

# Consumer Credit (Victoria) Bill

No.

## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

#### *Clause*

1. Purpose
2. Commencement
3. Definitions
4. Crown to be bound

### PART 2—CONSUMER CREDIT (VICTORIA) CODE AND CONSUMER CREDIT (VICTORIA) REGULATIONS

5. Application in Victoria of the Consumer Credit Code
6. Application of uniform regulations under the Consumer Credit Code
7. Interpretation of expressions in the Consumer Credit (Victoria) Code and the Consumer Credit (Victoria) Regulations

### PART 3—CONFERRAL OF JUDICIAL AND ADMINISTRATIVE FUNCTIONS

8. Conferral of judicial functions
9. Conferral of administrative functions

### PART 4—REGISTRATION

10. Exemption from this Part
11. Certain persons not to carry on business as credit provider
12. Section 401 not to apply in certain cases
13. Application for registration
14. False or misleading statements
15. Registration
16. Operation of registration
17. Credit provider may carry on business under additional names
18. Credit provider not to carry on business with unregistered partner
19. Register to be kept
20. Inspection of register
21. Credit provider to give notice of certain changes
22. Period of registration
23. Annual fee
24. Annual statement
25. Enquiries about credit providers
26. Undertakings by credit provider
27. Cancellation and suspension of registration
28. Objection to registration
29. Disciplinary action
30. Inquiry by Authority

31. Effect of suspension of registration
32. Powers of credit provider whose registration is suspended or cancelled
33. New registration of credit provider prohibited without consent
34. Appeal against cancellation etc. of registration
35. Legal personal representatives
36. Penalty for using name other than registered name
37. Assignment of rights by credit provider

#### **PART 5—MISCELLANEOUS**

38. Civil penalties to be paid to Consumer Credit Fund
39. Contract unenforceable if rate exceeds 48 per cent
40. Mortgage void if rate under credit contract exceeds 30 per cent
41. Regulations

#### **PART 6—TRANSITIONAL PROVISIONS**

42. Validation of certain Orders
43. Credit Regulations 1995
44. Exemptions
45. Registered credit providers deemed to be registered under this Act
46. Register of Credit Providers
47. Application for registration
48. Transitional provision for registration of credit providers
49. Transitional provision relating to objections
50. Special savings and transitional regulations for Victoria

#### **PART 7—CONSEQUENTIAL AMENDMENTS**

##### **Division 1—Credit Act 1984**

51. New sections 19A and 19B inserted
  - 19A. Act not to apply to new credit contracts
  - 19B. Act to continue to apply in certain cases
52. Amendment of section 85 of **Credit Act 1984**
53. New section 86A inserted in the **Credit Act 1984**
  - 86A. Payments to Consumer Credit Fund
54. New section 167E inserted in **Credit Act 1984**
  - 167E. Operation of section 86A etc.

##### **Division 2—Credit (Administration) Act 1984**

55. Amendment of **Credit (Administration) Act 1984**
56. Amendment of Part 2 of the **Credit (Administration) Act 1984**
57. Further amendment of **Credit (Administration) Act 1984**

58. New Part 5A inserted in Part III in **Credit Act 1984**

**PART 5A—CONSUMER CREDIT FUND**

86AA. The Fund

86AB. Application of Consumer Credit Fund

86AC. Advisory Committee

59. Amendment of sections 86 and 95

**Division 3—Other Acts**

60. Amendment of section 32 of **Interpretation of Legislation Act 1984**

61. New section 38c inserted in **Interpretation of Legislation Act 1984**

38c. References to Consumer Credit legislation

62. Consequential amendments

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**SCHEDULE 1**

**CONSEQUENTIAL AMENDMENTS**



# LEGISLATIVE ASSEMBLY

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Read 1° 3 May 1995

*(Brought in by Mrs Wade and Mr Gude)*

## A BILL

to regulate the provision of consumer credit, to amend the **Credit (Administration) Act 1984** and the **Credit Act 1984** and for other purposes.

### **Consumer Credit (Victoria) Act 1995**

**The Parliament of Victoria enacts as follows:**

#### **PART 1—PRELIMINARY**

##### **1. *Purpose***

The purpose of this Act is to regulate the provision of credit.

##### **2. *Commencement***

- (1) This Part and sections 43, 44, 53, 54 and 58 come into operation on the day on which this Act receives the Royal Assent.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

### 3. *Definitions*

- (1) In this Act—

“**Authority**” means the Credit Authority established under the **Credit (Administration) Act 1984**; 5

“**Consumer Credit (Queensland) Act**” means the Consumer Credit (Queensland) Act 1994 of Queensland;

“**Consumer Credit (Victoria) Code**” means the provisions applying because of section 5 of this Act; 10

“**Consumer Credit (Victoria) Regulations**” means the provisions applying because of section 6 of this Act; 15

“**Credit Tribunal**” means the Credit Tribunal established under the **Credit (Administration) Act 1984**;

“**Director**” means the Director of the Office of Fair Trading and Business Affairs in the Department of Justice; 20

“**exempt credit provider**” means a credit provider referred to in section 12 (1) or a person who under section 10 is a person to whom Part 4 does not apply; 25

“**Ministerial Council**” means the Ministerial Council established under the Uniform Consumer Credit Laws Agreement 1993.

“**Registrar**” means the Registrar of the Authority.

- (2) In this Act, a reference to carrying on a business of providing credit includes a reference to carrying on the provision of credit in the course of or as part of or as incidental to or in connection with the carrying on of another business. 30

- 5
- (3) Words and expressions used in the Consumer Credit (Victoria) Code and in this Act have the same meanings in this Act as they have in that Code.
  - (4) Sub-section (3) does not apply to the extent that the context or subject matter otherwise indicates or requires.

#### ***4. Crown to be bound***

10 This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

### **PART 2—CONSUMER CREDIT (VICTORIA) CODE AND CONSUMER CREDIT (VICTORIA) REGULATIONS**

#### ***5. Application in Victoria of the Consumer Credit Code***

15 The Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland) Act as in force for the time being—

- 20
- (a) applies as a law of Victoria; and
  - (b) as so applying may be referred to as the Consumer Credit (Victoria) Code.

#### ***6. Application of uniform regulations under the Consumer Credit Code***

- 25
- (1) The regulations in force for the time being under Part 4 of the Consumer Credit (Queensland) Act—
    - (a) apply as regulations in force for the purposes of the Consumer Credit (Victoria) Code; and
    - (b) as so applying may be referred to as the Consumer Credit (Victoria) Regulations.
  - (2) Schedule 2 to the Consumer Credit (Victoria) Code applies in relation to any such regulation.
  - (3) To the extent to which a provision of any such regulation of a savings or transitional nature takes
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effect from a day earlier than the day of the regulation’s notification in the Government Gazette of Queensland, the provision does not operate in this State to the disadvantage of a person (other than the State or a State authority) by—

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- (a) decreasing the person’s rights; or
- (b) imposing liabilities on the person.

**7. Interpretation of expressions in the Consumer Credit (Victoria) Code and the Consumer Credit (Victoria) Regulations**

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- (1) In the Consumer Credit (Victoria) Code and the Consumer Credit (Victoria) Regulations—

“**Legislature of this jurisdiction**” means the Legislature of Victoria;

“**the Code**” or “**this Code**” means the Consumer Credit (Victoria) Code;

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“**the jurisdiction**” or “**this jurisdiction**” means Victoria.

- (2) The Acts Interpretation Act 1954, and other Acts, of Queensland do not apply to—

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- (a) the Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland) Act in its application as a law of Victoria; or

- (b) the regulations in force for the time being under Part 4 of the Consumer Credit (Queensland) Act in their application as regulations in force for the purposes of the Consumer Credit (Victoria) Code.

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**PART 3—CONFERRAL OF JUDICIAL AND ADMINISTRATIVE FUNCTIONS**

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**8. Conferral of judicial functions**

- (1) The jurisdiction that is expressed to be exercisable by “the Court” under the Consumer Credit (Victoria)



Code and the Consumer Credit (Victoria) Regulations is exercisable by—

- 5 (a) in the case of any jurisdiction under section 36 (6) or (7), 47 (3), 68, 69, 70, 71, 72, 74, 77, 83 (1), 88, 89 or 162 or Division 1 or 2 of Part 6 of the Code—only the Credit Tribunal; or
- (b) in any other case—either the Credit Tribunal or any court.

10 (2) The jurisdiction conferred on a court by this section (other than the Credit Tribunal) is subject to the court's general jurisdictional limits (so far as they relate to the amounts, or the value of property, with which the court may deal), but is not subject to the court's other jurisdictional limits.

15 (3) The regulations may make provision for or with respect to the transfer of proceedings between the Credit Tribunal and other courts or between other courts.

20 (4) The Governor in Council may make regulations for the purposes of this section.

### 9. *Conferral of administrative functions*

25 The Director has the functions of the Government Consumer Agency under the Consumer Credit (Victoria) Code and the Consumer Credit (Victoria) Regulations.

## PART 4—REGISTRATION

### 10. *Exemption from this Part*

30 (1) The Governor in Council may, by Order published in the Government Gazette, declare that the provisions of this Part do not have effect in relation to a specified person or to a specified class of persons.

(2) An Order made under sub-section (1)—  
(a) may specify the period during which the Order shall remain in force;

- (b) may provide that its operation is subject to such terms and conditions as are specified in the Order; and
  - (c) may specify the circumstances under which a person to whom the Order applies is by reason of the Order to be deemed to be an exempt credit provider for the purposes of this Act and the Consumer Credit (Victoria) Code. 5
- (3) The Governor in Council may, by Order published in the Government Gazette, revoke or vary an Order made under this section. 10
  - (4) An Order under this section, including an Order that is varied under this section, has effect according to its tenor.
- 11. *Certain persons not to carry on business as credit provider*** 15
- (1) Subject to this Act, a person must not carry on a business of providing credit under credit contracts unless registered as a credit provider under this Part.  
Penalty: 500 penalty units. 20
  - (2) Subject to this Act, a person must not hold himself, herself or itself out as a person who carries on a business of providing credit under credit contracts unless registered as a credit provider under this Part.  
Penalty: 250 penalty units. 25
- 12. *Section 11 not to apply in certain cases***
- (1) Section 11 does not apply to—
    - (a) the Crown or a public or local body or authority constituted by or under an Act;
    - (b) a bank; 30
    - (c) a body corporate registered under the Life Insurance Act 1945 of the Commonwealth;

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- (d) a body corporate authorised under the Insurance Act 1973 of the Commonwealth to carry on insurance business;
- (e) unless Part VII of the Insurance Act 1973 of the Commonwealth has ceased to have effect—a Lloyd's underwriter, being an underwriter of the society known as Lloyd's incorporated by the Imperial Act known as Lloyd's Act 1971;
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- (f) the holder of a pawnbroker's business premises licence under the **Second-Hand Dealers and Pawnbrokers Act 1989**;
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- (g) a body corporate incorporated or empowered by an Act or an Act of the Parliament of the Commonwealth to lend money or provide credit, in respect of the lending of money or provision of credit in accordance with that Act or Act of the Parliament of the Commonwealth;
- 20
- (h) a person, not being a body corporate, authorised by an Act or an Act of the Parliament of the Commonwealth to lend money or provide credit, in respect of the lending of money or provision of credit in accordance with that Act or Act of the Parliament of the Commonwealth;
- 25
- (i) a council within the meaning of the **Local Government Act 1989**;
- (j) a pastoral finance company.

- (2) A reference in section 11 to providing credit does not include a reference to providing credit otherwise than under credit contracts.

30 **13. Application for registration**

- (1) An application for registration as a credit provider may be made to the Registrar in a form approved by the Registrar—
- 35
- (a) by a natural person of or over the age of 18 years; or
- (b) by a body corporate.
- (2) The application must specify—

- (a) the name and address of the applicant;
  - (b) if the applicant is a body corporate, the name and address of each director of the body corporate;
  - (c) the principal place of business of the applicant in Victoria; 5
  - (d) each other place where the applicant carries on, or intends to carry on, a business of providing credit in Victoria;
  - (e) the name or names under which the applicant carries on, or intends to carry on, a business of providing credit; 10
  - (f) the name of any person with whom the applicant carries on, or intends to carry on, a business of providing credit in partnership; 15
  - (g) such other matters as are prescribed.
- (3) The application must be accompanied by the prescribed registration fee.
- (4) An applicant under this section must give to the Registrar such further particulars (if any) as the Registrar requests in connection with the application. 20

#### **14. *False or misleading statements***

A person must not, in or in relation to an application under section 13—

- (a) knowingly make a statement that is false or misleading; or 25
- (b) knowingly omit any thing without which the application is misleading.

Penalty: 50 penalty units.

#### **15. *Registration***

- (1) If the Registrar receives an application made in accordance with section 13 together with the prescribed fee, the Registrar must register the applicant as a credit provider. 30

- (2) A certificate of registration in a form approved by the Registrar and signed by the Registrar must be given to each credit provider registered under this Part.
- (3) On registering a credit provider, the Registrar -
- 5           (a) must make an entry in the Register of Credit Providers of the particulars of the registration; and
- (b) give notice to the Director of the entry.

16. *Operation of registration*

10           A registration credit provider is authorised to carry on business as a credit provider under the name of the registered credit provider and, subject to the **Business Names Act 1962**, any other name or names specified in the certificate of registration subject to and in

15           accordance with this Act, the regulations, the Consumer Credit (Victoria) Code and the Consumer Credit (Victoria) Regulations.

17. *Credit provider may carry on business under additional names*

- 20           (1) A registered credit provider may apply to the Registrar for the entry in the Register of Credit Providers of a name or names in addition to, or in substitution for, a name or names specified in the Register as a name or names under which the credit
- 25           provider is authorised, as specified in section 16, to carry on business as a credit provider.
- (2) The Registrar must make entries in the Register of Credit Providers in accordance with the application.

18. *Credit provider not to carry on business with unregistered partner*

30           A credit provider must not carry on a business of providing credit under credit contracts in partnership with a person who is not a registered credit provider or an exempt credit provider.

35           Penalty: 10 penalty units.

**19. Register to be kept**

For the purposes of this Act, the Registrar must keep a register to be known as the Register of Credit Providers.

**20. Inspection of register**

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A person—

- (a) may inspect the Register of Credit Providers; and
- (b) may make a copy of, or take extracts from, the Register.

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**21. Credit provider to give notice of certain changes**

- (1) If a prescribed change occurs in relation to a registered credit provider, the registered credit provider must give notice in writing to the Registrar within 14 days after the change occurs, together with particulars of the change.

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- (2) If the Registrar receives notice of any prescribed change under sub-section (1), he or she must make an entry in the Register of Credit Providers of the particulars of the change.

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**22. Period of registration**

The registration of a credit provider under this Act continues in force until it is cancelled under this Act.

**23. Annual fee**

- (1) A registered credit provider must, not later than 1 month after each anniversary of the day on which the credit provider was registered or is deemed to have been registered, pay to the Registrar the prescribed annual fee in respect of the year commencing on that anniversary.

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- (2) On the application of a registered credit provider, the Registrar may, in his or her discretion, extend or

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further extend the time within which that credit provider is required to pay a fee under sub-section (1).

- 5
- (3) If a registered credit provider has failed to pay a fee in accordance with sub-section (1) or (2), the Registrar must give notice in writing to the credit provider to the effect that unless the credit provider pays the fee within 14 days, or such longer period as the Registrar determines, after the notice is given, the registration will be cancelled.
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- (4) The Registrar must cancel the registration of a credit provider who fails to pay a fee within the time specified in a notice under sub-section (3).

#### **24. Annual statement**

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- (1) A person who is or was a registered credit provider during a year, or part of a year, commencing on the day, or anniversary of the day, on which the person was registered, or is deemed to have been registered, must lodge with the Registrar a statement in respect of that year or part containing such information as is prescribed.
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- (2) A person required under sub-section (1) to lodge a statement must lodge the statement within one month after each anniversary of the day on which the person was registered, or is deemed to have been registered.
- 25
- (3) On the application of a credit provider or other person, the Registrar may, in his or her discretion, extend or further extend the time within which that credit provider or person is required under this section to lodge a statement.
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- (4) Where a credit provider or other person has failed to lodge a statement in accordance with sub-section (1) or (2), the Registrar must give notice in writing to the credit provider or other person to the effect that unless the credit provider or other person lodges the statement within 14 days, or such longer period as the
- 35

Registrar determines, after the notice is given, the registration will be cancelled.

- (5) The Registrar must cancel the registration of a credit provider who fails to lodge a statement within the time specified in a notice under sub-section (4). 5

## **25. *Enquiries about credit providers***

- (1) The Director may make such enquires as he or she thinks fit about a credit provider, or an officer or employee of a credit provider.
- (2) The Chief Commissioner of Police must make such enquiries as he or she thinks fit about a credit provider, or an officer or employee of a credit provider, if requested to make enquiries by the Director. 10
- (3) The Chief Commissioner of Police must report the results of any enquiries made under sub-section (2) to the Director. 15
- (4) The Director may make a report to the Authority of enquiries made under this section.

## **26. *Undertakings by credit provider*** 20

- (1) If it appears to the Director that a registered credit provider has, in the course of carrying on a business of providing credit, repeatedly engaged in unjust conduct, the Director may request the credit provider to execute a deed in terms approved by the Director under which the credit provider undertakes any one or more of the following: 25
- (a) To refrain from specified conduct; or
- (b) To engage in specified conduct; or
- (c) To take specified action to rectify the consequences of past conduct. 30
- (2) A copy of the deed must be given to the Director as soon as practicable after it is executed.



- (3) The Director must give a copy to the Registrar of any undertaking given by a credit provider.
- (4) The Registrar must make an entry in the Register of each undertaking given by a credit provider.
- 5 (5) A registered credit provider must comply with any undertakings given by the credit provider under this section.

Penalty: 50 penalty units.

- 10 (6) For the purposes of this section, “**unjust conduct**” means conduct which—
- (a) is dishonest or unfair; or
- (b) consists of any act or omission which is a breach of a contract, whether or not any action or proceedings in respect of the breach are on foot; or
- 15 (c) is a breach of the Consumer Credit (Victoria) Code or of this Act.

### ***27. Cancellation and suspension of registration***

- 20 (1) The Authority may cancel or suspend the registration of a registered credit provider, being a natural person who—
- (a) requests the cancellation or suspension of registration; or
- 25 (b) becomes bankrupt, applies to take the benefit of a law for a relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or any part of his or her property for their benefit; or
- 30 (c) would be prohibited from managing a corporation under section 229 (3) of the Corporations Law; or
- (d) becomes incapable through mental infirmity of managing his or her affairs.

- (2) The Authority may cancel or suspend the registration of a registered credit provider, being a body corporate which—
- (a) requests the cancellation or suspension of registration; or 5
  - (b) is an externally administered body corporate within the meaning of the Corporations Law; or
  - (c) on an application under section 459P of the Corporations Law, the Court within the meaning of that Law would be required under section 459C (2) of that Law to presume to be insolvent. 10

### **28. *Objection to registration***

- (1) The Director, or any other person, may object to the registration of a registered credit provider by lodging with the Registrar notice in writing setting out the grounds of the objection. 15
- (2) The Registrar—
- (a) must cause a copy of a notice received under sub-section (1) to be given to the registered credit provider; and 20
  - (b) must refer the objection to the Authority.
- (3) If an objection is referred to the Authority under sub-section (2), the Authority, after giving the objector and credit provider an opportunity to be heard, must determine whether or not to hold an inquiry under section 30. 25

### **29. *Disciplinary action***

- The Authority may determine to hold an inquiry under section 30 if, in the opinion of the Authority, after giving the credit provider an opportunity to be heard, there are grounds for believing that a credit provider— 30
- (a) may have provided false or misleading information to the Registrar in or in connection with an application for registration under the 35

**Credit (Administration) Act 1984** or this Act;  
or

- (b) may have failed to comply with the **Credit Act 1984**, the **Credit (Administration) Act 1984**, this Act or the Consumer Credit (Victoria) Code; or
- (c) may not be carrying on business efficiently, honestly and fairly; or
- (d) may have failed to comply with a registered undertaking; or
- (e) may have failed to comply with a condition imposed under the **Credit (Administration) Act 1984** or under section 30 of this Act; or
- (f) may have provided credit while the credit provider's registration was suspended under the **Credit (Administration) Act 1984** or this Part.

### 30. *Inquiry by Authority*

- (1) If, under section 28 or 29, the Authority determines to hold an inquiry under this section, the Authority must cause to be sent to the credit provider—
  - (a) a copy of the objection; or
  - (b) a statement of the grounds that, in the opinion of the Authority, exist for the belief referred to in section 29.
- (2) If, after holding an inquiry, the Authority is satisfied that the credit provider—
  - (a) provided false or misleading information to the Registrar in or in connection with an application for registration under the **Credit (Administration) Act 1984** or this Act; or
  - (b) has failed to comply with the **Credit Act 1984**, the **Credit (Administration) Act 1984**, this Act or the Consumer Credit (Victoria) Code; or
  - (c) has not been carrying on business efficiently, honestly and fairly, whether before or after the commencement of this section; or

- (d) has failed to comply with a registered undertaking under the **Credit (Administration) Act 1984** or this Part; or
  - (e) has failed to comply with a condition of registration imposed by the Authority under the **Credit (Administration) Act 1984** or this Part; or 5
  - (f) has been providing credit while the credit provider’s registration was suspended under the **Credit (Administration) Act 1984** or this Part— 10
- the Authority may do one or more of the following—
- (g) reprimand the credit provider; or
  - (h) require the credit provider to comply with a specified condition imposed by the Authority; or
  - (i) subject to sub-section (3), suspend the registration for a specified period not exceeding 1 year; or 15
  - (j) subject to sub-section (3), cancel the registration.
- (3) If the registered credit provider is registered, licensed or otherwise authorised to operate under the **Financial Institutions (Victoria) Code** or any other prescribed law providing for the prudential supervision of the credit provider, the Authority— 20
    - (a) must, before holding an inquiry, send to the body responsible under that Code or law for the registration, licensing or authorisation of the credit provider— 25
      - (i) a copy of the objection; or
      - (ii) a statement of the grounds that, in the opinion of the Authority existing for the belief referred to in section 29; and 30
    - (b) must not suspend or cancel the registration under this Act unless it has consulted with that body.
  - (4) If the Authority imposes a condition on a registered credit provider under sub-section (2), it must cause notice of the condition to be given to the Registrar. 35

- 5
- (5) If the Registrar receives notice under sub-section (4) that a condition has been imposed on a credit provider, he or she must cause details of the condition to be entered in the Register.
- 10
- (6) Despite anything to the contrary in this or any other Act or law, a person who constituted, or was one of the members constituting, the Authority at an inquiry under section 28 or 29 may also constitute, or be one of the members constituting, the Authority for the purposes of an inquiry under this section.

**31. *Effect of suspension of registration***

For the purposes of this Act, a credit provider whose registration is suspended under section 27 or 30 is deemed not to be registered under this Part.

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**32. *Powers of credit provider whose registration is suspended or cancelled***

A credit provider whose registration is cancelled or suspended—

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- (a) may receive money under and enforce contracts entered into before the suspension or cancellation;
- (b) may provide credit in accordance with a contract (other than a continuing credit contract) entered into before the cancellation or suspension; or
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- (c) may provide credit in the course of a variation or deferral of a contract entered into with the credit provider before the cancellation or suspension if—
- 30
- (i) the debtor so requests; and
- (ii) the debtor informs the credit provider that the variation or deferral is necessary to enable the debtor to comply with the contract.

**33. *New registration of credit provider prohibited without consent***

- (1) If the registration of a credit provider has been cancelled under this Part, the Registrar must not re-register the credit provider without the consent of the Authority. 5
- (2) The Authority must not consent to the re-registration of a credit provider under sub-section (1) unless satisfied that the credit provider will carry on business efficiently, honestly and fairly. 10
- (3) The Authority must not refuse consent under this section unless it has given the credit provider an opportunity to be heard.

**34. *Appeal against cancellation etc. of registration***

- (1) If the Authority suspends or cancels the registration of a credit provider, or imposes a condition of registration, the credit provider may appeal against the suspension or cancellation or the imposition of the condition to the Supreme Court. 15
- (2) A credit provider who appeals under sub-section (1) against a determination of the Authority must, within 28 days after the determining, give notice in writing of the appeal, together with the grounds of the appeal, to the Director and each other party, or a person representing each other party, who appeared before the Authority at the inquiry. 20  
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- (3) An appeal under this section is an appeal in the strict sense.
- (4) Despite sub-section (3), where an appeal is made under this section, a party, with leave of the Supreme Court, may adduce new evidence, other than evidence as to matters occurring or circumstances arising after the hearing by the Authority. 30
- (5) If the Supreme Court allows an appeal under this section, the Supreme Court— 35

(a) must set aside the determination of the Authority, either wholly or in part; and

(b) must remit the proceedings back to the Authority subject to such directions as the Supreme Court thinks fit.

(6) The decision of the Supreme Court on an appeal under this section is final and without appeal.

(7) An appeal under this section against the imposition of a condition of a registration or the cancellation or suspension of registration does not operate as a stay of the imposition of the condition or the cancellation or suspension of registration unless the Supreme Court otherwise orders.

### **35. *Legal personal representatives***

(1) Where a registered credit provider dies, a person who is, or persons who are, named as, or intends or intend to make application to become, legal personal representative or representatives of the registered credit provider may, within 28 days after the death or such longer period as the Authority allows, make application to the Authority to carry on the business of the deceased registered credit provider, being the business in relation to which the credit provider was registered under this Part, until the expiration of the period of six months after the death.

(2) Where an application is made under sub-section (1), the Registrar shall give a copy of the application to the Director.

### **36. *Penalty for using name other than registered name***

A registered credit provider must not—

(a) carry on a business as a credit provider; or

(b) hold himself out as a credit provider or as a person carrying on business as a credit provider—

in a name other than the name under which the credit provider is registered or a name specified in the register as a name under which the credit provider may carry on business.

Penalty: 50 penalty units.

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### ***37. Assignment of rights by credit provider***

(1) A credit provider must not assign the whole or any part of the credit provider's rights as credit provider under a credit contract to a person other than a registered credit provider or an exempt credit provider unless the assignment—

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(a) is an assignment made in good faith by way of security in respect of a liability incurred by the assignor; or

(b) is made with the consent of the Director or the Tribunal.

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Penalty: 10 penalty units.

(2) Sub-section (1) does not apply to or in respect of an assignment that occurs by operation of law.

## **PART 5—MISCELLANEOUS**

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### ***38. Civil penalties to be paid to Consumer Credit Fund***

The Consumer Credit Fund established under the **Credit (Administration) Act 1984** is the fund into which are to be paid amounts of civil penalty payable under section 106 of the Consumer Credit (Victoria) Code.

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### ***39. Contract unenforceable if rate exceeds 48 per cent***

(1) A credit contract (and any mortgage given to a credit provider in relation to that contract) is unenforceable where the annual percentage rate in respect of the contract exceeds 48.

30



- 5
- (2) Nothing in this section affects or limits the powers of the Court under section 70 of the Consumer Credit (Victoria) Code if the Court is satisfied that the annual percentage rate in respect of a credit contract although not exceeding, in the case of a credit contract in relation to which there is a mortgage, 30, and in the case of any other contract, 48, is excessive or that the transaction is unjust within the meaning of that section or is such that a court of equity would give relief.
- 10
- (3) A credit provider must not enter into a credit contract where the annual percentage rate in respect of the contract exceeds 48.

Penalty applying to this sub-section: 10 penalty units.

15

**40. *Mortgage void if rate under credit contract exceeds 30 per cent***

A mortgage relating to a credit contract in respect of which the annual percentage rate exceeds 30 is void in so far as it relates to that contract.

20

**41. *Regulations***

- 25
- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing authorised or required to be prescribed for the purposes of this Act and in particular for and with respect to—
- 30
- (a) prescribing forms for the purposes of this Act;
  - (b) keeping and inspection of the Register of Credit Providers;
  - (c) subject to any directions of the Treasurer, authorising the Credit Registrar or the Registrar—
    - 35
    - (i) to waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this Act or the regulations; or

- (ii) to refund in whole or in Part, in a particular case or classes of cases, fees paid pursuant to this Act or the regulations.
- (2) The regulations may prescribe the manner in which a registration fee is to be determined including the fixing of the fee by reference to the number of places at which the credit provider carries on business whether personally or by an agent and may, for the purposes of prescribing registration fees, prescribe the circumstances under which a credit provider carries on, or is deemed to carry on, business by an agent. 5
- (3) Except as otherwise expressly provided by this Act, the regulations may be of general or of specially limited application and may differ according to differences in time, place or circumstance. 10 15

#### **PART 6—TRANSITIONAL PROVISIONS**

##### **42. *Validation of certain Orders***

- (1) The Credit (Credit Societies General Exemptions) Order No. 2 made under section 19 of the **Credit Act 1984** and published in the Government Gazette on 5 February 1992 is deemed to have been made as if, in clause 7 (1) (c), after “you may elect to extend the term of your contract and continue to make existing payments” there were included the words “for the extended term or pay the increased payments”. 20 25
- (2) The Credit (Credit Union Fees) Order No. 3 made under section 19 of the **Credit Act 1984** and published in the Government Gazette on 1 July 1993 is deemed to have come into operation on 6 May 1992. 30
- (3) The Credit (Exemption of Small Credit Societies) Order No. 2 made under section 19 of the **Credit Act 1984** and published in the Government Gazette on 30 September 1993 is deemed to have come into operation on 6 May 1992. 35

43. *Credit Regulations 1995*

- 5 (1) The Credit Regulations 1995 made under the **Credit Act 1984** are deemed to have come into operation immediately after the revocation of the Credit Regulations 1984.
- 10 (2) A contract entered into or anything done or omitted to be done after the revocation of the Credit Regulations 1984 that, if it had been entered into or done or omitted to be done before that revocation, would have been in accordance with those Regulations as in force immediately before their revocation is deemed to have been entered into or done or omitted to be done in accordance with the Credit Regulations 1995.
- 15 (3) If the Credit Regulations 1995 are amended, sub-section (2) does not apply to anything done or omitted to be done that is inconsistent with those Regulations as amended and in force for the time being.

20 44. *Exemptions*

25 An Order made under section 10 of the **Credit (Administration) Act 1984** and in force immediately before the commencement of this section has effect, on and after that commencement, as if made under section 18 of this Act and may be revoked or varied as if it had been so made.

45. *Registered credit providers deemed to be registered under this Act*

- 30 (1) A credit provider who was a registered credit provider within the meaning of the **Credit (Administration) Act 1984** immediately before the commencement of this section is deemed to be registered as a credit provider under Part 4 of this Act.
- 35 (2) The Registrar must make an entry in the Register of Credit Providers of the particulars of each credit

provider to whom sub-section (1) applies including particulars of any suspension in force and any specified condition or requirement imposed by the Authority and applying to the credit provider immediately before the commencement of this section. 5

- (3) For the purposes of sections 23 and 24, the anniversary in relation to a person who is deemed to have been registered as a credit provider under this Act is the same anniversary as applied in relation to that person for the purposes of sections 49 and 50 of the **Credit (Administration) Act 1984** immediately before the commencement of this section. 10

**46. Register of credit providers**

The Register of Credit Providers kept under the **Credit (Administration) Act 1984** continues as the Register of Credit Providers required to be kept under Part 4 of this Act. 15

**47. Application for registration**

An application for registration as a credit provider under the **Credit (Administration) Act 1984** made, but not determined, before the commencement of this section is deemed to have been made under Part 4 of this Act. 20

**48. Transitional provision for registration of credit providers** 25

A person who—

- (a) immediately before the commencement of this section was an exempt credit provider within the meaning of the **Credit (Administration) Act 1984**; and 30
- (b) is not registered as a credit provider under this Act—

is not guilty of an offence under section 11—

- 5
- (c) if the person makes an application for registration in accordance with section 13 within 3 months after the commencement of this section—during the period before the person is registered; or
  - (d) if the person does not make such an application—during the period of 3 months after that commencement.

**49. Transitional provision relating to objections**

- 10
- (1) If an objection had been made under section 54 of the **Credit (Administration) Act 1984** before the commencement of this section but had not been disposed of by that date, the objection has effect as an objection to the registration of the credit provider under section 28 of this Act.
  - 15
  - (2) Anything done by the Authority before the commencement of this section in relation to an objection referred to in sub-section (1) has effect, so far as applicable, as if done in relation to an objection to the registration of the credit provider under section 28 of this Act.
  - 20

**50. Special savings and transitional regulations for Victoria**

- 25
- (1) The Governor in Council may make regulations of a savings or transitional nature consequent on the enactment of this Act or of an Act of Queensland amending the Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland) Act.
  - (2) If such a regulation so provides, it has effect despite any provision of this Act, including the Consumer Credit (Victoria) Code.
  - 30
  - (3) A provision of regulations made under this section may, if the regulations so provide, take effect from the date on which the Act concerned receives the Royal Assent or from a later date.

- (4) To the extent to which a provision takes effect from a date earlier than the date on which notice of the making of the regulations is published in the Government Gazette, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by—
  - (a) decreasing the person’s rights; or
  - (b) imposing liabilities on the person.

**PART 7—CONSEQUENTIAL AMENDMENTS**

**Division 1—Credit Act 1984** 10

No. 10097.  
Reprinted to  
No. 57/1989  
and  
subsequently  
amended by  
Nos 57/1989,  
34/1991 and  
72/1993.

**51. New sections 19A and 19B inserted**

After section 19 of the **Credit Act 1984** insert—

**“19A. Act not to apply to new credit contracts**

- (1) Subject to sub-section (2), this Act does not apply to a credit contract made on or after the commencement of section 51 of the **Consumer Credit (Victoria) Act 1995**. 15
- (2) This Act applies to—
  - (a) a credit contract, other than a continuing credit contract, and to a mortgage or guarantee relating to such a credit contract— 20
    - (i) made on or after the commencement of section 51 of the **Consumer Credit (Victoria) Act 1995** if the offer to enter into it was made before that commencement; and 25
    - (ii) to which this Act would have applied if the credit contract had been made before that commencement; and 30

5 (b) a credit contract, other than a continuing credit contract, and to a mortgage or guarantee relating to such a credit contract made on or after that commencement but not later than one month after that commencement if—

10 (i) the credit contract does not comply with the Consumer Credit (Victoria) Code; and

15 (ii) has the credit contract been made before that commencement, this Act would have applied to it and it would have complied with this Act.

**19B. Act to continue to apply in certain cases**

(1) Except as otherwise provided by this section, this Act continues to apply—

20 (a) to a continuing credit contract entered into before that commencement but only in respect of anything done or omitted to be done before that commencement;

25 (b) to a credit contract of any other kind entered into before that commencement in respect of anything done or omitted to be done, whether before or after that commencement;

30 (c) to a mortgage or guarantee relating to a continuing credit contract referred to in paragraph (a) but only in respect of anything done or omitted to be done before that commencement;

35 (d) to a mortgage or guarantee relating to a credit contract referred to in paragraph (b) in respect of anything

done, or omitted to be done, whether before or after that commencement.

- (2) If the credit provider under a contract to which this Act continues to apply acts in accordance with a provision of section 34, 35, 66 to 69, Part 5 (except sections 75 to 77), 163, 171, 172 or 173 of the Consumer Credit (Victoria) Code, the credit provider is deemed to have acted in accordance with the corresponding provision of this Act. 5 10
- (3) Despite anything to the contrary in sub-section (2), section 112 (1) (b) continues to apply in respect of goods subject to a regulated mortgage.”. 15

**52. Amendment of section 85 of Credit Act 1984**

After section 85 (5) of the **Credit Act 1984** insert—

- “(6) The provisions of this section are subject to the provisions of section 86A and, in particular, sub-section (3) of this section does not apply to the determination of an amount under sub-section (1) of that section.”. 20

**53. New section 86A inserted in the Credit Act 1984**

After section 86 of the **Credit Act 1984** insert—

**“86A. Payments to Consumer Credit Fund 25**

- (1) If the Tribunal makes a determination referred to in section 86 (1) (a), (b) or (c), it may, in an order under section 85 or by an order under this section (whether or not it has made an order under section 85), direct that each debtor is to remain liable to pay the whole of the credit charge under the relevant regulated contract but that the credit provider is to pay into the 30



5 Consumer Credit Fund established under Part 5A of the **Credit (Administration) Act 1984** such amount as the Tribunal may determine, having regard to the number of contracts to which the determination relates.

10 (2) If it is necessary to do so, the Tribunal may, for the purposes of this section, make an estimate of the number of contracts to which such a determination relates.

15 (3) A direction under this section may not be given unless the Tribunal is satisfied that it would be unreasonable (whether because of the number of contracts concerned or otherwise) to require the credit provider to adjust the debtor's accounts, or to refund money to the debtors, to give effect to any reduction in liability that would occur if the credit charges were reduced.

20 (4) A direction under this section may be given in respect of all regulated contracts to which the application for the determination relates or in respect of some only of those contracts.”.

25 **54. New section 167E inserted in Credit Act 1984**

After section 167D of the **Credit Act 1984** insert—

**“167E. Operation of section 86A etc.**

30 The amendments to this Act made by section 53 of the **Consumer Credit (Victoria) Act 1995** apply to proceedings commenced before the commencement of that section in the same way as they apply to proceedings

commenced on or after that commencement.”.

### Division 2—Credit (Administration) Act 1984

No. 10091.  
R printed to  
No. 72/1993.

#### 55. Amendment of Credit (Administration) Act 1984

- In the Credit (Administration) Act 1984— 5
- (a) in section 3 after “1984” insert “and the Consumer Credit (Victoria) Act 1995”;
- (b) in section 4 for the definitions of “Chairperson” substitute—
- “Chairperson”— 10
- (a) in Part 3 means the Chairperson of the Authority and includes a person acting as chairperson; and
- (b) in Part 5 means the Chairperson of the Tribunal and includes a person acting as chairperson;’; 15
- (c) in section 4 for the definition of “Deputy Chairperson” substitute—
- “deputy chairperson”, in Part 5, means the Deputy Chairperson of the Tribunal and includes a person acting as deputy chairperson;’; 20
- (d) in clause 4 omit the definition of “exempt credit provider”;
- (e) in clause 4 in the definition of “member”— 25
- (i) for “Part III” substitute “Part 3”; and
- (ii) for “Part V” substitute “Part 5”;
- (f) in clause 4 in the definition of “registered credit provider” for “Part IV” substitute “Part 4 of this Act or under the Consumer Credit (Victoria) Act 1995”; 30
- (g) in clause 4 in the definition of “registration” for “Part IV” substitute “Part 4 of this Act or under the Consumer Credit (Victoria) Act 1995”;

- 5
- (h) in clause 4 in the definition of “Tribunal” for “Part V” substitute “Part 5”;
  - (i) in section 5 after “1984” insert “or the **Consumer Credit (Victoria) Act 1995**, as the case requires.”;
  - (j) in section 6 after “this Act” insert “in relation to the **Credit Act 1984**”;
  - (k) in section 9 (1) after “credit contract” insert “to which the **Credit Act 1984** applies”;
  - (l) section 10 is **repealed**.
- 10

**56. Amendment of Part 2 of the Credit (Administration) Act 1984**

For the heading preceding section 11 of the **Credit (Administration) Act 1984** substitute—

15 **‘PART 2—THE DIRECTOR**

**10A. Definition**

In this Part—

20 **“Credit Acts” means the Credit Act 1984 and the Consumer Credit (Victoria) Code.’.**

**57. Further amendment of Credit (Administration) Act 1984**

In the **Credit (Administration) Act 1984**—

- 25
- (a) in sections 11, 12, 13, 15 and 16 for “**Credit Act 1984**” (wherever occurring) substitute “Credit Acts”;
  - (b) in the heading preceding section 17 for “Part III” substitute “Part 3”;
  - (c) in section 36D (2) after “1984” (where twice occurring) insert “or the **Consumer Credit (Victoria) Code**”;
  - (d) in section 36E (2) after “1984” insert “or the **Consumer Credit (Victoria) Code**”;
- 30

- (e) Part IV is **repealed**;
  - (f) in the heading preceding section 66 for “Part V” substitute “Part 5”;
  - (g) in section 77 after “**1984**” (wherever occurring) insert “or under section 68, 69, 88 or 89 or Division 1 or 2 of Part 6 of the **Consumer Credit (Victoria) Code**”; 5
  - (h) in section 85F after “**1984**” insert “**Consumer Credit (Victoria) Code**”;
  - (i) in section 85K (1) after “**1984**” insert “and the **Consumer Credit (Victoria) Code**”; 10
  - (j) in section 85K (2) and 85L (2) after “**1984**” (wherever occurring) insert “or the **Consumer Credit (Victoria) Code**”.
- 58. New Part 5A inserted in Credit (Administration) Act 1984** 15
- After Part 5 of the **Credit (Administration) Act 1984** insert—

**“PART 5A—CONSUMER CREDIT FUND**

**86AA. The Fund**

- (1) There shall be established in the Public Account as part of the Trust Fund an account to be known as the Consumer Credit Fund. 20
- (2) There shall be paid into the Fund—
  - (a) amounts paid under section 86A of the **Credit Act 1984**; 25
  - (b) amounts required under section 38 of the **Consumer Credit (Victoria) Act 1995** to be paid into the Fund;
  - (c) money that a credit provider has agreed or undertaken to pay to a fund with objects similar to those of the Fund; 30

(d) money appropriated by the Parliament for the purposes of the Fund;

(e) interest received on the investment of money in the Fund.

(3) There shall be paid out of the Fund such amounts as the Minister determines from time to time in accordance with this Part.

(4) The Treasurer may invest money in the Fund in such manner as the Treasurer determines.

**86AB. Application of Consumer Credit Fund**

The Minister, on the recommendation of a majority of the members for the time being of the Advisory Committee established under section 86AC, may determine that amounts from the Consumer Credit Fund be applied, subject to such terms and conditions as the Minister determines, for the benefit of persons to whom credit, or services relating to the provision of credit, have been, are or may be provided under credit contracts by grants to—

(a) non-profit making persons or organisations for the purpose of providing education services about credit;

(b) non-profit making persons or organisations for the purpose of providing education, advice or assistance (otherwise than by the conduct of legal proceedings) to persons to whom credit has been, is or may be provided under credit contracts;

- (c) non-profit making persons or organisations for the purpose of providing research about the use of credit.

**88AC. Advisory Committee**

5

- (1) There shall be an Advisory Committee consisting of not more than—

- (a) 2 persons appointed by the Minister with an interest in the provision of education, advice, or assistance to consumers;

10

- (b) 2 persons appointed by the Minister from names submitted by a prescribed body representing interests of credit providers;

15

- (c) 2 persons appointed by the Minister from names submitted by a prescribed body representing interests of consumers.

- (2) A member appointed under sub-section (1) holds office for such term not exceeding 3 years, as the Minister determines.

20

- (3) A member of the Committee must not participate in a recommendation for payment of an amount from the Consumer Credit Fund to a body of which that person is an officer, employee or member.

25

- (4) The application of money from the Consumer Credit Fund after a recommendation in which a member has participated in contravention of sub-section (3) is not invalid.”.

30

**59. Amendment of sections 86 and 95**

In the **Credit (Administration) Act 1984**—

- (a) in the heading preceding section 86 for “Part VI” substitute “Part 6”;
- (b) in section 86 (1) after “this Act” insert “or Part 4 of the Consumer Credit (Victoria) Code”;
- (c) in section 95, sub-sections (4) and (5) are repealed.

**Division 3—Other Acts**

**60. Amendment of section 32 of the Interpretation of Legislation Act 1984**

After section 32 (1) (j) of the **Interpretation of Legislation Act 1984** insert—

“(k) the Consumer Credit (Victoria) Code.”.

**61. New section 38C inserted in Interpretation of Legislation Act 1984**

After section 38B of the **Interpretation of Legislation Act 1984** insert—

**‘38C. References to Consumer Credit legislation**

In an Act or subordinate instrument—

“**Consumer Credit (Victoria) Code**” means the provisions applying because of section 5 of the **Consumer Credit (Victoria) Act 1995**;

“**Consumer Credit (Victoria) Regulations**” means the provisions applying by reason of section 6 of the **Consumer Credit (Victoria) Act 1995**.”.

**62. Consequential amendments**

An Act specified in the heading to an item in Schedule 1 is amended, on commencement of that item or a provision of that item, as set out in that item or provision.

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**SCHEDULE 1**

Section 62

CONSEQUENTIAL AMENDMENTS

**1. *Administrative Law Act 1984***

In section 4 (3) after “**Credit (Administration) Act 1984**” insert “or the Consumer Credit (Victoria) Code”.

**2. *Finance Brokers Act 1969***

2.1 In section 2, in the definition of “loan” after “**1984**” insert “or a credit contract within the meaning of the Consumer Credit (Victoria) Code”.

2.2 In section 3 (2), after “**1984**” insert “or the Consumer Credit (Victoria) Code”.

**3. *Hire-Purchase Act 1959***

In section 2 (1), in the definition of “hire-purchase agreement” after paragraph (c) insert—

“or

(d) a credit contract within the meaning of the Consumer Credit (Victoria) Code.”.

**4. *Melbourne and Metropolitan Board of Works Act 1958***

In section 170, sub-section (9) is **repealed**.

**5. *Motor Car Traders Act 1986***

5.1 In section 43 (6) after “**1984**” insert “and section 125 of the Consumer Credit (Victoria) Code”.

5.2 In section 47 (3) (d) for “accrued credit charge within the meaning of the **Credit Act 1984**” substitute “interest that has accrued”.

5.3 In section 47 (3) (e) **omit** “within the meaning of the **Credit Act 1984**”.

5.4 In section 49, after “**1984**” insert “or the Consumer Credit (Victoria) Code”.

SCHEDULE 1—*continued*

**6. *Second-Hand Dealers and Pawnbrokers Act 1989***

In section 23 (2) for “section 150A of the **Credit Act 1984**” substitute “section 39 of the **Consumer Credit (Victoria) Act 1995**”.

**7. *Small Claims Tribunal Act 1973***

In section 2 (3A) after “**1984**” insert “or the Consumer Credit (Victoria) Code”.

**8. *Supreme Court Act 1986***

In section 57 (1), for “**Credit Act 1984**” substitute “Consumer Credit (Victoria) Code”.