

Queensland



# CREDIT ACT 1987

**Reprinted as in force on 1 July 1992  
(includes amendments up to Act No. 97 of 1991)**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 1 July 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- use updated references permitted by Division 3 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- use gender neutral office names as permitted by section 25 of that Act;
- correct spelling, and use different spelling consistent with current legislative drafting practice, as permitted by section 26 of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- reorder definitions as permitted by section 30 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 37, 38, 39 and 40 of that Act;
- omit unnecessary referential words as permitted by section 41 of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act;
- correct minor errors as permitted by section 44 of that Act;
- do anything else permitted to be done by that Act or a regulation made under that Act;
- make all necessary consequential amendments as permitted by section 7(1)(l) of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

# Queensland



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## **CREDIT ACT 1987**

[as amended by all amendments that commenced before 1 July 1992<sup>2</sup>]

**An Act relating to the provision of credit and the regulation of contracts providing credit and of related matters; to repeal the *Money Lenders Act 1916*; to amend the *Hire-purchase Act 1959*, the *Administration of Commercial Laws Act 1962* and the *Bills of Sale and Other Instruments Act 1955* each in certain particulars and for other purposes**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Credit Act 1987*<sup>3-6</sup>.

#### **Commencement**

**2.(1)** Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

**(2)** Except as provided by subsection (1), the several provisions of this Act shall commence on a day or on the respective days appointed by proclamation or successive proclamations.

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

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

- (a) if the contract of sale, credit contract or mortgage is in writing and is signed in Queensland by the buyer, debtor or mortgagor; or

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

(2) Subject to subsection (3), a provision of this Act that relates to a contract of sale, credit contract, mortgage or contract for the hiring of goods does not apply to or in relation to a contract of sale, credit contract, mortgage or contract for the hiring of goods, as the case may be, made before the commencement of the provision.

(3) This Act (except sections 59, 60 and 68(1)(c), Parts 2, 7 and 8 and Division 3 of Part 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 commenced before the commencement of that Part.

(4) Where, because of subsection (3), this Act (except sections 59, 60 and 68(1)(c), Parts 2, 7 and 8 and Division 3 of Part 9) applies to and in relation to a continuing credit contract, the credit provider shall, when the credit provider first gives a statement of account referred to in section 62 after the commencement of Part 3 give to the debtor a statement in accordance with section 59 and a notice stating the matters required to be stated in a notice under section 60.

### **Further transitional and other special provisions**

**5A.** The further transitional and other special provisions set out in Schedule 8 have effect (including retrospective effect) as according to their tenor.

## **Act binds Crown**

**6.(1)** Except where otherwise expressly provided by this Act, this Act binds the Crown not only in right of Queensland but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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

## **Interpretation**

**7.(1)** In this Act—

**“acceptable rate of interest”**, in relation to a loan contract or a continuing credit contract, means an annual percentage rate that the credit provider agrees to accept so long as the debtor duly observes and performs the terms of the contract;

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

- (a) in relation to the period of 12 months after the contract is made—the sum (not exceeding the amount prescribed for the time being or, if no amount is prescribed, \$100) of—
  - (i) any amount that, under the contract, is payable by the debtor to the credit provider as the fixed fee or other charge for entering into the contract; and
  - (ii) any amount that, under the contract, is payable by the debtor to the credit provider as the fixed annual fee or other annual charge in respect of that period; or
- (b) in relation to any other period of 12 months—any amount (not exceeding the amount prescribed for the time being or, if no amount is prescribed, \$50) that, under the contract, is payable by the debtor to the credit provider as the fixed annual fee or other annual charge in respect of that period;

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

- (a) the minimum credit charge; or
- (b) the amount of any credit charge which, under the contract, has accrued at that time calculated as provided in section 13;

whichever is the greater;

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

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

**“amount financed”** means—

- (a) in relation to a regulated credit sale contract—the sum of the balance of the cash price required to be stated in accordance with clause 1(c) of Schedule 2 and the total of the amounts required to be stated in accordance with clause 1(d) to (i) of that Schedule;
- (b) in relation to any other credit sale contract—the sum of the cash price (less the deposit, if any) and amounts payable under the contract by the debtor to the credit provider that, if the contract were a regulated credit sale contract, would be required to be stated in accordance with clause 1(d) to (i) of Schedule 2;
- (c) in relation to a regulated loan contract—the sum of the amounts required to be stated in accordance with clause 1 of Schedule 4;
- (d) in relation to any other loan contract—the sum of the amount agreed under the contract to be lent and amounts payable under the contract by the debtor to the credit provider that, if the contract



were a regulated loan contract, would be required to be stated in accordance with clause 1(b) to (f) of Schedule 4;

**“annual percentage rate”** means annual percentage rate within the meaning of section 12;

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

**“billing cycle”** means billing cycle as referred to in section 51;

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

- (a) a body corporate constituted under the *Building Units and Group Titles Act 1980* by the proprietor or proprietors of lots within the meaning of that Act; or
- (b) a company owning an interest in land and having a memorandum or articles of association conferring on owners of shares in the company the right to occupy certain parts of a building erected on that land;

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

**“cash”** includes cheques;

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

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

credit provider of the supplier and, at the time at which the contract is made, the goods or services are reasonably available for purchase for cash but are not available for purchase from the supplier for cash—the price at which at that time the buyer might reasonably have bought goods or services of that kind for cash; or

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

**“commercial vehicle”** means—

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

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

- (a) that is paid or payable in respect of the introduction of the debtor to the credit provider and paid or payable by the credit provider or

the spouse of the credit provider or, where the credit provider is a body corporate, the credit provider or a related body corporate within the meaning of the Corporations Law; or

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

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

**“continuing credit contract”** means a continuing credit contract within the meaning of section 49;

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

**“credit”** includes any form of financial accommodation other than—

- (a) credit provided to a debtor predominantly for the purposes of carrying on or establishing or in connection with the carrying on or establishing of a trade, business or profession by the debtor; or
- (b) credit provided for the purchase of services, where the buyer has contracted to provide those services, or goods and services that include those services, to a third person; or
- (c) any transaction prescribed as being a transaction that is not credit within the meaning of this Act;

but, despite paragraph (a), credit includes any form of financial accommodation provided to a debtor in respect of a contract relating to a commercial vehicle or farm machinery;

**“credit charge”** means credit charge within the meaning of section 13(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 providing credit under the contract in the course of a business carried on by the person; or
- (b) in relation to a proposed credit contract—the person by whom credit is to be provided under the contract in the course of a business carried on by the person;

**“credit sale contract”** means, subject to sections 15 and 16, a contract of sale of goods or services where in respect of the payment for the goods or services credit is, or is to be, provided to a debtor, being a buyer but not being a body corporate, by a supplier in the course of a business carried on by the supplier and, under the contract—

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

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

**“cross claim”** includes counterclaim, set off and third party claim;

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

**“debtor”** means—

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

**“default charge”** means—

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

contract—a charge made by a credit provider in accordance with section 74; or

- (b) in relation to any other credit contract—an amount payable under the contract by the debtor because of the debtor’s failure to fulfil the debtor’s obligations under the contract;

**“deferral charge”** means—

- (a) in relation to a regulated credit sale contract or a regulated loan contract—a charge made by a credit provider in respect of the deferral of the payment of an amount in accordance with section 73; or
- (b) in relation to any other credit sale contract or loan contract—a charge made by a credit provider in respect of the deferral of the payment of an amount payable under the contract by the debtor;

**“deposit”** means—

- (a) in relation to a credit sale contract relating to goods—an amount that, under the contract, was paid or payable by the buyer to the supplier on or before the delivery of the goods or, where the delivery is not completed on 1 day, on or before the commencement 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 commencement of the supply of the services; or
- (c) in relation to a credit sale contract relating to goods and services—an amount that, under the contract, was paid or payable by the buyer to the supplier on or before the commencement of the delivery or supply of the goods and services;

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

**“determination”** includes order, direction, decision or declaration;

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

**“enforcement expense”** means—

- (a) in relation to a regulated contract—an amount that, subject to section 77, 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; or
- (b) in relation to a regulated mortgage—an amount that, subject to section 94, the mortgagor is liable to pay to the mortgagee in relation to the exercise of a right under the mortgage arising from the default of the mortgagor; or
- (c) in relation to any other credit contract or mortgage—an amount expended or the amount of a liability incurred by the credit provider or mortgagee under the contract or mortgage to remedy a default of the debtor or mortgagor or in the exercise of rights of the credit provider or mortgagee under the contract or mortgage arising 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 on which, under the contract, they are required to be paid; or
- (b) in accordance with an applicable method prescribed for the purposes of calculating estimated credit charges;

**“farm machinery”** means—

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

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

**“farming undertaking”** includes—

- (a) any agricultural, 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;

**“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 not being goods within the meaning of this Act;

**“guarantee”** includes indemnity;

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

- (a) a person who is the supplier, or spouse of the supplier, of goods or services to which the contract or mortgage relates or, where the supplier is a body corporate, a person who is a director or officer of the body corporate or is a related body corporate within the meaning of the Corporations Law or a director or officer of a related body corporate or spouse of such a director or officer; or
- (b) a person who enters into a contract of guarantee or a contract of indemnity—
  - (i) in respect of the obligations under a credit contract of a person who deals in goods or services of the kind to which the contract relates; or
  - (ii) in respect of the obligations of a debtor under a loan contract made for the purposes of the acquisition of goods of a kind

in which the debtor deals;

**“instalment”** does not include a deposit;

**“judgment”** includes order;

**“land”** has the same meaning as it has in the *Property Law Act 1974*;

**“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) with whom the supplier has an agreement or arrangement, whether formal or informal, under which contracts or applications or offers for credit from the credit provider may be signed by persons at the premises of the supplier;

**“loan contract”**, subject to section 17, means a contract under which a person in the course of a business carried on by the person provides or agrees to provide, whether on 1 or more occasions, credit to another person, not being a body corporate, in 1 or more of the following ways—

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

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

**“minimum credit charge”**, in relation to a credit sale contract or a loan



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

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

**“mortgagee”**, in relation to a mortgage, means the person to whom the mortgage is given;

**“mortgagor”**, in relation to a mortgage, means the person by whom the mortgage is given;

**“motor vehicle”** means a motor vehicle within the meaning of the *Transport Infrastructure (Roads) Regulation 1991* made under the *Transport Infrastructure (Roads) Act 1991*;

**“officer”**, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 9 of the Corporations Law;

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

**“predetermined credit charge”**, in relation to a credit contract that specifies a fixed amount as the whole or part of the credit charge (not being a minimum credit charge), means that fixed amount;

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

**“recognised State”** means a State or Territory in respect of which a declaration referred to in section 19 is in force;

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

**“Registrar”** means the Registrar of Commercial Acts, Brisbane, appointed under the *Administration of Commercial Laws Act 1962*, and includes any Deputy Registrar of Commercial Acts, Brisbane, appointed under that Act;

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

**“regulated continuing credit contract”** means a continuing credit contract to which Part 3 applies;

**“regulated contract”** means regulated credit sale contract, regulated loan contract or regulated continuing credit contract;

**“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;

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

**“security interest”** means an interest or power—

- (a) reserved in or over an interest in goods or other property; or
- (b) created or otherwise arising in or over an interest in goods or other property under a mortgage, bill of sale, 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 15 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 one 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 the person or persons 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 not being 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 not being services within the meaning of this Act;

**“statutory rebate”** means—

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

**“supplier”**—

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

**“supply”** includes—

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

**“tied continuing credit contract”** means tied continuing credit contract within the meaning of section 14(2);

**“tied loan contract”** means tied loan contract within the meaning of section 14(1);

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

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

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

**(2) In this Act—**

- (a) a reference to goods or services includes a reference to goods and services;
- (b) a reference to the resupply of goods bought from a person includes a reference to—

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

(5) Where a regulation made for the purposes of this section—

- (a) prescribes an amount other than \$40 000 as the monetary limit for the purposes of this Act, a reference in this Act (including this section) to \$40 000 shall be construed as a reference to the amount so prescribed;
- (b) prescribes an annual percentage rate other than 14% as the annual percentage rate for the purposes of this Act, a reference in this Act (including this section) to a rate of 14% shall be construed as a reference to the annual percentage rate so prescribed.

### **Jurisdiction of courts**

8. In this Act, a reference to a court in relation to any contract or other matter—

- (a) where proceedings in relation to the contract or matter have been instituted in, or are before, a court (including a Small Claims Tribunal)—is a reference to that court; or
- (b) in any other case, is a reference to the court the monetary jurisdiction of which is not exceeded by the total amount payable in respect of the contract or other matter.

### **Credit contracts deemed to be regulated contracts**

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

- (a) a credit sale contract or a loan contract is a credit sale contract or a loan contract to which Part 3 applies; or
- (b) a continuing credit contract is a continuing credit contract to which Part 3 applies;

it shall be presumed, unless the contrary is established, that Part 3 applies to the credit sale contract or loan contract or to the continuing credit contract.

**Application of Act to assignors and assignees**

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

**(2)** Nothing in subsection (1) operates to confer any rights under this Act on an assignee of a credit provider or mortgagee where the assignment is in contravention of this Act.

**(3)** Subsection (1) does not apply where the rights and obligations referred to in subsection (1)(b),(c) or (f) are assigned or transferred, or pass by operation of law, to a body corporate.

**Contracts of employment excluded**

**11.** A reference in this Act to a contract or agreement in respect of the payment by a debtor for services supplied by another person does not include a reference to a contract or agreement that is solely a contract of service that creates the relationship of employer and employee 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 1990*.

**Annual percentage rate**

**12.** For the purposes of this Act, a reference to the annual percentage rate—

- (a) in relation to a credit sale contract or a loan contract in respect of

which the annual percentage rate has not been disclosed to the debtor or has been disclosed otherwise than in accordance with section 40—is a reference to the lowest percentage rate per annum that can be determined in accordance with that section in relation to the contract; 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 40—is a reference to the rate disclosed; and
- (c) in relation to a continuing credit contract—is a reference to the annual percentage rate within the meaning of section 56.

### **Credit charge**

**13.(1)** For the purposes of this Act a reference to a credit charge—

- (a) in relation to a credit sale contract or a loan contract—is a reference to the amount by which the amount payable under the contract by the debtor to the credit provider or a person on the debtor's behalf (not including amounts of deferral charges, default charges or enforcement expenses) exceeds the amount financed; and
- (b) in relation to a billing cycle of a continuing credit contract—is a reference to a credit charge within the meaning of section 55.

**(2)** For the purposes of the interpretation of “**accrued credit charge**” in relation to a credit sale contract or a loan contract, the amount of the credit charge which has accrued at a particular time shall be calculated—

- (a) by adding together the amounts ascertained by applying the daily percentage rate to the unpaid daily balances (being daily balances before that time)—
  - (i) in the case of a credit sale contract—of the amount financed; or
  - (ii) in the case of a loan contract—of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time; or
- (b) where Schedule 1 applies to the credit sale contract or loan contract—in accordance with the formula set out in that Schedule;

or

- (c) where an applicable method is prescribed for the purposes of this subsection—in accordance with that method.

(3) In calculating the amount of a credit charge which has accrued under a credit sale contract or a loan contract, the credit provider may, if the credit provider so determines, apply a percentage rate per annum that is lower than the annual percentage rate disclosed under the contract.

### **Tied loan contracts and tied continuing credit contracts**

**14.(1)** For the purposes of this Act, a loan contract is a tied loan contract where the credit provider enters into the loan contract with a person who is a buyer of goods or services supplied by a supplier and—

- (a) the credit provider knows or ought reasonably to know that the buyer enters into the loan contract wholly or partly for the purposes of payment for the goods or services; and
- (b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier.

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

### **Contracts for hiring of goods deemed credit sale contracts**

**15.(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 (other than any goods that are a commercial vehicle or farm machinery) at the time when the contract for the hiring is made is not more than \$40 000; and
- (b) under the contract, the person to whom the goods are hired has a right, obligation or option to purchase the goods.

(2) A contract for the hiring of goods shall be deemed to be a credit sale contract if the cash price of the goods at the time the contract is made is not



more than \$40 000 or the goods are a commercial vehicle or farm machinery and—

- (a) the contract provides, or it is reasonably likely having regard to the nature of the goods that the goods are, or are to be, affixed to land or to other goods and the goods are not, or when so affixed would not be, reasonably capable of being redelivered to the supplier; or
- (b) before the contract is made, the supplier—
  - (i) acts in such a manner that the person to whom the goods are hired ought reasonably to infer that the supplier is willing, whether during or within a reasonable time after the period during which the contract is in force, to negotiate the sale to the person 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 the person of the goods or of goods of such a similar value and description; or
- (c) before the contract is made, it is agreed that the person to whom the goods are hired may continue the contract for a nominal consideration for a period that exceeds, or for 2 or more periods that together exceed, the period of 2 years after the expiration of the original term of the contract for the hiring.

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

- (a) the person from whom the goods are hired is the credit provider under the credit sale contract; 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 upon 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 the supplier by the person to whom the goods are hired under the contract; and
- (g) any provision in the contract for hiring by virtue of which the supplier is empowered to take possession or dispose of the goods to which the contract relates is void.

(4) Subsection (2) does not apply to a contract for the hiring of goods that are or might reasonably be expected to be used by the person to whom they are hired for the purpose of a business carried on by the person or by the person and another person or other persons, where the whole or the greater part of the amount payable under the contract is or might reasonably be expected to be a loss or outgoing necessarily incurred in carrying on the business.

(5) In this section—

- (a) a reference to a contract for the hiring of goods does not include a reference—
  - (i) to a contract for the hiring of goods to a body corporate; or
  - (ii) to a contract for the hiring of goods to the extent that the financial accommodation provided in relation to the goods is not credit within the meaning of this Act; and
- (b) “**cash price**”, in relation to a contract for the hiring of goods, means—
  - (i) where at the time the contract is made the goods are available for purchase for cash from the person from whom the goods are hired—the lowest price at which the person to whom the goods are hired might have bought the goods from the first mentioned person for cash; or
  - (ii) where at the time the contract is made the goods are

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

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

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

**16.(1)** For the purposes of this Act, a reference to a credit sale contract does not include—

- (a) a reference to a contract of sale of goods or services in respect of the payment for which credit is, or is to be, provided under a continuing credit contract; or
- (b) a reference to a lay-by sale within the meaning of subsection (2).

**(2)** A reference in subsection (1) to a lay-by sale is a reference to a sale of goods, or an agreement to sell goods, under conditions, express or implied, which provide that—

- (a) any of the goods sold or agreed to be sold will not be delivered to the purchaser until the purchase price is paid for the goods to be delivered, whether or not any charge is expressed to be payable for storage of the goods; and
- (b) the purchase price or, where a deposit is paid, the balance of the purchase price—
  - (i) is to be payable by instalments (whether the number of instalments or the amount of all or any of the instalments is fixed by those conditions or is left at the option of the purchaser) payable over a fixed or ascertainable period; or
  - (ii) is to be paid at the expiration of a fixed or ascertainable period with an option, express or implied, for the purchaser to make payments in respect of the purchase price during that period.

**Loan contract does not include amounts of credit under credit sale contracts or continuing credit contracts**

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

**Business of providing credit**

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

**Recognised States**

**19.** The Governor in Council—

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

**Exceptions from application of Act**

**20.** The provisions of this Act specified in Schedule 9 do not apply to or with respect to the persons, classes of persons, matters or things specified in that Schedule to the extent indicated in that Schedule.

**Variation of application of Act**

**21.(1)** The Governor in Council may, by order in council, declare that the provisions of this Act, or such of those provisions as are specified in the order—

- (a) do not have effect in relation to a specified person or to a specified

class of persons; or

- (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified; or
- (c) do not have effect in relation to a specified transaction or matter or class of transactions or matters; or
- (d) have effect in relation to a specified transaction or matter or class of transactions or matters to such extent as is specified; or
- (e) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons or in relation to specified associated matters; or
- (f) have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.

(2) An order in council made under subsection (1)—

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

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

(4) A person to whom an order in council under this section applies, or to whom such an order as varied from time to time applies, shall comply with the terms and conditions (if any) to which the operation of the order is subject.

Maximum penalty—100 penalty units.

(5) Section 28A of the *Acts Interpretation Act 1954* (Regulations) shall apply with respect to orders in council made for the purposes of this section and, for the purposes of such application, that section shall be read and construed as if references in that section to regulations were references to orders in council made for the purposes of this section.

## **PART 2—CONTRACTS OF SALE**

### **Contracts of sale to which Part applies**

**22.(1)** In this Part, a reference to a contract of sale is a reference—

- (a) to a contract of sale of goods (not being a commercial vehicle or farm machinery) or services where the cash price in relation to the sale is not more than \$40 000; or
- (b) to a contract of sale of goods, being a commercial vehicle or farm machinery; or
- (c) to a contract of sale—
  - (i) of goods, being a commercial vehicle or farm machinery; and
  - (ii) of other goods or services in relation to which the cash price is not more than \$40 000.

**(2)** For the purpose of this Part, a reference to a buyer or a person who buys or proposes to buy goods or services does not include a reference to a body corporate.

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

**23.(1)** Where a buyer, before entering into a contract of sale of goods or services, makes it known to the supplier that the buyer requires credit to be provided in respect of the payment for the goods or services and the credit is not provided by the supplier, the buyer, if the buyer takes reasonable steps to obtain the credit but does not obtain the credit, may within a reasonable period after the contract is made, by notice in writing given to the supplier, rescind the contract.

**(2)** Where a buyer has purported to rescind a contract of sale as referred to in subsection (1), a court may, on the application of the supplier or the buyer, declare whether or not the purported rescission was valid and, if it declares that it was valid—

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

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

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

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

Maximum penalty—40 penalty units.

### **Discharge of mortgage relating to discharged regulated contracts**

**25.(1)** Where a regulated credit sale contract is rescinded or discharged (whether under this Act or any other Act or law), any mortgage or guarantee that relates to the contract is also discharged to the extent that it secures or guarantees the payment of a debt or other pecuniary obligation, or the performance of any other obligation, under the regulated credit sale contract.

**(2)** Where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law)—

- (a) any regulated loan contract relating to the contract of sale and made by the buyer with the supplier is also discharged to the extent that it provides for the payment of a debt or other pecuniary obligation, or the performance of any other obligation, relating to the contract of sale; and
- (b) any mortgage or guarantee relating to the regulated loan contract to the extent that the contract is discharged is also discharged to the extent that it secures or guarantees the payment of a debt or other pecuniary obligation, or the performance of any other obligation, under the regulated loan contract.

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

- (a) in respect of the contract of sale, there is a regulated continuing credit contract made by the buyer with the supplier; and

- (b) in relation to the regulated continuing credit contract there is a regulated mortgage or a guarantee;

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

### **Liability of supplier and linked credit provider**

**26.(1)** Where a buyer who has entered into a tied loan contract or tied continuing credit contract with a linked credit provider of a supplier for the provision of credit in respect of the payment by the buyer for goods or services supplied by the supplier under a contract of sale is entitled to claim damages against or recover a sum of money from the supplier for misrepresentation, breach of contract or failure of consideration in relation to the contract of sale, the supplier and linked credit provider are, subject to this section, jointly and severally liable to the buyer for the damages or sum of money.

**(2)** It is a defence to proceedings arising under subsection (1) against a linked credit provider of a supplier if the linked credit provider proves—

- (a) that the credit provided by the credit provider to a buyer was provided as a result of an approach by the buyer to the credit provider which was not induced by the supplier; or
- (b) where the proceedings relate to a contract of sale with respect to which a tied loan contract applies—that—
  - (i) after due inquiry before the credit provider became such a linked credit provider, the credit provider was satisfied that the supplier was of good reputation in respect of the supplier's 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, the credit provider had not had cause to suspect, and had not suspected, that the buyer might be entitled to claim damages against, or recover



a sum of money from, the supplier for misrepresentation, breach of contract or failure of consideration as referred to in subsection (1); and

(iii) since becoming such a linked credit provider, but before the tied loan contract was entered into, the credit provider had not had any cause to suspect, and had not suspected, that the supplier might be unable to meet the supplier's liabilities as and when they fell due; or

(c) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider under an agreement of the kind referred to in section 49(2)(a)(ii) applies—that, having regard to—

(i) the nature and volume of business carried on by the linked credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case;

the linked credit provider, before becoming aware of the contract of sale or of proposals for the making of the contract of sale (whichever the linked credit provider first became aware of), did not suspect, and could not reasonably have been expected to suspect, that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract or failure of consideration as referred to in subsection (1).

**(3)** Subject to subsection (4), a buyer may in any proceedings set up the liability of a linked credit provider for damages or a sum of money under subsection (1) in diminution or extinction of the buyer's liability upon any claim for damages or a sum of money made by the linked credit provider against the buyer in the proceedings.

**(4)** Subject to subsection (5), a buyer may not—

(a) bring proceedings for damages or to recover a sum of money from a linked credit provider; or

(b) where proceedings are brought against the buyer by a linked credit provider—make a cross claim or exercise a right referred to in subsection (3) against the credit provider;

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

(5) Subsections (4), (8)(a) and (9)(a) do not apply where—

(a) the supplier—

- (i) is a bankrupt or a person whose affairs are being dealt with under Part X of the *Bankruptcy Act 1966* of the Commonwealth; or
- (ii) being a body corporate, has been dissolved or has commenced to be wound up; or
- (iii) being a natural person, has died; or

(b) the court believes on reasonable grounds that it is not reasonably likely that any part of a judgment obtained against the supplier would be satisfied and has on the application of the buyer declared that subsections (4) and (8)(a) do not apply in that case; or

(c) the buyer satisfies the court that the buyer has made reasonable efforts to locate the supplier but has been unable to do so and the court declares that subsections (4) and (8)(a) do not apply in that case.

(6) A reference in subsection (5) to the commencement of winding up is a reference to commencement of winding up as determined under the law relating to companies in the place where the body corporate is being wound up.

(7) The liability of a linked credit provider to a buyer for damages or a sum of money in respect of a contract of sale referred to in subsection (1) does not exceed the sum of—

- (a) the amount financed under the tied loan contract or tied continuing credit contract in relation to the contract of sale; and
- (b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and
- (c) the amount of costs (if any) awarded by the court against the

linked credit provider or supplier or both.

(8) Where in the proceedings in respect of the liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, the judgment—

- (a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and
- (b) may be enforced against the linked credit provider only to the extent of—
  - (i) the amount calculated in accordance with subsection (7); or
  - (ii) so much of the judgment debt as has not been satisfied by the supplier;

whichever is the less.

(9) Where in proceedings in respect of the liability arising under subsection (1), a right referred to in subsection (3) is established against a linked credit provider, the buyer—

- (a) shall not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider, a written demand has been made on the supplier for satisfaction of the judgment and the demand has remained unsatisfied for not less than 30 days; and
- (b) may receive the benefit only to the extent of—
  - (i) the amount calculated in accordance with subsection (7); or
  - (ii) so much of the judgment debt as has not been satisfied by the supplier;

whichever is the less.

(10) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider's liability under subsection (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings because of which the liability was incurred.

(11) Despite anything to the contrary in any other Act, where in proceedings in respect of the liability arising under subsection (1) judgment is given against a supplier and a linked credit provider, or against a linked credit provider, for damages or a sum of money, the court shall upon application by the buyer, unless good cause is shown to the contrary, allow or award interest to the buyer against the supplier and linked credit provider or against the linked credit provider, as the case may be, upon the whole or part of the damages or sum of money—

- (a) at the percentage rate per annum that is the annual percentage rate under the tied loan contract or tied continuing credit contract; or
- (b) at the percentage rate prescribed for the time being or, if no rate is prescribed, at 8% per annum;

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

(12) In determining whether good cause is shown against allowing or awarding interest under subsection (11) on the whole or part of the damages or sum of money, the court shall take into account any payment made into court by the supplier or linked credit provider, as the case may be.

(13) Where a judgment in respect of a liability arising under subsection (1) in relation to a contract of sale is enforced against a linked credit provider, the linked credit provider is subrogated to the extent of the judgment so enforced to any rights that the buyer would, but for the judgment, have had against any person in respect of the loss or damage suffered by the buyer 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.

### **Discharge of tied loan contract and mortgage upon rescission or discharge of contract of sale**

**27.(1)** Subject to section 29, where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) and there is a tied loan contract made with the buyer by a linked credit provider of the supplier under the contract of sale, at the same time as the contract of sale is rescinded or discharged—

- (a) the tied loan contract is discharged to the extent that it was entered into for the purposes of the payment for the goods or services supplied under the contract of sale; and
- (b) any mortgage relating to the tied loan contract is discharged to the extent that it secures the payment of a debt or other pecuniary obligation or performance of any other obligation under the tied loan contract.

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

(3) Where, 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 the amount (if any) 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 the amount (if any) paid under the tied loan contract, to the extent that it is discharged, to the buyer by the credit provider, other than amounts paid to the buyer and paid by the buyer to the supplier;

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

- (d) if the goods are in the possession of the buyer—
  - (i) where, before the rescission or discharge of the contract of sale, there was not a mortgage relating to the tied loan

contract—the buyer shall deliver the goods to the supplier; or

- (ii) where before the rescission or discharge of the contract of sale, there was a mortgage relating to the tied loan contract—to the extent that it is discharged, the buyer shall deliver the goods to the credit provider; and

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

(4) Where, under subsection (3)(d), goods are delivered to the credit provider, the credit provider is entitled to possession of the goods as against the supplier until the credit provider has been paid the amount for which the supplier is liable to the credit provider under subsection (3)(b).

### **Discharge of mortgage relating to tied continuing credit contract on discharge or rescission of contract of sale**

**28.(1)** Subject to section 29, where a contract of sale is rescinded or discharged (whether under this Act or any other Act or law) and there is a tied continuing credit contract made with the buyer by a linked credit provider of the supplier under the contract of sale, any mortgage relating to the tied continuing credit contract is discharged to the extent that it secures payment of the amount entered in relation to the contract of sale in an account of the debtor kept by the credit provider under the tied continuing credit contract and the amount (if any) of the credit charge so entered and attributable to the contract of sale and—

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

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

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

- (ii) where, before the rescission or discharge of the contract of sale, the goods were subject to a mortgage relating to the tied continuing credit contract, the buyer shall deliver the goods to the credit provider; and
- (d) if the goods are in the possession of the credit provider and no amounts are owed to the credit provider under paragraph (b), the credit provider shall deliver the goods to the supplier.

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

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

**Provisions of ss.27 and 28 are in addition to other rights etc.**

**29.** The provisions of sections 27 and 28—

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

**Disputes**

**30.** Where there is a dispute arising out of the operation of section 25, 27 or 28, a court may, on the application of a buyer, supplier, credit provider, mortgagee or guarantor, or any other person (being a person claiming an interest in the goods), make an order declaring or adjusting rights or liabilities affected by the operation of that section—

- (a) to give effect to, or to enforce, any rights or liabilities consequent upon that operation; or
- (b) subject to any such rights or liabilities, to restore the buyer, supplier and credit provider, and any mortgagee, guarantor or

other person interested in the goods, as nearly as practicable to their respective positions before the contract to which the dispute relates was entered into.

### **Supplier to inform linked credit provider of rescission or discharge of contract of sale**

**31.** A supplier who becomes aware that a contract of sale by the supplier is rescinded or discharged, being a contract of sale in respect of which the supplier knows a linked credit provider of the supplier has—

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

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

## **PART 3—REGULATED CONTRACTS**

### ***Division 1—Credit sale contracts and loan contracts***

#### **Application of Part**

**32.(1)** In this Part, a reference to a credit sale contract does not include a reference to a credit sale contract relating to goods or services in relation to which the cash price is more than \$40 000 unless—

- (a) it is a contract relating to a commercial vehicle or farm machinery; or
- (b) it is a contract relating to—
  - (i) a commercial vehicle or farm machinery; and
  - (ii) other goods or services in relation to which the cash price is



not more than \$40 000.

(2) In this Part, a reference to a loan contract does not include a reference to a loan contract in respect of which—

- (a) the amount financed is more than \$40 000; or
- (b) where the amount financed is not more than \$40 000—
  - (i) there is no annual percentage rate or there is only 1 annual percentage rate and that rate does not exceed 14%; or
  - (ii) there is an acceptable rate of interest and a higher annual percentage rate that exceeds the acceptable rate by not more than 2% and that acceptable rate does not exceed 14%;

unless, when the contract is made, a mortgage relating to a commercial vehicle or farm machinery has been, or is agreed to be, entered into to secure the payment of a debt or the performance of an obligation under the contract.

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

### **Contracts to be in writing**

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

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

### **Form and copies of contract**

**34.(1)** A person who 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 to a person a document for signature by that person as an offer in writing to the credit provider to enter into a credit sale contract or a loan contract unless it includes a notice that is in the form prescribed for the purposes of this subsection and is in a position so prescribed or, in a particular case, in a position approved by the Registrar.

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

(3) Where—

- (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 that person's own use certified by the credit provider, agent or supplier as a true copy of the first mentioned document.

(4) Where a credit provider or an agent of a credit provider gives to a person an offer in writing signed by or on behalf of the credit provider to enter into a credit sale contract or a loan contract, the credit provider or agent

shall, before that person accepts the offer, also give to that person a true copy of the offer for that person's own use certified by the credit provider or agent as a true copy of the offer.

(5) Where a person signs a document and thereby offers to enter into, or enters into, a credit sale contract or a loan contract, any subsequent alteration of, or addition to, the terms and conditions of the contract has no force or effect unless, after the alteration or addition has been made, the person has, opposite the alteration or addition, signed or initialled the margin of—

- (a) the document in which the terms and conditions of the contract are specified; and
- (b) the copy of the document given to the person pursuant to subsection (3) or (4).

(6) Where a person signs a document and thereby offers to enter into, or enters into, a credit sale contract or a loan contract—

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

Maximum penalty—100 penalty units.

(7) In this section—

**“offer in writing”** includes a document that if signed by or on behalf of the credit provider and the debtor, would be a credit sale contract or a loan contract.

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

**35.(1)** Where a person has signed an offer in writing to a credit provider to enter a credit sale contract or a loan contract the credit provider shall,

within 21 days after accepting the offer, give to the debtor notice in writing of the acceptance endorsed on, or accompanied by, a copy of the offer.

Maximum penalty—40 penalty units.

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

- (a) an offer to enter into a credit sale contract relating to goods that, in accordance with the offer, is accepted by delivery of the goods; or
- (b) an offer to enter into a credit sale contract relating to services that in accordance with the offer, is accepted by commencement of performance of the services.

(3) In this section—

“**offer in writing**” includes a document that, if signed by or on behalf of the credit provider and the debtor, would be a credit sale contract or a loan contract.

### **Debtor to be given prescribed statement of rights under Act**

**36.(1)** Where a credit sale contract or a loan contract is made, the credit provider shall, not later than 21 days after the contract is made, give to the debtor a statement in or to the effect of the form prescribed for the purposes of this section.

Maximum penalty—40 penalty units.

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

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

**37.(1)** A credit sale contract relating to goods or services shall include—

- (a) the date on which the contract, or an offer to enter into the contract, was signed by the debtor; and
- (b) a description or identification of the goods or 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) where, at the relevant date, it is possible to express the whole of the credit charge as an amount of money—a statement of the total of—
  - (i) the credit charge; and
  - (ii) the amount financed; and
- (f) a statement of the annual percentage rate in accordance with section 40; and
- (g) a statement of the person to whom, and the place at which, 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) where each instalment is the same amount—that amount;
  - (ii) where each instalment except the last is the same amount—that amount and the amount of the last instalment;
  - (iii) where neither subparagraph (i) nor subparagraph (ii) applies—the amount of each instalment;
  - (iv) the number of instalments;
  - (v) the time for the payment of each instalment or the time for the payment of the first instalment and the interval between each instalment and the subsequent instalment; and
- (i) if a commission charge is payable—a statement to that effect and, except in so far as the information is not known by the credit provider or is not readily available to the credit provider, a statement of the person to whom and the person by whom the commission charge is payable; and
- (j) a statement whether any mortgage relating to the contract has been or is agreed to be entered into.

(2) A credit provider shall not include in the amount financed under a credit sale contract—

- (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance (not being compulsory insurance relating to goods) other than a risk specified in clause 1(d)(iv) or (e) of Schedule 2; or
- (b) where a mortgage relating to the contract has been entered into—an amount in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any Act exceeding an amount calculated by applying the prescribed rate for title insurance in relation to goods of that class; or
- (c) an amount in respect of the discharge of a liability of the debtor to the credit provider under a regulated contract that exceeds the amount of the net balance due to the credit provider calculated in accordance with section 104 immediately before the discharge of the liability.

(3) Nothing in this section requires the inclusion in a credit sale contract of a statement referred to in this section that is not applicable to the contract.

(4) In this section—

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

### **Disclosure in loan contracts**

**38.(1)** A loan contract shall include—

- (a) the date on which the contract, or an offer to enter into the contract, was signed by the debtor; 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) where, at the relevant date, it is possible to express the whole of the credit charge as an amount of money—a statement of the total of—

- (i) the credit charge; and
  - (ii) the amount financed; and
  - (e) a statement of the annual percentage rate in accordance with section 40; and
  - (f) a statement of the person to whom and the place at which 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) where each instalment is the same amount—that amount;
    - (ii) where each instalment except the last is the same amount—that amount and the amount of the last instalment;
    - (iii) where neither subparagraph (i) nor subparagraph (ii) applies—the amount of each instalment;
    - (iv) the number of instalments;
    - (v) the time for the payment of each instalment or the time for the payment of the first instalment and the interval between each instalment and the subsequent instalment; and
  - (h) if a commission charge is payable—a statement to that effect and, except in so far as the information is not known by the credit provider or is not readily available to the credit provider, a statement of the person to whom and the person by whom the commission charge is payable; and
  - (i) a statement whether any mortgage relating to the contract has been or is agreed to be entered into.
- (2) A credit provider shall not include in the amount financed under a loan contract—
- (a) an amount payable by the debtor to the credit provider in respect of a risk under a contract of insurance other than a risk specified in clause 1(b) of Schedule 4; or
  - (b) where a mortgage relating to the contract has been entered into—an amount in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the

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

- (c) an amount in respect of the discharge of a liability of the debtor to the credit provider under a regulated contract that exceeds the amount of the net balance due to the credit provider calculated in accordance with section 104 immediately before the discharge of the liability.

(3) Nothing in this section requires the inclusion in a loan contract of a statement referred to in this section that is not applicable to the contract.

(4) In this section—

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

### **Add on contracts**

**39.(1)** This section applies to a credit sale contract or loan 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 or loan contract (not being a credit sale contract or a loan contract in relation to which there is a mortgage) that is discharged upon the entering into of the first mentioned contract.

(2) A credit sale contract or a loan contract to which this section applies does not fail to be in accordance with section 37 or 38 because only that the statements referred to—

- (a) in the case of a credit sale contract, in section 37(1)(c) to (h); or
- (b) in the case of a loan contract, in section 38(1)(b) to (g);

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 37(1)(c), (d), (f), (g) and (h) or section 38(1)(b), (c), (e), (f) and (g) 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 or to the effect of the prescribed form.

(4) At any time after a credit sale contract or a loan contract to which this section applies is entered into and before the expiration of 10 days after the day on which the notice referred to in subsection (3)(a) has been given, the debtor may rescind the contract by notice in writing given to the credit provider.

(5) Upon rescission under subsection (4) by the debtor of a credit sale contract or a loan contract to which this section applies, the other credit sale contract or loan contract referred to in subsection (1) shall, by force of this subsection, revive, and any payments made under the credit sale contract or loan contract to which this section applies shall be deemed to have been made under the revived contract.

(6) Where a credit sale contract or a loan contract revives by force of subsection (5), the debtor shall be deemed not to be or have been in breach of, or in default under, the revived contract in respect of the period during which the credit sale contract or loan 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 or loan contract to which this section applies.

(7) Where a credit sale contract to which this section applies is rescinded by the debtor, the debtor shall, on demand by the supplier, return any goods to which the contract relates, other than goods to which the revived contract applies.

(8) Where there is a dispute arising out of the operation of this section, a court may, on the application of a debtor, credit provider or guarantor, make an order declaring or adjusting rights or liabilities affected by the operation of this section—

- (a) to give effect to, or to enforce, any rights or liabilities consequent upon that operation; or
- (b) subject to any such rights or liabilities, to restore the debtor, credit

provider or guarantor, as nearly as practicable to their respective positions before the credit sale contract or loan contract to which this section applies was entered into.

(9) The reference in subsection (1) to the net balance due to the credit provider shall be construed in accordance with section 104, and as if that section were contained in this Part.

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

**40.** The annual percentage rate required under section 37 or 38 to be stated in a credit sale contract or a loan contract is—

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

whichever the credit provider determines.

### **Acceptable rate of interest**

**41.(1)** Where the payment of a debt or other pecuniary obligation or the performance of any other obligation under a loan contract is secured by a mortgage of land, the loan contract may, despite section 42, include an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2%.

**(2)** Where, in accordance with subsection (1), a loan contract includes 2 annual percentage rates, the statement in accordance with section 40 of the annual percentage rate required under section 38 shall be made in respect of each rate.

### **Inclusion of more than 1 rate of interest**

**42.(1)** Subject to sections 41 and 72, a credit sale contract or a loan contract shall be deemed to be not in accordance with the provisions of this Division if it includes—

- (a) a statement of, or a reference to, more than 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.

**(2)** Where, 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 reference to, any other rate referred to in subsection (1), the annual percentage rate for the purposes of the contract shall be the lowest rate so stated or referred to.

### **Variation ineffective without notice**

**43.(1)** Where, in accordance with a provision in a credit sale contract or a loan contract, the credit provider exercises a right under the contract to vary the contract (otherwise than at the request of the debtor or in a manner referred to in section 39, 70, 71, 72 or 73) the variation does not have effect until—

- (a) the prescribed period; or
- (b) where the contract provides for a period of notice of the variation,

that period;

whichever is the longer has elapsed after notice of the variation has been given to the debtor.

(2) Where notice of the variation of a credit sale contract or loan contract is given in a common form and posted by bulk postage, the notice shall be deemed to have been given 7 days after the date on which the last of the bulk postages was made.

### **Civil penalty**

**44.(1)** Subject to sections 86 and 87, where—

- (a) a credit sale contract is not in writing signed by the debtor or is not in accordance with section 37; or
- (b) a loan contract is not in writing signed by the debtor or is not in accordance with section 38; or
- (c) the annual percentage rate under a credit sale contract, or a loan contract, is not disclosed in accordance with section 40 and, if applicable, section 41; 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 42(1); or
- (e) a mortgage relating to a credit sale contract, or a loan contract, is entered into in contravention of section 92(1);

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

(2) An amount paid by a debtor in respect of the credit charge that, in accordance with subsection (1), the debtor is not liable to pay, may be set off by the debtor against the amount that is due or becomes due to the credit provider under the credit sale contract or the loan contract or, where there is not such an amount, is a debt due by the credit provider to the debtor.

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

**Contracts to be in accordance with Division**

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

**Minimum credit charge**

**46.(1)** A provision in a credit sale contract or a loan contract to the effect that the minimum credit charge exceeds—

- (a) where the amount financed under the contract is not more than \$75—the amount prescribed for the time being for the purposes of this paragraph or, if no amount is prescribed, \$5; or
- (b) where the amount financed under the contract is more than \$75—the amount prescribed for the time being for the purposes of this paragraph or, if no amount is prescribed, \$7.50;

is void.

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

Maximum penalty—40 penalty units.

**Statement for debtor or guarantor on request**

**47.(1)** Where a credit provider receives a request in writing for a statement under this subsection, together with the prescribed fee (if any), from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a credit sale contract or a loan contract, the credit provider shall within 14 days after receiving the request give to the debtor or guarantor who made the request a statement in writing showing—

- (a) each amount received under the contract by the credit provider and the date on which it was received; 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 on which it became due; and

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

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

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

**48.(1)** Where a credit provider receives a request in writing for a copy of a document that the credit provider is required by this section to provide together with the prescribed fee (if any) from a debtor under a credit sale contract or a loan contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a credit sale contract or a loan contract, the credit provider shall within 14 days after receiving the request, give to the debtor or guarantor who made the request—

- (a) a copy of the contract or of the offer or other document signed by the debtor or guarantor relating to the contract and to which the request relates; or
- (b) where the request relates to a contract of insurance in relation to which an amount is included in the amount financed—
  - (i) a copy of the contract of insurance; or
  - (ii) a statement of the terms and conditions of the contract of insurance which affect or concern the rights of the debtor.

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

*Division 2—Continuing credit contracts***Interpretation**

**49.(1)** For the purposes of this section—

- (a) a reference to an agreement includes a reference to an arrangement, understanding or course of dealing; and
- (b) a person shall be deemed to agree with another person with respect to a matter if the first mentioned person has an agreement, arrangement or understanding with the other person, or is engaged in a course of dealing with the other person, with respect to the matter.

**(2)** Where—

- (a) a person (“**the creditor**”), in the course of a business carried on by the person, agrees with another person (not being a body corporate) to provide credit to that other person in respect of—
  - (i) payment for goods or services or cash supplied by the creditor to that other person from time to time; or
  - (ii) payment by the creditor to a third person in respect of goods or services or cash supplied by that third person to that other person from time to time; and
- (b) the amounts owing to the creditor from time to time under the agreement are or are to be calculated on the basis that all amounts owing, and all payments made, by that other person under or in respect of the agreement are entered in 1 or more accounts kept for the purpose of the agreement;

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

**(3)** Where the creditor agrees to make payments to a third person in respect of goods or services or cash supplied by that third person to the other person, as referred to in subsection (2)(a)(ii), then, for the purposes of this Act, the creditor shall, in respect of any goods or services or cash so supplied, be deemed to have provided credit to that other person to the extent of any payments made or to be made by the creditor to that third person.

**(4)** Where in respect of the provision of credit—

- (a) the only credit charge is a predetermined credit charge; or
- (b) the credit is, or is to be, provided by specified instalments;

the provision of 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 not being continuing credit contracts within the meaning of this section.

### **Application of Part**

**50.(1)** Subject to subsection (2), a reference in this Part (other than in section 49) to a continuing credit contract is a reference to a continuing credit contract under which—

- (a) where credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person (whether to the debtor or to another person)—a charge is or may be made for the provision of credit in respect of which the annual percentage rate exceeds 14%; or
- (b) where credit is or may be provided to the debtor by the credit provider in respect of payment for goods or services supplied by the credit provider or any other person (whether to the debtor or to another person)—
  - (i) a charge, other than an account charge, is or may be made for the provision of credit; or
  - (ii) an amount, other than an account charge, owing at any time by the debtor is not required to be paid within the period of 4 months after it is first owed; or
  - (iii) an amount, other than an account charge, owing at any time by the debtor is or will become payable by 5 or more instalments or by a deposit and 4 or more instalments.

**(2)** This Part does not apply to a continuing credit contract under which—

- (a) where credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person (whether to the debtor or to another person)—a charge is or may be made for the provision of credit in respect of which, where the payment



of a debt or other pecuniary obligation or the performance of any other obligation under the continuing credit contract is secured by a mortgage of land—there is an acceptable rate of interest that does not exceed 14% and a higher annual percentage rate that exceeds 14% but does not exceed the acceptable rate by more than 2%; or

- (b) an amount exceeding \$40 000 is agreed as the maximum amount that at any time may be owed by the debtor under the contract; or
- (c) a bank or a pastoral finance company provides credit to a person by overdraft on current account.

(3) For the purposes of subsection (2)(b), a continuing credit contract shall be deemed not to be a contract under which an amount exceeding \$40 000 is agreed as the maximum amount that at any time may be owed by the debtor under the contract where—

- (a) under the contract, the debtor may not, otherwise than because of the debtor's default, owe more than \$40 000 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 \$40 000 excluding any credit charge.

(4) Where more than 1 account is maintained under a continuing credit contract, this Division (this section and sections 59, 60, 61 and 67 excepted) has effect as if separate continuing credit contracts in the same terms as the contract under which the accounts are maintained had been entered into in relation to each account.

### **Billing cycle**

**51.(1)** For the purposes of this Act, a reference to a billing cycle in relation to a continuing credit contract is a reference to the period applied from time to time in accordance with the contract as the billing cycle in relation to the contract.

(2) A credit provider under a continuing credit contract shall not apply as a billing cycle for the purposes of section 62 or Schedule 7 a period exceeding 40 days.

**Payment of supplier by credit provider on behalf of debtor**

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

**Chargeable amount**

**53.(1)** Subject to this section, a reference in this Division to the chargeable amount in respect of a billing cycle of a continuing credit contract is a reference to the sum of such of the amounts included in the statement of account referred to in section 62 for that billing cycle as, under the contract, the credit provider determines constitutes the chargeable amount, being an amount not exceeding—

- (a) the amount that is the amount owed under the contract by the debtor immediately before the commencement of the billing cycle less amounts included in the statement of account in respect of payments by the debtor during the billing cycle; or
- (b) the amount that is the sum of the balances owed under the contract by the debtor, at the end of each day of the billing cycle, divided by the number of days in the billing cycle;

whichever is the greater.

**(2)** A credit provider shall not determine as an amount constituting the chargeable amount for a billing cycle of a continuing credit contract an amount that exceeds the greater of the amounts referred to in subsection (1)(a) and (b).

**(3)** Where an amount determined as an amount constituting the chargeable amount for a billing cycle exceeds the greater of the amounts referred to in subsection (1)(a) and (b), the chargeable amount for that billing cycle shall be deemed, for the purposes of this Division, to be the smaller of the amounts referred to in subsection (1)(a) and (b).

**Amount payable under continuing credit contract**

**54.(1)** A provision in a continuing credit contract which requires the debtor to pay to the credit provider an amount other than an amount that is—

- (a) the cash price of goods or services supplied by the credit provider or by another supplier in respect of payment for which credit is provided under the contract; 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 in respect of 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 the purposes of this section; or
- (g) the amount of any other consideration given to the debtor under the contract being consideration that is of a kind prescribed for the purposes of this section;

is void.

**(2)** A credit provider shall not enter into a continuing credit contract that includes a provision that, because of subsection (1), is void.

Maximum penalty—40 penalty units.

**Credit charge**

**55.(1)** For the purposes of 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 or services supplied by the credit provider or by another supplier in respect of 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 respect of 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 the purposes of 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 the purposes of this section; or
- (g) the amount of a credit charge included in a statement of account for an earlier billing cycle of the contract.

(2) A credit provider shall not include in a statement of account for a billing cycle a credit charge that exceeds the amount derived by the application of the annual percentage rate in respect of the contract to the chargeable amount for the billing cycle in the manner applicable under the contract.

(3) In ascertaining the credit charge in relation to a continuing credit contract made between a credit provider and a debtor, regard shall not be had to any amount by which the amount payable by the credit provider to any supplier of goods or services or of cash to the debtor or to another person under the contract is less than the cash price of the goods or services or the amount of the cash.

### **Annual percentage rate**

**56.(1)** For the purposes of this Act, a reference to the annual percentage rate in relation to a continuing credit contract is a reference to the percentage rate calculated—

- (a) in accordance with the following formula—

$$\mathbf{n = a \times b}$$

where—

“n” is the annual percentage rate to be calculated;

“a” is the percentage rate that, under the contract, is to be applied to the chargeable amount for each billing cycle of the contract to yield the credit charge;

“b” is 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; or

(b) in accordance with the following formula—

$$n = \frac{c \times 36\,500}{d \times e}$$

where—

“n” is the annual percentage rate to be calculated;

“c” is the credit charge for a billing cycle of the contract;

“d” is the chargeable amount for the billing cycle;

“e” is the number of days of the billing cycle.

(2) Where, under a continuing credit contract—

(a) credit is or may be provided to the debtor by way of the supply of cash by the credit provider or any other person; and

(b) the payment of a debt or other pecuniary obligation or the performance of any other obligation under the contract is secured by a mortgage of land;

the contract may include an acceptable rate of interest and a higher annual percentage rate that does not exceed the acceptable rate by more than 2%.

(3) Where, in accordance with subsection (2), a continuing credit contract includes 2 annual percentage rates, the statement in the notice under section 60 of the annual percentage rate shall be made in respect of each such rate.

(4) Except as provided by subsection (2), a continuing credit contract shall not include more than 1 annual percentage rate in respect of the contract.

(5) Where the annual percentage rate in respect of a continuing credit contract may, at the option of the credit provider, be any rate less than, or not exceeding, an annual percentage rate specified by the credit provider, that specified rate shall, for the purposes of section 50(1)(a) be deemed to be the annual percentage rate in respect of the contract, whether or not the annual

percentage rate applied under the contract is a lower rate than that specified rate.

### **Application of annual percentage rate to billing cycle of less than 1 month**

**57.** 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 of the credit charge in relation to a billing cycle merely because the credit provider applies a percentage rate under the contract to the whole or part of the chargeable amount to yield the credit charge or part of the credit charge in respect of a billing cycle, the period of which is not less than 24 days, as if the period of that billing cycle were 1 month.

### **Credit charge in respect of non-business days**

**58.(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 merely because the credit provider includes in the credit charge in a statement of account for a billing cycle the amount that would be the credit charge in respect of a day that is, or 2 or more days each of which is, a Saturday, a Sunday or a public or bank holiday throughout the State or throughout a recognised State, immediately following the last day of the billing cycle if no other amounts were entered on that day or on those days in the account of the debtor kept by the credit provider.

**(2)** Subsection (1) does not apply where a credit provider includes the amount of a credit charge to which that subsection relates in a statement of account for a billing cycle and includes that amount in the statement of account for a succeeding billing cycle.

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

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

Maximum penalty—40 penalty units.

**Notice of terms of continuing credit contract**

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

- (a) the amount (if any) that, under the contract, is agreed as the maximum amount in respect of which, at any time, credit is agreed to be provided to the debtor under the contract; and
- (b) the method by which the chargeable amount in respect of each billing cycle is to be determined; and
- (c) the terms and conditions (if any) upon 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 expiration of a billing cycle within which the amount owed by the debtor at the expiration of the billing cycle is payable including particulars of provisions requiring payment at a time or times during that period of any part or parts of that amount; and
- (f) the annual percentage rate in respect of the contract and the manner of its application to the contract; and
- (g) particulars of stamp duty (if any) in respect of 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 such other matters (if any) as are prescribed for the purposes of this section; and
- (k) the other terms and conditions (if any) to which the contract is subject.

**(2)** It is sufficient compliance with subsection (1) if the continuing credit contract was made by the acceptance of an offer in writing by the debtor to the credit provider to enter into the contract (being an offer that includes the

matters required to be stated in a notice under subsection (1)) and, before the debtor incurs a debt under the contract, a copy of that offer is given to the debtor for the debtor's own use.

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

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

**61.(1)** Where, in accordance with a provision in a continuing credit contract, the credit provider exercises a right under the contract to vary the operation of the contract (other than a right exercised at the request of the debtor), the variation does not have effect—

- (a) in the case of a variation that increases the credit charge under the contract, or increases the amount of, or abridges the time for payment of, the amount standing to the debit of the account—until a period that is not shorter than 2 billing cycles has elapsed after notice of the variation has been given to the debtor in writing; or
- (b) in the case of any other variation—until a period of—
  - (i) at least 7 clear days; or
  - (ii) where the contract provides for a period of notice of the variation, that period;

whichever is the longer has elapsed after notice of the variation has been given to the debtor in writing.

(2) Where notice of the variation of a provision in a continuing credit contract is given in a common form by the credit provider and posted by bulk postage, the notice of the variation shall be deemed to have been given 7 days after the date on which the last of the bulk postages was made.

### **Statement of account**

**62.(1)** A credit provider under a continuing credit contract shall give to the debtor a statement of account in accordance with Schedule 7 in respect of each billing cycle applied under the continuing credit contract from time to time.



(2) A credit provider shall not include in a statement of account referred to in subsection (1)—

- (a) where a mortgage relating to the contract has been entered into—an amount in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any 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 respect of the discharge of a liability of the debtor to the credit provider under a regulated contract that exceeds the amount of the net balance due to the credit provider calculated in accordance with section 104 immediately before the discharge of the liability; or
- (c) a statement that is, or particulars that are, prescribed as a statement, or particulars that may not be included in the statement of account.

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

(4) Where particulars of matters required to be included in the statement of account are included in documents attached to or accompanying the statement of account, the provisions of Schedule 7 requiring those particulars to be so included are sufficiently complied with.

(5) Where an amount paid by a debtor is not included in the statement of account in respect of the billing cycle during which the amount was paid, the credit provider shall within a reasonable time after the receipt of the amount enter the amount in the account of the debtor kept by the credit provider.

(6) A credit provider under a continuing credit contract shall not—

- (a) fail to give a statement of account in accordance with this section in respect of each billing cycle applied under the contract from time to time; or
- (b) give a statement of account that does not comply with the provisions of this section; or
- (c) give a statement of account under this section in respect of a billing cycle the period of which exceeds 40 days; or

- (d) include in a statement of account under this section an amount of deferral charges or default charges.

### **Correction of billing errors**

#### **63.(1) Where—**

- (a) the debtor under a continuing credit contract queries, by a written document given or sent to the credit provider, any amount or other matter (being matter that the debtor reasonably believes is incorrect as to the nature or extent of the liability of the debtor to the credit provider) shown in a statement of account given to the debtor in accordance with section 62; 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 respect of the statement of account; and
- (d) the credit provider does not take such action as satisfies the query;

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

(2) If the credit provider corrects, in a manner that satisfies the query, the amount or other matter in the statement of account relating to the next billing cycle given to the debtor or a subsequent billing cycle, the credit provider may not impose any charge for the provision of credit, or otherwise, in respect of that next billing cycle and any such subsequent billing cycles, relating to the queried amount or other matter, and the imposition of any such charge is void.

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

- 64.** A credit provider shall not institute proceedings for the recovery of an

amount owed to the credit provider under a continuing credit contract unless, when giving the required notice under section 108, the credit provider gives the debtor a statement of account under section 62 that includes a request for payment of that amount.

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

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

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

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

**Statement of account need not be given in certain circumstances**

**66.** Nothing in section 62 or 65 requires a credit provider to give to a debtor a statement of account in respect of a billing cycle of a continuing credit contract where—

- (a) during the billing cycle an amount was not entered in the account of the debtor kept by the credit provider and at the end of the

billing cycle there was not an amount entered in the account and owing by or to the debtor; 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 preceding billing cycles, the debtor was in default under the contract and, before the commencement of the first mentioned billing cycle, the credit provider, in accordance with the contract, exercised a right not to provide further credit under the contract and did not, during the billing cycle, provide further credit.

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

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

### **Civil penalty**

**68.(1)** Subject to sections 86 and 87, where, in relation to a billing cycle of a continuing credit contract—

- (a) the credit provider has not given notice in writing to the debtor of the annual percentage rate in respect of the contract in accordance with section 5(4) or 60; 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 62; or
- (c) the debtor incurs a debt under the contract before the credit provider has given a notice under section 60; 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 92(1);

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

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

### **Credit provider to give copy of notice upon request**

**69.(1)** Where a credit provider receives a request in writing together with the prescribed fee (if any) from a debtor under a continuing credit contract or from a guarantor who has entered into a contract of guarantee with the credit provider in respect of the obligations of the debtor under a continuing credit contract, the credit provider shall, within 14 days after the receipt of the request, give to the debtor or guarantor who made the request a copy of any notice given under section 5(4), 60 or 61 in respect of the contract.

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

## ***Division 3—Operation of regulated contracts***

### **Disclosure on discharge of contracts and making of new contract**

**70.(1)** Where 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 statement in writing stating, in respect of each of the regulated contracts to be discharged—

- (a) the amount that would be due to the credit provider under section

106 if, immediately before the relevant date, the debtor were to discharge the debtor's obligations under the contract in accordance with that section; and

- (b) in the case of a regulated credit sale contract or a regulated loan contract, particulars of the calculation of that amount by setting out—
  - (i) the outstanding balance of the amount financed; and
  - (ii) the outstanding balance of the accrued credit charge; and
  - (iii) the outstanding balance of the deferral charges (if any) charged in accordance with this Part; and
  - (iv) the outstanding balance of the default charges (if any) charged in accordance with this Part; and
  - (v) the outstanding balance of the enforcement expenses (if any);and (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges deducted from the sum of the amounts referred to in subparagraphs (i) to (v).

(2) In subsection (1)—

**“relevant date”** means the date on which the new credit contract is entered into or, if that credit contract is entered into by the acceptance by the credit provider of an offer made by the debtor, the date on which the offer is made.

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

**71.(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 merely 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—

- (i) the annual percentage rate applicable to the contract immediately before the variation; or
- (ii) the annual percentage rate prescribed by the regulations for the purposes of this subparagraph;  
whichever is the less; and
- (c) a deferral charge is not made in respect of the variation; and
- (d) the agreement is in writing signed by the credit provider and the debtor and specifies (where applicable)—
  - (i) the varied terms of repayment; 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 charges 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 legal practitioner (not being 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) such other matters as may be prescribed.

(2) The regulations may prescribe the manner in which matters required by subsection (1)(d) to be specified in an agreement are to be so specified, whether by the use of a prescribed form or otherwise.

(3) The following are the amounts by which the outstanding balance of the amount financed under a credit sale contract or a loan contract may be increased by a variation under subsection (1)—

- (a) where, under the credit sale contract or loan contract, the premium under a contract of insurance or compulsory insurance entered into in relation to the credit sale contract or loan contract or a regulated mortgage relating to the contract was included in the amount financed under the credit sale contract or loan contract—a premium payable under that contract of insurance or compulsory

insurance in relation to a subsequent period not exceeding 12 months;

- (b) where, under the credit sale contract or loan contract, registration fees relating to goods and in respect of a particular period were included in the amount financed under the credit sale contract or loan contract—registration fees relating to those goods in respect of a subsequent period;

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

(4) Where a credit provider enters into an agreement referred to in subsection (1) the credit provider shall, not later than 21 days after the agreement is entered into, give the debtor a copy of the agreement.

(5) Despite any other provisions of this Act, an agreement to vary a contract in accordance with this section is not a loan contract.

(6) Where a variation to which this section applies is made to the terms of a credit sale contract or a loan contract, a guarantor under a contract of guarantee in respect of the obligations of the debtor under the contract is not liable in respect of the contract for an amount exceeding the amount for which, but for the variation, the guarantor would have been liable unless the credit provider, not later than 21 days after the variation was made, gave the guarantor a notice in writing of the variation.

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

- (a) if section 39, 70, 72 or 73 applies to or in respect of the variation;  
or
- (b) merely because, as a result of a variation, the amount due to a credit provider is satisfied or reduced.

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

**72.(1)** A credit provider under a credit sale contract or a loan contract shall not vary the annual percentage rate applicable to the contract unless—

- (a) prior to the contract having been entered into, the prescribed notice in writing had been given to the debtor and the guarantor (if any);  
and
- (b) the contract provides for variation of the annual percentage rate;  
and



- (c) the prescribed notice in writing is given to the debtor and the guarantor (if any) varying the annual percentage rate applicable to the contract as from the date specified in the notice being not earlier than 14 days after the date of service of the notice upon the debtor and the guarantor (if any).

(2) Notice referred to in subsection (1) shall be given to the debtor and the guarantor (if any) personally or in such other manner as the Registrar approves.

### **Deferral charge payable under credit sale contract or loan contract**

**73.(1)** Where a credit provider and a debtor agree to vary a credit sale contract or a loan contract by the deferral of the payment of an amount payable by the debtor under the contract, the credit provider shall not make a charge in respect of the deferral unless—

- (a) the payment is deferred—
  - (i) in accordance with a term in the contract to the effect that such a payment may be deferred; or
  - (ii) in accordance with the agreement of the credit provider and the debtor; and
- (b) the charge in respect of the deferral does not exceed the amount determined in accordance with subsection (2); and
- (c) a default charge is not made in respect of the deferral; and
- (d) the deferral is made in accordance with subsection (4).

(2) The amount of a charge in respect of the deferral of the payment of an amount payable under a credit sale contract or a loan contract determined in accordance with this subsection is—

- (a) the amount that is the sum of the amount determined by applying to the amount, payment of which is deferred, in respect of the number of days for which it is deferred—
  - (i) where a credit charge is payable under the contract—a rate not exceeding the daily percentage rate that applies to the contract; or
  - (ii) where a credit charge is not payable under the contract—the

rate prescribed for the purposes of this section;

and the amounts (if any) payable in respect of charges mentioned in subsection (3) in relation to the deferral of the payment; or

- (b) the amount agreed by the credit provider and the debtor as the charge;

whichever is the less.

**(3)** The charges in relation to the deferral of a payment referred to in subsection (2)(a) and subsection (4)(b) are charges in respect of—

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

**(4)** Where a credit provider defers payment of an amount payable under a credit sale contract or a loan contract the deferral is in accordance with this subsection if, not later than 14 days after the credit provider agrees to defer or, where the deferral is made under a term of the contract, the credit provider defers the payment, the credit provider gives notice in writing to the debtor stating—

- (a) the amount of the payment deferred; and
- (b) the amounts (if any) payable in respect of charges mentioned in subsection (3) in relation to the deferral of the payment; and
- (c) the date on which the period for which the payment is deferred expires; and
- (d) the amount of the charge, in dollars and cents; and
- (e) if applicable, the rate applied to the amount, payment of which is deferred in accordance with subsection (2)(a), to determine the amount of the charge.

**(5)** A credit provider shall not make a charge—

- (a) in respect of the deferral of the payment of an amount payable by the debtor under a credit sale contract or a loan contract, unless the whole or part of the credit charge under the contract is a predetermined credit charge; or
- (b) in respect of the deferral of the payment of an amount payable by

the debtor under a regulated continuing credit contract.

(6) Despite anything to the contrary in this Act, the deferral of the payment of an amount payable by a debtor under a credit sale contract or a loan contract in accordance with this section is not a loan contract.

### **Default charges**

**74.(1)** Where under a credit sale contract or a loan contract the debtor does not pay an amount payable under the contract when it is due, the credit provider shall not make a charge in respect of the failure to pay unless there is a term in the contract to the effect that such a charge may be made and the charge does not exceed—

- (a) the amount determined by applying to the daily balance of the amount due and unpaid—
  - (i) where a credit charge is payable under a contract—the daily percentage rate under the contract; or
  - (ii) where a credit charge is not payable under the contract—the rate prescribed for the purposes of this section; or
- (b) the amount determined by applying to the amount unpaid the rate specified in the contract for the purposes of such a charge;

whichever is the less.

**(2)** A credit provider shall not make a charge—

- (a) in respect of the failure to pay an amount payable under a credit sale contract or a loan contract when it is due unless the whole or part of the credit charge under the contract is a predetermined credit charge; or
- (b) in respect of the failure to pay an amount payable under a regulated continuing credit contract; or
- (c) in respect of a charge under subsection (1) that is unpaid.

**(3)** Nothing in this section affects the right of a credit provider to make or require payment of an accrued credit charge, a deferral charge or an enforcement expense.

**Variation of credit contracts generally**

**75.** Where the terms of a regulated contract are varied or a regulated contract is discharged in consideration of the debtor entering into another credit contract, whether in a manner referred to in section 39, 70, 71, 72 or 73 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 even though, but for this section, it would not continue to be, or be, a regulated contract.

***Division 4—General*****Unauthorised fees**

**76.(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, despite subsection (1), is paid by a debtor to a credit provider in accordance with an agreement referred to in subsection (1) is recoverable by the debtor from the credit provider as a debt.

**(3)** A credit provider shall not enter into an agreement that, because of subsection (1), is void.

Maximum penalty—40 penalty units.

**Enforcement expenses**

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

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

Maximum penalty—40 penalty units.

**Right to revoke offer is paramount**

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

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

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

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

Maximum penalty—40 penalty units.

**Sufficient statement of annual percentage rate**

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

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

**Sufficient statement of estimated credit charge**

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

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

**Liability where discrepancy between credit charge and annual percentage rate**

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

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

**Assignment of rights by credit provider**

**82.(1)** A credit provider or a mortgagee under a regulated contract or a regulated mortgage shall not assign the person's rights as a credit provider or mortgagee unless the assignment—

- (a) is an assignment made bona fide by way of security in respect of a liability incurred by the assignor; or
- (b) is made with the consent of the Registrar or a court.

**(2)** An application to a court for consent referred to in subsection (1)(b) shall not be made unless the Registrar refuses to give consent.

**(2A)** For the purposes of this section, if the Registrar fails to give consent within 30 days of the receipt by the Registrar of an application for consent the Registrar shall be taken to have refused to give consent.

**(2B)** An applicant to a court for consent shall forthwith give a copy of the application to the Registrar who shall be a party at any hearing and entitled to be represented by a duly qualified legal practitioner or a person nominated by the Registrar as the Registrar's agent.

**(2C)** A determination by a court under this section is final and without appeal.

**(3)** Where a mortgage secures payment of a debt or other pecuniary obligation or the performance of any other obligation under a regulated contract and secures other moneys or the performance of any other obligation, subsection (1) does not apply to or in respect of an assignment of rights under the mortgage that do not relate to a regulated contract.

**(4)** Subject to this section, where a credit provider or a mortgagee assigns the person's rights as a credit provider under a regulated contract or as a mortgagee under a regulated mortgage—

- (a) the debtor or mortgagor and, where there is a guarantee in relation to the contract or mortgage, the guarantor, have under the contract, mortgage or guarantee the same obligations to the assignee as they would have had to the credit provider or mortgagee if the assignment had not been made; and
- (b) subject to subsection (5), the debtor or mortgagor and any such guarantor have and may exercise the same rights in respect of the contract, mortgage or guarantee against the assignee as they have and may exercise against the credit provider or mortgagee.

**(5)** An assignee under an assignment to which subsection (1) applies of the rights of a credit provider under a regulated contract or of a mortgagee under a mortgage relating to a regulated contract is not liable to the debtor or mortgagor under the contract or mortgage in respect of an amount exceeding the amount due to the assignee under the regulated contract at the date of the assignment.

**(6)** The rights of a debtor, mortgagor or guarantor referred to in

subsection (4)(b) in respect of a regulated contract or a regulated mortgage may not be exercised otherwise than by way of a defence or set off in respect of a claim by the assignee under the regulated contract.

(7) Subject to sections 86 and 87, where a credit provider assigns the whole or any part of the credit provider's 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.

(8) Subject to sections 86 and 87, where a credit provider assigns the whole or any part of the credit provider's 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.

(9) Subject to sections 86 and 87, where a credit provider assigns the whole or any part of the credit provider's rights as mortgagee under a regulated mortgage otherwise than in accordance with subsection (1)—

- (a) where the mortgage relates to a credit sale contract or a loan contract—the debtor is not liable to pay the amount of the credit charge under the contract; and
- (b) where the mortgage relates to a regulated continuing credit contract—the debtor is not liable to pay the amount of the credit charge for the billing cycle during which the assignment is made.

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

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

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

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



**Application of payments**

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

- (a) in the case of a regulated credit sale contract or a regulated loan contract—
  - (i) firstly in payment of default charges (if any); and
  - (ii) secondly in payment of the accrued credit charge; and
  - (iii) thirdly in payment of deferral charges (if any); and
  - (iv) fourthly in payment of the outstanding balance of the amount financed; and
  - (v) fifthly in payment of enforcement expenses; and
- (b) in the case of a regulated continuing credit contract—
  - (i) firstly in payment of the credit charge; and
  - (ii) secondly in payment of any other amount owed under the contract by the debtor to the credit provider.

**Appropriation of payments where more than 1 credit contract**

**85.** A debtor who is liable to make payments in respect of 2 or more regulated contracts to the same credit provider shall, despite any agreement to the contrary, be entitled, on making a payment in respect of the contracts which is not sufficient to discharge the total amount then due under all the contracts, to require the credit provider to appropriate the amount so paid in or towards the satisfaction of the amount due under any 1 or more of the contracts, or in or towards the satisfaction of the amount due under any 2 or more of the contracts in such proportions as the debtor specifies and, if the debtor fails to make such an appropriation, the payment shall, unless the debtor and the credit provider otherwise agree, be appropriated in or towards the satisfaction of the amounts due under the respective contracts in the order in which the contracts were entered into.

**Credit provider may apply to court for reduction of loss for contravention of Act**

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

**(2)** Where an application is made to a court under this section in relation to a regulated contract, the court, after consideration of the relevant circumstances, including the conduct of the credit provider and the debtor and the loss or damage (if any) suffered by the debtor may, where it is satisfied that the contravention or failure has occurred, determine not to increase the liability of the debtor or determine that the debtor is liable to pay the whole or such part of the credit charge under the contract as it determines.

**(3)** Where, under this section, a court 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 court shall ensure that, in determining that amount, the amount that the debtor would have been liable to pay but for the contravention or failure is reduced by an amount that is not less than the amount of loss or damage (if any) suffered by the debtor as a result of the contravention or failure.

**(4)** Where, under this section, a court 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 court instead of the liability that, but for the determination, the debtor would have had to the credit provider under the contract.

**(4A)** A court may, when making a determination under this section of the amount that a debtor is liable to pay, give the parties to the proceedings such directions as the court considers appropriate relating to the payment of the amount owed by the debtor or by the credit provider as a result of the determination.

**(4B)** A determination made by a court under this section of the liability of a debtor has effect only in respect of the contravention or failure to which

the determination relates.

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

### **Stay of civil penalty pending court's decision**

**86A.(1)** When an application is made for a determination under section 86, the civil penalty to which the application relates is stayed pending the disposal of the application by the court.

(2) For the purposes of staying any such civil penalty, the application operates as an interim determination of the court in the terms sought by the applicant pending its disposal by the court.

(3) When the application is disposed of by the court, the interim determination under this section ceases to have effect and (unless a determination in the same terms is made by the court) is taken never to have had effect.

(4) The court may, before disposing of the application give the applicant such directions as it considers appropriate to protect the interests of the debtor concerned, including directions relating to the enforcement of the debtor's obligations under the contract or to the payment of all or any of the amounts concerned into a trust account.

(5) This section does not apply to an application for a determination if—

- (a) the determination cannot be made by the court under section 86; or
- (b) the court excludes the application from the operation of this section because a direction under subsection (4) has not been complied with or for any other reason.

(6) For the purposes of this section, a reference to the disposal of an application includes a reference to the withdrawal of the application by the applicant.

(7) In this section—

**“civil penalty”** means a penalty which is imposed on a credit provider by the operation of this Act and under which the debtor is not liable to pay to the credit provider an amount otherwise payable under a regulated contract.

**General order varying civil penalty**

**87.(1)** Where a credit provider has contravened or failed to comply with this Act in respect of 2 or more regulated contracts, the credit provider may apply to a court for a determination under section 86 and the court, without affecting the liability of a person to be convicted of an offence under this Act—

- (a) may make a determination under section 86 in relation to 1 or more specified regulated contracts; and
- (b) may make a determination under section 86 in relation to all regulated contracts entered into by the credit provider during a specified period; and
- (c) may make a determination under section 86 in relation to all regulated contracts of a specified class entered into by the credit provider during a specified period (for example, all regulated contracts entered into during a specified period which are affected by a specified contravention or failure).

**(2)** The debtors affected by an application under this section need not be identified in the application.

**(2A)** However, the court 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 court may authorise notice of an application under this section to be given by the publication of the notice in a newspaper circulating within the State or Australia if the court considers that (because of the number of debtors and 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 (despite anything to the contrary in the rules of the court) is not entitled to any other notice of the application.

### **General order varying civil penalty for minor errors**

**87A.(1)** In this section—

**“minor error”** means a contravention or failure to comply with this Act which is unlikely to disadvantage the debtors concerned in any significant respect.

**(2)** If a credit provider makes an application to a court under section 87 and requests the court to deal with the application under this section, the following provisions have effect—

- (a) notice of the application must be served on the Registrar but (unless the court otherwise directs) is not required to be served on any other person;
- (b) if the court is satisfied that all the contraventions or failures to which the application relates are minor errors and ought reasonably to be excused—the court may make a determination under section 86 that debtors under all regulated contracts entered into during the period concerned which are affected by those minor errors are liable to pay the whole of the credit charges under those contracts;
- (c) if the court is not so satisfied—the court must direct that notice of the application be given to the debtors concerned, either personally or in accordance with section 87.

**(3)** The Registrar may be represented by a duly qualified legal practitioner on the hearing of an application under this section for the purpose of making submissions to the court in relation to the application.

### **Effect of reduction of liability**

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

- (a) the amount of the reduction shall be set off against amounts that, but for the reduction, would become payable by the debtor to the

credit provider; and

- (b) where the amount of the reduction exceeds the amount that the debtor, but for the reduction, would have become liable to pay to the credit provider the amount of the excess is a debt payable by the credit provider to the debtor.

### **Relief for minor errors**

**89.** In a prosecution for a contravention of section 5(4), 45, 60, 62 or 65 the court may, without proceeding to conviction, dismiss the charge if it is satisfied—

- (a) that the contravention was unlikely to deceive or operate to the disadvantage of a party to the relevant contract; and
- (b) in the case of a contravention of section 5(4), 60 or 65—that the required notice was given within a reasonable time after it should have been given in order to comply with this Act.

## **PART 4—REGULATED MORTGAGES**

### *Division 1—General*

#### **Application of Part**

**90.** 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.

#### **Obligations under mortgage not to exceed obligations under regulated contract**

**91.(1)** A provision in a mortgage relating to a regulated contract that requires or purports to require or secures or purports to secure payment or performance under the contract by the debtor or by a guarantor of the debtor

of a debt or other pecuniary obligation or any other obligation of an amount or to an extent that exceeds the payment or performance—

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

is void.

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

Maximum penalty—40 penalty units.

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

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

(2) Subsection (1) is not contravened if—

- (a) the mortgage was entered into by the acceptance of an offer in writing signed by the mortgagor to the mortgagee to enter into the mortgage; or
- (b) the mortgage arose pursuant to an agreement in writing or an agreement made by the acceptance of an offer in writing signed by the mortgagor to the mortgagee; or
- (c) the mortgagee lawfully had possession of the goods that are subject to the mortgage before the mortgage was entered into otherwise than merely because of being the supplier of the goods.

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

**93.** Where a mortgage is entered into in relation to a regulated contract, the credit provider shall, if the debtor has not already received a copy of the mortgage, within 21 days after the mortgage is entered into, give to the debtor a copy of the mortgage.

**Enforcement expense**

**94.(1)** A provision in a mortgage to the effect that where the mortgagor makes default under the mortgage and the mortgagee exercises a right in relation to the mortgage arising from the default, the mortgagor is, if the mortgagee so determines, liable to pay to the mortgagee an amount incurred or expended in the exercise of that right is void unless the provision limits the amount so payable to the reasonable amount reasonably incurred or expended by the mortgagee in the exercise of that right.

**(2)** A mortgagee shall not enter into a mortgage containing a provision that, because of subsection (1), is void.

Maximum penalty—40 penalty units.

**Provision for entry of premises void in certain circumstances**

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

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

Maximum penalty—40 penalty units.

**(3)** Subsections (1) and (2) do not apply in respect of a mortgage where the only goods affected by the mortgage are fixtures on land over which the mortgage is given.

**Order of court required before entry for repossession**

**96.(1)** Subject to subsection (2), a mortgagee shall not enter or authorise a person on the mortgagee's behalf to enter, and a person so authorised shall not enter, upon premises for the purpose of taking possession of goods subject to a mortgage otherwise than in accordance with an order of a court.

Maximum penalty—40 penalty units.

**(2)** Subsection (1) does not apply where the mortgagor was aware of the provisions of this section and, before the entry was made, gave the



mortgagor's consent to the entry upon the premises for the purpose of taking possession of the goods.

(3) The onus of proving that, because of subsection (2), subsection (1) does not apply is on the person who makes the entry or gives the authority.

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

### **Mortgagor may be required to state where goods are**

**97.(1)** A mortgagee may at any time by notice in writing served on the mortgagor require the mortgagor to state in writing where the goods subject to the mortgage are or, if the goods are not in the possession of the mortgagor, the name and address of the person to whom the mortgagor delivered the goods or the circumstances under which the mortgagor lost possession of them.

(2) A mortgagor shall not—

- (a) fail to give to the mortgagee within 14 days after receiving a notice under subsection (1) a statement that complies with the requirement in the notice; or
- (b) give a statement under subsection (1) containing information which to the mortgagor's knowledge is false.

### **Court may determine time and place for return of goods**

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

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

**99.(1)** Subject to subsection (2), a provision in a mortgage securing an interest relating to the provision of credit to the effect that the mortgagor charges all the mortgagor's property or assets or all the mortgagor's property and assets and that does not specify the property or assets is void.

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

(3) A mortgagee shall not enter into a mortgage that includes a provision that, because of subsection (1), is void.

Maximum penalty—40 penalty units.

### **Restriction on mortgage of after-acquired property**

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

(2) Subsection (1) does not apply to or in respect of—

- (a) a provision in a mortgage relating to property that is to be, or may be, acquired by the mortgagor with or partly with credit provided under the regulated contract to which the mortgage relates; 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 the mortgagor; or
- (e) a provision in a mortgage to the effect that property may, at the request or with the consent of the mortgagor, become subject to the mortgage in substitution of property currently subject to the mortgage.

(3) A mortgagee shall not enter into a mortgage that includes a provision that, because of subsection (1), is void.

Maximum penalty—40 penalty units.

**Mortgages and continuing credit contracts**

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

**(2)** A provision in a mortgage to the effect that goods supplied from time to time under a regulated continuing credit contract are subject to the mortgage is void.

**(3)** Nothing in subsection (1) or (2) makes void a provision in a mortgage in respect of specified goods securing payment of a debt under a regulated continuing credit contract.

**(4)** A credit provider shall not enter into a regulated continuing credit contract or mortgage that includes a provision that, because of subsection (1) or (2), is void.

Maximum penalty—40 penalty units.

**Fraudulent sale or disposal of property**

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

Maximum penalty—100 penalty units or imprisonment for 1 year.

***Division 2—Assignment etc. of property*****Assignment by mortgagor**

**103.(1)** A mortgagor shall not, except as provided in this section, assign or dispose of property subject to a mortgage without the consent of the mortgagee.

**(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 the mortgagee's consent.

(3) As a condition of granting consent to an assignment or disposal of property subject to a mortgage, the mortgagee may require any breaches of the regulated contract or contracts to which the mortgage relates and of the mortgage to be remedied and may require the mortgagor and the assignee—

- (a) to execute and deliver to the mortgagee an agreement relating to the assignment or disposal in a form approved by the mortgagee under which, without prejudicing or affecting the liability of the mortgagor, the assignee agrees with the mortgagee—
  - (i) to be personally liable to pay the amounts due or that become due under the mortgage; and
  - (ii) to perform and observe all other requirements and conditions of the mortgage; and
- (b) to pay the reasonable costs (if any) incurred by the mortgagee in respect of—
  - (i) stamp duty; and
  - (ii) fees payable to a duly qualified legal practitioner (not being the mortgagee or an employee of the mortgagee) authorised to prepare documents;

in respect of the assignment agreement.

(4) Where a mortgage relates to goods for the time being forming the whole or part of the trading stock of a business carried on by the mortgagor, this section does not apply to or in respect of an assignment or disposal of any such goods.

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

(6) 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**

### **Calculation of net balance and outstanding balance of amount financed**

**104.(1)** For the purposes of this Part, a reference to the net balance due to a credit provider at a particular time—

- (a) in relation to a regulated credit sale contract or a regulated loan contract, is a reference to the amount that, at that time, is the sum of—
  - (i) the amount financed; 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); and
  - (vi) such other amounts as the credit provider charges under the authority of any other Act;

less any payments received by the credit provider in relation to the contract and (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges; and

- (b) in relation to a regulated continuing credit contract, is a reference to the amount owed under the contract by the debtor to the credit provider at that time less (where the relevant insurance and maintenance contracts are discharged) the amounts of statutory rebates (if any) of insurance charges and maintenance charges.

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

**Statement of net balance due**

**105.(1)** Where a credit provider receives a request in writing from a debtor under a regulated contract, or from a guarantor under a contract of guarantee that relates to that regulated contract, for a statement of the net balance due to the credit provider under the regulated contract, the credit provider shall, within 7 days after receiving the request, give to the debtor or guarantor a statement in writing—

- (a) stating the net balance due to the credit provider on the business day that last preceded the giving of the statement and, where the debtor or guarantor has also requested particulars of the calculation of that net balance, those particulars; and
- (b) where the amount of the net balance increases until paid, stating that the amount so increases.

Maximum penalty—40 penalty units.

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

- (a) by a debtor—if the credit provider has, within the period of 3 months that last preceded receipt of the request, complied with an earlier such request by the debtor in relation to the contract to which the later request relates; or
- (b) by a guarantor—if the credit provider has, within the period of 3 months that last preceded receipt of the request, complied with an earlier such request by the guarantor in relation to the contract to which the later request relates.

**Early termination of regulated contract**

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

**Mortgagor may compel sale of goods**

**107.(1)** Subject to this section, the mortgagor under a regulated mortgage may, unless the mortgage is also security for a debt or obligation arising otherwise than in relation to a regulated contract, by notice in writing given

to the mortgagee, require the mortgagee to sell goods that are subject to the mortgage.

(2) A notice given under subsection (1) is of no force or effect unless—

- (a) the goods to which the notice relates are, when the notice is given, in the possession of the mortgagee; or
- (b) the mortgagor delivers the goods to the mortgagee in accordance with subsection (3) not later than 7 days after the giving of the notice or such longer time as is agreed upon between the mortgagee and the mortgagor or as a court permits on application by the mortgagee or the mortgagor.

(3) A mortgagor who gives a notice under subsection (1) may, unless the goods to which the notice relates are in the possession of the mortgagee, deliver the goods to the mortgagee during ordinary business hours at a place at which the mortgagee ordinarily carries on business or at a time and place agreed upon by the mortgagee and the mortgagor or, if the mortgagee and mortgagor fail to agree on a time and place, at a time and place determined by a court on application by the mortgagee or the mortgagor.

(4) Where—

- (a) a notice has been given to a mortgagee under this section; and
- (b) any goods to which the notice relates are in the possession of the mortgagee or have been delivered to the mortgagee 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 115.

### **Restrictions on exercise of rights by credit provider or mortgagee**

**108.(1)** A credit provider shall not—

- (a) institute proceedings against a debtor in respect of 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 part of the outstanding balance of the amount financed or of the amount owed has become due on a date earlier than the date on which it would have become due, if the default, failure, exercise, fact, act or thing had not occurred or been done;

unless—

(c) the debtor is in default under the contract; and

(d) the credit provider has served on the debtor and, where there is a guarantor in respect of the contract, on the guarantor, a notice in accordance with subsection (3); and

(e) the notice referred to in paragraph (d) has not been complied with in accordance with subsection (4).

(2) A mortgagee shall not institute proceedings in respect of a matter arising under a regulated mortgage or exercise, or purport to exercise, a right under a regulated mortgage unless—

(a) the debtor under the regulated contract to which the mortgage relates is in default under the contract; and

(b) the mortgagee has served on the mortgagor and, where there is a guarantor in respect of the mortgage, on the guarantor, a notice in accordance with subsection (3); and

(c) the notice referred to in paragraph (b) has not been complied with in accordance with subsection (4).



**(3)** A notice referred to in subsection (1)(d) or (2)(b) is a notice—

- (a) specifying the default, as the case may be—
  - (i) of the debtor under the regulated contract; or
  - (ii) of the debtor under the regulated contract to which the regulated mortgage relates; 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 a period of 1 month after service of the notice (or where a longer period is specified in the notice, that longer period)—
  - (i) the default is remedied (except in so far as the default relates to a requirement to do a thing at or before a certain time, or within a certain period, or is a default in payment of an amount that became payable earlier than would have been the case if there had been no other default); 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) the enforcement expenses (if any) in relation to the exercise by the credit provider or mortgagee of any rights arising from the default of the debtor are paid; 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 the period of 1 month after service of the notice (or where a longer period is specified in the notice, that longer period) the default is remedied to the extent referred to in subsection (3)(b)(i), the amounts referred to in subsection (3)(b)(ii) have been paid or tendered and the enforcement expenses referred to in subsection (3)(b)(iii) (if any) have been paid.

**(5)** Where a mortgage secures payment of a debt or other pecuniary obligation or the performance of any other obligation under a regulated contract and secures payment of other moneys or the performance of any other obligation, subsection (2) does not apply to or in respect of the

institution of proceedings or the exercise, or purported exercise, of a right under the mortgage arising otherwise than because of a default of the debtor under the regulated contract.

**(6)** Subsections (1) and (2) do not apply where—

- (a) in relation to a regulated contract—the credit provider believes on reasonable grounds that the credit provider 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 the mortgagee was induced by fraudulent misrepresentation on the part of the mortgagor to enter into the mortgage; or
  - (ii) in the case of the exercise of a right to take possession of goods—that the goods will be or have been removed, concealed, damaged or disposed of by the mortgagor in breach of the mortgage; or
  - (iii) in the case of the exercise of a right under the mortgage in respect of property other than goods—that the property has been or will be damaged or prejudiced by the mortgagor in breach of the mortgage; or
- (c) the credit provider or mortgagee has, after making reasonable efforts to locate the debtor or mortgagor, been unable to do so.

**(7)** The onus of proving that, because of subsection (6), subsection (1) or (2) does not apply, is on the credit provider or mortgagee.

**(8)** Where a credit provider or mortgagee fails to comply with subsection (1) or (2), as the case may be, a court may, on the application of the debtor or mortgagor, order the credit provider or mortgagee, as the case may be, to compensate the debtor or mortgagor for any loss suffered by the debtor or mortgagor as a result of that failure.

Maximum penalty—40 penalty units.

**Proceedings prohibited where debtor remedies breach etc.**

**109.** Where a credit provider or a mortgagee serves a notice referred to in section 108 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 108(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.

Maximum penalty—40 penalty units.

**Limit on amount recoverable**

**110.** A credit provider who institutes proceedings or exercises a right referred to in section 108(1) in respect of a regulated contract, is not entitled to recover from the debtor an amount that exceeds the net balance due to the credit provider at the time of recovery.

**Restriction on exercise of powers**

**111.(1)** A mortgagee shall not, except with the consent of a court, take possession (otherwise than under section 107) of goods subject to a regulated mortgage or otherwise exercise the mortgagee's powers under such a mortgage in relation to property other than land if the outstanding balance of the amount financed under the contract to which the mortgage relates is less than one-quarter of the total amount financed.

Maximum penalty—40 penalty units.

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

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

**(4)** Subsection (1) does not apply in respect of a mortgage where the only goods affected by the mortgage are fixtures on land over which the mortgage is given.

**Court may order delivery of goods**

**112.(1)** A court may, on the application of the mortgagee under a regulated mortgage and upon being satisfied—

- (a) that the mortgagee is entitled to take possession of goods subject to the mortgage; and
- (b) that the mortgagor or another person in possession of the goods has without just cause refused or failed to deliver up the goods after service of a notice under section 108;

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

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

**Taking possession of goods by mortgagee**

**113.(1)** Where the mortgagee takes possession (otherwise than under section 107) of goods subject to a regulated mortgage—

- (a) the mortgagee shall not, without the consent in writing of the mortgagor given without inducement by the mortgagee, or the authority of a court, sell or otherwise dispose of or part with possession of the goods or any of the goods until the expiration of 21 days after the date of service on the mortgagor of a notice in the form prescribed for the purposes of this section relating to rights of the mortgagor in relation to the goods and specifying the estimated value of the goods; and
- (b) where the mortgagor has made application to a court in relation to the taking of possession of goods by the mortgagee, the mortgagee shall not sell or otherwise dispose of or part with the possession of the goods or any of the goods—
  - (i) before the court has determined the matter; or
  - (ii) in contravention of a determination by the court; or
  - (iii) where a determination of the court is made against which an appeal may lie—until the time within which an appeal may be made has expired and an appeal has not been made or,

where an appeal is made, until the appeal is withdrawn or has been determined in favour of the mortgagee.

Maximum penalty—40 penalty units.

(2) Subject to section 115, a mortgagee who (otherwise than under section 107) takes possession of goods subject to a regulated mortgage shall, if the mortgagor requires the mortgagee so to do by notice in writing served on the mortgagee before the mortgagee sells or otherwise disposes of or parts with possession of the goods, offer the goods for sale to a person introduced by the mortgagor—

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

### **Mortgagor's right to redeem**

**114.(1)** Where a mortgagee takes possession of goods subject to a regulated mortgage, the mortgagor may redeem the goods by discharging the mortgagor's obligations under the mortgage in accordance with subsection (2).

(2) A mortgagor may exercise the mortgagor's right under subsection (1) to redeem goods subject to a mortgage by paying or tendering at any time before foreclosure or sale by the mortgagee—

- (a) where the mortgage relates to 1 or more regulated contracts, the net balance within the meaning of section 104 due to the credit provider under each contract at the time of payment or tender; and
- (b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract, the amount payable to that person in respect of that debt or obligation at the time of payment or tender;

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

(3) Where a mortgagee takes possession of goods subject to a regulated mortgage and, at any time before foreclosure or sale by the mortgagee—

- (a) where the mortgage relates to 1 or more 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) the enforcement expenses (if any) in relation to the exercise of the right to take possession of the goods are paid; and
- (b) where the mortgage secures payment to a person of a debt or other pecuniary obligation arising otherwise than under a regulated contract, the amounts payable to that person in respect of that debt or obligation at the time of payment, are paid;

the mortgagee shall forthwith return the goods to the mortgagor.

**(4)** Where a mortgagee returns goods to a mortgagor because of the mortgagee's compliance with subsection (3)—

- (a) the goods are received and held by the mortgagor subject to the mortgage; and
- (b) the mortgage and any contracts to which it relates shall continue in force as if the mortgagee's right to take possession of the goods had not arisen and had not been exercised.

**(5)** In subsection (3)—

**“the default”** does not include—

- (a) a default in observance of the time at or within which a thing is required to be done; or
- (b) a default in payment of an amount that became payable earlier than would have been the case if there had been no other default.

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

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

- (a) as soon after the mortgagee became entitled to exercise it as is reasonable and practicable in the circumstances; and

(b) so as to receive the best price reasonably obtainable.

(2) Where a mortgage relates to 1 or more regulated contracts and the mortgagee sells goods subject to the mortgage otherwise than by offering the goods for sale as provided by section 113(2), the mortgagee is liable to the mortgagor—

- (a) where the goods are sold pursuant to section 107(4) or by the mortgagee exercising a power of sale in accordance with subsection (1)—for the amount received pursuant to the sale; or
- (b) where the goods are not sold as referred to in paragraph (a)—for the amount that, in the opinion of the court, would have been received if the goods had been sold by the mortgagee exercising a power of sale in accordance with subsection (1);

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

(3) Where a mortgagee offers goods for sale as provided by section 113(2), the mortgagee is liable to the mortgagor—

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

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

(4) For the purposes of subsections (2) and (3), the amounts referred to in this subsection are—

- (a) where the goods sold were subject to a prior mortgage—the amount payable in discharge of the prior mortgage; and
- (b) where the mortgage secures the payment of a debt or other pecuniary obligation arising otherwise than under a regulated contract to which the mortgage relates—the amount payable in respect of that debt or obligation; and
- (c) an amount equal to—
  - (i) where the power of sale was exercised in accordance with subsection (1)—the net balance, or the sum of the net balances, within the meaning of section 104 due to the credit provider in respect of the regulated contract or contracts to which the mortgage related at the time of receipt of the proceeds of the sale; or
  - (ii) where the power of sale was not exercised in accordance with subsection (1)—the net balance, or the sum of the net balances, within the meaning of section 104 as was or were due at the time the mortgagee would reasonably have expected to receive the proceeds of sale if the power had been exercised in accordance with subsection (1); and
- (d) the reasonable expenses of the mortgagee incurred in selling the goods; and
- (e) the amounts payable in successive discharge of any subsequent mortgages to which the goods were subject and of which the vendor mortgagee had notice.

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

(6) Proceedings for the recovery of an amount due to a person in respect of the exercise of a power of sale by a mortgagee because of the operation of this section shall not be instituted after the expiration of 3 years after the exercise of the power.

(7) Where the mortgagee exercises a power of sale over goods subject to



a mortgage, a court may, on the application of—

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

### **Power to give relief against repossession of certain goods from farmers**

**116.(1)** Where the mortgagor under a regulated mortgage is a person whose sole or principal business is a farming undertaking and the mortgagee gives to the mortgagor notice under section 108 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) where the mortgagee has not taken possession of the goods to which the application relates—to suspend the power of the mortgagee to take possession of the goods; or
- (b) where the mortgagee has taken possession of the goods to which the application relates but has not sold the goods or otherwise parted with possession of the goods—to suspend the power of the mortgagee to sell or otherwise part with possession of the goods;

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

**(3)** Where application is made for an order under this subsection and the

court is satisfied that the mortgagor will have a reasonable prospect of being able to remedy the default specified in the notice under section 108 within 12 months after service of notice of the application on the mortgagee, the court may—

- (a) where, at the time the mortgagee was served with notice of the application, the mortgagee 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 107) for such period, expiring not later than 12 months after service on the mortgagee of notice of the application, as is specified in the order; or
- (b) where, at the time the mortgagee was served with notice of the application, the mortgagee had taken possession of the goods but had not sold the goods or otherwise parted with possession of the goods—make an order that the mortgagee restore the goods to the applicant and also make an order referred to in paragraph (a).

(4) An order under subsection (3) may be made on such terms and conditions as the court thinks fit including a condition that the mortgagor pay to the mortgagee any enforcement expenses.

(5) Where an order is made under subsection (3) and the applicant mortgagor complies with any terms and conditions of the order that are applicable to the mortgagor, the mortgagee the subject of the order, shall not—

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

Maximum penalty—40 penalty units.

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

**Postponement of exercise of rights**

**117.(1)** Where a credit provider or mortgagee has given notice under section 108 to a debtor or mortgagor of intention to institute proceedings in respect of, or to exercise a right under, a regulated contract or a regulated mortgage, the debtor or mortgagor may—

- (a) in the case of a right to take possession of goods—at any time before the expiration of the period specified in the notice under section 108(4); or
- (b) in any other case—at any time before institution of the proceedings or exercise of the right;

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

**(2)** Where a postponement is negotiated under subsection (1) and a written statement of the conditions of the postponement is given to the debtor or mortgagor, the notice under section 108 shall, if the conditions of the postponement are complied with by the debtor or mortgagor, be deemed not to have been given.

**(3)** Where a debtor or mortgagor is unable to negotiate a postponement under subsection (1), the debtor or mortgagor may apply to a court for such a postponement.

**(4)** Where an application is made under subsection (3), the court shall seek the views of the credit provider or mortgagee and, after giving the credit provider or mortgagee a reasonable opportunity to be heard and making such other inquiries as the court thinks fit, determine whether or not to order the postponement to which the application relates.

**(5)** Subsection (2) applies to and in respect of a postponement ordered under subsection (4) in the same way as it applies to and in respect of a postponement negotiated under subsection (1).

**(6)** Where an order under subsection (4) is in force, the credit provider or mortgagee under the contract or mortgage to which the application relates may apply to a court for a variation of the order.

**(7)** A court may, where it receives an application under subsection (6), make such variation of the order to which the application relates as it thinks

fit or may refuse to make such an order.

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

(9) Where, after a mortgagee has taken possession of property subject to the mortgage, the mortgagor commences negotiations under subsection (1) with a mortgagee or makes application under subsection (4) to a court, it is a condition of any postponement negotiated under subsection (1) or ordered under subsection (4) that the mortgagor pay the reasonable costs of the mortgagee incurred in taking possession of the property.

(10) Where an application to a court has been made for a postponement under subsection (4) in relation to a regulated contract or a regulated mortgage, the credit provider or mortgagee shall not institute proceedings, or exercise a right, under the contract or mortgage before the court has dismissed the application for postponement or has ordered or refused to order a postponement.

Maximum penalty—40 penalty units.

## **PART 6—REGULATED CONTRACTS AND REGULATED MORTGAGES—GENERAL**

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

**118.(1)** A person shall not in, or in relation to, an offer to enter into a regulated contract or a regulated mortgage, make a representation that is false or misleading.

(2) It is a defence to a prosecution of a person for an offence under subsection (1) if the person proves that when the offer was made the person—

- (a) believed on reasonable grounds that the false matter was true; or
- (b) believed on reasonable grounds that the misleading matter was not misleading.

(3) A supplier shall not in, or in relation to, an offer by a person to a credit provider (not being the supplier) to enter into a regulated contract or

regulated mortgage, make a representation that is false or misleading because of the inclusion in the representation of false or misleading matter or of the omission from the representation of any material matter of which the supplier had been informed by that person.

Maximum penalty—200 penalty units.

(4) A supplier shall not induce, or attempt to induce, a person to make, in or in relation to an offer by that person to a credit provider (not being the supplier) to enter into a regulated contract, a representation that is false or misleading.

Maximum penalty—200 penalty units.

(5) It is a defence to a prosecution of a supplier for an offence under subsection (3) or (4) or to a claim by a credit provider under subsection (6) if the supplier proves that when the offer was made the supplier—

- (a) believed on reasonable grounds that the false matter was true; or
- (b) believed on reasonable grounds that the misleading matter was not misleading; or
- (c) in the case of an omission—believed on reasonable grounds that no material matter of which the supplier had been informed by the person by whom the offer was made had been omitted, being material matter the omission of which would make the representation false or misleading; or
- (d) in the case of an omission—did not know that the omitted matter was material.

(6) Where in, or in relation to, an offer by a person to a credit provider to enter into a regulated contract or a regulated mortgage—

- (a) a supplier makes a representation in contravention of subsection (3); and
- (b) the credit provider suffers loss because of the representation;

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

(7) Subsection (6)—

- (a) does not affect the liability of a person to be convicted of an offence under subsection (3); and
- (b) is in addition to all other rights of a credit provider exercisable

against the supplier who made the representation in contravention of subsection (3) (whether under this or any other Act or law).

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

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

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

**120.(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.

**(1A)** Subsection (1) does not apply in respect of an assignment or agreement to assign by way of an authority given by the debtor or mortgagor authorising—

- (a) the deduction of amounts due or which may become due to the debtor or mortgagor as wages or salary or as entitlements to benefits or a refund of contributions made under a superannuation scheme; and
- (b) the payment to the credit provider or mortgagee of the amounts deducted;

if the authority is revocable without the debtor or mortgagor incurring a penalty.

**(2)** A credit provider or mortgagee shall not enter into a contract or mortgage that includes a provision that, because of subsection (1), is void.

Maximum penalty—40 penalty units.

**Restrictions on taking bills of exchange as security**

**121.(1)** Subject to subsection (2), a credit provider shall not take a bill of exchange or promissory note in discharge of or as security for an amount payable by a debtor, mortgagor or guarantor under or in relation to a regulated contract or regulated mortgage unless the face of the bill or note bears the prescribed notice and the notice complies with section 156.

**(2)** If a credit provider institutes any proceedings under a bill of exchange or promissory note taken in discharge of or as security for an amount payable by a debtor, mortgagor or guarantor under or in relation to a regulated contract or regulated mortgage, the provisions of this Act applicable to or in respect of the regulated contract or, as the case may be, regulated mortgage shall apply in respect of the bill of exchange or promissory note as if it were the regulated contract or regulated mortgage.

**(3)** A reference in subsections (1) and (2) to the taking of a bill of exchange or promissory note does not include a reference to the taking of a cheque dated on or before the date on which it is taken or an order addressed to a banker requesting payment of specified amounts at specified times to a credit provider.

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

**Advertisements offering credit**

**122.(1)** A person shall not publish or cause to be published an advertisement stating or implying that credit is available in respect of the payment for goods or services sold or supplied by the person under a contract of sale to which Part 2 applies or that the person provides credit under regulated contracts if—

(a) the advertisement includes—

(i) a representation that is false, misleading or deceptive; or

- (ii) a statement that is, or is to the effect of, a statement prescribed for the purposes of this section as a prohibited statement; or
- (b) the advertisement does not include a statement or matter prescribed for the purposes of this section as a statement or matter required to be included in the advertisement; or
- (c) the advertisement includes a statement of the amount of a periodic payment in respect of the credit and does not also, in the advertisement—
  - (i) specify the amount that is the total of the amount financed and the credit charge to which that periodic payment relates; 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 or services; or
- (d) where the contract offered includes provision for variation of the annual percentage rate—
  - (i) the advertisement does not include a statement to that effect; or
  - (ii) there are reasonable grounds, of which that person is aware or ought reasonably to be aware, for believing that the credit provider will not be able to offer a debtor a contract with the annual percentage rate specified in the advertisement for a period which is reasonable having regard to the nature of the market in which the credit provider carries on business and the nature of the advertisement.

Maximum penalty—200 penalty units.

(2) A reference in subsection (1) to a false representation includes a reference to a representation that states or implies that the rate of interest or charges payable under a credit contract is a rate other than the annual percentage rate that would be applicable to contracts of that kind.

(3) It is a defence to a prosecution of a person for publishing an advertisement which includes a false, misleading or deceptive representation



in contravention of subsection (1)(a)(i) if the person proves that when the advertisement was published the person believed on reasonable grounds that the false matter was true, that the misleading matter was not misleading or that the deceptive matter was not deceptive.

**(4) Where—**

- (a) an advertisement is published in contravention of subsection (1); and
- (b) within 3 months after that publication, a debtor enters into a regulated contract to which, or into a regulated contract of a kind to which, the advertisement relates; and
- (c) the debtor suffers loss because of entering into the contract as a result of the advertisement;

the person who published the advertisement or caused it to be published is liable to the debtor for the amount of the loss.

**(5) Subsection (4)—**

- (a) does not affect the liability of a person to be convicted of an offence against this Act because of a contravention of subsection (1); and
- (b) is in addition to all other rights (whether under this Act or any other Act or law) of a debtor against the person who published the advertisement or caused it to be published.

**(6) In any proceedings arising under this section—**

- (a) where a name, business name, address, telephone number or post office box number specified in an advertisement is that of a person, or of the agent of a person, who—
  - (i) is the owner, whether alone or jointly with 1 or more other persons, of any goods; or
  - (ii) is the supplier of any goods or services; or
  - (iii) has an interest in goods otherwise than as an owner or has an interest in the supply of any services; or
  - (iv) provides credit under regulated contracts;

being goods or services the supply of which, or credit the provision of which, the advertisement is intended or apparently

intended to promote, that person or agent, as the case may be—shall be deemed, in the absence of proof to the contrary, to have caused the advertisement to be published; and

- (b) a person who causes an advertisement to be published shall be deemed to have done so on any day on which the advertisement is published.

(7) Proceedings for a contravention of a provision of this section or under subsection (4) do not lie against the printer, publisher or proprietor of a newspaper, or the licensee of a commercial broadcasting station or commercial television station, or the 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 Registrar or a person authorised in writing by the Registrar in that regard—
  - (i) in the case of a representation referred to in subsection (1)(a)(i)—that publication of the representation, or of a representation substantially the same as that representation; or
  - (ii) in any other case—that publication or, as the case may require, omission of the statement;would be such a contravention; and
- (b) the printer, publisher, proprietor, licensee or exhibitor, after receipt of the warning, published, or caused to be published or, as the case may be, omitted to publish, the representation or statement in an advertisement.

(8) In this section—

- (a) “**advertisement**” includes, without affecting the generality of the expression, a notice, sign, label, circular and matter that is not writing but, by reason of the form or context in which it appears, conveys a message; and
- (b) a reference to the publishing of an advertisement is a reference to its publishing by any means, including publishing in a newspaper or periodical, by radio, by television or in a film; and

- (c) “**licensee**”, “**commercial broadcasting station**” and “**commercial television station**” have the same meanings as they have in the *Broadcasting Act 1942* of the Commonwealth.

### **Prohibition of credit hawking**

**123.(1)** Subject to subsection (2), a credit provider must not canvass, or employ a person for the purpose of canvassing, at the place of residence of another person with a view to inducing the other person to apply for or obtain credit under a regulated contract.

Maximum penalty—100 penalty units.

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

- (a) the purchase of goods of a particular kind by a supplier who deals in goods of that kind; or
- (b) the purchase of goods or services from a supplier if the invitation and supply are made by the same person.

**(3)** 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 loss.

**(4)** Subsection (3)—

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

**(5)** For the purposes of subsection (1)—

“**canvass**” does not include communicate by post, telephone or telex.

### **Terminology in contracts etc.**

**124.** The regulations may require the use of specified descriptive terms in a regulated contract, a notice under section 60, a statement of account referred to in section 62 or any other document, or in an advertisement

relating to the provision of credit or to the business of a credit provider.

### **Contracting by agents**

**125.(1)** An agreement or arrangement to the effect that a credit provider or a mortgagee, or a person acting on behalf of, or who is associated with, a credit provider or a mortgagee—

- (a) is authorised to enter into or to offer to enter into a regulated contract or a regulated mortgage on behalf of the debtor or mortgagor; or
- (b) is to be treated as, or declared to be the agent of, the debtor or mortgagor in relation to entering into, or offering to enter into, a regulated contract or regulated mortgage;

is void.

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

Maximum penalty—40 penalty units.

### **Contract or mortgage not illegal etc. because of offence**

**126.(1)** A regulated contract or a regulated mortgage is not illegal, void, voidable or unenforceable merely because that the credit provider or mortgagee commits an offence against this Act.

**(2)** Where a credit provider or mortgagee commits an offence against this Act in relation to a regulated contract or a regulated mortgage, the debtor or mortgagor does not, merely because of being, or having been, a party to the regulated contract or regulated mortgage, aid, abet, counsel or procure the commission of the offence.

### **Notices to be given to all parties**

**127.(1)** Where, under this Act, a credit provider or a mortgagee gives a notice or other document to, or serves a notice or other document on, a debtor, mortgagor or guarantor, being a debtor, mortgagor or guarantor constituted by 2 or more persons, the credit provider or mortgagee shall be

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

(2) For the purposes of subsection (1), where a debtor is constituted by 2 or more persons residing at the same address or having the same address for service of notices or other documents, a notice addressed to both or, as the case may be, all such persons and given or served at that address is given or served on each of those persons.

## **PART 7—CONTRACTS OF INSURANCE**

### **Insurance in respect of regulated contracts**

**128.(1)** In this section—

“**condition**” includes—

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

whether or not the condition has legal or equitable force.

(2) A credit provider shall not, as a condition of the credit provider providing credit under a regulated contract (whether or not the condition is a term of the regulated contract) require the debtor to enter into a contract of insurance other than—

- (a) a contract of insurance or compulsory insurance, in respect of a mortgage relating to the contract in accordance with section 129; or
- (b) a contract of insurance against sickness of, or accidental injury to, or disability or death of the debtor; or
- (c) a contract of insurance against unemployment of the debtor; or
- (d) a contract of insurance against loss of profits by the debtor; or
- (e) any other prescribed contract of insurance.

Maximum penalty—100 penalty units.

(2A) Subsection (2) does not authorise or permit a credit provider to require insurance by a particular insurer.

(3) A supplier shall not represent that it is a condition of the provision of credit under a regulated contract that the debtor enter into a contract of insurance other than—

- (a) a contract of insurance or compulsory insurance, in respect of a mortgage relating to the contract in accordance with section 129; or
- (b) a contract of insurance against sickness of, or accidental injury to, or disability or death of the debtor; or
- (c) a contract of insurance against unemployment of the debtor; or
- (d) a contract of insurance against loss of profits by the debtor; or
- (e) any other prescribed contract of insurance.

Maximum penalty—100 penalty units.

(4) A court by which a credit provider is convicted of an offence under subsection (2) may, on the application of the debtor under the regulated contract concerned, order the credit provider to pay to the debtor an amount equal to the whole or part of any premium paid by the debtor under a contract of insurance entered into by the debtor in compliance with a condition imposed in breach of subsection (2).

(5) A court by which a supplier is convicted of an offence under subsection (3) may, on the application of the debtor under the regulated contract concerned, order the supplier to pay to the debtor an amount equal to the whole or part of any premium paid by the debtor under a contract of insurance entered into by the debtor pursuant to a representation referred to in subsection (3).

### **Insurance in respect of regulated mortgages**

**129.(1)** Subject to this section, a mortgagee under a regulated mortgage—

- (a) may require the mortgagor to enter into a contract of compulsory insurance in respect of goods subject to the mortgage; and

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

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

(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 which the mortgagee would not reasonably require if the mortgagee were to arrange the insurance at the mortgagee's own expense; or
- (c) to require insurance for a period subsequent to that for which insurance is in force as referred to in subsection (1) against risks or subject to terms, conditions or exceptions which the mortgagee did not require in respect of the immediately preceding period.

(3) A mortgagee shall not enter into a regulated mortgage that includes—

- (a) a condition that the mortgagor enters into a contract of insurance in respect of the mortgage (not being a contract of insurance or compulsory insurance authorised by subsection (1) or a contract of insurance referred to in section 128(2)(b), (c), (d) or (e)); or
- (b) a condition that the mortgagor maintain in force a contract of insurance in respect of the mortgage (not being a contract of insurance or compulsory insurance authorised by subsection (1) or a contract of insurance referred to in section 128(2)(b), (c), (d) or (e)).

Maximum penalty—40 penalty units.

(4) Where a mortgagor enters into a regulated mortgage, the mortgagor shall be deemed to have entered into the mortgage on the basis that it does not include—

- (a) a condition that the mortgagor enter into a contract of insurance in respect of the mortgage (not being a contract of insurance or compulsory insurance authorised by subsection (1) or a contract of insurance referred to in section 128(2)(b), (c), (d) or (e)); or
- (b) a condition that the mortgagor maintain in force a contract of insurance in respect of the mortgage (not being a contract of insurance or compulsory insurance authorised by subsection (1) or a contract of insurance referred to in section 128(2)(b), (c), (d) or (e)).

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

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

**130.(1)** Where a debtor or a mortgagor has, in relation to a regulated contract or a regulated mortgage, entered into a contract of insurance that is not a contract of insurance in accordance with the provisions of section 129 and is not a contract of insurance referred to in section 128(2)(b), (c), (d) or (e), 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.

Maximum penalty—40 penalty units.

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

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

**131.(1)** Where—

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

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



**(2) Where—**

- (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract; 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) Where—**

- (a) under a regulated credit sale contract or a regulated loan contract an amount payable to an insurer is included in the amount financed under the contract; and
- (b) the insurer rejects the proposal to which the amount so payable to the insurer relates; 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)** It is a defence to a prosecution for an offence under subsection (1) or (2) if the defendant proves that, at the time the proposal was rejected, the defendant did not know, and would not reasonably have been expected to know, that the amount payable to the insurer was included in the amount financed under the relevant contract.

Maximum penalty—40 penalty units.

**No-claim bonus**

**132.(1)** Where, in respect of the insurance of property to which a regulated contract relates or of property subject to a regulated mortgage, the insurer allows a no-claim rebate or a rebate of a similar nature, the debtor or mortgagor is entitled to the benefit of the rebate.

(2) A credit provider or mortgagee who receives the benefit of a rebate referred to in subsection (1) to which a debtor or mortgagor is entitled shall give the benefit of the rebate to the debtor or mortgagor.

## **PART 8—CONTRACTS OF GUARANTEE**

### **Contracts of guarantee unenforceable unless in writing**

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

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

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

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

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

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

### **Recovery against guarantor**

**135.(1)** A credit provider shall not bring proceedings to recover an amount from a guarantor in respect of a regulated contract unless the credit provider brings proceedings against both the debtor and the guarantor to recover that amount or unless the credit provider has obtained judgment

against the debtor and a written demand made on the debtor for satisfaction of the judgment has remained unsatisfied for not less than 30 days.

(2) Where, in proceedings to recover an amount in respect of a regulated contract, judgment is given against both a debtor and a guarantor, the judgment is not enforceable against the guarantor unless a written demand made on the debtor for satisfaction of the judgment has remained unsatisfied for not less than 30 days.

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

- (a) the debtor is a bankrupt or a person whose affairs are being dealt with under Part X of the *Bankruptcy Act 1966* of the Commonwealth; 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) as to the whereabouts of the debtor and has given the guarantor 30 days notice in the prescribed form of the intention to bring proceedings against the guarantor; or
- (d) the debtor is a minor.

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

**136.(1)** Subject to subsection (2), a guarantor of the obligations of a debtor under a regulated contract where the debtor is a minor is liable under the contract of guarantee to the same extent as the guarantor would be liable if the debtor had not been a minor when the regulated contract was made.

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

**Guarantor to receive copy of contract of guarantee**

**137.** Where a contract of guarantee is made between a guarantor and a credit provider with respect to the obligations of a debtor under a regulated contract, the credit provider shall, if the guarantor has not already received a copy of the contract of guarantee, give to the guarantor a copy of the contract of guarantee not later than 21 days after it is signed by the guarantor.

**Guarantor to be given prescribed statements**

**138.** Where a contract of guarantee is made between a credit provider and a guarantor with respect to the obligations of a debtor under a regulated contract, the credit provider shall, not later than 21 days after the contract of guarantee is signed by the guarantor, give to the guarantor a statement in or to the effect of the form prescribed for the purposes of this section.

**Discharge of guarantee by notice**

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

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

**Right to revoke offer of guarantee**

**140.(1)** A provision in an agreement to the effect that a person does not

have a right to revoke an offer to enter into a contract of guarantee—

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

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

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

Maximum penalty—40 penalty units.

## **PART 9—CONTROL OF CREDIT PROVIDERS’ PRACTICES**

### ***Division 1—Unjust conduct by credit providers***

#### **Interpretation**

**141.** For the purposes of this Division, conduct of a credit provider is unjust if it is conduct—

- (a) that is dishonest or unfair; or
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought; or
- (c) that consists of varying the annual percentage rate under credit sale contracts or loan contracts where, in comparison to similar contracts entered into by similar credit providers, the resultant annual percentage rate is excessive; or
- (d) that consists of a contravention of this Act.

**District Court to exercise jurisdiction**

**142.(1)** For the purposes of this Division and Division 2—

“**court**” means any District Court which is hereby invested with jurisdiction to hear and determine every application made under this or that Division and to make any order authorised by this or that Division.

(2) For the purposes of exercising its jurisdiction pursuant to this Division and Division 2, a District Court shall be constituted by a Judge sitting alone.

(3) The power to make rules of court governing the practice of District Courts includes power to make rules for the hearing of applications under this Division or Division 2.

(4) Until such rules of court are made or in so far as the rules made do not extend to a particular case a Judge of the District Courts may give directions as to the hearing as the Judge thinks fit and such directions shall be complied with.

**Undertakings by credit provider**

**143.(1)** Where it appears to the Registrar that a credit provider has, in the course of a business of providing credit, repeatedly engaged in unjust conduct, the Registrar may, with the consent of the Minister—

- (a) request the credit provider to execute a deed in terms approved by the Registrar under which the credit provider gives undertakings as to—
  - (i) the discontinuance of the unjust conduct; and
  - (ii) the credit provider’s future conduct; and
  - (iii) the action the credit provider will take to rectify the consequences of the credit provider’s unjust conduct; or
- (b) apply to a court for an order under section 145(1).

(2) Where the Registrar makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that the Registrar does so with the consent of the Minister.

(3) Where a credit provider executes a deed under subsection (1)(a) and observes the undertakings given in the deed, the Registrar may not apply for

an order under section 145(1) because of any conduct to which the undertakings relate.

### **Register of Undertakings**

**144.(1)** Where a credit provider executes a deed containing undertakings as referred to in section 143(1)(a), the Registrar shall give a copy of the deed to the credit provider who executed it.

**(2)** The Registrar shall retain all deeds and shall register the deeds in a Register of Undertakings kept by the Registrar and containing the prescribed particulars.

**(3)** The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.

**(4)** A credit provider shall observe undertakings given by the credit provider in a deed executed under section 143(1)(a).

Maximum penalty—200 penalty units.

**(5)** A prosecution for an offence under subsection (4) shall not be instituted except by the Registrar with the consent of the Minister.

### **Restraint of unjust conduct**

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

Maximum penalty—200 penalty units.

**(2)** Where, on the application of the Registrar, a court is satisfied that a credit provider has failed to observe an undertaking given by the credit provider in a deed executed under section 143(1)(a), the court may make an order under subsection (1) against the credit provider and, in the case of an undertaking referred to in section 143(1)(a)(iii), an order to observe that undertaking within a time specified by the court when making the order.

**(3)** Where the Registrar applies for an order under subsection (1) or (2) against a credit provider that is a body corporate and the court is satisfied

that the unjust conduct or breach of undertaking to which the application relates was engaged in with the consent or connivance of a person who, at the time of the conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the court may, in addition to any other order it may make under this section, make an order prohibiting that person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under section 143(1)(a), by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned and that person shall comply with the order.

Maximum penalty—200 penalty units.

(4) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the court thinks fit including conditions as to the future conduct of the credit provider and conditions specifying the action to be taken by the credit provider to rectify the consequences of the credit provider's unjust conduct.

### **Variation etc. of restraining order**

**146.** A court may, on the application of the Registrar or a credit provider or person to whom an order made under section 145 relates, vary or discharge the order.

## ***Division 2—Prohibition to act as credit provider***

### **Power to order certain persons not to act as credit providers**

**147.(1)** Where in the opinion of a court, a person is not a fit and proper person to enter into regulated contracts as a credit provider, a court may make an order prohibiting or restricting the person from doing all or any of the following things—

- (a) providing credit under regulated contracts either alone or in partnership with any person and whether or not through agents;
- (b) acting as a director or taking part directly or indirectly in the management or control of any body corporate or business that provides credit under regulated contracts;



- (c) being in the employ, or acting as agent, of a credit provider in any capacity that allows the person to take any part in the negotiation of regulated contracts involving the provision of credit by the credit provider.

(2) The Registrar, with the consent of the Minister, may apply to a court for an order under this section.

(3) An order under this section—

- (a) may be for a specified period of time or without any time limit; and
- (b) may provide that its operation is subject to such terms and conditions as are specified in the order; and
- (c) may be cancelled or varied at any time by the court.

(4) A person to whom an order made under this section applies, or to whom such an order as varied applies, shall comply with the order and the terms and conditions (if any) to which the operation of the order is subject.

Maximum penalty—100 penalty units or imprisonment for 3 months, or both such penalty and imprisonment.

(5) For the purposes of determining whether a person is a fit and proper person to enter into regulated contracts as a credit provider, a court may consider—

- (a) the fact that the person—
  - (i) has been convicted of an offence against this Act; or
  - (ii) has been convicted of an offence in the State or elsewhere involving fraud or dishonesty; or
  - (iii) is or has been a credit provider under a credit contract that has been reopened pursuant to Division 3; or
  - (iv) has failed, more than once, to comply with any of the provisions of Part 3 or of section 122; or
  - (v) was a director, manager, secretary or other officer of a body corporate at the time the body corporate committed such an offence, had its credit contract reopened or did so fail; or
- (b) such other matter as the Registrar brings to the attention of the court.

***Division 3—Reopening of regulated contracts and regulated mortgages*****Interpretation**

**148.** For the purposes of this Division, 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.

**Court may reopen certain transactions**

**149.(1)** Subject to section 152, a court 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 court that, in the circumstances relating to the contract or mortgage at the time it was entered into, it was unjust.

**(2)** Where the court reopens a transaction under subsection (1), the court may, despite 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 such amount as the court, having regard to the risk involved and all other circumstances, considers to be reasonably payable, in the case of a credit sale contract or a loan contract, in respect of the amount financed and the credit charge or, in the case of a continuing credit contract, in respect of the amount owed by the debtor to the credit provider under the contract;
- (c) set aside either wholly or in part or revise or alter an agreement made or mortgage given in connection with the transaction;
- (d) give judgment for or make an order in favour of a party of such

amount as, having regard to the relief (if any), which the court thinks fit to grant, is justly due to that party under the contract or mortgage;

- (e) give judgment or make an order against a person for delivery of goods to which the contract or mortgage relates and which are in the possession of that person.

### **Matters to be considered by court**

**150.(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 court 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 affecting the generality of subsection (1), the matters to which the court 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 the debtor's or mortgagor's 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 the debtor's or mortgagor's age or the state of the debtor's or mortgagor's 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 the purposes of subsection (2), a person shall be deemed to have represented a debtor or mortgagor if the person represented the debtor or mortgagor, or assisted the debtor or mortgagor to a significant degree, in negotiations prior to, or at, the time the contract or mortgage was entered into.

**(4)** In determining whether a contract or mortgage is unjust, the court shall not have regard to any injustice arising from circumstances that were

not reasonably foreseeable at the time the contract or mortgage was entered into.

(5) In determining whether to grant relief in respect of a contract or mortgage that it finds to be unjust, the court may have regard to the conduct of the parties to the proceedings in relation to the contract or mortgage since it was entered into.

### **Joinder of parties**

**151.** Where it appears to the court 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 court holds to be unjust, the court may join that person as a party to the proceedings and may make such other order in respect of that person as it thinks fit.

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

**152.(1)** Except as provided by subsection (2), a debtor, mortgagor or guarantor may not make an application under section 149 in respect of a regulated contract or regulated mortgage—

- (a) in the case of a regulated mortgage under which the mortgagee has exercised a right to take possession of the property to which the mortgage relates—after the expiration of the period of 12 months after the time when the mortgagee served the notice referred to in section 108 on the mortgagor or guarantor; or
- (b) in any other case—after the expiration of the period of 12 months after the time when the contract or mortgage is terminated.

(2) A debtor, mortgagor or guarantor may make an application under section 149 in respect of a regulated contract or a regulated mortgage during the period of pendency of maintainable proceedings arising out of or in relation to the contract or mortgage, being proceedings (including cross-claims) that are pending against the debtor, mortgagor or guarantor.

**Jurisdiction of court**

**153.(1)** For the purposes of this Division each court is invested with jurisdiction to hear and determine applications made under this Division and to make any order authorised by this Division.

(2) However, nothing in this section shall authorise the bringing of proceedings in a court where the total amount payable under the regulated contract or regulated mortgage concerned exceeds the monetary limit to which the jurisdiction of the court is subject.

**PART 10—GENERAL****Notices by mortgagee**

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

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

**Governor in Council may fix maximum annual percentage rates**

**155.(1)** The Governor in Council, by order in council, may from time to time declare that the annual percentage rate in respect of a regulated contract or a class of regulated contracts shall not exceed a specified rate.

(2) A regulated contract entered into that provides for an annual percentage rate that exceeds the rate for the time being specified in respect of that contract or the class of contract in an order in council in force under subsection (1) shall, despite the terms of the contract, be taken to provide for

the specified annual percentage rate in lieu of the first mentioned annual percentage rate.

(3) A debtor is entitled to recover from the credit provider as a debt that proportion of any moneys paid by the debtor to the credit provider that is attributable to the excess of the specified annual percentage rate.

(4) Section 28A of the *Acts Interpretation Act 1954* (Regulations) applies in respect of orders in council made under this section as if they were regulations and, for the purpose of such application, that section shall be read as if a reference to the term “regulation” were a reference to the term “order in council”.

### **Legibility of documents**

**156.(1)** A document that, under this Act, is required to be in writing or to comply with the provisions of this section shall be readily legible.

(2) For the purposes of this section, a document shall be deemed to be readily legible if it is—

- (a) in clear hand writing; or
- (b) in print or type or otherwise reproduced in a form, that complies with the prescribed requirements.

(3) For the purposes of this Act, a document that is not readily legible shall be deemed not to be in writing.

(4) Regulations may prescribe in respect of a document referred to in subsection (1)—

- (a) the size, type and quality of paper upon which a document may be printed; and
- (b) the size and nature of the type to be used in the printing and completion of a document; and
- (c) the ink or other substance with which a document shall or may be printed or completed.

### **Restriction on form of document**

**157.** Where the form of a document given or issued by a credit provider

or mortgagee under or for the purposes of this Act is, in the opinion of the Registrar—

- (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 manner that detracts from the legibility of the document;

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

### **Approval of form of document**

**158.** Where a credit provider or a mortgagee submits to the Registrar for the Registrar's opinion a form of document intended to be given or entered into under this Act, the credit provider or mortgagee shall not, merely because that the credit provider or mortgagee gives or issues a document under this Act in that form, be guilty of an offence under section 159 if the Registrar, before the document is given or issued, determines that in the Registrar's 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 manner;

that does not detract from the legibility of the document.

### **Documents and forms to comply with Act**

**159.** A credit provider or mortgagee shall not—

- (a) give or issue a document under this Act that is not readily legible; or
- (b) give or issue a form of document in contravention of a direction in force under section 157.



Maximum penalty—40 penalty units.

### **Statements etc. not required to be in separate documents**

**160.** Except where this Act expressly otherwise provides, nothing in this Act requires an agreement, mortgage, contract, notice, statement, form or other writing to be contained in or written on a document that is separate from any other agreement, mortgage, contract, notice, statement, form or writing.

### **Signature of documents**

**161.** Subject to section 125, where, under this Act, a document is required to be signed by a person, it is not necessary that the person should sign it with the person's own hand, but it is sufficient if the person's signature is written on the document by another person by or under the person's authority.

### **Contracting out of Act prohibited**

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

**(2)** A credit provider or mortgagee shall not enter into a contract, mortgage or agreement that includes a provision that, because of subsection (1), is void.

Maximum penalty—100 penalty units.

### **General penalty**

**163.(1)** A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

**(2)** A person who commits an offence against this Act for which a specific penalty is not prescribed by a provision of this Act other than this subsection, is liable to a penalty of 20 penalty units.

**Proceedings for offences**

**164.(1)** A prosecution for an offence against this Act may be brought within 3 years after the offence is committed or, with the consent of the Minister, at any later time.

**(2)** Proceedings for an offence against this Act—

- (a) shall be taken by way of summary proceedings under the *Justices Act 1886*; and
- (b) may be instituted by—
  - (i) the Registrar; or
  - (ii) any other person authorised by the Minister.

**(3)** An authority to prosecute purporting to have been signed by the Minister is evidence of that authority without proof of the signature of the Minister.

**Offence by body corporate**

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

**Evidence**

**166.** In any proceedings under this Act or in any proceeding in respect of a matter arising under this Act—

- (a) it shall not be necessary to prove the appointment of the Minister or the Registrar;
- (b) a signature purporting to be that of the Minister or the Registrar shall be taken to be the signature it purports to be until the contrary is proved;
- (c) a certificate purporting to be signed by the Registrar to the effect that a person specified in the certificate was, on a day or during a period so specified, authorised for the purposes of section 173 or

175, shall, upon its production in the proceedings, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate.

### **Disposal of penalties and fees etc.**

**167.** Except where this Act otherwise expressly provides, all fees, penalties and other moneys recovered under this Act shall be paid into and become part of the Consolidated Revenue Fund.

### **Certain rights etc. saved**

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

### **Giving of notices etc.**

**169.(1)** Where, under this Act, a document or notice is required or permitted to be given to or served on a person, the document or notice may be given or served—

- (a) where the person is a natural person—by giving it to or serving it personally on the person or by sending it by post to the person at the person's usual or last known place of abode or business;
- (b) where the person is a body corporate—by leaving it at or sending it by post to the registered office of the body corporate.

**(2)** In subsection (1)—

**“registered office”** means—

- (a) the office of the body corporate that is the registered office or principal office in accordance with the law of the State or Territory by or under which the body corporate is incorporated; or
- (b) where the body corporate is not incorporated in Australia—an office registered under the law of a State or Territory as a registered office of the body corporate; or
- (c) in the case of a body corporate that has no such registered office or principal office—the principal place of business of the body

corporate in the State or, if it has no place of business in the State, its principal place of business in Australia.

(3) Where the rights and obligations of a person under this Act have been assigned or have passed by operation of law to another person, a document or notice given to or served on the first mentioned person at the person's usual or last known place of abode or business shall be deemed to have been given to or served on the second mentioned person unless the person giving or serving the document or notice had, before the person gave or served the document or notice, been given notice in writing that the rights and obligations of the first mentioned person had been assigned or had so passed to the second mentioned person.

### **Limitation of liability of Registrar**

**170.** The Registrar shall not incur any liability on account of anything done or omitted by the Registrar bona fide and without negligence for the purposes of this Act.

### **Regulations**

**171.(1)** The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act and, without affecting the generality of the foregoing, for or with respect to—

- (a) the conversion to Australian currency of amounts to be shown in a statement of account, or in other documents of a kind referred to in this Act or the regulations, in respect of goods or services paid for in other than Australian currency or cash supplied in other than Australian currency; and
- (b) the making and retention of records relating to credit contracts and related contracts, including records relating to negotiations for and steps preliminary to the making of any such contracts; and
- (c) prescribing tables for the purposes of applying the formula in Schedule 1 in the calculation of the amount of a predetermined credit charge or estimated credit charge that has accrued at a particular time under a regulated credit sale contract or regulated

loan contract to which that Schedule applies; and

- (d) prescribing tables for the purposes of applying the formula in Schedule 6 in the determination of the annual percentage rate under a regulated credit sale contract or regulated loan contract to which that Schedule applies; and
- (e) prescribing penalties not exceeding 10 penalty units for a breach of the regulations.

(2) A provision of a regulation may—

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

or may do any combination of those things.

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

## **PART 11—ADMINISTRATION**

### **Functions and powers of Registrar**

**172.(1)** For the purposes of this Act, the Registrar—

- (a) shall receive and investigate complaints from and may give advice to natural persons in relation to matters to which this Act applies; and
- (b) shall keep under review the operation of this Act and from time to time report to the Minister on the operation of this Act; and
- (c) shall confer and exchange information with persons having functions similar to the Registrar's own under the law of another State or of a Territory; and

(d) may take proceedings for an offence against this Act.

(2) Subject to this Act, the Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of the Registrar's functions and, in particular, may, in investigating a complaint in relation to a credit provider, seek compliance by the credit provider with this Act.

### **Power of Registrar to enter premises**

**173.(1)** For the purpose of ascertaining whether the provisions of this Act are being or have been complied with by a person who is or has been a credit provider or mortgagee, the Registrar and any other person authorised in writing in that behalf by the Registrar may—

- (a) enter premises where the business of the first mentioned person or the business of a person with whom the first mentioned person has a trade or tie agreement, is being or has been carried on; and
- (b) require the production of records; and
- (c) inspect and require explanation of any record; and
- (d) take notes, copies and extracts of or from any record or statement produced pursuant to this section.

(2) Where the Registrar or a person authorised by the Registrar requires production under subsection (1) of a record that is not in writing, is not written in the English language or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(3) The Registrar or a person authorised by the Registrar shall so far as the person is able exercise the powers under this section in a manner that causes as little inconvenience to the business of the credit provider or mortgagee as is consistent with the exercise of the powers.

(4) Before the Registrar or a person authorised by the Registrar enters a part of any premises or other place which part is used exclusively as a dwelling house the person shall, save where the person has the permission of the occupier of that part to the entry, obtain from a justice a warrant to

enter.

(5) A justice who is satisfied upon the complaint of the Registrar or an authorised person that there is reasonable cause to suspect that an offence against this Act has been, is being or is about to be committed on any premises may issue a warrant authorising the Registrar or any person authorised by the Registrar to enter the premises named in the warrant for the purpose of exercising in the premises the powers and authorities conferred upon the Registrar by or under this Act.

(6) A warrant shall be, for the period of 14 days from the date of its issue, sufficient authority for the Registrar and any person authorised by the Registrar—

- (a) to enter the premises specified in the warrant; and
- (b) to exercise in the premises the powers and authorities conferred upon the Registrar by or under this Act.

(7) For the purposes of subsections (4), (5) and (6), premises that are used as a dwelling house do not include the curtilage of those premises.

### **Persons not to obstruct Registrar**

**174.(1)** A person shall not—

- (a) wilfully delay or obstruct the Registrar or other person authorised by the Registrar in the exercise of powers under section 173; or
- (b) refuse or fail, without reasonable excuse, to produce, or conceal or attempt to conceal, any record or statement the person is required under section 173(1) or (2) to produce; or
- (c) being a credit provider or mortgagee or, where the credit provider or mortgagee is a body corporate, an officer of the credit provider or mortgagee, refuse or fail to answer a question or give an explanation relating to any such record or statement put to or required of the person by a person entitled to require production of the record or statement who first informs the person that the person is required and obliged by this section to answer the question or give the explanation; or
- (d) being a credit provider or mortgagee or, where the credit provider or mortgagee is a body corporate, an officer of the credit provider

or mortgagee, give to a question relating to any record or statement an answer that the person knows is false or misleading or give an explanation of any record or statement that the person knows is a false or misleading explanation.

Maximum penalty—40 penalty units.

(2) A person is not excused from answering a question put to the person by the Registrar or other authorised person on the ground that the answer might tend to incriminate the person but, where the person claims, before answering the question, that the answer might tend to incriminate the person the answer is not admissible in evidence against the person in proceedings for an offence against this Act other than an offence under subsection (1)(a), (b) or (d).

### **Production of records**

**175.(1)** In this section—

**“authorised person”** means the Registrar or a person authorised in writing by the Registrar to exercise the powers conferred by this section on an authorised person;

**“credit provider”** includes a person who was at any time a credit provider to whom a provision of this Act applied as a credit provider;

**“mortgagee”** includes a person who was at any time a mortgagee to whom a provision of this Act applied as a mortgagee.

(2) For the purpose of ascertaining whether the provisions of this Act are being or have been complied with by a credit provider or mortgagee, an authorised person may, by instrument in writing, require the credit provider or mortgagee to produce specified records, or records of a specified class or description, to a specified authorised person at a specified place at a specified time or within a specified period.

(3) Where an authorised person requires production under subsection (2) of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.



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

Maximum penalty—40 penalty units.

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

(6) Nothing in this section limits the operation of section 173 and nothing in section 173(1) limits the operation of this section.

### **Secrecy**

**176.(1)** This section applies to every person who is or has been the Registrar, an authorised person under section 173(1) or 175(1) or a member of the staff assisting the Registrar.

(2) A person to whom this section applies shall not, either directly or indirectly, except in legal proceedings or in the exercise or performance of a power, authority, duty or function under or in connection with this Act or the corresponding Acts of the legislature of the Commonwealth or of another State or of a Territory, make a record of, or divulge or communicate to any person, any information concerning the affairs of any person acquired by the person because of the person's office or employment under or for the purposes of this Act.

Maximum penalty—40 penalty units.

### **Annual report**

**177.(1)** The Registrar shall, as soon as practicable after the expiration of the period of 12 months ending on 30 June in each year, prepare a report on the administration of this Act during that period of 12 months and submit the report to the Minister.

(2) The first report under subsection (1) shall relate to the period commencing on the date of commencement of this section and ending on 30 June next following.

(3) The Minister shall cause a report under subsection (1) to be laid before the Legislative Assembly within 14 sitting days after it is received.

## **PART 12—REPEALS AND AMENDMENTS**

### **Amendment of Hire-purchase Act 1959**

**179.(3)** Despite the amendment of the *Hire-purchase Act 1959* by this section, that Act continues to have the same operation and effect in relation to a hire-purchase agreement that—

- (a) was within the meaning of that Act before the commencement of this section; and
- (b) was made before that commencement;

as it would have had if that Act had not been amended by this section.

## **SCHEDULE 1**

### **ACCRUED CREDIT CHARGE**

section 13

1. This Schedule applies to a credit sale contract or loan contract where—
  - (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 commencing on the date on which the amount financed was provided and the last interval ending not more than 5 years after that date; and
  - (d) the period of each interval is 1 month or less.

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

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

where—

“C” is the amount of the predetermined credit charge or estimated credit charge;

“E” is the number of instalment intervals (including a part of an interval as a whole interval) which have elapsed since the amount financed was provided under the contract;

“T” is the number of instalment intervals (excluding a part of an interval) in the period of the contract.

3. For the purposes of this Schedule—

- (a) instalments shall be deemed to be equal if all the instalments except 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 2**

### **STATEMENT OF AMOUNT FINANCED IN RELATION TO CREDIT SALE CONTRACT**

section 37

**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 that trade-in allowance was given; and
- (b) the cash price of the goods or services; and
- (c) the balance of the cash price after deduction of the amount (if any) paid or provided, or to be paid or provided, by way of deposit;

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

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

- (e) amounts payable in respect of contracts of insurance (if any) entered into in relation to the contract, showing separately, in respect of each such contract the name of the insurer and—
    - (i) where the contract relates to goods that are or include a motor vehicle, boat or other vehicle or thing required to be registered or licensed—amounts so payable in respect of compulsory insurance (unless those amounts are included in a statement under paragraph (d)); and
    - (ii) where there is a mortgage relating to the contract—amounts so payable in respect of insurance of property subject to the mortgage (other than compulsory insurance included in the statement under subparagraph (i) or under paragraph (d)); and
    - (iii) where there is a mortgage relating to the contract—amounts so payable in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any Act; and
    - (iv) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of the debtor or against unemployment of the debtor or, where there is more than 1 debtor, amounts so payable in respect of such insurance in relation to the debtors; and
    - (v) amounts so payable in respect of life insurance of the debtor or, where there is more than 1 debtor, amounts so payable in respect of life insurance of the debtors; and
    - (vii) amounts so payable in respect of insurance against loss of profits by the debtor or, where there is more than 1 debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and
    - (viii) amounts so payable in respect of insurance against such other risks (if any) as are prescribed;
- or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to 1 or more of the risks referred to in the preceding subparagraphs—that amount and a statement of the risks to which the amount relates; and

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

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

**2.** In clause 1—

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

## **SCHEDULE 3**

### **STATEMENT OF CREDIT CHARGE IN RELATION TO CREDIT SALE CONTRACT OF GOODS OR SERVICES**

section 37

**1. A statement of the credit charge—**

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

**2. In clause 1—**

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



**SCHEDULE 4****STATEMENT OF AMOUNT FINANCED IN  
RELATION TO LOAN CONTRACT**

section 38

**1. A statement of the amount financed shall state—**

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

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

- (b) amounts payable in respect of contracts of insurance (if any), entered into in relation to the contract showing separately in respect of each such contract the name of the insurer and—
  - (i) where there is a mortgage relating to the contract—amounts so payable in respect of insurance of property subject to the mortgage; and
  - (ii) where there is a mortgage relating to the contract—amounts so payable in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any Act; and
  - (iii) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of the debtor or against unemployment of the debtor or, where there is more than 1 debtor, amounts so payable in respect of such insurance in relation to the debtors; and
  - (iv) amounts so payable in respect of life insurance of the debtor or, where there is more than 1 debtor, amounts so payable in respect of life insurance of the debtors; and
  - (vi) amounts so payable in respect of insurance against loss of

profits by the debtor or, where there is more than 1 debtor, amounts so payable in respect of insurance against loss of profits by the debtors; and

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

or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to 1 or more of the risks referred to in the preceding subparagraphs—that amount and a statement of the risks to which the amount relates; and

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

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

2. In clause 1—

**“relevant date”** means the date on which the loan contract is entered into or, if the loan contract is entered into by the acceptance by the credit

provider of an offer made by the debtor, the date on which the offer is made.

## SCHEDULE 5

### STATEMENT OF CREDIT CHARGE IN RELATION TO LOAN CONTRACT

section 38

**1.** A statement of the credit charge—

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

**2.** In clause 1—

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

## **SCHEDULE 6**

### **ANNUAL PERCENTAGE RATE**

section 40

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

- (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 commencing on the date on which the amount financed is provided.

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

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

where—

“N” is the total number of instalments;

“C” is the number of instalments that, under the contract, will be paid in 1 year or, where 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” is an amount determined in accordance with the formula—

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

where—

“C” is the same number as in the first mentioned formula;

“T” is the total amount of the predetermined credit charge;

“N” is the total number of instalments; and

“A” is the amount financed.

**3.** For the purposes of this Schedule—

- (a) instalments shall be deemed to be equal if all the instalments except 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**

### **STATEMENT OF ACCOUNT IN RELATION TO CONTINUING CREDIT CONTRACT**

section 62

**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 the cash price of goods or services supplied by the credit provider during the billing cycle in respect of payment for which credit is provided under the contract and such a description of each transaction as will enable it to be identified; and
- (e) particulars, including the amount, of each amount of cash supplied by the credit provider during the billing cycle in respect of the supply of which credit is provided under the contract; and
- (f) particulars of each amount in respect of which, under the contract, credit is provided to the debtor during the billing cycle in respect of goods or services or cash supplied by a person other than the credit provider and in relation to each such amount particulars of the suppliers of the goods or services or of the cash to which the amount relates; 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 (not being a payment by the debtor to the credit provider) by way of refund or allowance given to the debtor during the billing cycle; and

- (i) particulars of each amount (not being 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) where the statement of account includes a statement under paragraph (d) of amounts relating to goods—particulars so far as they are known or can be ascertained, of amounts included in that amount in respect of—
  - (i) charges for installation of the goods; or
  - (ii) charges for maintenance of the goods; or
  - (iii) charges for delivery of the goods to the debtor;unless included in the cash price of the goods under paragraph (d); 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 respect of contracts of insurance (if any) entered into in relation to the contract showing separately in respect of each such contract the name of the insurer and—
  - (i) where there is a mortgage relating to the contract—amounts so payable in respect of insurance of property subject to the mortgage; and
  - (ii) where there is a mortgage relating to the contract—amounts so payable in respect of insurance against loss of the security interest of the mortgagee in any goods subject to the mortgage because of any Act; and
  - (iii) amounts so payable in respect of insurance against sickness of, accidental injury to, or disability or death of the debtor or against unemployment of the debtor or, where there is more than 1 debtor, amounts so payable in respect of such insurance in relation to the debtors; and
  - (iv) amounts so payable in respect of life insurance of the debtor or where there is more than 1 debtor, amounts so payable in



respect of life insurance of the debtors; and

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

or, where an amount is payable in respect of a contract of insurance entered into in relation to the contract relating to 1 or more of the risks referred to in the preceding subparagraphs—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 respect of—
  - (i) stamp duty payable in respect of the contract; or
  - (ii) stamp duty payable in respect of any mortgage relating to the contract entered into during the billing cycle; and
- (m) the amount of the credit charge in respect of the billing cycle; and
- (n) the annual percentage rate in respect of the contract and the manner of its application to the contract; and
- (o) where the statement of account includes a request for payment of an amount by the debtor—
  - (i) the amount payable or the manner in which it may be ascertained from the statement; and
  - (ii) the person to whom and the place at which the amount is payable; and
  - (iii) where the request is not a request for the amount to be paid on receipt of the statement by the debtor—the date before which the amount is to be paid; 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 a preceding paragraph; 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 respect of the value of any consideration provided by the credit provider to the debtor, being consideration of a kind prescribed for the purposes of this paragraph, other than consideration referred to in a preceding paragraph.

**2. In clause 1—**

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

commencement of the billing cycle but that have not been included in an earlier statement of account under the contract.

## **SCHEDULE 8**

### **FURTHER TRANSITIONAL AND OTHER SPECIAL PROVISIONS**

section 5A

#### **Certain past nondisclosures about insurance commission not to incur civil penalty**

**1.(1)** This clause applies to credit sale contracts or loan contracts entered into before the commencement of this clause.

**(2)** If a statement about an insurance commission charge payable in respect of a credit sale contract or a loan contract was included in written information given or shown to the debtor before or at the time that the debtor entered into the contract, section 44 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 or contains an inaccurate statement about the insurance commission charge.

**(3)** If—

- (a)** an insurance commission charge was payable to the credit provider in respect of a credit sale contract or a loan contract; and
- (b)** an insurance commission charge was also payable to a body with a name that is similar to (or a derivative of) the name of the credit provider and a statement about the insurance commission charge payable to that body was included in the contract or in written information referred to in subclause (2);

section 44 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 or contains an inaccurate statement about the insurance commission charge.

**(4)** If the name of an insurer under a contract of insurance entered into in

relation to a credit sale contract or loan contract is disclosed in written information given or shown to the debtor before or at the time that the debtor entered into the credit sale contract or loan contract, section 44 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 disclose the name of the insurer or contains an inaccurate statement of the name of the insurer.

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

(6) This clause does not apply to any liability to pay any credit charge which has been determined by a court before the commencement of this clause.

(7) In this clause, a reference to a statement about any insurance commission charge that is payable in respect of a credit sale contract or loan contract is a reference to a statement—

- (a) which relates to a commission charge for a contract of insurance entered into in connection with the credit sale contract or loan contract; and
- (b) which is required by section 37(1)(i) or 38(1)(h) to be included in the credit sale contract or loan contract.

### **Operation of amendments relating to description of consumer credit insurance**

2.(1) The amendments made to Schedules 2, 4 and 7 by the *Credit Amendment Act 1991* apply to regulated contracts entered into before as well as after the commencement of those amendments but a regulated contract entered into before the commencement of the amendments which complied with Schedule 2, 4 or 7, as the case may be, as in force prior to the commencement of the amendments and the other provisions of this Act, is to be taken to continue to comply with this Act.

(2) A debtor who was, before the commencement of those amendments, not liable (because of section 44, section 68 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 subclause (1)) is taken always to have been liable to pay that charge.

(3) This clause does not apply to any liability to pay any credit charge which has been determined by a court before the commencement of this clause.

(4) A regulation under section 124 which prescribes the term “consumer credit insurance” to describe the insurance referred to in clause 1(e)(iv), of Schedule 2, clause 1(b)(iii) of Schedule 4 or clause 1(k)(iii) of Schedule 7 (as in force before the amendment of those provisions by the *Credit Amendment Act 1991*), is taken to authorise (and always to have authorised) the use of that term to describe that insurance even though it included insurance against unemployment.

(5) A regulation under section 124 which prescribes the term “unemployment insurance” to describe the insurance referred to in clause 1(e)(vi) of Schedule 2, clause 1(b)(v) of Schedule 4 or clause 1(k)(v) of Schedule 7 (as in force before the repeal of those provisions) is taken to authorise (and always to have authorised) the use of that term to describe insurance against unemployment despite the repeal of those provisions.

### **Operation of amendments to sections 86 and 87**

3. The amendments made to sections 86 and 87 by the *Credit Amendment Act 1991* apply to proceedings in a court commenced before as well as after the commencement of those amendments.

### **Operation of sections 86A and 87A**

4. Sections 86A and 87A do not apply to proceedings pending in a court on the commencement of those sections but apply to proceedings commenced after the commencement of those sections even though the contraventions or failures to which the proceedings relate occurred before that commencement.

## **SCHEDULE 9**

### **EXCEPTIONS FROM APPLICATION OF ACT**

section 20

#### **Certain credit by bank or pastoral finance company**

1. The provisions of Parts 3, 4, 5, 6, 7 and 8 do not apply to or with respect to the provision of credit by a bank or a pastoral finance company where the credit is provided by way of overdraft or otherwise than by way of a credit sale contract, continuing credit contract or term loan.

#### **Housing loan contract**

2.(1) In this clause—

**“housing loan contract”** means a loan contract in respect of which the whole or part of the credit provided is, or is intended by the credit provider to be, applied for the purpose of—

- (a) enabling the debtor to acquire a private dwelling house or land on which to erect such a house; or
- (b) providing the debtor with funds for the erection of a private dwelling house or for the provision of additional accommodation in a private dwelling house; or
- (c) discharging the liability of the debtor in respect of credit referred to in paragraph (a) or (b); or
- (d) discharging the liability of the debtor under the later or latest loan contract in a series of 2 or more loan contracts where—
  - (i) the series commenced with a contract referred to in paragraph (c); and
  - (ii) the debtor under each contract in the series is the same; and
  - (iii) credit was provided under each contract in the series to discharge the liability of the debtor under the immediately

preceding contract in the series;

**“private dwelling house”** means—

- (a) a building that is designed, or is designed principally, as a separate residence for 1 family or person; or
- (b) an apartment, flat or other part of a building that is so designed.

**(2)** Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of—

- (a) the provision of credit under a housing loan contract; and
- (b) related matters preliminary to, and consequential upon, the provision of that credit.

### **Pawnbrokers**

**3.** Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of—

- (a) the provision of credit in the course of a business of pawnbroking carried on in accordance with the *Pawnbrokers Act 1984* by a licensed pawnbroker within the meaning of that Act; and
- (b) related matters preliminary to, and consequential upon, the provision of that credit.

### **Monthly account charges**

**4.** Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of—

- (a) the provision of credit under a credit contract where the only charge is an account charge that does not exceed \$5 in relation to any period of 1 month; and
- (b) related matters preliminary to, and consequential upon, the provision of that credit.

### **Low value transactions**

**5.(1)** Subject to subclause (3), Division 1 of Part 3 does not apply in respect of—

- (a) a credit sale contract; or



- (b) a loan contract relating to the supply of goods or services to a debtor by a related body corporate within the meaning of Corporations Law of the credit provider;

where the amount financed is not more than the prescribed amount or if an amount is not prescribed \$150 if subclause (2) is complied with in relation to the contract and the credit provider gives a copy of the contract to the debtor immediately upon its execution.

(2) This clause is complied with in relation to a contract if the contract is in writing, is signed by the debtor and includes—

- (a) a statement of the cash price of the goods or services; and
- (b) a statement of the annual percentage rate calculated in accordance with section 40; and
- (c) a statement of the credit charge; and
- (d) a statement of the total amount payable under the contract; and
- (e) a statement whether payments are to be made by instalments and if they are to be so made a statement of—
  - (i) where each instalment is of the same amount—that amount; and
  - (ii) where each instalment except the last is the same amount—that amount and the amount of the last instalment; and
  - (iii) where neither subparagraph (i) nor subparagraph (ii) applies—the amount of each instalment; and
  - (iv) the number of instalments; and
  - (v) the time for the payment of each instalment or the time for payment of the first instalment and the interval between each instalment and the next succeeding instalment; and
- (f) a notice immediately above the place where the debtor signs the contract stating—

“READ YOUR CONTRACT CAREFULLY AS IT TELLS YOU ABOUT YOUR OBLIGATIONS. YOU HAVE OTHER RIGHTS AND OBLIGATIONS UNDER THE LAW. FOR MORE INFORMATION CONTACT

THE REGISTRAR OF COMMERCIAL ACTS OR GET  
LEGAL ADVICE.”.

(3) Subclause (1) does not apply to a credit sale contract or loan contract where, under or in relation to the contract—

- (a) a mortgage to secure payment of a debt or other pecuniary obligation or the performance of any other obligation under the contract is given or required to be given; or
- (b) a contract of insurance is entered into or required to be entered into.

**Insurance premium financing**

6.(1) Section 38(2) does not apply in respect of a regulated loan contract under which the whole of the amount financed (other than that part of the amount financed that is payable in respect of stamp duty or prescribed charges) is or is to be paid in accordance with the instructions of the debtor to an insurer as an amount payable by way of premium in respect of a contract of insurance entered into by the insurer and the debtor.

(2) Section 128 does not apply in respect of a credit provider where the condition to which that section applies relates to a regulated loan contract referred to in subclause (1).

**Overseas visitors cash advances**

7. Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of a loan contract where—

- (a) the debtor is not ordinarily resident in Australia; and
- (b) pursuant to the terms of a contract entered into in a country other than Australia, the amount financed is to be repaid to a person whose principal place of business is outside Australia.

**Staff loans**

8. Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of a person who in the course of or in connection with a trade, business or profession carried on by the person—

- (a) provides credit to an employee of that person; and
- (b) does not provide credit under a regulated contract to any person other than such an employee.

### **Educational services**

**9.** Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of—

- (a) the provision of credit—
  - (i) by a school within the meaning of the *Commonwealth Schools Commission Act 1973* of the Commonwealth; or
  - (ii) by a tertiary institution within the meaning of the *Commonwealth Tertiary Education Commission Act 1977* of the Commonwealth;

for the purposes of payment of fees or other expenses relating to the supply of educational services by the school or institution, as the case may be; or

- (b) related matters preliminary to, or consequential upon, the provision of that credit.

### **Beneficiaries under trusts**

**10.** Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of credit provided to a person who is a beneficiary under a trust if the credit is provided by way of an advance by a trustee from the estate of a deceased person that is subject to that trust.

### **Petrol and taxi cards**

**11.(1)** Subject to subclause (2), Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of—

- (a) the provision of credit under a continuing credit contract that either wholly or substantially relates to—
  - (i) the supply of petrol, liquefied petroleum gas, diesel fuel or oil; or
  - (ii) the hire of a commercial passenger vehicle; and

- (b) related matters preliminary to, or consequential upon, the provision of that credit.

(2) Subclause (1) does not apply to a continuing credit contract referred to in that subclause unless—

- (a) the contract is in writing; and
- (b) the contract includes a statement of the charges (if any) payable under the contract or the method of calculation of those charges; and
- (c) the contract provides that the credit provider shall give to the debtor notice in writing of any variation in the charges payable under the contract, or the method of calculation of those charges, not less than 7 days before the taking effect of the variation.

(3) For the purposes of this clause—

**“charges”** does not include the cash price of goods or services supplied, or to be supplied, under a contract;

**“services”** does not include the opening or maintenance of a continuing credit contract.

### **Farming property transactions**

**12.** Parts 3, 4, 5, 6, 7 and 8 do not apply in respect of the provision of credit for the purpose of the acquisition of land and goods where—

- (a) the land is acquired primarily for the purposes of a farming undertaking; and
- (b) the goods are intended for use in connection with that farming undertaking.

(2) In subclause (1)—

**“goods”** mean—

- (a) a commercial vehicle; or
- (b) farm machinery.

## ENDNOTES

### 1 Index to Endnotes

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### 2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 1 July 1992. Future amendments of the *Credit Act 1987* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

### 3 List of legislation

#### **Credit Act 1987 No 52**

date of assent 1 October 1987

ss 1–2 commenced on date of assent

ss 21, 158, 170 and 171 commenced 15 December 1988 (proc pubd Gaz 17 December 1988 p 1943)

remaining provisions commenced 1 May 1989 (proc pubd Gaz 17 December 1988 p 1943)

as amended by—

#### **Credit Amendment Act 1991 No 31**

date of assent 12 June 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 15 July 1991 (proc pubd Gaz 13 July 1991 p 1572)

#### **Statute Law (Miscellaneous Provisions) Act 1991 No 97 s 3 Sch 2**

date of assent 17 December 1991

commenced on date of assent

## 4 List of annotations

### Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
orig	=	original
pres	=	present

Provisions not included in reprint, or amended by  
amendments not included in reprint, are underlined

**Long title** amd 1991 No 97 s 3 Sch 2

### **Arrangement of Act**

s 3 om 1991 No 97 s 3 Sch 2

### **Failure to comply with Money Lenders Act 1916 has not invalidated certain continuing credit contracts**

s 4 om (see s 38 RA)

### **Further transitional and other special provisions**

s 5A ins 1991 No 31 s 4

### **Interpretation**

- s 7(1) def “**body corporate**” amd 1991 No 97 s 3 Sch 2  
def “**commission charge**” amd 1991 No 97 s 3 Sch 2  
def “**guarantor**” amd 1991 No 97 s 3 Sch 2  
def “**land**” amd 1991 No 97 s 3 Sch 2  
def “**Minister**” om 1991 No 97 s 3 Sch 2  
def “**motor vehicle**” sub 1991 No 97 s 3 Sch 2  
def “**officer**” amd 1991 No 97 s 3 Sch 2  
def “**Territory**” om 1991 No 97 s 3 Sch 2  
s 7(3) om 1991 No 97 s 3 Sch 2  
s 7(4) om 1991 No 97 s 3 Sch 2

### **Contracts of employment excluded**

s 11 amd 1991 No 97 s 3 Sch 2

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

s 21(5) amd 1991 No 97 s 3 Sch 2

### **Assignment of rights by credit provider**

s 82(2) amd 1991 No 97 s 3 Sch 2

**Credit provider may apply to court for reduction of loss for contravention of**

**Act****s 86(4A)** ins 1991 No 31 s 5**s 86(4B)** ins 1991 No 31 s 5**Stay of civil penalty pending court's decision****s 86A** ins 1991 No 31 s 6**General order varying civil penalty****s 87(1)** amd 1991 No 31 s 7**s 87(2)** ins 1991 No 31 s 7**s 87(3)** ins 1991 No 31 s 7**s 87(4)** ins 1991 No 31 s 7**s 87(5)** ins 1991 No 31 s 7**General order varying civil penalty for minor errors****s 87A** ins 1991 No 31 s 8**Prohibition of credit hawking****s 123** sub 1991 No 97 s 3 Sch 2**District Court to exercise jurisdiction****s 142(3)** amd 1991 No 97 s 3 Sch 2**s 142(4)** (orig s 142(3) second paragraph) renum 1991 No 97 s 3 Sch 2**Governor in Council may fix maximum annual percentages rates****s 155(4)** amd 1991 No 97 s 3 Sch 2**Proceedings for offences****s 164(2)** amd 1991 No 97 s 3 Sch 2**Power of Registrar to enter premises****s 173(4)** amd 1991 No 97 s 3 Sch 2**s 173(5)** orig s 173(4)(b) renum 1991 No 97 s 3 Sch 2**s 173(6)** orig s 173(4)(c) renum 1991 No 97 s 3 Sch 2**s 173(7)** orig s 173(4)(d) renum 1991 No 97 s 3 Sch 2**Repeal of Money Lenders act 1916****s 178(1)** om (see s 40 RA)**s 178(2)–(3)** om (see s 38 RA)**Amendment of Hire-purchase act 1959****s 179(1)–(2)** om (see s 40 RA)**Amendment of Administration of Commercial Laws Act 1962****s 180** om (see s 40 RA)**Amendment of Bills of Sale and Other Instruments Act 1955****s 181** om (see s 40 RA)**SCHEDULE 2—STATEMENT OF ACCOUNT FINANCED IN RELATION TO  
CREDIT SALE CONTRACT****cl 1** amd 1991 No 31 s 9**SCHEDULE 4—STATEMENT OF AMOUNT FINANCED IN RELATION TO  
LOAN CONTRACT****cl 1** amd 1991 No 31 s 10

**SCHEDULE 7—STATEMENT OF ACCOUNT IN RELATION TO CONTINUING CREDIT CONTRACT****cl 1** amd 1991 No 31 s 11**SCHEDULE 8****Sch 8** orig om (see s 40 RA)**FURTHER TRANSITIONAL AND OTHER SPECIAL PROVISIONS****Sch 8** pres ins 1991 No 31 s 12**SCHEDULE 9—EXCEPTIONS FROM APPLICATION OF ACT****cl 5** amd 1991 No 97 s 3 Sch 2**5 Table of corrected minor errors**TABLE OF CORRECTED MINOR ERRORS  
under section 7(1)(j) of *Reprints Act 1992*

Section	Description
s 7 def “credit”	in (a), after the words ‘the carrying on or establishing’, ins ‘of’
s 31(b)	after the words ‘kept by’, ins ‘the’

**6 Table of renumbered provisions**TABLE OF RENUMBERED PROVISIONS  
under section 43 of *Reprints Act 1992*

Original	Renumbered as
87(2) (2nd sentence)	87(2A)
120(1) (2nd sentence)	120(1A)
153 (1st sentence)	153(1)
153 (2nd sentence)	153(2)