

# CREDIT (ADMINISTRATION) ACT, 1984, No. 95

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NEW SOUTH WALES.



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SCHEDULE 1.—TRANSITIONAL PROVISIONS.

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**CREDIT (ADMINISTRATION) ACT, 1984, No. 95**

**New South Wales**



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**ELIZABETHÆ II REGINÆ**

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**Act No. 95, 1984.**

An Act to provide for the licensing of credit providers and finance brokers; to facilitate inquiries into matters relating to the provision of credit; and for certain other purposes. [Assented to, 28th June, 1984.]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**Short title.**

1. This Act may be cited as the "Credit (Administration) Act, 1984".

**Commencement.**

2. (1) Sections 1, 2 and 3 and Schedule 1 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Transitional provisions.**

3. Schedule 1 has effect.

**Interpretation.**

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

“amount financed” has the same meaning as it has in the Credit Act, 1984;

“annual percentage rate” has the same meaning as it has in the Credit Act, 1984;

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“bank” means a bank within the meaning of the Banking Act 1959 of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth;

“billing cycle” means a billing cycle within the meaning of section 50 of the Credit Act, 1984;

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

- (a) a body corporate constituted under the Strata Titles Act, 1973, 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;

“cognate Acts” means this Act, the Credit Act, 1984, the Credit (Finance Brokers) Act, 1984 and the Credit (Home Finance Contracts) Act, 1984;

“Commissioner” means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act, 1969, and any person appointed under section 14 of that Act to act as Commissioner;

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

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

“credit charge” has the same meaning as it has in the Credit Act, 1984;

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

“credit provider” has the same meaning as it has in the Credit Act, 1984;

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

“Deputy Registrar” means the Deputy Registrar of the Tribunal;

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

“finance broker” has the same meaning as it has in the Credit (Finance Brokers) Act, 1984;

“finance broking” has the same meaning as it has in the Credit (Finance Brokers) Act, 1984;

“licence” means a credit provider’s licence, or a finance broker’s licence, under this Act;

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

“officer”, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 5 (1) of the Companies (New South Wales) Code;

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

“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 Registrar of the Tribunal;

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

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

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“rules” means rules made under section 38 of the Commercial Tribunal Act, 1984;

“regulation” means a regulation made under this Act;

“Supreme Court” means the Supreme Court of New South Wales;

“this Act” includes the regulations;

“trade or tie agreement” has the same meaning as it has in the Credit Act, 1984;

“Tribunal” means the Commercial Tribunal of New South Wales.

**Business of providing credit.**

5. 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.

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**PART II.****LICENCES.****DIVISION 1.—Requirement to be licensed.****Credit providers and finance brokers to be licensed.**

6. (1) Subject to this Act, a person shall not carry on a business of providing credit unless the person is the holder of a credit provider's licence.

Penalty: 100 penalty units.



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

Penalty: 50 penalty units.

(3) Subject to this Act, a person shall not carry on business as a finance broker unless the person is the holder of a finance broker's licence.

Penalty: 50 penalty units.

(4) Subject to this Act, a natural person shall not hold himself or herself out, and a body corporate shall not hold itself out, as carrying on business as a finance broker unless the person or body corporate, as the case may be, is the holder of a finance broker's licence.

Penalty: 25 penalty units.

**Exemptions from licensing.**

7. (1) The provisions of section 6 (1) and (2) do not apply to—
- (a) the Crown or a public or local body or authority constituted by or under an Act;
  - (b) a bank;
  - (c) a body corporate that is registered under the Life Insurance Act 1945 of the Commonwealth as amended and in force for the time being unless the only or principal business carried on by it is the business of providing credit;
  - (d) a body corporate authorised under the Insurance Act 1973 of the Commonwealth as amended and in force for the time being to carry on insurance business unless the only or principal business carried on by it is the business of providing credit;

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- (e) unless Part VII of the Insurance Act 1973 of the Commonwealth as amended and in force for the time being has ceased to have effect—a Lloyd's underwriter, being an underwriter of the society known as Lloyd's incorporated by the Imperial Act known as Lloyd's Act 1871;
- (f) the holder of a pawnbroker's license issued under the Pawnbrokers Act, 1902, in respect of the business of a pawnbroker carried on in accordance with that Act;
- (g) a pastoral finance company;
- (h) a society registered under the Co-operation Act, 1923, or specified in the Second Schedule to that Act;
- (i) a society or association registered under the Permanent Building Societies Act, 1967;
- (j) a credit union registered under the Credit Union Act, 1969; or
- (k) any other person empowered by an Act or an Act of the Commonwealth to lend money or provide credit, in respect of the lending of money or provision of credit in accordance with that Act or that Act of the Commonwealth.

**(2)** A reference in section 6 (1) or (2) to carrying on a business of providing credit does not include a reference to—

- (a) providing credit otherwise than under a regulated contract; or
- (b) collecting money due to a person whose licence has been surrendered, is suspended or has been cancelled.

**(3)** The provisions of section 6 (3) and (4) do not apply to—

- (a) a person who carries on a bona fide business of selling land or supplying goods or services (whether as principal or agent) but only while the person negotiates or acts as intermediary to obtain,

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- or advertises or holds himself, herself or itself in any way as being willing to negotiate, or act as intermediary to obtain, credit exclusively for persons who deal with the person in the ordinary course of that business and who have authorised in writing the application of that credit in payment for the land, goods or services;
- (b) a solicitor, while acting in the ordinary course of the profession of a solicitor;
  - (c) a registered company auditor within the meaning of the Companies (New South Wales) Code while acting in the ordinary course of the profession of a public accountant;
  - (d) a bank;
  - (e) a body corporate that is registered under the Life Insurance Act 1945 of the Commonwealth as amended and in force for the time being;
  - (f) a body corporate authorised under the Insurance Acts 1973 of the Commonwealth as amended and in force for the time being to carry on insurance business;
  - (g) unless Part VII of the Insurance Act 1973 of the Commonwealth as amended and in force for the time being has ceased to have effect—a Lloyd's underwriter, being an underwriter of the society known as Lloyd's incorporated by the Imperial Act known as Lloyd's Act 1871;
  - (h) the holder of a dealers licence under, or a recognised dealer within the meaning of, the Securities Industry (New South Wales) Code, while acting in the ordinary course of the business of a dealer within the meaning of that Code;
  - (i) the Public Trustee and a trustee company within the meaning of the Trustee Companies Act, 1964;
  - (j) a society registered under the Co-operation Act, 1923, or specified in the Second Schedule to that Act;
  - (k) a society or association registered under the Permanent Building Societies Act, 1967; or
  - (l) a credit union registered under the Credit Union Act, 1969.

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(4) A person to whom the provisions of section 6 (1) and (2) do not apply by reason of this section is, notwithstanding any other provision of this Act—

- (a) required to be registered as a credit provider in accordance with the regulations; and
- (b) liable to pay, in accordance with the regulations, such fees as are equivalent to the fees that would be payable by the person under sections 9 and 21 had this section not been enacted.

(5) Such provisions of this Act (except sections 10, 11, 12, 13, 14, and 23) as may be prescribed apply, with such variations or modifications, if any, as may be prescribed, to and in respect of a person registered or required to be registered under subsection (4), and so apply as if references (however expressed) in those provisions to a licensee or the holder of a licence or a person required to be licensed were references to a person so registered or required to be registered, as the case may be.

(6) The provisions of section 6 (1) and (2) and section 8 and such other provisions of this Act as may be prescribed apply, with such variations or modifications, if any, as may be prescribed, to and in respect of a person referred to in subsection (4) who is not registered as required by that subsection, and so apply as if subsection (1) of this section had not been enacted.

**Civil penalty.**

**8. (1)** Subject to section 85 of the Credit Act, 1984, where a person provides credit under a regulated contract in contravention of section 6 (1) and—

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

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(2) Where a debtor pays to a credit provider an amount that, in accordance with subsection (1), the debtor is not liable to pay, the amount is a debt due by the credit provider to the debtor.

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

DIVISION 2.—*Licensing provisions.*

**Application for licence.**

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

- (a) by a natural person of or over the age of 18 years; or
- (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.

(2) An application shall be in writing in a form approved by the Minister, shall be accompanied by the prescribed fee and shall be signed—

- (a) where the application is made by a natural person—by that person; or
- (b) where the application is made—
  - (i) by a body corporate having only 2 directors—by those directors; or
  - (ii) by a body corporate having more than 2 directors—by not fewer than 2 of those directors.

(3) An application shall specify—

- (a) the name and address—
  - (i) where the application is made by a natural person—of that person; or
  - (ii) where the application is made by a body corporate—of each director of the body corporate;

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- (b) where the application is made by a body corporate—the date and place of incorporation of the body corporate, its corporate name and the address of its registered office or, if it is not incorporated in Australia, the address of the principal office in Australia;
- (c) whether the application is an application for—
  - (i) a credit provider's licence; or
  - (ii) a finance broker's licence;
- (d) the address of the principal place in the State at which, and the name or names under which, the applicant intends to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
- (e) whether the applicant intends to carry on that business in partnership with another person;
- (f) such matters as may be prescribed relating to the financial standing of applicants; and
- (g) such other matters as may be prescribed.

**(4)** Where application is made for a licence and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (3), the applicant shall, within 14 days after the occurrence of the change, give to the Tribunal notice, in writing signed by the applicant or, where the applicant is a body corporate, by a director of the body corporate, specifying particulars of the change.

Penalty: 10 penalty units.

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

**(6)** A person shall not in, or in relation to, an application under this section, a notice under subsection (4) or any particulars provided under subsection (5), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty: 50 penalty units.

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(7) It is a defence to a prosecution of a person for an offence under subsection (6) if the person proves that, when the application was made, the notice given or the particulars provided, the person—

- (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading;
- (c) in the case of an omission—believed on reasonable grounds that no material matter had been omitted; or
- (d) in the case of an omission—did not know that the omitted matter was material.

**Investigation of application.**

**10. (1)** Where an application for a licence has been made in accordance with section 9, the Registrar shall send a copy of the application to the Commissioner with a request in writing that the Commissioner make such inquiries with respect to the applicant and the application as the Registrar specifies in the request.

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

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

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

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**Objection to application.**

**11. (1)** At any time before the expiration of the period of 14 days that next succeeds publication of a notice under section 10 (4) with respect to an application for a licence, or within such longer period as the Tribunal in a particular case allows, the Commissioner may with the consent of the Minister, and any other person may, lodge with the Tribunal an objection in writing to the granting of the application if the objection complies with subsection (2).

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

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

**Grant or refusal of licence.**

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

- (a) except where a hearing is required to be held in respect of the application as provided by subsection (5)—as soon as practicable after the expiration of the period allowed by or under section 11 (1) for the lodging of an objection to the granting of an application; or
- (b) if a hearing is, pursuant to subsection (5), required to be held with respect to the application—as soon as practicable after the conclusion of the hearing.

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

- (a) has not attained the age of 18 years;
- (b) is disqualified from holding a licence;
- (c) is an undischarged bankrupt;



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- (d) does not have, or is not likely to continue to have, sufficient financial resources to enable the person to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
- (e) is not a person likely to carry on such a business honestly and fairly;
- (f) does not have sufficient expertise to enable the person to carry on such a business; or
- (g) is in any other way not a fit and proper person to be the holder of a licence.

**(3)** Without affecting the generality of subsection (2) (g), the Tribunal may, in determining whether an applicant is not a fit and proper person to be the holder of a licence, have regard (if such be the case) to the fact that the applicant—

- (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in New South Wales or elsewhere involving fraud or dishonesty;
- (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance; or
- (c) had, at the time of the making of the application, a charge pending against the applicant in relation to such an offence.

**(4)** An application for a licence made by a body corporate shall be refused if it appears to the Tribunal that—

- (a) a person concerned in the management of the body corporate has not attained the age of 18 years;
- (b) the body corporate is disqualified from holding a licence;
- (c) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
- (d) the body corporate is not likely to carry on such a business honestly and fairly;

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- (e) the officers of the body corporate are such that it would not have sufficient expertise to enable it to carry on such a business;
- (f) the reputation of the body corporate is such that it would not be a fit and proper person to be the holder of a licence;
- (g) an officer of the body corporate is disqualified from being an officer of a body corporate that is the holder of a licence;
- (h) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if the director or person were to apply for the licence personally; or
- (i) any person other than an officer of the body corporate who, in the opinion of the Tribunal, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly.

**(5)** An application for a licence shall not be refused on a ground specified in subsection (2) (d)–(g) or (4) (c)–(i) unless the Tribunal is satisfied that the ground has been made out after it—

- (a) has informed the applicant of the ground and has held a hearing with respect to the application; and
- (b) has afforded the applicant and any person who, in accordance with section 11, has lodged an objection on that ground, an opportunity to appear at the hearing and to make submissions and adduce evidence.

**(6)** A hearing referred to in subsection (5) (a) shall be deemed to be proceedings prescribed for the purposes of section 19 (9) of the Commercial Tribunal Act, 1984.

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

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(8) Where an application for a licence in respect of which an objection has been lodged in accordance with section 11 is granted, the Registrar shall forthwith, by notice in writing, inform the person who lodged the objection of the granting of the application.

(9) Where an application for a licence is granted—

- (a) the applicant shall be deemed to be the holder of the licence granted; and
- (b) the Registrar shall forthwith, by notice in writing, inform the applicant of the granting of the application.

(10) Notwithstanding anything in this section, the Tribunal may refrain from granting an application for a licence unless—

- (a) where the applicant is not a body corporate—the applicant; or
- (b) where the applicant is a body corporate—all of the directors and officers of the body corporate, or such of them as the Tribunal specifies or refers to,

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

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

**13. (1)** The Tribunal may—

- (a) upon the granting of an application for a licence and at any other time, impose conditions or restrictions subject to which the licence is to be held; and
- (b) upon application or of its own motion, at any time vary or revoke any of those conditions or restrictions.

(2) A licence is subject to—

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

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(3) Subject to subsection (4), the Tribunal shall not impose conditions or restrictions to which a licence is to be subject, or vary conditions or restrictions to which the licence is subject, unless the Tribunal has first held a hearing with respect to the conditions and restrictions that are proposed to be imposed or varied and has afforded the applicant for, or, as the case may be, the holder of, the licence an opportunity to appear at the hearing and to make submissions and adduce evidence with respect to the conditions or restrictions proposed to be imposed or varied.

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

(5) A hearing referred to in subsection (3) shall be deemed to be proceedings prescribed for the purposes of section 19 (9) of the Commercial Tribunal Act, 1984.

**Name under which licensee may operate.**

14. (1) Subject to the Business Names Act, 1962, a licence may authorise the holder to carry on business under a name or names in addition to or in substitution for the name of the licensee.

(2) A licensee shall not—

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

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(iii) in the case of a body corporate—hold itself out as so carrying on business,

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

Penalty: 50 penalty units.

(3) Upon application made in accordance with the rules, the Tribunal may add or amend an endorsement referred to in section 16 (1) (b).

**Partnerships.**

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

Penalty: 50 penalty units.

(2) The holder of a finance broker's licence shall not carry on business as a finance broker in partnership with a person who is not the holder of a finance broker's licence.

Penalty: 25 penalty units.

**Form of licence.**

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

(a) shall be in a form approved by the Minister; and

(b) where it authorises the holder to carry on business under a name or names in addition to, or in substitution for, the name of the holder, shall bear an endorsement to that effect.

(2) Where the Registrar is satisfied that a licence has been lost or destroyed, the Registrar may, on payment of the prescribed fee, issue a duplicate of the licence.

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**Change of address of licensee.**

17. (1) Where the principal place at which a licensee carries on, or intends to carry on, a business of providing credit or, as the case may be, business as a finance broker, is at an address other than an address specified in accordance with section 9 (3) (d) or of which notice has been given under this section, the licensee shall, not later than 14 days after commencing to carry on the business at that other address, give to the Commissioner notice in writing of that other address.

(2) A licensee shall, not later than 14 days after ceasing to carry on a business of providing credit or, as the case may be, business as a finance broker, at the address specified in accordance with section 9 (3) (d) or, where a notice has been given under subsection (1), at the address specified in the notice, give to the Commissioner notice in writing that the licensee has ceased to carry on the business at that address.

Penalty: 10 penalty units.

**Registers of licensees.**

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

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

**Inspection of register.**

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

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

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

20. (1) Except during any period while it is suspended, a licence continues in force until it is surrendered under section 22 or cancelled under section 21 or 23.

(2) A credit provider's licence authorises the licensee to carry on a business of providing credit under the name or names specified in the licence, subject to and in accordance with this Act and the conditions and restrictions to which the licence is subject.

(3) A finance broker's licence authorises the licensee to carry on business as a finance broker under the name or names specified in the licence, subject to and in accordance with this Act and the conditions and restrictions to which the licence is subject.

(4) For the purposes of this Act, sections 21 and 22 excepted, a person whose licence is suspended under section 23 shall, while the suspension continues, be deemed to be a person who does not hold a licence.

**Annual fee and annual statement.**

21. (1) A licensee shall, before the expiration of one month after each anniversary of the date on which the licence was granted, pay to the Commissioner in respect of the year commencing on that anniversary the prescribed fee for the licence.

(2) A person who is or was the holder of a licence during a year, or part of a year, commencing on the date, or an anniversary of the date, on which the licence was granted to the person, shall lodge with the Commissioner a statement in respect of that year or part that is in a form approved by the Minister and is signed by or on behalf of the licensee.

(3) A licensee or other person required under subsection (2) to lodge a statement shall lodge the statement within one month after the end of the year in respect of which, or part of which, the statement is lodged.

(4) The Commissioner may, on the application of a person required to comply with subsection (1), or subsections (2) and (3), extend or further extend the time for compliance with the applicable subsection or subsections.

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(5) Where a licensee has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section, the Commissioner shall give notice in writing to the licensee that, unless the fee is paid or the statement lodged, or the fee is paid and the statement lodged, as the case may require, together with the prescribed late fee, before a day specified in the notice, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled.

(6) The Commissioner shall cancel the licence of a licensee who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, as referred to in a notice given under subsection (5).

(7) Subject to subsection (4), a person (not being a licensee) to whom subsections (2) and (3) apply shall comply with those subsections.

Penalty: 10 penalty units.

(8) If, while a licence is in force, there occurs—

- (a) between the time the application for the licence was granted and the time the first statement is lodged under subsection (2)—a change in the particulars specified in, or in connection with, the application in accordance with section 9 (3), (4) and (5); or
- (b) between the lodging of successive annual statements under subsection (2)—a change in the particulars specified in the earlier of those statements,

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

Penalty: 10 penalty units.

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

Penalty: 50 penalty units.



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**(10)** It is a defence to a prosecution of a person for an offence under subsection (9) if the person proves that, when the statement was lodged, or the notice given, the person—

- (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading;
- (c) in the case of an omission—believed on reasonable grounds that no material matter had been omitted; or
- (d) in the case of an omission—did not know that the omitted matter was material.

**Surrender of licence.**

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

**(2)** Where the Tribunal has decided to hold an inquiry under section 23 in relation to the holding of a licence, the licence may not be surrendered until after a determination is made by the Tribunal as a result of the inquiry.

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

*DIVISION 3.—Disciplinary action.***Disciplinary action against licensee.**

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

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

- (a) it specifies the licensee and the grounds of the objection to the holding of a licence by the licensee; and

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

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

(4) Where it appears to the Chairman, whether or not pursuant to an objection under subsection (1), that there are grounds for believing that—

- (a) a licence may have been improperly obtained or, at the time a licence was granted, there may have been grounds for refusing to grant it;
- (b) a licensee may have failed to comply with this Act, the Credit Act, 1984, the Credit (Finance Brokers) Act, 1984, or a regulation under any of them, a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the licensee;
- (c) a licensee may be unable, or is likely to become unable, to meet the licensee's liabilities;
- (d) a licensee has, within the period of 10 years that last preceded the grant of the licence, been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- (e) the holder of a credit provider's licence has provided credit at an interest rate that is excessive having regard to the risk involved, the value of any security, the time for repayment, the amount of credit provided and any other relevant circumstances;
- (f) the business to which a licence relates is being carried on in a dishonest or unfair manner;
- (g) the holder of a credit provider's licence has taken security for the performance of the debtor's obligations under a regulated contract that is excessive having regard to the risk involved, the value of the security, the time for repayment, the amount of credit provided, the annual percentage rate and any other relevant circumstances;

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- (h) the holder of a credit provider's licence has taken security for the performance of the debtor's obligations under a regulated contract that, having regard to the nature and value of the security, the amount of credit provided and any other relevant circumstances, is unreasonable;
- (i) if a person were not the holder of a licence, the Tribunal would be required by section 12 (2) or (4) to refuse an application by the person for a licence; or
- (j) the licensee is, for any other reason, not a fit and proper person to continue to hold a licence,

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

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

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

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

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

**(7)** The Tribunal shall give to the licensee and each other person referred to in subsection (6) (b) an opportunity to appear at the inquiry and be heard.

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

- (a) reprimand the licensee;
- (b) impose on the licensee a fine not exceeding 10 penalty units payable within a specified time;
- (c) require the licensee to comply within a specified time with a requirement specified by the Tribunal;
- (d) suspend the licence for a period not exceeding 12 months;
- (e) disqualify the licensee or any person concerned in the direction, management or conduct of the business of the licensee from holding a licence or from being concerned in the direction, management or conduct of a business for the carrying on of which a licence is required either permanently or for such period as the Tribunal thinks fit;
- (f) cancel the licence.

**(9)** Where, under subsection (8), the Tribunal—

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

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

Penalty: 50 penalty units.

**(10)** A fine imposed under subsection (8) (b) is, if not paid within the time specified by the Tribunal for its payment, a debt due to the Crown.

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

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**(12)** Where the Tribunal—

- (a) suspends a licence—the licensee; or
- (b) cancels a licence—the former licensee,

shall return the licence to the Registrar within a period specified by the Tribunal when suspending or cancelling the licence.

Penalty: 10 penalty units.

**(13)** A person disqualified under subsection (8) (c) shall not, while disqualified—

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

Penalty: 50 penalty units.

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

**(15)** An inquiry under this section shall be deemed to be proceedings prescribed for the purposes of section 19 (9) of the Commercial Tribunal Act, 1984.

DIVISION 4.—*Appeals.*

**Appeals.**

**24. (1)** Where the Tribunal refuses to grant an application for, or cancels or suspends, a licence or imposes a condition or restriction under section 13, or imposes a disqualification referred to in section 23 (8) (c), the applicant for the licence or the person who held the licence or the person disqualified, as the case may be, may appeal to the Supreme Court in accordance with rules of the Supreme Court.

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(2) An appellant under subsection (1) shall, within 7 days after lodging the appeal, give notice in writing of the appeal, together with the grounds of the appeal, to the Commissioner.

(3) Section 75A of the Supreme Court Act, 1970, applies to an appeal under this section.

(4) An appeal under this section does not, except in relation to the collection of payments by a credit provider, operate to stay the cancellation, suspension, disqualification or imposition of a condition or restriction unless the Tribunal or the Supreme Court otherwise orders and any conditions imposed by the Tribunal or the Supreme Court when ordering the stay are complied with.

DIVISION 5.—*General.*

**Death of licensee.**

25. (1) Where a licensee dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the licensee may, within 28 days after the death or such longer period as the Registrar allows, apply to the Registrar for authority to carry on, until the expiration of the period of 6 months that next succeeds the death, the business of the deceased licensee to which the licence relates.

(2) The Registrar—

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

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

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

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

(6) A hearing referred to in subsection (4) shall be deemed to be proceedings prescribed for the purposes of section 19 (9) of the Commercial Tribunal Act, 1984.

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

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

Penalty: 10 penalty units.

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## PART III.

## UNJUST CONDUCT BY CREDIT PROVIDERS.

**Interpretation.**

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

- (a) that is dishonest or unfair;
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought; or
- (c) that consists of the contravention of this Act, the Credit Act, 1984, or the Credit (Home Finance Contracts) Act, 1984, or a regulation under any of them.

**Undertakings by credit provider.**

**28. (1)** Where it appears to the Commissioner that a credit provider has, in the course of a business of providing credit, repeatedly engaged in unjust conduct, the Commissioner may, with the consent of the Minister—

- (a) request the credit provider to execute a deed in terms approved by the Commissioner whereby the credit provider gives undertakings as to—
  - (i) the discontinuance of the unjust conduct;
  - (ii) the credit provider's future conduct; and
  - (iii) the action the credit provider will take to rectify the consequences of the credit provider's unjust conduct; or
- (b) apply to the Tribunal for an order under section 30 (1).

**(2)** Where the Commissioner makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that the Commissioner does so with the consent of the Minister.



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(3) Where a licensee executes a deed under subsection (1) (a) and observes the undertakings given in the deed—

- (a) proceedings may not be instituted under section 23; and
- (b) the Commissioner may not apply for an order under section 30 (1),

by reason of any conduct to which the undertakings relate.

**Register of Undertakings.**

29. (1) Where a credit provider executes a deed containing undertakings as referred to in section 28 (1) (a), the Commissioner shall—

- (a) lodge a copy of the deed with the Registrar; and
- (b) give a copy of the deed to the credit provider who executed it.

(2) The Commissioner shall retain all deeds and shall register the deeds in a Register of Undertakings kept by the Commissioner and containing the prescribed particulars.

(3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.

(4) A credit provider shall observe undertakings given by the credit provider in a deed executed under section 28 (1) (a).

Penalty: 100 penalty units.

(5) A prosecution for an offence under subsection (4) shall not be instituted except by the Commissioner with the leave of the Tribunal given when making an order in accordance with section 30 (2).

**Restraint of unjust conduct.**

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

Penalty: 100 penalty units.

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

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

Penalty: 100 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 Tribunal thinks fit including conditions as to the future conduct of the credit provider and conditions specifying the action to be taken by the credit provider to rectify the consequences of the credit provider's unjust conduct.

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

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

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## PART IV.

## INQUIRIES.

**Minister may order inquiry.**

**32. (1)** The Minister may, by instrument in writing, appoint the Tribunal (constituted as specified in the instrument) or any person to inquire into matters specified in the instrument, being matters that relate to the provision of credit or consequences of the provision of credit, or both.

**(2)** The Minister may, by instrument in writing, revoke an appointment made under subsection (1).

**(3)** An appointment under subsection (1) may be made subject to such conditions or limitations as to the exercise or performance of a power, authority, duty or function, or as to time or circumstances, as may be specified in the instrument of appointment.

**(4)** Subject to subsection (3), the Tribunal or person appointed under subsection (1) has, and may exercise the functions conferred on the Tribunal by or under this Part.

**(5)** An appointment under subsection (1) or a revocation under subsection (2) of such an appointment does not take effect until the terms of the instrument of appointment or revocation have been published in the Gazette and in such newspaper or newspapers as is or are specified in the instrument.

**(6)** Where any matter purporting to be the terms of an instrument of appointment under subsection (1) or of revocation under subsection (2) is published in the Gazette, it shall be presumed, unless the contrary is proved, that the matter comprises the terms of such an instrument.

**(7)** Where an inquiry is held under this Part, the Tribunal or person conducting the inquiry shall, as soon as practicable, report to the Minister the results of the inquiry and make such recommendations with respect to those results as the Tribunal or that person thinks fit.

**(8)** The protection and immunity conferred by section 8 of the Commercial Tribunal Act, 1984, on a member of the Tribunal extend to a person appointed under subsection (1).

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(9) A reference in the Commercial Tribunal Act, 1984, to proceedings before the Tribunal does not include a reference to an inquiry under this Part.

**Notice of inquiry.**

33. The Tribunal shall, before commencing an inquiry under this Part, give notice by advertisement published on such day or days as it thinks fit in the Gazette and in such newspaper or newspapers as it thinks fit of—

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

**Appearances at inquiry.**

34. (1) The Tribunal may, at an inquiry under this Part, grant leave to any person to appear at the inquiry if it is of the opinion that the person has a substantial interest in the matter the subject of the inquiry.

(2) A person granted leave under subsection (1) to appear at an inquiry may appear at the inquiry in person or by counsel, solicitor or agent and may give evidence, call witnesses and make submissions at the inquiry.

**Procedure at inquiry.**

35. (1) An inquiry under this Part shall be held in public and, subject to this section—

- (a) evidence at the inquiry shall be given on oath in public; and
- (b) submissions at the inquiry shall be made in public.

(2) At an inquiry under this Part, the Tribunal may, if it thinks fit, permit a witness to give evidence by tendering a written statement verified on oath and, where the evidence is so given, the Tribunal shall, subject to this section, make the statement available to the public in such manner as the Tribunal thinks fit.

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(3) Where a witness giving evidence under subsection (1) or (2) objects to any part of the evidence being made public and the Tribunal is satisfied that the part of the evidence to which the objection relates is of a confidential nature, that part of the evidence shall not be taken in public under subsection (1) or made public under subsection (2).

(4) At an inquiry under this Part, the Tribunal may require or permit a person entitled to make submissions to make them in writing and, where submissions are so made, the Tribunal shall make them public in such manner as it thinks fit.

(5) In conducting an inquiry under this Part, the Tribunal is not bound by the rules of evidence.

**Powers of Tribunal at inquiry.**

**36. (1)** For the purposes of an inquiry under this Part, the Tribunal may—

- (a) issue a summons to a witness to give evidence or produce a record, or both, at the inquiry;
- (b) administer an oath; and
- (c) take evidence on oath.

(2) Where, pursuant to this section, a person is required by a summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require the person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(3) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed pursuant to this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court of New South Wales.

(4) A witness summoned under subsection (1) is entitled to be paid such fees and allowances as are prescribed.

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**Failure to appear at inquiry.**

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

Penalty: 10 penalty units or imprisonment for 6 months, or both.

**Refusal to be sworn, etc.**

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

Penalty: 10 penalty units or imprisonment for 6 months, or both.

**Power to obtain information.**

**39. (1)** For the purposes of an inquiry under this Part, the Tribunal or a person authorised by the Tribunal for the purposes of this section (in this section referred to as the "authorised person") may require any person—

(a) to give information; or

(b) to answer any question,

in relation to the subject-matter of the inquiry.

**(2)** The Tribunal or authorised person may require information to be given, or a question to be answered, on oath either orally or in writing and, for the purposes of such a requirement, may administer an oath.

**(3)** The Tribunal or authorised person may, by notice in writing, require information to be given, or a question to be answered, in writing at a place specified in the notice.

**(4)** A person shall not—

(a) fail to comply with a requirement under subsection (1), (2) or (3); or

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- (b) give, pursuant to such a requirement, information or an answer that to the person's knowledge is false or misleading in any particular.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(5) A person is not obliged to give information or answer a question which the person has, pursuant to subsection (1), been required to give or answer unless the person has first been informed by the Tribunal or authorised person that the person is required and obliged by this section to give the information or answer the question.

(6) A person shall not refuse to comply with a requirement under subsection (1) on the ground that compliance with a requirement might incriminate the person or render the person liable to a penalty.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(7) Information and answers given by a person pursuant to a requirement under subsection (1) are not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under subsection (4).

(8) A certificate signed by a member of the Tribunal or a person appointed under section 32 (1) to the effect that a person specified therein was, on a day or during a period so specified, an authorised person for the purposes of this section is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

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PART V.

FUNCTIONS OF COMMISSIONER IN RELATION TO PROCEEDINGS.

**Commissioner may represent debtor, etc.**

40. In any proceedings before the Tribunal, a person may, notwithstanding anything in the Commercial Tribunal Act, 1984, be represented by the Commissioner or by counsel, solicitor or agent for the Commissioner.

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**Commissioner may proceed for another.**

**41. (1)** Where a person, not being a body corporate, has made a complaint to the Commissioner in respect of a matter arising under or in relation to a regulated contract or regulated mortgage and the Commissioner, after investigating the complaint, is satisfied that—

- (a) the complainant may, with respect to that matter, have a right to take proceedings before a court or the Tribunal or a defence to proceedings taken before a court or the Tribunal by another person against the complainant in respect of that matter; and
- (b) it is in the public interest that the Commissioner should take or, as the case may be, defend those proceedings on behalf of the complainant,

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

**(2)** Where a complainant has given a consent to the taking or defending by the Commissioner of proceedings before a court or the Tribunal on behalf of the complainant, that consent is not, after the Commissioner has taken steps in those proceedings, revocable except with the concurrence of the Commissioner.

**Conduct of proceedings taken by Commissioner.**

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

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



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**Intervention by Commissioner.**

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

**(2)** Where the Commissioner intervenes in any proceedings under subsection (1), lodges an objection under section 11 or 23 or takes or defends proceedings in accordance with section 41 (1), it shall be presumed, unless the contrary is proved, that the Minister has consented to the intervention, the lodging of the objection or the taking or defending of proceedings, as the case may be.

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

**Investigation of application to Tribunal.**

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

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**PART VI.****MISCELLANEOUS.****Variation of application of Act.**

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

- (a) do not have effect in relation to a specified person or to a specified class of persons;

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

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

- (a) may specify the period during which the order shall remain in force;
- (b) may provide that its operation is subject to such terms and conditions as are specified in the order; and
- (c) may specify the circumstances under which a person to whom the order applies is, by reason of the order, to be deemed to be an exempt credit provider.

**(3)** The Governor may, by order published in the Gazette, revoke or vary an order made under this section.

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

**(5)** A person to whom an order under this section applies, including an order that is varied under this section, shall comply with the terms and conditions (if any) to which the operation of the order is subject.

Penalty: 50 penalty units.

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**Penalty units.**

**46.** A reference in this Act to a number (whether fractional or whole) of penalty units shall be deemed to be a reference to an amount of money equal to the amount obtained by multiplying \$100 by that number of penalty units.

**General penalty.**

**47. (1)** A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

**(2)** A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by a provision of this Act other than this subsection is liable to a penalty not exceeding 10 penalty units.

**Limitation.**

**48.** Notwithstanding anything in any Act, proceedings for an offence against this Act may be brought within the period of 3 years that next succeeds the commission of the offence or, with the consent of the Attorney General, at any later time.

**Offence by body corporate.**

**49.** 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.

**Who may take proceedings for offences.**

**50. (1)** Proceedings for an offence against this Act or the Credit Act, 1984, or for a breach of the regulations under either Act may be taken and prosecuted by any person acting with the authority of—

- (a) the Minister; or
- (b) a prescribed officer.

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(2) An authority to prosecute purporting to have been signed by the Minister or a prescribed officer is evidence of that authority without proof of the signature of the Minister or the prescribed officer.

(3) In proceedings for an offence against this Act or the Credit Act, 1984, or for a breach of the regulations under either Act, the informant may conduct his or her case personally, or by counsel or attorney, or by an agent authorised by the informant in writing.

**Disposal of proceedings.**

51. (1) Proceedings for an offence against this Act or the Credit Act, 1984, shall be disposed of summarily before—

- (a) a court of petty sessions constituted by a stipendiary magistrate sitting alone; or
- (b) with the written consent of the Minister—the Supreme Court in its summary jurisdiction.

(2) Proceedings for a breach of the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(3) A monetary penalty imposed by a court of petty sessions for an offence against this Act or the Credit Act, 1984, shall not exceed 50 penalty units notwithstanding that, but for this subsection, the maximum monetary penalty that could be imposed would exceed 50 penalty units.

**Evidence.**

52. (1) A certificate signed by the Commissioner to the effect that a person specified therein was or was not, on a day or during a period so specified, the holder of a licence so specified is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

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(2) A certificate signed by the Commissioner to the effect that a person specified therein was, on a day or during a period so specified, authorised for the purposes of section 55 or 56 is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

(3) Where it is alleged in any proceedings under this Act, or in any other proceeding in relation to a matter arising under this Act, that a credit contract is a regulated contract, it shall be presumed, unless the contrary is established, that the credit contract is a regulated contract.

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

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

**Application of Consumer Protection Act, 1969.**

54. (1) For the purposes of section 12 of the Consumer Protection Act, 1969, matters arising under the cognate Acts are matters relating to the interests of consumers and those Acts are Acts designed to protect the interests of consumers.

(2) The Commissioner has, in relation to the Commissioner's functions and powers under the cognate Acts, the same power of delegation as is conferred on the Commissioner by section 15A of the Consumer Protection Act, 1969, in relation to the Commissioner's functions and powers under that Act.

**Power of entry.**

55. (1) For the purpose of ascertaining whether the provisions of any of the cognate Acts are being or have been complied with by a credit provider, finance broker or mortgagee or for the purpose of enabling the Commissioner

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to prepare a report for the Tribunal, the Commissioner, an inspector appointed under the Consumer Protection Act, 1969, or any other person authorised in writing in that behalf by the Commissioner may—

- (a) enter premises where the business of the credit provider, finance broker or mortgagee, or the business of a person with whom the credit provider has a trade or tie agreement, is being carried on;
- (b) require the production of records;
- (c) inspect and require explanations of any record; and
- (d) take notes, copies and extracts of or from any record or statement produced pursuant to this section.

(2) Where the Commissioner, or an inspector or authorised person referred to in subsection (1), requires production under that subsection of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(3) A person shall not—

- (a) wilfully delay or obstruct the Commissioner, an inspector or any other person in the exercise of powers under this section;
- (b) refuse or fail to produce, or conceal or attempt to conceal, any record or statement the person is required under subsection (1) or (2) to produce;
- (c) being a credit provider, finance broker or mortgagee or, where the credit provider, finance broker or mortgagee is a body corporate, an officer of the credit provider, finance broker 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, him or her by a person entitled to require production of the record or statement who first informs him or her that he or she is required and obliged by this section to answer the question or give the explanation; or
- (d) being a credit provider, finance broker or mortgagee or, where the credit provider, finance broker or mortgagee is a body corporate, an officer of the credit provider, finance broker or mortgagee, give

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to a question relating to any record or statement an answer that he or she knows is false or misleading or give an explanation of any record or statement that he or she knows is a false or misleading explanation.

Penalty: 20 penalty units.

**Production of records.****56. (1) In this section—**

“authorised person” means the Commissioner or a person authorised in writing by the Commissioner to exercise the powers conferred by this section on an authorised person;

“credit provider” includes a person who was at any time a credit provider to whom a provision of a cognate Act applied as a credit provider;

“finance broker” includes a person who was at any time a finance broker to whom a provision of a cognate Act applied as a finance broker;

“mortgagee” includes a person who was at any time a mortgagee to whom a provision of a cognate Act applied as a mortgagee.

**(2)** For the purpose of ascertaining whether the provisions of any of the cognate Acts are being or have been complied with by a credit provider, finance broker or mortgagee, an authorised person may, by instrument in writing, require the credit provider, finance broker 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,

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

Penalty: 20 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 55 and nothing in section 55 (1) limits the operation of this section.

**Secrecy.**

**57. (1)** This section applies to every person who is or has been—

- (a) a member of the Tribunal;
- (b) a person appointed under section 32 (1);
- (c) the Commissioner;
- (d) an authorised person under section 55 (1) or 56 (1);
- (e) the Registrar;
- (f) the Deputy Registrar;
- (g) a member of the staff assisting the Commissioner or the Registrar;  
or
- (h) a person employed under section 28 of the Commercial Tribunal Act, 1984.

(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 any of the cognate Acts, the Consumer Protection Act, 1969, the Commercial Tribunal Act, 1984, or the corresponding Acts, or proposed 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 by reason of the person's office or employment under or for the purposes of this Act or any of the cognate Acts.

Penalty: 20 penalty units.



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**Extensions of time.**

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

**Service of documents.**

**59. (1)** Where, under this Act, a document or notice is required or permitted to be given to or served on a person, the document or notice may be given or served—

- (a) where the person is a natural person, by giving it to or serving it personally on the person or by sending it by post to the person at the person's usual or last known place of abode or business; or
- (b) where the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation.

**(2)** In subsection (1), "registered office" means—

- (a) the office of the corporation that is the registered office or principal office in accordance with the law of the State or Territory of the Commonwealth by or under which the corporation is incorporated;
- (b) where the corporation is not incorporated in Australia, an office registered under the law of a State or Territory of the Commonwealth as a registered office of the corporation; or
- (c) in the case of a corporation that has no such registered office or principal office, the principal place of business of the corporation in the State or, if it has no place of business in the State, its principal place of business in Australia.

**Service by post.**

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

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**Annual report.**

**61. (1)** The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report on the administration of the cognate Acts during that period of 12 months and submit the report to the Minister for presentation to Parliament.

**(2)** The report referred to in subsection (1) may form part of the report submitted to the Minister in accordance with section 18 of the Consumer Protection Act, 1969.

**Regulations.**

**62. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

**(2)** The regulations may provide that the fee referred to in section 9 (2), 21 (1) or 21 (5) is to be—

- (a) a specified amount; or
- (b) an amount calculated in a specified manner.

**(3)** A regulation may impose a penalty not exceeding 5 penalty units for a breach of the regulation.

**(4)** A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

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## SCHEDULE 1.

(Sec. 3.)

## TRANSITIONAL PROVISIONS.

**Interpretation.**

1. In this Schedule, "appointed day" means the day on which section 6 commences.

**Grant or refusal of application for licence.**

2. (1) Where an application for a licence is made and granted before the appointed day, the licence takes effect on that day and shall be signed and issued by the Registrar.

(2) Where an application for a licence is made before the appointed day but the application is not determined until that day or a later day, the applicant shall, subject to clause 3, be deemed to be the holder of a licence (being a licence of the class applied for) between the commencement of the appointed day and the time of the granting or, as the case may be, the refusal of the application.

(3) Where an application for a licence referred to in subclause (2) is granted, an additional fee is payable in respect of the licence, being a fee that bears to the fee paid under section 9 (2) the same proportion as the period between the commencement of the appointed day and the day on which the licence is granted bears to one year.

(4) Where an application for a licence made before the appointed day is granted or refused on or after that day, the Registrar shall notify the applicant and any objector of the granting or refusal and, where the application is granted and an additional fee is payable under subclause (3), give written notice to the licensee that, unless the amount (specified in the notice) of the additional fee is paid before a day so specified, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled.

(5) The Registrar shall cancel the licence of a licensee who fails to pay the fee referred to in a notice to the licensee under subclause (4), and such a cancellation has the same effect as a cancellation under section 21 (6).

(6) Where an application for a licence made before the appointed day is refused before, on or after that day, the Registrar shall refund to the applicant so much of the fee paid under section 9 (2) as is specified by the Tribunal as appropriate to be refunded.

(7) Where, pursuant to subclause (5), a licence is cancelled, the Registrar shall refund to the former licensee an amount determined by the Tribunal, being such proportion of the fee paid under section 9 (2) as the Tribunal considers appropriate having regard to the period that elapsed between the commencement of the appointed day and the day on which the application for the licence was granted.

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SCHEDULE 1—*continued.*TRANSITIONAL PROVISIONS—*continued.***Tribunal may give certain directions.**

3. If the Tribunal, upon cause shown, so directs, clause 2 (2) ceases to apply to a person to whom, but for this clause and the direction, it would apply.

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