

**Reprint  
as at 1 August 2009**



**Credit Contracts and Consumer  
Finance Act 2003**

Public Act 2003 No 52  
Date of assent 13 October 2003  
Commencement see section 2

**Contents**

	Page
1 Title	7
<b>Part 1</b>	
<b>Preliminary provisions</b>	
2 Commencement	8
3 Purposes	8
4 Overview	9
5 Interpretation	10
6 Meaning of credit	16
7 Meaning of credit contract	16
8 Meaning of buy-back transaction	16
8A Meanings of associated and associated person	17
9 Act binds the Crown	18

---

**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Consumer Affairs.**

**Part 2**  
**Consumer credit contracts**

Subpart 1—Application

10	When this Part applies	19
11	Meaning of consumer credit contract	19
12	Investment purposes	20
13	Presumption relating to consumer credit contract	20
14	Effect of declaration	20
15	Certain contracts not consumer credit contracts	20
16	Lease of goods treated as consumer credit contract	21

Subpart 2—Required disclosure

*Initial disclosure*

17	Initial disclosure	22
----	--------------------	----

*Continuing disclosure*

18	Continuing disclosure	23
19	Content of continuing disclosure statement	23
20	Opening unpaid balance must not exceed closing unpaid balance of previous continuing disclosure statement	24
21	Continuing disclosure not required	24

*Variation disclosure*

22	Disclosure of agreed changes	25
23	Disclosure of changes following exercise of power	26

*Request and guarantee disclosure*

24	Request disclosure	27
25	Disclosure of guarantee	28
26	Disclosure of changes to guarantors	28

Subpart 3—Debtor's right to cancel

27	Right to cancel consumer credit contract	29
28	Notice of cancellation, return of property, and payment of cash price	30
29	Right of cancellation does not apply in certain situations	31
30	Effect of cancellation	31
31	Effect of credit sale cancellation	32

Subpart 4—Disclosure standards and how disclosure is  
made

32	Disclosure standards	32
33	Assumptions	33

34	Model forms	33
35	How disclosure is made	34
	Subpart 5—Interest charges	
36	End of day	35
37	Creditor to ensure that contract specifies annual interest rate or rates	35
38	Early debit or payment of interest charges prohibited	35
39	Limit on interest charges	36
40	Default interest charges	36
	Subpart 6—Fees	
	<i>Unreasonable fees</i>	
41	Unreasonable credit fee or default fee	37
42	Establishment fees	37
43	Prepayment fees	38
44	Other credit fees and default fee	38
	<i>Fees or charges passed on by creditor</i>	
45	Fees or charges passed on by creditor	39
	Subpart 7—Payments	
46	Crediting of payments	39
47	Dating and adjustments of debits and credits in accounts	40
48	Recovery of payments	41
	<i>Prepayments</i>	
49	Part prepayments	41
50	Debtor's right to full prepayment	41
51	Amount required for full prepayment	42
52	Rebate of insurance	42
53	Termination of consumer credit insurance contract	43
54	Creditor's loss arising from full prepayment	43
	Subpart 8—Changes on grounds of unforeseen hardship	
55	Changes on grounds of unforeseen hardship	43
56	Changes that can be made	44
57	Application may not be made in certain circumstances	45
58	Changes by court	45
59	Creditor may apply for variation of change	46

**Part 3**  
**Consumer leases, credit-related insurance, and**  
**buy-back transactions of land**

Subpart 1—Consumer leases

60	Consumer leases	46
61	Presumption relating to consumer lease	47
62	Declaration concerning consumer lease	47

*Disclosure of consumer lease*

63	Application of disclosure provisions	47
64	Initial disclosure of consumer lease	47
65	Variation disclosure of consumer leases	48
66	Variation disclosure not required	48
67	Request disclosure for consumer leases	48

*Amount payable on termination*

68	Amount payable on termination	49
----	-------------------------------	----

Subpart 2—Credit-related insurance, repayment waivers,  
and extended warranties

69	Restrictions on credit-related insurance, repayment waivers, and extended warranties	49
70	Disclosure of credit-related insurance, repayment waiver, or extended warranty	50

Subpart 3—Buy-back transactions of land

71	Application of disclosure provisions	51
72	Initial disclosure of buy-back transaction	51
73	Independent legal advice must be given to occupier	51
74	Buy-back transactions involving buy-back promoter	52
75	Land cannot be dealt with without leave of court if initial disclosure not made or no independent legal advice given	53
76	Interest of occupier is caveatable interest	53
77	Variation disclosure of buy-back transactions	53
78	Variation disclosure not required	54
79	Request disclosure for buy-back transactions	54
80	Unreasonable buy-back fees or buy-back default fees	54
81	Fees or charges passed on by transferee	55
82	Unreasonable fees payable to buy-back promoter or associated person	55
83	No limit on Part 2	56

**Part 4  
Enforcement and remedies**

Subpart 1—Preliminary provisions

84	Compliance programmes	56
----	-----------------------	----

*Jurisdiction*

85	Jurisdiction of High Court	56
86	Jurisdiction of District Courts	57
87	Jurisdiction of Disputes Tribunals	57

Subpart 2—Statutory damages

88	Creditors, lessors, transferees, and buy-back promoters liable for statutory damages	58
89	Amount of statutory damages	59
90	Enforcement of statutory damages	60
91	Court may reduce statutory damages	61
92	Guidelines for reducing statutory damages	61

Subpart 3—Orders, injunctions, and prohibited  
enforcement

*Court's general power to make orders*

93	Court's general power to make orders	62
94	Court orders	62
95	Miscellaneous provisions concerning court's general power to make orders	63

*Injunctions*

96	Injunctions	63
97	Injunctions restraining conduct of particular kind	64
98	Interim injunction	64

*Prohibited enforcement*

99	Enforcement of consumer credit contract prohibited	65
100	Enforcement of guarantee prohibited	65
101	Enforcement of consumer lease prohibited	66
102	Enforcement of buy-back transaction prohibited	66

Subpart 4—Offences

103	Offences	66
104	Conviction for 2 or more offences	67
105	When proceedings may be commenced	67

Subpart 5—Defence		
106	Reasonable mistake defence	67
107	Relevance of compliance programme	68
Subpart 6—Prohibition on certain creditors, lessors, transferees, and buy-back promoters		
108	Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters	68
109	Who may apply and nature of order	69
110	Costs	70
Subpart 7—Application of Commerce Act 1986 and provisions relating to Commerce Commission		
111	Role and functions of Commission under this Act	70
112	Commission’s rights to appear and adduce evidence	71
113	Application of Commerce Act 1986	71
114	Additional proceedings	72
115	Disposal of things seized	72
116	Court order for disposal of things seized to be suspended on conviction	72
<b>Part 5</b>		
<b>Reopening of oppressive credit contracts, consumer leases, and buy-back transactions</b>		
117	Application of Part	73
118	Meaning of oppressive	73
119	Collateral contracts and linked transactions	73
120	Reopening of credit contracts, consumer leases, and buy-back transactions	74
121	Refusal to agree to early termination, variation, or waiver	74
122	Reopening credit contracts involved in arrangement	74
123	Time and circumstances relevant to reopening credit contracts, consumer leases, or buy-back transactions	75
124	Guidelines for reopening credit contracts, consumer leases, and buy-back transactions	75
125	When reopening proceedings may be commenced	76
126	Evidence	77
127	Power of court on reopening credit contract, consumer lease, or buy-back transaction	78
128	Costs in consumer cases	79
129	Persons who share in profits or have beneficial interest in reopened credit contract, consumer lease, or buy-back transaction	79

130	Time of exercise of court's powers	79
131	No limit on sections 41, 80, and 82	80
<b>Part 6</b>		
<b>Miscellaneous provisions</b>		
132	Provisions relating to assignment of credit contracts, consumer leases, or buy-back transactions	80
133	Changes, deferrals, or postponements under credit contracts and consumer leases	80
134	Right to set-off	81
135	No contracting out	81
136	Application of law relating to illegal contracts	82
137	Conflict of laws	82
<i>Regulations</i>		
138	Regulations	82
<i>Acts amended and repealed</i>		
139	Acts amended	84
140	Repeal of Credit Contracts Act 1981 and Hire Purchase Act 1971	84
<i>Transitional provisions</i>		
141	Transitional provision	84
142	Election for Act to apply	85
143	Continuing application of Credit Contracts Act 1981 and Hire Purchase Act 1971	85
<b>Schedule 1</b>		87
<b>Key information concerning consumer credit contract</b>		
<b>Schedule 2</b>		92
<b>Information concerning consumer lease</b>		
<b>Schedule 3</b>		94
<b>Information concerning buy-back transactions of land</b>		
<b>Schedule 4</b>		97
<b>Acts amended</b>		

---

**1 Title**

This Act is the Credit Contracts and Consumer Finance Act 2003.

## Part 1

### Preliminary provisions

#### 2 Commencement

- (1) This section, section 1, subpart 3 of Part 3, section 138, section 141(2) and (3), and Schedule 3 come into force on the day after the date on which this Act receives the Royal assent.
- (2) Part 1 (other than this section), subpart 4 of Part 2, Parts 4 and 5, and sections 132 to 137 come into force,—
  - (a) for the purpose of applying those provisions to buy-back transactions, on the day after the date on which this Act receives the Royal assent; and
  - (b) for all other purposes, on 1 April 2005.
- (3) The rest of this Act comes into force on 1 April 2005.

#### 3 Purposes

The purposes of this Act are—

- (a) to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land; and
- (b) to provide for the disclosure of adequate information to consumers under consumer credit contracts and consumer leases—
  - (i) to enable consumers to distinguish between competing credit arrangements or competing lease arrangements; and
  - (ii) to enable consumers to become informed of the terms of consumer credit contracts or consumer leases before they become irrevocably committed to them; and
  - (iii) to enable consumers to monitor the performance of consumer credit contracts or consumer leases; and
- (c) to provide rules about interest charges, fees, and payments in relation to consumer credit contracts; and
- (d) to enable consumers to seek reasonable changes to consumer credit contracts on the grounds of unforeseen hardship; and

- (e) to provide for the disclosure of adequate information to consumers under buy-back transactions of land and for the provision of independent legal advice to those consumers—
  - (i) to inform consumers of the terms, the effects, and the implications of those transactions before they become irrevocably committed to them; and
  - (ii) to enable consumers to monitor the performance of those transactions; and
- (f) to provide rules about fees in relation to buy-back transactions of land; and
- (g) to prevent—
  - (i) oppressive credit contracts, consumer leases, and buy-back transactions of land; and
  - (ii) oppressive conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land.

#### **4 Overview**

In this Act,—

- (a) this Part deals with preliminary matters, including interpretation and the application of this Act to the Crown;
- (b) Part 2 contains provisions relating to consumer credit contracts, including provisions relating to when a credit contract is a consumer credit contract, when a lease of goods is to be treated as a consumer credit contract (instead of a consumer lease), disclosure, interest charges, fees, payments, and changes to consumer credit contracts on the grounds of unforeseen hardship;
- (c) Part 3 contains provisions relating to consumer leases, credit-related insurance, repayment waivers, extended warranties, and buy-back transactions of land;
- (d) Part 4 contains provisions relating to civil remedies, injunctions, offences, a defence, and certain provisions concerning the Commerce Commission;
- (e) Part 5 contains provisions relating to the reopening of oppressive credit contracts, consumer leases, and buy-back transactions of land:

- (f) Part 6 contains miscellaneous provisions, including provisions relating to contracting out, regulations, consequential amendments, and transitional arrangements.

## 5 Interpretation

In this Act, unless the context otherwise requires,—

**advance** means—

- (a) money provided to the debtor or to another person to the order of the debtor;
- (b) a pre-existing monetary obligation of the debtor that is paid, discharged, or consolidated by the creditor;
- (c) the cash price of any property or services purchased by the debtor from the creditor;
- (d) in the case of the use of a credit card to purchase property or services from a person who is not the creditor or to obtain money, the agreed price of the property or services or the monetary amount, as the case may be

**annual interest rate** means a rate specified in the credit contract as an annual interest rate

**broker** means a person who, for consideration, assists a person in obtaining credit

**buy-back default fees** means fees or charges payable on a breach of a buy-back transaction by an occupier or on the enforcement of a buy-back transaction by a transferee

**buy-back fees** means fees or charges payable by the occupier under a buy-back transaction, or payable by the occupier to, or for the benefit of, the transferee in connection with a buy-back transaction (including any insurance premiums payable if the transferee requires the occupier to obtain insurance cover from a particular insurer); but does not include the following:

- (a) a buy-back default fee;
- (b) government charges, duties, taxes, or levies

**buy-back promoter** means a person who introduces the parties to a buy-back transaction to each other if—

- (a) the person receives a fee in connection with the buy-back transaction from the occupier, the transferee, or any other person; or

- (b) an associated person of that person receives a fee in connection with the buy-back transaction from the occupier, the transferee, or any other person

**buy-back transaction** has the meaning set out in section 8

**cash price**, in relation to property sold or leased, or to services provided under a contract, means—

- (a) the lowest price at which a person could have purchased that property or those services from the vendor, lessor, or provider on the basis of payment in full at the time the contract was made; or
- (b) if there is no price in accordance with paragraph (a), the fair market value of that property or those services at the time the contract was made

**charge for an optional service** means a fee or charge for a service or benefit that is offered to the debtor in connection with a credit contract if the debtor does not have to accept the service or benefit as a condition of entering into the contract

**Commission** means the Commerce Commission established by the Commerce Act 1986

**consumer credit contract** has the meaning set out in section 11

**consumer credit insurance** means insurance cover in the event of the insured's disability or death or the insured contracting a sickness, sustaining an injury, or becoming unemployed, if the liability of the insurer is to be determined by reference to the liability of the insured under a credit contract or a consumer lease

**consumer lease** has the meaning set out in section 60

**court** means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined

**credit** has the meaning set out in section 6

**credit contract** has the meaning set out in section 7

**credit fees** means fees or charges payable by the debtor under a credit contract, or payable by the debtor to, or for the benefit of, the creditor in connection with a credit contract (including any insurance premiums payable if the creditor requires the

debtor to obtain insurance cover from a particular insurer); but does not include the following:

- (a) interest charges;
- (b) a charge for an optional service;
- (c) a default fee or a default interest charge;
- (d) government charges, duties, taxes, or levies

**credit limit** means the maximum unpaid balance permitted under the credit contract

**credit-related insurance** means, in connection with a credit contract or consumer lease,—

- (a) insurance over secured property or leased goods; or
- (b) insurance that provides cover for the shortfall that occurs if secured property or leased goods are totally or substantially destroyed and the insurance proceeds from another insurance contract are insufficient to pay any outstanding obligations of the debtor under the credit contract or the lessee under the consumer lease; or
- (c) consumer credit insurance

**credit sale** means a contract involving the sale of property or the provision of services under which payment of the whole or a part of the purchase price is deferred; and includes a lease that is to be treated as a credit sale under section 16

**creditor** means a person who provides, or may provide, credit under a credit contract; and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights

**daily interest rate** means the rate determined by dividing the annual interest rate by 365

**debtor** means a person to whom credit has been provided, or may be provided, under a credit contract; and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights

**default fees** means fees or charges payable on a breach of a credit contract by a debtor or on the enforcement of a credit contract by a creditor; but does not include default interest charges

**default interest charges** means additional interest charges payable on a breach of a credit contract by a debtor

**electronic** includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

**electronic communication** means a communication by electronic means

**establishment fees** means the fees or charges payable under the credit contract that relate to the costs incurred by the creditor in connection with the application for credit, processing and considering that application, documenting the contract, and advancing the credit; but does not include any fee or charge to the extent that it is a charge for an optional service

**estate** means a fee simple estate, a leasehold estate, or a stratum estate

**extended warranty** means an agreement between a creditor or lessor and a debtor or lessee under which the creditor or lessor, for an additional consideration, agrees to repair or replace defective goods outside of the warranty period that would otherwise apply

**family trust** means a trust that is established primarily to benefit either or both of the following:

- (a) a natural person for whom the settlor has natural love and affection:
- (b) an organisation or a trust whose income is exempt under section CB 4(1)(c) or (e) of the Income Tax Act 1994

**full costs** includes reasonable costs incurred between solicitor and client, fees, and other expenses

**full prepayment** means the payment of the unpaid balance before the last amount to be paid under the credit contract becomes payable

**goods** means personal chattels other than money and choses in action

**guarantor**, in relation to a credit contract,—

- (a) means a person who—
  - (i) guarantees the performance of a debtor's obligations under the contract; or

- (ii) indemnifies a creditor against any loss that the creditor may incur in connection with the contract; or
  - (iii) assumes liability for performing the obligations of a debtor under the contract; but
- (b) does not include a person who indemnifies a creditor against any loss that the creditor may incur in connection with the contract under a contract of insurance

**information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications

**interest charge** means a charge that accrues over time and is determined by applying a rate to an amount owing under a credit contract

**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**lease** means a contract for the hire of goods

**occupier** has the meaning set out in section 8

**oppressive** has the meaning set out in section 118

**paid adviser** means a person who acts for consideration as an adviser to, or as a trustee, nominee, or agent of, 1 or more of the parties; but does not include a person who is an employee of 1 or more of the parties

**part prepayment** means the payment of an amount that is less than the unpaid balance before that amount is payable under the credit contract

**payment**, in relation to a credit sale, includes a deposit or a trade-in allowance

**property** means land, money, goods, choses in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere

**regulations** means regulations in force under this Act

**related company** has the same meaning as in section 2(3) of the Companies Act 1993

**repayment waiver** means an agreement between a creditor or lessor and a debtor or lessee under which the creditor or lessor, for an additional consideration, agrees to waive the creditor's

or lessor's right to any amount payable under the credit contract or consumer lease in the event of the unemployment of, sickness of, injury to, or the disability or death of the debtor or lessee

**revolving credit contract** means a credit contract, whether or not the contract specifies a credit limit, if the contract—

- (a) anticipates multiple advances, to be made when requested by the debtor in accordance with the contract; and
- (b) does not limit the total amount to be advanced to the debtor under the contract

**security interest** means an interest in property created or provided for by a transaction that, in substance, secures payment or performance of an obligation under a credit contract, consumer lease, or buy-back transaction, without regard to—

- (a) the form of the transaction; and
- (b) the identity of the person who has title to the property that is subject to the security

**transferee** has the meaning set out in section 8

**unpaid balance** means the amount owing under a credit contract at a particular time, being the difference between all amounts credited and all amounts debited to the debtor under the contract at that time

**unpaid daily balance**, in relation to a day, means the unpaid balance under a credit contract at the end of that day

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

Section 5 **associated person**: repealed, on 25 August 2005, by section 75 of the Overseas Investment Act 2005 (2005 No 82).

Section 5 **lawyer**: substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

## 6 Meaning of credit

In this Act, unless the context otherwise requires, **credit** is provided under a contract if a right is granted by a person to another person to—

- (a) defer payment of a debt; or
- (b) incur a debt and defer its payment; or
- (c) purchase property or services and defer payment for that purchase (in whole or in part).

## 7 Meaning of credit contract

- (1) In this Act, unless the context otherwise requires, **credit contract** means a contract under which credit is or may be provided.
- (2) If, because of any contract or contracts (none of which by itself constitutes a credit contract) or any arrangement, there is a transaction that is in substance or effect a credit contract, the contract, contracts, or arrangement must, for the purposes of this Act, be treated as a credit contract made at the time when the contract, or the last of those contracts, or the arrangement, was made, as the case may be.

## 8 Meaning of buy-back transaction

- (1) In this Act, unless the context otherwise requires, **buy-back transaction** means a transaction under which—
  - (a) a person (the **occupier**) transfers, or agrees to transfer, an estate in land to another person (the **transferee**); and
  - (b) the land is the principal place of residence of the occupier at the time that the occupier enters into the transaction; and
  - (c) the occupier, or a person designated by the occupier, has, after the transfer, a right to occupy the whole or any part of the land; and
  - (d) 1 or more of the following applies:
    - (i) the occupier, or a person designated by the occupier, has a right to repurchase the estate in the land in whole or in part:

- (ii) there is an understanding between the occupier and the transferee that the occupier, or a person designated by the occupier, has a right to repurchase the estate in the land in whole or in part:
    - (iii) there is an understanding between the occupier and any buy-back promoter that the occupier, or a person designated by the occupier, has a right to repurchase the estate in the land in whole or in part; and
  - (e) the occupier is a natural person who enters into the transaction primarily for personal, domestic, household, or investment purposes.
- (2) If, by virtue of any contract or contracts (none of which by itself constitutes a buy-back transaction) or any arrangement, there is a transaction that is in substance or effect a buy-back transaction, the contract, contracts, or arrangement must, for the purposes of this Act, be treated as a buy-back transaction made at the time when the contract, or the last of those contracts, or the arrangement, was made, as the case may be.

#### **8A Meanings of associated and associated person**

- (1) For the purposes of this Act, one person (**A**) is associated with another person (**B**),—
- (a) if A is connected to B by blood relationship, marriage, or adoption or where A is a trustee for B, and for the purposes of this paragraph—
    - (i) persons are connected by blood relationship if they are within the fourth degree of relationship:
    - (ii) persons are connected by marriage if one person is married to the other person or to a person who is connected by blood relationship to the other person, or if one person has a relationship in the nature of marriage with the other person or with a person who is connected by blood relationship to the other person (whether or not the parties to the relationship are of the same or different sex):
    - (iii) persons are connected by adoption if one person has been adopted as the child of the other person

or as a child of a person who is within the third degree of relationship to the other person:

- (b) in the case where B is a company, if A is a director or officer of B, or is associated (within the meaning of paragraph (a)) with a director or officer of B, or is directly or indirectly able to exercise control over the affairs of B;
  - (c) in the case where A is a company, if B is a director or officer of A, or is associated (within the meaning of paragraph (a)) with a director or officer of A, or is directly or indirectly able to exercise control over the affairs of A;
  - (d) in the case where both A and B are companies,—
    - (i) if A is a holding company or subsidiary of B within the meaning of section 5 of the Companies Act 1993; or
    - (ii) if A owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of B; or
    - (iii) if B owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of A; or
    - (iv) if A and B have the same holding company within the meaning of section 5 of the Companies Act 1993; or
    - (v) if a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- (2) **Associated person** has a corresponding meaning.

Section 8A: inserted, on 25 August 2005, by section 75 of the Overseas Investment Act 2005 (2005 No 82).

## 9 Act binds the Crown

This Act binds the Crown.

**Part 2**  
**Consumer credit contracts**  
Subpart 1—Application

**10 When this Part applies**

This Part applies to consumer credit contracts.

**11 Meaning of consumer credit contract**

- (1) A credit contract is a **consumer credit contract** if—
- (a) the debtor is a natural person; and
  - (b) the debtor enters into the contract primarily for personal, domestic, or household purposes; and
  - (c) 1 or more of the following applies:
    - (i) interest charges are or may be payable under the contract;
    - (ii) credit fees are or may be payable under the contract;
    - (iii) a security interest is or may be taken under the contract; and
  - (d) when the contract is entered into, 1 or more of the following applies:
    - (i) the creditor, or one of the creditors, carries on a business of providing credit (whether or not the business is the creditor's only business or the creditor's principal business);
    - (ii) the creditor, or one of the creditors, makes a practice of providing credit in the course of a business carried on by the creditor;
    - (iii) the creditor, or one of the creditors, makes a practice of entering into credit contracts in the creditor's own name as creditor on behalf of, or as trustee or nominee for, any other person;
    - (iv) the contract results from an introduction of one party to another party by a paid adviser or broker.
- (2) This section is subject to sections 14 and 15.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 6(1) (Qld)

**12 Investment purposes**

Investment by the debtor is not a personal, domestic, or household purpose.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 6(4) (Qld)

**13 Presumption relating to consumer credit contract**

In any proceedings in which a party claims that a credit contract is a consumer credit contract, it is presumed that the credit contract is a consumer credit contract unless the contrary is established.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 11(1) (Qld)

**14 Effect of declaration**

- (1) A credit contract is not a consumer credit contract if the debtor makes a declaration before entering into the contract that the credit is to be used primarily for business or investment purposes (or for both purposes).
- (2) Subsection (1) does not apply if the creditor, or the person who obtains the declaration, knew, or had reason to believe, at the time the declaration was made, that the credit was in fact to be used primarily for personal, domestic, or household purposes.
- (3) A declaration is effective only if the declaration is in a separate written document and the debtor confirms that he or she has read and understood the declaration.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 11(2), (3) (Qld)

**15 Certain contracts not consumer credit contracts**

- (1) The following contracts are not consumer credit contracts:
  - (a) a contract for the sale of property, or the provision of services, to a person if the total amount payable under the contract by the person (other than any amount payable solely as a result of a default in payment by the person) is the agreed price of the property or services and is to be paid within 2 months from the day the contract is made:

- (b) a contract that is a credit contract merely because a person's account with a creditor is debited and—
    - (i) the effect of the debit is to put the account into overdraft; and
    - (ii) the creation of the overdraft has not been agreed between the creditor and the person before the debit of the account:
  - (c) a credit contract under which the debtor is a trustee acting in his or her capacity as a trustee of a family trust:
  - (d) a contract of any class prescribed by regulations to be a class of contract that is exempted from being a consumer credit contract if the person who relies on the exemption complies with the terms and conditions (if any) that apply to the exemption.
- (2) Subsection (1)(b) applies whether or not—
- (a) the creditor knows at the time the account is debited that the debit would have the effect of putting the account into overdraft; or
  - (b) the creditor makes a charge (whether by way of an interest charge or otherwise) relating to the creation of the overdraft.

## **16 Lease of goods treated as consumer credit contract**

- (1) For the purposes of this Act, a lease is to be treated as a credit sale and a consumer credit contract if—
- (a) the lessee is a natural person; and
  - (b) the lessee enters into the lease primarily for personal, domestic, or household purposes; and
  - (c) when the lease is entered into, the lessor, or one of the lessors, carries on the business of leasing goods (whether or not the business is the lessor's only business or the lessor's principal business), or makes a practice of leasing goods in the course of a business carried on by the lessor; and
  - (d) either or both of the following applies:
    - (i) the amount payable by the lessee under the lease is substantially equivalent to, or in excess of, the cash price of the goods (whether or not the lessee has an option to purchase the goods):

- (ii) the lessee has an option to purchase the goods for no additional amount, for a nominal amount, or for an amount substantially below a reasonable estimate (calculated as at the date the lease is made) of the fair market value of the goods at the end of the term of the lease (whether or not the amount payable by the lessee under the lease is substantially equivalent to, or in excess of, the cash price of the goods).
- (2) For the purposes of this section, the amount payable by the lessee under the lease does not include—
- (a) any amount payable for optional services or services that are incidental to the hire of the goods; and
  - (b) any amount payable to exercise an option to purchase the goods; and
  - (c) any amount that would cease to be payable on the cancellation of the lease if the lessee were to exercise a right of cancellation at the earliest opportunity.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 10(1), (4) (Qld)

## Subpart 2—Required disclosure

### *Initial disclosure*

#### **17 Initial disclosure**

- (1) Every creditor under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every debtor under the contract—
- (a) before the contract is made; or
  - (b) within 5 working days of the day on which the contract is made.
- (2) Every creditor under a consumer credit contract must ensure that a copy of all of the terms of the contract not disclosed under subsection (1) (other than terms implied by law) is given or sent to every debtor under the contract—
- (a) before the contract is made; or
  - (b) within 5 working days of the day on which the contract is made.

- (3) For the purposes of subsection (2), the copy of the terms of the contract must be given or sent in the same manner that disclosure is made under section 35.

Compare: 1981 No 27 s 16

### *Continuing disclosure*

#### **18 Continuing disclosure**

- (1) Every creditor under a consumer credit contract must ensure that disclosure of as much of the information set out in section 19 as is applicable to the contract is made periodically to every debtor under the contract in continuing disclosure statements.
- (2) The maximum period for a continuing disclosure statement is,—
- (a) in the case of a revolving credit contract, 45 working days; or
  - (b) in any other case, 6 months.
- (3) This section is subject to section 21.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 31 (Qld)

#### **19 Content of continuing disclosure statement**

Every continuing disclosure statement must contain as much of the following information as is applicable to the consumer credit contract:

- (a) the opening and closing dates of the period covered by the statement; and
- (b) the opening and closing unpaid balances; and
- (c) the date, amount, and a description of each advance during the statement period; and
- (d) the date and amount of each interest charge debited to the debtor's account during the statement period; and
- (e) the date and amount of each amount paid by the debtor to the creditor, or credited to the debtor, during the statement period; and
- (f) the date, amount, and a description of each fee or charge debited to the debtor's account during the statement period; and

- (g) the amount and the time for payment of the next payment that must be made by the debtor under the contract; and
- (h) the annual interest rate or rates during the statement period (expressed as a percentage or percentages).

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 32 (Qld)

## **20 Opening unpaid balance must not exceed closing unpaid balance of previous continuing disclosure statement**

The opening unpaid balance shown in each successive continuing disclosure statement must not exceed the closing unpaid balance shown in the last continuing disclosure statement.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 33(1) (Qld)

## **21 Continuing disclosure not required**

- (1) Disclosure under section 18 is not required if—
  - (a) each advance under the consumer credit contract is of an amount that is known on the date that the contract is made and the contract specifies that the payments under the contract are to be made in accordance with a specified schedule of payments that is not subject to adjustment under the contract (other than an adjustment made as a result of a breach of the contract by the debtor); or
  - (b) in connection with the consumer credit contract,—
    - (i) the creditor maintains (at all reasonable times) a website that allows the debtor to access the information set out in section 19 as is applicable to the contract for any reasonable statement period specified by the debtor; and
    - (ii) the debtor consents to the information set out in section 19 being disclosed in the manner set out in subparagraph (i); or
  - (c) neither interest charges nor credit fees are payable under the consumer credit contract.
- (2) Disclosure under section 18 is not required in relation to a particular period if—
  - (a) the creditor cannot reasonably locate the debtor; or

- (b) during the period that would otherwise be covered by a disclosure statement,—
  - (i) there have been no debits or credits to the debtor's account and the unpaid balance is nil; or
  - (ii) the creditor has written off the unpaid balance and there are no subsequent credits or debits to the debtor's account; or
  - (iii) the debtor has breached the consumer credit contract and the creditor has commenced enforcement proceedings; or
  - (iv) the debtor has been declared bankrupt or died and the Official Assignee or executors or trustees or administrator of the debtor's estate have not requested a continuing disclosure statement.
- (3) If disclosure under section 18 has not, in accordance with this section, been made in relation to a particular period, the next continuing disclosure statement that is required to be given or sent under this Act must cover every immediately preceding period for which a continuing disclosure statement has not been given or sent.

*Variation disclosure*

**22 Disclosure of agreed changes**

- (1) Every creditor under a consumer credit contract must ensure that disclosure of the following information is made to every debtor under the contract if the parties to the contract agree to change the contract:
  - (a) full particulars of the change;
  - (b) any other information prescribed by regulations to be information that must be disclosed under this section.
- (2) Disclosure under this section must be made before the change takes effect.
- (3) Disclosure is not required under this section in relation to a change that—
  - (a) reduces the obligations that the debtor would otherwise have, unless the obligations are reduced following an application under section 55; or

- (b) extends the time for payment of any payment to be made under the contract, unless the time for payment is extended following an application under section 55; or
- (c) releases the whole or any part of a security interest relating to the contract; or
- (d) changes the place where payments are to be made.

Compare: 1981 No 27 s 17

### **23 Disclosure of changes following exercise of power**

- (1) Every creditor under a consumer credit contract must ensure that disclosure of the information set out in subsection (2) is made to every debtor under the contract if the creditor exercises a power under the contract to change any of the following matters:
  - (a) the amount of an interest rate under the contract or any other particular in relation to how any interest charge under the contract is calculated or applied;
  - (b) the amount, frequency, time for payment, or method of calculation of any payment to be made under the contract;
  - (c) the amount, frequency, time for payment, or method of calculation of any fee or charge payable under the contract.
- (2) The information that must be disclosed is as follows:
  - (a) full particulars of the change;
  - (b) any other information prescribed by regulations to be information that must be disclosed under this section.
- (3) Disclosure under this section must be made within 5 working days of the day on which the change takes effect.
- (4) In the case of a change to the amount of an interest rate or in the case of a change to the amount of any fee or charge payable, a creditor may, instead of complying with section 35, make disclosure in accordance with any publication requirements prescribed by regulations for the purposes of this section.
- (5) Disclosure is not required under this section in relation to—
  - (a) a change that—
    - (i) reduces the obligations that the debtor would otherwise have; or

- (ii) extends the time for payment of any payment to be made under the consumer credit contract; or
- (iii) increases any credit limit under the consumer credit contract; or
- (b) a change of any class prescribed by regulations to be a class of change to which this section does not apply.

*Request and guarantee disclosure*

**24 Request disclosure**

- (1) Every debtor or guarantor under a consumer credit contract may request in writing that disclosure of any or all of the matters referred to in subsection (2) be made to them by the creditor.
- (2) The matters are as follows:
  - (a) the effect of a part prepayment on the debtor's obligations under the consumer credit contract:
  - (b) full particulars concerning any changes made to the consumer credit contract since the contract was made:
  - (c) the amount of any fee or charge payable on a part prepayment and how that amount is calculated:
  - (d) the amount required for full prepayment at a specified date and how that amount is calculated:
  - (e) the unpaid balance, including the amount of any interest charge outstanding (calculated as at the date that the disclosure statement is prepared):
  - (f) the information specified in paragraph (o) of Schedule 1:
  - (g) a copy of any disclosure statement that was provided or that should have been provided before the date on which the request is made.
- (3) The creditor must comply with the request for disclosure within 15 working days of the later of—
  - (a) the date that the request is received by the creditor; or
  - (b) the date on which the creditor receives payment of a reasonable fee for the disclosure as specified by the creditor.
- (4) However, the creditor does not have to comply with the request for disclosure if—

- (a) disclosure of the matter that is requested has been made to the person making the request during the 3 months before the receipt of the request by the creditor; or
- (b) the request is received by the creditor more than 1 year after the consumer credit contract has come to an end.

Compare: 1981 No 27 s 19

## **25 Disclosure of guarantee**

- (1) Every creditor who takes a guarantee of a consumer credit contract must ensure—
  - (a) that every guarantor under the guarantee is given or sent a copy of all of the terms of the guarantee (other than terms implied by law); and
  - (b) that disclosure of as much of the key information (set out in Schedule 1) as is applicable to each consumer credit contract that the creditor and the debtor enter into and to which the guarantee applies is made to every guarantor under the guarantee.
- (2) The copy of the terms of the guarantee must be given or sent, and disclosure of the key information concerning each consumer credit contract that the creditor and the debtor enter into and to which the guarantee applies at the time the guarantee is given must be made,—
  - (a) before the guarantee is given; or
  - (b) within 15 working days of the day on which the guarantee is given.
- (3) Disclosure of the key information concerning any subsequent consumer credit contract that the creditor enters into with the debtor and to which the guarantee applies must be made within 15 working days of the day on which the contract is made.
- (4) For the purposes of subsection (1), the copy of the terms of the guarantee must be given or sent in the same manner that disclosure is made under section 35.

Compare: 1981 No 27 s 16A

## **26 Disclosure of changes to guarantors**

- (1) Every creditor who takes a guarantee of a consumer credit contract must ensure that disclosure of the information set out in

- subsection (2) is made to every guarantor under the guarantee if—
- (a) the debtor and the creditor agree to a change to the contract that increases the obligations that the debtor would otherwise have or reduces the time for payment of any payment to be made under the contract; or
  - (b) the creditor exercises a power under the contract that has the effect of increasing the obligations that the debtor would otherwise have or reducing the time for payment of any payment to be made under the contract.
- (2) The information that must be disclosed under subsection (1) is as follows:
- (a) full particulars of the change;
  - (b) any other information prescribed by regulations to be information that must be disclosed under subsection (1).
- (3) Disclosure under subsection (1) must be made within 5 working days of the day on which—
- (a) the change is agreed to by the debtor and the creditor, in the case of subsection (1)(a); or
  - (b) the change takes effect, in the case of subsection (1)(b).
- (4) If the creditor has exercised a power under the credit contract to change the amount of an interest rate or to change the amount of any fee or charge payable, the creditor may, instead of complying with section 35, make disclosure in accordance with any publication requirements prescribed by regulations for the purposes of this section.

### Subpart 3—Debtor’s right to cancel

#### **27 Right to cancel consumer credit contract**

- (1) A debtor under a consumer credit contract may cancel the contract by giving written notice of the cancellation to the creditor under the contract within 3 working days of the day that disclosure is made under section 17 (or at any time if that disclosure has not been made) and either,—
- (a) in the case of a contract referred to in subsection (2), paying the cash price of the property or services (or the balance of the cash price after deducting any amount al-

- ready paid by the debtor) to the creditor within 15 working days of the day the notice is given; or
- (b) in any other case, returning to the creditor any advance and any other property received by a debtor under the contract within 3 working days of the day that disclosure is made under section 17 (or at any time if that disclosure has not been made).
- (2) A consumer credit contract for the purposes of subsection (1)(a) is—
- (a) a credit sale of goods if the debtor has taken possession of the goods and disclosure of the information referred to in paragraph (s) of Schedule 1 has been made:
  - (b) a credit sale involving a sale of property by auction:
  - (c) a credit sale of property that the debtor wants to keep or of services the debtor wants to obtain:
  - (d) a credit sale of services that have been performed.

Compare: 1981 No 27 s 22(1), (2)

## **28 Notice of cancellation, return of property, and payment of cash price**

- (1) Written notice of cancellation may be expressed in any way that shows the intention of the debtor to cancel or withdraw from the consumer credit contract.
- (2) Written notice of cancellation may be given, property may be returned, and a cash price paid, to a creditor—
  - (a) by giving it to the creditor or any agent or employee of the creditor; or
  - (b) by posting it to the last known place of residence or business of the creditor or any agent of the creditor.
- (3) Written notice of cancellation may be given in electronic form, whether by means of an electronic communication or otherwise, if the creditor consents to notices or other communications from the debtor being given in electronic form and by means of an electronic communication, if applicable.
- (4) For the purposes of this section, a creditor may consent to notices or other communications from the debtor being given in electronic form subject to conditions regarding the form of the notice or communication or the means by which the notice or

communication is produced, sent, received, processed, stored, or displayed.

- (5) Written notice of cancellation may be given, property may be returned, and a cash price paid by an agent acting on behalf of a debtor.

Compare: 1981 No 27 s 22(3)

**29 Right of cancellation does not apply in certain situations**

- (1) Section 27 does not apply if the credit is provided for a specified period of less than 2 months and no part of the credit is used, with the knowledge of the creditor, to pay amounts owing to the creditor or a related company under another credit contract.

- (2) Section 27 does not entitle a debtor to cancel a consumer credit contract on the ground that disclosure has not been made to a guarantor.

Compare: 1981 No 27 s 22(4), (5)

**30 Effect of cancellation**

- (1) If a consumer credit contract is cancelled under section 27(1)(b),—

- (a) no party is obliged or entitled to perform it further:
- (b) every creditor must promptly—
- (i) return any property received by him or her under the contract to the party from whom it was received; and
  - (ii) ensure that every security interest taken in connection with the contract is released (except to the extent that the security interest secures obligations of the debtor or guarantor arising otherwise than under the contract):
- (c) no debtor or guarantor under the contract is liable to pay any part of the interest charges, fees, or charges provided for in the contract, and the creditor must repay any interest charges, fees, or charges already received by him or her:
- (d) the debtor is liable to pay to the creditor interest charges on the unpaid balance for the period during which the credit was provided (at the same rate that would have

- been payable over that period if the contract had not been cancelled):
- (e) unless the contract otherwise provides, the debtor is liable to pay to the creditor—
    - (i) any reasonable expenses necessarily incurred by the creditor in connection with the contract and the cancellation of the contract; and
    - (ii) if property is returned to a creditor that has been damaged while in the possession of a debtor, the cost of repairing the damage.
  - (2) Subsection (1)(b) and (c) is subject to subsection (1)(d) and (e).  
Compare: 1981 No 27 s 23(1)

### **31 Effect of credit sale cancellation**

If a consumer credit contract is cancelled under section 27(1)(a), section 30(1)(b) to (e) applies to the contract except that—

- (a) the creditor need not return the cash price paid under section 27(1)(a) or any property forming part of the contract; and
- (b) the creditor's obligation to provide the property or services to which the cash price relates continues.

Compare: 1981 No 27 s 23(2)

## Subpart 4—Disclosure standards and how disclosure is made

### **32 Disclosure standards**

- (1) Disclosure must—
  - (a) be in writing in a disclosure statement; and
  - (b) contain the information required by this Act; and
  - (c) express the required information clearly, concisely, and in a manner likely to bring the information to the attention of a reasonable person; and
  - (d) not be likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract, guarantee, consumer lease, or buy-back transaction (as the case may be).

- (2) A disclosure statement—
  - (a) may be in a single document or a series of related documents:
  - (b) may be included as part of 1 or more other documents.
- (3) If a creditor provides 2 or more credit facilities to a debtor under 1 or more consumer credit contracts, disclosure may be made in 1 or more disclosure statements.
- (4) The requirement to make disclosure in writing may be met by giving the required information in electronic form, whether by means of an electronic communication or otherwise, if—
  - (a) the information is readily accessible so as to be usable for subsequent reference; and
  - (b) the person to whom the disclosure is required to be made consents to the disclosure being made in electronic form and by means of an electronic communication, if applicable.
- (5) For the purposes of this section, a person may consent to the information being given in electronic form subject to conditions regarding the form of the information or the means by which the information is produced, sent, received, processed, stored, or displayed.

### **33 Assumptions**

- (1) Information that is required to be disclosed under this Act may be disclosed by using or applying the assumptions that are prescribed for the purposes of this section in accordance with the terms and conditions (if any) that apply to those assumptions.
- (2) Information that is required to be disclosed under this Act that is not otherwise ascertainable must be treated as ascertainable if it is ascertainable on the basis of the prescribed assumptions as at the date that the disclosure statement is prepared.
- (3) Information disclosed in a disclosure statement must be treated as correctly disclosed if it is within the prescribed assumptions.

### **34 Model forms**

A person who uses a model disclosure statement prescribed by regulations in the manner required by those regulations is to be

treated as having complied with the requirements of section 32(1)(a), (c), and (d).

### **35 How disclosure is made**

- (1) Disclosure must be made by—
  - (a) giving the disclosure statement to the person to whom disclosure is to be made; or
  - (b) sending the disclosure statement by post to that person's place of residence last known to the person making disclosure or to an address specified by the person for this purpose; or
  - (c) in the case of an electronic communication, sending the disclosure statement to the information system specified by the person for this purpose.
- (2) If the place of residence referred to in subsection (1)(b) is the same for 2 or more persons, the disclosure statement given or sent to any of those persons is to be treated as having been given or sent to all of those persons.
- (3) For the purposes of sections 27 and 99 to 102, when disclosure is made by sending the disclosure statement to a person by post, the disclosure is to be treated as having been made on the fourth working day after the day on which the statement is posted.
- (4) For the purposes of sections 27 and 99 to 102, when disclosure is made by sending the disclosure statement to a person by means of an electronic communication, the disclosure is to be treated as having been made on the second working day after the day on which the statement is sent.
- (5) For all other purposes, when disclosure is made by sending the disclosure statement to a person by post or by means of an electronic communication, the disclosure is to be treated as having been made on the day on which the statement is posted or sent.
- (6) Without limiting section 32(4) and (5), sending a disclosure statement by means of an electronic communication may involve sending to the person to whom disclosure is made an electronic communication that allows the disclosure statement

to be accessed from a website or by means of the Internet if the person consents to the disclosure being made in this manner.

Compare: 1981 No 27 s 20

### Subpart 5—Interest charges

#### **36 End of day**

- (1) A consumer credit contract may specify when a day ends for any purpose under the contract.
- (2) Different times of the day may be specified as the end of the day for different purposes.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 25(2) (Qld)

#### **37 Creditor to ensure that contract specifies annual interest rate or rates**

- (1) This section applies if interest charges are or may be payable under a consumer credit contract.
- (2) Every creditor under a consumer credit contract must ensure that the contract specifies the interest rate or interest rates under the contract in terms of an annual interest rate or annual interest rates under the contract.
- (3) An annual interest rate may be specified by describing how the annual interest rate is determined in accordance with the contract.

#### **38 Early debit or payment of interest charges prohibited**

- (1) A creditor must not, at any time before the end of a day to which an interest charge applies, require payment of or debit the interest charge.
- (2) A consumer credit contract may provide for an interest charge to become payable or to be debited at any time after the day to which it applies.
- (3) Subsection (1) does not apply to the following:
  - (a) the first payment or debiting of interest charges under a consumer credit contract if the payment or debiting relates to interest charges for a period that is less than the normal period for which interest charges are to be periodically debited to the debtor's account:

- (b) the debit of an interest charge under a consumer credit contract before the end of the period to which the charge applies if—
  - (i) the charge is debited on the last day of the period; and
  - (ii) the amount debited is not treated by the creditor as part of the unpaid daily balance for that day for the purpose of calculating interest charges under the contract.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 27 (Qld)

### **39 Limit on interest charges**

- (1) The maximum amount of an interest charge that may be imposed or provided for under a consumer credit contract is,—
  - (a) in the case of 1 annual interest rate applying to the unpaid balances under the contract, the amount determined by applying the daily interest rate to the unpaid daily balances; or
  - (b) in any other case, the sum of each of the amounts determined by applying each daily interest rate to that part of the unpaid daily balances that it applies to under the contract.
- (2) However, an interest charge under a consumer credit contract for a week, a fortnight, a month, a quarter of a year, or a half of a year may be determined by applying the annual interest rate or rates, divided by 52 (for a week), by 26 (for a fortnight), by 12 (for a month), by 4 (for a quarter of a year), or by 2 (for a half of a year), to the whole or that part of the average unpaid daily balances that it applies to.
- (3) This section does not prevent the imposition, in accordance with the consumer credit contract and section 40, of default interest charges.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 26 (Qld)

### **40 Default interest charges**

- (1) A consumer credit contract must not provide that an annual interest rate applicable under the contract to any part of the

unpaid balance will differ according to whether the debtor has breached the contract.

- (2) However, a consumer credit contract may provide for a differential rate if the higher rate is imposed only—
  - (a) in the event of a default in payment and while the default continues; or
  - (b) in the event of the debtor causing the credit limit under the contract to be exceeded and while the credit limit is exceeded.
- (3) This section does not limit Part 5 or any other rule of law that limits the amount of a default interest charge that may be imposed.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 28 (Qld)

## Subpart 6—Fees

### *Unreasonable fees*

#### **41 Unreasonable credit fee or default fee**

- (1) A consumer credit contract must not provide for a credit fee or a default fee that is unreasonable.
- (2) If the court is satisfied, on the application of the Commission, a debtor, or a guarantor, that a credit fee or default fee is unreasonable, it may order that the fee be annulled or reduced.
- (3) The court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (2).
- (4) An application for an order may be made within 1 year of the day that the fee is imposed or debited under the consumer credit contract.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 72(1) (Qld)

#### **42 Establishment fees**

In determining whether an establishment fee is unreasonable, the court must have regard to—

- (a) whether the amount of the fee is equal to or less than the creditor's reasonable costs in connection with the application for credit, processing and considering that

application, documenting the consumer credit contract, and advancing the credit; or

- (b) whether the amount of the fee is equal to or less than the creditor's average reasonable costs of the matters referred to in paragraph (a) for the appropriate class of consumer credit contract.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 72(3) (Qld)

#### **43 Prepayment fees**

- (1) A fee or charge payable on a part prepayment under a consumer credit contract is unreasonable if, and only if, it exceeds a reasonable estimate of the creditor's loss arising from the part prepayment, including the creditor's average reasonable administration costs arising from part prepayments under consumer credit contracts of the appropriate class.
- (2) A fee or charge payable on a full prepayment of a consumer credit contract (other than a fee relating to administrative costs) is unreasonable if, and only if, it exceeds a reasonable estimate of the creditor's loss arising from the full prepayment as calculated in accordance with section 54.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 72(4) (Qld)

#### **44 Other credit fees and default fee**

- (1) In determining whether a credit fee or a default fee is unreasonable, the court must have regard to,—
- (a) in relation to the matter giving rise to the fee, whether the fee reasonably compensates the creditor for the following:
- (i) any cost incurred by the creditor (including the cost of providing a service to the debtor if the fee relates to the provision of a service);
- (ii) a reasonable estimate of any loss incurred by the creditor as a result of the debtor's acts or omissions; and
- (b) reasonable standards of commercial practice.
- (2) This section does not apply to—
- (a) establishment fees; or

- (b) a fee or charge payable on a part prepayment under a consumer credit contract; or
- (c) a fee or charge payable on a full prepayment of a consumer credit contract (unless the fee relates to administrative costs).

*Fees or charges passed on by creditor*

**45 Fees or charges passed on by creditor**

- (1) A fee or charge payable by a debtor for an amount payable or to reimburse an amount paid by the creditor to another person, body, or agency must not exceed the actual amount payable by the creditor if that amount is ascertainable when the fee or charge is paid by the debtor.
- (2) The actual amount payable must be determined by taking into account any discount, rebate, or allowance received or receivable by the creditor or any related company.
- (3) If the actual amount paid by the creditor to another person, body, or agency is not ascertainable when the debtor pays an amount to the creditor for the fee or charge and is less than the amount paid by the debtor, the creditor must refund or credit the difference to the debtor.
- (4) Nothing in this section requires a rebate on tax payable by the creditor or a related company to be taken into account in determining the actual amount paid or payable by the creditor.
- (5) For the avoidance of doubt, nothing in this section prevents a reasonable commission from being payable or paid to a creditor in connection with any credit-related insurance taken out by the debtor.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 30 (Qld)

**Subpart 7—Payments**

**46 Crediting of payments**

- (1) A creditor must credit each payment made under a consumer credit contract to the debtor's account as soon as practicable after receipt of the payment.
- (2) In this section, **as soon as practicable** means the earliest time that, operating under the normal business conditions applying

to the creditor, a reasonable creditor would have the payment available for reinvestment (whether or not on similar terms).

- (3) Despite subsection (1), if the consumer credit contract specifies that payments are to be made in accordance with a specified schedule of payments, the creditor may credit a payment that is accepted in accordance with the schedule if the contract expressly permits the creditor to credit those payments in this manner.
- (4) Subsection (3) applies whether or not—
  - (a) the specified schedule of payments is subject to adjustment in accordance with the contract to accommodate contingencies (for example, the possibility of changes to the interest rate); and
  - (b) the payment is of an amount that is not equal to the amount of the next scheduled payment.
- (5) However, subsection (3) does not apply to a full prepayment.  
Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 24 (Qld)

#### **47 Dating and adjustments of debits and credits in accounts**

- (1) A debit or credit made by a creditor to a debtor's account is taken to have been made, and has effect, on the date assigned to the debit or credit and not on the date on which it is processed.
- (2) A creditor may subsequently adjust debits or credits to a debtor's account and account balances so as to accurately reflect the legal obligations of the debtor and the creditor.
- (3) Subsections (1) and (2) do not permit a debit or credit to be assigned a date other than the date on which it is processed, or the subsequent adjustment of a debit or credit or account balance, if—
  - (a) the assignment or adjustment is inconsistent with the consumer credit contract; or
  - (b) the assignment or adjustment results in an interest charge that is more than the maximum amount permitted under this Act, as calculated on the basis of debits and credits to a debtor's account consistent with the consumer credit contract; or
  - (c) the assignment or adjustment results in a breach of section 46; or

- (d) the assignment of the date on which an interest charge is taken to be debited results in a breach of section 38.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 36A (Qld)

#### **48 Recovery of payments**

- (1) If a debtor makes any payment to a creditor that, by virtue of this Act, the creditor is not entitled to receive, the creditor must refund or credit the payment to the debtor as soon as practicable.
- (2) Subsection (1) applies despite any agreement to the contrary.

#### *Prepayments*

#### **49 Part prepayments**

- (1) A creditor must accept any part prepayment under a consumer credit contract from a debtor unless the contract expressly permits the creditor to decline to accept the part prepayment.
- (2) If the consumer credit contract expressly permits the creditor to decline to accept the part prepayment, the creditor must decide whether or not to accept the part prepayment as soon as practicable after receipt of the payment.
- (3) If the creditor does not accept any part prepayment, the part prepayment must be refunded to the debtor as soon as practicable.
- (4) If the creditor does accept any part prepayment, the part prepayment must be credited in accordance with section 46.

#### **50 Debtor's right to full prepayment**

- (1) A creditor must accept any full prepayment of a consumer credit contract from a debtor at any time.
- (2) The full prepayment must be credited in accordance with section 46(1).
- (3) A consumer credit contract must not prohibit the full prepayment of the contract.
- (4) Nothing in sections 97 to 99 of the Property Law Act 2007 limits this section or section 51.

Section 50(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**51 Amount required for full prepayment**

- (1) The amount required for the full prepayment of the consumer credit contract must be no more than the sum of the following less the amount referred to in section 52:
  - (a) the unpaid balance at the time of the full prepayment; and
  - (b) if expressly authorised by the contract, the administrative costs incurred by the creditor arising from the full prepayment or a charge equal to the creditor's average administrative costs arising from full prepayments of consumer credit contracts of the appropriate class; and
  - (c) if expressly authorised by the contract, a fee or charge that does not exceed a reasonable estimate of the creditor's loss arising from the full prepayment.
- (2) In calculating the unpaid balance, the creditor must only include interest charges and other fees and charges that have accrued or would ordinarily be payable under the consumer credit contract up to the time of the full prepayment.

**52 Rebate of insurance**

- (1) The amount to be deducted under section 51 is an amount equal to a proportionate rebate of the premium paid under any consumer credit insurance contract financed under the consumer credit contract.
- (2) The rebate must be calculated using the procedure prescribed for the purposes of this section by regulations if regulations have prescribed a procedure.
- (3) An amount is to be deducted under subsection (1) only if the creditor has arranged the insurance.
- (4) If an amount is deducted under subsection (1), the creditor may recover the amount from the insurer as a debt due.
- (5) In this section, insurance is arranged by the creditor if 1 or more of the following applies:
  - (a) the creditor or a related company of the creditor is the insurer;
  - (b) the creditor or a related company of the creditor acts as the agent of the insurer in relation to the insurance:

- (c) the creditor or a related company of the creditor receives a commission in relation to the insurance;
- (d) the creditor requires the debtor to obtain the insurance from a particular insurer.

**53 Termination of consumer credit insurance contract**

A consumer credit insurance contract financed under a consumer credit contract is terminated on the full prepayment of the consumer credit contract unless the consumer credit insurance contract—

- (a) provides insurance cover in connection with 1 or more other credit contracts; or
- (b) otherwise provides a benefit to, or insurance cover for, the debtor.

**54 Creditor's loss arising from full prepayment**

- (1) A creditor must calculate a reasonable estimate of its loss arising from a full prepayment using—
  - (a) a procedure prescribed for the purposes of this section by regulations; or
  - (b) an appropriate procedure set out in the consumer credit contract for calculating that loss.
- (2) If a creditor uses a procedure prescribed for the purposes of this section by regulations, the amount calculated is to be treated in any court and in any proceedings under this Act as a reasonable estimate of the creditor's loss.

**Subpart 8—Changes on grounds of  
unforeseen hardship**

**55 Changes on grounds of unforeseen hardship**

- (1) A debtor who is unable reasonably, because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, to meet the debtor's obligations under a consumer credit contract and who reasonably expects to be able to discharge the debtor's obligations if the terms of the contract were changed in a manner set out in section 56 may apply to the creditor to agree to that change.
- (2) For the purposes of this section,—

**de facto partner, civil union partner, and spouse** have the same meanings as in the Property (Relationships) Act 1976

**end of a relationship** means—

- (a) a situation described in section 25(2)(a) to (d) of the Property (Relationships) Act 1976; or
- (b) the death of the spouse, civil union partner, or de facto partner of the debtor.

Section 55(2) **de facto partner**: repealed, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 55(2) **de facto partner, civil union partner, and spouse**: inserted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 55(2) **end of a relationship** paragraph (b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 55(2) **spouse**: repealed, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## 56 Changes that can be made

- (1) An application by a debtor under section 55 must seek to change the terms of the consumer credit contract in one of the following ways:
  - (a) extending the term of the contract and reducing the amount of each payment due under the contract accordingly (without a consequential change being made to the annual interest rate or annual interest rates);
  - (b) postponing, during a specified period, the dates on which payments are due under the contract (without a consequential change being made to the annual interest rate or annual interest rates);
  - (c) extending the term of the contract and postponing, during a specified period, the dates on which payments are due under the contract (without a consequential change being made to the annual interest rate or annual interest rates).
- (2) The change that the debtor seeks—
  - (a) must not be more extensive than is necessary to enable the debtor to reasonably expect to be able to discharge the debtor's obligations; and
  - (b) must be fair and reasonable to both the debtor and the creditor in all the circumstances.

- (3) A change is not unfair or unreasonable merely because it involves a change to the agreed terms of the consumer credit contract.

**57 Application may not be made in certain circumstances**

- (1) A debtor may not make an application under section 55 if—
- (a) the debtor has defaulted in a payment; or
  - (b) the debtor has caused a credit limit to be exceeded; or
  - (c) it was reasonably foreseeable to the debtor at the time the contract was made that the debtor would be unlikely to be able to meet his or her obligations under the consumer credit contract because of the illness, the injury, the loss of employment, the end of the relationship, or the other reasonable cause.
- (2) However,—
- (a) subsection (1)(a) does not prevent an application being made if the debtor has remedied the default (to the extent that it can be remedied); and
  - (b) subsection (1)(b) does not prevent an application being made if the credit limit is no longer exceeded.

**58 Changes by court**

- (1) If the creditor does not agree to change the consumer credit contract in accordance with the application, the debtor may apply to the court to change the terms of the contract.
- (2) The court may, after allowing the applicant, the creditor, and any guarantor a reasonable opportunity to be heard,—
- (a) by order, change the consumer credit contract in a manner set out in section 56; and
  - (b) make any other orders it thinks fit.
- (3) The court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under the consumer credit contract, and make any other orders it thinks fit, until the application has been determined.
- (4) Subsection (3) does not apply to a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988.

**59 Creditor may apply for variation of change**

- (1) A creditor under a consumer credit contract that has been changed by an order under section 58 may apply to the court for an order varying or revoking the order.
- (2) A creditor subject to a stay of enforcement proceedings or other order under section 58 may apply to the court for an order varying or revoking the stay or order.
- (3) On an application under this section, the court may vary or revoke the order or stay to which the application relates as it thinks fit.

**Part 3****Consumer leases, credit-related  
insurance, and buy-back transactions of  
land**

## Subpart 1—Consumer leases

**60 Consumer leases**

- (1) For the purposes of this Act, a lease is a **consumer lease** if—
  - (a) the lessee is a natural person; and
  - (b) the lessee enters into the lease primarily for personal, domestic, or household purposes; and
  - (c) when the lease is entered into, the lessor, or one of the lessors, carries on the business of leasing goods (whether or not the business is the lessor's only business or the lessor's principal business), or makes a practice of leasing goods in the course of a business carried on by the lessor; and
  - (d) when the lease is entered into, 1 or more of the following applies:
    - (i) the term of the lease is for 1 year or more;
    - (ii) the lessee has an option to purchase the goods.
- (2) However, a lease that is to be treated as a consumer credit contract under section 16 is not a consumer lease.
- (3) If, because of any contract or contracts (none of which by itself constitutes a consumer lease) or any arrangement, there is a transaction that is in substance or effect a consumer lease, the contract, contracts, or arrangement must, for the purposes of

this Act, be treated as a consumer lease made at the time when the contract, or the last of those contracts, or the arrangement, was made, as the case may be.

- (4) This section is subject to section 62.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 148(1) (Qld)

**61 Presumption relating to consumer lease**

- (1) In any proceedings in which a party claims that a lease is a consumer lease, it is presumed that the lease is a consumer lease unless the contrary is established.

- (2) This section is subject to section 13.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 150(1) (Qld)

**62 Declaration concerning consumer lease**

- (1) A lease is not a consumer lease if the lessee makes a declaration before entering into the lease that the goods are hired primarily for business purposes.

- (2) Subsection (1) does not apply if the lessor, or the person who obtains the declaration, knew, or had reason to believe, at the time the declaration was made that the goods were in fact hired primarily for personal, domestic, or household purposes.

- (3) A declaration is effective only if the declaration is in a separate written document and the lessee confirms that he or she has read and understood the declaration.

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 150(2), (3) (Qld)

*Disclosure of consumer lease*

**63 Application of disclosure provisions**

Sections 32 to 35 apply to disclosure under this subpart.

**64 Initial disclosure of consumer lease**

- (1) Every lessor under a consumer lease must ensure that disclosure of as much of the information set out in Schedule 2 as is applicable to the lease is made to every lessee under the lease before the lease is made.

- (2) Every lessor under a consumer lease must ensure that a copy of all of the terms of the lease not disclosed under subsection (1) (other than terms implied by law) is given or sent to every lessee under the lease—
  - (a) before the lease is made; or
  - (b) within 5 working days of the day on which the lease is made.
- (3) For the purposes of subsection (2), the copy of the terms of the lease must be given or sent in the same manner that disclosure is made under section 35.

**65 Variation disclosure of consumer leases**

- (1) Every lessor under a consumer lease must ensure that disclosure of the full particulars of a change to the lease is made to every lessee under the lease if the parties agree to change the lease.
- (2) Disclosure under this section must be made before the change takes effect.

**66 Variation disclosure not required**

Section 65 does not apply to a change that reduces the lessee's obligations under the consumer lease.

**67 Request disclosure for consumer leases**

- (1) Every lessee under a consumer lease may request in writing that disclosure of any or all of the matters referred to in subsection (2) be made to the lessee by the lessor.
- (2) The matters are as follows:
  - (a) the amount, timing, and number of payments to be made under the lease;
  - (b) full particulars concerning any changes made to the lease since the lease was made;
  - (c) a copy of any disclosure statement that was provided or that should have been provided before the date on which the request is made.
- (3) The lessor must comply with the request for disclosure within 15 working days of the later of—
  - (a) the date that the request is received by the lessor; or

- (b) the date on which the lessor receives payment of a reasonable fee for the disclosure as specified by the lessor.
- (4) However, the lessor does not have to comply with the request for disclosure if—
  - (a) disclosure of the matter that is requested has been made to the person making the request during the 3 months before the receipt of the request by the lessor; or
  - (b) the request is received by the lessor more than 1 year after the lease has come to an end.

*Amount payable on termination*

**68 Amount payable on termination**

The amount payable by a lessee on the termination of a consumer lease before the end of its term is the lesser of—

- (a) an amount payable under the lease that does not exceed a reasonable estimate of the lessor's loss relating to the termination; or
- (b) the amount determined using a procedure prescribed by regulations for the purposes of this section (if any).

Compare: Consumer Credit Code (Appendix to Consumer Credit (Queensland) Act 1994) s 157(2) (Qld)

**Subpart 2—Credit-related insurance,  
repayment waivers, and extended warranties**

**69 Restrictions on credit-related insurance, repayment waivers, and extended warranties**

- (1) A creditor or a lessor must not, in connection with a consumer credit contract or consumer lease, make any unreasonable requirement as to the terms on which the debtor or lessee is to take out or obtain credit-related insurance, a repayment waiver, or an extended warranty.
- (2) A requirement is unreasonable if—
  - (a) it is not reasonably necessary for the protection of the legitimate interests of the creditor or lessor; or
  - (b) it is not reasonably justifiable in light of the risks undertaken by the parties to the arrangement.

- (3) The court may, on the application of the Commission or a debtor or lessee, make the following orders if it is satisfied that a creditor or lessor has breached subsection (1):
- (a) order that the insurance, repayment waiver, or extended warranty be annulled on any terms and conditions that it thinks fit;
  - (b) order that all or part of the premium or any other amount payable in relation to the insurance, repayment waiver, or extended warranty be reimbursed to the debtor or lessee by the creditor or lessor.

**70 Disclosure of credit-related insurance, repayment waiver, or extended warranty**

- (1) If a consumer credit contract or consumer lease involves credit-related insurance and that insurance was arranged by the creditor under the contract or by the lessor under the lease, the creditor or the lessor must ensure that every insured person is supplied with a copy of the terms of the credit-related insurance (other than terms implied by law) within 15 working days of the day on which the credit-related insurance is arranged.
- (2) If a consumer credit contract or consumer lease involves a repayment waiver or an extended warranty, every creditor under the contract or lessor under the lease must ensure that every debtor under the contract or lessee under the lease is supplied with a copy of the terms of the repayment waiver or extended warranty (other than terms implied by law) within 15 working days of the day on which the repayment waiver or extended warranty is arranged.
- (3) For the purposes of this section, insurance is arranged by the creditor or lessor if 1 or more of the following applies:
- (a) the creditor or lessor or a related company of the creditor or lessor is the insurer;
  - (b) the creditor or lessor or a related company of the creditor or lessor acts as the agent of the insurer in relation to the insurance;
  - (c) the creditor or lessor or a related company of the creditor or lessor receives a commission in relation to the insurance:

- (d) the creditor or lessor requires the debtor or lessee to obtain the insurance from a particular insurer.

### Subpart 3—Buy-back transactions of land

#### **71 Application of disclosure provisions**

Sections 32 to 35 apply to disclosure under this subpart.

#### **72 Initial disclosure of buy-back transaction**

- (1) Every transferee under a buy-back transaction must ensure that disclosure of as much of the information set out in Schedule 3 as is applicable to the transaction is made to every occupier under the transaction before the occupier enters into any contract or arrangement that forms part of the buy-back transaction.
- (2) Every transferee under a buy-back transaction must ensure that a copy of all of the terms of the buy-back transaction not disclosed under subsection (1) (other than terms implied by law) is given or sent to every occupier under the transaction before the occupier enters into any contract or arrangement that forms part of the buy-back transaction.
- (3) For the purposes of subsection (2), the copy of the transaction terms must be given or sent in the same manner that disclosure is made under section 35.

#### **73 Independent legal advice must be given to occupier**

- (1) Every transferee under a buy-back transaction must ensure that every occupier under the transaction has received independent legal advice concerning the transaction from a lawyer before entering into any contract or arrangement that forms part of the buy-back transaction.
- (2) The signature of each occupier on any contract or other document that forms part of the buy-back transaction must be witnessed by a lawyer.
- (3) The lawyer who witnesses the signature of an occupier must certify that, before that occupier signed the contract or document, the lawyer explained to the occupier the effect and implications of the contract or document.

- (4) The certificate must be in the form prescribed by regulations (if any).
- (5) For the purposes of this section, **independent legal advice** means legal advice provided by a lawyer who has no relationship with, or interest in, the transferee or any buy-back promoter.

**74 Buy-back transactions involving buy-back promoter**

- (1) This section applies if—
  - (a) a buy-back promoter introduced the transferee and the occupier to each other; and
  - (b) none of the following applies:
    - (i) the transferee carries on the business of providing credit (whether or not the business is the transferee's only business or the transferee's principal business);
    - (ii) the transferee carries on the business of entering into buy-back transactions (whether or not the business is the transferee's only business or the transferee's principal business);
    - (iii) the transferee makes a practice of providing credit in the course of a business carried on by the transferee;
    - (iv) the transferee makes a practice of entering into buy-back transactions in the course of a business carried on by the transferee.
- (2) If this section applies,—
  - (a) the obligations of the transferee under sections 72 and 73 are to be treated as being imposed on the buy-back promoter (instead of on the transferee); and
  - (b) the references in sections 72 and 73 to the transferee are to be read as references to the buy-back promoter.
- (3) The buy-back promoter must ensure that every transferee under the buy-back transaction has received independent legal advice concerning the transaction from a lawyer before entering into any contract or arrangement that forms part of the buy-back transaction.

- (4) For the purposes of this section, **independent legal advice** means legal advice provided by a lawyer who has no relationship with, or interest in, the buy-back promoter.

**75 Land cannot be dealt with without leave of court if initial disclosure not made or no independent legal advice given**

- (1) This section applies if the transferee knows, or has reason to believe, that any provision of section 72 or section 73 has not been complied with by any person in connection with the buy-back transaction.
- (2) The transferee must not transfer the estate in the land to a person other than the occupier or otherwise deal with the land without obtaining the leave of the High Court.
- (3) The High Court may grant leave only if it is satisfied that the non-compliance has not materially prejudiced the interests of the occupier.
- (4) The High Court may grant leave subject to any terms and conditions that the court thinks fit.
- (5) Subsection (2) does not affect the rights under sections 62 to 64, 75, 182, and 183 of the Land Transfer Act 1952 of a person who derives an estate or interest in the land from the transferee.

**76 Interest of occupier is caveatable interest**

- (1) The occupier under a buy-back transaction is to be treated as being entitled to, or to be beneficially interested in, the land for the purposes of section 137(1)(a) of the Land Transfer Act 1952.
- (2) A term of a buy-back transaction is entirely of no effect if it—
- (a) prohibits the occupier from lodging with the Registrar (within the meaning of the Land Transfer Act 1952) a caveat against dealings in the land; or
  - (b) otherwise restricts the ability of the occupier to lodge with the Registrar a caveat against dealings in the land.

**77 Variation disclosure of buy-back transactions**

- (1) Every transferee under a buy-back transaction must ensure that disclosure of the full particulars of a change to the transaction

is made to every occupier under the transaction if the parties agree to change the transaction.

- (2) Disclosure under this section must be made before the change takes effect.

### **78 Variation disclosure not required**

Section 77 does not apply to a change that reduces the occupier's obligations under the buy-back transaction.

### **79 Request disclosure for buy-back transactions**

- (1) Every occupier under a buy-back transaction may request in writing that disclosure of any or all of the matters referred to in subsection (2) be made to the occupier by the transferee.
- (2) The matters are as follows:
- (a) the amount, timing, and number of payments to be made under the transaction;
  - (b) full particulars concerning any changes made to the transaction since the transaction was made;
  - (c) a copy of any disclosure statement that was provided or that should have been provided before the date on which the request is made.
- (3) The transferee must comply with the request for disclosure within 15 working days of the later of—
- (a) the date that the request is received by the transferee; or
  - (b) the date on which the transferee receives payment of a reasonable fee for the disclosure as specified by the transferee.
- (4) However, the transferee does not have to comply with the request for disclosure if—
- (a) disclosure of the matter that is requested has been made to the person making the request during the 3 months before the receipt of the request by the transferee; or
  - (b) the request is received by the transferee more than 1 year after the transaction has come to an end.

### **80 Unreasonable buy-back fees or buy-back default fees**

- (1) A buy-back transaction must not provide for a buy-back fee or a buy-back default fee that is unreasonable.

- (2) If the court is satisfied, on the application of the Commission or an occupier, that a buy-back fee or buy-back default fee is unreasonable, it may order that the fee be annulled or reduced.
- (3) The court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (2).
- (4) An application for an order may be made within 1 year of the day that the fee is imposed or debited under the buy-back transaction.

**81 Fees or charges passed on by transferee**

- (1) A fee or charge payable by an occupier for an amount payable or to reimburse an amount paid by the transferee to another person, body, or agency must not exceed the actual amount payable by the transferee if that amount is ascertainable when the fee or charge is paid by the occupier.
- (2) The actual amount payable must be determined by taking into account any discount, rebate, or allowance received or receivable by the transferee or any related company.
- (3) If the actual amount paid by the transferee to another person, body, or agency is not ascertainable when the occupier pays an amount to the transferee for the fee or charge and is less than the amount paid by the occupier, the transferee must refund or credit the difference to the occupier.
- (4) Nothing in this section requires a rebate on tax payable by the transferee or a related company to be taken into account in determining the actual amount paid or payable by the transferee.
- (5) For the avoidance of doubt, nothing in this section prevents a reasonable commission from being payable or paid to a transferee in connection with any insurance taken out by the occupier.

**82 Unreasonable fees payable to buy-back promoter or associated person**

- (1) A buy-back promoter and an associated person of the buy-back promoter must not require the payment of an unreasonable fee in connection with a buy-back transaction.
- (2) If the court is satisfied, on the application of the Commission, an occupier, or a transferee, that a fee payable to a buy-back

promoter or to an associated person of a buy-back promoter is unreasonable, it may order that the fee be annulled or reduced.

- (3) The court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (2).
- (4) An application for an order may be made within 1 year of the day that the fee is imposed or debited.

**83 No limit on Part 2**

Nothing in this subpart limits any provision in Part 2.

## **Part 4 Enforcement and remedies**

### Subpart 1—Preliminary provisions

**84 Compliance programmes**

For the purposes of this Part, a creditor or lessor has a **compliance programme** if the creditor or lessor—

- (a) requires its employees and agents to follow procedures, or has implemented automated procedures, that are designed to ensure compliance with this Act and the regulations; and
- (b) ensures that there are in place methods for systematically identifying deficiencies in the effectiveness of the programme; and
- (c) promptly remedies any deficiencies discovered.

### *Jurisdiction*

**85 Jurisdiction of High Court**

The High Court may hear and determine the following matters:

- (a) appeals from any proceedings in a District Court under this Act;
- (b) applications for injunctions under section 96;
- (c) applications for orders under any of the provisions of this Act (except sections 108 and 115).

Compare: 1986 No 121 s 37

**86 Jurisdiction of District Courts**

- (1) A District Court may hear and determine proceedings for offences against any of the provisions of this Act.
- (2) A District Court may hear and determine applications for orders under any of the provisions of this Act if—
  - (a) the occasion for the exercise of the power arises in the course of civil proceedings properly before the court; or
  - (b) in the case of—
    - (i) a revolving credit contract that has a credit limit, the credit limit does not exceed \$200,000; or
    - (ii) any other credit contract, the total of all advances made and agreed to be made under the credit contract does not exceed \$200,000; or
    - (iii) a consumer lease, the cash price of the goods hired does not exceed \$200,000; or
    - (iv) a buy-back transaction, the amount of the consideration paid by the transferee under the transaction does not exceed \$200,000; or
  - (c) the parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court has jurisdiction to hear and determine the application.
- (3) A District Court does not have jurisdiction to hear and determine applications for injunctions under section 96.
- (4) For the purposes of section 43 of the District Courts Act 1947, an application made to a District Court for an order under this Act is to be treated as a proceeding.

Compare: 1981 No 27 s 45

**87 Jurisdiction of Disputes Tribunals**

- (1) A Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988 has jurisdiction to hear and determine applications for orders under sections 41, 69, 80, 82, 90, 93, 120, and 122 if the total amount in respect of which an order of the Tribunal is sought is not more than \$15,000.
- (2) A Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988 has jurisdiction to hear and determine applications for orders under sections 58 and 59 if, at the date that the claim is lodged with the appropriate Tribunal, the

unpaid balance under the consumer credit contract does not exceed \$15,000.

- (3) An order of a Disputes Tribunal under this Act must not—
  - (a) require a person to pay an amount exceeding \$15,000:
  - (b) declare a person not liable to another person for an amount exceeding \$15,000:
  - (c) vest any property exceeding \$15,000 in value in any person:
  - (d) direct the transfer or assignment or delivery of possession of any property exceeding \$15,000 in value.
- (4) An order of a Tribunal that exceeds any restriction specified in subsection (3) is entirely of no effect.
- (5) If, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made under section 13 of the Disputes Tribunals Act 1988, subsections (1) to (3) are to be read as if every reference in those subsections to \$15,000 were a reference to \$20,000.

Compare: 1981 No 27 s 45A

Section 87(1): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 87(2): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 87(3)(a): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 87(3)(b): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 87(3)(c): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 87(3)(d): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 87(5): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

## Subpart 2—Statutory damages

### **88 Creditors, lessors, transferees, and buy-back promoters liable for statutory damages**

- (1) The debtor under a consumer credit contract is entitled to recover from the creditor under the contract the amount of the statutory damages set out in section 89 if the creditor breaches,

in connection with the contract, any of the provisions of sections 17 to 24, 32 to 40, and 70.

- (2) The guarantor under a guarantee is entitled to recover from the creditor under a consumer credit contract to which the guarantee applies the amount of the statutory damages set out in section 89 if the creditor breaches, in connection with the guarantee, any of the provisions of sections 24 to 26 and 32 to 35.
- (3) The lessee under a consumer lease is entitled to recover from the lessor under the lease the amount of the statutory damages set out in section 89 if the lessor breaches, in connection with the lease, any of the provisions of sections 32 to 35, 64 to 67, and 70.
- (4) The occupier under a buy-back transaction is entitled to recover from the transferee under the transaction the amount of the statutory damages set out in section 89 if the transferee breaches, in connection with the transaction, any of the provisions of sections 32 to 35, 72, and 77 to 79.
- (5) If section 74 applies, the occupier under a buy-back transaction is entitled to recover from the buy-back promoter the amount of the statutory damages set out in section 89 if the buy-back promoter breaches, in connection with the transaction, any of the provisions of sections 32 to 35, and 72.
- (6) The statutory damages that are to be paid in relation to a consumer credit contract, guarantee, consumer lease, or buy-back transaction must be divided equally between all of the debtors under the contract, the guarantors under the guarantee, the lessees under the lease, or the occupiers under the buy-back transaction, as the case may be.

### **89 Amount of statutory damages**

- (1) The amount of the statutory damages is,—
  - (a) in the case of a breach of section 18, an amount equal to the interest charges and credit fees payable under the consumer credit contract during the period to which the breach relates; and
  - (b) in the case of a breach of section 24, an amount equal to the interest charges and credit fees payable under the consumer credit contract during the period commencing

- on the date that the request for disclosure was received and ending on the earlier of the following:
- (i) the day on which disclosure was made in accordance with section 24;
  - (ii) the date on which the contract comes to an end; and
- (c) in the case of a breach of section 25(1)(a), the lesser of \$3,000 or 5% of the total of all advances made and agreed to be made under the consumer credit contracts to which the guarantee applies at the time the guarantee is given; and
- (d) in the case of any other breach, the lesser of \$3,000 or 5% of,—
- (i) in the case of a revolving credit contract, the credit limit at the time of the breach; or
  - (ii) in the case of a consumer lease, the cash price of the goods; or
  - (iii) in the case of any other consumer credit contract, the total of all advances made and agreed to be made under the contract; or
  - (iv) in the case of a buy-back transaction, the rateable value of the land at the time the transaction was made.
- (2) Subject to subsection (1)(a) and (b), if a revolving credit contract does not have a credit limit, the amount of the statutory damages is \$3,000.
- (3) If the amount of the statutory damages under subsection (1)(d) is less than \$100, the amount of the statutory damages must be rounded up to \$100.
- (4) If a person has breached 2 or more provisions referred to in section 88 in connection with the same consumer credit contract, consumer lease, or buy-back transaction and the breaches occur at or about the same time, the total statutory damages payable for those breaches is equal to the highest statutory damages payable for 1 of those breaches.

## **90 Enforcement of statutory damages**

- (1) The court may, on the application of the Commission or any party to a consumer credit contract, guarantee, consumer lease,

or buy-back transaction, make an order directing a creditor, a lessor, a transferee, or a buy-back promoter to pay any statutory damages that are payable under section 88.

- (2) An order under subsection (1) may be made whether or not any person has suffered, or is likely to suffer, any loss or damage as a result of the breach referred to in section 88.
- (3) An application under this section may be made at any time within 3 years from the time when the matter giving rise to the application occurred.
- (4) An application by the Commission under this section may be made by the Commission on behalf of a person or a class of persons.

#### **91 Court may reduce statutory damages**

- (1) The court may, on the application of a creditor under a class of consumer credit contract, a lessor under a class of consumer lease, or a transferee or buy-back promoter under a class of buy-back transaction, order that the statutory damages payable in connection with a breach or breaches that affect that class be extinguished or reduced to an amount specified by the court if the court considers that it is just and equitable that an order be made.
- (2) Any order under this section may be made on the terms and conditions that the court thinks fit.

#### **92 Guidelines for reducing statutory damages**

In deciding whether to make an order under section 91 and the terms and conditions applying to an order under that section, the court must have regard to the following matters:

- (a) the role that statutory damages have in providing incentives for compliance with this Act;
- (b) whether the creditor or lessor has an appropriate compliance programme;
- (c) the extent of, and the reasons for, the breach or breaches;
- (d) the extent to which any person has been prejudiced by the breach or breaches;
- (e) the extent to which the creditor, lessor, transferee, or buy-back promoter has compensated, or agreed to com-

pensate, the persons who are affected by the breach or breaches:

- (f) any other matters that the court thinks fit.

### Subpart 3—Orders, injunctions, and prohibited enforcement

#### *Court's general power to make orders*

#### **93 Court's general power to make orders**

The court may make all or any of the orders referred to in section 94 if the court finds that a person (whether or not that person is a party to any proceedings) has suffered loss or damage by conduct of any creditor, lessor, transferee, buy-back promoter, paid adviser, or broker that constitutes, or would constitute,—

- (a) a breach of any of the provisions of sections 17 to 82:
- (b) aiding, abetting, counselling, or procuring any other person to breach any of those provisions:
- (c) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to breach any of those provisions:
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, the breach by any other person of any of those provisions:
- (e) conspiring with any other person to breach any of those provisions.

Compare: 1986 No 121 s 43(1)

#### **94 Court orders**

- (1) The types of orders that the court may make against the person who engaged in the conduct referred to in section 93 are as follows:
  - (a) an order directing the person to refund or credit a payment in accordance with section 48:
  - (b) an order directing the person to pay to any person who has suffered loss or damage by that conduct an amount not exceeding the amount of the loss or damage (to the extent that any statutory damages that are to be paid do

- not adequately compensate the person for the loss or damage):
- (c) an order directing the person to pay exemplary damages to any person who has suffered loss or damage by that conduct:
  - (d) an order for any consequential relief that the court thinks fit.
- (2) The court must not make an order under subsection (1)(c) if a penalty has been imposed against the person in relation to the same conduct under section 103.
- Compare: 1986 No 121 s 43(2)

**95 Miscellaneous provisions concerning court's general power to make orders**

- (1) An order under section 93 may be made on the application of the Commission or any party to a consumer credit contract, guarantee, consumer lease, or buy-back transaction.
- (2) An application for an order under section 93 may be made at any time within 3 years from the time when the matter giving rise to the application occurred.
- (3) An application made by the Commission for an order under section 93 may be made on behalf of a person or a class of persons.
- (4) Nothing in section 93 or this section limits or affects the Illegal Contracts Act 1970.

*Injunctions*

**96 Injunctions**

- (1) The court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes, or would constitute, any of the following:
  - (a) a breach of any of the provisions of sections 17 to 82:
  - (b) any attempt to breach any of those provisions:
  - (c) aiding, abetting, counselling, or procuring any other person to breach any of those provisions:

- (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to breach any of those provisions:
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the breach by any other person of any of those provisions:
  - (f) conspiring with any other person to breach any of those provisions.
- (2) The court may rescind or vary an injunction granted under this section.
- (3) An application made by the Commission for the grant of an injunction may be made on behalf of a person or a class of persons.
- Compare: 1986 No 121 s 41(1), (2)

#### **97 Injunctions restraining conduct of particular kind**

- (1) This section applies if an application is made to the court for the grant of an injunction under section 96 restraining a person from engaging in conduct of a particular kind.
- (2) The court may grant the injunction—
- (a) if it is satisfied that the person has engaged in conduct of that kind (whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind); or
  - (b) if it is satisfied that it is likely that the person will engage in conduct of that kind in the event that an injunction is not granted,—
    - (i) whether or not the person has previously engaged in conduct of that kind; and
    - (ii) whether or not there is an imminent danger of substantial damage to any person if that person engages in conduct of that kind.

Compare: 1986 No 121 s 41(3), (4)

#### **98 Interim injunction**

- (1) This section applies if an application is made to the court for the grant of an interim injunction under section 96 restraining a person from engaging in conduct of a particular kind.

- (2) The court may grant an interim injunction if the court is satisfied that it is desirable to do so,—
  - (a) whether or not the person has previously engaged in conduct of that kind; and
  - (b) whether or not there is an imminent danger of substantial damage to any person if that person engages in conduct of that kind.
- (3) If the Commission applies to the court for the grant of an interim injunction, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (4) However, in determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

Compare: 1986 No 121 s 41(3), (4); 1986 No 5 s 88A

#### *Prohibited enforcement*

#### **99 Enforcement of consumer credit contract prohibited**

- (1) If disclosure is required under section 17 or section 22, no person (other than a debtor under the consumer credit contract) may, before that disclosure is made,—
  - (a) enforce the contract; or
  - (b) enforce any right to recover property to which the contract relates; or
  - (c) enforce any security interest taken in connection with the contract.
- (2) This section does not limit any rights that a person has in connection with a bill of exchange.

Compare: 1981 No 27 s 24

#### **100 Enforcement of guarantee prohibited**

- (1) If disclosure is required to be made under section 25 or section 26, no person may enforce the guarantee before disclosure is made.
- (2) Failure to comply with section 25 or section 26 does not affect the ability of a person to enforce a consumer credit contract against the debtor.

- (3) Failure to make disclosure to a debtor in accordance with this Act does not affect the ability of a person to enforce a guarantee.

Compare: 1981 No 27 s 24A

#### **101 Enforcement of consumer lease prohibited**

If disclosure is required under section 64 or section 65, no person (other than a lessee under the consumer lease) may, before that disclosure is made,—

- (a) enforce the lease; or
- (b) enforce any right to recover property to which the lease relates; or
- (c) enforce any security interest taken in connection with the lease.

#### **102 Enforcement of buy-back transaction prohibited**

If disclosure is required under section 72 or section 77, no person (other than an occupier under the buy-back transaction) may, before that disclosure is made,—

- (a) enforce the buy-back transaction; or
- (b) enforce any right to recover property to which the buy-back transaction relates; or
- (c) enforce any security interest taken in connection with the buy-back transaction.

### Subpart 4—Offences

#### **103 Offences**

- (1) Every creditor, lessor, transferee, or buy-back promoter who breaches any of the provisions of sections 17 to 69, 71 to 74, and 76 to 82 commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.
- (2) Every transferee who breaches section 75 commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$200,000, or to both.
- (3) Every person who acts in breach of an order made under section 108 commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.

tion to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$30,000, or to both.

- (4) *Amendment(s) incorporated in the Act(s).*

Compare: 1986 No 121 s 40(1)

#### **104 Conviction for 2 or more offences**

If a person is convicted, whether in the same or separate proceedings, of 2 or more offences in respect of breaches of the same provisions of this Act and those breaches are of the same or a substantially similar nature and occurred at or about the same time, the total amount of any fines imposed on that person for those convictions must not exceed the amount of the maximum fine that may be imposed in respect of a conviction for a single offence.

Compare: 1986 No 121 s 40(2)

#### **105 When proceedings may be commenced**

- (1) Proceedings under section 103 may be commenced at any time within 3 years after the matter giving rise to the breach arose.
- (2) This section applies despite section 14 of the Summary Proceedings Act 1957.

Compare: 1986 No 121 s 40(3)

### Subpart 5—Defence

#### **106 Reasonable mistake defence**

- (1) Every person has a defence to a claim for statutory damages under section 88 or a prosecution under section 103(1), in connection with a breach of this Act, if the person proves that—
- (a) the breach was due to a reasonable mistake or due to events outside of the person's control; and
  - (b) the breach was remedied (to the extent that it could be remedied) as soon as practicable after the breach was discovered by the person or brought to the person's notice; and
  - (c) the person has compensated or offered to compensate any person who has suffered loss or damage by that breach.

- (2) For the avoidance of doubt, a **mistake** does not include a mistake of law or a mistake in the interpretation of any enactment or of any document.

**107 Relevance of compliance programme**

The court must, in determining whether the breach is due to a reasonable mistake, take into account whether the person has in place an appropriate compliance programme.

Subpart 6—Prohibition on certain creditors,  
lessors, transferees, and buy-back promoters

**108 Power to order certain persons not to act as creditors,  
lessors, transferees, or buy-back promoters**

- (1) A District Court may make an order prohibiting or restricting a person from doing all or any of the matters set out in subsection (2) if—
- (a) the person—
- (i) has been convicted of an offence against this Act, or of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); or
  - (ii) is, or has been, a creditor under a credit contract that has been reopened under the Credit Contracts Act 1981; or
  - (iii) is, or has been, a creditor under a credit contract, a lessor under a consumer lease, or a transferee under a buy-back transaction that has been reopened under section 120; or
  - (iv) is, or has been, a buy-back promoter in connection with a buy-back transaction that has been reopened under section 120; or
  - (v) has failed, more than once, to comply with any of the provisions of this Act or the Credit Contracts Act 1981; or
  - (vi) was a director or principal officer of a body corporate at the time the body corporate acted in the manner referred to in subparagraphs (i) to (v); and

- (b) in the opinion of the District Court, the person is not a fit and proper person to—
  - (i) enter into consumer credit contracts as a creditor; or
  - (ii) enter into consumer leases as a lessor; or
  - (iii) enter into buy-back transactions as a transferee; or
  - (iv) act as a buy-back promoter in connection with a buy-back transaction.
- (2) The matters are—
  - (a) providing credit under consumer credit contracts, leasing goods under consumer leases, purchasing land under buy-back transactions, or acting as a buy-back promoter in connection with a buy-back transaction either alone or in partnership with any person and whether or not through agents;
  - (b) acting as a director or taking part directly or indirectly in the management or control of any company or business that provides credit under consumer credit contracts, leases goods under consumer leases, purchases land under buy-back transactions, or acts as a buy-back promoter in connection with a buy-back transaction;
  - (c) being in the employ, or acting as an agent, of a creditor, a lessor, a transferee, or a buy-back promoter in any capacity that allows the person to take any part in the negotiation of—
    - (i) consumer credit contracts involving the provision of credit by the creditor; or
    - (ii) consumer leases involving the leasing of goods by the lessor; or
    - (iii) buy-back transactions.

Compare: 1981 No 27 s 39(1)

**109 Who may apply and nature of order**

- (1) Any person (including the Commission) may apply to a District Court for an order under section 108.
- (2) An order under section 108—

- (a) may be for a specified period of time or without any time limit, and may be made on any other terms and conditions that the District Court thinks fit; and
- (b) may be cancelled or varied at any time by the District Court.

Compare: 1981 No 27 s 39(2), (3)

#### **110 Costs**

- (1) In any proceedings under section 108, the District Court may make an order for the payment by any party to the proceedings of the whole or any part of the full costs incurred in connection with the proceedings by any other party to the proceedings.
- (2) The costs so awarded are recoverable as a debt due by the party against whom they have been awarded to the party in whose favour they have been awarded.

Compare: 1981 No 27 s 39(4)

### Subpart 7—Application of Commerce Act 1986 and provisions relating to Commerce Commission

#### **111 Role and functions of Commission under this Act**

- (1) The role of the Commission under this Act is to promote compliance with this Act.
- (2) The functions of the Commission, in relation to this Act, are to—
  - (a) monitor trade practices in credit markets, consumer lease markets, and buy-back transaction markets; and
  - (b) take prosecutions in relation to breaches of this Act; and
  - (c) take civil proceedings under this Act (including proceedings under Part 5); and
  - (d) make available appropriate information for the guidance of consumers, creditors, lessors, transferees, and other interested persons in relation to promoting compliance with this Act.
- (3) Nothing in this Act imposes on the Commission any duty or obligation to take any proceedings under this Act or to exercise any power conferred by this Act in respect of any particular person.

**112 Commission's rights to appear and adduce evidence**

- (1) The Commission may appear and be heard, in person or by a barrister or solicitor, in any proceedings brought (in whole or in part) under this Act in a District Court, the High Court, the Court of Appeal, or the Supreme Court.
- (2) That right applies whether or not the Commission was a party to the proceeding at any earlier stage in the proceedings.
- (3) The Commission has the right to adduce evidence and the right to cross-examine witnesses if the Commission appears under this section, unless the proceedings are by way of appeal.
- (4) This section does not affect the court's power to make any order (including any order as to costs).

Section 112(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

**113 Application of Commerce Act 1986**

The following provisions of the Commerce Act 1986 apply with all necessary modifications:

- (a) sections 15 to 17 (proceedings of the Commission):
- (b) section 90 (conduct by servants or agents):
- (c) section 98 (Commission may require person to supply information or documents or give evidence):
- (d) sections 98A to 98G (Commission's powers of search and seizure):
- (e) section 99 (powers of Commission to take evidence):
- (f) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (g) section 100A (Commission may state case for opinion of High Court):
- (h) sections 101 (notices) and 102 (service of notices):
- (i) section 103 (offences):
- (j) section 104 (determinations of Commission):
- (k) *[Repealed]*
- (l) section 106 (proceedings privileged):
- (m) section 106A (judicial notice):
- (n) section 109 (Commission may prescribe forms).

Section 113(a): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 113(k): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **114 Additional proceedings**

Proceedings brought under this Act are in addition to any proceedings brought under any other Act.

#### **115 Disposal of things seized**

- (1) In any proceedings relating to any thing seized under warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in any manner that the court thinks fit.
- (2) The Commission may, at any time, unless an order has been made under subsection (1), return the thing to the person from whom it was seized, or apply to a District Court Judge for an order for its disposal.
- (3) On any application under subsection (2), the District Court Judge may make any order that a court may make under subsection (1).
- (4) If proceedings relating to the thing are not brought within a period of 3 months of its seizure, any person claiming to be entitled to the thing may, after the expiry of that period, apply to a District Court Judge for an order that it be delivered to him or her.
- (5) On any application under subsection (4), the District Court Judge may—
  - (a) adjourn the application, on any terms that he or she thinks fit, for proceedings to be brought; or
  - (b) make any order that a court may make under subsection (1).

#### **116 Court order for disposal of things seized to be suspended on conviction**

- (1) If any person is convicted in any proceedings for an offence relating to anything for which a warrant has been issued, and any order is made under section 115, the operation of the order is suspended,—

- (a) in any case, until the expiration of the time prescribed by the Summary Proceedings Act 1957 for the filing of a notice of appeal or an application for leave to appeal; and
  - (b) if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
  - (c) if application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.
- (2) If the operation of any order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

## **Part 5**

### **Reopening of oppressive credit contracts, consumer leases, and buy-back transactions**

#### **117 Application of Part**

This Part applies to—

- (a) every credit contract (whether or not it is a consumer credit contract); and
- (b) every consumer lease; and
- (c) every buy-back transaction.

#### **118 Meaning of oppressive**

In this Act, **oppressive** means oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice.

Compare: 1981 No 27 s 9

#### **119 Collateral contracts and linked transactions**

- (1) If a security interest is or may be taken in connection with a credit contract, consumer lease, or buy-back transaction, the contract or arrangement that creates or provides for the security interest is to be treated as forming part of the credit contract, lease, or transaction for the purposes of this Part.

- (2) If it is a term of a credit contract that another contract or arrangement be entered into, any part of that other contract or arrangement that relates to the provision of credit to, or the payment of money by, a debtor under the credit contract is to be treated as forming part of the credit contract for the purposes of this Part.
- (3) If it is a term of a consumer lease or buy-back transaction that another contract or arrangement be entered into, any part of that other contract or arrangement that relates to the payment of money by a lessee under the consumer lease or by an occupier under a buy-back transaction is to be treated as forming part of the consumer lease or transaction for the purposes of this Part.

#### **120 Reopening of credit contracts, consumer leases, and buy-back transactions**

The court may reopen a credit contract, a consumer lease, or a buy-back transaction if, in any proceedings (whether or not brought under this Act), it considers that—

- (a) the contract, lease, or transaction is oppressive; or
- (b) a party has exercised, or intends to exercise, a right or power conferred by the contract, lease, or transaction in an oppressive manner; or
- (c) a party has induced another party to enter into the contract, lease, or transaction by oppressive means.

Compare: 1981 No 27 s 10(1)

#### **121 Refusal to agree to early termination, variation, or waiver**

If a party refuses to agree to the early termination of a credit contract, consumer lease, or buy-back transaction, or to vary or waive any term of a credit contract, consumer lease, or buy-back transaction, or imposes conditions on that agreement, the party is deemed, for the purposes of this Act, to be exercising a right or power under the contract, lease, or transaction.

Compare: 1981 No 27 s 10(2)

#### **122 Reopening credit contracts involved in arrangement**

- (1) The court may reopen all or any of the credit contracts involved in an arrangement if,—

- (a) with the knowledge of the creditor under a reopened credit contract,—
    - (i) credit provided under the reopened credit contract is used (in whole or in part) to pay amounts owing under another credit contract or other credit contracts; or
    - (ii) amounts owing under the reopened credit contract were paid from credit provided under another credit contract or other credit contracts; and
  - (b) the creditors under the credit contracts are either the same person or related companies.
- (2) Subsection (1) applies whether or not the court considers that section 120(a) to (c) applies.
- Compare: 1981 No 27 s 10(3)

**123 Time and circumstances relevant to reopening credit contracts, consumer leases, or buy-back transactions**

A credit contract, a consumer lease, a buy-back transaction, a term of a credit contract, a consumer lease, or a buy-back transaction, or an act performed under, or in connection with, a credit contract, a consumer lease, or a buy-back transaction is not oppressive if the contract, lease, transaction, term, or act would not have been considered oppressive at the time, and in the circumstances, that it was made or performed.

Compare: 1981 No 27 s 11(1)

**124 Guidelines for reopening credit contracts, consumer leases, and buy-back transactions**

In deciding whether section 120 applies and whether to reopen a credit contract, consumer lease, or buy-back transaction, the court must have regard to—

- (a) all of the circumstances relating to the making of the contract, lease, or transaction, or the exercise of any right or power conferred by the contract, lease, or transaction, or the inducement to enter the contract, lease, or transaction (as the case may be); and
- (b) the following matters if they are applicable:
  - (i) whether the amount payable by the debtor under the contract, lessee under the lease, or occupier

- under the transaction is oppressive (whether or not on default by the debtor, lessee, or occupier):
- (ii) if a debtor, lessee, or occupier is in default under the contract, lease, or transaction, whether the time given to the debtor, the lessee, or the occupier to remedy the default is oppressive, having regard to the likelihood of loss to the creditor, lessor, or transferee:
  - (iii) if the creditor has required, as a condition of the full prepayment of a credit contract, that the debtor pay a certain amount, whether the amount is oppressive having regard to the expenses of the creditor and the likelihood that the amount repaid can be reinvested on similar terms:
  - (iv) if the creditor, lessor, or transferee has refused to release part of any security interest relating to the contract, lease, or transaction, or has agreed to the release subject to conditions, whether the refusal is, or the conditions are, oppressive, having regard to the obligations secured by the security interest and the extent of the security that would remain after the release; and
- (c) any other matters that the court thinks fit.

Compare: 1981 No 27 s 11(2)

## **125 When reopening proceedings may be commenced**

- (1) Proceedings seeking the reopening of a credit contract, consumer lease, or buy-back transaction may be commenced in the court by the Commission, any party to the contract, lease, or transaction, or any guarantor under a guarantee relating to the credit contract, at any time earlier than,—
- (a) in the case of a buy-back transaction, 3 years after the due date for the performance of the last obligation required to be performed under the transaction; or
  - (b) in the case of a contract or lease that is terminated by either party, 1 year after the date on which the contract or lease is terminated; or

- (c) in any other case, 1 year after the due date for the performance of the last obligation required to be performed under the contract or lease.
- (2) However, subsection (3) applies if,—
  - (a) with the knowledge of the creditor under a credit contract,—
    - (i) the credit provided under the contract is used (in whole or in part) to pay amounts owing under another credit contract or other credit contracts; or
    - (ii) amounts owing under the contract were paid from credit provided under another credit contract or other credit contracts; and
  - (b) the creditors under the credit contracts are either the same person or related companies.
- (3) Proceedings seeking the reopening of all or any of the credit contracts referred to in subsection (2) may be commenced at any time earlier than 1 year after the due date for the performance of the last obligation required to be performed under any of those contracts.
- (4) Proceedings seeking the reopening of a credit contract, consumer lease, or buy-back transaction may not be commenced at any other time.
- (5) The Commission may commence proceedings on behalf of a person or a class of persons.
- (6) This section applies despite any other enactment or rule of law.  
Compare: 1981 No 27 s 12

## **126 Evidence**

- (1) If the court considers reopening a credit contract, consumer lease, or buy-back transaction under section 120(a), evidence regarding the terms on which credit was available from other persons, goods could be hired from other persons, or land could be sold to other persons at the time the contract, lease, or transaction was made is admissible in evidence.
- (2) If the court considers reopening a credit contract, consumer lease, or buy-back transaction under section 120(b), evidence regarding the exercise of the rights or powers by other persons

at the time the right or power was exercised is admissible in evidence.

- (3) If the court considers reopening a credit contract, consumer lease, or buy-back transaction under section 120(c), evidence regarding the inducements offered by other persons at the time the inducement was offered is admissible in evidence.

Compare: 1981 No 27 s 13

**127 Power of court on reopening credit contract, consumer lease, or buy-back transaction**

- (1) If the court reopens a credit contract, consumer lease, or buy-back transaction, it may make any orders that it thinks necessary to remedy the matters that caused the court to reopen the contract, lease, or transaction.
- (2) The court may—
- (a) order that an account be taken, and reopen any account already taken, for any transaction between the parties; or
  - (b) vest in any party, or direct any party to transfer or assign to any other party or to deliver to any other party the possession of, the whole or any part of any property that is the subject of the credit contract, consumer lease, or buy-back transaction or that is the whole or part of the consideration for it; or
  - (c) direct any party to pay to any other party any sum that the court thinks fit; or
  - (d) order that any obligation outstanding under the credit contract, consumer lease, or buy-back transaction be extinguished, revised, altered, complied with, or performed; or
  - (e) order that the credit contract, consumer lease, or buy-back transaction, or any term of the contract, lease, or transaction, or any security interest in connection with the contract, lease, or transaction, be set aside (in whole or in part) or revised or altered; or
  - (f) if a party has parted with any property that is the subject of a security interest in connection with the credit contract, consumer lease, or buy-back transaction, order him or her to indemnify the other party or parties; or

- (g) direct any party to do or refrain from doing any act or thing in relation to any other party.
  - (3) Subsection (2) does not limit subsection (1).
  - (4) Any order may be made on any terms and conditions that the court thinks fit.
- Compare: 1981 No 27 s 14(1), (3)

**128 Costs in consumer cases**

- (1) In any proceedings under this Part, the court may, if it has reopened a consumer credit contract, consumer lease, or buy-back transaction, make an order for the payment by any party to the proceedings of the whole or any part of the full costs incurred in connection with the proceedings by any other party to the proceedings.
- (2) The costs so awarded are recoverable as a debt due by the party against whom they have been awarded to the party in whose favour they have been awarded.
- (3) This section is subject to section 87.

**129 Persons who share in profits or have beneficial interest in reopened credit contract, consumer lease, or buy-back transaction**

- (1) If it appears to the court that any person has shared in the profits of, or has any beneficial interest in (whether prospective or otherwise), a reopened credit contract, consumer lease, or buy-back transaction (whether or not the person is a party to the contract, lease, or transaction), the court may make any orders concerning that person that it thinks fit.
  - (2) This section does not limit section 127.
- Compare: 1981 No 27 s 14(2)

**130 Time of exercise of court's powers**

- The powers of the court may be exercised whether or not—
- (a) the time for performance of any term of the credit contract, consumer lease, or buy-back transaction has arrived:

- (b) any statement or settlement of account relating to the credit contract, consumer lease, or buy-back transaction has been given:
- (c) any agreement purporting to end the credit contract, consumer lease, or buy-back transaction has been made:
- (d) any party has assigned any of the party's rights under the credit contract, consumer lease, or buy-back transaction.

Compare: 1981 No 27 s 14(4)

**131 No limit on sections 41, 80, and 82**

Nothing in this Part limits section 41 or section 80 or section 82.

## **Part 6**

### **Miscellaneous provisions**

**132 Provisions relating to assignment of credit contracts, consumer leases, or buy-back transactions**

- (1) An assignee of a credit contract, a consumer lease, or a buy-back transaction from a creditor, a lessor, or a transferee takes the contract, lease, or transaction subject to all equities and to all rights and remedies under this Act that the debtor, the lessee, or the occupier has or would have against the original creditor, the original lessor, the original transferee, or any subsequent creditor, lessor, or transferee.
- (2) This section is subject to the Bills of Exchange Act 1908.

Compare: 1981 No 27 s 42

**133 Changes, deferrals, or postponements under credit contracts and consumer leases**

- (1) The provision of credit as a result of a change to an existing credit contract, or a deferral of an amount payable under an existing credit contract, or a postponement relating to an existing credit contract, is not to be treated as creating a new credit contract for the purposes of this Act if the change, deferral, or postponement is made in accordance with this Act or the existing credit contract.

- (2) The provision of further goods under an existing consumer lease, or a change in a consumer lease as a result of a deferral of an amount payable under an existing consumer lease, or a postponement relating to an existing consumer lease, is not to be treated as creating a new consumer lease for the purposes of this Act or as creating a credit contract for the purposes of this Act if the provision of the further goods, change, deferral, or postponement is made in accordance with this Act or the existing consumer lease.

**134 Right to set-off**

- (1) A creditor, lessor, or transferee may set-off any entitlement of a debtor, guarantor, lessee, or occupier to statutory damages or to an amount that must be paid to a debtor, guarantor, lessee, or occupier under an order made under section 93 against any amount otherwise owing by the debtor, guarantor, lessee, or occupier to the creditor, lessor, or transferee.
- (2) Subsection (1) is subject to any order of the court.

**135 No contracting out**

- (1) This Act has effect despite any provision to the contrary in any credit contract, guarantee, consumer lease, or buy-back transaction.
- (2) Every creditor, lessor, or transferee commits an offence against section 13(i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act.
- (3) Subsection (1) does not limit or affect any term in a credit contract, guarantee, consumer lease, or buy-back transaction between a creditor, a lessor, or a transferee and a debtor, a guarantor, a lessee, or an occupier to the extent that the term—
- (a) imposes a stricter duty on the creditor, the lessor, or the transferee than that imposed by this Act; or
  - (b) provides a remedy more advantageous to the debtor, guarantor, lessee, or occupier than the remedies provided by this Act.

- (4) Subsection (1) does not prevent a debtor, guarantor, lessee, or occupier who has a claim under this Act from agreeing to settle or compromise that claim.

Compare: 1993 No 91 s 43

### **136 Application of law relating to illegal contracts**

The fact that a credit contract, a consumer lease, or a buy-back transaction has been entered into in breach of this Act, or that an act that breaches this Act has been committed in the course of the performance of any contract, lease, or transaction, does not—

- (a) make that contract, lease, or transaction illegal; or
- (b) make that contract, lease, or transaction or any provision of that contract, lease, or transaction unenforceable or of no effect, except as expressly provided in this Act.

Compare: 1981 No 27 s 44

### **137 Conflict of laws**

This Act applies to a credit contract, guarantee, lease, or buy-back transaction if the contract, guarantee, lease, or transaction—

- (a) is governed by the law of New Zealand; or
- (b) would be governed by the law of New Zealand but for a choice of law provision in the contract, guarantee, lease, or transaction.

## *Regulations*

### **138 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing any class of credit contract that is exempted from being a consumer credit contract and the terms and conditions (if any) applying to the exemption;
  - (b) prescribing any other information that must be disclosed under section 22 or section 23 or section 26;
  - (c) prescribing, for the purposes of section 23 or section 26, any alternative publication requirements in relation

- to disclosing a change to the amount of an interest rate or a change to the amount of any fee or charge payable:
- (d) prescribing any class of change to a matter for which disclosure under section 23 is not required:
  - (e) prescribing model disclosure statements that comply with section 32, and the terms and conditions on which the model disclosure statements may be used:
  - (f) prescribing, for the purposes of section 33, the assumptions that may be made when disclosing information that is required to be disclosed under this Act and the terms and conditions (if any) that apply to those assumptions:
  - (g) prescribing a procedure or procedures for calculating a reasonable estimate of a creditor's loss arising from full prepayment:
  - (h) prescribing, for the purposes of section 52, the procedure for calculating a proportionate rebate of any premium paid for any consumer credit insurance product financed under a consumer credit contract:
  - (i) prescribing the procedure for determining the maximum amount payable by a lessee on the termination of a consumer lease before the end of its term:
  - (j) prescribing the form of the certificate that must be given under section 73:
  - (k) prescribing, for the purposes of Schedule 1, any other information or warnings as key information concerning a consumer credit contract:
  - (l) prescribing, for the purposes of Schedule 2, any other information or warnings as information concerning a consumer lease:
  - (m) prescribing, for the purposes of Schedule 3, any other information or warnings as information concerning a buy-back transaction:
  - (n) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) For the purposes of subsection (1)(e), regulations may—
- (a) prescribe model disclosure statements in any language; and

- (b) authorise the translation of a prescribed model disclosure statement into 1 or more languages and the terms and conditions that apply to the translation.
- (3) Without limiting subsection (1)(f), regulations may prescribe assumptions for the purposes of section 33 that relate to—
  - (a) the amount of any advance, interest rate, fee, charge, or payment; and
  - (b) whether or not at any time there will be a change to the amount of any advance, interest rate, fee, charge, or payment; and
  - (c) when any advance or payment will be made or will become payable; and
  - (d) when any interest charge, fee, or other charge will be paid or become payable; and
  - (e) the actions or behaviour of any person.

*Acts amended and repealed*

**139 Acts amended**

The Acts specified in Schedule 4 are amended in the manner indicated in that schedule.

**140 Repeal of Credit Contracts Act 1981 and Hire Purchase Act 1971**

The following enactments are repealed:

- (a) Credit Contracts Act 1981 (1981 No 27);
- (b) Hire Purchase Act 1971 (1971 No 147).

*Transitional provisions*

**141 Transitional provision**

- (1) This Act applies to every credit contract, consumer lease, and guarantee that is made after the commencement of this subsection.
- (2) This Act applies to every buy-back transaction, whether made before or after the commencement of this subsection.
- (3) However, subpart 3 of Part 3 does not apply to a buy-back transaction made before the commencement of this subsection.

**142 Election for Act to apply**

- (1) A creditor under a credit contract made before the commencement of this section may, after the commencement of this section, elect that this Act apply to the credit contract and any guarantee made in connection with the credit contract from a particular date (the **effective date**).
- (2) A creditor must not make an election under subsection (1) if that election increases any obligation that the debtor has in connection with the credit contract.
- (3) The effective date must be a date after the date that the election is made.
- (4) If a creditor makes an election under subsection (1),—
  - (a) the Credit Contracts Act 1981 and the Hire Purchase Act 1971 do not apply to the credit contract or the guarantee from the effective date; and
  - (b) the creditor must, within 5 working days of the day that the election is made, notify the debtor or guarantor in writing—
    - (i) that the creditor has made an election under this section; and
    - (ii) that this Act applies to the credit contract or guarantee from the effective date; and
  - (c) the election does not affect the completion of a matter or thing, or the bringing or completion of proceedings that relate to a right, interest, title, immunity, or duty that existed immediately before the election takes effect; and
  - (d) the Credit Contracts Act 1981 and the Hire Purchase Act 1971 continue to have effect as if the election had not been made for the purpose of completing the matter or thing or the bringing or completion of proceedings that relate to a right, interest, title, immunity, or duty that existed immediately before the election takes effect.

**143 Continuing application of Credit Contracts Act 1981 and Hire Purchase Act 1971**

- (1) If this Act does not apply to a credit contract, hire purchase agreement, or guarantee made before the commencement of this section, or to any act, omission, right, interest, title, im-

munity, or duty in connection with that contract, agreement, or guarantee, then the Credit Contracts Act 1981 and the Hire Purchase Act 1971 continue to apply to the contract, agreement, or guarantee or to the act, omission, right, interest, title, immunity, or duty as if they were still in force.

(2) For the purposes of subsection (1), Part 2 of Schedule 1 of the Disputes Tribunals Act 1988 is to be read as if it includes references to the Credit Contracts Act 1981 and the Hire Purchase Act 1971.

(2A) The references in subsection (1) to the Credit Contracts Act 1981 and the Hire Purchase Act 1971 are references to those Acts as in force immediately before the commencement of this section, except that references in section 45A of the Credit Contracts Act 1981 and section 47A of the Hire Purchase Act 1971 to \$7,500 and \$12,000 must be treated as references to \$15,000 and \$20,000 respectively.

(3) In this section,—

**credit contract** has the same meaning as in the Credit Contracts Act 1981 (as in force immediately before the commencement of this section)

**hire purchase agreement** has the same meaning as in the Hire Purchase Act 1971 (as in force immediately before the commencement of this section).

Section 143(1): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 143(2A): inserted, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

---

## Schedule 1

s 17

### Key information concerning consumer credit contract

The following information is the key information concerning a consumer credit contract as is applicable:

*Full name and address of creditor*

- (a) the full name and full address of the creditor:

*Initial unpaid balance*

- (b) the unpaid balance as at the date that is specified in the disclosure statement as the effective date of the statement, accounting for every payment made by the debtor on or before that date:

- (c) the amount and a description of each advance, charge, or payment accounted for in the unpaid balance disclosed under paragraph (b):

*Subsequent advance*

- (d) the amount, a description, and timing of each advance to be made after the effective date of the disclosure statement, if ascertainable:

*Total advances*

- (e) the total of all advances made or to be made in connection with the contract, if ascertainable:

*Credit limit*

- (f) the credit limit:

*Annual interest rate*

- (g) the annual interest rate or rates under the contract (with the rate or rates being expressed in terms of a percentage):

- (h) if there is more than 1 rate, how each rate applies:

- (i) if an annual interest rate is fixed for the term or any part of the term of the contract, the period during which the annual interest rate is fixed:

- (j) if an annual interest rate is determined by referring to a base rate, particulars that describe how the annual interest rate is determined, including—

- (i) the name of the base rate or a description of it; and  
(ii) the margin or margins (if any) above or below the base rate to be applied to determine the annual interest rate; and

- (iii) where and when the base rate is published or, if it is not published, how the debtor may ascertain the rate; and
- (iv) the current annual interest rate or rates:

*Method of charging interest*

- (k) the method of calculating interest charges payable under the contract and the frequency with which interest charges are debited under the contract:

*Total interest charges*

- (l) the total amount of interest charges payable under the contract, if ascertainable (but only if the contract would, on the assumptions prescribed by regulations, be paid out within 7 years of the date on which credit is first provided under the contract):

*Interest free period*

- (m) if the contract involves an interest free period, the following particulars:
  - (i) the length of the interest free period:
  - (ii) when interest will begin to accrue:

*Credit fees and charges*

- (n) a description of the credit fees and charges (other than interest charges) that are, or may become, payable under the contract (unless the fee or charge is disclosed under paragraph (c)), including—
  - (i) when each fee or charge is payable, if ascertainable; and
  - (ii) the amount of each fee or charge if ascertainable, but, if not, the method of calculation of the fee or charge:

*Payments required*

- (o) if more than 1 payment is to be made—
  - (i) the amount of the payments or the method of calculating the amount; and
  - (ii) if ascertainable, the number of the payments; and
  - (iii) if ascertainable, the total amount of the payments (but only if the contract would, on the assumptions prescribed by regulations, be paid out within 7 years of the date on which credit is first provided under the contract); and
  - (iv) when the first payment is due, if ascertainable, and the frequency of payments:

- Full prepayment*
- (p) how the reasonable estimate of the creditor's loss on full prepayment is calculated and whether a statutory procedure prescribed in regulations is used:
- Security interest*
- (q) a description of any security interest that is or may be taken in connection with the contract (including a description of any property that is subject to, or proposed to be subject to, any security interest) and the extent to which the debtor's obligations to the creditor are secured:
- Default interest charges and default fees*
- (r) particulars that describe any default interest charges and default fees that may be payable under the contract including how and when default interest charges and default fees would become payable:
- Debtor's right to cancel*
- (s) a statement of the debtor's rights under section 27 in the following form (unless the contract is a revolving credit contract):

“Statement of right to cancel

The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

**How to cancel**

If you want to cancel this contract you must give written notice to the creditor.

\*You must also—

- (a) return to the creditor any advance and any other property received by you under the contract (but you cannot do this if you have taken possession of any goods or if you bought any property at an auction or if the contract is for the sale of services that have been performed); or
- (b) pay the cash price of the property or services within 15 working days of the day you give notice.

\*Delete if the credit contract does not involve a credit sale.

†You must also return to the creditor any advance and any other property received by you under the contract.

†Delete if the credit contract involves a credit sale.

**Time limits for cancellation**

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 3 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, e-mail) you must give notice that you intend to cancel within 5 working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within 7 working days after they were posted.

Saturdays, Sundays, and national public holidays are not counted as working days.

**What you may have to pay if you cancel**

If you cancel the contract the creditor can charge you—

- (a) the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and
- \*(b) interest for the period from the day you received the property or services until the day you either pay the cash price for the property or services or return the property to the creditor.

\*Delete if the credit contract does not involve a credit sale.

- †(b) interest for the period from the day you received the advance until the day you repay the advance.

†Delete if the credit contract involves a credit sale.

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is being unreasonable in any way, you should seek legal advice immediately.”:

*Continuing disclosure statements*

- (t) the frequency with which continuing disclosure statements will be provided (assuming that section 21 does not apply):

*Consent to electronic communications*

- (u) if the creditor consents to receive notices or other communications from the debtor in electronic form, whether by means of an electronic communication or otherwise, a statement to that effect:

*Other items*

- (v) any other information or warnings prescribed by the regulations to be information that is key information concerning a credit contract.
-

**Schedule 2**

s 64

**Information concerning consumer lease**

The following is information concerning a consumer lease as is applicable:

- (a) *Full name and address of lessor*  
the full name and full address of the lessor:
- (b) *Nature of lease*  
the fact that the lease is a consumer lease under this Act:
- (c) *Term of lease*  
the term of the lease:
- (d) *Cash price*  
the cash price of the goods leased:
- (e) *Option to purchase goods*  
whether the lessee has an option to purchase the goods and if so, the amount payable to exercise the option or the method of calculating that amount:
- (f) *Payments required*  
the amount, timing, and number of payments to be made under the lease:
- (g) *Amount paid at commencement*  
any amount or consideration that must be paid or provided before or at the commencement of the term of the lease or before the lessee takes possession of the goods:
- (h) *Total amount payable*  
the total amount payable by the lessee under the lease, if ascertainable:
- (i) *Conditions of termination*  
a statement of the conditions on which the lessee may terminate the lease, including how any amount payable on the termination of the lease is calculated:
- (j) *Services financed under lease*  
particulars of any services that in substance are financed under the lease:

*Default fees or charges*

- (k) the fees or charges that are payable on a breach of the lease by the lessee or on the enforcement of the lease by the lessor:

*Other items*

- (l) any other information or warnings prescribed by the regulations to be information concerning a consumer lease.
-

**Schedule 3**  
**Information concerning buy-back**  
**transactions of land**

s 72

The following is information concerning a buy-back transaction as is applicable:

- Full name and address of transferee*
- (a) the full name and full address of the transferee:
- Amounts paid or provided to, or for benefit of, occupier*
- (b) the amount, a description, and timing of each of the following, if ascertainable:
- (i) the money provided to the occupier or to another person to the order of the occupier in connection with the buy-back transaction:
  - (ii) the payment, discharge, or consolidation of a pre-existing monetary obligation of the occupier in connection with the buy-back transaction:
- Total of amounts paid or provided to, or for benefit of, occupier*
- (c) the total of all of the amounts described in paragraph (b), if ascertainable:
- Right to occupy*
- (d) particulars of the right to occupy the whole or any part of the land, including—
- (i) the date of the agreement that confers the right to occupy the land; and
  - (ii) the date of commencement of the right to occupy the land (if that is different from the date of the agreement that confers the right); and
  - (iii) the transferee's address for service; and
  - (iv) the amount of any bond; and
  - (v) the rent (if any) that is payable; and
  - (vi) the frequency and amount of any rent payments; and
  - (vii) the place or bank account number where any rent is to be paid; and
  - (viii) a statement (if applicable) that the occupier must pay any fee or other charge for services rendered by any so-

licitor or real estate agent relating to the right to occupy;  
and

- (ix) a statement (if applicable) that the occupier must pay for any metered water provided to the land; and
- (x) a list of any goods provided by the transferee; and
- (xi) if the right to occupy is for a fixed term, the date on which the right to occupy will terminate:

*Right or understanding to repurchase land*

- (e) the terms of the right or understanding to repurchase the land (other than terms implied by law), including the purchase price or the method of calculating that amount:

*Fees and charges*

- (f) a description of the fees and charges that are, or may become, payable under the transaction, including—
  - (i) when each fee or charge is payable, if ascertainable; and
  - (ii) the amount of each fee or charge if ascertainable, but, if not, the method of calculation of the fee or charge:

*Payments required*

- (g) if more than 1 payment is to be made under the transaction by the occupier,—
  - (i) the amount of the payments or the method of calculating the amount; and
  - (ii) if ascertainable, the number of the payments; and
  - (iii) if ascertainable, the total amount of the payments; and
  - (iv) when the first payment is due, if ascertainable, and the frequency of payments:

*Buy-back default fees*

- (h) particulars that describe any buy-back default fees that may be payable under the transaction, including how and when buy-back default fees would become payable:

*Consent to electronic communications*

- (i) if the transferee consents to receive notices or other communications from the occupier in electronic form, whether by means of an electronic communication or otherwise, a statement to that effect:

*Other items*

- (j) any other information or warnings prescribed by the regulations to be information that is information concerning a buy-back transaction.
-

**Schedule 4**

s 139

**Acts amended**

**Administration Act 1969 (1969 No 52)**

*Amendment(s) incorporated in the Act(s).*

**Bills of Exchange Act 1908 (1908 No 15)**

*Amendment(s) incorporated in the Act(s).*

**Consumer Guarantees Act 1993 (1993 No 91)**

*Amendment(s) incorporated in the Act(s).*

**Contractual Remedies Act 1979 (1979 No 11)**

*Amendment(s) incorporated in the Act(s).*

**Credit (Repossession) Act 1997 (1997 No 85)**

*Amendment(s) incorporated in the Act(s).*

**Department of Justice (Restructuring) Act 1995 (1995 No 39)**

*Amendment(s) incorporated in the Act(s).*

**Disputes Tribunals Act 1988 (1988 No 110)**

*Amendment(s) incorporated in the Act(s).*

**Disputes Tribunals Amendment Act 1998 (1998 No 84)**

*Amendment(s) incorporated in the Act(s).*

**District Courts Amendment Act 1979 (1979 No 125)**

*Amendment(s) incorporated in the Act(s).*

**District Courts Amendment Act 1991 (1991 No 61)**

*Amendment(s) incorporated in the Act(s).*

**Door to Door Sales Act 1967 (1967 No 126)**

*Amendment(s) incorporated in the Act(s).*

**Fencing of Swimming Pools Act 1987 (1987 No 178)**

*Amendment(s) incorporated in the Act(s).*

**Finance Act 1941 (1941 No 4)**

*Amendment(s) incorporated in the Act(s).*

**Finance Act 1986 (1986 No 134)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Act 1985 (1985 No 141)**

*Amendment(s) incorporated in the Act(s).*

**Income Tax Act 1994 (1994 No 164)**

*Amendment(s) incorporated in the Act(s).*

**Insolvency Act 1967 (1967 No 54)**

*Amendment(s) incorporated in the Act(s).*

**Layby Sales Act 1971 (1971 No 80)**

*Amendment(s) incorporated in the Act(s).*

**Motor Vehicle Dealers Act 1975 (1975 No 127)**

*Amendment(s) incorporated in the Act(s).*

**Motor Vehicle Sales Act 2003 (2003 No 12)**

*Amendment(s) incorporated in the Act(s).*

**Sentencing Act 2002 (2002 No 9)**

*Amendment(s) incorporated in the Act(s).*

**Social Security Act 1964 (1964 No 136)**

*Amendment(s) incorporated in the Act(s).*

**Superannuation Schemes Act 1989 (1989 No 10)**

*Amendment(s) incorporated in the Act(s).*

---

**Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
- 

**Notes****1 General**

This is a reprint of the Credit Contracts and Consumer Finance Act 2003. The reprint incorporates all the amendments to the Act as at 1 August 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

## **5** *List of amendments incorporated in this reprint (most recent first)*

Disputes Tribunals Amendment Act 2009 (2009 No 22): section 8

Property Law Act 2007 (2007 No 91): section 364(1)

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

Overseas Investment Act 2005 (2005 No 82): section 75

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Crown Entities Act 2004 (2004 No 115): section 200

Supreme Court Act 2003 (2003 No 53): section 48(1)