 1996 No 42 s 10

Inspection and retention of records

s 203 om 1996 No 42 s 10

Dismissal of frivolous etc proceedings

s 204 om 1996 No 42 s 10

Costs

s 205 om 1996 No 42 s 10

Orders for payment of money

s 206 om 1996 No 42 s 10

Reasons for decision of tribunal

s 207 om 1996 No 42 s 10

Adjournments

s 208 om 1996 No 42 s 10

Protection of members, persons appearing and witnesses

s 209 om 1996 No 42 s 10

Right of appeal

s 210 am 1985 No 67; 1991 No 44 s 7 (2), sch 1; 1995 No 46 sch
om 1996 No 42 s 10

Endnotes

4 Amendment history

Fees	
s 211	om 1996 No 42 s 10
Inquiries	
pt 13 hdg	om 1996 No 42 s 10
Interpretation	
s 212	om 1996 No 42 s 10
Minister may order inquiry	
s 213	om 1996 No 42 s 10
Notice of inquiry	
s 214	om 1996 No 42 s 10
Appearances at inquiry	
s 215	om 1996 No 42 s 10
Procedure at inquiry	
s 216	om 1996 No 42 s 10
Powers of tribunal at inquiry	
s 217	om 1996 No 42 s 10
Failure to appear at inquiry	
s 218	om 1996 No 42 s 10
Refusal to be sworn etc	
s 219	om 1996 No 42 s 10
Power to obtain information	
s 220	am 1994 No 50 sch om 1996 No 42 s 10
Unjust conduct by credit providers	
pt 14 hdg	om 1996 No 42 s 10
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s 221	om 1996 No 42 s 10
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def **account charge** am 1991 No 97 s 4
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- def **amount financed** reloc from s 5 A2007-16 amdt 3.37
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- def **buyer** ins A2007-16 amdt 3.42
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- def **cash** reloc from s 5 A2007-16 amdt 3.37
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- def **compulsory insurance** reloc from s 5 A2007-16
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def **person who buys or proposes to buy goods or
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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 106	4 June 1992

Endnotes

5 Earlier republications

Republication No	Amendments to	Republication date
2	Act 1993 No 44	31 January 1994
3	Act 1994 No 97	31 January 1995
4	Act 1996 No 42	30 November 1996
5	Act 2001 No 44	12 September 2001
6	A2001-56	13 September 2002
7	A2004-2	22 March 2004
8	A2005-2	23 February 2005
9	A2007-16	11 July 2007
10*	A2008-36	2 February 2009
11	A2009-20	22 September 2009

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