National Consumer Credit Protection Act 2009

No. 134, 2009

Compilation No. 25

Compilation date:	1 January 2021
Includes amendments up to:	Act No. 154, 2020
Registered:	17 February 2021

This compilation is in 2 volumes

Volume 1: sections 1–322
Volume 2: sections 323–337
Schedule 1
Endnotes

Each volume has its own contents

This compilation includes commenced amendments made by Act No. 135, 2020

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *National Consumer Credit Protection Act 2009* that shows the text of the law as amended and in force on 1 January 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 7—Miscellaneous 1

Part 7-1—Miscellaneous 1

Division 1—Introduction 1

323 Guide to this Part 1

Division 2—Liability of persons for conduct of their agents etc. 2

324 Liability for bodies corporate for conduct of their agents, employees etc. 2

325 Liability of persons (other than bodies corporate) for the conduct of their agents, employees etc. 3

326 Regulations for the purposes of this Division 4

Division 3—Review of ASIC's decisions 5

327 Review by Administrative Appeals Tribunal of decisions by ASIC under this Act 5

328 Notice of reviewable decision and review rights 6

Division 4—Regulations 8

329 Regulations 8

330 Regulations—where proceedings may be brought 8

Division 5—Other miscellaneous provisions 9

332 Civil penalty provisions contravened or offences committed partly in and partly out of this jurisdiction 9

333 Contravention of Act does not generally affect validity of transactions etc. 9

334 Contracting out etc. 9

335 Indemnities 10

335A Review relating to small amount credit contracts 11

336 Acquisition of property 12

337 Minister may delegate prescribed functions and powers under this Act 12

Schedule 1—National Credit Code 13

Part 1—Preliminary 13

1 Short title 13

2 Interpretation generally 13

3 Meaning of *credit* and *amount of credit* 13

4 Meaning of *credit contract* 14

Authorised Version C2021C00117 registered 17/02/2021

5 Provision of credit to which this Code applies 14
6 Provision of credit to which this Code does not apply 15
7 Mortgages to which this Code applies 19
8 Guarantees to which this Code applies 19
9 Goods leases with option to purchase to be regarded as sale by instalments 20
10 Deciding application of Code to particular contracts for the sale of land by instalments 21
11 Deciding application of Code to particular contracts for the sale of goods by instalments 23
12 Deciding application of Code to particular contracts for the sale of goods by instalments under related contracts 24
13 Presumptions relating to application of Code 24
13A Reverse mortgages 26

Part 2—Credit contracts 27

Division 1—Negotiating and making credit contracts 27
14 Credit contract to be in form of written contract document 27
15 Other forms of contract 27
16 Precontractual disclosure 28
17 Matters that must be in contract document 29
18 Form and expression of contract document 35
18A Provisions that must not be included in credit contract for reverse mortgage 35
18B Disclosure if credit contract for reverse mortgage does not protect tenancy of person other than debtor 36
18C Independent legal advice before entry into credit contract for reverse mortgage 37
19 Alteration of contract document 37
20 Copy of contract for debtor 38
21 When debtor may terminate contract 38
22 Offence for noncompliance 38

Division 2—Debtor's monetary obligations 40
23 Prohibited monetary obligations—general 40
23A Prohibited monetary obligations—small amount credit contracts 40
24 Offences related to prohibited monetary obligations—credit providers 41
24A Offences related to prohibited monetary obligations—credit assistance providers 42

Authorised Version C2021C00117 registered 17/02/2021

25 Loan to be in money or equivalent 42
26 Early payments and crediting of payments 43
26A Regulations about residential investment property 44

Division 3—Interest charges 45
27 Definitions relating to interest 45
27A Application of this Division 45
28 Limit on interest charges 45
29 Early debit or payment of interest charges prohibited 46
30 Default interest 47
30A Regulations about residential investment property 47
30B Regulations about credit card contracts 47

Division 4—Fees and charges 49
31 Prohibited credit fees or charges 49
31A Restrictions on fees and charges for small amount credit contracts 49
31B Credit provider or prescribed person must not require or accept payment of a fee or charge in relation to a small amount credit contract etc. 50
32 Fees or charges in relation to third parties 51

Division 4A—Annual cost rate of certain credit contracts 52
32A Prohibitions relating to credit contracts if the annual cost rate exceeds 48% 52
32AA Prohibition relating to the annual cost rate of credit contracts—later increases of the annual percentage rate etc. 53
32B Calculation of annual cost rate 53

Division 5—Credit provider's obligation to account 58
33 Statements of account 58
34 Information to be contained in statements of account 59
35 Opening balance must not exceed closing balance of previous statement 62
36 Statement of amount owing and other matters 62
37 Court may order statement to be provided 63
38 Disputed accounts 64
39 Dating and adjustment of debits and credits in accounts 65

Division 5A—Additional rules relating to small amount credit contracts 67
39A Limit on the application of amount of credit provided under a small amount credit contract 67

Authorised Version C2021C00117 registered 17/02/2021

39B Limit on amount that may be recovered if there is default under a small amount credit contract ... 68
39C Credit provider must do prescribed things if a default in payment by direct debit occurs ... 68

Division 6—Certain transactions not to be treated as new contracts 69
40 Changes etc. under contracts ... 69

Part 3—Related mortgages and guarantees 70

Division 1—Mortgages 70
41 Application of Division ... 70
42 Form of mortgage ... 70
43 Copy of mortgage for mortgagor ... 70
44 Mortgages over all property void ... 71
45 Restriction on mortgage of future property ... 71
46 Mortgages and continuing credit contracts ... 71
47 All accounts mortgages ... 72
48 Third party mortgages prohibited ... 72
49 Maximum amount which may be secured ... 73
50 Prohibited securities ... 73
51 Assignment or disposal of mortgaged property by mortgagor ... 75
52 Conditions on consent to assignment or disposal of property subject to mortgage ... 75
53 Offence for noncompliance ... 76

Division 2—Guarantees 77
54 Application of Division ... 77
55 Form of guarantee ... 77
56 Disclosure ... 77
57 Copies of documents for guarantor ... 77
58 Guarantor may withdraw before credit is provided ... 78
59 Extension of guarantee ... 78
60 Limitation of guarantor's liability ... 79
61 Increase in guarantor's liabilities ... 80
62 Offence for noncompliance ... 81

Part 4—Changes to obligations under credit contracts, mortgages and guarantees 82

Division 1—Unilateral changes by credit provider 82
63 Application of Division ... 82

Authorised Version C2021C00117 registered 17/02/2021

64 Interest rate changes 82
65 Repayment changes 84
66 Credit fees and charges changes 85
67 Changes to credit limits etc. in continuing credit contracts 86
67A Changes to tenancy protection in credit contracts for reverse mortgages 87
68 Other unilateral changes by credit provider 87
69 Particulars of matters as changed only required to be given under this Division in certain cases 88
70 Prohibited increases in liabilities 88

Division 2—Changes by agreement of parties 90
71 Changes by agreement 90

Division 3—Changes on grounds of hardship and unjust transactions 91
72 Changes on grounds of hardship 91
73 Notice of change 93
74 Changes by court 93
75 Credit provider may apply for variation of change 94
76 Court may reopen unjust transactions 94
77 Orders on reopening of transactions 97
78 Court may review unconscionable interest and other charges 98
79 Applications by ASIC 99
80 Time limit 99
81 Joinder of parties 100

Part 5—Ending and enforcing credit contracts, mortgages and guarantees 101

Division 1—Ending of credit contract by debtor etc. 101

Subdivision A—Paying out contract etc. 101
82 Debtor's or guarantor's right to pay out contract 101
83 Statement of pay out figure 101
84 Court may determine pay out figure if credit provider does not provide a pay out figure 102
85 Surrender of mortgaged goods and goods subject to sale by instalments 102
86 Compensation to debtor or mortgagor 105

Subdivision B—Ending of reverse mortgage by credit provider receiving value of reverse mortgaged property 106
86A Application of this Subdivision 106

Authorised Version C2021C00117 registered 17/02/2021

86B Discharge of debtor's obligations under credit contract and discharge of mortgage 107
86C Credit provider must pay debtor excess of receipt over adjusted market value for reverse mortgaged property 107
86D Credit provider must not demand or accept further payments 107
86E Cases in which sections 86B, 86C and 86D do not apply 107
86F Relationship between this Subdivision and other provisions 108
Subdivision C—Notice of first direct debit default 108
87 One-off notice to be given the first time a direct debit default occurs 108
Division 2—Enforcement of credit contracts, mortgages and guarantees 109
88 Requirements to be met before credit provider can enforce credit contract or mortgage against defaulting debtor or mortgagor 109
89 Defaults may be remedied 113
89A Effect of hardship notices on enforcement 113
90 Requirements to be met before credit provider can enforce guarantee against guarantor 115
91 Requirements to be met before credit provider can repossess mortgaged goods 115
93 Requirements to be met before credit provider can enforce an acceleration clause 116
93A Extra requirements for enforcing reverse mortgage if debtor's liability exceeded value of reverse mortgaged property 117
Division 3—Postponement of enforcement proceedings 119
94 Postponement of exercise of rights 119
95 Effect of negotiated postponement 120
96 Postponement by court 121
97 Credit provider may apply for variation of postponement order 121
Division 4—Enforcement procedures for goods mortgaged 123
98 Information as to location of mortgaged goods 123
99 Entry to residential property to take possession of goods 123
100 Court may order entry 124
101 Order for possession 124
102 Procedures to be followed by credit provider after taking possession of goods 125

Authorised Version C2021C00117 registered 17/02/2021

103 Mortgagor may nominate purchaser of goods taken by credit provider ... 126
104 Sale of goods by credit provider ... 126
105 Matters for which account can be debited after mortgagee sale of goods ... 127
106 Compensation to mortgagor ... 128
Division 5—Enforcement expenses 129
107 Recovery of enforcement expenses ... 129
Division 6—Mortgagor's remedies 130
108 Mortgagor may apply to regain possession of mortgaged goods ... 130
109 Order for possession for mortgagor ... 130
110 Ancillary or consequential orders ... 131
Part 6—Penalties for defaults of credit providers 132
Division 1—Penalties for breach of key disclosure and other requirements 132
111 Key requirements ... 132
112 Application for order relating to key requirements ... 133
113 Penalty may be imposed for contravention of key requirement ... 133
114 Penalty if application made by debtor or guarantor ... 135
115 Payment of penalty to debtor or guarantor ... 136
116 Penalty if application made by a credit provider or ASIC ... 137
117 Payment of penalty ... 137
118 Compensation for debtor or guarantor ... 137
119 General provisions relating to applications by credit providers or ASIC ... 138
120 ASIC may represent interests of debtors ... 138
121 Directions pending court's decision ... 138
122 Offences ... 139
123 Time limit for application for orders under this Division ... 139
Division 2—Other penalties 140
124 Civil effect of contraventions ... 140
Part 7—Related sale contracts 141
Division 1—Interpretation and application 141
125 Meaning of *sale contract* ... 141
126 Sale contracts to which this Part applies ... 141

Authorised Version C2021C00117 registered 17/02/2021

127 Linked credit providers and tied credit contracts 141

Division 2—Liability of credit providers for suppliers' misrepresentations 143

128 Credit provider liable with respect to supplier's misrepresentations etc. about tied credit contract 143

Division 3—Liability of credit providers in relation to goods 144

129 Right to damages under sale contract against both supplier and linked credit provider 144

130 Limits on debtor's right of action against linked credit provider 146

131 Liability of supplier to linked credit provider 148

132 Interest may be awarded 148

133 Subrogation of credit provider 149

Division 4—Termination of related transactions 150

134 Termination of sale contract which is conditional on obtaining credit 150

135 Termination of (or recredit under) tied credit contract if sale contract terminated 151

136 Termination of linked maintenance services contract if credit contract terminated 152

137 Termination of contract under this Part to be in writing 153

138 Powers of court with respect to termination of contract under this Part 153

139 Part 5 not to apply to termination of contract under this Part 153

Division 5—Other provisions 154

140 Requirement as to source of credit for goods or services 154

141 Prohibition on payment for goods or services by postdated bills of exchange or notes which exceed cash price of goods or services 154

Part 8—Related insurance contracts 155

142 Interpretation and application 155

143 Requirement to take out insurance or to insure with particular insurer or on particular terms 155

144 Financing of insurance premiums over mortgaged property 156

145 Commission for consumer credit insurance 157

146 Supply of copy of credit-related insurance contract by insurer 158

147 Rejection of debtor's proposal for insurance 159

Authorised Version C2021C00117 registered 17/02/2021

148 Termination of consumer credit insurance contract if credit contract terminated 159
149 Termination of insurance contract over mortgaged property if credit contract terminated 160

Part 9—Advertising and related conduct 162
150 Advertising 162
151 Persons liable for advertisements 163
152 Defence 163
153 Interest rates which may be disclosed 163
154 False or misleading representations 164
155 Harassment 165
156 Canvassing of credit at home 165

Part 10—Comparison rates 167

Division 1—Preliminary 167
157 Object of Part 167
158 Part not to apply to continuing credit contracts 167
159 Definitions 167

Division 2—Comparison rate in credit advertising 169
160 Comparison rate mandatory in advertisements containing annual percentage rate 169
161 The relevant comparison rate 169
162 Information about comparison rate 169
163 Warning about comparison rate 170
164 Other requirements for comparison rate 170

Division 3—Comparison rate in other documents 172
165 Comparison rates in documents other than credit advertising 172

Division 4—Miscellaneous 173
166 Calculation of comparison rates 173
167 Compliance grace period following changes in interest or fees 173
168 Regulations—exemptions and other matters 173

Part 11—Consumer leases 174

Division 1—Interpretation and application 174
169 Meaning of *consumer lease* 174
170 Consumer leases to which this Part applies 174
171 Consumer leases to which this Part does not apply 175

Authorised Version C2021C00117 registered 17/02/2021

172 Presumptions relating to application of this Part 176

Division 2—Form of and information to be included in consumer leases 178

173 Form of consumer lease 178
173A Other forms of consumer lease 178
174 Disclosures in consumer leases 179
174A Alteration of consumer lease document 180
175 Copy of lease etc. for lessee 180

Division 4—Fees and charges 181

175A Prohibited consumer lease fees or charges 181
175B Fees or charges in relation to third parties 181

Division 5—Lessor's obligation to account 183

Subdivision A—Ongoing statements of account 183

175C Statements of account 183
175D Information to be contained in statements of account 183
175E Statement of amount owing and other matters 183
175F Court may order statement of account to be provided 184
175G Disputed accounts 184

Subdivision B—End of lease statements 186

175H End of lease statement 186

Division 6—Certain transactions not to be treated as new consumer leases 187

175J Changes etc. under consumer leases 187

Division 7—Changes to obligations under consumer leases 188

Subdivision A—Changes by agreement of parties 188

177A Changes by agreement 188

Subdivision B—Changes on grounds of hardship and unjust transactions 189

177B Changes on grounds of hardship 189
177C Notice of change 191
177D Changes by court 191
177E Lessor may apply for variation of change 192
177F Court may reopen unjust transactions 192
177G Orders on reopening of transactions 194
177H Applications by ASIC 195
177J Time limit 195

Authorised Version C2021C00117 registered 17/02/2021

177K Joinder of parties 195

Division 8—Repossession, termination and enforcement of consumer leases 197

Subdivision A—Repossession of goods under consumer lease 197

178 Notice of repossession 197

Subdivision B—Termination of consumer lease by lessee 197

178A Termination before goods have been provided 197

179 Termination after goods have been provided 198

179A Statement of amount payable on termination 198

179B Court may determine amount payable on termination if lessor does not 199

179C One-off notice to be given the first time a direct debit default occurs 199

Subdivision C—Enforcement of consumer leases 200

179D Requirements to be met before lessor can enforce consumer lease against defaulting lessee 200

179E Defaults may be remedied 202

179F Effect of hardship notices on enforcement 203

179G Requirements to be met before lessor can enforce an acceleration clause 204

Subdivision D—Postponement of enforcement proceedings 205

179H Postponement of exercise of rights 205

179J Effect of negotiated postponement 206

179K Postponement by court 207

179L Lessor may apply for variation of postponement order 207

Subdivision E—Enforcement procedures for goods hired under a consumer lease 208

179M Information as to location of goods hired under a consumer lease 208

179N Entry to residential property to take possession of goods 208

179P Court may order entry 209

179Q Order for possession 209

Subdivision F—Enforcement expenses 209

179R Recovery of enforcement expenses 209

Division 9—Linked lessors and tied consumer leases 211

Subdivision A—Interpretation and application 211

179S Linked lessors and tied consumer leases 211

Authorised Version C2021C00117 registered 17/02/2021

Subdivision B—Liability of lessors for suppliers' misrepresentations 212
179T Lessor liable for supplier's misrepresentations about hired goods ... 212
Division 10—Conduct relating to consumer leases 213
179U False or misleading representations ... 213
179V Harassment ... 213
Division 11—Other Code provisions applicable to consumer leases 215
179W Application of certain Code provisions to consumer leases ... 215
Part 12—Miscellaneous 216
Division 1—Tolerances and assumptions 216
180 Tolerances and assumptions relating to information ... 216
181 Tolerances relating to contracts and other documents ... 217
182 Regulations ... 218
Division 2—Documentary provisions 219
183 Form of notices ... 219
184 Legibility and language ... 219
185 Copies of contracts and other documents ... 220
185A Records of nominations of persons to occupy reverse mortgaged properties ... 221
186 Signing of documents ... 221
187 Electronic transactions and documents ... 221
Division 3—General provisions 223
188 Assignment by credit provider ... 223
189 Assignment by debtor, mortgagor or guarantor ... 223
190 Appropriation of payments ... 223
191 Contracting out ... 224
192 Indemnities ... 225
193 Effect of noncompliance ... 225
194 Giving notice or other document ... 225
195 Manner of giving notice or other document ... 227
196 Date of notice or other document ... 228
197 Extensions of time ... 229
198 Orders of court ... 229
199 Conduct of agents and related matters ... 229

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Provisions relating to offences 231
200 Offences by officers, agents or employees 231
201 Offences by corporations 231
202 Limitations 231
203 Application of section 4K of the *Crimes Act 1914* 232
Division 5—Exemptions from this Code 233
203A Exemptions by ASIC 233
203B Exemptions by the regulations 233
Part 13—Principal definitions 234
204 Principal definitions 234
Part 14—Miscellaneous provisions relating to interpretation 249
Division 1—Preliminary 249
205 Displacement of Part by contrary intention 249
Division 2—General 250
207 References to particular Acts and to enactments 250
208 Compliance with forms 250
Division 3—Terms and references 251
209 Provisions relating to defined terms and gender and number 251
210 Meaning of *may* and *must* etc. 251
211 Effect of express references to bodies corporate and individuals 251
212 Reference to certain provisions of Code 252
213 Reference to provisions of this Code or an Act is inclusive 252
Division 4—Functions and powers 254
214 Power to make instrument or decision includes power to amend or repeal 254
215 Matters for which statutory instruments may make provision 254
216 Presumption of validity and power to make 255
217 Exercise of powers between enactment and commencement 256
Division 5—Distance, time and age 259
218 Matters relating to distance, time and age 259
Endnotes 260
Endnote 1—About the endnotes 260
Endnote 2—Abbreviation key 262

Authorised Version C2021C00117 registered 17/02/2021

Endnote 3—Legislation history 263
Endnote 4—Amendment history 268

Authorised Version C2021C00117 registered 17/02/2021

Chapter 7—Miscellaneous

Part 7-1—Miscellaneous

Division 1—Introduction

323 Guide to this Part

This Part deals with miscellaneous matters.

Division 2 deals with when a person will be liable for the conduct of others (usually the person's employee or agent).

Division 3 provides for AAT review of ASIC's decisions.

Division 4 provides for regulations to be made.

Division 5 has other miscellaneous provisions (such as Ministerial delegations).

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Liability of persons for conduct of their agents etc.

324 Liability for bodies corporate for conduct of their agents, employees etc.

Liability of bodies corporate

(1) Any conduct engaged in on behalf of a body corporate:

(a) by a director, employee or agent (an ***official***) of the body within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an official of the body, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act (other than the National Credit Code), to have been engaged in also by the body.

(2) Any conduct engaged in by a person (for example, the giving of money) in relation to:

(a) an official of the body acting within the scope of his or her actual or apparent authority; or

(b) any other person acting at the direction or with the consent or agreement (whether express or implied) of an official of the body, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act (other than the National Credit Code), to have been engaged in also in relation to the body.

Authorised Version C2021C00117 registered 17/02/2021

State of mind of a body corporate

(3) If, for the purposes of this Act (other than the National Credit Code), it is necessary to establish the state of mind of the body corporate in relation to particular conduct, it is enough to show:
  (a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and
  (b) that the person had that state of mind.

Disapplication of Part 2.5 of the Criminal Code

(4) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility, but this section instead deals with that for the purposes of this Act (other than the National Credit Code), and section 199 of the National Credit Code deals with that for the purpose of that Code.

325 Liability of persons (other than bodies corporate) for the conduct of their agents, employees etc.

Liability of principals

(1) Any conduct engaged in on behalf of a person (the ***principal***) who is not a body corporate:
  (a) by any of the following persons (an ***official***) within the scope of the person's actual or apparent authority:
    (i) an employee or agent of the principal;
    (ii) if the principal is a partnership—a partner;
    (iii) if the principal is the trustees of a trust—a trustee; or
  (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an official of the principal, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act (other than the National Credit Code), to have been engaged in also by the principal.

Authorised Version C2021C00117 registered 17/02/2021

(2) Any conduct engaged in by a person (for example, the giving of money) in relation to:

(a) an official of the principal acting within the scope of his or her actual or apparent authority; or

(b) any other person acting at the direction or with the consent or agreement (whether express or implied) of an official of the principal, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act (other than the National Credit Code), to have been engaged in also in relation to the principal.

State of mind of the principal

(3) If, for the purposes of this Act (other than the National Credit Code), it is necessary to establish the state of mind of the principal in relation to particular conduct, it is enough to show:

(a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and

(b) that the person had that state of mind.

326 Regulations for the purposes of this Division

The regulations may modify this Division for the purposes prescribed in the regulations.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Review of ASIC's decisions

327 Review by Administrative Appeals Tribunal of decisions by ASIC under this Act

(1) An application may be made to the Administrative Appeals Tribunal for review of a decision (within the meaning of the *Administrative Appeals Tribunal Act 1975*) made by ASIC under this Act other than:

(a) a decision of ASIC under subsection 109(3) (which deals with certain exemptions from, and modifications of, Chapter 2); or

(b) a decision of ASIC under subsection 163(3) (which deals with certain exemptions from, and modifications of, Chapter 3); or

(c) a decision of ASIC under section 238A or 238B (which deals with approved codes of conduct); or

(d) a decision of ASIC under Chapter 6 (which deals with compliance and enforcement), except for a decision of ASIC:

(i) to make an order under subsection 300(1) (which deals with orders relating to credit contracts, mortgages, guarantees or consumer leases); or

(ii) to make, or refuse to make, an order under subsection 301(1) (which deals with orders varying or revoking orders made under section 300); or

(iii) to make an order under subsection 301D(1) (which deals with product intervention orders); or

(iv) to amend a product intervention order under section 301J unless, under subsection 301J(6), the amendment must be by legislative instrument; or

(v) to revoke a product intervention order under section 301K unless, under subsection 301K(4), the revocation must be by legislative instrument; or

Authorised Version C2021C00117 registered 17/02/2021

(e) a decision of ASIC to make a determination under subsection 328(3) (which deals with determinations in relation to notice of reviewable decisions etc.); or

(f) a decision of ASIC under subsection 6(17) of the National Credit Code (which deals with the exclusion of provisions of credit from the application of the National Credit Code); or

(g) a decision of ASIC under subsection 171(6) of the National Credit Code (which deals with the exclusion of consumer leases from the application of the National Credit Code); or

(h) a decision of ASIC under subsection 203A(3) of the National Credit Code (which deals with certain exemptions from the National Credit Code); or

(i) a decision of ASIC under the regulations, unless the regulations specify that an application may be made to the Administrative Appeals Tribunal for review of the decision.

(2) Section 27A of the *Administrative Appeals Tribunal Act 1975* does not apply to the decision.

328 Notice of reviewable decision and review rights

(1) This section applies if ASIC makes a decision to which section 327 applies.

(2) Subject to subsection (3), ASIC must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:

(a) of the making of the decision; and

(b) of the person's right to have the decision reviewed by the Administrative Appeals Tribunal.

(3) Subsection (2) does not require ASIC to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if ASIC determines that giving notice to the person or persons is not warranted, having regard to:

(a) the cost of giving notice to the person or persons; and

Authorised Version C2021C00117 registered 17/02/2021

(b) the way in which the interests of the person or persons are affected by the decision.

(4) A determination made under subsection (3) is not a legislative instrument.

(5) A failure to comply with this section does not affect the validity of the decision.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Regulations

329 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

330 Regulations—where proceedings may be brought

The regulations may prescribe the location for where court proceedings in relation to the following must be brought:

(a) matters arising under this Act;

(b) credit contracts;

(c) mortgages;

(d) guarantees;

(e) consumer leases.

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Other miscellaneous provisions

332 Civil penalty provisions contravened or offences committed partly in and partly out of this jurisdiction

If:

(a) a person does or omits to do an act outside this jurisdiction; and

(b) if that person had done or omitted to do that act in this jurisdiction, the person would, by reason of also having done or omitted to do an act in this jurisdiction, have contravened a civil penalty provision or committed an offence against this Act;

the person contravenes that provision or commits that offence.

333 Contravention of Act does not generally affect validity of transactions etc.

(1) A failure to comply with any requirement of this Act does not affect the validity or enforceability of any transaction, contract, instrument or other arrangement.

(2) Subsection (1) has effect subject to any express provision to the contrary in:

(a) this Act (including regulations made under this Act); or

(b) regulations referred to in subsection (3).

(3) Regulations may provide that a failure to comply with a specified requirement referred to in subsection (1) has a specified effect on the validity or enforceability of a transaction, contract, instrument or arrangement.

334 Contracting out etc.

(1) A provision of a contract or other instrument by which a person seeks to avoid or modify the effect of this Act (other than the National Credit Code) is void.

Authorised Version C2021C00117 registered 17/02/2021

Note: A similar rule applies for the purposes of the National Credit Code (see section 191 of that Code).

(2) A provision of a contract or other instrument by which a person seeks to have:

(a) a debtor indemnify a credit provider; or

(b) a mortgagor indemnify a mortgagee; or

(c) a guarantor indemnify a beneficiary of a guarantee; or

(d) a lessee indemnify a lessor;

for any loss or liability arising under this Act (other than the National Credit Code) is void.

Note: A similar rule applies for the purposes of the National Credit Code (see section 191 of that Code).

(3) A person commits an offence if:

(a) the person is a credit provider, mortgagee, beneficiary of a guarantee or lessor; and

(b) the person is a party to a contract or other instrument; and

(c) the contract or other instrument is void under subsection (1) or (2).

Criminal penalty: 100 penalty units.

(4) Subsection (3) is an offence of strict liability:

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) Subsection (2) does not affect the operation of subsection 60(2) of the National Credit Code.

335 Indemnities

(1) An indemnity for any liability under this Act (other than the National Credit Code) is not void, and cannot be declared void, on the grounds of public policy, despite any rule of law to the contrary.

Note: A similar rule applies for the purposes of the National Credit Code (see section 192 of that Code).

Authorised Version C2021C00117 registered 17/02/2021

(2) The liabilities to which this section applies include the following:
  (a) a liability for any criminal or civil penalty incurred by any person under this Act (other than the National Credit Code);
  (b) a payment in settlement of a liability or alleged liability under this Act (other than the National Credit Code);
  (c) a liability under another indemnity for any liability under this Act (other than the National Credit Code).

(3) This section is subject to subsection 334(2).

(4) This section does not derogate from any other rights and remedies that exist apart from this section.

335A Review relating to small amount credit contracts

(1) The Minister must cause an independent review of the following matters to be undertaken as soon as practicable after 1 July 2015:
  (a) the operation of the following provisions:
    (i) subsections 117(1A), 118(3A), 123(3A), 130(1A), 131(3A) and 133(3A) of this Act;
    (ii) Division 7 of Part 3-1 of this Act;
    (iii) Part 3-2C of this Act;
    (iv) sections 23A, 31A, 31B, 39A and 39B of the National Credit Code;
  (b) whether a national database of small amount credit contracts should be established;
  (c) whether any additional provisions relating to small amount credit contracts should be included in this Act and/or the National Credit Code.

(2) The review must be undertaken by 3 persons who, in the Minister's opinion, possess appropriate qualifications to undertake the review.

(3) The persons who undertake the review must give the Minister a written report of the review.

Authorised Version C2021C00117 registered 17/02/2021

(4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

(5) The report is not a legislative instrument.

336 Acquisition of property

(1) A provision of this Act does not apply, and is taken never to have applied, to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms.

(2) In subsection (1), ***acquisition of property*** and ***just terms*** have the same meanings as in paragraph 51(xxxi) of the Constitution.

337 Minister may delegate prescribed functions and powers under this Act

(1) The Minister may, by signed instrument, delegate to:
(a) an ASIC member; or
(b) an ASIC staff member;
such of the Minister's functions and powers under this Act as are prescribed.

(1A) However, the Minister must not delegate the Minister's powers under section 301H, 301J, 301K or 301M (which deal with product intervention orders) to a person other than ASIC.

(2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

Authorised Version C2021C00117 registered 17/02/2021

Schedule 1—National Credit Code

Note: See section 3 of the National Credit Act.

Part 1—Preliminary

1 Short title

This Code may be cited as the *National Credit Code*.

2 Interpretation generally

(1) Part 13 contains the principal definitions of words and expressions used in this Code.

(2) Part 14 contains other miscellaneous provisions relating to the interpretation of this Code.

3 Meaning of *credit* and *amount of credit*

(1) For the purposes of this Code, ***credit*** is provided if under a contract:
  (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***).

(2) For the purposes of this Code, the ***amount of credit*** is the amount of the debt actually deferred. The ***amount of credit*** does not include:
  (a) any interest charge under the contract; or
  (b) any fee or charge:
    (i) that is to be or may be debited after credit is first provided under the contract; and
    (ii) that is not payable in connection with the making of the contract or the making of a mortgage or guarantee related to the contract.

Authorised Version C2021C00117 registered 17/02/2021

4 Meaning of *credit contract*

For the purposes of this Code, a ***credit contract*** is a contract under which credit is or may be provided, being the provision of credit to which this Code applies.

5 Provision of credit to which this Code applies

(1) This Code 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 precontractual obligations) is proposed to be entered into:

(a) the debtor is a natural person or a strata corporation; and

(b) the credit is provided or intended to be provided wholly or predominantly:

(i) for personal, domestic or household purposes; or

(ii) to purchase, renovate or improve residential property for investment purposes; or

(iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and

(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 carried on in this jurisdiction or as part of or incidentally to any other business of the credit provider carried on in this jurisdiction.

(2) If this Code applies to the provision of credit (and to the credit contract and related matters):

(a) this Code applies in relation to all transactions or acts under the contract whether or not they take place in this jurisdiction; and

(b) this Code continues to apply even though the credit provider ceases to carry on a business in this jurisdiction.

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

Authorised Version C2021C00117 registered 17/02/2021

(4) 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.

6 Provision of credit to which this Code does not apply

Short term credit

(1) This Code does not apply to the provision of credit if, under the contract:

(a) the provision of credit is limited to a total period that does not exceed 62 days; and

(b) the maximum amount of credit fees and charges that may be imposed or provided for does not exceed 5% of the amount of credit; and

(c) the maximum amount of interest charges that may be imposed or provided for does not exceed an amount (calculated as if the Code applied to the contract) equal to the amount payable if the annual percentage rate were 24% per annum.

(2) For the purposes of paragraph (1)(b), credit fees and charges imposed or provided for under the contract are taken to include the following, whether or not payable under the contract:

(a) a fee or charge payable by the debtor to any person for an introduction to the credit provider;

(b) a fee or charge payable by the debtor to any person for any service if the person has been introduced to the debtor by the credit provider;

(c) a fee or charge payable by the debtor to the credit provider for any service related to the provision of credit, other than a service mentioned in paragraph (b).

Authorised Version C2021C00117 registered 17/02/2021

(3) For the purposes of paragraphs (2)(a) and (b), it does not matter whether or not there is an association between the person and the credit provider.

Credit without express prior agreement

(4) This Code does not apply to the provision of credit if, before the credit was provided, there was no express agreement between the credit provider and the debtor for the provision of credit. For example, when a cheque account becomes overdrawn but there is no expressly agreed overdraft facility or when a savings account falls into debit.

Credit for which only account charge payable

(5) This Code 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. However, this Code applies if the charge 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.

Joint credit and debit facilities

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

Bill facilities

(7) This Code applies 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. However, it does not apply if:

(a) the credit is provided by an authorised deposit-taking institution (within the meaning of subsection 5(1) of the *Banking Act 1959*); or

Authorised Version C2021C00117 registered 17/02/2021

(b) the regulations provide that the Code does not apply to the provision of all or any credit arising out of such a facility.

Insurance premiums by instalments

(8) This Code 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.

Pawnbrokers

(9) This Code does not apply to the provision of credit on the security of pawned or pledged goods by a pawnbroker in the ordinary course of a pawnbroker's business (being a business which is being lawfully conducted by the pawnbroker) as long as it is the case that, if the debtor is in default, the pawnbroker's only recourse is against the goods provided as security for the provision of the credit. However, sections 76 to 81 (Court may reopen unjust transactions) apply to any such provision of credit.

Trustees of estates

(10) This Code 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. However, sections 76 to 81 (Court may reopen unjust transactions) apply to any such provision of credit.

Employee loans

(11) This Code (other than this Part, Part 4, Division 3 of Part 5, Divisions 4 and 5 of Part 7 and Parts 12, 13 and 14) does not apply to the provision of credit by an employer, or a related body corporate within the meaning of the *Corporations Act 2001* of an employer, to an employee or former employee (whether or not it is provided to the employee or former employee with another

Authorised Version C2021C00117 registered 17/02/2021

person). However, for a credit provider that provides credit to which this Code applies in the course of a business of providing credit to which this Code applies to employees or former employees and to others, this subsection applies only 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.

Margin loans

(12) This Code does not apply to the provision of credit by way of a margin loan (within the meaning of subsection 761EA(1) of the *Corporations Act 2001*).

Regulations may exclude credit

(13) The regulations may exclude, from the application of this Code, the provision of credit of a class specified in the regulations. 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.

ASIC may exclude credit

(14) ASIC may exclude, from the application of this Code, a provision of credit specified by ASIC.

(15) Without limiting subsection (14), ASIC may exclude a provision of credit if:
  (a) the amount of the credit exceeds, or may exceed, a specified amount; or
  (b) the credit is provided by a specified credit provider.

(16) An exemption under subsection (14) is not a legislative instrument.

(17) ASIC may, by legislative instrument, exclude from the application of this Code, the provision of credit of a class specified in the instrument.

Authorised Version C2021C00117 registered 17/02/2021

(18) Without limiting subsection (17), ASIC may exclude a provision of credit if:

(a) the amount of the credit exceeds, or may exceed, a specified amount; or

(b) the credit is provided by a specified credit provider, or a class of credit providers.

Definitions

(19) In this section:

fee or charge does not include a government fee, charge or duty of any kind.

security, of pawned or pledged goods, means security by way of bailment of the goods under which the title to the goods does not pass, conditionally or unconditionally, to the bailee.

7 Mortgages to which this Code applies

(1) This Code applies to a mortgage if:

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

(b) the mortgagor is a natural person or a strata corporation.

(2) If any such mortgage also secures other obligations, this Code applies to the mortgage to the extent only that it secures obligations under the credit contract or related guarantee.

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

8 Guarantees to which this Code applies

(1) This Code applies to a guarantee if:

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

(b) the guarantor is a natural person or a strata corporation.

Authorised Version C2021C00117 registered 17/02/2021

(2) If any such guarantee also guarantees other obligations, this Code 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 Code, a guarantee of a class specified in the regulations.

9 Goods leases with option to purchase to be regarded as sale by instalments

(1) For the purposes of this Code, 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 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.

Note: A contract includes a series of contracts, or contracts and arrangements (see Part 13).

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

(3) Accordingly, if because of subsection 5(1) the contract is a credit contract, this Code (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; and

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

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

(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,

Authorised Version C2021C00117 registered 17/02/2021

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; and

(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 at the earliest opportunity.

Note: Part 11 (Consumer leases) applies to the contracts specified in that Part for the hire of goods under which the hirer does not have a right or obligation to purchase the goods.

10 Deciding application of Code to particular contracts for the sale of land by instalments

(1) This section applies to an executory contract for the sale of land if:

(a) under the contract, the purchaser:

(i) is entitled to enter into possession of the land before becoming entitled to receive a conveyance or transfer of the land; and

(ii) is bound to make a payment or payments (other than a deposit or rent payment) to, or in accordance with the instructions of, the vendor without becoming entitled to

Authorised Version C2021C00117 registered 17/02/2021

receive a conveyance or transfer of the land in exchange for the payment or payments; and

(b) the amount payable to purchase the land under the contract exceeds the cash price of the land.

Note: ***Cash price*** is defined in Part 13 in terms of goods or services. ***Services*** is defined in Part 13 to include rights in relation to, and interests in, real property.

(2) For the purpose of deciding whether the contract is a credit contract and, if it is a credit contract, of applying this Code (including Part 6) to it:

(a) a debt is to be regarded as having been incurred, and credit provided, in the circumstances mentioned in subsection (1); and

(b) the debtor is the purchaser under the contract; and

(c) the credit provider is the vendor under the contract; and

(d) the charge for providing the credit is the amount by which the amount payable to purchase the land, together with any other amount payable under the contract other than outgoings for the land, exceeds the cash price of the land.

(3) This section does not affect the application of this Code to a contract that is, apart from this section, a credit contract.

(4) In this section:

deposit, in relation to a contract, means an amount:

(a) not exceeding 10% of the amount payable to purchase the land under the contract; and

(b) paid or payable in one or more amounts; and

(c) liable to be forfeited and retained by the vendor in the event of a breach of contract by the purchaser.

outgoings includes rates, water charges and house and contents insurance.

rent payment, under a contract, means a payment:

Authorised Version C2021C00117 registered 17/02/2021

(a) made by the purchaser to the vendor in exchange for possession of the land before becoming entitled to receive a conveyance or transfer of the land; and

(b) that is not deductible from the amount payable to purchase the land.

11 Deciding application of Code to particular contracts for the sale of goods by instalments

(1) This section applies to a contract for the sale of goods if the amount payable to purchase the goods under the contract:

(a) is payable by instalments; and

(b) exceeds the cash price of the goods.

(2) This section does not apply to a contract for the hire of goods even if the hirer has a right or obligation to purchase the goods.

(3) For the purpose of deciding whether the contract is a credit contract and, if it is a credit contract, of applying this Code (including Part 6) to it:

(a) a debt is to be regarded as having been incurred, and credit provided, in the circumstances mentioned in subsection (1); and

(b) the debtor is the person who is to make the payments; and

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

(d) the charge for providing the credit is the amount by which the amount payable to purchase the goods, together with any other amount payable under the contract, exceeds the cash price of the goods.

(4) This section does not affect the application of this Code to a contract that is, apart from this section, a credit contract.

Authorised Version C2021C00117 registered 17/02/2021

12 Deciding application of Code to particular contracts for the sale of goods by instalments under related contracts

(1) For the purpose of this section, a contract is a ***related contract*** to a contract for the sale of goods (the ***goods contract***) if:

(a) the sale of goods is financed, wholly or partly, by the provision of credit under the contract; and

(b) the credit provider under the contract is:

(i) the supplier of goods under the goods contract; or

(ii) a related body corporate within the meaning of the *Corporations Act 2001* of the supplier of the goods under the goods contract; and

(c) the amount payable under the contract is payable by instalments.

(2) For the purpose of deciding whether a related contract to a goods contract is a credit contract and, if it is a credit contract, of applying this Code (including Part 6) to it, the charge for providing the credit is the amount by which the amount payable to purchase the goods, together with any other amount payable under the related contract, exceeds the cash price of the goods.

(3) This section does not affect the application of this Code to a contract that is, apart from this section, a credit contract.

13 Presumptions relating to application of Code

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

(2) It is presumed for the purposes of this Code that credit is not provided or intended to be provided under a contract wholly or predominantly for any or all of the following purposes (a ***Code purpose***):

(a) for personal, domestic or household purposes;

Authorised Version C2021C00117 registered 17/02/2021

(b) to purchase, renovate or improve residential property for investment purposes;

(c) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes;

if the debtor declares, before entering the contract, that the credit is to be applied wholly or predominantly for a purpose that is not a Code purpose, unless the contrary is established.

(3) However, the declaration is ineffective if, when the declaration was made, the credit provider or a person (the ***prescribed person***) of a kind prescribed by the regulations:

(a) knew, or had reason to believe; or

(b) would have known, or had reason to believe, if the credit provider or prescribed person had made reasonable inquiries about the purpose for which the credit was provided, or intended to be provided, under the contract;

that the credit was in fact to be applied wholly or predominantly for a Code purpose.

(4) If the declaration is ineffective under subsection (3), paragraph 5(1)(b) is taken to be satisfied in relation to the contract.

(5) 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.

(6) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct induces a debtor to make a declaration under this section that is false or misleading in a material particular; and

(c) the declaration is false or misleading in a material particular.

Criminal penalty: 2 years imprisonment.

(7) Strict liability applies to paragraph (6)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

13A Reverse mortgages

(1) For the purposes of this Code, an arrangement is a ***reverse mortgage*** if the arrangement involves a credit contract, except a bridging finance contract, and a mortgage over a dwelling or land securing a debtor's obligations under the contract and either:

(a) the conditions in subsections (2) and (3) are met; or

(b) the arrangement is of a kind declared by ASIC under subsection (4) and is made on or after the commencement of that declaration.

Conditions

(2) The first condition is that the debtor's total liability under the credit contract or mortgage may exceed (to a limited or unlimited extent) the maximum amount of credit that may be provided under the contract without the debtor being obliged to reduce that liability to or below that maximum amount.

Note: The debtor's total liability can exceed the maximum amount of credit because interest and some other fees and charges are not included in an amount of credit: see subsection 3(2).

(3) The second condition is that, if the regulations prescribe any prerequisites for the arrangement to be a reverse mortgage, those prerequisites are met.

Declarations by ASIC

(4) ASIC may by legislative instrument declare specified kinds of arrangements involving a credit contract and a mortgage over a dwelling or land securing a debtor's obligations under the contract to be reverse mortgages.

Authorised Version C2021C00117 registered 17/02/2021

Part 2—Credit contracts

Division 1—Negotiating and making credit contracts

14 Credit contract to be in form of written contract document

(1) 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 by the debtor in accordance with the terms of the offer.

(2) An offer may be accepted by the debtor for the purposes of paragraph (1)(b):

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

(b) by any other act of the debtor or of any such authorised person that satisfies the conditions of the offer and constitutes an acceptance of the offer at law.

(3) The credit provider, or a person associated with the credit provider, may not be authorised by the debtor for the purposes of subsection (2). However, this subsection does not prevent the debtor authorising the credit provider to debit the debtor's account.

(4) In the case of a contract document consisting of more than one document, it is sufficient compliance with this section if one of the documents is duly signed and the other documents are referred to in the signed document.

15 Other forms of contract

(1) The regulations may authorise other ways of making a credit contract that do not involve a written document.

Authorised Version C2021C00117 registered 17/02/2021

(2) In that case, the provisions of this Division apply with such modifications as are prescribed by the regulations.

16 Precontractual disclosure

(1) A credit provider must not enter into a credit contract unless the credit provider has given the debtor:
  (a) a precontractual statement setting out the matters required by section 17 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 statutory obligations.

(2) Those statements 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. If the credit provider does so, the comparison rate must be calculated as prescribed by the regulations and be accompanied by the warnings set out in the regulations.

(4) The precontractual statement must contain the financial information specified by the regulations in the form prescribed by the regulations.

(5) The precontractual statement may be the proposed contract document or be a separate document or documents.

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

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

Authorised Version C2021C00117 registered 17/02/2021

17 Matters that must be in contract document

(1) The contract document must contain the following matters.

Credit provider's name

(2) The contract document must contain the credit provider's name.

Amount of credit

(3) The contract document must contain:

(a) if the amount of credit to be provided is ascertainable:

(i) that amount; and

(ii) the persons, bodies or agents (including the credit provider) to whom it is to be paid and the amounts payable to each of them, but only if both the person, body or agent and the amount are ascertainable; and

(b) if the amount of the credit to be provided is not ascertainable—the maximum amount of credit agreed to be provided, or the credit limit under the contract, if any; and

(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 cash price or of the goods and their cash price.

The requirement under paragraph (c) is in addition to, and does not limit, the requirement under paragraph (a) or (b).

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Annual percentage rate or rates

(4) In the case of a credit contract other than a small amount credit contract, the contract document must contain:

(a) the annual percentage rate or rates under the contract; and

(b) if there is more than one rate, how each rate applies; and

(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; and

Authorised Version C2021C00117 registered 17/02/2021

(ii) the margin or margins (if any) above or below the reference rate to be applied to determine the annual percentage rate or rates; and

(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.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Calculation of interest charges

(5) In the case of a credit contract other than a small amount credit contract, the contract document must contain 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.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Total amount of interest charges payable

(6) In the case of a credit contract other than a small amount credit contract, the contract document must contain the total amount of interest charges payable under the contract, if ascertainable (but only if the contract would, on the assumptions under sections 180 and 182, be paid out within 7 years of the date on which credit is first provided under the contract).

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Repayments

(7) The contract document must contain:

(a) if more than one repayment is to be made:

(i) the amount of the repayments or the method of calculating the amount; and

(ii) if ascertainable, the number of the repayments; and

Authorised Version C2021C00117 registered 17/02/2021

(iii) if ascertainable, the total amount of the repayments, but only if the contract would, on the assumptions under sections 180 and 182, be paid out within 7 years of the date on which credit is first provided under the contract; and

(iv) when the first repayment is to be paid, if ascertainable, and the frequency of payment of repayments; and

(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.

Paragraph (a) does not apply to minimum repayments under a continuing credit contract.

Credit fees and charges

(8) The contract document must contain:

(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; and

(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; and

(c) the total amount of credit fees and charges payable under the contract to the extent that it is ascertainable.

Note: A penalty may be imposed for contravention of a key requirement in paragraph (a) or (b), but only in respect of retained credit fees and charges: see Part 6.

Changes affecting interest and credit fees and charges

(9) 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, the contract document must contain a statement or statements to that effect and of the means by which the debtor will be informed of the change or the new fee or charge.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Authorised Version C2021C00117 registered 17/02/2021

Statements of account

(10) The contract document must contain 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).

Default rate

(11) The contract document must contain:

(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; and

(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; and

(ii) the margin or margins (if any) above or below the reference rate to be applied to determine the default rate; and

(iii) when and where the reference rate is published or, if it is not published, how the debtor may ascertain the rate; and

(iv) the current default rate.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Enforcement expenses

(12) The contract document must contain a statement that enforcement expenses may become payable under the credit contract or mortgage (if any) in the event of a breach.

Mortgage or guarantee

(13) The contract document must contain:

Authorised Version C2021C00117 registered 17/02/2021

(a) if any mortgage or guarantee is to be or has been taken by the credit provider—a statement to that effect; and
(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 to which it is ascertainable.

Commission

(14) 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, the contract document must contain:
(a) a statement of that fact; and
(b) the person by whom the commission is payable; and
(c) the person to whom the commission is payable; and
(d) the amount if ascertainable.

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.

Insurance financed by contract

(15) 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, the contract document must contain:
(a) the name of the insurer; and
(b) the amount payable to the insurer or, if it is not ascertainable, how it is calculated; and
(c) the kind of insurance and any other particulars that may be 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.

Authorised Version C2021C00117 registered 17/02/2021

In the case of consumer credit insurance that includes a contract of general insurance within the meaning of the *Insurance Contracts Act 1984*:

(e) it is sufficient compliance with paragraphs (a) and (b) if the contract document contains the name of the general insurer and the total amount payable to the insurers (or, if it is not ascertainable, how it is calculated); and

(f) it is sufficient compliance with paragraph (d) relating to the amount of commission if the contract document contains the total amount of commission (expressed as a monetary amount or as a proportion of the premium) to be paid by the insurers.

Note: A penalty may be imposed for contravention of a key requirement in paragraph (a) or (b): see Part 6.

Provisions for person other than debtor to occupy reverse mortgaged property

(15A) If the credit contract for a reverse mortgage is to make provision for a person other than the debtor to occupy the reverse mortgaged property, the contract document must contain provisions that have the following effect (whether or not the document also contains other provisions relating to such occupation by such a person):

(a) the debtor may at any time (before, when or after the contract is made):

(i) nominate to the credit provider a person who is to be allowed to occupy the property (whether alone or with other persons); and

(ii) revoke such a nomination by notice given to the credit provider;

(b) while a nomination described in paragraph (a) is in force, the nominated person has the same rights (against the credit provider) to occupy the property as the debtor has or would have apart from the death of the debtor or vacation of the property by the debtor.

Note: Other provisions contained in the contract document may, for example, limit the kinds of persons whom the debtor may nominate to

Authorised Version C2021C00117 registered 17/02/2021

the credit provider as persons who are to be allowed to occupy the property.

Other information

(16) The contract document must contain any information or warning required by the regulations.

Note: Sections 180 to 182 set out the tolerances and assumptions applicable to matters required to be disclosed.

18 Form and expression of contract document

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.

18A Provisions that must not be included in credit contract for reverse mortgage

(1) A credit provider must not enter into a credit contract for a reverse mortgage that provides a basis for beginning enforcement proceedings relating to the contract for an event described in subsection (3).

(2) A credit provider must not agree to change, or unilaterally change, a credit contract for a reverse mortgage so that it provides a basis for beginning enforcement proceedings relating to the contract for an event described in subsection (3).

(3) For the purposes of subsections (1) and (2), the events are as follows:

(a) the debtor failing to inform the credit provider that another person occupies the reverse mortgaged property;

(b) the debtor failing, when the debtor occupies the reverse mortgaged property, to give the credit provider evidence that the debtor, or another person nominated by the debtor to the credit provider, occupies or occupied the reverse mortgaged property;

Authorised Version C2021C00117 registered 17/02/2021

(c) the debtor leaving the reverse mortgaged property unoccupied while it is the debtor's principal place of residence;

(d) the debtor failing to pay a cost to a person other than the credit provider within 3 years after the payment became due;

(e) the debtor failing to comply with a provision of the credit contract if the contract does not make it clear how the debtor is to comply with the provision;

(f) the debtor breaching another credit contract with the credit provider;

(g) an event that involves an act or omission by the debtor and is prescribed by the regulations.

18B Disclosure if credit contract for reverse mortgage does not protect tenancy of person other than debtor

(1) This section applies if a proposed credit contract for a reverse mortgage does not include a provision (a ***tenancy protection provision***) for a person other than the debtor to have a right against the credit provider to occupy the reverse mortgaged property.

(2) A person must not provide a credit service relating to the contract unless the person has told the debtor, in writing in the form (if any) prescribed by the regulations, that the contract does not include a tenancy protection provision.

Criminal penalty: 50 penalty units.

(3) Subsection (2) does not apply if the person is or will be the credit provider under the contract.

(4) The credit provider must not enter into the contract unless the credit provider has told the debtor, in writing in the form (if any) prescribed by the regulations, that the contract does not include a tenancy protection provision.

Criminal penalty: 50 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

(5) An offence against subsection (2) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

18C Independent legal advice before entry into credit contract for reverse mortgage

(1) The regulations may regulate or prohibit the entry by a credit provider into a credit contract for a reverse mortgage if the debtor has not obtained legal advice, in accordance with the regulations, about the contract or reverse mortgage.

(2) The regulations may provide for offences and civil penalties for contraventions of regulations made for the purposes of subsection (1).

(3) The penalties for offences described in subsection (2) must not be more than 50 penalty units for an individual or 500 penalty units for a body corporate.

(4) The civil penalty for a contravention of a regulation made for the purposes of subsection (1) by an individual is 5,000 penalty units. However, section 167B of the National Credit Act applies in the same way as it would apply if the regulation contravened were a civil penalty provision under that Act.

19 Alteration of contract document

(1) An alteration of (including an addition to) a new contract document by the credit provider after it is signed by the debtor is ineffective unless the debtor has agreed in writing to the alteration.

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

Authorised Version C2021C00117 registered 17/02/2021

20 Copy of contract for debtor

(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 in the form in which it was made to the debtor.

(3) Subsection (2) does not apply if the credit provider has previously given the debtor a copy of the contract document to keep.

21 When debtor may terminate contract

(1) Although a credit contract has been made, the debtor may nevertheless, by written notice to the credit provider, terminate the contract unless:

(a) any credit has been obtained under the contract; or

(b) a card or other means of obtaining credit provided to the debtor by the credit provider has been used to acquire goods or services for which credit is to be advanced under the contract.

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

22 Offence for noncompliance

(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.

Criminal penalty: 100 penalty units.

(2) Subsection (1) is an offence of strict liability.

Authorised Version C2021C00117 registered 17/02/2021

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply to a contravention of a requirement of section 18B.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Debtor's monetary obligations

23 Prohibited monetary obligations—general

(1) A credit contract (other than a small amount credit contract) must not impose a monetary liability on the debtor:

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

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

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

Note 1: A penalty may be imposed for contravention of a key requirement in this subsection, but only at the time the credit contract is entered into: see Part 6.

Note 2: This subsection also applies to liabilities imposed contrary to section 133BI of the National Credit Act: see subsection (7) of that section.

Civil effect

(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. If an amount that is prohibited by subsection (1) is paid, it 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.

Civil effect

(4) If an amount that is prohibited by subsection (3) is paid, it may be recovered.

23A Prohibited monetary obligations—small amount credit contracts

(1) A small amount credit contract must not impose a monetary liability on the debtor:

Authorised Version C2021C00117 registered 17/02/2021

(a) in respect of an interest charge (including a default rate of interest) under the contract; or
(b) in respect of a fee or charge prohibited by this Code; or
(c) in respect of an amount of a fee or charge exceeding the amount that may be charged consistently with this Code.

(2) If a provision of a small amount credit contract imposes a monetary liability prohibited by subsection (1) then:
(a) each provision (the ***void provisions***) of the contract that imposes a monetary liability of a kind referred to in that subsection (whether or not the liability is imposed consistently with this Code) is void to the extent that the provision relates to the liability; and
(b) the debtor may recover as a debt due to the debtor any amount paid to the credit provider under the void provisions to the extent that the amount relates to the liability.

24 Offences related to prohibited monetary obligations—credit providers

(1) A credit provider must not:
(a) enter into a credit contract on terms imposing a monetary liability prohibited by subsection 23(1); or
(b) require or accept payment of an amount in respect of a monetary liability that cannot be imposed consistently with this Code.

Civil penalty: 5,000 penalty units.

(1A) A credit provider must not:
(a) enter into a small amount credit contract on terms imposing a monetary liability prohibited by subsection 23A(1); or
(b) require or accept payment of an amount in respect of a monetary liability that cannot be imposed consistently with this Code.

Civil penalty: 5,000 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

Offence

(2) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1) or (1A); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

24A Offences related to prohibited monetary obligations—credit assistance providers

(1) A person must not provide credit assistance to a consumer by:
  (a) suggesting that the consumer apply for a particular small amount credit contract with a particular credit provider; or
  (b) assisting the consumer to apply for a particular small amount credit contract with a particular credit provider;

if the person knows, or is reckless as to whether, the contract will contravene subsection 23A(1).

Criminal penalty: 50 penalty units.

(2) If a person provides credit assistance to a consumer that is prohibited by subsection (1):
  (a) the consumer is not liable (and is taken never to have been liable) to pay any fees or charges to the person in relation to:
    (i) the credit assistance; or
    (ii) any other services provided by the person in connection with the credit assistance; and
  (b) the consumer may recover as a debt due to the consumer the amount of any such fees or charges paid by the consumer to the person.

25 Loan to be in money or equivalent

(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

Authorised Version C2021C00117 registered 17/02/2021

payment is in cash or money's worth and is made in full without deducting an amount for interest charges under the contract.

Criminal penalty: 100 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) 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.

26 Early payments and crediting of payments

(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.

Criminal penalty: 100 penalty units.

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

Criminal penalty: 100 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) Despite subsection (2), a credit provider is not required to credit a payment under a credit contract before it is payable under the contract if the contract prohibits its early payment and:

(a) the credit provider informs the debtor, as soon as practicable after the credit provider becomes aware of the payment, that it will not be credited to the debtor (or that any credit will be reversed) until it becomes payable under the contract, and the debtor elects to leave the payment with the credit provider; or

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

Authorised Version C2021C00117 registered 17/02/2021

(c) the credit provider refunds the payment to the debtor.

(5) A credit contract may not, under this section, prohibit the paying out of the contract at any time under section 82.

(6) A credit contract for a reverse mortgage may not prohibit an early payment that:
(a) is made in the circumstances described in paragraph 86A(1)(a); and
(b) is of the amount described in paragraph 86A(1)(b).

26A Regulations about residential investment property

The regulations may provide that section 25 or 26 applies in relation to a provision of credit covered by subparagraph 5(1)(b)(ii) or (iii) as if specified provisions were omitted, modified or varied as specified in the regulations.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Interest charges

27 Definitions relating to interest

(1) In this Code:

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 30.

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 or any other purposes under the contract, when a day ends. Different times of the day may be specified for different purposes.

27A Application of this Division

This Division does not apply to a small amount credit contract.

28 Limit on interest charges

(1) The maximum amount of an interest charge that may be imposed or provided for under a credit contract is:

(a) where 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; or

Authorised Version C2021C00117 registered 17/02/2021

(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) However, 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. The regulations may provide for the calculation of unpaid daily balances in these circumstances.

(3) This section does not prevent the imposition of a default rate of interest permitted by section 30.

29 Early debit or payment of interest charges prohibited

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

(2) A credit contract may provide for an interest charge to become payable or be debited 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.

(4) This section does not apply to the debit of an interest charge under a credit contract before the end of the period to which the charge applies if:

(a) the charge is debited on the last day of the period; and

(b) the amount debited is not treated by the credit provider as part of the unpaid daily balance for that day for the purpose of calculating interest charges under the contract.

Authorised Version C2021C00117 registered 17/02/2021

30 Default interest

(1) 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) However, 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.

30A Regulations about residential investment property

The regulations may provide that this Division applies in relation to a provision of credit covered by subparagraph 5(1)(b)(ii) or (iii) as if specified provisions were omitted, modified or varied as specified in the regulations.

30B Regulations about credit card contracts

(1) The regulations may make provision in relation to any of the following matters relating to interest charges under credit card contracts:

(a) the day from which a daily percentage rate may be applied, and the balance (or the part of a balance) to which it may be applied;

(b) how matters relating to interest charges may be described in:

(i) credit card contracts; and

(ii) other documents or advertisements published or broadcast by or on behalf of licensees who are credit providers under credit card contracts.

(2) Regulations made for the purpose of subsection (1) may:

(a) provide for offences against the regulations; and

(b) provide for civil penalties for contraventions of the regulations.

Authorised Version C2021C00117 registered 17/02/2021

(3) The penalties for offences referred to in paragraph (2)(a) must not be more than 50 penalty units for an individual or 500 penalty units for a body corporate.

(4) The civil penalty for a contravention of a regulation made for the purposes of subsection (1) by an individual is 5,000 penalty units. However, section 167B of the National Credit Act applies in the same way as it would apply if the regulation contravened were a civil penalty provision under that Act.

(5) This Division has effect subject to regulations made for the purpose of subsection (1).

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Fees and charges

31 Prohibited credit fees or charges

(1) The regulations may specify credit fees or charges or classes of credit fees or charges that are prohibited for the purposes of this Code.

(2) Subsection (1) does not apply to a small amount credit contract.

31A Restrictions on fees and charges for small amount credit contracts

(1) A small amount credit contract must not impose or provide for fees and charges if the fees and charges are not of the following kind:

(a) a permitted establishment fee;

(b) a fee or charge (a ***permitted monthly fee***) that is payable on a monthly basis starting on the day the contract is entered into;

(c) a fee or charge that is payable in the event of a default in payment under the contract;

(d) a government fee, charge or duty payable in relation to the contract.

Note: See section 39B for the maximum amount that may be recovered by the credit provider if there is a default in payment under the contract.

(1A) Despite subsection (1), a small amount credit contract must not impose or provide for a permitted establishment fee if any of the amount of credit to be provided under the contract is to refinance any of the amount of credit provided to the debtor under another small amount credit contract.

Permitted establishment fee

(2) A ***permitted establishment fee*** is a fee or charge the amount of which must not exceed 20% of the adjusted credit amount in relation to the small amount credit contract.

Authorised Version C2021C00117 registered 17/02/2021

Maximum amount of permitted monthly fee

(3) The amount of a permitted monthly fee that may be imposed or provided for under a small amount credit contract must not exceed 4% of the adjusted credit amount in relation to the contract.

31B Credit provider or prescribed person must not require or accept payment of a fee or charge in relation to a small amount credit contract etc.

(1) A credit provider, or a person prescribed by the regulations, must not require or accept payment by the debtor of a fee or charge in relation to:

(a) a small amount credit contract; or

(b) the provision of the amount of credit under a small amount credit contract; or

(c) a thing that is connected with a small amount credit contract or the provision of the amount of credit under such a contract.

Criminal penalty: 100 penalty units.

(2) Subsection (1) does not apply if the fee or charge is:

(a) a fee or charge that may be imposed or provided for by the small amount credit contract under section 31A; or

(b) a fee or charge prescribed by the regulations.

(3) If a credit provider or person contravenes subsection (1):

(a) the debtor is not liable (and is taken never to have been liable) to make the payment to the credit provider or person; and

(b) the debtor may recover as a debt due to the debtor the amount of any payment made by the debtor to the credit provider or person.

Authorised Version C2021C00117 registered 17/02/2021

32 Fees or charges in relation to third parties

When this section applies

(1) This section applies if a fee or charge is payable by a debtor to the credit provider for an amount (the ***third party amount***) payable or paid by the credit provider to another person, body or agency.

Third party amount ascertainable at time of debtor payment

(2) If, when the fee or charge is paid by the debtor to the credit provider, the third party amount is ascertainable, then the amount of the fee or charge must not exceed the third party amount.

Third party amount not ascertainable at time of debtor payment

(3) If:

(a) when the fee or charge is paid by the debtor to the credit provider, the third party amount is not ascertainable; and

(b) after the fee or charge is paid, the credit provider ascertains the third party amount; and

(c) the third party amount is less than the amount of the fee or charge paid;

then the credit provider must refund or credit the difference to the debtor.

Determining third party amount

(4) The third party amount is to be determined by:

(a) taking into account any discount, rebate or other allowance that is received or receivable by the credit provider or a related body corporate (within the meaning of the *Corporations Act 2001*); and

(b) disregarding any rebate on tax payable by the credit provider or a related body corporate (within the meaning of that Act).

Authorised Version C2021C00117 registered 17/02/2021

Division 4A—Annual cost rate of certain credit contracts

32A Prohibitions relating to credit contracts if the annual cost rate exceeds 48%

Entering into a credit contract

(1) A credit provider must not enter into a credit contract if the annual cost rate of the contract exceeds 48%.

Criminal penalty: 50 penalty units.

Provision of credit assistance

(2) A person must not provide credit assistance to a consumer by suggesting that the consumer apply, or assisting the consumer to apply, for a particular credit contract with a particular credit provider if the person knows, or is reckless as to whether, the annual cost rate of the contract exceeds 48%.

Criminal penalty: 50 penalty units.

(3) If a person provides credit assistance to a consumer that is prohibited by subsection (2):
  (a) the consumer is not liable (and is taken never to have been liable) to pay any fees or charges to the person in relation to:
    (i) the credit assistance; or
    (ii) any other services provided by the person in connection with the credit assistance; and
  (b) the consumer may recover as a debt due to the consumer the amount of any such fees or charges paid by the consumer to the person.

Application

(4) This section does not apply if:
  (a) the credit provider is an ADI; or

Authorised Version C2021C00117 registered 17/02/2021

(b) the credit contract is a small amount credit contract or bridging finance contract.

32AA Prohibition relating to the annual cost rate of credit contracts—later increases of the annual percentage rate etc.

(1) If:

(a) a credit provider is a party to a credit contract (other than a small amount credit contract or bridging finance contract); and

(b) the credit provider is not an ADI; and

(c) either or both of the following things (the ***varied matters***) occur after the contract is entered into:

(i) the annual percentage rate under the contract increases;

(ii) an amount referred to in subsection 32B(3) that is prescribed by the regulations increases;

the credit provider contravenes this subsection if the annual cost rate of the contract would have exceeded 48% at the time the contract was entered into if that or those varied matters had been taken into account at that time for the purposes of calculating the annual cost rate of the contract.

(2) A credit provider must not contravene subsection (1).

Criminal penalty: 50 penalty units.

32B Calculation of annual cost rate

(1) The annual cost rate of a credit contract must be calculated as a nominal rate per annum, together with the compounding frequency, using the formula:

$n \times r \times 100\%$

where:

Authorised Version C2021C00117 registered 17/02/2021

n is the number of repayments per annum to be made under the credit contract (annualised if the term of the contract is less than 12 months), except that:

(a) if repayments are to be made weekly—***n*** is 52.18; and

(b) if repayments are to be made fortnightly—***n*** is 26.09; and

(c) if the contract does not provide for a constant interval between repayments—***n*** is to be derived from the interval selected for the purposes of the definition of ***j*** in subsection (2).

r is the solution of the equation specified in subsection (2).

(2) The equation for the purposes of the definition of ***r*** in subsection (1) is:

$$\sum_{j=0}^{t} \frac{A_j}{(1+r)^j} = \sum_{j=0}^{t} \frac{R_j + C_j}{(1+r)^j} - F$$

where:

A_j is the amount of credit to be provided under the credit contract at time ***j*** (the value of ***j*** for the provision of the first amount of credit is taken to be zero).

C_j is the credit cost amount (if any) for the credit contract that is payable by the debtor at time ***j*** in addition to the repayments R_j.

F is:

(a) if the credit contract is a medium amount credit contract—$400 (or such other amount as is prescribed by the regulations); or

(b) if the credit contract is not a medium amount credit contract and an amount is prescribed by the regulations in relation to the contract—that amount; or

(c) otherwise—$0.

j is the time, measured as a multiple (not necessarily integral) of:

Authorised Version C2021C00117 registered 17/02/2021

(a) if the credit contract does not provide for a constant interval between contractual repayments—an interval of any kind selected by the credit provider as the unit of time; or

(b) otherwise—the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract.

R_j is the repayment to be made at time ***j***.

t is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected), that will elapse between:

(a) the time when the first amount of credit is provided under the credit contract; and

(b) the time when the last repayment is to be made under the contract.

Credit cost amount

(3) The ***credit cost amount*** for the credit contract is the sum of the following amounts if they are ascertainable:

(a) the amount of credit fees and charges payable in relation to the contract;

(b) the amount of a fee or charge payable by the debtor (whether or not payable under the contract) to:

(i) any person (whether or not associated with the credit provider) for an introduction to the credit provider; or

(ii) any person (whether or not associated with the credit provider) for any service if the person has been introduced to the debtor by the credit provider; or

(iii) the credit provider for any service relating to the provision of credit, other than a service referred to in subparagraph (ii);

(c) any other amount prescribed by the regulations.

(4) For the purposes of subsection (3), the amounts referred to in that subsection:

Authorised Version C2021C00117 registered 17/02/2021

(a) include an amount that is payable even if the credit is not provided; but

(b) do not include an amount of a government fee, charge or duty payable in relation to the credit contract.

(4A) Despite subsection (3), the regulations may provide that a specified amount, or an amount included in a specified class, is not an amount referred to in paragraph (3)(a) or (b).

Tolerances and assumptions etc.

(5) The annual cost rate must be correct to at least the nearest one hundredth of 1% per annum.

(6) In calculating the annual cost rate, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.

Example: If repayments are to be made on a fixed day each month, it may be assumed that repayments will be made on that day each month even though the credit contract provides for payment on the preceding or succeeding business day when the due date is not a business day.

(7) The tolerances and assumptions under sections 180 to 182 apply to the calculation of the annual cost rate.

Continuing credit contracts

(8) If the credit contract is a continuing credit contract, the following assumptions also apply to the calculation of the annual cost rate of the contract:

(a) that the debtor has drawn down the maximum amount of credit that the credit provider has agreed to provide under the contract;

(b) that the debtor will pay the minimum repayments specified in the contract;

(c) if credit is provided in respect of payment by the credit provider to a third person in relation to goods or services or cash supplied by that third person to the debtor from time to

Authorised Version C2021C00117 registered 17/02/2021

time—that the debtor will not be supplied with any further goods or services or cash;

(d) if credit is provided in respect of cash supplied by the credit provider to the debtor from time to time—that the debtor will not be supplied with any further cash.

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Credit provider's obligation to account

33 Statements of account

(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.

Criminal penalty: 100 penalty units.

(2) The maximum period for a statement of account is:
- (a) in the case of a credit card contract—40 days; or
- (aa) in the case of a continuing credit contract for a reverse mortgage—12 months; or
- (b) in the case of any other continuing credit contract—40 days or such longer period, not exceeding 3 months, as is agreed by the credit provider and the debtor; or
- (ba) in the case of a reverse mortgage not involving a continuing credit contract—12 months; or
- (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; or
- (b) no amount has been debited or credited to the account during the statement period (other than debits for government charges, or duties, on receipts or withdrawals) and the amount outstanding is zero or below a level fixed by the regulations; or
- (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; or

Authorised Version C2021C00117 registered 17/02/2021

(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; or

(f) the debtor has died or is insolvent and the debtor's personal representative or trustee in bankruptcy has not requested a statement of account.

(4) A separate statement of account may, but need not, be given in respect of each or any number of the credit facilities provided under a credit contract.

(5) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

34 Information to be contained in statements of account

(1) A statement of account must contain the following matters.

Statement period

(2) A statement of account must contain the dates on which the statement period begins and ends.

Balances

(3) A statement of account must contain the opening and closing balances (indicating the amount owed by the debtor at the beginning and at the end of the statement period).

Authorised Version C2021C00117 registered 17/02/2021

Credit provided

(4) A statement of account must contain particulars of each amount of credit provided by the credit provider to the debtor during the statement period.

Identity of supplier

(5) In the case of a credit card contract, a statement of account must contain the identity of the supplier if the credit was provided for any cash, goods or services supplied by another person.

Interest charges

(6) In the case of a credit contract other than a small amount credit contract, a statement of account must contain:
  (a) the amount of the interest charge debited to the debtor's account during the statement period and when the interest was debited; and
  (b) the annual percentage rate or rates and, if required by Part 4, details of any change since the last statement period.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

Fees and charges

(7) A statement of account must contain particulars of any fees and charges debited to the debtor's account during the statement period.

Payments to or from account

(8) A statement of account must contain:
  (a) particulars of each amount paid by the debtor to the credit provider, or credited to the debtor, during the statement period; and
  (b) particulars of any amount transferred to or from the account to which the statement relates or to or from any other account maintained under or for the purposes of the credit contract.

Authorised Version C2021C00117 registered 17/02/2021

Amounts payable by debtor

(9) If a minimum amount is payable by the debtor under a continuing credit contract, a statement of account must contain a statement of the amount and the date by which it is due.

Insurance payments

(10) 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 statement of account must contain:

(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 Code).

In the case of consumer credit insurance that includes a contract of general insurance within the meaning of the *Insurance Contracts Act 1984*:

(c) it is sufficient compliance with paragraph (a) if the statement of account contains the name of the general insurer, the total amount payable to the insurers and the kind of insurance; and

(d) it is sufficient compliance with paragraph (b) if the statement of account contains the total amount of commission (expressed as a monetary amount or as a proportion of the premium) to be paid by the insurers.

Alterations

(11) A statement of account must contain any correction of information in a previous statement of account.

Authorised Version C2021C00117 registered 17/02/2021

Other

(12) A statement of account must contain any other information required by the regulations.

Note: Sections 180 to 182 set out the tolerances and assumptions applicable to matters required to be included in statements of accounts.

35 Opening balance must not exceed closing balance of previous statement

(1) The opening balance shown in each successive statement of account must not exceed the closing balance shown in the last statement of account.

Note: A penalty may be imposed for contravention of a key requirement in this section: see Part 6.

(2) However, if no statement of account was given for the previous period, the next statement of account required to be given by this Code may have an opening balance that exceeds the closing balance for the previous statement and must provide the particulars referred to in subsections 34(4) to (12) in relation to any immediately preceding periods for which statements were not given.

36 Statement of amount owing and other matters

(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 amounts credited or debited during a period specified in the request;

(c) any amounts currently overdue and the dates they became due;

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

Criminal penalty: 100 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

(2) The statement must be given:

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

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

(3) A statement under this section may be given orally but if the request for the statement is made in writing the statement must be given in writing.

(4) In the case of joint debtors or guarantors, the statement under this section need only be given to a debtor or guarantor who requests the statement and not, despite section 194, to each joint debtor or guarantor.

(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 given, given such a statement to the person requesting it.

(6) Except where otherwise ordered by the court on the application of the 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.

(7) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

37 Court may order statement to be provided

If a statement is not provided within the time required by this Division, the court may, on the application of the debtor or guarantor, order the credit provider to provide the statement or itself determine the amounts in relation to which the statement was sought.

Authorised Version C2021C00117 registered 17/02/2021

38 Disputed accounts

(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 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 the 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, the notice of dispute must be given to the credit provider on or before that date.

(4) In the case of any other credit contract for which a statement of account is given, the notice of dispute must be given to the credit provider within 30 days after the day the debtor receives the statement of account in which the amount, or part of that amount, is first shown.

(5) In the case of a credit contract in respect of which a statement of account need not be and is not given for the period to which the disputed liability relates, the notice of dispute must be given to the credit provider not later than 3 months after the day the contract ends.

(6) The credit provider must not begin enforcement proceedings on the basis of a default arising from the disputed liability until the period of 30 days, starting on the day the credit provider gives the written explanation or advice as to agreement, has expired.

Criminal penalty: 50 penalty units.

(7) A debtor or credit provider may apply to the court to have the court determine a 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.

Authorised Version C2021C00117 registered 17/02/2021

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

Criminal penalty: 50 penalty units.

(9) Subsections (6) and (8) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

39 Dating and adjustment of debits and credits in accounts

(1) For the purposes of this Code and the credit contract, a debit or a credit made by a credit provider to a debtor's account is taken to have been made, and has effect, on the date assigned to the debit or credit, not on the date on which it is processed.

(2) A credit provider may subsequently adjust debits or credits to a debtor's account, and the account balances, so as to accurately reflect the legal obligations of the debtor and the credit provider.

(3) However, subsections (1) and (2) do not permit a debit or a credit to be assigned a date other than the date on which it is processed, or the subsequent adjustment of a debit or a credit or account balance, if:

(a) the assignment or adjustment is not consistent with the credit contract; or

(b) the adjustment results in an interest charge that is more than the maximum amount permitted by the Code, as calculated on the basis of debits or credits to a debtor's account consistent with the credit contract; or

(c) the assignment or adjustment results in a contravention of section 26; or

(d) the assignment of the date on which an interest charge is taken to be debited results in a debit being taken to be done before a time permitted under this Code.

Authorised Version C2021C00117 registered 17/02/2021

(4) An adjustment by a credit provider under subsection (2) does not affect any liability of a credit provider under Part 6.

Authorised Version C2021C00117 registered 17/02/2021

Division 5A—Additional rules relating to small amount credit contracts

39A Limit on the application of amount of credit provided under a small amount credit contract

(1) No part of the amount of credit provided under a small amount credit contract may be applied to pay an amount (the ***prohibited credit amount***) to:

(a) the credit provider; or

(b) a person prescribed by the regulations.

(2) Subsection (1) does not apply to:

(a) an amount of a permitted establishment fee, or a permitted monthly fee, payable in relation to the small amount credit contract; or

(b) an amount of a government fee, charge or duty payable in relation to the small amount credit contract; or

(ba) if some or all of the amount of credit (the ***refinanced amount***) is to refinance some or all of the amount of credit provided by the credit provider to the debtor under another small amount credit contract—the refinanced amount; or

(c) an amount prescribed by the regulations.

(3) If subsection (1) is contravened in relation to a small amount credit contract:

(a) the debtor is not liable (and is taken never to have been liable) to repay the prohibited credit amount to the credit provider; and

(b) the debtor may recover as a debt due to the debtor any amount paid to the credit provider to the extent that it relates to the prohibited credit amount.

Authorised Version C2021C00117 registered 17/02/2021

39B Limit on amount that may be recovered if there is default under a small amount credit contract

(1) If there is a default in payment under a small amount credit contract, the credit provider in relation to the contract must not (whether by repayments under the contract or otherwise) recover more than twice the adjusted credit amount in relation to the contract.

Civil penalty: 5,000 penalty units.

(2) Any provision of the small amount credit contract that confers a greater right is void to the extent that it does so. If an amount is in fact recovered in excess of this limitation, it may be recovered back.

(3) This section does not apply to enforcement expenses.

39C Credit provider must do prescribed things if a default in payment by direct debit occurs

(1) If:

(a) the amount of repayments under a small amount credit contract are to be paid by way of direct debit; and

(b) the direct debit has been authorised by the debtor; and

(c) a default in the payment of an amount of a repayment occurs;

the credit provider must do the things prescribed by the regulations.

Criminal penalty: 50 penalty units.

(2) In this section, ***direct debit*** has the same meaning as in section 87.

Authorised Version C2021C00117 registered 17/02/2021

Division 6—Certain transactions not to be treated as new contracts

40 Changes etc. under contracts

If:

(a) there is:

(i) a change to an existing credit contract that results in further credit being provided; or

(ii) a deferral or waiver of an amount under an existing credit contract; or

(iii) a postponement relating to an existing credit contract; and

(b) the change, deferral, waiver or postponement is made in accordance with this Code or the existing credit contract;

then the change, deferral, waiver or postponement is not to be treated as creating a new credit contract for the purposes of this Code.

Authorised Version C2021C00117 registered 17/02/2021

Part 3—Related mortgages and guarantees

Division 1—Mortgages

41 Application of Division

This Division applies to a mortgage (under which the mortgagor is a natural person or a strata corporation) which secures obligations under a credit contract or related guarantee, whether or not it also secures other obligations (see section 7).

42 Form of mortgage

(1) A mortgage must be in the form of a written mortgage document that is 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) However, 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 (for example, the goods were held by way of security).

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

43 Copy of mortgage for mortgagor

(1) 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

Authorised Version C2021C00117 registered 17/02/2021

mortgagor a copy to keep, in the form in which it was made, within 14 days after it is made.

(2) This section does not apply if the credit provider has previously given the mortgagor a copy of the mortgage document to keep.

44 Mortgages over all property void

(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.

45 Restriction on mortgage of future property

(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) However, this section 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; or

(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; or

(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 specified by the regulations.

46 Mortgages and continuing credit contracts

(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.

Authorised Version C2021C00117 registered 17/02/2021

(2) However, this section does not apply to a provision in a mortgage relating to specified goods securing payment of a debt under a continuing credit contract.

47 All accounts mortgages

(1) In addition to securing credit provided by the credit contract or proposed credit contract, or securing obligations under a related guarantee or proposed related guarantee, to which a mortgage initially applies, the mortgage may contain a provision that secures credit provided under another future credit contract or future related guarantee.

(2) Any such mortgage is unenforceable in relation to such 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 42 (Form of mortgage) does not apply to an extension of a mortgage under this section.

48 Third party mortgages prohibited

(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.

Authorised Version C2021C00117 registered 17/02/2021

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

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

(5) In this section, a reference to a credit contract or guarantee includes a reference to a proposed credit contract or proposed guarantee.

49 Maximum amount which may be secured

(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 the amount of the liabilities of the debtor under the credit contract and 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 the guarantor's liability under the guarantee and the reasonable enforcement expenses of enforcing the mortgage.

(3) This section does not affect a provision of a mortgage permitted by section 47.

50 Prohibited securities

(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) A mortgage cannot be created over goods that are essential household property unless:

(a) the mortgagee supplied the goods to the mortgagor as part of a business carried on by the mortgagee of supplying goods and the mortgagor has not, as a previous owner of the goods, sold them to the mortgagee for the purposes of the supply; or

Authorised Version C2021C00117 registered 17/02/2021

(b) the mortgagee is a linked credit provider of the person who supplied the goods to the mortgagor.

(3) For the purposes of subsection (2), essential household property includes goods of a type prescribed under the regulations.

(4) A type of goods may be prescribed under subsection (3) only if the type is similar to a type of household property mentioned in regulations made under subparagraph 116(2)(b)(i) of the *Bankruptcy Act 1966*.

(5) A mortgage cannot be created over goods that are property used by the mortgagor in earning income by personal exertion if the goods do not have a total value greater than the relevant limit.

(6) 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.

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

(8) In this section:

antique item means an item of household property the market value of which is substantially attributable to its age or historical significance.

essential household property means household property as prescribed under regulations made under subparagraph 116(2)(b)(i) of the *Bankruptcy Act 1966*.

goods does not include antique items.

relevant limit, in relation to goods, means the limit prescribed from time to time under regulations made under the *Bankruptcy Act 1966* for the purposes of subparagraph 116(2)(c)(i) of that Act for goods of that type.

Authorised Version C2021C00117 registered 17/02/2021

51 Assignment or disposal of mortgaged property by mortgagor

(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 the court under subsection (3).

Criminal penalty: 50 penalty units.

(2) The credit provider must not unreasonably withhold consent or attach unreasonable conditions to the consent (but a condition requiring security over property of an equivalent kind and value is not to be regarded as unreasonable).

(3) The court may, on application by a mortgagor, authorise the mortgagor to dispose of mortgaged property on conditions determined by the court if:

(a) the 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.

(4) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

(1) As a condition of granting consent to an assignment or disposal of property subject to a mortgage, the credit provider may make any or all of the requirements set out in this section. This section does not limit any other requirements that may be made by the credit provider.

(2) The credit provider may require any breaches of the credit contract to which the mortgage relates and of the mortgage to be remedied.

(3) The credit provider may require the mortgagor and the assignee or person to whom the property is disposed to execute and deliver to the credit provider an agreement relating to the assignment or

Authorised Version C2021C00117 registered 17/02/2021

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.

(4) The credit provider may require the mortgagor and the assignee or person to whom the property is disposed to pay the reasonable costs (if any) 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 payable to a duly qualified lawyer.

53 Offence for noncompliance

(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.

Criminal penalty: 50 penalty units.

(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.

Criminal penalty: 50 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Guarantees

54 Application of Division

This Division applies to a guarantee (under which the guarantor is a natural person or a strata corporation) to the extent to which it guarantees obligations under a credit contract, whether or not it also guarantees other obligations (see section 8).

55 Form of guarantee

(1) A guarantee 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 regulations made under this section.

56 Disclosure

(1) Before a guarantee is signed by the guarantor, 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 paragraph (1)(a) is complied with.

57 Copies of documents for guarantor

(1) A credit provider must, not later than 14 days after a guarantee is signed and given to the credit provider, give the guarantor:

Authorised Version C2021C00117 registered 17/02/2021

(a) a copy of the guarantee signed by the guarantor; and
(b) a copy of the credit contract or proposed credit contract.

(2) Paragraph (1)(a) does not apply if the credit provider has previously given the guarantor a copy of the guarantee document to keep and paragraph (1)(b) does not apply if the credit provider has previously given the guarantor a copy of the credit contract or proposed credit contract to keep.

58 Guarantor may withdraw before credit is provided

(1) Although a guarantee has been made, the guarantor may nevertheless, by written notice to the credit provider:
(a) withdraw from the guarantee at any time before credit is first provided under the credit contact; 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 given to the guarantor before the guarantee is signed.

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

(3) This section is subject to section 61.

59 Extension of guarantee

(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) Any such guarantee is unenforceable in relation to such 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 obtained

Authorised Version C2021C00117 registered 17/02/2021

acceptance in some other form provided for by the regulations.

(3) Section 55 (Form of guarantee) and section 56 (Disclosure) do not apply to an extension of a guarantee under this section.

60 Limitation of guarantor's liability

Total amount for which guarantor can be liable

(1) A guarantee is void to the extent that it secures an amount, in relation to a credit contract to which this Code applies, that exceeds the sum of the amount of the liabilities of the debtor under the credit contract and the reasonable expenses of enforcing the guarantee, or any lesser amount agreed between the credit provider and the guarantor.

Unenforceable contracts

(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.

Debtors under 18 years of age

(3) A guarantee 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.

Guarantor may limit liabilities under continuing credit contract

(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

Authorised Version C2021C00117 registered 17/02/2021

the debtor's account) and such further amount (if any) as the guarantor agrees to guarantee.

Guarantee must not limit indemnity

(5) A guarantee is void to the extent that it limits the guarantor's right to indemnity from the person whose liability the guarantor has guaranteed or it postpones or otherwise purports to limit the guarantor's right to enforce the indemnity against the person.

Effect of section

(6) This section does not affect a provision of a guarantee permitted by section 59.

61 Increase in guarantor's liabilities

(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 a written acceptance of the extension of the guarantee to those increased liabilities or obtained acceptance in some other form provided for by the regulations.

(2) This section does not apply to an increase in liabilities resulting from:
  (a) a change of a kind referred to in paragraph 63(2)(a) or (b); or
  (b) a change of which notice is required to be given under Division 1 of Part 4 (not being a change referred to in subsection 67(4) or section 68); or
  (c) a change under subsection 74(2) or a postponement under subsection 96(2); or
  (d) a deferral or waiver of a debtor's obligations for a period not exceeding 90 days.

Authorised Version C2021C00117 registered 17/02/2021

62 Offence for noncompliance

(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.

Criminal penalty: 50 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Part 4—Changes to obligations under credit contracts, mortgages and guarantees

Division 1—Unilateral changes by credit provider

63 Application of Division

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

(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 in addition to those conferred by the contract.

64 Interest rate changes

Notification of interest rate changes

(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:

Authorised Version C2021C00117 registered 17/02/2021

(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.

Criminal penalty: 100 penalty units.

Notification by publication

(2) Notice under subsection (1) may be given by publishing the notice in a newspaper circulating throughout each State and Territory. A credit provider that gives notice in accordance with this subsection 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.

Criminal penalty: 100 penalty units.

Changes in reference rates

(3) 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 each State and Territory not later than the date the change takes effect.

Notification of other interest changes

(4) A credit provider must, not later than 20 days before a change in the manner in which interest is calculated or applied under a credit contract (including a change in or abolition of any interest free period under the contract) takes effect, give to the debtor written notice setting out:
(a) particulars of the change; and
(b) any information required by the regulations.

Criminal penalty: 100 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

Interest rate reductions

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

Strict liability offences

(6) Subsections (1), (2) and (4) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Application

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

65 Repayment changes

Notification of repayment changes

(1) A credit provider must, not later than 20 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.

Criminal penalty: 100 penalty units.

Repayment reductions

(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. The credit provider must, however, give particulars of any such change before or when the next statement of account is sent to the debtor after the change takes effect.

Criminal penalty: 100 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

(3) If the amount or frequency or time for payment of instalments or minimum repayments is not specified in the credit contract but is determined by a method of calculation so specified, this section requires the credit provider to give particulars only of any change in that method of calculation.

Strict liability offences

(4) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Application

(5) This section does not apply to a change that occurs while the credit contract does not require any repayment of the amount of credit provided.

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

66 Credit fees and charges changes

Notification of credit fees and charges changes

(1) A credit provider must, not later than 20 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.

Criminal penalty: 100 penalty units.

Notification by publication

(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 each State and

Authorised Version C2021C00117 registered 17/02/2021

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

Criminal penalty: 100 penalty units.

Credit fee or charge reductions

(3) 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. The credit provider must, however, give particulars of any such change before or when the next statement of account is sent to the debtor after the change takes effect.

Criminal penalty: 100 penalty units.

Strict liability offences

(4) Subsections (1), (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Application

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

67 Changes to credit limits etc. in continuing credit contracts

(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. However, this subsection does not prevent the termination of the contract if otherwise permitted by this Code or the contract.

(2) 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.

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 100 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(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.

67A Changes to tenancy protection in credit contracts for reverse mortgages

A purported change to a credit contract for a reverse mortgage that makes provision for a person other than the debtor to occupy the reverse mortgaged property is void so far as the change purports to:

(a) remove a provision required by subsection 17(15A) to be contained in the contract document; or

(b) vary the contract so as to limit:

(i) the ability of the debtor to nominate to the credit provider a person who is to be allowed to occupy the reverse mortgaged property (whether alone or with other persons); or

(ii) the rights of a person nominated by the debtor to the credit provider to occupy the property.

68 Other unilateral changes by credit provider

(1) A credit provider must not exercise a power under a credit contract, mortgage or guarantee to unilaterally change its terms without giving to the other party, not less than 20 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.

Criminal penalty: 100 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

(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. The credit provider must, however, give particulars of any such change before or when the next statement of account is sent to the debtor after the change takes effect.

Criminal penalty: 100 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) This section does not apply to a change of which notice is required to be given under section 64, 65, 66 or 67 (or which would be required to be so given but for an exception provided in any such section) or which is referred to in subsection 67(4).

69 Particulars of matters as changed only required to be given under this Division in certain cases

The credit provider may, under section 64, 65, 66 or 68, give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider:

(a) makes it clear to the person that the matter has changed; or

(b) issues to the person a new set of terms and conditions relating to the credit contract, mortgage or guarantee.

70 Prohibited increases in liabilities

(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.

Authorised Version C2021C00117 registered 17/02/2021

(2) The regulations may prescribe circumstances in which such a change is permitted.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Changes by agreement of parties

71 Changes by agreement

(1) If the parties under an existing credit contract, mortgage or guarantee agree to change its terms, the credit provider must, not later than 30 days after the date of the agreement, give to the other party under the 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.

Criminal penalty: 100 penalty units.

(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 (other than a continuing 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.

Criminal penalty: 100 penalty units.

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

(5) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider:

(a) makes it clear to the person that the matter has changed; or

(b) issues to the person a new set of terms and conditions relating to the credit contract, mortgage or guarantee.

(6) Subsections (1) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Changes on grounds of hardship and unjust transactions

72 Changes on grounds of hardship

Hardship notice

(1) If a debtor considers that he or she is or will be unable to meet his or her obligations under a credit contract, the debtor may give the credit provider notice (a ***hardship notice***), orally or in writing, of the debtor's inability to meet the obligations.

Note: If the debtor gives the credit provider a hardship notice, there may be requirements (beyond those in section 88) that the credit provider must comply with before beginning enforcement proceedings—see section 89A.

Further information

(2) Within 21 days after the day of receiving the debtor's hardship notice, the credit provider may give the debtor notice, orally or in writing, requiring the debtor to give the credit provider specified information within 21 days of the date of the notice stated in the notice. The information specified must be relevant to deciding:

(a) whether the debtor is or will be unable to meet the debtor's obligations under the contract; or

(b) how to change the contract if the debtor is or will be unable to meet those obligations.

(3) The debtor must comply with the requirement.

Note: The credit provider need not agree to change the credit contract, especially if the credit provider:

(a) does not believe there is a reasonable cause (such as illness or unemployment) for the debtor's inability to meet his or her obligations; or

(b) reasonably believes the debtor would not be able to meet his or her obligations under the contract even if it were changed.

Authorised Version C2021C00117 registered 17/02/2021

Notice of decision on changing credit contract

(4) The credit provider must, before the end of the period identified under subsection (5), give the debtor a notice:

(a) that is in the form (if any) prescribed by the regulations and records the fact that the credit provider and the debtor have agreed to change the credit contract; or

(b) that is in the form (if any) prescribed by the regulations and states:

(i) the credit provider and the debtor have not agreed to change the credit contract; and

(ii) the reasons why they have not agreed; and

(iii) the name and contact details of the AFCA scheme; and

(iv) the debtor's rights under that scheme.

Civil penalty: 5,000 penalty units.

(5) The credit provider must give the notice before the end of the period identified using the table.

Period for giving notice

	If:	The period is:
1	The credit provider does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2	The credit provider requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the stated date of the notice under subsection (2)
3	The credit provider requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

Regulations may prescribe shorter periods for credit contracts

(6) The regulations may provide for subsections (2), (3), (4) and (5) to have effect in relation to credit contracts prescribed by the regulations as if a particular reference in subsection (2) or (5) to a number of days were a reference to a lesser number of days prescribed by the regulations.

Authorised Version C2021C00117 registered 17/02/2021

73 Notice of change

(1) A credit provider that enters into an agreement with the debtor to change the credit contract as a result of a hardship notice by the debtor must, not later than 30 days after the date of the agreement, give to the debtor, and 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.

Criminal penalty: 50 penalty units.

(2) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider:

(a) makes it clear to the person that the matter has changed; or

(b) issues to the person a new set of terms and conditions relating to the credit contract.

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

74 Changes by court

(1) If the credit provider does not change the credit contract as a result of a hardship notice by the debtor, the debtor may apply to the court to change the terms of the credit contract.

(2) The court may, after allowing the applicant, the credit provider and any guarantor a reasonable opportunity to be heard:

(a) by order change the credit contract (but not so as to reduce the amount ultimately payable by the debtor to the credit provider under the contract), and make such other orders as it thinks fit; or

(b) refuse to change the credit contract.

(3) The court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under the credit contract, and make

Authorised Version C2021C00117 registered 17/02/2021

such other orders as it thinks fit, until the application has been determined.

75 Credit provider may apply for variation of change

(1) A credit provider under a credit contract that has been changed by an order under subsection 74(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 subsection 74(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.

76 Court may reopen unjust transactions

Power to reopen unjust transactions

(1) The 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 or guarantee or change was unjust, reopen the transaction that gave rise to the contract, mortgage or guarantee or change.

Matters to be considered by court

(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, the court is to 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;

Authorised Version C2021C00117 registered 17/02/2021

(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 or not 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 or not any of the provisions of the contract, mortgage or guarantee 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 or not 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 or not, 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 or 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 those 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 transaction and, if so, the adequacy of those measures;

Authorised Version C2021C00117 registered 17/02/2021

(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 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) for a mortgage—any relevant purported provision of the mortgage that is void under section 50;

(o) 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;

(p) any other relevant factor.

Representing debtor, mortgagor or guarantor

(3) For the purposes of paragraph (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 the negotiations process prior to, or at, the time the credit contract, mortgage or guarantee was entered into or changed.

Unforeseen circumstances

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

Conduct

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

Authorised Version C2021C00117 registered 17/02/2021

relation to the contract, mortgage or guarantee since it was entered into or changed.

Application

(6) This section does not apply:
  (a) to a matter or thing in relation to which an application may be made under subsection 78(1); or
  (b) to a change to a contract under this Division.

(7) This section does apply in relation to a mortgage, and a mortgagor may make an application under this section, even though all or part of the mortgage is void under subsection 50(3).

77 Orders on reopening of transactions

The court may, if it reopens a transaction under this Division, do any one or more of the following, despite any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation:
  (a) reopen an account already taken between the parties to the transaction;
  (b) relieve the debtor and any guarantor from payment of any amount in excess of such amount as 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 such steps as are necessary to discharge the mortgage;
  (e) give judgment for or make an order in favour of a party to the transaction 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;

Authorised Version C2021C00117 registered 17/02/2021

(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.

78 Court may review unconscionable interest and other charges

(1) The 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 subsection 64(1) or (4) applies; or

(b) an establishment fee or charge; or

(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 this section, 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, the court is to have regard to whether the amount of the fee or charge is equal to the credit provider's reasonable costs of determining an application for credit and the initial administrative costs of providing the credit or is equal to the credit

Authorised Version C2021C00117 registered 17/02/2021

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.

79 Applications by ASIC

(1) This section applies if ASIC considers that it is in the public interest to make an application under this Division.

(2) ASIC may make an application under this Division and has standing to represent the public interest.

(3) The application:
  (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 a credit provider during a specified period (for example, all credit contracts entered into during a specified period that are affected by a specified matter for which relief is sought).

80 Time limit

(1) An application (other than an application under section 78) may not be brought under this Division more than 2 years after the relevant credit contract is rescinded or discharged or otherwise comes to an end.

(2) An application under section 78 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 contract is rescinded or discharged or otherwise comes to an end.

Authorised Version C2021C00117 registered 17/02/2021

81 Joinder of parties

(1) If it appears to the 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 an order about the third party that the court considers appropriate.

(2) However, before making an order about the third party, 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.

Authorised Version C2021C00117 registered 17/02/2021

Part 5—Ending and enforcing credit contracts, mortgages and guarantees

Division 1—Ending of credit contract by debtor etc.

Subdivision A—Paying out contract etc.

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

(1) A debtor or guarantor 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 148.

83 Statement of pay out figure

(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 such date as the debtor or guarantor specifies. If so requested, the credit provider must also provide details of the items which make up that amount.

(2) The statement 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.

Authorised Version C2021C00117 registered 17/02/2021

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

Criminal penalty: 50 penalty units.

(4) In the case of joint debtors or guarantors, the statement under this section need only be given to a debtor or guarantor who requests the statement and not, despite section 194, to each joint debtor or guarantor.

(5) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

(1) If the 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, the 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) The credit contract is discharged if an amount calculated in accordance with the determination is tendered to the credit provider within the applicable period.

85 Surrender of mortgaged goods and goods subject to sale by instalments

General principle

(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

Authorised Version C2021C00117 registered 17/02/2021

(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 return 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.

Delivery of goods

(2) A debtor or mortgagor may return the goods 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 or within such other period or at such other time or place as may be agreed with the credit provider.

Notice of value

(3) The credit provider must, within 14 days after a debtor or mortgagor returns 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.

Return or sale of goods

(4) If the debtor or mortgagor, within 21 days after the 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 the debtor is not in default under the terms of the credit contract), the credit provider must return to the debtor or mortgagor any goods returned by the debtor or mortgagor and must not comply with the requirement.

Nominated purchaser

(5) The debtor or mortgagor may, within 21 days after the notice under subsection (3) is given, 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

Authorised Version C2021C00117 registered 17/02/2021

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.

Sale of goods by credit provider

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

Amount to be credited to debtor or mortgagor

(7) The credit provider must credit the debtor or mortgagor with a payment equivalent to the proceeds of the sale less any amounts which the credit provider is entitled to deduct from those proceeds. On the sale of the goods, the amount required to pay out the contract becomes due.

Deductions from 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 or guarantee, not being more than the amount required to discharge the contract or guarantee;

(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;

Authorised Version C2021C00117 registered 17/02/2021

(e) the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.

Notice of amount credited and other matters

(9) The credit provider must give the debtor or mortgagor a written notice stating the gross amount realised on the sale, the net proceeds of the sale, the amount credited to the debtor or mortgagor and the amount required to pay out the credit contract or the amount due under the guarantee.

Offence—credit provider

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

Criminal penalty: 50 penalty units.

Strict liability offence

(11) Subsection (10) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

86 Compensation to debtor or mortgagor

(1) The court, on application by the debtor or mortgagor, may order a credit provider to credit the debtor or mortgagor with a payment, fixed by the court, exceeding the net proceeds of sale if it is not satisfied that the credit provider sold the goods as soon as reasonably practicable (or at such other time as the credit provider and debtor or mortgagor agreed) for the best price reasonably obtainable.

(2) On application by the debtor or mortgagor, the mortgagee under any prior mortgage to which the goods are subject or the mortgagee under any subsequent mortgage of which the credit provider has notice, the court, if not satisfied that the credit provider complied with section 85, may make an order requiring

Authorised Version C2021C00117 registered 17/02/2021

the credit provider to compensate the debtor or mortgagor or the relevant mortgagee for any loss suffered as a result.

(3) The onus of proving that section 85 was complied with is on the credit provider.

Subdivision B—Ending of reverse mortgage by credit provider receiving value of reverse mortgaged property

86A Application of this Subdivision

(1) This Subdivision applies in relation to a credit contract for a reverse mortgage and a mortgage securing the debtor's obligations under the contract if:

(a) the debtor's accrued liability (whether or not due and payable) under the contract is more than the amount (the ***adjusted market value***) worked out under subsection (2) for the reverse mortgaged property; and

(b) the credit provider receives an amount at least equal to the adjusted market value for the reverse mortgaged property either:

(i) as a payment accepted from the debtor under the credit contract; or

(ii) as proceeds of the sale by the credit provider of the reverse mortgaged property.

(2) The adjusted market value for the reverse mortgaged property is the amount worked out by:

(a) working out the market value of the property in accordance with the regulations (if any); and

(b) adjusting that value in accordance with the regulations (if any).

Regulations for the purposes of paragraph (b) may prescribe different adjustments to be made in different circumstances.

Authorised Version C2021C00117 registered 17/02/2021

86B Discharge of debtor's obligations under credit contract and discharge of mortgage

(1) The debtor's obligations under the credit contract are discharged by force of this subsection.

(2) The mortgage securing those obligations is discharged by force of this subsection.

Note: This section does not apply in some cases: see section 86E.

86C Credit provider must pay debtor excess of receipt over adjusted market value for reverse mortgaged property

If the amount received by the credit provider exceeds the adjusted market value for the reverse mortgaged property, the credit provider must pay the excess to the debtor.

Note 1: If the credit provider contravenes this requirement, the court may order the credit provider to compensate anyone affected by the contravention: see section 124.

Note 2: This section does not apply in some cases: see section 86E.

86D Credit provider must not demand or accept further payments

(1) The credit provider must not:

(a) purport to require payment under the credit contract; or

(b) accept a payment purportedly under the credit contract.

Note 1: If the credit provider contravenes this requirement, the court may order the credit provider to compensate anyone affected by the contravention: see section 124.

Note 2: This section does not apply in some cases: see section 86E.

(2) To avoid doubt, subsection (1) does not apply to the payment (if any) that is described in subparagraph 86A(1)(b)(i) and caused this Subdivision to apply.

86E Cases in which sections 86B, 86C and 86D do not apply

Sections 86B, 86C and 86D do not apply if:

Authorised Version C2021C00117 registered 17/02/2021

(b) the debtor engaged in fraud, or made a misrepresentation, relating to the reverse mortgage before, at or after the time the credit contract was made; or
(c) circumstances prescribed by the regulations exist.

86F Relationship between this Subdivision and other provisions

This Subdivision does not limit any of the other provisions of this Division.

Subdivision C—Notice of first direct debit default

87 One-off notice to be given the first time a direct debit default occurs

(1) This section applies if:
(a) a debtor authorises payment of an amount for a credit contract by direct debit; and
(b) default occurs; and
(c) it is the first occasion the default occurs.

(2) The credit provider must give the debtor, and any guarantor, a notice, complying with this section, within 14 days of the default occurring.

Criminal penalty: 50 penalty units.

(3) The notice must contain the information prescribed under the regulations.

(4) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) This section does not affect any other requirement under this Code to give a notice.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Enforcement of credit contracts, mortgages and guarantees

88 Requirements to be met before credit provider can enforce credit contract or mortgage against defaulting debtor or mortgagor

Enforcement of credit contract

(1) A credit provider must not begin enforcement proceedings against a debtor in relation to a credit contract unless:

(a) the debtor is in default under the credit contract; and

(b) 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

(c) the default has not been remedied within that period; and

(d) if the credit contract is for a reverse mortgage, the credit provider has spoken to one of the following persons by telephone or in person in that period and has thus both confirmed that the debtor received the default notice and informed the person of the consequences of failure to remedy the default, or has made reasonable efforts to do so:

(i) the debtor;

(ii) a practising lawyer representing the debtor;

(iii) a person with a power of attorney relating to the debtor's financial affairs.

Criminal penalty: 50 penalty units.

Note: If a debtor or guarantor has given a credit provider a hardship notice or a postponement request there may be extra requirements that the credit provider must comply with before beginning enforcement proceedings: see sections 89A and 94.

Authorised Version C2021C00117 registered 17/02/2021

Enforcement of mortgage

(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:

(a) the mortgagor is in default under the mortgage; and

(b) 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

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

(d) if the mortgage secures an obligation under a credit contract for a reverse mortgage, the credit provider has spoken to one of the following persons by telephone or in person in that period and has thus both confirmed that the mortgagor received the default notice and informed the person of the consequences of failure to remedy the default, or has made reasonable efforts to do so:

(i) the mortgagor;

(ii) a practising lawyer representing the mortgagor;

(iii) a person with a power of attorney relating to the mortgagor's financial affairs.

Criminal penalty: 50 penalty units.

Note: If a mortgagor has given a credit provider a postponement request there may be extra requirements that the credit provider must comply with before beginning enforcement proceedings: see section 94.

Default notice requirements

(3) A default notice must contain a prominent heading at its top stating that it is a default notice and specify:

(a) the default; and

(b) the action necessary to remedy the default; and

(c) a period for remedying the default; and

Authorised Version C2021C00117 registered 17/02/2021

(d) the date after which enforcement proceedings in relation to the default, and, if relevant, repossession of mortgaged property may begin if the default has not been remedied; and

(e) that repossession and sale of mortgaged property may not extinguish the debtor's liability; and

(f) the information prescribed by the regulations about the debtor's right to:

(i) give a hardship notice under section 72; or

(ii) give a postponement request under section 94; or

(iii) make an application to the court under sections 74 and 96; and

(g) the information prescribed by the regulations about:

(i) the AFCA scheme; and

(ii) the debtor's rights under that scheme; and

(h) that a subsequent default of the same kind that occurs during the period specified for remedying the original default may be the subject of enforcement proceedings without further notice if it is not remedied within the period; and

(i) that, under the *Privacy Act 1988*, a credit reporting body (within the meaning of that Act) may collect and hold default information (within the meaning of that Act) in relation to the default; and

(j) any other information prescribed by the regulations.

Combined notices

(4) Default notices that may be given under subsections (1) and (2) may be combined in one document if given to a person who is both a debtor and a mortgagor.

When default notice not required

(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:

Authorised Version C2021C00117 registered 17/02/2021

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

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

(c) the court authorises the credit provider to begin the enforcement proceedings; or

(d) the credit provider reasonably believes 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, or intends to remove or dispose of mortgaged goods, without the credit provider's permission or that urgent action is necessary to protect the mortgaged property.

Non-remedial default

(6) If the credit provider reasonably believes that a default is not capable of being remedied:

(a) the default notice need only specify the default; and

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

(7) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Some defaults are not a basis for a default notice

(7A) So far as a notice purporting to be a default notice relates to an alleged default under a credit contract for a reverse mortgage that is an event described in subsection 18A(3), the notice is not a default notice for the purposes of any of the following provisions:

(a) subsections (1) and (2) of this section;

(b) section 93.

Note: This has the effect that:

(a) if the credit provider begins enforcement proceedings relating to the alleged default the credit provider will contravene

Authorised Version C2021C00117 registered 17/02/2021

subsection (1) or (2) of this section (unless subsection (5) of this section applies); and

(b) section 93 will affect the operation of an acceleration clause on the basis of the alleged default.

(7B) To avoid doubt, subsection (7A) does not affect the status of the notice as a default notice for the purposes of section 89, 94 or 95.

Other law about mortgages not affected

(8) This section is in addition to any provision of any other law relating to the enforcement of real property or other mortgages and does not prevent the issue of notices to defaulting mortgagors under other legislation. Nothing in this section prevents a notice to a defaulting mortgagor under other legislation being issued at the same time, or in the same document, as the default notice under this section.

Note: By virtue of subsection 183(2), a notice may contain information required to be given under other legislation or be included in a notice given under other legislation.

89 Defaults may be remedied

(1) If a default notice under section 88 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 the default if, at the end of the period, 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.

89A Effect of hardship notices on enforcement

(1) This section applies if:

(a) a credit provider is required to give a default notice under section 88 before beginning enforcement proceedings; and

Authorised Version C2021C00117 registered 17/02/2021

(b) before or after the credit provider gives the default notice, the debtor gives the credit provider a hardship notice (the ***current hardship notice***) under section 72; and

(c) either:

(i) in the 4 months before the day the current hardship notice is given, the debtor had not given the credit provider another hardship notice; or

(ii) in that 4-month period, the debtor had given the credit provider one or more other hardship notices, but the credit provider reasonably believes that the basis on which the current hardship notice was given is materially different from the bases on which the other hardship notices were given.

(2) The credit provider must not begin enforcement proceedings against the debtor unless:

(a) the credit provider has given the debtor a notice under paragraph 72(4)(b), in response to the current hardship notice, stating that the credit provider and debtor have not agreed to change the credit contract; and

(b) the period of 14 days, starting on the day the credit provider gives the notice under paragraph 72(4)(b), has expired.

Criminal penalty: 50 penalty units.

Note: The credit provider must allow the debtor at least 30 days from the date of the default notice to remedy the default—see section 88. The 14-day period in subsection (2) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

(3) However, the credit provider may take possession of mortgaged goods if the credit provider reasonably believes that:

(a) the debtor or mortgagor has removed or disposed of the mortgaged goods, or intends to remove or dispose of them, without the credit provider's permission; or

(b) urgent action is necessary to protect the goods.

(4) Subsection (2) is an offence of strict liability.

Authorised Version C2021C00117 registered 17/02/2021

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

(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; or

(b) the 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; or

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

(d) the debtor is insolvent.

Criminal penalty: 50 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

91 Requirements to be met before credit provider can repossess mortgaged goods

(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 $10,000, whichever is the lesser.

Criminal penalty: 100 penalty units.

(2) However, the restriction does not apply:

(a) to a continuing credit contract; or

Authorised Version C2021C00117 registered 17/02/2021

(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) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(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 85.

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

(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 88; and

(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 reasonably believes that the default is not capable of being remedied).

(2) However, a credit provider is not required to give a default notice under section 88 or to wait until the period specified in the default notice has elapsed before bringing an acceleration clause into operation, if:

Authorised Version C2021C00117 registered 17/02/2021

(a) the credit provider reasonably believes 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; or

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

(d) the credit provider reasonably believes 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.

93A Extra requirements for enforcing reverse mortgage if debtor's liability exceeded value of reverse mortgaged property

(1) This section applies in relation to a credit contract for a reverse mortgage and a mortgage securing the debtor's obligations under the contract if:

(a) Subdivision B of Division 1 applies in relation to the contract and the mortgage (see section 86A); and

(b) just before the amount was received by the credit provider as described in paragraph 86A(1)(b), the debtor's accrued liability described in paragraph 86A(1)(a) exceeded that amount; and

(c) one or more of the conditions in section 86E are met (so that sections 86B, 86C and 86D do not apply).

(2) If section 88 requires the credit provider to give the debtor or mortgagor a default notice before beginning enforcement proceedings to recover any of the excess, the credit provider must not begin them unless:

(a) the default notice given to the debtor or mortgagor specifies:

Authorised Version C2021C00117 registered 17/02/2021

(i) the amount received by the credit provider; and

(ii) the debtor's accrued liability just before that amount was received; and

(iii) the conditions in section 86E that are met; and

(b) if the credit provider knows of a practising lawyer acting for the debtor or mortgagor and the credit provider gave the debtor or mortgagor the default notice by means other than giving it to the lawyer—the credit provider has given the lawyer a copy of the default notice at the same time as, or as soon as practicable after, giving the debtor or mortgagor the notice.

Criminal penalty: 50 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Postponement of enforcement proceedings

94 Postponement of exercise of rights

Postponement request

(1) A debtor, mortgagor or guarantor who has been given a default notice under section 88 or a demand for payment under section 90 may, at any time before the end of the period specified in the notice or demand, request (a ***postponement request***), orally or in writing, that the credit provider negotiate a postponement of:
  (a) the enforcement proceedings; or
  (b) any action taken under such proceedings; or
  (c) the operation of any applicable acceleration clause.

Credit provider's notice about postponement

(2) If the debtor, mortgagor or guarantor gives the postponement request, the credit provider must, within 21 days after the day of receiving the request, give the person a written notice:
  (a) that states whether or not the credit provider agrees to negotiate a postponement; and
  (b) if the credit provider does not agree to negotiate—that states:
    (i) the name of the AFCA scheme; and
    (ii) the person's rights under that scheme; and
    (iii) the reasons for not agreeing to negotiate.

Criminal penalty: 30 penalty units.

Enforcement proceedings

(3) If the debtor, mortgagor or guarantor gives the postponement request, the credit provider must not begin enforcement proceedings unless:

Authorised Version C2021C00117 registered 17/02/2021

(a) the credit provider has given the debtor, mortgagor or guarantor a notice under subsection (2) in response to the postponement request; and

(b) the period of 14 days, starting on the day the credit provider gives the notice under subsection (2), has expired.

Criminal penalty: 50 penalty units.

Note: The credit provider must allow the debtor or mortgagor at least 30 days from the date of the default notice to remedy the default—see section 88. The 14-day period in subsection (3) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

(4) However, the credit provider may take possession of mortgaged goods if the credit provider reasonably believes that:

(a) the debtor or mortgagor has removed or disposed of the mortgaged goods, or intends to remove or dispose of them, without the credit provider's permission; or

(b) urgent action is necessary to protect the goods.

(5) Subsections (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

95 Effect of negotiated postponement

(1) A default notice under section 88 or a demand for payment under section 90 is taken, for the purposes of this Code, not to have been given or made if a postponement is negotiated with the credit provider 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.

(3) A credit provider must give written notice of the conditions of a postponement referred to in subsection (1) not later than 30 days after agreement is reached on the postponement. The notice must

Authorised Version C2021C00117 registered 17/02/2021

set out the consequences under subsection (6) if the conditions of the postponement are not complied with.

Criminal penalty: 100 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) A credit provider that is required to give notice under section 71 in relation to a postponement is not required to comply with subsection (3).

(6) If any of the conditions of a postponement are not complied with, a credit provider is not required to give a further default notice under this Code to the debtor, mortgagor or guarantor with whom the postponement was negotiated before proceeding with enforcement proceedings.

96 Postponement by court

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

(2) The 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 the application relates and may make such other orders as it thinks fit.

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

97 Credit provider may apply for variation of postponement order

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

Authorised Version C2021C00117 registered 17/02/2021

Section 97

(2) On such an application, 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.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Enforcement procedures for goods mortgaged

98 Information as to location of mortgaged goods

(1) A credit provider may, by written notice to a mortgagor under a goods mortgage, require the mortgagor to inform the credit provider, within 7 days after the day the notice is given to the mortgagor, 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.

Criminal penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

99 Entry to residential property to take possession of goods

(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) the 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.

Authorised Version C2021C00117 registered 17/02/2021

(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.

Criminal penalty: 50 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

100 Court may order entry

The 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.

101 Order for possession

(1) The 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) The 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.

Criminal penalty: 30 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

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

Notice to be given

(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 containing the following matters:

(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 obligations in the form set out in the regulations.

Goods not to be sold immediately

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

Effect of proceedings

(3) If at the end of that 21 day period a stay of enforcement proceedings is in force under this Code or an application under section 76 has not been determined, the credit provider must not dispose of the goods until those proceedings have been determined and any period allowed for appeal has elapsed.

Payment during notice period

(4) The credit provider must return the goods if:

(a) the amount in arrears (less any accelerated amount) and the credit provider's reasonable enforcement expenses are paid within that 21 day period 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.

Authorised Version C2021C00117 registered 17/02/2021

Offence

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

Criminal penalty: 50 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

103 Mortgagor may nominate purchaser of goods taken by credit provider

(1) The mortgagor may, within 21 days after the date of the notice given under section 102, 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) 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.

Criminal penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

104 Sale of goods by credit provider

(1) The credit provider must, if payment is not made within 21 days after the date of the notice given under section 102 and that section does not prevent the sale, as soon as reasonably practicable (or at such time as the credit provider and mortgagor agree) sell the goods in accordance with section 103 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) The credit provider must credit the mortgagor with a payment equivalent to the proceeds of the sale less any amounts which the credit provider is entitled to deduct from those proceeds. On the

Authorised Version C2021C00117 registered 17/02/2021

sale of the goods, the amount required to pay out the contract becomes due.

(3) A credit provider that sells mortgaged goods must give the mortgagor a written notice stating the gross amount realised on the sale, the net proceeds of the sale, the amount required to pay out the credit contract or the amount due under the guarantee, any further recovery action proposed to be taken by the credit provider against the debtor and any other information required by the regulations.

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

Criminal penalty: 50 penalty units.

(5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

A credit provider that sells mortgaged goods under section 104 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.

Authorised Version C2021C00117 registered 17/02/2021

106 Compensation to mortgagor

(1) The court, on application by a mortgagor, may order a credit provider to credit the mortgagor with a payment, fixed by the court, exceeding the net proceeds of sale if it is not satisfied that the credit provider sold the goods as soon as reasonably practicable, or at a time agreed between the credit provider and the mortgagor, for the best price reasonably obtainable.

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

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Enforcement expenses

107 Recovery of enforcement expenses

(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. Enforcement expenses of a credit provider extend to those reasonably incurred by the use of the staff and facilities of the credit provider.

Civil effect

(2) Any provision of the credit contract, mortgage or guarantee that appears to confer a greater right is void. If enforcement expenses are in fact recovered in excess of this limitation, they may be recovered back.

(3) If there is a dispute between the credit provider and the debtor, mortgagor or guarantor about the amount of enforcement expenses that may be recovered by the credit provider, the court may, on application by any of the parties to the dispute, determine the amount of that liability.

Authorised Version C2021C00117 registered 17/02/2021

Division 6—Mortgagor's remedies

108 Mortgagor may apply to regain possession of mortgaged goods

(1) If a credit provider takes possession of mortgaged goods in contravention of Division 2 or Division 4, the court may, on the application of the mortgagor, order the credit provider, at the credit provider's expense, to return possession of the goods to the mortgagor.

(2) An order may be made under subsection (1) even though the relevant default has not been remedied.

(3) A person who contravenes an order under subsection (1) commits an offence.

Criminal penalty: 30 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

109 Order for possession for mortgagor

(1) The court may, when making an order under subsection 108(1), order a person who has possession of the goods to deliver them to the mortgagor at a specified time or place or within a specified period.

(2) If the person is not the credit provider, the court may also order the credit provider to pay the person's costs of delivering the goods to the mortgagor.

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

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

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 30 penalty units.

(5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

110 Ancillary or consequential orders

(1) This section applies if the court makes an order under this Division.

(2) The court may make ancillary or consequential orders it considers appropriate, including, for example, orders to restore the parties to the position they were in before the taking of possession in contravention of Division 2 or Division 4.

(3) Without limiting subsection (2), the court may order that the mortgagor be paid compensation for any damage to the goods because of the taking of possession.

Authorised Version C2021C00117 registered 17/02/2021

Part 6—Penalties for defaults of credit providers

Division 1—Penalties for breach of key disclosure and other requirements

111 Key requirements

(1) For the purposes of this Division, a ***key requirement*** in connection with a credit contract (other than a continuing credit contract) is any one of the requirements of this Code contained in the following provisions:

(a) subsection 17(3);
(b) subsection 17(4);
(c) subsection 17(5);
(d) subsection 17(6);
(e) paragraphs 17(8)(a) and (b)—but only in respect of retained credit fees and charges;
(f) subsection 17(9);
(g) subsection 17(11);
(h) paragraphs 17(15)(a) and (b);
(ha) subsection 17(15A);
(i) subsection 23(1)—but only at the time the credit contract is entered into;
(j) subsection 32A(1);
(k) subsection 32AA(2).

(2) For the purposes of this Division, a ***key requirement*** in connection with a continuing credit contract is any one of the requirements of this Code contained in the following provisions:

(a) paragraph 17(3)(b);
(b) subsection 17(4);
(c) subsection 17(5);
(d) paragraphs 17(8)(a) and (b)—but only in respect of retained credit fees and charges;

Authorised Version C2021C00117 registered 17/02/2021

(e) subsection 17(9);
(ea) subsection 17(15A);
(f) subsection 23(1);
(fa) subsection 32A(1);
(fb) subsection 32AA(2);
(g) subsection 34(6);
(h) section 35.

(3) A key requirement relating to a disclosure or a statement of account extends to the requirements set out in Part 2 as to the manner in which the disclosure or statement is to be made, but does not extend to any requirements set out in the regulations.

112 Application for order relating to key requirements

(1) A party to a credit contract or a guarantor or ASIC may apply to the court for an order under this Division.

(2) A debtor or guarantor may not make an application for an order under this Division in respect of a contravention under a contract if the contravention under that contract is or has been subject to an application for an order made by the credit provider or ASIC anywhere in Australia under this Code.

(3) Subsection (2) does not prevent an application from being made for an order for the payment of compensation under section 118.

113 Penalty may be imposed for contravention of key requirement

Declaration as to key requirement

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

Authorised Version C2021C00117 registered 17/02/2021

Penalty orders

(2) The court may make an order, in accordance with this Division, requiring the credit provider to pay an amount as a penalty, if it is of the opinion that the credit provider has contravened a key requirement.

Prudential standing

(3) The court, in considering the imposition of a penalty, must have regard primarily to the prudential standing of any credit provider concerned, or of any subsidiary of the credit provider (within the meaning of the *Corporations Act 2001*), if the credit provider or subsidiary takes deposits or is a borrowing corporation (within the meaning of that Act). However, the court is to have regard to that prudential standing only if the credit provider requests the court to do so.

Other matters to be considered

(4) The court, in considering the imposition of a penalty, must have regard to the following:
  (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;

Authorised Version C2021C00117 registered 17/02/2021

(i) any other matter the court considers relevant.

Related contraventions

(5) The court must, for the purposes of determining an application for an order under this Division or the amount of a penalty, treat a contravention of a key requirement that occurs merely because of another contravention of a key requirement as being a contravention of the same kind. If a provision referred to in section 111 contains several requirements, the 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 penalty.

Suppression of publication of application

(6) The court may, if it thinks it appropriate in the circumstances, order that particulars of or any matters relating to an application for an order under this Division not be published.

114 Penalty if application made by debtor or guarantor

(1) On application being made by a debtor or a guarantor for an order in relation to a credit contract other than a small amount credit contract, the maximum penalty that may be imposed by the court for a contravention of a key requirement is an amount not exceeding the amount of:

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

(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; or

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

Authorised Version C2021C00117 registered 17/02/2021

(1A) On application being made by a debtor or a guarantor for an order in relation to a small amount credit contract, the maximum penalty that may be imposed by the court for a contravention of a key requirement is an amount not exceeding the sum of the following amounts:

(a) the amount of the permitted establishment fee payable in relation to the contract;

(b) the total amount of the permitted monthly fees payable in relation to the contract based on the term of the contract when it was made.

(2) The court may, however, impose a greater penalty if the debtor or guarantor satisfies the court that the debtor has suffered a loss. The amount of the penalty is to be not less than the amount of the loss.

(3) For the purposes of paragraph (1)(a), the amount of future interest charges payable under a credit contract is to be calculated on the assumptions in sections 180 and 182.

115 Payment of penalty to debtor or guarantor

(1) An amount of penalty ordered by the court to be paid on an application for an order made by a debtor or a guarantor 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. If there is no such amount, the amount of the penalty is a debt due by the credit provider to the debtor or guarantor.

(2) The Consolidated Revenue Fund is appropriated for the purposes of:

(a) a set-off; or

(b) a debt due;

in relation to a penalty ordered under subsection (1). The *Public Governance, Performance and Accountability Act 2013* does not apply in relation to those amounts.

(3) An order made on application by a debtor or a guarantor may include such directions as the court considers appropriate relating

Authorised Version C2021C00117 registered 17/02/2021

to the payment of the amount owed by the debtor or the credit provider as a result of the order.

116 Penalty if application made by a credit provider or ASIC

(1) On application being made by a credit provider or ASIC for an order, the maximum penalty that may be imposed by the court for a contravention of a key requirement relating to a contract affected by the application is an amount calculated so that the total penalty for all contraventions of the requirement in Australia (as disclosed by the credit provider) does not exceed 5,000 penalty units for an individual.

(2) However, section 167B of the National Credit Act applies in the same way in relation to the contravention of a key requirement as it would apply in relation to a civil penalty provision under that Act.

117 Payment of penalty

An amount of penalty ordered by the court to be paid on an application for an order made by a credit provider or ASIC must be paid by the credit provider to ASIC on behalf of the Commonwealth.

118 Compensation for debtor or guarantor

(1) The court may, on application by a debtor or a guarantor, order that the 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) The 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.

Authorised Version C2021C00117 registered 17/02/2021

(3) The court may not make an order under this section if the debtor or guarantor has previously obtained or been refused a penalty referred to in section 115 relating to the same contravention.

(4) An amount payable under this section does not affect the amount of penalty for the purposes of section 116.

119 General provisions relating to applications by credit providers or ASIC

(1) An application for an order by a credit provider or ASIC:
  (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 (for example, all credit contracts entered into during a specified period which are affected by a specified contravention).

(2) The court may require notice of any such application to be published by notice, in a form approved by the court, in a newspaper circulating throughout one or more States or Territories, as the court determines.

(3) Notice of an application by a credit provider must be given by the credit provider to ASIC.

120 ASIC may represent interests of debtors

ASIC 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.

121 Directions pending court's decision

(1) The court may, before disposing of an application by a debtor or guarantor for an order under this Division, make such directions as it considers appropriate to protect the interests of the debtor or guarantor concerned.

Authorised Version C2021C00117 registered 17/02/2021

(2) Subject to any such directions of the court, the application does not prevent:

(a) any proceedings for the enforcement of the debtor's obligations (or the obligations of a 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 the court may apply to the court for variation of the direction. The court may, on such an application being made, vary or revoke the direction or refuse to vary or revoke the direction.

122 Offences

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

123 Time limit for application for orders under this Division

(1) Proceedings under this Division for a declaration of contravention and the imposition of a penalty for a contravention may not be brought after 6 years from the day the contravention happened.

(2) Subsection (1) applies despite any Act relating to the limitation of time for commencing actions.

(3) In this section:

contravention means contravention of a key requirement.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Other penalties

124 Civil effect of contraventions

(1) If a credit provider contravenes a requirement of or made under this Code, the 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:

(a) a person affected by the contravention; or

(b) ASIC on behalf of a person affected by the contravention, if the person has consented in writing to ASIC making the application; or

(c) ASIC (on its own behalf).

Authorised Version C2021C00117 registered 17/02/2021

Part 7—Related sale contracts

Division 1—Interpretation and application

125 Meaning of *sale contract*

For the purposes of this Code, 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.

126 Sale contracts to which this Part applies

This Part applies to or in respect of a sale contract or 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 Code applies.

127 Linked credit providers and tied credit contracts

(1) For the purposes of this Code, a ***linked credit provider*** of a supplier means a credit provider:

(a) with whom the supplier has a contract, arrangement or understanding relating to the supply to the supplier of goods in which the supplier deals, relating to the business carried on by the supplier of supplying goods or services or relating to 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; or

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

(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

Authorised Version C2021C00117 registered 17/02/2021

(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 Code, 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 Code, a ***tied loan contract*** is a credit contract (other than a continuing 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.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Liability of credit providers for suppliers' misrepresentations

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

(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 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.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Liability of credit providers in relation to goods

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

General right to damages

(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 sale 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.

Credit provider's defences

(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; or

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

Authorised Version C2021C00117 registered 17/02/2021

(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; and

(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).

Authorised Version C2021C00117 registered 17/02/2021

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

Debtor may raise credit provider's liability

(1) Subject to subsection (2), in relation to a contract referred to in paragraph 129(1)(a) or (b), in which a credit provider claims damages or an amount of money from a debtor, the debtor may set up the liability of the credit provider under section 129 in diminution or extinction of the debtor's liability.

Proceedings to be brought against both supplier and linked credit provider

(2) Subject to subsection (3), a debtor may not, in respect of a liability for which, by reason of section 129, 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) where 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.

When joint proceedings not required

(3) Subsection (2) and paragraphs (5)(a) and (6)(a) do not apply in relation to proceedings where:

(a) the supplier is insolvent, cannot be located after reasonable inquiry, 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 subsection (2) and

Authorised Version C2021C00117 registered 17/02/2021

paragraphs (5)(a) and (6)(a) do not apply in relation to the proceedings.

Limit of credit provider's liability

(4) The liability of a linked credit provider to a debtor for damages or a sum of money in respect of a contract referred to in subsection 129(1) is not to exceed the sum of:

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

(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.

Enforcement of judgment against linked credit provider

(5) Where in proceedings arising under section 129, 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.

Enforcement of right against linked credit provider

(6) Where in proceedings in respect of the liability arising under section 129, 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

Authorised Version C2021C00117 registered 17/02/2021

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.

131 Liability of supplier to linked credit provider

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 subsection 130(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.

132 Interest may be awarded

(1) Despite any other law, where, in proceedings arising under section 129, 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.

Authorised Version C2021C00117 registered 17/02/2021

133 Subrogation of credit provider

If a judgment given in proceedings arising under section 129 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.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Termination of related transactions

134 Termination of sale contract which is conditional on obtaining credit

(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.

(4) This section does not apply to a sale contract for the supply of rights in relation to, and interests in, real property unless the supplier was aware that the purchaser intended to obtain the credit from the supplier or from a linked credit provider of the supplier.

Authorised Version C2021C00117 registered 17/02/2021

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

(1) If a sale contract is rescinded or discharged (whether under this Code 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; or

(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

Authorised Version C2021C00117 registered 17/02/2021

give the credit provider under any tied loan contract or tied continuing credit contract notice of the termination.

Criminal penalty: 50 penalty units.

(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) This section applies:
  (a) to the exercise by a purchaser of a right under this Code or any other law to rescind or discharge a sale contract; and
  (b) to a tied loan contract or a tied continuing credit contract, but only if the sale contract was the principal purpose for which the credit was provided.

136 Termination of linked maintenance services contract if credit contract terminated

(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 Code 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 any such case, the credit provider must inform the debtor in accordance with the regulations of the debtor's rights under this section.

Criminal penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

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

(5) 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.

137 Termination of contract under this Part to be in writing

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.

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

The 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.

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

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

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Other provisions

140 Requirement as to source of credit for goods or services

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

Criminal penalty: 100 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

(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.

Criminal penalty: 100 penalty units.

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

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Part 8—Related insurance contracts

142 Interpretation and application

(1) For the purposes of this Code, 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) This Code does not apply to insurance over mortgaged property that:

(a) is insurance for an extended period of warranty for goods; or

(b) is insurance over property that is not mortgaged to secure obligations under the credit contract.

(3) This Code does not apply to consumer credit insurance in connection with a credit contract unless the contract for consumer credit insurance insures the obligations of the debtor under the credit contract.

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

(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

Authorised Version C2021C00117 registered 17/02/2021

nature and extent approved for the purposes of this section by the regulations.

Criminal penalty: 100 penalty units.

(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.

Criminal penalty: 100 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Civil effect

(4) If the 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 requires.

144 Financing of insurance premiums over mortgaged property

(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.

Criminal penalty: 100 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

(2) The credit provider must not knowingly debit the premium to the debtor's account more than 30 days before the beginning of the period of insurance to which it relates.

Criminal penalty: 100 penalty units.

Civil effect

(3) 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. If a credit provider contravenes subsection (2), the insured is entitled to recover the amount of premium debited in contravention of the subsection.

145 Commission for consumer credit insurance

(1) This section applies to commission paid by an insurer in connection with consumer credit insurance taken out by the 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 such supplier or agent must not accept, and an insurer must not pay, a commission exceeding, in amount or value, the maximum allowed under this section.

Criminal penalty: 100 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Civil effect

(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 requires.

ASIC determinations of caps on commissions

(6) Despite subsection (1), this section does not apply to commission mentioned in that subsection if the insurance:

(a) is an add-on risk product of a kind covered by a determination under subsection 12DMC(3) of the *Australian Securities and Investments Commission Act 2001*; and

(b) is provided in connection with:

(i) the sale or long-term lease of a motor vehicle; or

(ii) the provision of credit connected with the sale or long-term lease of a motor vehicle.

Note: Under subsection 12DMC(3) of the *Australian Securities and Investments Commission Act 2001*, ASIC may determine caps for commissions provided in connection with consumer credit insurance for credit connected with the sale or long-term lease of a motor vehicle.

146 Supply of copy of credit-related insurance contract by insurer

(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.

Criminal penalty: 100 penalty units.

(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.

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 100 penalty units.

(3) Subsections (1) and (2) do not apply to compulsory insurance.

(4) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

147 Rejection of debtor's proposal for insurance

(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 is refunded or credited in full.

Criminal penalty: 100 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

148 Termination of consumer credit insurance contract if credit contract terminated

(1) On termination of a credit contract, any relevant credit-related insurance contract financed under the credit contract for 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 relevant credit-related insurance contract

Authorised Version C2021C00117 registered 17/02/2021

for consumer credit insurance in force immediately before the credit contract is terminated.

(3) The credit provider may, in turn, recover the amount paid to the debtor from the insurer.

(4) The regulations may prescribe the manner of calculating the proportionate rebate of premium for the purposes of this section, including the rebate payable where this section does not apply to the whole of a credit-related insurance contract.

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

(6) This section does not apply to a credit-related insurance contract, to the extent that it provides a benefit in the event of the death of the debtor, if a credit contract is terminated on the death of a debtor. However, it does apply to the credit-related insurance contract to the extent that it provides other benefits.

149 Termination of insurance contract over mortgaged property if credit contract terminated

(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.

Criminal penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

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

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

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

Authorised Version C2021C00117 registered 17/02/2021

Part 9—Advertising and related conduct

150 Advertising

General principle

(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:
  (a) this section; and
  (b) if, under Part 10, the comparison rate is included or required to be included—Division 2 of that Part.

Criminal penalty: 100 penalty units.

Regulations

(2) The advertisement must not contain a statement of a kind prohibited by the regulations. It must contain any statement required by the regulations.

Annual percentage rate

(3) The advertisement need not contain an annual percentage rate, but must do so if the advertisement states the amount of any repayment. If the advertisement contains an annual percentage rate and credit fees and charges are payable, the advertisement must:
  (a) state that fees and charges are payable; or
  (b) specify the amount of the fees and charges payable; or
  (c) specify the amount of some of the fees and charges payable and state that other fees and charges are payable.

(3A) Subsection (3) does not apply if the credit would, if provided as advertised, be provided under a small amount credit contract.

Authorised Version C2021C00117 registered 17/02/2021

Civil effect

(4) 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.

151 Persons liable for advertisements

(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 150 of causing an advertisement that does not comply with that section to be published if the person charged proves that he or she could not, by the exercise of reasonable care, have prevented the noncompliance to which the offence relates.

152 Defence

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, does not commit an offence under section 150 unless he or she suspected, or had reason to suspect, that publishing the advertisement would constitute an offence.

153 Interest rates which may be disclosed

(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;

Authorised Version C2021C00117 registered 17/02/2021

unless the interest rate is expressed as a nominal percentage rate per annum or is the comparison rate calculated as prescribed by the regulations and accompanied by the warnings set out in the regulations.

Criminal penalty: 100 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

154 False or misleading representations

Prohibition on making false or misleading representations

(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.

Civil penalty: 5,000 penalty units.

Offence

(1A) A person commits an offence if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

(2) For the purposes of subsections (1) and (1A), it is a defence if a person charged proves that he or she reasonably believed that the representation was not false or misleading.

Right to recover loss

(3) A person who suffers loss as a result of a 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.

Authorised Version C2021C00117 registered 17/02/2021

155 Harassment

Prohibition on harassment

(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.

Civil penalty: 5,000 penalty units.

Offence

(2) A person commits an offence if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

156 Canvassing of credit at home

Prohibition on canvassing credit at home

(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 a person who resides there.

Civil penalty: 5,000 penalty units.

Offence

(1A) A person commits an offence if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the requirement.

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 100 penalty units.

(2) 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.

Authorised Version C2021C00117 registered 17/02/2021

Part 10—Comparison rates

Division 1—Preliminary

157 Object of Part

(1) The object of this Part is to assist consumers to identify the true cost of credit offered by credit providers.

(2) In order to achieve that object, this Part makes it mandatory for credit providers to include the comparison rate in advertisements for consumer credit (other than under continuing credit contracts) if an interest rate is advertised.

(3) The comparison rate will reflect the total cost of credit arising from interest charges and other prescribed credit fees and charges.

158 Part not to apply to continuing credit contracts

(1) This Part does not apply to advertising or other matters about the provision of credit under continuing credit contracts.

(2) Accordingly, a reference in this Part to the provision of credit (or to a credit contract or related matters) does not include a reference to the provision of credit under a continuing credit contract (or to a continuing credit contract or matters related to such a contract).

159 Definitions

In this Part:

consumer credit product means any form of facility for the provision of credit (other than under a continuing credit contract) provided to debtors by a credit provider.

credit advertisement means an advertisement in any form or medium that states or implies that credit is available, but (for the avoidance of doubt) does not include:

Authorised Version C2021C00117 registered 17/02/2021

(a) notices or other documents required or authorised to be given under this Code; or

(b) a publication that only lists reference rates.

name, of a consumer credit product, means the usual name or description by which the credit provider describes or advertises the product.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Comparison rate in credit advertising

160 Comparison rate mandatory in advertisements containing annual percentage rate

(1) A credit advertisement must contain the relevant comparison rate in accordance with this Part if it contains an annual percentage rate.

(2) A credit advertisement may contain the relevant comparison rate in accordance with this Part even if it does not contain an annual percentage rate.

Note: Section 150(1) makes it an offence (penalty—100 penalty units) if a person publishes a credit advertisement that does not comply with this Division.

161 The relevant comparison rate

(1) The relevant comparison rate for the purposes of section 160 is the comparison rate calculated for whichever of the designated amounts and terms most closely represents the typical amount of credit and term initially provided by the credit provider for the consumer credit product being advertised.

(2) The designated amounts and terms are the amounts and terms prescribed by a regulation for the purposes of this section.

(3) The credit advertisement may contain more than one relevant comparison rate.

162 Information about comparison rate

(1) The credit advertisement must clearly state the name of the consumer credit product, the amount of credit and the term to which each comparison rate applies.

(2) If the comparison rate is calculated for an amount of credit prescribed by a regulation for the purposes of this subsection, the credit advertisement must clearly state:

Authorised Version C2021C00117 registered 17/02/2021

(a) that the comparison rate is for a secured loan if it has been calculated on the basis that a mortgage or guarantee is taken by the credit provider; or

(b) that the comparison rate is for an unsecured loan if it has not been so calculated.

The word "secured" or "unsecured" in connection with the amount of credit for which the comparison rate is calculated is a sufficient description for the purposes of this subsection.

163 Warning about comparison rate

(1) A comparison rate in a credit advertisement must be accompanied by a warning about the accuracy of the comparison rate that is prescribed by a regulation.

(2) The warning may be given in conjunction with the basis on which the comparison rate is calculated, that is, that the comparison rate is accurate only for the specified amount of credit and specified term.

164 Other requirements for comparison rate

(1) A comparison rate in any credit advertisement must be identified as a comparison rate.

(2) A comparison rate in any credit advertisement must not be less prominent than:

(a) any annual percentage rate stated in the advertisement; and

(b) the amount of any repayment stated in the advertisement.

(3) The following applies to credit advertisements on television, the internet or other electronic display medium:

(a) if the annual percentage rate is in spoken form and not displayed on the screen in text, the comparison rate must also be in spoken form;

(b) if the annual percentage rate is displayed on the screen in text, the comparison rate must also be displayed on the screen in text and may be in spoken form;

Authorised Version C2021C00117 registered 17/02/2021

(c) if the comparison rate is in spoken form, the warning and other information may be either in spoken form or displayed on the screen in text;

(d) if the comparison rate is displayed on the screen in text, the warning and other information must also be displayed on the screen in text.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Comparison rate in other documents

165 Comparison rates in documents other than credit advertising

If a document, other than a credit advertisement, contains a comparison rate, Division 2 applies (with necessary changes) in relation to the comparison rate as if it were in a credit advertisement.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Miscellaneous

166 Calculation of comparison rates

(1) A regulation may make provision about the way in which comparison rates are to be calculated for the purposes of this Part.

(2) For the purposes of calculating the relevant comparison rate, credit fees or charges are not ascertainable and need not be included in the calculation if their imposition or amount is dependent on events that may or may not happen (unless a regulation under this section otherwise provides).

167 Compliance grace period following changes in interest or fees

A credit advertisement does not cease to comply with this Part merely because of a change in the annual percentage rate or in any credit fees or charges during the period of 7 days after the change takes effect.

168 Regulations—exemptions and other matters

A regulation may make provision about the following:

(a) exempting any class of persons or matters from the operation of any provision of this Part;

(b) requirements with which a credit advertisement containing a comparison rate must comply.

Authorised Version C2021C00117 registered 17/02/2021

Part 11—Consumer leases

Division 1—Interpretation and application

169 Meaning of *consumer lease*

For the purposes of this Code, a ***consumer lease*** is a contract for the hire of goods by a natural person or strata corporation under which that person or corporation does not have a right or obligation to purchase the goods.

170 Consumer leases to which this Part applies

(1) This Part applies to a consumer lease if, when the lease is entered into:

(a) the goods are hired wholly or predominantly for personal, domestic or household purposes; and

(b) 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

(c) the lessor hires the goods in the course of a business of hiring goods carried on in this jurisdiction or as part of or incidentally to any other business of the lessor carried on in this jurisdiction.

(2) 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 this jurisdiction; and

(b) this Part continues to apply even though the lessee ceases to carry on a business in this jurisdiction.

(3) 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:

Authorised Version C2021C00117 registered 17/02/2021

(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.

(4) 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.

171 Consumer leases to which this Part does not apply

Short term or indefinite leases

(1) This Part does not apply to a consumer lease for a fixed period of 4 months or less or for an indefinite period.

Employment-related leases

(2) This Part does not apply to a consumer lease under which goods are hired by an employee in connection with the employee's remuneration or other employment benefits.

Regulations may exclude leases

(3) The regulations may exclude from the application of this Part consumer leases of a class specified in the regulations.

ASIC may exclude leases

(4) ASIC may exclude, from the application of this Part, a consumer lease specified by ASIC.

(5) An exemption under subsection (4) is not a legislative instrument.

Authorised Version C2021C00117 registered 17/02/2021

(6) ASIC may, by legislative instrument, exclude from the application of this Part, consumer leases of a class specified in the instrument.

172 Presumptions relating to application of this Part

(1) In any proceedings (whether brought under this Code or not) in which a party claims that a lease is a consumer lease to which this Part applies, it is presumed to be such unless the contrary is established.

(2) It is presumed for the purposes of this Code that goods hired under a lease are not hired wholly or predominantly for personal, domestic or household purposes if the lessee declares, before entering the lease, that the goods are hired wholly or predominantly for business purposes, unless the contrary is established.

(3) However, the declaration is ineffective if, when the declaration was made, the lessor or a person (the ***prescribed person***) of a kind prescribed by the regulations:

(a) knew, or had reason to believe; or

(b) would have known, or had reason to believe, if the lessor or prescribed person had made reasonable inquiries about the purpose for which the goods were hired;

that the goods were in fact hired wholly or predominantly for personal, domestic or household purposes.

(4) If the declaration is ineffective under subsection (3), paragraph 170(1)(a) is taken to be satisfied in relation to the lease.

(5) 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.

(6) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct induces a debtor to make a declaration under this section that is false or misleading in a material particular; and

(c) the declaration is false or misleading in a material particular.

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 2 years imprisonment.

(7) Strict liability applies to paragraph (6)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Form of and information to be included in consumer leases

173 Form of consumer lease

(1) A consumer lease must be in the form of a written lease document:
  (a) signed by the lessor and the lessee; and
  (b) containing the information required by this Division.

(1A) Subject to subsection (2), a consumer lease may consist of one or more separate documents.

(2) The regulations may make provision for or with respect to the form of consumer leases and the way they are expressed.

(2A) In the case of a lease document consisting of more than one document, it is sufficient compliance with this section if one of the documents is duly signed and the other documents are referred to in the signed document.

(3) A lessor must not enter into a consumer lease that contravenes a requirement of this section or regulations made under this section.

Criminal penalty: 100 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

173A Other forms of consumer lease

(1) The regulations may authorise other ways of making a consumer lease that do not involve a written document.

(2) In that case, the provisions of this Division apply with such modifications as are prescribed by the regulations.

Authorised Version C2021C00117 registered 17/02/2021

174 Disclosures in consumer leases

(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 (other than on receipts or withdrawals) 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, 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;

(f) the number of rental payments to be made by the lessee, and the total amount of rental payable under the lease;

(g) a statement of the conditions on which the lessee may terminate the lease;

(h) a statement of the liabilities (if any) of the lessee on termination of the lease.

(2) A consumer lease is taken to comply with this section despite any omission or other error if the court is satisfied that the omission or error is not of such a nature as to mislead the lessee to his or her disadvantage.

(3) A lessor must not enter into a consumer lease that contravenes a requirement of this section.

Civil penalty: 5,000 penalty units.

(4) A lessor commits an offence of strict liability if the lessor enters into a consumer lease that contravenes a requirement of this section.

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 100 penalty units.

174A Alteration of consumer lease document

(1) An alteration of (including an addition to) a new consumer lease document by the lessor after it is signed by the lessee is ineffective unless the lessee has agreed in writing to the alteration.

(2) This section does not apply to an alteration having the effect of reducing the lessee's liabilities under the consumer lease.

175 Copy of lease etc. for lessee

(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.

Criminal penalty: 50 penalty units.

(2) Subsection (1) does not apply if the lessor has previously given the lessee a copy of the consumer lease to keep.

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) Section 194 applies to this section as if references in that section to the credit provider were references to the lessor or a lease broker and as if references in that section to the debtor were references to the lessee.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Fees and charges

175A Prohibited consumer lease fees or charges

The regulations may specify:

(a) consumer lease fees or charges; or

(b) classes of consumer lease fees or charges;

that are prohibited for the purposes of this Code.

175B Fees or charges in relation to third parties

When this section applies

(1) This section applies if a fee or charge is payable by a lessee to the lessor for an amount (the ***third party amount***) payable or paid by the lessor to another person, body or agency.

Third party amount ascertainable at time of lessee payment

(2) If, when the fee or charge is paid by the lessee to the lessor, the third party amount is ascertainable, then the amount of the fee or charge must not exceed the third party amount.

Third party amount not ascertainable at time of lessee payment

(3) If:

(a) when the fee or charge is paid by the lessee to the lessor, the third party amount is not ascertainable; and

(b) after the fee or charge is paid, the lessor ascertains the third party amount; and

(c) the third party amount is less than the amount of the fee or charge paid;

then the lessor must refund or credit the difference to the lessee.

Determining third party amount

(4) The third party amount is to be determined by:

Authorised Version C2021C00117 registered 17/02/2021

(a) taking into account any discount, rebate or other allowance that is received or receivable by the lessor or a related body corporate (within the meaning of the *Corporations Act 2001*); and

(b) disregarding any rebate on tax payable by the lessor or a related body corporate (within the meaning of that Act).

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Lessor's obligation to account

Subdivision A—Ongoing statements of account

175C Statements of account

(1) A lessor must give to the lessee, or arrange for the lessee to be given, periodic statements of account in accordance with this Subdivision.

Criminal penalty: 100 penalty units.

(2) The maximum period for a statement of account is 12 months.

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

(a) the lessee was in default under the consumer lease during the statement period and the lessor has commenced enforcement proceedings; or

(b) the lessee has died or is insolvent and the lessee's personal representative or trustee in bankruptcy has not requested a statement of account.

(4) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

175D Information to be contained in statements of account

A statement of account must contain the information prescribed by the regulations.

175E Statement of amount owing and other matters

(1) A lessor must, at the request of a lessee and within the time specified by this section, provide a statement of all or any of the following:

(a) any amounts credited to the lessee's account during a period specified in the request;

Authorised Version C2021C00117 registered 17/02/2021

(b) any amounts currently overdue and the date they became due;
(c) any amount currently payable and the date it becomes due;
(d) any other information prescribed by the regulations.

Criminal penalty: 100 penalty units.

(2) The statement must be given:
(a) within 14 days, if all information requested relates to a period 1 year or less before the request is given; or
(b) within 30 days, if any information requested relates to a period more than 1 year before the request is given.

(3) A statement under this section may be given orally but if the request for the statement is made in writing the statement must be given in writing.

(4) In the case of joint lessees, the statement under this section need only be given to a lessee who requests the statement and not, despite section 194, to each joint lessee.

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

(6) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

175F Court may order statement of account to be provided

If a statement of account is not provided within the time required by this Subdivision, the court may, on the application of the lessee, order the lessor to provide the statement or itself determine the amounts in relation to which the statement was sought.

175G Disputed accounts

(1) If:
(a) a liability is entered against a lessee under a consumer lease; and

Authorised Version C2021C00117 registered 17/02/2021

(b) the lessee, by written notice to the lessor, disputes the liability;

then the lessor must give the lessee a written notice explaining in reasonable detail how the liability arises.

(2) A written notice need not be given if the lessor agrees with the lessee as to the disputed amount and gives the lessee a written notice advising of the agreed liability.

(3) In the case of a consumer lease for which a statement of account is given, the notice of dispute must be given to the lessor within 30 days after the day the lessee receives the statement of account in which the amount, or part of that amount, is first shown.

(4) In the case of a consumer lease in respect of which a statement of account need not be and is not given for the period to which the disputed liability relates, the notice of dispute must be given to the lessor not later than 3 months after the day the lease ends.

(5) The lessor must not begin enforcement proceedings on the basis of a default arising from the disputed liability until the period of 30 days, starting on the day the lessor gives the written explanation or advice as to agreement, has expired.

Criminal penalty: 50 penalty units.

(6) A lessee or lessor may apply to the court to have the court determine a 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 the court under this section within 30 days after the day the written explanation is given, the lessor must not, without leave of the court, begin enforcement proceedings on the basis of a default arising from the disputed liability.

Criminal penalty: 50 penalty units.

(8) Subsections (5) and (7) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

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

Subdivision B—End of lease statements

175H End of lease statement

(1) A lessor must arrange for the lessee to be given, not later than 90 days before the end of the fixed term of a consumer lease, a statement containing the information prescribed by the regulations.

Criminal penalty: 100 penalty units.

(2) Subsection (1) does not apply in the circumstances (if any) prescribed by the regulations.

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Division 6—Certain transactions not to be treated as new consumer leases

175J Changes etc. under consumer leases

If:

(a) there is:

(i) a change to an existing consumer lease that results in further goods being provided; or

(ii) a deferral or waiver of an amount under an existing consumer lease; or

(iii) a postponement relating to an existing consumer lease; and

(b) the change, deferral, waiver or postponement is made in accordance with this Code or the existing consumer lease;

then the change, deferral, waiver or postponement is not to be treated as creating a new consumer lease or a credit contract for the purposes of this Code.

Authorised Version C2021C00117 registered 17/02/2021

Division 7—Changes to obligations under consumer leases

Subdivision A—Changes by agreement of parties

177A Changes by agreement

(1) If the parties under an existing consumer lease agree to change its terms, the lessor must, not later than 30 days after the date of the agreement, give to the lessee a written notice setting out:
  (a) particulars of the change in the terms of the consumer lease; and
  (b) any information required by the regulations.

  Criminal penalty: 100 penalty units.

(2) Subsection (1) does not apply to a change which defers or otherwise reduces the obligations of the lessee for a period not exceeding 90 days.

(3) This section does not apply to a change made under Subdivision B.

(4) The lessor may, under subsection (1), give a lessee particulars only of a matter as changed instead of particulars of the change, but only if the lessor:
  (a) makes it clear to the lessee that the matter has changed; or
  (b) issues to the lessee a new set of terms and conditions relating to the consumer lease.

(5) Subsection (1) is an offence of strict liability.

  Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

Subdivision B—Changes on grounds of hardship and unjust transactions

177B Changes on grounds of hardship

Hardship notice

(1) If a lessee considers that he or she is or will be unable to meet his or her obligations under a consumer lease, the lessee may give the lessor notice (a ***hardship notice***), orally or in writing, of the lessee's inability to meet the obligations.

Note: If the lessee has given the lessor a hardship notice, there may be extra requirements (beyond those in section 179D) that the lessor must comply with before beginning enforcement proceedings—see section 179F.

Further information

(2) Within 21 days after the day of receiving the lessee's hardship notice, the lessor may give the lessee notice, orally or in writing, requiring the lessee to give the lessor specified information within 21 days of the date of the notice stated in the notice. The information specified must be relevant to deciding:

(a) whether the lessee is or will be unable to meet the lessee's obligations under the lease; or

(b) how to change the lease if the lessee is or will be unable to meet those obligations.

(3) The lessee must comply with the requirement.

Note: The lessor need not agree to change the consumer lease, especially if the lessor:

(a) does not believe there is a reasonable cause (such as illness or unemployment) for the lessee's inability to meet his or her obligations; or

(b) reasonably believes the lessee would not be able to meet his or her obligations under the lease even if it were changed.

Authorised Version C2021C00117 registered 17/02/2021

Notice of decision on changing consumer lease

(4) The lessor must, before the end of the period identified under subsection (5), give the lessee a notice:

(a) that is in the form (if any) prescribed by the regulations and records the fact that the lessor and the lessee have agreed to change the consumer lease; or

(b) that is in the form (if any) prescribed by the regulations and states:

(i) the lessor and the lessee have not agreed to change the consumer lease; and

(ii) the reasons why they have not agreed; and

(iii) the name and contact details of the AFCA scheme; and

(iv) the lessee's rights under that scheme.

Civil penalty: 5,000 penalty units.

(5) The lessor must give the notice before the end of the period identified using the table.

Period for giving notice

	If:	The period is:
1	The lessor does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2	The lessor requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the stated date of the notice under subsection (2)
3	The lessor requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

Regulations may prescribe shorter periods for consumer leases

(6) The regulations may provide for subsections (2), (3), (4) and (5) to have effect in relation to consumer leases prescribed by the regulations as if a particular reference in subsection (2) or (5) to a number of days were a reference to a lesser number of days prescribed by the regulations.

Authorised Version C2021C00117 registered 17/02/2021

177C Notice of change

(1) A lessor that enters into an agreement with a lessee to change the consumer lease as a result of a hardship notice by the lessee must, not later than 30 days after the date of the agreement, give to the lessee a written notice setting out:

(a) particulars of the change in the terms of the lease; and

(b) any information required by the regulations.

Criminal penalty: 50 penalty units.

(2) The lessor may, under subsection (1), give the lessee particulars only of a matter as changed instead of particulars of the change, but only if the lessor:

(a) makes it clear to the lessee that the matter has changed; or

(b) gives to the lessee a new set of terms and conditions relating to the lease.

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

177D Changes by court

(1) If a lessor does not change a consumer lease as a result of a hardship notice by a lessee, the lessee may apply to the court to change the terms of the lease.

(2) The court may, after allowing the applicant and the lessor a reasonable opportunity to be heard:

(a) by order change the lease (but not so as to reduce the amount ultimately payable by the lessee to the lessor under the lease), and make such other orders as it thinks fit; or

(b) refuse to change the lease.

(3) The court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under the lease, and make such other orders as it thinks fit, until the application has been determined.

Authorised Version C2021C00117 registered 17/02/2021

177E Lessor may apply for variation of change

(1) A lessor under a consumer lease that has been changed by an order under subsection 177D(2) may apply to the court for an order varying or revoking the order.

(2) A lessor subject to a stay of enforcement proceedings or other order under subsection 177D(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.

177F Court may reopen unjust transactions

Power to reopen unjust transactions

(1) The court may, if satisfied on the application of a lessee that, in the circumstances relating to the relevant consumer lease at the time it was entered into or changed (whether or not by agreement), the lease or change was unjust, reopen the transaction that gave rise to the lease or change.

Matters to be considered by court

(2) In determining whether a term of a particular consumer lease is unjust in the circumstances relating to it at the time it was entered into or changed, the court is to 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 lease;
(b) the relative bargaining power of the parties;
(c) whether or not, at the time the lease was entered into or changed, its provisions were the subject of negotiation;
(d) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the lease or the change;

Authorised Version C2021C00117 registered 17/02/2021

(e) whether or not any of the provisions of the lease 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 lease;

(f) whether or not the lessee, or a person who represented the lessee, was reasonably able to protect the interests of the lessee because of his or her age or physical or mental condition;

(g) the form of the lease and the intelligibility of the language in which it is expressed;

(h) whether or not, and if so when, independent legal or other expert advice was obtained by the lessee;

(i) the extent to which the provisions of the lease or change and their legal and practical effect were accurately explained to the lessee and whether or not the lessee understood those provisions and their effect;

(j) whether the lessor or any other person exerted or used unfair pressure, undue influence or unfair tactics on the lessee and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics;

(k) whether the lessor took measures to ensure that the lessee understood the nature and implications of the transaction and, if so, the adequacy of those measures;

(l) whether at the time the lease was entered into or changed, the lessor knew, or could have ascertained by reasonable inquiry at the time, that the lessee 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 lessor is justified in the light of the risks undertaken by the lessor;

(n) the terms of other comparable transactions involving other lessors and, if the injustice is alleged to result from excessive costs, the costs payable in comparable cases;

(o) any other relevant factor.

Authorised Version C2021C00117 registered 17/02/2021

Representing lessee

(3) For the purposes of paragraph (2)(f), a person is taken to have represented a lessee if the person represented the lessee, or assisted the lessee to a significant degree, in the negotiations process prior to, or at, the time the consumer lease was entered into or changed.

Unforeseen circumstances

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

Conduct

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

Application

(6) This section does not apply to a change to a consumer lease under this Subdivision.

177G Orders on reopening of transactions

The court may, if it reopens a transaction under this Subdivision, do any one or more of the following, despite any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation:

(a) reopen an account already taken between the parties to the transaction;

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

Authorised Version C2021C00117 registered 17/02/2021

(c) set aside either wholly or in part or revise or alter an agreement made in connection with the transaction;
(d) give judgement for or make an order in favour of a party to the transaction 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 consumer lease;
(e) give judgement or make an order against a person for delivery of goods to which the lease relates and which are in the possession of that person;
(f) make ancillary or consequential orders.

177H Applications by ASIC

(1) This section applies if ASIC considers that it is in the public interest to make an application under this Subdivision.

(2) ASIC may make an application under this Subdivision and has standing to represent the public interest.

(3) The application:
(a) may apply to any one or more consumer leases; and
(b) may apply to all or any class of consumer leases entered into by a lessor during a specified period (for example, all leases entered into during a specified period that are affected by a specified matter for which relief is sought).

177J Time limit

An application may not be brought under this Subdivision more than 2 years after the relevant consumer lease is terminated, discharged or otherwise comes to an end.

177K Joinder of parties

(1) If it appears to the court that a person other than a lessor (a ***third party***) has shared in the profits of, or has a beneficial interest prospectively or otherwise in, a consumer lease that the court holds

Authorised Version C2021C00117 registered 17/02/2021

to be unjust, the court may make an order about the third party that the court considers appropriate.

(2) However, before making an order about the third party, 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.

Authorised Version C2021C00117 registered 17/02/2021

Division 8—Repossession, termination and enforcement of consumer leases

Subdivision A—Repossession of goods under consumer lease

178 Notice of repossession

(1) 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.

Criminal penalty: 50 penalty units.

(2) However, the lessor is not required to give the notice in accordance with this section if:

(a) the right arises under a lease granted for a fixed term at the end of that term; or

(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; or

(c) the lessor has made reasonable attempts to locate the lessee but without success; or

(d) the lessee is insolvent; or

(e) the court authorises the lessor to do so.

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision B—Termination of consumer lease by lessee

178A Termination before goods have been provided

(1) If:

(a) a consumer lease has been entered into; and

(b) the goods hired under the lease have not been provided;

Authorised Version C2021C00117 registered 17/02/2021

then the lessee may, by written notice to the lessor, terminate the lease.

(2) Nothing in subsection (1) prevents the lessor from retaining or requiring payment of fees or charges incurred before the termination and which would have been payable under the consumer lease.

179 Termination after goods have been provided

(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 such other time as may be agreed with the lessor or fixed by the court on the application of the lessee.

(2) The amount payable by a lessee on the termination of a consumer lease under this section 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 the principles (if any) set out in the regulations for the purposes of this section;

whichever is the lesser.

179A Statement of amount payable on termination

(1) A lessor must, at the written request of a lessee, provide a written statement of the amount required to terminate a consumer lease as at such date as the lessee specifies. If so requested, the lessor must also provide details of the items which make up that amount.

(2) The statement must also contain:

(a) a statement to the effect that the amount payable to terminate the lease may change according to the date on which it is paid; and

(b) a statement to the effect that the lessee has no right to own the goods if the lease is terminated; and

(c) a statement to the effect that the lessee must return the goods to the lessor by a specified date; and

Authorised Version C2021C00117 registered 17/02/2021

(d) any other matters prescribed by the regulations.

(3) A lessor must give a statement, complying with this section, within 7 days after the day the request is given to the lessor.

Criminal penalty: 50 penalty units.

(4) In the case of joint lessees, the statement need only be given to the lessee who requests the statement and not, despite section 194, to each joint lessee.

(5) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

179B Court may determine amount payable on termination if lessor does not

(1) If the lessor does not provide a statement of the amount payable to terminate a consumer lease in accordance with this Subdivision after a request is duly made by a lessee, the court may, on the application of the lessee, determine:

(a) the amount payable on the date of determination; and

(b) the amount by which it increases daily; and

(c) the period for which the determination is applicable.

(2) The consumer lease is discharged if:

(a) the goods hired under the lease are returned to the lessor within the applicable period; and

(b) an amount calculated in accordance with the determination is tendered to the lessor within the applicable period.

179C One-off notice to be given the first time a direct debit default occurs

(1) This section applies if:

(a) a lessee authorises payment of an amount for a consumer lease by direct debit; and

(b) default occurs; and

Authorised Version C2021C00117 registered 17/02/2021

(c) it is the first occasion the default occurs.

(2) The lessor must give the lessee a notice, complying with this section, within 14 days of the default occurring.

Criminal penalty: 50 penalty units.

(3) The notice must contain the information prescribed by the regulations.

(4) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) This section does not affect any other requirement under this Code to give a notice.

Subdivision C—Enforcement of consumer leases

179D Requirements to be met before lessor can enforce consumer lease against defaulting lessee

Enforcement of consumer lease

(1) A lessor must not begin enforcement proceedings against a lessee in relation to a consumer lease unless:

(a) the lessee is in default under the lease; and

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

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

Criminal penalty: 50 penalty units.

Note: If a lessee has given a lessor a hardship notice or a postponement request there may be extra requirements that the lessor must comply with before beginning enforcement proceedings—see sections 179F and 179H.

Authorised Version C2021C00117 registered 17/02/2021

Default notice requirements

(2) A default notice must contain a prominent heading at its top stating that it is a default notice and specify:

(a) the default; and

(b) the action necessary to remedy the default; and

(c) a period for remedying the default; and

(d) the date after which enforcement proceedings in relation to the default, and, if relevant, repossession of goods hired under the lease may begin if the default has not been remedied; and

(e) the information prescribed by the regulations about the lessee's right to:

(i) give a hardship notice under section 177B; or

(ii) give a postponement request under section 179H; or

(iii) make an application to the court under sections 177D and 179K; and

(f) the information prescribed by the regulations about:

(i) the AFCA scheme; and

(ii) the lessee's rights under that scheme; and

(g) that a subsequent default of the same kind that occurs during the period specified for remedying the original default may be the subject of enforcement proceedings without further notice if it is not remedied within the period; and

(h) that, under the *Privacy Act 1988*, a credit reporting body (within the meaning of that Act) may collect and hold default information (within the meaning of that Act) in relation to the default; and

(i) any other information prescribed by the regulations.

When default notice not required

(3) A lessor 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:

Authorised Version C2021C00117 registered 17/02/2021

(a) the lessor reasonably believes that it was induced by fraud on the part of the lessee to enter into the consumer lease; or
(b) the lessor has made reasonable attempts to locate the lessee but without success; or
(c) the court authorises the lessor to begin the enforcement proceedings; or
(d) the lessor reasonably believes 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; or
(e) the lessee becomes insolvent after entering into the consumer lease.

Non-remedial default

(4) If the lessor reasonably believes that a default is not capable of being remedied:
(a) the default notice need only specify the default; and
(b) the lessor may begin the enforcement proceedings after the period of 30 days from the date of the notice.

Strict liability

(5) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

179E Defaults may be remedied

(1) If a default notice under section 179D states that the lessor intends to take action because the lessee is in default under the consumer lease, the lessee may remedy the default within the period specified in the notice, and the lease is then reinstated and any acceleration clause cannot operate.

(2) A lessee does not remedy the default if, at the end of the period, the lessee is in default under the consumer lease because of the breach specified in the notice or because of a subsequent breach of the same type.

Authorised Version C2021C00117 registered 17/02/2021

179F Effect of hardship notices on enforcement

(1) This section applies if:

(a) a lessor is required to give a default notice under section 179D before beginning enforcement proceedings; and

(b) before or after the lessor gives the default notice, the lessee gives the lessor a hardship notice (the ***current hardship notice***) under section 177B; and

(c) either:

(i) in the 4 months before the current hardship notice is given, the lessee had not given the lessor another hardship notice; or

(ii) in that 4-month period, the lessee had given the lessor one or more other hardship notices, but the lessor reasonably believes that the basis on which the current hardship notice was given is materially different from the bases on which the other hardship notices were given.

(2) The lessor must not begin enforcement proceedings against the lessee unless:

(a) the lessor has given the lessee a notice under paragraph 177B(4)(b), in response to the current hardship notice, stating that the lessor and the lessee have not agreed to change the consumer lease; and

(b) the period of 14 days, starting on the day the lessor gave the notice under paragraph 177B(4)(b), has expired.

Criminal penalty: 50 penalty units.

Note: The lessor must allow the lessee at least 30 days from the date of the default notice to remedy the default—see section 179D. The 14-day period in subsection (2) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

(3) However, the lessor may take possession of goods hired under a consumer lease if the lessor reasonably believes that:

Authorised Version C2021C00117 registered 17/02/2021

(a) the lessee has removed or disposed of the goods, or intends to remove or dispose of them; or

(b) urgent action is necessary to protect the goods.

(4) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

179G Requirements to be met before lessor can enforce an acceleration clause

(1) An acceleration clause of a consumer lease is to operate only if:

(a) the lessee is in default under the lease; and

(b) the lessor has given to the lessee a default notice under section 179D; and

(c) the default notice contains an additional statement of:

(i) the manner in which the liabilities of the lessee under the consumer lease would be affected by the operation of the acceleration clause; and

(ii) the amount required to terminate the lease (as accelerated); and

(d) the default has not been remedied within the period specified in the default notice (unless the lessor reasonably believes that the default is not capable of being remedied).

(2) However, a lessor is not required to give a default notice under section 179D or to wait until the period specified in the default notice has elapsed before bringing an acceleration clause into operation, if:

(a) the lessor reasonably believes that it was induced by fraud on the part of the lessee to enter into the consumer lease; or

(b) the lessor has made reasonable attempts to locate the lessee but without success; or

(c) the court authorises the lessor not to do so; or

(d) the lessor reasonably believes that the lessee has removed or disposed of goods hired under a consumer lease, or intends to remove or dispose of goods hired under the lease, or that urgent action is necessary to protect the goods.

Authorised Version C2021C00117 registered 17/02/2021

Subdivision D—Postponement of enforcement proceedings

179H Postponement of exercise of rights

Postponement request

(1) A lessee who has been given a default notice under section 179D may, at any time before the end of the period specified in the notice, request (a ***postponement request***), orally or in writing, that the lessor negotiate a postponement of:
  (a) the enforcement proceedings; or
  (b) any action taken under such proceedings; or
  (c) the operation of any applicable acceleration clause.

Lessor's notice about postponement

(2) If the lessee gives the postponement request, the lessor must, within 21 days after the day of receiving the request, give the person a written notice:
  (a) that states whether or not the lessor agrees to negotiate a postponement; and
  (b) if the lessor does not agree to negotiate—that states:
    (i) the name of the AFCA scheme; and
    (ii) the person's rights under that scheme; and
    (iii) the reasons for not agreeing to negotiate.

Criminal penalty: 30 penalty units.

Enforcement proceedings

(3) If the lessee gives the postponement request, the lessor must not begin enforcement proceedings unless:
  (a) the lessor has given the lessee a notice under subsection (2) in response to the postponement request; and
  (b) the period of 14 days, starting on the day the lessor gives the notice under subsection (2), has expired.

Criminal penalty: 50 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

Note: The lessor must allow the lessee at least 30 days from the date of the default notice to remedy the default—see section 179D. The 14-day period in subsection (3) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

(4) However, the lessor may take possession of goods hired under the consumer lease if the lessor reasonably believes that:

(a) the lessee has removed or disposed of the goods, or intends to remove or dispose of them; or

(b) urgent action is necessary to protect the goods.

Strict liability

(5) Subsections (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

179J Effect of negotiated postponement

(1) A default notice under section 179D is taken, for the purposes of this Code, not to have been given if a postponement is negotiated with the lessor under section 179H and the lessee complies with the conditions of postponement.

(2) A lessor must give written notice of the conditions of a postponement referred to in subsection (1) not later than 30 days after agreement is reached on the postponement. The notice must set out the consequences under subsection (5) if the conditions of the postponement are not complied with.

Criminal penalty: 100 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) A lessor that is required to give notice under section 177A (which deals with changes to leases by agreement) in relation to a postponement is not required to comply with subsection (2).

Authorised Version C2021C00117 registered 17/02/2021

(5) If any of the conditions of a postponement are not complied with, a lessor is not required to give a further default notice under this Code to the lessee with whom the postponement was negotiated before proceeding with enforcement proceedings.

179K Postponement by court

(1) If the lessee is unable to negotiate a postponement, the lessee may apply to the court for a postponement.

(2) After allowing the applicant and the lessor a reasonable opportunity to be heard, the court may:
  (a) order the postponement to which the application relates; or
  (b) refuse to order the postponement; or
  (c) make such other orders as it thinks fit.

(3) The court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under the consumer lease until the application has been determined.

179L Lessor may apply for variation of postponement order

(1) A lessor that is subject to an order under this Subdivision may apply to the court for variation of the order.

(2) On such an application, the court may:
  (a) vary the order to which the application relates as it thinks fit; or
  (b) refuse to vary the order; or
  (c) revoke the order.

Authorised Version C2021C00117 registered 17/02/2021

Subdivision E—Enforcement procedures for goods hired under a consumer lease

179M Information as to location of goods hired under a consumer lease

(1) A lessor may, by written notice to a lessee, require the lessee to inform the lessor, within 7 days after the day the notice is given to the lessee, where the goods hired under the consumer lease are and, if the goods are not in the lessee's possession, to give the lessor all information in the lessee's possession that might assist the lessor to trace the goods.

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

Criminal penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

179N Entry to residential property to take possession of goods

(1) A lessor, or an agent of a lessor, must not enter any part of premises used for residential purposes for the purpose of taking possession of goods hired under a consumer lease unless:

(a) the 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 lessor or an agent of a lessor, the lessor commits an offence.

Authorised Version C2021C00117 registered 17/02/2021

Criminal penalty: 50 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

179P Court may order entry

The court may, on the application of a lessor that is entitled to take possession of goods hired under a consumer lease, authorise the lessor to enter residential premises for the purpose of taking possession of the goods.

179Q Order for possession

(1) The court may, on the application of a lessor that is entitled to take possession of goods hired under a consumer lease, order a person who has possession of the goods to deliver them to the lessor:
(a) at a specified time or place; or
(b) within a specified period.

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

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

Criminal penalty: 30 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision F—Enforcement expenses

179R Recovery of enforcement expenses

(1) A lessor must not recover or seek to recover enforcement expenses from a lessee in excess of those reasonably incurred by the lessor.

Authorised Version C2021C00117 registered 17/02/2021

Enforcement expenses of a lessor extend to those reasonably incurred by the use of the staff and facilities of the lessor.

(2) Any provision of the consumer lease that appears to confer a greater right is void. If enforcement expenses are in fact recovered in excess of this limitation, they may be recovered back.

(3) If there is a dispute between the lessor and the lessee about the amount of enforcement expenses that may be recovered by the lessor, the court may, on application by any of the parties to the dispute, determine the amount of that liability.

Authorised Version C2021C00117 registered 17/02/2021

Division 9—Linked lessors and tied consumer leases

Subdivision A—Interpretation and application

179S Linked lessors and tied consumer leases

(1) For the purposes of this Code, a ***linked lessor*** of a supplier means a lessor:

(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; or

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

(iii) the provision to persons of a consumer lease for the hire of goods supplied by the supplier to the lessor; or

(b) to whom the supplier, by arrangement with the lessor, regularly refers persons for the purpose of being provided with a consumer lease; or

(c) whose forms of contract or forms of application or offers for a consumer lease are, by arrangement with the lessor, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which applications for a consumer lease or offers to be provided with a consumer lease from the lessor may be signed by persons at the premises of the supplier.

(2) A ***tied consumer lease*** is a consumer lease entered into between a lessor and a lessee where:

(a) the lessee enters into the lease to hire goods supplied by the supplier to the lessor; and

(b) at the time the lease is entered into the lessor is a linked lessor of the supplier.

Authorised Version C2021C00117 registered 17/02/2021

Subdivision B—Liability of lessors for suppliers' misrepresentations

179T Lessor liable for supplier's misrepresentations about hired goods

(1) If there is a tied consumer lease, any representation, warranty or statement made (whether orally or in writing) by the supplier, or any person acting on behalf of the supplier, to the lessee in relation to:

(a) goods hired under the lease; or

(b) the lease; or

(c) services, supplied or arranged by the lessor, that are incidental to the hire of goods under the lease;

gives the lessee the same rights against the lessor as the lessee would have had if it had been made by the lessor.

(2) Without prejudice to any other rights or remedies to which a lessor may be entitled, a lessor 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 lessor through the operation of this section.

Authorised Version C2021C00117 registered 17/02/2021

Division 10—Conduct relating to consumer leases

179U False or misleading representations

(1) A person must not make a false or misleading representation:
  (a) in relation to a matter that is material to entry into a consumer lease or a related transaction; or
  (b) in attempting to induce another person to enter into a consumer lease or a related transaction.

Civil penalty: 5,000 penalty units.

(1A) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

(2) For the purposes of subsections (1) and (1A), it is a defence if a person charged proves that he or she reasonably believed that the representation was not false or misleading.

(3) A person who suffers loss as a result of a contravention of this section by another person may recover the amount of the loss from:
  (a) that other person; or
  (b) any other person involved in the contravention.

179V Harassment

(1) A lessor or supplier must not harass a person in attempting to get that person to:
  (a) apply for a consumer lease; or
  (b) enter into a consumer lease or a related transaction.

Civil penalty: 5,000 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

Authorised Version C2021C00117 registered 17/02/2021

Division 11—Other Code provisions applicable to consumer leases

179W Application of certain Code provisions to consumer leases

(1) Part 12 (relating to miscellaneous matters) and subsection 204(2) (definition of ***associated***) apply in relation to a consumer lease in the same way as they apply in relation to a credit contract.

(2) For the purposes of the application of those provisions:

(a) references to a credit provider are to be read as references to a lessor; and

(b) references to a debtor are to be read as references to a lessee; and

(c) references to a credit contract or contract are to be read as references to a consumer lease; and

(d) references to a linked credit provider are to be read as references to a linked lessor.

Authorised Version C2021C00117 registered 17/02/2021

Part 12—Miscellaneous

Division 1—Tolerances and assumptions

180 Tolerances and assumptions relating to information

Disclosures generally

(1) Information disclosed in a precontractual statement, contract document, mortgage document or guarantee, statement, notice or consumer lease, or otherwise disclosed for the purposes of this Code, is taken to be correctly disclosed if:
  (a) it is within tolerances allowed by the regulations; and
  (b) the disclosure is made as at a date stated in it.

Disclosure of interest charges

(2) Disclosures for the purposes of this Code relating to interest charges may be made on the following assumptions (and such other assumptions under this section as 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.

Disclosure of repayments

(3) Disclosures for the purposes of this Code 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

Authorised Version C2021C00117 registered 17/02/2021

contract and on such other assumptions under this section as are applicable.

Disclosures of credit fees and charges

(4) Disclosures relating to credit fees and charges for the purposes of this Code may be made on the following assumptions (and on such other assumptions under this section as are applicable):
  (a) that there will be no change in the credit fees and charges as so disclosed and no new fees or charges imposed;
  (b) that the debtor will pay the fees and charges required by the contract at the times required by the contract.

Disclosures in consumer leases

(5) Disclosures for the purposes of this Code 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 no new charges imposed.

When information is ascertainable

(6) Information required to be disclosed for the purposes of this Code, 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.

Disclosure of names

(7) Information disclosed for the purposes of this Code as to a name is taken to be correctly disclosed if the information is sufficient to identify the person concerned.

181 Tolerances relating to contracts and other documents

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

Authorised Version C2021C00117 registered 17/02/2021

purposes of this Code, taken to comply with this Code if the amount is within tolerances allowed by the regulations.

182 Regulations

The regulations may vary an assumption set out in this Division and may provide for additional assumptions.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—Documentary provisions

183 Form of notices

(1) The regulations may prescribe the form of any notices required or authorised to be given under this Code and may require such notices to contain specified information.

(2) A notice required to be given by a mortgagee under this Code 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 Code is to be in writing unless this Code or the regulations otherwise provide.

184 Legibility and language

(1) A credit contract, mortgage or guarantee or a notice given by a credit provider under this Code, other than a document transmitted by electronic communication:
  (a) must be easily legible; and
  (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) A credit contract, mortgage or guarantee or a notice given by a credit provider under this Code, if transmitted by electronic communication:
  (a) must be easily legible; and
  (b) must conform with the provisions of the regulations, if any, as to content, legibility and accompanying information; and
  (c) must be clearly expressed.

(3) If the court is satisfied, on application by ASIC, that a provision of a credit contract, mortgage or guarantee or a notice given by a credit provider under this Code does not comply with the

Authorised Version C2021C00117 registered 17/02/2021

requirements of this section, it may prohibit the credit provider from using a provision in the same or similar terms in future credit contracts, mortgages or guarantees or notices.

(4) A credit provider that contravenes a prohibition imposed under subsection (3) commits an offence.

Criminal penalty (subsection (4)): 100 penalty units.

185 Copies of contracts and other documents

(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; or

(b) any credit-related insurance contract in the credit provider's possession; or

(c) a notice previously given to the debtor, mortgagor or guarantor under this Code.

Criminal penalty: 30 penalty units.

(2) The copy must be provided:

(a) within 14 days, if the original came into existence one year or less before the request is given; or

(b) within 30 days, if the original came into existence more than one year before the request is given.

Note: Section 196 provides for the date on which notice is taken to be given.

(3) A credit provider must provide a copy of a notice which requires a debtor, mortgagor or guarantor to take action if requested in accordance with subsection (1) even though the contract has been discharged or terminated but only if the request is made within 2 years of the discharge or termination.

Criminal penalty: 30 penalty units.

(4) Subsections (1) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00117 registered 17/02/2021

185A Records of nominations of persons to occupy reverse mortgaged properties

(1) A credit provider under a credit contract for a reverse mortgage that provides for the debtor to nominate to the credit provider a person who is to be allowed to occupy the reverse mortgaged property, and to revoke such a nomination, must keep in accordance with the regulations a record of any such nominations and revocations.

(2) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person engages in conduct; and
  (c) the person's conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

186 Signing of documents

(1) It is sufficient compliance with a requirement under this Code that a document 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 199 (Conduct of agents and related matters).

187 Electronic transactions and documents

(1) Without limiting the provisions of this Code, it is declared that any contract, mortgage or guarantee referred to in this Code may be made in accordance with the *Electronic Transactions Act 1999*.

(2) Without limiting the provisions of this Code, it is declared that any requirement or permission by or under this Code, however expressed:
  (a) to give information in writing; or
  (b) to provide a signature; or

Authorised Version C2021C00117 registered 17/02/2021

(c) to produce a document; or

(d) to record information in writing; or

(e) to retain a document;

may be met in accordance with the *Electronic Transactions Act 1999*.

Example: Giving information would include the requirement under subsection 36(1) to provide a statement of amount owing.

Note 1: Subsection 9(5) of the *Electronic Transactions Act 1999* has a definition relating to the giving of information. That definition provides, generally, that giving information includes, but is not limited to, the following:

(a) making an application;
(b) making or lodging a claim;
(c) giving, sending or serving a notification;
(d) lodging a return;
(e) making a request;
(f) making a declaration;
(g) lodging or issuing a certificate;
(h) making, varying or cancelling an election;
(i) lodging an objection;
(j) giving a statement of reasons.

Note 2: See regulations made under the *Electronic Transactions Act 1999* for exemptions relating to electronic transactions.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—General provisions

188 Assignment by credit provider

(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 Code from then on applies to that other person and does not impose any further obligation on the credit provider.

(2) The debtor, mortgagor or guarantor has and may exercise the same rights in respect of the credit contract, mortgage or guarantee against the 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, or would continue to do so if the debtor complied with the credit contract.

189 Assignment by debtor, mortgagor or guarantor

(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 Code 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 52.

190 Appropriation of payments

(1) A debtor who is liable to a credit provider under 2 or more credit contracts may require the credit provider by written notice to apply

Authorised Version C2021C00117 registered 17/02/2021

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.

Criminal penalty: 30 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) 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.

191 Contracting out

(1) A provision of a contract or other instrument by which a person seeks to avoid or modify the effect of this Code is void.

(2) A provision of a contract or other instrument by which a person seeks to have the debtor, mortgagor or guarantor indemnify the credit provider for any loss or liability arising under this Code is void.

(3) A credit provider that is a party to any such contract or other instrument commits an offence.

Criminal penalty: 100 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) Subsection (2) does not affect the operation of subsection 60(2).

Authorised Version C2021C00117 registered 17/02/2021

192 Indemnities

(1) An indemnity for any liability under this Code is not void, and cannot be declared void, on the grounds of public policy, despite any rule of law to the contrary.

(2) The liabilities to which this section applies include the following:
  (a) a liability for any criminal or civil penalty incurred by any person under this Code;
  (b) a payment in settlement of a liability or alleged liability under this Code;
  (c) a liability under another indemnity for any liability under this Code.

(3) This section is subject to subsection 191(2).

(4) This section does not derogate from any other rights and remedies that exist apart from this section.

193 Effect of noncompliance

(1) A credit contract, mortgage or guarantee or any other contract is not illegal, void or unenforceable because of a contravention of this Code unless this Code contains an express provision to that effect.

(2) Except as provided by this section, this Code does not derogate from rights and remedies that exist apart from this Code.

194 Giving notice or other document

Application

(1) This section applies as follows:
  (a) this section applies (subject to this subsection) to notices or other documents that are required to be given for the purposes of this Code;
  (b) this subsection and subsections (3) and (7) apply, but the remainder of this section does not apply, to precontractual statements and notices given under section 16;

Authorised Version C2021C00117 registered 17/02/2021

(c) subsections (4), (5) and (6) do not apply to default notices;

(d) this section applies despite the provisions of any other section of this Code (except subsections 36(4) and 83(4)) to the contrary.

Note: Examples of notices or other documents to which this section applies are those required to be given under sections 20, 33, 36, 43, 56, 57 and 83.

Unsuccessful attempts by credit provider

(2) A credit provider is relieved from the obligation to give a notice or other document to a person if:

(a) the credit provider has previously made a reasonable (but unsuccessful) attempt to give a notice or other document in accordance with this Code by leaving it at, or by sending it by post or electronic communication to the appropriate address of the person under section 195; and

(b) the credit provider has reasonable grounds for believing that the person can no longer be contacted at that address.

Joint debtors etc.—general obligation

(3) In the case of joint debtors, mortgagors or guarantors, a notice or other document must be given to each debtor, mortgagor or guarantor, except as provided by this section.

Joint debtors etc.—nomination of one of them

(4) A notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors by being given to one of the joint debtors, mortgagors or guarantors nominated by them to receive the notice or other document on their behalf. The notice or other document need not be addressed to all of them.

Joint debtors etc.—same address

(5) A single copy of a notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors at the same address if each of them has consented to a single copy being given and the

Authorised Version C2021C00117 registered 17/02/2021

notice or other document is addressed jointly to them. The procedure prescribed by this subsection is an alternative to the procedure prescribed by subsection (4).

Nominated persons generally

(6) A notice or other document may be given to a person by being given to any other person nominated by the person to receive the notice or other document on his or her behalf. However—

(a) a debtor, mortgagor or guarantor cannot nominate the credit provider or a person associated with the credit provider; and

(b) a mortgagor cannot nominate the debtor if the mortgage is given by a guarantor; and

(c) a guarantor cannot nominate the debtor.

Lawyers

(7) A notice or other document may be given to a person by being given to a lawyer acting for the person in the matter concerned.

Withdrawal of nomination or consent

(8) A nomination or consent under this section ceases to have effect if it is withdrawn by the person who made or gave it.

Form of nomination or consent

(9) A nomination or consent under this section (or the withdrawal of any such nomination or consent) must be in the form required by the regulations.

195 Manner of giving notice or other document

(1) If this Code requires or permits a notice or other document to be given to a person who is a debtor, mortgagor or guarantor, the appropriate address of the person is:

(a) an address nominated in writing by that person to the person giving the notice or other document; or

Authorised Version C2021C00117 registered 17/02/2021

(b) if there is no such nomination, the address of the place of residence of that person last known to the person giving the notice or other document.

Note: A nominated address may be an electronic address.

(2) An appropriate address of any other person is:

(a) an address nominated in writing by that person to the person giving the notice or other document; or

(b) the address of the place of residence or business of that person last known to the person giving the notice or other document.

Note: A nominated address may be an electronic address.

(3) If a person nominates an address under paragraph (1)(a) or (2)(a), the person may, by notice in writing to the person giving the notice or other document referred to in subsection (1), change the nominated address or cancel the nomination.

(4) A nomination under this section ceases to have effect if it is cancelled by the person who made it.

196 Date of notice or other document

(1) For the purposes of this Code 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; or

(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; or

(c) in the case of a notice or other document given by electronic communication—at the time that subsection 14(3) of the *Electronic Transactions Act 1999* provides is the time of receipt of the electronic communication.

Authorised Version C2021C00117 registered 17/02/2021

(2) For the purposes of this Code, the date of a notice or other document is the date it is taken to be given in accordance with this section.

197 Extensions of time

The court may extend a period if authorised by this Code to do so even though the period has elapsed.

198 Orders of court

An order of the court in force under this Code, including such an order as varied from time to time, has effect according to its tenor.

199 Conduct of agents and related matters

(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. This subsection does not prevent a credit provider from authorising a person associated with the credit provider to enter into a credit contract on behalf of the credit provider.

(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.

Criminal penalty: 50 penalty units.

(4) A credit provider is not, for the purposes of this Code, 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,

Authorised Version C2021C00117 registered 17/02/2021

agent or employee acting in that capacity and in connection with the transaction concerned.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Provisions relating to offences

200 Offences by officers, agents or employees

An officer, agent or employee of a credit provider or other person may be prosecuted for an offence against this Code or the regulations (if liable for the offence) whether or not proceedings have been taken against the credit provider or other person.

201 Offences by corporations

(1) If a corporation contravenes a provision of this Code or the regulations, each officer of the corporation is taken to have contravened the provision if the officer knowingly authorised or permitted the contravention.

(2) An officer of a corporation may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under the provision.

(3) Nothing in this section affects the liability imposed on a corporation for an offence committed by the corporation against this Code or the regulations.

(4) In this section:

officer means a director of the corporation or a person who is otherwise concerned in its management.

202 Limitations

Despite anything in any Act, proceedings for an offence against this Code or the regulations may be brought within the period of 3 years that next succeeds the commission of the offence or, with the consent of the Attorney-General, at any later time.

Authorised Version C2021C00117 registered 17/02/2021

203 Application of section 4K of the *Crimes Act 1914*

Section 4K of the *Crimes Act 1914* does not apply in relation to an offence against this Code or the regulations.

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Exemptions from this Code

203A Exemptions by ASIC

Exemptions

(1) ASIC may exempt a person, contract, mortgage, guarantee or consumer lease from all or specified provisions of this Code.

(2) An exemption under subsection (1) is not a legislative instrument.

(3) ASIC may, by legislative instrument, exempt a class of persons, contracts, mortgages, guarantees or consumer leases from all or specified provisions of this Code.

Conditions on exemptions

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The court may order the person to comply with the condition in a specified way. Only ASIC may apply to the court for the order.

Publication of exemptions under subsection (1)

(5) An exemption under subsection (1) must be in writing and ASIC must publish notice of it on its website.

203B Exemptions by the regulations

The regulations may:

(a) exempt a person, contract, mortgage, guarantee or consumer lease from all or specified provisions of this Code; or

(b) exempt a class of persons, contracts, mortgages, guarantees or consumer leases from all or specified provisions of this Code.

Authorised Version C2021C00117 registered 17/02/2021

Part 13—Principal definitions

204 Principal definitions

(1) In this Code:

acceleration clause means:

(a) in relation to a credit contract or mortgage—a term of a credit contract or mortgage providing that:

(i) 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

(ii) 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; or

(b) in relation to a consumer lease—a term of a consumer lease providing that:

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

(ii) whether or not on the occurrence or non-occurrence of a particular event, the lessor has a discretion to require payment of an amount payable under a lease otherwise than by repayments fixed, or determined on a basis stated, in the lease.

Authorised Version C2021C00117 registered 17/02/2021

add-on risk product has the meaning given by subsection 12DMC(2) of the *Australian Securities and Investments Commission Act 2001*.

ADI has the same meaning as in the *Banking Act 1959*.

adjusted credit amount, in relation to a small amount credit contract, means the first amount of credit that is, or is to be, provided under the contract.

Note: Some amounts are to be disregarded in working out the first amount of credit (see subsection (3)).

AFCA scheme has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

amend includes:

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication.

amount of credit**:** see subsection 3(2).

annual cost rate of a credit contract means the annual cost rate of the contract calculated in accordance with section 32B.

annual percentage rate: see section 27.

ASIC means the Australian Securities and Investments Commission.

associated: see subsection (2).

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

bridging finance contract: a credit contract is a ***bridging finance contract*** if:

(a) when the contract is made, the debtor:

(i) reasonably expects to receive a lump sum before the term of the contract ends; and

Authorised Version C2021C00117 registered 17/02/2021

(ii) intends to discharge the debtor's obligations under the contract so far as possible with that sum; and

(aa) the term of the contract is 2 years or less; and

(b) the conditions (if any) prescribed by the regulations are met.

Bulk Electronic Clearing System means the system established by the Australian Payments Clearing Association to manage the conduct of the exchange and settlement of bulk electronic low value transactions and includes any replacement system.

business day means a day that is not:

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

carried on in this jurisdiction has a meaning affected by section 12 of the National Credit Act.

cash price of goods or services to which a credit contract relates means:

(a) the lowest price that a cash purchaser might reasonably be expected to pay for them from the supplier; or

(b) if the goods or services are not available for cash from the supplier or are only available for cash at the same, or a reasonably similar, price to the price that would be payable for them if they were sold with credit provided—the market value of the goods or services.

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

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

compulsory insurance means:

(a) compulsory third-party personal injury insurance; or

Authorised Version C2021C00117 registered 17/02/2021

(b) insurance of a nature declared by the regulations to be compulsory insurance for the purposes of this Code.

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: see section 169.

consumer lease fees or charges means fees or charges payable in connection with a consumer lease, but does not include:

(a) enforcement expenses; or

(b) government charges, or duties, on receipts or withdrawals.

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 the document or documents setting out the terms of a contract.

credit: see subsection 3(1).

credit card has the same meaning as in subsection 133BA(2) of the National Credit Act.

credit card contract has the same meaning as in subsection 133BA(1) of the National Credit Act.

credit contract: see section 4.

credit cost amount: see subsection 32B(3).

Authorised Version C2021C00117 registered 17/02/2021

credit fees and charges means fees and charges payable in connection with a credit contract or mortgage, 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 in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available (not being annual fees or charges in connection with credit card contracts); or

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

(d) enforcement expenses.

credit limit has the same meaning as in section 5 of the National Credit Act.

credit provider means a person that provides credit, and includes a prospective credit provider.

credit-related insurance contract: see section 142.

credit service has the same meaning as in section 7 of the National Credit Act.

daily percentage rate: see section 27.

date of a notice: see section 196.

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

default notice:

(a) in relation to credit contracts, mortgages and guarantees—see section 88; and

(b) in relation to consumer leases—see section 179D.

default rate: see section 27.

definition means a provision of this Code (however expressed) that:

Authorised Version C2021C00117 registered 17/02/2021

(a) gives a meaning to a word or expression; or
(b) limits or extends the meaning of a word or expression.

direct debit, in relation to the payment of an amount, means the debiting of an amount against an account with a financial institution that is processed through the Bulk Electronic Clearing System, as specified and authorised in writing by:
(a) in relation to the payment by a debtor of an amount for a credit contract—the debtor; and
(b) in relation to the payment by a lessee of an amount for a consumer lease—the lessee.

dispose of property includes:
(a) sell the property; or
(b) part with possession of the property to the prejudice of the owner or a mortgagee of the property; or
(c) destroy the property.

electronic communication has the same meaning as in the *Electronic Transactions Act 1999*.

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 means:
(a) for a credit contract, consumer lease or guarantee—proceedings in a court to recover a payment due under the contract, lease or guarantee; or
(b) for a consumer lease or mortgage—taking possession of property under the lease or mortgage; or
(c) for a mortgage—taking any other action to enforce the mortgage.

engage in conduct means:
(a) do an act; or

Authorised Version C2021C00117 registered 17/02/2021

(b) omit to perform an act.

fail includes refuse.

goods includes:

(a) ships, aircraft or other vehicles; or

(b) animals, including fish; or

(c) minerals, trees or crops, whether on, under or attached to land or not;

but does not include anything declared by the regulations not to be goods for the purposes of this Code.

goods mortgage means a mortgage over goods.

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

guarantee document means the document or documents setting out the terms of a guarantee.

guarantor includes a prospective guarantor.

hardship notice:

(a) in relation to credit contracts—see subsection 72(1); and

(b) in relation to consumer leases—see subsection 177B(1).

insolvent means:

(a) in the case of a natural person—a person who is an insolvent under administration; or

(b) in the case of a corporation—a corporation that is an externally-administered corporation within the meaning of the *Corporations Act 2001*.

instrument includes a statutory instrument.

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.

Authorised Version C2021C00117 registered 17/02/2021

key requirement: see Part 6.

land includes any interest in land.

lessee means the lessee under a consumer lease to which Part 11 applies, and includes a prospective lessee.

lessor means the lessor under a consumer lease to which Part 11 applies, and includes a prospective lessor.

linked credit provider: see subsection 127(1).

linked lessor: see subsection 179S(1).

long-term lease, of a motor vehicle, has the meaning given by subsection 12BA(1) of the *Australian Securities and Investments Commission Act 2001*.

lowest price, in relation to the cash price of goods or services to which a credit contract relates, means the lowest price including any goods and services tax but unaffected by any discount between the credit provider and the supplier.

market value, of goods or services to which a credit contract relates, means fair market value including any goods and services tax.

medium amount credit contract: a credit contract is a ***medium amount credit contract*** if:

(a) the contract is not a continuing credit contract; and
(b) the credit provider under the contract is not an ADI; and
(c) the credit limit of the contract is:
    (i) at least $2,001 (or such other amount as is prescribed by the regulations); but
    (ii) not more than $5,000 (or such other amount as is prescribed by the regulations); and
(d) the term of the contract is at least 16 days but not longer than 2 years (or such other number of years as is prescribed by the regulations); and

Authorised Version C2021C00117 registered 17/02/2021

(e) the contract meets any other requirements prescribed by the regulations.

merchant service agreement means an agreement between a credit provider and a 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.

modification includes addition, omission or substitution.

mortgage includes:

(a) any interest in, or power over, property securing obligations of a debtor or guarantor; or
(b) a credit provider's title to land or goods subject to a sale by instalments; or
(c) a mortgage taken to have been entered into under subsection 9(3);

but does not include a consumer lease to which Part 11 applies.

mortgage document means the document or documents setting out the terms of a mortgage by reference to which the mortgage is created.

mortgagor includes a prospective mortgagor.

motor vehicle has the meaning given by subsection 12BA(1) of the *Australian Securities and Investments Commission Act 2001*.

National Credit Act means the *National Consumer Credit Protection Act 2009* and includes regulations made under section 329 of that Act, but does not include this Code.

number means:

(a) a number expressed in figures or words; or
(b) a letter; or
(c) a combination of a number so expressed and a letter.

omit, in relation to a provision of this Code or an Act, includes repeal.

Authorised Version C2021C00117 registered 17/02/2021

on demand facility means 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.

penalty includes forfeiture or punishment.

permitted establishment fee: see paragraph 31A(1)(a).

permitted monthly fee: see subsection 31A(2).

postponement request:

(a) in relation to credit contracts, mortgages or guarantees—see subsection 94(1); and

(b) in relation to consumer leases—see subsection 179H(1).

power includes authority.

practising lawyer means a person who is admitted to the legal profession by a federal court or a Supreme Court of a State or Territory and holds a practising certificate (however described) entitling the person to practise that profession.

printed includes typewritten, lithographed or reproduced by any mechanical means.

proceedings means a legal or other action or proceedings.

prohibited credit amount: see subsection 39A(1).

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

Authorised Version C2021C00117 registered 17/02/2021

provision, in relation to this Code or an Act, means words or other matter that form or forms part of this Code or the Act, and includes:

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Code or the Act; or

(b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Code or the Act; or

(c) the long title and any preamble to the Act.

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.

reference rate means a benchmark, index or other reference rate.

referring State has the same meaning as in section 19 of the National Credit Act.

regulation means a regulation made or in force for the purposes of this Code.

repeal includes:

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Code or instrument concerned; or

(d) exclude from, or include in, the application of this Code or instrument concerned any person, subject matter or circumstance.

residential property means:

(a) land on which a dwelling is or will be affixed predominantly for residential purposes; or

(b) a lease of land on which a dwelling is or will be affixed predominantly for residential purposes, being a lease that:

Authorised Version C2021C00117 registered 17/02/2021

(i) is a Crown lease (within the meaning of the *Income Tax Assessment Act 1997*); and

(ii) gives the lessee reasonable security of tenure; or

(c) a licence in relation to land on which a dwelling is or will be affixed predominantly for residential purposes, being a licence that:

(i) is granted by the Commonwealth, a State or a Territory; and

(ii) gives the licensee reasonable security of tenure; or

(d) a share that:

(i) is in a company that is the legal owner of the land on which a dwelling is or will be affixed predominantly for residential purposes; and

(ii) gives the person who legally owns the share a right to occupy the dwelling; or

(e) a right to occupy a dwelling in an aged care facility or retirement village;

(f) an equity of redemption in relation to land on which a dwelling is or will be affixed predominantly for residential purposes.

retained credit fees and charges means credit fees and charges retained by the credit provider, other than credit fees and charges passed on to (or retained in reimbursement of an amount paid to):

(a) a third party that is not a related body corporate (for the purposes of the *Corporations Act 2001*) of the credit provider; or

(b) a financial institution that is such a related body corporate in respect of the provision of banking services that are provided to the credit provider by the financial institution on the same terms as those services are ordinarily provided to customers who are not related to or associated with the financial institution.

reverse mortgage: see section 13A.

Authorised Version C2021C00117 registered 17/02/2021

reverse mortgaged property, in relation to a credit contract for a reverse mortgage, means a dwelling or land that has been mortgaged to secure a debtor's obligations under the contract.

sale contract: see section 125.

services includes:

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

(b) insurance; or

(c) professional services; or

(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.

sign includes the affixing of a seal or the making of a mark.

Note: See section 186.

small amount credit contract has the same meaning as in section 5 of the National Credit Act.

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Code, and includes an instrument made or in force under any such instrument.

strata corporation means:

(a) a body corporate incorporated in relation to land subdivided wholly or mainly for residential purposes under a law of the Commonwealth, a State or a Territory providing for strata, cluster, precinct or other subdivision of land; or

(b) a body corporate whose issued shares confer a right to occupy land for residential purposes.

supplier means a supplier of goods or services.

supply includes agree to supply.

termination of a contract includes the discharge or rescission of the contract.

Authorised Version C2021C00117 registered 17/02/2021

this Code means this Schedule and includes regulations made for the purposes of this Schedule.

this jurisdiction has the same meaning as in section 21 of the National Credit Act.

tied consumer lease: see subsection 179S(2).

tied continuing credit contract: see subsection 127(2).

tied loan contract: see subsection 127(3).

unjust includes unconscionable, harsh or oppressive.

unpaid balance: see section 27.

unpaid daily balance: see section 27.

word includes any symbol, figure or drawing.

writing includes any mode of representing or reproducing words in a visible form.

Note: See section 187.

(2) For the purposes of this Code, a person is ***associated*** with a credit provider if:

(a) the person and the credit provider are related bodies corporate for the purposes of the *Corporations Act 2001*; or

(b) the person is a supplier in respect of whom the credit provider is a linked credit provider; or

(c) the person is an officer, agent or employee of the credit provider, or of any such related body corporate or supplier, acting in that capacity.

(3) In working out the first amount of credit that is, or is to be, provided under a small amount credit contract for the purposes of the definition of ***adjusted credit amount*** in subsection (1), the following amounts are to be disregarded:

(a) if some or all of the amount of a fee or charge (the ***fee amount***) payable in relation to the contract forms, or is to

Authorised Version C2021C00117 registered 17/02/2021

form, part of the first amount of credit that is, or is to be, provided under the contract—the fee amount;

(b) if subsection 39A(1) is contravened in relation to the contract—the prohibited credit amount;

(c) any other amount prescribed by the regulations.

Authorised Version C2021C00117 registered 17/02/2021

Part 14—Miscellaneous provisions relating to interpretation

Division 1—Preliminary

205 Displacement of Part by contrary intention

The application of this Part may be displaced, wholly or partly, by a contrary intention appearing in this Code.

Authorised Version C2021C00117 registered 17/02/2021

Division 2—General

207 References to particular Acts and to enactments

In this Code:

(a) an Act of the Commonwealth may be cited by its short title; and

(b) an Act of a State or Territory may be cited:

(i) by its short title; or

(ii) in another way sufficient in an Act of the State or Territory for the citation of such an Act;

together with a reference to the State or Territory.

208 Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Code, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Code requires:

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

Authorised Version C2021C00117 registered 17/02/2021

Division 3—Terms and references

209 Provisions relating to defined terms and gender and number

(1) If this Code defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Code apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Code, words indicating a gender include each other gender.

(4) In this Code:
  (a) words in the singular include the plural; and
  (b) words in the plural include the singular.

210 Meaning of *may* and *must* etc.

(1) In this Code, the word ***may***, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Code, the word ***must***, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This section has effect despite any rule of construction to the contrary.

211 Effect of express references to bodies corporate and individuals

In this Code, a reference to a person generally (whether the expression "person", "party", "someone", "anyone", "no-one", "one", "another" or "whoever" or another expression is used):
  (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Code there is

Authorised Version C2021C00117 registered 17/02/2021

particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Code there is particular reference to an individual (however expressed).

212 Reference to certain provisions of Code

If a provision of this Code refers:

(a) to a Part or section by a number and without reference to this Code—the reference is a reference to the Part or section, designated by the number, of this Code; or

(b) to a Division, Subdivision, subsection, paragraph, subparagraph or subsubparagraph by a number and without reference to this Code—the reference is a reference to:

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, or other provision in which the reference occurs; and

(v) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vi) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs;

as the case requires.

213 Reference to provisions of this Code or an Act is inclusive

In this Code, a reference to a portion of this Code or an Act includes:

Authorised Version C2021C00117 registered 17/02/2021

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Code or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Code or the Act referred to that forms the end of the portion.

Example: A reference to "sections 5 to 9" includes both section 5 and section 9. It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

Authorised Version C2021C00117 registered 17/02/2021

Division 4—Functions and powers

214 Power to make instrument or decision includes power to amend or repeal

If this Code authorises or requires the making of an instrument or decision:

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

215 Matters for which statutory instruments may make provision

(1) If this Code authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Code may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of:

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may:

(a) apply generally to all persons, matters or things or be limited in its application to:

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(b) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

Authorised Version C2021C00117 registered 17/02/2021

(4) A statutory instrument may:
  (a) apply differently according to different specified factors; or
  (b) otherwise make different provision in relation to:
    (i) different persons, matters or things; or
    (ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Code authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Code authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Code may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Code in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Code, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

216 Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

Authorised Version C2021C00117 registered 17/02/2021

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Code or a particular provision of this Code.

217 Exercise of powers between enactment and commencement

(1) If a provision of this Code (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power:

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then:

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of an Act (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Code so that it would confer a power:

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then:

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If:

Authorised Version C2021C00117 registered 17/02/2021

(a) this Code has commenced and confers a power to make a statutory instrument (the ***basic instrument-making power***); and

(b) a provision of an Act that does not commence on its enactment would, had it commenced, amend this Code so as to confer additional power to make a statutory instrument (the ***additional instrument-making power***);

then:

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subsection (2).

(4) If an instrument, or a provision of an instrument, is made under subsection (1) or (2) that is necessary for the purpose of:

(a) enabling the exercise of a power mentioned in the subsection; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect:

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If:

(a) an appointment is made under subsection (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subsection (1) or (2) is not necessary for a purpose mentioned in subsection (4);

the appointment, instrument or provision takes effect:

(c) on the commencement of the relevant empowering provision; or

Authorised Version C2021C00117 registered 17/02/2021

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subsection (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subsection (2) but before the provision's commencement, this section applies as if the references in subsections (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subsection (2) as amended by the empowering provision.

(8) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Authorised Version C2021C00117 registered 17/02/2021

Division 5—Distance, time and age

218 Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Code, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Code, the period is to be calculated by excluding the day, or the day of the act or event, and:

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Code for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Code for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Code, there is a reference to time, the reference is, in relation to the doing of anything in a State or Territory, a reference to the legal time in the State or Territory.

(7) For the purposes of this Code, a person attains an age in years at the beginning of the person's birthday for the age.

Authorised Version C2021C00117 registered 17/02/2021

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2021C00117 registered 17/02/2021

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2021C00117 registered 17/02/2021

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2021C00117 registered 17/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Consumer Credit Protection Act 2009	134, 2009	15 Dec 2009	ss. 3–337 and Schedule 1: 1 Apr 2010 (*see* F2010L00301) Remainder: Royal Assent	
National Consumer Credit Protection Amendment Act 2010	9, 2010	3 Mar 2010	3 Mar 2010	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (items 66–68): Royal Assent	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 781–784) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011	84, 2011	25 July 2011	Schedule 1 (items 1–5): 1 Jan 2012 Schedule 1 (items 6, 8–10, 12, 14, 15, 17–28): 1 July 2012	—
Consumer Credit Legislation Amendment (Enhancements) Act 2012	130, 2012	17 Sept 2012	Schedule 1, Schedule 2 (items 9–14, 16–18, 21, 22, 24–26), Schedule 3 and Schedule 5: 1 Mar 2013 Schedule 2 (items 1–8, 15, 19, 20, 23): 18 Sept 2012 Schedule 4: 1 July 2013	—

Authorised Version C2021C00117 registered 17/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (items 131, 132) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 418, 419) and Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (item 35) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	

Authorised Version C2021C00117 registered 17/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 2 (item 299): 1 Mar 2017 (s 2(1) item 5)	—
ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Act 2017	45, 2017	19 June 2017	Sch 1 (item 28, 29): 1 July 2017 (s 2(1) item 1)	Sch 1 (item 29)
Treasury Laws Amendment (Banking Measures No. 1) Act 2018	9, 2018	5 Mar 2018	Sch 5 (items 1–8, 15–23): 1 Jan 2019 (s 2(1) items 5, 7, 8) Sch 5 (items 9–14): 1 July 2018 (s 2(1) item 6)	—
Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018	13, 2018	5 Mar 2018	s 4: 5 Mar 2018 (s 2(1) item 1) Sch 1 (items 34–38, 44, 47–51, 58, 63–68, 72) and Sch 2 (item 5): 6 Mar 2018 (s 2(1) items 3, 5–7)	s 4 and Sch 1 (items 44, 58, 72)
Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019	17, 2019	12 Mar 2019	Sch 3 (items 1–49) and Sch 5 (items 16–24): 13 Mar 2019 (s 2(1) items 2, 5, 6) Sch 5 (items 3–15): never commenced (s 2(1) item 4) Sch 5 (items 29–34): 6 Apr 2019 (s 2(1) item 8)	—

Authorised Version C2021C00117 registered 17/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2019 Measures No. 1) Act 2019	49, 2019	5 Apr 2019	Sch 4 (items 63–65): 6 Apr 2019 (s 2(1) item 11)	Sch 4 (item 65)
Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019	50, 2019	5 Apr 2019	Sch 2 (items 13–15): 6 Apr 2019 (s 2(1) item 3)	—
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020	2, 2020	17 Feb 2020	Sch 3 (items 1–5, 7–29): 18 Feb 2020 (s 2(1) item 3)	—
Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020	3, 2020	17 Feb 2020	Sch 1 (items 2,13–20), Sch 3 (items 34–54, 61) and Sch 4 (items 23–38): 18 Feb 2020 (s 2(1) item 1)	—
Treasury Laws Amendment (2018 Measures No. 2) Act 2020	8, 2020	26 Feb 2020	Sch 1 (items 3–7): 27 Feb 2020 (s 2(1) item 2)	—
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (items 34–39): 23 June 2020 (s 2(1) item 4)	—
Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020	69, 2020	22 June 2020	Sch 1 (items 14–19, 1386–1413, 1465): awaiting commencement (s 2(1) items 2, 5)	Sch 1 (item 1465)

Authorised Version C2021C00117 registered 17/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Hayne Royal Commission Response) Act 2020	135, 2020	17 Dec 2020	Sch 1 (items 9–13) and Sch 4 (items 14, 15): 1 Jan 2021 (s 2(1) items 2, 6) Sch 10 (items 12–15) and Sch 11 (items 12–17): 1 Oct 2021 (s 2(1) item 11)	—
Treasury Laws Amendment (2020 Measures No. 6) Act 2020	141, 2020	17 Dec 2020	Sch 4 (items 59, 60): 18 Dec 2020 (s 2(1) item 6)	—
Territories Legislation Amendment Act 2020	154, 2020	17 Dec 2020	Sch 2 (items 56–63): 2 Aug 2021 (s 2(1) item 4) Sch 2 (item 86): awaiting commencement (s 2(1) item 7)	—

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1-2	
Division 2	
s 5	am No 9, 2010; No 46, 2011; No 84, 2011; No 130, 2012; No 13, 2013; No 11, 2016; No 9, 2018; No 13, 2018; No 17, 2019; No 2, 2020; No 3, 2020; No 69, 2020; No 135, 2020 (Sch 10 item 12; Sch 11 item 12); No 154, 2020
Division 3	
s 6	am No 84, 2011
Division 4	
s 11	rep No 13, 2018
s 15A	ad No 2, 2020
s 15B	ad No 2, 2020
s 15C	ad No 2, 2020
s 16A	ad No 3, 2020
s 16B	ad No 69, 2020
Part 1-3	
Division 2	
s. 18	am. No. 9, 2010; No. 46, 2011
s. 19	am. No. 9, 2010
s. 20	am. No. 9, 2010
Chapter 2	
Part 2-1	
Division 1	
s. 27	am. No. 130, 2012
Division 2	
s 29	am No 17, 2019; No 8, 2020
Division 3	
Division 3 heading	rs. No. 130, 2012
s 30	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 31	am No 17, 2019
s 32	am No 17, 2019
s. 33	rep. No. 130, 2012
Part 2-2	
Division 3	
s 37	am No 3, 2020
s 37A	ad No 3, 2020
s 37B	ad No 3, 2020
Division 4	
s 45	am No 3, 2020
s 46A	ad No 3, 2020
Division 5	
Subdivision A	
Subdivision A heading	ad No 135, 2020
s 47	am No 13, 2018; No 17, 2019; No 135, 2020
Subdivision B	
Subdivision B heading	ad No 135, 2020
s 49	am No 17, 2019; No 3, 2020
s 50	am No 17, 2019
s 50A	ad No 135, 2020
s 50B	ad No 135, 2020
s 50C	ad No 135, 2020
s 50D	ad No 135, 2020
s 51	am No 17, 2019
Subdivision C	
Subdivision C	ad No 135, 2020
s 51A	ad No 135, 2020
s 51B	ad No 135, 2020
s 51C	ad No 135, 2020
Subdivision D	
Subdivision D heading	ad No 135, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 52	am No 17, 2019
s 53	am No 17, 2019
s 53A	ad No 3, 2020
s 53B	ad No 3, 2020
s 53C	ad No 135, 2020
Division 6	
Subdivision A	
s 54	am No 45, 2017; No 3, 2020
s 55	am No 3, 2020
Part 2–3	
Division 2	
s 64	am No 13, 2018
s 65	am No 13, 2018
s 69	am No 17, 2019
s 70	am No 17, 2019
s 71	am No 17, 2019; No 69, 2020
s 72	am No 69, 2020
Division 3	
s 73	am No 17, 2019; No 154, 2020
Part 2–4	
Division 1	
s 79	rs No 3, 2020
Division 2	
s 80	am No 3, 2020
s 81	am No 3, 2020
s 82	am No 17, 2019
Division 3	
s 86	am No 3, 2020
Part 2–5	
Division 2	
s 88	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 92	am No 2, 2020
s 95	am No 17, 2019
Division 3	
s 98	am No 17, 2019
s 99	am No 17, 2019
s 100	am No 17, 2019; No 64, 2020
Division 4	
s 102	am No 17, 2019
s 104	am No 17, 2019
s 106	am No 3, 2020
Part 2-6	
Division 2	
s 109	am No 49, 2019
s 110	am No 8, 2020
Chapter 3	
Part 3-1	
Division 1	
s 111	am No 130, 2012; No 2, 2020
Division 2	
s 113	am No 13, 2018; No 17, 2019; No 2, 2020
Division 3	
s 114	am No 17, 2019
Division 4	
s 115	am No 17, 2019
s 117	am No 130, 2012; No 17, 2019
s 118	am No 130, 2012; No 9, 2018; No 17, 2019
s 119	am No 9, 2018; No 17, 2019
s 120	am No 17, 2019
Division 5	
Division 5 heading	am No 2, 2020
s 121	am No 17, 2019; No 2, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 122	am No 17, 2019
Division 6	
s 123	am No 130, 2012; No 9, 2018; No 17, 2019
s 124	am No 9, 2018; No 17, 2019
Division 7	
Division 7	ad No 130, 2012
s 124A	ad No 130, 2012
	am No 17, 2019
s 124B	ad No 130, 2012
	am No 17, 2019
Part 3-2	
Part 3-2 heading	rs. No. 84, 2011
Division 1	
s. 125	am. No. 130, 2012
Division 2	
s 126	am No 13, 2018; No 17, 2019
s 127	am No 13, 2018; No 17, 2019
Division 3	
Division 3 heading	rs No 130, 2012
s 128	am No 130, 2012; No 17, 2019
s. 129	am No 130, 2012
s 130	am No 130, 2012; No 17, 2019
s 131	am No 130, 2012; No 9, 2018; No 17, 2019
s 132	am No 17, 2019
Division 4	
s 133	am No 130, 2012; No 9, 2018; No 17, 2019
Part 3-2A	
Part 3-2A	ad. No. 84, 2011
Division 1	
s. 133A	ad. No. 84, 2011

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s. 133AA	ad. No. 84, 2011
s. 133AB	ad. No. 84, 2011
s 133AC	ad No 84, 2011
	am No 17, 2019
s 133AD	ad No 84, 2011
	am No 17, 2019
s 133AE	ad No 84, 2011
	am No 17, 2019
s. 133AF	ad. No. 84, 2011
Part 3-2B	
Part 3-2B	ad. No. 84, 2011
Division 1	
s 133B	ad No 84, 2011
	am No 9, 2018
Division 2	
s. 133BA	ad. No. 84, 2011
Division 3	
s 133BB	ad No 84, 2011
s 133BC	ad No 84, 2011
	am No 17, 2019
s 133BD	ad No 84, 2011
	am No 17, 2019
Division 4	
Division 4 heading	rs No 9, 2018
s 133BE	ad No 84, 2011
	am No 9, 2018; No 17, 2019
s 133BF	ad No 84, 2011
	rep No 9, 2018
	ad No 9, 2018
	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 133BFA	ad No 9, 2018
	am No 17, 2019
s 133BFB	ad No 9, 2018
	am No 17, 2019
s 133BFC	ad No 9, 2018
	am No 17, 2019
s 133BG	ad No 84, 2011
	rep No 9, 2018
Division 5	
s 133BH	ad No 84, 2011
	am No 17, 2019
s 133BI	ad No 84, 2011
s 133BJ	ad No 84, 2011
	am No 17, 2019
Division 6	
s 133BO	ad No 84, 2011
	am No 17, 2019
s. 133BP	ad. No. 84, 2011
s. 133BQ	ad. No. 84, 2011
s. 133BR	ad. No. 84, 2011
Division 7	
Division 7	ad No 9, 2018
s 133BS	ad No 9, 2018
	am No 17, 2019
Division 8	
Division 8	ad No 9, 2018
s 133BT	ad No 9, 2018
	am No 17, 2019
s 133BU	ad No 9, 2018
	am No 17, 2019
s 133BV	ad No 9, 2018

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
	am No 17, 2019
s 133BW	ad No 9, 2018
	am No 17, 2019
Part 3-2C	
Part 3-2C	ad. No. 130, 2012
Division 1	
s. 133C	ad. No. 130, 2012
Division 2	
s 133CA	ad No 130, 2012
	am No 17, 2019
s 133CB	ad No 130, 2012
	am No 17, 2019
s 133CC	ad No 130, 2012
	am No 17, 2019
Part 3-2D	
Part 3-2D	ad No 130, 2012
s 133DA	ad No 130, 2012
s 133DB	ad No 130, 2012
	am No 17, 2019
s 133DC	ad No 130, 2012
	am No 17, 2019
s 133DD	ad No 130, 2012
	am No 17, 2019
s 133DE	ad No 130, 2012
	am No 17, 2019
Part 3-3	
Division 1	
s 134	am No 2, 2020
Division 2	
s 136	am No 13, 2018; No 17, 2019; No 2, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 137	am No 17, 2019
Division 4	
s 138	am No 17, 2019
s 140	am No 17, 2019
s 141	am No 17, 2019
s 142	am No 17, 2019
s 143	am No 17, 2019
Division 5	
Division 5 heading	am No 2, 2020
s 144	am No 17, 2019; No 2, 2020
s 145	am No 17, 2019
Division 6	
s 146	am No 17, 2019
s 147	am No 130, 2012; No 17, 2019
Part 3-4	
Division 1	
s. 148	am. No. 130, 2012
Division 2	
s 149	am No 13, 2018; No 17, 2019
s 150	am No 13, 2018; No 17, 2019
Division 3	
Division 3 heading	rs No 130, 2012
s 151	rs No 130, 2012
	am No 17, 2019; No 64, 2020
s. 152	am. No. 130, 2012
s 153	am No 130, 2012
	am No 17, 2019
s 154	am No 17, 2019
s 155	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 4	
s 156	am No 17, 2019
Part 3-5	
Division 2	
s 158	am No 5, 2011; No 13, 2018; No 17, 2019; No 2, 2020
Part 3-5A	
Part 3–5A	ad No 2, 2020
Division 1	
Subdivision A	
s 158K	ad No 2, 2020
Subdivision B	
s 158KA	ad No 2, 2020
s 158KB	ad No 2, 2020
s 158KC	ad No 2, 2020
Division 2	
Subdivision A	
s 158L	ad No 2, 2020
s 158LA	ad No 2, 2020
s 158LB	ad No 2, 2020
Subdivision B	
s 158LD	ad No 2, 2020
s 158LE	ad No 2, 2020
s 158LF	ad No 2, 2020
Division 4	
Subdivision A	
s 158N	ad No 2, 2020
s 158NA	ad No 2, 2020
Subdivision B	
s 158NB	ad No 2, 2020
s 158NC	ad No 2, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Subdivision C	
s 158ND	ad No 2, 2020
s 158NE	ad No 2, 2020
s 158NF	ad No 2, 2020
Division 6	
s 158T	ad No 2, 2020
Part 3-6	
Division 2	
s 160	am No 13, 2018; No 17, 2019; No 2, 2020
Part 3-6A	
Part 3-6A	ad. No. 130, 2012
Division 1	
s 160A	ad No 130, 2012
	am No 9, 2018
Division 2	
s 160B	ad No 130, 2012
	am No 17, 2019; No 2, 2020
s 160C	ad No 130, 2012
	am No 17, 2019; No 8, 2020
Division 3	
s 160D	ad No 130, 2012
	am No 17, 2019
Division 4	
s 160E	ad No 130, 2012
	am No 17, 2019
Division 5	
Division 5	ad No 9, 2018
s 160F	ad No 9, 2018
Part 3-7	
Division 2	
s 163	am No 49, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Chapter 4	
Part 4-1	
Division 2	
s 167	am No 17, 2019; No 141, 2020
s 167A	ad No 17, 2019
s 167B	ad No 17, 2019
s 167C	ad No 17, 2019
s 167D	ad No 17, 2019
Division 3	
s 169	rs No 17, 2019
s 171	am No 17, 2019
s 172	am No 17, 2019
s 173	am No 17, 2019
s 174	am No 17, 2019
s 175	am No 17, 2019
s 175A	ad No 17, 2019
s 175B	ad No 17, 2019
s 175C	ad No 17, 2019
s 175D	ad No 17, 2019
s 175E	ad No 17, 2019
Part 4-2	
Division 2	
s. 179	am. No. 130, 2012
s. 180	am. No. 130, 2012
s. 180A	ad. No. 130, 2012
s 181	am No 130, 2012
	rs No 17, 2019
s. 184	am. No. 130, 2012
Part 4-3	
Division 1	
s. 185	am. No. 13, 2013

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
Subdivision B	
s 187	am No 13, 2013; No 154, 2020
s 189	am No 13, 2013; No 154, 2020
Subdivision C	
s 191	am No 13, 2013
s 194	am No 141, 2020
Subdivision D	
s. 199	am. No. 130, 2012; No. 13, 2013
s. 200	am. No. 130, 2012
Division 3	
Subdivision B	
s 204	am No 154, 2020
s 207	am No 17, 2019
Chapter 5	
Part 5-1	
Part 5-1 heading	rs No 69, 2020
Division 1	
s 212	rs No 69, 2020
Division 1A	
Division 1A	ad No 69, 2020
Subdivision A	
s 212A	ad No 69, 2020
s 212B	ad No 69, 2020
s 212C	ad No 69, 2020
s 212D	ad No 69, 2020
s 212E	ad No 69, 2020
s 212F	ad No 69, 2020
s 212G	ad No 69, 2020
Subdivision B	
s 212H	ad No 69, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 212J	ad No 69, 2020
s 212K	ad No 69, 2020
Subdivision C	
s 212L	ad No 69, 2020
s 212M	ad No 69, 2020
s 212N	ad No 69, 2020
s 212P	ad No 69, 2020
s 212Q	ad No 69, 2020
s 212R	ad No 69, 2020
Subdivision D	
s 212S	ad No 69, 2020
s 212T	ad No 69, 2020
s 212U	ad No 69, 2020
Division 2	
Division 2 heading	am No 69, 2020
s 213	rs No 69, 2020
s 214	rep No 69, 2020
Part 5-2	
Division 2	
s 218	am No 17, 2019
Division 3	
s 220	am No 17, 2019
Division 4	
s 225	am No 17, 2019
	rs No 3, 2020
Part 5-3	
Division 2	
s 227	am No 17, 2019; No 69, 2020
s 228	am No 17, 2019
s 229	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 5-4	
Division 2	
s 233	am No 69, 2020
s 236	am No 69, 2020
s 237	am No 69, 2020
Part 5-5	
Division 1A	
Division 1A	ad No 135, 2020
Subdivision A	
s 238A	ad No 135, 2020
s 238B	ad No 135, 2020
s 238C	ad No 135, 2020
s 238D	ad No 135, 2020
s 238E	ad No 135, 2020
Subdivision B	
s 238F	ad No 135, 2020
s 238G	ad No 135, 2020
Division 2	
s 240	am No 17, 2019; No 69, 2020
s 241	rep No 135, 2020
s 243	am No 3, 2020
s 245	am No 13, 2018
Part 6-2	
Division 2	
s 256	am No 17, 2019
s 259	am No 17, 2019
s 260	am No 17, 2019
Part 6-3	
Division 1	
s 262	am No 3, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s 263	am No 3, 2020; No 64, 2020
s 266	am No 49, 2019
s 269	rep No 3, 2020
s 270	rep No 3, 2020
s 271	am No 3, 2020
Part 6-3A	
Part 6–3A	ad No 3, 2020
Division 1	
s 272A	ad No 3, 2020
Division 2	
Subdivision A	
s 272B	ad No 3, 2020
s 272C	ad No 3, 2020
Subdivision B	
s 272D	ad No 3, 2020
s 272E	ad No 3, 2020
s 272F	ad No 3, 2020
s 272G	ad No 3, 2020
Part 6-5	
Division 2	
s 281	am No 69, 2020
s 282	am No 17, 2019
Part 6-5A	
Part 6-5A	ad No 17, 2019
Division 1	
s 288A	ad No 17, 2019
Division 2	
s 288B	ad No 17, 2019
s 288C	ad No 17, 2019
s 288D	ad No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s 288E	ad No 17, 2019
s 288F	ad No 17, 2019
s 288G	ad No 17, 2019
Part 6-5B	
Part 6-5B	ad No 17, 2019
Division 1	
s 288H	ad No 17, 2019
Division 2	
s 288J	ad No 17, 2019
s 288K	ad No 17, 2019
	am No 135, 2020
s 288L	ad No 17, 2019
s 288M	ad No 17, 2019
s 288N	ad No 17, 2019
s 288P	ad No 17, 2019
s 288Q	ad No 17, 2019
s 288R	ad No 17, 2019
s 288S	ad No 17, 2019
Part 6-6	
Part 6-6 heading	rs No 17, 2019
Division 2	
s 290	am No 17, 2019
s 291	am No 17, 2019
s 292	am No 17, 2019
	rep No 3, 2020
s 293	am No 17, 2019
s 294	am No 17, 2019
s 296	am No 17, 2019
Part 6-7	
Division 2	
s 301	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 6-7A	
Part 6-7A	ad No 50, 2019
Division 1	
s 301A	ad No 50, 2019
Division 2	
s 301B	ad No 50, 2019
s 301C	ad No 50, 2019
s 301D	ad No 50, 2019
s 301E	ad No 50, 2019
s 301F	ad No 50, 2019
s 301G	ad No 50, 2019
s 301H	ad No 50, 2019
s 301J	ad No 50, 2019
s 301K	ad No 50, 2019
s 301L	ad No 50, 2019
s 301M	ad No 50, 2019
s 301N	ad No 50, 2019
s 301P	ad No 50, 2019
	am No 17, 2019
Part 6-9	
Division 2	
s 319	am No 17, 2019
Chapter 7	
Part 7-1	
Division 1	
s 323	am No 69, 2020
Division 3	
Division 3 heading	rs No 69, 2020
s 327	am No 50, 2019; No 69, 2020; No 135, 2020
s 328	am No 69, 2020

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 4	
s 331	rep No 17, 2019
Division 5	
s. 335A	ad. No. 130, 2012
	am. No. 130, 2012
s 337	am No 50, 2019
Schedule 1	
Part 1	
s 13	am No 17, 2019
s 13A	ad No 130, 2012
Part 2	
Division 1	
s. 17	am. No. 130, 2012
s. 18A	ad. No. 130, 2012
s. 18B	ad. No. 130, 2012
s 18C	ad No 130, 2012
	am No 17, 2019
s. 19	am. No. 130, 2012
s. 22	am. No. 130, 2012
Division 2	
s. 23	am. No. 84, 2011; No. 130, 2012
s. 23A	ad. No. 130, 2012
s 24	am No 130, 2012; No 17, 2019
s. 24A	ad. No. 130, 2012
s. 26	am. No. 130, 2012
Division 3	
s. 27A	ad. No. 130, 2012
s 30B	ad No 84, 2011
	am No 17, 2019
Division 4	
s. 31	am. No. 130, 2012

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
s. 31A	ad. No. 130, 2012
s. 31B	ad. No. 130, 2012
s. 32	rs. No. 130, 2012
Division 4A	
Division 4A	ad. No. 130, 2012
s. 32A	ad. No. 130, 2012
s. 32AA	ad. No. 130, 2012
s. 32B	ad. No. 130, 2012
Division 5	
s. 33	am. No. 84, 2011; No. 130, 2012
s. 34	am. No. 84, 2011; No. 130, 2012
s. 36	am. No. 130, 2012
s. 38	am. No. 130, 2012
Division 5A	
Division 5A	ad. No. 130, 2012
s. 39A	ad. No. 130, 2012
s 39B	ad No 130, 2012
	am No 17, 2019
s. 39C	ad. No. 130, 2012
Division 6	
Division 6	rs. No. 130, 2012
s. 40	rs. No. 130, 2012
Part 3	
Division 1	
s 50	am No 64, 2020
Part 4	
Division 1	
s. 67A	ad. No. 130, 2012
Division 2	
s. 71	am. No. 130, 2012

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 72	am No 5, 2011
	rs No 130, 2012
	am No 13, 2018; No 17, 2019
s. 73	am. No. 130, 2012
s. 74	am. No. 130, 2012
s. 76	am. No. 130, 2012
Part 5	
Division 1	
Division 1 heading	rs. No. 130, 2012
Subdivision A	
Subdivision A heading	ad. No. 130, 2012
s. 83	am. No. 130, 2012
Subdivision B	
Subdivision B	ad. No. 130, 2012
s. 86A	ad. No. 130, 2012
s. 86B	ad. No. 130, 2012
s. 86C	ad. No. 130, 2012
s. 86D	ad. No. 130, 2012
s. 86E	ad. No. 130, 2012
s. 86F	ad. No. 130, 2012
Subdivision C	
Subdivision C heading	ad. No. 130, 2012
s. 87	am. No. 130, 2012
Division 2	
s 88	am No 130, 2012; No 197, 2012; No 13, 2018
s. 89	am. No. 130, 2012
s. 89A	ad. No. 130, 2012
s. 92	rep. No. 130, 2012
s. 93	am. No. 130, 2012
s. 93A	ad. No. 130, 2012

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s. 94	am. No. 5, 2011; No. 130, 2012; No 13, 2018
s. 95	am. No. 5, 2011; No. 130, 2012
Division 4	
s. 98	am. No. 130, 2012
Part 6	
Division 1	
s. 111	am. No. 130, 2012
s. 114	am. No. 130, 2012
s 115	am No 62, 2014
s 116	am No 17, 2019
Division 2	
s. 124	am. No. 130, 2012
Part 7	
Division 1	
s. 127	am. No. 130, 2012
Division 3	
s 129	am No 130, 2012
s 130	am No 130, 2012
s 131	am No 130, 2012
s 132	am No 130, 2012
s 133	am No 130, 2012
Part 8	
s 145	am No 135, 2020
Part 9	
s 150	am No 64, 2020
s 154	am No 17, 2019
s 155	rs No 17, 2019
s 156	am No 17, 2019

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 11	
Division 1	
s 172	am No 17, 2019
Division 2	
s. 173	am. No. 130, 2012
s. 173A	ad. No. 130, 2012
s 174	am No 17, 2019
s. 174A	ad. No. 130, 2012
Division 3 heading	rep. No. 130, 2012
Division 4	
Division 4	ad. No. 130, 2012
s. 175A	ad. No. 130, 2012
s. 175B	ad. No. 130, 2012
Division 5	
Division 5	ad. No. 130, 2012
Subdivision A	
s. 175C	ad. No. 130, 2012
s. 175D	ad. No. 130, 2012
s. 175E	ad. No. 130, 2012
s. 175F	ad. No. 130, 2012
s. 175G	ad. No. 130, 2012
Subdivision B	
s. 175H	ad. No. 130, 2012
Division 6	
Division 6	ad. No. 130, 2012
s. 175J	ad. No. 130, 2012
s. 176	rep. No. 130, 2012
s. 177	rep. No. 130, 2012
Division 7	
Division 7	ad. No. 130, 2012

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Subdivision A	
s. 177A	ad. No. 130, 2012
Subdivision B	
s 177B	ad No 130, 2012
	am No 13, 2018; No 17, 2019
s. 177C	ad. No. 130, 2012
s. 177D	ad. No. 130, 2012
s. 177E	ad. No. 130, 2012
s. 177F	ad. No. 130, 2012
s. 177G	ad. No. 130, 2012
s. 177H	ad. No. 130, 2012
s. 177J	ad. No. 130, 2012
s. 177K	ad. No. 130, 2012
Division 8	
Division 8 heading	ad. No. 130, 2012
Subdivision A	
Subdivision A heading	ad. No. 130, 2012
Subdivision B	
Subdivision B heading	ad. No. 130, 2012
s. 178A	ad. No. 130, 2012
s. 179	am. No. 130, 2012
s. 179A	ad. No. 130, 2012
s. 179B	ad. No. 130, 2012
s. 179C	ad. No. 130, 2012
Subdivision C	
Subdivision C	ad. No. 130, 2012
s. 179D	ad. No. 130, 2012
	am No 197, 2012; No 13, 2018
s. 179E	ad. No. 130, 2012
s. 179F	ad. No. 130, 2012
s. 179G	ad. No. 130, 2012

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Subdivision D	
Subdivision D	ad. No. 130, 2012
s. 179H	ad. No. 130, 2012
	am No 13, 2018
s. 179J	ad. No. 130, 2012
s. 179K	ad. No. 130, 2012
s. 179L	ad. No. 130, 2012
Subdivision E	
Subdivision E	ad. No. 130, 2012
s. 179M	ad. No. 130, 2012
s. 179N	ad. No. 130, 2012
s. 179P	ad. No. 130, 2012
s. 179Q	ad. No. 130, 2012
Subdivision F	
Subdivision F	ad. No. 130, 2012
s. 179R	ad. No. 130, 2012
Division 9	
Division 9	ad. No. 130, 2012
Subdivision A	
s. 179S	ad. No. 130, 2012
Subdivision B	
s. 179T	ad. No. 130, 2012
Division 10	
Division 10	ad No 130, 2012
s 179U	ad No 130, 2012
	am No 17, 2019
s 179V	ad No 130, 2012
	am No 17, 2019
Division 11	
Division 11	ad. No. 130, 2012
s. 179W	ad. No. 130, 2012

Authorised Version C2021C00117 registered 17/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 12	
Division 2	
s. 185A	ad. No. 130, 2012
Part 13	
s 204	am No 46, 2011; No 84, 2011; No 130, 2012; No 13, 2018; No 135, 2020
Part 14	
Division 2	
s 206	rep No 130, 2012

Authorised Version C2021C00117 registered 17/02/2021