

# Credit Bill

## CLAUSE NOTES

### PART I.—PRELIMINARY

*Clause 1* contains the short title of the Act.

*Clause 2* provides for the coming into operation of the Act upon a date, or dates to be fixed.

*Clause 3* contains details of the Parts and Divisions of the Act.

*Clause 4* applies the Act to sales, credit contracts and property mortgages made after the commencement of the Act, and specifies the circumstances in which the law of Victoria as enacted by this Act will apply.

*Clause 5* contains the definition provisions including the definition of significant terms used in the Act.

*Clause 6* contains a definition of the word "court" as used in this Act and means the Credit Tribunal or a Magistrates' Court, unless the issue arises in the course of other litigation, in which case the court before which that litigation arises may also have jurisdiction under this Act.

*Clause 7* provides for the variation of the monetary limit and interest rate set by the Act.

*Clause 8* presumes credit sales or loans and continuing credit contracts to fall within this Act unless the contrary is established.

*Clause 9* applies the Act to the successors of parties under a credit contract, contract of guarantee, or property mortgage.

*Clause 10* excludes master and servant contracts of employment.

*Clause 11* contains an interpretation of "annual percentage rate" and is to be read with the provisions of section 37 and section 60.

*Clause 12* contains an interpretation of "credit charge" and of "accrued credit charge" defining the interest component of amounts payable under credit sales, loans and continuing credit contracts.

*Clause 13* defines "tied loan" and "tied continuing credit contract" for the purposes of the provisions in Part II. imposing liability in certain circumstances on credit providers for breaches by suppliers of sale contracts.

*Clause 14* deems contracts for the hiring of goods to be credit sales if the price of the goods does not exceed \$15 000 and the hirer has a right or obligation to purchase and deems certain implied purchase leases to be credit sales. However, genuine hirings may be exempted under clause 19.

*Clause 15* provides that lay-by sales and sales in respect of payment for which credit is provided under a continuing credit contracts are not credit sales.

*Clause 16* provides that the provisions regulating loans do not apply to regulate the provision of credit under continuing credit contracts.

*Clause 17* is an interpretation provision whereby the business of providing credit applies where that is only part of the business carried on.

*Clause 18* relates to the operation of the Act as a uniform Act with the proposed laws of other States and Territories and allows the laws of such other States and Territories to be recognized as corresponding laws.

*Clause 19* contains powers for the Governor in Council to grant exemption from the Act.

## PART II.—SALES

*Clause 20* defines sales as being a contract for the sale of goods and services with a cash price of not more than \$15 000 or a sale of goods that are or include a commercial vehicle or farm machinery.

*Clause 21* enables a buyer to rescind a sale where he has been unable to obtain credit having made it known to the supplier that he required credit.

*Clause 22* prohibits the supplier requiring the buyer to obtain credit from a person selected by the supplier.

*Clause 23* provides that where a credit sale or loan regulated by this Act is rescinded and that sale or loan is tied to a property mortgage, the mortgage is also discharged to the extent the two are part of the one transaction.

*Clause 24* provides for the joint and several liability of the supplier and linked credit provider where the buyer has a claim in relation to the sale. Proceedings may not be taken against the credit provider unless they have been taken against the supplier and any judgments may not be enforced against the credit provider unless demand has been made on, but not satisfied by, the supplier. The credit provider's liability is limited to the cash price of the goods

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*Clause 25* makes provision for the discharge of a tied loan where the sale with which it is connected is rescinded or discharged. The clause makes provision for the rights and obligations of the buyer, supplier and credit provider both in respect of payments and the delivery of goods. The court is given power to settle disputes.

*Clause 26* makes provisions corresponding to those in clause 25 in the case of the rescission or discharge of a sale financed under a tied continuing credit contract. Under clause 26 where a sale is rescinded or discharged and payment was made, or is to be made under a continuing credit contract, the credit provider is required to cancel amounts that would have been due under the credit contract in respect of the sale, whether in payment of the cash price or of credit charges, the credit contract itself remaining in force.

*Clause 27* renders the provisions of clauses 25 and 26 additional rather than exclusive remedies at law and enables a supplier and a linked credit provider to contract as to their rights and obligations to each other, but not to the purchaser.

*Clause 28* requires a supplier who is informed of a buyer's rescission or discharge of a sale to inform the linked credit provider of the rescission or discharge.

### PART III.—REGULATED CONTRACTS

*Clause 29* limits the application of Part III. to credit sales of goods and services where the cash price does not exceed \$15 000 and to loans where the amount financed does not exceed \$15 000 and the interest rates does not exceed 14 per centum (with an exception for acceptable rates of interest). The Part also applies to credit sales of commercial vehicles and farm machinery with a cash price exceeding \$15 000 and to loans secured on commercial vehicles or farm machinery.

*Clause 30* requires credit sales and loans to be written unless made by the acceptance of a written offer or in accordance with clause 43.

*Clause 31* requires credit providers and suppliers to use contract forms that include a warning statement and a statement of the right to revoke the contract. The clause also requires copies of the forms to be given.

*Clause 32* requires credit providers to give to the debtor details of the acceptance of offers and a copy of the offers.

*Clause 33* requires credit providers to give to debtors a statement setting out the rights of the debtor under the Act.

*Clause 34* is the provision which, in conjunction with Schedules 2 and 3, sets out the details of the statutory information required to be included in credit sales of goods and services. The contract must disclose the details of the amount financed, the credit charge, the annual percentage rate and all other relevant details and terms of the contract. Sub-clause (2) limits the type of insurance premiums which may be included in the amount financed.

*Clause 35* is the provision which, in conjunction with Schedules 4 and 5, sets out the details of the statutory information required to be included in loans. The contract must disclose details of the amount financed, the credit charge, the annual percentage rate, and all other relevant details and terms of the contract. Sub-clause (2) limits the type of insurance premiums which may be included in the amount financed.

*Clause 36* applies to a credit sale or loan made by an agreement in writing which provides for the consolidation of amounts payable under one credit sale or loan with amounts payable under another credit sale or loan.

*Clause 37* specifies the requirements for disclosure of the annual percentage rate for credit sales and loans. Under paragraph (a), the rate to be disclosed is the rate applied to the balances of the amount financed to yield the credit charge. If paragraph (a) is not applicable, paragraph (b) provides alternative methods of disclosure of the rate, including disclosure by use of the method set out in Schedule 7.

*Clause 38* provides that where a loan is secured by a property mortgage over land there may be an acceptable rate of interest and a higher rate that does not exceed the acceptable rate by more than 2 per centum.

*Clause 39* provides that a credit sale or loan does not comply with the Act if it includes more than one annual percentage rate or a reference to any other rate and, for the purposes of applying an interest rate if more than one is disclosed, the lowest rate is to be applied.

*Clause 40* provides that a loan may be entered into pursuant to an agreement for the provision of store credit certificates and that the agreement itself is not a loan for the purposes of Part III.

*Clause 41* requires a store credit agreement and a loan thereunder to be in writing.

*Clause 42* recites the documents and statements to be given where a loan is made under a store credit agreement: (a) a copy of the agreement and loan, (b) a summary of the right to return credit certificates, and (c) a summary of the debtor's rights under the Act.

*Clause 43* recites the required content of the agreement for the provision of store credit certificates.

*Clause 44* requires a loan made pursuant to a store credit agreement to contain the same information as is required by section 35, subject to specified qualifications.

*Clause 45* provides that no normal debt liability is incurred by a person who returns a store credit certificate unused.

*Clause 46* imposes a civil penalty on a credit provider who does not comply with the requirements of the Act in relation to disclosure in credit sales and loans. The maximum amount of the penalty is loss of all credit charges but under clause 89 the Court is empowered to determine that part only of the credit charges will be lost. The penalty also applies to a credit provider where a property mortgage securing a credit sale or loan is not written as required under clause 95.

*Clause 47* makes a credit provider guilty of a criminal offence if a credit sale or loan is not in accordance with the Act. The penalty is in addition to the penalty under clause 30 where the contract is not in writing.

*Clause 48* makes void a provision imposing a minimum credit charge exceeding the statutory limits. A credit provider who includes a void provision is guilty of an offence.

*Clause 49* requires copies of property mortgages securing credit sales and loans to be given to the debtor.

*Clause 50* requires credit providers to comply with requests for information and statements of the account under credit sales and loans.

*Clause 51* requires credit providers to give copies of contracts or offers to debtors and guarantors upon request, together with copies of relevant insurance contracts.

*Clause 52* permits the Court to reduce certain fees or amounts included in credit sales or loans to the reasonable value of those fees or amounts.

*Clause 53* contains the interpretation of "continuing credit contract". A continuing credit contract is a contract under which credit is provided for the supply of cash or for the payment of goods and services on a running account basis.

*Clause 54* limits the application of Division 2 of Part III to continuing credit contracts where the interest rate exceeds 14 per cent for cash supplied under the contract, or where goods and services are supplied and a charge is made for the credit, or an amount owing is not required to be paid within three months, or an amount owing may be paid by five or more instalments. The provisions of the Division do not apply to a continuing credit contract where cash is provided and the debt is secured by a contract where cash is provided and the debt is secured by a property mortgage in relation to which there is an acceptable rate of interest not exceeding 14 per cent, or where the maximum amount that may be owed exceeds \$15 000, or where credit is provided by way of overdraft on current account by a bank or pastoral finance company.

*Clause 55* defines "billing cycle" in relation to continuing credit contracts. It is such period not exceeding 40 days as is applied from time to time as the accounting period.

*Clause 56* deems amounts paid by the credit provider to the supplier of goods which satisfy the sum owing by the debtor to have been paid.

*Clause 57* identifies the chargeable amount under continuing credit contracts as the amount determined by the credit provider for each billing cycle as the chargeable amount, subject to the provision that under no circumstances may be chargeable amount for any billing cycle exceed the sum of the average daily balances of the account (paragraph (b) of clause 57 (1) would always be a greater amount than the amount under paragraph (a) although paragraph (a) would be the more usual manner of calculation of the chargeable amount).

*Clause 58* further limits both the calculation of the chargeable amount under clause 57 and of the credit charge under clause 59 by prohibiting a credit provider charging to a debtor amounts other than amounts of the kind set out in clause 58 (1). In particular, the chargeable amount may not include amounts other than the cash price of goods and services, the amount of cash supplied, and credit charges and other expenses outstanding from previous billing cycles.

*Clause 59* defines the expression credit charge by excluding all sums and expenditures set out in paragraphs (a) to (g) of sub-clause (1). Sub-clause (2) requires a credit provider to limit the credit charge to the amount derived by applying the disclosed annual percentage rate to the chargeable amount. Sub-clause (3) provides that in determining a credit charge, account is not taken of charges made by the credit provider to the supplier of goods and services or of cash to the debtor (e.g. under credit cards).

*Clause 60* interprets “annual percentage rate” for the purposes of continuing credit contracts as the rate applied under the contract to the chargeable amount to yield the credit charge.

*Clause 61* permits the application to a billing cycle of a continuing credit contract charge calculated as a monthly rate notwithstanding that the billing cycle is less than one month. The provisions do not apply if a billing cycle is less than 24 days and are required only for the first billing cycle of a contract which is for a period of less than a month.

*Clause 62* permits statements of account to be made up to include credit charges for holidays immediately following the end of the billing cycle provided that that amount of credit charge is not also included in the succeeding billing cycle.

*Clause 63* requires a credit provider to give a statement of his rights under the Act to a debtor before a debt is incurred, or if the contract is not written, to give the statement with the notice he is required to give under clause 64.

*Clause 64* is the provision requiring a notice containing statutory information to be given before a debt is incurred under a continuing credit contract. The statutory information requires disclosure of methods for calculating the chargeable amount and the credit charge, a statement of the annual percentage rate (or rates as, under continuing credit contracts, more than one rate can be applied), the credit limit under the contract and all other relevant details of the contract.

*Clause 65* applies to limit the operation of the exercise of a right to vary a contract for at least seven days after the debtor has been given notice of the variation. Special provision is made where notices are posted by bulk postage.

*Clause 66* is a provision which in conjunction with Schedule 7 requires a statement of account disclosing the statutory information required to be given for each billing cycle. The statutory information must include the opening and closing balances, details of goods and services and cash supplied, details of refunds and allowances, details of the credit charge and annual percentage rate (or rates) and details of stamp duty and other charges in the account.

*Clause 67* requires a credit provider to give a statement of account to the debtor at least seven days prior to instituting proceedings.

*Clause 68* prohibits a credit provider giving a statement of account for a billing cycle unless he has given a statement of account for the previous billing cycle (if any) and the statutory period has elapsed. It also prohibits the inclusion in the first statement of the chargeable amount for that billing cycle, thus requiring the first chargeable amount to be free of credit charge if paid not later than the date required under the second billing cycle.

*Clause 69* exempts a credit provider from giving a statement of account for the billing cycle if the account has not been active or the debt has been written off.

*Clause 70* requires a credit provider to pay upon request any amounts by way of refunds or otherwise that he owes to the debtor.

*Clause 71* imposes a civil penalty on a credit provider where he fails to comply with his obligations to the debtor in accordance with the Division. The maximum amount of the civil penalty is total loss of the credit charge for the billing cycle in respect of which the failure occurred but under clause 89, a court is given power to reduce the amount of the credit provider's loss.

*Clause 72* requires a credit provider to give to the debtor a copy of any property mortgage entered into in relation to the credit contract.

*Clause 73* requires a credit provider upon request to give the debtor or guarantor a copy of the notice given under clause 64.

*Clause 74* makes provision for the disclosure of amounts owing under credit contracts that are discharged under an arrangement for a new credit contract consolidating amounts owing under the discharged contracts.

*Clause 75* requires disclosure of amounts owing under a regulated contract before any variation is made to the amount financed, or the amount payable by the debtor to the creditor under a regulated continuing credit contract.

*Clause 76* makes provisions regulating deferral charges imposed under contracts that include provisions permitting such charges to be made. A deferral

charge may not exceed an amount determined by the application of the annual percentage rate to the deferred amount, a prescribed rate or any lesser amount agreed between the parties.

*Clause 77* permits the making of a default charge for late payment of amounts under regulated credit sales and loans provided that the amount does not exceed the amount determined by applying the annual percentage rate to the unpaid amount or the contractual rate, whichever is the less. It is specifically provided that a credit charge cannot be made on a default charge.

*Clause 78* prevents variation of contracts (otherwise than by way of consolidation, refinancing or deferral) to be subject to notice being given. A regulated contract continues to be a regulated contract notwithstanding its variation.

*Clause 79* permits a debtor who because of illness, unemployment or other reasonable cause is unable reasonably to discharge his obligations to apply for a variation of the contract (other than a variation affecting the annual percentage rate). If the application cannot be resolved by the parties it may be referred to the Director and then to a court.

*Clause 80* allows reasonable enforcement expenses to be charged to the debtor. A court may determine the amount of the expenses in the case of a dispute.

*Clause 81* prevents an attempted exclusion of a person's right to revoke an offer at any time before acceptance.

*Clause 82* permits the over-statement of the annual percentage rate under credit contracts. It also permits the under-statement provided the under-statement is not more than 1 part in 50 of the actual rate.

*Clause 83* permits the under-statement of an estimated credit charge. It also permits the over-statement provided the over-statement is not more than 1 part in 100 of the actual charge.

*Clause 84* makes provision for a case where under a credit sale or loan there is a discrepancy between the stated amount of the credit charge and the amount calculated by applying the stated annual percentage rate to the amount financed. The effect of the clause is to make the liability of the debtor a liability to pay whichever amount is the less.

*Clause 85* generally prohibits assignment by a credit provider or rights under a credit contract or under a property mortgage securing a credit contract to a person other than a licensed or exempt credit provider, except in the case of assignment by way of security or with the consent of the Director or Tribunal. The limitation on assignment does not operate to prevent assignment of rights under property mortgages affecting obligations arising otherwise than under the credit contract. Where a credit provider assigns a contract in contravention of the clause he loses his credit charges unless a court reduces the extent of that penalty.



*Clause 86* requires a credit provider to pay the full amount lent under a loan in cash or money's worth.

*Clause 87* provides for the order in which payments are to be applied, unless otherwise agreed upon.

*Clause 88* empowers a debtor who makes payments under multiple credit contracts with the same credit provider to specify the manner in which the payments are to be allocated.

*Clause 89* enables a credit provider who has failed to comply with the Act and has thereby lost his rights to recover the whole or part of the amount financed or the credit charge to apply to a court for an order increasing the liability of the debtor.

*Clause 90* enables a credit provider who is or was unlicensed to apply to a court under clause 89 for a general order in respect of his losses under contracts entered into while unlicensed.

*Clause 91* provides that where a debtor's liability is reduced under the Act that reduction shall be set off against sums owing, or if it exceeds sums owing, will be a debt owed by the credit provider to the debtor.

*Clause 92* enables a court upon the application of a party to a contract to give relief for minor errors in documentation.

#### PART IV.—REGULATED PROPERTY MORTGAGES

*Clause 93* applies Part IV. to property mortgages given by persons, other than bodies corporate, to secure debts under regulated contracts.

*Clause 94* renders void provisions in a property mortgage to which the Part applies which require payments which exceed those specified in the regulated contract creating the secured debt, or permitted by the Act.

*Clause 95* requires a property mortgage to be in writing or to be made as the result of a written offer or agreement. The provision does not apply where the mortgagee had possession of the property before the mortgage was made.

*Clause 96* enables reasonable enforcement expenses to be charged to a mortgagor. A court may determine the amount of the expenses in the case of a dispute.

*Clause 97* makes void a provision purporting to permit a mortgagee to enter on premises to possess goods without an order of a court.

*Clause 98* makes a mortgagee guilty of an offence for entry on premises without the Order of a Court, unless the mortgagor has given consent.

*Clause 99* requires a mortgagor to comply with a written request to inform the mortgagee where the goods the subject of the mortgage are situated.

*Clause 100* empowers a court upon the application of a party to a mortgage to determine the time and place for re-delivering goods to the mortgagee.

*Clause 101* makes void a provision by a natural person creating a blanket charge over all his property and assets. (Other than business property or assets.)

*Clause 102* makes void property mortgages of future property. The clause does not apply to provisions in property mortgages relating to property acquired in the future under regulated credit contracts, property described or identified in the mortgage or provisions extending the mortgage to apply to goods replacing, or in addition to, other goods subject to the mortgage.

*Clause 103* makes void a provision under a property mortgage insofar as it secures amounts payable under a regulated credit contract where the annual percentage rate under the contract exceeds 30 per centum.

*Clause 104* makes void a purported property mortgage of goods to which a continuing credit contract relates.

*Clause 105* renders it an offence for a person to defraud the mortgagee by disposing of goods subject to a mortgage.

*Clause 106* prohibits a mortgagor from disposing of mortgaged goods without the consent of the mortgagee. Consent cannot unreasonably be withheld and in the case of dispute a court may be required to adjudicate.

#### PART V.—TERMINATION AND ENFORCEMENT OF REGULATED CONTRACTS AND REGULATED PROPERTY MORTGAGES

*Clause 107* defines net balance for the purposes of the termination and enforcement provisions relating to credit contracts. The net balance is the sum of the outstanding balances of amounts owed at the particular time less any statutory rebates.

*Clause 108* requires a credit provider upon request by the debtor to provide a statement of the net balance due under a regulated contract.

*Clause 109* entitles a debtor after giving notice, to discharge a credit contract by paying the net balance.

*Clause 110* permits a mortgagor to require the mortgagee to exercise his right to sell goods subject to a property mortgage unless the property mortgage is security for a debt or obligation arising otherwise than under a regulated credit contract. The clause makes provision for the return of the goods to the mortgagee and for the sale of them by the mortgagee at the best price reasonably obtainable.

*Clause 111* entitles a credit provider to institute proceedings or exercise a right under a regulated contract or mortgage, but only if there has been a default by the debtor, notice has been served by the credit provider or mortgagee and the notice has not been complied with.

*Clause 112* prevents a credit provider from exercising rights under a regulated contract if he has given notice of default and the debtor has remedied the default.

*Clause 113* authorises a credit provider to recover the net balance due to him under a regulated contract together with enforcement expenses.

*Clause 114* contains a prohibition upon the repossession of goods, except with the consent of a court, if 75 per centum of the amount financed under the regulated contract has been paid.

*Clause 115* empowers a court on the application of a mortgagee to order a mortgagor in default and upon whom notice has been served to re-deliver goods.

*Clause 116* requires a mortgagee who has taken possession of property to postpone sale or disposal until notice has been given to the mortgagee and a period has elapsed. If the mortgagor applies for relief to a court, a further prohibition on sale or disposal may be made by Order of a court.

*Clause 117* enables a mortgagor to redeem repossessed goods by paying the net balance due under the regulated contract and any other secured amounts or remedying all defaults and paying all amounts payable at any time before foreclosure or sale by the mortgagee.

*Clause 118* requires a mortgagee who takes possession of property to account for the proceeds of sale or the amount he should have received on prompt enforcement and to pay the balance to the mortgagor after deduction of amounts owing to the mortgagee. It places on the mortgagee the onus of proving that he obtained the best price under a sale of re-possessed goods.

*Clause 119* enables a farmer who has farm machinery repossessed under a property mortgage to apply to a Court for restoration.

*Clause 120* enables a debtor or mortgagor who has received notice from a credit provider or mortgagee of the intention to institute proceedings, to apply to the Director, or a Court for relief.

#### PART VI.—PROVISIONS APPLYING GENERALLY TO REGULATED CONTRACTS AND REGULATED PROPERTY MORTGAGES

*Clause 121* renders it an offence for a person in an application for a licence under this Act or in an offer to enter into a regulated contract or property mortgage to make a false or misleading statement or omission.

*Clause 122* where under a regulated contract or property mortgage it is provided that the goods be kept at a specified place, a court on the application of the debtor or mortgagor vary that place.

*Clause 123* renders a provision in a regulated contract or property mortgage requiring a debtor or mortgagor to assign part of his salary or superannuation to payment of the debt void.

*Clause 124* prohibits a credit provider from accepting a bill of exchange or promissory note for payment or security under a regulated contract or property mortgage. The clause does not apply to bank notes, cheques (other than post-dated cheques) or banker's orders.

*Clause 125* makes it an offence to publish an advertisement relating to credit that is false or misleading or that states or implies that an interest rate will be applied to credit contracts other than the interest rate that is actually applicable. It is also an offence to advertise instalment rates without also stating the cash price and total amount payable.

*Clause 126* contains a general prohibition of credit hawking.

*Clause 127* requires certain terminology to be used to describe amounts etc. in regulated contracts.

*Clause 128* renders void an agreement whereby a credit provider or mortgagee acts as the agent for the debtor or mortgagor.

*Clause 129* provides that a regulated contract or property mortgage is not void by reason only of an offence having been committed under the Act, and the other party in those circumstances is not deemed to aid or abet that offence.

*Clause 130* requires notes served by credit providers or mortgagee to be served on each person constituting a joint debtor or mortgagor.

## PART VII.—CONTRACTS OF INSURANCE

*Clause 131* prohibits a credit provider from requiring a debtor to enter into a contract of insurance other than a contract of insurance or compulsory insurance in respect of a property mortgage under clause 132.

*Clause 132* regulates requirements by the mortgagee for insurance in respect of property mortgages and prohibits the charging of premiums for periods exceeding 12 months.

*Clause 133* applies where a debtor or mortgagor had entered into a contract of insurance other than as referred to in clause 132, and precludes the mortgagee or credit provider from insisting upon the renewal of that policy but permits a requirement to maintain the policy in force for 12 months where the premium is part of the amount financed.

*Clause 134* requires insurance contracts (other than compulsory insurance contracts as defined in clause 5) to include certain information about the premiums and risks. Sub-clause (2) provides that *Scott v. Avery* clauses and certain other

provisions in insurance contracts relating to arbitration are to be read as agreements to arbitrate and not as preventing causes of action from accruing or being instituted.

*Clause 135* provides that where under a regulated credit sale or regulated loan, or under a regulated continuing credit contract an amount payable to an insurer forms part of the amount financed the credit provider shall hold such sum on trust for the insurer and requires the amount to be paid to the insurer.

*Clause 136* provides that where debtors and mortgagors are entitled to no-claim bonuses, credit providers and mortgagees shall pass that benefit to the debtors and mortgagors.

*Clause 137* provides that contracts of insurance relating to regulated contracts or regulated property mortgages are not void by reason only of immaterial mis-statements or omissions.

*Clause 138* limits the right of an insurer in respect of property under a regulated contract or property mortgage to exclude liability.

#### PART VIII.—CONTRACTS OF GUARANTEE

*Clause 139* makes a contract of guarantee in respect of the obligations of a debtor under a regulated contract unenforceable unless it is in writing.

*Clause 140* limits the liability of a guarantor in respect of the obligations of a debtor under a regulated contract to an amount not exceeding the debtor's liability and reasonable costs.

*Clause 141* limits the right of a credit provider to bring proceedings against a guarantor unless he proceeds against the debtor and guarantor jointly.

*Clause 142* provides that the guarantor of a minor is liable under a guarantee contract in respect of a regulated contract as if the minor had been of full age, provided that the contract includes a prominent statement to the effect that the guarantor may not be able to recover amounts from a debtor who is a minor.

*Clause 143* requires copies of guarantee contracts and regulated contracts to which they relate to be given to guarantors.

*Clause 144* requires a statement of rights to be given to guarantors.

*Clause 145* enables a guarantor to discharge a guarantee relating to a regulated contract insofar as it relates to future obligations.

*Clause 146* makes void a purported exclusion of a person's right to revoke an offer to enter into a contract of guarantee before it is accepted.

#### PART IX.—GENERAL

*Clause 147* enables a court to re-open a contract where it appears to the court that the contract is harsh or unconscionable.

*Clause 148* limits the right of a debtor to assign to a credit provider interests which will accrue under a will.

*Clause 149* renders unenforceable a credit contract where the rate of interest exceeds 48 per centum but does not affect the right of a court under clause 147 to give relief where the rate of interest is below that rate and in the opinion of the court, is excessive.

*Clause 150* requires written documents to be readily legible and deems them to be so legible if in clear handwriting or in a specified type of print.

*Clause 151* enables documents required by this Act to be on a single form unless this Act otherwise provides.

*Clause 152* recognizes signatures affixed under the authority of the person purporting to sign.

*Clause 153* provides for the giving or serving of notices under the Act.

*Clause 154* provides that documents sent by post are to be deemed to have been given to the addressee when the letter would be delivered in the ordinary course of post.

*Clause 155* allows Sundays, Saturdays and holidays to be excluded in the computation of periods less than eight days.

*Clause 156* enables a court to extend a period notwithstanding that the due date has passed.

*Clause 157* provides for a general offence and general penalty.

*Clause 158* restricts the commencement of proceedings under this Act to 3 years after the offence, or with the consent of the Attorney-General a longer period.

*Clause 159* makes officers of companies concurrently liable with the company itself if they are knowingly a party to the breach.

*Clause 160* renders void provisions in regulated contracts and mortgages that are inconsistent with this Act and makes credit providers and mortgagees guilty or an offence if such provisions are included.

*Clause 161* specifically provides that the Act (unless otherwise stated) does not exclude other remedies.

*Clause 162* enables the Governor in Council to make regulations, including regulations prescribing calculation tables.

#### PART X.—ADMINISTRATION

*Clause 163* vests in the Consumer Affairs Council under the *Consumer Affairs Act 1972* certain responsibilities for giving advice and making recommendations.

*Clause 164* sets out the functions and powers of the Director of Consumer Affairs with respect to investigating complaints and reviewing the Act.

*Clause 165* gives the Director power to enter premises and to inspect books and records in the course of his duties.

*Clause 166* renders it an offence to obstruct the Director, or to refuse without reasonable excuse to produce books to him.

*Clause 167* prohibits the Director and his staff from disclosing confidential information gained under this Act.

*Clause 168* requires the Director to table an annual report in Parliament.

*Clause 169* provides that clause 168 does not authorize the Director in his report to refer by name to a credit provider alleged to have breached the Act.

*Clause 170* establishes the Credit Tribunal and provides for its composition.

*Clause 171* provides the terms and conditions of appointment for the members of the Credit Tribunal.

*Clause 172* provides for the payment of allowances to members.

*Clause 173* provides for the resignation of members and for their removal from office.

*Clause 174* provides for the appointment of an acting chairman who shall be a Judge of the County Court.

*Clause 175.* Where a vacancy occurs in the post of any member, other than the Chairman, the Governor in Council may appoint an acting member.

*Clause 176.* Proceedings of the Tribunal are deemed not to be invalid by reason of the vacancy in the office of a member, or by reason of a defect in appointment.

*Clause 177* provides for the circumstances in which the Chairman may sit alone, whereas in all other cases the Tribunal shall consist of the Chairman and two other members.

*Clause 178.* All determinations by the Tribunal shall be by a majority of members, save the questions of law to be determined by the Chairman.

*Clause 179.* Questions of law arising before the Registrar may be referred to the Chairman, and the Chairman may refer questions of law in the form of a special case to the Supreme Court.

*Clause 180.* Parties to proceedings before the Tribunal may appear personally or by a legal representative, and in some instances by other persons. The Director may also appear on behalf of a natural person.

*Clause 181* incorporates provisions of the *Evidence Act 1958* with respect to hearings before the Tribunal.

*Clause 182* empowers the Tribunal to award costs.

*Clause 183.* Subject to the Act, the Tribunal is free to govern its own procedure.

*Clause 184.* Parties to proceedings may request written reasons for a determination of the Tribunal, and the Tribunal shall provide the same.

*Clause 185.* Determinations of the Tribunal are to be given effect to by the Director.

*Clause 186.* The Tribunal may request the Director to investigate a matter, and if the Minister agrees, the Director shall investigate that matter.

*Clause 187* provides circumstances in which a person may be in contempt of the Tribunal.

*Clause 188* authorizes the appointment of a Registrar who may act as the delegate of the Chairman.

*Clause 189* is an evidentiary provision enabling the Registrar to certify documents from the Register.

*Clause 190* renders it an offence for a member of the Tribunal, the Registrar or his staff to disclose information acquired in the performance of his duty.

### *Licences*

*Clause 191* renders it an offence to carry on the business of a credit provider without being the holder of a licence under this Act.

*Clause 192* exempts from the licensing requirement a number of bodies and institutions including banks, insurance companies, building societies and friendly societies, together with persons who provide credit only under contracts other than regulated contracts, to bodies corporate or under loans or continuing credit contracts at a rate lower than 14 per cent.

*Clause 193* sets out the requirements upon an application for a licence.

*Clause 194* renders it an offence to include false or misleading information in an application for a licence.

*Clause 195* requires the Tribunal to give public notice of its receipt of a licence application.

*Clause 196* enables the Director and any other person to object to the grant of a licence, which objection shall be referred to the Tribunal.



*Clause 197* provides that, where no objection is received to a licence application by a natural person, then unless that person is an undischarged bankrupt or has been convicted of fraud the Registrar shall grant a licence.

*Clause 198* is the corresponding provision with respect to corporate applicants.

*Clause 199* provides that a licence may be subject to prescribed conditions.

*Clause 200* enables the holder of a credit provider's licence to seek to have his licence endorsed for the provision of continuing credit or store credit.

*Clause 201* permits a licensee to carry on business under the name of the licensee, or any name which the licence permits.

*Clause 202* requires that where partners carry on the business of credit providers all partners must be licensed.

*Clause 203* describes the form of a licence.

*Clause 204* requires a licensee to state the address or addresses at which business is to be carried on.

*Clause 205* requires the licensee to notify the Registrar of any change of address of the business.

*Clause 206* requires the Registrar to keep a Register of licensed persons.

*Clause 207* enables persons to inspect the Register.

*Clause 208* provides that a licence will continue in force unless surrendered or cancelled under the Act.

*Clause 209* requires a licensee to pay an annual fee and to file an annual statement with the Registrar.

*Clause 210* enables a licensee to surrender his licence.

*Clause 211* enables the Tribunal to conduct a hearing where it receives notice of an objection to the holding of a licence under the Act, and to cancel or suspend the licence or impose other sanctions upon the licensee.

*Clause 212* provides that where the Director or any other person lodges with the Registrar an objection to an existing licence, the Tribunal may conduct a hearing and may discipline the licensee, and may suspend or cancel his licence.

*Clause 213.* Where a licence applicant has been the subject of a previous licence cancellation, the Registrar shall refer such application to the Tribunal for determination.

*Clause 214* provides a right of appeal to the Supreme Court where the Tribunal refuses to grant, suspends, or cancels a licence.

*Clause 215* enables the legal representatives of a deceased licensee to continue the business under the licence for a period up to 6 months.

*Clause 216* empowers the Tribunal to call in a licence for endorsement.

*Clause 217* imposes a civil penalty (subject to clause 89) upon an unlicensed credit provider by relieving a debtor of the obligation to pay the amount financed or the credit charge to that credit provider.

*Clause 218* renders it an offence (subject to clause 201) for a licensee to carry on business under a name other than its licensed name.

#### PART XI.—REPEALS AND AMENDMENTS

*Clause 219* repeals the *Money Lenders Act 1958* but retains the provisions of that Act in its application to contracts made before the commencement of this Act.

*Clause 220* amends the definition of "hire-purchase agreement" in the *Hire Purchase Act 1959* so that it excludes regulated credit sales.

*Schedule 1* sets out the formula for calculating accrued credit charges.

*Schedule 2* sets out the details to be included in a statement of the amount financed in relation to a credit sale of goods and services.

*Schedule 3* contains the information required in the statement of a credit charge in a credit sale of goods and services.

*Schedule 4* sets out the content of a statement of the amount financed in relation to a loan.

*Schedule 5* sets out the content of a statement of the credit charge in relation to a loan.

*Schedule 6* sets out the formula for calculating the annual percentage rate.

*Schedule 7* sets out the content of a statement of account in relation to a continuing credit contract.

*Schedule 8* lists the repealed Acts and provisions.