

Australian Capital Territory

Consumer Credit (Administration) Act 1996

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About this republication

The republished law

This is a republication of the *Consumer Credit (Administration) Act 1996* effective from 28 February 1999 to 30 June 1999.

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The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory

CONSUMER CREDIT (ADMINISTRATION) ACT 1996

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 28 February 1999

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Australian Capital Territory

CONSUMER CREDIT (ADMINISTRATION) ACT 1996

An Act relating to the administration of the consumer credit industry

PART 1—PRELIMINARY

1. Short title

This Act may be cited as the *Consumer Credit (Administration) Act 1996.*
[1]

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

3. Interpretation

In this Act, unless the contrary intention appears—

"bank" means—

(a) a bank within the meaning of the *Banking Act 1959* of the Commonwealth; or

(b) a bank constituted by or under any other law of the Commonwealth, or by a law of the Territory, another Territory or a State;

"Bureau" means the Consumer Affairs Bureau of the Australian Capital Territory under the *Consumer Affairs Act 1973*;

"Chairperson" means the Chairperson of the Tribunal;

"consumer credit" means credit to which the consumer credit legislation applies and includes arrangements under a consumer lease within the meaning of the Credit Code;

"consumer credit legislation" means the following legislation:

(a) this Act and the regulations under it;

(b) the *Consumer Credit Act 1995* and the regulations under it;

(c) the Consumer Credit (Australian Capital Territory) Code;

(d) the Consumer Credit (Australian Capital Territory) Regulations;

(e) the *Credit Act 1985* and the regulations under it;

"Credit Code" means the Consumer Credit (Australian Capital Territory) Code;

"credit provider" means a credit provider under the consumer credit legislation and includes a prospective credit provider;

"debtor" means a debtor under the consumer credit legislation and includes a prospective debtor;

"decision" includes a determination, judgment or order;

"defined influential person", in relation to a credit provider or a finance broker, means—

(a) if the credit provider or finance broker is a body corporate—the secretary or a director of the body; or

(b) in any case—

(i) a person substantially concerned in the direction or management of the credit provider or finance broker; or

(ii) a person able to control, or to substantially influence, the activities or internal affairs of the credit provider or finance broker;

"Deputy Registrar" means the Deputy Registrar of the Tribunal;

"determined fee" means the fee determined under section 140 for the purposes of the provision in which the expression occurs;

"Director" means the Director of Consumer Affairs for the Australian Capital Territory under the *Consumer Affairs Act 1973*;

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"finance broker" means a person who (whether or not carrying on any other business) carries on the business of finance broking;

"finance broking" means negotiating, or acting as intermediary to obtain, consumer credit for persons other than an employer or principal of the person so negotiating or acting;

"financial institution" means—

(a) a building society, a credit union, a foreign society, or a continuing foreign society, within the meaning of the Financial Institutions (ACT) Code;

(b) a body (however described) registered or incorporated under a law of a State or another Territory corresponding to the Financial Institutions (ACT) Code;

(c) a trading society, or a housing and services society, registered under the *Co-operative Societies Act 1939*; or

(d) a body (however described) registered or incorporated under a law of a State or another Territory corresponding to the *Co-operative Societies Act 1939*;

"Financial Institutions (ACT) Code" means the provisions applying because of section 8 of the *Financial Institutions (Application of Laws) Act 1992*;

"investigating officer" means—

(a) the Director; or

(b) an officer of the Bureau authorised under section 117;

"premises" means any place occupied by—

(a) a credit provider, finance broker, debtor, guarantor, mortgagee or mortgagor under the consumer credit legislation;

(b) a supplier in relation to—

(i) a trade or tie agreement under the *Credit Act 1985*; or

(ii) a tied continuing credit contract or tied loan contract under the Credit Code;

(c) any other person who has, or whom the Director believes on reasonable grounds to have, entered into a transaction to which the consumer credit legislation applies;

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"proceeding" means a proceeding of the Tribunal, other than an inquiry under Part 5;

"registered credit provider" means a credit provider who is registered under section 12;

"registered finance broker" means a finance broker who is registered under section 43;

"Registrar" means the Registrar of the Tribunal under section 69;

"registration" means—

(a) in relation to a credit provider—registration under section 12; or

(b) in relation to a finance broker—registration under section 43;

"Tribunal" means the Australian Capital Territory Credit Tribunal;

"unjust conduct" means conduct that—

(a) is dishonest or unfair;

(b) breaches a contract; or

(c) contravenes the consumer credit legislation.

PART 2—CREDIT PROVIDERS

Division 1—Exemptions

4. Exemption—banks

This Part does not apply in relation to a bank.

5. Exemption—collection of debts due to former credit providers

This Part does not apply in relation to the collection of money due to another person where—

(a) the other person is a former registered credit provider or a former holder of a credit provider's licence under the *Credit Act 1985*, or where the person's registration as a credit provider is suspended; and

(b) the money is collected pursuant to a contract for consumer credit entered into by the other person pursuant to the authority conferred under this Part, or under Part XI of the *Credit Act 1985*, by the registration or licence.

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6. Exemption—Ministerial determination

(1) A provision of this Part does not apply in relation to a credit provider if a determination under subsection (2) is in force exempting that person from the application of the provision, to the extent set out in the determination.

(2) The Minister may make a determination exempting a credit provider from the application of this Part, in part or in whole, and to the extent set out in the determination.

(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Division 2—Provision of consumer credit

7. Registration as a consumer credit provider

(1) A person shall not provide consumer credit unless the person is registered as a credit provider.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

(2) A natural person shall not hold himself or herself out as a provider of consumer credit unless the person is registered as a credit provider.

Penalty: 30 penalty units.

(3) A body corporate shall not hold itself out as a provider of consumer credit unless it is registered as a credit provider.

Penalty for contravention of subsection (3): 150 penalty units.

8. Authorised names

(1) A registered credit provider shall not provide consumer credit otherwise than under the credit provider's name or another name under which the credit provider is authorised under section 10 to provide consumer credit.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

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(2) A registered credit provider who is a natural person shall not hold himself or herself out as providing consumer credit otherwise than under his or her name or another name under which he or she is authorised under section 10 to provide consumer credit.

Penalty: 50 penalty units.

(3) A registered credit provider which is a body corporate shall not hold itself out as providing consumer credit otherwise than under the body's name or another name under which the body is authorised under section 10 to provide consumer credit.

Penalty for contravention of subsection (3): 250 penalty units.

9. Partnerships

A registered credit provider shall not provide consumer credit in partnership with a person who is not registered as a credit provider.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

Division 3—Registration of consumer credit providers

10. Authority conferred by registration

Subject to the consumer credit legislation and the *Business Names Act 1963*, registration as a credit provider authorises the registered person to provide consumer credit under the person's name and under any other name endorsed on the registration certificate.

11. Application for registration

(1) An application for registration as a credit provider may be made to the Director—

(a) by a natural person who has attained the age of 18 years; or

(b) by a body corporate.

(2) An application shall be in writing in a form approved by the Minister.

(3) An application shall be accompanied by the determined fee.

(4) An application shall specify—

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(a) the applicant's name and address;

(b) if the applicant is a body corporate—the name and address of each director of the body;

(c) the name or names under which the applicant intends to carry on business as a credit provider in the Territory;

(d) the address of each place at which the applicant intends to carry on business as a credit provider in the Territory, indicating which of these is the principal place of business;

(e) whether the applicant's business as a credit provider is to be carried on in partnership with any other person; and

(f) any other matters prescribed by the regulations.

(5) An applicant for registration shall provide the Director with such particulars additional to those included in the application as the Director may require.

12. Registration

(1) On an application for registration as a credit provider in accordance with section 11, the Director shall register the applicant unless the applicant is disqualified from registration—

(a) as a credit provider under this Part; or

(b) as a finance broker under Part 3.

(2) Upon registering a person as a credit provider, the Director shall issue a registration certificate to the person.

(3) A registration certificate shall be in a form approved by the Minister.

(4) The Director may, on payment of the determined fee, issue a duplicate of a registration certificate where he or she is satisfied that the certificate, or any duplicate subsequently issued under this subsection, has been lost or destroyed.

13. Endorsement of names

(1) Upon registration, or upon application by a registered credit provider under subsection (2), the Director shall endorse the registration certificate with the name of the registered credit provider and any additional name or names under which the registered person intends to carry on, or carries on, business as a credit provider.

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(2) Upon written application by a registered credit provider (accompanied by the registration certificate), the Director shall add, amend or omit an endorsement of a name on the registration certificate in accordance with the application.

14. Changed particulars

A registered credit provider shall give written notice to the Director specifying any change in the particulars notified upon application for registration, or in particulars subsequently notified under this section, within 14 days after the change.

Penalty:

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

15. Term of registration

Registration as a credit provider continues in force until it is surrendered or cancelled, except during any period during which the registration is suspended.

16. Annual fee and statement

(1) A registered credit provider shall lodge with the Director the determined fee on or before 27 March each year, or within such extended period as the Director allows under subsection (4).

(2) A person who has been a registered credit provider at any time during the period of 12 months preceding 28 February in each year shall, on or before 27 March in that year, or within such extended period as the Director allows under subsection (4), lodge with the Director a statement in respect of that part of the period of 12 months preceding 28 February in that year during which the person provided consumer credit.

(3) A statement under subsection (2) shall be in a form approved by the Minister.

(4) The Director may, in writing, extend, or further extend, the period for compliance with subsection (1) or (2) on application before the expiry of the period by the person required to comply with the subsection.

(5) A person who is not registered as a credit provider who fails to comply with subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

(a) if the offender is a natural person—20 penalty units; or

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(b) if the offender is a body corporate—100 penalty units.

(6) The initial fee a registered credit provider is liable to pay under subsection (1) shall be calculated in accordance with the formula in subsection (7), or as otherwise provided by the regulations.

(7) For the purposes of subsection (6), the formula for the initial fee a registered credit provider is liable to pay under subsection (1) is as follows:

where—

IF is the initial fee a registered credit provider is liable to pay under subsection (1);

DF is the fee determined under section 140 for the purposes of subsection (1) of this section;

AF is the fee paid under section 11 by the credit provider upon applying for registration; and

M is the number of whole months which had elapsed between the 28 February before the credit provider was registered and the date of registration.

(8) Where a calculation under subsection (6) yields nought, or a negative amount, for the initial fee that a registered credit provider is required to pay under subsection (1)—

(a) the credit provider is not liable to pay any fee under subsection (1); and

(b) if the calculation yields a negative amount—the Director shall accordingly refund that amount to the credit provider.

(9) In this section—

"registered credit provider", in relation to the period of 12 months preceding 28 February in any year, includes a person whose registration was suspended for any part of that period, or for the whole of that period.

17. Cancellation of registration for failure to pay fee or provide statement

(1) If a registered credit provider fails to lodge a fee or a statement in accordance with section 16, the Director shall give the credit provider written notice that the registration will be cancelled unless the fee or statement is lodged

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within a specified period (being a period of not less than 14 days after the date of the notice).

(2) If a registered credit provider fails to pay a fee or lodge a statement in accordance with a notice under subsection (1), the Director shall—

(a) cancel the registration; and

(b) disqualify the credit provider from obtaining registration as a credit provider or as a finance broker until such time as the fee is paid or the statement is lodged, as the case requires.

18. Surrender of registration

(1) A registered credit provider may surrender the registration by written notice to the Director accompanied by the registration certificate, subject to this section.

(2) If the Director has issued a notice under section 23 in relation to a registered credit provider, the credit provider shall not surrender the registration before the Director has decided whether to take action under section 24.

(3) Upon application by a person who has surrendered registration, the Director shall return to the person so much as the Director thinks fit of the fee last paid by the person under subsection 16 (1).

(4) In this section—

"registered credit provider" includes a person whose registration as a credit provider is suspended.

Division 4—Disciplinary procedures

19. Powers of inquiry

(1) The Director may make such inquiries for the purposes of this Division as he or she thinks fit about a registered credit provider.

(2) The Commissioner of Police shall make any reasonable inquiries for the purposes of this Division about a registered credit provider requested by the Director.

(3) The Commissioner of Police shall report the result of any inquiries under subsection (2) to the Director.

(4) In this section—

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"registered credit provider" includes—

(a) a defined influential person in relation to a registered credit provider; and

(b) an employee of a registered credit provider.

20. Cancellation or suspension for bankruptcy, fraud, dishonesty or incapacity

(1) The Director may cancel the registration of a credit provider who is a natural person, or suspend the registration for a specified period, if the credit provider—

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or any part of his or her property for their benefit;

(b) is convicted within the Territory or elsewhere of an offence involving fraud or dishonesty punishable, on conviction, by imprisonment for 3 months or more; or

(c) becomes incapable through mental infirmity of managing his or her affairs.

(2) The Director may cancel the registration of a credit provider which is a body corporate, or suspend the registration for a specified period, if the body—

(a) is dissolved, is under administration, is being wound up or has ceased to carry on business;

(b) if a receiver, or a receiver and manager, has been appointed under the Corporations Law or under the corresponding law of a State or of another Territory in relation to any property of the body; or

(c) has entered into a compromise or scheme of arrangement with its creditors.

(3) If the Director cancels the registration of a credit provider under subsection (2), the Director shall disqualify the credit provider from obtaining registration as a credit provider or as a finance broker for the period specified in the notice of cancellation under section 130.

(4) On written application by a credit provider whose registration has been cancelled or suspended under subsection (1), the Director may—

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(a) remove a suspension imposed under this section at any time before the expiry of the specified period of suspension; or

(b) revoke the disqualification of a credit provider at any time before the expiry of the specified period of disqualification.

21. Grounds for other disciplinary action

The grounds for disciplinary action under section 24 in relation to a registered credit provider are as follows:

(a) the credit provider has provided consumer credit inefficiently, dishonestly or unfairly;

(b) the credit provider provided false or misleading information to the Director in relation to an application for registration under this Act;

(c) the credit provider has contravened—

(i) the consumer credit legislation;

(ii) a direction of the Director under section 24; or

(iii) an undertaking under section 104 or section 222 of the *Credit Act 1985*;

(d) the credit provider has provided consumer credit while the registration was suspended or while disqualified under this Part;

(e) if the credit provider was licensed or registered at any time under the *Credit Act 1985*—

(i) the credit provider provided false or misleading information in relation to an application for the licence under the *Credit Act 1985*, or for registration under the *Credit Regulations*;

(ii) the credit provider breached a condition to which the licence was subject;

(iii) the credit provider contravened a requirement of the Tribunal under paragraph 173 (8) (c) of the *Credit Act 1985*; or

(iv) the credit provider provided consumer credit while the licence was suspended or cancelled, or while disqualified under subsection 173 (8) (e) of the *Credit Act 1985*.

22. Complaints against credit providers

A person may make a complaint to the Director about the conduct of a registered credit provider.

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23. Notice to show cause

(1) The Director shall not take disciplinary action under section 24 in relation to a registered credit provider without first giving the credit provider written notice inviting that person to show cause within 28 days after the date of the notice why action should not be taken under that section.

(2) A notice under subsection (1) shall—

(a) specify each ground upon which the Director proposes to take disciplinary action; and

(b) include details of any complaint received under section 22 in relation to the credit provider.

(3) In deciding whether to take action under subsection 24 (1), the Director shall take into account—

(a) any complaint made under section 22; and

(b) any representation made by the credit provider in accordance with the invitation referred to in subsection (1).

24. Disciplinary action

(1) If the Director is satisfied on reasonable grounds that any of the grounds referred to in section 21 are established in relation to a registered credit provider, he or she may take 1 or more of the following actions:

(a) issue a reprimand to the credit provider;

(b) subject to subsection (3)—direct the credit provider to pay to the Territory, within a specified time, an amount not exceeding—

(i) if the credit provider is a natural person—$1,000; or

(ii) if the credit provider is a body corporate—$5,000;

(c) direct the credit provider to comply with a specified requirement within a specified time;

(d) suspend the registration for a period not exceeding 12 months;

(e) cancel the registration and disqualify the credit provider from obtaining registration as a credit provider or as a finance broker for the period specified in the notice of cancellation under section 130;

(f) disqualify a specified defined influential person in relation to the credit provider from obtaining registration as a credit provider or as a finance broker for the period specified in the notice of disqualification under section 130.

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(2) A credit provider shall comply with a direction under paragraph (1) (b) or (c).

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(3) Where a registered credit provider has been convicted of an offence and the circumstances of the offence form, in whole or in part, a ground for taking disciplinary action against the credit provider under this section, the person is not liable to pay any amount under paragraph (1) (b).

(4) Where a direction imposing a requirement on a registered credit provider is made under paragraph (1) (c), the credit provider shall, upon written notice from the Director, return the certificate of registration to the Director for endorsement with the requirement within 14 days after the date of the notice.

Penalty:

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

(5) If the Director suspends or cancels the registration of a credit provider under this section, the credit provider shall return the certificate of registration to the Director within 14 days after the date of the order.

Penalty:

(a) if the offender is natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

(6) A person who is disqualified from obtaining registration under paragraph (1) (e) or (f) shall not be concerned in the direction, management or control of a business of providing consumer credit, or of a finance broking business, during the period of disqualification.

Penalty for contravention of subsection (6):

(a) if the offender is natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

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Division 5—General

24A. Civil penalty

(1) Where—

(a) whether before or after the commencement of this section, the registration of a credit provider was or is suspended or cancelled under this Part; and

(b) after that commencement, the credit provider provides consumer credit to a debtor while the registration is suspended or cancelled;

the debtor is not liable to pay, at any time, any amount under the credit contract that would, but for this subsection, have been payable during the period of suspension or cancellation.

(2) Where, by virtue of subsection (1), a debtor is not liable to pay an amount under a credit contract but the debtor has paid such an amount, the amount is recoverable by the debtor as a debt due and payable by the credit provider.

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

25. Death of registered credit provider

(1) If a registered credit provider dies, the credit provider's legal personal representative may apply to the Director to take over the registration for a period of 6 months after the death.

(2) An application under subsection (1) shall be—

(a) lodged within 28 days after the death of the registered credit provider, or within such an extended period as the Director allows; and

(b) accompanied by the deceased credit provider's registration certificate.

(3) On application in accordance with this section, the Director shall register the applicant unless the applicant is disqualified from registration—

(a) as a credit provider under this Part; or

(b) as a finance broker under Part 3.

(4) Where an application is granted, the Director shall endorse the registration certificate with the name of the applicant and the term of registration and return it to the applicant**.**

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(5) For the purposes of this Part, a successful applicant under this section is to be taken to be registered as a credit provider subject to the condition that the registration is to terminate—

(a) at the expiration of 6 months after the death of the original registered credit provider; or

(b) if an application by the new registered credit provider to become the original registered credit provider's legal personal representative is rejected at an earlier date—on the date of the rejection.

(6) In this section—

"legal personal representative", in relation to a registered credit provider, includes—

(a) a person who is named as the credit provider's legal personal representative; and

(b) a person who intends to apply to become the credit provider's legal personal representative.

26. Register of Credit Providers

(1) For the purposes of this Act and the *Credit Act 1985*, the Director shall keep a register to be known as the Register of Credit Providers including particulars of registration of all registered credit providers.

(2) The register shall be kept in such form and manner as the Director thinks fit.

27. Access to Register

On application to the Director in writing accompanied by the determined fee, a person may—

(a) inspect the Register of Credit Providers; and

(b) obtain a copy of, or an extract from, the Register.

28. False or misleading statements

A person shall not make a statement in purported compliance with this Part that is false or misleading by reason of—

(a) the inclusion of matter in the statement which the person knows to be false or misleading;

(b) the inclusion of matter in the statement which the person has no reasonable grounds for believing to be true;

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(c) the inclusion of matter in the statement which the person has no reasonable grounds for believing to be accurate; or

(d) the omission from the statement of any material matter which the person knows to be material, except where the person believes on reasonable grounds that such an omission would not make the statement false or misleading.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

PART 3—FINANCE BROKING

Division 1—Exemptions

29. Exemption—specified persons and bodies

This Part does not apply in relation to any of the following persons:

(a) a bank;

(b) a financial institution;

(c) a legal practitioner while acting in the ordinary course of the profession of legal practitioner;

(d) a registered company auditor within the meaning of the Corporations Law, while acting in the ordinary course of the profession of public accountant;

(e) a body corporate registered under the *Life Insurance Act 1995* of the Commonwealth;

(f) a body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business;

(g) unless Part VII of the *Insurance Act 1973* of the Commonwealth has ceased to have effect—a Lloyd's underwriter, being an underwriter of the society known as Lloyd's incorporated by the Imperial Act known as *Lloyd's Act 1871*;

(h) a dealer under, or a recognised dealer pursuant to, the *Security Industry Act 1980* of the Commonwealth while acting in the ordinary course of the business of a dealer within the meaning of that Act;

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(j) the Curator of Estates of Deceased Persons within the meaning of the *Public Trustee Act 1985*;

(k) the Public Trustee within the meaning of the *Public Trustee Act 1985*;

(m) a trustee company within the meaning of the *Trustee Companies Act 1947*.

30. Exemption—finance broking in the course of another business

This Part does not apply in relation to a person (in this section called the "exempt person") who carries on a business in good faith of selling land or supplying goods or services (whether as principal or agent) where—

(a) the exempt person acts as a finance broker in relation to the provision of consumer credit exclusively for a person (in this section called the "client") who deals with the exempt person in the ordinary course of that business; and

(b) the client has given written authority for such credit to be applied in payment for land, goods or services sold or supplied in the course of that business.

31. Exemption—Ministerial determination

(1) A provision of this Part does not apply in relation to a finance broker if a determination under subsection (2) is in force exempting that person from the application of the provision, to the extent set out in the determination.

(2) The Minister may make a determination exempting a finance broker from the application of this Part, in part or in whole, and to the extent set out in the determination.

(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Division 2—Finance broking

32. Registration as a finance broker

(1) A person shall not act as a finance broker unless the person is registered as a finance broker.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

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(b) if the offender is a body corporate—250 penalty units.

(2) A natural person shall not hold himself or herself out as a finance broker unless the person is registered as a finance broker.

Penalty: 30 penalty units.

(3) A body corporate shall not hold itself out as a finance broker unless it is registered as a finance broker.

Penalty for contravention of subsection (3): 150 penalty units.

33. Advertising

A finance broker shall not publish, or cause to be published, whether in a newspaper or otherwise, an advertisement in connection with the broker's business as a finance broker without specifying in the advertisement—

(a) a name under which the broker is authorised to act as a finance broker under section 41; and

(b) the address of a place of business in respect of that name where the broker is authorised to act as a finance broker.

Penalty:

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is body corporate—50 penalty units.

34. Records

(1) A finance broker shall make, or cause to be made, a full record of the particulars of a finance broking transaction as soon as practicable after entering into the transaction.

(2) A finance broker shall preserve a record made under subsection (1) for the period of 3 years immediately following the date of the transaction.

Penalty for contravention of subsection (1) or (2):

(a) if the offender is natural person—20 penalty units;

(b) if the offender is a body corporate—100 penalty units.

35. Commissions

(1) A finance broker shall not demand, receive or accept any commission for a finance broking transaction unless the transaction is effected pursuant to a written agreement—

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(a) signed by the person charged, or to be charged, with the payment of the commission; and

(b) containing particulars of the amount of credit to be obtained, the term of the credit and the maximum amount of interest and other charges to be paid in respect of the credit.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(2) A finance broker shall not demand, receive or accept any commission for a finance broking transaction in excess of the maximum prescribed by the regulations.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(3) A finance broker shall not demand, receive or accept any commission for a finance broking transaction before securing the credit in respect of which the commission is charged.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(4) A finance broker shall not demand, receive or accept any commission for a finance broking transaction if the credit secured—

(a) is for an amount less than the amount specified in the terms of the agreement to act as a finance broker required under subsection (1);

(b) is at a rate of interest, or for a charge, greater than the rate or charge specified in the terms of that agreement; or

(c) is for a term less than the term specified in that agreement.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

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(5) In proceedings for an offence under this section, the court may, if it finds the finance broker guilty of the offence (whether or not it proceeds to conviction), order the finance broker—

(a) to refund any amount received or accepted by the finance broker in contravention of this section; and

(b) to pay interest on such an amount at such rate as is fixed by the court, not exceeding the rate prescribed by the regulations, from the time of the receipt or acceptance of the amount until the time it is refunded.

36. Valuation fees

(1) Nothing in section 35 prohibits a finance broker from demanding, receiving or accepting at any time an amount equal to the estimated cost of obtaining a valuation of any security offered for any proposed credit.

(2) Subsection (1) applies only if—

(a) the cost of the valuation is estimated on the basis of the fees (if any) prescribed by the regulations as the maximum fees for such valuations; and

(b) any amount paid for the valuation is held in trust by the finance broker to pay the costs of the valuation and to repay the balance of any such amount to the person who paid it.

37. False statements about credit provision

A finance broker shall not induce, or attempt to induce, a person to enter into an agreement in relation to the provision of consumer credit by making a statement or representation that is false or misleading by reason of—

(a) the inclusion of matter which the finance broker knows to be false or misleading;

(b) the inclusion of matter which the finance broker has no reasonable grounds for believing to be true;

(c) the inclusion of matter which the finance broker has no reasonable grounds for believing to be accurate; or

(d) the omission of any material matter which the finance broker knows to be material, except where the finance broker believes on reasonable grounds that such an omission would not make the statement or representation false or misleading.

Penalty:

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(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(a) if the offender is a body corporate—250 penalty units.

38. Authorised names

(1) A registered finance broker shall not act as a finance broker otherwise than under the finance broker's name or another name under which the broker is authorised to act under section 41.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(2) A registered finance broker who is a natural person shall not hold himself or herself out as a finance broker otherwise than under his or her name or another name under which he or she is authorised under section 41 to act as a finance broker.

Penalty: 50 penalty units.

(3) A registered finance broker which is a body corporate shall not hold itself out as a finance broker otherwise than under the body's name or another name under which the body is authorised under section 41 to act as a finance broker.

Penalty for contravention of subsection (3): 250 penalty units.

39. Partnerships

A registered finance broker shall not carry on a business of finance broking in partnership with a person who is not registered as a finance broker.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

40. Proof of finance broking offences

A finance broker is not liable to be convicted of an offence under this Division unless it is proved that—

(a) the finance broker knew or had reasonable cause to suspect that the credit to which the proceedings relate was, or was to be, consumer credit in whole or in part; or

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(b) if the finance broker had made reasonable inquiries, the finance broker would have known or had reasonable cause to suspect that the credit to which the proceedings relate was, or was to be, consumer credit in whole or in part.

Division 3—Registration of finance brokers

41. Authority conferred by registration

Subject to the consumer credit legislation and the *Business Names Act 1963*, registration as a finance broker authorises the registered person to act as a finance broker under the person's name and under any other name endorsed on the registration certificate.

42. Application for registration

(1) An application for registration as a finance broker may be made to the Director—

(a) by a natural person who has attained the age of 18 years; or

(b) by a body corporate.

(2) An application shall be in writing in a form approved by the Minister.

(3) An application shall be accompanied by the determined fee.

(4) An application shall specify—

(a) the applicant's name and address;

(b) if the applicant is a body corporate—the name and address of each director of the body;

(c) the name or names under which the applicant intends to carry on business as a credit provider in the Territory;

(d) the address of each place at which the applicant intends to carry on business as a finance broker in the Territory, indicating which of these is the principal place of business;

(e) whether the applicant's business as a finance broker is to be carried on in partnership with any other person; and

(f) any other matters prescribed by the regulations.

(5) An applicant for registration shall provide the Director with such particulars additional to those included in the application as the Director may require.

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43. Registration

(1) On an application for registration as a finance broker in accordance with section 42, the Director shall register the applicant unless the applicant is disqualified from registration—

(a) as a finance broker under this Part; or

(b) as a credit provider under Part 2.

(2) Upon registering a person as a finance broker, the Director shall issue a registration certificate to the person.

(3) A registration certificate shall be in a form approved by the Minister.

(4) The Director may, on payment of the determined fee, issue a duplicate of a registration certificate where he or she is satisfied that the certificate, or any duplicate subsequently issued under this subsection, has been lost or destroyed.

44. Endorsement of names

(1) Upon registration, or upon application by a registered finance broker under subsection (2), the Director shall endorse the registration certificate with the name of the registered finance broker and any additional name or names under which the registered person intends to carry on, or carries on, business as a finance broker.

(2) Upon written application by a registered finance broker (accompanied by the registration certificate), the Director shall add, amend or omit an endorsement of a name on the registration certificate in accordance with the application.

45. Changed particulars

A registered finance broker shall give written notice to the Director specifying any change in the particulars notified upon application for registration, or in particulars subsequently notified under this section, within 14 days after the change.

Penalty:

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

46. Term of registration

Registration as a finance broker continues in force until it is surrendered or cancelled, except during any period during which the registration is suspended.

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47. Annual fee and statement

(1) A registered finance broker shall lodge with the Director the determined fee on or before 27 March each year, or within such extended period as the Director allows under subsection (4).

(2) A person who has been a registered finance broker at any time during the period of 12 months preceding 28 February in each year shall, on or before 27 March in that year, or within such extended period as the Director allows under subsection (4), lodge with the Director a statement in respect of that part of the period of 12 months preceding 28 February in that year during which the person acted as a finance broker.

(3) A statement under subsection (2) shall be in a form approved by the Minister.

(4) The Director may, in writing, extend, or further extend, the period for compliance with subsection (1) or (2) on application before the expiry of the period by the person required to comply with the subsection.

(5) A person who is not registered as a finance broker who fails to comply with subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

(a) if the offender is a natural person—20 penalty units; or

(b) if the offender is a body corporate—100 penalty units.

(6) The initial fee a registered finance broker is liable to pay under subsection (1) shall be calculated in accordance with the formula in subsection (7), or as otherwise provided by the regulations.

(7) For the purposes of subsection (6), the formula for the initial fee a registered finance broker is liable to pay under subsection (1) is as follows:

where—

IF is the initial fee a registered finance broker is liable to pay under subsection (1);

DF is the fee determined under section 140 for the purposes of subsection (1) of this section;

AF is the fee paid under section 42 by the finance broker upon applying for registration; and

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M is the number of whole months which had elapsed between the 28 February before the finance broker was registered and the date of registration.

(8) Where a calculation under subsection (6) yields nought, or a negative amount, for the initial fee that a registered finance broker is required to pay under subsection (1)—

(a) the finance broker is not liable to pay any fee under subsection (1); and

(b) if the calculation yields a negative amount—the Director shall accordingly refund that amount to the finance broker.

(9) In this section—

"registered finance broker", in relation to the period of 12 months preceding 28 February in any year, includes a person whose registration was suspended for any part of that period, or for the whole of that period.

48. Cancellation of registration for failure to pay fee or provide statement

(1) If a registered finance broker fails to lodge a fee or a statement in accordance with section 47, the Director shall give the finance broker written notice that the registration will be cancelled unless the fee or statement is lodged within a specified period (being a period of not less than 14 days after the date of the notice).

(2) If a registered finance broker fails to pay a fee or lodge a statement in accordance with a notice under subsection (1), the Director shall—

(a) cancel the registration; and

(b) disqualify the finance broker from obtaining registration as a finance broker or as a credit provider until such time as the fee is paid or the statement is lodged, as the case requires.

49. Surrender of registration

(1) A registered finance broker may surrender the registration by written notice to the Director accompanied by the registration certificate, subject to this section.

(2) If the Director has issued a notice under section 54 in relation to a registered finance broker, the finance broker shall not surrender the registration before the Director has decided whether to take action under section 55.

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(3) Upon application by a person who has surrendered registration, the Director shall return to the person so much as the Director thinks fit of the fee last paid by the person under subsection 47 (1).

(4) In this section—

"registered finance broker" includes a person whose registration as a finance broker is suspended.

Division 4—Disciplinary procedures

50. Powers of inquiry

(1) The Director may make such inquiries for the purposes of this Division as he or she thinks fit about a registered finance broker.

(2) The Commissioner of Police shall make any reasonable inquiries for the purposes of this Division about a registered finance broker requested by the Director.

(3) The Commissioner of Police shall report the result of any inquiries under subsection (2) to the Director.

(4) In this section—

"registered finance broker" includes—

(a) a defined influential person in relation to a registered finance broker; and

(b) an employee of a registered finance broker.

51. Cancellation or suspension for bankruptcy, fraud, dishonesty or incapacity

(1) The Director may cancel the registration of a finance broker who is a natural person, or suspend the registration for a specified period, if the finance broker—

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or any part of his or her property for their benefit;

(b) is convicted within the Territory or elsewhere of an offence involving fraud or dishonesty punishable, on conviction, by imprisonment for 3 months or more; or

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(c) becomes incapable through mental infirmity of managing his or her affairs.

(2) The Director may cancel the registration of a finance broker which is a body corporate, or suspend the registration for a specified period, if—

(a) the body is dissolved, is under administration, is being wound up or has ceased to carry on business;

(b) a receiver, or a receiver and manager, has been appointed under the Corporations Law or under the corresponding law of a State or of another Territory in relation to any property in respect of the body; or

(c) the body has entered into a compromise or scheme of arrangement with its creditors.

(3) If the Director cancels the registration of a finance broker under subsection (2), the Director shall disqualify the finance broker from obtaining registration as a finance broker or as a credit provider for the period specified in the notice of cancellation under section 130.

(4) On written application by a finance broker whose registration has been cancelled or suspended under subsection (1), the Director may—

(a) remove a suspension imposed under this section at any time before the expiry of the specified period of suspension; or

(b) revoke the disqualification of a finance broker at any time before the expiry of the specified period of disqualification.

52. Grounds for other disciplinary action

The grounds for disciplinary action under section 55 in relation to a registered finance broker are as follows:

(a) the finance broker has acted as a finance broker inefficiently, dishonestly or unfairly;

(b) the finance broker provided false or misleading information to the Director in relation to an application for registration under this Act;

(c) the finance broker has contravened—

(i) the consumer credit legislation;

(ii) a direction of the Director under section 55; or

(iii) an undertaking under section 105;

(d) the finance broker has acted as a finance broker while the registration was suspended or cancelled, or while disqualified under this Part;

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(e) if the finance broker was licensed at any time under the *Credit Act 1985*—

(i) the finance broker provided false or misleading information in relation to an application for the licence;

(ii) the finance broker breached a condition to which the licence was subject;

(iii) the finance broker contravened a requirement of the Tribunal under paragraph 173 (8) (c) of the *Credit Act 1985*; or

(iv) the finance broker acted as a finance broker while the licence was suspended or cancelled, or while disqualified under subsection 173 (8) (e) of the *Credit Act 1985*.

53. Complaints against finance brokers

A person may make a complaint to the Director about the conduct of a registered finance broker.

54. Notice to show cause

(1) The Director shall not take disciplinary action under section 55 in relation to a registered finance broker without first giving the finance broker written notice inviting that person to show cause within 28 days after the date of the notice why action should not be taken under that section.

(2) A notice under subsection (1) shall—

(a) specify each ground upon which the Director proposes to take disciplinary action; and

(b) include details of any complaint received under section 53 in relation to the finance broker.

(3) In deciding whether to take action under subsection 55 (1), the Director shall take into account—

(a) any complaint made under section 53; and

(b) any representation made by the finance broker in accordance with the invitation referred to in subsection (1).

55. Disciplinary action

(1) If the Director is satisfied on reasonable grounds that any of the grounds referred to in section 52 are established in relation to a registered finance broker, he or she may take 1 or more of the following actions:

(a) issue a reprimand to the finance broker;

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(b) subject to subsection (3)—direct the finance broker to pay to the Territory, within a specified time, an amount not exceeding—

(i) if the finance broker is a natural person—$1,000; or

(ii) if the finance broker is a body corporate—$5,000;

(c) direct the finance broker to comply with a specified requirement within a specified time;

(d) suspend the registration for a period not exceeding 12 months;

(e) cancel the registration and disqualify the finance broker from obtaining registration as a finance broker or as a credit provider for the period specified in the notice of cancellation under section 130;

(f) disqualify a specified defined influential person in relation to the finance broker from obtaining registration as a finance broker or as a credit provider for the period specified in the notice of disqualification under section 130.

(2) A finance broker shall comply with a direction under paragraph (1) (b) or (c).

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(3) Where a registered finance broker has been convicted of an offence and the circumstances of the offence form, in whole or in part, a ground for taking disciplinary action against the finance broker under this section, the person is not liable to pay any amount under paragraph (1) (b).

(4) Where a direction imposing a requirement on a registered finance broker is made under paragraph (1) (c), the finance broker shall, upon written notice from the Director, return the certificate of registration to the Director for endorsement with the requirement within 14 days after the date of the notice.

Penalty:

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

(5) If the Director suspends or cancels the registration of a finance broker under this section, the finance broker shall return the certificate of registration to the Director within 14 days after the date of the order.

Penalty:

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(a) if the offender is natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

(6) A person who is disqualified from obtaining registration under paragraph (1) (e) or (f) shall not be concerned in the direction, management or control of a finance broking business, or of a business of providing consumer credit, during the period of disqualification.

Penalty for contravention of subsection (6):

(a) if the offender is natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

Division 5—General

55A. Civil penalty

(1) Where—

(a) whether before or after the commencement of this section, the registration of a finance broker was or is suspended or cancelled under this Part; and

(b) after that commencement, the finance broker is involved in finance broking and for that purpose enters into a contract with a debtor while the registration is suspended or cancelled;

the debtor is not liable to pay any amount under the contract.

(2) Where, by virtue of subsection (1), a debtor is not liable to pay any amount under a contract but the debtor has paid such an amount, the amount is recoverable by the debtor as a debt due and payable by the finance broker.

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

56. Death of registered finance broker

(1) If a registered finance broker dies, the finance broker's legal personal representative may apply to the Director to take over the registration for a period of 6 months after the death.

(2) An application under subsection (1) shall be—

(a) lodged within 28 days after the death of the registered finance broker, or within such an extended period as the Director allows; and

(b) accompanied by the deceased finance broker's registration certificate.

(3) On application in accordance with this section, the Director shall register the applicant unless the applicant is disqualified from registration—

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(a) as a finance broker under this Part; or

(b) as a credit provider under Part 2.

(4) Where an application is granted, the Director shall endorse the registration certificate with the name of the applicant and the term of registration and return it to the applicant.

(5) For the purposes of this Part, a successful applicant under this section is to be taken to be registered as a finance broker subject to the condition that the registration is to terminate—

(a) at the expiration of 6 months after the death of the original registered finance broker; or

(b) if an application by the new registered finance broker to become the original registered finance broker's legal personal representative is rejected at an earlier date—on the date of the rejection.

(6) In this section—

"legal personal representative", in relation to a registered finance broker, includes—

(a) a person who is named as the finance broker's legal personal representative; and

(b) a person who intends to apply to become the finance broker's legal personal representative.

57. Register of Finance Brokers

(1) For the purposes of this Act and the *Credit Act 1985*, the Director shall keep a register to be known as the Register of Finance Brokers including particulars of registration of all registered finance brokers.

(2) The register shall be kept in such form and manner as the Director thinks fit.

58. Access to Register

On application to the Director in writing accompanied by the determined fee, a person may—

(a) inspect the Register of Finance Brokers; and

(b) obtain a copy of, or an extract from, the Register.

59. False or misleading statements

A person shall not make a statement in purported compliance with this Part that is false or misleading by reason of—

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(a) the inclusion of matter in the statement which the person knows to be false or misleading;

(b) the inclusion of matter in the statement which the person has no reasonable grounds for believing to be true;

(c) the inclusion of matter in the statement which the person has no reasonable grounds for believing to be accurate; or

(d) the omission from the statement of any material matter which the person knows to be material, except where the person believes on reasonable grounds that such an omission would not make the statement false or misleading.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

PART 4—CREDIT TRIBUNAL

Division 1—Establishment, functions and powers

60. Continuation of Tribunal

The Australian Capital Territory Credit Tribunal in existence under the *Credit Act 1985* immediately before the commencement of this Part continues in existence by force of this section.

61. Functions and powers

The Tribunal has the functions and powers conferred on it by the consumer credit legislation.

Division 2—Membership

62. Membership

The Tribunal shall consist of the following members:

(a) a Chairperson who shall be—

(i) a magistrate; or

(ii) a legal practitioner who has been enrolled for at least 5 years;

(b) a person representing the interests of credit providers and finance brokers;

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(c) a person representing the interests of persons who obtain consumer credit from credit providers or through finance brokers.

63. Terms of appointment

A member of the Tribunal—

(a) shall be appointed by the Minister;

(b) may only be appointed as a part-time member;

(c) holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment; and

(d) holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are specified in the instrument of appointment.

64. Remuneration and allowances

(1) A member shall be paid such remuneration and allowances as are prescribed.

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

(a) remuneration if there is a subsisting determination relating to the remuneration to be paid to a member; or

(b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to a member.

(3) In subsection (2)—

"determination" means a determination of the Remuneration Tribunal.

65. Leave of absence

The Minister may grant leave of absence to a member or a person appointed to act as a member on such terms and conditions as to remuneration or otherwise as the Minister determines.

66. Resignation

A member may resign his or her office by writing signed by the member and delivered to the Minister.

67. Termination of appointment

(1) The Minister may terminate the appointment of a member because of misbehaviour or physical or mental incapacity.

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(2) The Minister shall terminate the appointment of—

(a) the Chairperson if he or she ceases to have the qualifications described in paragraph 62 (a) because of which he or she was appointed; or

(b) any other member if satisfied that he or she no longer represents the interests of the persons he or she was appointed to represent.

(3) The Minister shall terminate the appointment of a member if the member—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors;

(b) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer; or

(c) is unreasonably absent from proceedings of the Tribunal, except on leave granted under section 65.

68. Acting members

(1) The Minister may, in writing, appoint a person to act as a member—

(a) during any vacancy in the office of the member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

(2) A person appointed to act as a member during a vacancy in the office of the member shall not so act continuously for more than 12 months.

(3) A person shall not be appointed to act as a member unless the person is eligible to be appointed as the member.

(4) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

(a) the appointment was ineffective or had ceased to have effect; or

(b) the occasion to act had not arisen or had ceased.

Division 3—Registrar and Deputy Registrar

69. Registrar

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

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(2) The Registrar may, subject to any direction of the Chairperson, do all things necessary or convenient to be done for or in connection with his or her functions under the consumer credit legislation.

(3) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Registrar of the Tribunal.

(4) The Registrar shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (3).

70. Deputy Registrar

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

(2) The Deputy Registrar may perform any function of the Registrar, subject to any direction of the Chairperson or the Registrar.

(3) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Deputy Registrar of the Tribunal.

(4) The Deputy Registrar shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (3).

Division 4—Proceedings

71. Constitution of Tribunal

(1) Subject to subsection (2), the Tribunal shall be constituted for the purposes of a proceeding by the Chairperson and the other 2 members of the Tribunal.

(2) The Tribunal may be constituted for the purposes of a proceeding by the Chairperson—

(a) where there is only 1 party to the proceeding and the Chairperson considers that the proceeding is not likely to involve any other parties;

(b) where there are 2 or more parties to the proceeding and all the parties agree to the Tribunal being so constituted; or

(c) where the proceeding is in a prescribed class of proceedings.

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72. Arrangement of business

Subject to section 71, the Chairperson may give directions as to the arrangement of the business of the Tribunal and as to the members who are to constitute the Tribunal for the purposes of a particular proceeding.

73. Presiding member

The Chairperson shall preside at a proceeding.

74. Procedure

(1) Subject to this Act, the Tribunal may determine the procedure to be followed in a proceeding.

(2) The Tribunal is not bound by the rules of evidence but may inform itself on any matter relevant to a proceeding in such manner as it thinks appropriate.

(3) A proceeding shall be conducted with as little formality and technicality, and with as much expedition, as this Act and the merits of the matter permit.

(4) The Tribunal is bound by the rules of natural justice.

75. Directions by Chairperson

The Chairperson may give directions as to the procedure to be followed in a proceeding for the purposes of—

(a) reducing the costs of the parties to the proceeding; and

(b) achieving a prompt hearing of the matters in issue between the parties.

76. Assistance from Director

The Chairperson may request the Director to prepare a report for, or provide other assistance to, the Tribunal in relation to a proceeding.

77. Determination of questions

(1) A question of law arising at a proceeding shall be decided according to the opinion of the Chairperson.

(2) Subject to subsection (1), where the members constituting the Tribunal for a proceeding are divided on a question, the question shall be decided according to the opinion of the majority.

78. Reference of questions of law to Supreme Court

(1) The Chairperson may, at the request of a party to a proceeding, refer a question of law arising in the proceeding to the Supreme Court for a decision.

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(2) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under subsection (1).

(3) Where a question of law has been referred to the Supreme Court under subsection (1), the Tribunal shall not in the proceeding in which the question arose—

(a) make a decision to which the question is relevant while the reference is pending; or

(b) proceed in a manner, or make a decision, that is inconsistent with the Supreme Court's decision on the question.

79. Joint liability

(1) Subject to the consumer credit legislation, where a party to a proceeding is jointly liable with another person, that other person need not be made a party to the proceeding.

(2) Where a decision is made against a party to a proceeding (in this subsection called the "party") who is jointly liable with another person who is not a party to the proceeding (in this subsection called the "non-party")—

(a) the liability of the non-party is not discharged by the decision or any step taken to enforce the decision;

(b) the party and the non-party are severally but not jointly liable;

(c) if there are 2 or more non-parties, as between themselves, the non-parties are jointly liable; and

(d) the liability of the non-party is discharged to the extent of any amount paid or recovered pursuant to the decision.

(3) Nothing in subsection (2) affects the right of a person to contribution or indemnity in respect of satisfaction by the person of a liability that he or she has jointly, severally or jointly and severally with another person.

80. Legal personal representatives

A legal personal representative may bring or defend a proceeding in the same manner as if he or she were bringing or defending the proceeding in his or her own right.

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81. Adding parties

(1) If, at any stage of a proceeding, the Chairperson is of the opinion that a person ought to be a party to the proceeding, the Chairperson may join that person as a party.

(2) The Tribunal may, on application by a person whose interests may be affected by a proceeding, join that person as a party to the proceeding.

82. Notice of proceeding

(1) The Chairperson shall fix a time and place for the conduct of a proceeding.

(2) The Registrar shall serve on each party to the proceeding a notice—

(a) specifying the time and place so fixed;

(b) specifying the matters to which the proceeding relates; and

(c) directing the party on whom it is served to appear at that time and place.

83. Appearance and representation

(1) A party to a proceeding—

(a) may appear in person;

(b) subject to subsection (2), may be represented by a legal practitioner; or

(c) with the leave of the Tribunal, may be represented by a person other than a legal practitioner.

(2) A party to a prescribed proceeding may only be represented by a legal practitioner with the leave of the Tribunal.

(3) A person other than a legal practitioner is not entitled to demand or receive any fee or reward for representing a party to a proceeding.

84. Failure to appear

If a party on whom a notice in accordance with subsection 82 (2) is served fails to appear as directed by the notice, the Tribunal may conduct the proceeding in the party's absence.

85. Hearings

(1) Subject to this section, the hearing of a proceeding shall be in public.

(2) The Tribunal may—

(a) direct that a hearing or part of a hearing is to be in private and give directions as to the persons who may be present; or

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(b) give directions prohibiting or restricting the publication or other disclosure of any evidence before or submission made to the Tribunal, whether in a public or private hearing.

(3) The Tribunal may give a direction under subsection (2) if satisfied that it is desirable to do so because of—

(a) the confidential nature of the subject matter of the proceeding;

(b) the confidential nature of any evidence before the Tribunal; or

(c) any other reason.

(4) A person who contravenes a direction under paragraph (2) (b) is guilty of an offence punishable, on conviction—

(a) if the offender is a natural person—by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 6 months, or both; or

(b) if the offender is a body corporate—by a fine not exceeding 250 penalty units.

86. Summoning witnesses

(1) For the purposes of a proceeding, the Registrar shall—

(a) if directed to do so by the Chairperson; or

(b) if requested to do so by a party to the proceeding;

serve on a person a summons requiring the person to appear before the Tribunal—

(c) on a date specified in the summons to produce the documents and other things referred to in the summons; or

(d) at a hearing—

(i) to give evidence; or

(ii) to give evidence and produce the documents and other things referred to in the summons.

(2) Where a person is required by a summons to produce a record—

(a) that is not in writing;

(b) that is not written in the English language; or

(c) that is not decipherable on sight;

the summons shall be taken to require the person to produce—

(d) instead of the record if it is not in writing; or

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(e) in addition to the record if it is in writing;

a statement, written in the English language and decipherable on sight, about the information in the record.

(3) A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

(4) A person shall be taken to have complied with a summons of the kind referred to in paragraph (1) (c) if the person delivers the documents and things to the Tribunal before the date specified in the summons.

(5) A person who appears at a hearing pursuant to a summons is entitled to be paid—

(a) if summoned at the direction of the Chairperson—such fees and allowances as are payable to a witness before the Supreme Court; or

(b) if summoned at the request of a party—his or her reasonable costs and expenses of attendance at the hearing.

(6) A summons under subsection (1) shall be accompanied by a form to be completed by the person required to appear to claim the fees and allowances, or costs and expenses, mentioned in subsection (5).

(7) A person is not entitled to refuse to comply with a summons because it was not accompanied by that form.

87. Taking of evidence

(1) At a hearing, the Tribunal may take evidence on oath or affirmation and, for that purpose the Chairperson may—

(a) require a witness at the hearing either to take an oath or make an affirmation; and

(b) administer an oath or affirmation to such a witness.

(2) At a hearing, the Chairperson may require a witness—

(a) to answer a question put to the witness; or

(b) to produce a document or other thing relevant to the hearing.

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(3) A person who appears as a witness at a hearing shall not, without reasonable excuse, refuse or fail—

(a) to take an oath or make an affirmation when required to do so by the Chairperson under paragraph (1) (a); or

(b) to give evidence when required to do so by the Chairperson under subsection (2).

Penalty for contravention of paragraph (3) (a): 50 penalty units or imprisonment for 6 months, or both.

Penalty for contravention of paragraph (3) (b):

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

88. Inspection and retention of documents and things

(1) The Tribunal or a member of the Tribunal may—

(a) inspect a document or other thing produced before, or delivered to, the Tribunal;

(b) retain possession of the document or thing for such period as is necessary for the purposes of the proceeding to which the document or thing relates; and

(c) in the case of a document produced before, or delivered to, the Tribunal—make copies of, or take extracts from, such parts of the document as are relevant to a matter the subject of the proceeding.

(2) Where a document is retained under paragraph (1) (b)—

(a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a member of the Tribunal to be a true copy and the certified copy shall be received in all courts as if it were the original; and

(b) until the certified copy is supplied, the Registrar shall, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

(3) Where the retention of a document or other thing under paragraph (1) (b) is no longer necessary for the purposes of a proceeding, the Registrar may, at the

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request of a person who appears to be entitled to make the request, cause the document or thing to be delivered to the person.

89. Adjournments and stays

The Tribunal may, on the application of a party or of its own motion—

(a) adjourn a proceeding; or

(b) at any stage of a proceeding, order that the proceeding be stayed.

90. Dismissal of proceedings

(1) The Tribunal may, at any stage of a proceeding, dismiss the proceeding—

(a) if satisfied that it is frivolous or vexatious; or

(b) for any other reason.

(2) Where the Tribunal dismisses a proceeding under subsection (1), it may order the person who brought the proceeding to pay the costs of the proceeding.

91. Costs

Subject to the consumer credit legislation, the Tribunal may award costs against a party to a proceeding and may determine the amount of costs so awarded.

92. Orders for payment of money

(1) Where the Tribunal makes an order for the payment of an amount (including an amount awarded for costs), if the prescribed documents are filed in a court having jurisdiction to the extent of the amount, the order shall be deemed to be a judgment of the court for the payment of the amount in accordance with the order.

(2) For the purposes of subsection (1), the prescribed documents are—

(a) a copy of the order certified by the Registrar as a true copy; and

(b) an affidavit by or on behalf of the person to whom the amount is ordered to be paid specifying—

(i) the amount unpaid under the order; and

(ii) where the order is to take effect on a default—that the default has occurred.

(3) Despite any other law of the Territory, no fee is payable for the filing of documents under subsection (1).

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93. Reasons for decisions of Tribunal

(1) The Tribunal shall serve a copy of its decision in a proceeding on each party to the proceeding.

(2) Where the Tribunal does not give written reasons for its decision, a party to the proceeding may, within 28 days after being so served, apply to the Tribunal for a statement of those reasons.

(3) The Tribunal shall comply with such a request within 28 days after receiving it.

(4) A statement of reasons shall set out the Tribunal's findings on material questions of fact, referring to the evidence or other material on which those findings were based.

Division 5—Appeals to Supreme Court

94. Decisions of Tribunal

(1) Subject to this section, a party to a proceeding may appeal to the Supreme Court from a decision of the Tribunal in the proceeding.

(2) Part 21 of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to an appeal under subsection (1) as if—

(a) a reference in that Part to the Magistrates Court were a reference to the Tribunal;

(b) a reference in that Part to the Registrar of the Magistrates Court were a reference to the Registrar of the Tribunal;

(c) a reference in that Part to a judgment or order of the Magistrates Court were a reference to a decision of the Tribunal; and

(d) a reference in that Part to the *Magistrates Court (Civil Jurisdiction) Act 1982* were a reference to the consumer credit legislation.

(3) For the purposes of subsection (2), a judgment or order of the Supreme Court made in proceedings remitted to the Tribunal for execution shall have effect as if it were a decision of the Tribunal and may be enforced under section 92.

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95. Decisions of Magistrates Court

(1) An appeal to the Supreme Court may be instituted from a decision of the Magistrates Court under the consumer credit legislation.

(2) Part 21 of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to an appeal under subsection (1) as if it were an appeal from a judgment or order of the Magistrates Court given, entered or made in proceedings that the Magistrates Court has jurisdiction to hear and determine under that Act.

96. Jurisdiction of Supreme Court

The Supreme Court has jurisdiction to hear and determine an appeal under this Division.

Division 6—General

97. Contempt

A person shall not—

(a) obstruct or hinder the Tribunal or a member of the Tribunal in the performance of the functions of the Tribunal; or

(b) disrupt a proceeding.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

98. Protection of members etc

(1) A member of the Tribunal has, in the performance of any function as a member, the same protection and immunity as a Judge of the Supreme Court in proceedings in that Court.

(2) A legal practitioner or other person appearing before the Tribunal on behalf of a party to a proceeding has the same protection and immunity as a barrister has in appearing for a party to a proceeding before the Supreme Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

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99. Fees payable to Registrar

A fee determined under section 140 in relation to a proceeding is payable to the Registrar.

PART 5—INQUIRIES

100. Minister may order inquiry

(1) The Minister may, by instrument, appoint the Tribunal or any person to inquire into such matters relating to the provision of credit or the consequences of the provision of credit as are specified in the instrument.

(2) An appointment may be made subject to such conditions as may be specified in the instrument of appointment.

(3) Subject to the instrument of appointment, the Tribunal or the person appointed under subsection (1) has the functions and powers conferred by or under this Part.

(4) An appointment or the termination of an appointment does not take effect until the terms of the instrument have been published in the *Gazette* and in such newspapers as are specified in the instrument.

(5) The terms published in the *Gazette* under subsection (4) shall be presumed to be the terms of the appointment or termination, but that presumption is rebuttable.

101. Notice of inquiry

Before commencing an inquiry, the Tribunal or the person appointed to conduct the inquiry shall cause to be published—

(a) in the *Gazette*; and

(b) in a newspaper circulating in the Territory;

notice of—

(c) the holding of the inquiry;

(d) the subject matter of the inquiry;

(e) the time and place at which the inquiry is to be held; and

(f) such other matters relating to the inquiry as the Tribunal or the person thinks fit.

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102. Application of Inquiries Act 1991

Part 3 (other than sections 14 and 14A), Part 4 and sections 38 and 39 of the *Inquiries Act 1991* apply in relation to an inquiry under this Part as if, in those provisions—

(a) a reference to an inquiry were a reference to an inquiry under this Part;

(b) a reference to a Board of Inquiry were a reference to the Tribunal or the person appointed under subsection 100 (1);

(c) a reference to the Chairperson of such a Board were a reference to the Chairperson of the Tribunal or that person; and

(d) a reference to a member of such a Board were a reference to a member of the Tribunal or that person.

103. Summons—indecipherable records

Where a person is required by a summons served in the course of an inquiry to produce a record—

(a) that is not in writing;

(b) that is not written in the English language; or

(c) that is not decipherable on sight;

the summons shall be taken to require the person to produce—

(d) instead of the record if it is not in writing; or

(e) in addition to the record if it is in writing;

a statement, written in the English language and decipherable on sight, about the information in the record.

104. Findings and recommendations

On completion of an inquiry, the Tribunal or the person conducting the inquiry shall, as soon as practicable—

(a) give a written report of the results of the inquiry to the Minister; and

(b) make such recommendations in that report with respect to the results as the Tribunal or that person thinks fit.

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PART 6—UNJUST CONDUCT

105. Undertakings

(1) Where the Director is satisfied that a person has engaged in unjust conduct as a credit provider or finance broker, the Director may, with the consent of the Minister—

(a) request the person to give an undertaking in respect of 1 or more of the following matters by a deed approved by the Director:

(i) refraining from that conduct;

(ii) rectifying its consequences;

(iii) future conduct by the person; or

(b) apply to the Tribunal for an order under subsection 107 (1).

(2) The Director may not—

(a) take disciplinary action under section 24 or 55; or

(b) apply for an order under subsection 107 (1);

in respect of conduct which is in accordance with an undertaking.

(3) A person shall not contravene an undertaking.

Penalty:

(a) if the offender is a natural person—100 penalty units; or

(b) if the offender is a body corporate—500 penalty units.

(4) A prosecution for an offence against subsection (3) shall not be instituted except by the Director with the leave of the Tribunal.

106. Registration of undertakings

(1) The Director shall—

(a) keep a register containing the prescribed particulars in respect of each undertaking referred to in section 105; and

(b) ensure that the register is available for public inspection free of charge at the office of the Director.

(2) The register shall be kept in such form and manner as the Director thinks fit.

(3) The Director shall—

(a) retain each deed by which an undertaking is given; and

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(b) give a copy of the deed to—

(i) the person who gave the undertaking; and

(ii) the Registrar.

107. Orders by Tribunal

(1) Where the Tribunal is satisfied that a person has engaged in unjust conduct as a credit provider or finance broker, it may order the person to refrain from such conduct.

(2) Where the Tribunal is satisfied that a person has contravened an undertaking referred to in section 105, it may order the person to comply with the undertaking within a period specified in the order.

(3) Where the Tribunal is satisfied that a person—

(a) is a defined influential person in relation to a body corporate; and

(b) has consented to or connived at—

(i) unjust conduct to which subsection (1) applies; or

(ii) a contravention of an undertaking referred to in section 105;

by the body corporate;

the Tribunal may, by order, prohibit the person from engaging in such activities.

(4) An order under this section is subject to such conditions as are specified in the order.

(5) The Tribunal shall not make an order under this section except on application by the Director.

108. Contravention of orders

(1) A person who contravenes an order under subsection 107 (1) is guilty of an offence punishable on conviction by a fine not exceeding—

(a) if the offender is a natural person—100 penalty units; or

(b) if the offender is a body corporate—500 penalty units.

(2) A person who contravenes an order under subsection 107 (2) is guilty of an offence punishable on conviction by a fine not exceeding—

(a) if the offender is a natural person—100 penalty units; or

(b) if the offender is a body corporate—500 penalty units.

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(3) A person who contravenes an order under subsection 107 (3) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

PART 7—ROLE OF DIRECTOR OF CONSUMER AFFAIRS

Division 1—Functions and powers generally

109. Functions

In addition to any other functions conferred on the Director under the consumer credit legislation, the Director has the following functions:

(a) to investigate complaints about matters relating to the consumer credit legislation received by the Director from credit providers, debtors, finance brokers and other persons who might reasonably be taken to have an interest in the matters complained about, and to provide advice to complainants about those matters;

(b) to conduct, on his or her own initiative, other investigations and research about matters relating to the consumer credit legislation;

(c) to confer and exchange information with persons who, under a law of a State or another Territory, have functions similar to those conferred on the Director under the consumer credit legislation;

(d) to commence and conduct proceedings for offences against the consumer credit legislation;

(e) at the request of the Chairperson or the Registrar, to prepare reports for, and to provide other assistance to, the Tribunal.

110. Powers

The Director has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions under the consumer credit legislation.

Division 2—Functions in relation to proceedings

111. Representing other persons before Tribunal

(1) Despite anything in the consumer credit legislation, the Director may represent a party in a proceeding before the Tribunal.

(2) For the purposes of subsection (1), the Director may—

(a) appear in person; or

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(b) be represented by a legal practitioner or another person.

112. Taking or defending proceedings for other persons

(1) Where, after investigating a complaint about a matter arising under the consumer credit legislation made by—

(a) a natural person; or

(b) a strata corporation under the Credit Code;

the Director is satisfied that—

(c) the complainant may have a right to take proceedings, or a defence to proceedings taken, in a court or the Tribunal in respect of the matter complained about; and

(d) it would be in the public interest for the Director to take or defend those proceedings on behalf of the complainant;

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

(2) The consent of a complainant is not revocable after the Director has taken a step in the proceedings unless the Director agrees to the revocation.

113. Conduct of proceedings so taken or defended

(1) This section applies in relation to proceedings being taken or defended by the Director under section 112.

(2) The Director shall have the conduct of the proceedings on behalf of the complainant.

(3) The Director may—

(a) appear in person; or

(b) despite any other law in force in the Territory, be represented by a legal practitioner or another person.

(4) The Director may do anything necessary or expedient to be done to give effect to an order or decision of the court or Tribunal.

(5) The complainant is liable to pay any amount (other than an amount for costs) that the complainant is ordered by the court or Tribunal to pay.

(6) The Territory is liable to pay the costs of the complainant, including any costs awarded against the complainant.

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114. Intervention by Minister or Director

(1) The Minister or, subject to subsection (2), the Director may intervene in proceedings under the consumer credit legislation (other than proceedings for an offence) that are before a court or the Tribunal if satisfied that it would be in the public interest to do so.

(2) The Director may only intervene with the Minister's consent.

(3) Where the Minister or Director intervenes in proceedings, he or she—

(a) is, by force of this section, a party to the proceedings; and

(b) may—

(i) appear in person; or

(ii) despite any other law in force in the Territory, be represented by a legal practitioner or another person.

115. Presumption that Minister has consented

Where the Director—

(a) takes or defends proceedings under section 112; or

(b) intervenes in proceedings under section 114;

it shall be presumed that the Minister consented to the Director doing so, but that presumption is rebuttable.

116. Investigation of certain applications to Tribunal

Before an application under section 86 of the *Credit Act 1985* or section 101 of the Credit Code is heard, the Director shall, if required to do so by the Chairperson, investigate the application and report the findings to the Tribunal.

Division 3—Powers in relation to investigations

117. Investigating officers

(1) The Director may authorise in writing officers of the Bureau to conduct investigations for the purposes of paragraph 109 (a) or (b).

(2) The Director shall issue to an officer so authorised a certificate—

(a) specifying the officer's name and that he or she is an investigating officer under this Act; and

(b) on which appears a recent photograph of the officer.

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118. Powers of entry and inspection

(1) An investigating officer may—

(a) for the purpose of ensuring that the consumer credit legislation is being complied with, enter—

(i) any premises (other than residential premises) at any reasonable time; or

(ii) any premises with the consent of the occupier or a person apparently in charge of the premises; or

(b) enter any premises pursuant to a search warrant.

(2) An investigating officer may enter premises under subsection (1)—

(a) with such assistance; and

(b) when entering pursuant to a warrant—with such force;

as is necessary and reasonable.

(3) An investigating officer who enters premises under subsection (1) is not authorised to remain on the premises if, on request by the occupier or a person apparently in charge of the premises, the officer does not produce—

(a) if he or she is the Director—written evidence that he or she is the holder of the office of Director; or

(b) in any other case—the certificate issued to the officer under subsection 117 (2).

(4) Where an investigating officer enters premises under subsection (1), the officer may—

(a) inspect any record found on the premises;

(b) take copies of and extracts from any such records; and

(c) require any person on the premises to—

(i) make available any record kept on the premises;

(ii) furnish information; and

(iii) answer questions.

119. Consent to entry

(1) Before obtaining the consent of a person for the purposes of subparagraph 118 (1) (a) (ii), an investigating officer shall—

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(a) produce the written evidence or certificate mentioned in subsection 118 (3); and

(b) inform the person that he or she may refuse to give consent.

(2) Where an investigating officer obtains the consent of a person for the purposes of subparagraph 118 (1) (a) (ii), the officer shall ask the person to sign a written acknowledgment of—

(a) the fact that the person has been informed that he or she may refuse to give consent;

(b) the fact that the person has voluntarily given consent; and

(c) the day on which, and the time at which, the consent was given.

(3) An entry by an investigating officer by virtue of a person's consent is not lawful unless the consent was voluntary.

(4) Where—

(a) it is material, in any proceedings, for a court to be satisfied that the consent of a person for the purposes of subparagraph 118 (1) (a) (ii) was voluntary; and

(b) an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence;

the court shall assume, unless the contrary is proved, that the consent was not voluntary.

120. Search warrants

(1) Where—

(a) an information is laid before a magistrate alleging that an investigating officer has reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against the consumer credit legislation; and

(b) the information sets out those grounds;

the magistrate may issue a search warrant authorising the investigating officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

(c) to enter the premises described in the warrant;

(d) to search the premises for things of the kind mentioned in paragraph (a); and

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(c) to exercise any of the powers under subsection 118 (4) in respect of those things.

(2) A magistrate shall not issue a warrant unless—

(a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant shall—

(a) state the purpose for which it is issued, including a reference to the nature of the offence in connection with which the entry and search is authorised;

(b) state that the entry is authorised at any time of the day or night, or specify particular hours during which the entry is authorised;

(c) a description of the kind of things in relation to which the powers under subsection 118 (4) may be exercised; and

(d) specify a date (being a date not later than 1 month after the date on which the warrant is issued) on which the warrant ceases to have effect.

121. Power to obtain information or documents

(1) Where an investigating officer is satisfied that a person is capable of providing information or producing a document reasonably required for the purpose of ensuring that the consumer credit legislation is being complied with, the officer may, by written notice, require the person—

(a) to provide the information to the officer in the manner specified in the notice; or

(b) to produce the document to the officer.

(2) A notice shall state—

(a) the place at which the information is to be provided or the document is to be produced; and

(b) the time at which, or the period within which, the information is to be provided or the document produced.

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(3) A person is not required to comply with a notice unless, at the time the notice is given, the investigating officer warns the person that the person is obliged to comply.

(4) A person is not excused from providing information or producing a document required under this section on the ground that the information or document would tend to incriminate the person.

(5) Where a person provides information or produces a document in compliance with a notice—

(a) the information provided or the document produced; and

(b) any other information, document or thing obtained as a direct or indirect consequence of that information or document;

is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence in respect of the falsity of the information or document or an offence against section 123.

(6) A person is excused from providing information or producing a document required under this section on the ground that the information or document would, in proceedings before the Supreme Court, be privileged because it was a communication between the person and his or her legal adviser.

122. Retaining and copying documents produced

Where a person produces to an investigating officer a document in compliance with a notice under section 121, the officer—

(a) may take possession of, and make copies of, the document;

(b) may retain possession of the document for such period as is necessary to make those copies; and

(c) shall, during that period, comply with any reasonable request by or of behalf of the person who produced the document to inspect and make copies of the document.

123. Obstructing etc investigating officers

A person shall not, without reasonable excuse—

(a) obstruct or hinder an investigating officer in the exercise of his or her powers under this Division; or

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(b) fail to comply with a requirement under paragraph 118 (4) (c) or a notice under section 121.

Penalty:

(a) if the offender is a natural person—

(i) for contravention of paragraph (a)—50 penalty units or imprisonment for 6 months, or both;

(ii) for contravention of paragraph (b)—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

PART 8—FINANCIAL COUNSELLING TRUST FUND

124. Continuation of Fund

(1) The Financial Counselling Trust Fund in existence under the *Credit Act 1985* immediately before the commencement of this Part continues in existence by force of this section with the same name.

(2) The money constituting the Fund immediately before the commencement of this Part continues to form part of the Fund.

125. Payments to Fund

The following amounts shall be paid to the Financial Counselling Trust Fund:

(a) amounts of public money appropriated by an Act for the purposes of the Fund;

(b) amounts of civil penalties paid under section 106 of the Credit Code;

(c) amounts that a credit provider or finance broker has agreed or undertaken to pay to the Fund;

(d) amounts paid to the Territory because of an order under subsection 85AA (1) of the *Credit Act 1985*;

(e) amounts recovered by enforcing orders under subsection 85AA (1) of the *Credit Act 1985* as judgments under section 92, and interest on such amounts;

(f) interest received from the investment of money of the Fund.

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126. Payments from Fund

The moneys of the Financial Counselling Trust Fund may be applied for any of the following purposes:

(a) consumer credit counselling;

(b) credit and debt management education;

(c) consumer credit research;

(d) consumer credit litigation;

(e) any other credit related activity determined by the Minister.

127. Bank account

All money received by the Financial Counselling Trust Fund shall be paid into a trust bank account maintained under section 51 of the *Financial Management Act 1996*.

PART 9—MISCELLANEOUS

Division 1—Review by Credit Tribunal

128. Review of decisions—credit providers

Application may be made to the Tribunal for review of a decision of the Director—

(a) under subsection 20 (1) cancelling the registration of a credit provider who is a natural person;

(b) under subsection 20 (1) suspending the registration of a credit provider who is a natural person;

(c) under subsection 20 (2) cancelling the registration of a credit provider which is a body corporate;

(d) under subsection 20 (2) suspending the registration of a credit provider which is a body corporate;

(e) under subsection 20 (3) disqualifying a credit provider from obtaining registration as a credit provider or finance broker;

(f) under paragraph 20 (4) (a) removing the suspension imposed on a credit provider;

(g) under paragraph 20 (4) (b) revoking the disqualification of a credit provider;

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(h) under subsection 24 (1) taking disciplinary action against a registered credit provider;

(j) under paragraph 24 (1) (f) disqualifying a defined influential person from obtaining registration as a credit provider or finance broker; or

(k) under subsection 24 (1) not to take disciplinary action in relation to a registered credit provider after inviting the credit provider to show cause why such action should not be taken.

129. Review of decisions—finance brokers

Application may be made to the Tribunal for review of a decision of the Director—

(a) under subsection 51 (1) cancelling the registration of a finance broker who is a natural person;

(b) under subsection 51 (1) suspending the registration of a finance broker who is a natural person;

(c) under subsection 51 (2) cancelling the registration of a finance broker which is a body corporate;

(d) under subsection 51 (2) suspending the registration of a finance broker which is a body corporate;

(e) under subsection 51 (3) disqualifying a finance broker from obtaining registration as a finance broker or credit provider;

(f) under paragraph 51 (4) (a) removing the suspension imposed on a finance broker;

(g) under paragraph 51 (4) (b) revoking the disqualification of a finance broker;

(h) under subsection 55 (1) taking disciplinary action against a registered finance broker;

(j) under paragraph 55 (1) (f) disqualifying a defined influential person from obtaining registration as a finance broker or credit provider; or

(k) under subsection 55 (1) not to take disciplinary action in relation to a registered finance broker after inviting the finance broker to show cause why such action should not be taken.

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130. Notification of decisions

(1) Where the Director makes a decision of the kind referred to in section 128 or 129, the Director shall, within 28 days after making the decision, give notice in writing of the decision to—

(a) the credit provider or finance broker;

(b) if the decision is of the kind referred to in paragraph 128 (h), (j) or (k) or 129 (h), (j) or (k) and was taken after a complaint was made under section 22 or 53 about the credit provider or finance broker—the complainant; and

(c) if the decision is of the kind referred to in paragraph 128 (j) or 129 (j)—the defined influential person.

(2) A notice under subsection (1) shall—

(a) set out the Director's findings on material questions of fact, referring to the evidence or other material on which those findings were based, and the reasons for the Director's decision; and

(b) include a statement to the effect that an application may be made within 28 days after the date of the notice to the Tribunal for review of the decision.

(3) The validity of a decision shall not be taken to be affected by a failure to comply with this section.

131. Application for review

(1) A person to whom the Director is required to give notice of a decision under section 130 may, within 28 days after receiving notice, apply to the Tribunal for review of the decision.

(2) The Tribunal may, on written application, extend the time for the making of an application under subsection (1).

132. Review by Tribunal

(1) The Tribunal may review any decision of the Director in respect of which an application is made to it under section 128 or 129.

(2) For the purpose of reviewing a decision, the Tribunal may exercise all the powers that are conferred by this Act on the Director and shall make a decision—

(a) affirming the decision under review;

(b) varying the decision under review; or

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(c) setting aside the decision under review and—

(i) making a decision in substitution for the decision so set aside; or

(ii) remitting the matter for reconsideration by the Director in accordance with any directions or recommendations of the Tribunal.

133. Operation and implementation of decision to be reviewed

(1) Subject to subsection (2), the making of an application to the Tribunal for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Tribunal may, on written application by a party to the proceeding for review of the decision, make an order staying or otherwise affecting the operation of the decision if the Tribunal—

(a) is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review; and

(b) considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application for review.

(3) An order under subsection (2) (including an order that has been varied under this subsection)—

(a) may be varied or revoked;

(b) is subject to such conditions as are specified in the order; and

(c) has effect until—

(i) the period of operation (if any) specified in the order expires; or

(ii) the decision of the Tribunal on the application for review comes into operation;

whichever occurs first.

(4) The Tribunal shall not make an order under this section unless each party to the proceeding for review of the decision has been given a reasonable opportunity to make submissions to the Tribunal in relation to the matter.

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Division 2—General

134. Secrecy

(1) This section applies to a person—

(a) who is or has been engaged in the administration of the consumer credit legislation; or

(b) who receives information or a document from the Director under that legislation.

(2) Subject to subsection (3), a person to whom this section applies shall not—

(a) make a record of, or directly or indirectly divulge or communicate to a person, information concerning the affairs of another person acquired for the purposes of the consumer credit legislation; or

(b) produce to a person a document produced for the purposes of the consumer credit legislation.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

(3) Subsection (2) does not prevent a person to whom this section applies from—

(a) divulging or communicating information concerning the affairs of another person with that person's consent; or

(b) divulging or communicating information, or producing a document, to a court for the purposes of civil or criminal proceedings.

135. Limitation on prosecution

Despite any other law in force in the Territory, proceedings for an offence against this Act or the *Credit Act 1985* may be brought—

(a) within the period of 3 years immediately following the commission of the offence; or

(b) with the consent of the Minister, at any time after the expiration of that period.

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136. Conduct of agents

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 taken to be the conduct of the credit provider or finance broker.

137. Extensions of time

Unless the contrary intention appears, a power of a court or the Tribunal, Director or Registrar to extend a period under this Act or the *Credit Act 1985* may be exercised despite the period having elapsed.

138. Registration—evidence

A certificate purporting to be signed by the Director stating that a specified person was or was not, on a specified day or during a specified period, a registered credit provider or a registered finance broker is evidence of the matters so stated.

139. Compliance with approved forms

Strict compliance with the forms approved for the purposes of this Act is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

140. Power of Minister to determine fees

(1) The Minister may, by notice published in the *Gazette*, determine fees for the purposes of this Act.

(2) A determined fee may be—

(a) a specified amount; or

(b) an amount calculated in a specified manner.

141. Regulations

The Executive may make regulations for the purposes of this Act, and, in particular, may make regulations prescribing penalties not exceeding—

(a) if the offender is a natural person—10 penalty units; or

(b) if the offender is a body corporate—50 penalty units;

for offences against the regulations.

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NOTES

1. The *Consumer Credit (Administration) Act 1996* as shown in this reprint comprises Act No. 41, 1996 amended as indicated in the Tables below.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

Table of Acts

Act	Number and year	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
Consumer Credit (Administration) Act 1996	41, 1996	2 Sept 1997	Ss. 1 and 2: 2 Sept 1997 Remainder: 1 Nov 1997 (*see Gazette* 1996, No. S272)	
Legal Practitioners (Consequential Amendments) Act 1997	96, 1997	1 Dec 1997	Ss. 1 and 2: 1 Dec 1997 Remainder: 1 June 1998 (*see* s. 2 (2))	—
Consumer Credit (Administration) (Amendment) Act 1998	47, 1998	16 Nov 1998	16 Nov 1998	—
Statute Law Revision (Penalties) Act 1998	54, 1998	27 Nov 1998	Ss. 1 and 2: 27 Nov 1998 Remainder: 9 Dec 1998 (*see Gazette* 1998, No. 49, p. 1078)	—

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NOTES—continued

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3	am. No. 96, 1997
S. 24A	ad. No. 47, 1998
S. 55A	ad. No. 47, 1998
S. 87	am. No. 54, 1998
S. 121	am. No. 47, 1998

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