



# National Consumer Credit Protection Regulations 2010<sup>1</sup>

## Select Legislative Instrument 2010 No. 44

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Consumer Credit Protection Act 2009*.

Dated 10 March 2010

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

CHRIS BOWEN  
Minister for Financial Services, Superannuation and Corporate  
Law

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**Contents****Chapter 1 Preliminary**

1	Name of Regulations	9
2	Commencement	9
3	Definitions	9
4	Meaning of <i>associate</i>	11
5	Prescribed orders	13
6	Forms	13

**Chapter 2 Licensing of persons who engage in credit activities****Part 2-1 Australian credit licences**

7	How to get an Australian credit licence — requirements for a foreign entity to appoint local agent	14
8	How to get an Australian credit licence — streamlined process for particular classes of applicants	15
9	The conditions on the licence	18
10	Obligations of licensees — alternative dispute resolution systems	21
11	Obligations of licensees — foreign entity must continue to have local agent	22
12	Obligations of licensees — requirements for compensation arrangements	23
13	Obligations of licensees — offence in relation to failure to cite licence number in documents	25
14	Obligations of licensees — who compliance certificate must be signed by	26
15	When a licence can be suspended, cancelled or varied — grounds to suspend or cancel licence	26

**Part 2-2 Authorisation of credit representatives**

16	Sub-authorisation by body corporate	27
----	-------------------------------------	----

		Page
<b>Part 2-3</b>	<b>Financial records, trust accounts and audit reports</b>	
17	Information and matters to be contained in a trust account audit report	28
18	Eligibility of auditors to prepare trust account audit report	28
19	Auditors who prepare audit reports	30
<b>Part 2-4</b>	<b>Exemptions</b>	
20	Persons exempt from requiring a licence — general	32
21	Persons exempt from requiring a licence — debt collectors	38
22	Persons exempt from requiring a licence — third parties	40
23	Persons exempt from requiring a licence — providers of point of sale credit services	41
24	Activities exempt from being credit activities	45
25	Activities exempt from requiring a licence	48
<b>Chapter 3</b>	<b>Responsible lending conduct</b>	
26	Obligations of credit providers before entering credit contracts or increasing credit limits	50
27	Giving the consumer an assessment — extended time period	50
28	Credit guide of credit representatives — contact details for an approved external dispute resolution scheme	51
<b>Chapter 4</b>	<b>Administration — registers relating to credit activities</b>	
29	Credit registers — licensees, credit representatives and registered persons	52
30	Credit registers — persons against whom banning order or disqualification order is made	55
<b>Chapter 5</b>	<b>Compliance and enforcement</b>	
31	Investigations — distribution of report	57
32	Examination of person — form of notice requiring assistance and appearance for examination	58
33	Inspection of books and audit information-gathering powers — evidence of authority	58

---

		Page
34	Hearings — form of summons to appear before ASIC	58
35	Miscellaneous provisions — allowances and expenses	58
<b>Chapter 6</b>	<b>Miscellaneous</b>	
<b>Part 6-1</b>	<b>Court proceedings</b>	
36	Where proceedings may be brought	60
<b>Part 6-2</b>	<b>Infringement notices</b>	
37	Purpose of Part 6-2	62
38	Definitions for Part 6-2	62
39	When an infringement notice can be given	64
40	Contents of infringement notice	65
41	Amount of penalty if infringement notice given	65
42	Extension of time to pay penalty	66
43	Payment of penalty by instalments	67
44	Time for payment of penalty	67
45	Effect of payment of penalty	68
46	Withdrawal of infringement notice by nominated person	70
47	Withdrawal of infringement notice by ASIC	71
48	Notice of withdrawal of infringement notice	71
49	Refund of penalty	71
<b>Chapter 7</b>	<b>Matters in relation to the National Credit Code</b>	
<b>Part 7-1</b>	<b>Exemptions, declarations and other matters</b>	
50	Continued application of Part 12 of the Code and interpretation provisions	72
51	Exempt credit — maximum account charges	72
52	Additional exempt credit	73
53	GIO Finance Limited's No Interest Loan Scheme — exemption from Code	73
54	Rental Purchase Plan — exemption from certain provisions of Code	74
55	Partnership loans — exemption from certain provisions of Code	74

	Page
56 Student loans — exemption from certain provisions of Code	75
57 Loans for conservation of heritage items — exemption from Code	76
58 ADIs — exemption from Code	76
59 Estate administrators — exemption from certain provisions of Code	76
60 Credit under <i>Aged Care Act 1997</i> — exemption from certain provisions of Code	77
61 Firefighter's Benefit Fund of WA Incorporated — exemption from certain provisions of Code	77
62 Charge card contracts — exemption of certain contracts from Code	78
63 Credit providers providing credit to directors — exemption from certain provisions of Code	78
64 Mortgages — exemptions from Code	79
65 Guarantees — exemption from Code	79
66 Deemed mortgages for goods lease with option to purchase	80
67 Prescribed person in relation to a declaration	80
68 Declaration of purposes for which credit provided	81
69 Direct debit default notices — exemption for credit providers	82
 <b>Part 7-2 Credit contracts</b>	
70 Statement about debtor's statutory rights and obligations	83
71 Comparison rate	83
72 Pre-contractual statement	86
73 Additional disclosures about insurance financed by contract	89
74 Additional disclosures about credit contracts to be signed by debtor	89
75 Deduction of amount for interest charges	90
76 Calculation of unpaid daily balances	90
77 Early debit or payment of interest charges	91
78 Interest charges in relation to residential investment property	92
79 When statement of account not required	92

		Page
<b>Part 7-3</b>	<b>Related mortgages and guarantees</b>	
80	Mortgage arising from certain home ownership schemes — exemption from subsection 50 (1) of the Code	93
81	Form of guarantees	94
82	Explanation about guarantor's rights and obligations	95
<b>Part 7-4</b>	<b>Changes to obligations under credit contracts, mortgages and guarantees</b>	
83	Information about increases in the amount of credit	96
<b>Part 7-5</b>	<b>Ending and enforcing credit contracts, mortgages and guarantees</b>	
84	Information after surrender of goods	98
85	Notice after direct debit default occurs	98
86	Notice after default occurs	98
87	Consent to enter premises	98
88	Statement about mortgagor's rights and obligations	99
89	Information about proceeds of sale of mortgaged goods	99
<b>Part 7-6</b>	<b>Related sale contracts</b>	
90	Rate of interest on damages	100
91	Informing debtor of rights	100
92	Rebate of consideration	100
<b>Part 7-7</b>	<b>Related insurance contracts</b>	
93	Particulars of insurance entered into by credit provider	102
94	Proportionate rebate of consumer credit insurance premium	103
95	Notice of right to cancel mortgaged property insurance	103
96	Proportionate rebate of premium for insurance over mortgaged property	103

		Page
<b>Part 7-8</b>	<b>Comparison rates</b>	
97	Relevant comparison rate where annual percentage rate stated	105
98	Information about whether comparison rate relates to secured loan	105
99	Warnings about comparison rate	105
100	Calculation of comparison rates	106
101	Matters that may be included in comparison rate schedules	108
<b>Part 7-9</b>	<b>Consumer leases</b>	
102	Consumer lease excluded from application of Part 11 of the Code	109
103	Prescribed person in relation to declarations	109
104	Declaration about purpose of lease	110
105	Explanation about rights and obligations of consumer lessees	111
<b>Part 7-10</b>	<b>Miscellaneous</b>	
106	Tolerances relating to disclosures	112
107	Tolerances relating to amounts payable etc	113
108	Additional assumptions relating to disclosures	114
109	Contracts linked to loan account offset arrangements	114
110	Requirements for print or type	115
111	Notices	115
<b>Part 7-11</b>	<b>Saving and transitional provisions — reliance on State and Territory Consumer Credit Codes</b>	
112	References in documents to Consumer Credit Code of a State or Territory	117
<b>Schedule 1</b>	<b>Forms</b>	119
Form 1	Notice requiring reasonable assistance in connection with an investigation and appearance at an examination	119
Form 2	Summons to witness	121
Form 3	Infringement notice	122
Form 4	Prescribed terms and conditions of mortgage	126

## Contents

---

		Page
Form 5	Information statement	128
Form 6	Disclosure about credit contracts	136
Form 7	Disclosure about credit contracts	137
Form 8	Disclosure about guarantee	138
Form 9	Information statement	139
Form 10	Information after surrender of mortgaged goods	148
Form 11	Direct debit default notice	153
Form 12	Information about debtor's rights after default	156
Form 13	Consent to enter premises	159
Form 14	Notice after taking possession of mortgaged goods	161
Form 15	Notice of right to terminate maintenance services contract	167
Form 16	Notice of right to cancel mortgaged property insurance	170
Form 17	Information statement	173

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# Chapter 1 Preliminary

## 1 Name of Regulations

These Regulations are the *National Consumer Credit Protection Regulations 2010*.

## 2 Commencement

These Regulations commence on 1 July 2010.

## 3 Definitions

(1) In these Regulations:

*Act* means the *National Consumer Credit Protection Act 2009*.

*associate* has the meaning given by regulation 4.

*Australian ADI* has the meaning given by section 9 of the Corporations Act.

*Code* means the National Credit Code.

*Corporations Act* means the *Corporations Act 2001*.

*exempt public authority* means a body corporate that is incorporated within Australia or an external Territory and is:

- (a) a public authority; or
- (b) an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory.

*financial counselling association* has the same meaning as in *ASIC Class Order [CO 03/1063]*.

*financial counselling service* means a counselling and advocacy service provided predominantly for the purpose of assisting individuals who are in financial difficulty to resolve their problems.

**Regulation 3**

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***foreign company*** means either of the following:

- (a) a body corporate that is incorporated in an external Territory, or outside Australia and the external Territories, and is not:
  - (i) a corporation sole; or
  - (ii) an exempt public authority;
- (b) an unincorporated body that:
  - (i) is formed in an external Territory or outside Australia and the external Territories; and
  - (ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
  - (iii) does not have its head office or principal place of business in Australia.

***officer of a body corporate*** has the meaning given by the definition of ***officer*** of a corporation (as it relates to a body corporate) in section 9 of the Corporations Act.

***public officer***, of a body corporate, means a person appointed under section 252 of the *Income Tax Assessment Act 1936* as it relates to a body corporate.

***registered debt agreement administrator*** means a person registered by the Insolvency and Trustee Service Australia as a debt agreement administrator under Part IX of the *Bankruptcy Act 1966*.

***registered person*** has the same meaning as in the Transitional Act.

***substantial holding*** has the meaning given by the definition of that term (as it relates to a body corporate) in section 9 of the Corporations Act.

- (2) In these Regulations, a person is ***associated*** with a lessor if:
  - (a) the person and the lessor are related bodies corporate for the purposes of the Corporations Act; or
  - (b) the person is an officer, agent or employee of the lessor, or of any such related body corporate, acting in that capacity; or

**Regulation 4**

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- (c) the person is a supplier in respect of whom the lessor is a linked lessor (within the meaning of *linked credit provider or linked lessor* in subregulation 23 (4)) for the purposes of regulation 23.

**4 Meaning of associate**

- (1) This regulation has effect for the purposes of interpreting a reference (the *associate reference*), in relation to a person (the *primary person*), to an associate.
- (2) A person is not an associate of the primary person except as provided in this regulation.
- (3) Nothing in this regulation limits the generality of anything else in it.
- (4) If the primary person is a body corporate, the associate reference includes a reference to:
  - (a) a director or secretary of the body; and
  - (b) a related body corporate; and
  - (c) a director or secretary of a related body corporate.
- (5) An associate reference includes a reference to:
  - (a) a person in partnership with whom the primary person engages in a credit activity; and
  - (b) subject to subregulation (8), a person who is a partner of the primary person otherwise than because of the engaging in a credit activity in partnership with the primary person; and
  - (c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting; and
  - (d) a director of a body corporate of which the primary person is also a director and that engages in a credit activity; and
  - (e) subject to subregulation (8), a director of a body corporate of which the primary person is also a director and that does not engage in a credit activity; and
  - (f) a person in concert with whom the primary person is acting, or proposes to act, in respect of the matter to which the associate reference relates; and

**Regulation 4**

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- (g) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way, in respect of the matter to which the associate reference relates.
- (6) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this regulation, the associate reference includes a reference to that other person.
- (7) A person is not an associate of another person by virtue of subregulation (5), or by virtue of subregulation (6) as it applies in relation to subregulation (5), merely because one or both of the following occurs:
  - (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;
  - (b) one, as a client, gives specific instructions to the other, whose ordinary business includes engaging in credit activities, to enter into a credit contract on the client's behalf in the ordinary course of that business.
- (8) For the purposes of proceedings in relation to a matter mentioned in these Regulations in which it is alleged that a person (*person 1*) was an associate of another person by virtue of paragraph (5) (b) or (e), person 1 is not taken to have been an associate of the other person in relation to a matter by virtue of that paragraph unless it is proved that person 1 knew, or ought to have known, at that time, the material particulars of that matter.
- (9) A reference to an associate, in relation to an entity (other than a body corporate) that:
  - (a) engages in a credit activity; and
  - (b) is constituted by 2 or more persons;includes a reference to an associate of any of those persons.

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**Regulation 6**

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**5 Prescribed orders**

For the definition of *prescribed State or Territory order* in subsection 5 (1) of the Act, orders made under the following Acts are prescribed:

- (a) the *Crimes (Criminal Organisations Control) Act 2009* (NSW);
- (b) the *Serious and Organised Crime (Control) Act 2008* (SA).

**6 Forms**

- (1) A reference in these Regulations to a form of a particular number is a reference to the form of that number in Schedule 1.
- (2) The number of a form need not appear on a document that is required to comply with the form.
- (3) A reference to a provision of the Code, or of these Regulations, to which a form relates need not appear on a document that is required to comply with the form.
- (4) The expression ‘credit provider’, ‘debtor’, ‘lessor’ or ‘lessee’ in a form may be replaced by the name of:
  - (a) the credit provider, debtor, lessor or lessee; or
  - (b) another expression that is explained in the form.
- (5) A document that is required to comply with a form need not contain any matter that is not relevant to the credit contract, mortgage, guarantee or consumer lease concerned. The consequential renumbering of items is permissible.

*Note* Section 208 of the Code makes provision with respect to forms. The section provides, among other things, that strict compliance with a form is not necessary and substantial compliance is sufficient.

## **Chapter 2    Licensing of persons who engage in credit activities**

### **Part 2-1        Australian credit licences**

#### **7            How to get an Australian credit licence — requirements for a foreign entity to appoint local agent**

- (1) For paragraph 37 (1) (e) of the Act, a foreign entity that:
  - (a) is not a foreign company; and
  - (b) applies for an Australian credit licence;must meet the requirements in subregulations (2) and (3).
- (2) The foreign entity must:
  - (a) have appointed, as an agent, a person who is:
    - (i) an individual or a company; and
    - (ii) a resident in this jurisdiction; and
    - (iii) authorised to accept, on the foreign entity's behalf, service of process and notices; and
  - (b) lodge, with the application, a memorandum of appointment or a power of attorney that is duly executed by or on behalf of the foreign entity and states the name and address of the agent.
- (3) If the memorandum of appointment, or power of attorney, lodged under paragraph (2) (b) was executed on behalf of the foreign entity, the foreign entity must also lodge a copy declared in writing to be a true copy of the document authorising the execution.

**8 How to get an Australian credit licence —  
streamlined process for particular classes of  
applicants**

- (1) For section 39 of the Act, if an applicant is:
- (a) in the class of applicants mentioned in subregulation (2);  
and
  - (b) is applying for a licence to engage in credit activities of  
the kind in which the person is authorised to engage under  
a law of a State or Territory;

paragraph 37 (1) (b) of the Act applies in relation to the applicant only to the extent that ASIC must consider whether it has reason to believe that the applicant is likely to contravene the obligations that will apply under paragraphs 47 (1) (i) and (j) of the Act if the licence is granted.

- (2) The class of applicants is persons:
- (a) who have applied for an Australian credit licence; and
  - (b) who are authorised to engage in credit activities under a law of a State or Territory; and
  - (c) who, under the law of the State or Territory, or under a condition imposed on the person by a licensing authority under the law of the State or Territory:
    - (i) are required to comply with the following requirements:
      - (A) the person must comply with the law;
      - (B) the person must have sufficient or adequate resources to ensure the person can comply with the law;
      - (C) the person must be responsible for ensuring that all representatives of the person comply with the law;
      - (D) the person must arrange or provide credit that is appropriate for consumers;
      - (E) the person must act honestly and fairly in the person's dealings with borrowers and lenders;

**Regulation 8**

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- (F) the person must ensure that the person and all representatives of the person are competent to engage in the credit activities the person is authorised to engage in;
      - (G) if the person is acting as an agent on behalf of a consumer, the person must act in the best interests of the person's principal; and
    - (ii) are not required to be supervised by another person; and
  - (d) who may be banned from engaging in credit activities under the law of the State or Territory; and
  - (e) who have provided to ASIC a written statement in the approved form that the person will comply with the person's obligations under the Act.
- (3) For section 39 of the Act, paragraph 37 (1) (c) of the Act does not apply in relation to the class of applicants mentioned in subregulation (4) to the extent that the applicant is applying for a licence to engage in credit activities of the kind the person was authorised to engage in under a law of a State or Territory.
- (4) The class of applicants is persons who:
- (a) are in the class of applicants mentioned in subregulation (2); and
  - (b) are authorised to engage in credit activities under a law of a State or Territory that:
    - (i) requires the person to demonstrate that the person is a fit and proper person (however described); or
    - (ii) deems the person to be ineligible to engage in credit activities if the person is not a fit and proper person (however described).
- (5) For section 39 of the Act, if an applicant is in the class of applicants mentioned in subregulation (7) or (8):
- (a) section 37 of the Act does not apply in relation to the applicant; and
  - (b) if:
    - (i) the applicant applies under section 36 of the Act for a licence; and



**Regulation 8**

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- (ii) the application includes a statement, in accordance with the requirements of the approved form, to the effect that the applicant will, if granted the licence, comply with the applicant's obligations as a licensee;

ASIC must grant the applicant a licence.

- (6) If ASIC grants the applicant a licence under subregulation (5), the licence must authorise the licensee to engage in credit activities that equate, as closely as possible, to the credit activities in relation to which the application was made.
- (7) The class of applicants is persons who:
  - (a) are authorised as a general insurer by APRA under section 12 of the *Insurance Act 1973*; and
  - (b) are included on the Register of General Insurers and Authorised NOHCs; and
  - (c) offer lenders mortgage insurance products; and
  - (d) engage in credit activities only:
    - (i) as an assignee in relation to providing the mortgage insurance products; or
    - (ii) as the credit provider under the doctrine of subrogation in relation to providing the mortgage insurance products.
- (8) The class of applicants is persons who:
  - (a) are registered by APRA under section 21 of the *Life Insurance Act 1995*; and
  - (b) engage in credit activities in relation to the provision of credit only because of the operation of the terms and conditions of:
    - (i) a life policy (within the same meaning as in that Act) that was entered into before 1 July 2010 by the person; or
    - (ii) a document issued or given by the person in relation to a life policy (within the same meaning as in that Act) that was entered into before 1 July 2010 by the person.

## Regulation 9

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### 9 The conditions on the licence

- (1) For section 45 of the Act, an Australian credit licence is subject to the conditions set out in this regulation.
- (2) If:
  - (a) there is a change in a matter particulars of which are entered in the credit register for licensees; and
  - (b) the change is not a direct consequence of an act by ASIC; the licensee must lodge particulars of the change with ASIC, in the approved form, within 10 business days after the change occurs.
- (3) If:
  - (a) there is a change in a matter particulars of which are entered in the credit register for credit representatives; and
  - (b) the change is not required to be reported in accordance with section 71 of the Act; and
  - (c) the change is not a direct consequence of an act by ASIC; the licensee must ensure that particulars of the change are lodged with ASIC in the approved form within 15 business days after the change occurs.
- (4) The licensee must ensure that each credit representative of the licensee that may give an authorisation to an individual is aware of the requirements in section 71 of the Act.
- (5) The licensee must ensure that, before the licensee authorises an individual to engage in a credit activity on its behalf as mentioned in section 64 of the Act, reasonable inquiries are made to establish:
  - (a) the individual's identity; and
  - (b) whether the individual has already been allocated a number by ASIC as a credit representative.
- (6) The licensee must ensure that, before a body corporate that is a credit representative of the licensee authorises an individual to engage in a credit activity on behalf of the licensee as mentioned in section 65 of the Act, reasonable inquiries are made to establish:
  - (a) the individual's identity; and

**Regulation 9**

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- (b) whether the individual has already been allocated a number by ASIC as a credit representative.
- (7) The licensee must ensure that, if:
- (a) ASIC has allocated a number to a credit representative; and
  - (b) the licensee, or a body corporate that has authorised an individual to engage in a credit activity on behalf of the licensee as mentioned in section 65 of the Act, lodges a document with ASIC that refers to the credit representative;  
the document refers to the number.
- (8) The licensee must provide evidence of an authorisation of any of its credit representatives:
- (a) on request by any person; and
  - (b) free of charge; and
  - (c) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which it received the request.
- (9) The licensee must take reasonable steps to ensure that each of its credit representatives supplies evidence of its authorisation by the licensee:
- (a) on request by any person; and
  - (b) free of charge; and
  - (c) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which the credit representative received the request.
- (10) If the licensee becomes aware of any change in control of the licensee, the licensee must lodge with ASIC particulars of the change, in the approved form, not later than 10 business days after the change.
- (11) For subregulation (10):
- (a) a change in control, in relation to a licensee, includes a transaction, or a series of transactions in a period of 12 months, that results in a person having control of the licensee, either alone or together with associates of the person; and

**Regulation 9**

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- (b) control, in relation to a licensee, means:
  - (i) if the licensee is a body corporate:
    - (A) the capacity to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the licensee; or
    - (B) directly or indirectly holding more than one half of the issued share capital of the licensee (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
  - (ii) the capacity to control the composition of the licensee's board or governing body; or
  - (iii) the capacity to determine the outcome of decisions about the licensee's financial and operating policies.
- (12) For subparagraph (11) (b) (iii), the following matters must be taken into account in determining whether a person has the capacity to determine the outcome of decisions about the licensee's financial and operating policies:
  - (a) the practical influence the person can exert (rather than the rights it can enforce);
  - (b) any practice or pattern of behaviour affecting the licensee's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).
- (13) On the request of any person, the licensee must make available, within 10 business days, evidence of its Australian credit licence for inspection by that person.
- (14) If:
  - (a) the licensee is not a body regulated by APRA; and
  - (b) an event occurs that may make a material adverse change to the financial position of the licensee by comparison with its financial position:
    - (i) at the time of the application for the Australian credit licence; or
    - (ii) as described in documents lodged with ASIC after the application for the Australian credit licence;

the licensee must lodge with ASIC in the approved form a notice setting out particulars of the event as soon as practicable, and in any case not later than 3 business days, after the licensee becomes aware of the event.

## **10 Obligations of licensees — alternative dispute resolution systems**

- (1) For subparagraph 47 (1) (h) (i) of the Act, ASIC must take the following matters into account when considering whether to make or approve standards or requirements relating to internal dispute resolution:
  - (a) Australian Standard AS ISO 10002:
    - (i) known as *Complaints Handling*; and
    - (ii) published by Standards Australia; and
    - (iii) as in force when this regulation commences;
  - (b) any other matter ASIC considers relevant.
- (2) ASIC may:
  - (a) vary or revoke a standard or requirement that it has made in relation to an internal dispute resolution procedure; and
  - (b) vary or revoke the operation of a standard or requirement that it has approved in its application to an internal dispute resolution procedure.
- (3) For paragraph 47 (1) (i) of the Act, ASIC must take the following matters into account when considering whether to approve an external dispute resolution scheme:
  - (a) the accessibility of the dispute resolution scheme;
  - (b) the independence of the dispute resolution scheme;
  - (c) the fairness of the dispute resolution scheme;
  - (d) the accountability of the dispute resolution scheme;
  - (e) the efficiency of the dispute resolution scheme;
  - (f) the effectiveness of the dispute resolution scheme;
  - (g) any other matter ASIC considers relevant.
- (4) ASIC may:
  - (a) specify a period for which an approval of an external dispute resolution scheme is in force; and

## Regulation 11

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- (b) make an approval of an external dispute resolution scheme subject to conditions specified in the approval, including conditions relating to the conduct of an independent review of the operation of the scheme; and
  - (c) vary or revoke:
    - (i) an approval of an external dispute resolution scheme; or
    - (ii) the specification of a period for which an approval is in force; or
    - (iii) a condition to which an approval of an external dispute resolution scheme is subject.
- (5) For paragraph 110 (a) of the Act, a licensee who engages in credit activities in the capacity of any of the following:
- (a) a trustee appointed under the will or on the intestacy of a person;
  - (b) a trustee appointed under an express trust if:
    - (i) the settlor is an individual; and
    - (ii) the interest in the trust is not a credit contract;
  - (c) an attorney appointed under an enduring power of attorney;
- is exempt from the requirements in paragraph 47 (1) (i) of the Act in relation to the credit activities if complaints about the credit provided by the licensee may be made to the Ombudsman of a State or Territory.

### **11 Obligations of licensees — foreign entity must continue to have local agent**

- (1) For paragraph 47 (1) (m) of the Act, a foreign entity that:
- (a) is not a foreign company; and
  - (b) is a licensee;
- must meet the requirements in subregulation (2).
- (2) The foreign entity must:
- (a) at all times, have an agent who is:
    - (i) an individual or a company; and
    - (ii) resident in this jurisdiction; and

**Regulation 12**

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- (iii) authorised to accept, on the foreign entity's behalf, service of process and notices; and
- (b) notify ASIC of any change to:
  - (i) the agent; or
  - (ii) the name or address of the agent;not later than 1 month after the change; and
- (c) make arrangements that ensure that ASIC may treat a document as being served on the foreign entity by leaving it at, or by sending it by post to:
  - (i) an address of the agent that has been notified to ASIC; or
  - (ii) if a notice or notices of a change or alteration to that address has or have been given to ASIC — the address shown in the most recent notice.

**12 Obligations of licensees — requirements for compensation arrangements**

- (1) For paragraph 48 (2) (a) of the Act, and unless the licensee is an exempt licensee, the arrangements mentioned in subsection 48 (1) of the Act are subject to the requirement that the licensee hold professional indemnity insurance cover that is adequate, having regard to:
  - (a) the licensee's membership of an approved external dispute resolution scheme (or schemes) mentioned in paragraph 47 (1) (i) of the Act, taking account of the maximum liability that has, realistically, some potential to arise in connection with:
    - (i) any particular claim against the licensee; and
    - (ii) all claims in respect of which the licensee could be found to have liability; and
  - (b) relevant considerations in relation to the engaging in a credit activity by the licensee, including:
    - (i) the volume of business involved in the credit activity; and
    - (ii) the number and kind of clients; and
    - (iii) the kind, or kinds, of credit activities involved; and
    - (iv) the number of representatives of the licensee.

## Regulation 12

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- (2) For paragraph 48 (3) (c) of the Act, a matter to which ASIC must have regard, before approving particular arrangements under paragraph 48 (2) (b) of the Act, is whether those arrangements would provide coverage that is adequate, having regard to matters of the kind mentioned in subregulation (1).
- (3) In this regulation:  
*exempt licensee* means any of the following:
- (a) a company or institution of any of the following kinds:
    - (i) a general insurance company authorised by APRA under section 12 of the *Insurance Act 1973*, and included on the Register of General Insurers and Authorised NOHCs;
    - (ii) a life insurance company registered with APRA under section 21 of the *Life Insurance Act 1995*;
    - (iii) an authorised deposit-taking institution;
  - (b) a licensee:
    - (i) that is related (within the meaning of section 50 of the Corporations Act) to a company or institution mentioned in paragraph (a); and
    - (ii) in respect of which the company or institution has provided a guarantee that:
      - (A) ensures payment of the obligations of the licensee to an extent that is adequate within the meaning of subregulation (1); and
      - (B) is approved in writing by ASIC;
  - (c) a licensee whose license:
    - (i) is subject to a condition under subsection 45 (6) of the Act that the licensee is only authorised to engage in credit activities mentioned in item 1, 3, 4 or 5 in the table in subsection 6 (1) of the Act; and
    - (ii) is not subject to a condition that the licensee hold professional indemnity insurance;
  - (d) a licensee who:
    - (i) has a licence to provide a credit service within the meaning given by section 7 of the Act; and



**Regulation 13**

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- (ii) will only provide the credit service in relation to:
  - (A) credit contracts for which the licensee is the credit provider; or
  - (B) consumer leases for which the licensee is the lessor.

*Note* For paragraph (b), a decision to refuse to approve a guarantee is a reviewable decision under section 327 of the Act.

**13 Obligations of licensees — offence in relation to failure to cite licence number in documents**

- (1) For subsection 52 (2) of the Act, the following kinds of documents are prescribed:
  - (a) a document that is required to be created or produced in accordance with Chapter 3 of the Act;
  - (b) a printed advertisement that relates to the provision of credit to which the Code would apply;
  - (c) a document that is required to be created, produced, given or published by a provision of the Code;
  - (d) a document lodged with ASIC that relates to the provision of credit to which the Code would apply.

*Note* Under subsection 52 (3) of the Act, a person commits an offence if:

- (a) the person is subject to a requirement to include and identify its Australian credit licence number in a document prescribed by the regulations; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.
- (2) For the purposes of paragraph (1) (b), if a printed advertisement identifies more than 1 licensee, or uses a word or description that covers more than 1 licensee, subsection 52 (2) of the Act is modified to provide that only 1 of the licensees must comply with paragraphs 52 (2) (a) and (b) of the Act.

*Note* Paragraph 110 (c) of the Act provides that the regulations may provide that Chapter 2 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

## Regulation 14

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### 14 **Obligations of licensees — who compliance certificate must be signed by**

For paragraph 53 (3) (b) of the Act, the following persons are prescribed:

- (a) if the body corporate is not an ADI:
  - (i) the CEO of the body corporate; or
  - (ii) if the body corporate does not have a CEO — the person who:
    - (A) is responsible for managing the affairs of the body corporate; and
    - (B) has authority to make decisions in relation to the allocation of resources so that the body corporate complies with the Act;
- (b) if the body corporate is an ADI:
  - (i) the CEO of the body corporate; or
  - (ii) a person who satisfies the criteria to be fit and proper to hold a responsible person position under Prudential Standard APS 520.

*Note* Prudential Standard APS 520 is in Schedule 1 to the *Banking (prudential standard) determination No. 1 of 2006—Prudential Standard APS 520 Fit and Proper*.

### 15 **When a licence can be suspended, cancelled or varied — grounds to suspend or cancel licence**

For paragraph 55 (2) (e) of the Act, the following are matters that ASIC must have regard to:

- (a) a licensee failing to lodge an annual compliance certificate under section 53 of the Act;
- (b) a licensee lodging an annual compliance certificate that contains information that:
  - (i) is false or misleading; or
  - (ii) can not reasonably be believed to be true by the person signing the certificate under subsection 53 (3) of the Act.

## **Part 2-2                      Authorisation of credit representatives**

### **16                      Sub-authorisation by body corporate**

For paragraph 110 (c) of the Act, paragraph 65 (6) (c) of the Act is modified to include after 'scheme' the words 'and is not an employee or director of the body corporate'.

*Note* Paragraph 110 (c) of the Act provides that the regulations may provide that Chapter 2 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

## **Part 2-3                    Financial records, trust                                      accounts and audit reports**

### **17                    Information and matters to be contained in a trust                                      account audit report**

For paragraph 100 (3) (b) of the Act, the trust account audit report must include a statement about the following matters:

- (a) whether, in the opinion of the auditor, the licensee's trust accounts have been kept regularly and properly maintained;
- (b) whether the auditor received all necessary records, information and explanations from the licensee;
- (c) whether, in the opinion of the auditor, the licensee's trust accounts provide a true and fair view of the transactions recorded and the balance at the end of the relevant period;
- (d) any other matter in relation to the trust accounts which should, in the opinion of the auditor, be communicated to ASIC.

### **18                    Eligibility of auditors to prepare trust account audit                                      report**

- (1) For subsection 100 (4) of the Act, a person is ineligible to prepare a trust account audit report for a credit service licensee if:
  - (a) the person does not meet the requirements of regulation 19; or
  - (b) the person is not an authorised audit company (within the meaning given by section 9 of the Corporations Act); or
  - (c) the person owes an amount to, or is owed an amount by:
    - (i) the credit service licensee; or
    - (ii) if the credit service licensee is a body corporate — a related body corporate of the credit service licensee; or

**Regulation 18**

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- (d) a body corporate in which the person has a substantial holding owes an amount to, or is owed an amount by:
    - (i) the credit service licensee; or
    - (ii) if the credit service licensee is a body corporate — a related body corporate of the credit service licensee; or
  - (e) if the credit service licensee is a body corporate — the person is:
    - (i) an officer of the body corporate; or
    - (ii) a partner or employee of an officer of the body corporate.
- (2) For paragraph (1) (c), a debt owed by an individual to a body corporate is to be disregarded if:
- (a) the body corporate is:
    - (i) an Australian ADI; or
    - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
  - (b) the debt arose because of a loan that the body corporate made to the individual in the ordinary course of the body corporate's ordinary business; and
  - (c) the individual used the amount of the loan to pay the whole or part of the purchase price of premises that the individual uses as his or her principal place of residence.
- (3) For subparagraphs (1) (e) (i) and (ii), a person is taken to be an officer of a body corporate if:
- (a) the person is an officer of a related body corporate; or
  - (b) unless ASIC directs that this paragraph does not apply in relation to the person — the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.
- (4) For this regulation, a person is not taken to be an officer of a body corporate by reason only:
- (a) of being or having been the liquidator of the body corporate or of a related body corporate; or

**Regulation 19**

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- (b) of having been appointed as an auditor of the body corporate or of a related body corporate; or
- (c) of being a public officer of the body corporate for any purpose relating to taxation; or
- (d) of being or having been authorised to accept service of process or any notices on behalf of the body corporate or a related body corporate.

**19        Auditors who prepare audit reports**

- (1) For paragraph 106 (c) of the Act, this regulation:
  - (a) sets out who is eligible to be an auditor for the purpose of preparing the audit reports mentioned in paragraphs 106 (a) and (b) of the Act; and
  - (b) sets out when a person may be appointed as an auditor.

*Note* Paragraph 106 (c) of the Act provides that the regulations may make provision in relation to the auditors that prepare the audit reports mentioned in paragraphs 106 (a) and (b) of the Act.

*Eligibility to be an auditor*

- (2) A person is eligible to be appointed as an auditor for the purpose mentioned in paragraph (1) (a) only if:
  - (a) the person is a registered company auditor (within the meaning given by section 9 of the Corporations Act); and
  - (b) the person:
    - (i) is not an employee, director or partner:
      - (A) of the licensee; or
      - (B) of any other person carrying on a business of engaging in credit activities; and
    - (ii) is not carrying on a business of engaging in credit activities.

*Appointment as an auditor*

- (3) A licensee must:
  - (a) within 3 months of being required to open a trust account, appoint a person who meets the requirements of subregulation (2) to be the licensee's auditor; and

**Regulation 19**

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- (b) notify ASIC of the appointment within 14 days after appointing the person.
- (4) If a person is appointed as a licensee's auditor, the appointment is continuous until the first of the following events occurs:
- (a) the licensee is no longer required to keep a trust account;
  - (b) the auditor dies or otherwise ceases to engage in the business of being an auditor;
  - (c) the auditor is unable to perform his or her duties as the licensee's auditor;
  - (d) ASIC approves the auditor's resignation;
  - (e) ASIC approves a request by the licensee to replace the person as an auditor.
- (5) If a person ceases to be a licensee's auditor under paragraph (4) (b), (c), (d) or (e), the licensee must:
- (a) within 28 days of the cessation of the appointment, appoint another person who meets the requirements of subregulation (2) to be the licensee's auditor; and
  - (b) notify ASIC of the appointment within 14 days after appointing the person.

**Regulation 20**

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## **Part 2-4            Exemptions**

### **20            Persons exempt from requiring a licence — general**

- (1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) section 29 of the Act; and
  - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
  - (c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

*Note* Section 29 of the Act provides that a person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

*Note* If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if the person engages in a credit activity while performing functions, or exercising powers, in any of the following capacities or circumstances:
- (a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*;
  - (b) as a receiver, receiver and manager, provisional liquidator, or liquidator (whether appointed by a court or otherwise);
  - (c) as a person appointed by a court to engage in a credit activity;
  - (d) as the Public Trustee acting under a law of a State or Territory;
  - (e) as an administrator of a body corporate;
  - (f) as an administrator of a deed of company arrangement executed by a body corporate;
  - (g) as a trustee or person administering a compromise or arrangement between a body corporate and another person or persons;



**Regulation 20**

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- (h) as a personal representative of a deceased person other than a deceased licensee;
  - (i) subject to subregulation (4), as a personal representative of a deceased licensee;
  - (j) in the administration of a bankrupt estate or in the winding up of a body corporate or partnership;
  - (k) as a registered debt agreement administrator preparing and administering a debt agreement under Part IX of the *Bankruptcy Act 1966*.
- (4) Paragraph (3) (i) only applies until the first of the following events occurs:
- (a) the end of 6 months after the death of the licensee;
  - (b) the removal or discharge of the personal representative;
  - (c) the final distribution of the licensee's estate.
- (5) A person is exempted if:
- (a) the person (the ***financial counselling agency***) engages in the credit activity as part of a financial counselling service; and
  - (b) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:
    - (i) engaging in the credit activity; or
    - (ii) any other aspect of the provision of the financial counselling service; and
  - (c) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, a representative of the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:
    - (i) engaging in the credit activity; or
    - (ii) any other aspect of the provision of the financial counselling service; and

**Regulation 20**

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- (d) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, an associate of the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:
    - (i) engaging in the credit activity; or
    - (ii) any other aspect of the provision of the financial counselling service; and
  - (e) no fees or charges (however described) are payable by or on behalf of the client in relation to the credit activity or any other aspect of the financial counselling service; and
  - (f) the financial counselling agency:
    - (i) does not engage in a credit activity that is not covered by paragraphs (a) to (e); and
    - (ii) takes all reasonable steps to ensure that none of its representatives engages in a credit activity that is not covered by paragraphs (a) to (e); and
  - (g) the financial counselling agency takes all reasonable steps to ensure that each person who engages in credit activities on its behalf:
    - (i) is a member of, or is eligible to be a member of, a financial counselling association; and
    - (ii) has undertaken appropriate training to ensure that the person has adequate skills and knowledge to engage satisfactorily in the credit activity and any other aspect of the provision of the financial counselling service.
- (6) A person is exempted if:
- (a) the person:
    - (i) is a related body corporate of a licensee; and
    - (ii) is engaging in credit activities only on behalf of the licensee; and
    - (iii) is engaging in credit activities only because its employees and directors are engaging in credit activities on behalf of the licensee; and

**Regulation 20**

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- (b) the credit activities in which the person engages are not those mentioned in:
- (i) paragraph (a) or (b) of item 1 of the table in subsection 6 (1) of the Act; or
  - (ii) paragraph (a) or (b) of item 3 of the table in subsection 6 (1) of the Act.
- (7) A person is exempted if the person is a public body or authority, or a local government body or authority, constituted under an Act of the Commonwealth or a State or Territory.
- (8) Subject to subregulation (9), if a person is authorised to engage in particular credit activities by:
- (a) an Act of the Commonwealth or a State or Territory (other than the Act, the Transitional Act or an Act mentioned in subregulation (10)); or
  - (b) a licence or registration issued or granted under an Act of the Commonwealth or a State or Territory (other than the Act, the Transitional Act or an Act mentioned in subregulation (10));
- the person is exempted to the extent that the person is engaging in the credit activities in which the person is authorised to engage under that Act, licence or registration.
- (9) If a person would have been exempted under regulation 21 except that 12 calendar months have passed since the day this Chapter commences, the person is not exempted under subregulation (8).
- Note* Subregulation 21 (4) provides that a person to whom subregulation 21 (3) applies is only exempted for 12 calendar months starting on the day this Chapter commences.
- (10) For paragraphs (8) (a) and (b), the Acts are:
- (a) the *Finance Brokers Control Act 1975* (WA); and
  - (b) the *Credit (Administration) Act 1984* (WA); and
  - (c) the *Consumer Credit (Administration) Act 1996* (ACT).
- (11) A person is exempted if:
- (a) the person is an organisation that provides services and makes benefits available to members of:
    - (i) the organisation; or

**Regulation 20**

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- (ii) a program or facility operated or conducted by or within the organisation; and
  - (b) an incidental benefit of membership of the organisation, program or facility is that members are eligible:
    - (i) to apply for a particular credit contract or consumer lease offered by a licensee or a registered person; or
    - (ii) to obtain services or benefits under a particular credit contract or consumer lease offered by a licensee or a registered person; and
  - (c) the person takes reasonable steps:
    - (i) to identify information which may be relevant to whether the licensee or registered person mentioned in paragraph (b) decides to enter into the credit contract or consumer lease; and
    - (ii) to give the information to the licensee or registered person; and
  - (d) the organisation provides credit services (within the meaning given by section 7 of the Act) in relation to the particular credit contract or consumer lease to members or persons likely to become members; and
  - (e) it would not ordinarily be the case that:
    - (i) the credit to be provided under the credit contract is provided predominantly for the payment for services, goods or benefits provided by the organisation or an associate of the organisation; or
    - (ii) the goods to be hired under the consumer lease are supplied by the organisation or an associate of the organisation.
- (12) A person is exempted if:
- (a) either:
    - (i) the person:
      - (A) is a charitable body (within the same meaning as in *ASIC Class Order [CO 02/184]*); and
      - (B) is engaging in credit activities by providing a credit service in relation to credit contracts or

**Regulation 20**

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- consumer leases provided by a licensed or registered credit provider or lessor; or
- (ii) the person:
    - (A) is not a charitable body (within the same meaning as in *ASIC Class Order [CO 02/184]*); and
    - (B) is engaging in credit activities by providing a credit service in relation to credit contracts or consumer leases provided by an ADI; and
  - (b) the credit contracts or consumer leases are offered as part of a program designed for low income consumers who are entitled:
    - (i) to hold a Health Care Card or Pension Concession Card; or
    - (ii) to receive Family Tax Benefit Part A; and
  - (c) the only remuneration (whether by way of commission or otherwise) payable to, or on behalf of, the person by any other person in relation to any action by, or on behalf of, the client arising from providing the credit service is payments made by a third party that has no existing relationship with the client.
- (13) A person is exempted if:
- (a) the person engages in credit activities mentioned in:
    - (i) paragraph (c) of item 1 of the table in subsection 6 (1) of the Act; or
    - (ii) paragraph (c) of item 3 of the table in subsection 6 (1) of the Act; or
    - (iii) paragraph (b) of item 4 of the table in subsection 6 (1) of the Act; or
    - (iv) paragraph (b) of item 5 of the table in subsection 6 (1) of the Act; and
  - (b) the person engages in the credit activities while performing the statutory obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee under:
    - (i) the *Privacy Act 1988*; or
    - (ii) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

**Regulation 21**

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**21            Persons exempt from requiring a licence — debt collectors**

- (1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) section 29 of the Act; and
  - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
  - (c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

*Note* Section 29 of the Act provides that a person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

*Note* If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if:

- (a) the person engages in a credit activity mentioned in:
  - (i) paragraph (c) of item 1 of the table in subsection 6 (1) of the Act, on behalf of the credit provider who is a licensee or a registered person; or
  - (ii) paragraph (c) of item 3 of the table in subsection 6 (1) of the Act, on behalf of the lessor who is a licensee or a registered person; or
  - (iii) paragraph (b) of item 4 of the table in subsection 6 (1) of the Act, on behalf of the mortgagee who is a licensee or a registered person; or
  - (iv) paragraph (b) of item 5 of the table in subsection 6 (1) of the Act, on behalf of the other person who is a licensee or a registered person; and
- (b) the person only performs the obligations, or exercises the rights, mentioned in those paragraphs in relation to:
  - (i) demanding and receiving payments from:
    - (A) borrowers or guarantors under credit contracts; or
    - (B) lessees under consumer leases; and

**Regulation 21**

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- (ii) enforcing rights in relation to taking possession of:
  - (A) property secured by a mortgage; or
  - (B) goods hired under a consumer lease; and
- (c) either:
  - (i) the person:
    - (A) holds a licence or authorisation to engage in an activity mentioned in paragraph (a) under one or more of the Acts mentioned in subregulation (5); or
    - (B) is authorised to act on behalf of a person who holds a licence or authorisation of a kind mentioned in subparagraph (i); or
  - (ii) the person:
    - (A) is not required to hold a licence or authorisation, or be authorised to act on behalf of a person who holds a licence or authorisation, to engage in an activity mentioned in paragraph (a) in a State or Territory; and
    - (B) is not prohibited from engaging in an activity mentioned in paragraph (a) by an order of a court or a law of the State or Territory; and
- (d) the person is authorised in writing by a registered person or a licensee to engage in an activity mentioned in paragraph (a).
- (4) The person is exempted for 12 calendar months starting on the day on which this Chapter commences.
- (5) For subparagraph (3) (c) (i), the Acts are the following:
  - (a) the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW);
  - (b) the **Private Agents Act 1966** (Vic);
  - (c) the *Property Agents and Motor Dealers Act 2000* (Qld);
  - (d) the *Debt Collectors Licensing Act 1964* (WA);
  - (e) the *Security and Investigation Agents Act 1995* (SA);
  - (f) the *Security and Investigations Agents Act 2002* (Tas);
  - (g) the *Commercial and Private Agents Licensing Act* (NT).

**Regulation 22**

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**22        Persons exempt from requiring a licence — third parties**

- (1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) section 29 of the Act; and
  - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
  - (c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

*Note* Section 29 of the Act provides that a person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.

Subsection 29 (3) provides, among other things, that it is a defence if the person is a credit representative of a person who holds a licence.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

*Note* If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if:

- (a) the person engages in a credit activity by selling, storing or transporting property of a debtor, lessor, mortgagor or guarantor on behalf of:
  - (i) a credit provider who is a licensee or a registered person; or
  - (ii) a mortgagee who is a licensee or a registered person; or
  - (iii) a person who is the beneficiary of a guarantee who is a licensee or a registered person; or
  - (iv) a lessor who is a licensee or a registered person; or
- (b) the person engages in a credit activity by giving or sending to a debtor, lessee, mortgagor or guarantor, on behalf of:
  - (i) a credit provider who is a licensee or a registered person; or
  - (ii) a mortgagee who is a licensee or a registered person; or



**Regulation 23**

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- (iii) a person who is the beneficiary of a guarantee who is a licensee or a registered person; or
- (iv) a lessor who is a licensee or a registered person; a notice or document that the person mentioned in subregulation (i), (ii), (iii) or (iv) is obliged by law to give or send to the debtor, lessee, mortgagor or guarantor.

**23 Persons exempt from requiring a licence — providers of point of sale credit services**

- (1) For paragraphs 110 (a) and (c) of the Act, this regulation:
  - (a) exempts certain persons engaging in a credit activity from:
    - (i) section 29 of the Act; and
    - (ii) definitions in the Act, as they apply to references in the provisions mentioned in subparagraph (i); and
    - (iii) instruments made for the purposes of any of the provisions mentioned in subparagraphs (i) and (ii); and
  - (b) modifies specified provisions for the purposes of the exemption under paragraph (a).

*Note* Section 29 of the Act provides that a person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

*Note* If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if:
  - (a) the person is:
    - (i) a supplier of goods or services; or
    - (ii) a related body corporate of a supplier of goods or services; and
  - (b) the person is:
    - (i) engaging in a credit activity mentioned in:
      - (A) paragraph (c) of item 1 of the table in subsection 6 (1) of the Act:

**Regulation 23**

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- (I) on behalf of the credit provider who is a licensee or a registered person; and
  - (II) in relation to a credit contract or consumer lease; or
- (B) paragraph (c) of item 3 of the table in subsection 6 (1) of the Act:
  - (I) on behalf of the lessor who is a licensee or a registered person; and
  - (II) in relation to a credit contract or consumer lease; or
- (C) paragraph (b) of item 4 of the table in subsection 6 (1) of the Act:
  - (I) on behalf of the mortgagee who is a licensee or a registered person; and
  - (II) in relation to a credit contract or consumer lease; or
- (D) paragraph (b) of item 5 of the table in subsection 6 (1) of the Act:
  - (I) on behalf of the other person who is a licensee or a registered person; and
  - (II) in relation to a credit contract or consumer lease; or
- (ii) providing credit services (within the meaning given by section 7 of the Act) in relation to a credit contract or consumer lease; and
- (c) the credit provider or lessor in relation to the credit contract or consumer lease is:
  - (i) a linked credit provider or linked lessor of the supplier; and
  - (ii) a licensee or a registered person; and
- (d) a consumer enters into the credit contract or consumer lease wholly or predominantly for the purpose of payment for goods or services supplied by the supplier.

**Regulation 23**

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- (4) For paragraph 110 (c) of the Act, the definition of *linked credit provider* of a supplier in section 127 of the Code is modified for the purposes of this exemption to provide that a *linked credit provider or linked lessor* of a supplier means a credit provider or 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:
      - (A) supplying goods or services; or
      - (B) causing goods to be supplied to the consumer by way of a consumer lease; or
    - (iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services; or
  - (b) to whom the supplier, by arrangement with the credit provider or lessor, regularly refers persons for the purpose of obtaining credit or being provided with a consumer lease; or
  - (c) whose:
    - (i) forms of contract; or
    - (ii) forms of application; or
    - (iii) offers for credit; or
    - (iv) offers to be provided with a consumer lease; are, by arrangement with the credit provider or lessor, made available to persons by the supplier; or
  - (d) with whom the supplier has a contract, arrangement or understanding under which:
    - (i) contracts; or
    - (ii) applications; or
    - (iii) offers for credit; or
    - (iv) offers to be provided with a consumer lease; from the credit provider or lessor may be signed by persons at the premises of the supplier.

**Regulation 23**

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- (5) For paragraph 110 (c) of the Act, the definition of *services* in subsection 204 (1) of the Code is modified for the purposes of this exemption to provide that *services*:
- (a) includes:
    - (i) insurance; or
    - (ii) professional services; or
    - (iii) a right to services; and
  - (b) does not include:
    - (i) rights in relation to, and interest in, real property; or
    - (ii) services relating to credit or consumer leases that are regulated under the Act, or would be regulated under the Act if entered into, other than credit services within the meaning given by section 7 of the Act.
- (6) The exemption does not apply to a person if the supplying of goods or services to the consumer is the result of unsolicited contact with the consumer.
- (7) For subregulation (6), unsolicited contact includes circumstances in which:
- (a) a consumer is contacted in relation to the supply of goods or services after providing his or her name or contact details to a person, and:
    - (i) the consumer did not provide his or her name or contact details for the predominant purpose of being contacted in relation to the supply of those goods or services; or
    - (ii) the consumer is not contacted within a reasonable period after making an inquiry in relation to the provision of those goods or services; or
  - (b) a consumer is contacted, in relation to the supply of goods or services, on or from business premises that are not physically separate from premises regularly used by consumers for purposes other than being contacted in relation to the provision of those goods or services.

**Regulation 24**

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**24 Activities exempt from being credit activities**

- (1) For paragraph 110 (b) of the Act, this regulation exempts certain credit activities, or classes of credit activities, from all of the provisions to which Part 2-6 of the Act applies.

*Note* Section 108 of the Act identifies the provisions to which Part 2-6 of the Act applies.

- (2) Subject to subregulation (3), the following credit activities are exempted:
- (a) the providing of credit assistance by a lawyer in his or her professional capacity in relation to matters of law, legal interpretation or the application of the law to any facts;
  - (b) the providing of any credit assistance not mentioned in paragraph (a) by a lawyer in the ordinary course of activities as a lawyer that is reasonably regarded as a necessary part of those activities.
- (3) For subregulation (2), the credit activity is exempted only if the lawyer providing the credit assistance does not hold out or advertise to consumers that he or she is able to provide credit services.
- (4) A credit activity, other than the provision of credit assistance mentioned in subregulation (2), is exempted if it is engaged in by a lawyer in the following circumstances:
- (a) the lawyer is acting:
    - (i) on the instructions of a client, an associate of the client or a relative of the client; and
    - (ii) in his or her professional capacity; and
    - (iii) in the ordinary course of his or her activities as a lawyer;
  - (b) the credit activity can reasonably be regarded as a necessary part of those activities;
  - (c) the lawyer has not received, and will not receive, from the client or from another person on behalf of the client a benefit in connection with those activities other than:
    - (i) the payment of professional charges in relation to those activities; and

**Regulation 24**

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- (ii) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client;
  - (d) the lawyer does not hold out or advertise to consumers that he or she is able to provide credit services.
- (5) A credit activity is exempted if:
  - (a) it is engaged in by a tax agent in the following circumstances:
    - (i) the tax agent is registered under Part VIIA of the *Income Tax Assessment Act 1936*;
    - (ii) the tax agent engages in the credit activity in the ordinary course of activities as a tax agent; and
  - (b) it is a credit activity mentioned in item 2 of the table in subsection 6 (1) of the Act; and
  - (c) it does not involve providing a certificate or assessment (however described) relating to whether a consumer will be able to meet financial obligations under a credit contract or consumer lease.
- (6) A credit activity is exempted if:
  - (a) the credit activity consists only of a person (*person 1*) passing on, publishing, distributing or otherwise disseminating a document that was provided or approved by another person (*person 2*); and
  - (b) person 2:
    - (i) is not acting on behalf of person 1; and
    - (ii) is a licensee or registered person; and
  - (c) person 1 is not otherwise required to hold an Australian credit licence to engage in credit activities; and
  - (d) either:
    - (i) for a consumer in relation to the credit activity mentioned in paragraph (a):
      - (A) person 1 advises the consumer that person 2 is a licensee or registered person; and
      - (B) if person 2 is a licensee — person 1 gives the consumer the licence number of person 2; or

**Regulation 24**

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- (ii) a reasonable person would not consider that person 1 is the licensee or registered person in relation to credit activities being engaged in by person 2; and
  - (e) person 2 approved the content of the document.
- (7) A credit activity is exempted if:
  - (a) the credit activity consists only of a person (*person 1*) allowing another person (*person 2*) to use person 1's business name, logo or trade mark in relation to:
    - (i) the passing on, publishing, distributing or other dissemination of a document; or
    - (ii) a credit contract, consumer lease, mortgage or guarantee provided or offered by person 2; or
    - (iii) a credit activity engaged in by person 2; and
  - (b) person 2:
    - (i) is not acting on behalf of person 1; and
    - (ii) is a licensee or registered person; and
  - (c) person 1 is not otherwise required to hold an Australian credit licence to engage in credit activities; and
  - (d) either:
    - (i) for a consumer in relation to a credit activity mentioned in paragraph (a):
      - (A) the person performing the credit activity advises the consumer that person 2 is a licensee or registered person; and
      - (B) if person 2 is a licensee — the person performing the credit activity gives the consumer the licence number of person 2; or
    - (ii) a reasonable person would not consider that person 1 is the licensee or registered person in relation to credit activities being engaged in by person 2.

**Regulation 25**

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- (8) A credit activity is exempted if:
- (a) the credit activity consists only of a person (*the provider*) giving to another person (*the inquirer*), in response to a request made by the inquirer to the provider, information about:
    - (i) the cost, or an estimate of the likely cost, of a credit contract or a consumer lease offered by a licensee or a registered person; or
    - (ii) terms and conditions of a credit contract or a consumer lease offered by a licensee or a registered person; and
  - (b) the provider could have complied with the request by giving the inquirer equivalent information about one or more other credit contracts or consumer leases offered by a licensee or a registered person; and
  - (c) the provider did not give the inquirer that equivalent information.
- (9) A credit activity is exempted if it is engaged in by a clerk or cashier in the ordinary course of activities as a clerk or cashier.

**25            Activities exempt from requiring a licence**

- (1) For paragraph 110 (b) of the Act, this regulation exempts certain credit activities from:
- (a) section 29 of the Act; and
  - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
  - (c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

*Note* Section 29 of the Act provides that a person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.



**Regulation 25**

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- (2) A credit activity is exempted if:
- (a) the activity consists only of:
    - (i) a person (*person 1*) informing another person (*person 2*) that a licensee or registered person, or a representative of the licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and
    - (ii) person 1 giving person 2 information about how person 2 may contact the licensee, registered person or representative; and
  - (b) at the time the activity is engaged in, person 1 discloses to person 2:
    - (i) any benefits, including commission, that person 1, or an associate of person 1, may receive in respect of the activity; and
    - (ii) any benefits, including commission, that person 1, or an associate of person 1, may receive that are attributable to the activity; and
  - (c) the disclosure mentioned in paragraph (b) is provided in the same form as the information mentioned in paragraph (a).
- (3) A credit activity is exempted if it is a credit activity engaged in in respect of the provision of credit mentioned in:
- (a) subsection 6 (9) or (11) of the Code; or
  - (b) regulation 52, 54, 55, 56, 57, 60, 61 or 63.

## Chapter 3 Responsible lending conduct

### 26 Obligations of credit providers before entering credit contracts or increasing credit limits

For section 128 of the Act, if:

- (a) the credit to be provided under the credit contract will be used for the purchase of a residential property; and
- (b) the credit will be secured by a mortgage over the property; the period is 120 days.

*Note* Section 128 of the Act provides that a licensee must not enter into a credit contract with a consumer, or increase the credit limit of a credit contract with a consumer, on a day unless the licensee has, within 90 days (or other period prescribed by the regulations) before the day, made an unsuitability assessment and made particular inquiries and verification.

### 27 Giving the consumer an assessment — extended time period

- (1) Subregulation (2) applies to a licensee to whom the rights of a credit provider under a credit contract have been assigned.
- (2) For paragraph 164 (d) of the Act:
  - (a) paragraph 132 (2) (c) of the Act is modified by omitting ‘7 business days’ and inserting ‘15 business days’; and
  - (b) paragraph 132 (2) (d) is modified by omitting ‘21 business days’ and inserting ‘25 business days’.
- (3) Subregulation (4) applies to a licensee to whom the rights of a lessor under a consumer lease have been assigned.
- (4) For paragraph 164 (d) of the Act:
  - (a) paragraph 155 (2) (c) of the Act is modified by omitting ‘7 business days’ and inserting ‘15 business days’; and
  - (b) paragraph 155 (2) (d) is modified by omitting ‘21 business days’ and inserting ‘25 business days’.

**Regulation 28**

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*Note* Paragraph 164 (d) of the Act provides that the regulations may provide that Chapter 3 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

**28 Credit guide of credit representatives — contact details for an approved external dispute resolution scheme**

For paragraph 158 (3) (a) of the Act, if:

- (a) a credit representative is not required to be a member of an approved external dispute resolution scheme; and
- (b) the credit representative is not a member of an approved external dispute resolution scheme;

the credit representative is not required to include in the credit representative's credit guide the contact details for a consumer to access an approved external dispute resolution scheme under paragraph 158 (2) (h) of the Act.

**Regulation 29**

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## **Chapter 4 Administration — registers relating to credit activities**

### **29 Credit registers — licensees, credit representatives and registered persons**

- (1) For subsection 213 (2) of the Act, ASIC must include the following details for each licensee included in a credit register of licensees:
  - (a) the licensee's name (including the licensee's principal business name, if any);
  - (b) the principal business address of the licensee;
  - (c) the date on which the licensee's Australian credit licence was granted;
  - (d) the number of the licensee's Australian credit licence;
  - (e) if the licensee has an ABN — the ABN;
  - (f) details of any conditions on the licensee's Australian credit licence, including details of the credit activities or classes of credit activities that the licensee is authorised to engage in;
  - (g) the name of the approved external dispute resolution scheme of which the licensee is a member;
  - (h) any other information that ASIC believes should be included in the register.
- (2) Subregulation (3) applies in relation to:
  - (a) credit representatives of licensees; and
  - (b) credit representatives of registered persons.
- (3) For subsection 213 (2) of the Act, ASIC must include the following details for each credit representative included in a credit register of credit representatives:
  - (a) the credit representative's name (including the credit representative's principal business name, if any);

**Regulation 29**

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- (b) the credit representative's principal business address;
  - (c) the number allocated to the credit representative by ASIC;
  - (d) the name of each licensee or registered person for which the credit representative is a credit representative;
  - (e) the:
    - (i) number of the Australian credit licence of each licensee; and
    - (ii) number allocated by ASIC to each registered person; for which the credit representative is a credit representative;
  - (f) if the credit representative has an ABN — the ABN;
  - (g) the date of the credit representative's authorisation by the licensee or registered person;
  - (h) the name of the approved external dispute resolution scheme of which the credit representative is a member;
  - (i) any other information that ASIC believes should be included in the register.
- (4) For subsection 213 (2) of the Act, ASIC must include the following details for each registered person included in a credit register of registered persons:
- (a) the registered person's name (including the registered person's principal business name, if any);
  - (b) the principal business address of the registered person;
  - (c) the date on which the registered person's name was entered on the credit register as a registered person;
  - (d) the number allocated to the registered person by ASIC;
  - (e) if the registered person has an ABN — the ABN;
  - (f) details of any conditions on the registered person's registration, including details of the credit activities or classes of credit activities that the registered person is authorised to engage in;
  - (g) the name of the approved external dispute resolution scheme of which the registered person is a member;
  - (h) any other information that ASIC believes should be included in the register.

**Regulation 29**

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- (5) For paragraphs (1) (b), (3) (b) and (4) (b), if:
- (a) the person's principal business address is the person's residential address; and
  - (b) ASIC determines, in writing, that including the person's residential address in a register would put at risk the personal safety of the person or members of the person's family; and
  - (c) the person provides an alternative address:
    - (i) that is in Australia; and
    - (ii) that is not a post office box or an electronic address; and
    - (iii) that has a connection with the credit activities engaged in by the person; and
    - (iv) at which documents can be served on the person;ASIC may include the alternative address in the register.
- (6) If ASIC includes a person's alternative address in the register under subregulation (5), the person must, in the approved form:
- (a) lodge with ASIC notice of the person's residential address; and
  - (b) lodge with ASIC notice of any change in the person's residential address within 14 days after the change.
- (7) If:
- (a) ASIC includes a person's alternative address in the register under subregulation (5); and
  - (b) a court gives a judgment for payment of a sum of money against the person;
- ASIC may give details of the person's residential address to an officer of the court for the purposes of enforcing the judgment debt.

**Regulation 30****30 Credit registers — persons against whom banning order or disqualification order is made**

- (1) For subsection 213 (2) of the Act, ASIC must include the following details for each person against whom a banning order is made under Division 2 of Part 2-4 of the Act in a credit register of persons against whom a banning order is made:
  - (a) the person's name;
  - (b) the day on which the banning order took effect;
  - (c) whether the banning order is permanent or for a fixed period;
  - (d) if the banning order is for a fixed period — the period;
  - (e) the terms of the banning order;
  - (f) whether the banning order has been varied or cancelled;
  - (g) if the banning order has been varied:
    - (i) the date of the variation; and
    - (ii) the terms of the variation;
  - (h) if the banning order has been cancelled — the date of the cancellation;
  - (i) any other information that ASIC believes should be included in the register.
  
- (2) For subsection 213 (2) of the Act, ASIC must include the following details for each person against whom a disqualification order is made under Division 3 of Part 2-4 of the Act in a credit register of persons against whom a disqualification order is made:
  - (a) the person's name;
  - (b) the day on which the disqualification order took effect;
  - (c) whether the disqualification order is permanent or for a fixed period;
  - (d) if the disqualification order is for a fixed period — the period;
  - (e) the terms of the disqualification order;
  - (f) whether the disqualification order has been varied or revoked;
  - (g) if the disqualification order has been varied:
    - (i) the date of the variation; and

**Regulation 30**

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- (ii) the terms of the variation;
  - (h) if the disqualification order has been revoked — the date of the revocation;
  - (i) any other information that ASIC believes should be included in the register.
- (3) For subsection 213 (2) of the Act, ASIC must include the following details for each person who is banned from engaging in a credit activity under a law of a State or Territory in a credit register of persons who are banned under a law of a State or Territory:
- (a) the person's name;
  - (b) the day on which the ban took effect;
  - (c) whether the ban is permanent or for a fixed period;
  - (d) if the ban is for a fixed period — the period;
  - (e) the terms of the ban;
  - (f) whether the ban has been varied or cancelled;
  - (g) if the ban has been varied:
    - (i) the date of the variation; and
    - (ii) the terms of the variation;
  - (h) if the ban has been cancelled — the date of the cancellation;
  - (i) any other information that ASIC believes should be included in the register.



## Chapter 5 Compliance and enforcement

### 31 Investigations — distribution of report

For paragraph 251 (2) (d) of the Act, the following are prescribed:

- (a) the Australian Competition and Consumer Commission;
- (b) APRA;
- (c) the Australian Taxation Office;
- (d) the CEO of the Australian Transaction Reports and Analysis Centre;
- (e) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;
- (f) the police force or service of each State and the Northern Territory;
- (g) the Department of Commerce (Office of Fair Trading) of New South Wales;
- (h) the Department of Justice (Consumer Affairs Victoria) of Victoria;
- (i) the Department of Employment, Economic Development and Innovation of Queensland;
- (j) the Department of Commerce of Western Australia;
- (k) the Office of Consumer and Business Affairs of South Australia;
- (l) the Office of Consumer Affairs and Fair Trading of Tasmania;
- (m) the Department of Justice and Community Safety (Office of Regulatory Services) of the Australian Capital Territory;
- (n) the Department of Justice of the Northern Territory;
- (o) the Australian Federal Police.

**Regulation 32**

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**32 Examination of person — form of notice requiring assistance and appearance for examination**

For subsection 253 (2) of the Act, Form 1 is prescribed.

**33 Inspection of books and audit information-gathering powers — evidence of authority**

If:

- (a) an ASIC member or ASIC staff member produces a document issued by ASIC; and
- (b) the document states that the person is authorised by ASIC under section 268 of the Act;

the document is evidence of:

- (c) the authority of the person to require other persons to produce books or give information under subsection 268 (1); and
- (d) any limitation on that authority that is specified in the document under that subsection.

**34 Hearings — form of summons to appear before ASIC**

For subsection 284 (1) of the Act, Form 2 is prescribed.

**35 Miscellaneous provisions — allowances and expenses**

- (1) For subsections 317 (1) and (2) of the Act, a person who:
  - (a) appears for examination under section 253 of the Act; or
  - (b) appears pursuant to a summons issued under section 284 of the Act;is entitled to be paid the allowances and expenses set out in this regulation.

**Regulation 35**

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- (2) A person summoned to appear as a witness before ASIC because of his or her professional, scientific or other special skill or knowledge must be paid:
- (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for the appearance; and
  - (b) in any other case — an amount of not less than \$81, or more than \$407, for each day on which he or she so attends.
- (3) A person summoned to appear as a witness before ASIC, other than a witness mentioned in subregulation (2), must be paid:
- (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for the appearance; and
  - (b) in any other case — an amount of not less than \$46, or more than \$76, for each day on which he or she so attends.
- (4) A person summoned to appear as a witness before ASIC must be paid a reasonable amount for allowances for:
- (a) transport between the usual place of residence of the person and the place that he or she attends for the appearance; and
  - (b) if he or she is required to be absent overnight from his or her usual place of residence — meals and accommodation during the absence.

## **Chapter 6      Miscellaneous**

### **Part 6-1        Court proceedings**

#### **36            Where proceedings may be brought**

- (1) For section 330 of the Act, this regulation sets out where court proceedings may be brought.
- (2) This regulation does not apply to a court proceeding if the court proceeding is:
  - (a) commenced by ASIC; or
  - (b) a class action or representative action on behalf of consumers from more than 1 State or Territory; or
  - (c) commenced by a credit provider under section 112 of the Code for an order under section 113 of the Code.
- (3) Subject to subregulation (4), a court proceeding must be brought in a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resides, if the court proceeding:
  - (a) is in relation to:
    - (i) a credit contract; or
    - (ii) a consumer lease; or
    - (iii) a mortgage; or
    - (iv) a guarantee;  
regulated under the Act; and
  - (b) involves a debtor, mortgagor or guarantor.
- (4) For subregulation (3), if it is not known where the debtor, mortgagor or guarantor ordinarily resides, the court proceeding must be brought in a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resided at the time the credit contract, consumer lease, mortgage or guarantee was made.

**Regulation 36**

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- (5) Subject to subregulation (6), a court proceeding should be filed in the registry of a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resides, if the court proceeding:
- (a) is in relation to:
    - (i) a credit contract; or
    - (ii) a consumer lease; or
    - (iii) a mortgage; or
    - (iv) a guarantee;regulated under the Act; and
  - (b) involves a debtor, mortgagor or guarantor; and
  - (c) is brought in the Federal Court or the Federal Magistrate's Court.
- (6) For subregulation (5), if it is not known where the debtor, mortgagor or guarantor ordinarily resides, the court proceeding must be filed in the registry of a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resided at the time the credit contract, consumer lease, mortgage or guarantee was made.
- (7) Subregulation (8) applies if a court proceeding is in relation to a credit contract:
- (a) that is not a standard form contract (within the meaning of section 12BK of the *Australian Securities and Investments Commission Act 2001*); and
  - (b) that states that a court proceeding in relation to the credit contract must be brought in a court of a particular State or Territory.
- (8) For subregulation (7):
- (a) subregulations (3) to (6) do not apply to the court proceedings; and
  - (b) the court proceeding must be brought in a court of the State or Territory stated in the credit contract.
- (9) The court proceedings mentioned in subregulations (3), (4) and (8) may be transferred to a court of another State or Territory under Part 4-3, Division 2, Subdivision C of the Act.

**Regulation 37**

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## **Part 6-2                      Infringement notices**

### **37                      Purpose of Part 6-2**

- (1) The purpose of this Part is to set out a scheme under section 331 of the Act under which:
  - (a) a person who is alleged to have committed an offence against the Act that is stated to be an offence of strict liability may pay a penalty to the Commonwealth as an alternative to prosecution; and
  - (b) a person who is alleged to have contravened a civil penalty provision may pay a penalty to the Commonwealth as an alternative to civil proceedings.
- (2) This Part does not require an infringement notice to be given to a person for the alleged commission of an offence or contravention of a civil penalty provision.
- (3) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if an infringement notice is not given to the person.
- (4) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if:
  - (a) an infringement notice is given to the person; and
  - (b) the person does not pay the penalty stated in the notice in accordance with regulation 44.
- (5) This Part does not limit or otherwise affect:
  - (a) the penalty that a court could impose on the person for the offence; or
  - (b) the penalty that a court could impose on the person for contravention of the civil penalty provision.

### **38                      Definitions for Part 6-2**

In this Part:

*infringement notice* means an infringement notice under regulation 39.

*infringement notice offence* means:

- (a) an offence against the Act that is stated to be an offence of strict liability; or
- (b) a contravention of 1 of the following civil penalty provisions in the Act:
  - (i) subsection 30 (1) or (2);
  - (ii) subsection 32 (1);
  - (iii) subsection 51 (1);
  - (iv) subsection 73 (3) or (5);
  - (v) subsection 88 (1);
  - (vi) subsection 95 (1);
  - (vii) subsection 98 (1);
  - (viii) subsection 99 (1), (2) or (3);
  - (ix) subsection 100 (1) or (2);
  - (x) subsection 114 (1), (4), (5) or (6);
  - (xi) subsection 115 (1) or (2);
  - (xii) subsection 117 (1);
  - (xiii) subsection 118 (1);
  - (xiv) subsection 119 (1);
  - (xv) subsection 121 (1);
  - (xvi) subsection 122 (1);
  - (xvii) subsection 123 (1);
  - (xviii) subsection 124 (1);
  - (xix) section 128;
  - (xx) subsection 130 (1);
  - (xxi) subsection 131 (2);
  - (xxii) subsection 133 (1);
  - (xxiii) subsection 137 (1), (4), (5) or (6);
  - (xxiv) subsection 138 (1) or (2);
  - (xxv) subsection 140 (1);
  - (xxvi) subsection 141 (1);
  - (xxvii) subsection 142 (1);
  - (xxviii) subsection 144 (1);
  - (xxix) subsection 145 (1);

**Regulation 39**

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- (xxx) subsection 146 (1);
- (xxxi) subsection 147 (1);
- (xxxii) section 151;
- (xxxiii) subsection 153 (1);
- (xxxiv) subsection 154 (2);
- (xxxv) subsection 156 (1);
- (xxxvi) subsection 229 (1).

***nominated person***, in relation to an infringement notice, means the person specified in the notice as the nominated person.

*Note* The nominated person is responsible for the administration of the infringement notice for the purposes of the payment of a penalty and the withdrawal of the notice.

***recipient***, in relation to an infringement notice, means the person to whom the notice is given under regulation 39.

**39            When an infringement notice can be given**

*Alleged commission of offence against the Act*

- (1) If ASIC has reasonable grounds to believe that a person has committed an offence against the Act that is stated to be an offence of strict liability, ASIC may give to the person an infringement notice relating to the alleged commission of the offence.
- (2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.
- (3) If an infringement notice given to a person in relation to the alleged commission of a particular offence is withdrawn, ASIC may give the person a new infringement notice in relation to the alleged commission.

*Example for subregulation (3)*

An infringement notice given to a person in relation to the alleged commission of a particular offence may be withdrawn, and a new infringement notice given to the person in relation to that alleged commission, if the original infringement notice contained an error.



**Regulation 41**

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*Alleged contravention of civil penalty provision*

- (4) If ASIC has reasonable grounds to believe that a person has contravened a civil penalty provision mentioned in paragraph (b) of the definition of *infringement notice offence* in regulation 38, ASIC may give to the person an infringement notice relating to the alleged contravention.
- (5) The infringement notice must be given within 12 months after the day on which the civil penalty provision is alleged to have been contravened.
- (6) If an infringement notice given to a person in relation to the alleged contravention of a particular civil penalty provision is withdrawn, ASIC may give the person a new infringement notice in relation to the alleged contravention.

*Example for subregulation (6)*

An infringement notice given to a person in relation to the alleged contravention of a particular civil penalty provision may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

**40 Contents of infringement notice**

An infringement notice:

- (a) must be in accordance with Form 3; and
- (b) may contain any other information that ASIC considers necessary.

**41 Amount of penalty if infringement notice given**

- (1) The penalty payable under an infringement notice for an alleged commission of an offence against the Act that is stated to be an offence of strict liability is:
  - (a) for an individual — one-fifth of the maximum penalty that a court could impose on the person for that offence; and
  - (b) for a body corporate — the maximum penalty that a court could impose on an individual for that offence.

**Regulation 42**

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- (2) The penalty payable under an infringement notice for an alleged contravention of a civil penalty provision mentioned in paragraph (b) of the definition of *infringement notice offence* in regulation 38 is:
- (a) for an individual — 50 penalty units; and
  - (b) for a body corporate — 250 penalty units.

*Note* Under section 331 of the Act:

- (a) the penalty for an offence against the Act that is stated to be an offence of strict liability must not exceed one-fifth of the maximum penalty that a court could impose on the person for that offence; and
- (b) the penalty for a contravention of a civil penalty provision must not exceed one-fortieth of the maximum penalty that a court could impose on the person for contravention of that provision.

**42            Extension of time to pay penalty**

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the penalty stated in the notice.
- (2) The application must:
  - (a) specify the infringement notice's unique identification code; and
  - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
  - (a) grant or refuse a further period not longer than the period sought (but less than 28 days); and
  - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) If the nominated person has not granted, or refused to grant, the further period within 14 days after receiving the application, the nominated person is taken to have refused to grant the further period.

**43 Payment of penalty by instalments**

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for permission to pay the amount of the infringement notice penalty by instalments.
- (2) The application must:
  - (a) specify the infringement notice's unique identification code; and
  - (b) set out the reasons for the application; and
  - (c) specify the amount and frequency of the instalments that the recipient proposes to pay.
- (3) Within 14 days after receiving the application, the nominated person must:
  - (a) grant or refuse to grant permission for payment by instalments; and
  - (b) give the recipient written notice of the decision, including:
    - (i) if permission is granted — the amount and frequency of the instalments; and
    - (ii) if permission is refused — the reasons for refusal.
- (4) If the nominated person has not granted, or refused to grant, permission for payment by instalments within 14 days after receiving the application, the nominated person is taken to have refused to grant permission for payment by instalments.

**44 Time for payment of penalty**

- (1) The penalty stated in an infringement notice must be paid within:
  - (a) 28 days after the day on which the notice is given to the recipient; or
  - (b) another period required by this regulation.
- (2) If the recipient applies for a further period of time in which to pay the penalty, and the application is granted, the penalty must be paid within the further period allowed.

**Regulation 45**

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- (3) If the recipient applies for a further period of time in which to pay the penalty, and the application is refused or is taken to have been refused, the penalty must be paid within the later of:
  - (a) 7 days after:
    - (i) the notice of the refusal is given to the recipient; or
    - (ii) the application is taken to have been refused; and
  - (b) 28 days after the day on which the infringement notice was given to the recipient.
- (4) If the recipient applies for permission to pay the penalty by instalments, and permission is granted, the penalty must be paid in accordance with the permission.
- (5) If the recipient applies for permission to pay the penalty by instalments, and permission is refused or is taken to have been refused, the penalty must be paid within the later of:
  - (a) 7 days after:
    - (i) the notice of the refusal is given to the recipient; or
    - (ii) the application is taken to have been refused; and
  - (b) 28 days after the day on which the infringement notice was given to the recipient.
- (6) If the recipient applies for the notice to be withdrawn, and the application is refused or is taken to have been refused, the penalty must be paid within the later of:
  - (a) 7 days after:
    - (i) the notice of the refusal is given to the recipient; or
    - (ii) the application is taken to have been refused; and
  - (b) 28 days after the day on which the infringement notice was given to the recipient.

**45        Effect of payment of penalty**

*Alleged commission of offence against the Act*

- (1) If:
  - (a) an infringement notice is given in relation to an alleged commission of an offence against the Act that is stated to be an offence of strict liability; and

**Regulation 45**

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- (b) the infringement notice is not withdrawn; and
  - (c) the recipient pays the penalty stated in the notice in accordance with regulation 44;
- the consequences mentioned in subregulation (2) apply.

(2) The effects are:

- (a) any liability of the recipient for the alleged offence is discharged; and
- (b) no prosecution may be brought against the recipient for the alleged offence; and
- (c) the recipient is not taken to have admitted guilt in respect of the alleged offence; and
- (d) the recipient is not taken to have been convicted of the offence.

*Alleged contravention of civil penalty provision*

(3) If:

- (a) an infringement notice is given in relation to an alleged contravention of a civil penalty provision; and
  - (b) the infringement notice is not withdrawn; and
  - (c) the recipient pays the penalty stated in the notice in accordance with regulation 44;
- the consequences mentioned in subregulation (4) apply.

(4) The effects are:

- (a) any liability of the recipient for the alleged contravention is discharged; and
- (b) no civil proceedings may be brought by the Commonwealth against the recipient for the alleged contravention; and
- (c) the recipient is not taken to have admitted guilt in respect of the alleged contravention; and
- (d) the recipient is not taken to have been found guilty of the contravention.

*Note* A consumer is not prevented from commencing a civil proceeding against the recipient under section 178 or 179 of the Act. ASIC is not prevented from applying for an order on behalf of a plaintiff in accordance with those sections.

**Regulation 46**

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**46 Withdrawal of infringement notice by nominated person**

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for the infringement notice to be withdrawn.
- (2) The application must:
  - (a) specify the infringement notice's unique identification code; and
  - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
  - (a) withdraw or refuse to withdraw the notice; and
  - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) Without limiting subregulation (3), the nominated person may withdraw the infringement notice after taking into account the following matters:
  - (a) whether the recipient:
    - (i) has been previously convicted of an offence against the Act; or
    - (ii) has been previously found to have contravened a civil penalty provision;
  - (b) the circumstances in which the commission or contravention set out in the infringement notice offence specified in the notice is alleged to have occurred;
  - (c) whether an infringement notice has previously been given to the recipient in relation to an infringement notice offence of the same kind as the offence specified in the notice, and in relation to which the recipient paid the penalty under the notice;
  - (d) any other relevant matter.
- (5) If the nominated person has not withdrawn, or refused to withdraw, the notice within 14 days after receiving the application, the nominated person is taken to have refused to withdraw the notice.

**Regulation 49**

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**47 Withdrawal of infringement notice by ASIC**

- (1) ASIC may withdraw an infringement notice given by ASIC without an application under regulation 46 having been made.
- (2) Without limiting subregulation (1), ASIC may withdraw the infringement notice after taking into account a matter mentioned in paragraph 46 (4) (a), (b), (c) or (d).

**48 Notice of withdrawal of infringement notice**

- (1) A notice withdrawing an infringement notice must include the following information:
  - (a) the full name, or surname and initials, and address of the recipient;
  - (b) the date the infringement notice was given;
  - (c) the infringement notice's unique identification code.
- (2) The notice must also state that the notice is withdrawn.

**49 Refund of penalty**

If an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

## Chapter 7 Matters in relation to the National Credit Code

### Part 7-1 Exemptions, declarations and other matters

#### 50 Continued application of Part 12 of the Code and interpretation provisions

- (1) This regulation applies despite a statement in a provision of this Part that:
  - (a) the Code does not apply to a particular matter; or
  - (b) the Code, other than a particular provision or provisions (the *prescribed provision or provisions*), does not apply to a particular matter; or
  - (c) a particular provision or provisions of the Code (the *prescribed provision or provisions*) does not apply to a particular matter.
- (2) The Code applies in relation to the particular matter and the prescribed provision or provisions to the extent necessary for the interpretation of the particular matter and the prescribed provision or provisions.
- (3) Part 12 of the Code applies in relation to the particular matter and the prescribed provision or provisions to the extent the context permits.

#### 51 Exempt credit — maximum account charges

For subsection 6 (5) of the Code, the prescribed maximum charge is:

- (a) for the period of 12 months after the continuing credit contract is made — \$200; and



- (b) for any subsequent period of 12 months — \$125.

*Note* Subsection 6 (5) of the Code provides that the 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, the Code applies if the charge exceeds the maximum charge (if any) prescribed by the regulations.

## **52 Additional exempt credit**

The Code, other than Division 3 of Part 4 and Part 5, does not apply to a contract, other than a continuing credit contract, to the extent that the contract provides for the provision of credit in the following circumstances:

- (a) the amount of credit to be provided does not at any time exceed \$50;
- (b) there is no insurance financed under the contract;
- (c) there is no mortgage or guarantee taken by the credit provider;
- (d) the annual percentage rate for the contract does not exceed the maximum annual percentage rate (if any) for the contract if it were a contract to which the Code applies.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a contract or a class of contracts from all or specified provisions of the Code.

## **53 GIO Finance Limited's No Interest Loan Scheme — exemption from Code**

- (1) This regulation applies to the scheme (the *No Interest Loan Scheme*) that is operated by GIO Finance Limited ACN 002 812 704 in accordance with the deed of agreement executed on 26 June 1992 by the New South Wales Minister for Further Education, Training and Employment and GIO Finance Limited.
- (2) The Code does not apply to the provision of credit under the No Interest Loan Scheme.

*Note* Subsection 6 (13) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**Regulation 54**

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**54 Rental Purchase Plan — exemption from certain provisions of Code**

The Code, other than sections 76 to 81, does not apply to a contract to the extent that the contract provides for the provision of credit under the Queensland Government scheme known as the Rental Purchase Plan Scheme, and formerly known as the H.O.M.E. Shared Scheme.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a contract or a class of contracts from all or specified provisions of the Code.

**55 Partnership loans — exemption from certain provisions of Code**

- (1) The Code, other than:
- (a) Part 1; and
  - (b) Division 3 of Part 4; and
  - (c) Divisions 4 and 5 of Part 5; and
  - (d) Part 7;

does not apply to a contract to the extent that the contract provides for the provision of credit by a firm, or by a related body corporate of the firm, to a partner of the firm, whether or not the credit is provided to the partner with another person.

- (2) However, for a credit provider who provides credit in the course of a business of providing credit to which the Code applies to partners of a firm and to others, this regulation 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 which the Code applies to persons who are not partners of the firm.
- (3) In this regulation:
- (a) a partner of a firm includes a former partner of a firm and an employee or former employee of the firm; and

**Regulation 56**

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- (b) a related body corporate of a firm is a body corporate that is ultimately wholly owned by all or some of the partners of the firm or by other persons on their behalf.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a contract or a class of contracts from all or specified provisions of the Code.

**56 Student loans — exemption from certain provisions of Code**

- (1) The Code, other than subsection 61 (1) and sections 76 to 81, does not apply to a contract to the extent that the contract provides for the provision of credit by a higher educational institution, or by an association of students of the institution, to a student of the institution on the grounds of hardship or of an emergency.
- (2) However, subsection (1) applies only if the institution or association gives the debtor and any guarantor the following things before the contract for the provision of credit is entered into by the debtor or the guarantee is signed by the guarantor:
- (a) a statement of the costs of the provision of credit, which must include any fees or charges payable and the interest rate applicable and may include other information;
- (b) a copy of the terms and conditions of the contract for the provision of credit.
- (3) In this regulation:

***association of students***, of a higher educational institution, means a union, guild or other association of students:

- (a) of the institution; or
- (b) of the institution and of other higher educational institutions.

***higher educational institution*** means an institution within the meaning given by section 4 of the *Higher Education Funding Act 1988*.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a contract or a class of contracts from all or specified provisions of the Code.

**Regulation 57**

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**57 Loans for conservation of heritage items — exemption from Code**

- (1) The Code does not apply to the provision of credit under section 106 of the *Heritage Act 1977* (NSW).
- (2) The Code does not apply to the provision of credit under section 12 of the *Heritage Act 1993* (SA), but only in respect of loans made from the State Heritage Fund to owners of land constituting places entered in the State Heritage Register established under that Act.
- (3) The Code does not apply to the provision of credit under section 140 of the **Heritage Act 1995** (Vic).

*Note* Subsection 6(13) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**58 ADIs — exemption from Code**

The Code does not apply to the provision of credit by an ADI limited by the contract to a total period not exceeding 62 days.

*Note* Subsection 6(13) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**59 Estate administrators — exemption from certain provisions of Code**

- (1) The Code, other than sections 76 to 81, does not apply to a public official or a public body authorised by any law or court to administer a person's estate, to the extent that the public official or public body is providing credit to the person's estate, whether or not the person is deceased.
- (2) In this regulation:  
*estate* includes trust property.  
*public body* includes a corporation owned or controlled by:
  - (a) the Commonwealth; or
  - (b) a State or Territory; or

- (c) an authority of the Commonwealth or a State or Territory.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

**60 Credit under *Aged Care Act 1997* — exemption from certain provisions of Code**

The Code, other than sections 72 to 74 and 76 to 81, does not apply to an approved provider (within the same meaning as in the *Aged Care Act 1997*) to the extent that the approved provider is providing credit that is made and regulated under that Act.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

**61 Firefighter's Benefit Fund of WA Incorporated — exemption from certain provisions of Code**

The Code, other than Division 3 of Part 2, Division 3 of Part 4 and Divisions 1 and 2 of Part 5, does not apply to a contract to the extent that the contract provides for the provision of credit to a person by the Firefighter's Benefit Fund of WA Incorporated (the *fund*) in the following circumstances:

- (a) the person is a member of the fund;
- (b) the application form by which the person applies for the credit states an annual percentage rate for the credit;
- (c) the contract:
  - (i) fixes, for the whole term of the contract, an annual percentage rate that is the same as the rate stated in the application form; and
  - (ii) does not provide for varying the rate.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a contract or a class of contracts from all or specified provisions of the Code.

**Regulation 62**

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**62 Charge card contracts — exemption of certain contracts from Code**

- (1) The Code does not apply to the provision of credit under a charge card contract made available by any of the following credit providers:
- (a) American Express Australia Limited ACN 108 952 085;
  - (b) American Express International Inc. ARBN 000 618 208;
  - (c) Diners Club Pty Limited ACN 004 343 051;
  - (d) Motorcharge Limited ACN 008 962 132.

*Examples*

- 1 American Express Platinum Card.
- 2 Diners Club Personal Card.
- 3 Motorcharge Card.

- (2) In subsection (1):

***charge card contract*** means a credit contract under which:

- (a) credit is ordinarily obtained by the use of a card; and
- (b) multiple advances of credit are contemplated; and
- (c) the provision of an advance of credit is limited to a total period of not more than 62 days; and
- (d) monthly or other periodic statements of account are provided to the debtor; and
- (e) liquidated damages or charges for late payment are payable by the debtor if the debtor does not repay an advance of credit mentioned in a monthly or other periodic statement of account within a stated period.

*Note* Subsection 6(13) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**63 Credit providers providing credit to directors — exemption from certain provisions of Code**

- (1) The Code, other than:
- (a) Part 1; and
  - (b) Part 4; and
  - (c) Division 3 of Part 5; and
  - (d) Divisions 4 and 5 of Part 7; and

**Regulation 65**

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(e) Parts 12, 13 and 14;

does not apply to a credit provider, or a related body corporate of a credit provider, to the extent that the credit provider or related body corporate is providing credit to a director of the credit provider, other than a former director, whether or not the credit is provided to the director with another person.

- (2) However, for a credit provider who provides credit in the course of a business of providing credit to which the Code applies to directors and to others, this regulation 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 which the Code applies to persons who are not directors of the employer.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

**64 Mortgages — exemptions from Code**

- (1) The Code does not apply to the following mortgages:
- (a) a mortgage relating to perishable goods, livestock, primary produce or food stuffs;
  - (b) a banker's right to combine accounts;
  - (c) a lien or charge arising by operation of any Act or law or by custom.
- (2) However, sections 16 and 17 of the Code (relating to disclosures) apply in respect of a mortgage mentioned in paragraph (1) (a).
- (3) Section 91 of the Code does not apply to any mortgage relating to goods that are lawfully in the possession of the credit provider.

*Note* This regulation is made under subsection 7 (3) of the Code.

**65 Guarantees — exemption from Code**

The Code does not apply to any guarantee by the supplier under a tied loan contract or tied continuing credit contract.

*Note* This regulation is made under subsection 8 (3) of the Code.

**Regulation 66**

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**66 Deemed mortgages for goods lease with option to purchase**

For paragraph 9 (3) (f) of the Code, the terms and conditions of a mortgage are set out in Form 4.

*Note* Section 9 of the Code treats a goods lease with an option to purchase to be a sale of goods by instalments for the purposes of the Code.

If the lease is a credit contract because of subsection 5 (1) of the Code, a mortgage containing the terms and conditions set out in the regulations is taken by paragraph 9 (3) (f) of the Code to have been entered into between the person to whom the goods are hired and the supplier as security for payments to the supplier by the hirer.

**67 Prescribed person in relation to a declaration**

For subsection 13 (3) of the Code, the *prescribed person* is:

- (a) if the person who obtained the declaration from the debtor was the credit provider — a person associated with the credit provider; or
- (b) if the person who obtained the declaration from the debtor was a person associated with the credit provider — the person associated with the credit provider; or
- (c) if the person who obtained the declaration from the debtor was not the credit provider or a person associated with the credit provider — any of the following:
  - (i) a person who obtained the declaration from the debtor;
  - (ii) a person who referred the debtor to the person who obtained the declaration (whether the referral was for the purpose of obtaining the declaration or otherwise);
  - (iii) a person who suggested that the debtor apply for the provision of credit, and the suggestion was made during the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person;
  - (iv) a person who assisted the debtor to apply for the provision of credit, and the assistance was given during the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person.



**68 Declaration of purposes for which credit provided**

- (1) For subsection 13 (5) of the Code, the form of the declaration is:

‘I/We declare that the credit to be provided to me/us by the credit provider is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.’

- (2) The declaration must contain the following warning immediately below the words of the declaration mentioned in subregulation (1) or, if the declaration is to be made by electronic communication, prominently displayed when (but not after) the person signs:

**IMPORTANT**

You should **only** sign this declaration if this loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code.

- (3) The declaration must contain:
- (a) the signature of each person making the declaration; and
  - (b) either:
    - (i) the date on which the declaration is signed; or
    - (ii) the date on which it is received by the credit provider.

*Note* The Code applies only to credit provided or intended to be provided for:

- (a) personal, domestic or household purposes; or
- (b) the purchase, renovation or improvement of residential property used for investment purposes; or

**Regulation 69**

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- (c) the refinancing of credit that has been provided wholly or predominantly for the purchase, renovation or improvement of residential property used for investment purposes.

Subsection 13 (2) of the Code provides that credit is presumed not to be provided for Code purposes if the debtor declares, before entering into the credit contract, that the credit is to be applied wholly or predominantly for business or investment purposes (or for both purposes), other than investment in residential property.

The declaration is not effective unless it is substantially in the form required by the regulations.

**69 Direct debit default notices — exemption for credit providers**

- (1) Subsection 87 (2) of the Code does not apply to a credit provider if the default mentioned in subsection 87 (1) of the Code is rectified before the credit provider is required to give the direct debit default notice under subsection 87 (2).
- (2) If:
- (a) the default is rectified before the credit provider is required to give the direct debit default notice under subsection 87 (2) of the Code; and
  - (b) the credit provider does not give the direct debit default notice;

the default is not taken to be the first occasion the default occurs for paragraph 87 (1) (c) of the Code.

*Note* Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

## **Part 7-2                      Credit contracts**

### **70                      Statement about debtor's statutory rights and obligations**

- (1) For paragraph 16 (1) (b) of the Code, an information statement must:
  - (a) be in writing; and
  - (b) be in accordance with Form 5.
- (2) The information statement may be in the form of a separate document or a part of the credit contract document.

*Note* Paragraph 16 (1) (b) of the Code requires a credit provider to give a prospective debtor an information statement in the form required by the regulations of the debtor's statutory rights and statutory obligations.

The statement must be given before the contract is entered into or before the debtor makes an offer to enter into the contract, whichever first occurs.

In accordance with subregulation 6 (5), the information need not contain any matter set out in Form 5 if it is not relevant to the credit contract concerned. For example, information about mortgages is not required for an unsecured loan.

### **71                      Comparison rate**

- (1) This regulation applies if:
  - (a) a credit provider, before entering into a credit contract, informs the debtor of the comparison rate in accordance with subsection 16 (3) of the Code; or
  - (b) a person publishes, or causes to be published, an advertisement that states or implies that credit is available and includes in the advertisement the comparison rate in accordance with Part 10 of the Code.
- (2) The comparison rate must be calculated as a nominal rate per annum, together with the compounding frequency, in accordance with this regulation.
- (3) The comparison rate is calculated using the formula:

$$n \times r \times 100\%$$

**Regulation 71**

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where:

***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***.

***r*** is the solution of:

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

where:

***A<sub>j</sub>*** is the amount of credit to be provided under the contract at time ***j*** (the value of ***j*** for the provision of the first amount of credit is taken to be zero).

***C<sub>j</sub>*** is the fee or charge (if any) payable by the debtor at time ***j*** in addition to the repayments ***R<sub>j</sub>***, being a credit fee or charge (other than a government fee, charge or duty) that is ascertainable when the comparison rate is disclosed (whether or not the credit fee or charge is payable if the credit is not provided).

***j*** is the time, measured as a multiple (not necessarily integral) of the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract, except that if the contract does not provide for a constant interval between repayments an interval of any kind is to be selected by the credit provider as the unit of time.

***R<sub>j</sub>*** 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 the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract.

**Regulation 71**

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- (4) The comparison rate must be correct to at least the nearest one hundredth of 1% per annum.
- (5) In the application of the above formulae, 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.

- (6) The tolerances and assumptions under sections 180 to 182 of the Code apply to the calculation of the comparison rate.
- (7) The comparison rate must be accompanied by a statement of the amount of credit on which it is based and the term for which credit is provided.
- (8) In the case of a comparison rate under subsection 16 (3) of the Code:
  - (a) the amount of credit is to be the amount (or the maximum amount) required by the debtor; and
  - (b) the term for which credit is provided is to be the term (or the maximum term) required by the debtor; and
  - (c) the amount of credit, in the case of a continuing credit contract, is not to exceed the credit limit required by the debtor.
- (9) If the debtor does not make a requirement in relation to a matter mentioned in paragraph (8) (a), (b) or (c), the credit provider may determine the matter.
- (10) In the case of a comparison rate under Part 10 of the Code:
  - (a) the amount of credit and term are to be typical of the type of credit contract offered in the advertisement; and
  - (b) a number of comparison rates may be included in the advertisement for different credit contracts if the amount of credit and term applicable to each of the rates are clearly stated.

## Regulation 72

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- (11) At the time that the debtor is informed of the comparison rate under subsection 16 (3) of the Code, the debtor must be given the following warning by the credit provider in writing:

**‘WARNING:** This comparison rate applies only to the example or examples given. Different amounts and terms will result in different comparison rates. Costs such as redraw fees or early repayment fees, and cost savings such as fee waivers, are not included in the comparison rate but may influence the cost of the loan.’

- (12) An advertisement that contains a comparison rate in accordance with Part 10 of the Code must include a warning that the comparison rate is accurate only for the example given.
- (13) A warning under this regulation must be given immediately after the comparison rate is given.

*Note 1* Subsection 16 (3) of the Code provides that the credit provider may inform the debtor of the comparison rate before entering into the contract.

*Note 2* Part 10 of the Code provides that a person who publishes an advertisement about the availability of credit may include in the advertisement the comparison rate. If the credit provider or person does so, the comparison rate must be calculated as prescribed by the regulations and be accompanied by the warnings set out in the regulations.

## 72 Pre-contractual statement

- (1) For subsection 16 (4) of the Code, the following financial information (*relevant financial information*) mentioned in section 17 of the Code, which is to be contained in the precontractual statement, is prescribed:
- (a) for subsection 17 (3) (Amount of credit):
- (i) the amount of credit agreed to be provided (if ascertainable); or
  - (ii) if the amount is not ascertainable — the maximum amount of credit agreed to be provided, or the credit limit under the contract (if any);
- (b) for subsection 17 (4) (Annual percentage rate or rates) — the information mentioned in the subsection, other than the information mentioned in subparagraph 17 (4) (c) (iii);

**Regulation 72**

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- (c) for subsection 17 (5) (Calculation of interest charges) — the maximum duration of any interest free period under the credit contract;
  - (d) for subsection 17 (6) (Total amount of interest charges payable) — the information mentioned in the subsection;
  - (e) for subsection 17 (7) (Repayments) — the information mentioned in the subsection;
  - (f) for subsection 17 (8) (Credit fees and charges) — the information mentioned in paragraphs 17 (8) (a) and (b), but only in respect of:
    - (i) retained credit fees and charges (being credit fees and charges retained by the credit provider and not passed on to or retained in reimbursement of an amount paid to a third party); and
    - (ii) lenders mortgage insurance.
- (2) The relevant financial information is to be set out:
- (a) separately from the remainder of the information under section 17 of the Code that is to be set out in the precontractual statement; and
  - (b) in tabular form (the *financial table*), in either portrait or landscape format.
- (3) Additional information may be included in the financial table, but only in the following circumstances:
- (a) any information mentioned in subsection 17 (3), (4), (5) or (8) of the Code that is not relevant financial information may be included with the relevant financial information;
  - (b) any other information mentioned in subsection 17 (2) or subsections 17 (9) to (16) of the Code may be included after the relevant financial information and any information included under paragraph (a).
- (4) If the relevant financial information relates to more than one type of credit facility, the information may be set out in a single financial table or in separate financial tables.
- (5) The financial table is to be set out at the beginning of the precontractual statement, after any formal cover page or pages that have no substantive content.

**Regulation 72**

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- (6) However:
  - (a) if the precontractual statement is not a separate document, the financial table is to be set out at the beginning of the proposed contract document; and
  - (b) the financial table may be preceded by information necessary to identify the loan.
- (7) If the precontractual statement consists of more than one document, the financial table need not be repeated.
- (8) If any of the relevant financial information can change under the credit contract because of a unilateral change by the credit provider:
  - (a) a clear statement must be made in the financial table that it is subject to change and that the change can be made without the debtor's consent; and
  - (b) a single statement may be made for 2 or more items of information that are subject to change.
- (9) An expression may be used for the purposes of the relevant financial information if the expression is defined in the precontractual statement.
- (10) The relevant date of disclosure of the information in the financial table may be set out in the financial table.
- (11) This regulation does not prevent a repetition of the relevant financial information in the financial table in any other form in connection with the remainder of the information under section 17 of the Code that is to be set out in the precontractual statement.

*Note* Paragraph 16 (1) (a) of the Code requires a credit provider to give a prospective debtor a precontractual statement setting out matters required by section 17 of the Code to be included in the credit contract document. The precontractual statement must be given before the credit contract is entered into or before the debtor makes an offer to enter into the contract, whichever first occurs.

Under subsection 16 (4) of the Code, the regulations may specify the financial information that is to be contained in the precontractual statement, and prescribe the form in which the information must appear.



**73 Additional disclosures about insurance financed by contract**

For paragraph 17 (15) (c) of the Code, the term of each credit-related insurance contract, if ascertainable, is prescribed.

*Note* Subsection 17 (15) of the Code sets out the disclosures to be made about credit-related insurance contracts that are to be financed under the credit contract. Paragraph 17 (15) (c) enables the regulations to prescribe additional particulars about the insurance that is to be disclosed.

**74 Additional disclosures about credit contracts to be signed by debtor**

- (1) For subsection 17 (16) of the Code, the information and warnings set out in Form 6 or 7, as relevant, are prescribed, but only if the credit contract document is to be signed by the debtor.
- (2) Form 6 is the relevant form if the document signed by the debtor constitutes an offer.
- (3) Form 7 is the relevant form if the document signed by the debtor constitutes the acceptance of an offer by the credit provider.
- (4) The information and warnings mentioned in subsection (1):
  - (a) are to be in the relevant form (including in the form of boxes); and
  - (b) must:
    - (i) be set out immediately above, and on the same page as, each place where the debtor (or at least one of the debtors) is to sign the contract document; or
    - (ii) if a contract is made by electronic communication — be prominently displayed when, but not after, the debtor (or if 2 or more debtors, each debtor) signs.

*Note 1* Section 17 of the Code sets out the matters to be included in the credit contract document. Subsection 17 (16) requires the contract document to contain any additional information or warnings required by the regulations.

## Regulation 75

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*Note 2* Section 18 of the Code requires a contract document to conform to the requirements of the regulations as to its form and the way it is expressed.

### **75 Deduction of amount for interest charges**

Subsection 25 (1) of the Code does not apply to the deduction of an amount for the first payment of interest charges under a credit contract, but only if the deduction relates to interest charges for a period that is less than the normal period for which interest charges are to be periodically debited to the debtor's account.

*Note 1* Subsection 25 (1) of the Code provides, among other things, that a credit provider must not deduct from a payment to, or in accordance with the instructions of, the debtor an amount for interest charges under the credit contract.

*Note 2* Subsection 25 (3) of the Code authorises the making of regulations that exempt from that prohibition the deduction of an amount for the first payment of interest charges.

### **76 Calculation of unpaid daily balances**

- (1) This regulation applies to the calculation of average unpaid daily balances if interest charges under a credit contract are determined under subsection 28 (2) of the Code for a month, a quarter or a half-year by applying the relevant fraction of the annual percentage rate.
- (2) The actual unpaid daily balances for each day in the month, quarter or half-year concerned are to be added together and divided by the total number of days in the whole of that month, quarter or half-year.
- (3) If the annual percentage rate applies to part (but not the whole) of the month, quarter or half-year, the calculation of the average unpaid daily balances for that part is to be made by adding together the actual unpaid daily balances for each day in that part and dividing the sum obtained by the total number of days in that month, quarter or half-year.

**Regulation 77**

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- (4) If the last day or days of the month, quarter or half-year fall on a non-business day or days, the average unpaid daily balances for the month, quarter or half-year may be calculated without reference to the unpaid daily balances for the non-business day or days.
- (5) In the event mentioned in subregulation (4), the unpaid daily balances for the non-business day or days must be included in the next month, quarter or half-year for the purposes of calculating the average unpaid daily balances for that next month, quarter or half-year.

*Note* Subsection 28 (1) of the Code limits the maximum amount of an interest charge that may be imposed or provided under a credit contract generally to an amount determined by applying the daily percentage rate to the unpaid daily balances (as defined in section 27 of the Code).

However, subsection 28 (2) of the Code allows an interest charge for a month, a quarter or half-year to be determined by applying the annual percentage rate or rates, divided by:

- (a) 12 (for a month); or
- (b) by 4 (for a quarter); or
- (c) by 2 (for a half-year);

to the relevant average unpaid daily balances for the period. The regulations may provide for the calculation of unpaid daily balances in these circumstances.

**77 Early debit or payment of interest charges**

Subsection 29 (1) of the Code does not apply to the first payment of interest charges under a credit contract, but only if it relates to interest charges for a period that is less than the normal period for which interest charges are to be periodically debited to the debtor's account.

*Note 1* Subsection 29 (1) of the Code provides that a credit provider must not require payment of or debit an interest charge at any time before the end of a day to which the interest charge applies.

*Note 2* Subsection 29 (3) of the Code authorises the making of regulations that exempt from that prohibition the first payment of interest charges under the credit contract.

## Regulation 78

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### 78 Interest charges in relation to residential investment property

- (1) This regulation applies to a provision of credit that is provided or intended to be provided wholly or predominantly:
  - (a) to purchase, renovate or improve residential property for investment purposes; or
  - (b) subject to subregulation (3), to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes.
- (2) For section 30A of the Code, Division 3 of Part 2 of the Code applies to the provision of credit as if section 29 of the Code were omitted.

*Note* Section 30A of the Code provides, among other things, that the regulations may provide that Division 3 of Part 2 of the Code applies in relation to a provision of credit covered by subparagraph 5 (1) (b) (ii) or (iii) of the Code as if specified provisions were omitted as specified in the regulations.

- (3) For paragraph (1) (b), this regulation does not apply if, at the time the credit contract is entered into, the predominant use of the residential property is not for investment purposes.

### 79 When statement of account not required

For paragraph 33 (3) (b) of the Code, the level is \$10.

*Note* Section 33 of the Code requires the credit provider to give the debtor periodic statements of account. Subsection 33 (3) sets out the circumstances in which a statement is not required to be given.

Paragraph 33 (3) (b) provides that a statement is not required if no amount has been debited or credited to the debtor's account during the statement period and the amount outstanding on the debtor's account is zero or below a level fixed by the regulations.



## Regulation 81

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(3) In this regulation:

*employee* means:

- (a) if BHP Billiton Iron Ore Pty Ltd ACN 008 700 981 is the manager of the Mt Newman Joint Venture or the Mount Goldsworthy Mining Associates Joint Venture:
  - (i) an employee of that corporation; or
  - (ii) an employee of a corporation that is a related body corporate in relation to BHP Billiton Iron Ore Pty Ltd; or
- (b) if BHP Billiton Iron Ore Pty Ltd ceases to manage the Mt Newman Joint Venture or the Mount Goldsworthy Mining Associates Joint Venture — an employee of the person for the time being exercising the functions of the manager of the Mt Newman Joint Venture or of the Mount Goldsworthy Mining Associates Joint Venture.

*Note* Section 50 of the Code provides that a mortgage can not be created over employees' remuneration or employment benefits or benefits under a superannuation scheme unless the regulations permit it to do so.

## 81 Form of guarantees

- (1) For section 55 of the Code, a guarantee must contain the warning set out in Form 8.
- (2) The warning must comply with the following requirements:
  - (a) it must be in the form of a box as indicated in Form 8;
  - (b) it must be set out immediately above, and on the same page as, the place where the guarantor (or at least 1 of the guarantors) is to sign the guarantee document;
  - (c) if the guarantors are to sign the guarantee document on separate pages, it must be set out in that way on each page.

*Note* Section 55 of the Code requires a guarantee to be in writing signed by the guarantor. Subsection 55 (3) provides that the regulations may make provision for or with respect to the content of guarantees and the way they are expressed.

**82 Explanation about guarantor's rights and obligations**

- (1) For paragraph 56 (1) (b) of the Code, the document explaining the rights and obligations of a guarantor must be in accordance with Form 9.
- (2) The document may be a separate document or a part of the guarantee document.

*Note* Paragraph 56 (1) (b) of the Code requires a credit provider to give a prospective guarantor an explanation in the form required by the regulations of the guarantor's rights and obligations. The explanation must be given before the obligations under the relevant credit contract are secured by the guarantee.

**Regulation 83**

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## **Part 7-4                      Changes to obligations under credit contracts, mortgages and guarantees**

### **83                      Information about increases in the amount of credit**

- (1) For subsection 71 (3) of the Code, as much of the following information as is ascertainable is prescribed in respect of a credit contract (other than a continuing credit contract):
  - (a) the date of the change in the contract;
  - (b) the unpaid daily balance at the date of the notice;
  - (c) the amount by which the amount of credit will be increased in accordance with the agreement;
  - (d) the persons, bodies or agents (including the credit provider) to whom the amount mentioned in paragraph (c) is to be paid and the amounts payable to them;
  - (e) the total of the amounts mentioned in paragraphs (b) and (c);
  - (f) details of any change to the annual percentage rate;
  - (g) details of any credit fees or charges that will be payable after the change in the contract;
  - (h) current repayment details, being:
    - (i) the number of repayments yet to be made; and
    - (ii) the amount of each of those repayments; and
    - (iii) the total amount of those repayments yet to be paid;
  - (i) the repayment details once the agreement is made, being:
    - (i) the number of repayments yet to be made once the agreement is made; and
    - (ii) the amount of each of those repayments; and
    - (iii) the total amount of those repayments; and
    - (iv) details of any changes in the times or frequency of repayment;



**Regulation 83**

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- (j) if commission is to be paid by or to the credit provider for the introduction of credit business or business financed by the increased amount of credit under the contract — information of the kind mentioned in subsection 17 (14) of the Code;
- (k) the proposed increase in the term of the contract;
- (l) the proposed new expiry date for the contract.

*Note 1* Subsection 71 (1) of the Code requires a credit provider to give notice to the other party of a change to a credit contract, mortgage or guarantee that has been agreed to by the credit provider and the other party. The notice must be given within 30 days after the date of the agreement.

*Note 2* Subsection 71 (3) of the Code provides that, if the parties propose to increase the amount of credit by agreement, the credit provider must also give to the debtor, before the agreement is made, a written notice containing the information required by the regulations.

- (2) Despite subregulation (1), the matter in paragraphs (1) (h) and (i) relating to the total amount of repayments need only be included in the written notice given under subsection 71 (3) of the Code if the contract concerned would, on the assumptions under sections 180 and 182 of the Code, be paid out within 7 years of the date on which credit is first provided under the contract.

**Regulation 84**

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## **Part 7-5                      Ending and enforcing credit contracts, mortgages and guarantees**

### **84                      Information after surrender of goods**

For subsection 85 (3) of the Code, the information required to be contained in a notice must include the information set out in Form 10.

*Note* Section 85 of the Code enables a debtor of goods sold by instalments or mortgagor to surrender the goods. Subsection 85 (3) requires a credit provider to give a debtor or mortgagor a written notice containing the estimated value of the goods and any other information required by the regulations.

### **85                      Notice after direct debit default occurs**

For subsection 87 (3) of the Code, the information required to be contained in a direct debit default notice is the information set out in Form 11.

### **86                      Notice after default occurs**

For paragraphs 88 (3) (f) and (g) of the Code, the information set out in Form 12 is prescribed.

### **87                      Consent to enter premises**

For subsection 99 (2) of the Code, consent by the occupier of premises to entry to the premises is taken to have been given only if the following requirements have been complied with:

- (a) a request to the occupier for entry to the premises must be made by the credit provider or agent by application in writing or by calling at the premises concerned;
- (b) if the request is made personally, it may only be made between the hours of 8 am and 8 pm on any day other than a Sunday or public holiday;
- (c) the consent in writing must be in accordance with Form 13 and signed by the occupier;

- (d) the document of consent is not to be presented to the occupier for signature with, or as part of, any other document (unless the other document, or the remainder of the other document, contains only the provisions of section 99 of the Code).

*Note 1* Subsection 99 (1) of the Code provides that a credit provider, or an agent of the 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 the court has authorised entry or the occupier of the premises (after being informed in writing of the provisions of section 99) consented in writing to the entry.

*Note 2* Under subsection 99 (2) of the Code, the regulations may provide procedures for the purposes of section 99 and set out circumstances in which consent is or is not taken to have been given.

## **88 Statement about mortgagor's rights and obligations**

For paragraph 102 (1) (c) of the Code, a statement of a mortgagor's rights and obligations must be a written statement in accordance with Form 14.

*Note* Subsection 102 (1) of the Code requires a credit provider that has taken possession of goods under a mortgage to give the mortgagor certain information, including a statement of the mortgagor's rights and obligations in the form set out in the regulations.

## **89 Information about proceeds of sale of mortgaged goods**

For subsection 104 (3) of the Code, the information required to be given to a mortgagor is an itemised account of each deduction made from the gross amount realised on the sale to arrive at the net proceeds of sale.

*Note* Subsection 104 (3) of the Code requires a credit provider that sells mortgaged goods to give the mortgagor a written notice stating the gross amount realised on the sale, the net proceeds of the sale and certain other information, including other information required by the regulations.

**Regulation 90**

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## **Part 7-6                      Related sale contracts**

### **90                      Rate of interest on damages**

For subsection 132 (1) of the Code, the prescribed rate of interest in respect of the relevant credit contract is the annual percentage rate under that contract as at:

- (a) the date of the judgment; or
- (b) if the contract was not still in force at that date — the date immediately before the contract was terminated.

*Note* Subsection 132 (1) of the Code allows interest to be paid on damages awarded under the linked credit provider provisions of the Code. The rate of interest is to be the rate prescribed by the regulations.

### **91                      Informing debtor of rights**

For subsection 136 (2) of the Code, the information given by the credit provider to the debtor must be:

- (a) a written statement in accordance with Form 15; and
- (b) given to the debtor within 21 days after the termination of the tied loan contract or the tied continuing credit contract.

*Note 1* Subsection 136 (1) of the Code provides for the termination of a linked maintenance services contract if a credit contract is terminated.

*Note 2* Subsection 136 (2) of the Code requires the credit provider in that case to inform the debtor in accordance with the regulations of the debtor's rights under section 136.

### **92                      Rebate of consideration**

For subsection 136 (4) of the Code, the proportionate rebate of consideration is calculated using the formula:

$$\frac{C \times S}{T}$$

where:

*C* is the amount of the charges under the maintenance services contract financed under the credit contract.

*S* is the number of whole months in the unexpired portion of

**Regulation 92**

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the period for which maintenance was agreed to be provided.

***T*** is the number of whole months for which maintenance was agreed to be provided.

*Note 1* Subsection 136 (1) of the Code provides that, if a debtor terminates a linked maintenance services contract because of the termination of the credit contract, the debtor is entitled to a proportionate rebate of consideration under the maintenance services contract.

*Note 2* Subsection 136 (4) of the Code provides that the regulations may prescribe the manner of calculating that proportionate rebate of consideration.

**Regulation 93**

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## **Part 7-7                      Related insurance contracts**

### **93                      Particulars of insurance entered into by credit provider**

- (1) For subsection 146 (2) of the Code, the prescribed particulars of the insurance that a credit provider is to give to the debtor are the key features of the credit-related insurance contract.
- (2) The key features of the contract are the following:
  - (a) the name of the insurer;
  - (b) the kind of insurance, the risks insured against and the exclusions;
  - (c) the beneficiaries under the policy;
  - (d) the expiry date of the policy;
  - (e) the premium payable (to the extent ascertainable);
  - (f) the fees and charges payable (to the extent ascertainable);
  - (g) the person by whom, and the person with whom, a claim may be made in respect of the policy, and the manner of making such a claim.
- (3) A particular mentioned in subregulation (2) may be given by providing a copy of the policy containing the particular.

*Note* Subsection 146 (2) of the Code provides that, if a credit provider enters into a credit-related insurance contract 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.

Credit-related insurance consists of insurance over mortgaged property or consumer credit insurance.

**94 Proportionate rebate of consumer credit insurance premium**

For subsection 148 (4) of the Code, the proportionate rebate of premium is calculated using the formula:

$$\frac{PS (S + 1)}{T (T + 1)}$$

where:

*P* is the amount of the premium paid (not including any amount payable in respect of a government charge).

*S* is the number of whole months in the unexpired portion of the period for which insurance was agreed to be provided.

*T* is the number of whole months for which insurance was agreed to be provided.

**95 Notice of right to cancel mortgaged property insurance**

For subsection 149 (2) of the Code, the information given to the debtor by the credit provider must be a written statement in accordance with Form 16.

*Note* Section 149 of the Code provides that 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, the debtor may terminate the insurance contract and recover from the insurer a proportionate rebate of premium. Subsection 149 (2) provides that a credit provider must inform the debtor, in accordance with the regulations, of the debtor's rights under section 149. The information is to be given on the termination of the credit contract.

**96 Proportionate rebate of premium for insurance over mortgaged property**

For subsection 149 (4) of the Code, the manner of calculating the proportionate rebate of premium is to calculate the sum of:

- (a) the amount of premium paid in respect of any period of the insurance contract that has not yet commenced; and

**Regulation 96**

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- (b) 90% of the proportion of the amount of the premium for insurance paid in respect of the current period of the insurance contract attributable to the unexpired portion of that period consisting of whole months.

*Note* Subsection 149 (4) of the Code provides that the regulations may prescribe the manner of calculating the proportionate rebate of premium for the purposes of section 149.



## **Part 7-8 Comparison rates**

### **97 Relevant comparison rate where annual percentage rate stated**

For subsection 161 (2) of the Code, the designated amounts and terms for which a comparison rate is to be calculated are:

- (a) \$250 for a term of 2 weeks; and
- (b) \$1 000 for a term of 6 months; and
- (c) \$2 500 for a term of 2 years; and
- (d) \$10 000 for a term of 3 years; and
- (e) \$30 000 for a term of 5 years; and
- (f) \$150 000 for a term of 25 years.

### **98 Information about whether comparison rate relates to secured loan**

For subsection 162 (2) of the Code, the following amounts of credit are prescribed as amounts for which a statement must be made as to whether a comparison rate is for a secured loan or an unsecured loan:

- (a) \$10 000;
- (b) \$30 000.

### **99 Warnings about comparison rate**

- (1) For subsection 163 (1) of the Code, the warning about the accuracy of a comparison rate in a credit advertisement must:
  - (a) include the short statement or long statement; and
  - (b) be given in the same form as the comparison rate is given unless the credit advertisement is on television, the internet or other electronic display medium.

*Note* Subsection 164 (3) of the Code explains the way in which the warning must be given for a credit advertisement on an electronic display medium.

## Regulation 100

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(2) The warning may also contain a statement that the credit provider does not provide credit for an amount, or a term, or both, specified in a credit advertisement or comparison rate schedule.

(3) The long statement is:

**‘WARNING:** This comparison rate applies only to the example or examples given. Different amounts and terms will result in different comparison rates. Costs such as redraw fees or early repayment fees, and cost savings such as fee waivers, are not included in the comparison rate but may influence the cost of the loan.’

(4) The short statement is:

**‘WARNING:** This comparison rate is true only for the examples given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate.’

### 100 Calculation of comparison rates

(1) For section 166 of the Code, comparison rates are to be calculated in accordance with this regulation.

(2) The comparison rate must be calculated as a nominal rate per annum, together with the compounding frequency.

(3) The comparison rate is calculated using the formula:

$$n \times r \times 100\%$$

where:

*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*.

$r$  is the solution of the following:

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

where:

$A_j$  is the amount of credit to be provided under the 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 fee or charge (if any) payable by the debtor at time  $j$  in addition to the repayments  $R_j$ , being a credit fee or charge (other than a government fee, charge or duty) that is ascertainable when the comparison rate is disclosed (whether or not the credit fee or charge is payable if the credit is not provided).

$j$  is the time, measured as a multiple (not necessarily integral) of the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract, except that if the contract does not provide for a constant interval between repayments an interval of any kind is to be selected by the credit provider as the unit of time.

$R_j$  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 the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract.

- (4) The comparison rate must be correct to at least the nearest one hundredth of 1% per annum.
- (5) In the application of the formulae, 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.

**Regulation 101**

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- (6) The tolerances and assumptions under sections 180 to 182 of the Code apply to the calculation of the comparison rate.
- (7) The comparison rate must be accompanied by a statement of the amount of credit on which it is based and the term for which credit is provided.

**101        Matters that may be included in comparison rate schedules**

A comparison rate schedule may include a statement as to the frequency of repayments used to calculate a comparison rate contained in the schedule.

## **Part 7-9 Consumer leases**

### **102 Consumer lease excluded from application of Part 11 of the Code**

- (1) For subsection 171 (3) of the Code, a consumer lease is excluded from the application of Part 11 of the Code if the consumer lease is in the class of consumer leases mentioned in subregulation (2).
- (2) The class of consumer leases is consumer leases under which:
  - (a) the lessee is a director of the lessor; and
  - (b) the director hires goods from the lessor in connection with the director's remuneration or other financial benefits derived from acting as a director.

### **103 Prescribed person in relation to declarations**

For subsection 172 (3) of the Code, the *prescribed person* is:

- (a) if the person who obtained the declaration from the lessee was the lessor — a person associated with the lessor; or
- (b) if the person who obtained the declaration from the lessee was a person associated with the lessor — the person associated with the lessor; or
- (c) if the person who obtained the declaration from the lessee was not the lessor or a person associated with the lessor — any of the following:
  - (i) a person who obtained the declaration from the lessee;
  - (ii) a person who referred the lessee to the person who obtained the declaration (whether the referral was for the purpose of obtaining the declaration or otherwise);
  - (iii) a person who suggested that the lessee apply for a consumer lease, and the suggestion was made during the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person;

**Regulation 104**

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- (iv) a person who assisted the lessee to apply for a consumer lease, and the assistance was given during the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person.

**104 Declaration about purpose of lease**

- (1) For subsection 172 (5) of the Code, the form of the declaration is:

‘I/We declare that the goods to be hired by me/us from the lessor are to be hired wholly or predominantly for business purposes.’

- (2) The declaration must contain the following warning immediately below the words of the declaration mentioned in subregulation (1) or, if the consumer lease is to be made by electronic communication, prominently displayed when (but not after) the person signs:

**IMPORTANT**

You should **only** sign this declaration if the goods are hired wholly or predominantly for business purposes.

By signing this declaration you may **lose** your protection under the National Credit Code.

- (3) The declaration must contain:
  - (a) the signature of each person making the declaration; and
  - (b) either the date on which the declaration is signed or the date on which it is received by the lessor.

*Note* The Code applies to consumer leases only if the goods are hired for personal, domestic or household purposes. Subsection 172 (2) of the Code provides that goods hired under a consumer lease are presumed not to be hired for those purposes if the lessee declares, before hiring the goods, that the goods are hired wholly or predominantly for business purposes.

The declaration is not effective unless it is substantially in the form required by the regulations.

**105 Explanation about rights and obligations of  
consumer lessees**

- (1) For subsection 175 (1) of the Code, a statement must:
  - (a) be in writing; and
  - (b) be in accordance with Form 17.
- (2) The statement may be in the form of a separate document or a part of the consumer lease document.

*Note* Section 175 of the Code requires a lessor under a consumer lease to give a lessee a statement in the form required by the regulations explaining the lessee's rights and obligations.

The statement must be given within 14 days after entering into the lease.

**Regulation 106**

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## **Part 7-10                      Miscellaneous**

### **106            Tolerances relating to disclosures**

- (1) For paragraph 180 (1) (a) of the Code:
  - (a) information about a percentage rate that contains more than 4 decimal places is within permissible tolerances if it is rounded-off to not less than 4 decimal places (so long as it is correct to the nearest fourth decimal place); and
  - (b) information about any amount payable that includes a fraction of a cent is within permissible tolerances if it is rounded-off to the nearest whole cent.
- (2) For paragraph 180 (1) (a) of the Code, information about any amount payable that:
  - (a) depends for its accuracy on an interest charge that is correct only because of a permissible tolerance under subsection (1); and
  - (b) is not inaccurate for any other reason;  
is also within permissible tolerances.
- (3) For this regulation and regulation 107:
  - (a) a percentage rate may be rounded up to the nearest highest fourth decimal place only if the part of the rate being rounded up exceeds 0.00005; and
  - (b) a fraction of a cent may be rounded up to the nearest highest whole cent only if the fraction being rounded up exceeds 0.5 cents.

*Note* Section 180 of the Code provides that information disclosed in a precontractual statement or contract document etc under the Code is taken to be correctly disclosed if it is within tolerances allowed by the regulations and the disclosure is made as at a date stated in it.

- (4) For paragraph 180 (1) (a) of the Code, information disclosed about:
  - (a) interest charges or repayments payable; or



**Regulation 107**

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(b) credit fees or charges that are government fees or government charges;  
is within permissible tolerances if it overstates the amount or amounts payable.

- (5) However, an overstatement mentioned in subregulation (4):
- (a) does not affect the amounts payable under the credit contract; and
  - (b) is not within permissible tolerances for section 181 of the Code unless it is within permissible tolerances because of regulation 107.

**107 Tolerances relating to amounts payable etc**

- (1) For section 181 of the Code:
- (a) if the daily or other percentage rate to be used for the calculation of an amount of interest contains more than 4 decimal places, the amount of interest is within permissible tolerances if the rate used for the calculation is rounded-off to not less than 4 decimal places (so long as it is correct to the nearest fourth decimal place); and
  - (b) an amount charged, payable or calculated that includes a fraction of a cent is within permissible tolerances if it is rounded-off to the nearest whole cent; and
  - (c) if the credit provider is authorised by a law of the Commonwealth to charge (or obtain reimbursement in respect of) an amount of duty in the nature of receipts or financial institutions duty that is not within a permissible tolerance under paragraph (a) or (b), that amount is within permissible tolerances.
- (2) For section 181 of the Code, an amount which depends for its accuracy on an interest charge that is correct only because of a permissible tolerance under subsection (1) (and is not inaccurate for any other reason) is within permissible tolerances.

*Note* Section 181 of the Code provides that all amounts charged, payable or calculated under or in connection with a credit contract, mortgage, guarantee or consumer lease comply with the Code if they are within tolerances allowed by the regulations.

**Regulation 108**

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**108 Additional assumptions relating to disclosures**

- (1) Disclosures for the purposes of the Code relating to interest charges, repayments, and fees and charges may, if any repayment is to be made, or interest charge, or fee or charge, is to be paid or debited, on a particular day, be made on the assumption that:
  - (a) the repayment will be made, or the interest charge, or fee or charge, paid or debited, on that day even though it is not a business day; and
  - (b) the contract provides that the repayment is to be made, or the interest charge, or fee or charge, paid or debited, on the next preceding or succeeding business day.
- (2) Disclosures for the purposes of the Code relating to repayments and interest charges may also be made on the assumption that the amount of credit will be provided:
  - (a) on the date nominated for that purpose in the pre-contractual statement given under section 16 of the Code; or
  - (b) if no date is nominated — on the relevant date of disclosure set out in the financial statement as mentioned in subregulation 72 (10); or
  - (c) if no date is so set out — the date on which the statement is given to the debtor.
- (3) Subregulation (2) does not apply to:
  - (a) a continuing credit contract; or
  - (b) a credit contract under which credit is provided progressively and the dates on which the credit is to be provided are not ascertainable.

**109 Contracts linked to loan account offset arrangements**

- (1) Disclosures for the purposes of the Code relating to a credit contract linked to a loan account offset arrangement may be made on the assumption that the contract is not linked to the arrangement.

**Regulation 111**

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- (2) If the amount of interest charges under a credit contract is affected by a loan account offset arrangement during a statement period:
- (a) the statement of account is to disclose the net interest charge debited under the credit contract during the statement period; and
  - (b) the statement of account must also show the amount by which the net interest differs from the interest charge that would otherwise have been payable under the credit contract if the interest charge had not been affected by the loan account offset arrangement.

**110 Requirements for print or type**

For paragraph 184 (1) (b) of the Code, print or type must be not less than 10 point.

*Note* Paragraph 184 (1) (b) of the Code provides that a credit contract, guarantee or notice given by a credit provider under the Code, to the extent that it is printed or typed, must conform with the provisions of the regulations as to print or type.

**111 Notices**

- (1) For subsection 194 (9) of the Code, a nomination under subsection 194 (4) or (6) of the Code must be in the following form:
- (a) the nomination must contain the words:  
‘I/We nominate [*full name of person nominated*] to receive notices and other documents under the National Credit Code on behalf of me/all of us.’;
  - (b) the nomination must contain a prominent statement:
    - (i) that each debtor, mortgagor or guarantor is entitled to receive a copy of any notice or other document under the Code; and
    - (ii) that, by signing the form, the debtor, mortgagor or guarantor is giving up the right to be provided with information direct from the credit provider;

**Regulation 111**

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- (c) the nomination must contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that the person wishes to cancel the nomination.
- (2) For subsection 194 (9) of the Code, a consent under subsection 194 (5) of the Code must be in the following form:
  - (a) the consent must contain the words:

‘We consent to notices and other documents under the National Credit Code being sent jointly to us at [*address for service*].’;
  - (b) the consent must contain a prominent statement:
    - (i) that each debtor, mortgagor or guarantor is entitled to receive a copy of any notice or other document under the Code; and
    - (ii) that, by signing the form, the debtor, mortgagor or guarantor is giving up the right to be provided with information separately from the credit provider;
  - (c) the consent must contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that the person wishes to cancel the consent.

## Part 7-11                      Saving and transitional provisions — reliance on State and Territory Consumer Credit Codes

### 112            References in documents to Consumer Credit Code of a State or Territory

- (1) If a person is required to provide or use a form prescribed by these Regulations, the person may provide or use a form (the *equivalent form*) that:
  - (a) is prescribed by regulations made under the Consumer Credit Code of a State or Territory mentioned in subregulation (2); and
  - (b) has the same effect, or is the same in substance, as the form prescribed by these Regulations.
- (2) The Consumer Credit Codes of the States and Territories are the following:
  - (a) the *Consumer Credit (New South Wales) Code* mentioned in the *Consumer Credit (New South Wales) Act 1995*;
  - (b) the *Consumer Credit (Victoria) Code* mentioned in the **Consumer Credit (Victoria) Act 1995**;
  - (c) the *Consumer Credit (Queensland) Code* mentioned in (and appended to) the *Consumer Credit (Queensland) Act 1994*;
  - (d) the *Consumer Credit (Western Australia) Code* mentioned in the *Consumer Credit (Western Australia) Act 1996*;
  - (e) the *Consumer Credit (South Australia) Code* mentioned in the *Consumer Credit (South Australia) Act 1995*;
  - (f) the *Consumer Credit (Tasmania) Code* mentioned in the *Consumer Credit (Tasmania) Act 1996*;
  - (g) the *Consumer Credit (Australian Capital Territory) Code* mentioned in the *Consumer Credit Act 1995 (ACT)*;
  - (h) the *Consumer Credit (Northern Territory) Code* mentioned in the *Consumer Credit (Northern Territory) Act 1995*.

**Regulation 112**

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- (3) If:
- (a) a person is required to provide or use a form prescribed by these Regulations; and
  - (b) under subregulation (1), the person provides or uses an equivalent form; and
  - (c) the form prescribed by these Regulations requires the person to provide more information than required by the equivalent form;
- the person may provide the additional information in a separate document with the equivalent form.
- (4) Subregulations (1) and (3) cease to have effect at the end of the period of 2 years starting when this regulation commences.

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## Schedule 1      Forms

(subregulation 6 (1))

### Form 1      Notice requiring reasonable assistance in connection with an investigation and appearance at an examination

**subsection 253 (2) of the Act  
regulation 32 of the Regulations**

To: <sup>1</sup>

In relation to an investigation of <sup>2</sup>

you are notified that under subsection 253 (2) of the *National Consumer  
Credit Protection Act 2009* (the Act) you are required:

(a) to give the Australian Securities and Investments Commission  
(ASIC) all reasonable assistance in connection with the  
investigation; and

(b) to appear at <sup>3</sup> on <sup>4</sup> at

<sup>5</sup> before <sup>6</sup>

for examination on oath or affirmation and to answer questions put to  
you in relation to the investigation.

Please note the provisions of subsection 257 (1) of the Act (relating to legal  
representation) and section 295 of the Act (relating to self-incrimination). The  
effect of those provisions is set out at the end of this form.

Dated <sup>4</sup>

Signature of person authorised  
by ASIC to conduct the  
examination:

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NOTICE OF RELEVANT STATUTORY PROVISIONS

1. Subsection 257 (1) of the Act provides that a person who is required to submit to an examination is entitled to have his or her lawyer attend the examination. It also provides that the person's lawyer may address the inspector or ask the person questions about matters raised with the person by the inspector.
  2. (1) You must not fail to comply with this notice without reasonable excuse (see subsection 290 (1) of the Act).  
(2) It is not a reasonable excuse for failure to comply with this notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see subsection 295 (1) of the Act).  
(3) However, if:
    - (a) before making an oral statement or signing a record in answer to this notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and
    - (b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;the statement, or the fact that you have signed the record, is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.  
(4) The right to make a claim of this kind is not available to a body corporate (see section 208 of the Act).
- 

- 1 *Insert full name and address of the person to whom the notice is to be given.*
- 2 *Insert the nature of the matter to which the investigation relates.*
- 3 *Insert time of day.*
- 4 *Insert date.*
- 5 *Insert full particulars of the address of the place at which the requirement is to be satisfied.*
- 6 *Insert full name of the person conducting the examination.*



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## Form 2 Summons to witness

### subsection 284 (1) of the Act regulation 34 of the Regulations

In the matter of

1

To:

2

at <sup>3</sup>you are summoned to appear before the Australian  
Securities and Investments Commission (ASIC)

on

4

at <sup>5</sup>and thereafter to attend  
from day to day until the hearing in this matter is completed or you are excused  
or released from further attendance by a member of ASIC.

You are required to produce the following document(s) at the hearing:

6.

Dated

4

Signature of person authorised by  
ASIC to issue summons:

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- 1 *Insert description of matter.*
- 2 *Insert full name and address of the person to be summoned to appear.*
- 3 *Insert time of day.*
- 4 *Insert date.*
- 5 *Insert full particulars of the address of the place where the hearing is to be held.*
- 6 *Insert description(s) of the documents that are to be produced at the hearing.*

## Form 3      Infringement notice

### section 331 of the Act paragraph 40 (a) of the Regulations

Date of issue:

Unique identification code:

TO [*name and address of recipient*]:

1. I, [*name of authorised ASIC officer giving the infringement notice*], give this infringement notice under regulation 39 of the *National Consumer Credit Protection Regulations 2010*.

\*2. I have reasonable grounds to believe that you have committed the following offence:

[*Details of alleged offence, including the provision of the Act that creates the offence, the nature of the offence, the time and date of the alleged offence, and the place of the alleged offence.*]

\*2. I have reasonable grounds to believe that you have contravened the following civil penalty provision:

[*Details of alleged contravention, including the provision of the Act, the nature of the contravention, the time and date of the alleged contravention, and the place of the alleged contravention.*]

\* Omit if not applicable.

#### Penalty under this notice

3. The penalty for the alleged offence under this notice is [*dollar amount in figures*] for an individual or [*dollar amount in figures*] for a body corporate.

This penalty can be paid by [*methods of payment*].

\*4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):

(a) any liability you have for the commission of the alleged offence will be discharged; and

- (b) you will not be prosecuted for the alleged offence; and
  - (c) you will not be taken to have admitted guilt in respect of the alleged offence; and
  - (d) you will not be taken to have been convicted of the alleged offence.
- \*4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- (a) any liability you have for the alleged contravention of the provision will be discharged; and
  - (b) no civil proceedings will be brought against you by the Commonwealth for the alleged contravention; and
  - (c) you will not be taken to have admitted guilt in respect of the alleged contravention; and
  - (d) you will not be taken to have been found guilty of the alleged contravention.

*\* Omit if not applicable.*

**Consequences of failure to pay penalty under this notice**

- \*5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, you may be prosecuted for the alleged offence.
- \*5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, civil proceedings may be brought against you for the alleged contravention.

*\* Omit if not applicable.*

6. The maximum penalty that a court may impose for this offence is [insert] penalty units for an individual and [insert] penalty units for a body corporate.

**Time for payment**

7. The time for payment is:
- (a) within 28 days after the day on which the notice is given to you; or
  - (b) if you apply for a further period of time in which to pay the penalty, and the application is granted — within the further period allowed;
- or

- (c) if you apply for a further period of time in which to pay the penalty, and the application is refused or is taken to have been refused — within the later of:
  - (i) 7 days after:
    - (A) the day you receive the notice of refusal; or
    - (B) the application is taken to have been refused; and
  - (ii) 28 days after the day on which the infringement notice was given to you; or
- (d) if you apply for permission to pay the penalty by instalments, and the permission is granted — in accordance with the permission; or
- (e) if you apply for permission to pay the penalty by instalments, and the permission is refused or is taken to have been refused — within the later of:
  - (i) 7 days after:
    - (A) the day you receive the notice of refusal; or
    - (B) the application is taken to have been refused; and
  - (ii) 28 days after the day on which the infringement notice was given to you; or
- (f) if you apply for the notice to be withdrawn, and the application is refused or is taken to have been refused — within the later of:
  - (i) 7 days after:
    - (A) the day you receive the notice of refusal; or
    - (B) the application is taken to have been refused; and
  - (ii) 28 days after the day on which the infringement notice was given to you.

**Further penalty for continuing offence**

- \*8. If the commission of the alleged offence continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.
- \*8. If the alleged contravention of the civil penalty provision continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.
- \* *Omit if not applicable.*

**Applying to have this notice withdrawn**

9. Within 28 days after you receive this notice, you may apply to [*name and/or position title*] to have this notice withdrawn.

*The person is the **nominated person** for this notice.*

**Applying for more time to pay the penalty under this notice**

10. Within 28 days after you receive this notice, you may apply to the nominated person for a further period of up to 28 days in which to pay the penalty under this notice.

**Applying to pay the penalty under this notice by instalments**

11. Within 28 days after you receive this notice, you may apply to the nominated person for permission to pay the penalty under this notice by instalments.

**Requirements for applications**

12. An application to have this notice withdrawn, or for more time to pay the penalty under this notice, or for permission to pay the penalty under this notice by instalments:
- (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) for an application for permission to pay the penalty under this notice by instalments — include the proposed amount and frequency of instalments; and
  - (e) may be made by [*methods of making application*].

*Signature of authorised ASIC officer issuing the notice*

## **Form 4      Prescribed terms and conditions of mortgage**

### **paragraph 9 (3) (f) of the Code regulation 66 of the Regulations**

- 1 In this mortgage —  
*Code* means the National Credit Code.  
*goods* means the goods hired under the hire contract.  
*hire contract* means the contract for the hire of goods as a consequence of which the mortgagor and the supplier are deemed by paragraph 9 (3) (f) of the Code to have entered into this mortgage.  
*mortgagor* means the person to whom the goods are hired under the hire contract.  
*supplier* means the person from whom the goods are hired under the hire contract.
- 2 The mortgagor gives and the supplier takes a mortgage of the goods.
- 3 The mortgagor's right or obligation to purchase the goods, which is contained in the hire contract, is extinguished.
- 4 Subject to item 5, the supplier may take possession of the goods, or may take possession of, and sell, the goods if —
  - (a) the supplier was induced by fraud on the part of the mortgagor to enter into the hire contract; or
  - (b) the mortgagor, contrary to a term of the hire contract, has attempted to assign or dispose of the goods; or
  - (c) the mortgagor, contrary to a term of the hire contract, has —
    - (i) failed to keep the goods in good order and repair; or
    - (ii) failed to keep the goods insured or registered; or
  - (d) the mortgagor has made default in the payment of any instalment or other monetary sum due under the hire contract; or

- (e) the mortgagor has made default in any other obligation under the hire contract which is likely to affect directly the value of the supplier's security; or
  - (f) the mortgagor has returned the goods to the supplier, or has given notice in writing to the supplier, that the mortgagor can not continue to observe the obligations imposed by the hire contract.
- 5 Nothing in item 4 affects the operation of any statute or any principle of law or equity applicable to the rights and duties of the mortgagor or supplier in relation to each other.

## **Form 5      Information statement**

**paragraph 16 (1) (b) of the Code  
regulation 70 of the Regulations**

### **Things you should know about your proposed credit contract**

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact the credit provider and, if you still have concerns, your credit provider's external dispute resolution scheme, or get legal advice.

### **The contract**

#### **1      How can I get details of my proposed credit contract?**

Your credit provider must give you a precontractual statement containing certain information about your contract. The precontractual statement, and this document, must be given to you before —

- your contract is entered into; or
- you make an offer to enter into the contract;

whichever happens first.

#### **2      How can I get a copy of the final contract?**

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep. Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply if the credit provider has previously given you a copy of the contract document to keep.



If you want another copy of your contract, write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy —

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

### **3 Can I terminate the contract?**

Yes. You can terminate the contract by writing to the credit provider so long as —

- you have not obtained any credit under the contract; or
- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

### **4 Can I pay my credit contract out early?**

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you wish to end your contract.

### **5 How can I find out the pay out figure?**

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

### **6 Will I pay less interest if I pay out my contract early?**

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early

termination charge (if your contract permits your credit provider to charge one) and other fees.

**7 Can my contract be changed by my credit provider?**

Yes, but only if your contract says so.

**8 Will I be told in advance if my credit provider is going to make a change in the contract?**

That depends on the type of change. For example —

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 20 days advance written notice for —
  - a change in the way in which interest is calculated; or
  - a change in credit fees and charges; or
  - any other changes by your credit provider;

except where the change reduces what you have to pay or the change happens automatically under the contract.

**9 Is there anything I can do if I think that my contract is unjust?**

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact your credit provider's external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is (name of external dispute resolution provider) and can be contacted at [*insert telephone number, email/website and postal address*].

Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.

You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

## Insurance

### 10 Do I have to take out insurance?

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not. If you take out insurance, the credit provider can not insist that you use any particular insurance company.

### 11 Will I get details of my insurance cover?

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing, your insurer must give you a statement containing all the provisions of the contract.

### 12 If the insurer does not accept my proposal, will I be told?

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

**13 In that case, what happens to the premiums?**

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

**14 What happens if my credit contract ends before any insurance contract over mortgaged property?**

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

## **Mortgages**

**15 If my contract says I have to give a mortgage, what does this mean?**

A mortgage means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

**16 Should I get a copy of my mortgage?**

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

**17 Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you can not assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

---

**18 What can I do if I find that I can not afford my repayments and there is a mortgage over property?**

See the answers to questions 22 and 23.

Otherwise you may —

- if the mortgaged property is goods — give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments, but only if your credit provider gives permission first.

If your credit provider won't give permission, you can contact their external dispute resolution scheme for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after the mortgaged property is sold.

**19 Can my credit provider take or sell the mortgaged property?**

Yes, if you have not carried out all of your obligations under your contract.

**20 If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

**21    When can my credit provider or its agent come into a residence to take possession of mortgaged goods?**

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

**General**

**22    What do I do if I can not make a repayment?**

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways —

- to extend the term of your contract and reduce payments; or
- to extend the term of your contract and delay payments for a set time; or
- to delay payments for a set time.

**23    What if my credit provider and I can not agree on a suitable arrangement?**

If the credit provider refuses your request to change the repayments, you can ask the credit provider to review this decision if you think it is wrong.

If the credit provider still refuses your request you can complain to the external dispute resolution scheme that your credit provider belongs to. Further details about this scheme are set out below in question 25.

**24    Can my credit provider take action against me?**

Yes, if you are in default under your contract. But the law says that you can not be unduly harassed or threatened for repayments. If you think you are being unduly harassed or

threatened, contact the credit provider's external dispute resolution scheme or ASIC, or get legal advice.

**25 Do I have any other rights and obligations?**

Yes. The law will give you other rights and obligations. You should also READ YOUR CONTRACT carefully.

**IF YOU HAVE ANY COMPLAINTS ABOUT YOUR CREDIT CONTRACT, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS *[INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER]* AND CAN BE CONTACTED AT *[INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS]*.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**

## Form 6      Disclosure about credit contracts

### subsection 17 (16) of the Code subregulation 74 (2) of the Regulations

#### IMPORTANT

##### BEFORE YOU SIGN

- \* READ THIS CONTRACT DOCUMENT so that you know exactly what contract you are entering into and what you will have to do under the contract.
  
- \* You should also read the information statement: 'THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT'.
  
- \* Fill in or cross out any blank spaces.
  
- \* Get a copy of this contract document.
  
- \* **Do not sign** this contract document if there is anything you do not understand.

##### THINGS YOU MUST KNOW

- \* You can withdraw this offer at any time before the credit provider accepts it. When the credit provider does accept it, you are bound by it. However, you may end the contract before you obtain credit, or a card or other means is used to obtain goods or services for which credit is to be provided under the contract, by telling the credit provider in writing, but you will still be liable for any fees or charges already incurred.
  
- \* You **do not** have to take out consumer credit insurance unless you want to. However, if this contract document says so, you must take out insurance over any mortgaged property that is used as security, such as a house or car.
  
- \* If you take out insurance, the credit provider can not insist on any particular insurance company.
  
- \* If this contract document says so, the credit provider can vary the annual percentage rate (the interest rate), the repayments and the fees and charges and can add new fees and charges without your consent.
  
- \* If this contract document says so, the credit provider can charge a fee if you pay out your contract early.



## Form 7 Disclosure about credit contracts

### subsection 17 (16) of the Code subregulation 74 (3) of the Regulations

#### IMPORTANT

##### BEFORE YOU SIGN

- \* **READ THIS CONTRACT DOCUMENT** so that you know exactly what contract you are entering into and what you will have to do under the contract.
- \* You should also read the information statement: 'THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT'.
- \* Fill in or cross out any blank spaces.
- \* Get a copy of this contract document.
- \* **Do not sign** this contract document if there is anything you do not understand.

##### THINGS YOU MUST KNOW

- \* Once you sign this contract document, you will be bound by it. However, you may end the contract before you obtain credit, or a card or other means is used to obtain goods or services for which credit is to be provided under the contract, by telling the credit provider in writing, but you will still be liable for any fees or charges already incurred.
- \* You **do not** have to take out consumer credit insurance unless you want to. However, if this contract document says so, you must take out insurance over any mortgaged property that is used as security, such as a house or car.
- \* If you take out insurance, the credit provider can not insist on any particular insurance company.
- \* If this contract document says so, the credit provider can vary the annual percentage rate (the interest rate), the repayments and the fees and charges and can add new fees and charges without your consent.
- \* If this contract document says so, the credit provider can charge a fee if you pay out your contract early.

## Form 8      Disclosure about guarantee

section 55 of the Code  
regulation 81 of the Regulations

### IMPORTANT

#### BEFORE YOU SIGN

- \* READ THIS GUARANTEE AND THE CREDIT CONTRACT DOCUMENT.
- \* You should also read the information statement: 'THINGS YOU SHOULD KNOW ABOUT GUARANTEES'.
- \* You should obtain independent legal advice.
- \* You should also consider obtaining independent financial advice.
- \* You should make your own inquiries about the credit worthiness, financial position and honesty of the debtor.

#### THINGS YOU MUST KNOW

- \* Understand that, by signing this guarantee, you may become personally responsible instead of, or as well as, the debtor to pay the amounts which the debtor owes and the reasonable expenses of the credit provider in enforcing the guarantee.
- \* If the debtor does not pay you must pay. This could mean you lose everything you own including your home.
- \* You may be able to withdraw from this guarantee or limit your liability. Ask your legal adviser about this before you sign this guarantee.
- \* You are not bound by a change to the credit contract, or by a new credit contract, that increases your liabilities under the guarantee unless you have agreed in writing and have been given written particulars of the change or a copy of the new credit contract document.

## Form 9 Information statement

### section 56 (1) (b) of the Code regulation 82 of the Regulations

## Things you should know about guarantees

This information tells you about some of the rights and obligations of yourself and the credit provider. It does not state the terms and conditions of your guarantee.

## Guarantees

### 1 What is a guarantee?

A promise by you that the person who is getting credit under a credit contract (the *debtor*) will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract (and any reasonable enforcement expenses) as soon as the money is asked for, up to the limit, if any, stated in the guarantee. If you do not pay, then the credit provider can take enforcement action against you which may result in the forced sale of any property owned by you such as your house.

### 2 How do I know how much the debtor is borrowing and how the credit charges are worked out?

These details are on the copy of the credit contract or proposed credit contract that you should be given before you sign the guarantee.

### 3 What documents should I be given?

Before you sign the guarantee you should get —

- the document you are reading now; and
- a copy of the credit contract or proposed credit contract.

**Your guarantee is not enforceable unless you get a copy of the credit contract or proposed credit contract before you sign.**

Within 14 days after you sign the guarantee and give it to the credit provider, the credit provider must give you a copy of —

- the signed guarantee; and
- the credit contract or proposed credit contract (if you do not already have a copy of the contract).

#### **4 Can I get a statement of the amount that the debtor owes?**

Yes. You can ask the credit provider at any time for a statement of the amount the debtor currently owes or any amounts credited or debited during a period you specify or any amounts which are overdue and when they became overdue or any amount payable and the date it became due.

The credit provider must give you the requested information —

- within 14 days if all the information requested related to a period 1 year or less before your request is given; or
- otherwise within 30 days.

This statement must be given to you in writing if you ask for it in writing but otherwise may be given orally.

You may be charged a fee for the statement.

You are not entitled to more than 1 written statement every 3 months.

#### **5 How can I find out the payout figure?**

You can write to the credit provider at any time and ask for a statement of the amount required to pay out the credit contract as at any date you specify. You can also ask for details of the items that make up the amount.

The credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

## **6 What other information can I get?**

You can write to the credit provider and ask for a copy of —

- the guarantee; or
- any credit-related insurance contract (such as insurance on mortgaged property) the credit provider has; or
- a notice previously given to you, the debtor or the mortgagor under the National Credit Code.

The credit provider must give you the requested copy —

- within 14 days of your written request if the contract came into existence 1 year or less before the request was given to the credit provider; or
- otherwise within 30 days.

The credit provider may charge you a fee.

Your request can be made any time up to 2 years after the end of the credit contract.

## **7 Can I withdraw from my guarantee?**

You can withdraw from your guarantee at any time by written notice to the credit provider if the final credit contract is materially different from the proposed credit contract given to you before you signed the guarantee.

## **8 Can I limit my guarantee?**

Yes, if it relates to a continuing credit contract (such as a credit card contract or an overdraft). In that case you can give the credit provider a notice limiting the guarantee so that it only applies to —

- credit previously given to the debtor; and
- any other amount you agree to guarantee.

**9 Can my guarantee also apply to any future contracts?**

No, unless the credit provider has given you a copy of the proposed new credit contract and you have given your written acceptance.

**10 If my guarantee says I have to give a mortgage, what does this mean?**

A mortgage means that you give the credit provider certain rights over any property you mortgage. If you default under your guarantee, you can lose that property and you might still owe money to the credit provider.

**11 Should I get a copy of my mortgage?**

Yes. It can be part of your guarantee or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

**12 Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you can not assign or dispose of the property unless you have the credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

**13 What can I do if I find that I can not afford to pay out the credit contract and there is a mortgage over my property?**

See the answer to question 22.

Otherwise you may —

- if the mortgaged property is goods — give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;

- sell the property, but only if the credit provider gives permission first;

OR

- give the property to someone who may then pay all amounts owing under the guarantee or give a similar guarantee, but only if the credit provider gives permission first.

If the credit provider won't give permission, you may contact the credit provider's external dispute resolution scheme for help. You should understand that you may owe money to the credit provider even after the mortgaged property is sold.

External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is (name of external dispute resolution provider) and can be contacted at [*insert telephone number, email/website and postal address*].

**14 Can the credit provider take or sell the mortgaged property?**

Yes, if you have not carried out all of your obligations under your guarantee.

**15 If the credit provider writes asking me where the mortgaged goods are, do I have to say where they are?**

Yes. You have 7 days after receiving the credit provider's request to tell the credit provider. If you do not have the goods you must give the credit provider all the information you have so they can be traced.

**16    When can the credit provider or its agent come into a residence to take possession of mortgaged goods?**

The credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

**17    If the debtor defaults, do I get any warning that the credit provider wants to take action against the debtor?**

In most cases both you and the debtor get at least 30 days from the date of a notice in writing to do something about the matter. The notice must advise —

- why the credit provider wants to take action; and
- what can be done to stop it (if the default can be remedied); and
- that if the same sort of default is committed within 30 days of the date of the notice and is not remedied within that period, the credit provider can take action without further notice.

You should immediately discuss any warning notice with the debtor and consider getting independent legal advice and/or financial advice.

However, there will be no warning notice if —

- there is a good reason to think the debtor committed a fraud to persuade the credit provider to enter into the contract; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the court says so; or
- there is a good reason to think that the debtor has, or will, remove or dispose of mortgaged goods without the credit provider's consent, or that urgent action is necessary to protect mortgaged property.



**18 When can the credit provider enforce a judgment against me?**

When —

- the credit provider has judgment against the debtor and if the judgment amount has still not been met 30 days after the credit provider has asked the debtor in writing to pay it; or
- the court says so because recovery from the debtor is unlikely; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the debtor is insolvent.

**19 If the debtor can not be found and the credit provider intends to take legal action against me do I get any warning?**

You may not. See the answer to question 17.

**20 Can the credit provider take action against me without first taking action against the debtor?**

Yes, but the credit provider will not be able to enforce any judgement against you except in the circumstances described in the answer to question 18.

**21 How much do I have to pay the credit provider if the debtor defaults?**

You have to pay what the debtor owes the credit provider, subject to any limit provided in the guarantee, plus the credit provider's reasonable expenses in making you honour your contract of guarantee.

## General

**22    What can I do if I am asked to pay out the credit contract and I can not pay it all at once?**

Talk to the credit provider and see if some arrangement can be made about paying.

If you can not come to a suitable arrangement, contact your credit provider's external dispute resolution scheme.

There are other people, such as financial counsellors, who may be able to help.

**23    If I pay out money for a debtor, is there any way I can get it back?**

You can sue the debtor, but remember, if the debtor can not pay the credit provider, he or she probably can not pay you back for a while, if at all.

**24    What happens if I go guarantor for someone who is under 18 when he or she signs a credit contract?**

You are responsible for the full debt if the contract of guarantee has a clear and obvious warning. The warning has to tell you that the courts might not let you sue the debtor if you have to pay out the credit contract for him or her.

**25    Do I have any other rights and obligations?**

Yes. The law does give you other rights and obligations. You should also **READ YOUR GUARANTEE** carefully.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS**

**UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS *[INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER]* AND CAN BE CONTACTED AT *[INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS]*.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**

**Form 10      Information after surrender of mortgaged goods**

**subsection 85 (3) of the Code  
regulation 84 of the Regulations**

.....

Date

TO: .....  
(name of mortgagor)

.....  
.....  
(address of mortgagor)

FROM: .....  
(name of credit provider)

.....  
(Australian credit licence number)  
.....  
(address of credit provider)

.....

Date

CONTACT PERSON: .....

---

(name, telephone number and address)

You have returned mortgaged goods to the credit provider/asked the credit provider to sell the mortgaged goods.\*

This information tells you some of your rights and obligations and some of the options open to you.

### Details you should know

Description of the goods: .....

Date you returned the goods to the credit provider/asked the credit provider to sell the goods\*: .....

The cost of enforcing the mortgage up to the date you returned the goods to the credit provider/asked the credit provider to sell the goods\* is \$ .....

The cost of the goods being in the credit provider's possession is \$ .....

per ..... \*\*

The credit provider's estimate of the value of the goods is \$ . .

### How to get the goods returned or not sold

**YOU CAN GET THE GOODS BACK OR STOP THEM BEING SOLD BY THE CREDIT PROVIDER IF YOU ASK THE CREDIT PROVIDER AND IF THE REPAYMENTS AND OTHER OBLIGATIONS UNDER THE CREDIT CONTRACT HAVE BEEN MET. YOUR REQUEST MUST BE MADE IN WRITING WITHIN 21 DAYS OF THIS NOTICE BEING GIVEN TO YOU.**

**IF YOU DO NOTHING, YOU MAY LOSE THE GOODS.**

## **Sale of goods**

The law says that the credit provider must get the best price reasonably obtainable for the goods.

If you want to, you can introduce a buyer to the credit provider. This has to be done in writing within 21 days after the date of this notice and the buyer must be willing to pay the credit provider's estimate of the value of the goods or any greater amount for which the credit provider has obtained a written offer to buy the goods.

The credit provider must offer to sell the goods to the buyer you have introduced.

Your letter introducing the buyer has to reach the credit provider before the goods are sold. If you post the letter, it is best to send it by certified or registered mail. Then you can check that it was delivered. If you take it to the credit provider's office, you should get an employee of the credit provider to sign and date something to say that your letter has been received. Make sure you keep anything that was signed by that employee.

Once the 21 day period has expired, the credit provider must sell the goods as soon as reasonably practicable unless you and the credit provider agree on some other time for sale.

As mentioned above, the goods must be sold for the best price reasonably obtainable.

## **Finalising the contract**

As soon as the goods are sold, the total amount payable under the credit contract becomes due. The credit provider must credit you with the proceeds of the sale less —

- the amount owing under your mortgage (which can not be more than the amount owing under the contract); and
- any amount owing under a prior mortgage of the goods; and

- 
- any amount owing under a subsequent mortgage of the goods which the credit provider knows about; and
  - the credit provider's reasonable expenses of enforcing the mortgage; and
  - the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.

After the goods are sold the credit provider must give you a notice setting out certain information including —

- what the sale price was; and
- the net proceeds of the sale; and
- the amount credited to you; and
- the amount required to pay out the credit contract or the amount due under the guarantee.

## General

You should discuss this matter with the credit provider as soon as possible. You should know that even after the goods are sold, you will still have to pay the credit provider any amount still outstanding. You may be able to work out some alternative arrangement about your contract if you are the debtor. For example, you could ask the credit provider —

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

The name and telephone number of the person to contact is on the front of this document.

If you can not come to a suitable arrangement with the credit provider, contact the credit provider's external dispute resolution scheme immediately. If you are the debtor and have been **unemployed, sick** or there is **another good reason** why you are having problems making payments under your

contract, then your contract may be able to be varied under the law to meet your situation.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS [INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER] AND CAN BE CONTACTED AT [INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS].**

Alternatively, you can seek legal advice, for example from a community legal centre or Legal Aid. There are other people, such as financial counsellors, who may be able to help.

.....  
(signature of credit provider or person signing on behalf of credit provider)

.....  
(name of person signing)

.....  
(position of person signing)

- \* *Omit whichever is not applicable.*
- \*\* *Indicate the daily, monthly or other rate at which enforcement expenses may accrue.*



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## Form 11 Direct debit default notice

subsection 87 (3) of the Code  
regulation 85 of the Regulations

### DIRECT DEBITS FROM YOUR BANK ACCOUNT

A direct debit repayment has been dishonoured (not paid). Contact us [*insert telephone number or email address*] to arrange to make your payment. Check your direct debit request before your next payment is due. Make sure you understand how your direct debit works and what to do if you have a problem.

#### Are you unable to make a payment?

If you can not make a payment, you should contact us immediately. Depending on your circumstances, we may make changes to the repayments under your contract to help you repay the debt.

You can ask us to:

- extend the term of your contract and reduce repayments; or
- extend the term of your contract and delay payments for a set time; or
- delay payments for a set time without extending the term of your contract.

If we refuse your request, you can ask us to reconsider. If we still refuse, you can go to [*insert name of relevant external dispute resolution scheme*] by [*insert contact details and method(s) for lodging complaints*]. You should apply as soon as we refuse your request or if we do not respond to you within 21 days.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS.**

Alternatively, you can seek legal advice, for example from a community legal centre or Legal Aid. There are other people, such as financial counsellors, who may be able to help.

### **Some useful tips on direct debits**

*Make sure you have the correct account number.* Ensure that you have not given the wrong account number, or that the direct debit has not been dishonoured due to the account being changed or closed.

*Read your Direct Debit Request Service Agreement carefully.* Make sure you understand how much we will withdraw from your account and when we will withdraw it. Contact us if you need to change the dates on which the direct debit occurs.

*Have adequate funds in your account to meet your payments.* This will ensure you don't default again or incur a fee for not having sufficient funds in your account.

*Check your bank statements.* Make sure we are withdrawing the correct amount at the right time.

*Cancelling your direct debit.* In most situations, you can cancel a direct debit with us or with the bank or financial institution where your account is held (provided you comply with any specific requirements). However, you need to make sure you have made alternative payment arrangements with us so that you do not default on your payment. Your instruction to cancel a direct debit may have to be in writing. Contact your bank or financial institution a few days after you have sent your written notification to check that the direct debit has been cancelled.

*Resolving a problem with your direct debit.* If you have a problem with a direct debit you can make a complaint to us or to the bank or financial institution where your account is held. You can also contact our external dispute resolution scheme for assistance in resolving the complaint if you were unable to resolve it with us. Our external dispute resolution scheme is [insert name of external dispute resolution scheme] and can be contacted at [insert telephone number, email/website and postal address].

*Get further information.* If you have questions about direct debit authorities, talk to your bank or financial institution.

## **Form 12 Information about debtor's rights after default**

### **paragraphs 88 (3) (f) and (g) of the Code regulation 86 of the Regulations**

#### **If you can not make a repayment:**

##### **1. Contact us immediately**

Contact us [*insert telephone number or email address for dealing with financial hardship applications*] to discuss your situation. If there is a reason why you cannot make repayments we may be able to help you by agreeing to vary your contract. The sooner you contact us the easier it will be to assist you.

You may also have specific legal rights to have changes made to your contract to help you repay the debt.

You can make a request if:

- you can not make repayments due to hardship (for example, illness, unemployment or some other good reason); and
- you expect to be able to make the repayments if the terms of your contract are changed; and
- you entered into your contract on or after 1 July 2010 and the amount you have borrowed is less than \$500 000/ you entered into your contract before 1 July 2010 and the amount you have borrowed is less than . . . . .\*(the threshold that applies to the contract under the Credit Code of a referring State or Territory that applied to the contract before 1 July 2010).\*\*

Your request for a change can ask us to:

- extend the term of your contract and reduce repayments; or
- extend the term of your contract and delay payments for a set time; or

- 
- delay payments for a set time without extending the term of your contract.

If you do not contact us **before** [*insert default notice period end date*], we may commence legal action against you.

### **IMPORTANT**

There is no guarantee that we will agree to change your contract or postpone legal action.

After we receive your application, we will provide you with a written notice within 21 days stating whether or not we agree to the change.

If we agree, you will receive a written notice detailing the agreement within 30 days.

If we refuse, we will provide you with reasons. You have the right to have the decision reviewed.

## **2. Right to review**

If we refuse your request to change your contract, you can ask us to reconsider. If we still refuse, or if we do not respond to your request within 21 days, you can go to [*insert name of relevant external dispute resolution scheme*] by [*insert contact details and method(s) for lodging complaints*]. You should apply as soon as we refuse your request or fail to respond.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS.**

If we fail to respond, we may have breached our obligation to you. You can contact ASIC on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

Alternatively, if we refuse, you can ask a court to make changes to your contract.

You can also ask a court to delay enforcement action against you. You may wish to get legal advice, for example from a community legal centre or Legal Aid, on how to go about this.

There are other people, such as financial counsellors, who may be able to help.

- \* *Indicate the threshold that applies to the contract under the old Credit Code of a referring State or a Territory that applied to the contract before 1 July 2010.*
- \*\* *Omit whichever is not applicable.*

---

**Form 13    Consent to enter premises**

**subsection 99 (2) of the Code  
regulation 87 of the Regulations**

.....

Date

TO: .....

(name of credit provider)

.....

(Australian credit licence number)

FROM: .....

(name of occupier)

.....

(address of occupier's premises)

.....

.....

(‘the premises’)

I consent to the credit provider entering the premises for the purpose of taking possession of the mortgaged goods described below.

The mortgaged goods are:\*

.....  
.....

.....  
.....

**IMPORTANT**  
YOU HAVE THE RIGHT TO REFUSE  
CONSENT. IF YOU DO THE CREDIT  
PROVIDER MAY GO TO COURT FOR  
PERMISSION TO ENTER THE  
PREMISES.

.....

(signature of occupier giving consent)

.....

(name, address and signature of credit provider's  
representative by whom the consent was obtained)

\* *Insert brief details of the mortgaged goods.*



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**Form 14 Notice after taking possession of mortgaged goods**

**paragraph 102 (1) (c) of the Code  
regulation 88 of the Regulations**

.....

Date

TO:

.....

(name of mortgagor)

.....

.....

(address of mortgagor)

FROM:

.....

(name of credit provider)

.....

(Australian credit licence number)

.....

(address of credit provider)

.....

(name, telephone and address)

This information tells you some of your rights and obligations  
and some of the options open to you.

## Details you should know

Description of the goods: .....

Date the goods were taken: .....

The goods were taken because: .....

The cost of enforcing the mortgage up to the date the goods were taken is \$. .....

The cost of the goods remaining in the credit provider's possession is \$. ..... per. .... \*

The credit provider's estimate of the value of the goods is \$. . . . .

## How to get the goods back

**IF YOU WANT THE GOODS BACK YOU MUST DO ONE OF THE THINGS LISTED BELOW AS SOON AS POSSIBLE. IF YOU DO NOT ACT WITHIN 21 DAYS AFTER THE DATE OF THIS NOTICE, THE CREDIT PROVIDER MAY SELL THE GOODS. IT IS ALSO POSSIBLE THAT THE GOODS MIGHT BE SOLD EARLIER IF THE CREDIT PROVIDER GETS A COURT ORDER.**

### Either

You can get the goods back if you pay \$ ..... and there is no repetition of the default that caused the goods to be taken.

This amount of \$ ..... is calculated as follows —

Arrears ..... \$ .....

Enforcement expenses . \$ .....

**TOTAL** ..... \$ .....

## OR

You can pay out the credit contract. If you do this you can get the goods back and you do not have any further obligations.

To give you an idea of what the amount required to pay out the credit contract may be, 2 figures are given below. The first is the amount required to pay out the contract at the date of this notice. The second is the amount required calculated 21 days from that date. Any difference is the result of further payments or charges that fall due between the 2 dates.

- 1 Amount required to pay out  
the credit contract on / / \$
  
- 2 Amount required to pay out  
the credit contract on / / \$

## **If you do nothing, you will lose the goods.**

### **Sale of goods**

The law says that the credit provider must get the best price reasonably obtainable for the goods.

If you want to, you can introduce a buyer to the credit provider. This has to be done in writing within 21 days after the date of the notice you receive and the buyer must be willing to pay the credit provider's estimate of the value of the goods or any greater amount for which the credit provider has obtained a written offer to buy the goods.

The credit provider must offer to sell the goods to the buyer you have introduced.

Your letter introducing the buyer has to reach the credit provider before the goods are sold. If you post the letter, it is best to send it by certified or registered mail then you can check that it was delivered. If you take it to the credit provider's office, you should get an employee to sign and date something to say that your letter has been received. Make sure you keep anything that was signed by the employee.

Once the 21 day period has expired, the credit provider must sell the goods as soon as reasonably practicable unless —

- you and the credit provider agree on some other time for sale; or
- legal proceedings have been taken which prevent the sale.

As mentioned above, the goods must be sold for the best price reasonably obtainable.

## **Finalising the contract**

As soon as the goods are sold, the total amount payable under the contract becomes due. However, the credit provider will have to deduct from what you owe any amount the credit provider gets for the goods less —

- the amount owing under your mortgage (which can not be more than the amount owing under the contract); and
- any amount owing under a prior mortgage of the goods; and
- any amount owing under a subsequent mortgage of the goods which the credit provider knows about; and
- the credit provider's reasonable expenses of enforcing the mortgage.

After the goods are sold, the credit provider must give you a notice setting out certain information including —

- what the sale price was; and
- the net proceeds of the sale after the amounts mentioned above have been deducted; and

- 
- the amount due under the credit contract or the amount of any surplus due to you; and
  - details of any further recovery action that might be taken against you under the credit contract if you are the debtor.

## General

You should discuss this matter with the credit provider as soon as possible. You should know that after the goods have been sold, you will still have to pay the credit provider any amount still outstanding. You may be able to work out some alternative arrangement about the contract and mortgage. For example, if you are the debtor, you could ask the credit provider —

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

The name, telephone number and address of the person to contact is on the front of this form.

If you can not come to a suitable arrangement with the credit provider, contact the credit provider's external dispute resolution scheme immediately. If you are the debtor and have been **unemployed, sick** or there is **another good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME.**

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**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS [INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER] AND CAN BE CONTACTED AT [INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS].**

Alternatively, you can seek legal advice, for example from a community legal centre or Legal Aid. There are other people, such as financial counsellors, who may be able to help.

.....

(signature of credit provider or person signing on behalf of  
credit provider)

.....

(name of person signing)

.....

(position of person signing)

\* *Indicate the daily, monthly or other rate at which enforcement expenses accrue.*

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**Form 15 Notice of right to terminate maintenance services contract**

**subsection 136 (2) of the Code  
regulation 91 of the Regulations**

.....

Date

TO:

.....

(name of debtor)

.....

.....

(address of debtor)

FROM:

.....

(name of credit provider)

.....

(Australian credit licence number)

.....

(address of credit provider)

.....

The law says that you must be told, now that your credit contract has terminated, that you can also —

- terminate your maintenance services contract with

.....dated .....

..... \* (*supplier*); and

- recover from the supplier a proportionate rebate of the amount you have paid under the maintenance services contract.

You must tell the supplier in writing if you want to terminate the maintenance services contract.

The proportionate rebate must be calculated in accordance with the law.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS [INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER] AND CAN BE CONTACTED AT [INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS].**

.....

(signature of credit provider or person signing on behalf of



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credit provider)

.....

(name of person signing)

.....

(position of person signing)

\* *Insert name and address of supplier under the maintenance services contract.*

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**Form 16    Notice of right to cancel mortgaged  
property insurance**

**subsection 149 (2) of the Code  
regulation 95 of the Regulations**

.....

Date

TO:

.....

(name of debtor)

.....

.....

(address of debtor)

FROM:

.....

(name of credit provider)

.....

(Australian credit licence number)

.....

(address of credit provider)

.....

The law says that you must be told, now that your credit contract has terminated, that you can also —

- terminate your insurance contract over mortgaged property financed under the credit contract; and

- recover from the insurer a proportionate rebate of premium paid under the insurance contract.

Your insurer will not terminate the insurance contract unless you ask the insurer in writing to do so. If you terminate the insurance, you will not be covered in the event of loss or damage to the property.

According to our records your insurer is .....

The mortgaged property is —

.....  
.....  
.....

The proportionate rebate of insurance must be calculated in accordance with the law.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS [INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER] AND CAN BE CONTACTED AT [INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS].**

.....

(signature of credit provider or person signing on behalf of  
credit provider)

.....

(name of person signing)

.....

(position of person signing)

## **Form 17 Information statement**

### **subsection 175 (1) of the Code regulation 105 of the Regulations**

## **Things you should know about your consumer lease**

This statement tells you about some of the rights and obligations of yourself and your lessor. It does not state the terms and conditions of your lease.

## **The lease**

### **1 How can I get details of my lease?**

Your lessor must give you a copy of your consumer lease with this statement. Both documents must be given to you within 14 days after the lessor enters into the consumer lease, unless you already have a copy of the consumer lease.

If you want another copy of your lease write to your lessor and ask for one. Your lessor may charge you a fee. Your lessor has to give you a copy —

- within 14 days of your written request if the contract came into existence 1 year or less before your request; or
- otherwise within 30 days.

### **2 What should my lease tell me?**

You should read your lease carefully.

Your lease should tell you about your obligations, and include information on matters such as —

- details of the goods which have been hired; and
- any amount you have to pay before the goods are delivered; and
- stamp duty and other government charges you have to pay; and

- charges you have to pay which are not included in the rental payments; and
- the amount of each rental payment; and
- the date on which the first rental payment is due and either the dates of the other rental payments or the interval between them; and
- the number of rental payments; and
- the total amount of rent; and
- when you can end your lease; and
- what your obligations are (if any) when your lease ends.

This information only has to be included in your lease if it is possible to give it at the relevant times.

If your lease does not tell you all these details, contact your credit provider's external dispute resolution scheme, or get legal advice, for example from a community legal centre or Legal Aid, as you may have rights against your lessor.

### **3 Can I end my lease early?**

Yes. Simply return the goods to your lessor. The goods may be returned in ordinary business hours or at any other time you and the lessor agree on or the court decides.

### **4 What will I have to pay if I end my lease early?**

The amount the lease says you have to pay.

If you have made rental payments in advance then it is possible that your lessor might owe you money if you return the goods early.

### **5 Can my lease be changed by my lessor?**

Yes, but only if your lease says so.

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**6 Is there anything I can do if I think that my lease is unjust?**

Yes. You should talk to your lessor. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact your credit provider's external dispute resolution scheme.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS [INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER] AND CAN BE CONTACTED AT [INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS].**

Alternatively, you can go to court. You may also wish to get legal advice, for example from a community legal centre or Legal Aid, and/or make a complaint to ASIC. ASIC can be contacted on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

## **The goods**

**7 If my lessor writes asking me where the goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your lessor's request to tell your lessor. If you do not have the goods you must give your lessor all the information you have so they can be traced.

**8 When can my lessor or its agent come into a residence to take possession of the goods?**

Your lessor can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

## General

### 9 What do I do if I can not make a rental payment?

Get in touch with your lessor immediately. Discuss the matter and see if you can come to some arrangement.

You can ask your lessor to change your lease in a number of ways —

- to extend the term of your lease and reduce rental payments; or
- to extend the term of your lease and delay rental payments for a set time; or
- to delay rental payments for a set time.

### 10 What if my lessor and I can not agree on a suitable arrangement?

If the lessor refuses your request to change the rental payments, you can ask your lessor to review this decision if you think it is wrong.

If the lessor still refuses your request, you can complain to the external dispute resolution scheme that your lessor belongs to. Further details about this scheme are set out below in question 12.

### 11 Can my lessor take action against me?

Yes, if you are in default under your lease. But the law says that you can not be unduly harassed or threatened for rental payments. If you think you are being unduly harassed or threatened, contact your credit provider's external dispute resolution scheme or ASIC, or get legal advice.

### 12 Do I have any other rights and obligations?

Yes. The law will give you other rights and obligations. You should also **READ YOUR LEASE** carefully.



**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.