National Consumer Credit Protection Regulations 2010

Select Legislative Instrument 2010 No. 44 as amended

made under the

National Consumer Credit Protection Act 2009

This compilation was prepared on 12 December 2012
taking into account amendments up to SLI 2012 No. 314

The text of any of those amendments not in force
on that date is appended in the Notes section

[Note: Regulation 28N ceased to have effect on 1 October 2011 — *see* subregulation 28N (5)**]**

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Chapter 1 Preliminary

1 Name of Regulations [*see* Note 1]

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

2 Commencement

These Regulations commence on 1 July 2010.

3 Definitions

(1) In these Regulations:

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

annual percentage rate has the same meaning as in section 27 of the Code.

associate has the meaning given by regulation 4.

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

authorised contact means contact with a consumer by a person in relation to the supply of goods or services by the person to the consumer, if the contact is made:

(a) no later than 3 months after the consumer provided his or her contact details:

(i) to the person; and

(ii) for the purpose of being contacted about the supply of the goods or services; or

(b) by posting to, or leaving at, a residential address written promotional material about goods or services; or

(c) in relation to the possible return of goods supplied to the consumer or the possible provision of replacement goods to the consumer.

carried over instrument has the meaning given by subsection 4 (1) of the Transitional Act.

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Code means the National Credit Code.

Corporations Act means the *Corporations Act 2001*.

credit card means:

(a) a card of a kind commonly known as a credit card; or

(b) a card of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit; or

(c) anything else that may be used as a card mentioned in paragraph (a) or (b).

credit card contract means a continuing credit contract (as defined in section 204 of the Code) under which credit is ordinarily obtained only by the use of a credit card.

default rate has the same meaning as in section 27 of the Code.

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

(a) a public authority; or

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

exempt special purpose funding entity means a special purpose funding entity that is engaging in a credit activity and is exempt, under regulation 23B or 23C, from the requirement to hold a licence.

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

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

foreign company means either of the following:

(a) a body corporate that is incorporated in an external Territory, or outside Australia and the external Territories, and is not:

  (i) a corporation sole; or

  (ii) an exempt public authority;

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(b) an unincorporated body that:

(i) is formed in an external Territory or outside Australia and the external Territories; and

(ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and

(iii) does not have its head office or principal place of business in Australia.

fundraising special purpose entity has the meaning given by section 5 of the Act as modified by item 3.2 of Schedule 3.

inappropriate person means:

(a) a person in relation to whom:

(i) a prescribed State or Territory order is in force; or

(ii) a banning or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is in force; or

(b) a person who is banned from engaging in a credit activity under:

(i) a law of a State or Territory; or

(ii) Part 2-4 of the Act; or

(c) a person who has been convicted of a serious fraud during the last 10 years; or

(d) a person who is disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001*; or

(e) a person:

(i) who is registered to engage in credit activities under Schedule 2 of the Transitional Act; and

(ii) whose registration is suspended under a provision of item 23 of Schedule 2 to the Transitional Act, other than under paragraph 23 (1) (a) or (b); or

(f) a person:

(i) who has been registered to engage in credit activities under Schedule 2 of the Transitional Act; and

(ii) whose registration has been cancelled under a provision of item 23 of Schedule 2 to the

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Transitional Act, other than paragraph 23 (1) (a) or (b); or

(g) a person:

(i) who is the holder of an Australian credit licence; and

(ii) whose licence is suspended on a ground mentioned in subsection 54 (1) of the Act, other than a ground mentioned in paragraph 54 (1) (a) or (b); or

(h) a person:

(i) who has been the holder of an Australian credit licence; and

(ii) whose licence has been cancelled on a ground mentioned in subsection 54 (1) of the Act, other than a ground mentioned in paragraph 54 (1) (a) or (b).

(i) a person:

(i) who is the holder of an Australian financial services licence; and

(ii) whose licence is suspended on a ground mentioned in section 915B of the *Corporations Act 2001*, other than a ground mentioned in any of the following paragraphs:

(A) paragraph 915B (1) (a) or (e);

(B) paragraph 915B (2) (a) or (d);

(C) paragraph 915B (3) (a) or (d);

(D) paragraph 915B (4) (a) or (d); or

(j) a person:

(i) who has been the holder of an Australian financial services licence; and

(ii) whose licence has been cancelled on a ground mentioned in section 915B of the *Corporations Act 2001*, other than a ground mentioned in any of the following paragraphs:

(A) paragraph 915B (1) (a) or (e);

(B) paragraph 915B (2) (a) or (d);

(C) paragraph 915B (3) (a) or (d);

(D) paragraph 915B (4) (a) or (d).

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lawyer, for the purpose of regulation 24 has the meaning given by the modified definition of ***lawyer*** set out in subregulation 24 (10).

linked credit provider, for the purpose of regulation 23A, has the meaning given by the modified definition of ***linked credit provider*** set out in regulation 25C.

linked credit provider or lessor, for the purpose of regulation 23, has the meaning given by the modified definition of ***linked credit provider*** set out in regulation 25B.

managed contract — see regulation 26.

mortgage manager — see regulation 26.

non-standard business premises means business premises that are not physically separate from premises regularly used by consumers for purposes other than being contacted in relation to the supply of goods or services.

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

product designer **—** see regulation 26.

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

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

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

securitisation entity has the meaning given by section 5 of the Act as modified by item 3.4 of Schedule 3.

services, for the purposes of regulations 23 and 23A, has the meaning given by the modified definition of ***services*** set out in regulation 25D.

servicing agreement has the meaning given by section 5 of the Act as modified by item 3.4 of Schedule 3.

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

trail commission **—** see regulation 26.

unlicensed carried over instrument lender has the meaning given by modified subsection 5 (1) of the Act as set out in item 2.4 of Schedule 2.

unsolicited contact includes contact with a consumer by a person or an associate of the person in relation to the supply of goods and services by the person to the consumer:

(a) in the following circumstances:

(i) the contact is the first contact made by the person;

(ii) the contact is made in person from a non-standard business premises; or

(b) in the following circumstances:

(i) the contact is made by the person or an associate of the person;

(ii) the contact is not the first contact made by the person or an associate of the person;

(iii) the first contact was made in person from a non-standard business premises; or

(c) in the following circumstances:

(i) the consumer provided the consumer's contact details to the person for the sole purpose of being contacted by the person in relation to the supply of goods or services by the person to the consumer;

(ii) the contact is not the first contact made by the person;

(iii) the contact is made on or after the day 3 months after the consumer provided the contact details;

(iv) the contact is not authorised contact; or

(d) in the following circumstances:

(i) the consumer did not provide the consumer's contact details to the person for the sole purpose of being contacted by the person in relation to the supply of goods or services by the person to the consumer;

(ii) the contact is not described in paragraph (a) or (b);

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(iii) the contact is not authorised contact.

volume bonus arrangement **—** see regulation 26.

(2) In these Regulations, a person is ***associated*** with a lessor if:

(a) the person and the lessor are related bodies corporate for the purposes of the Corporations Act; or

(b) the person is an officer, agent or employee of the lessor, or of any such related body corporate, acting in that capacity; or

(c) the person is a supplier in respect of whom the lessor is a linked lessor.

(3) In these Regulations, a provision of the Act modified in accordance with Division 2 of Part 2-4 and Schedule 2 is referred to as ***modified***.

4 Meaning of *associate*

(1) This regulation has effect for the purposes of interpreting a reference (the ***associate reference***), in relation to a person (the ***primary person***), to an associate.

(2) A person is not an associate of the primary person except as provided in this regulation.

(3) Nothing in this regulation limits the generality of anything else in it.

(4) If the primary person is a body corporate, the associate reference includes a reference to:

(a) a director or secretary of the body; and

(b) a related body corporate; and

(c) a director or secretary of a related body corporate.

(5) An associate reference includes a reference to:

(a) a person in partnership with whom the primary person engages in a credit activity; and

(b) subject to subregulation (8), a person who is a partner of the primary person otherwise than because of the engaging in a credit activity in partnership with the primary person; and

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(c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting; and

(d) a director of a body corporate of which the primary person is also a director and that engages in a credit activity; and

(e) subject to subregulation (8), a director of a body corporate of which the primary person is also a director and that does not engage in a credit activity; and

(f) a person in concert with whom the primary person is acting, or proposes to act, in respect of the matter to which the associate reference relates; and

(g) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way, in respect of the matter to which the associate reference relates.

(6) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this regulation, the associate reference includes a reference to that other person.

(7) A person is not an associate of another person by virtue of subregulation (5), or by virtue of subregulation (6) as it applies in relation to subregulation (5), merely because one or both of the following occurs:

(a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

(b) one, as a client, gives specific instructions to the other, whose ordinary business includes engaging in credit activities, to enter into a credit contract on the client's behalf in the ordinary course of that business.

(8) For the purposes of proceedings in relation to a matter mentioned in these Regulations in which it is alleged that a person (***person 1***) was an associate of another person by virtue of paragraph (5) (b) or (e), person 1 is not taken to have been an associate of the other person in relation to a matter by virtue of that paragraph unless it is proved that person 1 knew, or ought to have known, at that time, the material particulars of that matter.

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(9) A reference to an associate, in relation to an entity (other than a body corporate) that:

(a) engages in a credit activity; and

(b) is constituted by 2 or more persons;

includes a reference to an associate of any of those persons.

5 Prescribed orders

For the definition of ***prescribed State or Territory order*** in subsection 5 (1) of the Act, orders made under an Act specified in the following table are prescribed.

Item	Act
New South Wales	
1.1	*Crimes (Criminal Organisations Control) Act 2009*
Queensland	
3.1	*Criminal Organisation Act 2009*
South Australia	
5.1	*Serious and Organised Crime (Control) Act 2008*

6 Forms

(1) A reference in these Regulations to a form of a particular number is a reference to the form of that number in Schedule 1.

(2) The number of a form need not appear on a document that is required to comply with the form.

(3) A reference to a provision of the Code, or of these Regulations, to which a form relates need not appear on a document that is required to comply with the form.

(4) The expression ‘credit provider’, ‘debtor’, ‘lessor’ or ‘lessee’ in a form may be replaced by the name of:

(a) the credit provider, debtor, lessor or lessee; or

(b) another expression that is explained in the form.

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(5) A document that is required to comply with a form need not contain any matter that is not relevant to the credit contract, mortgage, guarantee or consumer lease concerned. The consequential renumbering of items is permissible.

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

Chapter 2 Licensing of persons who engage in credit activities

Part 2-1 Australian credit licences

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

(1) For paragraph 37 (1) (e) of the Act, a foreign entity that:

(a) is not a registered foreign company; and

(b) applies for an Australian credit licence;

must meet the requirements in subregulations (2) and (3).

(2) The foreign entity must:

(a) have appointed, as an agent, a person who is:

(i) an individual or a company; and

(ii) a resident in this jurisdiction; and

(iii) authorised to accept, on the foreign entity's behalf, service of process and notices; and

(b) lodge, with the application, a memorandum of appointment or a power of attorney that is duly executed by or on behalf of the foreign entity and states the name and address of the agent.

(3) If the memorandum of appointment, or power of attorney, lodged under paragraph (2) (b) was executed on behalf of the foreign entity, the foreign entity must also lodge a copy declared in writing to be a true copy of the document authorising the execution.

(4) In this regulation:

registered foreign company has the meaning given by section 9 of the *Corporations Act 2001*.

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7A When licence may be granted — continuous credit activity

For paragraph 37 (1) (e) of the Act, a requirement in relation to a person who:

(a) is a credit provider, lessor, mortgagee or beneficiary of a guarantee in relation to a carried over instrument immediately before 1 July 2010; and

(b) intends to engage in a credit activity in relation to the carried over instrument on or after 1 July 2010; and

(c) intends to engage in a credit activity otherwise than in relation to the carried over instrument on or after 1 July 2010;

is that the person must apply under section 36 of the Act for a licence to engage in the credit activities mentioned in paragraphs (b) and (c).

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

(1) For section 39 of the Act, if an applicant is:

(a) in the class of applicants mentioned in subregulation (2); and

(b) is applying for a licence to engage in credit activities of the kind in which the person is authorised to engage under a law of a State or Territory;

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

(2) The class of applicants is persons:

(a) who have applied for an Australian credit licence; and

(b) who are authorised to engage in credit activities under a law of a State or Territory; and

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(c) who, under the law of the State or Territory, or under a condition imposed on the person by a licensing authority under the law of the State or Territory:

(i) are required to comply with the following requirements:

(A) the person must comply with the law;

(B) the person must have sufficient or adequate resources to ensure the person can comply with the law;

(C) the person must be responsible for ensuring that all representatives of the person comply with the law;

(D) the person must arrange or provide credit that is appropriate for consumers;

(E) the person must act honestly and fairly in the person's dealings with borrowers and lenders;

(F) the person must ensure that the person and all representatives of the person are competent to engage in the credit activities the person is authorised to engage in;

(G) if the person is acting as an agent on behalf of a consumer, the person must act in the best interests of the person's principal; and

(ii) are not required to be supervised by another person; and

(d) who may be banned from engaging in credit activities under the law of the State or Territory; and

(e) who have provided to ASIC a written statement in the approved form that the person will comply with the person's obligations under the Act.

(3) For section 39 of the Act, paragraph 37 (1) (c) of the Act does not apply in relation to the class of applicants mentioned in subregulation (4) to the extent that the applicant is applying for a licence to engage in credit activities of the kind the person was authorised to engage in under a law of a State or Territory.

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(4) The class of applicants is persons who:

(a) are in the class of applicants mentioned in subregulation (2); and

(b) are authorised to engage in credit activities under a law of a State or Territory that:

(i) requires the person to demonstrate that the person is a fit and proper person (however described); or

(ii) deems the person to be ineligible to engage in credit activities if the person is not a fit and proper person (however described).

(5) For section 39 of the Act, if an applicant is in the class of applicants mentioned in subregulation (7) or (8):

(a) section 37 of the Act does not apply in relation to the applicant; and

(b) if:

(i) the applicant applies under section 36 of the Act for a licence; and

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

ASIC must grant the applicant a licence.

(6) If ASIC grants the applicant a licence under subregulation (5), the licence must authorise the licensee to engage in credit activities that equate, as closely as possible, to the credit activities in relation to which the application was made.

(7) The class of applicants is persons who:

(a) are authorised as a general insurer by APRA under section 12 of the *Insurance Act 1973*; and

(b) are included on the Register of General Insurers and Authorised NOHCs; and

(c) offer lenders mortgage insurance products; and

(d) engage in credit activities only:

(i) as an assignee in relation to providing the mortgage insurance products; or

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(ii) as the credit provider under the doctrine of subrogation in relation to providing the mortgage insurance products.

(8) The class of applicants is persons who:

(a) are registered by APRA under section 21 of the *Life Insurance Act 1995*; and

(b) engage in credit activities in relation to the provision of credit only because of the operation of the terms and conditions of:

(i) a life policy (within the same meaning as in that Act) that was entered into before 1 July 2010 by the person; or

(ii) a document issued or given by the person in relation to a life policy (within the same meaning as in that Act) that was entered into before 1 July 2010 by the person.

9 The conditions on the licence

(1) For section 45 of the Act, an Australian credit licence is subject to the conditions set out in this regulation.

(2) If:

(a) there is a change in a matter particulars of which are entered in the credit register for licensees; and

(b) the change is not a direct consequence of an act by ASIC;

the licensee must lodge particulars of the change with ASIC, in the approved form, within 10 business days after the change occurs.

(3) If:

(a) there is a change in a matter particulars of which are entered in the credit register for credit representatives; and

(b) the change is not required to be reported in accordance with section 71 of the Act; and

(c) the change is not a direct consequence of an act by ASIC;

the licensee must ensure that particulars of the change are lodged with ASIC in the approved form within 15 business days after the change occurs.

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(4) The licensee must ensure that each credit representative of the licensee that may give an authorisation to an individual is aware of the requirements in section 71 of the Act.

(5) The licensee must ensure that, before the licensee authorises an individual to engage in a credit activity on its behalf as mentioned in section 64 of the Act, reasonable inquiries are made to establish:

(a) the individual's identity; and

(b) whether the individual has already been allocated a number by ASIC as a credit representative.

(6) The licensee must ensure that, before a body corporate that is a credit representative of the licensee authorises an individual to engage in a credit activity on behalf of the licensee as mentioned in section 65 of the Act, reasonable inquiries are made to establish:

(a) the individual's identity; and

(b) whether the individual has already been allocated a number by ASIC as a credit representative.

(7) The licensee must ensure that, if:

(a) ASIC has allocated a number to a credit representative; and

(b) the licensee, or a body corporate that has authorised an individual to engage in a credit activity on behalf of the licensee as mentioned in section 65 of the Act, lodges a document with ASIC that refers to the credit representative;

the document refers to the number.

(8) The licensee must provide evidence of an authorisation of any of its credit representatives:

(a) on request by any person; and

(b) free of charge; and

(c) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which it received the request.

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(9) The licensee must take reasonable steps to ensure that each of its credit representatives supplies evidence of its authorisation by the licensee:

(a) on request by any person; and

(b) free of charge; and

(c) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which the credit representative received the request.

(10) If the licensee becomes aware of any change in control of the licensee, the licensee must lodge with ASIC particulars of the change, in the approved form, not later than 10 business days after the change.

(11) For subregulation (10):

(a) a change in control, in relation to a licensee, includes a transaction, or a series of transactions in a period of 12 months, that results in a person having control of the licensee, either alone or together with associates of the person; and

(b) control, in relation to a licensee, means:

(i) if the licensee is a body corporate:

(A) the capacity to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the licensee; or

(B) directly or indirectly holding more than one half of the issued share capital of the licensee (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(ii) the capacity to control the composition of the licensee's board or governing body; or

(iii) the capacity to determine the outcome of decisions about the licensee's financial and operating policies.

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(12) For subparagraph (11) (b) (iii), the following matters must be taken into account in determining whether a person has the capacity to determine the outcome of decisions about the licensee's financial and operating policies:

(a) the practical influence the person can exert (rather than the rights it can enforce);

(b) any practice or pattern of behaviour affecting the licensee's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).

(13) On the request of any person, the licensee must make available, within 10 business days, evidence of its Australian credit licence for inspection by that person.

(14) If:

(a) the licensee is not a body regulated by APRA; and

(b) an event occurs that may make a material adverse change to the financial position of the licensee by comparison with its financial position:

(i) at the time of the application for the Australian credit licence; or

(ii) as described in documents lodged with ASIC after the application for the Australian credit licence;

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

9AA The conditions on the licence — special purpose funding entity

(1) For subsection 45 (7) of the Act, the licence is subject to the conditions set out in this regulation if the licensee is a party to a servicing agreement with a special purpose funding entity.

(2) The licensee must lodge with ASIC a notice, in an approved form, stating that the licensee is a party to a servicing agreement with a special purpose funding entity.

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(3) For subregulation (2):

(a) if the servicing agreement was entered into before 1 July 2010, the licensee must notify ASIC no later than 30 business days after 1 July 2010; and

(b) if the servicing agreement was entered into on or after 1 July 2010, the licensee must lodge with ASIC a notice, in an approved form and stating that the service agreement was entered into, no later than 20 business days after the servicing agreement was entered into.

(4) If the licensee ceases to be a party to a servicing agreement with a special purpose funding entity, the licensee:

(a) must lodge with ASIC a notice, in an approved form, stating that the licensee has ceased to be a party to the servicing agreement with the entity; and

(b) must lodge the notice no later than 15 business days after the licensee ceases to be a party.

(5) The licensee:

(a) must lodge with ASIC a notice, in an approved form, setting out any action by a natural person in a position to control or influence the special purpose funding entity that has or may have the effect of directing the licensee to act inconsistently with:

(i) the licensee's licence conditions; or

(ii) the credit legislation; and

(b) must lodge the notice no later than 15 business days after the action occurs.

9AB Conditions for licensee — referrals

(1) For subsection 45 (7) of the Act, a licensee who engages in a credit activity, on or after 1 October 2010, as a consequence of being a licensee described in subregulation 25 (5) is subject to the conditions set out in this regulation.

Note The licensee, or a representative of the licensee, provides the credit activity to a person by contacting the person after a referral by the referrer described in subregulation 25 (5).

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Register of referrers

(2) The licensee must keep, or have access to, a register of the referrers described in subregulation 25 (5):

(a) with which the licensee has an agreement of the kind described in paragraph 25 (5) (a); or

(b) who have been made a written offer of the kind described in sub-subparagraph 25 (5) (b) (ii) (B).

(3) The register must include:

(a) the referrer's name and contact details; and

(b) the date and means by which the referrer was advised in writing of the way in which the referrer may engage in credit activities under the agreement; and

(c) the day on which the referrer first engaged in the conduct described in subparagraph 25 (5) (c) (ii) under the agreement.

Note The conduct is giving to the licensee, registered person or representative the consumer's name.

(4) The licensee must make the register available to ASIC on request.

Contact after referral

(5) The licensee may only contact the consumer described in subregulation 25 (5) if he or she does so within 10 business days after receiving the referral from the referrer described in that subregulation.

(6) If the licensee contacts the consumer in person, the licensee must begin the discussion with the consumer (after the licensee has identified itself) by statements to the following effect:

(a) 'I am contacting you because we have been provided with your contact details by *[name of referrer]*. Can you confirm that you agreed with *[name of referrer]* to have us contact you?';

(b) if a payment of commission or a financial benefit may be given to the referrer — 'before we continue, I would like to let you know that if you take up any of our products or

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services, *[name of referrer]* may receive the following financial benefits *[brief description]*';

(c) 'are you happy to continue this discussion?'.

(7) If the licensee contacts the consumer by letter or email, the licensee must include statements to the following effect at the start of the letter or email:

(a) the licensee is contacting the consumer as a result of being provided with their contact details by the referrer (identifying the referrer by name);

(b) the referrer may receive a financial benefit or payment.

9A Conditions for unlicensed carried over instrument lender — credit register

(1) For modified section 45 of the Act, an unlicensed carried over instrument lender is subject to the conditions set out in this regulation.

(2) If:

(a) there is a change in a matter, particulars of which are entered in the credit register for unlicensed carried over instrument lenders; and

(b) the change is not a direct consequence of an act by ASIC;

the lender must lodge particulars of the change with ASIC, in the approved form, no later than 10 business days after the change occurs.

(3) If the lender becomes aware of any change in control of the lender, the lender must lodge with ASIC particulars of the change, in the approved form, not later than 10 business days after the change.

(4) For subregulation (3):

(a) a change in control, in relation to a lender, includes a transaction, or a series of transactions in a period of 12 months, that results in a person having control of the lender, either alone or together with associates of the person; and

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(b) control, in relation to a lender, means:

(i) if the lender is a body corporate:

(A) the capacity to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the lender; or

(B) directly or indirectly holding more than one half of the issued share capital of the lender (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(ii) the capacity to control the composition of the lender's board or governing body; or

(iii) the capacity to determine the outcome of decisions about the lender's financial and operating policies.

(5) For subparagraph (4) (b) (iii), the following matters must be taken into account in determining whether a person has the capacity to determine the outcome of decisions about the lender's financial and operating policies:

(a) the practical influence the person can exert (rather than the rights it can enforce);

(b) any practice or pattern of behaviour affecting the lender's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).

(6) If:

(a) the lender is not a body regulated by APRA; and

(b) an event occurs that may make a material adverse change to the financial position of the lender by comparison with its financial position:

(i) at the time it became an unlicensed carried over instrument lender; or

(ii) as described in documents lodged with ASIC after it became an unlicensed carried over instrument lender;

the lender must lodge with ASIC in the approved form a notice setting out particulars of the event as soon as practicable, and

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in any case not later than 3 business days, after the lender becomes aware of the event.

10 Obligations of licensees — alternative dispute resolution systems

(1) For subparagraph 47 (1) (h) (i) of the Act, ASIC must take the following matters into account when considering whether to make or approve standards or requirements relating to internal dispute resolution:

(a) Australian Standard AS ISO 10002:

(i) known as *Complaints Handling*; and

(ii) published by Standards Australia; and

(iii) as in force when this regulation commences;

(b) any other matter ASIC considers relevant.

(2) ASIC may:

(a) vary or revoke a standard or requirement that it has made in relation to an internal dispute resolution procedure; and

(b) vary or revoke the operation of a standard or requirement that it has approved in its application to an internal dispute resolution procedure.

(3) For paragraph 47 (1) (i) of the Act, ASIC must take the following matters into account when considering whether to approve an external dispute resolution scheme:

(a) the accessibility of the dispute resolution scheme;

(b) the independence of the dispute resolution scheme;

(c) the fairness of the dispute resolution scheme;

(d) the accountability of the dispute resolution scheme;

(e) the efficiency of the dispute resolution scheme;

(f) the effectiveness of the dispute resolution scheme;

(g) any other matter ASIC considers relevant.

(4) ASIC may:

(a) specify a period for which an approval of an external dispute resolution scheme is in force; and

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(b) make an approval of an external dispute resolution scheme subject to conditions specified in the approval, including conditions relating to the conduct of an independent review of the operation of the scheme; and

(c) vary or revoke:

(i) an approval of an external dispute resolution scheme; or

(ii) the specification of a period for which an approval is in force; or

(iii) a condition to which an approval of an external dispute resolution scheme is subject.

(5) For paragraph 110 (a) of the Act, a licensee who engages in credit activities in the capacity of any of the following:

(a) a trustee appointed under the will or on the intestacy of a person;

(b) a trustee appointed under an express trust if:

(i) the settlor is an individual; and

(ii) the interest in the trust is not a credit contract;

(c) an attorney appointed under an enduring power of attorney;

is exempt from the requirements in paragraph 47 (1) (i) of the Act in relation to the credit activities if complaints about the credit provided by the licensee may be made to the Ombudsman of a State or Territory.

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

(1) For paragraph 47 (1) (m) of the Act, a foreign entity that:

(a) is not a foreign company; and

(b) is a licensee;

must meet the requirements in subregulation (2).

(2) The foreign entity must:

(a) at all times, have an agent who is:

(i) an individual or a company; and

(ii) resident in this jurisdiction; and

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(iii) authorised to accept, on the foreign entity's behalf, service of process and notices; and

(b) notify ASIC of any change to:

(i) the agent; or

(ii) the name or address of the agent;

not later than 1 month after the change; and

(c) make arrangements that ensure that ASIC may treat a document as being served on the foreign entity by leaving it at, or by sending it by post to:

(i) an address of the agent that has been notified to ASIC; or

(ii) if a notice or notices of a change or alteration to that address has or have been given to ASIC — the address shown in the most recent notice.

12 Obligations of licensees — requirements for compensation arrangements

(1) For paragraph 48 (2) (a) of the Act, and unless the licensee is an exempt licensee, the arrangements mentioned in subsection 48 (1) of the Act are subject to the requirement that the licensee hold professional indemnity insurance cover that is adequate, having regard to:

(a) the licensee's membership of an approved external dispute resolution scheme (or schemes) mentioned in paragraph 47 (1) (i) of the Act, taking account of the maximum liability that has, realistically, some potential to arise in connection with:

(i) any particular claim against the licensee; and

(ii) all claims in respect of which the licensee could be found to have liability; and

(b) relevant considerations in relation to the engaging in a credit activity by the licensee, including:

(i) the volume of business involved in the credit activity; and

(ii) the number and kind of clients; and

(iii) the kind, or kinds, of credit activities involved; and

(iv) the number of representatives of the licensee.

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(2) For paragraph 48 (3) (c) of the Act, a matter to which ASIC must have regard, before approving particular arrangements under paragraph 48 (2) (b) of the Act, is whether those arrangements would provide coverage that is adequate, having regard to matters of the kind mentioned in subregulation (1).

(3) In this regulation:

exempt licensee means any of the following:

(a) a company or institution of any of the following kinds:

(i) a general insurance company authorised by APRA under section 12 of the *Insurance Act 1973*, and included on the Register of General Insurers and Authorised NOHCs;

(ii) a life insurance company registered with APRA under section 21 of the *Life Insurance Act 1995*;

(iii) an authorised deposit-taking institution;

(b) a licensee:

(i) that is related (within the meaning of section 50 of the Corporations Act) to a company or institution mentioned in paragraph (a); and

(ii) in respect of which the company or institution has provided a guarantee that:

(A) ensures payment of the obligations of the licensee to an extent that is adequate within the meaning of subregulation (1); and

(B) is approved in writing by ASIC;

(c) a licensee whose license:

(i) is subject to a condition under subsection 45 (6) of the Act that the licensee is only authorised to engage in credit activities mentioned in item 1, 3, 4 or 5 in the table in subsection 6 (1) of the Act; and

(ii) is not subject to a condition that the licensee hold professional indemnity insurance;

(d) a licensee who:

(i) has a licence to provide a credit service within the meaning given by section 7 of the Act; and

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(ii) will only provide the credit service in relation to:

(A) credit contracts for which the licensee is the credit provider; or

(B) consumer leases for which the licensee is the lessor.

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

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

(1) For subsection 52 (2) of the Act, the following kinds of documents are prescribed:

(a) a document that is required to be created or produced in accordance with Chapter 3 of the Act;

(b) a printed advertisement that relates to the provision of credit to which the Code would apply;

(c) a document that is required to be created, produced, given or published by a provision of the Code;

(d) a document lodged with ASIC that relates to the provision of credit to which the Code would apply.

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

(a) the person is subject to a requirement to include and identify its Australian credit licence number in a document prescribed by the regulations; and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

(2) For the purposes of paragraph (1) (b), if a printed advertisement identifies more than 1 licensee, or uses a word or description that covers more than 1 licensee, subsection 52 (2) of the Act is modified to provide that only 1 of the licensees must comply with paragraphs 52 (2) (a) and (b) of the Act.

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

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

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

(a) if the body corporate is not an ADI:

(i) the Chief Executive Officer of the body corporate; or

(ii) if the body corporate does not have a Chief Executive Officer — the person who:

(A) is responsible for managing the affairs of the body corporate; and

(B) has authority to make decisions in relation to the allocation of resources so that the body corporate complies with the Act;

(b) if the body corporate is an ADI:

(i) the Chief Executive Officer of the body corporate; or

(ii) a person who satisfies the criteria to be fit and proper to hold a responsible person position under Prudential Standard APS 520.

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

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

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

(a) a licensee failing to lodge an annual compliance certificate under section 53 of the Act;

(b) a licensee lodging an annual compliance certificate that contains information that:

(i) is false or misleading; or

(ii) can not reasonably be believed to be true by the person signing the certificate under subsection 53 (3) of the Act.

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Part 2-2 Authorisation of credit representatives

16 Sub-authorisation by body corporate

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

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

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

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

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

(a) whether, in the opinion of the auditor, the licensee's trust accounts have been kept regularly and properly maintained;

(b) whether the auditor received all necessary records, information and explanations from the licensee;

(c) whether, in the opinion of the auditor, the licensee's trust accounts provide a true and fair view of the transactions recorded and the balance at the end of the relevant period;

(d) any other matter in relation to the trust accounts which should, in the opinion of the auditor, be communicated to ASIC.

18 Eligibility of auditors to prepare trust account audit report

(1) For subsection 100 (4) of the Act, a person is ineligible to prepare a trust account audit report for a credit service licensee if:

(a) the person does not meet the requirements of regulation 19; or

(b) the person is not an authorised audit company (within the meaning given by section 9 of the Corporations Act); or

(c) the person owes an amount to, or is owed an amount by:

(i) the credit service licensee; or

(ii) if the credit service licensee is a body corporate — a related body corporate of the credit service licensee; or

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(d) a body corporate in which the person has a substantial holding owes an amount to, or is owed an amount by:

(i) the credit service licensee; or

(ii) if the credit service licensee is a body corporate — a related body corporate of the credit service licensee; or

(e) if the credit service licensee is a body corporate — the person is:

(i) an officer of the body corporate; or

(ii) a partner or employee of an officer of the body corporate.

(2) For paragraph (1) (c), a debt owed by an individual to a body corporate is to be disregarded if:

(a) the body corporate is:

(i) an Australian ADI; or

(ii) a body corporate registered under the *Life Insurance Act 1995*; and

(b) the debt arose because of a loan that the body corporate made to the individual in the ordinary course of the body corporate's ordinary business; and

(c) the individual used the amount of the loan to pay the whole or part of the purchase price of premises that the individual uses as his or her principal place of residence.

(3) For subparagraphs (1) (e) (i) and (ii), a person is taken to be an officer of a body corporate if:

(a) the person is an officer of a related body corporate; or

(b) unless ASIC directs that this paragraph does not apply in relation to the person — the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.

(4) For this regulation, a person is not taken to be an officer of a body corporate by reason only:

(a) of being or having been the liquidator of the body corporate or of a related body corporate; or

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(b) of having been appointed as an auditor of the body corporate or of a related body corporate; or

(c) of being a public officer of the body corporate for any purpose relating to taxation; or

(d) of being or having been authorised to accept service of process or any notices on behalf of the body corporate or a related body corporate.

19 Auditors who prepare audit reports

(1) For paragraph 106 (c) of the Act, this regulation:

(a) sets out who is eligible to be an auditor for the purpose of preparing the audit reports mentioned in paragraph 102 (1) (b) of the Act; and

(b) sets out when a person may be appointed as an auditor.

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

Eligibility to be an auditor

(2) A person is eligible to be appointed as an auditor for the purpose mentioned in paragraph (1) (a) only if:

(a) the person is a registered company auditor or an authorised audit company (within the meaning given by section 9 of the Corporations Act); and

(b) the person:

(i) is not an employee, director or partner:

(A) of the licensee; or

(B) of any other person carrying on a business of engaging in credit activities; and

(ii) is not carrying on a business of engaging in credit activities.

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Appointment as an auditor

(3) A licensee must:

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

(b) lodge with ASIC a notice, in the approved form, of the appointment within 14 days after appointing the person.

(4) If a person is appointed as a licensee's auditor, the appointment is continuous until the first of the following events occurs:

(a) the licensee is no longer required to keep a trust account;

(b) the auditor dies or otherwise ceases to engage in the business of being an auditor;

(c) the auditor is unable to perform his or her duties as the licensee's auditor;

(d) ASIC approves the auditor's resignation;

(e) ASIC approves a request by the licensee to replace the person as an auditor.

(5) If a person ceases to be a licensee's auditor under paragraph (4) (b), (c), (d) or (e), the licensee must:

(a) within 28 days of the cessation of the appointment, appoint another person who meets the requirements of subregulation (2) to be the licensee's auditor; and

(b) lodge with ASIC a notice, in the approved form, of the appointment within 14 days after appointing the person.

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Part 2-4 Exemptions and modifications

Division 1 Exemptions

Subdivision 1.1 Persons exempt from being licensed

20 Persons exempt from requiring a licence — general

[*see* Note 2]

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and

(c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

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

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

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

(3) A person is exempted if:

(a) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a trustee within the meaning of the *Bankruptcy Act 1966*; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee; or

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(b) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a controller within the meaning of the *Corporations Act 2001*, provisional liquidator, or liquidator (whether appointed by a court or otherwise); or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a controller, provisional liquidator or liquidator; or

(c) the person engages in a credit activity while performing functions, or exercising powers, as a person appointed by a court to engage in a credit activity; or

(d) the person engages in a credit activity while performing functions, or exercising powers, as the Public Trustee acting under a law of a State or Territory; or

(e) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as an administrator within the meaning of the *Corporations Act 2001*; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as an administrator; or

(f) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a controlling trustee within the meaning of section 187 of the *Bankruptcy Act 1966*; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a controlling trustee; or

(fa) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a trustee of a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee of a personal insolvency agreement; or

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(g) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a trustee or person administering a compromise or arrangement between a body corporate and another person or person; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee or person of that kind; or

(h) the person engages in a credit activity while performing functions, or exercising powers, as a personal representative of a deceased person other than a deceased licensee; or

(i) subject to subregulation (4), the person engages in a credit activity while performing functions, or exercising powers, as a personal representative of a deceased licensee; or

(j) the person engages in a credit activity while performing functions, or exercising powers, as a registered debt agreement administrator preparing and administering a debt agreement under Part IX of the *Bankruptcy Act 1966*; or

(k) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a registered trustee under Part X of the *Bankruptcy Act 1966* in the ordinary course of activities as a registered trustee that is reasonably regarded as a necessary part of those activities; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a registered trustee; or

(l) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a registered liquidator within the meaning of the *Corporations Act 2001* in the ordinary course of activities as a registered liquidator that is reasonably regarded as a necessary part of those activities; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a registered liquidator.

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(4) Paragraph (3) (i) only applies until the first of the following events occurs:

(a) the end of 6 months after the death of the licensee;

(b) the removal or discharge of the personal representative;

(c) the final distribution of the licensee's estate.

(5) A person is exempted if:

(a) the person (the ***financial counselling agency***) engages in the credit activity as part of a financial counselling service; and

(b) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:

(i) engaging in the credit activity; or

(ii) any other aspect of the provision of the financial counselling service; and

(c) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, a representative of the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:

(i) engaging in the credit activity; or

(ii) any other aspect of the provision of the financial counselling service; and

(d) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, an associate of the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:

(i) engaging in the credit activity; or

(ii) any other aspect of the provision of the financial counselling service; and

(e) no fees or charges (however described) are payable by or on behalf of the client in relation to the credit activity or any other aspect of the financial counselling service; and

(f) the financial counselling agency:

(i) does not engage in a credit activity that is not covered by paragraphs (a) to (e); and

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(ii) takes all reasonable steps to ensure that none of its representatives engages in a credit activity that is not covered by paragraphs (a) to (e); and

(g) the financial counselling agency takes all reasonable steps to ensure that each person who engages in credit activities on its behalf:

(i) is a member of, or is eligible to be a member of, a financial counselling association; and

(ii) has undertaken appropriate training to ensure that the person has adequate skills and knowledge to engage satisfactorily in the credit activity and any other aspect of the provision of the financial counselling service.

(6) A person is exempted if:

(a) the person:

(i) is a related body corporate of a licensee; and

(ii) is engaging in credit activities only on behalf of the licensee; and

(iii) is engaging in credit activities only because its employees and directors are engaging in credit activities on behalf of the licensee; and

(b) the credit activities in which the person engages are not those mentioned in:

(i) paragraph (a) or (b) of item 1 of the table in subsection 6 (1) of the Act; or

(ii) paragraph (a) or (b) of item 3 of the table in subsection 6 (1) of the Act.

(7) A person is exempted if the person is a public body or authority, or a local government body or authority, constituted under an Act of the Commonwealth or a State or Territory.

(8) Subject to subregulation (9), if a person is authorised to engage in particular credit activities by:

(a) an Act of the Commonwealth or a State or Territory (other than the Act, the Transitional Act or an Act mentioned in subregulation (10)); or

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(b) a licence or registration issued or granted under an Act of the Commonwealth or a State or Territory (other than the Act, the Transitional Act or an Act mentioned in subregulation (10));

the person is exempted to the extent that the person is engaging in the credit activities in which the person is authorised to engage under that Act, licence or registration.

(10) For paragraphs (8) (a) and (b), the Acts are:

(a) the *Finance Brokers Control Act 1975* (WA); and

(b) the *Credit (Administration) Act 1984* (WA); and

(c) the *Consumer Credit (Administration) Act 1996* (ACT).

(11) A person is exempted if:

(a) the person is an organisation that provides services and makes benefits available to members of:

(i) the organisation; or

(ii) a program or facility operated or conducted by or within the organisation; and

(b) an incidental benefit of membership of the organisation, program or facility is that members are eligible:

(i) to apply for a particular credit contract or consumer lease offered by a licensee or a registered person; or

(ii) to obtain services or benefits under a particular credit contract or consumer lease offered by a licensee or a registered person; and

(d) the organisation provides credit services (within the meaning given by section 7 of the Act) in relation to the particular credit contract or consumer lease to members or persons likely to become members under a contract or agreement with the licensee or registered person; and

(e) it would not ordinarily be the case that:

(i) the credit to be provided under the credit contract is provided predominantly for the payment for services, goods or benefits provided by the organisation or an associate of the organisation; or

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(ii) the goods to be hired under the consumer lease are supplied by the organisation or an associate of the organisation.

(12) A person is exempted if:

(a) either:

(i) the person:

(A) is a charitable body (within the same meaning as in *ASIC Class Order [CO 02/184]*); and

(B) is engaging in credit activities by providing a credit service in relation to credit contracts or consumer leases provided by a licensed or registered credit provider or lessor or an exempt special purpose funding entity that is a credit provider or lessor; or

(ii) the person:

(A) is not a charitable body (within the same meaning as in *ASIC Class Order [CO 02/184]*); and

(B) is engaging in credit activities by providing a credit service in relation to credit contracts or consumer leases provided by an ADI; and

(b) the credit contracts or consumer leases are offered as part of a program designed for low income consumers who are entitled:

(i) to hold a Health Care Card or Pension Concession Card; or

(ii) to receive Family Tax Benefit Part A; and

(c) the only remuneration (whether by way of commission or otherwise) payable to, or on behalf of, the person by any other person in relation to any action by, or on behalf of, the client arising from providing the credit service is payments made by a third party that has no existing relationship with the client.

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(13) A person is exempted if:

(a) the person engages in credit activities mentioned in:

(i) paragraph (c) of item 1 of the table in subsection 6 (1) of the Act; or

(ii) paragraph (c) of item 3 of the table in subsection 6 (1) of the Act; or

(iii) paragraph (b) of item 4 of the table in subsection 6 (1) of the Act; or

(iv) paragraph (b) of item 5 of the table in subsection 6 (1) of the Act; and

(b) the person engages in the credit activities while performing the statutory obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee under:

(i) the *Privacy Act 1988*; or

(ii) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

21 Persons exempt from requiring a licence — debt collectors [*see* Note 2]

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and

(c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

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

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

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

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(3) A person is exempted if:

(a) the person engages in a credit activity mentioned in:

(i) paragraph (c) of item 1 of the table in subsection 6 (1) of the Act, on behalf of the credit provider who is a licensee, registered person or exempt special purpose funding entity; or

(ii) paragraph (c) of item 3 of the table in subsection 6 (1) of the Act, on behalf of the lessor who is a licensee, registered person or exempt special purpose funding entity; or

(iii) paragraph (b) of item 4 of the table in subsection 6 (1) of the Act, on behalf of the mortgagee who is a licensee, registered person or exempt special purpose funding entity; or

(iv) paragraph (b) of item 5 of the table in subsection 6 (1) of the Act, on behalf of the other person who is a licensee, registered person or exempt special purpose funding entity; and

(b) the person only performs the obligations, or exercises the rights, mentioned in those paragraphs in relation to:

(i) demanding and receiving payments from:

(A) borrowers or guarantors under credit contracts; or

(B) lessees under consumer leases; and

(ii) enforcing rights in relation to taking possession of:

(A) property secured by a mortgage; or

(B) goods hired under a consumer lease; and

(c) either:

(i) the person:

(A) holds a licence or authorisation to engage in an activity mentioned in paragraph (a) under one or more of the Acts mentioned in subregulation (5); or

(B) is authorised to act on behalf of a person who holds a licence or authorisation of a kind mentioned in sub-subparagraph (A); or

(ii) the person:

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(A) is not required to hold a licence or authorisation, or be authorised to act on behalf of a person who holds a licence or authorisation, to engage in an activity mentioned in paragraph (a) in a State or Territory; and

(B) is not prohibited from engaging in an activity mentioned in paragraph (a) by an order of a court or a law of the State or Territory; and

(d) the person is authorised in writing by a registered person or a licensee to engage in an activity mentioned in paragraph (a).

(5) For subparagraph (3) (c) (i), the Acts are the following:

(a) the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW);

(b) the **Private Agents Act 1966** (Vic);

(c) the *Property Agents and Motor Dealers Act 2000* (Qld);

(d) the *Debt Collectors Licensing Act 1964* (WA);

(e) the *Security and Investigation Agents Act 1995* (SA);

(f) the *Security and Investigations Agents Act 2002* (Tas);

(g) the *Commercial and Private Agents Licensing Act* (NT).

22 Persons exempt from requiring a licence — third parties

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and

(c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

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

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

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

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

(3) A person is exempted if:

(a) the person engages in a credit activity by selling, storing or transporting property of a debtor, lessor, mortgagor or guarantor on behalf of:

(i) a credit provider who is a licensee, registered person or exempt special purpose funding entity; or

(ii) a mortgagee who is a licensee, registered person or exempt special purpose funding entity; or

(iii) a person who is the beneficiary of a guarantee who is a licensee, registered person or exempt special purpose funding entity; or

(iv) a lessor who is a licensee, registered person or exempt special purpose funding entity; or

(b) the person engages in a credit activity by giving or sending to a debtor, lessee, mortgagor or guarantor, on behalf of:

(i) a credit provider who is a licensee, registered person or exempt special purpose funding entity; or

(ii) a mortgagee who is a licensee, registered person or exempt special purpose funding entity; or

(iii) a person who is the beneficiary of a guarantee who is a licensee, registered person or exempt special purpose funding entity; or

(iv) a lessor who is a licensee, registered person or exempt special purpose funding entity;

a notice or document that the person mentioned in subregulation (i), (ii), (iii) or (iv) is obliged by law to give or send to the debtor, lessee, mortgagor or guarantor.

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23 Persons exempt from requiring a licence — suppliers of goods or services

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons from:

(a) section 29 of the Act; and

(b) definitions in the Act as they apply to references in the provision mentioned in paragraph (a); and

(c) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) and (b).

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

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

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

(3) A person is exempted if:

(a) the person is:

(i) a supplier of goods or services (the ***supplier***); or

(ii) a related body corporate of the supplier; or

(iii) engaging in a credit activity primarily on the premises of the supplier with the agreement of the supplier; and

(b) the person is:

(i) on behalf of a relevant credit provider for a credit contract or proposed credit contract, performing the obligations or exercising the rights of the relevant credit provider in relation to the contract or proposed contract; or

(ii) on behalf of a relevant lessor for a consumer lease or proposed consumer lease, performing the obligations or exercising the rights of the lessor under the lease or proposed lease; or

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(iii) on behalf of a relevant mortgagee for a mortgage or proposed mortgage, performing the obligations or exercising the rights of the mortgagee under the mortgage or proposed mortgage; or

(iv) on behalf of a relevant beneficiary of a guarantee or proposed guarantee, performing the obligations or exercising the rights of the beneficiary in relation to the guarantee or proposed guarantee; or

(v) providing credit services in relation to a credit contract or consumer lease offered or provided by a relevant credit provider or relevant lessor; and

(c) if:

(i) the person is acting on behalf of the credit provider for a credit contract or proposed credit contract that is a loan contract or engaging in credit services in relation to a loan contract; and

(ii) the credit provided under the loan contract or the credit that would be provided if the loan contract were entered into will wholly or predominantly be used to pay for goods or services supplied by the supplier; and

(d) if:

(i) the person is acting on behalf of the credit provider of a credit contract or proposed credit contract that is a continuing credit contract or engaging in credit services in relation to a continuing contract; and

(ii) the credit initially provided under the continuing credit contract or the credit that would be initially provided under the continuing credit contract if it were entered into will wholly or predominantly be used to pay for goods or services supplied by the supplier; and

(e) if:

(i) the person is acting on behalf of a lessor for a consumer lease or proposed consumer lease or engaging in credit services in relation to a consumer lease; and

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(ii) payments made under the lease or payments that would be made under the lease if the lease were entered into will wholly or predominantly be used to pay the lessor for the hire of goods supplied by the supplier.

(4) The person is not exempted if the person supplies goods or services to the consumer as a result of unsolicited contact with the consumer.

(5) In this regulation:

relevant credit provider for a credit contract or proposed credit contract, means the credit provider for the contract or proposed contract if the credit provider is a:

(a) licensee, registered person or exempt special purpose funding entity; and

(b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).

relevant lessor for a consumer lease or proposed consumer lease, means the lessor under the lease or proposed lease if the lessor is a:

(a) licensee, registered person or exempt special purpose funding entity; and

(b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).

relevant mortgagee for a mortgage or proposed mortgage, means the mortgagee under the mortgage or proposed mortgage if the mortgagee is a:

(a) licensee, registered person or exempt special purpose funding entity; and

(b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).

relevant beneficiary of a guarantee or proposed guarantee, means the beneficiary of the guarantee or proposed guarantee if the beneficiary is a:

(a) licensee, registered person or exempt special purpose funding entity; and

(b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).

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23A Persons exempt from requiring a licence — suppliers of goods or services with branded or co-branded credit card

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:

(a) section 29 of the Act; and

(b) definitions in the Act as they apply to references in the provision mentioned in paragraph (a); and

(c) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) and (b).

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

(2) The person is exempted only to the extent that the person is engaging in the specified credit activity in relation to a continuing credit contract under which a credit card is provided.

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

(3) The person is exempted if:

(a) the person is:

(i) a supplier of goods or services; or

(ii) a related body corporate of a supplier of goods or services; or

(iii) engaging in a credit activity on behalf of the supplier of goods or services; and

(b) the person meets the requirements of subregulation (4) or (5).

(4) For paragraph (3) (b), the requirements are that the person is performing the obligations or exercising the rights of a credit provider in relation to a credit contract or proposed credit contract:

(a) on behalf of the credit provider who is a linked credit provider of the supplier and is a licensee, registered person or exempt special purpose funding entity; and

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(b) in relation to a continuing credit contract under which a credit card is:

(i) provided or would be provided if the contract were entered into; and

(ii) branded or co-branded with the name of the supplier or a related body corporate of the supplier or any other words, phrases, initials or logo associated with the supplier or related body corporate.

(5) For paragraph (3) (b), the requirements are that the person is providing credit services in relation to a continuing credit card contract under which a credit card is provided or would be provided if the contract were entered into and the:

(a) credit provider for the continuing credit contract is a linked credit provider of the supplier and is a licensee, registered person or exempt special purpose funding entity; and

(b) credit card is branded or co-branded with the name of the supplier or a related body corporate of the supplier or any other words, phrases, initials or logo associated with the supplier or related body corporate.

(6) The person is exempted if the person engages in credit activities on the premises of the supplier.

23B Persons exempt from requiring a licence — fund raising special purpose entity

(1) For paragraph 110 (a) of the Act, this regulation applies in relation to a fund raising special purpose entity if:

(a) it engages in a credit activity; and

(b) it is party to a servicing agreement; and

(c) it is a member of an approved external dispute resolution scheme; and

(d) if it is a body corporate — no director or secretary of the body corporate is an inappropriate person; and

(e) if it is a trust — no trustee of the trust is an inappropriate person.

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(2) The fund raising special purpose entity is exempted from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provision mentioned in paragraph (a); and

(c) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) and (b).

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

(3) The fund raising special purpose entity is exempted only to the extent that it is engaging in the specified credit activity.

Note 1 If the fund raising special purpose entity also engages in a credit activity that is not the subject of an exemption under the Act or the Transitional Act, it is not exempted in relation to that credit activity.

Note 2 Under subsection 109 (3) of the Act, ASIC may declare that instruments made under Chapter 2 of the Act apply in relation to a credit activity (other than an exempt credit activity in relation to a specified credit contract, mortgage, guarantee or consumer lease), or a class of persons or credit activities as if specified provisions were omitted, modified or varied as specified in the declaration.

23C Persons exempt from requiring a licence — securitisation entity

(1) For paragraph 110 (a) of the Act, this regulation applies in relation to a securitisation entity if:

(a) it engages in a credit activity; and

(b) it is party to a servicing agreement; and

(c) on and after 1 October 2010, it is a member of an approved external dispute resolution scheme; and

(d) if it is a body corporate — no director or secretary of the body corporate is an inappropriate person; and

(e) if it is a trust — no trustee of the trust is an inappropriate person.

(2) The securitisation entity is exempted from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provision mentioned in paragraph (a); and

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(c) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) and (b).

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

(3) The securitisation entity is exempted only to the extent that it is engaging in the specified credit activity.

Note 1 If the securitisation entity also engages in a credit activity that is not the subject of an exemption under the Act or the Transitional Act, it is not exempted in relation to that credit activity.

Note 2 Under subsection 109 (3) of the Act, ASIC may declare that instruments made under Chapter 2 of the Act apply in relation to a credit activity (other than an exempt credit activity in relation to a specified credit contract, mortgage, guarantee or consumer lease), or a class of persons or credit activities as if specified provisions were omitted, modified or varied as specified in the declaration.

23D Persons exempt from requiring a licence — employment agencies

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and

(c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

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

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

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

(3) The person is exempted if the person engages in a credit activity while performing functions, or exercising powers, in the following circumstances:

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(a) the person provides a person to a licensee, registered person or a representative of a licensee or registered person; and

(b) that person engages in a credit activity on behalf of the licensee or registered person only as a person described in regulation 25H or 25I.

Note Regulation 25H relates to temporary staff. Regulation 25I relates to locums.

(4) For paragraph 110 (c) of the Act, the provisions of the Act to which Part 2-6 of Chapter 2 of the Act applies apply in relation to the person as if subsection 29 (4) of the Act were omitted.

Subdivision 1.2 Activities exempt from being credit activities under the Act

24 Activities exempt from being credit activities

[*see* Note 2]

(1) For paragraphs 110 (b) and (c) of the Act, this regulation:

(a) exempts certain credit activities, or classes of credit activities, from all of the provisions to which Part 2-6 of the Act applies; and

(b) modifies specified provisions for the purposes of the exemption mentioned in paragraph (a).

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

(2) Subject to subregulation (3), the following credit activities are exempted:

(a) the providing of credit assistance by a lawyer in his or her professional capacity in relation to matters of law, legal interpretation or the application of the law to any facts;

(b) the providing of any credit assistance not mentioned in paragraph (a) by a lawyer in the ordinary course of activities as a lawyer that is reasonably regarded as a necessary part of those activities.

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(3) For subregulation (2), the credit activity is exempted only if the lawyer providing the credit assistance does not hold out or advertise to consumers that he or she is able to provide credit services.

(4) A credit activity, other than the provision of credit assistance mentioned in subregulation (2), is exempted if it is engaged in by a lawyer in the following circumstances:

(a) the lawyer is acting:

(i) on the instructions of a client, an associate of the client or a relative of the client; and

(ii) in his or her professional capacity; and

(iii) in the ordinary course of his or her activities as a lawyer;

(b) the credit activity can reasonably be regarded as a necessary part of those activities;

(c) the lawyer has not received, and will not receive, from the client or from another person on behalf of the client a benefit in connection with those activities other than:

(i) the payment of professional charges in relation to those activities; and

(ii) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client;

(d) the lawyer does not hold out or advertise to consumers that he or she is able to provide credit services.

(5) A credit activity is exempted if:

(a) it is engaged in by a tax agent in the following circumstances:

(i) the tax agent is registered under Part 2 of the *Tax Agent Services Act 2009*;

(ii) the tax agent engages in the credit activity in the ordinary course of activities as a tax agent; and

(b) it is a credit activity mentioned in item 2 of the table in subsection 6 (1) of the Act; and

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(c) it does not involve providing a certificate or assessment (however described) relating to whether a consumer will be able to meet financial obligations under a credit contract or consumer lease.

(6) A credit activity is exempted if:

(a) the credit activity consists only of a person (***person 1***) passing on, publishing, distributing or otherwise disseminating a document that was provided or approved by another person (***person 2***); and

(b) person 2:

(i) is not acting on behalf of person 1; and

(ii) is a licensee or registered person; and

(c) person 1 is not otherwise required to hold an Australian credit licence to engage in credit activities; and

(d) either:

(i) for a consumer in relation to the credit activity mentioned in paragraph (a):

(A) person 1 advises the consumer that person 2 is a licensee or registered person; and

(B) if person 2 is a licensee — person 1 gives the consumer the licence number of person 2; and

(C) if person 2 is an exempt special purpose funding entity — person 1 gives the consumer the licence number of the licensee who is party to the servicing agreement with the entity; or

(ii) a reasonable person would not consider that person 1 is the licensee or registered person in relation to credit activities being engaged in by person 2; and

(e) person 2 approved the content of the document.

(7) A credit activity is exempted if:

(a) the credit activity consists only of a person (***person 1***) allowing another person (***person 2***) to use person 1's business name, logo or trade mark in relation to:

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(i) the passing on, publishing, distributing or other dissemination of a document; or

(ii) a credit contract, consumer lease, mortgage or guarantee provided or offered by person 2; or

(iii) a credit activity engaged in by person 2; and

(b) person 2:

(i) is not acting on behalf of person 1; and

(ii) is a licensee or registered person; and

(c) person 1 is not otherwise required to hold an Australian credit licence to engage in credit activities; and

(d) either:

(i) for a consumer in relation to a credit activity mentioned in paragraph (a):

(A) the person performing the credit activity advises the consumer that person 2 is a licensee or registered person; and

(B) if person 2 is a licensee — the person performing the credit activity gives the consumer the licence number of person 2; and

(C) if person 2 is an exempt special purpose funding entity — person 1 gives the consumer the licence number of the licensee who is party to the servicing agreement with the entity; or

(ii) a reasonable person would not consider that person 1 is the licensee or registered person in relation to credit activities being engaged in by person 2.

(8) A credit activity is exempted if:

(a) the credit activity consists only of a person (***the provider***) giving to another person (***the inquirer***), in response to a request made by the inquirer to the provider, information about:

(i) the cost, or an estimate of the likely cost, of a credit contract or a consumer lease offered by a licensee or a registered person; or

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(ii) terms and conditions of a credit contract or a consumer lease offered by a licensee or a registered person; and

(b) the provider could have complied with the request by giving the inquirer equivalent information about one or more other credit contracts or consumer leases offered by a licensee or a registered person; and

(c) the provider did not give the inquirer that equivalent information.

(9) A credit activity is exempted if it is engaged in by a clerk or cashier in the ordinary course of activities as a clerk or cashier.

(10) For paragraph 110 (c) of the Act, the definition of ***lawyer*** in subsection 5 (1) of the Act is modified for the purposes of this regulation to provide that ***lawyer*** means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

Subdivision 1.3 Persons exempt from matters other than being licensed

24A ADI or registrable corporation exempt from responsible lending contract obligations — loan application received before 1 January 2011

(1) For paragraph 164 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from Parts 3-2 and 3-4 of the Act.

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

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

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Applications for credit or consumer lease made before 1 January 2011

(3) A person is exempted if the person:

(a) is an ADI or a registrable corporation under the *Financial Sector (Collection of Data) Act 2001*; and

(b) engages in the credit activity in relation to an application for credit or a consumer lease which the person received from a consumer during the period starting on 1 October 2010 and ending on 31 December 2010.

(4) The exemption ceases on 1 April 2011.

Division 2 Modifications

25 Activities exempt from requiring a licence

(1) For paragraph 110 (b) of the Act, this regulation exempts certain credit activities from:

(a) section 29 of the Act; and

(b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and

(c) instruments made for the purposes of any of the provisions mentioned in paragraphs (a) and (b).

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

(2) A credit activity is exempted if:

(a) the activity consists only of:

(i) a person (***person 1***) informing another person (***person 2***) that a licensee or registered person, or a representative of the licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and

(ii) person 1 giving person 2 information about how person 2 may contact the licensee, registered person or representative; and

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(b) at the time the activity is engaged in, person 1 discloses to person 2:

(i) any benefits, including commission, that person 1, or an associate of person 1, may receive in respect of the activity; and

(ii) any benefits, including commission, that person 1, or an associate of person 1, may receive that are attributable to the activity; and

(c) the disclosure mentioned in paragraph (b) is provided in the same form as the information mentioned in paragraph (a).

(2A) A credit activity is exempted if:

(a) the activity consists only of:

(i) a person (***person 1***) informing another person (***person 2***) that a licensee or registered person, or a representative of the licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and

(ii) person 1 giving person 2 information about how person 2 may contact the licensee, registered person or representative; and

(iii) person 1 making arrangements enabling person 2 to contact the licensee, registered person or representative by means of a link that can be accessed from a website provided by or for person 1 or an associate of person 1; and

(b) at the time the activity is engaged in, person 1 discloses to person 2:

(i) any benefits, including commission, that person 1, or an associate of person 1, may receive in respect of the activity; and

(ii) any benefits, including commission, that person 1, or an associate of person 1, may receive that are attributable to the activity; and

(c) the disclosure mentioned in paragraph (b) is provided in the same form as the information mentioned in subparagraph (a) (ii).

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(3) A credit activity is exempted if it is a credit activity engaged in in respect of the provision of credit mentioned in:

(a) subsection 6 (9) or (11) of the Code; or

(b) regulation 52, 54, 55, 56, 57, 60, 61 or 63.

(4) A credit activity is exempted if:

(a) a person (the ***referrer***) engages in a credit activity before 1 October 2010; and

(b) the activity consists only of:

(i) the referrer informing another person (the ***consumer***) that a licensee or registered person, or a representative of a licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and

(ii) the referrer giving to the licensee, registered person or representative the consumer's name and contact details; and

(iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and

(c) the referrer is not banned from engaging in the credit activity under:

(i) a law of a State or Territory; or

(ii) Part 2-4 of the Act; and

(d) at the time the activity is engaged in, the referrer discloses to the consumer:

(i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and

(ii) any benefits, including commission, that the referrer, or an associate of the referrer, may receive that are attributable to the activity; and

(e) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and

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(f) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and

(g) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person.

(5) A credit activity is exempted if:

(a) a person (the ***referrer***) engages in a credit activity on or after 1 October 2010 under an agreement with the licensee or registered person or a representative of the licensee or registered person; and

(b) the agreement:

(i) specifies the conduct in which the referrer can engage as conduct to which the exemption applies; and

(ii) is:

(A) in writing only; or

(B) based on an offer made in writing by the licensee, registered person or representative that has been accepted by the referrer; and

(c) the activity consists only of:

(i) the referrer informing another person (the ***consumer***) that the licensee or registered person, or a representative of the licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and

(ii) the referrer giving to the licensee, registered person or representative the consumer's name and contact details within 5 business days after informing the consumer; and

(iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and

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(d) the referrer is not banned from engaging in the credit activity under:
  (i) a law of a State or Territory; or
  (ii) Part 2-4 of the Act; and

(e) at the time the activity is engaged in, the referrer discloses to the consumer:
  (i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and
  (ii) any benefits, including commission, that the referrer, or an associate of the referrer, may receive that are attributable to the activity; and

(f) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and

(g) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and

(h) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person; and

(i) the referrer does not conduct a business as part of which the referrer contacts persons face-to-face from non-standard business premises.

25A Modifications — credit representatives

For paragraph 110 (c) of the Act, section 67 of the Act applies as if it were modified by adding the following subsections after subsection 67 (2):

'(3) However, if:

(a) a person (***person 1***) purports to authorise a registered person (within the meaning of the Transitional Act) to engage in a credit activity as a credit representative under subsection 64(1) or 65(1); and

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(b) at the time of making the purported authorisation, person 1 reasonably believes that the registered person will engage in the credit activity only as a credit representative;

the authorisation has effect when it is given and is taken not to contravene subsection (1).

(4) If the registered person does not request the cancellation of the registered person's registration within 15 business days after the day on which the authorisation is given, the authorisation mentioned in subsection (3) ceases to have effect at the end of the 15 business days.'.

25B Modification — meaning of *linked credit provider* or *linked lessor* for regulation 23

For paragraph 110 (c) of the Act and regulation 23, the definition of ***linked credit provider*** of a supplier in subsection 127 of the Code applies as if it were modified to provide that a ***linked credit provider*** or a ***linked lessor*** of a supplier means a credit provider or lessor:

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

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

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

(iii) the provision of a credit contract or consumer lease:

(A) to persons to whom goods or services are supplied by the supplier; and

(B) for payment for the goods or services; or

(b) to whom the supplier, by arrangement with the credit provider or lessor, regularly refers persons for the purpose of obtaining credit or being provided with a consumer lease; or

(c) whose:

(i) forms of contract; or

(ii) forms of application; or

(iii) offers for credit; or

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(iv) offers to be provided with a consumer lease;

are, by arrangement with the credit provider or lessor, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which:

(i) contracts; or

(ii) applications; or

(iii) offers for credit; or

(iv) offers to be provided with a consumer lease;

from the credit provider or lessor may be signed by persons at the premises of the supplier.

25C Modification — meaning of *linked credit provider* for regulation 23A

For paragraph 110 (c) of the Act and regulation 23A, the definition of ***linked credit provider*** of a supplier in subsection 127 (1) of the Code applies as if it were modified to provide that a ***linked credit provider*** of a supplier means a credit provider:

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

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

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

(iii) the provision of credit:

(A) to persons to whom goods or services are supplied by the supplier; and

(B) for payment for the goods or services; or

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

(c) whose:

(i) forms of contract; or

(ii) forms of application; or

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(iii) offers for credit;

are, by arrangement with the credit provider, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which:

(i) contracts; or

(ii) applications; or

(iii) offers for credit;

from the credit provider may be signed by persons at the premises of the supplier.

25D Modification — meaning of *services* for regulations 23 and 23A

For paragraph 110 (c) of the Act, the definition of ***services*** in subsection 204 (1) of the Code is modified for the purposes of regulations 23 and 23A to provide that ***services***:

(a) includes:

(i) insurance; or

(ii) professional services; or

(iii) a right to services; and

(b) does not include:

(i) rights in relation to, and interest in, real property; or

(ii) services relating to a credit contract or consumer lease that is regulated under the National Credit Code, or would be regulated under the National Credit Code if entered into, other than credit services.

25E Modifications — unlicensed carried over instrument lender

For paragraph 110 (c) of the Act, the provisions of the Act to which Part 2-6 of the Act applies, apply in relation to an unlicensed carried over instrument lender as if the provisions were modified as set out in Schedule 2.

Note ***Unlicensed carried over instrument lender*** is defined in modified section 5 of the Act as mentioned in item 2.4 of Schedule 2.

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25F Modifications — ADI in relation to carried over instrument

For paragraph 110 (c) of the Act, section 38 of the Act applies to an ADI in relation to a carried over instrument as if it were modified by substituting the following section:

38 When a license may be granted—ADI in relation to *carried over instrument*

(1) ASIC must grant a licence to an ADI in relation to a carried over instrument if (and must not grant a licence unless) the requirements mentioned in subsection (2), (3) or (4) are met.

(2) For subsection (1), the requirements are, if the ADI:
- (a) is a credit provider, lessor, mortgagee or beneficiary of a guarantee in relation to a carried over instrument (engages in the first credit activity) immediately before 1 July 2010; and
- (b) intends to engage in a credit activity (the second credit activity) other than the first credit activity on or after 1 July 2010; and
- (c) applies under section 36 for a licence to engage in the first credit activity and the second credit activity; and
- (d) includes a statement in the application (in accordance with the requirements of the approved form) to the effect that the ADI will, if granted the licence, comply with its obligations as a licensee.

(3) For subsection (1), the requirements are, if the ADI:
- (a) is a credit provider, lessor, mortgagee or beneficiary of a guarantee in relation to a carried over instrument immediately before 1 July 2010; and
- (b) does not intend to engage in a credit activity other than in relation to a carried over instrument on or after 1 July 2010; and
- (c) applies under section 36 for a licence to engage in a credit activity in relation to a carried over instrument; and
- (d) includes a statement in the application (in accordance with the requirements of the approved form) to the effect that the ADI will, if granted the licence, comply with its obligations as a licensee.

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(4) For subsection (1), the requirements are, if the ADI:
  (a) was not a credit provider, lessor, mortgagee or beneficiary of a guarantee in relation to a carried over instrument immediately before 1 July 2010; and
  (b) applies under section 36 for a licence; and
  (c) includes a statement in the application (in accordance with the requirements of the approved form) to the effect that the ADI will, if granted the licence, comply with its obligations as a licensee.

(5) The license must only authorise the ADI to engage in credit activities that equate (as closely as possible) to the credit activities in relation to which the application was made.

25G Modifications — special purpose funding entity

(1) For paragraphs 110 (c) and 164 (d) of the Act, the provisions to which Parts 2-6 and 3-7 of the Act apply apply in relation to:
  (a) a special purpose funding entity; or
  (b) a licensee or registered person who is a party to a servicing agreement with a special purpose funding entity;

  as if the provisions were modified as set out in Schedule 3.

(2) For paragraph (1) (a), each modification in Schedule 3 applies in relation to the special purpose funding entity from the time, or to the extent, that the obligation would apply to the licensee or registered person mentioned in paragraph (1) (b), in accordance with:
  (a) item 19 of Schedule 1 to the Transitional Act; or
  (b) item 36 of Schedule 2 to that Act;

  if the licensee or registered person were the credit provider or the lessor.

25H Modifications — temporary staff

(1) For paragraphs 110 (c) and 164 (d) of the Act, this regulation applies in relation to a person if:
  (a) the person's services are used by a licensee or registered person for a period of not more than 24 months (including

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any extension or rollover of a contract of engagement); and

(b) the person performs substantially the same duties as an employee of the licensee or registered person; and

(c) the person is subject to the same, or substantially the same, control and direction as an employee when the person is engaging in credit activities; and

(d) the person was not engaged because the person possesses particular skills or experience that would prevent the licensee or registered person from exercising the control and supervision over the person, when the person is engaging in credit activities, that the licensee or registered person can exercise over its employees; and

(e) the person is not remunerated predominantly by way of commission; and

(f) the licensee or registered person does not hold out or represent to consumers that the person is acting other than as an employee.

(2) The provisions of the Act to which Part 2-6 and Part 3-7 of the Act apply apply as if paragraph 65 (6) (c) and sections 71 and 158 of the Act were omitted.

25I Modifications — locums

(1) For paragraph 110 (c) of the Act, this regulation applies to a person who:

(a) is engaged to replace an employee of a licensee or registered person who is absent from work in that capacity and reasonably expected to return to work; and

(b) performs substantially the same duties as the employee; and

(c) is subject to the same, or substantially the same, control and direction as the employee when the person is engaging in credit activities.

(2) The provisions of the Act to which Part 2-6 of Chapter 2 of the Act applies apply as if each provision that refers to an employee of a licensee or registered person were modified by referring to:

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(a) an employee; and

(b) a person described in subregulation (1).

25J Modification — exempted persons

(1) For paragraph 110 (c) of the Act, this regulation applies to:

(a) a person who is exempted from provisions of the Act under subregulation 20 (11), 25 (4) or (5); and

(b) a person who acts on behalf of the person.

(2) Section 33 of the Act applies as if it were modified to include provision for section 128 of the Code to apply to any representation, warranty or statement made (whether orally or in writing) by the person in relation to a credit contract or consumer lease:

(a) offered by a licensee or registered person; and

(b) to which the person's exemption relates.

25K Modification — credit card contracts

(1) For paragraph 164 (d) of the Act, this regulation applies to a licensee that enters into a credit contract with a consumer in the form of issuing a credit card.

(2) The provisions of the Act to which Part 3-7 of the Act applies apply as if paragraph 128 (a) were modified to read:

'(a) provide a consumer with a credit card for the purpose of entering a credit contract that is formed or entered by:

(i) the use by a consumer of the credit card to obtain credit from the licensee; or

(ii) the activation by a consumer of the credit card by arrangement with the licensee;'.

25L Modification — assignees of credit providers, lessors, mortgagees and beneficiaries of a guarantee

For paragraph 164 (d) of the Act, the provisions of the Act to which Part 3-7 of the Act applies apply as if section 10 were modified by adding the following subsection after subsection 10 (2):

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‘(3) A person mentioned in paragraph (1)(b) is not a credit provider, lessor, mortgagee or beneficiary of a guarantee under a credit contract, consumer lease, mortgage or guarantee while the original credit provider, lessor, mortgagee or beneficiary of the guarantee under the credit contract, consumer lease, mortgage or guarantee continues to receive payments from the debtor, or would continue to do so if the debtor complied with the credit contract, consumer lease, mortgage or guarantee.’.

25M Modification—credit card provided before 1 July 2012

For paragraph 164 (d) of the Act, the provisions of the Act to which Part 3-7 of the Act applies apply as if section 133BD were modified by adding the following subsection after subsection 133BD (2):

‘(3) Subsections (1) and (2) do not apply if the application is made using an application form provided by the licensee to the consumer before 1 July 2012.’

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Chapter 3 Responsible lending conduct

Part 3.1 Preliminary

26 Definitions

In this Chapter:

disclosure document means any of the following:

(a) a credit guide mentioned in section 113, 126, 127, 136, 149, 150, 158 or 160 of the Act;

(b) a credit proposal disclosure document mentioned in section 121 of the Act;

(c) a lease proposal disclosure document mentioned in section 144 of the Act;

(d) a quote mentioned in section 114 or 137 of the Act.

(e) a precontractual statement or an information statement mentioned in section 16 of the National Credit Code.

interest rate means the interest rate or rates applicable to:

(a) a type of home loan; or

(b) a home loan chosen by a consumer.

Note For the characteristics of a home loan that is a standard form of credit contract, see regulation 28LA.

lender means a person or entity who:

(a) may determine the pricing of a standard home loan; and

(b) produces the Key Facts Sheet for that home loan.

licensee — see section 4.1 of Schedule 4.

managed contract means a credit contract or consumer lease entered into as a result of credit assistance provided by a mortgage manager under the terms of an agreement the mortgage manager has with a credit provider, lessor or third party to manage the contract or lease.

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mortgage manager means a licensee who has a written agreement with:

(a) a credit provider or lessor; or

(b) a third party who is authorised to act for a credit provider or lessor (under a written agreement with the credit provider or lessor); and

under the terms of which:

(c) the licensee is required to manage the relationship with the consumer on a day-to-day basis for the credit provider or lessor in accordance with the credit provider's, lessor's or third party's policies and procedures; and

(d) the credit contracts, consumer leases and associated documentation used by the licensee are branded or co-branded with the name of the licensee.

product designer means a licensee who engages in a credit activity only through a written agreement with a credit provider or lessor under the terms of which:

(a) the licensee manages a pool of funds from which credit contracts or consumer leases are provided; and

(b) the licensee receives commission that is worked out in relation to the net profit from operating the pool of funds; and

(c) the licensee has responsibility for creating the policy for usage of the credit contracts or consumer leases, including the eligibility requirements for consumers.

relevant provision of the Act is a section of the Act which requires a disclosure document to be provided to a consumer.

trail commission means a commission that is contingent on a consumer's conduct after the consumer has entered into a credit contract or consumer lease, and includes commission that is dependent on the amount of a repayment, or the number of repayments, made by the consumer under the contract or lease.

volume bonus arrangement means an arrangement between:

(a) a credit provider, lessor or other person (***the payer***); and

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(b) a licensee or credit representative (***the payee***);

under which the amount of commission payable by the payer to the payee increases as the total volume of business arranged by the payee with the payer increases.

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Part 3.2 Requirements about credit guides

26A Credit guide of licensee — to include further information

(1) This regulation is made for the following provisions of the Act:

(a) paragraphs 113 (2) (j) and (3) (b) (credit guide of credit assistance providers for credit contracts);

(b) paragraphs 136 (2) (j) and (3) (b) (credit guide of credit assistance providers for consumer leases).

Payments to third parties

(2) The licensee's credit guide must state if a commission is likely to be paid by the licensee to a third party for the introduction of credit business or business proposed to be financed by the credit contract or consumer lease and, if a commission is likely to be paid, include the following:

(a) information about the classes of persons to whom such commission may be payable;

(b) a statement that the consumer may, on request, obtain a reasonable estimate of the amount of commission and how it is worked out.

Volume bonus arrangements

(3) The licensee's credit guide must include the following information for each credit provider, lessor or other person with whom the licensee has a volume bonus arrangement:

(a) a statement that there is a volume bonus arrangement in place with the credit provider, lessor or other person;

(b) a statement that the licensee may receive additional commission depending on the total volume of business that the licensee arranges with the credit provider, lessor or other person;

(c) the person by whom the commission is payable;

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(d) the person to whom the commission is payable.

Mortgage managers

(4) If a mortgage manager is likely to provide credit assistance to the consumer in relation to a managed contract, the mortgage manager's credit guide must include the following information:

(a) an explanation of the relationship between the mortgage manager and the credit provider, lessor or third party;

(b) whether the mortgage manager will charge the consumer a fee for providing a credit service.

Product designers

(5) A product designer's credit guide must include the following information:

(a) an explanation of the relationship between the product designer and the credit provider or lessor;

(b) whether the product designer will charge the consumer a fee for providing a credit service.

26B Credit guide of credit provider or lessor — information about mortgage managers and product designers

(1) This regulation is made for the following provisions of the Act:

(a) paragraph 126 (2) (g) (credit guide of credit providers);

(b) paragraph 149 (2) (g) (credit guide of lessors).

(2) If a licensee is likely to enter into a credit contract or consumer lease with a consumer as a result of a mortgage manager or a product designer providing credit assistance to the consumer, the licensee's credit guide must include the information in subregulation (3).

(3) The licensee must include an explanation of the relationship between:

(a) the licensee and the mortgage manager; or

(b) the licensee and the product designer.

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27 Credit guide of licensees — when information about fees, charges and commission is not required

(1) This regulation is made for the following provisions of the Act:

(a) paragraph 113 (3) (a) (credit guide of credit assistance providers for credit contracts);

(b) paragraph 136 (3) (a) (credit guide of credit assistance providers for consumer leases).

(2) The information mentioned in subparagraphs 113 (2) (e) (iii) and (g) (ii) and (iii), or 136 (2) (e) (iii) and (g) (ii) and (iii), of the Act need not be included in the licensee's credit guide if:

(a) the credit guide includes a statement that the consumer may obtain information from the licensee about:

(i) how fees and charges payable by the consumer are worked out; and

(ii) a reasonable estimate of the commission likely to be received, directly or indirectly, by the licensee and how the commission is worked out; and

(b) the licensee has in place arrangements to make the information available when requested by the consumer.

Credit card contracts

(3) The information mentioned in subparagraphs 113 (2) (g) (ii) and (iii) of the Act need not be included in the licensee's credit guide if:

(a) the commission is payable in relation to a credit card contract; and

(b) the credit guide includes the maximum amount of commission payable on entering into the contract; and

(c) if any additional commission is payable during the life of the contract — the credit guide includes a statement that additional commission is payable, and includes either:

(i) a reasonable estimate of the amount of the additional commission; or

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(ii) if the amount of additional commission depends on the consumer's use of the credit card — information about factors contributing to the amount of commission.

27A Credit guide of credit representatives — to include further information

(1) This regulation is made for paragraph 158 (2) (i) of the Act (credit guide of credit representatives).

Commissions paid to third parties

(2) The credit representative's credit guide must state if a commission is likely to be paid by the credit representative to a third party for the introduction of credit business or business proposed to be financed by the credit contract or consumer lease and, if a commission is likely to be paid, include the following:

(a) information about the classes of persons to whom such commission may be payable;

(b) a statement that the consumer may, on request, obtain a reasonable estimate of the amount of commission and how it is worked out.

Information about credit providers or lessors

(3) The credit representative's credit guide must give the following information:

(a) if there are 6 or fewer credit providers or lessors that the credit representative conducts business with when providing credit assistance in relation to credit contracts or consumer leases — the names of the credit providers or lessors;

(b) if there are more than 6 credit providers or lessors that the credit representative conducts business with when providing credit assistance in relation to credit contracts or consumer leases — the names of the 6 credit providers or lessors with whom the credit representative reasonably believes it conducts the most business.

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Volume bonus arrangements

(4) The credit representative's credit guide must include the following information for each credit provider, lessor or other person with whom the credit representative has a volume bonus arrangement:

(a) a statement that there is a volume bonus arrangement in place with the credit provider, lessor or other person;

(b) a statement that the credit representative may receive additional commission depending on the total volume of business that the credit representative arranges with the credit provider, lessor or other person;

(c) the person by whom the commission is payable;

(d) the person to whom the commission is payable.

(5) However, the information in subregulations (3) and (4) is not required to be given if the credit representative's credit guide is combined in a single document with the licensee's credit guide.

27B Credit guide of credit representatives — when information about fees, charges and commission not required

(1) This regulation is made for paragraph 158 (3) (a) of the Act (credit guide of credit representatives).

(2) The information mentioned in subparagraph 158 (2) (e) (iii) or (g) (ii) or (iii) of the Act need not be included in the credit guide if:

(a) the credit guide includes a statement that the consumer may obtain information from the credit representative about:

(i) how fees and charges payable by the consumer are worked out; and

(ii) a reasonable estimate of the commission likely to be received, directly or indirectly, by the credit representative and how the commission is worked out; and

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(b) the credit representative has in place arrangements to make the information available when requested by the consumer.

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

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

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

(b) the credit representative is not a member of an approved external dispute resolution scheme;

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

28B Credit guide — circumstances where not required to update information

(1) This regulation is made for subsections 126 (3), 149 (3) and 160 (4) and paragraphs 113 (3) (a), 136 (3) (a) and 158 (3) (a) of the Act.

(2) If information contained in a credit guide changes and requires updating, the updated information, other than the information mentioned in subregulation (3), need not be included in the credit guide given to a consumer if:

(a) the updated information is less than 93 days old; and

(b) the consumer is given a credit guide that contains information that was correct and in accordance with the requirements in the Act at the time it was published.

(3) For subregulation (2), the information is contact details for a consumer to access an approved external dispute resolution scheme, if the person is required to give those contact details.

Note Regulation 28 sets out circumstances where a credit representative is not required to give contact details for a consumer to access an approved external dispute resolution scheme.

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Part 3.3 Requirements about quotes

28C Circumstances where no quote required

For subsection 114 (2A) or 137 (2A) of the Act, the circumstances are that:

(a) the licensee's credit guide includes a statement that the licensee does not impose fees or charges on consumers for providing credit assistance and other services; or

(b) both the following apply:

(i) before the licensee provides credit assistance to a consumer, the licensee does not intend to impose a fee or charge on the consumer for providing the credit assistance or other services;

(ii) the licensee's proposal disclosure document includes a statement that no fee or charge has been imposed on the consumer for credit assistance and other services provided by the licensee to the consumer.

28D Quote for providing credit assistance — licensee to give information about fees and charges

(1) This regulation is made for the following provisions of the Act:

(a) paragraph 114 (2) (f) (quote by credit assistance providers for credit contracts);

(b) paragraph 137 (2) (f) (quote by credit assistance providers for consumer leases).

(2) The information given by a licensee under paragraph 114 (2) (d) or 137 (2) (d) of the Act must be described as follows:

(a) for each fee and each charge payable to the licensee that the licensee does not describe under paragraph (b):

(i) identify the fee or charge as a fee or charge payable to the licensee; and

(ii) include a clear explanation of the type of fee or charge; and

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(iii) if the fee or charge is not a fixed amount — explain the method used for working out the amount of the fee or charge; and

(iv) if the method mentioned under subparagraph (iii) is expressed as a mathematical formula — include a clear explanation of the formula with the formula; and

(v) include a reasonable estimate of the maximum amount of the fee or charge, expressed as required by paragraph (c); and

(vi) state how frequently the fee or charge is to be paid; and

(vii) describe the circumstances when the fee or charge will or will not be payable; and

Note A fee payable to a credit representative of a licensee is a fee payable to the licensee.

(b) if the fee or charge is payable to the licensee for payment to another person on the consumer's behalf — for each fee and each charge that the licensee does not describe under paragraph (a):

(i) identify the fee or charge as a fee or charge; and

(ii) include a clear explanation of the type of fee or charge; and

(iii) include a reasonable estimate of the maximum amount of the fee or charge, expressed as required by paragraph (c); and

(c) the maximum amount of each fee or each charge, if known, must be expressed in dollars or, if unknown, in one of the following ways:

(i) as a proportion of the amount borrowed or total rental payments and a dollar amount;

(ii) as a percentage of the amount borrowed or total rental payments and a dollar amount;

(iii) if payable periodically — as a maximum amount for each period and as a maximum amount for the life of the credit contract or consumer lease, both as dollar amounts; and

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(d) include a statement that clearly identifies the amounts as a quote.

(3) The quote must include the maximum amount of fees or charges that will be payable by the consumer to another person, whether or not a credit contract or consumer lease is entered into.

(4) The information mentioned in subregulations (2) and (3) must be set out in a way that is easy for the consumer to understand without being required to do any working out or to look elsewhere for additional information.

Part 3.4 Requirements about proposal disclosure documents

28E Proposal disclosure document — information about fees and charges

(1) This regulation is made for the following provisions of the Act:

(a) paragraph 121 (2) (f) (credit proposal disclosure document of credit assistance providers for credit contracts);

(b) paragraph 144 (2) (e) (lease proposal disclosure document of credit assistance providers for consumer leases).

(2) The information given by a licensee under paragraph 121 (2) (a) or 144 (2) (a) of the Act must be described as follows:

(a) for each fee and each charge payable to the licensee:

(i) identify the fee or charge as a fee or charge payable to the licensee; and

(ii) include a clear explanation of the type of fee or charge; and

(iii) if the fee or charge is not a fixed amount — explain the method used for working out the amount of the fee or charge; and

(iv) if the method mentioned under subparagraph (iii) is expressed as a mathematical formula — include a clear explanation of the formula with the formula; and

(v) include the amount of the fee or charge, expressed as required by paragraph (b); and

(vi) state how frequently the fee or charge is to be paid; and

(vii) describe the circumstances when the fee or charge will or will not be payable; and

Note A fee payable to a credit representative of a licensee is a fee payable to the licensee.

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(b) the amount of each fee or charge must be expressed in one of the following ways:

(i) in dollars;

(ii) as a proportion of the amount borrowed or total rental payments, expressed in dollars;

(iii) as a range of amounts, expressed in dollars;

(iv) as a percentage of the amount borrowed or total rental payments and a dollar amount.

(3) The information given by a licensee, for the credit provider or lessor, and any other person about whom information must be given, under paragraphs 121 (2) (c) and (d), or 144 (2) (c) and (d), of the Act, must be described as follows:

(a) for each fee and each charge payable to the credit provider, lessor or other person:

(i) name the person to whom the fee or charge is payable personally or on behalf of another person; and

(ii) identify the fee or charge as a fee or charge; and

(iii) include a clear explanation of the type of fee or charge; and

(iv) if the fee or charge is not a fixed amount — explain the method used for working out the amount of the fee or charge; and

(v) if the method mentioned under subparagraph (iv) is expressed as a mathematical formula — include a clear explanation of the formula with the formula; and

(vi) if the amount of the fee or charge is a reasonable estimate of the fee or charge — state that it is an estimate, and express the amount as required by paragraph (b); and

(vii) state how frequently the fee or charge is to be paid; and

(viii) describe the circumstances when the fee or charge will or will not be payable; and

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(b) the reasonable estimate of the amount of each fee or charge must be expressed in one of the following ways:

(i) in dollars;

(ii) as a proportion of the amount borrowed or total rental payments and a dollar amount;

(iii) as a range of amounts, expressed in dollars;

(iv) as a percentage of the amount borrowed or total rental payments and a dollar amount.

(4) The licensee's proposal disclosure document must clearly state that the consumer will be liable to pay the fees and charges.

(5) The information mentioned in subregulations (2) to (4) must be set out in a way that is easy for the consumer to understand without being required to do any working out or to look elsewhere for additional information.

28F Proposal disclosure document — when information about fees and charges not required

(1) This regulation is made for the following provisions of the Act:

(a) subsection 121 (3A) (credit proposal disclosure document of credit assistance providers for credit contracts);

(b) subsection 144 (3A) (lease proposal disclosure document of credit assistance providers for consumer leases).

(2) The licensee's proposal disclosure document need not contain the information mentioned in subparagraphs 28E (2) (a) (iii) to (vii) and (3) (a) (iv) to (viii) if:

(a) the amount of the fee or charge has previously been disclosed in the licensee's quote for providing credit assistance and the amount has not changed; and

(b) the quote was given to the consumer no more than 30 days before the day the licensee is required to provide the consumer with the proposal disclosure document; and

(c) the proposal disclosure document includes a statement with the fees and charges that the consumer should refer to the quote for more information about the fees and charges.

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28G Proposal disclosure document — information about commissions

(1) This regulation is made for the following provisions of the Act:

(a) paragraph 121 (2) (f) and subsections 121 (3) and (3A) (credit proposal disclosure document of credit assistance providers for credit contracts);

(b) paragraph 144 (2) (e) and subsections 144 (3) and (3A) (lease proposal disclosure document of credit assistance providers for consumer leases).

(2) A description of the amounts of commissions must include the following:

(a) for each kind of commission forming part of the total amount of commission, a detailed description of the commission, including the following:

(i) identification of each kind of commission as commission;

(ii) a clear explanation of the kind of commission;

(iii) the person by whom each kind of commission is payable;

(iv) the person to whom each kind of commission is payable;

(v) a reasonable estimate of the amount of each kind of commission, expressed as required by paragraph (b);

Example for subparagraph (ii)

A commission that is a benefit described as an advertising subsidy or attendance at a conference.

(b) the reasonable estimate of the amount of each kind of commission must be expressed in one of the following ways:

(i) in dollars;

(ii) as a proportion of the amount borrowed or total rental payments and a dollar amount;

(iii) as a range of amounts, expressed in dollars;

(iv) as a percentage of the amount borrowed or total rental payments and a dollar amount;

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(v) if the commission is in the form of a benefit — the estimated value of the benefit, expressed in dollars;

(c) a reasonable estimate of the total amount of commission, expressed in dollars, likely to be received by each of the following:

(i) the licensee;

(ii) a credit representative of the licensee;

(d) a reasonable estimate of the total amount of commission, expressed in dollars and based on the amounts estimated for each kind of commission forming part of the total amount of commissions.

Note ***Commission*** is defined in subsection 5 (1) of the Act to include any financial or other benefit in the nature of a commission.

(3) The information mentioned in subregulation (2) must be set out in a way that is easy for the consumer to understand without being required to do any working out or to look elsewhere for additional information.

Information not required to be included

(4) The proposal disclosure document need not contain the information mentioned in paragraph (2) (c) for an employee or a director of the licensee (even if the employee or director is a credit representative of the licensee).

Assumptions

(5) For this regulation, a reasonable estimate of an amount of commission may be made on the following assumptions:

(a) that the consumer will enter into the credit contract or consumer lease on the terms known to the licensee as at the time the consumer is given the proposal disclosure document;

(b) that the consumer will make the repayments required by the credit contract or consumer lease at the times required by the contract or lease;

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(c) that, for an annual percentage rate or default rate, there will be no variation in the rate as disclosed over the whole term of the credit contract or any shorter term for which the contract applies;

(d) if the credit contract provides for a change to a variable rate, that the variable rate applicable over the term for which it applies is the same as the equivalent variable rate as at the time the consumer is given the proposal disclosure document;

(e) that, if the commission, or any part of the commission, is contingent on other credit assistance provided by, or activities conducted by, the licensee, the licensee may rely on credit assistance provided, or activities conducted, previously by the licensee for a similar period of time;

(f) that the method used to estimate the commission in the proposal disclosure document will not change.

Payments to third parties

(6) The licensee's proposal disclosure document must state if a commission is likely to be paid by the licensee to a third party for the introduction of credit business or business proposed to be financed by the credit contract or consumer lease and, if so, must include information about:

(a) the person by whom each commission is payable; and

(b) the person to whom each commission is payable; and

(c) the amount of commission, if known, or a reasonable estimate of the amount of commission, expressed in accordance with paragraph (2) (b).

Example of a third party

A commission that is payable to a real estate agent who refers a consumer to the licensee.

(7) The licensee's proposal disclosure document need not contain the information mentioned in paragraph (6) (c) if:

(a) the amount of commission is contingent on the conduct of other consumers who may be referred to the licensee; and

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(b) the proposal disclosure document includes information about factors contributing to the amount of commission payable by the consumer.

Volume bonus arrangements

(8) The licensee's proposal disclosure document must set out a reasonable estimate of the maximum amount of commission likely to be received by the licensee in relation to the credit contract or consumer lease that will result from a volume bonus arrangement.

28H Proposal disclosure documents — when information about commissions not required

(1) This regulation is made for the following provisions of the Act:

(a) subsection 121 (3A) (credit proposal disclosure document of credit assistance providers for credit contracts);

(b) subsection 144 (3A) (lease proposal disclosure document of credit assistance providers for consumer leases).

Mortgage managers

(2) Subregulation (3) applies to commission worked out on the difference between the interest rate charged to the mortgage manager by the credit provider or lessor and the interest rate payable by the consumer.

(3) The information mentioned in subparagraph 28G (2) (a) (v) and paragraphs 28G (2) (c) and (d) need not be included for the commission in the mortgage manager's proposal disclosure document if all of the following apply:

(a) the mortgage manager provided credit assistance to the consumer in relation to a managed contract;

(b) the mortgage manager told the consumer:

(i) about the mortgage manager's written agreement with the credit provider, lessor or third party; and

(ii) that the mortgage manager is not acting for the consumer in relation to the managed contract;

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(c) the maximum cost of the managed contract at the time the mortgage manager provides the credit assistance, and the interest rate to be charged, are published on the credit provider's or lessor's website;

(d) the mortgage manager cannot increase the interest rate above the interest rate that is published under paragraph (c).

Product designers

(4) A product designer's proposal disclosure document need not include the information mentioned in subparagraph 28G (2) (a) (v) and paragraphs 28G (2) (c) and (d) for commission worked out in relation to the net profit from operating the pool of funds from which credit contracts or consumer leases are provided.

Trail commissions

(5) For trail commission that is payable in more than one instalment, the licensee's proposal disclosure document need not contain the information mentioned in subparagraph 28G (2) (a) (v) or paragraph 28G (2) (c) if:

(a) the proposal disclosure document includes a reasonable estimate of the highest instalment of trail commission the licensee can expect to receive; and

(b) the highest instalment of trail commission is expressed in accordance with paragraph 28G (2) (b); and

(c) the following assumptions apply to the calculation of the highest instalment of trail commission:

(i) the assumptions mentioned in subregulation 28G (5); or

(ii) other assumptions set out in the licensee's proposal disclosure document.

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Part 3.5 Other obligations

28J Obligations of credit providers before entering credit contracts or increasing credit limits

For section 128 of the Act, if:

(a) the credit to be provided under the credit contract will be used for the purchase of a residential property; and

(b) the credit will be secured by a mortgage over the property;

the period is 120 days.

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

28JA Inquiries about credit limit

For paragraph 130 (1) (d) of the Act, a licensee must make reasonable inquiries about the maximum credit limit that a consumer requires.

28L Manner of giving disclosure documents

(1) This regulation is made for the following provisions of the Act:

(a) subsection 113 (4) (credit guide of credit assistance providers in relation to credit contracts);

(b) subsection 114 (3) (quote by credit assistance providers in relation to credit contracts);

(c) subsection 121 (4) (credit proposal disclosure document of credit assistance providers in relation to credit contracts);

(d) subsection 126 (4) (credit guide of credit providers in relation to credit contracts);

(e) subsection 127 (4) (credit guide of assignee credit providers in relation to credit contracts);

(f) subsection 136 (4) (credit guide of credit assistance providers in relation to consumer leases);

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(g) subsection 137 (3) (quote by credit assistance providers in relation to consumer leases);

(h) subsection 144 (4) (lease proposal disclosure document of credit assistance providers in relation to consumer leases);

(i) subsection 149 (4) (credit guide of lessors in relation to consumer leases);

(j) subsection 150 (4) (credit guide of assignee lessors in relation to consumer leases);

(k) subsection 158 (4) (credit guide of credit representatives);

(l) subsection 160 (5) (credit guide of debt collectors).

(m) section 18 of Schedule 1 (credit provider's contract document).

(2) In this regulation:

licensee includes a person who is a credit representative of a licensee.

(3) A licensee may, with the consent of the consumer, give a disclosure document to the consumer by:

(a) making the document available for a reasonable period on the licensee's information system for retrieval by electronic communication by the consumer; and

(b) promptly notifying the consumer by electronic communication that the document is available for retrieval on that information system and the nature of document; and

(c) providing the consumer with the ability to retrieve the document by electronic communication.

(4) A consumer may consent to the giving of documents by electronic communication only after being told that, if consent is given:

(a) paper documents may no longer be given; and

(b) electronic communications must be regularly checked for documents; and

(c) consent to the giving of documents by electronic communication may be withdrawn at any time.

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(5) If a disclosure document is given by sending it to a nominated electronic address or in a manner described in this regulation:

(a) it must be in a format that allows it to be saved to an electronic file and to be printed; and

(b) at the time it was sent or was made available on the licensee's information system, it would have been reasonable to expect that the intended recipient would be able to save it to an electronic file and print it.

(6) If a disclosure document is not given to a consumer personally, or to a person acting on the consumer's behalf, the licensee must be reasonably satisfied that the consumer has received the disclosure document before engaging in further credit activities in relation to the consumer's credit contract or consumer lease.

(7) For subregulation (6), a person is not acting on the consumer's behalf if the person is engaging in credit activities.

(8) The licensee may be reasonably satisfied that a consumer has received a disclosure document (unless the consumer advises the licensee otherwise):

(a) if the disclosure document is a credit guide and was made available to the consumer for retrieval on the licensee's information system — when the consumer tells the licensee that he or she has accessed the document on the information system; or

(b) in any other case — if the disclosure document was properly addressed to the consumer and sent to that address (including an electronic address or fax number).

(9) Two or more disclosure documents may be combined in a single document only if all other requirements of the Act and these Regulations are met.

28LA Standard home loans

For subsection 133AA (2) of the Act, a standard form of credit contract is a contract for a home loan that:

(a) is described in the table; and

(b) obliges the consumer to make repayments that repay principal and interest for the full term of the home loan.

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Item	Type of loan	Characteristics
1	Variable rate home loan	The interest rate on the entire loan balance may vary at the lender's discretion
2	Fixed rate home loan	The interest rate on the entire loan balance is fixed for the whole or part of the loan

28LB Key Facts Sheets

(1) For section 133AB of the Act, Schedule 5 sets out:

(a) the Key Facts Sheet for a standard home loan; and

(b) requirements for how the information in a Key Facts Sheet is to be prepared for a particular consumer and loan.

(2) A Key Facts Sheet that is given to a consumer or published online must meet the following requirements:

(a) the Key Facts Sheet must be in A4 size;

(b) all text in the Key Facts Sheet must be black on a white background, unless otherwise specified in this regulation;

(c) the text, except the heading, in the 'Description of this home loan' box must be black on a light blue background;

(ca) the text in the second row of the 'Estimated cost of this home loan' box must be black on a light blue background;

(d) the headings to all boxes must be white on a blue background;

(e) all other headings must be blue on a white background.

(3) However, if a lender is not able to print the Key Facts Sheet using a colour printer, the lender may print a Key Facts Sheet in black and white.

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Part 3.6 Modifications and exemptions

28M Modifications

Disclosure requirements

(1) For paragraph 164 (d) of the Act, the provisions to which Part 3-7 of Chapter 3 of the Act applies, apply as if the provisions were modified as set out in Schedule 4.

Extended time period for consumer assessment

(2) Subregulation (3) applies to a licensee to whom the rights of a credit provider under a credit contract have been assigned.

(3) For paragraph 164 (d) of the Act:

(a) paragraph 132 (2) (c) of the Act is modified by omitting ‘7 business days’ and inserting ‘15 business days’; and

(b) paragraph 132 (2) (d) is modified by omitting ’21 business days’ and inserting ‘25 business days’.

(4) Subregulation (5) applies to a licensee to whom the rights of a lessor under a consumer lease have been assigned.

(5) For paragraph 164 (d) of the Act:

(a) paragraph 155 (2) (c) of the Act is modified by omitting ‘7 business days’ and inserting ‘15 business days’; and

(b) paragraph 155 (2) (d) is modified by omitting ’21 business days’ and inserting ‘25 business days’.

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

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28N Exemption — requirement to provide disclosure documents

(1) For paragraph 164 (a) of the Act, a person who is a licensee or a credit representative engaging in a credit activity is exempted from a relevant provision of the Act, other than section 114 or 137, if:

(a) the person gives the consumer information, in writing, about the contact details for a consumer to access the approved external dispute resolution scheme of which the person is a member; or

(b) the person has given the information mentioned in paragraph (a) to the consumer within the previous 90 days.

(2) The information mentioned in paragraph (1) (a) may be given to the consumer as follows:

(a) in the manner set out in regulation 28L;

(b) together with some or all of the information mentioned in a relevant provision of the Act.

(3) For paragraph 164 (a) of the Act, a person who is a credit representative to whom regulation 28 applies is exempted from a relevant provision of the Act.

Note Regulation 28 sets out circumstances where a credit representative is not required to give contact details for a consumer to access an approved external dispute resolution scheme.

Quotes

(4) For paragraph 164 (a) of the Act, a licensee providing credit assistance to a consumer is exempted from sections 114 and 137 of the Act if:

(a) before the licensee provides credit assistance to a consumer, the licensee has entered into a written contract with the consumer setting out the maximum amount that will be payable by the consumer to the licensee in relation to the licensee's credit assistance and other services; or

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(b) both the following apply:

(i) before the licensee provides credit assistance to a consumer, the licensee does not intend to impose a fee or charge on the consumer for providing the credit assistance or other services;

(ii) the licensee does not impose a fee or charge on the consumer for the licensee's credit assistance and other services.

(5) This regulation ceases to have effect on 1 October 2011.

28P Circumstances where credit guide not required

Franchisees

(1) For paragraph 164 (a) of the Act, a person who is a credit representative is exempted from subsection 158 (1) of the Act if:

(a) the person is authorised by:

(i) a licensee; or

(ii) a body corporate that is a credit representative of a licensee;

to engage in specified credit activities on behalf of the licensee; and

(b) the person is:

(i) a franchisee of the licensee under a franchise agreement with the licensee; or

(ii) an employee or director of a franchisee of the licensee who has a franchise agreement with the licensee; and

(c) the franchise agreement:

(i) subjects the person to the policies of the licensee; and

(ii) requires compliance by the person with the policies of the licensee that were made to give effect to the licensee's obligations under the licensee's Australian credit licence; and

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(d) the credit guide of the licensee explains that the licensee takes responsibility for the credit activities engaged in by the person (or class of persons of which the person is a member).

Previous dealings with consumer

(2) For paragraph 164 (a) of the Act, a person who is a licensee or a credit representative is exempted from subsections 113 (1), 126 (1), 136 (1), 149 (1), 158 (1) or 160 (1) or (2) of the Act if:

(a) the person has, in the previous 12 months, given the consumer the person's credit guide in accordance with the requirements in the Act; and

(b) if the person would have been required to give contact details for a consumer to access an approved external dispute resolution scheme — the person's contact details for access to the scheme of which the person is a member have not changed.

Note Regulation 28 sets out circumstances where a credit representative is not required to give contact details for a consumer to access an approved external dispute resolution scheme.

Debt collectors

(3) For paragraph 164 (a) of the Act, a person who is a licensee or a credit representative is exempted from subsection 160 (1) or (2) of the Act if:

(a) the person has given the consumer the person's credit guide in accordance with the requirements of section 113, 136 or 158 of the Act; and

(b) the credit guide relates to:

(i) the same credit contract as that under which the person is authorised by the credit provider to collect, on behalf of the credit provider, repayments made by the consumer under the credit contract; or

(ii) the same consumer lease as that under which the person is authorised by the lessor to collect, on behalf of the lessor, payments made by the consumer under the consumer lease.

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Product designers

(4) For paragraph 164 (a) of the Act, a person who is a product designer is exempted from subsection 113 (1), 136 (1), 158 (1) or 160 (1) or (2) of the Act if the credit provider or lessor has complied with regulation 26B.

28Q Exemption — credit assistance provider with shared responsibility for credit contract

(1) For paragraph 164 (a) of the Act, this regulation applies to a person in the following circumstances:

(a) the person is:

(i) a credit assistance provider that:

(A) is an ADI; and

(B) holds an Australian credit licence, or has applied for an Australian credit licence in an application on which ASIC has not made a decision; and

(C) engages in conduct under an agreement with the credit provider; or

(ii) a credit representative of a credit assistance provider mentioned in subparagraph (i);

(b) the credit provider:

(i) is an ADI; and

(ii) holds an Australian credit licence or has applied for an Australian credit licence;

(c) the agreement between the credit provider and the credit assistance provider allows the credit provider to use the credit assistance provider's name or any other words, phrases, initials or logo associated with the credit assistance provider on the credit contract and any letter or other material;

(d) the credit assistance provider:

(i) provides credit assistance in relation to a credit contract connected with the agreement mentioned in paragraph (c) between the credit provider and the provider of credit assistance; and

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(ii) gives to the credit provider the consumer's details and any other information requested by the credit provider (if it is a reasonable request) in order to enable the credit provider to make an assessment about the credit contract under section 130 of the Act.

(2) The credit assistance provider is exempted from Division 4 and Division 6 of Part 3-1 of the Act in relation to:

(a) a credit contract connected with the agreement mentioned in paragraph (1) (c) between the credit provider and the provider of credit assistance; and

(b) an increase in the credit limit of the credit contract.

(3) Despite subregulation (2):

(a) the credit assistance provider is jointly and severally liable with the credit provider to pay any compensation which the credit provider is ordered to pay to the consumer under section 178 of the Act as a consequence of a breach by the credit provider of Division 4 of Part 3-2 of the Act in relation to a credit contract (including an increase in the credit limit of a contract) connected with the agreement mentioned in paragraph (1) (c) between the credit provider and the provider of credit assistance; and

(b) without prejudice to any other rights or remedies to which a credit provider may be entitled, the credit assistance provider is entitled to be indemnified by the credit provider against any loss or damage suffered by the credit assistance provider through the operation of paragraph (a).

28R Exemption — intermediary's requirement to provide proposal disclosure document

(1) For paragraph 164 (a) of the Act, a person mentioned in subregulation 28Q (1) is exempted from a requirement in section 121 and 144 of the Act in the circumstances set out in this regulation.

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Regulation 28R

(2) The exemption applies if:

(a) the consumer is not liable to pay to the person any fees or charges in relation to the credit contract or consumer lease; and

(b) at the time, or as soon as practicable after, the person gives credit assistance the person tells the consumer, in writing, that no fees or charges will be payable.

(3) If the credit contract is a credit card contract, the consumer must be given information about:

(a) any commissions that the person is likely to receive, directly or indirectly, from credit providers in relation to credit contracts for which the person has provided credit assistance; and

(b) the maximum amount of commission payable by the consumer on entering into the contract; and

(c) if any additional commission is payable during the life of the contract — a statement that additional commission is payable, and either:

(i) a reasonable estimate of the amount of the additional commission; or

(ii) if the amount of additional commission depends on the consumer's use of the credit card — information about how the commission is worked out.

(4) If the contract is not a credit card contract, the consumer must be given a reasonable estimate of the total amount of any commissions that the person is likely to receive in relation to the credit contract or consumer lease, and the method used for working out that amount.

(5) The information mentioned in subregulations (3) and (4) must be given, in writing, no more than 15 business days before the day the person would have been required to provide the consumer with a proposal disclosure document.

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Chapter 4 Administration — registers relating to credit activities

29 Credit registers — licensees, credit representatives and registered persons

(1) For subsection 213 (2) of the Act, ASIC must include the following details for each licensee included in a credit register of licensees:

(a) the licensee's name (including the licensee's principal business name, if any);

(b) the principal business address of the licensee;

(c) the date on which the licensee's Australian credit licence was granted;

(d) the number of the licensee's Australian credit licence;

(e) if the licensee has an ABN — the ABN;

(f) details of any conditions on the licensee's Australian credit licence, including details of the credit activities or classes of credit activities that the licensee is authorised to engage in;

(g) the name of the approved external dispute resolution scheme of which the licensee is a member;

(h) any other information that ASIC believes should be included in the register.

(2) Subregulation (3) applies in relation to:

(a) credit representatives of licensees; and

(b) credit representatives of registered persons.

(3) For subsection 213 (2) of the Act, ASIC must include the following details for each credit representative included in a credit register of credit representatives:

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(a) the credit representative's name (including the credit representative's principal business name, if any);

(b) the credit representative's principal business address;

(c) the number allocated to the credit representative by ASIC;

(d) the name of each licensee or registered person for which the credit representative is a credit representative;

(e) the:

(i) number of the Australian credit licence of each licensee; and

(ii) number allocated by ASIC to each registered person;

for which the credit representative is a credit representative;

(f) if the credit representative has an ABN — the ABN;

(g) the date of the credit representative's authorisation by the licensee or registered person;

(h) the name of the approved external dispute resolution scheme of which the credit representative is a member;

(i) any other information that ASIC believes should be included in the register.

(4) For subsection 213 (2) of the Act, ASIC must include the following details for each registered person included in a credit register of registered persons:

(a) the registered person's name (including the registered person's principal business name, if any);

(b) the principal business address of the registered person;

(c) the date on which the registered person's name was entered on the credit register as a registered person;

(d) the number allocated to the registered person by ASIC;

(e) if the registered person has an ABN — the ABN;

(f) details of any conditions on the registered person's registration, including details of the credit activities or classes of credit activities that the registered person is authorised to engage in;

(g) the name of the approved external dispute resolution scheme of which the registered person is a member;

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(h) any other information that ASIC believes should be included in the register.

(5) For paragraphs (1) (b), (3) (b) and (4) (b), if:

(a) the person's principal business address is the person's residential address; and

(b) ASIC determines, in writing, that including the person's residential address in a register would put at risk the personal safety of the person or members of the person's family; and

(c) the person provides an alternative address:

(i) that is in Australia; and

(ii) that is not a post office box or an electronic address; and

(iii) that has a connection with the credit activities engaged in by the person; and

(iv) at which documents can be served on the person;

ASIC may include the alternative address in the register.

(6) If ASIC includes a person's alternative address in the register under subregulation (5), the person must, in the approved form:

(a) lodge with ASIC notice of the person's residential address; and

(b) lodge with ASIC notice of any change in the person's residential address within 14 days after the change.

(7) If:

(a) ASIC includes a person's alternative address in the register under subregulation (5); and

(b) a court gives a judgment for payment of a sum of money against the person;

ASIC may give details of the person's residential address to an officer of the court for the purposes of enforcing the judgment debt.

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

(1) For subsection 213 (2) of the Act, ASIC must include the following details for each person against whom a banning order is made under Division 2 of Part 2-4 of the Act in a credit register of persons against whom a banning order is made:

(a) the person's name;

(b) the day on which the banning order took effect;

(c) whether the banning order is permanent or for a fixed period;

(d) if the banning order is for a fixed period — the period;

(e) the terms of the banning order;

(f) whether the banning order has been varied or cancelled;

(g) if the banning order has been varied:

(i) the date of the variation; and

(ii) the terms of the variation;

(h) if the banning order has been cancelled — the date of the cancellation;

(i) any other information that ASIC believes should be included in the register.

(2) For subsection 213 (2) of the Act, ASIC must include the following details for each person against whom a disqualification order is made under Division 3 of Part 2-4 of the Act in a credit register of persons against whom a disqualification order is made:

(a) the person's name;

(b) the day on which the disqualification order took effect;

(c) whether the disqualification order is permanent or for a fixed period;

(d) if the disqualification order is for a fixed period — the period;

(e) the terms of the disqualification order;

(f) whether the disqualification order has been varied or revoked;

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(g) if the disqualification order has been varied:

(i) the date of the variation; and

(ii) the terms of the variation;

(h) if the disqualification order has been revoked — the date of the revocation;

(i) any other information that ASIC believes should be included in the register.

(3) For subsection 213 (2) of the Act, ASIC must include the following details for each person who is banned from engaging in a credit activity under a law of a State or Territory in a credit register of persons who are banned under a law of a State or Territory:

(a) the person's name;

(b) the day on which the ban took effect;

(c) whether the ban is permanent or for a fixed period;

(d) if the ban is for a fixed period — the period;

(e) the terms of the ban;

(f) whether the ban has been varied or cancelled;

(g) if the ban has been varied:

(i) the date of the variation; and

(ii) the terms of the variation;

(h) if the ban has been cancelled — the date of the cancellation;

(i) any other information that ASIC believes should be included in the register.

30A Credit register — unlicensed carried over instrument lender

(1) For subsection 213 (2) of the Act, ASIC must include the following details for each unlicensed carried over instrument lender in a credit register for unlicensed carried over instrument lenders:

(a) the lender's name (including the lender's principal business name, if any);

(b) the postal address of the lender;

(c) if the principal business address of the lender is different from the postal address — the principal business address;

(d) if the lender has an ABN — the ABN;

(e) if the lender is required to engage in credit activities through a registered person or licensee under section 74 of the Act:

(i) the reason why the lender is required to engage in the credit activities through the registered person or licensee; and

(ii) the name of the registered person or licensee;

(f) if the lender is a member of an approved external dispute resolution scheme — the name of the scheme.

(2) For paragraph (1) (d), ASIC may include in the credit register an alternative address to the lender's principal business address if:

(a) the lender's principal business address is the lender's residential address; and

(b) ASIC determines, in writing, that including the lender's residential address in the register would put at risk the personal safety of the lender or members of the lender's family; and

(c) the lender provides an alternative address:

(i) that is in Australia; and

(ii) that is not a post office box or an electronic address; and

(iii) that has a connection with the credit activities engaged in by the lender.

(3) If ASIC includes a lender's alternative address in the register, the lender must, in the approved form, lodge with ASIC notice of:

(a) the lender's residential address; and

(b) any change of the lender's address no later than 14 days after the change.

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Regulation 30A

(4) ASIC may give details of the lender's residential address to an officer of a court for the purposes of enforcing a judgement debt if:

(a) ASIC includes the lender's alternative address in the register; and

(b) the court gives a judgement for payment of a sum of money against the person.

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Chapter 5 Compliance and enforcement

31 Investigations — distribution of report

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

(a) the Australian Competition and Consumer Commission;

(b) APRA;

(c) the Australian Taxation Office;

(d) the CEO of the Australian Transaction Reports and Analysis Centre;

(e) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;

(f) the police force or service of each State and the Northern Territory;

(g) the Department of Commerce (Office of Fair Trading) of New South Wales;

(h) the Department of Justice (Consumer Affairs Victoria) of Victoria;

(i) the Department of Employment, Economic Development and Innovation of Queensland;

(j) the Department of Commerce of Western Australia;

(k) the Office of Consumer and Business Affairs of South Australia;

(l) the Office of Consumer Affairs and Fair Trading of Tasmania;

(m) the Department of Justice and Community Safety (Office of Regulatory Services) of the Australian Capital Territory;

(n) the Department of Justice of the Northern Territory;

(o) the Australian Federal Police.

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

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

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

If:

(a) an ASIC member or ASIC staff member produces a document issued by ASIC; and

(b) the document states that the person is authorised by ASIC under section 268 of the Act;

the document is evidence of:

(c) the authority of the person to require other persons to produce books or give information under subsection 268 (1); and

(d) any limitation on that authority that is specified in the document under that subsection.

34 Hearings — form of summons to appear before ASIC

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

35 Miscellaneous provisions — allowances and expenses

(1) For subsections 317 (1) and (2) of the Act, a person who:

(a) appears for examination under section 253 of the Act; or

(b) appears pursuant to a summons issued under section 284 of the Act;

is entitled to be paid the allowances and expenses set out in this regulation.

(2) A person summoned to appear as a witness before ASIC because of his or her professional, scientific or other special skill or knowledge must be paid:

(a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of

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wages, salary or fees not paid to the person because of his or her attendance for the appearance; and

(b) in any other case — an amount of not less than $81, or more than $407, for each day on which he or she so attends.

(3) A person summoned to appear as a witness before ASIC, other than a witness mentioned in subregulation (2), must be paid:

(a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for the appearance; and

(b) in any other case — an amount of not less than $46, or more than $76, for each day on which he or she so attends.

(4) A person summoned to appear as a witness before ASIC must be paid a reasonable amount for allowances for:

(a) transport between the usual place of residence of the person and the place that he or she attends for the appearance; and

(b) if he or she is required to be absent overnight from his or her usual place of residence — meals and accommodation during the absence.

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Chapter 6 Miscellaneous

Part 6-1 Court proceedings

36 Where proceedings may be brought

(1) For section 330 of the Act, this regulation sets out where court proceedings may be brought.

(2) This regulation does not apply to a court proceeding if the court proceeding is:

(a) commenced by ASIC; or

(b) a class action or representative action on behalf of consumers from more than 1 State or Territory; or

(c) commenced by a credit provider under section 112 of the Code for an order under section 113 of the Code.

(3) Subject to subregulation (4), a court proceeding must be brought in a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resides, if the court proceeding:

(a) is in relation to:

(i) a credit contract; or

(ii) a consumer lease; or

(iii) a mortgage; or

(iv) a guarantee;

regulated under the Act; and

(b) involves a debtor, mortgagor or guarantor.

(4) For subregulation (3), if it is not known where the debtor, mortgagor or guarantor ordinarily resides, the court proceeding must be brought in a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resided at the time the credit contract, consumer lease, mortgage or guarantee was made.

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(5) Subject to subregulation (6), a court proceeding should be filed in the registry of a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resides, if the court proceeding:

(a) is in relation to:

(i) a credit contract; or

(ii) a consumer lease; or

(iii) a mortgage; or

(iv) a guarantee;

regulated under the Act; and

(b) involves a debtor, mortgagor or guarantor; and

(c) is brought in the Federal Court or the Federal Magistrate's Court.

(6) For subregulation (5), if it is not known where the debtor, mortgagor or guarantor ordinarily resides, the court proceeding must be filed in the registry of a court of the State or Territory where the debtor, mortgagor or guarantor ordinarily resided at the time the credit contract, consumer lease, mortgage or guarantee was made.

(7) Subregulation (8) applies if a court proceeding is in relation to a credit contract:

(a) that is not a standard form contract (within the meaning of section 12BK of the *Australian Securities and Investments Commission Act 2001*); and

(b) that states that a court proceeding in relation to the credit contract must be brought in a court of a particular State or Territory.

(8) For subregulation (7):

(a) subregulations (3) to (6) do not apply to the court proceedings; and

(b) the court proceeding must be brought in a court of the State or Territory stated in the credit contract.

(9) The court proceedings mentioned in subregulations (3), (4) and (8) may be transferred to a court of another State or Territory under Part 4-3, Division 2, Subdivision C of the Act.

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Part 6-2 Infringement notices

37 Purpose of Part 6-2

(1) The purpose of this Part is to set out a scheme under section 331 of the Act under which:

(a) a person who is alleged to have committed an offence against the Act that is stated to be an offence of strict liability may pay a penalty to the Commonwealth as an alternative to prosecution; and

(b) a person who is alleged to have contravened a civil penalty provision may pay a penalty to the Commonwealth as an alternative to civil proceedings.

(2) This Part does not require an infringement notice to be given to a person for the alleged commission of an offence or contravention of a civil penalty provision.

(3) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if an infringement notice is not given to the person.

(4) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if:

(a) an infringement notice is given to the person; and

(b) the person does not pay the penalty stated in the notice in accordance with regulation 44.

(5) This Part does not limit or otherwise affect:

(a) the penalty that a court could impose on the person for the offence; or

(b) the penalty that a court could impose on the person for contravention of the civil penalty provision.

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38 Definitions for Part 6-2

In this Part:

infringement notice means an infringement notice under regulation 39.

infringement notice offence means:

(a) an offence against the Act that is stated to be an offence of strict liability; or

(b) a contravention of 1 of the following civil penalty provisions in the Act:

(i) subsection 30 (1) or (2);

(ii) subsection 32 (1);

(iii) subsection 51 (1);

(iv) subsection 73 (3) or (5);

(v) subsection 88 (1);

(vi) subsection 95 (1);

(vii) subsection 98 (1);

(viii) subsection 99 (1), (2) or (3);

(ix) subsection 100 (1) or (2);

(x) subsection 114 (1), (4), (5) or (6);

(xi) subsection 115 (1) or (2);

(xii) subsection 117 (1);

(xiii) subsection 118 (1);

(xiv) subsection 119 (1);

(xv) subsection 121 (1);

(xvi) subsection 122 (1);

(xvii) subsection 123 (1);

(xviii) subsection 124 (1);

(xix) section 128;

(xx) subsection 130 (1);

(xxi) subsection 131 (2);

(xxii) subsection 133 (1);

(xxiii) subsection 137 (1), (4), (5) or (6);

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(xxiv) subsection 138 (1) or (2);
(xxv) subsection 140 (1);
(xxvi) subsection 141 (1);
(xxvii) subsection 142 (1);
(xxviii) subsection 144 (1);
(xxix) subsection 145 (1);
(xxx) subsection 146 (1);
(xxxi) subsection 147 (1);
(xxxii) section 151;
(xxxiii) subsection 153 (1);
(xxxiv) subsection 154 (2);
(xxxv) subsection 156 (1);
(xxxvi) subsection 229 (1).

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

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

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

39 When an infringement notice can be given

Alleged commission of offence against the Act

(1) If ASIC has reasonable grounds to believe that a person has committed an offence against the Act that is stated to be an offence of strict liability, ASIC may give to the person an infringement notice relating to the alleged commission of the offence.

(2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.

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(3) If an infringement notice given to a person in relation to the alleged commission of a particular offence is withdrawn, ASIC may give the person a new infringement notice in relation to the alleged commission.

Example for subregulation (3)

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

Alleged contravention of civil penalty provision

(4) If ASIC has reasonable grounds to believe that a person has contravened a civil penalty provision mentioned in paragraph (b) of the definition of ***infringement notice offence*** in regulation 38, ASIC may give to the person an infringement notice relating to the alleged contravention.

(5) The infringement notice must be given within 12 months after the day on which the civil penalty provision is alleged to have been contravened.

(6) If an infringement notice given to a person in relation to the alleged contravention of a particular civil penalty provision is withdrawn, ASIC may give the person a new infringement notice in relation to the alleged contravention.

Example for subregulation (6)

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

40 Contents of infringement notice

An infringement notice:

(a) must be in accordance with Form 3; and

(b) may contain any other information that ASIC considers necessary.

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41 Amount of penalty if infringement notice given

(1) The penalty payable under an infringement notice for an alleged commission of an offence against the Act that is stated to be an offence of strict liability is:

(a) for an individual — one-fifth of the maximum penalty that a court could impose on the person for that offence; and

(b) for a body corporate — the maximum penalty that a court could impose on an individual for that offence.

(2) The penalty payable under an infringement notice for an alleged contravention of a civil penalty provision mentioned in paragraph (b) of the definition of ***infringement notice offence*** in regulation 38 is:

(a) for an individual — 50 penalty units; and

(b) for a body corporate — 250 penalty units.

Note Under section 331 of the Act:

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

(b) the penalty for a contravention of a civil penalty provision must not exceed one-fortieth of the maximum penalty that a court could impose on the person for contravention of that provision.

42 Extension of time to pay penalty

(1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the penalty stated in the notice.

(2) The application must:

(a) specify the infringement notice's unique identification code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, the nominated person must:

(a) grant or refuse a further period not longer than the period sought (but less than 28 days); and

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(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) If the nominated person has not granted, or refused to grant, the further period within 14 days after receiving the application, the nominated person is taken to have refused to grant the further period.

43 Payment of penalty by instalments

(1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for permission to pay the amount of the infringement notice penalty by instalments.

(2) The application must:

(a) specify the infringement notice's unique identification code; and

(b) set out the reasons for the application; and

(c) specify the amount and frequency of the instalments that the recipient proposes to pay.

(3) Within 14 days after receiving the application, the nominated person must:

(a) grant or refuse to grant permission for payment by instalments; and

(b) give the recipient written notice of the decision, including:

(i) if permission is granted — the amount and frequency of the instalments; and

(ii) if permission is refused — the reasons for refusal.

(4) If the nominated person has not granted, or refused to grant, permission for payment by instalments within 14 days after receiving the application, the nominated person is taken to have refused to grant permission for payment by instalments.

44 Time for payment of penalty

(1) The penalty stated in an infringement notice must be paid within:

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Regulation 44

(a) 28 days after the day on which the notice is given to the recipient; or

(b) another period required by this regulation.

(2) If the recipient applies for a further period of time in which to pay the penalty, and the application is granted, the penalty must be paid within the further period allowed.

(3) If the recipient applies for a further period of time in which to pay the penalty, and the application is refused or is taken to have been refused, the penalty must be paid within the later of:

(a) 7 days after:

(i) the notice of the refusal is given to the recipient; or

(ii) the application is taken to have been refused; and

(b) 28 days after the day on which the infringement notice was given to the recipient.

(4) If the recipient applies for permission to pay the penalty by instalments, and permission is granted, the penalty must be paid in accordance with the permission.

(5) If the recipient applies for permission to pay the penalty by instalments, and permission is refused or is taken to have been refused, the penalty must be paid within the later of:

(a) 7 days after:

(i) the notice of the refusal is given to the recipient; or

(ii) the application is taken to have been refused; and

(b) 28 days after the day on which the infringement notice was given to the recipient.

(6) If the recipient applies for the notice to be withdrawn, and the application is refused or is taken to have been refused, the penalty must be paid within the later of:

(a) 7 days after:

(i) the notice of the refusal is given to the recipient; or

(ii) the application is taken to have been refused; and

(b) 28 days after the day on which the infringement notice was given to the recipient.

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45 Effect of payment of penalty

Alleged commission of offence against the Act

(1) If:

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

(b) the infringement notice is not withdrawn; and

(c) the recipient pays the penalty stated in the notice in accordance with regulation 44;

the consequences mentioned in subregulation (2) apply.

(2) The effects are:

(a) any liability of the recipient for the alleged offence is discharged; and

(b) no prosecution may be brought against the recipient for the alleged offence; and

(c) the recipient is not taken to have admitted guilt in respect of the alleged offence; and

(d) the recipient is not taken to have been convicted of the offence.

Alleged contravention of civil penalty provision

(3) If:

(a) an infringement notice is given in relation to an alleged contravention of a civil penalty provision; and

(b) the infringement notice is not withdrawn; and

(c) the recipient pays the penalty stated in the notice in accordance with regulation 44;

the consequences mentioned in subregulation (4) apply.

(4) The effects are:

(a) any liability of the recipient for the alleged contravention is discharged; and

(b) no civil proceedings may be brought by the Commonwealth against the recipient for the alleged contravention; and

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(c) the recipient is not taken to have admitted guilt in respect of the alleged contravention; and

(d) the recipient is not taken to have been found guilty of the contravention.

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

46 Withdrawal of infringement notice by nominated person

(1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for the infringement notice to be withdrawn.

(2) The application must:

(a) specify the infringement notice's unique identification code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, the nominated person must:

(a) withdraw or refuse to withdraw the notice; and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) Without limiting subregulation (3), the nominated person may withdraw the infringement notice after taking into account the following matters:

(a) whether the recipient:

(i) has been previously convicted of an offence against the Act; or

(ii) has been previously found to have contravened a civil penalty provision;

(b) the circumstances in which the commission or contravention set out in the infringement notice offence specified in the notice is alleged to have occurred;

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(c) whether an infringement notice has previously been given to the recipient in relation to an infringement notice offence of the same kind as the offence specified in the notice, and in relation to which the recipient paid the penalty under the notice;

(d) any other relevant matter.

(5) If the nominated person has not withdrawn, or refused to withdraw, the notice within 14 days after receiving the application, the nominated person is taken to have refused to withdraw the notice.

47 Withdrawal of infringement notice by ASIC

(1) ASIC may withdraw an infringement notice given by ASIC without an application under regulation 46 having been made.

(2) Without limiting subregulation (1), ASIC may withdraw the infringement notice after taking into account a matter mentioned in paragraph 46 (4) (a), (b), (c) or (d).

48 Notice of withdrawal of infringement notice

(1) A notice withdrawing an infringement notice must include the following information:

(a) the full name, or surname and initials, and address of the recipient;

(b) the date the infringement notice was given;

(c) the infringement notice's unique identification code.

(2) The notice must also state that the notice is withdrawn.

49 Refund of penalty

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

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Part 6-3 Transitional arrangements

49A Transitional—Schedule 1 to *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)*

(1) This regulation applies if, during the period commencing on the commencement of this regulation and ending on 1 October 2012, a document complies with the requirements for a Key Facts Sheet set out in Schedule 5 as in force immediately before the commencement of Schedule 1 to the *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)*.

(2) The document is taken, during that period, to be a Key Facts Sheet that complies with Schedule 5 as amended by Schedule 1 to the *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)*.

49B Transitional—Schedule 2 to *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)*

(1) This regulation applies if, during the period commencing on the commencement of this regulation and ending on 1 October 2012, a person complies with a requirement of these Regulations as in force immediately before the commencement of Schedule 2 to the *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)*.

(2) The person is taken, during that period, to have complied with these Regulations as amended by Schedule 2 to the *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)*.

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Chapter 7 Matters in relation to the National Credit Code

Part 7-1 Exemptions, declarations and other matters

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

(1) This regulation applies despite a statement in a provision of this Part that:

(a) the Code does not apply to a particular matter; or

(b) the Code, other than a particular provision or provisions (the ***prescribed provision or provisions***), does not apply to a particular matter; or

(c) a particular provision or provisions of the Code (the ***prescribed provision or provisions***) does not apply to a particular matter.

(2) The Code applies in relation to the particular matter and the prescribed provision or provisions to the extent necessary for the interpretation of the particular matter and the prescribed provision or provisions.

(3) Part 12 of the Code applies in relation to the particular matter and the prescribed provision or provisions to the extent the context permits.

51 Exempt credit — maximum account charges

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

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

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

Note Subsection 6 (5) of the Code provides that the Code does not apply to the provision of credit under a continuing credit contract if the only charge that is or may be made for providing the credit is a periodic or other fixed charge that does not vary according to the amount of credit provided. However, the Code applies if the charge exceeds the maximum charge (if any) prescribed by the regulations.

52 Additional exempt credit

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

(a) the amount of credit to be provided does not at any time exceed $50;

(b) there is no insurance financed under the contract;

(c) there is no mortgage or guarantee taken by the credit provider;

(d) the annual percentage rate for the contract does not exceed the maximum annual percentage rate (if any) for the contract if it were a contract to which the Code applies.

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

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

(1) This regulation applies to the scheme (the ***No Interest Loan Scheme***) that is operated by GIO Finance Limited ACN 002 812 704 in accordance with the deed of agreement executed on 26 June 1992 by the New South Wales Minister for Further Education, Training and Employment and GIO Finance Limited.

(2) The Code does not apply to the provision of credit under the No Interest Loan Scheme.

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

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54 Rental Purchase Plan — exemption from certain provisions of Code

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

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

55 Partnership loans — exemption from certain provisions of Code

(1) The Code, other than:

(a) Part 1; and

(b) Division 3 of Part 4; and

(c) Divisions 4 and 5 of Part 5; and

(d) Part 7;

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

(2) However, for a credit provider who provides credit in the course of a business of providing credit to which the Code applies to partners of a firm and to others, this regulation applies only to the provision of credit on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to which the Code applies to persons who are not partners of the firm.

(3) In this regulation:

(a) a partner of a firm includes a former partner of a firm and an employee or former employee of the firm; and

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

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

56 Student loans — exemption from certain provisions of Code

(1) The Code, other than subsection 61 (1) and sections 76 to 81, does not apply to a contract to the extent that the contract provides for the provision of credit by a higher educational institution, or by an association of students of the institution, to a student of the institution on the grounds of hardship or of an emergency.

(2) However, subsection (1) applies only if the institution or association gives the debtor and any guarantor the following things before the contract for the provision of credit is entered into by the debtor or the guarantee is signed by the guarantor:

(a) a statement of the costs of the provision of credit, which must include any fees or charges payable and the interest rate applicable and may include other information;

(b) a copy of the terms and conditions of the contract for the provision of credit.

(3) In this regulation:

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

(a) of the institution; or

(b) of the institution and of other higher educational institutions.

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

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

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57 Loans for conservation of heritage items — exemption from Code

(1) The Code does not apply to the provision of credit under section 106 of the *Heritage Act 1977* (NSW).

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

(3) The Code does not apply to the provision of credit under section 140 of the **Heritage Act 1995** (Vic).

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

58 ADIs — exemption from Code

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

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

59 Estate administrators — exemption from certain provisions of Code

(1) The Code, other than sections 76 to 81, does not apply to a public official or a public body authorised by any law or court to administer a person's estate, to the extent that the public official or public body is providing credit to the person's estate, whether or not the person is deceased.

(2) In this regulation:

estate includes trust property.

public body includes a corporation owned or controlled by:

(a) the Commonwealth; or

(b) a State or Territory; or

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

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

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

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

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

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

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

(a) the person is a member of the fund;

(b) the application form by which the person applies for the credit states an annual percentage rate for the credit;

(c) the contract:

(i) fixes, for the whole term of the contract, an annual percentage rate that is the same as the rate stated in the application form; and

(ii) does not provide for varying the rate.

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

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62 Charge card contracts — exemption of certain contracts from Code

(1) The Code does not apply to the provision of credit under a charge card contract made available by any of the following credit providers:

(a) American Express Australia Limited ACN 108 952 085;

(b) American Express International Inc. ARBN 000 618 208;

(c) Diners Club Pty Limited ACN 004 343 051;

(d) Motorcharge Limited ACN 008 962 132.

Examples

1 American Express Platinum Card.

2 Diners Club Personal Card.

3 Motorcharge Card.

(2) In subsection (1):

charge card contract means a credit contract under which:

(a) credit is ordinarily obtained by the use of a card; and

(b) multiple advances of credit are contemplated; and

(c) the provision of an advance of credit is limited to a total period of not more than 62 days; and

(d) monthly or other periodic statements of account are provided to the debtor; and

(e) liquidated damages or charges for late payment are payable by the debtor if the debtor does not repay an advance of credit mentioned in a monthly or other periodic statement of account within a stated period.

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

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

(1) The Code, other than:

(a) Part 1; and

(b) Part 4; and

(c) Division 3 of Part 5; and

(d) Divisions 4 and 5 of Part 7; and

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(e) Parts 12, 13 and 14;

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

(2) However, for a credit provider who provides credit in the course of a business of providing credit to which the Code applies to directors and to others, this regulation applies only to the provision of credit on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to which the Code applies to persons who are not directors of the employer.

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

64 Mortgages — exemptions from Code

(1) The Code does not apply to the following mortgages:

(a) a mortgage relating to perishable goods, livestock, primary produce or food stuffs;

(b) a banker's right to combine accounts;

(c) a lien or charge arising by operation of any Act or law or by custom.

(2) However, sections 16 and 17 of the Code (relating to disclosures) apply in respect of a mortgage mentioned in paragraph (1) (a).

(3) Section 91 of the Code does not apply to any mortgage relating to goods that are lawfully in the possession of the credit provider.

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

65 Guarantees — exemption from Code

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

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

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65A Indigenous Business Australia — exemption from certain provisions of Code

The Code, other than sections 72 to 81, does not apply to Indigenous Business Australia.

Note 1 Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

Note 2 Indigenous Business Australia is the former Aboriginal and Torres Strait Islander Commercial Development Corporation, renamed in accordance with subsection 145 (1) of the *Aboriginal and Torres Strait Islander Act 2005*.

65B Exemption — providing credit in relation to a residential investment property

(1) Section 16 of the Code does not apply to a person to the extent that:

(a) the person enters into a credit contract as a credit provider; and

(b) the credit is provided or intended to be provided wholly or predominantly for a purpose mentioned in subparagraph 5 (1) (b) (ii) or (iii) of the Code; and

(c) the person made the offer in relation to the contract before 1 July 2010; and

(d) the borrower accepted the offer on or after 1 July 2010.

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

(2) This regulation ceases to have effect on 1 October 2010.

65C Residential investment property loans — exemption from Code

The Code does not apply to the provision of credit if:

(a) the credit is provided for either of the following purposes:

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

(ii) predominantly to refinance credit that has been provided wholly or predominantly to purchase,

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renovate or improve residential property for investment purposes; and

(b) the credit is not provided for the purpose of investment in a single residence; and

(c) the total amount if the credit provided, or to be provided, is more than $5 000 000.

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

66 Deemed mortgages for goods lease with option to purchase

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

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

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

67 Prescribed person in relation to a declaration

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

(a) if the person who obtained the declaration from the debtor was the credit provider — a person associated with the credit provider; or

(b) if the person who obtained the declaration from the debtor was a person associated with the credit provider — the person associated with the credit provider; or

(c) if the person who obtained the declaration from the debtor was not the credit provider or a person associated with the credit provider — any of the following:

(i) a person who obtained the declaration from the debtor;

(ii) a person who referred the debtor to the person who obtained the declaration (whether the referral was for the purpose of obtaining the declaration or otherwise);

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(iii) a person who suggested that the debtor apply for the provision of credit, and the suggestion was made during the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person;

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

68 Declaration of purposes for which credit provided

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

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

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

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

IMPORTANT

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

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

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

(3) The declaration must contain:

(a) the signature of each person making the declaration; and

(b) either:

(i) the date on which the declaration is signed; or

(ii) the date on which it is received by the credit provider.

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

(a) personal, domestic or household purposes; or

(b) the purchase, renovation or improvement of residential property used for investment purposes; or

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

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

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

69 Direct debit default notices — exemption for credit providers

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

(2) If:

(a) the default is rectified before the credit provider is required to give the direct debit default notice under subsection 87 (2) of the Code; and

(b) the credit provider does not give the direct debit default notice;

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

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

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Part 7-2 Credit contracts

70 Statement about debtor's statutory rights and obligations

(1) For paragraph 16 (1) (b) of the Code, an information statement must:

(a) be in writing; and

(b) be in accordance with Form 5.

(2) The information statement may be in the form of a separate document or a part of the credit contract document.

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

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

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

71 Comparison rate

(1) This regulation applies if:

(a) a credit provider, before entering into a credit contract, informs the debtor of the comparison rate in accordance with subsection 16 (3) of the Code; or

(b) a person publishes, or causes to be published, an advertisement that states or implies that credit is available and includes in the advertisement the comparison rate in accordance with Part 10 of the Code.

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

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

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

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where:

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

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

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

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

r is the solution of:

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

where:

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

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

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

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

t is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected) that will elapse between the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract.

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

(5) In the application of the above formulae, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.

Example

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

(6) The tolerances and assumptions under sections 180 to 182 of the Code apply to the calculation of the comparison rate.

(7) The comparison rate must be accompanied by a statement of the amount of credit on which it is based and the term for which credit is provided.

(8) In the case of a comparison rate under subsection 16 (3) of the Code:

(a) the amount of credit is to be the amount (or the maximum amount) required by the debtor; and

(b) the term for which credit is provided is to be the term (or the maximum term) required by the debtor; and

(c) the amount of credit, in the case of a continuing credit contract, is not to exceed the credit limit required by the debtor.

(9) If the debtor does not make a requirement in relation to a matter mentioned in paragraph (8) (a), (b) or (c), the credit provider may determine the matter.

(10) In the case of a comparison rate under Part 10 of the Code:

(a) the amount of credit and term are to be typical of the type of credit contract offered in the advertisement; and

(b) a number of comparison rates may be included in the advertisement for different credit contracts if the amount of credit and term applicable to each of the rates are clearly stated.

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

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

(12) An advertisement that contains a comparison rate in accordance with Part 10 of the Code must include a warning that the comparison rate is accurate only for the example given.

(13) A warning under this regulation must be given immediately after the comparison rate is given.

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

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

72 Pre-contractual statement

(1) For subsection 16 (4) of the Code, the following financial information (***relevant financial information***) mentioned in section 17 of the Code, which is to be contained in the precontractual statement, is prescribed:

(a) for subsection 17 (3) (Amount of credit):

(i) the amount of credit agreed to be provided (if ascertainable); or

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

(b) for subsection 17 (4) (Annual percentage rate or rates) — the information mentioned in the subsection, other than the information mentioned in subparagraph 17 (4) (c) (iii);

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(c) for subsection 17 (5) (Calculation of interest charges) — the maximum duration of any interest free period under the credit contract;

(d) for subsection 17 (6) (Total amount of interest charges payable) — the information mentioned in the subsection;

(e) for subsection 17 (7) (Repayments) — the information mentioned in the subsection;

(f) for subsection 17 (8) (Credit fees and charges) — the information mentioned in paragraphs 17 (8) (a) and (b), but only in respect of:

(i) retained credit fees and charges (being credit fees and charges retained by the credit provider and not passed on to or retained in reimbursement of an amount paid to a third party); and

(ii) lenders mortgage insurance.

(2) The relevant financial information is to be set out:

(a) separately from the remainder of the information under section 17 of the Code that is to be set out in the precontractual statement; and

(b) in tabular form (the ***financial table***), in either portrait or landscape format.

(3) Additional information may be included in the financial table, but only in the following circumstances:

(a) any information mentioned in subsection 17 (3), (4), (5) or (8) of the Code that is not relevant financial information may be included with the relevant financial information;

(b) any other information mentioned in subsection 17 (2) or subsections 17 (9) to (16) of the Code may be included after the relevant financial information and any information included under paragraph (a).

(4) If the relevant financial information relates to more than one type of credit facility, the information may be set out in a single financial table or in separate financial tables.

(5) The financial table is to be set out at the beginning of the precontractual statement, after any formal cover page or pages that have no substantive content.

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(6) However:

(a) if the precontractual statement is not a separate document, the financial table is to be set out at the beginning of the proposed contract document; and

(b) the financial table may be preceded by information necessary to identify the loan.

(7) If the precontractual statement consists of more than one document, the financial table need not be repeated.

(8) If any of the relevant financial information can change under the credit contract because of a unilateral change by the credit provider:

(a) a clear statement must be made in the financial table that it is subject to change and that the change can be made without the debtor's consent; and

(b) a single statement may be made for 2 or more items of information that are subject to change.

(9) An expression may be used for the purposes of the relevant financial information if the expression is defined in the precontractual statement.

(10) The relevant date of disclosure of the information in the financial table may be set out in the financial table.

(11) This regulation does not prevent a repetition of the relevant financial information in the financial table in any other form in connection with the remainder of the information under section 17 of the Code that is to be set out in the precontractual statement.

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

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

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73 Additional disclosures about insurance financed by contract

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

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

74 Additional disclosures about credit contracts to be signed by debtor

(1) For subsection 17 (16) of the Code, the information and warnings set out in Form 6 or 7, as relevant, are prescribed, but only if the credit contract document is to be signed by the debtor.

(2) Form 6 is the relevant form if the document signed by the debtor constitutes an offer.

(3) Form 7 is the relevant form if the document signed by the debtor constitutes the acceptance of an offer by the credit provider.

(4) The information and warnings mentioned in subsection (1):

(a) are to be in the relevant form (including in the form of boxes); and

(b) must:

(i) be set out immediately above, and on the same page as, each place where the debtor (or at least one of the debtors) is to sign the contract document; or

(ii) if a contract is made by electronic communication — be prominently displayed when, but not after, the debtor (or if 2 or more debtors, each debtor) signs.

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

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

75 Deduction of amount for interest charges

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

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

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

76 Calculation of unpaid daily balances

(1) This regulation applies to the calculation of average unpaid daily balances if interest charges under a credit contract are determined under subsection 28 (2) of the Code for a month, a quarter or a half-year by applying the relevant fraction of the annual percentage rate.

(2) The actual unpaid daily balances for each day in the month, quarter or half-year concerned are to be added together and divided by the total number of days in the whole of that month, quarter or half-year.

(3) If the annual percentage rate applies to part (but not the whole) of the month, quarter or half-year, the calculation of the average unpaid daily balances for that part is to be made by adding together the actual unpaid daily balances for each day in that part and dividing the sum obtained by the total number of days in that month, quarter or half-year.

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(4) If the last day or days of the month, quarter or half-year fall on a non-business day or days, the average unpaid daily balances for the month, quarter or half-year may be calculated without reference to the unpaid daily balances for the non-business day or days.

(5) In the event mentioned in subregulation (4), the unpaid daily balances for the non-business day or days must be included in the next month, quarter or half-year for the purposes of calculating the average unpaid daily balances for that next month, quarter or half-year.

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

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

(a) 12 (for a month); or

(b) by 4 (for a quarter); or

(c) by 2 (for a half-year);

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

77 Early debit or payment of interest charges

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

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

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

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78 Interest charges in relation to residential investment property

(1) This regulation applies to a provision of credit that is provided or intended to be provided wholly or predominantly:

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

(b) subject to subregulation (3), to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes.

(2) For section 30A of the Code, Division 3 of Part 2 of the Code applies to the provision of credit as if section 29 of the Code were omitted.

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

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

79 When statement of account not required

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

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

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

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Part 7-2A Prohibited credit fees and charges

79A Termination fees for certain credit contracts

(1) For section 31 of the Code, a credit fee or charge is prohibited if:

(a) it is provided for in a credit contract entered into on or after 1 July 2011; and

(b) it is to be paid on or in relation to the termination of the credit contract, whether the liability to make the payment is incurred at that time or at an earlier time; and

(c) any of the amount of credit provided under the credit contract is secured over residential property.

(2) However, subregulation (1) does not apply to:

(a) a credit fee or charge that is:

(i) a break fee; or

(ii) a discharge fee; or

(b) a credit fee or charge that is incurred before the termination of a credit contract that is terminated before any credit has been provided under the credit contract.

(3) In this regulation:

break fee means a credit fee or charge that relates:

(a) only to the early repayment of an amount provided under a credit contract for a fixed rate loan; and

(b) only to the portion of the loan that is fixed; and

(c) to the part of the credit provider's loss, arising from the early repayment, that is a result of differences in interest rates.

discharge fee means a credit fee or charge that only reimburses the credit provider for the reasonable administrative cost of terminating the credit contract.

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fixed rate loan means a credit contract under which the annual percentage rate is fixed, for an agreed term, for the whole or a part of the amount due under the credit contract.

(4) For the definition of discharge fee, a cost is a ***reasonable administrative cost*** only if it does not exceed a reasonable estimate of the average reasonable administrative cost to the credit provider of terminating that class of credit contract.

79B Minimum Repayment Warning

(1) For subsection 34 (12) of the Code, a statement of account for a credit card contract must contain the warning and details mentioned in subregulation (2).

(1A) However, the warning and details are not required if:

(a) the outstanding balance shown on the statement is $50 or less; or

(b) there is no outstanding balance; or

(c) a payment arrangement is in effect which replaces the normal monthly minimum payments.

Note If there is an outstanding balance of $50 or less, the licensee may choose to provide the warning and details. In that case, subregulation (3) may affect the content of the warning.

(1B) If the licensee provides the warning and details, they must be shown on the front page of the statement of account.

(2) The warning and details must be in the following form:

Minimum Repayment Warning: If you make only the minimum payment each month, you will pay more interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay ...	You will pay off the Closing Balance shown on this statement in about ...	And you will end up paying an estimated total of interest charges of ...
Only the minimum payment	[period]	[total interest 1]

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If you make no additional charges using this card and each month you pay ...	You will pay off the Closing Balance shown on this statement in about ...	And you will end up paying an estimated total of interest charges of ...
[repayment 2]	2 years	[total interest 2], a saving of [savings 2]

Having trouble making repayments? If you are having difficulty making credit card repayments, please contact us on [phone number]. We may be able to assist you.

(3) If the time to pay off the closing balance, making only the minimum payment each month, is 2 years or less, the item for [repayment 2] in the table in the Minimum Payment Warning is not required.

Note If the time to pay off the closing balance, making only the minimum payment each month, is 2 years or less, the licensee may choose to provide the item for [repayment 2] in the warning.

(4) [Period] must be calculated on the assumption that:

(a) the borrower pays the amount of the minimum payment mentioned in the statement of account each month; and

(b) no other purchases or advances are added to the outstanding balance.

(5) If more than one interest rate applies, the licensee may elect to use the purchase rate as the applicable rate to be applied to the whole of the outstanding balance.

Note The tolerances and assumptions in section 180 of the Code will apply to the calculation.

(7) In this regulation:

[date] means the repayment due date.

[period] means the time, in years and months, needed to repay the closing balance, making the minimum repayment each month until the balance is repaid.

purchase rate means the rate which applies to the purchase of goods and services under the credit card contract.

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[repayment 2] means the monthly repayment required to pay off the closing balance in 2 years.

[savings 2] is the difference between [total interest 1] and [total interest 2].

[total interest 1] means the total interest payable if the customer is making the minimum repayment each month until the balance is repaid.

[total interest 2] means the total interest that the consumer would be charged if the consumer made payments of [repayment 2] to pay off the closing balance in 2 years.

Part 7-3 Related mortgages and guarantees

80 Mortgage arising from certain home ownership schemes — exemption from subsection 50 (1) of the Code

(1) This regulation applies to:

(a) the home ownership scheme operated by the Mt Newman Joint Venturers, being:

(i) BHP Billiton Minerals Pty Ltd ACN 008 694 782; and

(ii) Mitsui-Itochu Iron Pty Ltd ACN 088 702 761; and

(iii) CI Minerals Australia Pty Ltd ACN 009 256 259; and

(b) the home ownership scheme operated by the Mount Goldsworthy Mining Associates Joint Venturers, being:

(i) BHP Billiton Minerals Pty Ltd ACN 008 694 782; and

(ii) Mistsui Iron Ore Corporation Pty Ltd ACN 050 157 456; and

(iii) CI Minerals Australia Pty Ltd ACN 009 256 259;

that assist employees, whether alone or jointly with one or more other persons, to purchase land owned respectively by the Mt Newman Joint Venturers and the Mount Goldsworthy Mining Associates Joint Venturers.

(2) Subsection 50 (1) of the Code does not apply to any mortgage created over an interest that is acquired by an employee under a contract for the purchase of land entered into by the employee, whether alone or jointly with one or more other persons, under a home ownership scheme to which this regulation applies.

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(3) In this regulation:

employee means:

(a) if BHP Billiton Iron Ore Pty Ltd ACN 008 700 981 is the manager of the Mt Newman Joint Venture or the Mount Goldsworthy Mining Associates Joint Venture:

(i) an employee of that corporation; or

(ii) an employee of a corporation that is a related body corporate in relation to BHP Billiton Iron Ore Pty Ltd; or

(b) if BHP Billiton Iron Ore Pty Ltd ceases to manage the Mt Newman Joint Venture or the Mount Goldsworthy Mining Associates Joint Venture — an employee of the person for the time being exercising the functions of the manager of the Mt Newman Joint Venture or of the Mount Goldsworthy Mining Associates Joint Venture.

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

81 Form of guarantees

(1) For section 55 of the Code, a guarantee must contain the warning set out in Form 8.

(2) The warning must comply with the following requirements:

(a) it must be in the form of a box as indicated in Form 8;

(b) it must be set out immediately above, and on the same page as, the place where the guarantor (or at least 1 of the guarantors) is to sign the guarantee document;

(c) if the guarantors are to sign the guarantee document on separate pages, it must be set out in that way on each page.

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

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82 Explanation about guarantor's rights and obligations

(1) For paragraph 56 (1) (b) of the Code, the document explaining the rights and obligations of a guarantor must be in accordance with Form 9.

(2) The document may be a separate document or a part of the guarantee document.

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

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

83 Information about increases in the amount of credit

(1) For subsection 71 (3) of the Code, as much of the following information as is ascertainable is prescribed in respect of a credit contract (other than a continuing credit contract):

(a) the date of the change in the contract;

(b) the unpaid daily balance at the date of the notice;

(c) the amount by which the amount of credit will be increased in accordance with the agreement;

(d) the persons, bodies or agents (including the credit provider) to whom the amount mentioned in paragraph (c) is to be paid and the amounts payable to them;

(e) the total of the amounts mentioned in paragraphs (b) and (c);

(f) details of any change to the annual percentage rate;

(g) details of any credit fees or charges that will be payable after the change in the contract;

(h) current repayment details, being:

(i) the number of repayments yet to be made; and

(ii) the amount of each of those repayments; and

(iii) the total amount of those repayments yet to be paid;

(i) the repayment details once the agreement is made, being:

(i) the number of repayments yet to be made once the agreement is made; and

(ii) the amount of each of those repayments; and

(iii) the total amount of those repayments; and

(iv) details of any changes in the times or frequency of repayment;

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(j) if commission is to be paid by or to the credit provider for the introduction of credit business or business financed by the increased amount of credit under the contract — information of the kind mentioned in subsection 17 (14) of the Code;

(k) the proposed increase in the term of the contract;

(l) the proposed new expiry date for the contract.

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

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

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

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

84 Information after surrender of goods

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

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

84A Market value of reverse mortgaged property

(1) This regulation is made for subsection 86A (2) of the Code.

(2) The market value of a reverse mortgaged property is:

(a) if the property has not been sold—the property's market value, as determined by an accredited valuer within 3 months before the credit provider receives an amount from the debtor to discharge the reverse mortgage; or

(b) if the property has been sold—the property's sale price.

(3) However, if the market value under paragraph (2) (b) is reduced because:

(a) the debtor, or a person who occupied the property with the debtor's consent, deliberately damaged the property; or

(b) the sale was not conducted in good faith; or

(c) the sale was not conducted on fair and reasonable terms;

the market value of the property is the market value at the time of the sale, as determined by an accredited valuer.

(4) In this regulation:

accredited valuer, in relation to a property, means a person who is:

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(a) accredited as a certified practising valuer by the Australian Property Institute; or

(b) a professional member of the Royal Institution of Chartered Surveyors who is entitled to be described as a Chartered Valuation Surveyor; or

(c) registered or otherwise authorised, under the laws of the State or Territory in which the property is situated, to value that kind of property.

85 Notice after direct debit default occurs

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

86 Notice after default occurs

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

87 Consent to enter premises

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

(a) a request to the occupier for entry to the premises must be made by the credit provider or agent by application in writing or by calling at the premises concerned;

(b) if the request is made personally, it may only be made between the hours of 8 am and 8 pm on any day other than a Sunday or public holiday;

(c) the consent in writing must be in accordance with Form 13 and signed by the occupier;

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

Note 1 Subsection 99 (1) of the Code provides that a credit provider, or an agent of the credit provider, must not enter any part of premises used for

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residential purposes for the purpose of taking possession of mortgaged goods under a goods mortgage unless the court has authorised entry or the occupier of the premises (after being informed in writing of the provisions of section 99) consented in writing to the entry.

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

88 Statement about mortgagor's rights and obligations

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

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

89 Information about proceeds of sale of mortgaged goods

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

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

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Part 7-6 Related sale contracts

90 Rate of interest on damages

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

(a) the date of the judgment; or

(b) if the contract was not still in force at that date — the date immediately before the contract was terminated.

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

91 Informing debtor of rights

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

(a) a written statement in accordance with Form 15; and

(b) given to the debtor within 21 days after the termination of the tied loan contract or the tied continuing credit contract.

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

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

92 Rebate of consideration

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

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

where:

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

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

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

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

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

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Part 7-7 Related insurance contracts

93 Particulars of insurance entered into by credit provider

(1) For subsection 146 (2) of the Code, the prescribed particulars of the insurance that a credit provider is to give to the debtor are the key features of the credit-related insurance contract.

(2) The key features of the contract are the following:

(a) the name of the insurer;

(b) the kind of insurance, the risks insured against and the exclusions;

(c) the beneficiaries under the policy;

(d) the expiry date of the policy;

(e) the premium payable (to the extent ascertainable);

(f) the fees and charges payable (to the extent ascertainable);

(g) the person by whom, and the person with whom, a claim may be made in respect of the policy, and the manner of making such a claim.

(3) A particular mentioned in subregulation (2) may be given by providing a copy of the policy containing the particular.

Note Subsection 146 (2) of the Code provides that, if a credit provider enters into a credit-related insurance contract in which the debtor has a beneficial interest, the credit provider must ensure that a written notice containing particulars of the insurance prescribed by the regulations is given to the debtor within 14 days after the beneficial interest is acquired by the debtor.

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

94 Proportionate rebate of consumer credit insurance premium

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

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

where:

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

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

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

95 Notice of right to cancel mortgaged property insurance

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

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

96 Proportionate rebate of premium for insurance over mortgaged property

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

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

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

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

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Part 7-8 Comparison rates

97 Relevant comparison rate where annual percentage rate stated

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

(a) $250 for a term of 2 weeks; and

(b) $1 000 for a term of 6 months; and

(c) $2 500 for a term of 2 years; and

(d) $10 000 for a term of 3 years; and

(e) $30 000 for a term of 5 years; and

(f) $150 000 for a term of 25 years.

98 Information about whether comparison rate relates to secured loan

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

(a) $10 000;

(b) $30 000.

99 Warnings about comparison rate

(1) For subsection 163 (1) of the Code, the warning about the accuracy of a comparison rate in a credit advertisement must:

(a) include the short statement or long statement; and

(b) be given in the same form as the comparison rate is given unless the credit advertisement is on television, the internet or other electronic display medium.

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

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

(3) The long statement is:

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

(4) The short statement is:

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

100 Calculation of comparison rates

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

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

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

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

where:

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

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

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

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

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r is the solution of the following:

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

where:

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

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

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

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

t is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected) that will elapse between the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract.

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

(5) In the application of the formulae, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.

Example

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

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(6) The tolerances and assumptions under sections 180 to 182 of the Code apply to the calculation of the comparison rate.

(7) The comparison rate must be accompanied by a statement of the amount of credit on which it is based and the term for which credit is provided.

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Part 7-9 Consumer leases

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

(1) For subsection 171 (3) of the Code, a consumer lease is excluded from the application of Part 11 of the Code if the consumer lease is in the class of consumer leases mentioned in subregulation (2).

(2) The class of consumer leases is consumer leases under which:

(a) the lessee is a director of the lessor; and

(b) the director hires goods from the lessor in connection with the director's remuneration or other financial benefits derived from acting as a director.

103 Prescribed person in relation to declarations

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

(a) if the person who obtained the declaration from the lessee was the lessor — a person associated with the lessor; or

(b) if the person who obtained the declaration from the lessee was a person associated with the lessor — the person associated with the lessor; or

(c) if the person who obtained the declaration from the lessee was not the lessor or a person associated with the lessor — any of the following:

(i) a person who obtained the declaration from the lessee;

(ii) a person who referred the lessee to the person who obtained the declaration (whether the referral was for the purpose of obtaining the declaration or otherwise);

(iii) a person who suggested that the lessee apply for a consumer lease, and the suggestion was made during the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person;

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

104 Declaration about purpose of lease

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

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

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

IMPORTANT

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

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

(3) The declaration must contain:

(a) the signature of each person making the declaration; and

(b) either the date on which the declaration is signed or the date on which it is received by the lessor.

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

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

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105 Explanation about rights and obligations of consumer lessees

(1) For subsection 175 (1) of the Code, a statement must:

(a) be in writing; and

(b) be in accordance with Form 17.

(2) The statement may be in the form of a separate document or a part of the consumer lease document.

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

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

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Part 7-10 Miscellaneous

106 Tolerances relating to disclosures

(1) For paragraph 180 (1) (a) of the Code:

(a) information about a percentage rate that contains more than 4 decimal places is within permissible tolerances if it is rounded-off to not less than 4 decimal places (so long as it is correct to the nearest fourth decimal place); and

(b) information about any amount payable that includes a fraction of a cent is within permissible tolerances if it is rounded-off to the nearest whole cent.

(2) For paragraph 180 (1) (a) of the Code, information about any amount payable that:

(a) depends for its accuracy on an interest charge that is correct only because of a permissible tolerance under subsection (1); and

(b) is not inaccurate for any other reason;

is also within permissible tolerances.

(3) For this regulation and regulation 107:

(a) a percentage rate may be rounded up to the nearest highest fourth decimal place only if the part of the rate being rounded up exceeds 0.00005; and

(b) a fraction of a cent may be rounded up to the nearest highest whole cent only if the fraction being rounded up exceeds 0.5 cents.

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

(4) For paragraph 180 (1) (a) of the Code, information disclosed about:

(a) interest charges or repayments payable; or

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(b) credit fees or charges that are government fees or government charges;

is within permissible tolerances if it overstates the amount or amounts payable.

(5) However, an overstatement mentioned in subregulation (4):

(a) does not affect the amounts payable under the credit contract; and

(b) is not within permissible tolerances for section 181 of the Code unless it is within permissible tolerances because of regulation 107.

107 Tolerances relating to amounts payable etc

(1) For section 181 of the Code:

(a) if the daily or other percentage rate to be used for the calculation of an amount of interest contains more than 4 decimal places, the amount of interest is within permissible tolerances if the rate used for the calculation is rounded-off to not less than 4 decimal places (so long as it is correct to the nearest fourth decimal place); and

(b) an amount charged, payable or calculated that includes a fraction of a cent is within permissible tolerances if it is rounded-off to the nearest whole cent; and

(c) if the credit provider is authorised by a law of the Commonwealth to charge (or obtain reimbursement in respect of) an amount of duty in the nature of receipts or financial institutions duty that is not within a permissible tolerance under paragraph (a) or (b), that amount is within permissible tolerances.

(2) For section 181 of the Code, an amount which depends for its accuracy on an interest charge that is correct only because of a permissible tolerance under subsection (1) (and is not inaccurate for any other reason) is within permissible tolerances.

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

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108 Additional assumptions relating to disclosures

(1) Disclosures for the purposes of the Code relating to interest charges, repayments, and fees and charges may, if any repayment is to be made, or interest charge, or fee or charge, is to be paid or debited, on a particular day, be made on the assumption that:

(a) the repayment will be made, or the interest charge, or fee or charge, paid or debited, on that day even though it is not a business day; and

(b) the contract provides that the repayment is to be made, or the interest charge, or fee or charge, paid or debited, on the next preceding or succeeding business day.

(2) Disclosures for the purposes of the Code relating to repayments and interest charges may also be made on the assumption that the amount of credit will be provided:

(a) on the date nominated for that purpose in the pre-contractual statement given under section 16 of the Code; or

(b) if no date is nominated — on the relevant date of disclosure set out in the financial statement as mentioned in subregulation 72 (10); or

(c) if no date is so set out — the date on which the statement is given to the debtor.

(3) Subregulation (2) does not apply to:

(a) a continuing credit contract; or

(b) a credit contract under which credit is provided progressively and the dates on which the credit is to be provided are not ascertainable.

109 Contracts linked to loan account offset arrangements

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

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(2) If the amount of interest charges under a credit contract is affected by a loan account offset arrangement during a statement period:

(a) the statement of account is to disclose the net interest charge debited under the credit contract during the statement period; and

(b) the statement of account must also show the amount by which the net interest differs from the interest charge that would otherwise have been payable under the credit contract if the interest charge had not been affected by the loan account offset arrangement.

110 Requirements for print or type

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

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

111 Notices

(1) For subsection 194 (9) of the Code, a nomination under subsection 194 (4) or (6) of the Code must be in the following form:

(a) the nomination must contain the words:

'I/We nominate [*full name of person nominated*] to receive notices and other documents under the National Credit Code on behalf of me/all of us.';

(b) the nomination must contain a prominent statement:

(i) that each debtor, mortgagor or guarantor is entitled to receive a copy of any notice or other document under the Code; and

(ii) that, by signing the form, the debtor, mortgagor or guarantor is giving up the right to be provided with information direct from the credit provider;

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(c) the nomination must contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that the person wishes to cancel the nomination.

(2) For subsection 194 (9) of the Code, a consent under subsection 194 (5) of the Code must be in the following form:

(a) the consent must contain the words:

'We consent to notices and other documents under the National Credit Code being sent jointly to us at [*address for service*].';

(b) the consent must contain a prominent statement:

(i) that each debtor, mortgagor or guarantor is entitled to receive a copy of any notice or other document under the Code; and

(ii) that, by signing the form, the debtor, mortgagor or guarantor is giving up the right to be provided with information separately from the credit provider;

(c) the consent must contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that the person wishes to cancel the consent.

111A Exemption from Code — persons who are not members of approved external dispute resolution scheme

(1) For section 203B of the Code, this regulation applies to:

(a) a person who is an unlicensed carried over instrument lender; and

(b) a person who is exempt under section 109 or 110 of the Act from the requirement to hold a licence; and

(c) a person who is exempt under item 41 or 42 of Schedule 2 to the Transitional Act from the requirement to be registered;

who is not a member of an approved external dispute resolution scheme.

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Regulation 111A

(2) For the avoidance of doubt, the person is exempt from a provision of the Code mentioned in subregulation (3) to the extent that the provision would otherwise require the person to disclose information about rights under or access to an approved external dispute resolution scheme.

(3) For subregulation (2) a provision of the Code is any of the following provisions of the Code:

(aa) subparagraph 72 (3) (b) (i);

(ab) subparagraph 72 (3) (b) (ii);

(a) subsection 85 (3);

(b) subsection 87 (3);

(c) paragraph 88 (3) (g);

(d) paragraph 102 (1) (c);

(e) subsection 136 (2);

(f) subsection 149 (2);

(g) subsection 175 (1).

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

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

(1) If a person is required to provide or use a form prescribed by these Regulations, the person may provide or use a form (the ***equivalent form***) that:

(a) is prescribed by regulations made under the Consumer Credit Code of a State or Territory mentioned in subregulation (2); and

(b) has the same effect, or is the same in substance, as the form prescribed by these Regulations.

(2) The Consumer Credit Codes of the States and Territories are the following:

(a) the *Consumer Credit (New South Wales) Code* mentioned in the *Consumer Credit (New South Wales) Act 1995*;

(b) the Consumer Credit (Victoria) Code mentioned in the **Consumer Credit (Victoria) Act 1995**;

(c) the Consumer Credit (Queensland) Code mentioned in (and appendixed to) the *Consumer Credit (Queensland) Act 1994*;

(d) the *Consumer Credit (Western Australia) Code* mentioned in the *Consumer Credit (Western Australia) Act 1996*;

(e) the *Consumer Credit (South Australia) Code* mentioned in the *Consumer Credit (South Australia) Act 1995*;

(f) the Consumer Credit (Tasmania) Code mentioned in the *Consumer Credit (Tasmania) Act 1996*;

(g) the Consumer Credit (Australian Capital Territory) Code mentioned in the *Consumer Credit Act 1995* (ACT);

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(h) the Consumer Credit (Northern Territory) Code mentioned in the *Consumer Credit (Northern Territory) Act 1995*.

(3) If:

(a) a person is required to provide or use a form prescribed by these Regulations; and

(b) under subregulation (1), the person provides or uses an equivalent form; and

(c) the form prescribed by these Regulations requires the person to provide more information than required by the equivalent form;

the person may provide the additional information in a separate document with the equivalent form.

(4) Subregulations (1) and (3) cease to have effect at the end of the period of 2 years starting when this regulation commences.

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Schedule 1 Forms

(subregulation 6 (1))

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

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

To: [1]

In relation to an investigation of [2]

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

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

(b) to appear at [3] on [4] at [5] before [6] for examination on oath or affirmation and to answer questions put to you in relation to the investigation.

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

Dated [4]

Signature of person authorised by ASIC to conduct the examination:

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NOTICE OF RELEVANT STATUTORY PROVISIONS

1. Subsection 257 (1) of the Act provides that a person who is required to submit to an examination is entitled to have his or her lawyer attend the examination. It also provides that the person's lawyer may address the inspector or ask the person questions about matters raised with the person by the inspector.

2. (1) You must not fail to comply with this notice without reasonable excuse (see subsection 290 (1) of the Act).

   (2) It is not a reasonable excuse for failure to comply with this notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see subsection 295 (1) of the Act).

   (3) However, if:

   (a) before making an oral statement or signing a record in answer to this notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and

   (b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;

   the statement, or the fact that you have signed the record, is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.

   (4) The right to make a claim of this kind is not available to a body corporate (see section 295 of the Act).

1 I*nsert full name and address of the person to whom the notice is to be given.*

2 *Insert the nature of the matter to which the investigation relates.*

3 *Insert time of day.*

4 *Insert date.*

5 *Insert full particulars of the address of the place at which the requirement is to be satisfied.*

6 *Insert full name of the person conducting the examination.*

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Form 2 Summons to witness

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

In the matter of [1]

To: [2]

at [3] you are summoned to appear before the Australian Securities and Investments Commission (ASIC)

on [4]

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

You are required to produce the following document(s) at the hearing: [6].

Dated [4]

Signature of person authorised by
ASIC to issue summons:

1 *Insert description of matter.*

2 *Insert full name and address of the person to be summoned to appear.*

3 *Insert time of day.*

4 *Insert date.*

5 *Insert full particulars of the address of the place where the hearing is to be held.*

6 *Insert description(s) of the documents that are to be produced at the hearing.*

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Form 3 Infringement notice

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

Date of issue:

Unique identification code:

TO [*name and address of recipient*]:

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

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

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

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

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

* *Omit if not applicable.*

Penalty under this notice

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

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

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

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

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(b) you will not be prosecuted for the alleged offence; and

(c) you will not be taken to have admitted guilt in respect of the alleged offence; and

(d) you will not be taken to have been convicted of the alleged offence.

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

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

(b) no civil proceedings will be brought against you by the Commonwealth for the alleged contravention; and

(c) you will not be taken to have admitted guilt in respect of the alleged contravention; and

(d) you will not be taken to have been found guilty of the alleged contravention.

* *Omit if not applicable.*

Consequences of failure to pay penalty under this notice

*5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, you may be prosecuted for the alleged offence.

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

* *Omit if not applicable.*

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

Time for payment

7. The time for payment is:

(a) within 28 days after the day on which the notice is given to you; or

(b) if you apply for a further period of time in which to pay the penalty, and the application is granted — within the further period allowed; or

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(c) if you apply for a further period of time in which to pay the penalty, and the application is refused or is taken to have been refused — within the later of:

(i) 7 days after:

(A) the day you receive the notice of refusal; or

(B) the application is taken to have been refused; and

(ii) 28 days after the day on which the infringement notice was given to you; or

(d) if you apply for permission to pay the penalty by instalments, and the permission is granted — in accordance with the permission; or

(e) if you apply for permission to pay the penalty by instalments, and the permission is refused or is taken to have been refused — within the later of:

(i) 7 days after:

(A) the day you receive the notice of refusal; or

(B) the application is taken to have been refused; and

(ii) 28 days after the day on which the infringement notice was given to you; or

(f) if you apply for the notice to be withdrawn, and the application is refused or is taken to have been refused — within the later of:

(i) 7 days after:

(A) the day you receive the notice of refusal; or

(B) the application is taken to have been refused; and

(ii) 28 days after the day on which the infringement notice was given to you.

Further penalty for continuing offence

*8. If the commission of the alleged offence continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.

*8. If the alleged contravention of the civil penalty provision continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.

* *Omit if not applicable.*

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Applying to have this notice withdrawn

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

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

Applying for more time to pay the penalty under this notice

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

Applying to pay the penalty under this notice by instalments

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

Requirements for applications

12. An application to have this notice withdrawn, or for more time to pay the penalty under this notice, or for permission to pay the penalty under this notice by instalments:

    (a) must be in writing; and

    (b) must include the unique identification code set out at the top of this notice; and

    (c) must include your reasons for making the application; and

    (d) for an application for permission to pay the penalty under this notice by instalments — include the proposed amount and frequency of instalments; and

    (e) may be made by [*methods of making application*].

Signature of authorised ASIC officer issuing the notice

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Form 4 Prescribed terms and conditions of mortgage

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

1 In this mortgage —

Code means the National Credit Code.

goods means the goods hired under the hire contract.

hire contract means the contract for the hire of goods as a consequence of which the mortgagor and the supplier are deemed by paragraph 9 (3) (f) of the Code to have entered into this mortgage.

mortgagor means the person to whom the goods are hired under the hire contract.

supplier means the person from whom the goods are hired under the hire contract.

2 The mortgagor gives and the supplier takes a mortgage of the goods.

3 The mortgagor's right or obligation to purchase the goods, which is contained in the hire contract, is extinguished.

4 Subject to item 5, the supplier may take possession of the goods, or may take possession of, and sell, the goods if —

(a) the supplier was induced by fraud on the part of the mortgagor to enter into the hire contract; or

(b) the mortgagor, contrary to a term of the hire contract, has attempted to assign or dispose of the goods; or

(c) the mortgagor, contrary to a term of the hire contract, has —

(i) failed to keep the goods in good order and repair; or

(ii) failed to keep the goods insured or registered; or

(d) the mortgagor has made default in the payment of any instalment or other monetary sum due under the hire contract; or

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(e) the mortgagor has made default in any other obligation under the hire contract which is likely to affect directly the value of the supplier's security; or

(f) the mortgagor has returned the goods to the supplier, or has given notice in writing to the supplier, that the mortgagor can not continue to observe the obligations imposed by the hire contract.

5 Nothing in item 4 affects the operation of any statute or any principle of law or equity applicable to the rights and duties of the mortgagor or supplier in relation to each other.

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Form 5 Information statement

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

Things you should know about your proposed credit contract

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

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

The contract

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

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

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

whichever happens first.

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

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

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

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

3 Can I terminate the contract?

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

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

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

4 Can I pay my credit contract out early?

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

5 How can I find out the pay out figure?

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

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

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

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

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

7 Can my contract be changed by my credit provider?

Yes, but only if your contract says so.

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

That depends on the type of change. For example —

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

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

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

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

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

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

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

Insurance

10 Do I have to take out insurance?

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

11 Will I get details of my insurance cover?

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

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

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

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

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

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13 In that case, what happens to the premiums?

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

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

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

Mortgages

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

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

16 Should I get a copy of my mortgage?

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

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

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

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

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

See the answers to questions 22 and 23.

Otherwise you may —

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

OR

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

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

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

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

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

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

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

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

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

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

General

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

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

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

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

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

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

24 Can my credit provider take action against me?

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

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

25 Do I have any other rights and obligations?

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

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

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

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

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Form 6 Disclosure about credit contracts

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

IMPORTANT

BEFORE YOU SIGN

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

THINGS YOU MUST KNOW

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

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Form 7 Disclosure about credit contracts

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

IMPORTANT

BEFORE YOU SIGN

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

THINGS YOU MUST KNOW

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

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Form 8 Disclosure about guarantee

section 55 of the Code
regulation 81 of the Regulations

IMPORTANT

BEFORE YOU SIGN

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

THINGS YOU MUST KNOW

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

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Form 9 Information statement

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

Things you should know about guarantees

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

Guarantees

1 What is a guarantee?

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

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

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

3 What documents should I be given?

Before you sign the guarantee you should get —

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

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

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

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

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

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

The credit provider must give you the requested information —

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

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

You may be charged a fee for the statement.

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

5 How can I find out the payout figure?

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

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

6 What other information can I get?

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

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

The credit provider must give you the requested copy —

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

The credit provider may charge you a fee.

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

7 Can I withdraw from my guarantee?

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

8 Can I limit my guarantee?

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

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

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9 Can my guarantee also apply to any future contracts?

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

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

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

11 Should I get a copy of my mortgage?

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

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

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

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

See the answer to question 22.

Otherwise you may —

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

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

OR

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

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

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

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

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

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

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

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

The credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the

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occupier is informed in writing of the relevant section in the National Credit Code.

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

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

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

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

However, there will be no warning notice if —

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

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

When —

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

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

You may not. See the answer to question 17.

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

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

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

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

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General

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

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

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

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

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

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

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

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

25 Do I have any other rights and obligations?

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

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

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

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

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

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Form 10 Information after surrender of mortgaged goods

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

TO: . . . . . .

(name of mortgagor)

. . . . . .

. . . . . .

(address of mortgagor)

FROM: . . . . . .

(name of credit provider)

. . . . . .

(Australian credit licence number)

. . . . . .

(address of credit provider)

. . . . . .

Date

CONTACT PERSON: . . . .

(name, telephone number and address)

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

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

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Details you should know

Description of the goods: . . . . . .

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

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

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

per . . . . . **

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

How to get the goods returned or not sold

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

IF YOU DO NOTHING, YOU MAY LOSE THE GOODS.

Sale of goods

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

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

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

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

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

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

Finalising the contract

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

- the amount owing under your mortgage (which can not be more than the amount owing under the contract); and
- any amount owing under a prior mortgage of the goods; and
- any amount owing under a subsequent mortgage of the goods which the credit provider knows about; and
- the credit provider's reasonable expenses of enforcing the mortgage; and
- the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.

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

- what the sale price was; and

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

General

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

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

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

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

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

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

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

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

. . . . . .
(name of person signing)

. . . . . .
(position of person signing)

* *Omit whichever is not applicable*.

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

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Form 11 Direct debit default notice

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

DIRECT DEBITS FROM YOUR BANK ACCOUNT

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

Are you unable to make a payment?

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

You can ask us to:

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

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

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

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

Some useful tips on direct debits

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

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

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

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

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

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

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

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Form 12 Information about debtor's rights after default

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

If you cannot make a repayment:

1. Contact us immediately

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

You have specific legal rights to request changes be made to your contract to help you repay the debt if:

- you cannot make repayments due to hardship (for example, illness, unemployment or some other good reason); and
- you expect to be able to make the repayments if the terms of your contract are changed; and
- you entered into your contract:
  - on or after 1 July 2010 and the amount you have borrowed is less than $500 000; or
  - before 1 July 2010 and the amount you have borrowed is less than the relevant threshold.*

You may request that we:

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

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Alternatively, you may request that we negotiate with you to postpone any further action that we may take against you.

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

IMPORTANT

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

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

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

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

2. Right to review

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

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

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

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

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

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

* *You can find out what the relevant threshold is by contacting us or referring to ASIC's website at http:// www.asic.gov.au or contacting ASIC on 1300 300 630.*

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Form 13 Consent to enter premises

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

. . . . . .

Date

TO: . . . . . .

(name of credit provider)

. . . . . .

(Australian credit licence number)

FROM: . . . . . .

(name of occupier)

. . . . . .

(address of occupier's premises)

. . . . . .

. . . . . .

('the premises')

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

The mortgaged goods are:*

. . . . . .
. . . . . .
. . . . . .
. . . . . .

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IMPORTANT

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

. . . . . .

(signature of occupier giving consent)

. . . . . .

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

* *Insert brief details of the mortgaged goods*.

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Form 14 Notice after taking possession of mortgaged goods

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

. . . . . .

Date

TO: . . . . . .

(name of mortgagor)

. . . . . .

. . . . . .

(address of mortgagor)

FROM: . . . . . .

(name of credit provider)

. . . . . .

(Australian credit licence number)

. . . . . .

(address of credit provider)

. . . . . .

(name, telephone and address)

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

Details you should know

Description of the goods: . . . . . .

Date the goods were taken: . . . . . .

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The goods were taken because:. . . . . .

. . . . . .

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

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

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

How to get the goods back

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

Either

You can get the goods back if you pay $ . . . . . and there is no repetition of the default that caused the goods to be taken. This amount of $ . . . . . is calculated as follows —

Arrears . . . . . $ . . . . . .

Enforcement expenses . $ . . . . . .

TOTAL. . . . . $ . . . . . .

OR

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

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

1 Amount required to pay out

the credit contract on / / $

2 Amount required to pay out

the credit contract on / / $

If you do nothing, you will lose the goods.

Sale of goods

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

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

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

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

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something to say that your letter has been received. Make sure you keep anything that was signed by the employee.

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

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

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

Finalising the contract

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

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

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

- what the sale price was; and
- the net proceeds of the sale after the amounts mentioned above have been deducted; and
- the amount due under the credit contract or the amount of any surplus due to you; and
- details of any further recovery action that might be taken against you under the credit contract if you are the debtor.

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General

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

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

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

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

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

EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS [*INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER*] AND CAN BE

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CONTACTED AT [*INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS*].

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

. . . . . .

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

. . . . . .

(name of person signing)

. . . . . .

(position of person signing)

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

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Form 15 Notice of right to terminate maintenance services contract

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

. . . . . .

Date

TO: . . . . . .

(name of debtor)

. . . . . .

. . . . . .

(address of debtor)

FROM: . . . . . .

(name of credit provider)

. . . . . .

(Australian credit licence number)

. . . . . .

(address of credit provider)

. . . . . .

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

- terminate your maintenance services contract with

. . . . . .dated . . . . . .

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

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

You must tell the supplier in writing if you want to terminate the maintenance services contract.

The proportionate rebate must be calculated in accordance with the law.

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

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

. . . . . .

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

. . . . . .

(name of person signing)

. . . . . .

(position of person signing)

* *Insert name and address of supplier under the maintenance services contract.*

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Form 16 Notice of right to cancel mortgaged property insurance

subsection 149 (2) of the Code
regulation 95 of the Regulations

. . . . . .
Date

TO: . . . . . .
(name of debtor)
. . . . . .
. . . . . .
(address of debtor)

FROM: . . . . . .
(name of credit provider)
. . . . . .
(Australian credit licence number)
. . . . . .
(address of credit provider)
. . . . . .

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

- terminate your insurance contract over mortgaged property financed under the credit contract; and
- recover from the insurer a proportionate rebate of premium paid under the insurance contract.

Your insurer will not terminate the insurance contract unless you ask the insurer in writing to do so. If you terminate the insurance, you will not be covered in the event of loss or damage to the property.

According to our records your insurer is . . . . . .

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The mortgaged property is —

. . . . . .

. . . . . .

. . . . . .

The proportionate rebate of insurance must be calculated in accordance with the law.

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

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

. . . . . .

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

. . . . . .

(name of person signing)

. . . . . .

(position of person signing)

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Form 17 Information statement

subsection 175 (1) of the Code
regulation 105 of the Regulations

Things you should know about your consumer lease

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

The lease

1 How can I get details of my lease?

Your lessor must give you a copy of your consumer lease with this statement. Both documents must be given to you within 14 days after the lessor enters into the consumer lease, unless you already have a copy of the consumer lease.

If you want another copy of your lease write to your lessor and ask for one. Your lessor may charge you a fee. Your lessor has to give you a copy —

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

2 What should my lease tell me?

You should read your lease carefully.

Your lease should tell you about your obligations, and include information on matters such as —

- details of the goods which have been hired; and
- any amount you have to pay before the goods are delivered; and
- stamp duty and other government charges you have to pay; and

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- charges you have to pay which are not included in the rental payments; and
- the amount of each rental payment; and
- the date on which the first rental payment is due and either the dates of the other rental payments or the interval between them; and
- the number of rental payments; and
- the total amount of rent; and
- when you can end your lease; and
- what your obligations are (if any) when your lease ends.

This information only has to be included in your lease if it is possible to give it at the relevant times.

If your lease does not tell you all these details, contact your credit provider's external dispute resolution scheme, or get legal advice, for example from a community legal centre or Legal Aid, as you may have rights against your lessor.

3 Can I end my lease early?

Yes. Simply return the goods to your lessor. The goods may be returned in ordinary business hours or at any other time you and the lessor agree on or the court decides.

4 What will I have to pay if I end my lease early?

The amount the lease says you have to pay.

If you have made rental payments in advance then it is possible that your lessor might owe you money if you return the goods early.

5 Can my lease be changed by my lessor?

Yes, but only if your lease says so.

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6 Is there anything I can do if I think that my lease is unjust?

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

If that is not successful, you may contact your credit provider's external dispute resolution scheme.

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

Alternatively, you can go to court. You may also wish to get legal advice, for example from a community legal centre or Legal Aid, and/or make a complaint to ASIC. ASIC can be contacted on 1300 300 630 or through ASIC's website at http://www.asic.gov.au.

The goods

7 If my lessor writes asking me where the goods are, do I have to say where they are?

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

8 When can my lessor or its agent come into a residence to take possession of the goods?

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

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General

9 What do I do if I can not make a rental payment?

Get in touch with your lessor immediately. Discuss the matter and see if you can come to some arrangement.

You can ask your lessor to change your lease in a number of ways —

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

10 What if my lessor and I can not agree on a suitable arrangement?

If the lessor refuses your request to change the rental payments, you can ask your lessor to review this decision if you think it is wrong.

If the lessor still refuses your request, you can complain to the external dispute resolution scheme that your lessor belongs to. Further details about this scheme are set out below in question 12.

11 Can my lessor take action against me?

Yes, if you are in default under your lease. But the law says that you can not be unduly harassed or threatened for rental payments. If you think you are being unduly harassed or threatened, contact your credit provider's external dispute resolution scheme or ASIC, or get legal advice.

12 Do I have any other rights and obligations?

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

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

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

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Schedule 2 Modifications — carried over instruments

(regulation 25E)

2.1 Subsection 5 (1), after definition of *carried on in this jurisdiction*

insert

carried over instrument has the meaning given by subsection 4 (1) of the Transitional Act.

2.2 Subsection 5 (1), after definition of *prescribed State or Territory order*

insert

prescribed unlicensed carried over instrument lender has the meaning given by section 5A.

2.3 Subsection 5 (1), after definition of *registered company auditor*

insert

registered person has the meaning given by subsection 4 (1) of the Transitional Act.

2.4 Subsection 5 (1), after definition of *tribunal*

insert

unlicensed carried over instrument lender means a credit provider or lessor who:

(a) was a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010; and

(b) on and after 1 July 2010 has been the credit provider or lessor in relation to the carried over instrument on a continuous basis; and

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(c) is not any of the following persons:
  (i) a licensee;
  (ii) a registered person;
  (iii) a person exempt from the requirement to hold a licence under this Act or to be a registered person under the Transitional Act.

2.5 After section 5

insert

5A Meaning of *prescribed unlicensed carried over instrument lender*

(1) A prescribed unlicensed carried over instrument lender means a person:
  (a) for whom:
    (i) a prescribed State or Territory order is in force; or
    (ii) a banning or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is in force; or
    (iii) a judgement has been entered against as a result of a civil action taken by an agency of a State or Territory government under the old Credit Code in the last 10 years; or
  (b) who is banned from engaging in a credit activity under:
    (i) a law of a State or Territory; or
    (ii) Part 2-4; or
  (c) who is disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001*; or
  (d) who has been convicted of a serious fraud during the last 10 years; or
  (e) who is incapable of managing his or her affairs because of physical or mental incapacity; or
  (f) who is not a trustee of a trust and who is insolvent; or
  (g) who is or has been registered to engage in credit activities under Schedule 2 to the Transitional Act and whose registration was suspended or cancelled under item 23 of Schedule 2 to the Transitional Act, other than under paragraph 23(1)(a) or (b); or

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(h) who is or has been the holder of an Australian credit licence and whose licence is suspended or was cancelled under section 54, other than under paragraph 54(1)(a) or (b); or

(i) who is or has been the holder of an Australian financial services licence and whose licence is suspended or was cancelled under section 915B of the *Corporations Act 2001*, other than under any of the following paragraphs of that Act:

(i) paragraphs 915B(1)(a) or (e);

(ii) paragraphs 915B(2)(a) or (d);

(iii) paragraphs 915B(3)(a) or (d);

(iv) paragraphs 915B(4)(a) or (d).

(2) In this section ***person*** means:

(a) if the person is a natural person—that person; and

(b) if the person is a body corporate—each director or secretary of the body corporate; and

(c) if the person is a partnership or a trustee of a trust—each partner of the partnership or each trustee of the trust.

2.6 Chapter 2, heading

substitute

Chapter 2—Unlicensed carried over instrument lenders

2.7 Part 2-1, Divisions 1 and 2

omit

2.8 Section 30

omit

2.9 Subsection 31 (1)

omit

A licensee

insert

An unlicensed carried over instrument lender

2.10 Sections 32 and 33

omit

2.11 Part 2-2, heading

substitute

Part 2-2—Obligations of unlicensed carried over instrument lenders

2.12 Part 2-2, Divisions 1 to 3

omit

2.12A Part 2-2, Division 4 heading

substitute

Division 4—Conditions for unlicensed carried over instrument lender

2.13 Section 45

substitute

45 Conditions for unlicensed carried over instrument lender

(1) This section applies to an unlicensed carried over instrument lender who engages in a credit activity in relation to a carried over instrument.

(2) The lender in relation to the credit activity in relation to the instrument is subject to the conditions prescribed in the regulations.

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2.14 Section 46

omit

2.15 Part 2-2, Division 5, heading

substitute

Division 5—General obligations

2.16 Section 47, heading

substitute

47 General conduct obligations of unlicensed carried over instrument lender

2.17 Subsection 47 (1)

substitute

(1) An unlicensed carried over instrument lender must:

(a) do all things necessary to ensure that the credit activities engaged in in relation to the carried over instrument are engaged in efficiently, honestly and fairly; and

(b) have in place adequate arrangements to ensure that its clients are not disadvantaged by any conflict of interest in relation to a carried over instrument that may arise wholly or partly in relation to credit activities engaged in by it or its representatives; and

(c) ensure that its representatives are adequately trained and competent to engage in the credit activities in relation to the carried over instrument; and

(d) maintain its competence to engage in the credit activities in relation to the carried over instrument; and

(e) have an internal dispute resolution procedure that:

(i) complies with standards and requirements made or approved by ASIC in accordance with section 48; and

(ii) covers disputes in relation to the credit activities the lender engages in in relation to the carried over instrument; and

(f) if the lender is not a member of an approved external dispute resolution scheme:

(i) keep a register of complaints in relation to carried over instruments and include the information mentioned in subsection (1A); and

(ii) keep a register of applications by a debtor for changes to the terms a credit contract under section 72 of the National Credit Code and include the information mentioned in subsection (1B); and

(iii) keep a register of requests by a debtor, mortgagor or guarantor to negotiate a postponement of enforcement proceedings in relation to the credit contract, mortgage or guarantee under section 94 of the National Credit Code and include the information mentioned in subsection (1C); and

(g) have adequate arrangements and systems to ensure compliance with its obligations under this section, and a written plan documenting those arrangements and systems; and

(h) unless the unlicensed carried over instrument lender is a body regulated by APRA:

(i) have adequate resources (including financial, technological and human resources) available so it can engage in credit activities in relation to the carried over instrument and to carry out supervisory arrangements; and

(ii) have adequate risk management systems.

(1A) For the purposes of subparagraph (1)(f) (i), the information is:

(a) the name of the person making the complaint; and

(b) the date the complaint was made; and

(c) details of the substance of the complaint; and

(d) details of the outcome of the compliant.

(1B) For the purposes of subparagraph (1)(f)(ii), the information is:

(a) the name of the person making the application; and

(b) the date the application was made; and

(c) details of the information included in the application; and

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(d) details of the written notice given under subsection 72(3) of the National Credit Code.

(1C) For the purposes of subparagraph (1)(f)(iii), the information is:

(a) the name of the person making the request; and

(b) the date the request was made; and

(c) details of the information included in the request; and

(d) details of the written notice given under subsection 94(2) of the National Credit Code.

2.18 Subsection 47 (2)

omit

For the purposes of paragraphs (1)(b), (g), (k) and (l),

insert

For the purposes of paragraphs (1)(b), (c), (g) and (h),

2.18A Subsection 47 (2)

omit

licensee

insert

unlicensed carried over instrument lender

2.19 Subsection 47 (3), including subsection heading

omit

2.20 Section 48

substitute

48 Standards or requirements for internal dispute resolution approved or made by ASIC

(1) ASIC must take the following matters into account when considering whether to approve standards or requirements for

internal dispute resolution for an unlicensed carried over instrument lender:

(a) Australian Standard AS ISO 10002-2006:

(i) known as *Complaints Handling*; and

(ii) published by Standards Australia; and

(iii) as in force when this Act commences;

(b) any other matters ASIC considers relevant.

(2) ASIC may vary or revoke:

(a) a standard or requirement that it has made in relation to an internal dispute resolution procedure; and

(b) the operation of a standard or requirement that it has approved in its application to an internal dispute resolution procedure.

2.21 Section 49, heading

substitute

49 Obligation to provide a statement or audit report

2.22 Subsections 49 (1) to (3)

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.23 After subsection 49 (3)

insert

Requirement to lodge audit report

(3A) An unlicensed carried over instrument lender who is not a member of an approved external dispute resolution scheme must lodge with ASIC an audit report, prepared by a suitably qualified person and in accordance with subsection (10), about whether the lender has complied with the following requirements in relation to a carried over instrument for the lender:

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(a) if the carried over instrument is a credit contract—the requirements mentioned in section 17 of the National Credit Code;

(b) if the carried over instrument is a consumer lease—the requirements mentioned in section 174 of the National Credit Code.

Civil penalty: 2,000 penalty units.

2.24 Subsections 49 (5) and (6)

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.25 After subsection 49 (9)

insert

When audit report due

(10) For subsection (3A), the unlicensed carried over instrument lender must lodge the audit report with ASIC on or before 31 December 2010. ASIC may extend the day by giving written notice to the lender.

2.26 Subsections 50 (1) and (2), including subsection headings and penalty

substitute

Requirement to give information

(1) ASIC may request an unlicensed carried over instrument lender to give ASIC information about the registers the lender is required to keep under paragraph 47(1)(f).

(2) If ASIC requests the lender give ASIC the information mentioned in subsection (1), the lender must give ASIC the information.

Civil penalty: 2,000 penalty units.

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2.26A Subsection 51 (1)

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.27 Section 52

substitute

52 Obligation to lodge certain matters with ASIC

Requirement to lodge report of contravention or likely contravention

(1) If an unlicensed carried over instrument lender is not a member of an approved external dispute resolution scheme and the lender becomes aware of a contravention, or a likely contravention, mentioned in subsection (2), the lender must lodge a written report with ASIC on the matter:

(a) as soon as practicable; and

(b) in any case no later than 10 business days after becoming aware of the contravention or likely contravention.

Civil penalty: 2,000 penalty units.

When there is a contravention or likely contravention

(2) For the purposes of subsection (1), there is a contravention, or a likely contravention, if:

(a) the unlicensed carried over instrument lender contravenes, or is likely to contravene, this Act, the Transitional Act or the ASIC Act; and

(b) the contravention, or likely contravention, is significant having regard to the following:

(i) the number and frequency of similar previous contraventions;

(ii) the impact of the contravention, or likely contravention, on the lender's ability to engage in the credit activities;

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(iii) the extent to which the contravention, or likely contravention, indicates that the lender's arrangements to ensure compliance with its obligations under this Part are inadequate;

(iv) the actual or potential financial loss to consumers, or the lender itself, arising from the contravention, or likely contravention.

(3) For the purposes of subsection (2), an unlicensed carried over instrument lender is likely to contravene an obligation referred to in that subsection if, and only if, the person is not longer able to comply with the obligation.

Offence

(4) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

(5) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

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

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

2.28 Subsection 53 (1)

omit

A licensee must, no later than 45 days after the licensee's licence anniversary in each year,

insert

An unlicensed carried over instrument lender must, no later than 15 August in 2011 and each subsequent year,

2.29 Subsection 53 (1)

omit

to the licensee.

insert

to the unlicensed carried over instrument lender.

2.30 Paragraph 53 (3) (a)

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.31 Paragraph 53 (3) (b)

substitute

(b) if the unlicensed carried over instrument lender is a body corporate—a kind of person mentioned in subsection 53(7); or

2.32 Paragraph 53 (3) (c)

omit

licensee

insert

unlicensed carried over instrument lender

2.33 Subsection 53 (4)

omit

licensee

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insert

unlicensed carried over instrument lender

2.34 Subsection 53 (7), including subsection heading

substitute

Kinds of persons

(7) For paragraph (3)(b), the ***kinds of persons*** are:

(a) if the body corporate is not an ADI:

(i) the Chief Executive Officer of the body corporate; or

(ii) if the body corporate does not have a Chief Executive Officer—the person who:

(A) is responsible for managing the affairs of the body corporate; and

(B) has authority to make decisions in relation to the allocation of resources so that the body corporate complies with the Act; and

(b) if the body corporate is an ADI:

(i) the Chief Executive Officer of the body corporate; or

(ii) a person who satisfies the criteria to be a fit and proper person to hold a responsible person position under Prudential Standard APS 520.

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

2.35 Division 6, Part 2-2

omit

2.36 Part 2-3, heading

substitute

Part 2-3—Representatives of unlicensed carried over instrument lender

2.37 Part 2-3, Divisions 1 and 2

omit

2.38 Section 73, including the heading and subsection headings

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.39 Part 2-3, Division 4

substitute

Division 4—Appointment of licensee or registered person to act on behalf of prescribed unlicensed carried over instrument lender

74 Obligation for prescribed unlicensed carried over instrument lender to appoint licensee or registered person

(1) This section applies to a prescribed unlicensed carried over instrument lender on or after 1 July 2010.

(2) The prescribed unlicensed carried over instrument lender:

(a) must not engage in a credit activity in relation to a carried over instrument (other than the credit activity that is engaged in solely by the lender being the credit provider under a credit contract or the lessor under a consumer lease); and

(b) must appoint, in writing, a licensee or registered person as the lender's representative to engage in a credit activity in relation to the carried over instrument (other than the credit activity that is engaged in solely by the lender being the status of the credit provider under a credit contract or the lessor under a consumer lease) on behalf of the lender.

Civil penalty: 2,000 penalty units.

Note: Having the status of a credit provider under a credit contract or a lessor under a consumer lease is itself a credit activity.

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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: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

(4) 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: 10 penalty units.

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

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

75 Lodgment obligations for prescribed unlicensed carried over instrument lender

(1) If a licensee or registered person is appointed by a prescribed unlicensed carried over instrument lender to act on the lender's behalf, the lender must lodge with ASIC, no later than 15 business days after the appointment is made:
  (a) a copy of the appointment under section 74; and
  (b) a document, in an approved form, setting out the following information:
    (i) the basis, under section 5A, on which the lender is a prescribed unlicensed carried over instrument lender;
    (ii) the licensee's or registered person's name (including the licensee's or registered person's principal business name if any);
    (iii) the postal address of the licensee or registered person;

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(iv) if the principal business address of the licensee or registered person is different from the postal address—the principal business address.

Civil penalty: 2,000 penalty units.

Offence

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

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

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

Criminal penalty: 10 penalty units.

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

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

75A Obligation for prescribed unlicensed carried over instrument lender if appointment of licensee or registered person ceases

(1) This section applies if a licensee or registered person is appointed, in accordance with paragraph 74(2)(b), by a prescribed unlicensed carried over instrument lender to engage in a credit activity mentioned in that paragraph on behalf of the lender.

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(2) The appointment is continuous until the first of the following events occurs:

(a) the licensee, or registered person dies or otherwise ceases to engage in the business;

(b) the licensee, or registered person is unable to perform its duties.

(3) If the licensee's or registered person's appointment ceases under subsection (2):

(a) section 74 applies to the prescribed unlicensed carried over instrument lender as if it required the lender to appoint another licensee or registered person to engage in a credit activity, as described in paragraph 74(2)(b), on behalf of the lender no later than 15 business days after the previous appointment ceased; and

(b) section 75 applies to the prescribed unlicensed carried over instrument lender in relation to the appointment.

75B Obligation if person ceases to be prescribed unlicensed carried over instrument lender

(1) If a person is a prescribed unlicensed carried over instrument lender because a matter mentioned in subsection 5A (1) applies to the person and the matter ceases to apply to the person, the person must lodge with ASIC a notice, in an approved form and no later than 15 business days after the day on which the matter ceases to apply to the person, that the matter has ceased to apply to the person.

Civil penalty: 2,000 penalty units.

Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

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Strict liability offence

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

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

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

76 Lodgement obligation for licensee or registered person acting on behalf of prescribed unlicensed carried over instrument lender

(1) If a licensee or registered person is appointed by a prescribed unlicensed carried over instrument lender to act on the lender's behalf, the licensee or registered person must lodge with ASIC a notice, in an approved form, of the appointment no later than 15 business days after the appointment.

Civil penalty: 2,000 penalty units.

Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

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

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

2.39B Part 2-4

omit

2.39C Part 2-5, heading

substitute

Part 2-5—Financial records and audit reports

2.40 Section 87

omit

2.40A Subsection 88 (1)

omit

A licensee

insert

An unlicensed carried over instrument lender

2.40B Subsection 88 (1)

omit

licensee.

insert

lender.

2.40C Paragraph 88 (2) (c)

omit

2.40D Subsection 88 (4)

omit

A licensee

insert

An unlicensed carried over instrument lender

2.40E Subsection 88 (4)

omit

licensee.

insert

lender.

2.41 Sections 90 to 92

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.42 Section 94, heading

substitute

94 Financial records taken to be made with unlicensed carried over instrument lender's authority

2.43 Section 94

omit

licensee.

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insert

unlicensed carried over instrument lender.

2.44 Subsection 95 (1)

omit

A licensee

insert

An unlicensed carried over instrument lender

2.45 Subsection 96 (2)

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.46 Part 2-5, Division 3

omit

2.47 Subsection 102 (1)

substitute

(1) An auditor (the ***auditor***) who prepares an audit report required under subsection 49(3) or 49(3A) in relation to an unlicensed carried over instrument lender has a right of access at all reasonable times to the financial records or other credit books of the lender for purposes relating to the audit report.

2.48 Subsections 102 (2) and (3)

omit each mention of

licensee

insert

unlicensed carried over instrument lender

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2.49 Section 103

omit each mention of

licensee

insert

unlicensed carried over instrument lender

2.50 Paragraph 104 (1) (b)

omit

licensee

insert

unlicensed carried over instrument lender

2.51 Paragraph 104 (2) (a)

omit

licensee to meet the licensee's obligations as a licensee; or

insert

unlicensed carried over instrument lender to meet its obligations under section 47 or the National Credit Code; or

2.52 Paragraph 104 (2) (b)

substitute

(b) constitutes or may constitute a contravention of section 47 or Division 2; or

2.53 Section 105

omit each mention of

licensee

insert

unlicensed carried over instrument lender

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2.53A Paragraph 106 (b)

omit

Schedule 3 Modifications — special purpose funding entity

(regulation 25G)

3.1 Section 5, after definition of *contravention*

insert

court has the same meaning as it has in Part 4-3.

3.2 Section 5, after definition of *function*

insert

fund raising special purpose entity means a body corporate or trust that:

(a) has the sole purpose of raising funds in order to be:

(i) a credit provider for a credit contract; or

(ii) a lessor for a consumer lease; and

(b) raises funds from persons other than natural persons; and

(c) only engages in credit activities as a credit provider under a credit contract or a lessor under a consumer lease; and

(d) does not have any employees; and

(e) is not a licensee or registered person.

3.3 Section 5, after definition of *registered company auditor*

insert

registered person has the meaning given by section 4 of the Transitional Act.

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3.4 Section 5, after definition of *representative*

insert

securitisation entity means a body corporate or trust that:

(a) carries on a business consisting of managing by way of a securitisation transaction some or all of the economic risk associated with assets, liabilities or investments (whether the body corporate or trust assumes the risk from another person or creates the risk itself); and

(b) is an insolvency remote special purpose funding entity according to the criteria of an internationally recognised rating agency that are applicable to the circumstances of the body corporate or trust (regardless of whether the agency has determined that the body corporate or trust satisfies the criteria); and

(c) raises substantially all of its funds by issuing securitisation products on terms that the funds raised would be applied to the business mentioned in paragraph (a); and

(d) is a credit provider under a credit contract or a lessor under a consumer lease.

securitisation product means a debt instrument or an interest in a managed investment scheme (within the meaning of section 9 of the *Corporations Act 2001*).

servicing agreement means an agreement:

(a) that is between:

(i) a special purpose funding entity; and

(ii) a licensee or registered person; and

(b) under which the licensee or registered person, on behalf of the special purpose funding entity, performs obligations, or exercises the rights of:

(i) a credit provider in relation to a credit contract or proposed credit contract; or

(ii) a lessor in relation to a consumer lease or proposed consumer lease; or

(iii) a mortgagee in relation to a mortgage or proposed mortgage; or

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(iv) a person who is a beneficiary of a guarantee or proposed guarantee in relation to the guarantee or proposed guarantee.

special purpose funding entity means a fund raising special purpose entity or a securitisation entity.

3.5 Subsection 29 (4)

omit

3.6 Subsection 45 (1), including the subheading

substitute

ASIC may impose, vary or revoke conditions on licensee who is party to a servicing agreement

(1) ASIC may, at any time:

(a) impose conditions or additional conditions on a licensee who is a party to a servicing agreement with a special purpose funding entity, including a condition requiring the licensee to cease engaging in a credit activity on behalf of a special purpose funding entity; and

(b) vary or revoke conditions imposed on the licensee.

3.7 Section 46

omit

3.8 Before section 74

insert in Division 4

74A Definitions for this Division

In this Division:

represented person means a special purpose funding entity that is exempt from the requirement to be licensed under the Credit Act or exempt from the requirement to be registered under the Transitional Act.

representative includes a licensee or registered person who is a party to a servicing agreement with a special purpose funding entity.

3.9 Section 74

omit

licensee

insert

represented person

3.10 Section 75, heading

substitute

75 Responsibility if representative of only one represented person

3.11 Section 75

omit each mention of

licensee

insert

represented person

3.12 Section 76, heading

substitute

76 Representatives of multiple represented persons

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3.13 Subsections 76 (1) and (2)

omit each mention of

licensee

insert

represented person

3.14 Subsection 76 (2)

omit

licensees

insert

represented persons

3.15 Paragraph 76 (3) (a)

omit

licensees

insert

represented persons

3.16 Paragraph 76 (3) (c)

substitute

(c) the conduct is within the authority of:

(i) only one of those represented persons (the ***authorising represented person***); or

(ii) 2 or more of those represented persons (the ***authorising represented persons***);

3.17 Paragraph 76 (3) (d)

omit

authorising licensee

insert

authorising represented person

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3.18 Paragraph 76 (3) (d)

omit

licensee

insert

represented person

3.19 Paragraph 76 (3) (e)

omit

authorising licensees

insert

authorising represented persons

3.21 Section 77

omit each mention of

licensee

insert

represented person

3.22 Section 78

omit each mention of

licensee

insert

represented person

3.23 Subsection 78 (2)

omit

licensees

insert

represented persons3.24 Section 112

substitute

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112 Application of this Part

This Part does not apply in relation to credit assistance provided by a licensee or registered person in relation to a credit contract if:

(a) a special purpose funding entity is or will be the credit provider under the contract; and

(b) the licensee or registered person is party to a servicing agreement with the special purpose funding entity.

3.25 Section 125

substitute

125 Definition for this Part

In this Part:

licensee means a licensee or registered person.

3.26 Subsection 126 (1)

substitute

(1) As soon as practicable after it becomes apparent to an exempt special purpose funding entity that it is likely to enter a credit contract with a consumer who will be the debtor under the contract, the entity must take reasonable steps to ensure that the licensee who is a party to a servicing agreement with the entity gives the consumer the licensee's credit guide in accordance with subsection (2).

Civil penalty: 2,000 penalty units.

3.27 Subsection 127 (1)

substitute

(1) If an exempt special purpose funding entity has been assigned any rights or obligations of a credit provider under a credit contract and the licensee is acting on behalf of the entity, the entity must take reasonable steps to ensure that the licensee:

(a) gives the debtor under the contract the licensee's credit guide in accordance with subsection (2); and

(b) gives the credit guide to the debtor as soon as practicable after the entity has been assigned the rights or obligations.

Civil penalty: 2,000 penalty units.

3.28 Section 128

omit

A licensee

insert

An exempt special purpose funding entity

3.28A Section 128

omit

the licensee

insert

the exempt special purpose funding entity

3.29 Section 129

omit each mention of

licensee

insert

exempt special purpose funding entity

3.30 Section 130

omit each mention of

licensee

insert

exempt special purpose funding entity

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3.31 Section 131

omit each mention of

licensee

insert

exempt special purpose funding entity

3.32 Section 132

omit each mention of

licensee

insert

exempt special purpose funding entity

3.33 Section 133

omit each mention of

licensee

insert

exempt special purpose funding entity

3.34 Section 134

omit

3.35 Section 135

substitute

135 Application of this Part

This Part does not apply in relation to credit assistance provided by a licensee or registered person in relation to a consumer lease if:

(a) an exempt special purpose funding entity will be the lessor under the lease; and

(b) the licensee or registered person is party to a servicing agreement with the exempt special purpose funding entity.

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3.36 Section 148

substitute

148 Definition for this Part

In this Part:

licensee means a licensee or registered person.

3.37 Subsection 149 (1)

substitute

(1) As soon as practicable after it becomes apparent to an exempt special purpose funding entity that a licensee with whom it has a servicing agreement is likely to enter a consumer lease with a consumer who will be the lessee under the lease, the entity must take reasonable steps to ensure that the licensee gives the consumer the licensee's credit guide in accordance with subsection (2).

Civil penalty: 2,000 penalty units.

3.38 Subsection 150 (1)

substitute

(1) If an exempt special purpose funding entity has been assigned any rights or obligations of a lessor under a consumer lease and a licensee is acting on behalf of the entity, the entity must take reasonable steps to ensure that the licensee:

(a) gives the lessee under the lease the licensee's credit guide in accordance with subsection (2); and

(b) gives the credit guide to the lessee as soon as practicable after the entity has been assigned the rights or obligations.

Civil penalty: 2,000 penalty units.

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3.39 Section 151

omit

A licensee

insert

An exempt special purpose funding entity

3.39A Section 151

omit

the licensee

insert

the exempt special purpose funding entity

3.40 Section 152

omit each mention of

licensee

insert

exempt special purpose funding entity

3.41 Section 153

omit

licensee

insert

special purpose funding entity

3.42 Section 154

omit each mention of

licensee

insert

special purpose funding entity

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3.43 Section 155

omit each mention of

licensee

insert

special purpose funding entity

3.44 Section 156

omit

licensee

insert

special purpose funding entity

3.45 After section 159

insert

159A Application of this Part

This Part does not apply in relation to a licensee or registered person who is authorised by a credit provider or lessor to collect repayments if:

(a) the credit provider or lessor is a special purpose funding entity; and

(b) the licensee or registered person is party to a servicing agreement with the special purpose funding entity.

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Schedule 4 Modifications — responsible lending conduct

(regulation 28M)

4.1 Subsection 5 (1), definition of *licensee*

substitute

licensee means:

(a) a person who holds a licence; or

(b) a person who has applied for a licence before 1 January 2011 in an application on which ASIC has not made a decision.

4.2 After paragraph 114 (1) (e)

insert

(ea) the licensee is not required to give the consumer a quote in the circumstances prescribed by the regulations; and

4.3 After subsection 114 (2)

insert

(2A) The regulations may prescribe circumstances where a licensee is not required to give the consumer a quote in accordance with subsection (2).

4.4 After subsection 114 (4)

insert

No demanding payment if no quote given

(4A) The licensee must not request or demand payment of an amount for the licensee's credit assistance if the licensee has not given the consumer a quote in accordance with subsection (2).

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Civil penalty: 2,000 penalty units.

4.5 Paragraph 121 (2) (e)

omit

made.

insert

made;

4.6 After paragraph 121 (2) (e)

insert

(f) any other information prescribed by the regulations.

4.7 After subsection 121 (3)

insert

(3A) The regulations may prescribe information that need not be included in the credit proposal disclosure document, despite subsection (2).

4.8 After paragraph 137 (1) (d)

insert

(da) the licensee is not required to give the consumer a quote in the circumstances prescribed by the regulations; and

4.9 After subsection 137 (2)

insert

(2A) The regulations may prescribe circumstances in which a licensee is not required to give the consumer a quote in accordance with subsection (2).

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4.10 After subsection 137 (4)

insert

No demanding payment if no quote given

(4A) The licensee must not request or demand payment of an amount for the licensee's credit assistance if the licensee has not given the consumer a quote in accordance with subsection (2).

Civil penalty: 2,000 penalty units.

4.11 Paragraph 144 (2) (d)

omit

lease.

insert

lease;

4.12 After paragraph 144 (2) (d)

insert

(e) any other information prescribed by the regulations.

4.13 After subsection 144 (3)

insert

(3A) The regulations may prescribe information that need not be included in the lease proposal disclosure document, despite subsection (2).

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Schedule 5 Key Facts Sheets

(regulation 28LB)

Part 1 Model of Key Facts Sheets

This Key Facts Sheet is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*

KEY FACTS ABOUT THIS HOME LOAN

Date produced: [date]	[lender logo] Australian credit licence number: [lender's ACL number] [1]

THIS IS NOT AN OFFER OF CREDIT. This Key Facts Sheet is provided to help you compare this home loan with the home loans of other lenders.

What you have told us	
Loan Amount:	[loan amount]
Term of the home loan:	[loan term]
Interest type:	[fixed or variable] [2]
Lender and product name:	[lender and product name]

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HOW DOES THIS HOME LOAN COMPARE?

Description of this home loan	
Repayment method	Principal and interest [3]
Repayment frequency	Monthly (other repayment options are available) [4]
Interest rate	[5] [variable interest rate] per annum [fixed interest rate] per annum fixed for [number] years, then a variable rate currently [variable interest rate] per annum [variable interest rate] per annum variable for [number] years, then a [*fixed/*variable/*discount interest rate] per annum * *Delete whichever is not applicable* [*fixed/*variable] [introductory interest rate] per annum for [number] years, then a variable rate currently [variable interest rate] per annum * *Delete whichever is not applicable*
Personalised comparison rate: (interest rate including fees)	[Personalised comparison rate] per annum [6]

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Estimated cost of this home loan	
Total amount to be paid back (including the loan amount and fees)	**[repaid amount]** [7]
This means you will pay back	**[amount] for every $1 borrowed** [8]
Establishment fees	**[establishment fees]** [9]
Ongoing fees	[monthly fees] 11 per month [annual fees] 12 per year
[10] Repayment per month (including ongoing fees)	**[monthly repayment]** [13]
[10] Repayment per year (including ongoing fees)	**[yearly repayment]** [14]
[10] Repayment per month for first [number] [15] years (including ongoing fees)	**[monthly repayment]** [13]
[10] Repayment per year for first [number] [15] years (including ongoing fees)	**[yearly repayment]** [14]
[10] Repayment per month after [number] [15] years (including ongoing fees)	**[monthly repayment]** [13]
[10] Repayment per year after [number] [15] years (including ongoing fees)	**[yearly repayment]** [14]

There may be circumstances in which other fees are payable. Fees applicable for the loan you apply for will be shown in the loan contract. You can also obtain a list of fees applicable to this type of loan from our branches [16] or through our website at [*lender's website*].
Other loan set-up fees, such as valuation fees [16A] and lender's mortgage insurance, and Government charges, such as registration fees and stamp duty on property transfer, have not been included. These will be determined after application.
Additional fees may be payable if you choose to repay your fixed rate home loan early. [17]

[18] What happens at the end of the fixed rate period?

At the end of the fixed rate period you may be able to fix the rate at a new fixed interest rate for a further period. If a further fixed rate is not entered into, the rate will convert to the applicable variable interest rate. Under the current variable interest rate, if interest rates do not change, your monthly repayment would [increase/decrease] by around [change in repayment]. [19]

At the end of the fixed rate period, the rate will convert to the applicable variable interest rate. Under the current variable interest rate, if interest rates do not change, your monthly repayment would [increase/decrease] by around [change in repayment]. [19]

[18] What happens if interest rates increase?

This is a variable rate loan. If your interest rate was to increase by 1% per annum, your monthly repayment would increase by around **[change in repayment 2]**. [19]

This is a fixed rate loan. Your repayments will not change during the fixed rate period. After the fixed rate period, if the variable interest rate was to increase by 1% per annum, from the current variable interest rate of [variable interest rate], your monthly repayment would increase by around **[change in repayment]**. [19]

How can I repay my loan faster?

This loan allows you to make additional repayments to pay off your home loan faster. If you increased your monthly repayments by $200 a month to **[monthly repayment + $200] you would repay the loan in [new loan term], instead of [loan term], based on the current variable interest rate stated in this Key Facts Sheet**. [19]
This loan allows you to make additional repayments to pay off your loan faster but such repayments may attract a fee. You should ask your lender about the fee before making additional repayments. [19]
This loan does not allow you to make additional repayments to pay off your home loan faster. [19]
Altering the frequency of repayments may also help repay the loan faster.

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How to find the best deal for you
To obtain the best deal for you, it is important to shop around and compare interest rates, fees and features before you apply for a home loan. Choosing the best home loan for you may save you money. For more information about how to get the best deal on your home loan visit the ASIC consumer website at www.moneysmart.gov.au.

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FURTHER INFORMATION ABOUT THIS KEY FACTS SHEET

Which home loan is right for you?

When choosing a home loan, it's important to work out what you want from your loan and how much it will cost you. Given the wide range of loans on offer – with different interest rates, product features and fees – it pays to shop around to find the loan that fits your needs and circumstances. Some loans offer features that may be appropriate for your situation and result in savings over the life of the loan.

Some features you may wish to consider include:

- ability to split your loan between fixed and variable interest rates;
- ability to make extra repayments;
- an offset account;
- a redraw facility; and
- linked credit card and savings accounts.

But compare the costs and benefits of these features before you agree to them.

For more information on choosing the right home loan for you, you may also wish to visit the ASIC consumer website at www.moneysmart.gov.au.

Where can I find out more about this loan?

If you want more information on the terms used in this document or about this home loan, please contact us [lender's contact details], or visit our website at [lender's contact website].

This Key Facts Sheet is an Australian Government requirement.

The Australian Government requires all lenders selling standard home loans to give you a Key Facts Sheet like this one when you ask for one and provide the necessary information.

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Key Facts Sheets contain information presented in the same way to help you compare and select the most appropriate home loan for you. You should request Key Facts Sheets when shopping around for a home loan to help you find the home loan that is right for you.

This Key Facts Sheet is not an offer of credit. The lender is not obliged to provide you with the home loan described in this Key Facts Sheet. You will need to apply for the loan and meet our lending criteria before we can determine whether you are eligible for this loan.

You should also be aware:

- the interest rates and fees and charges are those that apply as at the date of production of this Key Facts Sheet.
- the amount required to be paid does not include fees which are dependent on events that may not occur (for example, late payment fees if you do not make repayments on time).
- the amount of the repayments shown in this Key Facts Sheet will change if interest rates, fees and charges change and if a different loan type, loan term or loan amount is used.

What is the personalised comparison rate?

The personalised comparison rate helps you understand what the total cost of your home loan might be, taking into account known fees and charges that will apply (other than government fees, charges or duties) by building those costs into the interest rate. It also helps you understand the impact of fixed or introductory rates of interest on the total amount of interest you could pay over the life of the loan.

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Part 2 Information about preparing a Key Facts Sheet

Notes in model of Key Facts Sheet

2.1 A lender that prepares a Key Facts Sheet for a particular consumer must include the following information at the numbers marked in the model in Part 1:

1 If the lender is an ACL holder – this is the lender's ACL number. If the lender is not an ACL holder, no ACL number is required. However, the lender must disclose that the credit provider's ACL will be provided in the credit contract. The lender is exempted from the requirement to set out its ACN or ABN in subsection 153(2) of the *Corporations Act 2001* on the Key Facts Sheet.

2 This must be an interest type in the table in regulation 28LA. If a fixed loan is specified, the term of the fixed rate period must also be indicated.

3 Under regulation 28LA, the repayments under the home loan must repay principal and interest for the full term of the loan.

4 The repayment frequency must be based on monthly repayments.

5 This is the current interest rate applicable to the loan on the date on which the Key Facts Sheet is produced.

If discounts to this interest rate apply, the discount and the period in which it will apply must also be disclosed here.

Only one of the 4 paragraphs in this box is required. Omit the paragraphs that do not apply to the loan this Key Facts Sheet relates to.

A licensee may replicate this item if more than 1 discount period applies

6 This rate must be calculated in accordance with the formula in subregulation 100 (3) but using the designated amounts provided by the consumer under sections 133AC and 133AD of the Act. This rate includes each fee or charge (if any) payable by the debtor at the time each repayment is made, being a credit fee or charge (other than

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a government fee, charge or duty) that is ascertainable when the comparison rate is disclosed (whether or not the credit fee or charge is payable if the credit is not provided). The tolerances in subregulations 100 (4), (5) and (6) also apply to this rate.

7 This is the sum of the principal and all interest and fees certain to be payable over the life of the home loan. The fees include each fee or charge (if any) payable by the debtor at the time each repayment is made, being a credit fee or charge (other than a government fee, charge or duty) that is ascertainable when the comparison rate is disclosed (whether or not the credit fee or charge is payable if the credit is not provided).

8 This is the total amount to be paid back, divided by the loan amount, expressed as a dollar amount for every dollar borrowed.

9 These are the fees and charges, paid to the lender on the commencement of the loan, used for the purpose of calculating the Personalised Comparison Rate.

10 If the home loan is a variable rate loan or a fixed rate loan with a term that expires at the end of the fixed rate period, only the first 2 sections (‘Repayment per month (including ongoing fees)’ and ‘Repayment per year (including ongoing fees)’) are required. If the home loan is any other type of standard home loan, the remaining sections are required.

11 This is any fee paid each month to the lender on a regular and ongoing basis.

12 This is any fee paid each year to the lender on a regular and ongoing basis. It does not include the monthly ongoing fee in note 11.

13 This is the sum of amounts payable per month on the home loan and any fees paid to the lender that are charged in that month.

14 This is the sum of the amounts payable per year on the home loan and any fees paid to the lender that are charged during the year.

15 This is the length of the fixed rate period for fixed loans, the length of the discount rate period for introductory rate

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loans, and the length of the period before the discounted rate applies for discounting rate loans.

16 The reference to the lender's branches in this sentence may be removed if not applicable.

16A Omit the reference to valuation fees if:

(a) a credit provider charges a valuation fee in all cases; and

(b) the amount of the valuation fee is included in the amount for establishment fees mentioned in the Key Fact Sheet.

17 Only include if break fees are payable on the loan.

18 Omit this section if:

(a) the interest rate will be fixed for the entire term of the loan; or

(b) the loan is a variable rate loan for which a fixed interest rate component is not available after the initial fixed rate period expires.

19 Only one of these paragraphs is required. Omit the paragraph that does not apply to the loan this Key Facts Sheet relates to.

Assumptions

2.2 The tolerances and assumptions under section 180 of the Code apply to the calculation of any amounts in this Key Facts Sheet.

Publication online

2.3 If a Key Facts Sheet is published online, links must be provided to the websites mentioned in the Key Facts Sheet.

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Adopting the Key Facts Sheet for non-prescribed purposes

2.4 A lender may produce a Key Facts Sheet for home loans if Part 3-2A of the Credit Act does not require the lender to provide a Key Facts Sheet. A lender that provides such a Key Facts Sheet must, to a reasonable extent, comply with the requirements for producing the Key Facts Sheet, but must omit any reference to the production of the Key Facts Sheet being an Australian Government requirement.

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Schedule 6 Key Facts Sheets for credit card contracts

(regulation 28LFA)

Part 1 Model of Key Facts Sheets

Key facts about this credit card

Correct as at: *[date on which Key Facts Sheet is produced]*	*Lender's logo and/or name*

This information sheet is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*

Description of credit card

Product name	*[name of credit card product]*
Minimum credit limit	*[minimum credit limit]*
Minimum repayments [1]	*[minimum repayment or how the minimum repayment will be calculated]*
Interest on purchases	*[interest rate payable on purchases]*
Interest-free period [2]	*[description of interest-free period]*
Interest on cash advances	*[interest payable on cash advances]*
Promotional interest rate [3]	*[promotional interest rate]*
Balance transfer interest rate [3]	*[interest rate payable on transferred balances and (if applicable) the number of months for which the rate is applicable]*

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Annual fee	*[annual fee]*
Late payment fee	*[late payment fee]*
There may be circumstances in which you have to pay other fees. You can only be charged a fee for exceeding your credit limit if you separately agree to being charged that fee [4]. A full list of current fees applicable to this credit card can be obtained from [*web address for lender's fees page*]. For more information on choosing and using credit cards visit the ASIC consumer website at www.moneysmart.gov.au The terms on which this credit card is offered can change over time. You can check if any changes have been made by visiting [*web address for lender's credit card Key Facts Sheet page*] or by contacting us on [*lender's contact phone number*] [5].	

Notes for using model

[1] Minimum repayments may be expressed as amounts or as an explanation of how minimum repayments will be calculated.

[2] The expression 'interest free' must be used in accordance with section 30B of the Credit Act and the regulations made under that section.

[3] This item may be omitted if it is not relevant or applicable to the credit card contract.

[4] This sentence may be omitted if it is not relevant or applicable to the credit card contract.

[5] The licensee may provide both a web address and a phone number or only one of those contact methods. If the licensee only provides one of those methods, the licensee may omit the phrase that refers to the option that is not provided

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Part 2 Information about preparing a Key Facts Sheet

Notes for using model of Key Facts Sheet

2.1 The notes for using the model Key Facts Sheet in Part 1 are to be deleted from a Key Facts Sheet provided to a consumer.

Key Facts Sheet for more than one credit card

2.2 A licensee may publish a Key Facts Sheet about more than one credit card in a table format by adding columns to the right of the tables in the model Key Facts Sheet in Part 1. If the licensee does so, the Key Facts Sheet provided to a consumer must enable the consumer to clearly identify or select each credit card for which the consumer is applying.

Publication online

2.3 If a Key Facts Sheet is published online, links must be provided to the websites mentioned in the Key Facts Sheet.

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Notes to the *National Consumer Credit Protection Regulations 2010*

Note 1

The *National Consumer Credit Protection Regulations 2010* (in force under the *National Consumer Credit Protection Act 2009*) as shown in this compilation comprise Select Legislative Instrument 2010 No. 44 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2010 No. 44	12 Mar 2010 (*see* F2010L00631)	1 July 2010	
2010 No. 59	26 Mar 2010 (*see* F2010L00742)	1 July 2010	—
2010 No. 105	21 May 2010 (*see* F2010L01369)	24 May 2010	—
2010 No. 137	18 June 2010 (*see* F2010L01578)	19 June 2010	—
2010 No. 185	30 June 2010 (*see* F2010L01810)	1 July 2010	—
2010 No. 235	21 July 2010 (*see* F2010L02121)	Schedule 1 (item 1): 1 Oct 2010 Remainder: 22 July 2010	—
2010 No. 303	25 Nov 2010 (*see* F2010L03104)	26 Nov 2010	—
2010 No. 333	10 Dec 2010 (*see* F2010L03196)	1 Jan 2011	—
2011 No. 39	24 Mar 2011 (*see* F2011L00474)	25 Mar 2011	—
2011 No. 40	23 Mar 2011 (*see* F2011L00465)	1 July 2011	—
2011 No. 67	13 May 2011 (*see* F2011L00764)	1 July 2011	—
2011 No. 143	2 Aug 2011 (*see* F2011L01585)	Rr. 1–3 and Schedule 1: 3 Aug 2011 Schedule 2: 1 Oct 2011	—
2011 No. 165	5 Sept 2011 (*see* F2011L01805)	1 Jan 2012	—

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Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2011 No. 201	7 Nov 2011 (*see* F2011L02260)	1 July 2012	—
2012 No. 117	18 June 2012 (*see* F2012L01233)	Ss. 1–3 and Schedule 1: 19 June 2012 S. 4 and Schedule 2: 1 July 2012	—
2012 No. 201	20 Aug 2012 (*see* F2012L01706)	21 Aug 2012	—
2012 No. 313	11 Dec 2012 (*see* F2012L02415)	Ss. 1–4 and Schedule 1; 12 Dec 2012 Schedule 2: (*see* s. 2 (b) and Note 6)	—
2012 No. 314	12 Dec 2012 (*see* F2012L02429)	Ss. 1–3: 12 Dec 2012 Schedule 1: (*see* s. 2 (b) and Note 7) Schedule 2: (*see* s. 2 (c) and Note 8)	—

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
R. 3	am. 2010 Nos. 105, 137, 235 and 303; 2011 No. 143
R. 5	rs. 2010 No. 235
Chapter 2	
Part 2-1	
R. 7	am. 2011 No. 143
R. 7A	ad. 2010 No. 105 rs. 2010 No. 137
Heading to r. 9A (first occurring)	rep. 2010 No. 185
R. 9A (first occurring) Renamed r. 9AA	ad. 2010 No. 137 2010 No. 185
R. 9AA	am. 2010 No. 303
R. 9AB	ad. 2010 No. 235
R. 9A	ad. 2010 No. 105 am. 2010 No. 235
R. 14	am. 2010 No. 105
Part 2-3	
R. 19	am. 2010 Nos. 137 and 303
Part 2-4	
Heading to Part 2-4	rs. 2010 No. 105
Division 1	
Heading to Div. 1 of Part 2-4	ad. 2010 No. 105
Subdivision 1.1	
Heading to Subdiv. 1.1 of Div. 1	ad. 2010 No. 105 rs. 2010 No. 303
R. 20	am. 2010 Nos. 105, 137, 185, 235 and 303
R. 21	am. 2010 Nos. 137, 235 and 303
R. 22	am. 2010 No. 137
Heading to r. 23	rs. 2010 No. 137
R. 23	am. 2010 Nos. 105 and 137
Heading to r. 23A	rs. 2010 No. 137
R. 23A	ad. 2010 No.105 am. 2010 No. 137
R. 23B	ad. 2010 No. 137
R. 23C	ad. 2010 No. 137
Note 1 to r. 23C (3)	am. 2010 No. 303

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 23D	ad. 2010 No. 235
Subdivision 1.2	
Heading to Subdiv. 1.2 of Div. 1	ad. 2010 No. 105
R. 24	am. 2010 Nos. 105, 137 and 303
Subdivision 1.3	
Heading to Subdiv. 1.3 of Div. 1	ad. 2010 No. 303
R. 24A	ad. 2010 No. 303
Division 2	
Heading to Div. 2 of Part 2-4	ad. 2010 No. 105
R. 25	am. 2010 Nos. 185, 235 and 303
R. 25A	ad. 2010 No. 59
R. 25B	ad. 2010 No. 105
R. 25C	ad. 2010 No. 105
R. 25D	ad. 2010 No. 105
R. 25E	ad. 2010 No. 105
R. 25F	ad. 2010 No. 105
R. 25G	ad. 2010 No. 137 rs. 2010 No 235
R. 25H	ad. 2010 No. 235
R. 25I	ad. 2010 No. 235
R. 25J	ad. 2010 No. 235
R. 25K	ad. 2010 No. 303
R. 25L	ad. 2010 No. 303
R. 25M	ad. 2012 No. 117 am. 2012 No. 201
Chapter 3	
Chapt. 3	rs. 2010 No. 333
Part 3.1	
Heading to Part 3.1	ad. 2010 No. 333
R. 26	rs. 2010 No. 333 am. 2011 Nos. 143 and 165
Part 3.2	
Heading to Part 3.2	ad. 2010 No. 333
R. 26A	ad. 2011 No. 143
R. 26B	ad. 2011 No. 143
R. 27	rep. 2010 No. 333 ad. 2011 No. 143
R. 27A	ad. 2011 No. 143

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 27B	ad. 2011 No. 143
R. 28	rs. 2010 No. 333
R. 28A	ad. 2010 No. 235 am. 2010 No. 303 rs. 2010 No. 333 rep. 2011 No. 143
R. 28B	ad. 2010 No. 235 rs. 2010 No. 333
Part 3.3	
R. 28C	ad. 2010 No. 333
R. 28D	ad. 2011 No. 143
Part 3.4	
Part 3.4	rs. 2011 No. 143
R. 28E	ad. 2011 No. 143
R. 28F	ad. 2011 No. 143
R. 28G	ad. 2011 No. 143
R. 28H	ad. 2011 No. 143
Part 3.5	
R. 28J	ad. 2010 No. 333
R. 28JA	ad. 2011 No. 201
R. 28K Renumbered r. 28Q	ad. 2010 No. 333 2011 No. 143
R. 28L	ad. 2010 No. 333
R. 28LA	ad. 2011 No. 165
R. 28LB	ad. 2011 No. 165 am. 2012 No. 117
Part 3.6	
R. 28M	ad. 2010 No. 333
R. 28N	ad. 2010 No. 333 am. 2011 No. 39; 2011 No. 143
R. 28P	ad. 2011 No. 143
R. 28Q (formerly r. 28K)	
R. 28R	ad. 2011 No. 143
Chapter 4	
R. 30A	ad. 2010 No. 105
Chapter 6	
Part 6-3	
Part 6-3 of Chapt. 6	ad. 2012 No. 117
R. 49A	ad. 2012 No. 117

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 49B	ad. 2012 No. 117
Chapter 7	
Part 7-1	
R. 65A	ad. 2010 No. 59
R. 65B	ad. 2010 No. 235
R. 65C	ad. 2010 No. 303 am. 2011 No. 143
Part 7-2	
R. 78	am. 2010 No. 105
R. 101	rep. 2010 No. 105
Part 7-2A	
Part 7-2A of Chapt. 7	ad. 2011 No. 40
R. 79A	ad. 2011 No. 40 am. 2011 No. 67
R. 79B	ad. 2011 No. 201 am. 2012 No. 117
Note to r. 79B (3)	ad. 2012 No. 117
Part 7-5	
R. 84A	ad. 2012 No. 313
Part 7-10	
Heading to r. 111A	rs. 2010 No. 235
R. 111A	ad. 2010 No. 137 am. 2010 No. 235
Schedule 1	
Schedule 1	am. 2010 Nos. 105 and 137
Schedule 2	
Schedule 2	ad. 2010 No. 105 am. 2010 Nos. 137, 185, 235 and 303
Schedule 3	
Schedule 3	ad. 2010 No. 137 am. 2010 Nos. 185 and 303; 2011 No. 143
Schedule 4	
Schedule 4	ad. 2010 No. 333
Schedule 5	
Schedule 5	ad. 2011 Nos. 201 and 165 am. 2012 No. 117
Schedule 6	
Schedule 6	ad. 2011 No. 201 am. 2012 No. 117

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Note 2

Regulations 20, 21, 22, 24 — Schedule 1 [items 10, 12, 21, 22, 25, 26 and 29] of the *National Consumer Credit Protection Amendment Regulations 2010 (No. 3)* (2010 No. 137) provides as follows:

[10] Paragraph 20 (11) (b)

omit each mention of

licensee or registered person

insert

licensee, registered person or exempt special purpose funding entity

[12] Subparagraphs 21 (3) (d)

omit each mention of

licensee or a registered person

insert

licensee, registered person or exempt special purpose funding entity

[21] Subparagraph 24 (6) (b) (ii)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

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[22] Sub-subparagraph 24 (6) (d) (i) (A)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[25] Subparagraph 24 (7) (b) (ii)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[26] Sub-subparagraph 24 (7) (d) (i) (A)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[29] Paragraph 24 (8) (a)

omit each mention of

licensee or registered person;

insert

licensee, registered person or exempt special purpose funding entity;

The proposed amendments are misdescribed and are not incorporated in this compilation.

Note 3

Regulation 24B — Schedule 1 [item 3] of the *National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 1)* (2010 No. 185) provides as follows:

[3] After regulation 24B

insert

24C Persons exempt from certain provisions of Act — credit relates to a residential investment property

(1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:

(a) paragraphs 128 (a) and 133 (1) (a) of the Act; and

(b) section 16 of the Code; and

(c) definitions in the Act as they apply to references in the provisions mentioned in paragraphs (a) and (b); and

(d) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) to (c).

(2) A person is exempted if:

(a) the person enters into a credit contract as a credit provider; and

(b) the credit is provided or intended to be provided wholly or predominantly for a purpose mentioned in subparagraph 5 (1) (b) (ii) or (iii) of the Code; and

(c) the person made the offer in relation to the contract before 1 July 2010; and

(d) the borrower accepted the offer on or after 1 July 2010.

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

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

(4) This regulation ceases to have effect on 1 October 2010.

The proposed amendment is misdescribed and is not incorporated in this compilation.

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Note 4

Regulation 28LE—Schedule 1 [item 2] of the *National Consumer Credit Protection Amendment Regulations 2011 (No. 6)* (2011 No. 201) provides as follows:

[2] After regulation 28LE

insert

28LFA Key Facts Sheets

(1) For section 133BB of the Act, Schedule 6 sets out:

(a) the Key Facts Sheet for a credit card contract; and

(b) requirements for how the information in a Key Facts Sheet is to be prepared.

(2) A Key Facts Sheet is taken to comply with Schedule 6 if:

(a) it does not refer to a term or condition that is, or may, only be available to a particular class of consumer; and

(b) the term or condition does not cause the consumers in that class to be worse off than they would be under the terms and conditions described in the Key Facts Sheet.

Example

A licensee makes a special promotional offer to customers who have a home loan with the licensee. The terms and conditions of the credit card contract under the offer are more advantageous than the terms and conditions of the credit card contract as described in the Key Facts Sheet.

It would be difficult to provide a new Key Fact Sheet for each promotional offer of this kind.

28LF Circumstances in which application form may include out-of-date Key Facts Sheet

(1) For subsection 133BC (3) of the Act, a circumstance in which a licensee may make available an application form that includes a Key Facts Sheet, containing information that has ceased to be up-to-date, is that the information ceased to be up-to-date no

more than 3 months before the day on which the licensee makes the application form available.

(2) If the licensee makes the application form available by means that are under the licensee's control, the period for which the licensee may make the application form available is 3 months after the day on which the information ceased to be up-to-date.

(3) For subsection 133BC (3) of the Act, a circumstance in which a licensee may make available an application form that includes a Key Facts Sheet, containing information that has ceased to be up-to-date, is that:

(a) the application form forms part of an advertisement in a publication published by a third party who is authorised to act for the licensee; and

(b) the licensee approved the application form for publication by the third party; and

(c) the information in the Key Facts Sheet was up to date when the licensee approved the application form for publication; and

(d) the expected date of publication of the advertisement was less than 30 days after the licensee approved the application form for publication.

28LG Circumstances in which up-to-date information can be provided otherwise than in Key Facts Sheet

For subparagraph 133BD (1) (b) (ii) of the Act, a requirement for the provision of up-to-date information to a consumer if a Key Facts Sheet contains information that has ceased to be up-to-date is that the licensee provides the up-to-date information no later than the time at which the licensee provides the consumer with the credit card to which the Key Facts Sheet related.

28LH Meaning of *credit limit increase invitation*

(1) For subsection 133BE (6) of the Act, a written communication is covered by the definition of ***credit limit increase invitation*** in subsection 133BE (5) of the Act if it:

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(a) includes a proposed credit limit that is higher than the consumer's existing credit limit; or

(b) suggests that a higher credit limit may benefit the consumer.

(2) For subsection 133BE (6) of the Act, a written communication is not covered by the definition of ***credit limit increase invitation*** in subsection 133BE (5) of the Act if it only provides generic information about credit limits that is applicable to each consumer who is a party to a credit card contract with the licensee.

Note Subsection 133BE (6) of the Act provides that regulations may make provisions that apply to determining whether a written communication is covered by the definition of ***credit limit increase invitation*** in subsection 133BE (5).

28LI Giving consent to receive credit limit increase invitations

(1) For subsection 133BF (7) of the Act, a requirement to be complied with is that, if consent to a licensee making credit limit increase invitations is to be provided in response to a written communication from the licensee, the written communication:

(a) must seek the consumer's consent only in relation to whether or not to receive credit limit increase invitations; and

(b) must set out the matters mentioned in subsection 133BF (4) of the Act in a way that would allow a reasonable person to conclude that the consumer was aware of those matters when the consumer gave consent.

(2) For subsection 133BF (7) of the Act, a requirement to be complied with in relation to withdrawing consent to a licensee making credit limit increase invitations is that if:

(a) the licensee has arranged for a credit limit increase invitation (the ***current invitation***) to be sent to a consumer in accordance with the consumer's consent; and

(b) the consumer withdraws his or her consent after the arrangements have been made; and

(c) it would be unreasonable to stop the current invitation from being sent to the consumer;

the withdrawal of the consumer's consent is to be treated as not applying to the current invitation.

28LJ Licensee to notify consumer of use of credit card in excess of credit limit

(1) For subsection 133BH (1) of the Act, a licensee who is the credit provider under a credit card contract must take reasonable steps to notify the consumer who is the debtor under the contract if the licensee becomes aware that the consumer has used a card in excess of the credit limit for the contract.

(2) The licensee must notify the consumer not later than 2 business days after the day on which the licensee becomes aware that the consumer has used the card in excess of the credit limit for the contract.

(3) However, if:

(a) the consumer pays the amount by which the credit limit has been exceeded within 2 business days after the day on which the balance under the credit card contract first exceeds the credit limit; and

(b) the licensee has not already notified the consumer when the amount is paid;

the licensee is not required to notify the consumer.

(4) The licensee is only required to notify the consumer once during a statement period.

(5) The licensee must include in the notification under subregulation (2) information about exceeding the credit limit that is sufficient to lead a reasonable consumer to check the balance under his or her credit card contract.

28LK Fees charges and higher rates of interest

For paragraph 133BI (1) (c) of the Act, if a licensee provides a form to allow a consumer to consent to have fees, charges or a higher rate of interest charged on a credit card that is used in a

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way mentioned in subsection 133BI (1) of the Act, the licensee must ensure that the invitation to give consent:

(a) allows the consumer to withdraw the consent; and

(b) discloses any fee charged in relation to the consumer's consent; and

(c) discloses the fee, charge or higher rate of interest that will be charged on the credit card if it is used in the way mentioned in subsection 133BI (1) of the Act; and

(d) explains that the fee may increase at any time, in accordance with the terms of the credit card contract; and

(e) explains that fees, charges or a higher rate of interest may be charged on the credit card for the amount by which the balance under the credit card contract exceeds the credit limit; and

(f) explains that fees, charges or a higher rate of interest are likely to be charged on the credit card for the statement period in which the credit card was used in a way mentioned in subsection 133BI (1) of the Act.

28LL Records of elections and withdrawals to be kept

(1) For paragraph 133BJ (1) (a) of the Act, if a consumer in relation to a credit card contract has:

(a) given a consent covering the imposition of fees or charges, or a higher rate of interest, in relation to the contract; or

(b) withdrawn a consent of that kind;

the licensee in relation to the contract must keep a record stating that a consent or withdrawal is current and showing the date on which the consent was given or withdrawn.

Note The consent is described in detail in section 133BI of the Act.

(2) The licensee must keep the record for the period during which the consent or withdrawal is in effect.

28LM Agreement to apply payment against particular amount owed

For subsection 133BP (5) of the Act, a licensee that proposes to agree to a request by a consumer to apply certain payments

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made under the credit card contract against a particular amount must, before agreeing to the request, advise the consumer that the consumer:

(a) may be liable to pay an amount or rate of interest under the agreement that is greater than the consumer would be liable to pay under subsection 133BQ of the Act; and

(b) may withdraw the request at a later time.

28LN Modification — Divisions 5 and 6 of Part 3-2B

For paragraph 164 (d) of the Act, the provisions to which Part 3-7 of the Act applies apply as if Divisions 5 and 6 of Part 3-2B of the Act, as amended by Part 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*, were modified so that:

(a) they apply to a credit card contract entered into after the commencement of Part 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011* (the ***commencement***); and

(b) they do not apply to a credit card contract under which a licensee has provided a consumer with a credit card, in the period of 90 days immediately before the commencement, for the purpose of entering a credit contract that is formed or entered by:

(i) the use by a consumer of the credit card to obtain credit from the licensee; or

(ii) the activation by a consumer of the credit card by arrangement with the licensee.

The proposed amendments are misdescribed and are not incorporated in this compilation

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Note 5

Regulation 28LFA—Schedule 2 [items 2–7] of the *National Consumer Credit Protection Amendment Regulation 2012 (No. 1)* (2012 No. 117) provides as follows:

[2] After regulation 28LFA

insert

28LFB Application forms in electronic form

For subsection 133BC (1) of the Act, if a licensee:

(a) makes available, in an electronic form, an application form that can be used to apply for a credit card contract; and

(b) includes, as part of the electronic form, a hyperlink to a Key Facts Sheet for the contract;

the application form is taken to include a Key Facts Sheet for the contract.

Example of electronic form

A licensee may provide an application form as an online document, in an email, or as an attachment to an email.

Note Subsection 133BC (1) of the Act requires the Key Facts Sheet to contain up-to-date information.

[3] Paragraph 28LI (1) (a)

omit

only

[4] After paragraph 28LI (1) (a)

insert

(aa) may seek the consumer's consent to one or more other matters, but only in the form of a separate consent from the consumer to each matter; and

[5] After subregulation 28LI (1)

insert

(1A) The consent mentioned in paragraph (1) (a) must relate only to the receipt of credit limit increase invitations.

[6] Subregulations 28LJ (1) and (2)

substitute

(1) For subsection 133BH (1) of the Act, if a consumer who is the debtor under a credit card contract has used a card in excess of the credit limit for the contract, the licensee who is the credit provider under the contract must take reasonable steps to notify the consumer of that matter, not later than 2 business days after becoming aware of the use of the card in excess of the limit.

[7] Subregulation 28LJ (5)

omit

under subregulation (2)

The proposed amendments are misdescribed and are not incorporated in this compilation

Note 6

National Consumer Credit Protection Amendment Regulation 2012 (No. 3) (2012 No. 313)

The following amendments commence on 1 March 2013:

Schedule 2

[1] After regulation 105

insert

105A Information to be contained in statement of account

For section 175D of the Code, the information that must be contained in a statement of account is a disclosure that:

(a) the lessee will not own the goods at the end of the consumer lease; and

(b) the lessee will not have an obligation or a right to purchase the goods at the end of the consumer lease.

105B Information to be contained in statement of account about amount owing and other matters

For paragraph 175E (1) (d) of the Code, the other information to be contained in a statement of account is the following:

(a) the dates on which the statement period begins and ends;

(b) particulars of any amounts paid by the lessee to the lessor during the statement period;

(c) particulars of any amounts credited to the lessee's account during the statement period;

(d) particulars of payments debited from the lessee's account and paid to a third party during the statement period;

(e) any corrections to information contained in a previous statement of account.

Example for paragraph (d)
Insurance.

105C Information to be contained in end of lease statement

For subsection 175H (1) of the Code, the information to be contained in an end of lease statement is the following:

(a) the date when the consumer lease ends;

(b) a statement that the goods leased under the consumer lease must be returned;

(c) the total amount that the lessee will pay for the goods under the consumer lease (assuming that the lessee will make each payment on the dates required by the consumer lease);

(d) the date when the goods must be returned;

(e) the following information about the return of the goods:

(i) if the goods can be collected by the lessor—a statement that the goods can be collected by the lessor, the particulars of how the collection can be arranged and an estimate of the costs (if any) that may be charged for the collection of the goods;

(ii) if the goods are to be returned by the lessee—a statement that the goods must be returned to the lessor by the lessee and the particulars of how and where the goods are to be returned;

(f) the amounts the lessee is liable to pay if the goods are not returned, expressed as an amount for each month that the goods are not returned;

(g) a statement as to whether the lessor is prepared to negotiate the sale of the goods;

(h) if the lessor is prepared to negotiate the sale of the goods:

(i) an estimate of the sale price of the goods; and

(ii) contact details for the person through whom the sale of the goods may be negotiated.

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105D Circumstances in which lessor is not required to provide end of lease statement

For subsection 175H (2) of the Code, the circumstances in which the lessor is not required to provide an end of lease statement are:

(a) the lessor wrote off the debt of the lessee under the consumer lease; or

(b) the lessor has commenced enforcement proceedings; or

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

105E Information to be contained in written notice about change by agreement to consumer lease

For paragraph 177A (1) (b) of the Code, the information to be contained in a written notice about a change by agreement to a consumer lease is the following:

(a) the date of the change in the consumer lease;

(b) particulars of any change in respect of goods hired under the consumer lease;

(c) the amounts of any fees or charges payable after the change;

(d) particulars of any amounts payable to third parties after the change;

(e) the rental details under the consumer lease:

  (i) before the change; and

  (ii) after the change;

(f) the amounts of any commission to be paid by or to the lessee in relation to the change;

(g) the period of time by which the term of the consumer lease is increased;

(h) the expiry date for the consumer lease.

Example for paragraph (d)

Insurance.

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105G Information to be contained in statement of amount payable on termination of consumer lease

For paragraph 179A (2) (d) of the Code, the matters that must be contained in a statement of amount payable on the termination of a consumer lease are the following:

(a) the total amount to be paid, on the date of the statement, to terminate the lease;

(b) the amounts the lessee is liable to pay to terminate the lease, expressed as an amount for each month from the date of the statement;

(c) a statement as to whether the lessor is prepared to negotiate the sale of the goods;

(d) if the lessor is prepared to negotiate the sale of the goods:

(i) an estimate of the sale price of the goods; and

(ii) contact details for the person through whom the sale of the goods may be negotiated.

105H Exemption for lessors from giving one-off notice about direct debit default

(1) For section 203B of the Code, subsection 179C (2) of the Code does not apply to a lessor if the default mentioned in subsection 179C (1) is rectified before the lessor is required to give the direct debit default notice under subsection 179C (2).

(2) If:

(a) the default is rectified before the lessor is required to give the direct debit default notice under subsection 179C (2); and

(b) the lessor does not give the direct debit default notice;

the default is not taken to be the first occasion the default occurs for paragraph 179C (1) (c).

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

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105J Information to be contained in one-off notice about direct debit default

For subsection 179C (3) of the Code, the information required to be contained in a one-off notice about a direct debit default is the information set out in Form 18.

105L Consent to enter residential property to take possession of goods

For subsection 179N (2) of the Code, consent by the occupier of premises to entry to the premises is taken to be given only if the following requirements have been complied with:

(a) a request to the occupier for entry to the premises must be made by the lessor or agent by application in writing or by calling at the premises concerned;

(b) if the request is made personally, it may only be made between the hours of 8 am and 8 pm on any day other than a Sunday or public holiday;

(c) the consent in writing must be in accordance with Form 19 and signed by the occupier;

(d) the document of consent is not to be presented to the occupier for signature with, or as part of, any other document (unless the other document, or the remainder of the other document, contains only the provisions of section 179N of the Code).

Note 1 Subsection 179N (1) of the Code provides that a lessor, or an agent of the lessor, must not enter any part of premises used for residential purposes for the purpose of taking possession of goods hired under a consumer lease unless the court has authorised entry or the occupier of the premises (after being informed in writing of the provisions of section 179N) has consented in writing to the entry.

Note 2 Under subsection 179N (2) of the Code, the regulations may provide procedures for the purposes of section 179N and set out circumstances in which consent is or is not taken to have been given.

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[2] Schedule 1, after Form 17

insert

Form 18 Direct debit default notice

subsection 179C(2) of the Code
regulation 105J of the Regulations

DIRECT DEBITS FROM YOUR BANK ACCOUNT

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

Are you unable to make a payment?

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

You can ask us to:

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

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

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

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

Some useful tips on direct debits

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

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

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

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

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

Resolving a problem with your direct debit. If you have a problem with a direct debit you can make a complaint to us or to the bank or financial institution where your account is held. You can also contact our external dispute resolution scheme for assistance in resolving the complaint if you

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were unable to resolve it with us. Our external dispute resolution scheme is [*insert name of external dispute resolution scheme*] and can be contacted at [*insert telephone number, email/website and postal address*].

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

Form 19 Consent to enter premises

subsection 179N(1) of the Code
paragraph 105L (c) of the Regulations

. . . . . .

Date

TO: . . . . . .

(name of lessor)

. . . . . .

(Australian credit licence number)

FROM: . . . . . .

(name of occupier)

. . . . . .

(address of occupier's premises)

. . . . . .

. . . . . .

('the premises')

I consent to the lessor entering the premises for the purpose of taking possession of the hired goods described below.

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The hired goods are:*

. . . . . .
. . . . . .

. . . . . .
. . . . . .

IMPORTANT

YOU HAVE THE RIGHT TO REFUSE CONSENT. IF YOU DO THE LESSOR MAY GO TO COURT FOR PERMISSION TO ENTER THE PREMISES.

. . . . . .

(signature of occupier giving consent)

. . . . . .

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

* *Insert brief details of the hired goods.*

As at 12 December 2012 the amendments are not incorporated in this compilation.

Note 7

National Consumer Credit Protection Amendment Regulation 2012 (No. 4) (2012 No. 314)

The following amendments commence on 1 March 2013:

Schedule 1

[1] Before Part 3.6

insert

28XXA Small amount credit contracts—requirements for warning on licensee's premises

(1) For paragraphs 124B (1) (a) and 133CB (1) (a) of the Act:

(a) any premises from which a licensee engages in credit activities is prescribed; and

(b) any premises from which the licensee engages in credit activities must display a warning; and

(c) the warning must:

(i) be as set out in Schedule 7; and

(ii) be in poster form; and

(iii) be A4 in size; and

(iv) unless otherwise illustrated in Schedule 7, be in typeface that is:

(A) 18 points in size; and

(B) in bold font; and

(v) include the word 'WARNING':

(A) printed at the top of the poster; and

(B) in bold font; and

(vi) include the words 'Do you really need a loan today?':

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(A) printed immediately below the word 'WARNING'; and

(B) in typeface that is 36 points in size; and

(C) in bold font; and

(vii) include the words 'This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*':

(A) printed at the bottom of the poster; and

(B) in typeface that is 8 points in size; and

(d) unless the licensee is prohibited, by the owner of the premises or under any requirement relating to the premises, from displaying a notice on the point of public entry, or a front window, of the premises:

(i) the warning must be displayed on the point of public entry or a front window; and

(ii) if the warning is displayed on a front window, it must be displayed as close as practicable to the point of public entry; and

(iii) the warning must be visible before entering the premises; and

(e) the warning must also be displayed in an area inside the premises where it is visible from the location at which a consumer would deal with the licensee or a representative of the licensee.

(2) If the premises:

(a) are not enclosed; or

(b) are of a kind where a consumer can approach the licensee, or a representative of the licensee, without going through a door;

the warning must be displayed so that it is visible on a counter, desk, table or other item of furniture at which the licensee or a representative of the licensee would deal with the consumer.

Examples

1 A stand at an exhibition.

2 An open booth in a shopping centre.

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28XXB Small amount credit contracts—requirements for warning on licensee's website

For paragraphs 124B (1) (b) and 133CB (1) (b) of the Act, the requirements for a licensee's website are as follows:

(a) a hyperlink, in the form of a boxed icon and the words 'Warning about Borrowing', must appear on the homepage and any webpage which contains information about the benefits or characteristics of small amount credit contracts and be displayed in a size that is not smaller than it would appear on the webpage using Arial font and 12 points in size;

(b) the hyperlink must be in the form shown in Schedule 8;

(c) the hyperlink must open a warning;

(d) the warning must:

(i) be as set out in Schedule 9; and

(ii) use the typeface known as Arial; and

(iii) unless otherwise illustrated in Schedule 9, be displayed in a size that is not smaller than it would appear on the webpage using Arial font and 10 points in size; and

(iv) include the words 'WARNING – Do you really need a loan today?':

(A) at the start of the warning; and

(B) in bold font; and

(v) include the words 'This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*', displayed in a size that is not smaller than it would appear on the webpage using Arial font and 8 points in size;

(e) an identical warning must immediately appear when a person clicks on an access point or link that would take the person to a webpage where the person can apply for a small amount credit contract;

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(f) an application form for a small amount credit contract must not be able to be accessed until the identical warning is closed or acknowledged.

Example for paragraph (f)

The acknowledgement can be done by clicking on a 'progress with application' button offered on the page.

28XXC Credit assistance in relation to small amount credit contracts—requirements for warning during telephone contact

(1) For section 164 of the Act, the provisions to which Part 3-7 of the Act applies apply as if Division 7 of Part 3-1 of the Act were modified by inserting the following section after section 124B:

124BA Licensee who makes representations about credit assistance in relation to small amount credit contracts must give information by telephone

Requirement

(1) If:

(a) a licensee represents that the licensee provides, or is able to provide, credit assistance to consumers in relation to small amount credit contracts; and

(b) a consumer communicates with the licensee by telephone in relation to the credit assistance; and

(c) the licensee reasonably believes that the consumer has not, in the previous 30 days, sighted the warning referred to in either regulation 28XXA or 28XXB of the *National Consumer Credit Protection Regulations 2010* as a result of visiting premises from which the licensee engages in credit activities or as a result of using a website of the licensee;

the licensee must give information in accordance with the regulations as part of dealing with the consumer and comply with any other requirements prescribed in the regulations.

Civil penalty: 2,000 penalty units.

Note: If the consumer has visited premises from which the licensee engages in credit activities, or used a website of the licensee, the consumer should already have seen a consumer warning required by this Act.

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Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

(2) For subsection 124BA (1) of the Act, as modified by subregulation (1):

(a) the licensee must:

(i) read the statement:

'It is an Australian Government requirement to provide you with the following information';

to the consumer as part of the telephone communication mentioned in that subsection; and

(ii) read the text of the warning in Schedule 7, except for the sentence:

'This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*';

to the consumer as part of the telephone communication mentioned in that subsection; and

(iii) send the consumer the warning in Schedule 9; and

(iv) reasonably believe that the consumer has received the warning mentioned in subparagraph (iii) before providing credit assistance in relation to a small amount credit contract; and

(b) the licensee must not provide credit assistance to the consumer, as a result of the telephone communication, if the licensee has not been able to comply with paragraph (a).

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28XXD Small amount credit contracts—requirements for warning during telephone contact

(1) For section 164 of the Act, the provisions to which Part 3-7 of the Act applies apply as if Division 2 of Part 3-2C of the Act were modified by inserting the following section after section 133CB:

133CBA Licensee who makes representations about small amount credit contracts must give information by telephone

Requirement

(1) If:

(a) a licensee represents that the licensee enters into, or is able to enter into, small amount credit contracts with consumers under which the licensee would be the credit provider; and

(b) a consumer communicates with the licensee by telephone in relation to a small amount credit contract of that kind; and

(c) the licensee reasonably believes that the consumer has not, in the previous 30 days, sighted the warning referred to in either regulation 28XXA or 28XXB of the *National Consumer Credit Protection Regulations 2010* as a result of visiting premises from which the licensee engages in credit activities or as a result of using a website of the licensee;

the licensee must give information in accordance with the regulations as part of dealing with the consumer and comply with any other requirements prescribed in the regulations.

Civil penalty: 2,000 penalty units.

Note: If the consumer has visited premises from which the licensee engages in credit activities, or used a website of the licensee, the consumer should already have seen a consumer warning required by this Act.

Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

(2) For subsection 133CBA (1) of the Act, as modified by subregulation (1):

(a) the licensee must:

(i) read the statement:

'It is an Australian Government requirement to provide you with the following information';

to the consumer as part of the telephone communication mentioned in that subsection; and

(ii) read the text of the warning in Schedule 7, except for the sentence:

'This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*';

to the consumer as part of the telephone communication mentioned in that subsection; and

(iii) send the consumer the warning in Schedule 9; and

(iv) reasonably believe that the consumer has received the warning mentioned in subparagraph (iii) before entering into a small amount credit contract with the consumer; and

(b) the licensee must not enter into, or offer to enter into, a small amount credit contract, as a result of the telephone communication, if the licensee has not been able to comply with paragraph (a).

28XXE Authorisation for deduction

(1) For subsection 160E (2) of the Act, a kind of credit contract or consumer lease is any credit contract or consumer lease under which a credit provider or lessor intends to give an employer an instrument as described in subsection 160E (1) of the Act.

Note Subsection 160E (2) of the Act relates to credit contracts or consumer leases of a kind prescribed by the regulations.

(2) For subsection 160E (2) of the Act, the form of statement is set out in Schedule 10.

Note Schedule 10 sets out the statement within a form of document that a credit provider or lessor may use as the instrument authorising the employer to pay amounts directly to the credit provider or lessor. To comply with the

Act, the statement must comply with Schedule 10 whether or not the credit provider or lessor chooses to use the document as the formal instrument.

[2] After Part 3.6

insert

Part 3.7 Licensees that are credit providers under credit contracts—additional rules relating to small amount credit contracts

28S Licensee must not enter into small amount credit contract if repayments do not meet prescribed requirements

(1) For subsection 133CC (1) of the Act, this regulation sets out:

(a) a class of consumers; and

(b) requirements for repayments that would be required under a small amount credit contract (the ***proposed contract***).

Note Under subsection 133CC (1) of the Act, a licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if:

(a) the consumer is included in a class of consumers prescribed by the regulations; and

(b) the repayments that would be required under the contract would not meet the requirements prescribed by the regulations.

(2) The class of consumers is consumers who receive at least 50% of their gross income as payments under the *Social Security Act 1991*.

(3) The requirement for the repayments that would reasonably be expected to be paid in each payment cycle of income under the proposed contract is that the total amount of repayments under each small amount credit contract for which the consumer is a debtor, including the proposed contract, in a payment cycle of income during the term of the proposed contract must not

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exceed 20% of the consumer's gross income for that payment cycle of income.

(4) For subregulation (3):

(a) treat a payment cycle of income as the period during which the consumer receives the predominant amount of his or her income payments under the *Social Security Act 1991*; and

(b) using the same information as was used for the purposes of section 128 of the Act, and having regard to the repayments under the proposed contract, work out, for each payment cycle of income during the term of the proposed small amount credit contract:

(i) the consumer's expected gross income; and

(ii) the repayments that the consumer reasonably expects to pay under each small amount credit contract to which the consumer is a party; and

(c) work out the expected gross income for each payment cycle of income during the term of the proposed small amount credit contract; and

(d) work out the total amount of repayments that the consumer:

(i) has paid under each small amount credit contract for which the consumer is a debtor immediately before the time the consumer would enter into the proposed small amount credit contract; and

(ii) reasonably expects to continue making after entering into the proposed small amount credit contract.

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[3] After Schedule 6

insert

Schedule 7 Warning about small amount credit contracts—warning on premises

(subparagraph 28XXA (1) (c) (i))

Do you really need a loan today?*

It can be expensive to borrow small amounts of money and borrowing may not solve your money problems

Check your options <u>before</u> you borrow:

- For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor

- Talk to your electricity, gas, phone or water provider to work out a payment plan
- If you are on government benefits, ask for an advance payment from Centrelink: 13 17 94

Go to **www.moneysmart.gov.au —** MoneySmart shows you how small amount loans work and suggests other options that may help you.

* This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*.

Schedule 8 Form of hyperlink

(paragraph 28XXB (b))

⚠ Warning about Borrowing

Schedule 9 Warning about small amount credit contracts—warning on websites

(subparagraph 28XXB (d) (i))

⚠ **Do you really need a loan today?***

It can be expensive to borrow small amounts of money and borrowing may not solve your money problems.

Check your options before you borrow:

- For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor
- Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan
- If you are on government benefits, ask if you can receive an advance from Centrelink: Phone: 13 17 94

The Government's MoneySmart website shows you how small amount loans work and suggests other options that may help you.

* This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*.

Schedule 10 Employer authorisation—prescribed form of statement

(subregulation 28XXE (2))

[Form] **Consent to make direct deductions from salary or wages**

Subsection 160E (2) of the Act

[Regulation 28XXC of the Regulations]

TO: . . . . . .

(name of employer of debtor/lessee)

Note 7

. . . . . .

. . . . . .

(address of employer of debtor/lessee)

FROM: . . . . . .

(name of credit provider/lessor)

. . . . . .

(Australian credit licence number)

. . . . . .

(address of credit provider/lessor)

Complete all of the following information (except as indicated) ***before*** *signing the form*

Date of first deduction:

Date of last deduction:

Amount of each deduction:

IMPORTANT
YOU CAN CANCEL THIS DEDUCTION REQUEST DIRECTLY WITH YOUR EMPLOYER AT ANY TIME. IF YOU CANCEL THIS DEDUCTION REQUEST YOU WILL BE IN DEFAULT IF YOU DO NOT MAKE ALTERNATIVE ARRANGEMENTS TO MAKE REPAYMENTS.

. . . . . .

(signature of debtor/lessee giving consent)

I confirm I have been provided with a copy of this form.

. . . . . .

(signature of debtor/lessee giving consent)

. . . . . .

Date of signing

The following information is optional

INFORMATION TO THE EMPLOYER
These arrangements relate to a contract between your employee and a third party. You are not liable for any failure of your employee to make payments to that person. Your employee may ask you to cancel these arrangements at any time or may vary them by completing a new form.

. . . . . .

(signature of employer)

. . . . . .

Date of signing

As at 12 December 2012 the amendments are not incorporated in this compilation.

Note 8

National Consumer Credit Protection Amendment Regulation 2012 (No. 4) (2012 No. 314)

The following amendments commence on 1 July 2013:

Schedule 2

[1] After regulation 28XXE

insert

28XXF Unsuitable credit contracts—prescribed circumstances

(1) This regulation is made for the following provisions of the Act:

(a) paragraph 118 (2) (c) (when the credit contract must be assessed as unsuitable—entering contract or increasing the credit limit);

(b) paragraph 123 (2) (c) (prohibition on suggesting or assisting consumers to enter, or increase the credit limit under, unsuitable credit contracts);

(c) paragraph 131 (2) (c) (when credit contract must be assessed as unsuitable);

(d) paragraph 133 (2) (c) (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts).

(2) A credit contract is unsuitable for a consumer if:

(a) the consumer's requirements and objectives are to receive an identified amount of credit; and

(b) the credit contract is part of an arrangement by which the identified amount of credit is provided, or to be provided, by:

(i) 2 or more small amount credit contracts; or

(ii) 2 or more medium amount credit contracts; or

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(iii) a combination of small amount credit contracts and medium amount credit contracts; and

(c) the amount that is payable under the combination of credit contracts (in circumstances in which there is no default by the debtor) is higher than the maximum amount that could be charged under a single credit contract under section 32A of the Code.

Example

The consumer's requirements and objectives are to receive the sum of $3,300. This could be provided by a medium amount credit contract for $3,300.

However, the credit provider offers to enter into 2 small amount credit contracts with the consumer. The amount of credit under each contract is $1,500 and each term is 12 months. The credit provider is only prepared to advance $3,000 in total, and not $3,300, because the consumer cannot afford the higher repayments that would be required if the amount of credit under these 2 contracts were $3,300.

The consumer agrees to this as the consumer still has a need for $3,000.

The amount payable under each small amount credit contract is an upfront fee of 20% of the amount of $1,500, and a monthly fee of 4% of this amount, or charges of $1,020 for each contract, and total charges of $2,040. The maximum amount that could be charged under a medium amount credit contract for $3,000 would be interest charges of $768 plus an additional fee of $400—a total of $1,168. The consumer has therefore been charged an additional amount of $872.

Each of the 2 small amount credit contracts would be unsuitable.

[2] After regulation 79A

insert

79AB Credit provider or prescribed person must not require or accept payment of fee or charge in relation to small amount credit contract etc

For subsection 31B (1) of the Code, a person who has been introduced to a debtor by a credit provider to provide a service in relation to a small amount credit contract is a prescribed person (whether or not the person is associated with the credit provider).

Note Section 31B of the Code applies to a credit provider or a person prescribed by the regulations.

79AC Prohibition relating to annual cost rate of credit contracts—later increases of annual percentage rate etc

(1) For subparagraph 32AA (1) (c) (ii) of the Code, an amount is a prescribed amount if it:

(a) is referred to in subsection 32B (3) of the Code; and

(b) is payable in relation to a medium amount credit contract.

(2) For subparagraph 32AA (1) (c) (ii) of the Code, an amount is a prescribed amount if:

(a) it is referred to in subsection 32B (3) of the Code; and

(b) it is not payable in relation to a medium amount credit contract; and

(c) the credit provider has a practice of requesting debtors to increase the amount of repayments above the amount the debtor is required to pay under the credit contract; and

(d) the debtor becomes liable to pay the fee as a result of making increased repayments because of a request by the credit provider.

Note Subparagraph 32AA (1) (c) (ii) of the Code refers to an amount referred to in subsection 32B (3) of the Code that is prescribed by the regulations. Section 32AA of the Code applies if the prescribed amount increases after a credit contract is entered into and other circumstances occur.

[3] After Part 7-2A

insert

Part 7-2B Additional rules in relation to small amount credit contracts

79C Default in payment by direct debit under small amount credit contract

(1) For subsection 39C (1) of the Code, the credit provider must refrain from seeking a repayment due under a small amount credit contract by relying on a direct debit request if:

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(a) the credit provider has twice sought to obtain the repayment using the direct debit request; and

(b) the credit provider:

(i) has not told the debtor that the direct debit requests have been unsuccessful; or

(ii) has not made reasonable attempts to contact the debtor.

(2) If the credit provider receives the repayment to which subregulation (1) relates:

(a) subregulation (1) ceases to apply; and

(b) the credit provider may seek repayments due under the small amount credit contract by relying on a direct debit request.

As at 12 December 2012 the amendments are not incorporated in this compilation.