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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Consumer Credit and Corporations
Legislation Amendment (Enhancements)
Bill 2011**

No. , 2011

(Treasury)

**A Bill for an Act to amend the law relating to
consumer credit and corporations, and for related
purposes**

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1, 2 and 3	Immediately after the commencement of Part 2 of Schedule 1 to the <i>National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011</i> .	1 July 2012
3. Schedule 4	1 January 2013.	1 January 2013
4. Schedules 5 and 6	Immediately after the commencement of Schedule 2 to the <i>National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011</i> .	1 July 2012
5. Schedule 7	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Enhancements**

3 **Part 1—Protection of debtor in cases of hardship**

4 *National Consumer Credit Protection Act 2009*

5 **1 Section 72 of the National Credit Code**

6 Repeal the section, substitute:

7 **72 Changes on grounds of hardship**

8 *Hardship notice*

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

13 *Credit provider's notice in response to hardship notice*

- 14 (2) Within 21 days after the day of receiving the debtor's hardship
15 notice, the credit provider must give the debtor:
16 (a) if the credit provider agrees to negotiate a change to the
17 credit contract—notice, in the form prescribed by the
18 regulations, that the credit provider agrees to negotiate; or
19 (b) if the credit provider does not agree to negotiate a change to
20 the credit contract—a written notice that states:
21 (i) that the credit provider does not agree to negotiate; and
22 (ii) the reasons for not agreeing to negotiate; and
23 (iii) the name of the approved external dispute resolution
24 scheme of which the credit provider is a member; and
25 (iv) the debtor's rights under that scheme.

26 Criminal penalty: 30 penalty units.

27 Note: If a debtor has given a credit provider a hardship notice, there may be
28 extra requirements that the credit provider must comply with before
29 beginning enforcement proceedings—see section 89A.

Schedule 1 Enhancements

Part 1 Protection of debtor in cases of hardship

1 (3) A credit provider that has given notice under paragraph (2)(a) may,
2 within 21 days after the day of giving that notice, give a notice
3 under paragraph (2)(b).

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

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

6 **2 Subsection 73(1) of the *National Credit Code***

7 Omit “on any such application”, substitute “to change the credit
8 contract as a result of a hardship notice by the debtor”.

9 **3 Subsection 74(1) of the *National Credit Code***

10 Omit “in accordance with the application”, substitute “as a result of a
11 hardship notice by the debtor”.

12 **4 Subsection 74(2) of the *National Credit Code***

13 Repeal the subsection, substitute:

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

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

20 (b) refuse to change the credit contract.

21 **5 Subparagraphs 88(3)(f)(i) and (ii) of the *National Credit***
22 ***Code***

23 Repeal the subparagraphs, substitute:

24 (i) give a hardship notice under section 72; or

25 (ii) give a postponement request under section 94; or

26 **6 After section 89 of the *National Credit Code***

27 Insert:

28 **89A Effect of hardship notices on enforcement**

29 (1) This section applies if:

30 (a) a credit provider is required to give a default notice under
31 section 88 before beginning enforcement proceedings; and

- 1 (b) before or after the credit provider gives the default notice, the
2 debtor gives the credit provider a hardship notice (the *current*
3 *hardship notice*) under section 72; and
4 (c) either:
5 (i) in the 4 months before the day the current hardship
6 notice is given, the debtor had not given the credit
7 provider another hardship notice; or
8 (ii) in that 4-month period, the debtor had given the credit
9 provider one or more other hardship notices, but the
10 credit provider reasonably believes that the basis on
11 which the current hardship notice was given is
12 materially different from the bases on which the other
13 hardship notices were given.

- 14 (2) The credit provider must not begin enforcement proceedings
15 against the debtor unless:
16 (a) the credit provider has given the debtor a notice under
17 paragraph 72(2)(b), in response to the current hardship
18 notice, stating that the credit provider does not agree to
19 negotiate a change to the credit contract; and
20 (b) the period of 14 days, starting on the day the lessor gives the
21 notice under paragraph 72(2)(b), has expired.

22 Criminal penalty: 50 penalty units.

23 Note: The credit provider must allow the debtor at least 30 days from the
24 date of the default notice to remedy the default—see section 88. The
25 14-day period in subsection (2) may end before, at the same time as,
26 or after the end of the period for remedying the default specified in the
27 default notice.

- 28 (3) However, the credit provider may take possession of mortgaged
29 goods if the credit provider reasonably believes that:
30 (a) the debtor or mortgagor has removed or disposed of the
31 mortgaged goods, or intends to remove or dispose of them,
32 without the credit provider's permission; or
33 (b) urgent action is necessary to protect the goods.

- 34 (4) Subsection (2) is an offence of strict liability.

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

36 **7 Subsection 94(1) of the *National Credit Code***

37 Repeal the subsection, substitute:

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Postponement request

- (1) A debtor, mortgagor or guarantor who has been given a default notice under section 88 or a demand for payment under section 90 may, at any time before the end of the period specified in the notice or demand, request (a *postponement request*), orally or in writing, that the credit provider negotiate a postponement of:
 - (a) the enforcement proceedings; or
 - (b) any action taken under such proceedings; or
 - (c) the operation of any applicable acceleration clause.

8 Subsection 94(2) of the *National Credit Code*

Omit “makes the request”, substitute “gives the postponement request”.

9 Subsections 94(3) and (4) of the *National Credit Code*

Repeal the subsections, substitute:

Enforcement proceedings

- (3) If the debtor, mortgagor or guarantor gives the postponement request, the credit provider must not begin enforcement proceedings unless:
 - (a) the credit provider has given the debtor, mortgagor or guarantor a notice under subsection (2) in response to the postponement request; and
 - (b) the period of 14 days, starting on the day the credit provider gives the notice under subsection (2), has expired.

Criminal penalty: 50 penalty units.

Note: The credit provider must allow the debtor or mortgagor at least 30 days from the date of the default notice to remedy the default—see section 88. The 14-day period in subsection (3) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

- (4) However, the credit provider may take possession of mortgaged goods if the credit provider reasonably believes that:
 - (a) the debtor or mortgagor has removed or disposed of the mortgaged goods, or intends to remove or dispose of them, without the credit provider’s permission; or
 - (b) urgent action is necessary to protect the goods.

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

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

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Part 2—Remedies for unfair or dishonest conduct by credit service providers

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National Consumer Credit Protection Act 2009

5

10 After section 180

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Insert:

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180A Orders to remedy unfair or dishonest conduct by credit service providers

8

9

(1) The court may make one or more of the orders described in subsection (2) if the court is satisfied that:

10

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(a) a person (the *defendant*) provided a credit service to a consumer (the *plaintiff*); and

12

13

(b) the defendant engaged in conduct that:

14

(i) was connected with the provision of the service; and

15

(ii) was unfair or dishonest; and

16

(c) the conduct had one or more of the following results:

17

(i) the plaintiff entered a credit contract, consumer lease, mortgage or guarantee that the plaintiff would not have entered apart from the conduct;

18

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(ii) the plaintiff entered a credit contract, consumer lease, mortgage or guarantee whose terms were different from a credit contract, consumer lease, mortgage or guarantee the plaintiff would have entered apart from the conduct;

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(iii) the plaintiff became liable to pay fees, costs or charges to the defendant or someone else.

25

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(2) The orders are as follows:

27

(a) an order that the defendant take, or refrain from taking, specified action;

28

29

(b) an order that the defendant pay the plaintiff a specified amount;

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31

(c) an order that a specified amount is not due or owing by the plaintiff to the defendant;

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(d) any other order the court considers appropriate to:

- 1 (i) redress the unfairness or dishonesty; or
2 (ii) prevent the defendant from profiting from the plaintiff
3 by engaging in the conduct;
4 except an order that affects a credit contract, consumer lease,
5 mortgage or guarantee to which the conduct related.

6 *Determining whether conduct was unfair or dishonest*

- 7 (3) In determining whether conduct was unfair or dishonest, the court:
8 (a) must have regard to the extent (if any) to which one or more
9 of the circumstances described in subsection (4) existed; and
10 (b) must consider it more likely that the conduct was unfair or
11 dishonest the more any of those circumstances existed and
12 the more any of them affected the plaintiff's interests.
13 This does not limit the matters to which the court may have regard.
- 14 (4) The circumstances are as follows:
15 (a) the plaintiff was at a special disadvantage in dealing with the
16 defendant in relation to the transaction involving:
17 (i) the conduct; and
18 (ii) a credit contract, consumer lease, mortgage or guarantee
19 to which the conduct related; and
20 (iii) any other contract requiring the plaintiff to make
21 payments for the purposes of which it is reasonable to
22 expect the plaintiff would or did enter such a credit
23 contract, consumer lease, mortgage or guarantee;
24 (b) the plaintiff was a member of a class whose members were
25 more likely than people who were not members of the class
26 to be at such a disadvantage;
27 (c) if the plaintiff was a member of a class referred to in
28 paragraph (b)—a reasonable person would consider that the
29 conduct was directed at that class;
30 (d) the plaintiff was unable, or considered himself or herself
31 unable, to make:
32 (i) a credit contract with a credit provider other than the
33 credit provider to which the conduct related; or
34 (ii) a consumer lease with a lessor other than the lessor to
35 which the conduct related; or
36 (iii) a mortgage with a mortgagee other than the mortgagee
37 to which the conduct related;
-

Schedule 1 Enhancements

Part 2 Remedies for unfair or dishonest conduct by credit service providers

- 1 (iv) a guarantee with a beneficiary other than the beneficiary
2 to which the conduct related;
- 3 (e) the conduct involved a technique that:
4 (i) should not in good conscience have been used; or
5 (ii) manipulated the plaintiff;
- 6 (f) the defendant could determine or significantly influence the
7 terms of a contract covered by subparagraph (a)(ii) or (iii);
- 8 (g) the terms of the transaction described in paragraph (a) were
9 less favourable to the plaintiff than the terms of a comparable
10 transaction.

11 *When order may be made*

- 12 (5) The court may make the order only if:
13 (a) the plaintiff or ASIC (on behalf of the plaintiff) applies for an
14 order under this section; and
15 (b) the application is made within 6 years of the day the
16 defendant first started engaging in the conduct.

17 *Applications for order*

- 18 (6) For the purposes of paragraph (5)(a), ASIC may make an
19 application on behalf of the plaintiff, but only if the plaintiff has
20 given consent in writing before the application is made.

21 *Recovery of amount as a debt*

- 22 (7) If the court makes an order that the defendant pay an amount
23 specified in the order to the plaintiff, the plaintiff may recover the
24 amount as a debt due to the plaintiff.

25 *When this section does not apply*

- 26 (8) This section does not apply to the provision of credit assistance by
27 a person who is (or after the provision of the assistance becomes):
28 (a) a credit provider under the credit contract to which the
29 assistance relates; or
30 (b) a lessor under the consumer lease to which the assistance
31 relates; or
32 (c) a mortgagee under a mortgage in relation to the credit
33 contract to which the assistance relates; or

1 (d) a beneficiary of a guarantee in relation to the credit contract
2 to which the assistance relates.

3 **11 Section 184**

4 Add at the end “or another Act”.
5

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2 **Part 3—Representations about eligibility to enter**
3 **credit contracts, consumer leases etc.**
4 **without assessing unsuitability**

5 *National Consumer Credit Protection Act 2009*

6 **12 Section 125 (paragraph relating to Division 3)**

7 Omit “entering or increasing the credit limit of a credit contract”,
8 substitute “doing particular things (such as entering a credit contract)”.

9 **13 Division 3 of Part 3-2 (heading)**

10 Repeal the heading, substitute:

11 **Division 3—Obligation to assess unsuitability**

12 **14 Section 128 (heading)**

13 Repeal the heading, substitute:

14 **128 Obligation to assess unsuitability**

15 **15 After paragraph 128(a)**

16 Insert:

17 (aa) represent to a consumer that the licensee considers that the
18 consumer is eligible to enter a credit contract with the
19 licensee; or

20 **16 After paragraph 128(b)**

21 Insert:

22 ; or (ba) represent to a consumer that the licensee considers that the
23 credit limit of credit contract between the consumer and the
24 licensee will be able to be increased;

25 **17 Section 148 (paragraph relating to Division 3)**

26 Omit “entering a consumer lease”, substitute “doing particular things
27 (such as entering a consumer lease)”.

1 **18 Division 3 of Part 3-4 (heading)**

2 Repeal the heading, substitute:

3 **Division 3—Obligation to assess unsuitability**

4 **19 Section 151**

5 Repeal the section, substitute:

6 **151 Obligation to assess unsuitability**

7 A licensee must not:

8 (a) enter a consumer lease with a consumer who will be the
9 lessee under the lease; or

10 (b) represent to a consumer that the licensee considers that the
11 consumer is eligible to enter a consumer lease with the
12 licensee;

13 on a day (the *lease day*) unless the licensee has, within 90 days (or
14 other period prescribed by the regulations) before the lease day:

15 (c) made an assessment that:

16 (i) is in accordance with section 152; and

17 (ii) covers a period in which the lease day occurs; and

18 (d) made the inquiries and verification in accordance with
19 section 130.

20 Civil penalty: 2,000 penalty units.

21 **20 Section 152**

22 Omit “paragraph 151(a)”, substitute “paragraph 151(c)”.

23 **21 Subsection 153(1)**

24 Omit “paragraph 151(b)”, substitute “paragraph 151(d)”.

25

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2 **Part 4—Prohibition on certain representations and**
3 **other matters**

4 *National Consumer Credit Protection Act 2009*

5 **22 Section 27 (paragraph relating to Division 3)**

6 Omit “, charging fees for unlicensed conduct, and giving misleading
7 information”, substitute “, and charging fees for unlicensed conduct”.

8 **23 Division 3 of Part 2-1 (heading)**

9 Repeal the heading, substitute:

10 **Division 3—Other prohibitions relating to the requirement**
11 **to be licensed**

12 **24 Section 33**

13 Repeal the section.

14 **25 After Part 3-6**

15 Insert:

16 **Part 3-6A—Miscellaneous rules**

17 **Division 1—Introduction**

18 **160A Guide to this Part**

19 This Part has a number of miscellaneous rules that require
20 responsible lending conduct when engaging in credit activities or
21 particular types of credit activities. Some of these rules apply to a
22 person even if the person is not required to be licensed.

23 Division 2 prohibits licensees from making particular
24 representations when providing a credit service to a consumer.

1 Division 3 prohibits a person (whether licensed or not) from giving
2 false or misleading information in the course of engaging in a
3 credit activity.

4 **Division 2—Representations**

5 **160B “Independent”, “impartial” or “unbiased” etc.**

6 (1) A licensee must not, in providing or offering to provide a credit
7 service to a consumer, use any of the following terms (either alone
8 or in combination with other words or letters) in a representation to
9 the consumer about the licensee, the service or the licensee’s
10 actions in providing the service:

- 11 (a) the word “independent”;
- 12 (b) the word “impartial”;
- 13 (c) the word “unbiased”;
- 14 (d) another term (whether or not in English) that is of similar
15 import to a word mentioned in paragraph (a), (b) or (c).

16 Civil penalty: 2,000 penalty units.

17 *Defences*

- 18 (2) For the purposes of subsection (1), it is a defence if:
- 19 (a) the licensee does not receive any of the following:
 - 20 (i) commissions (apart from commissions that are rebated
21 in full to the licensee’s clients);
 - 22 (ii) other gifts or benefits from a credit provider or a lessor
23 that may reasonably be expected to influence the
24 licensee; and
 - 25 (b) in providing a credit service, the licensee operates free from
26 direct or indirect restrictions relating to the credit contracts
27 and consumer leases to which the service relates (except
28 restrictions imposed on the licensee by this Act or by an
29 Australian credit licence); and
 - 30 (c) in providing a credit service, the licensee operates without
31 any conflicts of interest that might:
 - 32 (i) arise from the licensee’s associations or relationships
33 with credit providers and lessors; and

- 1 (ii) reasonably be expected to influence the licensee in
2 providing the service; and
3 (d) neither of the following persons receives any commission,
4 gift, or benefit, covered by paragraph (a):
5 (i) the licensee's employer (if any);
6 (ii) any other person prescribed (whether by reference to a
7 class of person or otherwise) by the regulations.
- 8 (3) For the purposes of subsection (1), it is a defence if the
9 representation uses any of the terms in the negative (for example, a
10 representation that the licensee is not independent).

11 **160C "Financial counsellor" etc.**

- 12 (1) A licensee must not, in providing or offering to provide a credit
13 service to a consumer, use any of the following terms (either alone
14 or in combination with other words or letters) in a representation to
15 the consumer about the licensee, the service or the licensee's
16 actions in providing the service:
17 (a) the phrase "financial counsellor";
18 (b) the phrase "financial counselling";
19 (c) another term (whether or not in English) that:
20 (i) is of similar import to a phrase mentioned in
21 paragraph (a) or (b); and
22 (ii) is prescribed by the regulations.

23 Civil penalty: 2,000 penalty units.

24 *Defences*

- 25 (2) For the purposes of subsection (1), it is a defence if regulations
26 made for the purposes of paragraph 110(a) exempt the licensee
27 from section 29 in relation to a credit activity because the licensee
28 engages in the activity as part of a financial counselling service.
- 29 (3) For the purposes of subsection (1), it is a defence if:
30 (a) the licensee is providing, or offering to provide, the credit
31 service on behalf of another person (the *principal*); and
32 (b) the licensee is a representative of the principal; and
33 (c) regulations made for the purposes of paragraph 110(a)
34 exempt the principal from section 29 in relation to a credit

1 activity because the principal engages in the activity as part
2 of a financial counselling service; and
3 (d) the licensee's actions in providing or offering to provide the
4 credit service are within the authority of the principal.

5 (4) For the purposes of subsection (1), it is a defence if the
6 representation uses any of the terms in the negative (for example, a
7 representation that the licensee is not a financial counsellor).

8 **Division 3—Giving misleading information**

9 **160D Prohibition on giving misleading information etc.**

10 *Prohibition on giving misleading information etc.*

11 (1) A person (the *giver*) must not, in the course of engaging in a credit
12 activity, give information or a document to another person if the
13 giver knows, or is reckless as to whether, the information or
14 document is:

15 (a) false in a material particular; or

16 (b) materially misleading.

17 Civil penalty: 2,000 penalty units.

18 *Offence*

19 (2) A person commits an offence if:

20 (a) the person gives information or a document to another
21 person; and

22 (b) the person does so in the course of engaging in a credit
23 activity; and

24 (c) the information or document is false in a material particular
25 or materially misleading.

26 Criminal penalty: 100 penalty units, or 2 years imprisonment, or
27 both.

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**Part 5—Civil remedies for contravention of the
National Credit Code**

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National Consumer Credit Protection Act 2009

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26 Section 124 of the *National Credit Code* (heading)

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Repeal the heading, substitute:

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124 Civil effect of contraventions

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27 Subsection 124(1) of the *National Credit Code*

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Omit “(other than one for which a civil effect is specifically provided by
Division 1 or by any other provision of this Code)”.

10

11

28 Subsection 124(2) of the *National Credit Code*

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Repeal the subsection, substitute:

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(2) An application for the exercise of the court’s powers under this
section may be made by:

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(a) a person affected by the contravention; or

16

(b) ASIC on behalf of a person affected by the contravention, if
the person has consented in writing to ASIC making the
application; or

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(c) ASIC (on its own behalf).

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2 **Part 6—Miscellaneous amendments**

3 *National Consumer Credit Protection Act 2009*

4 **29 Subsection 19(1) of the *National Credit Code***

5 Omit “a contract document”, substitute “a new contract document”.

6 **30 Section 32 of the *National Credit Code***

7 Repeal the section, substitute:

8 **32 Fees or charges in relation to third parties**

9 *When this section applies*

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

13 *Third party amount ascertainable at time of debtor payment*

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

17 *Third party amount not ascertainable at time of debtor payment*

- 18 (3) If:
19 (a) when the fee or charge is paid by the debtor to the credit
20 provider, the third party amount is not ascertainable; and
21 (b) after the fee or charge is paid, the credit provider ascertains
22 the third party amount; and
23 (c) the third party amount is less than the amount of the fee or
24 charge paid;
25 then the credit provider must refund or credit the difference to the
26 debtor.

27 *Determining third party amount*

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

- 1 (a) taking into account any discount, rebate or other allowance
2 that is received or receivable by the credit provider or a
3 related body corporate (within the meaning of the
4 *Corporations Act 2001*); and
5 (b) disregarding any rebate on tax payable by the credit provider
6 or a related body corporate (within the meaning of that Act).

7 **31 Paragraph 36(1)(c) of the *National Credit Code***

8 Repeal the paragraph, substitute:

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

11 **32 Paragraph 36(1)(d) of the *National Credit Code***

12 Omit “became due”, substitute “becomes due”.

13 **33 Subsection 38(4) of the *National Credit Code***

14 Omit “of receiving the statement of account in which the amount, or
15 part of that amount, was first shown”, substitute “after the day the
16 debtor receives the statement of account in which the amount, or part of
17 that amount, is first shown”.

18 **34 Subsection 38(5) of the *National Credit Code***

19 Omit “after the end of the contract”, substitute “after the day the
20 contract ends”.

21 **35 Subsection 38(6) of the *National Credit Code***

22 Omit “at least 30 days have elapsed from the time the written
23 explanation or advice as to agreement was given”, substitute “the period
24 of 30 days, starting on the day the credit provider gives the written
25 explanation or advice as to agreement, has expired”.

26 **36 At the end of subsection 38(6) of the *National Credit Code***

27 Add:

28 Criminal penalty: 50 penalty units.

29 **37 Subsection 38(9) of the *National Credit Code***

30 Omit “Subsection (8) is an offence”, substitute “Subsections (6) and (8)
31 are offences”.

1 **38 Division 6 of Part 2 of the *National Credit Code***

2 Repeal the Division, substitute:

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

5 **40 Changes etc. under contracts**

6 If:

7 (a) there is:

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

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

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

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

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

19 **39 Subsection 71(1) of the *National Credit Code***

20 Omit “under a credit contract”, substitute “under an existing credit
21 contract”.

22 **40 Subsection 83(1) of the *National Credit Code* (penalty)**

23 Repeal the penalty.

24 **41 Subsection 83(3) of the *National Credit Code***

25 Omit “after the request”, substitute “after the day the request”.

26 **42 Subsection 83(5) of the *National Credit Code***

27 Repeal the subsection (not including the note), substitute:

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

29 **43 Subsection 87(2) of the *National Credit Code***

1 Omit “direct debit default notice under this section within 10 business
2 days”, substitute “notice, complying with this section, within 14 days”.

3 **44 Subsection 87(3) of the *National Credit Code***

4 Omit “direct debit default”.

5 **45 Paragraphs 88(5)(a) and (d) of the *National Credit Code***

6 Omit “believes on reasonable grounds”, substitute “reasonably
7 believes”.

8 **46 Subsection 88(6) of the *National Credit Code***

9 Omit “believes on reasonable grounds”, substitute “reasonably
10 believes”.

11 **47 Subsection 89(1) of the *National Credit Code***

12 After “a default notice”, insert “under section 88”.

13 **48 Paragraphs 93(1)(c), (2)(a) and (2)(d) of the *National Credit*
14 *Code***

15 Omit “believes on reasonable grounds”, substitute “reasonably
16 believes”.

17 **49 Subsection 95(1) of the *National Credit Code***

18 Omit “The default notice or demand for payment”, substitute “A default
19 notice under section 88 or a demand for payment under section 90”.

20 **50 Subsection 98(1) of the *National Credit Code***

21 Omit “within 7 days”, substitute “, within 7 days after the day the notice
22 is given to the mortgagor,”.

23 **51 Section 206 of the *National Credit Code***

24 Repeal the section.
25

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2 **Part 7—Technical corrections**

3 ***National Consumer Credit Protection Act 2009***

4 **52 Section 129**

5 Omit “128(1)(c)”, substitute “128(c)”.

6 Note: This item fixes an incorrect cross-reference.

7 **53 Subsection 130(1)**

8 Omit “128(1)(d)”, substitute “128(d)”.

9 Note: This item fixes an incorrect cross-reference.

10 **54 Paragraph 181(b)**

11 After “order under”, insert “section”.

12 **55 Subparagraph 88(3)(g)(i) of the *National Credit Code***

13 Omit “or”, substitute “and”.

14 **56 Subsection 127(2) of the *National Credit Code***

15 Omit “*tied continuing credit* contract”, substitute “*tied continuing*
16 *credit contract*”.

17 **57 Section 129 of the *National Credit Code* (heading)**

18 Repeal the heading, substitute:

19 **129 Right to damages under sale contract against both supplier and**
20 **linked credit provider**

21 Note: This item removes a reference to a repealed provision.

22 **58 Section 130 of the *National Credit Code* (heading)**

23 Repeal the heading, substitute:

24 **130 Limits on debtor’s right of action against linked credit provider**

25 Note: This item removes a reference to a repealed provision.

1 **59 Section 131 of the *National Credit Code* (heading)**

2 Repeal the heading, substitute:

3 **131 Liability of supplier to linked credit provider**

4 Note: This item removes a reference to a repealed provision.

5 **60 Section 132 of the *National Credit Code* (heading)**

6 Repeal the heading, substitute:

7 **132 Interest may be awarded**

8 Note: This item removes a reference to a repealed provision.

9 **61 Section 133 of the *National Credit Code* (heading)**

10 Repeal the heading, substitute:

11 **133 Subrogation of credit provider**

12 Note: This item removes a reference to a repealed provision.

13 **62 Subsection 204(1) of the *National Credit Code* (definition**
14 **of *approved external dispute resolution scheme*)**

15 After “has”, insert “the”.

16

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2 **Schedule 2—Reverse mortgages**

3 **Part 1—Definitions**

4 **Division 1—Definition of reverse mortgage**

5 *National Consumer Credit Protection Act 2009*

6 **1 Subsection 5(1)**

7 Insert:

8 *reverse mortgage* has the same meaning as in section 13A of the
9 National Credit Code.

10 **2 At the end of Part 1 of the *National Credit Code***

11 Add:

12 **13A Reverse mortgages**

- 13 (1) For the purposes of this Code, an arrangement is a *reverse*
14 *mortgage* if the arrangement involves a credit contract, except a
15 bridging finance contract, and a mortgage over a dwelling or land
16 securing a debtor's obligations under the contract and either:
17 (a) the conditions in subsections (2) and (3) are met; or
18 (b) the arrangement is of a kind declared by ASIC under
19 subsection (4) and is made on or after the commencement of
20 that declaration.

21 *Conditions*

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

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

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

4 *Declarations by ASIC*

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

9 **3 Subsection 204(1) of the *National Credit Code***

10 Insert:

11 *reverse mortgage*: see section 13A.

12 **Division 2—Other definitions**

13 ***National Consumer Credit Protection Act 2009***

14 **4 Subsection 5(1)**

15 Insert:

16 *reverse mortgage information statement* means a document
17 relating to reverse mortgages that complies with the regulations.

18 **5 Subsection 204(1) of the *National Credit Code***

19 Insert:

20 *bridging finance contract*: a credit contract is a *bridging finance*
21 *contract* if:

- 22 (a) when the contract is made, the debtor:
23 (i) reasonably expects to receive a lump sum before the
24 term of the contract ends; and
25 (ii) intends to discharge the debtor's obligations under the
26 contract so far as possible with that sum; and
27 (b) the conditions (if any) prescribed by the regulations are met.

28 **6 Subsection 204(1) of the *National Credit Code***

29 Insert:

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2 **Part 2—Provisions applying to licensees**

3 *National Consumer Credit Protection Act 2009*

4 **9 At the end of section 133**

5 Add:

6 Note: Sections 178 and 179 provide for remedies for anyone who suffers, or
7 is likely to suffer, loss or damage because of a breach of this section.
8 For example, if a consumer makes an unsuitable credit contract with a
9 licensee, rather than making a not unsuitable credit contract for a
10 reverse mortgage, a person who suffered, or is likely to suffer, loss as
11 a result may be able to get court orders under section 178 or 179 to put
12 the person in a position like the one they would have been in had the
13 consumer entered into the contract for the reverse mortgage.

14 **10 Before Part 3-3**

15 Insert:

16 **Part 3-2D—Licensees and reverse mortgages**

17

18 **133DA Guide to this Part**

19

20

This Part has rules that apply to licensees that provide credit services or are credit providers.

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Before providing credit assistance, or entering into a credit contract, for a reverse mortgage, licensees must provide projections of the debtor's equity in the property that may be covered by the reverse mortgage.

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26

Licensees must also make reverse mortgage information statements available on their websites and on request.

27

28

Licensees must not inaccurately use terms like "reverse mortgage" in making representations about credit contracts and mortgages.

1 **133DB Giving projections of equity before providing credit**
2 **assistance or entering credit contract**

3 *Requirement to give projections*

- 4 (1) Before a licensee makes a preliminary assessment for the purposes
5 of paragraph 115(1)(c) or (2)(a), or an assessment for the purposes
6 of paragraph 128(c), in connection with a credit contract with a
7 consumer for a reverse mortgage, the licensee must:
8 (a) show the consumer in person projections that:
9 (i) relate to the value of the dwelling or land that may
10 become reverse mortgaged property, and the consumer's
11 indebtedness, over time if the consumer were to enter
12 into a contract for a reverse mortgage; and
13 (ii) are made in accordance with the regulations by using a
14 website approved by ASIC; and
15 (b) give the consumer a printed copy of the projections; and
16 (c) tell the consumer in person the things (if any) that relate to
17 reverse mortgages and are prescribed by the regulations; and
18 (d) give the consumer a reverse mortgage information statement.

19 Civil penalty: 2,000 penalty units.

20 *Offence*

- 21 (2) A person commits an offence if:
22 (a) the person is subject to a requirement under subsection (1);
23 and
24 (b) the person engages in conduct; and
25 (c) the person's conduct breaches the requirement.

26 Criminal penalty: 50 penalty units.

27 *Defences for not giving projections*

- 28 (3) For the purposes of paragraphs (1)(a) and (b), and of subsection (2)
29 so far as it relates to either of those paragraphs, it is a defence if the
30 licensee reasonably believes that:
31 (a) another person has:
32 (i) shown the consumer in person projections described in
33 paragraph (1)(a); and

- 1 (ii) given the consumer a printed copy of the projections;
2 and
3 (b) the projections are the same, or substantially the same, as
4 those paragraph (1)(a) requires the licensee to show the
5 consumer.

6 Note: For the purposes of subsection (2), a defendant bears an evidential
7 burden in relation to the matter in subsection (3) (see subsection
8 13.3(3) of the *Criminal Code*).

- 9 (4) For the purposes of paragraphs (1)(a) and (b), and of subsection (2)
10 so far as it relates to either of those paragraphs, it is a defence if the
11 circumstances prescribed by the regulations exist.

12 Note: For the purposes of subsection (2), a defendant bears an evidential
13 burden in relation to the matter in subsection (4) (see subsection
14 13.3(3) of the *Criminal Code*).

15 *Defence for not giving reverse mortgage information statement*

- 16 (5) For the purposes of paragraph (1)(d), and of subsection (2) so far
17 as it relates to that paragraph, it is a defence if the licensee
18 reasonably believes that another person has given the consumer a
19 reverse mortgage information statement in the last 90 days.

20 Note: For the purposes of subsection (2), a defendant bears an evidential
21 burden in relation to the matter in subsection (5) (see subsection
22 13.3(3) of the *Criminal Code*).

23 **133DC Making reverse mortgage information statement available**
24 **on website of credit provider or credit assistance provider**

25 *When this section applies*

- 26 (1) This section applies if a licensee:
27 (a) is:
28 (i) a person who provides, or holds himself or herself out
29 as able to provide, credit assistance relating to credit
30 contracts for reverse mortgages; or
31 (ii) a credit provider under one or more credit contracts for
32 a reverse mortgages; and
33 (b) has a website that provides information about such contracts.

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Requirement

- (2) The licensee must, in accordance with any requirements prescribed by the regulations, give the consumer a reverse mortgage information statement.

Civil penalty: 2,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

Defences

- (4) For the purposes of subsections (2) and (3), it is a defence if:
- (a) the licensee has given the consumer, or reasonably believes that someone else has given the consumer, a reverse mortgage information statement; or
 - (b) the licensee:
 - (i) is a credit provider under one or more credit contracts for reverse mortgages; and
 - (ii) reasonably believes that the consumer would not be eligible to make a credit contract with the licensee for a reverse mortgage; or
 - (c) there exist circumstances prescribed by regulations as circumstances in which the licensee is not required to give the consumer a reverse mortgage information statement.

Note: For the purposes of subsection (3), a defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

1 **133DE Representations that use the term “reverse mortgage” etc.**

2 *Credit service providers*

3 (1) A licensee must not, in providing or offering to provide a credit
4 service to a consumer, use either of the following terms (either
5 alone or in combination with other words or letters) in a
6 representation to the consumer about an actual or proposed credit
7 contract or mortgage:

8 (a) the phrase “reverse mortgage”;

9 (b) another term (whether or not in English) of similar import to
10 the phrase “reverse mortgage”.

11 Civil penalty: 2,000 penalty units.

12 *Credit providers*

13 (2) A licensee that is a credit provider must not use either of the
14 following terms (either alone or in combination with other words
15 or letters) in a representation to a consumer about an actual or
16 proposed credit contract or mortgage:

17 (a) the phrase “reverse mortgage”;

18 (b) another term (whether or not in English) of similar import to
19 the phrase “reverse mortgage”.

20 Civil penalty: 2,000 penalty units.

21 *Defence*

22 (3) For the purposes of subsections (1) and (2), it is a defence if:

23 (a) the representation truly represents that a credit contract:

24 (i) is or will be a credit contract for a reverse mortgage; or

25 (ii) is not or will not be a credit contract for a reverse
26 mortgage; or

27 (b) the representation truly represents that a mortgage:

28 (i) is or will be part of a reverse mortgage; or

29 (ii) is not or will not be part of a reverse mortgage.

30 **11 At the end of section 179**

31 Add:

Presumption in favour of certain orders

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- (6) Subsection (7) applies if:
- (a) the defendant is a credit provider who has contravened section 133 by entering into, or increasing the credit limit of, a credit contract (the *illegal contract*) that is not a credit contract for a reverse mortgage; and
 - (b) the debtor's obligations under the illegal contract are secured by a mortgage over the debtor's principal place of residence; and
 - (c) the court is satisfied that, at any time in the period in which an assessment needed to be made to comply with section 128 in relation to the illegal contract:
 - (i) there was a credit provider (whether the defendant or not) offering credit through a reverse mortgage (whether or not the credit provider actually made such an offer to the debtor); and
 - (ii) the debtor would have been eligible to enter into a credit contract for the reverse mortgage; and
 - (iii) the credit contract for the reverse mortgage would not have been unsuitable for the debtor under section 133; and
 - (d) the plaintiff, or ASIC on behalf of the plaintiff, applies for an order under this section to let the plaintiff reside in the place to prevent or reduce loss or damage suffered or likely to be suffered by the plaintiff vacating the place.
- (7) The court must consider the order appropriate to prevent or reduce the loss or damage and make the order unless the court is satisfied that the order would adversely affect a person other than the debtor and the defendant.

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Part 3—Provisions applying to credit providers generally

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National Consumer Credit Protection Act 2009

5

12 After subsection 17(15) of the *National Credit Code*

6

Insert:

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Provisions for person other than debtor to occupy reverse mortgaged property

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9

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

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

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

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

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

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Note: Other provisions contained in the contract document may, for example, limit the kinds of persons whom the debtor may nominate to the credit provider as persons who are to be allowed to occupy the property.

30

13 After section 18 of the *National Credit Code*

31

Insert:

1 **18A Provisions that must not be included in credit contract for**
2 **reverse mortgage**

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

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

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

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

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

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

22 (d) the debtor failing to pay a cost to a person other than the
23 credit provider;

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

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

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

31 **18B Disclosure if credit contract for reverse mortgage does not**
32 **protect tenancy of person other than debtor**

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

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

5 Criminal penalty: 50 penalty units.

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

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

12 Criminal penalty: 50 penalty units.

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

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

16 **18C Independent legal advice before entry into credit contract for**
17 **reverse mortgage**

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

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

25 (3) The penalties for offences described in subsection (2) must not be
26 more than 50 penalty units for an individual or 250 penalty units
27 for a body corporate.

28 (4) The civil penalties described in subsection (2) must not be more
29 than 500 penalty units for an individual or 2,500 penalty units for a
30 body corporate.

31 **14 At the end of section 22 of the *National Credit Code***

32 Add:

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

3 **15 At the end of section 26 of the *National Credit Code***

4 Add:

5 (6) A credit contract for a reverse mortgage may not prohibit an early
6 payment that:

7 (a) is made in the circumstances described in paragraph
8 86A(1)(a); and

9 (b) is of the amount described in paragraph 86A(1)(b).

10 **16 After paragraph 33(2)(a) of the *National Credit Code***

11 Insert:

12 (aa) in the case of a continuing credit contract for a reverse
13 mortgage—12 months; or

14 **17 After paragraph 33(2)(b) of the *National Credit Code***

15 Insert:

16 (ba) in the case of a reverse mortgage not involving a continuing
17 credit contract—12 months; or

18 **18 After section 67 of the *National Credit Code***

19 Insert:

20 **67A Changes to tenancy protection in credit contracts for reverse**
21 **mortgages**

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

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

27 (b) vary the contract so as to limit:

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

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

3 **19 Division 1 of Part 5 of the *National Credit Code* (heading)**

4 Repeal the heading, substitute:

5 **Division 1—Ending of credit contract by debtor etc.**

6 **Subdivision A—Paying out contract etc.**

7 **20 After section 86 of the *National Credit Code***

8 Insert:

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

11 **86A Application of this Subdivision**

- 12 (1) This Subdivision applies in relation to a credit contract for a
13 reverse mortgage and a mortgage securing the debtor's obligations
14 under the contract if:
- 15 (a) the debtor's accrued liability (whether or not due and
16 payable) under the contract is more than the amount (the
17 *adjusted market value*) worked out under subsection (2) for
18 the reverse mortgaged property; and
 - 19 (b) the credit provider receives an amount at least equal to the
20 adjusted market value for the reverse mortgaged property
21 either:
 - 22 (i) as a payment accepted from the debtor under the credit
23 contract; or
 - 24 (ii) as proceeds of the sale by the credit provider of the
25 reverse mortgaged property.
- 26 (2) The adjusted market value for the reverse mortgaged property is
27 the amount worked out by:
- 28 (a) working out the market value of the property in accordance
29 with the regulations (if any); and
 - 30 (b) adjusting that value in accordance with the regulations (if
31 any).

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

3 **86B Discharge of debtor's obligations under credit contract and**
4 **discharge of mortgage**

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

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

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

10 **86C Credit provider must pay debtor excess of receipt over adjusted**
11 **market value for reverse mortgaged property**

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

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

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

19 **86D Credit provider must not demand or accept further payments**

20 (1) The credit provider must not:
21 (a) purport to require payment under the credit contract; or
22 (b) accept a payment purportedly under the credit contract.

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

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

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

30 **86E Cases in which sections 86B, 86C and 86D do not apply**

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

- 1 (a) the market value of the reverse mortgaged property was
2 reduced by deliberate damage to the property caused by the
3 debtor or a person who occupied the property with the
4 debtor's consent; or
5 (b) the debtor engaged in fraud, or made a misrepresentation,
6 relating to the reverse mortgage before, at or after the time
7 the credit contract was made; or
8 (c) circumstances prescribed by the regulations exist.

9 **86F Relationship between this Subdivision and other provisions**

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

12 **Subdivision C—Notice of first direct debit default**

13 **21 Subsections 88(1) and (2) of the *National Credit Code***

14 Repeal the subsections, substitute:

15 *Enforcement of credit contract*

- 16 (1) A credit provider must not begin enforcement proceedings against
17 a debtor in relation to a credit contract unless:
18 (a) the debtor is in default under the credit contract; and
19 (b) the credit provider has given the debtor, and any guarantor, a
20 default notice, complying with this section, allowing the
21 debtor a period of at least 30 days from the date of the notice
22 to remedy the default; and
23 (c) the default has not been remedied within that period; and
24 (d) if the credit contract is for a reverse mortgage, the credit
25 provider has spoken to one of the following persons by
26 telephone or in person in that period and has thus both
27 confirmed that the debtor received the default notice and
28 informed the person of the consequences of failure to remedy
29 the default, or has made reasonable efforts to do so:
30 (i) the debtor;
31 (ii) a practising lawyer representing the debtor;
32 (iii) a person with a power of attorney relating to the
33 debtor's financial affairs.

Schedule 2 Reverse mortgages

Part 3 Provisions applying to credit providers generally

1 Criminal penalty: 50 penalty units.

2 Note: If a debtor or guarantor has given a credit provider a hardship notice
3 or a postponement request there may be extra requirements that the
4 credit provider must comply with before beginning enforcement
5 proceedings: see sections 89A and 94.

6 *Enforcement of mortgage*

- 7 (2) A credit provider must not begin enforcement proceedings against
8 a mortgagor to recover payment of money due or take possession
9 of, sell, appoint a receiver for or foreclose in relation to property
10 subject to a mortgage, unless:
- 11 (a) the mortgage is in default under the mortgage; and
 - 12 (b) the credit provider has given the mortgagor a default notice,
13 complying with this section, allowing the mortgagor a period
14 of at least 30 days from the date of the notice to remedy the
15 default; and
 - 16 (c) the default has not been remedied within that period.
 - 17 (d) if the mortgage secures an obligation under a credit contract
18 for a reverse mortgage, the credit provider has spoken to one
19 of the following persons by telephone or in person in that
20 period and has thus both confirmed that the mortgagor
21 received the default notice and informed the person of the
22 consequences of failure to remedy the default, or has made
23 reasonable efforts to do so:
 - 24 (i) the mortgagor;
 - 25 (ii) a practising lawyer representing the mortgagor;
 - 26 (iii) a person with a power of attorney relating to the
27 mortgagor's financial affairs.

28 Criminal penalty: 50 penalty units.

29 Note: If a mortgagor has given a credit provider a postponement request
30 there may be extra requirements that the credit provider must comply
31 with before beginning enforcement proceedings: see section 94.

32 **22 After subsection 88(7) of the *National Credit Code***

33 Insert:

34 *Some defaults are not a basis for a default notice*

- 35 (7A) So far as a notice purporting to be a default notice relates to an
36 alleged default under a credit contract for a reverse mortgage that
-

1 is an event described in subsection 18A(3), the notice is not a
2 default notice for the purposes of any of the following provisions:

- 3 (a) subsections (1) and (2) of this section;
4 (b) section 93.

5 Note: This has the effect that:

- 6 (a) if the credit provider begins enforcement proceedings relating to
7 the alleged default the credit provider will contravene
8 subsection (1) or (2) of this section (unless subsection (5) of this
9 section applies); and
10 (b) section 93 will affect the operation of an acceleration clause on
11 the basis of the alleged default.

12 (7B) To avoid doubt, subsection (7A) does not affect the status of the
13 notice as a default notice for the purposes of section 89, 94 or 95.

14 **23 At the end of Division 2 of Part 5 of the *National Credit***
15 ***Code***

16 Add:

17 **93A Extra requirements for enforcing reverse mortgage if debtor's**
18 **liability exceeded value of reverse mortgaged property**

- 19 (1) This section applies in relation to a credit contract for a reverse
20 mortgage and a mortgage securing the debtor's obligations under
21 the contract if:
22 (a) Subdivision B of Division 1 applies in relation to the contract
23 and the mortgage (see section 86A); and
24 (b) just before the amount was received by the credit provider as
25 described in paragraph 86A(1)(b), the debtor's accrued
26 liability described in paragraph 86A(1)(a) exceeded that
27 amount; and
28 (c) one or more of the conditions in section 86E are met (so that
29 sections 86B, 86C and 86D do not apply).
- 30 (2) If section 88 requires the credit provider to give the debtor or
31 mortgagor a default notice before beginning enforcement
32 proceedings to recover any of the excess, the credit provider must
33 not begin them unless:
34 (a) the default notice given to the debtor or mortgagor specifies:
35 (i) the amount received by the credit provider; and

- 1 (ii) the debtor's accrued liability just before that amount
2 was received; and
3 (iii) the conditions in section 86E that are met; and
4 (b) if the credit provider knows of a practising lawyer acting for
5 the debtor or mortgagor and the credit provider gave the
6 debtor or mortgagor the default notice by means other than
7 giving it to the lawyer—the credit provider has given the
8 lawyer a copy of the default notice at the same time as, or as
9 soon as practicable after, giving the debtor or mortgagor the
10 notice.

11 Criminal penalty: 50 penalty units.

12 **24 After paragraph 111(1)(h) of the *National Credit Code***

13 Insert:

14 (ha) subsection 17(15A);

15 **25 After paragraph 111(2)(e) of the *National Credit Code***

16 Insert:

17 (ea) subsection 17(15A);

18 **26 After section 185 of the *National Credit Code***

19 Insert:

20 **185A Records of nominations of persons to occupy reverse**
21 **mortgaged properties**

- 22 (1) A credit provider under a credit contract for a reverse mortgage
23 that provides for the debtor to nominate to the credit provider a
24 person who is to be allowed to occupy the reverse mortgaged
25 property, and to revoke such a nomination, must keep in
26 accordance with the regulations a record of any such nominations
27 and revocations.
- 28 (2) A person commits an offence if:
29 (a) the person is subject to a requirement under subsection (1);
30 and
31 (b) the person engages in conduct; and
32 (c) the person's conduct contravenes the requirement.

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Schedule 3—Small amount credit contracts

National Consumer Credit Protection Act 2009

1 Subsection 5(1)

6

Insert:

7

small amount credit contract: a credit contract is a *small amount credit contract* if:

8

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(a) the contract is not a continuing credit contract; and

10

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

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(c) the debtor's obligations under the contract are not secured by a mortgage; and

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(d) the credit limit of the contract is \$2,000 (or such other amount as is prescribed by the regulations) or less; and

14

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(e) the term of the contract is 2 years (or such other number of years as is prescribed by the regulations) or less; and

16

17

(f) the contract meets any other requirements prescribed by the regulations.

18

2 At the end of section 111

19

Add:

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Division 7 imposes requirements in relation to the website of a licensee who provides credit assistance in relation to small amount credit contracts. It also restricts a licensee from providing credit assistance to a consumer who is a debtor under a small amount credit contract.

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25

3 At the end of Part 3-1

26

Add:

27

1 **Division 7—Small amount credit contracts**

2 **124A Licensee’s website must comply with requirements prescribed**
3 **by the regulations**

4 *Requirement*

5 (1) If a licensee has a website that represents that the licensee
6 provides, or is able to provide, credit assistance to consumers in
7 relation to small amount credit contracts, the licensee must ensure
8 that the website complies with the requirements prescribed by the
9 regulations.

10 Civil penalty: 2,000 penalty units.

11 *Offence*

12 (2) A person commits an offence if:
13 (a) the person is subject to a requirement under subsection (1);
14 and
15 (b) the person engages in conduct; and
16 (c) the conduct contravenes the requirement.

17 Criminal penalty: 50 penalty units.

18 **124B Prohibition on suggesting, or assisting with, small amount**
19 **credit contracts**

20 *Prohibition*

21 (1) A licensee must not provide credit assistance to a consumer by
22 suggesting that the consumer apply, or assisting the consumer to
23 apply, for a small amount credit contract with a particular credit
24 provider if the licensee knows, or is reckless as to whether, the
25 consumer is a debtor under another small amount credit contract.

26 Civil penalty: 2,000 penalty units.

27 *Offence*

28 (2) A licensee commits an offence if:

- 1 (a) the licensee provides credit assistance to a consumer by
2 suggesting that the consumer apply, or assisting the consumer
3 to apply, for a small amount credit contract with a particular
4 credit provider; and
5 (b) the consumer is a debtor under another small amount credit
6 contract.

7 Criminal penalty: 50 penalty units.

- 8 (3) For the purposes of subsections (1) and (2), it is a defence if the
9 licensee reasonably believes that the consumer is not a debtor
10 under another small amount credit contract.

11 Note: For the purposes of subsection (2), a defendant bears an evidential
12 burden in relation to the matter in subsection (3) (see subsection
13 13.3(3) of the *Criminal Code*).

14 **124C Prohibition on suggesting, or assisting with, credit limit** 15 **increases**

16 *Prohibition*

- 17 (1) A licensee must not provide credit assistance to a consumer who is
18 a debtor under a small amount credit contract by suggesting that
19 the consumer apply, or assisting the consumer to apply, for an
20 increase to the credit limit of the contract.

21 Civil penalty: 2,000 penalty units.

22 *Offence*

- 23 (2) A person commits an offence if:
24 (a) the person is subject to a requirement under subsection (1);
25 and
26 (b) the person engages in conduct; and
27 (c) the conduct contravenes the requirement.

28 Criminal penalty: 50 penalty units.

29 **4 After Part 3-2B**

30 Insert:

1 Criminal penalty: 50 penalty units.

2 **133CB Credit providers must not enter into small amount credit**
3 **contracts in certain circumstances**

4 *Prohibition*

5 (1) A licensee must not enter into, or offer to enter into, a small
6 amount credit contract with a consumer who will be a debtor under
7 the contract if the licensee knows, or is reckless as to whether, the
8 consumer is a debtor under another small amount credit contract.

9 Civil penalty: 2,000 penalty units.

10 *Offence*

11 (2) A licensee commits an offence if:
12 (a) the licensee enters into, or offers to enter into, a small amount
13 credit contract with a consumer; and
14 (b) the consumer is, or will be, a debtor under that contract; and
15 (c) the consumer is a debtor under another small amount credit
16 contract.

17 Criminal penalty: 50 penalty units.

18 (3) For the purposes of subsections (1) and (2), it is a defence if the
19 licensee reasonably believes that the consumer is not a debtor
20 under another small amount credit contract.

21 Note: For the purposes of subsection (2), a defendant bears an evidential
22 burden in relation to the matter in subsection (3) (see subsection
23 13.3(3) of the *Criminal Code*).

24 **133CC Credit providers must not refinance credit provided under**
25 **small amount credit contracts**

26 *Prohibition*

27 (1) A licensee must not enter into, or offer to enter into, a small
28 amount credit contract with a consumer who will be a debtor under
29 the contract if some or all of the credit provided under the contract
30 is to refinance some or all of the credit provided to the consumer
31 under another small amount credit contract.

1 Civil penalty: 2,000 penalty units.

2 *Offence*

3 (2) A person commits an offence if:

- 4 (a) the person is subject to a requirement under subsection (1);
5 and
6 (b) the person engages in conduct; and
7 (c) the conduct contravenes the requirement.

8 Criminal penalty: 50 penalty units.

9 (3) For the purposes of subsections (1) and (2), it is a defence if the
10 licensee reasonably believes that none of the credit provided under
11 the small amount contract is to refinance any of the credit provided
12 to the consumer under another small amount credit contract.

13 Note: For the purposes of subsection (2), a defendant bears an evidential
14 burden in relation to the matter in subsection (3) (see subsection
15 13.3(3) of the *Criminal Code*).

16 **133CD Credit providers must not increase the credit limit of small**
17 **amount credit contracts**

18 *Prohibition*

19 (1) A licensee who is a credit provider under a small amount credit
20 contract must not increase the credit limit of the contract.

21 Civil penalty: 2,000 penalty units.

22 *Offence*

23 (2) A person commits an offence if:

- 24 (a) the person is subject to a requirement under subsection (1);
25 and
26 (b) the person engages in conduct; and
27 (c) the conduct contravenes the requirement.

28 Criminal penalty: 50 penalty units.

29 **5 Paragraph 180(1)(b)**

30 Repeal the paragraph, substitute:

- 1 (b) the engaging in the activity contravenes any of the following:
2 (i) section 29 (which requires the holding of a licence);
3 (ii) section 124B or 124C (which deal with credit assistance
4 in relation to small amount credit contracts);
5 (iii) section 133CB, 133CC or 133CD (which deal with
6 entering into small amount credit contracts etc.);
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Schedule 4—Caps on costs etc. for credit contracts

National Consumer Credit Protection Act 2009

1 Subsections 17(4) to (6) of the *National Credit Code*

Omit “The contract”, substitute “In the case of a credit contract other than a small amount credit contract, the contract”.

2 Section 23 of the *National Credit Code* (heading)

Repeal the heading, substitute:

23 Prohibited monetary obligations—general

3 Subsection 23(1) of the *National Credit Code*

After “credit contract”, insert “(other than a small amount credit contract)”.

4 After section 23 of the *National Credit Code*

Insert:

23A Prohibited monetary obligations—small amount credit contracts

- (1) A small amount credit contract must not impose a monetary liability on the debtor:
 - (a) in respect of an interest charge (including a default rate of interest) under the contract; or
 - (b) in respect of a fee or charge prohibited by this Code; or
 - (c) in respect of an amount of a fee or charge exceeding the amount that may be charged consistently with this Code.

- (2) If a provision of a small amount credit contract imposes a monetary liability prohibited by subsection (1) then:
 - (a) each provision (the *void provisions*) of the contract that imposes a monetary liability of a kind referred to in that subsection (whether or not the liability is imposed

- 1 consistently with this Code) is void to the extent that the
2 provision relates to the liability; and
3 (b) the debtor may recover as a debt due to the debtor any
4 amount paid to the credit provider under the void provisions
5 to the extent that the amount relates to the liability.

6 **5 Section 24 of the *National Credit Code* (heading)**

7 Repeal the heading, substitute:

8 **24 Offences related to prohibited monetary obligations—credit**
9 **providers**

10 **6 After subsection 24(1) of the *National Credit Code***

11 Insert:

- 12 (1A) A credit provider must not:
13 (a) enter into a small amount credit contract on terms imposing a
14 monetary liability prohibited by subsection 23A(1); or
15 (b) require or accept payment of an amount in respect of a
16 monetary liability that cannot be imposed consistently with
17 this Code.

18 Criminal penalty: 100 penalty units.

19 **7 Subsection 24(2) of the *National Credit Code***

20 Omit “Subsection (1) is an offence”, substitute “Subsections (1) and
21 (1A) are offences”.

22 **8 After section 24 of the *National Credit Code***

23 Insert:

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

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

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

3 Criminal penalty: 50 penalty units.

4 (2) If a person provides credit assistance to a consumer that is
5 prohibited by subsection (1):

6 (a) the consumer is not liable (and is taken never to have been
7 liable) to pay any fees or charges to the person in relation to:

8 (i) the credit assistance; or

9 (ii) any other services provided by the person in connection
10 with the credit assistance; and

11 (b) the consumer may recover as a debt due to the consumer the
12 amount of any such fees or charges paid by the consumer to
13 the person.

14 **9 After section 27 of the *National Credit Code***

15 Insert:

16 **27A Application of this Division**

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

18 **10 Section 31 of the *National Credit Code***

19 Before “The regulations”, insert “(1)”.

20 **11 At the end of section 31 of the *National Credit Code***

21 Add:

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

23 **12 After section 31 of the *National Credit Code***

24 Insert:

25 **31A Restrictions on fees and charges for small amount credit 26 contracts**

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

29 (a) a fee or charge (a *permitted establishment fee*) that reflects
30 the credit provider’s reasonable costs of determining the

- 1 application for credit and the initial administrative costs of
2 providing the credit under the contract;
- 3 (b) a fee or charge (a *permitted monthly fee*) that is payable on a
4 monthly basis starting on the day the contract is entered into;
- 5 (c) a fee or charge that is payable in the event of a default in
6 payment under the contract;
- 7 (d) a government fee, charge or duty payable in relation to the
8 contract.

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

11 *Maximum amount of permitted establishment fee*

- 12 (2) The amount of a permitted establishment fee that may be imposed
13 or provided for under a small amount credit contract must not
14 exceed 10% of the adjusted credit amount in relation to the
15 contract.

16 *Maximum amount of permitted monthly fee*

- 17 (3) The amount of a permitted monthly fee that may be imposed or
18 provided for under a small amount credit contract must not exceed
19 2% of the adjusted credit amount in relation to the contract.

20 **13 After Division 4 of Part 2 of the *National Credit Code***

21 Insert:

22 **Division 4A—Annual cost rate of certain credit contracts**

23 **32A Prohibitions relating to credit contracts if the annual cost rate**
24 **exceeds 48%**

25 *Entering into a credit contract*

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

28 Criminal penalty: 50 penalty units.

Provision of credit assistance

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

Criminal penalty: 50 penalty units.

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

Application

- (4) This section does not apply if:
- (a) the credit provider is an ADI; or
 - (b) the credit contract is a small amount credit contract or bridging finance contract.

32B Calculation of annual cost rate

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

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

where:

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

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

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

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

8
$$\sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

9 where:

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

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

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

- 16 (a) if the credit contract does not provide for a constant interval
17 between contractual repayments—an interval of any kind
18 selected by the credit provider as the unit of time; or
19 (b) otherwise—the interval between contractual repayments that
20 will have elapsed since the first amount of credit is provided
21 under the credit contract.

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

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

- 26 (a) the time when the first amount of credit is provided under the
27 credit contract; and
28 (b) the time when the last repayment is to be made under the
29 contract.

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Credit cost amount

- (3) The **credit cost amount** for the credit contract is the sum of the following amounts if they are ascertainable:
 - (a) the amount of credit fees and charges payable in relation to the contract;
 - (b) the amount of a fee or charge payable by the debtor (whether or not payable under the contract) to:
 - (i) any person (whether or not associated with the credit provider) for an introduction to the credit provider; or
 - (ii) any person (whether or not associated with the credit provider) for any service if the person has been introduced to the debtor by the credit provider; or
 - (iii) the credit provider for any service relating to the provision of credit, other than a service referred to in subparagraph (ii);
 - (c) any other amount prescribed by the regulations.
- (4) For the purposes of subsection (3), the amounts referred to in that subsection:
 - (a) include an amount that is payable even if the credit is not provided; but
 - (b) do not include an amount of a government fee, charge or duty payable in relation to the credit contract.

Tolerances and assumptions etc.

- (5) The annual cost rate must be correct to at least the nearest one hundredth of 1% per annum.
- (6) In calculating the annual cost rate, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.

Example: If repayments are to be made on a fixed day each month, it may be assumed that repayments will be made on that day each month even though the credit contract provides for payment on the preceding or succeeding business day when the due date is not a business day.
- (7) The tolerances and assumptions under sections 180 to 182 apply to the calculation of the annual cost rate.

1 *Continuing credit contracts*

- 2 (8) If the credit contract is a continuing credit contract, the following
3 assumptions also apply to the calculation of the annual cost rate of
4 the contract:
- 5 (a) that the debtor has drawn down the maximum amount of
6 credit that the credit provider has agreed to provide under the
7 contract;
 - 8 (b) that the debtor will pay the minimum repayments specified in
9 the contract;
 - 10 (c) if credit is provided in respect of payment by the credit
11 provider to a third person in relation to goods or services or
12 cash supplied by that third person to the debtor from time to
13 time—that the debtor will not be supplied with any further
14 goods or services or cash;
 - 15 (d) if credit is provided in respect of cash supplied by the credit
16 provider to the debtor from time to time—that the debtor will
17 not be supplied with any further cash.

18 **14 Subsection 34(6) of the *National Credit Code***

19 Omit “A statement”, substitute “In the case of a credit contract other
20 than a small amount credit contract, a statement”.

21 **15 After Division 5 of Part 2 of the *National Credit Code***

22 Insert:

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

25 **39A Limit on the application of amount of credit provided under a**
26 **small amount credit contract**

- 27 (1) No part of the amount of credit provided under a small amount
28 credit contract may be applied to pay an amount (the *prohibited*
29 *credit amount*) to:
- 30 (a) the credit provider; or
 - 31 (b) a person prescribed by the regulations.
- 32 (2) Subsection (1) does not apply to:

- 1 (a) an amount of a permitted establishment fee, or a permitted
2 monthly fee, payable in relation to the small amount credit
3 contract; or
4 (b) an amount of a government fee, charge or duty payable in
5 relation to the small amount credit contract; or
6 (c) an amount prescribed by the regulations.
- 7 (3) If subsection (1) is contravened in relation to a small amount credit
8 contract:
9 (a) the debtor is not liable (and is taken never to have been
10 liable) to repay the prohibited credit amount to the credit
11 provider; and
12 (b) the debtor may recover as a debt due to the debtor any
13 amount paid to the credit provider to the extent that it relates
14 to the prohibited credit amount.

15 **39B Limit on amount that may be recovered if there is default under**
16 **a small amount credit contract**

- 17 (1) If there is a default in payment under a small amount credit
18 contract, the maximum amount that may be recovered (whether by
19 repayments under the contract or otherwise) by the credit provider
20 in relation to the contract must not exceed an amount that is twice
21 the adjusted credit amount in relation to the contract.
- 22 (2) Any provision of the small amount credit contract that confers a
23 greater right is void to the extent that it does so. If an amount is in
24 fact recovered in excess of this limitation, it may be recovered
25 back.
- 26 (3) This section does not apply to enforcement expenses.

27 **16 At the end of subsection 111(1) of the *National Credit***
28 ***Code***

- 29 Add:
30 ; (j) subsection 32A(1).

31 **17 After paragraph 111(2)(f) of the *National Credit Code***

- 32 Insert:
33 (fa) subsection 32A(1);

1 **18 Subsection 114(1) of the *National Credit Code***

2 After “order”, insert “in relation to a credit contract other than a small
3 amount credit contract”.

4 **19 After subsection 114(1) of the *National Credit Code***

5 Insert:

6 (1A) On application being made by a debtor or a guarantor for an order
7 in relation to a small amount credit contract, the maximum penalty
8 that may be imposed by the court for a contravention of a key
9 requirement is an amount not exceeding the sum of the following
10 amounts:

- 11 (a) the amount of the permitted establishment fee payable in
12 relation to the contract;
- 13 (b) the total amount of the permitted monthly fees payable in
14 relation to the contract based on the term of the contract
15 when it was made.

16 **20 Subsection 204(1) of the *National Credit Code***

17 Insert:

18 *adjusted credit amount*, in relation to a small amount credit
19 contract, means the first amount of credit that is, or is to be,
20 provided under the contract but does not include:

- 21 (a) the amount of a permitted establishment fee, or a permitted
22 monthly fee, payable in relation to the contract; and
23 (b) if subsection 39A(1) is contravened in relation to the
24 contract—the prohibited credit amount; and
25 (c) any other amount prescribed by the regulations.

26 **21 Subsection 204(1) of the *National Credit Code***

27 Insert:

28 *annual cost rate* of a credit contract means the annual cost rate of
29 the contract calculated in accordance with section 32B.

30 **22 Subsection 204(1) of the *National Credit Code***

31 Insert:

32 *credit cost amount*: see subsection 32B(3).

1 **23 Subsection 204(1) of the *National Credit Code***

2 Insert:

3 *permitted establishment fee*: see paragraph 31A(1)(a).

4 **24 Subsection 204(1) of the *National Credit Code***

5 Insert:

6 *permitted monthly fee*: see paragraph 31A(1)(b).

7 **25 Subsection 204(1) of the *National Credit Code***

8 Insert:

9 *prohibited credit amount*: see subsection 39A(1).

10 **26 Subsection 204(1) of the *National Credit Code***

11 Insert:

12 *small amount credit contract* has the same meaning as in section 5
13 of the National Credit Act.
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Schedule 5—Consumer leases

4

National Consumer Credit Protection Act 2009

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1 Subsection 5(1) (definition of lessor)

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7

Omit “means the lessor under a consumer lease”, substitute “has the same meaning as in section 204 of the National Credit Code”.

8
9

2 Subsection 5(1) (definition of *value of a credit contract, mortgage, guarantee or consumer lease*)

10

Repeal the definition.

11

3 Subsection 5(1)

12

Insert:

13
14

value of a credit contract, mortgage, guarantee or consumer lease: see section 199.

15

4 Paragraph 147(7)(b)

16

Omit “sections 72 and 94”, substitute “sections 177B and 179H”.

17

5 Subsection 147(7) (note 1)

18

Omit “Note 1”, substitute “Note”.

19

6 Subsection 147(7) (note 2)

20

Repeal the note.

21

7 Subsection 199(2) (table items 2, 3, 6, 7, 9 and 12)

22

Omit “, guarantee or consumer lease”, substitute “or guarantee”.

23

8 Subsection 199(2) (at the end of the table)

24

Add:

14	Section 175F of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed
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		by the regulations—that higher amount.
15	Subsection 175G(6) of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.
16	Section 177D of the National Credit Code	not applicable.
17	Section 177E of the National Credit Code	not applicable.
18	Section 177F of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.
19	Section 179K of the National Credit Code	not applicable.
20	Section 179Q of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.
21	Subsection 179R(3) of the National Credit Code	the order is for an amount that is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.

1 **9 Subsection 199(3)**

2 Omit “*of a credit contract, mortgage, guarantee or consumer lease*”,
3 substitute “of a credit contract, mortgage, guarantee or consumer lease”.

1 **10 Paragraph 200(1)(b)**

2 Omit “or 96”, substitute “, 96, 177D or 179K”.

3 **11 Subsection 76(8) of the *National Credit Code***

4 Repeal the subsection.

5 **12 Subsection 87(6) of the *National Credit Code***

6 Repeal the subsection.

7 **13 Section 92 of the *National Credit Code***

8 Repeal the section.

9 **14 Subsection 173(1) of the *National Credit Code***

10 Repeal the subsection, substitute:

11 (1) A consumer lease must be in the form of a written lease document:

12 (a) signed by the lessor and the lessee; and

13 (b) containing the information required by this Division.

14 (1A) Subject to subsection (2), a consumer lease may consist of one or
15 more separate documents.

16 **15 After subsection 173(2) of the *National Credit Code***

17 Insert:

18 (2A) In the case of a lease document consisting of more than one
19 document, it is sufficient compliance with this section if one of the
20 documents is duly signed and the other documents are referred to
21 in the signed document.

22 **16 After section 173 of the *National Credit Code***

23 Insert:

24 **173A Other forms of consumer lease**

25 (1) The regulations may authorise other ways of making a consumer
26 lease that do not involve a written document.

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

17 After section 174 of the *National Credit Code*

Insert:

174A Alteration of consumer lease document

- (1) An alteration of (including an addition to) a new consumer lease document by the lessor after it is signed by the lessee is ineffective unless the lessee has agreed in writing to the alteration.
- (2) This section does not apply to an alteration having the effect of reducing the lessee's liabilities under the consumer lease.

18 After section 175 of the *National Credit Code*

Insert:

Division 4—Fees and charges**175A Prohibited consumer lease fees or charges**

The regulations may specify:

- (a) consumer lease fees or charges; or
 - (b) classes of consumer lease fees or charges;
- that are prohibited for the purposes of this Code.

175B Fees or charges in relation to third parties*When this section applies*

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

Third party amount ascertainable at time of lessee payment

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

Third party amount not ascertainable at time of lessee payment

- (3) If:

- 1 (a) when the fee or charge is paid by the lessee to the lessor, the
2 third party amount is not ascertainable; and
3 (b) after the fee or charge is paid, the lessor ascertains the third
4 party amount; and
5 (c) the third party amount is less than the amount of the fee or
6 charge paid;
7 then the lessor must refund or credit the difference to the lessee.

8 *Determining third party amount*

- 9 (4) The third party amount is to be determined by:
10 (a) taking into account any discount, rebate or other allowance
11 that is received or receivable by the lessor or a related body
12 corporate (within the meaning of the *Corporations Act 2001*);
13 and
14 (b) disregarding any rebate on tax payable by the lessor or a
15 related body corporate (within the meaning of that Act).

16 **Division 5—Lessor’s obligation to account**

17 **Subdivision A—Ongoing statements of account**

18 **175C Statements of account**

- 19 (1) A lessor must give to the lessee, or arrange for the lessee to be
20 given, periodic statements of account in accordance with this
21 Subdivision.

22 Criminal penalty: 100 penalty units.

- 23 (2) The maximum period for a statement of account is 12 months.

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

- 25 (a) the lessee was in default under the consumer lease during the
26 statement period and the lessor has commenced enforcement
27 proceedings; or
28 (b) the lessee has died or is insolvent and the lessee’s personal
29 representative or trustee in bankruptcy has not requested a
30 statement of account.

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

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

2 **175D Information to be contained in statements of account**

3 A statement of account must contain the information prescribed by
4 the regulations.

5 **175E Statement of amount owing and other matters**

- 6 (1) A lessor must, at the request of a lessee and within the time
7 specified by this section, provide a statement of all or any of the
8 following:
9 (a) any amounts credited to the lessee's account during a period
10 specified in the request;
11 (b) any amounts currently overdue and the date they became due;
12 (c) any amount currently payable and the date it becomes due;
13 (d) any other information prescribed by the regulations.

14 Criminal penalty: 100 penalty units.

- 15 (2) The statement must be given:
16 (a) within 14 days, if all information requested relates to a period
17 1 year or less before the request is given; or
18 (b) within 30 days, if any information requested relates to a
19 period more than 1 year before the request is given.
- 20 (3) A statement under this section may be given orally but if the
21 request for the statement is made in writing the statement must be
22 given in writing.
- 23 (4) In the case of joint lessees, the statement under this section need
24 only be given to a lessee who requests the statement and not,
25 despite section 194, to each joint lessee.
- 26 (5) A lessor is not required to provide a further written statement under
27 this section if it has, within the 3 months before the request is
28 given, given such a statement to the person requesting it.
- 29 (6) Subsection (1) is an offence of strict liability.

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

1 **175F Court may order statement of account to be provided**

2 If a statement of account is not provided within the time required
3 by this Subdivision, the court may, on the application of the lessee,
4 order the lessor to provide the statement or itself determine the
5 amounts in relation to which the statement was sought.

6 **175G Disputed accounts**

- 7 (1) If:
- 8 (a) a liability is entered against a lessee under a consumer lease;
9 and
10 (b) the lessee, by written notice to the lessor, disputes the
11 liability;
12 then the lessor must give the lessee a written notice explaining in
13 reasonable detail how the liability arises.
- 14 (2) A written notice need not be given if the lessor agrees with the
15 lessee as to the disputed amount and gives the lessee a written
16 notice advising of the agreed liability.
- 17 (3) In the case of a consumer lease for which a statement of account is
18 given, the notice of dispute must be given to the lessor within 30
19 days after the day the lessee receives the statement of account in
20 which the amount, or part of that amount, is first shown.
- 21 (4) In the case of a consumer lease in respect of which a statement of
22 account need not be and is not given for the period to which the
23 disputed liability relates, the notice of dispute must be given to the
24 lessor not later than 3 months after the day the lease ends.
- 25 (5) The lessor must not begin enforcement proceedings on the basis of
26 a default arising from the disputed liability until the period of 30
27 days, starting on the day the lessor gives the written explanation or
28 advice as to agreement, has expired.
- 29 Criminal penalty: 50 penalty units.
- 30 (6) A lessee or lessor may apply to the court to have the court
31 determine a disputed liability and, if satisfied that a liability is
32 genuinely disputed, the court may determine the matters in dispute
33 and make such consequential orders as it thinks just.

1 (7) If an application is made to the court under this section within 30
2 days after the day the written explanation is given, the lessor must
3 not, without leave of the court, begin enforcement proceedings on
4 the basis of a default arising from the disputed liability.

5 Criminal penalty: 50 penalty units.

6 (8) Subsections (5) and (7) are offences of strict liability.

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

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

10 **Subdivision B—End of lease statements**

11 **175H End of lease statement**

12 (1) A lessor must arrange for the lessee to be given, not later than 90
13 days before the end of the fixed term of a consumer lease, a
14 statement containing the information prescribed by the regulations.

15 Criminal penalty: 100 penalty units.

16 (2) Subsection (1) does not apply in the circumstances (if any)
17 prescribed by the regulations.

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

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

20 **Division 6—Certain transactions not to be treated as new** 21 **consumer leases**

22 **175J Changes etc. under consumer leases**

23 If:

24 (a) there is:

25 (i) a change to an existing consumer lease that results in
26 further goods being provided; or

27 (ii) a deferral or waiver of an amount under an existing
28 consumer lease; or

29 (iii) a postponement relating to an existing consumer lease;
30 and

- 1 (b) the change, deferral, waiver or postponement is made in
2 accordance with this Code or the existing consumer lease;
3 then the change, deferral, waiver or postponement is not to be
4 treated as creating a new consumer lease or a credit contract for the
5 purposes of this Code.

6 **Division 7—Changes to obligations under consumer leases**

7 **Subdivision A—Changes by agreement of parties**

8 **177A Changes by agreement**

- 9 (1) If the parties under an existing consumer lease agree to change its
10 terms, the lessor must, not later than 30 days after the date of the
11 agreement, give to the lessee a written notice setting out:
12 (a) particulars of the change in the terms of the consumer lease;
13 and
14 (b) any information required by the regulations.
- 15 Criminal penalty: 100 penalty units.
- 16 (2) Subsection (1) does not apply to a change which defers or
17 otherwise reduces the obligations of the lessee for a period not
18 exceeding 90 days.
- 19 (3) This section does not apply to a change made under Subdivision B.
- 20 (4) The lessor may, under subsection (1), give a lessee particulars only
21 of a matter as changed instead of particulars of the change, but
22 only if the lessor:
23 (a) makes it clear to the lessee that the matter has changed; or
24 (b) issues to the lessee a new set of terms and conditions relating
25 to the consumer lease.
- 26 (5) Subsection (1) is an offence of strict liability.
- 27 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **Subdivision B—Changes on grounds of hardship and unjust**
2 **transactions**

3 **177B Changes on grounds of hardship**

4 *Hardship notice*

- 5 (1) If a lessee considers that he or she is or will be unable to meet his
6 or her obligations under a consumer lease, the lessee may give the
7 lessor notice (a **hardship notice**), orally or in writing, of the
8 lessee's inability to meet the obligations.

9 *Lessor's notice in response to hardship notice*

- 10 (2) Within 21 days after the day of receiving the lessee's hardship
11 notice, the lessor must give the lessee:
12 (a) if the lessor agrees to negotiate a change to the lease—notice,
13 in the form prescribed by the regulations, that the lessor
14 agrees to negotiate; or
15 (b) if the lessor does not agree to negotiate a change to the
16 lease—a written notice that states:
17 (i) that the lessor does not agree to negotiate; and
18 (ii) the reasons for not agreeing to negotiate; and
19 (iii) the name of the approved external dispute resolution
20 scheme of which the lessor is a member; and
21 (iv) the lessee's rights under that scheme.

22 Criminal penalty: 30 penalty units.

23 Note: If a lessee has given a lessor a hardship notice, there may be extra
24 requirements that the lessor must comply with before beginning
25 enforcement proceedings—see section 179F.

- 26 (3) A lessor that has given notice under paragraph (2)(a) may, within
27 21 days after the day of giving that notice, give a notice under
28 paragraph (2)(b).

29 *Strict liability*

- 30 (4) Subsection (2) is an offence of strict liability.

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

1 **177C Notice of change**

2 (1) A lessor that enters into an agreement with a lessee to change the
3 consumer lease as a result of a hardship notice by the lessee must,
4 not later than 30 days after the date of the agreement, give to the
5 lessee a written notice setting out:

- 6 (a) particulars of the change in the terms of the lease; and
7 (b) any information required by the regulations.

8 Criminal penalty: 50 penalty units.

9 (2) The lessor may, under subsection (1), give the lessee particulars
10 only of a matter as changed instead of particulars of the change,
11 but only if the lessor:

- 12 (a) makes it clear to the lessee that the matter has changed; or
13 (b) gives to the lessee a new set of terms and conditions relating
14 to the lease.

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

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

17 **177D Changes by court**

18 (1) If a lessor does not change a consumer lease as a result of a
19 hardship notice by a lessee, the lessee may apply to the court to
20 change the terms of the lease.

21 (2) The court may, after allowing the applicant and the lessor a
22 reasonable opportunity to be heard:

- 23 (a) by order change the lease (but not so as to reduce the amount
24 ultimately payable by the lessee to the lessor under the lease),
25 and make such other orders as it thinks fit; or
26 (b) refuse to change the lease.

27 (3) The court may, if it thinks it appropriate in the circumstances, stay
28 any enforcement proceedings under the lease, and make such other
29 orders as it thinks fit, until the application has been determined.

177E Lessor may apply for variation of change

- 1
- 2 (1) A lessor under a consumer lease that has been changed by an order
3 under subsection 177D(2) may apply to the court for an order
4 varying or revoking the order.
- 5 (2) A lessor subject to a stay of enforcement proceedings or other
6 order under subsection 177D(3) may apply to the court for an order
7 varying or revoking the stay or order.
- 8 (3) On an application under this section, the court may vary or revoke
9 the order or stay to which the application relates as it thinks fit, or
10 may refuse the application.

177F Court may reopen unjust transactions*Power to reopen unjust transactions*

- 11
- 12
- 13 (1) The court may, if satisfied on the application of a lessee that, in the
14 circumstances relating to the relevant consumer lease at the time it
15 was entered into or changed (whether or not by agreement), the
16 lease or change was unjust, reopen the transaction that gave rise to
17 the lease or change.

Matters to be considered by court

- 18
- 19 (2) In determining whether a term of a particular consumer lease is
20 unjust in the circumstances relating to it at the time it was entered
21 into or changed, the court is to have regard to the public interest
22 and to all the circumstances of the case and may have regard to the
23 following:
- 24 (a) the consequences of compliance, or noncompliance, with all
25 or any of the provisions of the lease;
- 26 (b) the relative bargaining power of the parties;
- 27 (c) whether or not, at the time the lease was entered into or
28 changed, its provisions were the subject of negotiation;
- 29 (d) whether or not it was reasonably practicable for the applicant
30 to negotiate for the alteration of, or to reject, any of the
31 provisions of the lease or the change;
- 32 (e) whether or not any of the provisions of the lease impose
33 conditions that are unreasonably difficult to comply with, or

- 1 not reasonably necessary for the protection of the legitimate
2 interests of a party to the lease;
- 3 (f) whether or not the lessee, or a person who represented the
4 lessee, was reasonably able to protect the interests of the
5 lessee because of his or her age or physical or mental
6 condition;
- 7 (g) the form of the lease and the intelligibility of the language in
8 which it is expressed;
- 9 (h) whether or not, and if so when, independent legal or other
10 expert advice was obtained by the lessee;
- 11 (i) the extent to which the provisions of the lease or change and
12 their legal and practical effect were accurately explained to
13 the lessee and whether or not the lessee understood those
14 provisions and their effect;
- 15 (j) whether the lessor or any other person exerted or used unfair
16 pressure, undue influence or unfair tactics on the lessee and,
17 if so, the nature and extent of that unfair pressure, undue
18 influence or unfair tactics;
- 19 (k) whether the lessor took measures to ensure that the lessee
20 understood the nature and implications of the transaction and,
21 if so, the adequacy of those measures;
- 22 (l) whether at the time the lease was entered into or changed, the
23 lessor knew, or could have ascertained by reasonable inquiry
24 at the time, that the lessee could not pay in accordance with
25 its terms or not without substantial hardship;
- 26 (m) whether the terms of the transaction or the conduct of the
27 lessor is justified in the light of the risks undertaken by the
28 lessor;
- 29 (n) the terms of other comparable transactions involving other
30 lessors and, if the injustice is alleged to result from excessive
31 costs, the costs payable in comparable cases;
- 32 (o) any other relevant factor.

33 *Representing lessee*

- 34 (3) For the purposes of paragraph (2)(f), a person is taken to have
35 represented a lessee if the person represented the lessee, or assisted
36 the lessee to a significant degree, in the negotiations process prior
37 to, or at, the time the consumer lease was entered into or changed.

Unforeseen circumstances

- 1
- 2 (4) In determining whether a consumer lease is unjust, the court is not
3 to have regard to any injustice arising from circumstances that
4 were not reasonably foreseeable when the lease was entered into or
5 changed.

Conduct

- 6
- 7 (5) In determining whether to grant relief in respect of a consumer
8 lease that it finds to be unjust, the court may have regard to the
9 conduct of the parties to the proceedings in relation to the lease
10 since it was entered into or changed.

Application

- 11
- 12 (6) This section does not apply to a change to a consumer lease under
13 this Subdivision.

177G Orders on reopening of transactions

14

15 The court may, if it reopens a transaction under this Subdivision,
16 do any one or more of the following, despite any settlement of
17 accounts or any agreement purporting to close previous dealings
18 and create a new obligation:

- 19 (a) reopen an account already taken between the parties to the
20 transaction;
- 21 (b) relieve the lessee from payment of any amount in excess of
22 such amount as the court, having regard to the risk involved
23 and all other circumstances, considers to be reasonably
24 payable;
- 25 (c) set aside either wholly or in part or revise or alter an
26 agreement made in connection with the transaction;
- 27 (d) give judgement for or make an order in favour of a party to
28 the transaction of such amount as, having regard to the relief
29 (if any) which the court thinks fit to grant, is justly due to that
30 party under the consumer lease;
- 31 (e) give judgement or make an order against a person for
32 delivery of goods to which the lease relates and which are in
33 the possession of that person;
- 34 (f) make ancillary or consequential orders.

1 **177H Applications by ASIC**

- 2 (1) This section applies if ASIC considers that it is in the public
3 interest to make an application under this Subdivision.
- 4 (2) ASIC may make an application under this Subdivision and has
5 standing to represent the public interest.
- 6 (3) The application:
7 (a) may apply to any one or more consumer leases; and
8 (b) may apply to all or any class of consumer leases entered into
9 by a lessor during a specified period (for example, all leases
10 entered into during a specified period that are affected by a
11 specified matter for which relief is sought).

12 **177J Time limit**

13 An application may not be brought under this Subdivision more
14 than 2 years after the relevant consumer lease is terminated,
15 discharged or otherwise comes to an end.

16 **177K Joinder of parties**

- 17 (1) If it appears to the court that a person other than a lessor (a *third*
18 *party*) has shared in the profits of, or has a beneficial interest
19 prospectively or otherwise in, a consumer lease that the court holds
20 to be unjust, the court may make an order about the third party that
21 the court considers appropriate.
- 22 (2) However, before making an order about the third party, the court
23 must:
24 (a) join the third party as a party to the proceedings; and
25 (b) give the third party an opportunity to appear and be heard in
26 the proceedings.

27 **19 Section 176 of the *National Credit Code***

28 Repeal the section.

29 **20 Division 3 of Part 11 of the *National Credit Code* (heading)**

30 Repeal the heading, substitute:

1 **Division 8—Repossession, termination and enforcement of**
2 **consumer leases**

3 **Subdivision A—Repossession of goods under consumer lease**

4 **21 Section 177 of the *National Credit Code***

5 Repeal the section.

6 **22 After section 178 of the *National Credit Code***

7 Insert:

8 **Subdivision B—Termination of consumer lease by lessee**

9 **178A Termination before goods have been provided**

10 (1) If:

11 (a) a consumer lease has been entered into; and

12 (b) the goods hired under the lease have not been provided;

13 then the lessee may, by written notice to the lessor, terminate the
14 lease.

15 (2) Nothing in subsection (1) prevents the lessor from retaining or
16 requiring payment of fees or charges incurred before the
17 termination and which would have been payable under the
18 consumer lease.

19 **23 Section 179 of the *National Credit Code* (heading)**

20 Repeal the heading, substitute:

21 **179 Termination after goods have been provided**

22 **24 After section 179 of the *National Credit Code***

23 Insert:

24 **179A Statement of amount payable on termination**

25 (1) A lessor must, at the written request of a lessee, provide a written
26 statement of the amount required to terminate a consumer lease as
27 at such date as the lessee specifies. If so requested, the lessor must
28 also provide details of the items which make up that amount.

- 1 (2) The statement must also contain:
2 (a) a statement to the effect that the amount payable to terminate
3 the lease may change according to the date on which it is
4 paid; and
5 (b) a statement to the effect that the lessee has no right to own
6 the goods if the lease is terminated; and
7 (c) a statement to the effect that the lessee must return the goods
8 to the lessor by a specified date; and
9 (d) any other matters prescribed by the regulations.
- 10 (3) A lessor must give a statement, complying with this section, within
11 7 days after the day the request is given to the lessor.
- 12 Criminal penalty: 50 penalty units.
- 13 (4) In the case of joint lessees, the statement need only be given to the
14 lessee who requests the statement and not, despite section 194, to
15 each joint lessee.
- 16 (5) Subsection (3) is an offence of strict liability.
- 17 Note: For strict liability, see section 6.1 of the *Criminal Code*.

18 **179B Court may determine amount payable on termination if lessor**
19 **does not**

- 20 (1) If the lessor does not provide a statement of the amount payable to
21 terminate a consumer lease in accordance with this Subdivision
22 after a request is duly made by a lessee, the court may, on the
23 application of the lessee, determine:
24 (a) the amount payable on the date of determination; and
25 (b) the amount by which it increases daily; and
26 (c) the period for which the determination is applicable.
- 27 (2) The consumer lease is discharged if:
28 (a) the goods hired under the lease are returned to the lessor
29 within the applicable period; and
30 (b) an amount calculated in accordance with the determination is
31 tendered to the lessor within the applicable period.

1 **179C One-off notice to be given the first time a direct debit default**
2 **occurs**

- 3 (1) This section applies if:
4 (a) a lessee authorises payment of an amount for a consumer
5 lease by direct debit; and
6 (b) default occurs; and
7 (c) it is the first occasion the default occurs.
- 8 (2) The lessor must give the lessee a notice, complying with this
9 section, within 14 days of the default occurring.
- 10 Criminal penalty: 50 penalty units.
- 11 (3) The notice must contain the information prescribed by the
12 regulations.
- 13 (4) Subsection (2) is an offence of strict liability.
14 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 15 (5) This section does not affect any other requirement under this Code
16 to give a notice.

17 **Subdivision C—Enforcement of consumer leases**

18 **179D Requirements to be met before lessor can enforce consumer**
19 **lease against defaulting lessee**

20 *Enforcement of consumer lease*

- 21 (1) A lessor must not begin enforcement proceedings against a lessee
22 in relation to a consumer lease unless:
23 (a) the lessee is in default under the lease; and
24 (b) the lessor has given the lessee a default notice, complying
25 with this section, allowing the lessee a period of at least 30
26 days from the date of the notice to remedy the default; and
27 (c) the default has not been remedied within that period.

28 Criminal penalty: 50 penalty units.

29 Note: If a lessee has given a lessor a hardship notice or a postponement
30 request there may be extra requirements that the lessor must comply
31 with before beginning enforcement proceedings—see sections 179F
32 and 179H.

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Default notice requirements

- (2) A default notice must contain a prominent heading at its top stating that it is a default notice and specify:
 - (a) the default; and
 - (b) the action necessary to remedy the default; and
 - (c) a period for remedying the default; and
 - (d) the date after which enforcement proceedings in relation to the default, and, if relevant, repossession of goods hired under the lease may begin if the default has not been remedied; and
 - (e) the information prescribed by the regulations about the lessee's right to:
 - (i) give a hardship notice under section 177B; or
 - (ii) give a postponement request under section 179H; or
 - (iii) make an application to the court under sections 177D and 179K; and
 - (f) the information prescribed by the regulations about:
 - (i) the approved external dispute resolution scheme of which the lessor is a member; and
 - (ii) the lessee's rights under that scheme; and
 - (g) that a subsequent default of the same kind that occurs during the period specified for remedying the original default may be the subject of enforcement proceedings without further notice if it is not remedied within the period; and
 - (h) that, under the *Privacy Act 1988*, the debt may be included in a credit reporting agency's credit information file about the lessee if:
 - (i) the debt remains overdue for 60 days or more; and
 - (ii) the lessor has taken steps to recover all or part of the debt; and
 - (i) any other information prescribed by the regulations.

When default notice not required

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

-
- 1 (a) the lessor reasonably believes that it was induced by fraud on
2 the part of the lessee to enter into the consumer lease; or
3 (b) the lessor has made reasonable attempts to locate the lessee
4 but without success; or
5 (c) the court authorises the lessor to begin the enforcement
6 proceedings; or
7 (d) the lessor reasonably believes that the lessee has disposed of
8 goods hired under the lease, or intends to dispose of such
9 goods, contrary to the terms of the lease; or
10 (e) the lessee becomes insolvent after entering into the consumer
11 lease.

12 *Non-remedial default*

- 13 (4) If the lessor reasonably believes that a default is not capable of
14 being remedied:
15 (a) the default notice need only specify the default; and
16 (b) the lessor may begin the enforcement proceedings after the
17 period of 30 days from the date of the notice.

18 *Strict liability*

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

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

21 **179E Defaults may be remedied**

- 22 (1) If a default notice under section 179D states that the lessor intends
23 to take action because the lessee is in default under the consumer
24 lease, the lessee may remedy the default within the period specified
25 in the notice, and the lease is then reinstated and any acceleration
26 clause cannot operate.
- 27 (2) A lessee does not remedy the default if, at the end of the period, the
28 lessee is in default under the consumer lease because of the breach
29 specified in the notice or because of a subsequent breach of the
30 same type.

31 **179F Effect of hardship notices on enforcement**

- 32 (1) This section applies if:

- 1 (a) a lessor is required to give a default notice under
2 section 179D before beginning enforcement proceedings; and
3 (b) before or after the lessor gives the default notice, the lessee
4 gives the lessor a hardship notice (the **current hardship**
5 **notice**) under section 177B; and
6 (c) either:
7 (i) in the 4 months before the current hardship notice is
8 given, the lessee had not given the lessor another
9 hardship notice; or
10 (ii) in that 4-month period, the lessee had given the lessor
11 one or more other hardship notices, but the lessor
12 reasonably believes that the basis on which the current
13 hardship notice was given is materially different from
14 the bases on which the other hardship notices were
15 given.

- 16 (2) The lessor must not begin enforcement proceedings against the
17 lessee unless:
18 (a) the lessor has given the lessee a notice under paragraph
19 177B(2)(b), in response to the current hardship notice; stating
20 that the lessor does not agree to negotiate a change to the
21 consumer lease; and
22 (b) the period of 14 days, starting on the day the lessor gave the
23 notice under paragraph 177B(2)(b), has expired.

24 Criminal penalty: 50 penalty units.

25 Note: The lessor must allow the lessee at least 30 days from the date of the
26 default notice to remedy the default—see section 179D. The 14-day
27 period in subsection (2) may end before, at the same time as, or after
28 the end of the period for remedying the default specified in the default
29 notice.

- 30 (3) However, the lessor may take possession of goods hired under a
31 consumer lease if the lessor reasonably believes that:
32 (a) the lessee has removed or disposed of the goods, or intends to
33 remove or dispose of them; or
34 (b) urgent action is necessary to protect the goods.

- 35 (4) Subsection (2) is an offence of strict liability.

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

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

- (1) An acceleration clause of a consumer lease is to operate only if:
- (a) the lessee is in default under the lease; and
 - (b) the lessor has given to the lessee a default notice under section 179D; and
 - (c) the default notice contains an additional statement of:
 - (i) the manner in which the liabilities of the lessee under the consumer lease would be affected by the operation of the acceleration clause; and
 - (ii) the amount required to terminate the lease (as accelerated); and
 - (d) the default has not been remedied within the period specified in the default notice (unless the lessor reasonably believes that the default is not capable of being remedied).
- (2) However, a lessor is not required to give a default notice under section 179D or to wait until the period specified in the default notice has elapsed before bringing an acceleration clause into operation, if:
- (a) the lessor reasonably believes that it was induced by fraud on the part of the lessee to enter into the consumer lease; or
 - (b) the lessor has made reasonable attempts to locate the lessee but without success; or
 - (c) the court authorises the lessor not to do so; or
 - (d) the lessor reasonably believes that the lessee has removed or disposed of goods hired under a consumer lease, or intends to remove or dispose of goods hired under the lease, or that urgent action is necessary to protect the goods.

Subdivision D—Postponement of enforcement proceedings**179H Postponement of exercise of rights***Postponement request*

- (1) A lessee who has been given a default notice under section 179D may, at any time before the end of the period specified in the

- 1 notice, request (a *postponement request*), orally or in writing, that
2 the lessor negotiate a postponement of:
3 (a) the enforcement proceedings; or
4 (b) any action taken under such proceedings; or
5 (c) the operation of any applicable acceleration clause.

6 *Lessor's notice about postponement*

- 7 (2) If the lessee gives the postponement request, the lessor must,
8 within 21 days after the day of receiving the request, give the
9 person a written notice:
10 (a) that states whether or not the lessor agrees to negotiate a
11 postponement; and
12 (b) if the lessor does not agree to negotiate—that states:
13 (i) the name of the approved external dispute resolution
14 scheme of which the lessor is a member; and
15 (ii) the person's rights under that scheme; and
16 (iii) the reasons for not agreeing to negotiate.

17 Criminal penalty: 30 penalty units.

18 *Enforcement proceedings*

- 19 (3) If the lessee gives the postponement request, the lessor must not
20 begin enforcement proceedings unless:
21 (a) the lessor has given the lessee a notice under subsection (2)
22 in response to the postponement request; and
23 (b) the period of 14 days, starting on the day the lessor gives the
24 notice under subsection (2), has expired.

25 Criminal penalty: 50 penalty units.

26 Note: The lessor must allow the lessee at least 30 days from the date of the
27 default notice to remedy the default—see section 179D. The 14-day
28 period in subsection (3) may end before, at the same time as, or after
29 the end of the period for remedying the default specified in the default
30 notice.

- 31 (4) However, the lessor may take possession of goods hired under the
32 consumer lease if the lessor reasonably believes that:
33 (a) the lessee has removed or disposed of the goods, or intends to
34 remove or dispose of them; or
35 (b) urgent action is necessary to protect the goods.

Strict liability

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

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

179J Effect of negotiated postponement

(1) A default notice under section 179D is taken, for the purposes of this Code, not to have been given if a postponement is negotiated with the lessor under section 179H and the lessee complies with the conditions of postponement.

(2) A lessor must give written notice of the conditions of a postponement referred to in subsection (1) not later than 30 days after agreement is reached on the postponement. The notice must set out the consequences under subsection (5) if the conditions of the postponement are not complied with.

Criminal penalty: 100 penalty units.

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

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

(4) A lessor that is required to give notice under section 177A (which deals with changes to leases by agreement) in relation to a postponement is not required to comply with subsection (2).

(5) If any of the conditions of a postponement are not complied with, a lessor is not required to give a further default notice under this Code to the lessee with whom the postponement was negotiated before proceeding with enforcement proceedings.

179K Postponement by court

(1) If the lessee is unable to negotiate a postponement, the lessee may apply to the court for a postponement.

(2) After allowing the applicant and the lessor a reasonable opportunity to be heard, the court may:

(a) order the postponement to which the application relates; or

(b) refuse to order the postponement; or

(c) make such other orders as it thinks fit.

- 1 (3) The court may, if it thinks it appropriate in the circumstances, stay
2 any enforcement proceedings under the consumer lease until the
3 application has been determined.

4 **179L Lessor may apply for variation of postponement order**

- 5 (1) A lessor that is subject to an order under this Subdivision may
6 apply to the court for variation of the order.
- 7 (2) On such an application, the court may:
8 (a) vary the order to which the application relates as it thinks fit;
9 or
10 (b) refuse to vary the order; or
11 (c) revoke the order.

12 **Subdivision E—Enforcement procedures for goods hired under**
13 **a consumer lease**

14 **179M Information as to location of goods hired under a consumer**
15 **lease**

- 16 (1) A lessor may, by written notice to a lessee, require the lessee to
17 inform the lessor, within 7 days after the day the notice is given to
18 the lessee, where the goods hired under the consumer lease are and,
19 if the goods are not in the lessee's possession, to give the lessor all
20 information in the lessee's possession that might assist the lessor to
21 trace the goods.
- 22 (2) A lessee who contravenes a notice under this section commits an
23 offence.
- 24 Criminal penalty: 50 penalty units.
- 25 (3) Subsection (2) is an offence of strict liability.
- 26 Note: For strict liability, see section 6.1 of the *Criminal Code*.

27 **179N Entry to residential property to take possession of goods**

- 28 (1) A lessor, or an agent of a lessor, must not enter any part of
29 premises used for residential purposes for the purpose of taking
30 possession of goods hired under a consumer lease unless:
31 (a) the court has authorised the entry; or
-

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

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

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

10 Criminal penalty: 50 penalty units.

11 (4) Subsection (3) is an offence of strict liability.

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

13 **179P Court may order entry**

14 The court may, on the application of a lessor that is entitled to take
15 possession of goods hired under a consumer lease, authorise the
16 lessor to enter residential premises for the purpose of taking
17 possession of the goods.

18 **179Q Order for possession**

19 (1) The court may, on the application of a lessor that is entitled to take
20 possession of goods hired under a consumer lease, order a person
21 who has possession of the goods to deliver them to the lessor:

22 (a) at a specified time or place; or

23 (b) within a specified period.

24 (2) The court may, on the application of a lessor or other person
25 required to deliver goods to a lessor, by order vary the place at
26 which or time or period within which goods must be delivered to
27 the lessor.

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

30 Criminal penalty: 30 penalty units.

31 (4) Subsection (3) is an offence of strict liability.

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

2 **Subdivision F—Enforcement expenses**

3 **179R Recovery of enforcement expenses**

- 4 (1) A lessor must not recover or seek to recover enforcement expenses
5 from a lessee in excess of those reasonably incurred by the lessor.
6 Enforcement expenses of a lessor extend to those reasonably
7 incurred by the use of the staff and facilities of the lessor.
- 8 (2) Any provision of the consumer lease that appears to confer a
9 greater right is void. If enforcement expenses are in fact recovered
10 in excess of this limitation, they may be recovered back.
- 11 (3) If there is a dispute between the lessor and the lessee about the
12 amount of enforcement expenses that may be recovered by the
13 lessor, the court may, on application by any of the parties to the
14 dispute, determine the amount of that liability.

15 **Division 9—Linked lessors and tied consumer leases**

16 **Subdivision A—Interpretation and application**

17 **179S Linked lessors and tied consumer leases**

- 18 (1) For the purposes of this Code, a *linked lessor* of a supplier means a
19 lessor:
- 20 (a) with whom the supplier has a contract, arrangement or
21 understanding relating to:
- 22 (i) the supply to the supplier of goods in which the supplier
23 deals; or
- 24 (ii) the business carried on by the supplier of supplying
25 goods; or
- 26 (iii) the provision to persons of a consumer lease for the hire
27 of goods supplied by the supplier to the lessor; or
- 28 (b) to whom the supplier, by arrangement with the lessor,
29 regularly refers persons for the purpose of being provided
30 with a consumer lease; or

- 1 (c) whose forms of contract or forms of application or offers for
2 a consumer lease are, by arrangement with the lessor, made
3 available to persons by the supplier; or
4 (d) with whom the supplier has a contract, arrangement or
5 understanding under which applications for a consumer lease
6 or offers to be provided with a consumer lease from the
7 lessor may be signed by persons at the premises of the
8 supplier.
- 9 (2) A *tiered consumer lease* is a consumer lease entered into between a
10 lessor and a lessee where:
11 (a) the lessee enters into the lease to hire goods supplied by the
12 supplier to the lessor; and
13 (b) at the time the lease is entered into the lessor is a linked
14 lessor of the supplier.

15 **Subdivision B—Liability of lessors for suppliers’**
16 **misrepresentations**

17 **179T Lessor liable for supplier’s misrepresentations about hired**
18 **goods**

- 19 (1) If there is a tiered consumer lease, any representation, warranty or
20 statement made (whether orally or in writing) by the supplier, or
21 any person acting on behalf of the supplier, to the lessee in relation
22 to:
23 (a) goods hired under the lease; or
24 (b) the lease; or
25 (c) services, supplied or arranged by the lessor, that are
26 incidental to the hire of goods under the lease;
27 gives the lessee the same rights against the lessor as the lessee
28 would have had if it had been made by the lessor.
- 29 (2) Without prejudice to any other rights or remedies to which a lessor
30 may be entitled, a lessor is entitled to be indemnified by the person
31 who made the representation, warranty or statement, and any
32 person on whose behalf it was made, against any damage suffered
33 by the lessor through the operation of this section.

1 **Division 10—Conduct relating to consumer leases**

2 **179U False or misleading representations**

- 3 (1) A person must not make a false or misleading representation:
4 (a) in relation to a matter that is material to entry into a
5 consumer lease or a related transaction; or
6 (b) in attempting to induce another person to enter into a
7 consumer lease or a related transaction.

8 Criminal penalty: 50 penalty units.

- 9 (2) It is a defence to prosecution for an offence against this section if a
10 person charged proves that he or she reasonably believed that the
11 representation was not false or misleading.

- 12 (3) A person who suffers loss as a result of a contravention of this
13 section by another person may recover the amount of the loss from:
14 (a) that other person; or
15 (b) any other person involved in the contravention.

16 **179V Harassment**

17 A lessor or supplier must not harass a person in attempting to get
18 that person to:

- 19 (a) apply for a consumer lease; or
20 (b) enter into a consumer lease or a related transaction.

21 Criminal penalty: 100 penalty units.

22 **Division 11—Other Code provisions applicable to**
23 **consumer leases**

24 **179W Application of certain Code provisions to consumer leases**

- 25 (1) Part 12 (relating to miscellaneous matters) and subsection 204(2)
26 (definition of *associated*) apply in relation to a consumer lease in
27 the same way as they apply in relation to a credit contract.

- 28 (2) For the purposes of the application of those provisions:

-
- 1 (a) references to a credit provider are to be read as references to
2 a lessor; and
3 (b) references to a debtor are to be read as references to a lessee;
4 and
5 (c) references to a credit contract or contract are to be read as
6 references to a consumer lease; and
7 (d) references to a linked credit provider are to be read as
8 references to a linked lessor.

9 **25 Subsection 204(1) of the *National Credit Code* (definition**
10 **of *acceleration clause*)**

11 Repeal the definition, substitute:

12 ***acceleration clause*** means:

- 13 (a) in relation to a credit contract or mortgage—a term of a credit
14 contract or mortgage providing that:
15 (i) on the occurrence or non-occurrence of a particular
16 event, the credit provider becomes entitled to immediate
17 payment of all, or a part, of an amount under the
18 contract that would not otherwise have been
19 immediately payable; or
20 (ii) whether or not on the occurrence or non-occurrence of a
21 particular event, the credit provider has a discretion to
22 require repayment of the amount of credit otherwise
23 than by repayments fixed, or determined on a basis
24 stated, in the contract;
25 but does not include any such term in a credit contract or
26 mortgage that is an on demand facility; or
27 (b) in relation to a consumer lease—a term of a consumer lease
28 providing that:
29 (i) on the occurrence or non-occurrence of a particular
30 event, the lessor becomes entitled to immediate payment
31 of all, or a part, of an amount under the lease that would
32 not otherwise have been immediately payable; or
33 (ii) whether or not on the occurrence or non-occurrence of a
34 particular event, the lessor has a discretion to require
35 payment of an amount payable under a lease otherwise
36 than by repayments fixed, or determined on a basis
37 stated, in the lease.

1 **26 Subsection 204(1) of the *National Credit Code***

2 Insert:

3 *Bulk Electronic Clearing System* means the system established by
4 the Australian Payments Clearing Association to manage the
5 conduct of the exchange and settlement of bulk electronic low
6 value transactions and includes any replacement system.

7 **27 Subsection 204(1) of the *National Credit Code***

8 Insert:

9 *consumer lease fees or charges* means fees or charges payable in
10 connection with a consumer lease, but does not include:
11 (a) enforcement expenses; or
12 (b) government charges, or duties, on receipts or withdrawals.

13 **28 Subsection 204(1) of the *National Credit Code* (definition
14 of *default notice*)**

15 Repeal the definition, substitute:

16 *default notice*:

- 17 (a) in relation to credit contracts, mortgages and guarantees—see
18 section 88; and
19 (b) in relation to consumer leases—see section 179D.

20 **29 Subsection 204(1) of the *National Credit Code***

21 Insert:

22 *direct debit*, in relation to the payment of an amount, means the
23 debiting of an amount against an account with a financial
24 institution that is processed through the Bulk Electronic Clearing
25 System, as specified and authorised in writing by:
26 (a) in relation to the payment by a debtor of an amount for a
27 credit contract—the debtor; and
28 (b) in relation to the payment by a lessee of an amount for a
29 consumer lease—the lessee.

30 **30 Subsection 204(1) of the *National Credit Code* (definition
31 of *enforcement proceedings*)**

32 Repeal the definition, substitute:

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

5 **36 Subsection 204(1) of the *National Credit Code***

6 Insert:

7 ***postponement request:***

- 8 (a) in relation to credit contracts, mortgages or guarantees—see
9 subsection 94(1); and
10 (b) in relation to consumer leases—see subsection 179H(1).

11 **37 Subsection 204(1) of the *National Credit Code***

12 Insert:

13 ***tied consumer lease:*** see subsection 179S(2).

14 **38 Subsection 204(1) of the *National Credit Code***

15 Insert:

16 ***unjust*** includes unconscionable, harsh or oppressive.
17

1 **Part 2—Schedule 1 (enhancements) to the amending**
2 **Act**

3 **2 Section 128 of the National Credit Act**

4 The amendments of section 128 of the National Credit Act made by
5 Schedule 1 to the amending Act apply in relation to representations
6 made on or after the commencement of that Schedule.

7 **3 Section 180A of the National Credit Act**

8 Section 180A of the National Credit Act, as inserted by Schedule 1 to
9 the amending Act, applies in relation to credit services provided on or
10 after the commencement of that Schedule.

11 **4 Sections 32 and 40 of the new Credit Code**

12 The amendments of sections 32 and 40 of the new Credit Code made by
13 Schedule 1 to the amending Act apply in relation to credit contracts
14 entered into on or after the commencement of that Schedule.

15 **5 Sections 72, 73, 74 and 88 of the new Credit Code**

16 The amendments of sections 72, 73, 74 and 88 of the new Credit Code
17 made by Schedule 1 to the amending Act apply in relation to credit
18 contracts made on or after the commencement of that Schedule.

19 **6 Section 89A of the new Credit Code**

20 Section 89A of the new Credit Code, as inserted by Schedule 1 to the
21 amending Act, applies in relation to credit contracts, mortgages and
22 guarantees entered into on or after the commencement of that Schedule.

23 **7 Section 94 of the new Credit Code**

24 The amendments of section 94 of the new Credit Code made by
25 Schedule 1 to the amending Act apply in relation to credit contracts,
26 mortgages and guarantees entered into on or after the commencement of
27 that Schedule.

28 **8 Section 124 of the new Credit Code**

29 The amendments of section 124 of the new Credit Code made by
30 Schedule 1 to the amending Act apply in relation to applications made
31 on or after the commencement of that Schedule, whether the
32 contraventions occurred before, on or after that commencement.

1 **Part 3—Schedule 2 (reverse mortgages) to the**
2 **amending Act**

3 **9 Subsections 179(6) and (7) of the National Credit Act**

4 Subsections 179(6) and (7) of the National Credit Act, as inserted by
5 Schedule 2 to the amending Act, apply in relation to credit contracts
6 entered into on or after the commencement of that Schedule.

7 **10 Subsection 17(15A) of the new Credit Code**

8 Subsection 17(15A) of the new Credit Code, as inserted by Schedule 2
9 to the amending Act, applies in relation to credit contracts entered into
10 on or after the commencement of that Schedule.

11 **11 Section 18A of the new Credit Code**

12 Section 18A of the new Credit Code, as inserted by Schedule 2 to the
13 amending Act, applies to entry into, and changes to, credit contracts on
14 or after the commencement of that Schedule.

15 **12 Subsection 26(6) of the new Credit Code**

16 Subsection 26(6) of the new Credit Code, as added by Schedule 2 to the
17 amending Act, applies in relation to credit contracts entered into on or
18 after the commencement of that Schedule.

19 **13 Section 33 of the new Credit Code**

20 The amendments of section 33 of the new Credit Code made by
21 Schedule 2 to the amending Act apply to credit contracts entered into
22 before, on or after the commencement of the Schedule.

23 **14 Section 67A of the new Credit Code**

24 Section 67A of the new Credit Code, as inserted by Schedule 2 to the
25 amending Act, applies in relation to credit contracts entered into on or
26 after the commencement of that Schedule.

27 **15 Subdivision B of Division 1 of Part 5 of the new Credit**
28 **Code**

29 Subdivision B of Division 1 of Part 5 of the new Credit Code, as
30 inserted by Schedule 2 to the amending Act, applies in relation to credit
31 contracts and mortgages entered into on or after the commencement of
32 that Schedule.

1 **16 Subsections 88(1) and (2) of the new Credit Code**

2 The amendment of subsections 88(1) and (2) of the new Credit Code
3 made by Schedule 2 to the amending Act applies to credit contracts and
4 mortgages entered into before, on or after the commencement of that
5 Schedule.

6 **17 Subsections 88(7A) and (7B) of the new Credit Code**

7 Subsections 88(7A) and (7B) of the new Credit Code, as inserted by
8 Schedule 2 to the amending Act, apply in relation to credit contracts and
9 mortgages entered into on or after the commencement of that Schedule.

10 **18 Section 93A of the new Credit Code**

11 Section 93A of the new Credit Code, as added by Schedule 2 to the
12 amending Act, applies in relation to credit contracts and mortgages
13 entered into on or after the commencement of that Schedule.

14 **19 Section 185A of the new Credit Code**

15 Section 185A of the new Credit Code, as inserted by Schedule 2 to the
16 amending Act, applies in relation to credit contracts entered into on or
17 after the commencement of that Schedule.

18 **Part 4—Schedule 3 (small amount credit contracts)**
19 **to the amending Act**

20 **20 Sections 124C and 133CD of the National Credit Act**

21 Sections 124C and 133CD of the National Credit Act, as inserted by
22 Schedule 3 to the amending Act, apply in relation to small amount
23 credit contracts entered into on or after the commencement of that
24 Schedule.

25 **Part 5—Schedule 4 (caps on costs etc. for credit**
26 **contracts) to the amending Act**

27 **21 Sections 23A, 31A, 39A and 39B and subsection 114(1A)**
28 **of the new Credit Code**

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Schedule 7—Voting at AGMs of public companies

Corporations Act 2001

1 Subsection 250R(5)

Repeal the subsection, substitute:

- (5) However, a person (the *voter*) described in subsection (4) may cast a vote on the resolution as a proxy if the vote is not cast on behalf of a person described in subsection (4) and either:
- (a) the voter is appointed as a proxy by writing that specifies the way the proxy is to vote on the resolution; or
 - (b) the voter is the chair of the meeting and the appointment of the chair as proxy:
 - (i) does not specify the way the proxy is to vote on the resolution; and
 - (ii) expressly authorises the chair to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity.