

AUSTRALIAN CAPITAL TERRITORY

CREDIT ORDINANCE 1985

EXPLANATORY STATEMENT

No. 5 of 1985

The Credit Ordinance 1985 is the Australian Capital Territory component of a new legislative scheme for the regulation of credit transactions. The details of the scheme, which has been proposed for adoption Australia-wide, have been under development since 1969 under the auspices of the Standing Committee of Attorneys-General. Credit Acts were passed in New South Wales and Victoria in 1981 each embodying the principles of the scheme, but only in those States' revised Acts of 1984 was a truly uniform legislative framework achieved.

Because money lending activities in the Australian Capital Territory are closely integrated with those of New South Wales in particular, considerable disruption would be caused and additional cost incurred if discrepancies existed between the credit laws of the two jurisdictions. Providers of credit from offices in Canberra would be obliged to maintain dual systems, using different documentation and entering into different kinds of transactions according to whether a client was a resident of the Territory or of New South Wales. For debtors, inability to meet the conditions of a contract would have different consequences under State than under Territory law. These considerations have led to representations from money lenders, legal practitioners and State Ministers seeking assurances that the Territory would implement without delay legislation consistent with the Credit Acts of New South Wales and Victoria.

The Ordinance adopts with minor variations the uniform provisions of the State Credit Acts. Its principal objectives are -

- (a) to provide for users of credit to receive information about their rights and obligations and particulars of their credit contracts which is in standard form, is readily comprehensible and facilitates comparison of the costs of different forms of credit;
- (b) to extend to all forms of credit transactions a single scheme of regulation and user-protection to replace existing fragmented and partly ineffective controls;
- (c) by means of a licensing system and a system of review of credit contracts which may be causing hardship, to ensure that the business of providing credit is carried on fairly and on a sound commercial and financial basis.

The regulatory provisions of the Ordinance are directed to credit contracts under which the value of the credit provided is no more than \$20,000 and, in the case of cash advances, interest is charged at a rate greater than 14 percent. Contracts of a value greater than \$20,000 involving the purchase of farm machinery and commercial vehicles are also regulated. Credit providers under regulated contracts are required to include specified information in the contractual documents they use, including itemized details of the credit provided, the credit charge or the method of its determination, and the percentage rate per annum underlying the credit charge. Debtors are entitled to receive copies of this information and of prescribed notices setting out their rights and obligations. Controls are placed on default and deferral charges, minimum credit charges and variations of credit contracts.

Mortgages securing repayments under regulated credit contracts are also subject to regulation, covering documentation, assignment of mortgage rights, discharge of mortgage obligations, repossession of mortgaged goods and application of the proceeds of sale of mortgaged property. In the case of both credit contracts and mortgages, the exercise of rights against a defaulting debtor is postponed until the debtor has been given reasonable opportunity to remedy the default.

Provision is made in the Ordinance in relation to the information to be given to a person who guarantees the performance of obligations under a regulated contract, and the extent and conditions of the guarantor's liability are defined. Rights and liabilities under, and the provision of information about, insurance contracts that relate to a regulated credit contract or regulated mortgage are addressed, and standards are set for advertising the availability of credit. A further concern of the Ordinance is the respective rights of the debtor, a supplier and the credit provider under a credit transaction where the supplier and the credit provider are linked in business by a trade or tie agreement.

Matters which are not part of the uniform credit legislation but are associated with it have been enacted in New South Wales in several separate Acts. These matters are incorporated in the Ordinance in a form that, as far as possible, mirrors the New South Wales provisions. Finance brokers' advertising, maintenance of records and charging of commission are controlled to the extent that they relate to finance provided under regulated credit contracts. Home finance contracts for amounts up to \$67,500 are made subject to variation in cases of hardship in the same way as are regulated credit contracts and regulated mortgages.

Administration of the credit scheme is vested principally in a Credit Tribunal established under the Ordinance. The Tribunal will be chaired by a legal practitioner and have industry and consumer representatives. It is given responsibility for the licensing of credit providers and finance brokers and supervision of the conduct of licensees under the Ordinance, besides adjudicating in disputes arising between the parties to regulated credit contracts and regulated mortgages. The power under several provisions in the Ordinance to grant relief from contractual obligations which cause hardship or injustice is also exercisable by the Credit Tribunal.

The content of each of the provisions in the Ordinance is outlined in the attachment.

Ord.86/84

DETAILS OF PROVISIONS
CREDIT ORDINANCE 1985

PART I

PRELIMINARY

Section 1. Short Title.

Section 2. Commencement.

Section 3 specifies the range of contracts to which the Ordinance applies.

Section 4 provides that, in general, the Ordinance binds the Crown.

Section 5. Interpretation.

Section 6 confers on the Credit Tribunal jurisdiction, when the occasion arises, to exercise powers given to the courts under the Ordinance, and provides for proceedings to be transferred between the Tribunal and a court.

Section 8 continues the operation of the Ordinance where certain rights and obligations have been assigned or transferred or have passed by operation of law.

Section 9 excludes contracts of employment from the ambit of the Ordinance.

Section 10 specifies the manner in which the annual percentage rate is to be determined in relation to a regulated contract.

Section 11 specifies the manner in which the amount of the credit charge under a regulated contract is to be determined.

Section 12 explains the expression "tied loan contract".

Section 13 converts certain hire-purchase agreements to contracts of sale

Section 14 excludes a continuing credit contract and a lay-by sale from references in the Ordinance to a credit sale contract.

Section 15 excludes a credit sale contract and a continuing credit contract from references in the Ordinance to a loan contract.

Section 16 provides that a business of providing credit is carried on notwithstanding that it is carried on in the course of, or as part of, or as incidental to, another business.

Section 17 enables the Governor-General to declare a State, or another Territory of the Commonwealth, to be a recognised State for the purposes of the Ordinance.

Section 18 contains certain exemptions from the operation of specified parts of the Ordinance.

Section 19 enables the Minister to vary in specified ways the application of provisions of the Ordinance.

PART II

CONTRACTS OF SALE

Section 20 applies Part II to a contract of sale of goods or services that, if the sale were a sale on credit, would be a regulated credit sale contract.

Section 21 enables the buyer under a contract of sale to rescind the contract if, before entering into the contract, the buyer informs the vendor that he requires credit in order to complete the contract and, after reasonable attempts to obtain the credit, is unsuccessful.

Section 22 prohibits the vendor of goods or services under a contract of sale from requiring the purchaser to obtain credit from a particular source.

Section 23 effects a discharge of a related guarantee or mortgage upon the rescission or discharge of a regulated credit sale contract; and, upon the rescission or discharge of any contract of sale, effects a discharge of any regulated loan contract relating to that contract of sale and any guarantee or mortgage relating to credit provided in respect of the contract of sale.

Section 24 regulates the rights and obligations of a supplier of goods or services whose practice it is to promote a particular credit provider ("linked credit provider"), that credit provider and a purchaser where, after the purchaser has bought goods or services from the supplier with the assistance of credit provided by the linked credit provider, the supplier becomes liable to pay damages or a sum of money to the purchaser.

Section 25 effects the discharge of a collateral loan contract and of any mortgage securing the debt under the loan contract, and deals with the consequences of those discharges, where a contract of sale of goods or services is rescinded or discharged and the parties to the loan contract are the buyer of the goods or services and a linked credit provider of the supplier of the goods or services.

Section 26 deals with the situation, similar to that dealt with under section 25, that arises upon the rescission of a contract of sale between the debtor under a continuing credit contract and a supplier in relation to whom the credit provider under the continuing credit contract is a linked credit provider.

Section 27 preserves all rights, in addition to those conferred by sections 25 and 26, that a buyer may have against a supplier or a linked credit provider of a supplier and enables rights conferred by those sections as between a supplier and a linked credit provider of the supplier to be varied by agreement between them.

Section 28 provides for the resolution of disputes arising by reason of the operation of section 23, 25 or 26 of the Ordinance.

Section 29 requires a supplier to notify a linked credit provider of the supplier of the rescission or discharge of a contract of sale to which the supplier is a party if the supplier knows that there is a loan contract, or a continuing credit contract, between the buyer under the contract of sale and the linked credit provider, being a loan contract or continuing credit contract relating to the contract of sale.

PART III

REGULATED CONTRACTS

Section 30 provides that, with specified exceptions, Part III of the Ordinance does not apply to a credit sale contract if the cash price of the goods or services is more than \$20,000, or to a loan contract if the amount of the loan is more than \$20,000 or the annual percentage rate is 14 percent or less.

Section 31 prohibits a credit provider from entering into a credit sale contract, or a loan contract, that is not in writing signed by the debtor.

Section 32 prescribes the procedures to be adopted in relation to offers in writing to enter into a credit sale contract or a loan contract, and subsequent alterations to the contract.

Section 33 requires a credit provider who accepts a written offer to enter into a credit sale contract or a loan contract to give to the offeror a copy of the accepted offer.

Section 34 requires a credit provider who enters into a credit sale contract or a loan contract to give to the debtor a prescribed statement (which will be a summary of rights and obligations of a debtor).

Section 35 prescribes the matters that must be specified in a credit sale contract and those that may not be included in the amount financed under the contract.

Section 36 prescribes the matters that must be included in a loan contract and those that may not be included in the amount financed under the contract.

Section 37 deals with the operation of section 35 in relation to the consolidation of one credit sale contract with another, and gives the debtor a right to rescind the new contract within a specified period.

Section 38 specifies the annual percentage rate that is required to be stated in a credit sale contract or a loan contract.

Section 39 permits a loan contract to specify more than one annual percentage rate only where the performance of the obligations under the contract is secured by a mortgage of land and the lower of the rates is that which the mortgagee will accept for prompt payment.

Section 40 prohibits statements in a credit sale contract or a loan contract of more than one annual percentage rate, except as provided by section 39.

Section 41 requires proper notice to be given of any proposed variation of a credit sale contract or a loan contract.

Section 42 operates to deprive the credit provider of the credit charge under a credit sale contract or a loan contract in certain cases of failure to comply with provisions of the Ordinance.

Section 43 prohibits a credit provider from entering into a credit sale contract, or a loan contract, that is in writing but contravenes the Ordinance.

Section 44 prescribes an upper limit for a minimum credit charge imposed under a credit sale contract or a loan contract.

Section 45 requires a credit provider, on request by the debtor under a credit sale contract, or a loan contract, or by a guarantor of the performance of such a contract, to provide a statement of the payments made and amounts due or yet to become due under the contract.

Section 46 requires a credit provider, on request by a person referred to in section 45, to supply a copy of the relevant credit sale contract, loan contract or contract of guarantee, or certain other documents.

Section 47 enables the Credit Tribunal to make a determination as to whether legal fees, and certain other charges, under a credit sale contract or loan contract, or a related mortgage, are reasonable.

Section 48 explains the concept of a continuing credit contract.

Section 49 provides that, with specified exceptions, Part III of the Ordinance does not apply to a continuing credit contract under which cash is supplied if the annual percentage rate is 14 per cent or less, or to any continuing credit contract under which the amount owing at any time may exceed \$20,000.

Section 50 limits a billing cycle under a continuing credit contract to a period not exceeding 40 days.

Section 51 deals with the situation where the credit provider under a continuing credit contract satisfies the amount payable by the debtor to a supplier of goods or services or cash.

Section 52 provides for the determination of the chargeable amount in respect of a billing cycle under a continuing credit contract.

Section 53 prescribes the amounts that the credit provider under a continuing credit contract may require the debtor to pay and nullifies any requirement to pay any other amount.

Section 54 defines the credit charge under a continuing credit contract and limits the amount of that credit charge.

Section 55 provides for the manner of calculating the annual percentage rate under a continuing credit contract and prohibits, with one exception, the inclusion of more than one annual percentage rate in such a contract.

Section 56 deals with the determination of the credit charge under a continuing credit contract in respect of a billing cycle of less than one month where, under the contract, billing cycles are stated to be one-month cycles.

Section 57 prescribes a permissible procedure under a continuing credit contract where the last day of a billing cycle is followed by a Saturday, Sunday or public holiday, or more than one of them.

Section 58 requires the credit provider under a continuing credit contract to give to the debtor a prescribed statement (which will be a summary of rights and obligations of the debtor) before a debt is incurred under the contract.

Section 59 specifies the matters to be included in a notice of terms of a continuing credit contract required to be given to the prospective debtor before a debt is incurred under the contract.

Section 60 requires proper notice to be given of any variation of a continuing credit contract.

Section 61 requires the credit provider under a continuing credit contract to give the prescribed statement of account to the debtor in respect of each billing cycle.

Section 62 deals with the procedure for the correction of billing errors under a continuing credit contract.

Section 63 requires the credit provider under a continuing credit contract to submit a statement of account, and request payment, before he becomes entitled to institute proceedings under the contract.

Section 64 defines the circumstances under which a statement of account in respect of a billing cycle may include an amount owed by the debtor before the first day of the billing cycle.

Section 65 relieves a credit provider, in certain circumstances, of the requirement to submit a statement of account for a billing cycle.

Section 66 requires the credit provider under a continuing credit contract to pay the debtor, on request, any surplus in the account kept under the contract.

Section 67 deprives the credit provider of the credit charge under a continuing credit contract in the event of failure to comply with certain provisions of the Ordinance.

Section 68 obliges the credit provider under a continuing credit contract to provide the debtor, or any guarantor, on request, with a copy of the terms of the contract or any notice of variation of the contract.

Section 69 prescribes the conditions to be complied with when the parties to a regulated contract agree to discharge the contract upon the same parties entering into another credit contract.

Section 70 prescribes the conditions to be complied with when the parties to a credit sale contract, or a loan contract, agree to vary the terms of the contract.

Section 71 regulates the circumstances in which a charge may be made for deferral of a payment under a credit sale contract or a loan contract and the amount of the deferral charge.

Section 72 deals with the imposition of default charges following failure to make a payment under a credit sale contract or a loan contract.

Section 73 provides for a contract to be a regulated contract -

- (a) if it was a regulated contract before being varied; or
- (b) if it is entered into in consideration of the discharge of a regulated contract.

Section 74 enables a debtor to obtain on grounds of hardship an adjustment of his obligations under a regulated contract.

Section 75 prohibits the charging by a credit provider of fees not authorised by the Ordinance.

Section 76 nullifies a provision in a regulated contract requiring the payment by the debtor of unreasonable enforcement expenses.

Section 77 prevents an agreement from depriving a person of a right to revoke an offer to enter into a regulated contract before the person learns that the offer has been accepted.

Section 78 limits the extent to which a stated annual percentage rate may vary from the annual percentage rate required to be stated.

Section 79 limits the extent to which an estimated credit charge may vary from that required to be stated.

Section 80 prescribes the debtor's liability where a credit charge differs from the amount of credit charge calculated by applying the annual percentage rate.

Section 81 governs the assignment of the rights of the credit provider under a regulated contract or a regulated mortgage.

Section 82 requires a credit provider to fulfil a loan contract by payment in full in cash or money's worth.

Section 83 prescribes the order in which, in the absence of agreement, payments made under a regulated contract are to be applied to the various amounts outstanding under the contract.

Section 84 deals with the appropriation of payments as between two or more contracts between the same debtor and the same credit provider.

Section 85 provides a procedure whereby a credit provider who, because of a failure to comply with the Ordinance, is deprived of payments otherwise due by the debtor may apply to the Tribunal to increase the liability of the debtor.

Section 86 enables the Tribunal, upon an application referred to in section 85, to make a general order affecting more than one contract.

Section 87 permits a debtor to recover amounts that, by virtue of the Ordinance, the debtor is not liable to pay, including by setting off those amounts against future payments due to the credit provider.

Section 88 provides relief from a prosecution under the Ordinance based on a minor error.

PART IV

REGULATED MORTGAGES

Section 89 applies Part IV only to a mortgage that is a regulated mortgage, ie., a mortgage securing performance of the obligations under a regulated contract.

Section 90 nullifies a provision of a mortgage that requires performance in excess of the performance required by the regulated contract to which the mortgage relates.

Section 91 requires a mortgage of goods to be in writing.

Section 92 requires a mortgagee to give a copy of the mortgage to the debtor under the regulated contract to which the mortgage relates.

Section 93 nullifies a provision of a mortgage that requires payment by the mortgagor of unreasonable enforcement expenses; and enables the Tribunal to make a determination as to whether the amount of enforcement expenses is reasonable.

Section 94 nullifies a provision of a mortgage of goods that confers a right of entry on premises without the order of the Tribunal.

Section 95 makes it an offence, except by order of the Tribunal or with the mortgagor's consent, to enter on premises to take possession of goods subject to a mortgage.

Section 96 authorises a mortgagee to require the mortgagor to disclose the whereabouts of goods subject to the mortgage.

Section 97 enables the court to arrange for delivery of goods by a mortgagor to a mortgagee.

Section 98 prohibits a "blanket" security over the whole of a person's assets.

Section 99 limits the application of a mortgage in relation to future property of the mortgagor.

Section 100 controls the mortgaging of goods obtained by the use of a continuing credit contract.

Section 101 deals with the fraudulent sale or disposal of property subject to a mortgage.

Section 102 prohibits a mortgagor from disposing of property subject to the mortgage without the consent of the mortgagee, and provides a procedure to be followed if that consent is unreasonably withheld.

PART V

TERMINATION AND ENFORCEMENT OF REGULATED CONTRACTS AND REGULATED MORTGAGES

Section 103 prescribes the method by which the net balance due to a credit provider at a particular time is to be calculated.

Section 104 requires a credit provider, on request by the debtor or a guarantor, to provide a statement of the net balance due under a regulated contract and, where the credit provider does not comply within 7 days, empowers the Tribunal to determine the net balance due.

Section 105 authorises the debtor to terminate a regulated contract at any time by paying the net balance due at that time.

Section 106 provides a procedure whereby a mortgagor may require the mortgagee to sell goods subject to the mortgage.

Section 107 requires the giving of certain notices before the credit provider under a regulated contract, or the mortgagee under a regulated mortgage, may exercise rights under the contract or mortgage, and enables the debtor or mortgagee, by rectifying within one month the default that has occurred, to forestall the exercise of those rights.

Section 108 restrains a credit provider or mortgagee from instituting proceedings, or exercising a right, under a regulated contract or mortgage in respect of a specified default if the default is rectified in accordance with section 107.

Section 109 limits to the net balance due the amount recoverable by the credit provider from the debtor under a regulated contract.

Section 110 requires a mortgagee to obtain the consent of the Tribunal before exercising any powers (other than powers relating to land) if the amount owed by the mortgagor is less than one-quarter of the amount financed.

Section 111 authorises the court to order a mortgagor to deliver to the mortgagee goods to which, in the opinion of the court, the mortgagee is entitled.

Section 112 regulates the exercise of a power of sale of goods by a mortgagee.

Section 113 confers on a mortgagor a right to redeem goods of which the mortgagee has taken possession by rectifying the default or paying the amount due under each credit contract to which the mortgage relates.

Section 114 prescribes the manner in which a mortgagee is required to account to the mortgagor for the proceeds of a sale by the mortgagee of goods subject to the mortgage.

Section 115 enables a person whose sole or principal business is a farming undertaking to obtain from the court an order postponing the exercise by a mortgagee of his power of repossessing farm machinery, or a commercial vehicle, used in connection with the farming undertaking.

Section 116 provides a procedure whereby a mortgagor may obtain a postponement by the mortgagee of the right of the mortgagee to take possession of, or sell, goods subject to the mortgage.

PART VI

REGULATED CONTRACTS AND REGULATED MORTGAGES - GENERAL

Section 117 penalises a person who makes certain false or misleading representations in relation to an offer to enter into a regulated contract or mortgage.

Section 118 enables the Tribunal, on the application of a mortgagor, to authorise the mortgagor to move mortgaged goods from the place at which the mortgagor had agreed to keep them.

Section 119 prohibits the giving of security or payment of debts under a regulated contract by way of an assignment of wages, salary or superannuation benefits.

Section 120 regulates the taking of security by way of a bill of exchange or promissory note other than a cheque (not being a post-dated cheque) or an order on a banker for the making of specified payments at specified times.

Section 121 prohibits advertising of the availability of credit that is false or misleading or does not comply with the Ordinance as to the information provided and enables a debtor to recover damages for loss suffered as a result of such advertising.

Section 122 regulates the canvassing of persons to apply for credit.

Section 124 nullifies an agreement or arrangement whereby a credit provider or mortgagee is authorised to enter into a regulated contract or regulated mortgage on behalf of the debtor or mortgagor.

Section 125 provides that the commission of an offence by the credit provider or mortgagee does not render a regulated contract or mortgage illegal, void or unenforceable and absolves the debtor or mortgagor from liability as an aider or abettor where an offence is committed by a credit provider or mortgagee in relation to such a contract or mortgage.

Section 126 provides that where a debtor, mortgagor or guarantor consists of two or more persons, a notice required to be given by a credit provider or mortgagee must be given to both, or all, of those persons.

PART VII

CONTRACTS OF INSURANCE

Section 127 regulates the kind of insurance that a credit provider may require to be taken out by a debtor.

Section 128 regulates the conditions under which a mortgagee may require the mortgagor to take out insurance.

Section 129 nullifies a condition of a regulated contract or mortgage that requires the debtor or mortgagor to maintain in force insurance not authorised by the Ordinance.

Section 130 prescribes matters that must be stated in a contract of insurance to which the debtor under a regulated contract is a party and requires the debtor under a regulated contract to be given a copy of any contract of insurance, or of particulars relating to a contract of insurance, under which the debtor has a beneficial interest.

Section 131 requires the credit provider under a regulated contract to hold in trust, and pay to the insurer within one month, any insurance premium included in the amount financed, or owed, under a regulated contract.

Section 132 requires certain action to be taken where an insurance proposal relating to a regulated credit sale contract or loan contract is rejected.

Section 133 requires a credit provider or mortgagee to pass on to the debtor or mortgagor any "no-claim bonus" or similar rebate allowed under a policy of insurance.

Section 134 provides that a contract of insurance relating to a regulated credit contract or regulated mortgage will not be avoided by a false or misleading but immaterial and non-fraudulent statement in, or an immaterial and unintended omission from, an insurance proposal.

Section 135 deals with the circumstances in which the debtor or mortgagor under a regulated contract or mortgage is entitled to be indemnified under a contract of insurance notwithstanding certain exclusions from liability under the contract.

PART VIII

CONTRACTS OF GUARANTEE

Section 136 requires a contract guaranteeing performance of obligations of the debtor under a regulated contract to be in writing and requires a copy of the regulated contract to be given to the guarantor.

Section 137 limits the liability of a guarantor in respect of a regulated contract to the sum of the amount due by the debtor and the reasonable expenses of enforcing the guarantee.

Section 138 prohibits a credit provider, subject to specified exceptions, from bringing proceedings against a guarantor in respect of a regulated contract unless the proceedings are brought against both the debtor and the guarantor or a judgment against the debtor has remained unsatisfied.

Section 139 enables a guarantor to obtain a variation, on grounds of hardship, of his commitments under a guarantee relating to a regulated contract.

Section 140 renders a guarantor liable in respect of the obligations of a minor who is the debtor under a regulated contract but only if certain statements appear in the contract of guarantee.

Section 141 requires the credit provider under a regulated contract to give to a guarantor of the obligations of the debtor a copy of the contract of guarantee.

Section 142 requires the credit provider under a regulated contract to give to a guarantor of the obligations of the debtor a prescribed statement (which will be a summary of rights and obligations of the guarantor).

Section 143 deals with the circumstances in which, and the extent to which, a guarantor of the obligations of the debtor under a regulated contract may discharge his liability under the contract of guarantee.

Section 144 nullifies a provision of an agreement purporting to prevent revocation of an offer to enter into a contract of guarantee before the person who would be the guarantor learns that the offer has been accepted.

PART IX

REOPENING OF CONTRACTS

Section 145 is an interpretation provision.

Section 146 enables the Tribunal, on the application of the debtor under a regulated contract, the mortgagor under a regulated mortgage or the guarantor of obligations under a regulated contract to re-open the transaction that led to the contract, mortgage or guarantee and to give relief against any injustice.

Section 147 prescribes the matters to which the Tribunal is required to have regard before granting the relief referred to in section 146.

Section 148 confers on the Tribunal certain powers relating to the joinder of additional parties in proceedings seeking the relief referred to in section 146.

Section 149 specifies the limitation periods applicable for the bringing of proceedings for the relief referred to in section 146.

PART X

HOME FINANCE CONTRACTS

Section 150. Interpretation.

Section 151 enables the debtor under a "home finance contract" in case of hardship, to apply successively to the credit provider and the Director for a variation of commitments under the contract and authorises the Director, if necessary, to refer the matter to the Tribunal.

Section 152 provides a procedure, similar to that referred to in section 151, where a guarantor of the performance of a home finance contract is unable to discharge the obligations under the guarantee.

Section 153 requires the service of certain notices before a credit provider may exercise a right under a home finance contract, or a mortgage or guarantee that relates to such a contract.

Section 154 provides that a person cannot be convicted of an offence against Part X of the Ordinance unless the person knew or ought to have known that the contract in question was a "home finance contract" as defined.

PART XI

LICENCES

Section 155 requires credit providers and finance brokers to be licensed.

Section 156 specifies the persons exempted from the licensing provisions of the Ordinance. Provision is made for exempted credit providers to be registered as such under the Regulations.

Section 157 operates to deprive an unlicensed credit provider of certain amounts that, if the credit provider were licensed, would be owed to the credit provider.

Section 158 regulates an application to the Tribunal for a licence.

Section 159 provides for investigation by the Director of Consumer Affairs ("the Director") of an application for a licence.

Section 160 enables the Director or any other person to object to the granting of a licence.

Section 161 deals with the granting or refusal of a licence by the Tribunal, and specifies the grounds on which a licence may be refused.

Section 162 authorises the Tribunal to impose conditions or restrictions to which a licence is to be subject and to vary or revoke any such conditions or restrictions.

Section 163 specifies circumstances in which the Tribunal is authorised to cancel or suspend a licence.

Section 164 regulates the name under which a licensee may carry on a business in respect of which a licence is required.

Section 165 prohibits a licensee from carrying on the business authorised by the licence in partnership with an unlicensed person.

Section 166 regulates the form of a licence.

Section 167 requires a licensee to notify the Director of changes of address.

Section 168 requires the Director to keep a Register of Licensed Credit Providers and a Register of Licensed Finance Brokers.

Section 169 provides for public inspection of the registers referred to in section 168.

Section 170 continues a licence in force, subject to any suspension, until it is surrendered or cancelled and specifies the authority conferred by a credit provider's licence and the authority conferred by a finance broker's licence.

Section 171 requires a licensee to pay an annual fee and to submit an annual statement containing prescribed particulars.

Section 172 regulates the surrender of a licence.

Section 173 enables the Director or any other person to object to the holding of a licence by a specified licensee, provides for the holding by the Tribunal of an inquiry with respect to the objection and authorises the Tribunal, if the objection is made out, to take specified disciplinary action.

Section 174 enables the personal representative of a deceased licensee to apply for authority to carry on the business of the licensee for a limited period.

Section 175 requires the licensee to produce the licence to the Registrar for endorsement of a condition or restriction to which the licence is subject.

Section 176. Interpretation relating to the conduct of finance broking.

Section 177 requires an advertisement by a finance broker to include the finance broker's registered name and business address.

Section 178 requires a finance broker to make and preserve records of finance broking transactions entered into.

Section 179 controls the demanding, receipt and acceptance of commission by a finance broker.

Section 180 enables a finance broker to receive, irrespective of any entitlement to commission, reimbursement for valuation fees paid.

Section 181 deals with false and misleading statements made by a finance broker to a prospective client.

Section 182 protects a finance broker against certain prosecutions and against proceedings brought under the Ordinance in relation to excessive commission if the finance broker had no cause to suspect that the transaction concerned was regulated under the Ordinance.

Section 183 enables a court or the Tribunal to reopen a transaction with a finance broker in relation to which excessive commission has been charged.

PART XII

CREDIT TRIBUNAL

Section 184 establishes the Australian Capital Territory Credit Tribunal ("the Tribunal").

Section 185 constitutes the Tribunal with three part-time members (who are required to have specified qualifications) and prescribes the term of office of a member as a period not exceeding 5 years.

Section 186 provides for the resignation of a member of the Tribunal.

Section 187 prescribes the circumstances in which a member of the Tribunal may be removed from office.

Section 188 provides for the remuneration and allowances to be paid to members of the Tribunal, and leave of absence to be granted to a member.

Section 189 authorises the Minister to appoint an acting member or Chairman of the Tribunal.

Section 190 authorises the Minister to appoint a Registrar of the Tribunal, and a Deputy Registrar.

Section 191 authorises the Tribunal to delegate to the Registrar certain powers under Part XI.

Section 192 governs the manner in which the Tribunal is to be constituted for the hearing and determination of proceedings before it.

Section 193 governs the manner in which questions arising in proceedings before the Tribunal are to be decided.

Section 194 makes provision to promote informality and to avoid unnecessary cost or delays in proceedings before the Tribunal.

Section 195 authorises the Tribunal in certain circumstances to conduct hearings in private and to prohibit or restrict publication of any evidence or document before the Tribunal.

Section 196 provides for references, on a question of law, from the Tribunal to the Supreme Court.

Section 197 deals with matters relating to parties to proceedings before the Tribunal.

Section 198 requires notice of the time and venue of proceedings to be given to the parties.

Section 199 deals with the rights of a party to appear before the Tribunal personally or by solicitor or counsel.

Section 200 deals with the summoning of witnesses to attend, and their examination, before the Tribunal.

Section 201 provides for a penalty for failure to comply with a summons or to produce a record in accordance with the summons, or to take an oath or make an affirmation.

Section 202 specifies what constitutes contempt of the Tribunal and provides for punishment of contempt.

Section 203 empowers the Tribunal to inspect, retain and make copies of documents and other records produced to it.

Section 204 empowers the Tribunal to dismiss frivolous and vexatious proceedings.

Section 205 empowers the Tribunal to order payment of costs.

Section 206 provides for the enforcement of orders by the Tribunal for the payment of money.

Section 207 requires the Tribunal, on request, to state reasons for its decisions.

Section 208 empowers the Tribunal to adjourn or stay proceedings before it.

Section 209 confers on a member, Registrar and Deputy Registrar of the Tribunal the same protection and immunity as a Justice of the Supreme Court; and confers on a barrister, solicitor, and witness the same protection as if they were before the Supreme Court.

Section 210 provides for and regulates appeals from the Tribunal to the Supreme Court.

Section 211 provides for fees to be paid in relation to proceedings before the Tribunal.

PART XIII

INQUIRIES

Section 212. Interpretation of "inquiry."

Section 213 authorises the Minister to appoint the Tribunal or any person to inquire into, and report upon, matters relating to, and consequential upon, the provision of credit.

Section 214 requires notice by advertisement of the time, venue and subject of the inquiry.

Section 215 empowers the Tribunal to grant leave to any person to appear at the inquiry if the person has a substantial interest in the subject of the inquiry.

Section 216 regulates the giving of evidence at an inquiry.

Section 217 enables the Tribunal to summon a witness, and take evidence on oath for the purposes of an inquiry.

Section 218 provides for a penalty for failure to appear at an inquiry after receiving a summons.

Section 219 provides for a penalty for a witness refusing to be sworn or to produce a record or statement at an inquiry.

Section 220 empowers the Tribunal to obtain information from any person in relation to the inquiry.

PART XIV

UNJUST CONDUCT BY CREDIT PROVIDERS

Section 221. Interpretation of "unjust conduct".

Section 222 empowers the Director to request that a credit provider who has repeatedly engaged in unjust conduct execute a deed containing undertakings as to the future conduct of the credit provider.

Section 223 requires the Director to keep a Register of Undertakings.

Section 224 empowers the Tribunal to make orders that a credit provider refrain from engaging in unjust conduct and to require the credit provider to rectify the consequences of unjust conduct.

PART XV

POWERS AND FUNCTIONS OF DIRECTOR

Section 225 defines and specifies the powers of the Director.

Section 226 deals with the rights of a person in proceedings before the Tribunal to be represented by the Director, or counsel, solicitor or agent for the Director.

Section 227 empowers the Director to take or defend proceedings on behalf of and in the name of a complainant.

Section 228 regulates the conduct of proceedings taken by the Director and the Director's liability for costs in the proceedings.

Section 229 empowers the Director to intervene in any proceedings before a court or the Tribunal.

Section 230 provides for investigation by the Director of an application to the Tribunal under section 86.

Section 231. Interpretation

Section 232 enables the Director or any officer of the Consumer Affairs Bureau to conduct investigations for the purposes of the Ordinance.

Section 233 confers on the Director or an investigating officer certain powers of entry on non-residential premises and powers relating to the production of records and provision of information.

Section 234 restricts the powers of entry of the Director or an investigating officer, except when acting under section 233, to searches conducted after a warrant has been issued under section 235 or after obtaining the consent of the occupier of the premises.

Section 235 deals with the procedure for obtaining a search warrant from a Magistrate and specifies the particulars to be stated in a warrant.

Section 236 sets out the procedure by which consent to enter premises may be obtained from the occupier.

Section 237 confers powers on the Director or an investigating officer to require information or documents to be provided and sets out certain rights and obligations of the person required to provide the information or documents.

Section 238 authorises the Director or an investigating officer to make copies of documents and to retain possession of documents for that purpose.

Section 239 makes it an offence to obstruct the Director or investigating officer in the exercise of his powers, or not to comply with a reasonable requirement of the Director or an investigating officer.

Section 240 preserves the confidentiality of matters of which knowledge is acquired in the course of the administration of the Ordinance.

Section 241 requires the Director to submit an annual report on the operation of the Ordinance.

PART XVI

MISCELLANEOUS

Section 242 deals with the situation where, in relation to land that is subject to a mortgage, certain notices are to be given under both the Ordinance and another law in force in the Territory.

Section 243 extends to the sale of land the concept of the "linked credit provider" dealt with in section 24 in relation to the sale of goods and applies sections 24 to 29 to sales of land.

Section 244 gives effect to a mortgage as a security only.

Section 245 deals with the legibility of documents to which the Ordinance relates.

Section 246 enables the Tribunal to direct a credit provider or mortgagee to discontinue using for the purposes of the Ordinance, a document that, in the opinion of the Tribunal, is in a form that is not readily legible or comprehensible.

Section 247 enables a credit provider or mortgagee to obtain a determination of the Tribunal that a document that the credit provider or mortgagee proposes to use is readily legible and comprehensible.

Section 248 prohibits a credit provider or mortgagee from issuing a document that is not readily legible or from issuing a document in contravention of a direction referred to in section 246.

Section 249 declares that, except where expressly otherwise provided, the Ordinance does not require a document used for the purposes of the Ordinance always to be separate from any other document.

Section 250 recognizes a signature of a person that, by the authority of that person, is written on a document by another person.

Section 251 deals with the service of documents.

Section 252 provides that a document or notice served by post is, unless the contrary is proved, to be deemed to have been served at the time a letter would have been delivered in the ordinary course of post.

Section 253 deals with the proof that a document or notice has been given to or served on a person.

Section 254 prohibits "contracting-out" of the Ordinance.

Section 255 fixes the limitation periods for the bringing of proceedings for offences against the Ordinance.

Section 256 imposes on a director or other officer of a corporation the same liability as the corporation has for an offence against the Ordinance if the offence was committed with the consent or connivance of the director or other officer.

Section 257 preserves rights that a person has apart from the Ordinance.

Section 258 deals with the computation of a short period that includes a Saturday, Sunday or public holiday.

Section 259 enables a court, the Tribunal, the Director or Registrar to extend a period that has elapsed.

Section 260 defines the offences which shall be triable on indictment and the circumstances in which they may be prosecuted summarily.

Section 261 enables evidence of certain matters to be given by means of a certificate by the Director.

Section 262 directs the Tribunal to state reasons for certain decisions under Part XI of the Ordinance and allows for appeals to the Administrative Appeals Tribunal from those decisions.

Section 263 enables the Minister to determine fees for the purposes of the Ordinance.

Section 264 deals with the transitional arrangements for credit provider's and finance broker's licences under the Ordinance.

Section 265 repeals the Money Lenders Ordinances and Hire Purchase Ordinances.

Section 266 empowers the Minister to make regulations for the purposes of the Ordinance.