

# Consumer Credit Administration Act 1995 No 69

[1995-69]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 1 to the *Credit (Commonwealth Powers) Act 2010 No 6* with effect from 1.7.2010.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Consumer Credit Administration Act 1995 No 69



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# Consumer Credit Administration Act 1995 No 69



New South Wales

An Act to provide for the supervision of the consumer credit industry; to provide for the making of inquiries into matters relating to the provision of credit; to repeal the *Credit (Administration) Act 1984*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Consumer Credit Administration Act 1995*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**client** of a finance broker is the person on behalf of whom consumer credit is to be obtained or is obtained (whether or not for commission) by the finance broker.

**commission** includes any fee, charge, reward or other remuneration (whether or not monetary and whether characterised as a termination fee or otherwise) that is:

- (a) paid or payable by the client of a finance broker for or in respect of finance broking engaged in by the finance broker on behalf of the client, and
- (b) retained by the finance broker.

**consumer credit** means credit to which any consumer credit legislation applies, and includes arrangements under a consumer lease as defined in the *Consumer Credit (New South Wales) Code*.

**consumer credit legislation** means the following Acts and the regulations made under them:

- (a) this Act,
- (b) the *Consumer Credit (New South Wales) Act 1995* (including the *Consumer Credit*

(*New South Wales* Code),

(c) the *Credit Act 1984*,

(d) (Repealed)

(e) the *Credit (Home Finance Contracts) Act 1984*.

**credit application fee** or **credit establishment fee** means a fee charged by a credit provider, or a person or body authorised to act on behalf of a credit provider, for determining an application for consumer credit or the initial administrative costs of providing consumer credit, or both.

**credit provider** means a credit provider under any consumer credit legislation and include a prospective credit provider.

**debtor** means a debtor under any consumer credit legislation and includes a prospective debtor.

**director** of a corporation has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

**Director-General** means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*.

**disciplinary action** means any of the following actions the Director-General is empowered to take:

- (a) requesting that a credit provider or finance broker execute a deed giving undertakings (under section 14),
- (b) issuing a notice to show cause (under section 15),
- (c) reprimanding a credit provider or finance broker (under section 18 (2) (a)),
- (d) ordering a credit provider or finance broker to rectify the consequences of unjust conduct within a specified period (under section 18 (2) (b)),
- (e) ordering a credit provider or finance broker to comply with a requirement within a specified period (under section 18 (2) (c)),
- (f) making a prohibition order (under section 19 or 20).

**engages in finance broking**—see subsection (3).

**exercise** a function includes perform a duty.

**finance broker** means a person who engages in finance broking.

**finance broking contract** means a contract between a finance broker and a client

under which the finance broker agrees to engage in finance broking on behalf of the client.

**function** includes a power, authority or duty.

**officer** of a corporation has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**official** means:

- (a) a public servant, or
- (b) a person of a class prescribed by the regulations.

**premises** means any place, vehicle or vessel.

**prohibition order** means a prohibition order made under Division 3 of Part 3 and in force.

**secured**—see subsection (4).

**Tribunal** means the Consumer, Trader and Tenancy Tribunal established by the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

**unjust conduct** means conduct:

- (a) that is unfair, dishonest or fraudulent, 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 a contravention of any consumer credit legislation.

**valuation fee** means a fee for a valuation obtained in respect of any security to be offered for a contract for consumer credit.

- (2) For the purposes of this Act, a person provides consumer credit if the person:
  - (a) provides the credit in the course of a business of providing consumer credit or as part of or incidentally to any other business of the person, or
  - (b) is involved in the taking of a mortgage, or the taking of a guarantee, to which any consumer credit legislation applies.
- (3) For the purposes of this Act, a person **engages in finance broking** if the person (“the intermediary”) acts, or purports to act, as an intermediary to negotiate and obtain consumer credit for a person (other than the intermediary’s employer, or a principal who is not a client of the intermediary) in return for a commission or financial benefit, whether payable to the intermediary by the person, the credit provider or any other person or body.



- (4) For the purposes of this Act, consumer credit is **secured** for a client when the credit provider has made a final determination regarding the credit application and is prepared to provide the client with the consumer credit sought.

#### **4 Conduct of agents**

For the purposes of this Act, the conduct of an officer, employee or agent of a credit provider or finance broker acting within his or her actual or ostensible authority will be imputed to the credit provider or finance broker and taken to be the conduct of the credit provider or finance broker.

### **Part 1A Regulation of finance broking**

#### **Division 1 Preliminary**

##### **4A Object of Part**

The object of this Part is to provide for the regulation of persons who engage in finance broking so as to ensure that the clients of finance brokers:

- (a) are given adequate information before entering into finance broking contracts, and
- (b) are protected from unfair practices engaged in by finance brokers, and
- (c) have access to a redress mechanism when finance brokers breach the terms of the finance broking contract, engage in unjust conduct or charge excessive commission.

##### **4B Application of Part**

- (1) This Part applies to and in respect of a finance broker only in so far as consumer credit to which the business of the finance broker relates is, or includes, credit to be provided under a credit contract within the meaning of the *Consumer Credit (New South Wales) Code*.
- (2) This Part does not apply to or in respect of a finance broker of a class prescribed by the regulations.

#### **Division 2 Finance broking contracts**

##### **4C Finance broking contract must be in writing and must be given to client**

- (1) A finance broker must not engage in finance broking on behalf of a particular client unless:
  - (a) the finance broker has first entered into a written finance broking contract with the client, and
  - (b) that contract has been signed by the client, and

- (c) the contract contains the matters required by subsection (3), and
- (d) a copy of the contract has been given to the client.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) applies to finance broking on behalf of a client whether or not the client is under any obligation to pay commission under the finance broking contract.
- (3) The matters required by this subsection are:
  - (a) particulars of the amount of consumer credit to be obtained or, if the amount is not ascertainable, the maximum amount of consumer credit, or the credit limit, to be obtained, and
  - (b) if the consumer credit is to be for a fixed term—the term of the consumer credit desired by the client, and
  - (c) if the consumer credit is intended to be repaid at regular intervals—the maximum periodic repayments the client is prepared to make in respect of the consumer credit (including the repayment of any credit application fee, credit establishment fee or other fee), and
  - (d) if the consumer credit is not intended to be repaid at regular intervals—the repayment arrangements acceptable to the client (including for the repayment of any credit application fee, credit establishment fee or other fee), and
  - (e) the maximum interest rate that will be payable in respect of the consumer credit, and
  - (f) the date by which the finance broker is to have secured the consumer credit for the client, and
  - (g) a statement, in the form prescribed by the regulations, that the finance broker's recommendations will be drawn from a range of potential lenders that does not necessarily include all lenders who offer consumer credit of the nature of the consumer credit sought, and
  - (h) the name and address of the finance broker, and
  - (i) if the finance broker is a company—the Australian Company Number (ACN) of the company, and
  - (j) if the finance broker trades under a business name—the name and address of the principals of the relevant business, and
  - (k) the amount of commission (if any is payable) payable by that client or, if the exact amount of commission is not known, the method of calculating the commission

and an estimate of the amount that will be payable if consumer credit is provided on the terms set out in the finance broking contract, and

(l) when and how any such commission will be payable, and

(m) if a financial or other benefit will be received from a person other than the client by the finance broker if consumer credit is ultimately provided to the client—a statement, in the terms prescribed by the regulations, as to the fact that the finance broker will receive a financial or other benefit and as to any other matters that may be prescribed, and

(n) any other matter that may be prescribed by the regulations.

(4) A finance broker must not demand, receive or accept any commission in respect of finance broking engaged in on behalf of a client if the finance broker has failed to comply with this section in relation to that finance broking.

Maximum penalty: 50 penalty units.

## **Division 3 Commission**

### **4D Up-front commission prohibited**

A finance broker must not demand, receive or accept any commission from a client before securing the consumer credit in respect of which the commission is payable.

Maximum penalty: 50 penalty units.

### **4E Payment of commission depends on terms of consumer credit being the same as those agreed to**

(1) A finance broker must not demand, receive or accept any commission from a client in respect of finance broking engaged in on behalf of a client if:

(a) the amount of consumer credit secured is not the same as the amount specified in the written finance broking contract, or

(b) in the case of consumer credit intended to be for a fixed term—the consumer credit secured is for a term that is not the same as the term specified in the contract, or

(c) in the case of consumer credit intended to be repaid at regular intervals—the periodic repayments exceed the maximum periodic repayments specified in the contract, or

(d) in the case of consumer credit not intended to be repaid at regular intervals—the repayment arrangements are more onerous than the repayment arrangements specified in the contract, or

(e) the consumer credit is secured at a rate of interest that exceeds the maximum rate specified in the contract, or

(f) the consumer credit is not secured by the date that is set out in the contract.

Maximum penalty: 50 penalty units.

(2) In this section, a reference to a finance broking contract includes a reference to a contract that has been varied in writing and signed by both the finance broker and the client.

(3) A finance broker is not prevented by this section from demanding, receiving or accepting any commission in respect of finance broking merely because of the potential for an increase in the periodic repayments or interest rate, or for repayment arrangements that are more onerous, that arises because of a variation of the interest rate in accordance with the consumer credit contract.

#### **4F Commission must not be greater than that disclosed or estimated in contract**

A finance broker must not demand, receive or accept from a client in respect of consumer credit obtained pursuant to a finance broking contract with the client:

(a) if an amount of commission is specified in the finance broking contract—any commission that is greater than the amount so specified, or

(b) if the exact amount of commission is not specified in the finance broking contract:

(i) any commission that is greater than the amount calculated by the method specified in the contract, or

(ii) if the amount calculated by the method specified in the contract would result in an amount of commission greater than the amount estimated in the contract, any commission that is greater than the amount estimated in the contract.

Maximum penalty: 50 penalty units.

#### **4G Finance broker may charge for costs even if client declines credit**

(1) A finance broker must not demand, receive or accept a commission in respect of finance broking engaged in on behalf of a client who has decided not to enter into a credit contract for the consumer credit that the finance broker has secured unless:

(a) the consumer credit secured by the finance broker:

(i) is of the same amount as that specified in the written finance broking contract with the client, and

(ii) is for a term that is the same as any term specified in that contract, and

(iii) if the consumer credit is intended to be repaid at regular intervals—involves

periodic repayments that do not exceed the maximum periodic repayments specified in the contract, and

- (iv) if the consumer credit is not intended to be repaid at regular intervals—involves repayment arrangements that are not more onerous than the repayment arrangements specified in the contract, and
- (v) is secured at a rate of interest that does not exceed the maximum rate specified in the contract, and
- (vi) was secured by the date that is specified in the contract, and

(b) the finance broking contract was not validly terminated before the finance broker secured the credit, and

(c) the finance broker and the client agreed in the finance broking contract that commission may be demanded, received or accepted if the client decided not to enter into a credit contract for the consumer credit that the finance broker has secured in the circumstances referred to in paragraphs (a) and (b).

Maximum penalty: 50 penalty units.

- (2) A finance broker is not prevented by this section from demanding, receiving or accepting any commission in respect of finance broking merely because of the potential for an increase in the periodic repayments or interest rate, or for repayment arrangements that are more onerous, that may have arisen because of a variation of the interest rate in accordance with the consumer credit contract.

## **Division 4 Records and fees**

### **4H Finance broker to keep records**

- (1) A finance broker must, before or immediately after entering into a transaction in the course of business as a finance broker, make, or cause to be made, a record containing full particulars of that transaction, including a copy of any relevant finance broking contract.
- (2) A finance broker must preserve a record made under subsection (1) for a period of at least 7 years after the date of the transaction to which the record relates.
- (3) Any record kept at a place of business of a finance broker is, unless the contrary is proved, to be presumed to have been made by, or with the authority of, the finance broker.

Maximum penalty: 50 penalty units.

#### **4I Valuation fees, credit application fees and credit establishment fees**

(1) A finance broker must not demand, receive or accept from a client:

- (a) any valuation fee, or
- (b) any credit application fee, or
- (c) any credit establishment fee,

except in accordance with this section.

Maximum penalty: 50 penalty units.

(2) A finance broker receives or accepts a valuation fee, a credit application fee or a credit establishment fee from a client in accordance with this section only if:

- (a) the fee is in the form of a cheque, money order or transfer made payable to an approved person and the finance broker gives or delivers it to the approved person as soon as practicable after receiving it, or
- (b) in the case of a valuation fee—the finance broker is authorised by the credit provider to instruct the valuer, or
- (c) in the case of a credit application fee or credit establishment fee—the finance broker is authorised to act on behalf of the credit provider and will incur the costs of determining the application for consumer credit or the initial administrative costs of providing the credit, or both, or
- (d) in the case of a credit application fee or credit establishment fee—the finance broker is also the credit provider.

(3) In this section:

**approved person** means:

- (a) in relation to a valuation fee—the valuer, the credit provider or a person or body authorised by the credit provider to instruct the valuer, or
- (b) in relation to a credit application fee or a credit establishment fee—the credit provider or a person or body who is authorised to act on behalf of the credit provider and who will incur the costs of determining the application for consumer credit, or the initial administrative costs of providing the credit, or both.

### **Division 5 Consumer action**

#### **4J Consumer action where contract breached, unjust conduct or excessive commission**

(1) The client of a finance broker under a finance broking contract may apply to the Tribunal for an order that the finance broker:

- (a) has not complied with the contract, or
  - (b) has engaged in, or is engaging in, unjust conduct in finance broking in relation to that contract, or
  - (c) has charged an excessive commission in relation to that contract.
- (2) The Tribunal may, if it considers that the finance broker has not complied with the contract, has engaged in unjust conduct or has charged an excessive commission:
- (a) order the finance broker to take specified action or refrain from specified action, or
  - (b) order the finance broker to pay a specified amount to the client, or
  - (c) order that a specified sum of money is not due or owing by the client to the finance broker, or
  - (d) make any other order that the Tribunal thinks is necessary or proper for the purposes of this section (not being an order that affects any contract for consumer credit).
- (3) An application under this section must be made no later than 3 years after the alleged non-compliance, unjust conduct or charging of excessive commission.
- (4) A person must not fail to comply with an order made by the Tribunal under this section.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

## **Division 6 Court may take action**

### **4K Court action where contract breached, unjust conduct or excessive commission**

- (1) This section applies if proceedings are taken in a court by a finance broker for the recovery of money in respect of a transaction entered into by the finance broker under a finance broking contract and it appears to the court:
- (a) that the finance broker has not complied with the finance broking contract, or
  - (b) that the finance broker has engaged in unjust conduct in relation to the finance broking contract, or
  - (c) that the commission charged by the finance broker in respect of the transaction is excessive.
- (2) If this section applies, the court may:
- (a) order the finance broker to take specified action or refrain from specified action, or
  - (b) order the finance broker to pay a specified amount to the client, or

- (c) order that a specified sum of money is not due or owing by the client to the finance broker, or
- (d) make any other order that the court thinks is necessary or proper for the purposes of this section (not being an order that affects any contract for consumer credit).

#### **4L Court may order refund**

- (1) A court that finds a finance broker guilty of any offence under this Act, may, whether or not it proceeds to conviction, order the finance broker to refund:
  - (a) any amount received or accepted by the finance broker in contravention of this Act, and
  - (b) interest payable, at the rate fixed by the court, for the period from the time of the receipt or acceptance of the amount until the time it is refunded.
- (2) The rate fixed by the court under subsection (1) (b) must not exceed the rate prescribed by the regulations.

## **Part 2 Supervision of the provision of consumer credit and finance broking**

### **5 Application**

- (1) The functions in this Part may be exercised only for the purpose of determining whether a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking.
- (2) The powers may be used to investigate a complaint made under Part 3 or to conduct any other investigation for supervisory purposes.

### **6 Requiring information**

- (1) For the purposes of this Part, an official authorised by the Director-General may do any of the following:
  - (a) require a person to answer in writing any question,
  - (b) require a person to state the person's full name and place of residence,
  - (c) require a person to produce any document,
  - (d) inspect and take extracts from or copies of any document,
  - (e) remove and retain any document in order to examine or copy it.
- (2) The power may be used only to make a requirement of, or to inspect, extract or remove the documents of, a credit provider or finance broker (or an officer, employee



or agent of a credit provider or finance broker).

- (3) Such a requirement is not duly made unless, at the time of making the requirement, the person of whom the requirement is made has been informed by the official that a refusal or failure to furnish the answer or document, as the case may be, constitutes an offence.
- (4) A person is not excused from answering a question, or producing a document, in response to a requirement duly made under this section on the ground that the answer or document may tend to incriminate the person.
- (5) Any information or document obtained from a natural person in response to a requirement duly made under this section is inadmissible against the person in criminal proceedings other than proceedings under section 7.
- (6) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an official authorised under subsection (1).

#### **7 Failure to give information is an offence**

- (1) A person who, without reasonable excuse, fails to comply with any requirement under section 6 is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) A person who gives information in response to any requirement under section 6 knowing it to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

- (3) A person who, without reasonable excuse, hinders or obstructs an official in the exercise of any of the official's powers under section 6 is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **8 Entry and inspection**

- (1) For the purposes of this Part, an official authorised by the Director-General may enter and inspect any premises of a credit provider or finance broker (or of an officer, employee or agent of a credit provider or finance broker).

- (2) A power of entry is not exercisable in relation to such part of any premises as is used for residential purposes except:

- (a) with the consent of the occupier of that part of the premises, or
- (b) under the authority conferred by a search warrant.

- (3) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an official authorised under subsection (1).

## 9 Search warrants

- (1) An official may apply to an authorised officer for a search warrant if the official is of the opinion that it is necessary to enter and inspect any premises for the purposes of this Part.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an official named in the warrant to enter and inspect the premises for the purposes of this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (3A) An investigator appointed under section 18 of the *Fair Trading Act 1987* may exercise the functions of an official under this section.
- (4) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 10 Standards for entry and inspection

- (1) A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the official proposing to exercise the power:
  - (a) has been authorised to do so by the Director-General, and
  - (b) is in possession of a certificate of authority, and
  - (c) gives reasonable notice to the occupier of the premises of the official's intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
  - (d) exercises the power at a reasonable time, and
  - (e) produces the certificate of authority if required to do so by a person apparently in occupation of the premises, and
  - (f) uses no more force than is reasonably necessary to effect the entry or make the inspection.
- (2) A certificate of authority must:
  - (a) state that it is issued under this Act, and
  - (b) give the name of the official to whom it is issued, and
  - (c) describe the nature of the powers conferred and the source of the powers, and

- (d) state the date (if any) on which it expires, and
  - (e) state that the powers do not extend to premises used for residential purposes, and
  - (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.
- (3) A certificate signed by the Director-General to the effect that a person specified in the certificate was, on a day or during a period so specified, authorised to exercise specified powers for the purposes of this Part 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.
- (4) If damage is caused by an official exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the employer of the official to the owner of the premises unless the occupier obstructed the official in the exercise of the power.
- (5) If a document is taken from premises by an official who exercises a power to enter the premises, a person otherwise entitled to possession of the document is, as far as is practicable, to be allowed access to the document and the document is to be returned to that person within a reasonable time.
- (6) In this section, ***certificate of authority*** means a certificate that, to enable an official to exercise a power conferred by this Act, is issued to the official by the Director-General.

## **Part 3 Discipline for unjust conduct**

### **Division 1 Complaints**

#### **11 Object of Part**

- (1) The general object of this Part is to ensure compliance by credit providers and finance brokers with the consumer credit legislation, and with the appropriate standards of honesty, fairness, competence and diligence.
- (2) The Director-General may take disciplinary action under this Part whether or not there has been a complaint made against a credit provider or finance broker.

#### **12 Complaints about a credit provider or finance broker**

- (1) Any person may make a complaint to the Director-General about the conduct of a credit provider or finance broker.
- (2) The grounds on which a complaint may be made against a credit provider are that the person has engaged in, or is engaging in, unjust conduct in the provision of consumer

credit.

- (3) The grounds on which a complaint may be made against a finance broker are that the person has engaged in, or is engaging in, unjust conduct in finance broking.

### **13 Investigation of complaints**

- (1) The powers in Part 2 may be exercised to investigate a complaint against a credit provider or finance broker.
- (2) The Director-General may exercise those powers personally or may direct an official authorised in accordance with Part 2 to exercise the powers.

## **Division 2 Disciplinary action**

### **14 Undertakings**

- (1) This section applies where it appears to the Director-General that a credit provider or finance broker, in the course of providing consumer credit or finance broking, has engaged in, or is engaging in, unjust conduct.
- (2) The Director-General may request the credit provider or finance broker to execute a deed in terms approved by the Director-General whereby the credit provider or finance broker gives undertakings as to:
  - (a) the discontinuance of the unjust conduct, and
  - (b) the credit provider's or finance broker's future conduct, and
  - (c) the action the credit provider or finance broker will take to rectify the consequences of the credit provider's or finance broker's unjust conduct.
- (3) Where a credit provider or finance broker executes a deed under this section and observes the undertakings given in the deed, the Director-General may not take further disciplinary action under this Part against the credit provider or finance broker by reason of any conduct to which the undertaking relates.

### **15 Notice to show cause**

- (1) This section applies only if the Director-General is of the opinion:
  - (a) that there are reasonable grounds for believing that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking, and
  - (b) that requiring the credit provider or finance broker to give an undertaking would not stop that unjust conduct, has not been effective in stopping that conduct or would not prevent its recurrence.

- (2) The Director-General may, by notice in writing served on the credit provider or finance broker, call upon the credit provider or finance broker to show cause why the credit provider or finance broker should not, for the reason specified in the notice, be subject to further disciplinary action (including the making of a prohibition order).
- (3) The notice must specify the period in which the credit provider or finance broker may show cause. That period must be at least 14 days after the notice is served.

#### **16 Person may make submission**

The credit provider or finance broker on whom a notice to show cause has been served may, within the period specified in the notice, make a written submission in respect of the matters to which the notice relates.

#### **17 Director-General may make further inquiries**

- (1) The Director-General may conduct such inquiry or make such investigation as the Director-General thinks fit in relation to:
  - (a) the matters to which the notice to show cause relates, or
  - (b) any written submissions made by or on behalf of the credit provider or finance broker in relation to those matters.
- (2) The Director-General may, by written notice, require a credit provider or finance broker who has made a written submission to appear before the Director-General to answer questions at a place, and at a date and time, specified in the notice
- (3) A person who has been given a written notice to appear before the Director-General must appear and must answer any question put by the Director-General.

Maximum penalty: 20 penalty units.

- (4) A person who gives an answer to any question put by the Director-General, knowing it to be false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 20 penalty units.

- (5) A person is not excused from answering a question in response to a notice duly given under this section on the ground that the answer may tend to incriminate the person.
- (6) Any information obtained from a natural person in response to a requirement duly made under this section is inadmissible against the person in criminal proceedings other than proceedings under subsection (3) or (4).

#### **18 Director-General may take further disciplinary action**

- (1) This section applies only if the Director-General:
  - (a) has issued a notice to show cause to a credit provider or finance broker under

section 15, and

- (b) has considered any submissions made in relation to it, and
  - (c) is of the opinion that the credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking.
- (2) The Director-General, in any such case, may do any one or more of the following:
- (a) reprimand the credit provider or finance broker,
  - (b) order the credit provider or finance broker to rectify the consequences of the unjust conduct within a specified period,
  - (c) order the credit provider or finance broker to comply within a specified period with a specified requirement (if the Director-General is satisfied that compliance with such a requirement will avoid further unjust conduct).
- (3) Where the Director-General orders a credit provider or finance broker to rectify the consequences of its conduct, or to comply with a requirement specified by the Director-General, the credit provider or finance broker must rectify those consequences, or comply with the requirement, within the period specified by the Director-General.

Maximum penalty: 100 penalty units.

## **Division 3 Prohibition orders**

### **19 Prohibition orders**

- (1) This section applies:
- (a) if other disciplinary action has been unsuccessful, namely when:
    - (i) the Director-General has made an order requiring a credit provider or finance broker to rectify the consequences of unjust conduct or to comply with a requirement specified by the Director-General (under section 18), and
    - (ii) the Director-General is satisfied that the credit provider or finance broker has not complied with the order within the time specified by the Director-General, or
  - (b) if more serious disciplinary action is warranted, namely when:
    - (i) the Director-General has issued a notice to show cause to a credit provider or finance broker (under section 15), and
    - (ii) the Director-General has considered any submissions made in relation to it,

and

- (iii) the Director-General is satisfied that a prohibition order is the only type of disciplinary action that will stop unjust conduct, or prevent further unjust conduct, by the credit provider or finance broker in the course of providing consumer credit or finance broking.
- (2) If the Director-General is satisfied that a credit provider or finance broker has engaged in, or is engaging in, unjust conduct in the course of providing consumer credit or finance broking, the Director-General may order the credit provider or finance broker not to be involved in providing consumer credit or finance broking:
- (a) in any way, or
  - (b) in a way stated in the order, or
  - (c) otherwise than in a way stated in the order.
- (3) A prohibition order may be made to operate for an indefinite period or for a stated period only.

## **20 Application for variation or revocation of a prohibition order**

- (1) Application for variation or revocation of a prohibition order may be made to the Director-General by the person the subject of the order.
- (2) On application, the Director-General may:
- (a) vary or revoke a prohibition order, or
  - (b) revoke the order and make a different prohibition order, or
  - (c) refuse to vary or revoke the order.

## **21 Powers of credit provider or finance broker**

- (1) A prohibition order does not operate so as to prevent a credit provider the subject of the prohibition order from:
- (a) receiving money under and enforcing contracts entered into before the order takes effect, or
  - (b) providing consumer credit in accordance with a contract (other than a continuing credit contract) entered into before the order takes effect, or
  - (c) providing consumer credit in the course of a variation or deferral of a contract entered into with the credit provider before the order takes effect if:
    - (i) the debtor so requests, and

(ii) the debtor informs the credit provider that the variation or deferral is necessary to enable the debtor to comply with the contract.

(2) A prohibition order does not operate so as to prevent a finance broker the subject of the order from receiving money under and enforcing contracts entered into before the order takes effect.

## **22 Civil penalty**

(1) If a credit provider provides consumer credit in contravention of a prohibition order, the debtor is not liable to pay any amount under the credit contract.

(2) If a finance broker is involved in finance broking in contravention of a prohibition order and for that purpose enters into a contract, a person who is a party to that contract is not liable to pay any amount under the contract.

(3) If a person who is not liable to do so pays an amount to a person the subject of a prohibition order, the amount is recoverable by the person as a debt due and payable by the credit provider or finance broker the subject of the order.

(4) This section does not affect any liability of a person to be convicted of an offence.

## **23 Criminal penalty**

A person who contravenes a prohibition order is guilty of an offence.

Maximum penalty: 200 penalty units.

## **Division 4 Administration**

### **24 Notification of decisions of Director-General**

(1) The Director-General must cause any decision to take disciplinary action, together with the reasons for the decision, to be notified in writing to the credit provider or finance broker against whom the action is taken.

(2) The notice should include a statement about the right to appeal against an order made by the Director-General.

(3) Where a credit provider or finance broker has executed a deed containing undertakings under this Part, the Director-General must give a copy of the deed to the credit provider or finance broker who executed it.

### **25 Register of disciplinary action taken**

(1) The Director-General must keep a register of all disciplinary action taken under this Part.

(2) Where the disciplinary action results in a credit provider or finance broker executing a



deed containing undertakings under this Part, the entry in the register must contain the following particulars:

- (a) the name of the credit provider or finance broker,
  - (b) the address of the principal place of business of the credit provider or finance broker,
  - (c) the date on which the deed was executed by the credit provider or finance broker,
  - (d) brief particulars of the circumstances and unjust conduct that led to the execution of the deed containing the undertakings,
  - (e) a summary of the undertakings given by the credit provider or finance broker in the deed,
  - (f) such other particulars as the Director-General thinks appropriate.
- (3) The register may, at any reasonable time, be inspected by any person free of charge.
  - (4) If a credit provider or finance broker has executed a deed containing undertakings under this Part, the Director-General must retain the deed.

## **26 Award of costs by Director-General**

- (1) This section applies to a credit provider or finance broker who:
  - (a) has been found by the Director-General to have engaged in, or to be engaging in, unjust conduct in the course of providing consumer credit or finance broking, and
  - (b) has been the subject of disciplinary action under this Part (and, if an appeal has been made against the disciplinary action, the action has been upheld).
- (2) The Director-General may make orders requiring such a credit provider or finance broker to pay such amounts by way of costs (including the costs of the Director-General in relation to the disciplinary action) as the Director-General determines.
- (3) An order of the Director-General under this section is to be filed in the Tribunal and is enforceable in the same way as a judgment or order of the Tribunal.

## **27 Appeal against order**

- (1) A person who is the subject of any order made by the Director-General under this Part may appeal to the Tribunal against the order.
- (2) An appeal must be made within 28 days of the making of the order.
- (3) In determining an appeal, the Tribunal may make any order that the Director-General may make.

- (4) An appeal does not operate to stay a prohibition order unless the Tribunal so orders and any conditions imposed by the Tribunal when ordering the stay are complied with.
- (5) Despite subsection (2), an appeal may, with the leave of the Tribunal, be lodged with the Registrar of the Tribunal after the end of the period referred to in that subsection, but only if:
  - (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and
  - (b) the Tribunal grants that leave.
- (6) The Tribunal must grant leave applied for under this section if satisfied that:
  - (a) there is a sufficient explanation as to why the appeal was not lodged in time, and
  - (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

## **Part 4 Inquiries**

### **28 Minister may order inquiry**

- (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 either matters that relate to the provision of consumer credit or to the consequences of the provision of consumer credit, or both.
- (2) The Minister may, by instrument in writing, terminate an appointment.
- (3) An appointment may be made subject to such conditions or limitations as to the exercise of a function, or as to time or circumstances, as may be specified in the instrument of appointment.
- (4) The Tribunal or person appointed under this section has the functions conferred on the Tribunal or person by or under this Part.
- (5) An appointment, or a termination 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) If any matter purporting to be the terms of an instrument of appointment or of termination is published in the Gazette, it is to be presumed, unless the contrary is proved, that the matter comprises the terms of such an instrument.
- (7) If an inquiry is held under this Part, the Tribunal or person conducting the inquiry must, 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 83 of the *Consumer, Trader and Tenancy Tribunal Act 2001* on a member of the Tribunal extend to a person appointed under this section.
- (9) A reference in the *Consumer, Trader and Tenancy Tribunal Act 2001* to proceedings before the Tribunal does not include a reference to an inquiry under this Part.

### **29 Notice of inquiry**

Before commencing an inquiry under this Part, the Tribunal is to give notice, by advertisements published in the Gazette and in a newspaper or newspapers, of:

- (a) the holding of the inquiry, and
- (b) the matter that is to be the subject of the inquiry, and
- (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.

### **30 Appearances at inquiry**

- (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 to appear at an inquiry may appear at the inquiry in person or by an Australian legal practitioner or agent and may give evidence, call witnesses and make submissions at the inquiry.

### **31 Procedure at inquiry**

- (1) Unless the Tribunal in special circumstances otherwise orders:
  - (a) an inquiry under this Part is to be heard in public, and
  - (b) evidence at the inquiry is to be given on oath in public, and
  - (c) submissions at the inquiry are to be made in public.
- (2) At an inquiry under this Part, the Tribunal may permit a witness to give evidence by tendering a written statement verified on oath and, if the evidence is so given, the Tribunal is to make the statement available to the public in such manner as the Tribunal decides.
- (3) If a witness giving evidence under this section 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 may not be

taken in public or made public.

- (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, if submissions are so made, the Tribunal may make them public in such manner as the Tribunal decides.
- (5) In conducting an inquiry under this Part, the Tribunal is not bound by the rules of evidence.

### **32 Powers of Tribunal at inquiry**

- (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 document, or both, at the inquiry, and
  - (b) administer an oath, and
  - (c) take evidence on oath.
- (2) If a person is required by summons to produce a document that is not written in the English language or is not decipherable on sight, the summons is to be taken to require the person also to produce a statement, written in the English language and decipherable on sight, that contains all of the information in the document to be produced.
- (3) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the District Court.
- (4) A witness summoned under this section is, in accordance with the regulations, entitled to be paid such fees and allowances as are prescribed.

### **33 Failure to appear at inquiry**

A person who has been summoned as a witness and fails to appear in obedience to the summons is guilty of an offence unless it is proved that there was a lawful excuse for the failure.

Maximum penalty: 50 penalty units.

### **34 Refusal to be sworn, produce document or answer question**

A person who appears as a witness at an inquiry under this Part (whether summoned or not) and refuses to be sworn, or to produce a document in accordance with a summons, or to answer a question after being required to answer it, is guilty of an offence unless there is a lawful excuse for the refusal.

Maximum penalty: 50 penalty units.

### **35 Power to obtain information**

- (1) For the purposes of an inquiry under this Part, the Tribunal or a person authorised by the Tribunal (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 who:
  - (a) fails to comply with a requirement under subsection (1), (2) or (3), or
  - (b) in compliance with such a requirement, gives information or an answer that to the person's knowledge is false or misleading in a material particular,is guilty of an offence.

Maximum penalty: 50 penalty units.

- (5) A person is not obliged to give information or answer a question that the person has under 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 by this section to give the information or answer the question.
- (6) Information and answers given by a person in compliance with 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 making a false statement on oath, or for an offence under subsection (4).
- (7) A certificate signed by a member of the Tribunal or a person appointed under section 28 (1) to the effect that a person named in the certificate was, on a stated day or during a stated period, 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.

- (8) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised by the Tribunal under subsection (1).

## **Part 5 Functions of Director-General in relation to proceedings**

### **36 Director-General may represent debtor or other person**

- (1) In any proceedings before the Tribunal arising under the consumer credit legislation, a person may be represented by the Director-General or by an Australian legal practitioner or agent for the Director-General.
- (2) This section overrides any provision of the *Consumer, Trader and Tenancy Tribunal Act 2001* dealing with representation.

### **37 Director-General may proceed for another**

- (1) This section applies if a person (other than a corporation) has made a complaint to the Director-General about a matter arising under the consumer credit legislation.
- (2) If the Director-General inquires into the complaint and 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 the matter, and
  - (b) it is in the public interest that the Director-General should take or, as the case may be, defend those proceedings on behalf of the complainant,
- the Director-General may take or defend those proceedings on behalf of and in the name of the complainant.
- (3) The Director-General may only take or defend the proceedings with the written consent of the Minister and the complainant.
- (4) Once the Director-General has taken steps in those proceedings, the consent of a complainant is not revocable except with the concurrence of the Director-General.

### **38 Conduct of proceedings taken by Director-General**

If the Director-General takes or defends proceedings before a court or the Tribunal on behalf of a complainant:

- (a) the Director-General is to have the conduct of those proceedings on behalf of the complainant and may (despite anything in any Act) appear personally or by an Australian legal practitioner or agent, and
- (b) the Director-General may do all such things as are necessary or expedient to give effect to an order or decision of the court or the Tribunal, and

- (c) the Director-General is liable to pay the costs of the complainant, and
- (d) the complainant is liable to pay any amount (other than costs for which the Director-General is liable), that the court or the Tribunal orders the complainant to pay.

### **39 Intervention by Minister or Director-General**

- (1) The Minister or the Director-General may intervene and be heard personally or by an Australian legal practitioner or agent, in any proceedings (other than proceedings for an offence) arising under the consumer credit legislation before a court or the Tribunal.
- (2) The Minister may intervene only if the Minister thinks it would be in the public interest to do so.
- (3) The Director-General may intervene only if:
  - (a) the Director-General thinks it would be in the public interest to do so, and
  - (b) the Minister has consented in writing to the intervention.
- (4) If the Director-General intervenes in any proceedings under this section or takes or defends proceedings in accordance with section 37, it is to be presumed, unless the contrary is proved, that the Minister has consented to the intervention or the taking or defending of proceedings, as the case may be.
- (5) The Director-General, on intervening in any proceedings, becomes a party to the proceedings and has all the rights, including rights of appeal, of such a party.
- (6) Nothing in this section limits the power of the Director-General to take or defend proceedings under section 37.

### **40 Investigation of application to Tribunal**

- (1) This section applies if an application has been made to the Tribunal by a credit provider under section 86 of the *Credit Act 1984* or section 101 of the *Consumer Credit (New South Wales) Code*.
- (2) The Chairman of the Tribunal may direct the Director-General to investigate the application, and report to the Tribunal on the results of the investigation, before the Tribunal hears the application.
- (3) The Director-General must comply with any such direction.

## **Part 6 Offences**

### **41 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or

the regulations, each officer of the corporation is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.

- (2) An officer of a corporation may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **42 Persons who may take proceedings**

- (1) Proceedings for an offence against this Act may be taken and prosecuted only by a person acting with the authority of the Minister, or a prescribed officer.
- (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, the informant may conduct his or her case personally, or by an Australian legal practitioner or an agent authorised by the informant in writing.

#### **43 Disposal of proceedings for offence**

- (1) Proceedings for an offence against this Act are to be disposed of summarily before:
  - (a) the Local Court, or
  - (b) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence under the regulations are to be disposed of summarily before the Local Court.
- (3) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence under this Act is 100 penalty units or the maximum monetary penalty provided by this Act for the offence, whichever is the lesser.

#### **44 Limitation**

Proceedings for an offence under this Act may be commenced within 3 years after the alleged commission of the offence.

### **Part 7 Miscellaneous**

#### **45 Secrecy**

- (1) This section applies to every person who is or has been:



- (a) a member of the Tribunal, or
- (b) a person appointed to make an inquiry under section 28 (1), or
- (c) the Director-General, or
- (d) an official authorised to conduct an investigation under section 6, or
- (e) the Registrar of the Tribunal, or
- (f) a member of the staff assisting the Director-General or the Registrar of the Tribunal, or
- (g) a person employed or appointed under section 19 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

(2) A person to whom this section applies must not make a record of information concerning the affairs of a person if the information was acquired by the person to whom this section applies under or for the purposes of any consumer credit legislation and by reason of the person's office or employment.

Maximum penalty: 20 penalty units.

(3) A person to whom this section applies must not, whether directly or indirectly, divulge or communicate any such information.

Maximum penalty: 20 penalty units.

(4) It is not an offence to make a record or divulge or communicate information if the record is made, or the information is divulged or communicated, in legal proceedings or in the exercise or performance of a function under or in connection with any consumer credit legislation.

(5) In this section, **consumer credit legislation** includes the *Fair Trading Act 1987*, in so far as it relates to the provision of credit, and the corresponding Acts of the legislature of the Commonwealth or of another State or Territory.

#### **46 Service of documents**

Any document or notice that is authorised, required or permitted by or under this Act to be given to or served on any person may be given or served:

- (a) personally, or
- (b) by sending it by post to the person at the person's usual or last known business or residential address, or
- (c) if the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation.

#### **47 Crown to be bound**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **48 Regulations**

- (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) A regulation may impose a penalty not exceeding 10 penalty units for a breach of the regulation.

#### **49 Repeals**

- (1) The *Credit (Administration) Act 1984* is repealed.
- (2) The *Credit (Administration) Regulation 1984* is repealed.

#### **50 (Repealed)**

#### **51 Savings and transitional provisions**

Schedule 2 has effect.

#### **52 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 (Repealed)**

### **Schedule 2 Savings and transitional provisions**

(Section 51)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

- [Consumer Credit Administration Act 1995](#).
- [Consumer Credit Administration Amendment \(Finance Brokers\) Act 2003](#)

- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the relevant Act or on a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of [Consumer Credit Administration Act 1995](#)**

### **2 Definition**

In this Schedule:

**repealed Act** means the [Credit \(Administration\) Act 1984](#).

### **3 Previous conduct**

Part 3 of this Act applies to conduct occurring before or after the commencement of that Part (including unjust conduct that occurred before the commencement of that Part).

### **4 Licence condition imposed under repealed Act**

- (1) A decision by the Tribunal under section 13 of the repealed Act to impose any conditions on the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the [Credit Act 1984](#) applies otherwise than in accordance with those conditions.
- (2) A decision by the Tribunal under section 13 of the repealed Act to impose any conditions on the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the [Credit Act 1984](#) applies otherwise than in accordance with those conditions.

## 5 Disciplinary action taken under repealed Act

- (1) A decision by the Tribunal under section 23 (8) (c) of the repealed Act to require a credit provider or finance broker that held a licence under that Act to comply within a specified time with a requirement specified by the Tribunal is taken to be a decision by the Director-General under section 18 (2) (c) of this Act to require the credit provider or finance broker to comply within that specified time with a requirement specified by the Director-General.
- (2) A decision by the Tribunal under section 23 (8) (d) of the repealed Act to suspend the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the [Credit Act 1984](#) applies for the period of the suspension.
- (3) A decision by the Tribunal under section 23 (8) (d) of the repealed Act to suspend the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the [Credit Act 1984](#) applies for the period of the suspension.
- (4) A decision by the Tribunal under section 23 (8) (e) of the repealed Act to disqualify the holder of a credit provider's licence (or any person concerned in the direction, management or conduct of the business of a holder of such a licence) from holding the licence (or being so concerned) is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the [Credit Act 1984](#) applies.
- (5) A decision by the Tribunal under section 23 (8) (e) of the repealed Act to disqualify the holder of a finance broker's licence (or any person concerned in the direction, management or conduct of the business of a holder of such a licence) from holding the licence (or being so concerned) is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the [Credit Act 1984](#) applies.
- (6) A decision by the Tribunal under section 23 (8) (f) of the repealed Act to cancel the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the [Credit Act 1984](#) applies.
- (7) A decision by the Tribunal under section 23 (8) (f) of the repealed Act to cancel the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broking

prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies.

(8) A decision by the Commissioner under section 21 (6) of the repealed Act to cancel the licence of a credit provider is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that credit provider prohibiting the credit provider from providing credit to which the *Credit Act 1984* applies.

(9) A decision by the Commissioner under section 21 (6) of the repealed Act to cancel the licence of a finance broker is taken to be a decision by the Director-General under section 19 of this Act to make a prohibition order in respect of that finance broker prohibiting the finance broker from finance broking in respect of credit to which the *Credit Act 1984* applies.

## **6 Civil penalties imposed by repealed Act**

The repeal of the *Credit (Administration) Act 1984* does not affect any right that a person had (under sections 85 or 86 of the *Credit Act 1984*) to apply to the Tribunal in respect of a contravention of or a failure to comply with the *Credit (Administration) Act 1984* before its repeal by the amending Act, and does not affect the power of the Tribunal to make any order that the Tribunal could have made in relation to such an application (under section 86A of the *Credit Act 1984*).

## **7 Inquiry commenced under repealed Act**

The repeal of the *Credit (Administration) Act 1984* does not affect any inquiry pending under Part 4 of that Act immediately before its repeal.

## **Part 3 Provisions consequent on enactment of Consumer Credit Administration Amendment (Finance Brokers) Act 2003**

### **8 Consumer action**

An application may be made against a finance broker under section 4J, and may be dealt with by the Tribunal, in respect of one or more transactions even if the transaction or transactions concerned was or were entered into before the commencement of the section.

### **9 Court action**

An order may be made against a finance broker under section 4K, in respect of one or more transactions even if the transaction or transactions concerned was or were entered into before the commencement of the section.