



Western Australia

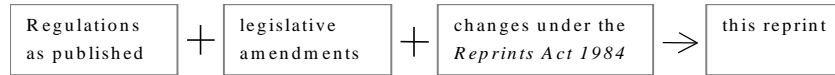
Credit Act 1984

Credit Regulations 1985

Reprint 2: The regulations as at 8 February 2007

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Credit Regulations 1985

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Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 8 February 2007

Credit Act 1984

Credit Regulations 1985

1. Citation

These regulations may be cited as the *Credit Regulations 1985*¹.

2. Commencement

These regulations shall come into operation on 31 March 1985.

3. Terms used in these regulations

- (1) In these regulations, unless the context otherwise requires —
“**Consumer and Employment Protection**” means the
Department of Consumer and Employment Protection;
“**form**” means a form in Schedule 1;
“**the Act**” means the *Credit Act 1984*.
- (2) Where a form suggests or requires the insertion of information in a blank space, that form shall be a form in compliance with this regulation only when each item of information is inserted as suggested or required.

r. 3A

- (3) Notwithstanding that a form includes the words “an independent body”, the substitution of the words “the State Administrative Tribunal” for the words “an independent body” when using the form is not a failure to comply with this regulation.

[Regulation 3 amended in Gazette 30 Dec 2004 p. 6914; 12 Jan 2007 p. 45.]

3A. Amounts prescribed in relation to definition of “account charge”

For the purposes of the definition of “account charge” in section 5(1) of the Act, the amount of —

- (a) \$150 is prescribed in relation to paragraph (a) of that definition; and
- (b) \$90 is prescribed in relation to paragraph (b) of that definition.

[Regulation 3A, formerly regulation 4, renumbered as regulation 3A in Gazette 10 Jan 1986 p. 137; amended in Gazette 25 Nov 1988 p. 4761.]

4. Exclusion from definition of “credit sale contract”

A contract is not a credit sale contract within the meaning of section 5(1) of the Act and a contract is not a continuing credit contract in relation to the provision of credit as referred to in section 48(2)(a)(i) of the Act where, under or in relation to the contract —

- (a) a charge is not made or cannot be made for the provision of credit; and
- (b) the amount paid or payable by the debtor does not exceed the cash price of the goods or services within the meaning of paragraph (b) of the definition of “cash price” in section 5(1) of the Act.

[Regulation 4, formerly regulation 5, renumbered as regulation 4 and amended in Gazette 10 Jan 1986 p. 137.]

5. Goods prescribed as farm machinery

The following goods are prescribed as farm machinery for the purposes of the Act —

- (a) a boat in respect of which a boat licence has been or is to be issued under the *Fisheries Act 1905*²; and
- (b) any implement, apparatus or device for taking or facilitating the taking of fish under a professional fisherman's licence issued under the *Fisheries Act 1905*².

[Regulation 5, formerly regulation 6, renumbered as regulation 5 in Gazette 10 Jan 1986 p. 137.]

6. Statutory rebate in relation to prescribed insurance charges

For the purposes of paragraph (b) of the definition of “statutory rebate” in section 5(1) of the Act —

- (a) the prescribed insurance charges are —
 - (i) amounts referred to in clause 1(e)(iv), (v), (vi) and (vii) of Schedule 2 to the Act;
 - (ii) amounts referred to in clause 1(b)(iii), (iv), (v) and (vi) of Schedule 4 to the Act; and
 - (iii) amounts referred to in clause 1(k)(iii), (iv), (v) and (vi) of Schedule 7 to the Act; and
- (b) the prescribed manner of ascertaining the statutory rebate is by applying the following formula —

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

Where —

- “Y” is the amount of the statutory rebate;
- “P” is the amount of insurance charges;
- “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.

[Regulation 6, formerly regulation 7, renumbered as regulation 6 in Gazette 10 Jan 1986 p. 137.]

7. Transfer of proceedings from Tribunal to court

Where proceedings are to be transferred pursuant to section 6(4) of the Act to a court that is not empowered to make rules in respect of the transfer, the executive officer (as defined in section 3(1) of the *State Administrative Tribunal Act 2004*) of the Tribunal shall —

- (a) prepare and certify a copy of the record of the proceedings;
- (b) file the copy in the office of the executive officer; and
- (c) deliver, or cause to be delivered, the whole of the record to the court.

[Regulation 7, formerly regulation 8, renumbered as regulation 7 in Gazette 10 Jan 1986 p. 137; amended in Gazette 30 Dec 2004 p. 6914.]

8. Prescribed method for calculation of accrued credit charge

- (1) For the purposes of section 11(2)(c) of the Act, an applicable method is followed where the amount of the credit charge which has accrued at a particular time is calculated by adding together the amounts ascertained by applying the monthly percentage rate to the unpaid monthly balances (being monthly balances up to that time, including the monthly balance for the month in which the accrued credit charge is calculated) —
 - (a) in the case of a credit sale contract — of the amount financed; or
 - (b) in the case of a loan contract — of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time.

- (2) In subregulation (1) —
- (a) **“monthly percentage rate”** means the rate determined by dividing the annual percentage rate by 12; and
 - (b) **“monthly balances”** means monthly balances obtained by application of the actuarial method.
- (3) For the purposes of section 11(2) of the Act, an applicable method for calculating the amount of the credit charge which has accrued at a particular time is by application of the formula set out in Schedule 1 to the Act, that Schedule being, for the purpose of that application, read and construed as if it has been amended —
- (a) by omitting after clause 3(b) the word “and”; and
 - (b) by inserting at the end of clause 3(c) the following —
 - “
 - ; and
 - (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided.
 - ”.

[Regulation 8, formerly regulation 9, renumbered as regulation 8 and amended in Gazette 10 Jan 1986 p. 137-8.]

9. **Form of mortgage of goods**

For the purposes of section 13(3)(f) of the Act, the prescribed terms and conditions are those contained in Form 1.

[Regulation 9, formerly regulation 10, renumbered as regulation 9 in Gazette 10 Jan 1986 p. 138.]

10. Notice for credit sale and loan contracts

- (1) For the purposes of section 32(1) of the Act, Form 2 is the prescribed notice.
- (2) For the purposes of section 32(2) of the Act, Form 3 is the prescribed notice.
- (3) For the purposes of section 32(1) or 32(2) of the Act, a notice is in the prescribed position if it is immediately above the place where the debtor is intended to sign.

[Regulation 10, formerly regulation 11, renumbered as regulation 10 in Gazette 10 Jan 1986 p. 138.]

11. Statement for credit sale and loan contracts

For the purposes of section 34 of the Act, Form 4 is the prescribed statement.

[Regulation 11, formerly regulation 12, renumbered as regulation 11 in Gazette 10 Jan 1986 p. 138.]

12. Notice for add-on contracts

For the purposes of section 37(3)(c) of the Act, Form 5 is the prescribed notice.

[Regulation 12, formerly regulation 13, renumbered as regulation 12 in Gazette 10 Jan 1986 p. 138.]

13. Applicable method of determining annual percentage rate

For the purposes of section 38(b)(iii) of the Act, each method specified in Schedule 2 is an applicable method.

[Regulation 13, formerly regulation 14, renumbered as regulation 13 in Gazette 10 Jan 1986 p. 138.]

14. Unilateral variation of credit sale and loan contracts

For the purposes of section 41(1) of the Act, the prescribed period is 7 clear days.

[Regulation 14, formerly regulation 13, renumbered as regulation 14 in Gazette 10 Jan 1986 p. 138.]

14A. Prescribed charges in relation to continuing credit contracts

- (1) For the purposes of sections 53 and 54 of the Act the following charges are prescribed in relation to a continuing credit contract —
- (a) fees payable for registration of a mortgage relating to the contract;
 - (b) fees payable to discharge a mortgage in force before the relevant date;
 - (c) fees payable to the Western Australian Land Information Authority for searching land title records;
 - (d) stamp duty payable in relation to a mortgage relating to the contract;
 - (e) stamp duty payable in relation to a contract of guarantee, being a contract of guarantee in respect of the obligations of the debtor under the contract;
 - (f) fees payable for lodgement of a caveat under the *Transfer of Land Act 1893*, where the estate or interest referred to in the caveat relates to the contract;
 - (g) fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into before the relevant date; and
 - (h) fees payable to a licensed valuer within the meaning of the *Land Valuers Licensing Act 1978* (not being the credit provider or an employer of the credit provider) for preparation of a valuation of property the subject of a mortgage relating to the contract.
- (2) In this regulation “**relevant date**”, in relation to a regulated continuing credit contract, means the date on which the contract is entered into.

[Regulation 14A inserted in Gazette 10 Oct 1986 p. 3874-5; amended in Gazette 22 Dec 2006 p. 5803.]

15. Statement for continuing credit contracts

For the purposes of section 58 of the Act, Form 6 is the prescribed statement.

[Regulation 15, formerly regulation 16, renumbered as regulation 15 in Gazette 10 Jan 1986 p. 138.]

16. Information in default notice

For the purposes of section 107(3)(d) of the Act, Form 7 is the prescribed information.

[Regulation 16, formerly regulation 17, renumbered as regulation 16 in Gazette 10 Jan 1986 p. 138.]

17. Notice after taking possession of mortgaged goods

For the purposes of section 112 of the Act, Form 8 is the prescribed notice.

[Regulation 17, formerly regulation 18, renumbered as regulation 17 in Gazette 10 Jan 1986 p. 138.]

18. Notice in bills of exchange taken as security

For the purposes of section 120 of the Act, Form 9 is the prescribed notice.

[Regulation 18, formerly regulation 19, renumbered as regulation 18 in Gazette 10 Jan 1986 p. 138.]

18A. Advertisements — prohibited statement

For the purposes of section 121 of the Act, a statement of a rate of interest that is expressed otherwise than as an annual percentage rate is prescribed as a prohibited statement.

[Regulation 18A inserted in Gazette 10 Oct 1986 p. 3875.]

19. Descriptive terms to be used in certain documents

- (1) In a regulated credit sale contract a matter specified in Column 1 of Schedule 3 shall be described or referred to by the term specified opposite that matter in Column 2 of Schedule 3.

- (2) In a regulated loan contract a matter specified in Column 1 of Schedule 4 shall be described or referred to by the terms specified opposite that matter in Column 2 of Schedule 4.
- (3) In a notice under section 59 of the Act a matter specified in Column 1 of Schedule 5 shall be described or referred to by the term specified opposite that matter in Column 2 of Schedule 5.
- (4) In a statement of account referred to in section 61 of the Act a matter specified in Column 1 of Schedule 6 shall be described or referred to by the term specified opposite that matter in Column 2 of Schedule 6.
- (5) A credit provider who —
 - (a) enters into a regulated credit sale contract;
 - (b) enters into a regulated loan contract;
 - (c) gives a notice under section 59 of the Act to a debtor; or
 - (d) gives a statement of account referred to in section 61 of the Act to a debtor,

that does not comply with the requirements of —

- (e) in the case of a regulated credit sale contract, subregulation (1);
- (f) in the case of a regulated loan contract, subregulation (2);
- (g) in the case of a notice under section 59 of the Act, subregulation (3); or
- (h) in the case of a statement of account referred to in section 61 of the Act, subregulation (4),

is guilty of an offence.

Penalty: \$500.

[Regulation 19, formerly regulation 20, renumbered as regulation 19 in Gazette 10 Jan 1986 p. 138.]

20. Particulars of insurance

- (1) For the purpose of section 130(2)(b) of the Act, the prescribed particulars are —
- (a) the relevant subject-matter;
 - (b) the amount for which the relevant subject matter is insured or the manner in which that amount may be determined;
 - (c) each amount paid and payable under the contract of insurance in respect of the relevant subject-matter;
 - (d) the period for which insurance is provided;
 - (e) the circumstances in which, the person by whom, and the person to whom, a claim may be made in respect of the contract of insurance, and the manner of making the claim;
 - (f) the risks to which the contract of insurance relates in respect of the relevant subject-matter; and
 - (g) the name and address of the insurer and the insured.
- (2) In subregulation (1), “**the relevant subject-matter**” means that part of the subject-matter of the contract of insurance in which the debtor has a beneficial interest.

[Regulation 20, formerly regulation 21, renumbered as regulation 20 in Gazette 10 Jan 1986 p. 138.]

21. Notice of intended proceedings against guarantor

For the purposes of section 138(3)(c) of the Act, Form 10 is the prescribed notice.

[Regulation 21, formerly regulation 22, renumbered as regulation 21 in Gazette 10 Jan 1986 p. 138.]

22. Statement for guarantor under contract of guarantee

For the purposes of section 142 of the Act, Form 11 is the prescribed statement.

[Regulation 22, formerly regulation 23, renumbered as regulation 22 in Gazette 10 Jan 1986 p. 138.]

23. Person authorised to certify assignment of will, etc.

For the purposes of section 150 of the Act, an assignment referred to in that section shall be executed in the presence of, and certified by —

- (a) a magistrate;
- (b) a registrar of the Magistrates Court; or
- (c) a legal practitioner instructed and employed independently of the proposed assignee.

[Regulation 23, formerly regulation 24, renumbered as regulation 23 in Gazette 10 Jan 1986 p. 138; amended in Gazette 12 Jan 2007 p. 45.]

24. Prescribed requirements for print and type in documents

(1) For the purposes of section 151(2)(b) of the Act —

- (a) subject to paragraph (c), where any print or type is produced directly or indirectly by a method or process under which each character occupies a space of the same width, that print or type shall be not smaller than 12-pitch;
- (b) subject to paragraph (c), print or type produced by a method or process other than that referred to in paragraph (a), shall be in one of the type faces specified in Schedule 7, or a type face or font identical in appearance to a specified type face, and of or larger than the size of 10 point;
- (c) where there is in any printed or typed document a blank space in which further print or type is subsequently inserted by a method or process by which each character occupies a space of the same width, that latter print or type shall, when inserted, be not smaller than 13-pitch.

(2) In subregulation (1) —

“character” includes a letter, figure, symbol, punctuation mark and space between adjacent characters;

“12-pitch” means of dimensions such that any selected passage of print or type 25 mm in length includes no more than 12 characters and **“13-pitch”** has a corresponding meaning.

[Regulation 24, formerly regulation 25, renumbered as regulation 24 in Gazette 10 Jan 1986 p. 138; amended in Gazette 8 Oct 1993 p. 5437.]

25. Prescribed requirements for reproduction of print or type

Where the dimensions of the face measurement of print or type in a document comply with regulation 24 and that document is photographed, reproduced or copied, the face measurement of the print or type in the document produced by that photograph, reproduction or copy shall, for the purposes of section 151(2)(b) of the Act, be not less than 95% of the face measurement of the print or type in the original document.

[Regulation 25, formerly regulation 26, renumbered as regulation 25 in Gazette 10 Jan 1986 p. 138.]

26. Lay-out of certain documents

- (1) Subject to sections 152 and 153 of the Act, where a notice, statement or document containing information prescribed by a form is required to be given, served or delivered to a debtor, mortgagor or guarantor, the notice, statement or document shall be in all respects —
 - (a) paragraphed;
 - (b) contrasted by means of bold type face or otherwise, so as to give effect to the prominence of print or type;
 - (c) set out in the contrasting print or type of upper and lower case; and
 - (d) enclosed within, or containing, lines, squares or rectangles,

as appears in the form.

- (2) A credit provider who gives, serves or delivers, or who causes to be given, served or delivered, a notice, statement or document that does not comply with subregulation (1) is guilty of an offence.

Penalty: \$500.

[Regulation 26, formerly regulation 27, renumbered as regulation 26 in Gazette 10 Jan 1986 p. 138.]

27. Charges to be included in amount financed

- (1) For the purposes of clause 1(g) of Schedule 2 to the Act and clause 1(d) of Schedule 4 to the Act, the following charges are prescribed in relation to a credit sale contract or a loan contract —
- (a) fees payable for registration of a mortgage relating to the contract;
 - (b) fees payable to discharge a mortgage in force before the relevant date;
 - (c) fees payable to the Western Australian Land Information Authority for searching land title records;
 - (d) stamp duty payable in relation to a contract of guarantee, being a contract of guarantee in respect of the obligations of the debtor under the contract;
 - (e) stamp duty payable in relation to a mortgage relating to the contract, being a mortgage proposed to be entered into on or after the relevant date;
 - (f) fees payable for lodgement of a caveat under the *Transfer of Land Act 1893*, where the estate or interest referred to in the caveat relates to the regulated contract;
 - (g) fees payable to a licensed valuer within the meaning of the *Land Valuers Licensing Act 1978* (not being the credit provider or an employee of the credit provider) for preparation of a valuation of property the subject of a mortgage relating to the regulated contract;

- (h) fees payable to the Commissioner³ for a certificate of entries, or a statement that there are no entries, under the *Chattel Securities Act 1987*;
 - (i) fees payable to the Commissioner³ for the registration of a security interest in relation to registrable goods under the *Chattel Securities Act 1987*.
- (2) In this clause “**relevant date**”, in relation to a credit sale contract or a loan contract, means the date on which the contract is entered into on or, if the contract is entered into by acceptance by the credit provider of an offer by the debtor, the date on which the offer is made.
- (2a) In addition to the charges set out in subregulation (1), administrative charges, not exceeding the amount prescribed under section 57 of the *Credit Unions Act 1979*⁴, charged by a Credit Union registered under that Act in respect of or in relation to the registration or discharge of a bill of sale are prescribed charges for the purpose of clause (1)(d) of Schedule 4 to the Act.

[Regulation 27 inserted in Gazette 10 Oct 1986 p. 3875; amended in Gazette 5 Aug 1988 p. 2630; 22 Dec 2006 p. 5803; 12 Jan 2007 p. 45.]

28. Prescribed risk

For the purposes of clause 1(e)(viii) of Schedule 2 to the Act and clause 1(b)(vii) of Schedule 4 to the Act, mechanical breakdown or failure of goods subject to a regulated contract or a regulated mortgage is a prescribed risk.

[Regulation 28 inserted as regulation 29 in Gazette 29 Mar 1985 p. 1143; renumbered as regulation 28 in Gazette 10 Jan 1986 p. 138.]

29. Infringement notices

- (1) The offences specified in Schedule 8 are offences for which an infringement notice may be issued under Part 2 of the *Criminal Procedure Act 2004*.

- (2) The modified penalty specified opposite an offence in Schedule 8 is the modified penalty for that offence for the purposes of section 5(3) of the *Criminal Procedure Act 2004*.
- (3) The Commissioner³ may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of Part 2 of the *Criminal Procedure Act 2004*.
- (4) The Commissioner³ is to issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.
- (5) For the purposes of the *Criminal Procedure Act 2004* —
 - (a) Form 12 is the prescribed form of infringement notice; and
 - (b) Form 13 is the prescribed form of withdrawal of infringement notice.

[Regulation 29 inserted in Gazette 22 Sep 2006 p. 4098.]

Schedule 1

[Heading inserted in Gazette 10 Jan 1986 p. 138.]

Form 1

[Reg. 9]

PRESCRIBED TERMS AND CONDITIONS OF MORTGAGE

1. In this mortgage —

“**debtor**” means the person to whom goods are hired under the hiring contract;

“**hiring contract**” means the contract for the hiring of goods as a consequence of which the debtor and the supplier are deemed by section 13(3)(f) of the Act to have entered into this mortgage;

“**subject goods**” means the goods hired under the hiring contract, including any goods or materials that have become incorporated in those goods in the course of maintaining, repairing or modifying them;

“**supplier**” means the person from whom the goods are hired under the hiring contract;

“**the Act**” means the *Credit Act 1984*.

2. The debtor gives and the supplier takes a mortgage of the subject goods.

3. Subject to clause 4, the supplier may take possession of the subject goods, or may take possession of, and sell, the subject goods, where —

(a) the debtor has made a fraudulent misrepresentation that induced the supplier to enter into the hiring contract;

(b) the debtor has, contrary to a term of the hiring contract, attempted to dispose of, or encumber (by mortgage, lien or charge), the subject goods;

(c) the debtor has, contrary to a term of the hiring contract —

(i) failed to keep the subject goods in good order and repair; or

(ii) failed to keep the subject goods insured or registered;

- (d) the debtor has made default in the payment of any instalment or other monetary sum due under the hiring contract and has failed to remedy the default within one month (or such longer period as the supplier allows) after being required in writing by the supplier to do so;
 - (e) the debtor has made default in any other obligation under the hiring contract which is likely to affect directly the value of the supplier's security, and has failed to remedy the default within one month (or such longer period as the supplier allows) after being required in writing by the supplier to do so; or
 - (f) the debtor has returned the subject goods to the supplier, or has given notice in writing to the supplier that the debtor cannot continue to observe the obligations imposed by the hiring contract.
4. Nothing in clause 3 affects the operation of any statute or of any principle of law or equity applicable to the rights and duties of the debtor and supplier in relation to each other.

[Form 1 inserted in Gazette 10 Jan 1986 p. 138.]

Form 2

[Reg. 10(1)]

IMPORTANT

BEFORE YOU SIGN

- * READ THIS OFFER, so that you know exactly what contract you are entering into and what you will have to do under the contract.
- * Fill in or cross out any blank spaces.
- * Get a copy of this offer.
- * Get Consumer and Employment Protection or someone else you can trust to explain anything you do not fully understand.

THINGS YOU MUST KNOW

- * You can withdraw this offer any time before the credit provider accepts it. When the credit provider does accept it, you are bound by it.
- * You must take out insurance over any property to be mortgaged if this offer says you have to. You can choose whether you take out any other insurance.
- * You can take out insurance through any company you choose.

WARNING

IF YOU DELIBERATELY GIVE FALSE OR MISLEADING INFORMATION TO GET CREDIT YOU CAN BE TAKEN TO COURT.

[Form 2 inserted in Gazette 10 Jan 1986 p. 139; amended in Gazette 12 Jan 2007 p. 46.]

Form 3

[Reg. 10(2)]

IMPORTANT

BEFORE YOU SIGN

- * READ THIS OFFER, so that you know exactly what contract you are entering into and what you will have to do under the contract.
- * Fill in or cross out any blank spaces.
- * Get a copy of this offer.
- * Get Consumer and Employment Protection or someone else you can trust to explain anything you do not fully understand.

THINGS YOU MUST KNOW

- * Once you have signed this offer you are bound by it.
- * You must take out insurance over any property to be mortgaged if this offer says you have to. You can choose whether you take out any other insurance.
- * You can take out insurance through any company you choose.

WARNING

**IF YOU DELIBERATELY GIVE FALSE OR MISLEADING
INFORMATION TO GET CREDIT YOU CAN BE TAKEN TO COURT.**

*[Form 3 inserted in Gazette 10 Jan 1986 p. 139; amended in Gazette
12 Jan 2007 p. 46.]*

Form 4

[Reg. 11]

**THINGS YOU SHOULD KNOW ABOUT YOUR CREDIT SALE
OR LOAN CONTRACT**

CREDIT ACT (Section 34)

The law says that your credit provider must give you this information about your credit sale contract or loan contract.

This information 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.

THE CONTRACT

1. How can I get a copy of my contract?

You should already have a copy of the agreement you signed. If you want a copy of your contract write to your credit provider and ask for one. You must pay any fee that the law says your credit provider can charge. Your credit provider will send a copy of your contract to you within 14 days after receiving your request. Your credit provider has to give you a copy of your contract only once in any period of 3 months.

2. What should my contract tell me?

You should **read your contract** carefully.

Your contract should tell you about your obligations, and include the following details:

- * the amount financed;
- * any credit charge;
- * the total repayments;
- * details of any instalments you must pay;
- * a statement of any **annual percentage rate** (interest rate).

If your contract does not tell you all of these details, contact Consumer and Employment Protection or get legal advice, as you may have rights against your credit provider.

3. Can I get a statement of account from my credit provider?

Yes. Write to your credit provider and ask for one. (You must pay any fee that the law says your credit provider can charge.) Your credit provider will write back in 14 days after receiving your request telling you:

- * the date and amount of each payment already received;
- * details of any arrears (payments which were due and you did not pay);
- * the dates and amounts of future repayments.

Your credit provider has to give you this information only once in any period of 3 months.

4. Can I pay out my contract early?

Yes. Pay your credit provider the amount owing on the day you wish to end your contract.

5. How can I find out the amount owing?

You can write to your credit provider at any time and ask for a statement of the **nett balance due** (pay out figure). You will get this statement within 7 days after your credit provider receives your request. If you want to, you can also ask for details of how the balance is worked out. Your credit provider has to give you this information only once in any period of 3 months.

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

Yes. Interest is only calculated for the actual time that money is owing.

However, under your contract you pay a big part of the interest in your early repayments. This means that, for example, by the time you are half-way through your contract, you have paid more than half the interest.

Therefore, the exact amount of interest you will save will vary, depending on when you pay out your contract.

7. Can there be an increase in the nett balance due after I get from my credit provider a statement telling me what the amount is?

Your statement of the nett balance due will tell you if this can happen. For example, if interest is charged on a daily basis, you also have to pay

interest from the date the statement is calculated until the date your contract is paid out.

8. Can any of the conditions of my contract be changed by my credit provider?

Yes, but only if your contract says so. Your credit provider cannot increase your annual percentage rate.

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

Yes. You get at least 7 clear days' notice in writing.

10. If I have been charged by my credit provider for a lawyer to prepare my contract, can I do anything if I think the fee is unreasonable?

Yes. You can ask to have an independent body decide whether the fee was reasonable. Contact Consumer and Employment Protection on how to go about this.

11. Is there anything I can do if I think my contract is unjust?

Yes. You can have an independent body look into the contract. Contact Consumer and Employment Protection or get legal advice.

INSURANCE

12. Do I have to take out insurance?

With certain types of property you must take out insurance. If there is a mortgage, the mortgagee can insist that you insure the property covered by the mortgage. Otherwise you can decide if you want to take out insurance or not.

13. Will I get details of my insurance cover?

Yes. You will get either a copy of the insurance contract from your insurer or the important details of your insurance cover from your credit provider. The copy of the contract, or the details, will be given to you within 14 days after the insurance contract is entered into or your insurance cover starts.

14. Do I get the benefit of any no claim bonus?

Yes.

15. If the insurer does not accept my proposal, will I be told?

Yes. The insurer will write to you.

16. In that case, what happens to the premium?

If it has already been paid to the insurer, you get it back. If your credit provider has not paid it to the insurer, the insurer will tell you this in writing. You should then contact your credit provider to decide what is to happen to the premium.

MORTGAGES

17. If my contract says there is a mortgage, what does this mean?

A mortgage **means** that you have given the mortgagee certain rights over any property you have mortgaged. If you default under your contract, you can lose that property and you might still owe money to the mortgagee.

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

The law says you cannot sell the property unless you have your mortgagee'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 cannot do with the property.

19. If my mortgagee writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 14 days after receiving your mortgagee's request to write and tell your mortgagee. If someone else has the goods, you have to give the name and address of that person. If you have lost the goods, you have to say how they were lost. If your letter does not get back to the mortgagee in 14 days, or if there is information in it that you know to be false, you can be taken to court.

20. Should I get a copy of my mortgage?

Yes. It will be given to you within 14 days after your mortgage is entered into.

21. What can I do if I find that I cannot afford my repayments and there is a mortgage over property?

Get in touch with your mortgagee immediately. Discuss the matter and see if you can come to some arrangement. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

If you cannot come to a suitable arrangement with your mortgagee and you want to keep the mortgaged property, contact Consumer and Employment Protection for help or seek financial counselling immediately.

Otherwise you may:

- * give the property back to your mortgagee, together with a letter saying you want the mortgagee to sell the property for you;

OR

- * sell the property — but only if your mortgagee gives permission first;

OR

- * give the property to someone who may then take over the repayments, but your mortgagee has to give permission first.

If your mortgagee won't give permission contact Consumer and Employment Protection for help.

22. Can my mortgagee take or sell the mortgaged property?

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

23. Must my mortgagee tell me first before taking or selling the mortgaged property?

In most cases, yes. In those cases, you get at least one month's notice in writing so that you can try to do something about the matter. The notice tells you why your mortgagee wants to take action against your property and what you can do to stop it.

Your mortgagee can take the property without giving notice if:

- * there is a good reason to think that you are going to sell, hide, damage or get rid of the property; or
- * there is a good reason to think you deliberately misled your mortgagee when you entered into your mortgage; or
- * your mortgagee has been unable to locate you after making reasonable efforts to do so.

If you have repaid more than three-quarters of the amount financed, your mortgagee will need an order from an independent body to take anything you have mortgaged (apart from land). It will take more than three-quarters of your total repayments to repay more than three-quarters of the amount financed because only some of each repayment goes towards paying off the amount financed.

Remember, you must still pay what you owe on your contract, regardless of how little it may be.

24. Can my mortgagee or a person working for my mortgagee come onto my premises to take possession of goods without my permission?

Only if your mortgagee has a court order.

25. What happens if my goods are taken by my mortgagee?

You get a notice setting out what you have to do if you want the goods back. It also tells you what happens if you do nothing. Your mortgagee cannot sell the goods until 21 days after you get a notice called "Notice After Taking Possession of Mortgaged Goods". So you have 21 days to do something if you want the goods returned.

However, the goods can be sold before the 21 days if you have freely given your mortgagee permission. The law will not allow anyone to force you or threaten you to give your permission.

The goods can also be sold before the 21 days if a court has authorised the sale.

GENERAL

26. What do I do if I cannot make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

27. What if my credit provider and I cannot agree on a suitable arrangement?

Contact Consumer and Employment Protection for help.

If you 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.

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

28. Can my credit provider take action against me?

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being harassed or threatened, contact Consumer and Employment Protection or the Trade Practices Commission, or get legal advice.

29. Must my credit provider tell me first before taking action against me?

In most cases, yes. In those cases, you get at least one month's notice in writing so that you can try to do something about the matter. The notice tells you why your credit provider wants to take action against you and what you can do to stop it.

You do not get any warning if there is good reason to think you deliberately misled your credit provider when your contract was made.

30. Do I have any other rights and obligations?

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

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AND EMPLOYMENT PROTECTION OR GET LEGAL ADVICE.

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

[Form 4 inserted in Gazette 10 Jan 1986 p. 139-42; amended in Gazette 12 Jan 2007 p. 46.]

Form 5

[Reg. 12]

**THINGS YOU SHOULD KNOW ABOUT COOLING-OFF PERIODS
UNDER ADD-ON CONTRACTS**

CREDIT ACT (Section 37)

THE COOLING-OFF PERIOD

1. What is a cooling-off period?

It is the time the law gives you to cancel your add-on contract.

2. How long is my cooling-off period?

At least 10 days.

3. When does the cooling-off period start?

As soon as you sign the add-on agreement.

4. When does the cooling-off period end?

10 days after you have received this Notice and a notice which has more details of your contract.

CANCELLING THE ADD-ON CONTRACT

5. How do I cancel my contract?

Write to your credit provider. In your letter:

- * say that you want to cancel your contract;
- * give the date of the contract;
- * give details of the goods or services you bought.

Keep a copy of your letter.

6. How should I send the letter cancelling my contract?

You can post it or take it to any of your credit provider's offices yourself.

If you post the letter, send it by certified or registered mail. Then you can check that it was delivered.

If you take it to your credit provider's office, you should get an employee to sign and date something to say that your letter has been received. Make sure you keep anything that was signed by the employee.

7. Where should I send the letter to?

A postal address and an office address close to you are set out below:

Postal address:
(name of credit provider)
.....
(branch, section, person, etc., if applicable)
.....
(address)

Office address:
(name)
.....
(floor, suite, shop no., building name, etc.,
if applicable)
.....
(address)
.....

AFTER THE CONTRACT IS CANCELLED

8. Do I have any obligations after I cancel my add-on contract?

Yes. When you cancel your add-on contract, you go back to where you were under your old credit sale contract. This means you start making your old repayments again.

9. What do I do with the goods I have bought if I cancel my add-on contract?

You should put them in a safe place. When your credit provider demands the return of the goods, you have to give them back as soon as possible. If you do not give them back, you could be taken to court.

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION,
CONTACT CONSUMER AND EMPLOYMENT PROTECTION OR
GET LEGAL ADVICE.**

*[Form 5 inserted in Gazette 10 Jan 1986 p. 142-3; amended in
Gazette 12 Jan 2007 p. 46.]*

Form 6

[Reg. 15]

**THINGS YOU SHOULD KNOW ABOUT YOUR
CONTINUING CREDIT CONTRACT**

CREDIT ACT (Section 58)

The law says that your credit provider must give you this information about your **continuing credit contract**.

This information 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.

THE CONTRACT

1. How do I find out the details of my contract?

Your credit provider will give them to you in writing before you start using your credit. You should **read them** carefully.

2. What details should be included?

The details should include:

- * your credit limit;
- * how any credit charge is to be worked out;
- * any annual percentage rate (interest rate);
- * the length of the billing cycle.

If your contract does not tell you all of these details, contact Consumer and Employment Protection or get legal advice, as you may have rights against your credit provider.

3. Can I get another copy of the details of my contract?

Yes. Write to your credit provider and ask for one. (You must pay any fee that the law says your credit provider can charge.) But your credit provider has to give you a copy of your contract or details of your contract only once in any period of 14 days. In the same way you can get another copy of this Notice.

4. Can any of the conditions of my contract be changed by my credit provider?

Yes, but only if your contract says so.

5. Will my credit provider tell me before making a change in my contract?

Yes. You usually get at least 7 clear days' notice in writing. You get a period of at least 2 billing cycles' notice if the change increases the credit charge, increases your repayments, or shortens the time for repayment.

6. How do I know what I owe?

You get a statement of account which will tell you. The statement is sent to you once every billing cycle, if during the billing cycle:

- * an amount was debited or credited to your account; or
- * there is a credit or debit balance on the account at the end of the cycle.

7. Are there any times when I do not get a statement of account?

Yes. You do not get a statement if:

- * your account balance at the beginning of the billing cycle is nil and no entries are made in the account during the cycle; or
- * your debt was written off by your credit provider and no other entries were made in the account during the cycle; or
- * you have been in default for 3 billing cycles and your credit provider has stopped providing you credit.

8. Is there anything I can do if I think my contract is unjust?

You may be able to have an independent body look into the contract. Contact Consumer and Employment Protection for details or get legal advice.

BILLING ERRORS

9. What can I do if I think my statement of account has an error in it?

Write to your credit provider. Tell your credit provider what you think the error is. If you can, also tell your credit provider how and why you think the error has been made.

Make sure your letter has the following details:

- * your name;
- * the name the account is in, if it is different from your name;
- * the account number;
- * the date of the statement that the error appears in.

10. When should I send the letter?

It is best to send it before your next payment is due. This will stop your credit provider taking action against you and, in the meantime, you will not have to pay the amount you are disputing, or any credit charge on that amount.

11. What happens if my credit provider gets the letter before my next payment is due? Your credit provider has 3 choices:

1. Correct the error on your next statement of account.
2. Leave the error as it is and send you a letter giving reasons why your credit provider thinks there is no error.
3. Do nothing. In this case your credit provider has no right to take action against you to recover the amount you dispute.

12. What if my credit provider does not change the error, and I still think it is wrong?

You can have an independent body decide the matter. To do this you have to apply within the next 2 complete billing cycles after you receive your credit provider's reply. If you do not apply in this time, you have to pay the amount you are disputing. The credit charge on this amount will also start up again.

GENERAL

- 13. If my credit provider owes me any money, can I ask for it to be paid to me?**

Yes.

- 14. What do I do if I cannot make one of my repayments?**

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

- 15. What if my credit provider and I cannot agree on a suitable arrangement?**

Contact Consumer and Employment Protection for help.

If you 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.

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

- 16. Can my credit provider take action against me under my contract?**

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being harassed or threatened, contact Consumer and Employment Protection or the Trade Practices Commission, or get legal advice.

- 17. Must my credit provider tell me first before taking action against me?**

In most cases, yes. In those cases, you get at least one month's notice in writing from your credit provider. At the same time you get a statement of what you have to pay.

The notice tells you why your credit provider wants to take action against you and what you can do to stop it.

You do not get any warning if there is good reason to think you deliberately misled your credit provider when your contract was made.

18. Do I have any rights and obligations under the law if I have given a mortgage?

Yes. You have the right to get certain documents from your credit provider. You also have rights if your credit provider wants to take the mortgaged property.

Your obligations under law limit what you can do with mortgaged property.

19. Do I have to take out insurance?

With certain types of property you must take out insurance. If there is a mortgage, your credit provider can insist that you insure the property covered by the mortgage. Otherwise, you can decide if you want to take out insurance or not.

20. Do I have any other rights and obligations?

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

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AND EMPLOYMENT PROTECTION OR GET LEGAL ADVICE.

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

[Form 6 inserted in Gazette 10 Jan 1986 p. 143-5; amended in Gazette 12 Jan 2007 p. 46.]

Form 7

[Reg. 16]

**WHAT SHOULD I DO NOW THAT I HAVE RECEIVED
THIS NOTICE?**

1. You should discuss this matter with your credit provider or mortgagee as soon as possible. You may be able to work out some other arrangement about your contract. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.
The person to contact is
(name or title of officer/s)
of
(name of credit provider or mortgagee)
.....
(address)
.....
Telephone No./s:
2. If you cannot come to a suitable arrangement with your credit provider or mortgagee, contact Consumer and Employment Protection immediately. If you 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.
There are other people, such as financial counsellors, who may be able to help.
3. If you disagree with anything in this notice, including what it says you owe, contact Consumer and Employment Protection or get legal advice immediately.

[Form 7 inserted in Gazette 10 Jan 1986 p. 145; amended in Gazette 12 Jan 2007 p. 46.]

Form 8

[Reg. 17]

NOTICE AFTER TAKING POSSESSION OF MORTGAGED GOODS

CREDIT ACT (Section 112)

....., 20.....
(Date)

TO:
(name of mortgagor)

.....
(address of mortgagor)

.....
.....

FROM:
(name of mortgagee)

.....
(address of mortgagee)

.....
.....

The law says that you must be given this information.

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

DETAILS YOU SHOULD KNOW

Description of the goods:.....

Date the goods were taken:.....

The goods were taken because:.....

.....

As at the date of this Notice, the cost of enforcing the mortgage (such as the cost of taking the goods) is \$

Your mortgagee's estimate of the value of the goods is \$

HOW TO GET THE GOODS BACK

IF YOU WANT THE GOODS IT IS PARTICULARLY IMPORTANT FOR YOU TO DO ONE OF THE THINGS LISTED BELOW AS SOON AS POSSIBLE. IF YOU DO NOT ACT WITHIN 21 DAYS AFTER YOU GET THIS NOTICE, YOUR MORTGAGEE MAY SELL THE GOODS.

EITHER

- * You can get the goods back if you pay \$ and fix up any reasons why the goods were taken. This amount of \$ is calculated as follows:

Arrears	\$
Enforcement Expenses	\$
TOTAL	\$

OR

- * You can pay the nett balance due to the mortgagee worked out to the actual day you pay out your 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 nett balance due may be, 2 figures are given below. The first is the nett balance due at the date of this notice. The second is the balance calculated 21 days from that date. Any difference is the result of further payments or charges that fall due between the 2 dates.

1. Nett balance due on/...../..... = \$
2. Nett balance due on/...../..... = \$

- * IF YOU DO NOTHING, YOU WILL LOSE THE GOODS.

SALE OF THE GOODS

The law says that your mortgagee must get the best price reasonably obtainable for the goods.

If you want to, you can introduce a buyer to your mortgagee. This has to be done in writing and the buyer must be willing to pay the mortgagee's estimate of the value of the goods. Keep a copy of what you write.

Your mortgagee has to accept the buyer's offer, with one exception. The exception is where your mortgagee claims to be able to sell the goods for a price higher than the estimate of their value. In this case, the buyer has to be willing

to pay this higher price if he or she still wants the goods. However, if the buyer does not buy the goods at the higher price, the law says the higher price must still be taken off the amount you owe.

Your letter introducing the buyer has to reach your mortgagee 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 your mortgagee's office, you should get an employee to sign and date something to say that your letter has been received. Make sure you keep anything that was signed by the employee.

FINALISING THE CONTRACT

No matter how the goods are sold, the money they bring in will be taken off the amount you owe.

If the goods are sold for more than what you owe, you get back what is left after:

- * your mortgagee gets the money owing under your mortgage;
- * any person holding a prior or subsequent mortgage over the goods gets the money owing under that mortgage; and
- * all costs of the sale have been paid.

If the sale price of the goods does not cover the full balance on your contract, you have to pay the difference.

GENERAL

You should discuss this matter with your mortgagee as soon as possible. You may be able to work out some alternative arrangement about your contract and mortgage. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

The person to contact is.....
(name or title of officer/s)

of.....
(name of mortgagee or agent)

(Office address)

(Postal address)

Telephone No./s:

If you cannot come to a suitable arrangement with your mortgagee, contact Consumer and Employment Protection immediately. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract or mortgage, then your contract may be able to be varied under the law to meet your situation.

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

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION,
CONTACT CONSUMER AND EMPLOYMENT PROTECTION OR GET
LEGAL ADVICE.**

.....
(Signature of mortgagee or agent)

*[Form 8 inserted in Gazette 10 Jan 1986 p. 146-7; amended in
Gazette 12 Jan 2007 p. 46.]*

Form 9

[Reg. 18]

CREDIT ACT (Section 120)

This instrument relates to a regulated contract or a regulated mortgage (within the meaning of the *Credit Act 1984*) under which the drawer or maker may have certain claims or defences.

[Form 9 inserted in Gazette 10 Jan 1986 p. 147.]

Form 10

[Reg. 21]

GUARANTORS — NOTICE OF INTENDED LEGAL ACTION

CREDIT ACT (Section 138)

....., 20.....
Date

TO:
(name of guarantor)
.....
(address of guarantor)
.....
.....

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

After 14 days from the time you receive this Notice
.....
(name of credit provider)

intends to take legal action against you under your contract of guarantee. The credit provider's reasons are given at the end of this Notice.

You will also find at the end of this Notice:

- * the amount the credit provider says you owe at the date of this Notice;
- * details to identify your contract of guarantee;
- * details to identify the debtor's credit contract.

You should discuss this matter with the credit provider as soon as possible. You may be able to work out some alternative arrangement about the amount you owe.

The person to contact is.....
(name or title of officer/s)
of.....
(name of credit provider)
.....
(address of credit provider)
.....
Telephone No./s:.....

If you cannot come to a suitable arrangement with the credit provider, contact Consumer and Employment Protection immediately. If you have been **unemployed, sick** or there is another **good reason** why you have problems repaying the amount owing, then your contract may be able to be varied under the law to meet your situation.

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

If you disagree with anything in this Notice including what it says you owe, contact Consumer and Employment Protection or get legal advice immediately.

REASONS FOR INTENDED LEGAL ACTION

Under your contract of guarantee, you agreed to pay money owing under a credit contract between and
(name of debtor)
.....
(name of credit provider)

if the debtor defaulted under the contract.

The debtor has defaulted under the contract in the following ways: (*Specify details of default by debtor*)
.....
.....

Also, the debtor cannot be found even though the following inquiries have been made (*Specify details of inquiries*)
.....
.....
.....

The credit provider now wants you to payout the debtor's contract, and the reasonable costs of enforcing the guarantee.

AMOUNT THE CREDIT PROVIDER CLAIMS YOU OWE

As at the date of this Notice the credit provider claims you owe \$

This amount is calculated as follows:

\$

Nett balance due under debtor's credit contract:

Reasonable costs of enforcing your contract of guarantee: _____

TOTAL _____

DETAILS OF THE CONTRACT

Your contract of guarantee: —

Date:

Contract No. (if any):

Debtor's credit contract: —

Date:

Contract No. (if any):

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION
ABOUT WHAT TO DO NEXT, CONTACT CONSUMER AND
EMPLOYMENT PROTECTION OR GET LEGAL ADVICE.**

.....
(Signature of credit provider of agent)

*[Form 10 inserted in Gazette 10 Jan 1986 p. 147-9; amended in
Gazette 12 Jan 2007 p. 46.]*

Form 11

[Reg. 22]

THINGS YOU SHOULD KNOW ABOUT GUARANTEES

CREDIT ACT (Section 142)

The law says the credit provider must give you this information about your **contract of guarantee**.

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 contract.

GUARANTEES

1. What is a guarantee?

A promise by you that the person who is getting credit under a credit contract 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 as soon as the money is asked for.

2. How do I know how much the debtor is borrowing and the credit charges?

These details are on the copy of the credit contract or offer that the debtor signed. You should have been given a copy of that contract or offer before you signed the guarantee papers.

3. What documents should I be given?

- * The document you are reading now.
- * A copy of your contract.
- * A copy of the credit contract or offer signed by the debtor.

4. What other information can I get?

- * If you have guaranteed repayment of a **credit sale contract** or a **loan contract**, you can write to the credit provider and ask for:
 - * an extra copy of your contract of guarantee;

- * an extra copy of the debtor's credit sale contract or loan contract;
- * a copy of any other document signed by the debtor (for example, a mortgage) or by you;
- * a statement of the debtor's repayments under the credit sale contract or loan contract;
- * details of any insurance cover financed by the debtor's credit sale contract or loan contract.

When writing to the credit provider, you must pay any fee that the law says the credit provider can charge.

The credit provider will write back to you within 14 days after receiving your request.

But the credit provider has to give you this information only once in any period of 3 months.

- * If you have guaranteed repayment of a **continuing credit contract** you can write to the credit provider and ask for:
 - * an extra copy of the debtor's continuing credit contract or a notice stating the details of the contract;
 - * a copy of the notice given to the debtor entitled "THINGS YOU SHOULD KNOW ABOUT YOUR CONTINUING CREDIT CONTRACT".

Again, when writing to the credit provider you must pay any fee that the law says the credit provider can charge.

But the credit provider has to give you these documents only once in any period of 14 days.

- * You can write to the credit provider and ask for the **nett balance due** (pay-out figure) under the **credit contract** guaranteed by you. You will get this information within 7 days after the credit provider receives your request. If you want to, you can also ask for details of how the balance is worked out.

But the credit provider has to give you this information only once in any period of 3 months.

5. Can I cancel my contract of guarantee?

You may be able to under certain circumstances. For exact details, contact Consumer and Employment Protection or get legal advice.

IF THE DEBTOR DEFAULTS

6. Do I get any warning that the credit provider wants to take action against the debtor?

In most cases, yes. You get the same warning as the debtor. You get a notice in writing telling you why the credit provider wants to take action against the debtor. It also tells you what the debtor has to do to stop the action. The debtor has at least one month to try and fix up the problem. You should discuss the matter with the debtor immediately.

7. Can the credit provider take action against me without taking action against the debtor at the same time?

No, except where:

- * the debtor cannot be found;
- * the debtor's financial affairs are being handled under bankruptcy law; or
- * a court has declared that action can be taken against you without action being taken against the debtor.

8. If the debtor cannot be found and the credit provider intends to take legal action against me do I get any warning?

Yes. You get a notice giving you at least 14 days' warning.

9. Exactly 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, plus the credit provider's costs in having you honour your contract of guarantee.

GENERAL

10. What can I do if I am asked to pay out the credit contract and I cannot pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying. If you cannot come to a suitable arrangement, contact

Consumer and Employment Protection for help. If you 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.

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

11. 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 cannot pay the credit provider, he or she probably cannot pay you back for a while, if at all.

12. 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 had a clear and obvious warning near your signature. The warning had 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.

13. Do I have any other rights and obligations?

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

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION,
CONTACT CONSUMER AND EMPLOYMENT PROTECTION OR GET
LEGAL ADVICE.**

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

*[Form 11 inserted in Gazette 10 Jan 1986 p. 149-50; amended in
Gazette 12 Jan 2007 p. 46.]*

Form 12

[r. 29(5)(a)]

<i>Credit Act 1984</i> Infringement notice		Infringement notice no.
Alleged offender	Name: Family name _____	
	Given names _____	
	or Company name _____	
	ACN _____	
Address _____		Postcode _____
Alleged offence	Description of offence _____	
	<i>Credit Act 1984 s.</i> _____	
	Date _____ / _____ /20	Time _____ a.m./p.m.
	Modified penalty \$ _____	
Officer issuing notice	Name _____	
	Signature _____	
	Office _____	
Date	Date of notice _____ / _____ /20	
Notice to alleged offender	<p>It is alleged that you have committed the above offence. If you do not want to be prosecuted in court for the offence, pay the modified penalty within 28 days after the date of this notice.</p> <p>How to pay</p> <p>By post: Send a cheque or money order (payable to 'Approved Officer — <i>Credit Act 1984</i>') to: Approved Officer — <i>Credit Act 1984</i> Department of Consumer and Employment Protection Locked Bag 14 Cloisters Square Perth WA 6850</p> <p>In person: Pay the cashier at: Department of Consumer and Employment Protection 219 St George's Terrace, Perth WA</p> <p>If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act your driver's licence and/or vehicle licence may be suspended.</p> <p>If you need more time to pay the modified penalty, you can apply for an extension of time by writing to the Approved Officer at the above postal address.</p>	

	<p>If you want this matter to be dealt with by prosecution in court, sign here _____ and post this notice to the Approved Officer at the above postal address within 28 days after the date of this notice.</p>
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[Form 12 inserted in Gazette 22 Sep 2006 p. 4099.]

Form 13

[r. 29(5)(b)]

<i>Credit Act 1984</i>		Withdrawal no.
Withdrawal of infringement notice		
Alleged offender	Name: Family name _____	
	Given names _____	
	or Company name _____	
	ACN _____	
Address _____		Postcode _____
Infringement notice	Infringement notice no. _____	
	Date of issue / /20	
Alleged offence	Description of offence _____	
	<i>Credit Act 1984 s.</i> _____	
	Date / /20	Time a.m./p.m.
Officer withdrawing notice	Name _____	
	Signature _____	
	Office _____	
Date	Date of withdrawal / /20	
Withdrawal of infringement notice	The above infringement notice issued against you has been withdrawn.	
	If you have already paid the modified penalty for the alleged offence you are entitled to a refund. * Your refund is enclosed. <i>or</i> * If you have paid the modified penalty but a refund is not enclosed, to claim your refund sign this notice and post it to: Approved Officer — <i>Credit Act 1984</i> Department of Consumer and Employment Protection Locked Bag 14 Cloisters Square Perth WA 6850	
<i>[*delete whichever is not applicable]</i>	Signature _____ / /20	

[Form 13 inserted in Gazette 22 Sep 2006 p. 4100.]

Schedule 2

[Reg. 13]

Annual percentage rate — Applicable methods

1. Method No. 1

- (1) This clause applies to a credit sale contract or a loan contract, where —
- (a) the whole of the credit charge is a pre-determined credit charge;
 - (b) the whole of the amount financed is, or is to be, provided on the same day; and
 - (c) the amount financed and the pre-determined credit charge are payable by equal instalments at equal intervals, the first interval commencing on the date on which the amount financed was provided.

- (2) Where this clause applies to a contract, the annual percentage rate may be determined in accordance with the formula —

$$\frac{200 \text{ CF } (3 + F)}{2 \text{ NF } + 3 (N + 1)}$$

where —

- N is the total number of instalments;
- C is the number of instalments that, under the contract, will be paid in one year or, where the contract is to be completed in less than one year, the number of instalments that would be paid in one year if instalments continued to be paid at the same intervals; and
- F is an amount determined in accordance with the formula —

$$\frac{T}{A}$$

where —

- T is the total amount of the pre-determined credit charge; and
- A is the amount financed.

2. Method No. 2

The annual percentage rate may be expressed as the percentage rate per annum which when applied to the unpaid monthly balance of the amount financed calculated according to the actuarial method will yield a sum equal to the amount which under the contract would be the credit charge if all payments under the contract were paid when they were required to be paid under the contract.

3. Interpretation

For the purposes of clause 1 of this Schedule —

- (a) instalments shall be deemed to be equal if all the instalments except one are of the same amount and the difference between the amount of that one instalment and the amount of each of the other instalments is not more than \$5 or 5% of the amount of each of the other instalments, whichever is the greater;
- (b) monthly intervals shall be deemed to be equal intervals;
- (c) intervals shall be deemed to be equal if all the intervals except one are of the same length and the difference between the length of that one interval and the length of each of the other intervals is not more than 5% of the length of each of the other intervals; and
- (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month following the next month.

[Schedule 2 amended in Gazette 10 Jan 1986 p. 150.]

Schedule 3

[Reg. 19(1)]

Specified descriptive terms for use in a credit sale contract

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
1. The amount financed expressed in accordance with Schedule 2 to the Act	Amount financed
2. The credit charge expressed in accordance with Schedule 3 to the Act	Credit charge
3. The annual percentage rate expressed in accordance with section 38 of the Act	Annual percentage rate
4. The amount paid or provided, or to be paid or provided, by way of deposit —	
(a) paid in money;	Cash deposit
(b) by a consideration other than money;	Other deposit
(c) on account of a trade-in allowance; and	Trade-in
(d) being the sum of all amounts paid or provided, or to be paid or provided, by way of deposit	Total deposit paid
5. The cash price of the goods or services	Cash price
6. Amounts payable by the debtor to the credit provider in respect of —	
(a) charges for installation of the goods;	Installation charges
(b) charges for maintenance of the goods;	Maintenance charges
(c) charges for delivery of the goods to the debtor;	Delivery charges
(d) registration fees;	Registration fees
(e) compulsory insurance;	Compulsory insurance
(f) insurance of mortgaged property (not being compulsory insurance);	Mortgaged property insurance

Credit Regulations 1985**Schedule 3** Specified descriptive terms for use in a credit sale contract

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
(g) insurance against loss of the security interest of a mortgagee by reason of any Act;	Title insurance
(h) insurance against sickness of, accidental injury to, or disability or death of, the debtor or debtors;	Consumer credit insurance
(i) life insurance of the debtor or debtors;	Life insurance
(j) insurance against unemployment of the debtor or debtors;	Unemployment insurance
(k) insurance against loss of profits by the debtor or debtors;	Loss of profits insurance
(l) stamp duty payable in respect of or in relation to —	
(i) the credit sale contract;	Contract stamp duty
(ii) any mortgage relating to the credit sale contract entered into on or before the relevant date as defined in clause 2 of Schedule 2 to the Act; and	Mortgage stamp duty
(iii) the sum of paragraph (i) and (ii); and	Total stamp duty
(m) fees payable to a legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the credit sale contract or for a mortgage relating to the credit sale contract entered into at or before the time of the making of the credit sale contract.	Legal fees
7. The Act	<i>Credit Act 1984</i>
8. This Regulation	<i>Credit Regulations 1985</i>

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
9. The Commissioner ³ or the Department of Consumer and Employment Protection	Consumer and Employment Protection

[Schedule 3 amended in Gazette 10 Jan 1986 p. 150; 12 Jan 2007 p. 46.]

Schedule 4

[Reg. 19(2)]

Specified descriptive terms for use in a loan contract

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
1. The amount financed expressed in accordance with Schedule 4 to the Act	Amount financed
2. The credit charge expressed in accordance with Schedule 5 to the Act	Credit charge
3. The annual percentage rate expressed in accordance with section 38 of the Act	Annual percentage rate
4. Amounts payable by the debtor to the credit provider in respect of —	
(a) insurance of mortgaged property (not being compulsory insurance;	Mortgaged property insurance
(b) insurance against loss of the security interest of a mortgagee by reason of any Act;	Title insurance
(c) insurance against sickness of, accidental injury to, or disability or death of, the debtor or debtors	Consumer credit insurance
(d) life insurance of the debtor or debtors;	Life insurance
(e) insurance against unemployment of the debtor or debtors;	Unemployment insurance
(f) insurance against loss of profits by the debtor or debtors;	Loss of profits insurance
(g) stamp duty payable in respect of or in relation to —	
(i) the loan contract;	Contract stamp duty
(ii) any mortgage relating to the loan contract entered into on or before the relevant date as defined in clause 2 of Schedule 4 to the Act; and	Mortgage stamp duty

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
(iii) the sum of paragraphs (i) and (ii); and	Total stamp duty
(h) fees payable to a legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the loan contract or for a mortgage relating to the loan contract entered into at or before the time of the making of the loan contract	Legal fees
5. The Act	<i>Credit Act 1984</i>
6. This Regulation	<i>Credit Regulations 1985</i>
7. The Commissioner ³ or the Department of Consumer and Employment Protection	Consumer and Employment Protection

[Schedule 4 amended in Gazette 10 Jan 1986 p. 150; 12 Jan 2007 p. 46.]

Credit Regulations 1985

Schedule 5 Specified descriptive terms for use in a notice under section 59 of the Act

Schedule 5

[Reg. 19(3)]

Specified descriptive terms for use in a notice under section 59 of the Act

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
1. The maximum amount referred to in section 59(1)(a) of the Act	Credit limit
2. The period referred to in section 59(1)(e) of the Act	Due date
3. The annual percentage rate in respect of the continuing credit contract	Annual percentage rate
4. The Act	<i>Credit Act 1984</i>
5. This Regulation	<i>Credit Regulations 1985</i>
6. The Commissioner ³ or the Department of Consumer and Employment Protection	Consumer and Employment Protection

[Schedule 5 amended in Gazette 10 Jan 1986 p. 150; 12 Jan 2007 p. 46.]

Schedule 6

[Reg. 19(4)]

Specified descriptive terms for use in a statement of account referred to in section 61 of the Act

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
1. The date of the last day of the billing cycle	Statement date
2. The amount owed by the debtor under the contract —	
(a) on the first day of the billing cycle; and	Opening balance
(b) on the last day of the billing cycle	Closing balance
3. Amounts payable by the debtor to the credit provider in respect of —	
(a) charges for installation of the goods;	Installation charges
(b) charges for maintenance of the goods;	Maintenance charges
(c) charges for delivery of the goods to the debtor;	Delivery charges
(d) insurance of mortgaged property (not being compulsory insurance);	Mortgaged property insurance
(e) insurance against loss of the security interest of a mortgagee by reason of any Act;	Title insurance
(f) insurance against sickness of, accidental injury to, or disability or death of, the debtor or debtors;	Consumer credit insurance
(g) life insurance of the debtor or debtors;	Life insurance
(h) insurance against unemployment of the debtor or debtors;	Unemployment insurance
(i) insurance against loss of profits by the debtor or debtors; and	Loss of profits insurance

Credit Regulations 1985**Schedule 6** Specified descriptive terms for use in a statement of account referred to in section 61 of the Act

Column 1	Column 2
Matters Described or Referred to	Descriptive Terms
(j) stamp duty payable in respect of or in relation to — (i) the continuing credit contract; (ii) any mortgage relating to the continuing credit contract entered into during the billing cycle; and (iii) the sum of paragraphs (i) and (ii).	Contract stamp duty Mortgage stamp duty Total stamp duty
4. The amount of the credit charge in respect of the billing cycle	Credit charge
5. The annual percentage rate in respect of the continuing credit contract	Annual percentage rate
6. The date by which a payment by the debtor is requested	Due date
7. The Act	<i>Credit Act 1984</i>
8. This Regulation	<i>Credit Regulations 1985</i>
9. The Commissioner ³ or the Department of Consumer and Employment Protection	Consumer and Employment Protection

[Schedule 6 amended in Gazette 10 Jan 1986 p. 150; 12 Jan 2007 p. 46.]

Schedule 7

[Reg. 24(1)(b)]

Print or type for use in documents under *Credit Act 1984*

Avante Garde	Claro Demi-Bold
Avante Garde Book	De Vinne
Avante Garde Medium Bold	De Vinne Roman
American Typewriter	De Vinne Roman Italic
American Typewriter Medium	De Vinne Bold
American Typewriter Bold	Dutch Roman
Baskerville	Gill Sans
Baskerville Roman	Gill Sans Medium
Baskerville Roman Italic	Gill Sans Medium Italic
Baskerville Roman Bold	Gill Sans Bold
Bembo	Gloucester Old Style
Bembo Roman	Gloucester Old Style Roman
Bembo Roman Italic	Gloucester Old Style Roman Italic
Bembo Bold	Gloucester Old Style Bold
Bodoni	Helvetica
Bodoni Roman	Helvetica Light
Bodoni Roman Italic	Helvetica Medium
Bodoni Bold	Helvetica Medium Italic
Century Old Style	Helvetica Bold
Century Old Style Roman	ITC Cheltenham Bold
Century Old Style Roman Italic	ITC Cheltenham Light
Century Old Style Bold	Karnak Intermediate
Century School Book	Karnak Intermediate Roman
Century School Book Roman	Karnak Intermediate Roman Italic
Century School Book Roman Italic	Karnak Intermediate Bold
Century School Book Bold	Megaron
Clarendon	Megaron Light
Clarendon Roman	Megaron Medium
Clarendon Roman Italic	Megaron Medium Italic
Clarendon Bold	Megaron Bold
Claro	Metro
Claro Light	Metro Italic
Claro Medium	Metro Bold
Claro Medium Italic	Musica

Musica Roman	Rockwell Bold
Musica Roman Italic	Rockwell Italic
Musica Bold	Souvenir
Old Style	Souvenir Light
Old Style Roman	Souvenir Light Italic
Old Style Roman Italic	Souvenir Bold
Old Style Bold	Souvenir Medium
Optima Roman	Swiss Roman
Optima Roman Italic	Times (or English)
Optima Bold	Times (or English) Roman
Plantin	Times (or English) Roman Italics
Plantin Roman	Times (or English) Bold
Plantin Roman Italic	Univers
Plantin Bold	Univers Light
Press Roman Bold	Univers Medium
Press Roman Medium	Univers Medium Italic
Record Gothic	Univers Bold
Rockwell Light	Zapf
Rockwell Medium	Zapf Medium

[Schedule 7 amended in Gazette 10 Jan 1986 p. 150; 10 Oct 1986 p. 3875; 8 Oct 1993 p. 5437; 24 Mar 1995 p. 1092.]

Schedule 8 — Prescribed offences and modified penalties

[r. 29]

[Heading inserted in Gazette 22 Sep 2006 p. 4100.]

Offences under <i>Credit Act 1984</i>	Modified penalty
s. 32(1) Providing offer for signature without prescribed notice	\$400
s. 32(2) Giving offer to provide credit without prescribed notice	\$400
s. 32(3) Failing to provide certified copy of offer to credit provider	\$200
s. 32(4) Failing to provide certified copy of offer to provide credit	\$200
s. 33(1) Failing to provide copy of accepted offer	\$400
s. 34(1) Failing to give prescribed statement to debtor under credit sale contract or loan contract	\$400
s. 43 Entering into a credit sales contract or loan contract that does not comply with Part III Division 1	\$200
s. 44(2) Entering into contract with minimum credit charge in excess of specified amount	\$400
s. 58 Failing to give prescribed statement to debtor under continuing credit contract	\$400
s. 59(1) Failing to give notice of terms to debtor under continuing credit contract	\$200
s. 75(3) Entering into agreement for debtor to pay unauthorised fees	\$400
s. 76(2) Entering into contract requiring debtor to pay unreasonable enforcement expenses	\$400
s. 77(2) Entering into agreement to remove, restrict or modify right to revoke offer	\$400

Credit Regulations 1985

Schedule 8 Prescribed offences and modified penalties

Offences under <i>Credit Act 1984</i>	Modified penalty
s. 130(2)(a) Failing to provide copy of insurance contract	\$200

[Schedule 8 inserted in Gazette 22 Sep 2006 p. 4100-1.]

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Notes

- ¹ This reprint is a compilation as at 8 February 2007 of the *Credit Regulations 1985* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Credit Regulations 1985</i>	8 Mar 1985 p. 876-900	31 Mar 1985 (see r. 2)
<i>Credit Amendment Regulations 1985</i>	29 Mar 1985 p. 1143	31 Mar 1985 (see r. 2)
<i>Credit Amendment Regulations (No. 2) 1985</i>	10 Jan 1986 p. 137-50	10 Jan 1986
<i>Credit Amendment Regulations 1986</i>	10 Oct 1986 p. 3874-5	10 Oct 1986
<i>Credit Amendment Regulations 1988</i>	5 Aug 1988 p. 2630	29 Aug 1988 (see r. 2)
<i>Credit Amendment Regulations (No. 2) 1988</i>	25 Nov 1988 p. 4761	25 Nov 1988
<i>Credit Amendment Regulations 1993</i>	8 Oct 1993 p. 5437	8 Oct 1993
<i>Credit Amendment Regulations 1995</i>	24 Mar 1995 p. 1092	24 Mar 1995
Reprint of the <i>Credit Regulations 1985</i> as at 28 Jul 2000 (includes amendments listed above)		
<i>Credit Amendment Regulations 2004</i>	30 Dec 2004 p. 6914	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Credit Amendment Regulations 2006</i>	22 Sep 2006 p. 4097-101	22 Sep 2006 (see r. 2(a))
<i>Credit Amendment Regulations (No. 3) 2006</i>	22 Dec 2006 p. 5803	1 Jan 2007 (see r. 2 and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Credit Amendment Regulations (No. 2) 2006</i>	12 Jan 2007 p. 45-6	12 Jan 2007
Reprint 2: The <i>Credit Regulations 1985</i> as at 9 Feb 2007 (includes amendments listed above)		

- ² Repealed by the *Fish Resources Management Act 1994*.

- ³ As at the time of this reprint the person designated as the Commissioner for the purposes of the Act is known as the Commissioner for Consumer Protection (see *Gazette* 18 August 2006 p. 3372).
- ⁴ Repealed by the *Financial Institutions (Western Australia) Act 1992*, which was repealed by the *Acts Amendment and Repeal (Financial Sector Reform) Act 1999*.

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
12-pitch	24(2)
13-pitch	24(2)
character	24(2)
Consumer and Employment Protection.....	3(1)
form.....	3(1)
monthly balances	8(2)(b)
monthly percentage rate	8(2)(a)
relevant date	14A(2), 27(2)
the Act.....	3(1)
the relevant subject-matter	20(2)