

FIJI ISLANDS

CONSUMER CREDIT ACT 1999

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CONSUMER CREDIT ACT 1999

ACT NO. 15 OF 1999

I assent.

[L.S.]

K. K. T. MARA
President

[19 March 1999]

AN ACT

**TO PROVIDE FOR THE REGULATION OF CONSUMER CREDIT AGREEMENTS
AND RELATED MORTGAGES, GUARANTEES, SALE CONTRACTS AND
INSURANCE CONTRACTS, FOR THE REGULATION OF CONSUMER LEASES AND
HIRE PURCHASE AGREEMENTS, AND FOR RELATED MATTERS**

ENACTED by the Parliament of the Fiji Islands -

Part 1 - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Consumer Credit Act 1999.
- (2) This Act comes into force on a date or dates to be appointed by the Minister by notice in the *Gazette*.
- (3) The Minister may appoint different dates for the coming into force of different provisions.

Interpretation

2. In this Act, unless the context otherwise requires -

"acceleration clause" has the meaning given to it by section 84;

"adult" means an individual who is at least 18 years of age;

"affidavit", in relation to a person allowed by law to affirm, declare or promise, includes an affirmation, declaration or promise;

"amend" includes -

(a) omit or omit and substitute;

(b) alter or vary; and

(c) amend by implication;

"annual percentage rate" has the meaning given to it by section 25;

"appoint" includes re-appoint;

"Assistant Director" means the Assistant Director of Fair Trading and Consumer Affairs appointed under the section 25 of the Fair Trading Decree 1992 and includes any person who for the time being performs the duties of the Assistant Director;

"business day" means a day that is not -

(a) a Saturday or Sunday; or

(b) a Public holiday, special holiday or bank holiday;

"calendar month" means a period starting at the beginning of any day of a month and ending -

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding, day at the end of the next named month;

"calendar year" means a period of 12 months beginning on 1st January;

"cash price" of goods or services to which a credit contract relates means the lowest price (unaffected by any discount between the credit provider and the supplier) that a cash purchaser might reasonably be expected to pay for them (either from the supplier or, if not available for cash from the supplier, from another supplier);

"commission" includes any form of monetary consideration or any form of non-monetary consideration to which a monetary value can be assigned;

"consumer" means a person who acquires goods or services for personal, domestic or

household purposes;

"consumer credit insurance" means insurance that insures the capacity of the debtor to make repayments under the credit contract, including insurance against sickness of, injury to, or disability or death of, the debtor or against unemployment of the debtor, and also including life insurance (including insurance under a group policy) to cover any outstanding amount on the debtor's death;

"consumer lease" has the meaning given to it by section 146;

"continuing credit contract" means a credit contract under which -

(a) multiple advances of credit are contemplated; and

(b) the amount of available credit ordinarily increases as the amount of credit is reduced;

"contract" includes a series or combination of contracts, or contracts and arrangements;

"contract document" means a document or documents setting out the terms of a contract;

"credit" means -

(a) payment of a debt owed by one person (the debtor) to another (the credit provider) is deferred; or

(b) one person (the debtor) incurs a deferred debt to another (the credit provider);

"credit contract" means a contract under which credit is or may be provided, being the provision of credit to which this Act applies;

"credit fees and charges" means fees and charges payable in connection with a credit contract, mortgage or hire purchase but does not include -

(a) interest charges (including default charges); or

(b) any fees or charges that are payable to or by a credit provider in connection with a credit contract under which both credit and debit facilities are available, whether or not a transaction involves the provision of credit (for example, transaction fees); or

(c) government charges and duties on receipts or withdrawals;

"credit provider" means a person that provides credit, and includes a prospective credit provider;

"credit-related insurance contract" has the meaning given to it by section 131;

"daily percentage rate" has the meaning given to it by section 25;

"date" has the meaning given to it by section 182;

"debtor" means a person (other than a guarantor) who is liable to pay for (or to repay) credit, and includes a prospective debtor;

"default rate" has the meaning given to it by section 25;

"Director" means the Director of Fair Trading and Consumer Affairs appointed under section 24 of the Fair Trading Decree 1992 and includes any other person who for the time being occupies the office or performs the duties of the Director;

"dispose of" in relation to property includes -

(a) sell the property;

(b) part with possession of the property to the prejudice of the owner including a mortgagee of the property; and

(c) destroy the property;

"document" includes -

(a) any paper or other material on which there is writing;

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

"enforcement expenses" in relation to a mortgage includes expenses incurred by the mortgagee in preserving or maintaining property subject to the mortgage (including insurance, rates and taxes payable for the property) but only if the expenses are incurred after a breach occurs and are authorised by the mortgage;

"enforcement proceedings" -

(a) in relation to a credit contract or a guarantee means proceedings in a court to recover a payment due under the contract or guarantee;

(b) in relation to a mortgage or hire purchase means taking possession of property

or goods under the mortgage or hire purchase, or taking any other action to enforce a mortgage or hire purchase agreement;

"estate" includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

"expire" includes lapse or otherwise cease to have effect;

"fail" includes refuse;

"foreign country" means a country (whether or not an independent sovereign state) outside the Fiji Islands;

"goods" mean goods for personal, family or household purposes and includes any replacements or renewals by the hirer of any part or parts thereof and any accessories added or additions made thereto by the hirer during the period of the hiring;

"guarantee" includes an indemnity (other than one arising under a contract of insurance);

"guarantor" includes a prospective guarantor;

"hire purchase agreement" includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement-

(a) whereby the property in the goods comprised therein passes at the time of the agreement or at any time before delivery of the goods; or

(b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

"insolvent" means-

(a) a person who is insolvent under administration within the meaning of the Companies Act; or

(b) a corporation that is an externally-administered corporation within the meaning of the Companies Act;

"interest" in relation to land or other property, means -

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

"key requirement" has the meaning given to it by section 100;

"linked credit provider" has the same meaning given to it by section 116;

"make" includes issue or grant;

"merchant service agreement" means an agreement between a credit provider and supplier of goods and services under which the credit provider agrees to pay to the supplier amounts for goods or services supplied by the supplier and paid by means of credit cards, whether or not the credit cards are issued by the credit provider;

"minor" means an individual who is under the age of 18 years;

"modification" includes an addition, omission or substitution;

"month" includes -

(a) any interest in, or power over, property securing obligations of a debtor or guarantor;

(b) a credit provider's title to land or goods subject to a sale by instalments; and

(c) a mortgage taken to have been entered into under section 10 (3);

but does not include a consumer lease to which the mortgage is created or hire purchase;

"mortgagor" includes a prospective mortgagor;

"number" may be -

(a) a number expressed in figures or words;

(b) a letter; or

(c) a combination of a number so expressed and a letter;

"Office" means the consumer Credit Office established by section 5(1);

"party" may be an individual or a body politic or corporate;

"penalty" includes forfeiture or other punishment;

"predominant" in relation to the purpose for which credit is provided for goods hired under a consumer lease means -

(a) a purpose for which more than half of the credit is or goods are intended to be

used; or

(b) if the credit is intended to be used to obtain goods or services intended to be used for more than one purpose, or the goods are intended to be used for more than one purpose, the purpose for which the goods or services are intended to be most used;

"printed" includes typewritten, lithographed or reproduced by any mechanical means;

"proceeding" means a legal or other action or proceeding;

"purchaser" means -

(a) in relation to goods - a person who purchases, or proposes to purchase, the goods; or

(b) in relation to services - a person who contracts, or proposes to contract, to obtain services;

"record" includes information stored or recorded by means of a computer;

"reference rate" means a benchmark, index or other reference rate;

"regulations" means regulations made under section 187;

"sale contract" has the meaning given to it by section 115;

"services" includes -

(a) rights in relation to, and interests in, real property;

(b) insurance;

(c) professional services; and

(d) a right to services,

but does not include the provision of credit or a right to credit or services provided under a consumer lease;

"supplier" means a supplier of goods or services;

"supply" includes agree to supply;

"swear" in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

"termination" in relation to a contract includes the discharge or rescission of the contract;

"tied continuing credit contract" has the meaning given to it by section 116 (1);

"tied loan contract" has the meaning given to it by section 116 (3);

"unpaid balance" has the meaning given to it by section 25;

"unpaid daily balance" has the meaning given to it by section 25;

"word" includes any symbol, figure or drawing.

Act binds the Government

3. This Act binds the Government

Maximum annual percentage rate for interest

4. (1) The Minister may by regulations prescribe the maximum annual percentage rate of interest for a credit contract or class of credit contract.

(2) Division 2 of Part 2 (which limits a debtor's monetary obligations) applies in relation to a maximum annual percentage rate prescribed under subsection (1).

Establishment of Consumer Credit Office

5.-(1) There is established a Consumer Credit Office consisting of the Director and other officers appointed under subsection (4).

(2) The Office must perform its functions and the Director must perform his or her functions subject to the written directions and general control of the Minister.

(3) The functions of the Consumer Credit Office are -

(a) to administer this Act and to facilitate its operation;

(b) to promote the interests of consumers and persons negotiating or considering the acquisition of goods or services on credit;

(c) to collect, examine and disseminate information in respect of matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services on credit;

(d) to receive and consider complaints concerning matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or

services on credit and, if the Director is of the opinion that such action is warranted, to investigate the complaints and take any action in respect thereof which the Director considers appropriate;

(e) to investigate complaints in relation to matters that affect or are likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services on credit, and to take any action in respect of the complaint which the Director considers appropriate;

(f) to perform any other functions the Minister may direct it to perform under this Act.

(4) The Chief Inspector for Trade Measurement and Standards, every inspector appointed under the National and Trade Measurement Decree 1989, the Director and the Assistant Director are deemed to be inspectors for the purpose of this Act.

(5) The Secretary to the Minister must furnish the Director, Assistant Director, every inspector and other staff of the Consumer Credit Office with certificates of appointment authorising them to exercise powers under this Act and such certificates must be produced on request.

Provision of credit to which the Act applies

6. (1) This Act applies to the provision of credit (and to the credit contract and related matters) if, when the credit contract is entered into, or, in the case of pre-contractual obligations is proposed to be entered into -

(a) the debtor is a natural person ordinarily resident in the Fiji Islands, or is a body corporate or unincorporate formed in and under the law of the Fiji Islands;

(b) the credit is provided or intended to be provided wholly or predominantly for personal, domestic or household purposes;

(c) a charge is or may be made for providing the credit; and

(d) the credit provider provides the credit in the course of a business of providing credit or as part of or incidentally to any other business of the credit provider.

(2) If not all the debtors under a credit contract are persons or corporations to whom or which subsection (1)(a) applies this Act applies only if credit is first provided under the contract in the Fiji Islands.

(3) This Act applies to the provision of credit (and to the credit contract and related matters) -

(a) whether or not it takes place in the Fiji Islands; and

(b) even though the debtor ceases to be ordinarily resident in the Fiji Islands.

(4) For the purposes of this section, investment by the debtor is not a personal, domestic or household purpose.

(5) For the purposes of this section, the predominant purpose for which credit is provided is -

(a) the purpose for which more than half of the credit is intended to be used; or

(b) if the credit is intended to be used to obtain goods or services for use for different purposes, the purpose for which the goods or services are intended to be most used.

Provision of credit to which the Act does not apply

7.(1) This Act does not apply to the provision of credit limited by the contract to a total period not exceeding 62 days.

(2) This Act does not apply to the provision of credit without prior agreement between the credit provider and the debtor.

(3) Subject to subsection (4), this Act does not apply to the provision of credit under a continuing credit contract if the only charge that is or may be made for providing the credit is a periodic or other fixed charge that does not vary according to the amount of credit provided.

(4) This Act applies if the charge referred to in subsection (3) is of a nature prescribed by the regulations for the purposes of this subsection or if the charge exceeds the maximum charge (if any) so prescribed.

(5) This Act does not apply to any part of a credit contract under which both credit and debit facilities are available, if and to the extent that the contract or any amount payable or other matter arising out of it relates only to the debit facility.

(6) This Act does not apply to the provision of credit arising out of a bill facility, that is, a facility under which the credit provider provides credit by accepting, drawing, discounting or endorsing a bill of exchange or promissory note, unless the regulations otherwise provide.

(7) This Act does not apply to the provision of credit by an insurer for the purpose of the payment to the insurer of an insurance premium by instalments, even though the instalments exceed the total of the premium that would be payable if the premium were paid in a lump sum, if on cancellation the insured would have no liability to make further payments under the contract, unless the regulations otherwise provide.

(8) This Act (other than sections 70 to 72) does not apply to the provision of credit by a pawnbroker in the ordinary course of a pawnbroker's business.

(9) This Act (other than sections 70 to 72) does not apply to the provision of credit by the trustee of the estate of a deceased person by way of an advance to a beneficiary or prospective beneficiary of the estate.

(10) This Act (other than this Part, Division 3 of Part 4, Divisions 4 and 5 of Part 5 and Part 7) does not apply to the provision of credit by an employer, or a related body corporate (within the meaning of the Companies Act) of an employer, to an employee or former employee, whether or not the credit is provided to the employee or former employee with another person.

(11) For a credit provider that provides credit in the course of business of providing credit, this Act applies to the provision of credit on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to persons who are not employees or former employees of the credit provider or a related body corporate.

(12) The regulations may exclude, from the application of all or any provisions of this Act, the provision of credit of a class specified in the regulations and in particular (but without limiting the generality of the foregoing), the regulations may so exclude the provision of credit if the amount of the credit exceeds or may exceed a specified amount or if the credit is provided by a credit provider of a specified class.

Mortgages to which the Act applies

8. (1) This Act applies to a mortgage if -

(a) the mortgage secures obligations under a credit contract or a related guarantee; and

(b) the mortgagor is a natural person or body of the kind mentioned in section 6(1)(a).

(2) If a mortgage as described in subsection (1) also secures other obligations, this Act applies to the mortgage to the extent that it secures obligations under the credit contract or a related guarantee.

(3) The regulations may exclude from the application of all or any provisions of this Act a mortgage of a specified class.

Guarantees to which the Act applies

9. (1) This Act applies to a guarantee if -

(a) it guarantees obligations under a credit contract; and

(b) a guarantor is a natural person or a body of the kind mentioned in section 6 (1) (a).

(2) If a guarantee as described in subsection (1) also guarantees other obligations, this Act applies to the guarantee to the extent only that it guarantees obligations under the credit contract.

(3) The regulations may exclude from the application of all or any provisions of this Act a guarantee of a specified class.

Goods leased with option to purchase to be regarded as sale by instalments

10. (1) For the purposes of this Act, a contract for the hire of goods under which the hirer has a right or obligation to purchase the goods is to be regarded as a sale of the goods by instalments or hire purchase, if the charge that is or may be made for hiring the goods, together with any other amount payable under the contract (including an amount to purchase the goods or to exercise an option to do so) exceeds the cash price of the goods.

(2) A debt is to be regarded as having been incurred, and credit provided, in the circumstances described in subsection (1).

(3) If by virtue of section 6 (1) the contract referred to in subsection (1) is a credit contract, this Act (including Part 6) applies as if the contract had always been a sale of goods by instalments, and for that purpose -

(a) the amounts payable under the contract are the instalments;

(b) the credit provider is the person who is to receive the payments;

(c) the debtor is the person who is to make the payments;

(d) the property of the supplier in the goods passes under the contract to the person to whom the goods are hired on delivery of the goods or the making of the contract, whichever occurs last; and

(e) the charge for providing the credit is the amount by which the charge that is or may be made for hiring the goods, together with any other amount payable under the contract (including an amount to purchase the goods or to exercise an option to do so) exceeds the cash price of the goods;

(f) a mortgage containing the terms and conditions set out in the regulations is taken to have been entered into in writing between the person to whom the goods are hired under the contract and the supplier as security for payment to the supplier of the amount payable to the supplier by the person to whom the goods are hired under the contract; and

(g) any provision in the contract for hiring, by virtue of which the supplier is empowered to take possession, or dispose of, the goods to which the contract relates, is void.

(4) For the purposes of this section, the amount payable under the contract includes any agreed or residual value of the goods at the end of the hire period or on termination of the contract, but does not include the following amounts -

(a) any amount payable in respect of services that are incidental to the hire of goods under the contract;

(b) any amount that ceases to be payable on the termination of the contract following the exercise of a right of cancellation by the hirer.

Presumptions relating to application of Act

11. (1) In any proceedings, whether brought under this Act or not, in which a party claims that a credit contract, mortgage or guarantee is one to which this Act applies, it is presumed to be such unless the contrary is established.

(2) For the purposes of this Act, credit is conclusively presumed not to be provided wholly or predominantly for personal, domestic or household purposes if the debtor declares, before entering into the credit contract, that the credit is to be applied wholly or predominantly for business purposes or investment purposes or for both purposes.

(3) A declaration under subsection (2) is ineffective for the purposes of this section if the credit provider, or any other person who obtained the declaration from the debtor knew, or had reason to believe, at the time the declaration was made, that the credit was in fact to be applied wholly or predominantly for personal, domestic or household purposes.

(4) A declaration under this section is to be substantially in the form, if any, required by the regulations and is ineffective for the purposes of this section if it is not.

Part 2 - CREDIT CONTRACTS

Division 1 - Negotiating and making credit documents

Credit contract to be in form of written contract document

12. Subject to section 13, a credit contract must be in the form of -

(a) a written contract document signed by the debtor and the credit provider; or

(b) a written contract document signed by the credit provider and constituting an offer to the debtor that is accepted, if the terms of the offer provide for it by -

(i) the debtor or another authorised person accessing or drawing down credit to incur a liability; or

(ii) any other act of the debtor that satisfies the conditions of the offer.

Other forms of contract

13. The regulations may authorise ways of making a credit contract that do not involve a written document, in which case the provisions of this Division apply with any modifications prescribed by the regulations.

Pre-contractual disclosure

14. (1) A credit provider must not enter into a credit contract unless the credit provider has given the debtor -

(a) a pre-contractual statement setting out the matters required by section 15 to be included in the contract document; and

(b) an information statement, in the form required by the regulations, of the debtor's statutory rights and obligations.

(2) The statements required by subsection (1) must be given -

(a) before the contract is entered into; or

(b) before the debtor makes an offer to enter into the contract,

whichever first occurs.

(3) Before entering into a credit contract, the credit provider may inform the debtor of the comparison rate, in which case the comparison rate must be calculated as prescribed by the regulations and be accompanied by the warnings set out in the regulations.

(4) The pre-contractual statement required by subsection (1) must contain the financial information specified by the regulations in the form prescribed by the regulations.

(5) The pre-contractual statement required by subsection (1) may be the proposed contract document or a separate document or documents.

(6) A document forming part of a pre-contractual statement consisting of more than one document when the pre-contractual statement is first given must indicate that it does not contain all of the required pre-contractual information.

(7) A pre-contractual statement may be varied, within the time referred to in subsection (2), by written notice to the debtor containing particulars of the variation.

(8) A credit provider that contravenes subsection (1) commits an offence.

Matters that must be in contract document

15. The contract document must contain the matters specified in Schedule 1.

Form and expression of contract document

16. The contract document must conform to the requirements of the regulations as to its form and the way it is expressed and, subject to any such requirements, may consist of one or more separate documents.

Alteration of contract document

17.(1) An alteration of or addition to a contract document by the credit provider after it is signed by the debtor is ineffective unless, after the alteration or addition is made, the debtor signs or initials in the margin opposite the alteration or addition.

(2) This section does not apply to an alteration having the effect of reducing the debtor's liabilities under the credit contract.

Copy of contract for debtor

18.-(1) If a contract document is to be signed by the debtor and returned to the credit provider, the credit provider must give the debtor a copy to keep.

(2) A credit provider must, not later than 14 days after a credit contract is made, give a copy of the contract to the debtor in the form in which it was made.

(3) Subsection (2) does not apply to a credit contract the terms of which are accepted by-

(a) accessing or drawing down credit to incur a liability; or

(b) the debtor satisfying the conditions of an offer.

(4) A credit provider that contravenes this section commits an offence.

When debtor may terminate contract

19. (1) Although a credit contract has been made, the debtor may nevertheless, by written notice to the credit provider, terminate the contract unless any credit has been obtained or attempted to be obtained under the contract.

(2) Nothing in this section prevents the credit provider from retaining or requiring payment of fees or charges which were incurred before the termination and which would have been payable under the credit contract.

Offence of non-compliance

20. (1) A credit provider must not

(a) enter into a credit contract that contravenes a requirement of this Division; or

(b) otherwise contravene a requirement of this Division.

(2) A person who contravenes this section commits an offence.

Division 2 - Debtor's monetary obligations

Prohibited monetary obligations

21. (1) A credit contract must not impose a monetary liability on the debtor -

(a) in respect of a fee or charge prohibited by this Act;

(b) in respect of an amount of a fee or charge exceeding the amount that may be charged consistently with this Act; or

(c) in respect of an interest charge under the contract exceeding the amount that may be charged consistently with this Act.

(2) Any provision of a credit contract that imposes a monetary liability prohibited by subsection (1) is void to the extent that it does so may be recovered.

(3) A credit fee or charge cannot be charged in respect of a credit contract unless the contract authorises it to be charged.

(4) Any amount prohibited by subsection (1) or (3) which is paid may be recovered.

Offences related to prohibited monetary obligations

22. (1) A credit provider must not -

(a) enter into a credit contract on terms imposing a monetary liability prohibited by section 21 (1); or

(b) require or accept payment of an amount in respect of a monetary liability that cannot be imposed consistently with this Act.

(2) A credit provider that contravenes subsection (1) commits an offence.

Loan to be in money or equivalent

23. (1) A credit provider must not under a credit contract pay an amount to or in accordance with the instructions of the debtor unless the payment is in cash or money's worth and is made in full without deducting an amount for interest charges under the contract.

(2) The regulations may provide that subsection (1) does not apply to the deduction of an amount for the first payment of interest charges under the contract.

(3) A credit provider that contravenes this section commits an offence.

Early payments and crediting of payments

24. (1) A credit provider must accept any payment under a credit contract that is made before it is payable under the contract, unless the contract prohibits its early payment.

(2) A credit provider must credit to the debtor each payment made under a credit contract as soon as practicable after receipt of the payment.

(3) Notwithstanding subsection (2) a credit provider is not required to credit a payment made under a credit contract before it is payable under the contract if -

(a) the contract prohibits its early payment; and

(b) the credit provider informs the debtor, before accepting the payment, that the payment will not be credited to the debtor before it becomes payable under the contract.

(4) A credit contract may not, under this section, prohibit the paying out of the contract at any time under section 75.

(5) A credit provider that contravenes this section commits an offence.

Division 3 - Interest charges

Definitions relating to interest

25. (1) In this Act-

"annual percentage rate" under a credit contract means a rate specified in the contract as an annual percentage rate;

"daily percentage rate" means the rate determined by dividing the annual percentage rate by 365;

"default rate" means a higher annual percentage rate permitted by section 28;

"Rule of 78" means the amount of interest charge for required months derived by subtracting the sum of all whole numbers from one to the number of incomplete months under the agreement (both inclusive) from the sum of all the whole numbers from one to the number of total months in the agreement (both inclusive), then divided by the sum of all the whole numbers from one to the number of total months in the agreement (both inclusive) and multiplied by the total interest charge under the agreement, as illustrated in Schedule 3;

"unpaid balance" under a credit contract at any time means the difference between all amounts credited and all amounts debited to the debtor under the contract at that time;

"unpaid daily balance" for a day under a credit contract means the unpaid balance under the contract at the end of that day.

(2) A credit contract may specify, for the purposes of payments under the contract, when a day ends.

Limit on interest charges

26. (1) Subject to subsection (2), the maximum amount of an interest charge that may be imposed or provided for under a credit contract is -

(a) if only one annual percentage rate applies to the unpaid balances under the contract - the amount determined by applying the daily percentage rate to the unpaid daily balances;

(b) in any other case - the sum of each of the amounts determined by applying each daily percentage rate to that part of the unpaid daily balances to which it applies under the contract.

(2) An interest charge under a credit contract for a month, a quarter or half a year may be determined by applying the annual percentage rate or rates, divided by 12 (for a month), by 4 (for a quarter) or by 2 (for half a year), to the whole or that part of the average unpaid daily balances to which it applies, except for a hire purchase agreement where Rule of 78 will apply.

(3) The regulations may provide for the calculation of unpaid daily balances in the circumstances mentioned in subsection (2).

(4) This section does not prevent the imposition of a default rate of interest permitted by section 28.

Early debit or payment of interest charges prohibited

27. (1) A credit provider must not, at any time before the end of a day to which an interest charge applies, require payment of the interest charge.

(2) A credit contract may provide for an interest charge to become payable at any time after the day to which it applies.

(3) The regulations may provide that subsection (1) does not apply to the first payment of interest charges under a credit contract.

Default interest

28. (1) Subject to subsection (2), a credit contract may not provide that an annual percentage rate applicable under a credit contract to any part of the unpaid balance will differ according to whether the debtor is in default under the contract.

(2) A credit contract may provide for such a differential rate if the higher rate is imposed only in the event of default in payment, in respect of the amount in default and while the default continues.

Division 4 - Fees and charges

Prohibited credit fees or charges

29. The regulations may specify credit fees or charges or classes of credit fees or charges that are prohibited for the purposes of this Act.

Fees or charges passed on to other parties

30. (1) A fee or charge payable by a debtor in respect of an amount payable by the credit provider to another person, body or agency is not to exceed the actual amount payable by the credit provider if that amount is ascertainable when the fee or charge is paid by the debtor.

(2) The actual amount payable pursuant to subsection (1) is to be determined after taking into account any discount or other rebate or other applicable allowance received or receivable by the credit provider or a related body corporate within the meaning of the Companies Act.

(3) If the actual amount paid by the credit provider to another person was not ascertainable when the debtor paid an amount to the credit provider for the fee or charge and is less than the amount paid by the debtor, the credit provider must refund or credit the difference to the debtor.

(4) Nothing in this section requires a rebate on tax payable by the credit provider or a related body corporate to be taken into account in determining the actual amount payable or paid by a credit provider.

(5) Nothing in this section prevents a commission from being payable or paid in accordance with section 134.

Division 5 - Credit provider's obligation to account

Statements of account

31. (1) A credit provider that provides credit must give to the debtor, or arrange for the debtor to be given, periodic statements of account in accordance with this Division.

(2) The maximum period for a statement of account given under subsection (1) is -

(a) in the case of a continuing credit contract under which credit is ordinarily obtained only by the use of a card - 40 days;

(b) in the case of any other continuing credit contract - 40 days or any longer period, not exceeding 3 months, agreed between the credit provider and the debtor;

(c) in any other case - 6 months.

(3) A statement of account need not be given if -

(a) the credit is provided under a credit contract for which the annual percentage rate is

fixed for the whole term of the contract and under which there is no provision for varying the rate;

(b) no amount has been debited or credited to the account during the statement period and the amount outstanding is zero or below a level fixed by the regulations;

(c) the credit provider wrote off the debt of the debtor under the credit contract during the statement period and no further amount has been debited or credited to the account during the statement period;

(d) the debtor was in default under the credit contract (not being a continuing credit contract) during the statement period and the credit provider has commenced enforcement proceedings; or

(e) the debtor was in default under a continuing credit contract during the preceding 120 days, or during the statement period and the 2 immediately preceding statement periods, whichever is the shorter time, and the credit provider has, before the commencement of the statement period, exercised a right not to provide further credit under the contract and has not provided further credit during the period.

(4) A credit provider that contravenes subsection (1) commits an offence.

Information to be contained in statements of account

32. A statement of account must contain the matters specified in Schedule 2.

Opening balance must not exceed closing balance of previous statement

33. (1) Subject to subsection (2), the opening balance shown in each successive statement of account must not exceed the closing balance shown in the last statement of account.

(2) If no statement of account was given for a particular period the next statement of account required to be given by this Act may have an opening balance that exceeds the closing balance for that period and must provide the particulars referred to in paragraphs (C)-(K) of Schedule 2 in relation to any immediately preceding periods for which statements were not given.

Statement of amount owing and other matters

34. (1) A credit provider must, at the request of a debtor or guarantor and within the time specified by this section, provide a statement of all or any of the following -

(a) the current balance of the debtor's account;

(b) any amount credited or debited during a period specified in the request;

(c) any amounts overdue and when each such amount became due;

(d) any amount payable and the date it became due.

(2) The statement required by subsection (1) must be given -

(a) if all information requested relates to a period 1 year or less before the request is given within 14 days; or

(b) if any information requested relates to a period more than 1 year before the request is given within 30 days.

(3) A statement required by subsection (1) may be given orally but if the request for the statement is made in writing the statement must be given in writing.

(4) A person who contravenes this section commits an offence.

(5) A credit provider is not required to provide a further written statement under this section if it has, within the 3 months before the request is made, given such a statement to the person requesting it.

(6) Except where otherwise ordered by a court on the application of a debtor or guarantor, a credit provider is not required to provide information in a statement under this section about amounts credited or debited, or which were overdue or payable, more than 7 years before the request is given, unless those amounts are currently overdue and payable.

Court may order statement to be provided

35. (1) If a statement as required by section 34 is not provided within the time specified in that section, a court may, on the application of a debtor or guarantor, order a credit provider to provide the statement, or may itself determine the amounts in relation to which the statement was sought.

(2) A credit provider that contravenes an order under subsection (1) commits an offence.

Disputed accounts

36. (1) If a debtor, by written notice to a credit provider, disputes a particular liability entered against the debtor under a credit contract, the credit provider must give the debtor a written notice explaining in reasonable detail how the liability arises.

(2) A written notice under subsection (1) need not be given if the credit provider agrees with the debtor as to the disputed amount and gives the debtor a written notice advising of the agreed liability.

(3) If in the case of a continuing credit contract a disputed entry appears in a statement of account in which a date for payment of the amount of the account, or part of that amount, is shown, notice of dispute must be given to the credit provider on or before that date.

(4) In a case other than that described in subsection (3), notice of dispute must be given to the credit provider within 30 days of receiving the statement of account in which the disputed amount, or part of that amount, was first shown.

(5) A credit provider must not begin enforcement proceedings on the basis of a default arising from disputed liability until at least 30 days have elapsed from the time a written explanation or advice as to agreement was given, as the case may be.

(6) A debtor or credit provider may apply to a court to determine any disputed liability and, if satisfied that a liability is genuinely disputed, the court may determine the matters in dispute and make such consequential orders as it thinks just.

(7) If an application is made to a court under subsection (6) within 30 days after an explanation is given pursuant to subsection (1), the credit provider must not, without leave of the court, begin enforcement proceedings on the basis of a default arising from the disputed liability.

(8) A person who contravenes this section commits an offence.

(9) This section does not affect a dispute not dealt with, or not arising, under this section.

Division 6 - Certain transactions not to be treated as contracts

Deferrals, waivers and changes under contracts

37. The provision of credit as a result of a change to an existing credit contract, or a deferral or waiver of an amount under 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 waiver is made in accordance with this Act or the contract.

Part 3 - RELATED MORTGAGES AND GUARANTEES

Division 1 - Mortgages

Form of mortgage

38. (1) Subject to subsection (3), a mortgage to which this Act applies under section 8 must be in the form of a written mortgage document signed by the mortgagor.

(2) It is sufficient compliance with subsection (1) if -

(a) the mortgage is contained in a credit contract signed by the mortgagor; or

(b) one of the documents comprising the mortgage document is signed by the mortgagor (and the other documents are referred to in the signed document).

(3) A goods mortgage need not be in the form of a written mortgage document if the credit provider lawfully had possession of the goods that are subject to the mortgage before the mortgage was entered into, otherwise than because the credit provider supplied the goods.

(4) A mortgage is not enforceable unless it complies with this section.

Copy of mortgage for mortgagor

39. If a mortgage is in the form of a written mortgage document and is not part of a credit contract, the credit provider must give the mortgagor a copy to keep, in the form in which it was made, within 14 days after it is made.

Mortgages over all property void

40. (1) A mortgage that does not describe or identify the property which is subject to the mortgage is void.

(2) Without limiting subsection (1), a provision in a mortgage that charges all the property of the mortgagor is void.

Restriction on mortgage of future property

41. (1) A provision in a mortgage to the effect that the mortgagor creates or agrees to create a mortgage over or in respect of property or a class of property that is to be, or may be, acquired by the mortgagor after the mortgage is entered into is void.

(2) Subsection (1) does not apply -

(a) to a provision in a mortgage of property that is to be acquired wholly or partly with the credit provided under the credit contract secured by the mortgage;

(b) to a provision in a mortgage relating to property or a class of property (whether or not ascertained) described or identified in the mortgage;

(c) to a provision in a mortgage relating to goods acquired in replacement for, or as additions or accessories to, other goods subject to the mortgage; or

(d) to any other provision prescribed by the regulations.

Mortgages and continuing credit contracts

42. (1) A provision in a mortgage to the effect that goods supplied from time to time under a continuing credit contract are subject to the mortgage is void.

(2) Subsection (1) does not apply to a provision in a mortgage relating to specified goods securing payment of a debt under a continuing credit contract.

All accounts mortgages

43. (1) In addition to -

- (a) securing credit provided by a credit contract or proposed credit contract; or
- (b) securing obligations under a related guarantee or proposed related guarantee, to which the mortgage initially applies,

a mortgage may contain a provision that secures credit provided under another future credit contract or future related guarantee.

(2) A mortgage as described in subsection (1) is unenforceable in relation to a future credit contract or future related guarantee unless the credit provider has -

- (a) given the mortgagor a copy of the contract document of the credit contract or proposed credit contract or a copy of the guarantee or proposed guarantee to which the mortgage is to relate; and
- (b) subsequently obtained from the mortgagor a written acceptance of the extension of the mortgage or obtained acceptance in some other form provided for by the regulations.

(3) Section 38 does not apply to an extension of a mortgage under this section.

Third party mortgages prohibited

44. (1) A credit provider must not enter into a mortgage to secure obligations under a credit contract unless each mortgagor is a debtor under the contract or a guarantor under a related guarantee.

(2) A credit provider must not enter into a mortgage to secure obligations under a guarantee unless each mortgagor is a guarantor under the guarantee or a debtor under the related credit contract.

(3) A mortgage which does not comply with this section is unenforceable.

(4) A court may, on the application of a party to a mortgage that is unenforceable because of this section, order that the credit provider takes all steps necessary to discharge the mortgage.

Maximum amount which may be secured

45. (1) A mortgage is void to the extent that it secures an amount, in relation to any credit contract which it secures, that exceeds the sum of -

- (a) the amount of the liabilities of the debtor under the credit contract; and

(b) the reasonable enforcement expenses of enforcing the mortgage.

(2) A mortgage is void to the extent that it secures an amount, in relation to any guarantee which it secures, that exceeds the limit of -

(a) the guarantor's liability under the guarantee; and

(b) the reasonable enforcement expenses of enforcing the mortgage.

(3) This section does not affect a provision of a mortgage permitted by section 43.

Prohibited securities

46. (1) A mortgage cannot be created over employees' remuneration or employment benefits or benefits under a superannuation scheme unless the regulations permit it to do so.

(2) An obligation under a credit contract cannot be secured by a cheque, or bill of exchange or promissory note, endorsed or issued by the debtor or guarantor.

(3) A mortgage or security is void to the extent that it contravenes this section.

Assignment or disposal of mortgaged property by mortgagor

47. (1) A mortgagor must not assign or dispose of property that is subject to a mortgage without the credit provider's consent or the authority of a court under subsection (3).

(2) A credit provider must not unreasonably withhold consent or attach unreasonable conditions to a consent under subsection (1).

(3) For the purposes of subsection (3), a condition requiring security over property of an equivalent kind and value is not to be regarded as unreasonable.

(4) A court may, on application by a mortgagor, authorise the mortgagor to dispose of mortgaged property on conditions determined by the court if -

(a) a credit provider fails within a reasonable time to reply to a request for consent to do so by the mortgagor; or

(b) consent is unreasonably withheld, or unreasonable conditions are attached to the consent.

(5) A person who contravenes this section commits an offence.

Conditions on consent to assignment or disposal of property subject to mortgage

48. (1) As a condition of granting consent to an assignment or disposal of property subject to a mortgage, a credit provider may make any or all of the requirements set out in this section.

(2) Subsection (1) does not limit any other requirements that may be made by the credit provider.

(3) A credit provider may require any breaches of the credit contract to which a mortgage relates and any breaches of the mortgage to be remedied.

(4) A credit provider may require a mortgagor and any assignee or person to whom the mortgaged property is disposed to execute and deliver to the credit provider an agreement relating to the assignment or disposal in a form approved by the credit provider under which, without prejudicing or affecting the liability of the mortgagor, the assignee or person to whom the property is disposed agrees with the credit provider -

(a) to be personally liable to pay the amounts due or that become due under the mortgage; and

(b) to perform and observe all other requirements and conditions of the mortgage.

(5) A credit provider may require a mortgagor and any assignee or person to whom the mortgaged property is disposed to pay any costs reasonably incurred by the credit provider for -

(a) stamp duty in respect of the assignment or disposal agreement, or any other document the credit provider reasonably requires to be executed in connection with the assignment or disposal; and

(b) fees reasonably payable to a duly qualified legal practitioner.

Offence for non-compliance

49. (1) A credit provider must not -

(a) enter into a mortgage that contravenes a requirement of this Division; or

(b) otherwise contravene a requirement of this Division.

(2) A credit provider must not enter into a mortgage that is void or unenforceable, or that includes a provision that is void or unenforceable, because of this Division.

(3) A person who contravenes this section commits an offence.

Division 2 - Guarantees

Form of guarantee

50. (1) A guarantee of a credit contract must be in writing signed by the guarantor.

- (2) It is sufficient compliance with subsection (1) if the guarantee is contained in a mortgage signed by the guarantor.
- (3) The regulations may make provision for or with respect to the content of guarantees and the way they are expressed.
- (4) A guarantee is not enforceable unless it complies with this section and any relevant regulations.

Disclosure

51. (1) Before the obligations under a credit contract are secured by a guarantee, the credit provider must give to the prospective guarantor -

- (a) a copy of the contract document of the credit contract or proposed credit contract; and
- (b) a document in the form prescribed by the regulations explaining the rights and obligations of a guarantor.

(2) A guarantee is not enforceable unless it complies with this section and regulations made under this section.

Copies of documents for guarantor

52. A credit provider must, within 14 days after a guarantee is signed and given to the credit provider, give to the guarantor -

- (a) a copy of the guarantee signed by the guarantor; and
- (b) if a copy of the related contract has not previously been given to the guarantor - a copy of any related credit contract or proposed credit contract.

Guarantor may withdraw before credit is provided

53. (1) A guarantor of a credit contract may by written notice to the credit provider -

- (a) withdraw from the guarantee at any time before credit is first provided under the credit contract; or
- (b) withdraw from the guarantee after credit is first provided under the contract if the credit contract made differs in some material respect from the proposed credit contract or pre-contractual statement given to the guarantor before the guarantee is signed.

(2) A guarantor may withdraw from a guarantee under this section to the extent only that it guarantees obligations under a credit contract.

(3) This section is subject to section 56.

Extension of guarantee

54. (1) In addition to guaranteeing obligations under a credit contract or proposed credit contract to which a guarantee initially applies, a guarantee may contain a provision that makes credit provided under another future credit contract subject to the guarantee.

(2) A guarantee as described in subsection (1) is unenforceable in relation to a future credit contract unless the credit provider has -

(a) given the guarantor a copy of the contract document of that future credit contract; and

(b) subsequently obtained from the guarantor a written acceptance of the extension of the guarantee or, acceptance in some other form provided for by the regulations.

(3) Section 50 does not apply to an extension of a guarantee under this section.

Limitation of guarantor's liability

55. (1) A guarantee of a credit contract is void to the extent that it secures an amount, in relation to a credit contract to which this Act applies, that exceeds the sum -

(a) of the amount of the liabilities of the debtor under the credit contract; and

(b) the reasonable expenses of enforcing the guarantee,

or any lesser amount agreed between the credit provider and the guarantor.

(2) Nothing in subsection (1) prevents a credit provider from enforcing a guarantee relating to liabilities under a credit contract that is unenforceable solely because of the debtor's death, insolvency or incapacity or any other act or omission by, or circumstance affecting, the debtor.

(3) A guarantee of a credit contract which guarantees the liability of a debtor who was under 18 years of age when the liability was incurred cannot be enforced against the guarantor unless it contains a prominent statement to the effect that the guarantor may not be entitled to an indemnity against the debtor.

(4) In the case of a continuing credit contract, a guarantor may, by notice to the credit provider, limit the guarantee so that it applies only to liabilities related to credit previously provided to the debtor under the credit contract (including any liabilities not yet debited to the debtor's account) and such further amount (if any) as the guarantor agrees to guarantee.

(5) A guarantee is void to the extent that it -

(a) limits the guarantor's right to indemnity from the person whose liability the guarantor has

guaranteed; or

(b) postpones or otherwise purports to limit the guarantor's right to enforce the indemnity against the person.

(6) This section does not affect a provision of a guarantee permitted by section 54.

Increase in guarantor's liabilities

56. (1) If the terms of a credit contract are changed to increase or allow for an increase in liabilities, the liabilities of a guarantor under a guarantee that secures those liabilities are not increased unless -

(a) the credit provider gives to the guarantor a written notice setting out particulars of the change in the terms of the credit contract; and

(b) the credit provider has subsequently obtained from the guarantor written acceptance of the extension of the guarantee to those increased liabilities, or acceptance in some other form prescribed by the regulations.

(2) This section does not apply to an increase in liabilities resulting from a change of a kind referred to in section 58 (2) (a) or (b) or to a change of which notice is required to be given under Division 1 of Part 4 (not being a change referred to in section 62 (3) or 63).

Offence for noncompliance

57. (1) A credit provider must not -

(a) enter into a guarantee that contravenes a requirement of this Division; or

(b) otherwise contravene a requirement of this Division.

(2) A credit provider must not enter into a guarantee that is void or unenforceable, or that contains a provision that is void or unenforceable, because of this Division.

(3) A credit provider that contravenes this section commits an offence.

Part 4 - CHANGES TO OBLIGATIONS UNDER CREDIT CONTRACTS, MORTGAGES AND GUARANTEES

Division 1 - Unilateral changes by credit provider

Application of Division

58. (1) This Division applies only to changes made unilaterally by a credit provider under a credit contract, mortgage, guarantee or hire purchase agreement.

(2) This Division does not apply to the following changes under a credit contract -

(a) a change to a new annual percentage rate payable under the contract (not being a rate determined by referring to a reference rate), if both the new rate and when it takes effect are ascertainable from the contract;

(b) an increase in the amount of repayments, if the increase occurs automatically, as specified by the contract, and both the amount of the increase and when it takes effect are ascertainable from the contract;

(c) an increase in the term of a credit contract, if the increase occurs only because of an increase in the annual percentage rate or rates payable under the contract;

(d) a change made under Division 3.

(3) Nothing in this Division confers on a credit provider or a debtor any power or right to change the credit contract or its terms apart from any power or right conferred by the contract.

Interest rate changes

59. (1) A credit provider must, not later than the day on which a change in the annual percentage rate or rates payable under a credit contract takes effect, give to the debtor written notice setting out-

(a) the new rate or rates or, if a rate is determined by referring to a reference rate, the new reference rate; and

(b) any information required by the regulations.

(2) Notice under subsection (1) maybe given by publishing the notice in a newspaper circulating throughout the Fiji Islands.

(3) A credit provider that gives notice in accordance with subsection (2) must give to the debtor particulars of the change before or when the next statement of account is sent to the debtor after the change takes effect.

(4) Subsection (1) does not apply to a change in a rate that is determined by referring to a reference rate if the changed reference rate is notified (whether or not by the credit provider) in a newspaper circulating throughout the Fiji Islands not later than the date the change takes effect.

(5) A credit provider must, not later than 30 days before a change in the manner in which interest is calculated or applied under a credit contract takes effect, give to the debtor written notice setting out-

(a) particulars of the change; and

(b) any information required by the regulations.

(6) In subsection (5) a reference to a change includes a change in or abolition of any interest free period under the contract.

(7) Subsections (1) and (4) do not apply to a change that reduces the obligations of the debtor under the credit contract.

(8) This section applies whether or not an interest rate change is a change to the terms of the contract.

(9) A credit provider that contravenes this section commits an offence.

Repayment changes

60. (1) A credit provider must, not later than 30 days before a change in the amount or frequency or time for payment of, or a change in the method of calculation of, instalments or minimum repayments, under a credit contract takes effect, give to the debtor written notice setting out -

(a) particulars of the change; and

(b) any information required by the regulations.

(2) Subsection (1) does not apply to a change that reduces the obligations of the debtor, or extends the time for payment, under the credit contract but the credit provider must give particulars of any such change before or when the next statement of account is sent to the debtor after the change takes effect.

(3) This section applies whether or not a repayment change is a change to the terms of the contract.

(4) A credit provider that contravenes this section commits an offence.

Credit fees and charges changes

61. (1) A credit provider must, not later than 30 days before a change in the amount of a credit fee or charge (including a new credit fee or charge), or a change in the frequency or time for payment of a credit fee or charge, under a credit contract takes effect, give to the debtor written notice setting out -

(a) particulars of the change; and

(b) any information required by the regulations.

(2) Notice relating to a change in the amount of a credit fee or charge (including a new credit fee or charge) may be given by publishing the notice in a newspaper circulating throughout the Fiji

Islands.

(3) A credit provider that gives notice in accordance with subsection (2) must give particulars of the change before or when the next statement of account is sent to the debtor after the change takes effect.

(4) Subsection (1) does not apply to a change that reduces the obligations of the debtor, or extends the time for payment, under the credit contract, but the credit provider must give particulars of any such change before or when the next statement of account is sent to the debtor after the change takes effect.

(5) This section applies whether or not a change in fees and charges is a change to the terms of the contract.

(6) A credit provider that contravenes this section commits an offence.

Changes to credit limits etc. in continuing credit contracts

62. (1) If a credit provider decides not to provide any further credit under a continuing credit contract, the credit contract continues in force in relation to any credit previously provided under the contract.

(2) Subsection (1) does not prevent the termination of a credit contract if such termination is otherwise permitted by this Act or the contract.

(3) A credit provider must, unless the debtor is in default under the contract, as soon as practicable after deciding not to provide any further credit or to reduce the credit limit, give to the debtor a written notice to that effect if such notice has not previously been given.

(4) A credit provider may increase the credit limit under a continuing credit contract only at the request of the debtor or with the written consent of the debtor.

(5) A credit provider that contravenes this section commits an offence.

Other unilateral changes by credit provider

63. (1) A credit provider that wishes to exercise a power under a credit contract, mortgage or guarantee to unilaterally change its terms must give to the other party, not less than 30 days before the change takes effect, written notice setting out -

(a) particulars of the change in the terms of the credit contract, mortgage or guarantee; and

(b) any information required by the regulations.

(2) Subsection (1) does not apply to a change that reduces the obligations of the debtor, or extends the time for payment, under a credit contract, but the credit provider must give particulars of any

such change before or when the next statement of account is sent to the debtor after the change takes effect.

(3) This section does not apply to a change of which notice is required to be given under section 59, 60, 61, or 62 or which is referred to in section 62 (3).

(4) A credit provider that contravenes this section commits an offence.

Prohibited increases in liabilities

64. (1) If the annual percentage rate under a credit contract is currently fixed for a specified term (including the whole term) of the contract, the contract cannot be changed unilaterally by a credit provider so as to increase, or change the method of calculation of a fee or charge so as to increase, a fee or charge -

(a) payable by the debtor on early termination of the credit contract; or

(b) payable on prepayment of an amount under the credit contract.

(2) The regulations may prescribe circumstances in which a change as described in subsection (1) is permitted.

Division 2 - Changes by agreement of parties

Changes by agreement

65. (1) If the parties under a credit contract, mortgage or guarantee agree to change its terms, the credit provider must, within 30 days after the date of the agreement, give to the party under agreement a written notice setting out -

(a) particulars of the change in the terms of the credit contract, mortgage or guarantee; and

(b) any information required by the regulations.

(2) Subsection (1) does not apply to a change which defers or otherwise reduces the obligations of the debtor for a period not exceeding 90 days or to an agreement to increase the amount of credit under a credit contract.

(3) If the parties under a credit contract propose to increase the amount of credit under the contract by agreement, the credit provider must also, before the agreement is made, give to the debtor a written notice containing the information required by the regulations.

(4) This section does not apply to a change made under Division 3.

(5) A credit provider that contravenes this section commits an offence.

Division 3 - Changes on grounds of hardship and unjust transactions

Changes on grounds of hardship

66. (1) A debtor who-

(a) is unable because of illness, unemployment or other reasonable cause, to meet the debtor's obligations under a credit contract; and

(b) 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 subsection (2),

may apply to the credit provider for such a change.

(2) An application by a debtor under subsection (1) must seek to change the terms of the contract in one of the following ways without a change being made to the annual percentage rate or rates -

(a) extending the period of the contract and reducing the amount of each payment due under the contract accordingly;

(b) postponing for a specified period the date on which any payment is due under the contract;

(c) extending the period of the contract and postponing for a specified period the date on which any payment is due under the contract.

(3) The credit provider may charge reasonable finance fees or penalty interest for changes made to a contract under subsection (2).

Notice of change

67. (1) A credit provider that enters into an agreement with a debtor in response to an application under section 66 must, within 30 days after the date of the agreement, give to the debtor and to any guarantor under a guarantee related to the contract, a written notice setting out -

(a) particulars of the change in the terms of the credit contract; and

(b) any information required by the regulations.

(2) A credit provider that contravenes subsection (1) commits an offence.

Changes by court

68. (1) If a credit provider does not change a credit contract in response to an application under section 66, the debtor may apply to a court to change the terms of the credit contract.

(2) A court may, after allowing the applicant, the credit provider and any guarantor a reasonable opportunity to be heard, by order change a credit contract in any manner set out in section 66, and may make such other orders as it thinks fit, or may refuse to change the credit contract.

(3) A court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under a credit contract, and make such other orders as it thinks fit, until an application under section 66 has been determined.

Credit provider may apply for variation of change

69. (1) A credit provider under a credit contract that has been changed by an order under section 68 (2) may apply to the court for an order varying or revoking the order.

(2) A credit provider subject to a stay of enforcement proceedings or other order under section 68 (3) 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, or may refuse the application.

Court may re-open unjust transactions

70. (1) A court may, if satisfied on the application of a debtor, mortgagor or guarantor that, in the circumstances relating to the relevant credit contract, mortgage or guarantee at the time it was entered into or changed (whether or not by agreement), the contract, mortgage, guarantee or change was unjust, re-open the transaction that gave rise to the contract, mortgage, guarantee or change.

(2) In determining whether a term of a particular credit contract, mortgage or guarantee is unjust in the circumstances relating to it at the time it was entered into or changed, a court must have regard to the public interest and to all the circumstances of the case and may have regard to the following-

(a) the consequences of compliance, or noncompliance, with all or any of the provisions of the contract, mortgage or guarantee;

(b) the relative bargaining power of the parties;

(c) whether or not at the time the contract, mortgage or guarantee was entered into or changed, its provisions were the subject of negotiation;

(d) whether it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the contract, mortgage or guarantee or the change;

(e) whether any of the provisions of the contract, mortgage or guarantee (before and after any change) impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the contract, mortgage or guarantee;

(f) whether the debtor, mortgagor or guarantor, or a person who represented the debtor, mortgagor or guarantor, was reasonably able to protect the interests of the debtor, mortgagor or guarantor because of his or her age or physical or mental condition;

(g) the form of the contract, mortgage or guarantee and the intelligibility of the language in which it is expressed;

(h) whether, and if so when, independent legal or other expert advice was obtained by the debtor, mortgagor or guarantor;

(i) the extent to which the provisions of the contract, mortgage or guarantee (before and after any change) and their legal and practical effect were accurately explained to the debtor, mortgagor or guarantor and whether or not the debtor, mortgagor or guarantor understood the provisions and their effect;

(j) whether the credit provider or any other person exerted or used unfair pressure, undue influence or unfair tactics on the debtor, mortgagor or guarantor and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics;

(k) whether the credit provider took measures to ensure that the debtor, mortgagor or guarantor understood the nature and implications of the transactions and, if so, the adequacy of those measures;

(l) whether at the time the contract, mortgage or guarantee was entered into or changed, the credit provider knew, or could have ascertained by reasonable inquiry of the debtor at the time, that the debtor could not pay in accordance with its terms or not without substantial hardship;

(m) whether the terms of the transaction or the conduct of the credit provider is justified in the light of the risks undertaken by the credit provider;

(n) the terms of other comparable transactions involving other credit providers and, if the injustice is alleged to result from excessive interest charges, the annual percentage rate or rates payable in comparable cases;

(o) any other relevant factor.

(3) For the purposes of subsection (2) (f), a person is taken to have represented a debtor, mortgagor or guarantor if the person represented the debtor, mortgagor or guarantor, or assisted the debtor, mortgagor or guarantor to a significant degree, in any negotiations before or when the credit contract, mortgage or guarantee was entered into or changed.

(4) In determining whether a credit contract, mortgage or guarantee is unjust, a court must not have regard to any injustice arising from circumstances that were not reasonably foreseeable when the contract, mortgage or guarantee was entered into or changed.

(5) In determining whether to grant relief in respect of a credit contract, mortgage or guarantee that if finds to be unjust, a court may have regard to the conduct of the parties to the proceedings in relation to the contract, mortgage or guarantee since it was entered into or changed.

(6) This section does not apply to

-

(a) a change in the annual percentage rate or rates payable under a contract, or to an establishment fee or charge or other fee or charge, in respect of which an application may be made under section 72; or

(b) a change to a contract under this Division.

(7) In this section, "unjust" includes unconscionable, harsh or oppressive.

Orders on re-opening of transactions

71. A court may, if it re-opens a transaction under this Division, do anyone or more of the following, despite any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation-

(a) re-open an account already taken between the parties;

(b) relieve the debtor and any guarantor from payment of any amount in excess of any amount the court, having regard to the risk involved and all other circumstances, considers to be reasonably payable;

(c) set aside either wholly or in part, or revise or alter, an agreement made or mortgage given in connection with the transaction;

(d) order that the mortgagee takes all steps necessary to discharge the mortgage;

(e) give judgment for or make an order in favour of a party of such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the contract, mortgage or guarantee;

(f) give judgment or make an order against a person for delivery of goods to which the contract, mortgage or guarantee relates and which are in the possession of that person;

(g) make ancillary or consequential orders.

Court may review unconscionable interest and other charges

72. (1) A court may, if satisfied on the application of a debtor or guarantor that -

(a) a change in the annual percentage rate or rates under a credit contract to which section 59 (1) or (5) applies;

(b) an establishment fee or charge;

(c) a fee or charge payable on early termination of a credit contract; or

(d) a fee or charge for a prepayment of an amount under a credit contract,

is unconscionable, annul or reduce the change or fee or charge and may make ancillary or consequential orders.

(2) For the purposes of subsection (1), a change to the annual percentage rate or rates is unconscionable if and only if it appears to the court that -

(a) it changes the annual percentage rate or rates in a manner that is unreasonable, having regard to any advertised rate or other representations made by the credit provider before or at the time the contract was entered into, the period of time since the contract was entered into and any other consideration the court thinks relevant; or

(b) the change is a measure that discriminates unjustifiably against the debtor when the debtor is compared to other debtors of the credit provider under similar contracts.

(3) In determining whether an establishment fee or charge is unconscionable, a court is to have regard to whether the amount of the fee or charge is equal to the credit provider's reasonable costs of making a decision on an application for credit and the initial administrative costs of providing the credit, or is equal to the credit provider's average reasonable costs of those things in respect of that class of contract.

(4) For the purposes of this section, a fee or charge payable on early termination of the contract or a prepayment of an amount under the credit contract is unconscionable if and only if it appears to the court that it exceeds a reasonable estimate of the credit provider's loss arising from the early termination or prepayment, including the credit provider's average reasonable administrative costs in respect of such a termination or prepayment.

Time limit

73. (1) An application (other than an application under section 72) may not be brought under this Division more than 2 years after the relevant credit contract is rescinded or discharged or the credit provider writes off the relevant debt, whichever occurs first.

(2) An application under section 72 may not be brought more than 2 years after the relevant change takes effect or fee or charge is charged under the credit contract or the credit provider writes off the relevant debt, whichever occurs first.

Joinder of parties

74. (1) If it appears to a court that a person other than a credit provider or a mortgagee (a "third party") has shared in the profits of, or has a beneficial interest prospectively or otherwise in, a credit contract or mortgage that the court holds to be unjust, the court may make any order in relation to the third party that the court considers appropriate.

(2) Before making an order under subsection (1), the court must -

(a) join the third party as a party to the proceedings; and

(b) give the third party an opportunity to appear and be heard in the proceedings.

Part 5 - ENDING AND ENFORCING CREDIT CONTRACTS, MORTGAGES AND GUARANTEES

Division 1 - Ending of credit contract by debtor

Debtor's or guarantor's right to pay out contract

75. (1) A debtor or guarantor under a credit contract is entitled to pay out the credit contract at any time.

(2) The amount required to pay out a credit contract (other than a continuing credit contract) is the total of the following amounts-

(a) the amount of credit;

(b) the interest charges and all other fees and charges payable by the debtor to the credit provider up to the date of termination;

(c) reasonable enforcement expenses;

(d) early termination charges, if provided for in the contract,

less any payments made under the contract and any rebate of premium under section 138.

Statement of pay out figure

76.-(1) A credit provider must, at the written request of a debtor or guarantor, provide a written statement of the amount required to pay out a credit contract (other than a continuing credit contract) as at a date the debtor or guarantor specifies.

(2) If so requested, the credit provider must also provide details of the items which make up the amount referred to in subsection (1).

(3) The statement under subsection (1) must also contain a statement to the effect that the amount required to pay out the credit contract may change according to the date on which it is paid.

(4) A credit provider must give a statement complying with this section within 7 days after the request is given to the credit provider.

(5) A credit provider that contravenes this section commits an offence.

Court may determine pay out figure if credit provider does not provide a pay out figure

77. (1) If a credit provider does not provide a statement of the amount required to pay out a credit contract (other than a continuing credit contract) in accordance with this Part after a request is duly made by a debtor or guarantor, a court may, on the application of the debtor or guarantor, determine the amount payable on the date of determination, the amount by which it increases daily and the period for which the determination is applicable.

(2) A credit contract is discharged if an amount calculated in accordance with a determination under subsection (1) is tendered to the credit provider within the applicable period.

Surrender of mortgaged goods and goods subject to sale by instalments

78. (1) If -

(a) a credit contract takes the form of a sale of goods by instalments and title in the goods does not pass until all instalments are paid; or

(b) the credit provider has a mortgage over goods of the debtor or guarantor,

the debtor or mortgagor may give written notice of an intention to surrender the goods to the credit provider or, if the goods are in the credit provider's possession, require the credit provider in writing to sell the goods.

(2) A debtor or mortgagor may surrender goods provided under a credit contract to the credit provider at the credit provider's place of business during ordinary business hours within 7 days of the date of the notice given under subsection (1), or within any other period or at any other place or time agreed with the credit provider.

(3) A credit provider must, within 14 days after a debtor or mortgagor, pursuant to subsection (1) surrender the goods or requires the credit provider to sell the goods, give the debtor or mortgagor a written notice containing the estimated value of the goods and any other information required by the regulations.

(4) If a debtor or mortgagor, within 21 days after a notice under subsection (3) is given, requests by written notice return of the goods to the debtor or mortgagor or withdraws the requirement to sell the goods (and, being a debtor, is not in default under the terms of the credit contract), the credit provider must return to the debtor or mortgagor any goods surrendered by the debtor or mortgagor

under subsection (2) and must not comply with the requirement to sell them.

(5) If a debtor or mortgagor, within 21 days after a notice under subsection (3) is given, nominates in writing a person who is prepared to purchase the goods from the credit provider at the estimated value, or at any greater amount for which the credit provider has obtained a written offer to buy the goods, the credit provider must offer to sell the goods to that person for the estimated value or, if there is a written offer to buy the goods for a greater amount, that amount.

(6) A credit provider must, if surrendered goods are not required to be returned under subsection (4), as soon as reasonably practicable (or at any other time the credit provider and the debtor or mortgagor agree on) sell the goods in accordance with subsection (5) or, if there is no nominated buyer or the nominated buyer under that subsection does not buy the goods, for the best price reasonably obtainable.

(7) A credit provider must credit the debtor or mortgagor with a payment equivalent to the proceeds of a sale under subsection (5) less any amounts which the credit provider is entitled to deduct from those proceeds.

(8) A credit provider that sells mortgaged goods under this section is entitled to deduct from the proceeds of that sale only the following amounts -

(a) the amount currently secured by the mortgage in relation to the credit contract, not being more than the amount required to discharge the contract;

(b) the amount payable to discharge any prior mortgage to which the goods were subject;

(c) the amounts payable in successive discharge of any subsequent mortgages to which the goods were subject and of which the credit provider had notice;

(d) the credit provider's reasonable enforcement expenses.

(9) A credit provider must give the debtor or mortgagor a written notice stating the gross amount realised on a sale under this section, the net proceeds of the sale, the amount credited to the debtor or mortgagor and the net amount due under the credit contract.

(10) A credit provider that contravenes this section commits an offence.

Compensation to debtor or mortgagor

79. (1) If, on an application by a debtor or mortgagor, a court is satisfied that the credit provider sold goods under section 78(6) but is not satisfied that they were sold as soon as reasonably practicable, or at the time the credit provider and debtor or mortgager agreed on, or for the best price reasonably obtainable, the court may order the credit provider to credit the debtor or mortgager with an amount, fixed by the court, exceeding the net proceeds of sale.

(2) On application by a debtor or mortgagor, the mortgagee under any prior mortgage to which

goods are subject, or the mortgagee under any subsequent mortgage of which the credit provider has notice, a court, if not satisfied that a credit provider complied with section 78, may direct the credit provider to compensate the debtor, mortgagor or mortgagee for any loss suffered as a result.

(3) The onus of proving that section 78 was complied with is on the credit provider.

Division 2 - Enforcement of credit contracts, mortgages and guarantees

Enforcement of credit contract or mortgage

80. (1) A credit provider must not begin enforcement proceedings against a debtor in relation to a credit contract unless the debtor is in default under the credit contract and-

(a) the credit provider has given the debtor, and any guarantor, a default notice, complying with this section, allowing the debtor a period of at least 30 days from the date of the notice to remedy the default; and

(b) the default has not been remedied within that period.

(2) A credit provider must not begin enforcement proceedings against a mortgagor to recover payment of money due, or take possession of, sell, appoint a receiver for or foreclose in relation to property subject to a mortgage, unless the mortgagor is in default under the mortgage and -

(a) the credit provider has given the mortgagor a default notice, complying with this section, allowing the mortgagor a period of at least 30 days from the date of the notice to remedy the default; and

(b) the default has not been remedied within that period.

(3) A credit provider that contravenes subsection (1) or (2) commits an offence.

(4) A default notice under subsection (1) must specify the default and the action necessary to remedy it and that any subsequent default of the same kind that occurs during the period of 30 days may be the subject of enforcement proceedings without further notice if it is not remedied within the period.

(5) A credit provider is not required to give a default notice or to wait until the period specified in the default notice has elapsed, before beginning enforcement proceedings, if -

(a) the credit provider believes on reasonable grounds that it was induced by fraud on the part of the debtor or mortgagor to enter into the credit contract or mortgage;

(b) the credit provider has made reasonable attempts to locate the debtor or mortgagor but without success;

(c) the court authorises the credit provider to do so; or

(d) the credit provider believes on reasonable grounds -

(i) that the debtor or mortgagor has removed or disposed of mortgaged goods under a mortgage related to the credit contract or under the mortgage concerned;

(ii) that the debtor or mortgagor intends to remove or dispose of mortgaged goods without the credit provider's permission; or

(iii) that urgent action is necessary to protect the mortgaged property.

(6) If a credit provider believes on reasonable grounds that a default is not capable of being remedied-

(a) the default notice under subsection (1) or (2) need only specify the default; and

(b) the credit provider may begin enforcement proceedings 30 days after the date of the notice.

(7) This section is in addition to any provision of any other law relating to the enforcement of real property mortgages and does not prevent the issue of notices to defaulting mortgagors under other legislation.

Default may be remedied

81. (1) If a default notice under section 80(1) or (2) states that the credit provider intends to take action because the debtor or mortgagor is in default under the credit contract or mortgage, the debtor, mortgagor or guarantor may remedy the default within the period specified in the notice, and the contract or mortgage is then reinstated and any acceleration clause cannot operate.

(2) A debtor, mortgagor or guarantor does not remedy a default if, at the end of the period specified in the notice, the debtor or mortgagor is in default under the credit contract or mortgage because of the breach specified in the notice or because of a subsequent breach of the same type.

Requirements to be met before credit provider can enforce guarantee against guarantor

82. (1) A credit provider must not, under a guarantee, enforce a judgment against a guarantor unless -

(a) the credit provider has obtained a judgment against the debtor for payment of the guaranteed liability and the judgment remains unsatisfied for 30 days after the credit provider has made a written demand for payment of the judgment debt;

(b) a court has relieved the credit provider from the obligation to obtain a judgment against the debtor on the ground that recovery from the debtor is unlikely;

(c) the credit provider has made reasonable attempts to locate the debtor but without success; or

(d) the debtor is insolvent.

(2) A person who contravenes this section commits an offence.

Requirements to be met before credit provider can repossess mortgaged goods

83. (1) A credit provider must not, without the consent of the court, take possession of mortgaged goods if the amount currently owing under the credit contract related to the relevant mortgage is less than 25% of the amount of credit provided under the contract or \$2,000, whichever is the lesser.

(2) The restriction in subsection (1) does not apply -

(a) to a continuing credit contract; or

(b) if the credit provider believes on reasonable grounds that the debtor has removed or disposed of the mortgaged goods, or intends to remove or dispose of them, without the credit provider's permission or that urgent action is necessary to protect the goods.

(3) A credit provider that contravenes subsection (1) commits an offence.

(4) In any proceedings in which it is established that a credit provider has taken possession of mortgaged goods contrary to subsection (1), the burden of establishing that the possession of the goods was lawfully taken by virtue of subsection (2) lies on the credit provider.

(5) Nothing in this section prevents a credit provider from accepting the return of goods under section 78.

Acceleration clauses

84. (1) For the purposes of this Part, an "acceleration clause" is a term of a credit contract or mortgage providing that -

(a) on the occurrence or non-occurrence of a particular event, the credit provider becomes entitled to immediate payment of all, or a part, of an amount under the contract that would not otherwise have been immediately payable; or

(b) whether or not on the occurrence or non-occurrence of a particular event, the credit provider has a discretion to require repayment of the amount of credit otherwise than by repayments fixed, or determined on a basis stated, in the contract,

but does not include any such term in a credit contract or mortgage that is an on demand facility.

(2) For the purposes of subsection (1) an "on demand facility" is a credit contract or mortgage under which -

(a) the total amount outstanding under the contract or mortgage is repayable at any time on demand by the credit provider; and

(b) there is no agreement, arrangement or understanding between the credit provider and the debtor or mortgagor that repayment will only be demanded on the occurrence or non-occurrence of a particular event.

Requirements to be met before credit provider can enforce an acceleration clause

85. (1) An acceleration clause is to operate only if the debtor or mortgagor is in default under the credit contract or mortgage and -

(a) the credit provider has given to the debtor and any guarantor, or to the mortgagor, a default notice under section 80;

(b) the default notice contains an additional statement of the manner in which the liabilities of the debtor or mortgagor under the contract or mortgage would be affected by the operation of the acceleration clause and also of the amount required to pay out the contract (as accelerated); and

(c) the default has not been remedied within the period specified in the default notice (unless the credit provider believes on reasonable grounds that the default is not capable of being remedied).

(2) A credit provider is not required to give a default notice under section 80 or to wait until the period specified in the default notice had elapsed before bringing an acceleration clause into operation, if -

(a) the credit provider believes on reasonable grounds that it was induced by fraud on the part of the debtor or mortgagor to enter into the contract or mortgage; or

(b) the credit provider has made reasonable attempts to locate the debtor or mortgagor but without success;

(c) a court authorises the credit provider not to do so; or

(d) the credit provider believes on reasonable grounds that the debtor or mortgagor has removed or disposed of mortgaged goods under a mortgage related to the credit contract or the mortgage concerned, or intends to remove or dispose of mortgaged goods, without the credit provider's permission or that urgent action is necessary to protect the goods.

(3) This section is in addition to any provision of any other law relating to the enforcement of real property mortgages and does not prevent the issue of notices to defaulting mortgagors under

other legislation.

Division 3 - Postponement of enforcement proceedings

Postponement of exercise of rights

86. A debtor, mortgagor or, guarantor who has been given a default notice under Division 2 or a demand for payment under section 82 may, at any time before the end of the period specified in the notice or demand, negotiate with the credit provider a postponement of the enforcement proceedings or any action taken under such proceedings or of the operation of any applicable acceleration clause.

Effect of negotiated postponement

87. (1) The default notice or demand for payment is taken, for the purposes of this Act, not to have been given or made if a postponement is negotiated with the credit provider, written notice of the conditions of postponement is given to the debtor, mortgagor or guarantor and the debtor, mortgagor or guarantor complies with the conditions of postponement.

(2) It is a condition of any postponement negotiated with a credit provider after the credit provider has taken possession of property subject to a mortgage that the mortgagor pay the reasonable costs of the credit provider in taking possession of the property.

Postponement by court

88. (1) If a debtor, mortgagor or guarantor is unable to negotiate a postponement under section 86, the debtor, mortgagor or guarantor may apply to the court for a postponement.

(2) A court may, after allowing the applicant, the credit provider and any debtor, mortgagor or guarantor concerned a reasonable opportunity to be heard, order or refuse to order the postponement to which an application under subsection (1) relates and may make such other orders as it thinks fit.

(3) A court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under a credit contract or mortgage until an application under subsection (1) has been determined.

Credit provider may apply for variation of postponement order

89. (1) A credit provider that is subject to an order under this Division may apply to the court for variation of the order.

(2) On an application under subsection (1), the court may vary the order to which the application relates as it thinks fit or may refuse to vary the order or may revoke the order.

Division 4 - Enforcement procedures for goods mortgaged

Information as to location of mortgaged goods

90. (1) A credit provider may, by written notice to a mortgagor under a mortgage, require the mortgagor to inform the credit provider within 7 days where the mortgaged goods are and, if the mortgaged goods are not in the mortgagor's possession, to give the credit provider all information in the mortgagor's possession that might assist the credit provider to trace the goods.

(2) A mortgagor who contravenes a notice under this section commits an offence.

Entry to residential property to take possession of goods

91. (1) A credit provider, or an agent of a credit provider, must not enter any part of premises used for residential purposes for the purpose of taking possession of mortgaged goods under a goods mortgage unless -

(a) a court has authorised the entry; or

(b) the occupier of the premises has, after being informed in writing of the provisions of this section, consented in writing to the entry.

(2) The regulations may provide for procedures for the obtaining and giving of consent for the purposes of this section and may set out the circumstances in which consent is or is not taken to have been given.

(3) If premises are entered in contravention of this section by a credit provider or an agent of a credit provider, the credit provider commits an offence.

Court may order entry

92. A court may, on the application of a credit provider that is entitled to take possession of mortgaged goods, authorise the credit provider to enter residential premises for the purpose of taking possession of mortgaged goods.

Order for possession

93. (1) A court may, on the application of a credit provider that is entitled to take possession of mortgaged goods, order a person who has possession of the goods to deliver them to the credit provider at a specified time or place or within a specified period.

(2) A court may, on the application of a credit provider or other person required to deliver goods to a credit provider, by order vary the place at which or time or period within which goods must be delivered to the credit provider.

(3) A person who contravenes an order under this section commits an offence.

Procedures to be followed by credit provider after taking possession of goods

94. (1) A credit provider that has taken possession of goods under a mortgage must, within 14 days after doing so, give the mortgagor a written notice setting out -

(a) the estimated value of the goods;

(b) the enforcement expenses incurred up to the date on which the goods were taken into the credit provider's possession and, if enforcement expenses are accruing while the goods remain in the credit provider's possession, the rate of accrual;

(c) a statement of the mortgagor's rights and obligation in the form set out in the regulations.

(2) A credit provider must not dispose of goods taken under a mortgage within 21 days after the date of the notice given under subsection (1) unless the court authorises the credit provider to do so.

(3) If at the end of the 21 - day period specified in subsection (2) a stay of enforcement proceedings is in force under this Act or an application under section 70 has not been determined, the credit provider must not dispose of the goods in question until those proceedings have been determined and any period allowed for appeal has elapsed.

(4) A credit provider must return any goods under a mortgage if -

(a) the amount in arrears (less any accelerated amount) and the credit provider's reasonable enforcement expenses are paid within the 21 day period prescribed in subsection (2) and the debtor has not committed a further default of the same kind under the credit contract; or

(b) the credit contract is paid out.

(5) A credit provider that contravenes this section commits an offence.

Mortgagor may nominate purchaser of goods taken by credit provider

95. (1) A mortgagor may, within 21 days after the date of the notice given under section 94, nominate in writing a person who is prepared to purchase the goods from the credit provider at the estimated value or at any greater amount for which the credit provider has obtained a written offer to buy the goods.

(2) If a person has been nominated as a buyer under subsection (1), the credit provider must offer to sell the goods to that person for the estimated value or, if there is a written offer to buy the goods for a greater amount, that amount.

(3) A credit provider that contravenes subsection (2) commits an offence.

Sale of goods by credit provider

96. (1) A credit provider must, if payment is not made within 21 days after the date of a notice given under section 94, and if that section does not prevent the sale, as soon as reasonably practicable (or at any other time the credit provider and mortgagor agree on) sell goods taken under a mortgage in accordance with section 95 or, if there is no nominated buyer or the nominated buyer under that section does not buy the goods, for the best price reasonably obtainable.

(2) A credit provider must credit a mortgagor with a payment equivalent to the proceeds of a sale under subsection (1) less any amounts which the credit provider is entitled to deduct from those proceeds.

(3) A credit provider that contravenes this section commits an offence.

Matters for which account can be debited after mortgagee sale of goods

97. A credit provider that sells mortgaged goods under section 96 is entitled to deduct from the proceeds of the sale only the following amounts -

(a) the amount currently secured by the mortgage in relation to the credit contract, not being more than the amount required to discharge the contract;

(b) the amount payable to discharge any prior mortgage to which the goods were subject;

(c) the amounts payable in successive discharge of any subsequent mortgages to which the goods were subject and of which the credit provider had notice; and

(d) the credit provider's reasonable enforcement expenses.

Compensation to mortgagor

98. (1) If, on an application by a mortgagor, a court is satisfied that the credit provider sold goods under section 96(1) but is not satisfied that they were sold as soon as reasonably practicable, or at the time the credit provider and mortgagor agreed on, or for the best price reasonably obtainable, the court may order the credit provider to credit the mortgagor with an amount, fixed by the court, exceeding the net proceeds of sale.

(2) On application by a mortgagor, the mortgagee under any prior mortgage to which goods are subject, or the mortgagee under any subsequent mortgage of which the credit provider has notice, a court, if not satisfied that a credit provider exercised its power of sale in accordance with this Division, may order the credit provider to compensate the mortgagor or the relevant mortgagee for any loss suffered as a result.

(3) The onus of proving that a power of sale was exercised in accordance with this Division is on the credit provider that exercised it.

Division 5 - Enforcement expenses

Recovery of enforcement expenses

- 99.** (1) A credit provider must not recover or seek to recover enforcement expenses from a debtor, mortgagor or guarantor in excess of those reasonably incurred by the credit provider.
- (2) Any provision of a credit contract, mortgage or guarantee that appears to confer a greater right in respect of enforcement expenses than that conferred by subsection (1) is void.
- (3) Any enforcement expenses received by a credit provider in excess of those reasonably incurred must be returned to the debtor, mortgagor or guarantor.
- (4) A credit provider that contravenes this section commits an offence.

Part 6 - CIVIL PENALTIES FOR DEFAULTS OF CREDIT PROVIDERS

Division 1 - Civil penalties for breach of key requirements

Key requirements

100. (1) For the purposes of this Division a "key requirement" in connection with a credit contract (other than a continuing credit contract) is a requirement of -

(a) paragraph (B), (C), (D), (E), (G), (H), (J), or (N) (a) and (b) of Schedule 1;

(b) section 21 (1) (at the time the credit contract is entered into.)

(2) For the purposes of this Division, a "key requirement" in connection with a continuing credit contract is a requirement of-

(a) paragraph (B)(b), (C) (D) (G) or (H) of Schedule 1;

(b) section 21(1);

(c) paragraph (E) of Schedule 2;

(d) section 33.

(3) A key requirement relating to a disclosure or a statement of account includes the requirements set out in sections 14 and 31 respectively as to the manner in which the disclosure or statement is to be made out but does not include any requirement set out in the regulations.

Application for order relating to key requirements

101. (1) A party to a credit contract, a guarantor or the Director of Fair Trading and Consumer Affairs may apply to a court for an order under this Division.

(2) A debtor or guarantor may not apply for an order under this Division in respect of a contravention of a key requirement in respect of a contract if the contravention is or has been subject to an application for an order made by the credit provider or Director of Fair Trading and Consumer Affairs.

(3) Subsection (2) does not prevent an application from being made for an order for the payment of compensation under section 107.

Civil penalty may be imposed for contravention of key requirement

102. (1) A court must, on an application being made under section 101, by order declare whether or not a credit provider has contravened a key requirement in connection with the credit contract or contracts concerned.

(2) If a court decides that a credit provider has contravened a key requirement, the court may make an order, in accordance with section 103, requiring a credit provider to pay an amount as a civil penalty.

(3) In considering the imposition of a civil penalty, a court must have regard primarily to the prudential standing of the credit provider concerned, or of any subsidiary of the credit provider (within the meaning of the Companies Act) if -

(a) the credit provider or subsidiary takes deposits or is a borrowing corporation (within the meaning of that Act); and

(b) the credit provider requests the court to do so.

(4) A court, in considering the imposition of a civil penalty, must also have regard to-

(a) the conduct of the credit provider and debtor before and after the credit contract was entered into;

(b) whether the contravention was deliberate or otherwise;

(c) the loss or other detriment (if any) suffered by the debtor as a result of the contravention;

(d) when the credit provider first became aware, or ought reasonably to have become aware, of the contravention;

(e) any systems or procedures of the credit provider to prevent or identify contraventions;

(f) whether the contravention could have been prevented by the credit provider;

(g) any action taken by the credit provider to remedy the contravention or compensate the debtor or to prevent further contraventions;

(h) the time taken to make the application and the nature of the application;

(i) any other matter the court considers relevant.

(5) For the purposes of determining an application for an order under this Division, or the amount of a civil penalty, a court must treat a contravention of a key requirement that occurs only because of another contravention of a key requirement as being a contravention of the same kind.

(6) If a provision referred to in section 100 contains several requirements, a court must treat contraventions of more than one of those requirements as a single contravention of the one key requirement for the purposes of determining the amount of a civil penalty.

(7) A court may, if it thinks it appropriate in the circumstances, order that particulars of any matter relating to an application for an order under this Division must not be published.

Penalty if application made by debtor or guarantor

103. (1) Subject to subsection (2), if an application under section 101 was made by a debtor or a guarantor, the maximum civil penalty that may be imposed by the court under section 102(2) is-

(a) except as provided by paragraphs (b) and (c) - all interest charges payable under the contract from the date it was made;

(b) in the case of a contravention of a key requirement relating to a statement of account of a continuing credit contract - all interest charges payable under the contract for the period to which the statement of account relates;

(c) in the case of contravention of a key requirement relating to prohibited monetary obligations - all interest charges accruing under the contract from the date the contravention occurred.

(2) If a debtor or guarantor satisfies the court that the debtor has suffered a loss as a result of the contravention by a credit provider of a key requirement the court may impose by way of additional civil penalty an amount not less than the loss suffered.

(3) For the purpose of subsection (1)(a), the amount of future interest charges payable under a credit contract is to be calculated on the assumptions set out in sections 158 and 160.

Payment of penalty to debtor or guarantor

104. (1) An amount of civil penalty ordered by a court to be paid under section 102(2) may be set off by the debtor or guarantor against any amount that is due or becomes due to the credit provider

under the credit contract.

(2) If there is no amount due to the credit provider, the amount of the civil penalty is a debt due by the credit provider to the debtor or guarantor.

(3) An order made by a court on an application by a debtor or a guarantor may include any directions the court considers appropriate relating to the payment of the amount owed by the debtor or the credit provider as a result of the order.

*Penalty if application made by credit provider or
Director of Fair Trading and Consumer Affairs*

105. (1) If an application under section 101 is made by a credit provider or the Director of Fair Trading and Consumer Affairs, the maximum civil penalty that may be imposed by the court under section 102(2) is an amount calculated so that the total civil penalty for all contraventions of the requirement in the Fiji Islands (as disclosed by the credit provider) does not exceed \$500,000.

(2) For the purpose of determining a civil penalty, a court must, in making an order, determine the appropriate amount of penalty for all disclosed contraventions of the key requirement and determine the amount payable according to the number of contracts affected by the disclosed contraventions.

Payment of penalty to fund

106. An amount of civil penalty ordered by a court to be paid under section 105 must be paid by the credit provider into a fund established and operated under the regulations for the purposes of this section or, if no such fund is established, to the Department of Fair Trading and Consumer Affairs.

Compensation for debtor or guarantor

107. (1) A court may, on application by a debtor or a guarantor, order that a credit provider pay to the debtor or guarantor an amount by way of compensation for loss arising from the contravention of a key requirement.

(2) A court may only order an amount to be paid by way of compensation if the debtor or guarantor satisfies the court that the debtor or guarantor has suffered a loss arising from the contravention. The amount of compensation is not to exceed the amount of the loss.

(3) A court may not make an order under this section if the debtor or guarantor has previously obtained or been refused a civil penalty referred to in section 103(2) relating to the same contravention.

(4) An amount payable under this section does not affect the amount of penalty for the purposes of section 105.

Recognition of civil penalty determined in other jurisdictions

108. (1) The Director of Fair Trading and Consumer Affairs may register with the court an order made by a court of another country under a provision of a law of that other country corresponding to sections 101 and 105.

(2) On registration of an order under subsection (1), the order is taken to be an order under section 102 or 105 as the case may be for the purpose of enforcement.

*General provisions relating to applications by credit providers or
Director of Fair Trading and Consumer Affairs*

109. (1) An application under section 101 by a credit provider or by the Director of Fair Trading and Consumer Affairs -

(a) may apply to any one or more credit contracts; and

(b) may apply to all or any class of credit contracts entered into by the credit provider during a specified period.

(2) A court may require notice of an application under section 101 to be published by notice, in a form approved by the court, in a newspaper circulating throughout the Fiji Islands as the court determines.

(3) Notice of an application by a credit provider under section 101 must be given by the credit provider to the Director of Fair Trading and Consumer Affairs.

Department of Fair Trading and Consumer Affairs may represent interests of debtors

110. The Director of Fair Trading and Consumer Affairs may apply to the Court to become a party to an application under this Division and, if joined as a party, has standing to represent the public interest and the interests of debtors.

Directions pending Court's decision

111. (1) A court may, before disposing of an application under section 101 or 107 by a debtor or guarantor, make any directions it considers appropriate to protect the interests of the debtor or guarantor.

(2) Subject to any directions of the court under subsection (1), an application by a debtor or guarantor does not prevent -

(a) any proceedings for the enforcement of the obligations of the debtor or guarantor from being taken; or

(b) any rights over property the subject of a mortgage from being exercised.

(3) For the purposes of this section, a reference to the disposal of an application includes a reference to its withdrawal by the applicant.

(4) A credit provider affected by a direction of a court may apply to the court for variation of the direction and the court may confirm, vary or revoke the direction.

Offences

112. Nothing in this Division affects the liability of a person for an offence against this Act or the regulations.

Division 2 - Civil effect of other contraventions

Civil effect of other contraventions

113. (1) If a credit provider contravenes a requirement of or made under this Act, other than one for which a civil penalty is provided by Division 1 or by any other provision of this Act, a court may order the credit provider to make restitution or pay compensation to any person affected by the contravention and, in that event, may make any consequential order it considers appropriate in the circumstances.

(2) An application for the exercise of the court's powers under this section may be made by the Director of Fair Trading and Consumer Affairs or by any person affected by the contravention.

Part 7 - RELATED SALE CONTRACTS

Division 1 - Interpretation and application

Meaning of sale contract

114. For the purposes of this Act, a "sale contract" is a contract for any one or more of the following-

(a) a contract for the sale of goods;

(b) a contract for the supply of services.

Sale contracts to which this Part applies

115. This Part applies to or in respect of a sale contractor proposed sale contract only if the sale of the goods or supply of services concerned is financed, or is proposed to be financed, wholly or partly by the provision of credit to which this Act applies.

Linked credit providers and tied credit contracts

116. (1) For the purposes of this Act, a "linked credit provider" of a supplier means a credit provider-

(a) with whom the supplier has a contract, arrangement or understanding relating to-

(i) the supply to the supplier of goods in which the supplier deals;

(ii) business carried on by the supplier of supplying goods or services; or

(iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services;

(b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit;

(c) whose forms of contract or forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which contracts or applications or offers for credit from the credit provider may be signed by persons at the premises of the supplier.

(2) For the purposes of this Act, a "tied continuing credit contract" is a continuing credit contract under which a credit provider provides credit in respect of the payment by a debtor for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

(3) For the purposes of this Act, a "tied loan contract" is a credit contract entered into between a credit provider and a debtor where -

(a) the credit provider knows or ought reasonably to know that the debtor enters into the credit contract wholly or partly for the purposes of payment for the goods or services supplied by a supplier; and

(b) at the time the credit contract is entered into the credit provider is a linked credit provider of the supplier.

Division 2 - Liability of credit providers for suppliers' misrepresentations

Credit provider liable with respect to supplier's misrepresentations etc. about tied credit contract

117. (1) If there is a tied loan contract or a tied continuing credit contract in respect of a sale contract, any representation, warranty or statement made (whether orally or in writing) by the supplier, or by any person acting on behalf of the supplier, to the debtor in relation to the tied loan contract or tied continuing credit contract gives the debtor the same rights against the credit provider as the debtor would have had if it had been made by the credit provider.

(2) Without prejudice to any other rights or remedies to which a credit provider may be entitled, a credit provider is entitled to be indemnified by the person who made the representation, warranty or statement, and any person on whose behalf it was made, against any damage suffered by the credit provider through the operation of this section.

Division 3 - Liability of credit providers in relation to goods

Right to damages under sale contract against both supplier and linked credit provider

118. (1) If -

(a) a supplier supplies goods, or causes goods to be supplied, to a linked credit provider of the supplier and a debtor enters into a contract with the linked credit provider for the provision of credit in respect of the supply by way of sale of the goods to the debtor; or

(b) a debtor enters into a contract with a linked credit provider of a supplier for the provision of credit in respect of the supply by the supplier of goods or services, or goods and services, to the debtor,

and the debtor suffers loss or damage as a result of misrepresentation, breach of contract, or failure of consideration in relation to the contract, the supplier and the linked credit provider are, subject to this Division, jointly and severally liable to the debtor for the amount of the loss or damage, and the debtor may recover that amount by action in accordance with this section in a court of competent jurisdiction.

(2) A linked credit provider of a particular supplier is not liable to a debtor by virtue of subsection (1) in proceedings arising under that subsection if the credit provider establishes-

(a) that the credit provided by the credit provider to the debtor was the result of an approach made to the credit provider by the debtor that was not induced by the supplier;

(b) (if the proceedings relate to a contract of sale with respect to which a tied loan contract applies) that-

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good;

(ii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that the debtor might, if the contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of misrepresentation, breach of contract or failure of consideration in relation to the contract as referred to in subsection (1); and

(iii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the credit provider had not had cause to suspect that the supplier might be unable to meet the supplier's liabilities as and when they fell due; or

(c) (if the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider applies) that, having regard to-

(i) the nature and volume of business carried on by the linked credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case,

the linked credit provider, before becoming aware of the contract of sale, or of proposals for the making of the contract of sale (whichever the linked credit provider first became aware of), had not had cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract or failure of consideration as referred to in subsection (1).

Limits on debtor's right of action against linked credit provider

119. (1) Subject to subsection (2), in relation to a contract referred to in section 118 (1) under which a credit provider claims damages or an amount of money from a debtor, the debtor may set up any liability of the credit provider under section 118 in diminution or extinction of the debtor's liability.

(2) Subject to subsection (3), a debtor may not, in respect of a liability for which, by reason of section 118, a supplier and a linked credit provider are jointly and severally liable-

(a) bring proceedings to recover an amount of loss or damage from the credit provider; or

(b) if proceedings are brought against the debtor by the linked credit provider, make a counterclaim or exercise the right conferred by subsection (1) against the credit provider,

unless the debtor brings the action against the supplier and the credit provider jointly or, in the case of a counterclaim or right conferred by subsection (1), claims in the proceedings against the supplier in respect of the liability by third-party proceedings or otherwise.

(3) Subsections (2), (5)(a) and (6)(a) do not apply in relation to proceedings where -

(a) the supplier is insolvent, cannot be located after reasonable enquiry, or has died or been dissolved; or

(b) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied and the court has, on the application of the debtor, declared that subsections (2),(5) (a) and (6) (a) do not apply in relation to the proceedings.

(4) The liability of a linked credit provider to a debtor for damages or for a sum of money in respect of a contract referred to in section 118 (1) is not to exceed the sum of -

(a) the amount of credit under the tied loan contract or tied continuing credit contract;

(b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and

(c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

(5) If in proceedings arising under section 118, judgment is given against a supplier and a linked credit provider, the judgment -

(a) must not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and

(b) may be enforced against the linked credit provider only to the extent of the amount calculated in accordance with this section, or so much of the judgment debt as has not been satisfied by the supplier, whichever is the lesser.

(6) If in proceedings in respect of the liability arising under section 118, a right conferred by subsection (1) is established against a linked credit provider, the debtor-

(a) may not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider, a written demand has been made on the supplier for satisfaction of the judgment and the demand has remained unsatisfied for not less than 30 days; and

(b) may receive the benefit only to the extent of the amount calculated in accordance with this section or so much of the judgment debt as has not been satisfied by the supplier, whichever is the lesser.

Liability of supplier to linked credit provider

120. Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider's liability under section 119 (4) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

Interest may be awarded

121. (1) Despite any other law, where, in proceedings arising under section 118, judgment is given against a supplier and a linked credit provider or against a linked credit provider for an amount of loss or damage, the court in which the proceedings are taken must, on the application of the debtor, unless good cause is shown to the contrary, award interest to the debtor against the supplier and credit provider or against the credit provider, as the case may be, on the whole or a part of the amount from the time when the debtor became entitled to recover the amount until the date on which the judgment is given, at a rate prescribed by the regulations.

(2) In determining whether good cause is shown against awarding interest under this section on the whole or part of an amount of loss or damage, the court is to take into account any payment made into court by the supplier or credit provider.

Subrogation of credit provider

122. If a judgment given in proceedings arising under section 118 is enforced against a linked credit provider of a particular supplier, the credit provider is subrogated to the extent of the judgment so enforced to any rights that the debtor would have had but for the judgment against the supplier or any other person in respect of the loss or damage suffered by the debtor as a result of the misrepresentation, breach of contract or failure of consideration in relation to the contract from which the liability arose.

Division 4 - Termination of related transactions

Termination of sale contract which is conditional on obtaining credit

123. (1) If a purchaser of goods or services makes it known to a supplier that credit is required in order to pay for the goods or services and the purchaser, after making reasonable endeavours to do so, fails to obtain credit on reasonable terms, the purchaser is entitled to terminate the sale contract.

(2) A purchaser may terminate a sale contract under this section even though goods or services have already been supplied under the contract but, if practicable, goods supplied under the sale contract must be returned to the supplier.

(3) If a sale contract is terminated under this section-

(a) the supplier is entitled to -

(i) reasonable compensation for damage to, or deterioration of, goods supplied under the sale contract (other than fair wear and tear) up to the date of their return to the supplier or, if they are not returned, the cash price of the goods; and

(ii) the reasonable value of the services supplied under the sale contract up to the date of termination; and

(b) the purchaser is entitled (subject to the supplier's entitlement referred to above) to the return of money paid under the sale contract.

Termination of (or recredit under) tied credit contract if sale contract terminated

124. (1) If a sale contract is rescinded or discharged (whether under this Act or any other law) and there is a tied loan contract or a tied continuing credit contract made with the purchaser by a linked credit provider of the supplier under the sale contract, the debtor is entitled-

(a) in the case of a tied loan contract - to terminate the credit contract;

(b) in the case of a tied continuing credit contract - to be credited with the amount of credit in relation to the sale contract and the interest charges attributable to that amount.

(2) If a tied loan contract is terminated under this section, any related guarantee or mortgage is terminated to the extent to which it secures obligations under the contract or any related guarantee.

(3) If a tied loan contract is terminated under this section, the credit provider is entitled to recover from the debtor any part of the amount of credit that has not been paid to the supplier and the debtor is entitled to recover from the credit provider any interest charges or other amounts paid by the debtor under the credit contract.

(4) If a mortgage or guarantee is terminated under this section, the credit provider is entitled to recover from the mortgagor or guarantor any part of the amount of credit that has not been paid to the supplier and that is secured by the mortgage or guarantee, and the mortgagor or guarantor is entitled to recover from the credit provider any other amounts paid by the mortgagor or guarantor.

(5) If a tied loan contract is terminated under this section, the credit provider is entitled to recover from the supplier (subject to any agreement between them) the amount of any loss suffered by the credit provider as a result of the operation of this section.

(6) A supplier who knows that a sale contract referred to in subsection (1) has been rescinded or discharged must forthwith give the credit provider under any tied loan contract or tied continuing credit contract notice of the termination.

(7) This section does not apply if the credit is provided as a result of an approach by the debtor that was not induced by the supplier or credit provider.

(8) A person who contravenes this section commits an offence.

Termination of linked maintenance services contract if credit contract terminated

125. (1) If -

(a) there is a tied loan contract or a tied continuing credit contract made with the debtor by a linked credit provider of the supplier under a sale contract to supply maintenance services; and

(b) the tied loan contract or tied continuing credit contract is terminated (whether under this Act or any other law) before the end of the term of the sale contract,

the debtor is entitled to terminate the sale contract to supply maintenance services and recover from the supplier a proportionate rebate of consideration paid under the sale contract.

(2) In a case as described in subsection (1), the credit provider must inform the debtor in accordance with the regulations of the debtor's rights under this section.

(3) The regulations may prescribe the manner of calculating the proportionate rebate of consideration for the purposes of this section.

(4) This section does not apply if the credit is provided as a result of an approach by the debtor that was not induced by the supplier or credit provider.

(5) A person who contravenes this section commits an offence.

Termination of contract under this Part to be in writing

126. An entitlement to terminate a sale contract or credit contract that is conferred by a provision of this Part may be exercised only by notice in writing to the other party to the contract.

Powers of court with respect to termination of contract under this Part

127. A court may, on the application of any interested party, make orders-

(a) declaring whether a purported termination of a contract under this Part is valid; and

(b) for the adjustment of rights following termination of a contract under this Part.

Part 5 not to apply to termination of contract under this Part

128. Part 5 does not apply to the termination of a contract under this Part.

Division 5 - Other Provisions

Requirement as to source of credit for goods or services

129. (1) A supplier must not require a purchaser of goods or services to apply for, or obtain, credit from a particular credit provider.

(2) As supplier that contravenes this section commits an offence.

Prohibition on payment for goods or services by postdated bills of exchange or notes which exceed cash price of goods or services

130. (1) A supplier must not demand or accept payment from the purchaser for goods or services supplied under a sale contract in the form of a postdated bill of exchange or promissory note given by the purchaser if the face value of the bill or note exceeds the cash price of the goods or services.

(2) Subsection (1) does not apply unless the postponement of the debt to the supplier constitutes a provision of credit to which this Act applies.

(3) A supplier that contravenes this section commits an offence.

Part 8 - RELATED INSURANCE CONTRACTS

Meaning of credit-related insurance contract

131. (1) For the purposes of this Act, a "credit-related insurance contract" is a contract for insurance of any of the following kinds in connection with a credit contract-

(a) insurance over mortgaged property;

(b) consumer credit insurance;

(c) insurance of a nature prescribed for the purposes of this section by the regulations.

(2) In this Part, "the insured" means a person who has taken out credit-related insurance.

Requirement to take out insurance or to insure with particular insurer or on particular terms

132.-(1) A credit provider or a supplier must not-

(a) require a debtor or guarantor to take out insurance or to pay the cost of insurance taken out or arranged by the credit provider or supplier; or

(b) represent to a debtor or guarantor that the debtor or guarantor is required to pay the cost of any such insurance,

unless the insurance is compulsory insurance, mortgage indemnity insurance, insurance over mortgaged property or insurance of a nature and extent approved for the purposes of this section by the regulations.

(2) A credit provider or a supplier must not, in connection with a credit contract or a sale contract in relation to which there is a tied loan contract or a tied continuing credit contract -

(a) require a debtor or guarantor to take out insurance with a particular insurer (unless the insurer is the only insurer providing insurance of the relevant kind or the requirement is exempted from the operation of this section by the regulations); or

(b) make any unreasonable requirement as to the terms on which the debtor or guarantor is to take out insurance.

(3) A person who contravenes this section commits an offence.

(4) If a credit provider or supplier contravenes this section, the insured is entitled to recover the whole of the premium paid under the contract from the credit provider or supplier, as the case may be.

Financing of insurance premiums over mortgaged property

133. (1) A credit provider must not knowingly provide credit to the debtor to pay the premium or finance the premium on insurance taken out by the debtor over mortgaged property for a period of insurance exceeding 1 year, but may provide credit for or finance successive premiums for periods of 1 year or less.

(2) Subsection (1) does not apply to a premium paid to obtain an extended period of warranty for goods purchased by a debtor.

(3) A credit provider must not knowingly debit a premium for insurance over mortgaged property to the debtor's account more than 30 days before the beginning of the period of insurance to which it relates.

(4) A person who contravenes this section commits an offence.

(5) If a credit provider contravenes subsection (1), the insured is entitled to recover the whole of the premium paid under the contract from the credit provider.

(6) If a credit provider contravenes subsection (3), the insured is entitled to recover the amount of premium debited in contravention of the subsection.

Commission for consumer credit insurance

134. (1) This section applies to commission paid by an insurer in connection with consumer credit insurance taken out by a debtor, or for which an amount is paid by the debtor.

(2) The total of any such commission accepted by all or any of the following -

(a) the credit provider;

(b) the supplier under a sale contract in relation to which there is a tied loan contract or a tied continuing credit contract;

(c) the agent of the credit provider or supplier,

must not exceed, in amount or value, 20% of the premium (excluding government charges).

(3) A credit provider or any supplier or agent referred to in subsection (2) must not accept, and an insurer must not pay a commission exceeding, in amount or value, the maximum allowed under this section.

(4) A person who contravenes this section commits an offence.

(5) If a credit provider or supplier contravenes this section, the insured is entitled to recover the whole amount or value of the commission from the credit provider or the supplier, as the case may be.

Supply of copy of credit-related insurance contract by insurer

135. (1) If the premium under a credit related insurance contract is financed under the credit contract, the insurer must ensure that a copy of the policy of insurance is given to the debtor within 14 days after acceptance of the insurance proposal by the insurer.

(2) In the case of any such contract of insurance entered into by the credit provider in which the debtor has a beneficial interest, the credit provider must ensure that a written notice containing particulars of the insurance prescribed by the regulations is given to the debtor within 14 days after the beneficial interest is acquired by the debtor.

(3) This section does not apply to compulsory insurance.

(4) A person who contravenes this section commits an offence.

Rejection of debtor's proposal for insurance

136. (1) If a credit provider proposes to finance the amount payable by the debtor under or in connection with a credit-related insurance contract and the proposal for insurance is rejected by an insurer, the insurer must inform the debtor and the credit provider of its rejection.

(2) Unless the insurance is to be arranged with another insurer, the credit provider must ensure that any amount paid by the debtor for insurance is refunded or credited in full.

(3) The credit provider may recover any amount paid or credited to the debtor under subsection (2) from the insurer, if an amount has been paid to the insurer by the debtor under or in connection with the proposed insurance contract.

(4) A person who contravenes this section commits an offence.

Termination of consumer credit insurance contract if credit contract terminated

137. (1) On termination of a credit contract, any related consumer credit insurance in force is also terminated.

(2) If a credit contract is terminated, the credit provider is required to pay the debtor or credit the debtor with a proportionate rebate of premium paid under any related consumer credit insurance in force immediately before the credit contract is terminated.

(3) A credit provider may recover any amount paid or credited to the debtor under subsection (2) from the insurer.

(4) The regulations may prescribe the manner of calculating the proportionate rebate of premium for the purposes of this section.

(5) This section has effect notwithstanding any provision of the credit-related insurance contract.

Termination of insurance contract over mortgaged property if credit contract terminated

138. (1) If a credit contract is terminated before the end of the term of a credit-related insurance contract over mortgaged property financed under the credit contract or before any such insurance contract is otherwise terminated, the debtor is entitled to terminate the insurance contract and recover from the insurer a proportionate rebate of premium paid under the insurance contract.

(2) On the termination of the credit contract, the credit provider must inform the debtor in accordance with the regulations of the debtor's rights under this section.

(3) The regulations may prescribe the manner of calculating the proportionate rebate of premium for the purposes of this section.

(4) An entitlement under this section to terminate an insurance contract may be exercised only by notice in writing to the insurer.

(5) This section has effect notwithstanding any provision of the credit-related insurance contract.

(6) A person who contravenes this section commits an offence.

Part 9 - ADVERTISING AND RELATED CONDUCT

Advertising

139. (1) A person must not publish, or cause to be published, an advertisement that states or implies that credit is available unless the advertisement complies with this section.

(2) An advertisement under subsection (1) must not contain a statement of a kind prohibited by the regulations and must contain any statement required by the regulations.

(3) If the advertisement contains any reference to the cost of any credit, it must contain the annual percentage rate or rates and, if any fees or charges are payable, a statement to that effect.

(4) The advertisement may contain the comparison rate calculated as prescribed by the

regulations and, if it does so, must be accompanied by the warnings set out in the regulations.

(5) The advertisement must not contain any statement of interest charges or of the cost of credit other than a statement referred to in subsection (3).

(6) A person who contravenes this section commits an offence.

(7) A person who suffers loss as a result of a contravention by another person of this section may recover the amount of the loss against that other person or any other person involved in the contravention.

Persons liable for advertisements

140. (1) A person is, in the absence of proof to the contrary, taken to have caused an advertisement to be published if -

(a) the person provides credit, owns or has an interest in any goods, or supplies or has an interest in the supply of any goods or services, which the advertisement promotes; and

(b) the advertisement specifies the name, business name, address, telephone number, facsimile number or post-office box number of the person or the person's agent.

(2) It is a defence to a charge under section 139(6) of causing an advertisement that does not comply with that section to be published if the person charged proves that the person could not, by the exercise of reasonable care, have prevented the noncompliance to which the offence relates.

Defence

141. A person who is a printer, publisher or proprietor of a newspaper, a licensee of a commercial broadcasting or television station, an exhibitor of a film or a person acting with the authority of any of them, is not guilty of an offence under section 139 unless the person suspected, or had reason to suspect, that publishing the advertisement would constitute an offence.

Interest rates which may be disclosed

142. (1) A person must not disclose an interest rate -

(a) in an advertisement that states or implies that credit is available; or

(b) to a debtor before the debtor enters into a credit contract,

unless the interest rate is the annual percentage rate or rates or is the comparison rate calculated as prescribed by the regulations and accompanied by the warnings set out in the regulations.

(2) A person who contravenes this section commits an offence.

False or misleading representations

143. (1) A person must not make a false or misleading representation in relation to a matter that is material to entry into a credit contract or a related transaction or in attempting to induce another person to enter into a credit contract or related transaction.

(2) A person who contravenes subsection (1) commits an offence.

(3) It is a defence to a charge under this section if the person charged proves that the person reasonably believed that the representation was not false or misleading.

(4) A person who suffers loss as a result of contravention by another person of this section may recover the amount of the loss from that other person or any other person involved in the contravention.

Harassment

144. (1) A credit provider or supplier must not harass a person in attempting to get that person to apply for credit or to enter into a credit contract or a related transaction.

(2) A person who contravenes this section commits an offence.

Canvassing of credit at home

145. (1) A credit provider must not visit (personally or in the person of an employee or agent) a place of residence for the purpose of inducing a person who resides there to apply for or obtain credit, except by prior arrangement by the credit provider with the person.

(2) A credit provider that contravenes subsection (1) commits an offence.

(3) A person who visits another's residence for the purpose of offering goods or services for sale and who offers to provide or arrange for the provision of credit to finance the sale will not be taken to have called for the purpose of inducing a person to apply for or obtain credit.

Part 10 - CONSUMER LEASES

Division 1 - Interpretation and application

Meaning of consumer lease

146. For the purposes of this Act, a "consumer lease" is a contract for the hire of goods by a natural person or body of the kind mentioned in subsection 147 (1) (a) under which that person or body does not have a right or obligation to purchase the goods.

Consumer leases to which this Part applies

147. (1) This Part applies to a consumer lease if, when the lease is entered into -

- (a) the lessee is a natural person ordinarily resident in the Fiji Islands, or is a body corporate or unincorporate formed in and under the law of the Fiji Islands;
- (b) the goods are hired wholly or predominantly for personal, domestic or household purposes;
- (c) a charge is or may be made for hiring the goods and the charge together with any other amount payable under the consumer lease exceeds the cash price of the goods; and
- (d) the lessor hires the goods in the course of a business of hiring goods or as part of or incidentally to any other business of the lessor.

(2) If not all the lessees under a consumer lease ordinarily reside, or are strata corporations formed, in the Fiji Islands, this Act applies only if goods are first hired under the lease in the Fiji Islands.

(3) If this Part applies to a consumer lease -

- (a) this Part applies to all transactions or acts under the lease whether or not they take place in the Fiji Islands; and
- (b) this Part continues to apply even though the lessee ceases to be ordinarily resident in the Fiji Islands.

(4) For the purposes of this section, the amount payable under a consumer lease includes any agreed or residual value of the goods at the end of the lease or on termination of the lease by the lessor or lessee, but does not include -

- (a) any amount payable for services that are incidental to the hire of the goods under the lease; or
- (b) any amount that ceases to be payable on the termination of the contract following the exercise of a right of cancellation by the lessee at the earliest opportunity.

(5) For the purposes of this section, the predominant purpose for which goods are hired is-

- (a) the purpose for which more than one half of the goods are intended to be used; or
- (b) if the same goods are intended to be used for different purposes, the purpose for which the goods are intended to be most used.

Consumer leases to which this Part does not apply

148. (1) This Part does not apply to a consumer lease for a fixed period of 4 months or less or for

an indefinite period.

(2) This Part does not apply to a consumer lease under which goods are hired by an employee in connection with the employees remuneration or other employment benefits.

(3) The regulations may exclude from the application of all or any provisions of this Part consumer leases of class specified in the regulations.

Presumptions relating to application of this Part

149. (1) In any proceedings (whether brought under this Act or not) in which a party claims that a lease is a consumer lease to which this Part applies, it will be presumed to be such unless the contrary is established.

(2) Goods hired under a lease are presumed conclusively for the purposes of this Part not to be hired wholly or predominantly for personal, domestic or household purposes if the lessee declares, before hiring the goods, that the goods are hired wholly or predominantly for business purposes.

(3) A declaration under subsection (2) is ineffective for the purposes of this section if the lessor (or any other person who obtained the declaration from the lessee) knew, or had reason to believe, at the time the declaration was made that the goods were in fact hired wholly or predominantly for personal, domestic or household purposes.

(4) A declaration under subsection (2) must be substantially in the form (if any) required by the regulations and is ineffective for the purposes of this section if it is not.

Division 2 - Form of and information to be included in consumer leases

Form of consumer leases

150. (1) A consumer lease must be in the form of a written lease document signed by the lessee and containing the information required by this Division.

(2) The regulations may make provision for or with respect to the form of consumer leases and the way they are expressed.

(3) A lessor must not enter into a consumer lease that contravenes a requirement of this section or of the regulations.

(4) A lessor that contravenes this section commits an offence.

Disclosures in consumer leases

151. (1) A consumer lease must contain the following matters, if ascertainable -

(a) a description or identification of the goods hired under the lease;

(b) the amount or value of any consideration to be paid or provided by the lessee before the delivery of those goods;

(c) the amount of any stamp duty or other government charge payable by the lessee in respect of the lease;

(d) the amount of any other charges not included in the rental payable under the lease, and a description of those charges;

(e) the amount of each rental payment to be made by the lessee under the lease;

(f) the date on which the first rental payment is due and either the dates on which subsequent rental payments are due or the interval between rental payments;

(g) the number of rental payments to be made by the lessee, and the total amount of rental payable under the lease;

(h) a statement of the conditions on which the lessee may terminate the lease;

(i) a statement of the liabilities (if any) of the lessee on the termination of the lease.

(2) A consumer lease is taken to comply with this section despite any omission or other error if a Court is satisfied that the omission or error is not of such a nature as to mislead the lessee to the disadvantage of the lessee.

(3) A lessor must not enter into a consumer lease that contravenes a requirement of this section.

(4) A lessor that contravenes this section commits an offence.

Copy of lease etc. for lessee

152. (1) A lessor must, within 14 days after entering into a consumer lease, give to the lessee a copy of the consumer lease, together with a statement in the form prescribed by the regulations explaining the rights and obligations of a lessee.

(2) A lessor that contravenes this section commits an offence.

Further goods and deferrals or waivers under consumer leases

153. The provision of further goods under a consumer lease or a change in a consumer lease as a result of a deferral or waiver of payment of an amount payable under a consumer lease is not to be treated as creating a new consumer lease for the purposes of this Part or as creating a credit contract, if the provision of the further goods or the deferral or waiver is permitted by this Act or the consumer lease.

Division 3 - Other provisions applicable to consumer leases

Application of certain provisions to consumer leases

154. (1) The following provisions apply in relation to a consumer lease in the same way as they apply in relation to credit contracts -

(a) Division 3 or Part 4 (relating to changes to contracts on the grounds of hardship and unjust transactions), other than section 72;

(b) sections 90 to 93 (relating to information as to mortgaged goods, entry to residential property to take possession of goods and orders by a Court for entry and possession);

(c) Part 12 (relating to miscellaneous matters).

(2) For the purposes of the application of the provisions referred to in subsection (1) -

(a) references to a credit provider are to be read as references to a lessor;

(b) references to a debtor are to be read as references to a lessee;

(c) references to a credit contract or contract are to be read as references to a consumer lease; and

(d) references to mortgaged goods are to be read as references to goods hired under a consumer lease.

(3) For the purposes of the application of Division 3 or Part 4, the words '(without a change being made to the annual percentage rate or rates)' are taken to be omitted from section 66 wherever occurring.

Notice of repossession

155. (1) Subject to subsection (2), a lessor must not exercise any right under a consumer lease to take possession of goods subject to the lease unless the lessor has given the lessee 30 days' written notice of the lessor's intention to do so.

(2) A lessor is not required to give notice in accordance with subsection (1) if -

(a) the right arises under a lease granted for a fixed term at the end of that term;

(b) the lessor believes on reasonable grounds that the lessee has disposed of goods hired under the lease, or intends to dispose of such goods, contrary to the terms of the lease;

(c) the lessor has made reasonable attempts to locate the lessee but without success;

(d) the lessee is insolvent; or

(e) a court authorises the lessor to do so.

(3) A lessor that contravenes this section commits an offence.

Termination of lease

156. (1) A lessee may, at any time before the end of a consumer lease, end the lease by returning the goods hired under the lease to the lessor during ordinary business hours or at any other time agreed with the lessor or fixed by a court on the application of the lessee.

(2) The amount payable by a lessee on the termination of a consumer lease under subsection (1) before the end of its fixed term is -

(a) the amount payable under the lease on such a termination; or

(b) the amount determined in accordance with any principles set out in the regulations for the purposes of this section, whichever is the lesser.

Part 11 - HIRE PURCHASE AGREEMENTS

Division 1 - Formation and contents of hire purchase agreements

Requirements relating to hire purchase agreements

157. (1) Before any hire purchase agreement is entered into in respect of any goods -

(a) any person conducting negotiations leading to the making of the hire-purchase agreement must inform the intending hirer in accordance with sections 12, 13, 15, 16, 17, 18, 19 and 20, as applicable to hire purchase agreements; and

(b) the credit provider must provide the intending hirer with a written summary of the hirer's financial obligations, in the form set out in Schedule 4.

(2) The summary of financial obligations given to an intending hirer under subsection (1) (b) may be varied-

(a) before the contract is entered into; or

(b) before the intending hirer offers to enter into the contract,

whichever first occurs.

(3) A credit provider that contravenes subsection (1) (b) commits an offence.

Hire purchase agreement to be in writing

158. (1) A hire purchase agreement in respect of any goods must be in writing.

(2) A hire purchase agreement that does not comply with subsection (1) is void.

Hire purchase agreement to be signed

159. (1) Every hire purchase agreement must be signed by or on behalf of all parties to the agreement.

(2) An owner, dealer, agent or any person acting on behalf of an owner must not require or cause an intending hirer or hirers agent to sign a hire purchase agreement or any other form or document relating to a hire purchase agreement unless such hire purchase agreement form or document has been duly completed.

(3) A hire purchase agreement that does not comply with subsections (1) and (2) is void.

(4) A person who contravenes subsection (2) commits an offence.

Contents of hire purchase agreement

160. Every hire purchase agreement must be in accordance with Schedule 1 as applicable to hire purchase agreements.

Division 2 - Warranties and conditions

Conditions and warranties to be implied in every hire purchase agreement

161. (1) In every hire purchase agreement there is implied -

(a) a condition on the part of the owner that the owner has a right to sell the goods at the time when the property is to pass;

(b) a warranty that the hirer will have and enjoy quiet possession of the goods;

(c) a warranty that the goods will be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) In every hire purchase agreement there is a condition that the goods are of merchantable quality, except -

(a) if the hirer has examined the goods or a sample of them - as regards defects which the examination ought to have revealed; or

(b) if the goods are second-hand goods and the agreement contains a statement to the

effect that -

(i) the goods are second-hand; and

(ii) all conditions and warranties as to quality are expressly negated, and the owner proves that the hirer has acknowledged in writing that the statement was brought to the hirer's notice.

(3) If a hirer expressly or by implication makes known to the owner or the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there is implied in the hire purchase agreement a condition that the goods will be reasonably fit for that purpose, but such a condition must be implied if the goods are second-hand goods and the agreement contains a statement to the effect-

(a) that the goods are second-hand; and

(b) that all conditions and warranties of fitness and suitability are expressly negative, and the owner proves that the hirer has acknowledged in writing that the statement was brought to the hirer's notice.

(4) Nothing in this section affects the operation of any other written law or rule of law whereby any condition or warranty is implied in any hire purchase agreement.

Power of hirer to determine hiring

162. (1) The hirer of any goods comprised in a hire purchase agreement may terminate the agreement by returning the goods, provided the agreement permits the return, to -

(a) the owner, during ordinary business hours at the place at which the owner ordinarily carries on business, or

(b) a place specified for that purpose in the agreement.

(2) If the nature of the goods comprised in a hire purchase agreement or the facilities at the owner's place of business or at the place specified in the agreement are such that it would be impracticable to return the goods to that place, the hirer may terminate the agreement by returning the goods to any place agreed to by the parties to the agreement.

(3) If the parties fail to agree under subsection (2) as to a place for return of the goods, a hirer who proposes to return goods to the owner under this section may, subject to subsection (4), apply to a court for an order fixing the place to which the goods may be returned, and the court -

(a) must fix the place that is in its opinion reasonable having regard to all the circumstances surrounding the transaction;

(b) may order that, subject to the goods being returned to the owner, the agreement

determines on a date specified in the order, being a date after the hirer required the owner to nominate a place for the return of the goods.

(4) Notice of an application under subsection (3) must be given to the owner by the hirer.

(5) If a hire purchase agreement is determined pursuant to this section -

(a) the hirer may require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price agreeable to the owner;

(b) if the value of goods at the time when they are returned to the owner is more than the balance outstanding under the hire purchase agreement, the hirer is entitled to the difference, which is recoverable as a debt due to the hirer;

(c) if the value of the goods at the time when they are returned to the owner is less than the balance outstanding under the hire-purchase agreement, the owner is entitled to the difference, which is recoverable as a debt due to the hirer.

Repossession

163. (1) Subject to this section, an owner must not exercise a power of taking possession of goods comprised in a hire purchase agreement which arises out of a breach of the agreement relating to the payment of instalments, unless -

(a) there have been 2 successive defaults of payments, or a default in respect of the last payment; and

(b) the owner has served on the hirer a notice in writing at the last known address provided to the owner and the period fixed by the notice (being not less than 21 days after the service of the notice) has expired.

(2) If a hirer is deceased, the owner must not exercise any power of taking possession of goods comprised in a hire purchase agreement which arises out of any breach of the agreement relating to the payment of installments, unless there have been 4 successive defaults of payments.

(3) An owner need not comply with subsection (1) if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

(4) Within 21 days after the owner has taken possession of goods that were comprised in a hire purchase agreement, the owner must serve on the hirer and on every guarantor of the hirer a notice, in writing, setting out the cost of repossession and amount to be paid under the agreement and specifying a time within which the amount must be paid.

(5) An owner that takes possession of goods that were comprised in a hire purchase agreement

must deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods or, if the hirer is not present at that time, send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.

(6) The document required by subsection (5) acknowledging receipt of the goods must set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.

(7) Before and when exercising a power of taking possession, the owner or the owner's servant or agent must, in addition to the provisions of this section, comply with Part 4 Division 3, as required by section 167 (1)(a).

Hirer who returns goods not liable to pay cost of repossession etc.

164. A hirer who returns goods comprised in a hire purchase agreement within 21 days after the receipt of the notice under section 163(4) is not liable to pay -

- (a) the cost of repossession;
- (b) any cost incidental to taking possession; or
- (c) the cost of storage.

Owner to retain possession of goods repossessed for twenty-one days

165. (1) An owner that has taken possession of any goods under section 163 must not, without the written consent of the hirer, sell, dispose of or part with possession of the goods until -

- (a) after the expiration of 21 days after the date of the service on the hirer of the notice referred to in section 163(4); or
- (b) the time for payment specified in that notice has expired,

whichever is the later.

(2) An owner that sells or disposes of any goods, or parts with possession of any goods, in contravention of subsection (1) commits an offence.

Power of hirer to regain possession of goods in certain circumstances

166. (1) If, within 21 days after the notice referred to in section 163(4), the hirer -

- (a) pays to the owner any amount due by the hirer under the hire purchase agreement in respect of the period of hiring up to the date of the payment (for which purpose the hiring is deemed to have continued up to that date);

(b) remedies any breach of the agreement or, if unable to remedy the breach by reason of the fact that the owner has taken possession of the goods, pays to the owner the costs and expenses reasonably and actually incurred by the owner in doing any thing necessary to remedy the breach; and

(c) pays to the owner the owner's reasonable costs and expenses of and incidental to taking possession of the goods and returning them to the hirer,

the owner must forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire purchase agreement as if the breach had not occurred and the owner had not taken possession of the goods.

(2) If goods are returned to the hirer pursuant to subsection (1) and any breach of the hire purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless -

(a) by notice in writing given to the hirer at the time of the return of the goods the owner specifies the breach and requires it to be remedied within a specified time; and

(b) the hirer fails within 21 days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

Application of certain provisions of the Act to Hire Purchase Agreements

167. (1) The following provisions apply in relation to a hire purchase agreement in the same way as they apply in relation to credit contracts -

(a) Part 4 Division 3 (relating to changes on grounds of hardship and unjust transactions);

(b) Sections 24, 26(2), 27, 28 and Part 1 Division 4 (relating to fees and charges);

(c) Part 2 Division 5 (relating to credit providers obligation to account);

(d) Part 2 Division 6 (relating to certain transactions not to be treated as contracts);

(e) Part 12 (relating to miscellaneous matters).

(2) For the purposes of the application of the provisions referred in subsection (1) -

(a) references to a credit provider are to be read as references to an owner;

(b) references to a debtor are to be read as references to a hirer; and

(c) references to a credit contract or contract are to be read as references to a hire purchase agreement.

Part 12 - MISCELLANEOUS

Division 1 - Tolerances and assumptions

Tolerances and assumptions relating to information

168. (1) Information disclosed in a pre-contractual statement, contract document, mortgage document or guarantee, statement, notice or consumer lease, or otherwise disclosed for the purposes of this Act, is taken to be correctly disclosed if -

(a) the information is within tolerances allowed by the regulations; and

(b) the disclosure is made as at a date stated in the document.

(2) Disclosures for the purposes of this Act relating to interest charges may be made on the following assumptions (and on any other assumptions under this section that are applicable) -

(a) that, in the case of an annual percentage rate or default rate, there will be no variation in the rate as disclosed over the whole term of the contract or any shorter term for which it applies;

(b) if a change to a variable rate is provided for by the contract, that the variable rate applicable over the term for which it applies is the same as the equivalent variable rate as at the date disclosure is made;

(c) that the debtor will make the repayments required by the contract at the times required by the contract.

(3) Disclosures for the purposes of this Act relating to repayments may be made on the assumption that the debtor will pay the repayments required by the contract at the times required by the contract (and on any other assumptions under this section that are applicable).

(4) Disclosures relating to credit fees and charges for the purposes of this Act may be made on the following assumptions (and on any other assumptions under this section that are applicable)-

(a) that there will be no change in the credit fees and charges as so disclosed and that no new fees or charges will be imposed;

(b) that the debtor will pay the fees and charges required by the contract at the times required by the contract.

(5) Disclosures for the purposes of this Act relating to consideration, charges and payments in a consumer lease may be made on the assumptions that there will be no change in the matters disclosed and that no new charges will be imposed.

(6) Information required to be disclosed for the purposes of this Act, which is not otherwise

ascertainable, is taken to be ascertainable if it is ascertainable as at the date the disclosure is made, on the basis of assumptions set out in this section or in the regulations.

(7) Information disclosed for the purposes of this Act as to a name is taken to be correctly disclosed if the information is sufficient to identify the person concerned.

Tolerances relating to contracts and other documents

169. An amount of interest, a fee or charge or any other amount charged, payable or calculated under or in connection with a credit contract, mortgage, guarantee or consumer lease is, for the purposes of this Act, taken to comply with this Act if the amount is within tolerances allowed by the regulations.

Regulations

170. The regulations may prescribe the allowed tolerances, may vary an assumption set out in this Division and may provide for additional assumptions.

Division 2 - Documentary provisions

Form of notices

171. (1) The regulations may prescribe the form of any notices required or authorised to be given under this Act and may require such notices to contain specified information.

(2.) A notice required to be given by a mortgagee under this Act may include information required to be given in the same situation under an Act, and the notice may be included in any notice given under that Act.

(3) A notice required or authorised to be given under this Act is to be in writing unless this Act or the regulations otherwise provide.

Legibility and language

172. (1) A credit contract, guarantee or a notice given by a credit provider under this Act -

(a) must be easily legible;

(b) to the extent that it is printed or typed must conform with the provisions of the regulations as to print or type; and

(c) must be clearly expressed.

(2) If a Court is satisfied, on application by the Director of Fair Trading and Consumer Affairs, that a provision of a credit contract, a guarantee or a notice given by a credit provider under this Act does not comply with the requirements of this section, it may prohibit the credit provider

from using a provision in the same or similar terms in future credit contracts, guarantees or notices.

(3) A credit provider that contravenes a prohibition imposed under subsection (2) commits an offence.

Copies of contracts and other documents

173. (1) A credit provider must in accordance with this section, at the written request of a debtor, mortgagor or guarantor, provide to the debtor, mortgagor or guarantor a copy of -

(a) the credit contract, mortgage or guarantee;

(b) any credit-related insurance contract in the credit provider's possession; and

(c) any notice previously given to the debtor, mortgagor or guarantor under this Act.

(2) A copy of a document provided under subsection (1) must be provided -

(a) if the original came into existence 1 year or less before the request is given - within 14 days of the request; or

(b) if the original came into existence more than 1 year before the request is given - within 30 days of the request.

(3) A copy under this section may be provided in the form of a computer generated facsimile containing the same information as was contained in the original document, or in any other manner prescribed by the regulations and until the contrary is proved, any such facsimile or copy is prescribed to contain the same information as the original document.

(4) A credit provider must provide a copy of any notice which requires a debtor, mortgagor or guarantor to take action, if so requested in accordance with subsection (1).

(5) Subsection (4) applies even if the contract in question has been discharged or terminated, but only if the request is made within 2 years of the discharge or termination.

(6) A person who contravenes this section commits an offence.

Signing of documents

174. (1) It is sufficient compliance with a requirement under this Act for a document to be signed by a person if the person's signature is written on the document by another person by or under the authority of the person required to sign.

(2) This section has effect subject to section 185.

Assignment by credit provider

175. (1) If the rights of a credit provider under a credit contract, mortgage or guarantee are assigned or pass by law to another person, this Act applies to that other person and does not impose any further obligation on the credit provider.

(2) A debtor, mortgagor or guarantor has and may exercise the same rights in respect of the credit contract, mortgage or guarantee against an assignee as the debtor, mortgagor or guarantor has against the credit provider.

(3) Subsection (1) does not apply while the credit provider continues to receive payments from the debtor.

Assignment by debtor, mortgagor or guarantor

176. (1) If the rights of a debtor, mortgagor or guarantor under a credit contract, mortgage or guarantee are assigned or pass by law to another person, this Act from then on applies to that other person and does not confer any further rights on the debtor, mortgagor or guarantor.

(2) Subsection (1) does not apply if the rights are assigned or pass by law to a corporation which is neither a trustee for the debtor, mortgagor or guarantor nor an executor of the debtor's, mortgagor's or guarantor's estate.

(3) Subsection (1) does not affect a requirement which is made of a debtor or mortgagor under section 48.

Appropriation of payments

177. (1) A debtor that is liable to a credit provider under 2 or more credit contracts may require the credit provider by written notice to apply a payment to a particular one of those contracts or to divide the payment between them in a specified manner.

(2) A credit provider that contravenes a requirement under this section commits an offence.

(3) A debtor may not make a requirement under this section if the debtor and the credit provider have previously agreed as to the application of the payment concerned in relation to the credit contracts under which the debtor is liable to the credit provider.

Contracting out

178. (1) A provision of a contract or other instrument by which a person seeks to avoid or modify the effect of this Act is void.

(2) A provision of a contract or other instrument by which a person seeks to have the debtor or guarantor indemnify the credit provider for any loss or liability arising under this Act is void.

(3) A credit provider that is a party to any contract as referred in subsection (2) commits an offence.

(4) Subsection (2) does not affect the operation of section 55 (2).

Effect of non-compliance

179. (1) A credit contract, mortgage or guarantee or any other contract is not illegal, void or unenforceable because of a contravention of this Act unless this Act contains an express provision to that effect.

(2) Except as provided by this section, this Act does not derogate from rights and remedies that exist apart from this Act.

Giving notice or other document

180. (1) A court may relieve a person from the obligation to give a notice or other document if satisfied that a reasonable attempt has been made to locate the person to whom the notice or other document is to be given, but without success.

(2) An order of the court under subsection (1) may be made subject to conditions.

(3) A notice or other document must be given to each debtor, mortgagor or guarantor in order to be effective in the case of joint debtors, mortgagors or guarantors.

(4) If joint debtors, mortgagors or guarantors reside at the same address, one may be nominated by them to receive notices and other documents on behalf of all of them and, a notice or other document given to that one is, while the nomination remains in force, taken to have been given to both or all of them.

(5) A nomination under subsection (4) must be in the form required by the regulations.

(6) Subsection (4) does not apply in relation to default notices.

Manner of giving notice or other document

181. (1) If this Act requires or permits a notice or other document to be given to a person (whether the expression "deliver", "serve", "notify", "send", or "give" or another expression is used) the notice or other document may be given -

(a) to a natural person -

(i) by delivering it to the person personally;

(ii) by leaving it at, or by sending it by post, telex, facsimile or similar electronic facility to, the address of the place of residence or business of the person last known

to the person giving the notice or other document;

(b) to a body corporate -

(i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or

(ii) by sending it by post, telex, facsimile or similar electronic facility to its registered office.

(2) Nothing in subsection (1) -

(a) affects the operation of another law that authorises the service of a notice or other document otherwise than as provided in subsection (1); or

(b) affects the power of a court or tribunal to authorise service of a notice or other document otherwise than as provided in subsection (1).

(3) If this Act requires or permits a notice or other document to be given by post (whether the expression "deliver", "serve", "notify", "send", or "give" or another expression is used), service may be effected by properly addressing, prepaying and posting the notice or other document as a letter.

Date of notice or other document

182. (1) For the purposes of this Act a notice or other document is taken to be given -

(a) in the case of a notice or other document given personally - on the date it bears or the date it is received by the addressee, whichever is the later;

(b) in the case of a notice or other document sent by post - on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later;

(c) in the case of a notice or other document sent by facsimile transmission or some other form of electronic transmission - on the date it bears or the date on which the machine from which the transmission was sent produces a report indicating that the notice or other document was sent to the facsimile or other number of the addressee, whichever is the later.

(2) For the purposes of this Act, the date of a notice or other document is the date it is taken to be given in accordance with this section.

Conduct of agents and related matters

183. (1) The conduct of an officer, agent or employee of a credit provider acting within his or her actual or ostensible authority will be imputed to the credit provider and taken to be conduct of the credit provider.

(2) A person cannot authorise a credit provider, or a person associated with a credit provider, to enter into a credit contract, mortgage or guarantee on the person's behalf.

(3) A credit provider or person associated with a credit provider that purports to act as agent of a debtor, mortgagor or a guarantor in entering into a credit contract or a mortgage or guarantee commits an offence.

(4) A person is associated with a credit provider if -

(a) that person and the credit provider are related bodies corporate for the purposes of the Companies Act; or

(b) that person is an officer, agent or employee of the credit provider or of a related body corporate.

(5) A credit provider is not, for the purposes of this Act, taken to know or have reason to believe something because an officer, agent or employee of the credit provider does so, unless the knowledge or reason to believe that thing is acquired by the officer, agent or employee acting in that capacity and in connection with the transaction concerned.

Division 3 - Penalties

Penalties

184. (1) Subject to subsections (2) and (3) a person who commits an offence under this Act is liable on conviction to a fine of \$5,000 for a first offence and \$10,000 for a second or subsequent offence.

(2) If a natural person is convicted of any offence against this Act and the court by which the person is convicted is of opinion that the offence was committed with intent to defraud, the person is liable, in addition to or instead of any other penalty, to imprisonment for 3 years.

(3) The maximum penalty for an offence under this Act committed by a body corporate is a fine that is 5 times the fine provided for in subsection (1).

(4) If a person is convicted of an offence under this Act and the court considers, upon sufficient evidence in that regard, that the commission of the offence caused another person to suffer pecuniary loss, the court may on application by the other person order the convicted person to pay to the other person a specified amount of compensation for the loss.

(5) The court may make an order under subsection (4) whether or not it imposes a penalty for the offence.

(6) An amount ordered to be paid under subsection (4) may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person. Proceedings for an offence

under this Act may be heard and determined by a Resident Magistrate and a Resident Magistrate may impose the maximum sentence for an offence under this Act notwithstanding any limitation on a magistrate's jurisdiction under any other Act.

(7) Proceedings for an offence under this Act may be heard and determined by a Resident Magistrate and a Resident Magistrate may impose the maximum sentence for an offence under this Act notwithstanding any limitation on a magistrate's jurisdiction under any other Act.

Division - 4 Records

Production of records kept in computers etc.

185. If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Act-

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then unless the court, tribunal or person otherwise directs-

(c) the requirement obliges the person to produce or to make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal, or person; and

(d) the production to the court, tribunal or person of the document in a form that complies with the requirement.

Division 5 - Enforcement

Performance of functions of Director and other officers.

186. For the purpose of the performance of the functions of the Director and other officers under this Act, sections 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 119, 122, 123, 124 and 134 of the Fair Trading Decree 1992 apply with necessary modifications.

Division 6 - Regulations

Power to make regulations

187. (1) The Minister must make regulations not inconsistent with this Act prescribing anything which is required by this Act to be prescribed.

(2) The Minister may make regulations not inconsistent with this Act prescribing anything

which-

- (a) is permitted by this Act to be prescribed by regulations;
- (b) is necessary for the carrying out of the purposes of this Act.

SCHEDULE 1
(Section 15)

CONTENTS OF A CONTRACT DOCUMENT

(A) Credit provider's name

The credit provider's name.

(B) Amount of credit

- (a) If the amount of the credit to be provided is ascertainable, that amount, the persons, bodies or agents (including the credit provider) to whom the amount is to be paid and the amounts payable to them, to the extent that the amounts are ascertainable.
- (b) If the amount of the credit to be provided is not ascertainable, the maximum amount of credit agreed to be provided, or any credit limit under the contract.
- (c) If the credit is provided by the supplier for a sale of land or goods by instalments, a description of the land and its price or of the goods and their cash price.

(C) Annual percentage rate or rates

- (a) The annual percentage rate or rates under the contract.
- (b) If there is more than one rate, how each rate applies.
- (c) If an annual percentage rate under the contract is determined by referring to a reference rate-
 - (i) the name of the rate or a description of it;
 - (ii) the margin or margins (if any) above or below the reference rate to be applied to determine the annual percentage rate or rates;
 - (iii) where and when the reference rate is published or, if it is not published, how the debtor may ascertain the rate; and
 - (iv) the current annual percentage rate or rates.

(D) Calculation of interest charges

The method of calculation of the interest charges payable under the contract and the frequency with which interest charges are to be debited under the contract.

(E) Total amount of interest charges payable

The total amount of interest charges payable under the contract, if ascertainable (but only if the contract would, on the assumptions in sections 158 and 160, be paid out within 7 years of the date on which credit is first provided under the contract).

(F) Repayments

(a) If more than one repayment is to be made -

- (i) the amount of the repayments or the method of calculating the amount;
- (ii) if ascertainable when the contract is made, the number of the repayments, the period over which they are to be paid and the total amount of the repayments; and
- (iii) when the first repayment is to be paid, if ascertainable, and the frequency of payment of repayments.

(b) If the contract provides for a minimum repayment, the amount of that repayment, if ascertainable, but if not, the method of calculation of the minimum repayment.

(G) Credit fees and charges

(a) A statement of the credit fees and charges that are, or may become, payable under the contract, and when each such fee or charge is payable, if ascertainable.

(b) The amount of any such fee or charge, if ascertainable, but if not, the method of calculation of the fee or charge, if ascertainable.

(c) The total amount of credit fees and charges payable under the contract to the extent that they are ascertainable.

(H) Changes affecting interest and credit fees and charges

If the annual percentage rate or rates or the amount or frequency of payment of a credit fee or charge or instalment payable under the contract may be changed, or a new credit fee or charge may be imposed, a statement or statements to that effect and a statement of how the debtor will be informed of the change or the new fee or charge.

(I) Statements of account

The frequency with which statements of account are to be provided to the debtor, except in the case of a credit contract for which the annual percentage rate is fixed for the whole term of the contract and under which there is no provision for varying the rate.

(J) Default rate

(a) If the contract is a contract under which a default rate of interest may be charged when payments are in default - a statement to that effect and the default rate and how it is to be applied.

(b) If the default rate under the contract is determined by referring to a reference rate -

(i) the name of the rate or a description of it;

(ii) the margin or margins (if any) above or below the reference rate to be applied to determine the default rate;

(iii) when and where the reference rate is published or, if it is not published, how the debtor can ascertain the rate; and

(iv) the current default rate.

(K) Enforcement expenses

A statement that enforcement expenses may become payable under the credit contract or mortgage (if any) in the event of a breach.

(L) Mortgage or guarantee

(a) If any mortgage or guarantee is to be or has been taken by the credit provider, a statement to that effect.

(b) In the case of a mortgage, a description of the property subject to, or proposed to be subject to, the mortgage, to the extent that it is ascertainable.

(M) Commission

If a commission is to be paid by or to the credit provider for the introduction of credit business or business financed by the contract-

(a) a statement of that fact; and

(b) particulars of the person by whom the commission is payable;

(c) particulars of the person to whom the commission is payable; and

(d) the amount, if ascertainable.

(Note: Commission does not include fees payable by a supplier under a merchant service agreement with a credit provider, an amount payable in connection with a credit related insurance contract or commission paid to employees of the credit provider).

(N) Insurance financed by contract

If the credit provider knows that the debtor is to enter into a credit-related insurance contract and that the insurance is to be financed under the credit contract -

(a) the name of the insurer;

(b) the amount payable to the insurer or, if is not ascertainable, how it is calculated;

(c) the kind of insurance and any other particulars prescribed by the regulations;
and

(d) if the credit provider knows of any commission to be paid by the insurer for the introduction of the insurance business -a statement that it is to be paid and, if ascertainable, the amount of the commission expressed either as a monetary amount or as a proportion of the premium.

(O) Other information

Any other information and any warning required by the regulations.

SCHEDULE 2
(Section 32)

CONTENTS OF A STATEMENT OF ACCOUNT

(A) Statement period

The dates on which the statement period begins and ends.

(B) Balances

The opening and closing balances, indicating the amount owed by the debtor at the beginning and at the end of the statement period.

(C) Credit provided

Particulars of each amount of credit provided by the credit provider to the debtor during the statement period.

(D) Identity of supplier

In the case of a continuing credit contract under which credit is ordinarily obtained only by the use of a card - the identity of the supplier if the credit was provided for any cash, goods or services supplied by another person.

(E) Interest charges

(a) The amount of the interest charge debited to the debtor's account during the statement period and when the interest was debited.

(b) The annual percentage rate or rates and, if required by Part 4, details of any change since the last statement period.

(F) Fees and charges

Particulars of any fees and charges debited to the debtor's account during the statement period.

(G) Payments to or from account

(a) Particulars of each amount paid by the debtor to the credit provider, or credited to the debtor, during the statement period.

(b) Particulars of any amount transferred to or from the account to which the statement relates to or from any other account maintained under or for the purposes of the credit contract.

(H) Amounts payable by debtor

If a minimum amount is payable by the debtor under a continuing credit contract, a statement of the amount and the date by which it is due.

(I) Insurance payments

If payment to an insurer is made during the statement period under a credit-related insurance contract that is agreed to be financed under the credit contract -

(a) the name of the insurer, the amount paid to the insurer and the kind of insurance; and

(b) if the credit provider is aware of any commission to be paid by the insurer in relation to the insurance contract - the amount of the commission expressed either

as a monetary amount or as a proportion of the premium, if ascertainable when the statement is given, (if not previously disclosed in accordance with this Act).

(J) Alterations

Any correction of information in a previous statement of account.

(K) Other.

Any other information required by the regulations.

SCHEDULE 3
(Section 25)

FORMULA AND WORKED EXAMPLE OF RULE OF 78

C - is the interest charge calculated for the required months completed, under the agreement.

x - the number of completed months under the agreement; month partially complete is taken as a whole or completed month.

n - the total number of whole months under the agreement.

i - months in whole numbers.

T - is the total interest charges for the whole agreement period.

$$C_x = \frac{\sum_{i=1}^n i - \sum_{i=1}^x i}{\sum_{i=1}^n i} \times T$$

WORKED EXAMPLE

Assume:

That total interest under an agreement which is calculated at the outset is \$100.00 (T). The total agreement is for 12 months (n). The credit provider intends to determine the interest charge for the 2 months (x) completed under the agreement.

Using the formula,

- | | |
|--|------------------|
| 11. Insurance for the goods under the hire -
purchase agreement | \$..... |
| 12. Total amount of term charges | \$.....
_____ |
| 13. Balance payable under the agreement | \$.....
_____ |
| 14. Particulars Relating to Payment | |
| 15. Duration of Hire Purchase Agreement | |
| 16. Number of instalments | |
| 17. Amount of each instalment \$ | |

Passed by the House of Representatives this 17th day of February 1999.

Passed by the Senate this 9th day of March 1999.
