



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 134 of 1972

An Act to regulate and control the provision of credit;
to repeal the Money-lenders Act, 1940-1971; and
for other purposes.

[Assented to 7th December, 1972]

BE IT ENACTED by the Governor of the State of South
Australia, with the advice and consent of the Parliament thereof,
as follows:

PART I**PART I****PRELIMINARY**

1. This Act may be cited as the "Consumer Credit Act, 1972". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.
3. This Act is arranged as follows:— Arrangement.
 - PART I—Preliminary.
 - PART II—Administration.
 - Division I—The Commissioner, etc.
 - Division II—The Credit Tribunal.
 - PART III—Control of Credit Providers.
 - Division I—Licensing of Credit Providers.
 - Division II—Powers of Investigation and Inquiry.
 - Division III—Conduct of business of Credit Providers.
 - PART IV—Credit Transactions.
 - PART V—Charges for the Procurement of Credit.

PART VI—Harsh and Unconscionable Terms.

PART VII—Miscellaneous.

**Repeal and
saving
provision.**

4. (1) The following Acts are repealed:—

- the Money-lenders Act, 1940;
- the Money-lenders Act Amendment Act, 1960;
- the Money-lenders Act Amendment Act, 1966.

(2) A person by, or on behalf of, whom a licence was held under the repealed Act immediately before the commencement of this Act shall be deemed to be licensed as a credit provider under this Act until the expiration of the period for which the licence was granted or last renewed and shall, for the duration of that period, be entitled to carry on business as a credit provider at any place at which he was authorized by the licence to carry on business as a money-lender.

(3) A person carrying on a business immediately before the commencement of this Act in respect of which a licence was not required under the repealed Act, but is required under this Act, is not required to be licensed until the expiration of two months from the commencement of this Act.

(4) The business of a body corporate that is deemed to be licensed under subsection (2) of this section, or to which subsection (3) of this section applies, is not required to be managed under the personal supervision of a natural person approved by the Tribunal until the expiration of two months from the commencement of this Act.

(5) Notwithstanding the repeal effected by subsection (1) of this section, the provisions of the repealed Act shall continue to apply to any contract made before the commencement of this Act to which that Act applied immediately before the commencement of this Act.

(6) This Act shall not apply in respect of any contract made before the commencement of this Act.

Interpretation.

5. In this Act, unless the contrary intention appears—

“authorized address” in relation to a licensed credit provider means any address at which a credit provider is authorized by this Act to carry on business:

“authorized name” in relation to a licensed credit provider means the name in which the credit provider is licensed:

“consumer” means any person (other than a body corporate) who enters into a credit contract with a view to obtaining credit or the use or benefit of credit:

“consumer contract” means a consumer contract, as defined in the Consumer Transactions Act, 1972:

“credit” means—

- (a) any advance of money or money’s worth made in expectation of repayment or any forbearance to require payment of any money owing made in expectation of subsequent payment;

and includes—

- (b) any provision of a contract or agreement for the sale of goods under which the consumer is entitled to discharge his pecuniary obligations under the contract or agreement in three or more instalments:

“credit charge”—

- (a) in relation to a credit contract (other than a sale by instalment) means any interest or other amount (however it may be described), or the value of any other benefit, in excess of the principal, that has been, or is to be, paid or given in consideration of, or otherwise in respect of, the provision of credit but does not include—

- (i) any amount that has been, or is to be paid, on account of stamp duty, fees payable to the Registrar-General, or costs or fees payable to a legal practitioner or licensed land broker in respect of the transaction;

or

- (ii) any other charges authorized for the purpose of this definition by regulation;

and

- (b) in relation to a sale by instalment, has the meaning assigned by section 41 of this Act:

“credit contract” means a contract or agreement (whatever its terms or form may be) under which credit is provided by a credit provider to, or for the use or benefit of, a person (other than a body corporate) and includes a sale by instalment:

“credit provider” means—

- (a) a person whose business is, or includes, the provision of credit, or who holds himself out in any way as carrying on that business;

and includes—

(b) a person who, in the course of a business, enters as vendor into a contract of sale by instalment:

“guarantee” includes an indemnity:

“guarantor” means a person who guarantees the performance of obligations under a credit contract by a consumer and includes a person who undertakes to indemnify a credit provider for any loss that he might suffer in consequence of any failure to recover moneys from a consumer under a credit contract or purported credit contract (but does not include a person who gives any such guarantee or makes any such undertaking in the course of carrying on a business of insurance or any other business):

“instalment” in relation to a sale by instalment does not include any deposit paid or provided by a consumer before or at the time of the formation of the contract:

“nominated member” of the Tribunal means a member of the Tribunal nominated by the Minister:

“officer” in relation to a corporation means any director, manager or secretary of the corporation:

“principal”—

(a) in relation to a credit contract (other than a sale by instalment), means the amount actually lent by the credit provider under the credit contract;

and

(b) in relation to a sale by instalment, has the meaning assigned by section 41 of this Act:

“revolving charge account” means an account—

(a) to which an amount or amounts due under a consumer contract or consumer contracts are debited;

and

(b) upon which a credit charge is made from time to time on the outstanding balance of the account:

“sale by instalment” means a consumer contract for the sale of goods under which the consumer is entitled to discharge his pecuniary obligations under the contract in three or more instalments:

“statutory rebate” in relation to a credit charge—

- (a) where it appears from a credit contract that the credit charge has been calculated on a simple interest basis at a rate specified in the contract on the amount outstanding from month to month—means the amount of interest attributable to the period of complete months still remaining under the contract;
- (b) in any other case, means the amount derived by multiplying the credit charge by the sum of all the whole numbers from one to the number of complete months in the period of the credit contract still remaining (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number of complete months in the period of the contract (both inclusive);

less any amount payable by the consumer to the credit provider, in respect of the transaction for which the statutory rebate is calculated, under the Stamp Duties Act:

“the Commissioner” means the person for the time being holding, or acting in, the office of the South Australian Commissioner for Prices and Consumer Affairs under the Prices Act:

“the Registrar” means the person for the time being holding, or acting in, the office of Registrar of the Tribunal under this Act:

“the repealed Act” means the Money-lenders Act, 1940-1971, repealed by this Act:

“the Tribunal” means the Credit Tribunal constituted under this Act.

6. (1) Subject to subsection (2) of this section, this Act (except Part V and Part VI) does not apply in respect of any credit provider or credit contract—

Application
of this Act.

- (a) where the credit provider is the Crown or an agency or instrumentality of the Crown;
- (b) where the credit provider is a licensed pawn broker who provides the credit in the course of his business as such;
- (c) where the credit provider is a municipal or district council or a body corporate that is, by virtue of any Act, vested with the powers of a municipal or district council;

- (d) where the credit provider is a society registered under the Friendly Societies Act, the Industrial and Provident Societies Act, or the Building Societies Act;
- (e) where the credit provider is a body corporate whose principal business is insurance;
- (f) where the credit provider is a body corporate empowered by special Act of Parliament to provide credit in accordance with the special Act;
- (g) where the credit provider is a body corporate lawfully carrying on the business of banking;
- (h) where the business of the credit provider does not consist of, or include, the provision of credit to consumers;
- (i) where the credit provider is a person whose business does not involve the provision of credit at a rate of interest exceeding ten per centum per annum or such other rate as may be prescribed;

or

- (j) where the credit provider is a person who is, for the time being, exempted from the obligation to be licensed by proclamation under this Act.

(2) The provisions of Parts IV, V and VI of this Act apply in respect of all sales by instalment.

(3) This Act does not apply to a credit contract—

- (a) where the amount of principal exceeds ten thousand dollars;

and

(b) where—

- (i) the credit is not provided on the security of land;

or

- (ii) the credit is provided on the security of land and the consumer has made a statutory declaration that he does not use, or propose to use, the land, or any part thereof, as a place of dwelling for his own personal occupation.

(4) The Governor may, by proclamation, exempt any person, or persons of any specified class from the obligation to be licensed under this Act, and may by subsequent proclamation vary or revoke any such proclamation.

(5) This Act does not apply in respect of any revolving charge account maintained on behalf of a consumer in accordance with the conditions prescribed by the Tribunal by a person authorized by the Tribunal to provide credit by means of such accounts.

(6) The Tribunal may, on the application of any person, authorize him to provide credit by means of revolving charge accounts, and such an authorization may be granted upon conditions—

- (a) limiting the frequency with which credit charges may be made on any such account;
- (b) limiting the amount of the credit charges that may be made on any such account,

and such other conditions as the Tribunal thinks fit.

PART II

PART II

ADMINISTRATION

DIVISION I—THE COMMISSIONER, ETC.

DIVISION I

7. (1) Subject to subsection (2) of this section, the Commissioner shall have the general administration of this Act.

Administration
of Act.

(2) The Commissioner shall be subject to direction by the Minister in the administration of this Act.

8. (1) The Commissioner may, by instrument in writing, delegate any of his powers under this Act or the Consumer Transactions Act, 1972, to any person to whom delegation of those powers is authorized by regulation.

Delegation.

(2) Where any powers are so delegated they may be exercised by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section shall be revocable at will, and shall not prevent the exercise of any powers by the Commissioner himself.

PART II

DIVISION I

Report.

9. (1) As soon as practicable after the thirtieth day of June in each year, the Commissioner shall make a report in writing upon the administration of this Act and the Consumer Transactions Act, 1972, during the year ending on that day to the Minister.

(2) The Minister shall, as soon as practicable after receiving the report of the Commissioner, cause a copy of the report to be laid before each House of Parliament.

Immunity from liability where acts done in good faith.

10. No liability shall attach to the Crown, the Commissioner, or any other person acting in the administration of this Act for any act or default on the part of the Commissioner or other person or any statement or report made or issued by the Commissioner or other person in good faith and in pursuance of, or in the course of the administration of, this Act, or in the performance of his duties or functions under this Act.

Obligation of secrecy.

11. A person who is engaged or has been engaged in any office or position connected with the administration of this Act shall not divulge or communicate information obtained by virtue of that office or position otherwise than in the performance of the duties appertaining to that office or position.

Penalty: Five hundred dollars or imprisonment for three months.

Powers of entry and inspection.

12. (1) For the purposes of ascertaining whether the provisions of this Act or the Consumer Transactions Act, 1972, are being or have been duly complied with, the Commissioner, or a person authorized in writing by the Commissioner, may at any reasonable time enter premises on which business affected by this Act or that Act is carried on, and inspect, and take extracts from, any books or documents relating to that business.

(2) The powers conferred by subsection (1) of this section shall be exercised so as to avoid any unnecessary disruption of, or interference with, the conduct of the business.

(3) Any person who hinders the Commissioner or an authorized person in the exercise of powers under this section, or who refuses or fails to produce books or documents in his possession or control relating to the conduct of the business after being requested by the Commissioner or an authorized person to do so, shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

DIVISION II—THE CREDIT TRIBUNAL

PART II
DIVISION II
Establishment
of the
Tribunal.

13. (1) There shall be a Tribunal entitled the "Credit Tribunal".

(2) The Tribunal shall consist of five members, appointed by the Governor, of whom—

- (a) one, who shall be the chairman of the Tribunal, shall be a person holding judicial office under the Local and District Criminal Courts Act;
- (b) two shall be persons who are, in the opinion of the Minister, suitable persons to represent the interests of consumers, and have been nominated by the Minister for appointment as members of the Tribunal; and
- (c) two shall be persons who are, in the opinion of the Minister, suitable persons to represent the interests of persons engaged in commercial business that is likely to be affected by the decisions of the Tribunal and have been nominated by the Minister for appointment as members of the Tribunal.

14. (1) The Chairman of the Tribunal shall be appointed for such term of office, not exceeding five years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

The Chairman.

(2) The Governor may appoint a person holding judicial office under the Local and District Criminal Courts Act to be a deputy of the Chairman, and such a person, while acting in the absence of the Chairman, shall have all the powers, authorities, duties and obligations appertaining to the office of Chairman.

15. (1) A nominated member of the Tribunal shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

Terms and conditions upon which nominated members hold office.

(2) The Governor may appoint a suitable person to be a deputy of a nominated member of the Tribunal, and such a person, while acting in the absence of that member shall be deemed to be a member of the Tribunal, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

PART II
DIVISION II

(3) The Governor may remove a nominated member of the Tribunal from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;
- or
- (c) dishonourable conduct.

(4) The office of a nominated member of the Tribunal shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a nominated member of the Tribunal becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a nominated member of the Tribunal becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Allowances
and expenses.

16. The members of the Tribunal shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Validity of
acts of the
Tribunal.

17. (1) An act or proceeding of the Tribunal shall not be invalid by reason only of a vacancy in its membership.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or by the Tribunal, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge, or purported discharge, of his or its duties under this Act.

How Tribunal
is to be
constituted.

18. (1) Subject to subsection (2) of this section, where the Tribunal sits to hear and determine any matter it shall be constituted of—

- (a) the Chairman;
 - (b) one of the members nominated by the Minister under paragraph (b) of subsection (2) of section 13 of this Act who has been selected by the Chairman for the purpose of hearing and determining that matter;
- and

(c) one of the members nominated by the Minister under paragraph (c) of subsection (2) of section 13 of this Act who has been selected by the Chairman for the purpose of hearing and determining that matter.

(2) The Chairman may alone constitute the Tribunal for the purpose of hearing and determining matters prescribed for the purpose in the regulations.

19. (1) The Chairman shall preside at the hearing of any proceedings by the Tribunal. Chairman, etc.

(2) Subject to subsection (3) of this section, where the Tribunal is constituted of the Chairman and two nominated members, a decision concurred in by any two members of the Tribunal shall be a decision of the Tribunal.

(3) The Chairman shall determine any question relating to the admissibility of evidence, and any other question of law or procedure.

20. (1) The Tribunal shall give to any person who is a party to proceedings instituted before the Tribunal reasonable notice of the time and place at which it intends to hear those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal. Proceedings before the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(3) The Commissioner may appear in any proceedings before the Tribunal.

(4) The Commissioner or any party to proceedings before the Tribunal shall be entitled to appear personally or by counsel.

(5) The Commissioner, or any party to proceedings before the Tribunal, may, by leave of the Tribunal, be represented before the Tribunal by a person other than a legal practitioner.

(6) A person, other than a legal practitioner, shall not demand or receive any fee or reward for representing a party to proceedings before the Tribunal.

Penalty: Five hundred dollars.

PART II
DIVISION II
Powers of the
Tribunal.

21. (1) In the exercise of its powers and functions under this Act, or under any other Act that confers jurisdiction on the Tribunal, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the attendance before the Tribunal of any person;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by any member of the Tribunal);
or
- (e) require any person appearing before the Tribunal, including the person whose conduct is subject to an inquiry, (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member thereof, or interrupts the proceedings of the Tribunal;
or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any proceedings, the Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper;

or

(b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.

(5) In any proceedings the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and, subject to subsection (6) of this section, it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(6) The Tribunal shall be bound by the rules of evidence in proceedings by way of an inquiry under Part III of this Act.

22. (1) The Tribunal may, upon the determination of any proceedings, make such orders for costs as the Tribunal considers just and reasonable.

Orders for
fines or
costs.

(2) Where the Tribunal makes an order for the payment of a fine or costs against a person licensed under this Act, and the fine or costs is not, or are not, paid within the time fixed by the Tribunal, the Tribunal may suspend the licence of that person until the fine or costs is or are paid, or for such period as the Tribunal thinks fit.

23. The Tribunal shall, within seven days after making any decision or order in any proceedings, give reasons in writing for its decision or order to the parties to those proceedings.

Reasons for
decision of
Tribunal to
be given.

24. (1) The Tribunal may state a case upon any question of law for the opinion of the Supreme Court.

Case stated.

(2) Any such case stated by the Tribunal shall be heard and determined by the Full Court.

25. (1) Any person aggrieved by a decision or order of the Tribunal shall, subject to this section and any other statutory provision relating to an appeal from a decision or order of the Tribunal, be entitled to appeal to the Supreme Court against the decision or order of the Tribunal.

Appeal.

PART II
DIVISION II

(2) The appeal must be instituted within one month of the making of the decision or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

(4) Any such appeal shall be heard and determined by the Full Court.

Operation
of order
may be
suspended.

26. (1) Where an order has been made by the Tribunal, and the Tribunal, or the Supreme Court, is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Tribunal has suspended the operation of an order under subsection (1) of this section, the Tribunal may terminate the suspension, and where the Supreme Court has suspended the operation of an order under subsection (1) of this section, the Supreme Court may terminate the suspension.

The Registrar.

27. (1) There shall be a Registrar of the Tribunal.

(2) The Registrar shall be appointed and shall hold Office subject to and in accordance with the Public Service Act, 1967-1971.

(3) The office of the Registrar may be held in conjunction with any other office in the Public Service of the State.

PART III

PART III

CONTROL OF CREDIT PROVIDERS

DIVISION I—LICENSING OF CREDIT PROVIDERS

DIVISION I

28. (1) A person shall not carry on business as a credit provider or hold himself out as carrying on business as a credit provider unless he is duly licensed as such under this Act. Obligation to be licensed.

Penalty: One thousand dollars.

(2) For the purposes of this section, a person acts as, or holds himself out as being, a credit provider whether he does so personally or through the agency or instrumentality of other persons.

(3) A credit provider who is required to be licensed under this Act shall not be entitled to recover or retain any credit charge in respect of credit provided by him at any time at which he is unlicensed.

29. (1) An application for a licence must be made to the Tribunal in writing and in the prescribed manner and form and must contain the prescribed information. Application.

(2) The application must be advertised in accordance with the regulations.

(3) The information contained in the application must be verified by statutory declaration made by the applicant or, where the applicant is a corporation, by an officer of the corporation.

(4) The applicant must furnish the Tribunal with such further information, verified, if the Tribunal so requires, by statutory declaration, as the Tribunal may require.

30. (1) Subject to this Act, a person (not being a body corporate) is entitled to be licensed as a credit provider if he has proved to the satisfaction of the Tribunal that— Entitlement to be granted a licence.

(a) he is over the age of eighteen years;

(b) he is a fit and proper person to hold a licence;
and

(c) he has sufficient financial resources to carry on business in a proper manner under the licence.

(2) Subject to this Act, a body corporate is entitled to be licensed as a credit provider if it has proved to the satisfaction of the Tribunal that—

PART III
DIVISION I

(a) the officers of the body corporate, and any other person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate, are fit and proper persons to manage, direct or control the affairs of a body corporate holding a licence under this Act;

and

(b) the body corporate has sufficient financial resources to carry on business in a proper manner under the licence.

(3) Where an applicant duly applies for a licence, and pays the prescribed fee and the applicant is entitled to be licensed in accordance with this section, the Tribunal shall grant a licence to the applicant.

**Renewal of
licence.**

31. (1) A licence shall, subject to this Act, remain in force until the thirtieth day of September next ensuing after the grant of the licence, and may from time to time be renewed for successive periods of twelve months expiring on the thirtieth day of September.

(2) An application for the renewal of a licence must be made in the prescribed form and must be accompanied by such statutory declarations and other documents as may be prescribed or as the Tribunal may require.

(3) The application must be delivered to the Registrar not earlier than the first day of July, and not later than the last day of August preceding the expiry of the licence, but the Tribunal may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

(4) Where the holder of a licence duly applies for the renewal of a licence, and pays the prescribed fee, the licence shall be renewed for a term of twelve months in accordance with this section.

**Surrender
of licence.**

32. The holder of a licence under this Act may at any time, with the consent of the Tribunal, surrender his licence, and the licence shall thereupon cease to have any effect.

**Licence
not to be
transferable.**

33. A licence shall not be transferable.

DIVISION II—POWERS OF INVESTIGATION AND INQUIRY

DIVISION II

34. The Commissioner may, of his own motion, and shall at the direction of the Tribunal, make any investigation that he, or the Tribunal, considers necessary or expedient for the purpose of determining any application, or any other matter before the Tribunal.

The Commissioner's powers of investigation.

35. (1) The Commissioner of Police shall, at the request of the Commissioner, cause his officers to make an investigation and report relating to any matter being investigated by the Commissioner.

Investigations by the Commissioner of Police.

(2) The report shall be forwarded to the Commissioner.

36. (1) The Tribunal may, upon the application of the Commissioner or any other person, or of its own motion, inquire into the conduct of any person licensed under this Act.

Inquiries.

(2) If, after conducting an inquiry under subsection (1) of this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may do any one or more of the following:—

- (a) reprimand the person in relation to whom the inquiry was held;
- (b) impose a fine not exceeding one thousand dollars on that person;
- and
- (c) suspend or cancel the licence and, in addition, disqualify the person who held the licence either temporarily or permanently, or until the fulfilment of the condition imposed by the Tribunal, or until the further order of the Tribunal, from holding a licence under this Act.

(3) There shall be proper cause for disciplinary action if:—

- (a) the licence was improperly obtained;
- (b) the credit provider, or any person acting with the authority or upon the instructions, of the credit provider has, in the course of any dealings with a consumer, been guilty of conduct that constitutes a breach of any law, or that unfairly prejudices any rights or interests of the consumer;
- (c) the credit provider has insufficient financial resources properly to carry on business as a credit provider;
- or
- (d) any other cause exists that, in the opinion of the Tribunal, renders the credit provider unfit to hold a licence.

PART III**DIVISION III****DIVISION III—CONDUCT OF BUSINESS OF CREDIT PROVIDERS**

Authorized
address.

37. (1) A licence shall specify an address within the State which shall be the registered address of the licensed credit provider for the purposes of this Act.

(2) The Tribunal may, at any time, on the application of a licensed credit provider alter his registered address.

(3) A licensed credit provider shall at least seven days before he commences to carry on business at any address (other than his registered address) send to the Registrar a notice in writing informing him that he proposes to carry on business at that address.

Penalty: Five hundred dollars.

(4) A licensed credit provider shall, not more than seven days after he ceases to carry on business at any address (other than his registered address), give notice in writing to the Registrar of the fact that he has ceased to carry on business at that address.

Penalty: Five hundred dollars.

(5) The registered address of a credit provider and any other address of which the credit provider has given notice under this section (not being an address in relation to which the credit provider has given a notice of cessation of business under subsection (4) of this section) is an authorized address for the purposes of this Act.

(6) A credit provider shall not invite the public to deal with him other than at an authorized address.

Penalty: Five hundred dollars.

Name in
which a
licensed credit
provider is to
carry on
business.

38. A licensed credit provider shall not carry on business as a credit provider otherwise than in the name in which he is licensed.

Penalty: Five hundred dollars.

Corporation
must employ
licensed person
as manager.

39. (1) Where a body corporate holds a licence the business of the body corporate conducted in pursuance of that licence in this State must be managed under the personal supervision of a natural person, approved by the Tribunal.

(2) Where the business of a body corporate is not managed as required by subsection (1) of this section, the body corporate must, within fourteen days, or such longer period as may be allowed by

the Tribunal, appoint a manager, approved by the Tribunal, to have the personal supervision of the business of the body corporate conducted in pursuance of the licence.

(3) A body corporate shall be deemed to be unlicensed for the duration of any period for which the body corporate is in default under the provisions of subsection (2) of this section.

PART IV

PART IV**CREDIT TRANSACTIONS**

40. (1) A credit contract (not being a sale by instalment)— Form of credit contract.

(a) must be in writing and signed by or on behalf of the consumer;

(b) must set out the terms and conditions upon which the credit is provided and in particular must show—

(i) the amount of the principal;

(ii) the person to whom and the place at which repayment is to be made by the consumer;

(iii) where the contract provides for repayment by instalment—

(A) the number of instalments to be paid by the consumer;

(B) the amount of each of those instalments;

(C) either the time for payment of each of those instalments, or both the time at which the first instalment is to be paid and the interval between instalments;

(iv) the total amount of the credit charge to be paid;

(v) an itemized statement of any amounts paid or payable by the consumer on account of stamp duty, fees payable to the Registrar-General, costs or fees payable to a legal practitioner or licensed land broker in respect of the transaction or any other charges authorized by regulation;

and

(c) must contain such information in relation to the rate at which the credit charge accrues upon the principal as may be required by regulation.

(2) Where the particular matters of which disclosure is required in a credit contract under subsection (1) of this section are not ascertainable by the credit provider before, or at the time of, the formation of the credit contract, the contract must—

(a) set out those matters to the extent to which they are ascertainable;

and

(b) set out the terms and conditions upon which the credit is, or is to be, provided in a clear and concise manner so that the obligations of the consumer under the contract are explicitly stated and readily ascertainable.

(3) For the purposes of subsection (1) of this section if the contract provides for a number of advances of principal and the total amount of principal to be advanced in pursuance of the contract is not ascertainable at the time of execution of the contract, the amount of the principal first lent in pursuance of the contract shall be deemed to be the amount of the principal.

(4) A credit contract shall be deemed to comply with this section notwithstanding that there is an error or omission or an incorrect or insufficient description in the contract, if the Tribunal or court, before which the contract is in question, is satisfied that the error, omission, incorrect or insufficient description, is of a minor nature or is not of such a nature as to mislead or deceive any person to his prejudice or disadvantage.

(5) The credit provider shall, within fourteen days of the formation of a credit contract to which this section applies, serve upon the consumer a copy of the credit contract together with a notice in the prescribed form setting out the provisions of this Act that afford protection to consumers.

Penalty: Five hundred dollars.

(6) If any credit is provided on the security of a negotiable instrument, it shall be sufficient compliance with the provisions of this section if—

(a) a note or memorandum in writing of the contract is made setting out the matters referred to in subsection (1) of this section;

(b) the note or memorandum is signed by or on behalf of the consumer;

and

(c) a copy of the note or memorandum together with the notice referred to in subsection (5) of this section is delivered or sent to the consumer in the manner provided by subsection (5) of this section.

(7) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(8) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall not be entitled to any amount in respect of the credit charge payable under that contract.

(9) Any such amount paid by or on behalf of the consumer in respect of a credit charge may be recovered back or deducted from any amount payable under the contract or payable in respect of any security given in respect of the contract, notwithstanding agreement to the contrary.

41. (1) A credit contract that is a sale by instalment—

(a) must be in writing;

(b) must be signed by or on behalf of the consumer;

(c) must—

(i) specify the number of instalments to be paid under the contract by the consumer;

(ii) specify the amount of each of those instalments and the person to whom and the place at which the payment of those instalments is to be made;

and

(iii) specify the time for payment of each instalment, or both the time at which payment of the instalments is to commence and the interval between each instalment;

(d) must contain a description of the goods subject to the contract sufficient to identify them;

(e) where any part of the consideration is, or is to be, provided otherwise than in cash, must contain a description of that part of the consideration;

Form of contract that is a sale by instalment.

(f) must set out—

- (i) the cash price of the goods;
- (ii) any amount payable under the contract on account of stamp duty;
- (iii) any amount payable under the contract by way of maintenance;
- (iv) any amount payable under the contract for delivery of the goods, or any of them, to or to the order of the consumer;
- (v) any amount payable under the contract to cover fees for registration or licensing of the goods so that they may be lawfully used by the consumer;
- (vi) any amount payable under the contract for insurance;

(g) must state the total amount paid or provided by way of deposit with a separate denotation of the amount paid in money, and of the value attributed to consideration provided otherwise than in money;

(h) must state the amount of the credit charge payable under the contract;

and

(i) must contain such information in relation to the rate at which the credit charge accrues upon the principal as may be required by regulation.

(2) For the purposes of subsection (1) of this section—

“cash price” in relation to goods means the price at which the consumer might, at the time of signing the contract, have purchased the goods for cash:

“credit charge” means the difference between—

- (a) the sum of the amounts referred to in paragraph (f) of subsection (1) of this section less the total amount referred to in paragraph (g) of that subsection;

and

- (b) the total amount payable under the contract:

“maintenance” means expenditure to be incurred in maintaining the condition of the goods:

“principal” means the sum of the amounts referred to in paragraph (f) of subsection (1) of this section, less the total amount referred to in paragraph (g) of that subsection.

(3) A credit contract shall be deemed to comply with this section notwithstanding that there is an error or omission or incorrect or insufficient description in the contract, if the Tribunal or court, before which the contract is in question, is satisfied that the error, omission, incorrect or insufficient description, is of a minor nature or is not of such a nature as to mislead or deceive any person to his prejudice or disadvantage.

(4) A credit provider shall, within fourteen days after the formation of a credit contract to which this section applies, serve upon the consumer a copy of the credit contract together with a notice in the prescribed form setting out the provisions of this Act that afford protection to consumers.

Penalty: Five hundred dollars.

(5) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(6) If a credit contract to which this section applies does not comply with the provisions of this section, the credit provider shall not be entitled to any amount in respect of the credit charge payable under that contract.

42. (1) Subject to subsection (2) of this section any credit contract shall be void in so far as it provides directly or indirectly for—

Prohibition
of compound
interest.

(a) payment of interest upon a credit charge;

or

(b) any increase in the rate at which a credit charge accrues by reason of any default in the payment of sums due under the contract, or by reason of any default in any other term or condition of the contract.

(2) Provision may be made in a credit contract that if default is made in the payment upon the due date of any sum payable to the credit provider under the contract (whether in respect of principal or credit charge), the credit provider shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid at a rate specified in the contract to be payable upon any sum in default, and any interest so charged shall not be regarded for the purposes of this Act as part of a credit charge.

(3) If default is made in the payment upon the due date of any sum payable to a credit provider under a credit contract, and that sum is subsequently paid or tendered to the credit provider by or

PART IV

on behalf of the consumer together with such further sums as would have become due and payable by the consumer under the contract up to the date of that payment or tender had there been no default, together with such costs, charges or expenses as have been properly incurred by the credit provider by reason of the default, then, notwithstanding anything in the contract to the contrary, there shall be deemed to have been no default in the payment of the sums due under the credit contract.

Provision
for payment
of credit
charge on
determination
of contract
on default
or otherwise.

43. (1) Where any credit contract is determined, either by reason of breach of contract by the consumer or pursuant to agreement between the parties, and any amount is outstanding under the contract, the total amount of credit charge that shall be payable under the credit contract shall be—

(a) the amount provided by the credit contract in that event;
or

(b) the total amount of the credit charge provided by the contract, less the statutory rebate,

whichever is the lesser.

(2) If a credit provider receives any amount in respect of a credit charge, in excess of that allowed by subsection (1) of this section, he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) Any such excess amount is recoverable by the consumer from the credit provider, as a debt, in any court of competent jurisdiction.

Provision
where credit
provider
enforces
security.

44. (1) If any security is taken to secure the payment of any amount due under a credit contract or a guarantee to a credit provider, the credit provider shall not be entitled to institute any proceedings, other than for the enforcement of the security, to recover any amount payable under the contract, or the guarantee unless the contract or guarantee, as the case may be, expressly and prominently provides on its face that the consumer or guarantor undertakes a personal liability to pay or guarantee the payment of that amount, and that the liability is additional to any liability under any security taken in respect of the credit contract or guarantee.

(2) In this section "security" means a mortgage, bill of sale, lien or charge upon any real or personal property and any assignment, conveyance, transfer or dealing with any real or personal property to secure repayment of any amount due under a credit contract or guarantee.

(3) The provisions of this section shall apply notwithstanding the provisions of any other Act or law.

PART V

CHARGES FOR THE PROCUREMENT OF CREDIT

45. (1) Any person who recovers or seeks to recover any fee or other consideration in respect of the procurement from any licensed credit provider of credit shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Prohibition
of
procurement
charges, etc.

(2) Where a scale of procurement charges has been fixed by regulation and any person recovers or seeks to recover any fee or other consideration in respect of the procurement from any credit provider or other person of credit in excess of the amount allowed in that scale of procurement charges, he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) The Governor may, by regulation, fix a scale of procurement charges for the purposes of this section.

(4) A person from whom any amount has been recovered in contravention of this section may recover back that amount from the person to whom, or to whose benefit it was paid, as a debt, in any court of competent jurisdiction.

(5) For the purposes of this section, a person recovers a fee or other consideration in respect of the procurement of credit where he receives any fee, commission, or other consideration or benefit from a credit provider, consumer or other person—

(a) for the procurement of credit;

(b) for the negotiation of a contract for the provision of credit between a person who seeks to obtain, and a person who is prepared to provide, credit;

or

(c) for the referral of a person who seeks to obtain credit to a person who is prepared to provide credit.

(6) Notwithstanding the foregoing provisions of this section, where the vendor under a contract for the sale of chattels (not being a contract that includes provision for the sale of land), or any person who has negotiated any such contract, has referred to a credit provider a person who seeks credit in order to discharge his obligations under that contract, it shall be lawful for the credit provider to pay or provide a fee or other consideration to the person by whom the applicant for credit was so referred not exceeding in amount or value ten per centum of the total credit charge or interest to which the credit provider is entitled under a contract for the provision of that credit.

PART VI

PART VI

HARSH AND UNCONSCIONABLE TERMS

Harsh and
unconscionable
terms.

46. (1) Where any term or condition of a credit contract, a guarantee given in respect of a liability under a credit contract or an instrument creating a mortgage, charge or other security in respect of an amount due under a credit contract or a guarantee—

(a) provides for the payment of a credit charge or any other charge that is, in the circumstances of the case, excessive;

or

(b) is harsh or unconscionable or such that a court of equity would give relief in respect thereof,

a party to the contract, guarantee or instrument who is aggrieved thereby may apply to the Tribunal for relief under this section.

(2) In any proceedings instituted before the Tribunal under subsection (1) of this section, or in any proceedings instituted before a court for the enforcement of any such credit contract, guarantee, or instrument, or for the recovery of damages or other compensation for any breach thereof, the Tribunal or the court, as the case may be, may grant relief under this section.

(3) The Tribunal or the court may, in granting relief under this section—

(a) reduce any excessive credit charge or other charge that is due or secured under the credit contract, guarantee or instrument;

(b) avoid *ab initio* any term or condition of the credit contract, guarantee or instrument against which relief is sought;

(c) modify the terms or conditions of the credit contract, guarantee or instrument in such manner as it considers just;

(d) order the repayment to a consumer of any amount paid by him in pursuance of a term or condition that has been avoided or modified under this section.

(4) The powers conferred by subsection (3) of this section are exercisable notwithstanding any settlement of account, or any contract purporting to close previous dealings and create a new obligation.

(5) Proceedings before the Tribunal under this section must be instituted before, or within six months after, the transaction to which the proceedings relate is finally closed.

(6) Where it appears to the Tribunal or a court in any proceedings brought under this section, or to which this section is applicable, that any person has, or may have, shared in the profits

of, or has, or may have any beneficial interest in the transaction in question, the Tribunal or court may cite that person as a party to the proceedings, and may make such orders against, or in respect of, that person as it considers just.

(7) For the purposes of effectually carrying out this section, all such orders may be made and directions given by the Tribunal or court as it considers necessary or expedient.

(8) This section shall apply in respect of every credit contract whether or not that credit contract is otherwise subject to the provisions of this Act.

PART VII

PART VII**MISCELLANEOUS**

47. (1) A credit provider shall upon receipt of the request in writing of any person for whom he has provided credit under a credit contract, or of any person who has entered into a guarantee in respect of such a credit contract and on payment of the prescribed fee, supply him with a statement showing—

Duty to supply information.

(a) the amounts received by the credit provider under the credit contract and the dates on which those amounts were received;

(b) the amount of every sum that has fallen due under the credit contract, but is unpaid, and the date upon which it became due;

and

(c) the amount of every sum that is not yet due but remains outstanding, and the date upon which it will fall due.

(2) A credit provider shall upon receipt of the request in writing of any person for whom he has provided credit under a credit contract, or of any person who has entered into a guarantee in respect of such a contract, and on payment of the prescribed fee, supply him with a copy of the credit contract, or of any other document relating to the provision of credit that was signed by that person.

(3) Where a credit provider to whom a request has been made under this section fails without reasonable excuse to comply with the request within one month after the request was made, he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

48. (1) Where any debt (consisting of principal or interest or both) arising under a credit contract or any interest in a contract, or security taken in respect of any such debt, is assigned the assignor (whether he is the credit provider by whom the credit was originally

Assignment by credit provider.

provided, or a person to whom the debt or interest has been previously assigned) shall supply to the assignee from time to time as occasion requires any information that the assignee may reasonably require for the purpose of supplying any person with information to which he is entitled under this Act.

Penalty: Five hundred dollars.

(2) A person who is in default under subsection (1) of this section shall indemnify any person who has suffered loss as a result of that default against the amount of the loss.

(3) This section does not apply in respect of an involuntary assignment that arises by operation of law.

Assignment
of interest
by credit
provider.

49. Where a credit provider assigns his rights or interest under a credit contract, guarantee or other security to any other person—

(a) the obligations (if any) of a person liable upon the contract, guarantee or security to the assignee shall be the same as his obligations to the assignor;

and

(b) the person so liable may raise any claim or defence against the assignee that he could have raised against the assignor.

Collateral
security.

50. Where—

(a) a bill of exchange or promissory note has been given by a consumer or a guarantor under, or in respect of, a credit contract to the credit provider in respect of an amount payable under the contract;

and

(b) the payment in due course of the bill of exchange or promissory note would result in the payment of an amount in excess of the liability of the consumer or guarantor.

the credit provider shall be liable to pay to the consumer or guarantor the amount of the excess.

Assignment
of certain
interests.

51. (1) No assignment by a consumer to a credit provider of any interest, actual or expectant, in the estate of a deceased person or under any deed of settlement or trust shall be of any force or effect unless the assignment is—

(a) in writing;

(b) executed in the presence of a legal practitioner instructed by the assignor;

and

(c) endorsed with a certificate under this section.

(2) The legal practitioner must examine the consumer concerning his understanding of the transaction and if satisfied that he fully understands the transaction and that he enters into it

freely and voluntarily, he shall certify that he is so satisfied by endorsement on the instrument by which the assignment is effected.

(3) In this section—

“assignment” includes assurance, sale, mortgage, lien, charge, conveyance, transfer and declaration of trust.

52. A consumer who is liable to make payments in respect of two or more credit contracts to the same credit provider shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the credit contracts that is not sufficient to discharge the total amount then due under all the credit contracts, to require the credit provider to appropriate the sums so paid by him in or towards the satisfaction of the sum due under any one of the credit contracts, or in or towards the satisfaction of the sums due under any two or more of the credit contracts in such proportions as he thinks fit, and if he fails to make any such appropriation, the payment shall, subject to any agreement to the contrary, be appropriated in or towards the satisfaction of the sums due under the respective credit contracts in the order in which those contracts were entered into.

Appropriation
of payments
under more
than one
credit contract.

53. (1) Subject to subsection (2) of this section, where a credit contract purports to provide for an advance of moneys the advance shall be made in cash or by cheque without deduction for interest or any other charge.

Manner in
which credit
is to be
provided.

(2) This section shall not prevent the deduction in accordance with a credit contract of amounts—

- (a) on account of stamp duty, or fees payable to the Registrar-General in respect of the transaction between the credit provider and the consumer;
- (b) on account of fees payable to a legal practitioner or licensed land broker in respect of the transaction,
or
- (c) on account of any other charges authorized by regulation.

54. (1) An advertisement by newspaper, circular, letter, radio or television to the effect that a credit provider is prepared to provide credit must conform with any stipulations made by the Commissioner in respect of advertisements relating to the provision of credit, and must state the authorized name and the registered address of the credit provider.

Advertise-
ments.

(2) Where an advertisement is published in contravention of subsection (1) of this section, the credit provider shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) It shall be a defence to a charge under subsection (2) of this section to prove that the advertisement was published without the authority of the credit provider.

Canvassing.

55. (1) Where a credit provider canvasses, or employs any person for the purpose of canvassing at the place of dwelling or business of any person with a view to inducing that person to apply for or obtain credit, the credit provider and the canvasser shall each be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(2) This section does not apply where the principal object of the canvasser is to negotiate contracts for the sale of goods or the provision of services with those whom he canvasses, and the credit to which the canvassing relates is to be provided for the sole purpose of enabling or assisting those persons to discharge their obligations under those contracts.

Nature of writing.

56. For the purposes of this Act, a document—

(a) that is in handwriting that is not clear and legible;

or

(b) that is printed in type the dimensions of which do not comply with the regulations.

shall be deemed not to be in writing.

False statements.

57. (1) A consumer shall not make any statement or representation that is to his knowledge false or misleading in an application or offer to a credit provider in which credit is sought.

Penalty: One thousand dollars, or imprisonment for twelve months.

(2) Any person who by means of any statement or representation that is to his knowledge false or misleading induces, or attempts to induce, any person to enter into a credit contract, or to agree to proposed terms of a credit contract shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars, or imprisonment for twelve months.

(3) This section does not relieve any person from any criminal liability to which he may otherwise be subject in respect of any such false or misleading statement.

58. An apparently genuine document purporting to be under the hand of the Registrar and to certify that a person named in the certificate was or was not licensed as a credit provider on a date specified in the document shall be accepted as proof of the matter so certified in the absence of evidence to the contrary.

Evidence.

59. Proceedings for offences against this Act except offences against section 11 and section 57 of this Act shall be disposed of summarily.

Proceedings.

60. (1) A notice or document required or permitted to be served on a consumer under this Act shall be deemed to have been duly served if it has been—

Service.

- (a) given to the consumer personally;
- (b) left at his usual or last known place of abode;
or
- (c) sent by registered or certified mail to his usual or last known place of abode, or to an address for service stated in any notice given by him.

(2) The affidavit or oral evidence of any person as to the delivery or posting of any notice or document required or permitted to be served on a consumer under this Act shall be admissible as evidence of the due service of the notice or document if the deponent swears to the facts necessary to prove due service either to his own knowledge, or to his information and belief based on, and verified by, records kept in the ordinary course of business.

(3) Any notice, process or document shall be deemed to have been duly served upon a credit provider if it had been—

- (a) served on the credit provider personally;
- (b) left at an authorized address of the credit provider with a person apparently responsible to the credit provider;
or
- (c) sent by registered or certified mail to the credit provider addressed to him at an authorized address.

61. (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act.

Regulations.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) prescribe the procedure of the Tribunal;

- (b) provide for the enforcement of judgments and orders of the Tribunal;
 - (c) prescribe the manner in which applications for licences are to be made under this Act;
 - (d) provide for the advertisement of applications for licences;
 - (e) prescribe, and provide for the recovery of, any fee for the purposes of this Act;
 - (f) prescribe methods and formulae by which credit charges may be reduced to rates of interest for the purpose of ascertaining whether a person is a credit provider subject to the provisions of this Act, or for any other purpose;
 - (g) require the disclosure of rates of interest in credit contracts generally, or any class of credit contracts, and prescribe the manner in which those interest rates are to be calculated;
 - (h) provide that charges that are made of a consumer under a credit contract upon default by the consumer in due compliance with the terms of the contract are not to be taken into account in determining rates of interest for the purposes of this Act;
 - (i) provide for the keeping of a register of licensed credit providers by the Registrar;
- and
- (j) prescribe penalties, not exceeding five hundred dollars for breach of, or non-compliance with, any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor