

Western Australia

Consumer Credit (Western Australia) Code Regulations

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Consumer Credit (Western Australia) Code Regulations

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Western Australia

Consumer Credit (Western Australia) Act 1996

**Consumer Credit (Western Australia) Code
Regulations**

Part 1 — Preliminary

1. Citation

This regulation may be cited as the *Consumer Credit Regulation 1995*^{1,2}.

2. Commencement

This regulation commences on the day the *Consumer Credit (Queensland) Act 1994*, section 10 commences².

3. Definition

In this regulation —

“**the Code**” means the Consumer Credit Code.

4. Forms

- (1) A reference in this regulation to a form of a particular number is a reference to a form of that number in the schedule.
- (2) The number of a form or a reference to the provision of the Code and this regulation to which the form relates need not appear on a document that is required to comply with the form.
- (3) The expression “credit provider”, “debtor”, “lessor” or “lessee” in a form may be replaced by the name of the credit provider, debtor, lessor or lessee or, if first explained, by another expression.
- (4) 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.
Consequential renumbering of items is permissible.

Note — Schedule 2, clause 11 of the Code makes provision with respect to forms. The clause provides, among other things, that strict compliance with a form is not necessary and substantial compliance is sufficient.

Part 2 — Matters prescribed for the purposes of Part 1 of the Code (Preliminary)

5A. Continued application of Part 11 of the Code and interpretation

- (1) This section 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 (“**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 11 of the Code applies in relation to the particular matter and the prescribed provision or provisions to the extent the context permits.

[Regulation 5A inserted in Gazette 13 Jun 2006 p. 2054-5.]

5. Exempt credit—maximum account charges

For the purposes of section 7(3) of the Code, the prescribed maximum charge is —

- (a) for the period of 12 months after the continuing credit contract is made — \$200; and
- (b) for any subsequent period of 12 months — \$125.

Note — Section 7(3) 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.

6. Additional exempt credit

The Code (except part 4, division 3 and part 5) does not apply to the provision of credit under a contract (other than a continuing credit contract) if—

- (a) the amount of credit does not at any time exceed \$50; and
- (b) there is no insurance financed under the contract; and
- (c) there is no mortgage or guarantee taken by the credit provider; and
- (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 7(10) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

6A. GIO Finance Limited’s No Interest Loan Scheme—exemption from Code

- (1) This section 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.

6B. Rental Purchase Plan—exemption from certain provisions of Code

The Code, other than sections 70 to 74, does not apply to 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.

r. 6A

6C. Partnership loans—exemption from certain provisions of Code

- (1) The Code, other than part 1, part 4, division 3, part 5, divisions 4 and 5 and part 7, does not apply to 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 it 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 section 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) For the purposes of this section —
 - (a) a partner of a firm includes a former partner of a firm and an employee or former employee of the firm; and
 - (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.

[Regulation 6C amended in Gazette 13 Jun 2006 p. 2055.]

6D. Student loans—exemption from certain provisions of Code

- (1) The Code, other than sections 56(1) and 70 to 74,* does not apply to 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) only applies 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 including any fees or charges payable and the interest rate applicable and may include other information; and
 - (b) a copy of the terms and conditions of the contract for the provision of credit.
- (3) In this section —
- “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 of the *Higher Education Funding Act 1988* (Cwlth), section 4.

* The Code, sections 56 (Increase in guarantor’s liabilities), 70 (Court may reopen unjust transactions), 71 (Orders on reopening of transactions), 72 (Court may review unconscionable interest and other charges), 73 (Time limit) and 74 (Joinder of parties)

6E. Loans for conservation of heritage items—exemption from Code

The Code does not apply to the provision of credit under any of the following provisions —

- (a) the *Heritage Act 1977* (NSW), section 106;
- (b) the *Heritage Act 1993* (SA), section 12, 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;
- (c) the *Heritage Act 1995* (Vic), section 140.

r. 6F

6F. Authorised deposit-taking institutions—exemption from Code

- (1) The Code does not apply to the provision of credit by an authorised deposit-taking institution limited by the contract to a total period not exceeding 62 days.
- (2) In this section —
“**authorised deposit-taking institution**” has the meaning given under the *Banking Act 1959* (Cwlth), section 5(1).

6G. Estate administrators — exemption from certain provisions of Code

- (1) The Code, other than sections 70 to 72, does not apply to the provision of credit to a person’s estate, whether or not the person is deceased, by a public official or a public body authorised by any law or court to administer the estate.
- (2) In this section —
“**estate**” includes trust property.
“**public body**” includes a corporation owned or controlled by the State or an authority of the State.

6H. Credit under *Aged Care Act 1997* (Cwlth) — exemption from certain provisions of Code

The Code, other than sections 66 to 68 and 70 to 74, does not apply to the provision of credit by an approved provider, within the meaning of the *Aged Care Act 1997* (Cwlth), if the provision of credit is made and regulated under that Act.

6I. Firefighter’s Benefit Fund of WA Incorporated

The Code, other than part 2, division 3, part 4, division 3 and part 5, divisions 1 and 2, does not apply to the provision of credit to a person by the Firefighter’s Benefit Fund of Western Australia Incorporated (the “**fund**”) if —

- (a) the person is a member of the fund;

- (b) the application form by which the person applies for that credit states an annual percentage rate for the credit; and
- (c) the credit contract under which the credit is provided —
 - (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.

[Regulation 6I inserted in Gazette 13 Jun 2006 p. 2055.]

7. Mortgages—exemptions from Code

- (1) The Code does not apply to the following mortgages —
 - (a) any 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.

However, sections 14 and 15 of the Code (relating to disclosures) apply in respect of a mortgage referred to in paragraph (a).

- (2) Section 83 of the Code does not apply to any mortgage relating to goods that are lawfully in the possession of the credit provider.

Note — This exclusion is made under section 8(3) of the Code.

8. 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 exclusion is made under section 9(3) of the Code.

9. Deemed mortgages for goods lease with option to purchase

For the purposes of section 10(3)(f) of the Code, the relevant terms and conditions of the mortgage are those set out in form 1.

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Note — Section 10 of the Code deems 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 section 6(1) of the Code, a mortgage containing the terms and conditions set out in the regulations is taken by section 10(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.

10. Declaration of purposes for which credit provided

(1) For the purposes of section 11 of the Code, the form of the declaration is as follows —

‘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 or investment purposes (or for both purposes).’

(2) The declaration is to contain (immediately below the above words) a warning in the following form—

IMPORTANT

You should **not** sign this declaration unless this loan is wholly or predominantly for business or investment purposes.

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

(3) The declaration is to 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 credit provider.

Note — The Code applies only to credit provided or intended to be provided for personal, domestic or household purposes. Section 11(2) of the Code provides that credit is conclusively presumed not to be provided for those 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). The declaration is not effective unless it is substantially in the form required by the regulations.

**Part 3 — Matters prescribed for the purposes of
Part 2 of the Code (Credit contracts)**

11. Statement about debtor's statutory rights and obligations

- (1) For the purposes of section 14(1)(b) of the Code, the information statement is to be a written statement in form 2.
- (2) The information statement may be in the form of a separate document or a part of the credit contract document.

Note — Section 14(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. Because of section 4(4) of this regulation, the information need not contain any matter set out in form 2 if it is not relevant to the credit contract concerned (for example, information about mortgages is not required for an unsecured loan).

12. Comparison rate

- (1) This section applies if —
 - (a) a credit provider, before entering into a credit contract, informs the debtor of the comparison rate pursuant to section 14(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 pursuant to section 140(3) of the Code.

(1a) Subsections (1)(b), (9) and (11) have no effect while part 8A is in force.

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

- (3) The comparison rate is given by the following formula —

$$i = n \times 4 \times 100 \%$$

r. 12

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 —
- (i) if repayments are to be made weekly or fortnightly—n is to be 52.18 or 26.09, respectively; and
 - (ii) 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 mentioned below.

“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—

- “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.
- “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.
- “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).
- “R_j”** is the repayment to be made at time j.

“ 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).

- (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. For 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 158 to 160 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 section 14(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.

If such a requirement is not made by the debtor, the credit provider may determine the matter.

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(Credit contracts)

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- (9) In the case of a comparison rate under section 140(3) of the Code, the amount of credit and term are to be typical of the type of credit contract offered in the advertisement. A number of comparison rates may be included in the advertisement for different credit contracts so long as the amount of credit and term applicable to each such rate are clearly stated.
- (10) At the time that the debtor is informed of the comparison rate under section 14(3) of the Code, the debtor must be given a warning by the credit provider that is in writing in the following form—
- ‘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.
- (11) An advertisement that contains a comparison rate under section 140(3) of the Code must include a warning that the comparison rate is accurate only for the example given.
- (12) A warning under this section must be given immediately after the comparison rate is given.

Note — Section 14(3) of the Code provides that the credit provider may inform the debtor of the comparison rate before entering into the contract. Section 140(3) 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.

13. Pre-contractual statement

- (1) For the purposes of section 14(4) of the Code, the following financial information under section 15 of the Code, which is to be contained in the precontractual statement, is prescribed (the “**relevant financial information**”) —
- (a) section 15(B) (Amount of credit)—the amount of credit agreed to be provided (if ascertainable) or (if not

- ascertainable) the maximum amount of credit agreed to be provided, or the credit limit under the contract, (if any);
- (b) section 15(C) (Annual percentage rate or rates)—the information referred to in section 15(C), except paragraph (c)(iii);
 - (c) section 15(D) (Calculation of interest charges)—the maximum duration of any interest free period under the credit contract;
 - (d) section 15(E) (Total amount of interest charges payable)—the information referred to in section 15(E);
 - (e) section 15(F) (Repayments)—the information referred to in section 15(F);
 - (f) section 15(G) (Credit fees and charges)—the information referred to in section 15(G)(a) and (b), but only in respect of —
 - (i) retained credit fees and charges (that is, 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 separately from the remainder of the information under section 15 of the Code that is to be set out in the precontractual statement. The relevant financial information is to be set out in tabular form, in either portrait or landscape format (the “**financial table**”).
- (3) Additional information may be included in the financial table, but only in the following circumstances —
- (a) any information referred to in section 15(B), (C), (D), (E), (F) or (G) of the Code that is not relevant financial information may be included with the relevant financial information;

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Part 3 Matters prescribed for the purposes of Part 2 of the Code
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- (b) any other information referred to in section 15(A) or (H) to (O) 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 1 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 on the first page of the precontractual statement (excluding any cover page) and, if necessary, on the immediately succeeding pages of the statement. If the precontractual statement consists of more than 1 document, the financial table need not be repeated. If the precontractual statement is not a separate document, the financial table is to be set out on the first, and if necessary any immediately succeeding, pages of the proposed contract document.
- (6) If any of the relevant financial information can change under the credit contract because of a unilateral change by the credit provider, 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. A single statement may be made in respect of 2 or more items of information subject to change.
- (7) Any expression may be used for the purposes of the relevant financial information if the expression is defined elsewhere in the precontractual statement.
- (8) The relevant date of disclosure of the information in the financial table may be set out in the financial table.
- (9) This section 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 15 of the Code that is to be set out in the precontractual statement.

Note — Section 14(1)(a) of the Code requires a credit provider to give a prospective debtor a precontractual statement setting out matters required by section 15

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 section 14(4) of the Code, the regulations may prescribe the form in which any of that financial information is to be contained in the precontractual statement.

14. Additional disclosures about insurance financed by contract

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

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

15. Additional disclosures about credit contracts to be signed by debtor

- (1) For the purposes of section 15(O) of the Code, the information and warnings set out in form 3A or 3B (whichever is relevant to the particular case) are prescribed, but only if the credit contract document is to be signed by the debtor.
- (2) The relevant form is —
 - (a) form 3A if the document signed by the debtor constitutes an offer; or
 - (b) form 3B if the document signed by the debtor constitutes the acceptance of an offer by the credit provider.
- (3) The information and warnings referred to in subsection (1) are to comply with the following requirements—
 - (a) they are to be in the relevant form (including in the form of a box);
 - (b) they are to be set out immediately above (and on the same page as) the place where the debtor (or at least 1 of the debtors) is to sign the contract document;

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- (c) if the debtors are to sign the contract document on separate pages—they are to be so set out on each such page.

Note — Section 15 of the Code sets out the matters to be included in the credit contract document. Section 15(O) requires the contract document to contain any additional information or warnings required by the regulations.

Section 16 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.

16. Deduction of amount for interest charges

Section 23(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 — Section 23(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. Section 23(2) 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.

17. Calculation of unpaid daily balances

- (1) This section applies to the calculation of average unpaid daily balances when interest charges under a credit contract are determined under section 26(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.

- (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. In that event, 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 — Section 26(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 25 of the Code). However, section 26(2) 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 12 (for a month), by 4 (for a quarter) or 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 any such case.

18. Early debit or payment of interest charges

Section 27(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 — Section 27(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. Section 27(3) of the Code authorises the making of regulations that exempt from that prohibition the first payment of interest charges.

19. When statement of account not required

For the purposes of section 31(3)(b) of the Code, the amount outstanding is fixed at \$10.

Note — Section 31 of the Code requires the credit provider to give the debtor periodic statements of account. Section 31(3) sets out the circumstances in which a statement is not required to be given. Section 31(3)(b) provides that a statement is not required if no amount has been debited or credited to the

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Part 3 Matters prescribed for the purposes of Part 2 of the Code
(Credit contracts)

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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.

**Part 4 — Matters prescribed for the purposes of
Part 3 of the Code (Related mortgages and
guarantees)**

**19A. Mortgage arising from certain home ownership schemes —
exemption from section 46(1) of the Code**

- (1) This section applies to —
- (a) the home ownership scheme operated by the Mt Newman Joint Venturers, being BHP Billiton Minerals Pty Ltd ACN 008 694 782, Mitsui-Itochu Iron Pty Ltd ACN 088 702 761 and 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 BHP Billiton Minerals Pty Ltd ACN 008 694 782, Mitsui Iron Ore Corporation Pty Ltd ACN 050 157 456 and CI Minerals Australia Pty Ltd ACN 009 256 259;

that assist employees, whether alone or jointly with 1 or more other persons, to purchase land owned respectively by the Mt Newman Joint Venturers and the Mount Goldsworthy Mining Associates Joint Venturers.

- (2) Section 46(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 1 or more other persons, under a home ownership scheme to which this section applies.
- (3) In this section —
- “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—an employee of that corporation or an employee of a corporation that is a related body

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(Related mortgages and guarantees)

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corporate within the meaning of the Corporations Act 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 46 of the Code provides that a mortgage cannot be created over employees' remuneration or employment benefits or benefits under a superannuation scheme unless the regulations permit it to do so.

20. Form of guarantees

- (1) For the purposes of section 50 of the Code, a guarantee must contain a warning in form 4.
- (2) The warning is to comply with the following requirements —
- (a) the warning is to be in the form of a box as indicated in form 4;
 - (b) the warning is to be set out immediately above (and on the same page as) the place where the guarantor (or at least one of the guarantors) is to sign the guarantee document;
 - (c) if the guarantors are to sign the guarantee document on separate pages—the warning is to be so set out on each such page.

Note — Section 50 of the Code requires a guarantee to be in writing signed by the guarantor. Section 50(3) provides that the regulations may make provision for or with respect to the content of guarantees and the way they are expressed.

21. Explanation about guarantor's rights and obligations

- (1) For the purposes of section 51(1)(b) of the Code, the information document is to be a written document in —
- (a) before 1 December 1998—form 5 or 5A; or

(b) from 1 December 1998—form 5A.

- (2) The information document may be in the form of a separate document or a part of the guarantee document.

Note — Section 51(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.

Part 5 — Matters prescribed for the purposes of Part 4 of the Code (Changes to obligations under credit contracts, mortgages and guarantees)

22. Information about increases in the amount of credit

For the purposes of section 65(3) of the Code, such 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 referred to in paragraph (c) is to be paid and the amounts payable to them;
- (e) the total of the amounts referred to 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 the number of repayments yet to be made, the amount of each of those repayments and the total amount of those repayments yet to be paid;
- (i) the repayment details once the agreement is made, being the number of repayments yet to be made once the agreement is made, the amount of each of those repayments, the total amount of those repayments and details of any changes in the times or frequency of repayment;

- (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 referred to in section 15(M) of the Code;
- (k) the proposed increase in the term of the contract;
- (l) the proposed new expiry date for the contract.

Note — Section 65(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. Section 65(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 subsection (1), the matter in subsection (1)(h) and (i) relating to the total amount of repayments need only be included in the written notice given under section 65(3) of the Code if the contract concerned would, on the assumptions under sections 158 and 160 of the Code, be paid out within 7 years of the date on which credit is first provided under the contract.

22A. Application of sections 66 to 69 of the Code

- (1) For the purposes of section 66(3) of the Code, sections 66 to 69 of the Code do not apply to a credit contract under which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for new dwellings in New South Wales.
- (2) In this section —
“average loan size for new dwellings in New South Wales”
means the average loan size for the purchase of new dwellings in New South Wales as set out in the Table of Housing Finance Commitments in the publication entitled *Housing Finance, Australia*, as published from time to time by the Australian Bureau of Statistics.

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Part 5 Matters prescribed for the purposes of Part 4 of the Code
(Changes to obligations under credit contracts, mortgages and
guarantees)

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[Regulation 22A inserted in Gazette 31 Dec 2004 p. 7133.]

**Part 6 — Matters prescribed for the purposes of
Part 5 of the Code (Ending and enforcing credit
contracts, mortgages and guarantees)**

23. Information after surrender of goods

For the purposes of section 78(3) of the Code, the information required to be contained in the notice is to include the information set out in form 6.

Note — Section 78 of the Code enables a debtor of goods sold by instalments or mortgagor to surrender the goods. Section 78(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.

23A. Application of Part 5 Division 3 of the Code

(1) For the purposes of section 86(2) of the Code, Part 5 Division 3 of the Code does not apply to a credit contract in respect of which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the average loan size for new dwellings in New South Wales.

(2) In this section —

“average loan size for new dwellings in New South Wales”

means the average loan size for the purchase of new dwellings in New South Wales as set out in the Table of Housing Finance Commitments in the publication entitled *Housing Finance, Australia*, as published from time to time by the Australian Bureau of Statistics.

[Regulation 23A inserted in Gazette 31 Dec 2004 p. 7133-4.]

24. Consent to enter premises

For the purposes of section 91 of the Code, consent by the occupier of premises to entry to the premises is taken to be given only if the following provisions have been complied with—

Consumer Credit (Western Australia) Code Regulations

Part 6 Matters prescribed for the purposes of Part 5 of the Code
(Ending and enforcing credit contracts, mortgages and
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- (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 requested between the hours of 8 a.m. to 8 p.m. on any day other than a Sunday or public holiday;
- (c) the consent in writing must be in form 7 and signed by the occupier;
- (d) the written 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 91 of the Code).

Note — Section 91(1) of the Code provides that a credit provider, or an agent of the credit provider, must not enter any part of premises used for residential purposes for the purpose of taking possession of mortgaged goods under a goods mortgage unless the court has authorised entry or the occupier of the premises (after being informed in writing of the provisions of section 91) consented in writing to the entry. Under section 91(2) of the Code, the regulations may provide procedures for the purposes of section 91 and set out circumstances in which consent is or is not taken to have been given.

25. Statement about mortgagor's rights and obligations

For the purposes of section 94(1)(c) of the Code, the information statement is to be a written statement in form 8.

Note — Section 94(1) of the Code requires a credit provider who has repossessed goods to give the mortgagor certain information, including an information statement in the form required by the regulations of the mortgagor's rights and obligations.

26. Information about proceeds of sale of mortgaged goods

For the purposes of section 96(3) of the Code, the information required to be given to the mortgagor includes an itemised account of each deduction made from the gross amount realised on the sale to arrive at the net proceeds of sale.

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Matters prescribed for the purposes of Part 5 of the Code
(Ending and enforcing credit contracts, mortgages and
guarantees)

Part 6

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Note — Section 96(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 — Matters prescribed for the purposes of
Part 7 of the Code (related sale contracts)**

27. Rate of interest on damages

For the purposes of section 122(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 — Section 122(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.

28. Informing debtor of rights

For the purposes of section 126(2) of the Code, the information given by the credit provider to the debtor is to be—

- (a) a written statement in form 9; and
- (b) given to the debtor within 21 days of the termination of the tied loan contract or the tied continuing credit contract.

Note — Section 126(1) of the Code provides for the termination of a linked maintenance services contract if a credit contract is terminated. Section 126(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 126.

29. Rebate of consideration

For the purposes of section 126(3) of the Code, the manner of calculating the proportionate rebate of consideration is by applying the following formula —

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

where—

“**R**” is the amount of rebate of consideration.

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

“**S**” is the number of whole months in the unexpired portion of 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 — Section 126(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. Section 126(3) of the Code provides that the regulations may prescribe the manner of calculating that proportionate rebate of consideration.

Part 8 — Matters prescribed for the purposes of Part 8 of the Code (Related insurance contracts)

30. Particulars of insurance entered into by credit provider

- (1) For the purposes of section 136(2) of the Code, the credit provider is to give the debtor particulars of 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) The written notice of any of the particulars referred to in subsection (2) may be given by the provision of a copy of the policy containing those particulars.

Note — Section 136(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.

31. Proportionate rebate of consumer credit insurance premium

For the purposes of section 138(4) of the Code, the manner of calculating the proportionate rebate of premium is by applying the following formula —

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

where—

“Y” is the amount of the rebate of premium.

“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.

32. Notice of right to cancel mortgaged property insurance

For the purposes of section 139(2) of the Code, the information given to the debtor by the credit provider is to be a written statement in form 10.

Note — Section 139 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. Section 139(2) provides that a credit provider must inform the debtor, in accordance with the regulations, of the debtor's rights under section 139. The information is to be given on the termination of the credit contract.

33. Proportionate rebate of premium for insurance over mortgaged property

For the purposes of section 139 of the Code, the manner of calculating the proportionate rebate of premium is to calculate the sum of the following amounts —

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

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Part 8 Matters prescribed for the purposes of Part 8 of the Code
(Related insurance contracts)

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Note — Section 139(3) of the Code provides that the regulations may prescribe the manner of calculating the proportionate rebate of premium for the purposes of section 139.

Part 8A — Matters prescribed for the purposes of Part 9A of the Code (Comparison rates)

33A. Relevant comparison rate where annual percentage rate stated

For the purposes of section 146F(2) of the Code, the designated amounts and terms for which a comparison rate is to be calculated are as follows —

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

33B. Information about whether comparison rate relates to secured loan

For the purposes of section 146G(2) of the Code, the following amounts 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.

33C. Warnings about comparison rate

- (1) For the purposes of section 146H(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 another electronic display medium.

Consumer Credit (Western Australia) Code Regulations

Part 8A Matters prescribed for the purposes of Part 9A of the Code
(Comparison rates)

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Note: For a credit advertisement on an electronic display medium, see section 146I(3) of the Code for the form in which the warning must be given.

- (2) For the purposes of section 146O(1) of the Code, the warning about the accuracy of a comparison rate in a comparison rate schedule must include the long statement.
- (3) A 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.
- (4) In this section —

“long statement” means the following statement —

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;

“short statement” means the following statement —

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.

[Regulation 33C inserted in Gazette 13 Jun 2006 p. 2051-2.]

33D. Relevant comparison rate schedules

- (1) For the purposes of section 146M(2) of the Code, the designated amounts of credit and terms for which a comparison rate is required to be listed in a comparison rate schedule are as follows —
 - (a) \$250 for a term of 2 weeks;
 - (b) \$600 for a term of 8 weeks;
 - (c) \$1 000 for a term of 6 months;

- (d) \$1 500 for a term of 1 year;
 - (e) \$2 500 for a term of 2 years;
 - (f) \$5 000 for a term of 2 years;
 - (g) \$10 000 for a term of 3 years;
 - (h) \$15 000 for a term of 4 years;
 - (i) \$20 000 for a term of 4 years;
 - (j) \$25 000 for a term of 5 years;
 - (k) \$30 000 for a term of 5 years;
 - (l) \$50 000 for a term of 7 years;
 - (m) \$70 000 for a term of 25 years;
 - (n) \$100 000 for a term of 25 years;
 - (o) \$130 000 for a term of 25 years;
 - (p) \$150 000 for a term of 25 years;
 - (q) \$200 000 for a term of 25 years;
 - (r) \$225 000 for a term of 25 years;
 - (s) \$250 000 for a term of 25 years;
 - (t) \$275 000 for a term of 30 years;
 - (u) \$300 000 for a term of 30 years.
- (2) For the purposes of section 146M(2) of the Code, if a credit provider generally provides credit for an amount listed in subsection (1)(m) to (u) for a term of less than 25 years for purposes other than for a housing loan, the term prescribed for the amount is the term for which credit of that amount is provided by the credit provider.
- (3) If the annual percentage rate applicable to an amount of credit provided by a credit provider is determined by a credit provider according to the risk profile of the debtor, a comparison rate schedule in which the amount is included must contain 5 comparison rates for that amount.

r. 33E

- (4) The comparison rates for an amount of credit mentioned in subsection (3) are to be calculated on the basis of repayments with an annual percentage rate that is the average annual percentage rate charged by the credit provider for the amount rounded to the nearest whole number and the 2 whole number rates above and below that rate.

[Regulation 33D amended in Gazette 13 Jun 2006 p. 2052-3.]

33E. Information about whether comparison rate relates to secured loan

- (1) For the purposes of section 146M(4) of the Code, amounts of not less than \$10 000 and not more than \$30 000 are prescribed as amounts for which a statement must be made as to whether a comparison rate in a comparison rate schedule is for a secured loan or an unsecured loan.
- (2) A comparison rate schedule may, but is not required to, contain statements as to whether a comparison rate in a comparison rate schedule is for a secured loan or unsecured loan for amounts other than the amounts for which such a statement is required to be made by subsection (1).

[Regulation 33E amended in Gazette 13 Jun 2006 p. 2053.]

33F. Calculation of comparison rates

- (1) For the purposes of this part, comparison rates are to be calculated in accordance with this section.
- (2) The comparison rate must be calculated as a nominal rate per annum, together with the compounding frequency, in accordance with this section.
- (3) The comparison rate is given by the following formula —

$$i = n \times r \times 100 \%$$

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—

- (i) if repayments are to be made weekly or fortnightly—
n is to be 52.18 or 26.09, respectively; and
- (ii) 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 mentioned below.

“**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—

“**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.

“**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.

“**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).

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

“**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

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(whether or not the credit fee or charge is payable if the credit is not provided).

- (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. For 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 158 to 160 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.

33G. Exemption of certain premises

- (1) A credit provider is exempt from section 146K(1) of the Code in relation to premises of the credit provider if the use of the premises relating to the provision of credit is limited to 1 or more of the following —
 - (a) the display or provision of credit advertisements that do not, or information that does not, contain an annual percentage rate;
 - (b) the distribution, or collection, or both, of credit applications.
- (2) A credit provider is exempt from section 146K(5) of the Code in relation to applications for credit sent or given by the credit provider from or at premises referred to in subsection (1).

[Regulation 33G amended in Gazette 13 Jun 2006 p. 2053.]

33H. Exemptions in relation to comparison rate schedules

- (1) A finance broker is exempt from section 146L of the Code in relation to any consumer credit product if the finance broker does not deal with that product.
- (2) A supplier of goods or services is exempt from section 146L of the Code in relation to any consumer credit product of a linked credit provider of the supplier that is not available for the purposes of providing credit relating to the supply of the goods or services.

33HA. Matters that may be included in comparison rate schedules

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

[Regulation 33HA inserted in Gazette 13 Jun 2006 p. 2053.]

33I. Expiry of part

This part expires on the expiry of part 9A of the Code.

**Part 9 — Matters prescribed for the purposes of
Part 10 of the Code (Consumer leases)**

34. Declaration about purpose of leases

- (1) For the purposes of section 150 of the Code, the form of the declaration is as follows —

‘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 is to contain (immediately below the above words) a warning in the following form —

IMPORTANT

You should **not** sign this declaration unless the goods are hired wholly or predominantly for business purposes.

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

- (3) The declaration is to 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. Section 150(2) of the Code provides that goods hired under a consumer lease are conclusively 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.

35. Explanation about rights and obligations of consumer lessees

- (1) For the purposes of section 153 of the Code, the information statement is to be a written statement in form 11.
- (2) The information statement may be in the form of a separate document or a part of the consumer lease document.

Note — Section 153 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 explanation must be given within 14 days after entering into the lease.

**Part 10 — Matters prescribed for the purposes of
Part 11 of the Code (Miscellaneous)**

36. Tolerances relating to disclosures

- (1) For the purposes of section 158(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 the purposes of section 158(1)(a) of the Code, information about any amount payable that 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 also within permissible tolerances.
- (3) For the purposes of this section and section 37 of this regulation —
 - (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 158 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 the purposes of section 158(1)(a) of the Code, information disclosed about any —
 - (a) interest charges or repayments payable; or

- (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, any such overstatement does not affect the amounts payable under the credit contract and accordingly is not within permissible tolerances for the purposes of section 159 of the Code (unless it is within permissible tolerances because of section 37 of this regulation).

37. Tolerances relating to amounts payable etc.

- (1) For the purposes of section 159 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 this jurisdiction 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 the purposes of section 159 of the Code, any 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 also within permissible tolerances.

Note — Section 159 of the Code provides that all amounts charged, payable or calculated under or in connection with a credit contract, mortgage, guarantee

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or consumer lease comply with the Code if they are within tolerances allowed by the regulations.

38. 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 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 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 on the date —
 - (a) nominated for that purpose in the pre-contractual statement given under section 14 of the Code; or
 - (b) if no date is so nominated—on the relevant date of disclosure set out in the financial statement as referred to in section 13(8) of this regulation; or
 - (c) if no date is so set out—the date on which the statement is given to the debtor.
- (3) Subsection (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.

38A. 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.

- (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) any such 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.

39. Requirements for print or type

For the purposes of section 162(1)(b) of the Code, print or type must be not less than 10 point.

Note — Section 162(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.

40. Address for notices

- (1) For the purposes of section 171(4) or (6) of the Code, a nomination is to be in the following form —
- (a) the nomination is to contain the words ‘I/We nominate.....[full name of person nominated] to receive notices and other documents under the Consumer Credit Code on behalf of me/all of us;
 - (b) the nomination is to contain a prominent statement that each debtor/mortgagor/guarantor is entitled to receive a copy of any notice or other document under the Code and that by signing the form they are giving up the right to be provided with information direct from the credit provider;

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- (c) the nomination is to contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that they wish to cancel their nomination.
- (2) For the purposes of section 171(5) of the Code, a consent is to be in the following form —
- (a) the consent is to contain the words ‘We consent to notices and other documents under the Consumer Credit Code to us being sent jointly to us at.....[address for service];
 - (b) the consent is to contain a prominent statement that each debtor/mortgagor/guarantor is entitled to receive a copy of any notice or other document under the Code and that by signing the form they are giving up the right to be provided with information separately from the credit provider;
 - (c) the consent is to contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that they wish to cancel their consent.

Part 11 — Savings and transitional provisions

Note — The provisions of this part are authorised by the *Consumer Credit (Queensland) Act 1994*, section 11. Other savings and transitional provisions applicable in particular jurisdictions are contained in the legislation of participating States and Territories that adopt the Code.

Division 1 — General

40A. Transitional provisions

This part is made pursuant to section 11 of the *Consumer Credit (Queensland) Act 1994* and has effect despite any provision of the Code.

41. Definitions

In this part —

“pre-Code continuing credit contract” means a pre-Code credit contract that is a continuing credit contract.

“pre-Code credit contract” means a contract for the provision of credit of a kind to which the Code applies —

- (a) made before the commencement of the Code; or
- (b) made after the commencement of the Code if the offer by the credit provider or debtor to enter into the contract was made before the commencement of the Code.

“the commencement of the Code” means—

- (a) the day appointed under the *Consumer Credit (Queensland) Act 1994*, section 2 for the commencement of the Code; or
- (b) if different days are so appointed for the commencement of different provisions of the Code— the day so appointed for the commencement of the relevant provision of the Code.

Division 2 — Savings and transitional provisions generally

42. Application of Code—pre-Code contracts other than continuing credit contracts

- (1) The Code does not apply to the provision of credit under a pre-Code contract (other than a continuing credit contract) or to the contract and related matters.
- (2) To avoid doubt, this section has effect even though credit is provided after the commencement of the Code.
- (3) This section is subject to section 52 of this regulation.

43. Application of Code—pre-Code continuing credit contracts

- (1) The Code applies to the provision of credit under a pre-Code continuing credit contract (and to the contract and related matters) on and from the deferred commencement date for the contract.
- (2) The deferred commencement date for such a contract is —
 - (a) the date of the commencement of the first complete statement period (referred to in section 32(A) of the Code) after the commencement of the Code; or
 - (b) the date that is 3 months after the commencement of the Code or, if the contract is made after the commencement of the Code, 3 months after the contract is made;

whichever date first occurs.

- (3) However —
 - (a) if the debtor's debt under the contract has been written off—the deferred commencement date is the date that is 30 days after any amount is credited or debited to the debtor's account; or
 - (b) if the debtor is in default under the contract and the credit provider has begun enforcement proceedings—the deferred commencement date is the date that is 30 days

- after the default is remedied or the enforcement proceedings are withdrawn (whichever first occurs); or
- (c) if the debtor is in default under the contract for more than 90 days and has been notified by the credit provider that no further credit will be provided under the contract—the deferred commencement date is the date that is 30 days after the credit provider agrees to provide further credit under the contract.
- (4) The credit provider may, by written notice to the debtor under a pre-Code continuing credit contract, fix as the deferred commencement date for the contract a date that is earlier than the date otherwise fixed by subsection (2) and (3), and the notice has effect accordingly.
 - (5) Even though the Code commences to apply to a pre-Code continuing credit contract on the deferred commencement date for the contract, the Code does not apply to anything done or omitted to be done in respect of the contract before that deferred commencement date.

44. Application of Code—mortgages and guarantees

- (1) The Code applies to a mortgage or guarantee made before the commencement of the Code to the extent that it secures obligations under a credit contract, or related guarantee, to which the Code applies or to the extent that it guarantees obligations under a credit contract to which the Code applies.
- (2) However —
 - (a) part 3 of the Code (except sections 54(2) and 56) does not apply to such a mortgage or guarantee; and
 - (b) part 5, division 2 of the Code does not apply to any enforcement action under such a mortgage or guarantee that was commenced before the Code commences to apply to the credit contract or related guarantee concerned.

- (3) The remainder of the Code applies only to anything done or omitted to be done in respect of such a mortgage or guarantee after the Code commences to apply to the credit contract or related guarantee concerned.

45. Application of Code—goods leases with option to purchase

Section 10 of the Code does not apply to a contract for the hire of goods —

- (a) made before the commencement of the Code; or
- (b) made after the commencement of the Code if the offer by the hirer or other party to enter into the contract was made before the commencement of the Code.

46. Application of Code—purpose for which credit is provided

In the application of section 6(1)(b) of the Code to a pre-Code continuing credit contract (relating to the purposes for which credit is provided or intended to be provided), the relevant date for determining that purpose is the date when the Code commences instead of the date when the contract is entered into.

47. Presumptions relating to application of Code to pre-Code continuing credit contracts

- (1) The provisions of section 11(2) to (4) of the Code apply to a declaration relating to a pre-Code continuing credit contract.
- (2) For that purpose —
 - (a) the declaration is to be made in respect of the application of credit that is to be provided after the declaration is made; and
 - (b) appropriate changes may be made to the form of declaration prescribed under section 11(4) of the Code.
- (3) A declaration relating to a pre-Code continuing credit contract may, despite anything to the contrary in those provisions, be made after the contract was entered into and either before or after the commencement of the Code. However, if the

declaration is made after the Code commences to apply to the credit contract, the declaration does not apply to or in respect of credit provided before the declaration is made.

48. Disclosures to debtors under pre-Code continuing credit contracts

- (1) The credit provider under a pre-Code continuing credit contract must —
 - (a) not later than 3 months after the commencement of the Code (and either before or after that commencement); or
 - (b) if the contract is made after that commencement—not later than 3 months after the contract is made;

give the debtor the statements required by section 14 of the Code (Pre-contractual disclosure) to be given in the case of a credit contract to which that section applies.

Maximum penalty — 50 penalty units.

- (2) Such a statement need not contain any information or warning that is only relevant to action to be taken before or at the time of entering the contract nor any information or warning that has ceased to be relevant. In particular, such a statement need not be given about any amount that became due for payment before the statement is given.
- (3) However, for the purposes only of a statement of the information referred to in section 15(L)(b) of the Code, the relevant period of 3 months in subsection (1) is increased to 15 months.
- (4) The requirements of this section may be complied with by the issue of a new contract document in which the required statements under this section are included.
- (5) The information required by this section need not be set out in the form and manner required by section 13 of this regulation.

- (6) Part 6 of the Code does not apply to a requirement imposed by this section.

49. Special transitional provision with respect to pre-determined credit charge

Sections 26 and 27 of the Code do not prohibit the imposition of credit charges under a credit contract (other than a continuing credit contract) that are determined at the date the contract is entered into if —

- (a) the contract is entered into within 12 months after the commencement of the Code; and
- (b) the contract provides that at the end of the contract a refund is to be made to the debtor of the amount (if any) by which the amount of interest charges that has been paid exceeds the amount of interest charges that would have been payable if the contract complied with sections 26 and 27 of the Code.

50. Special transitional provision with respect to early payment of interest

- (1) This section applies only to a credit contract —
 - (a) that is part of a securitised program; and
 - (b) that is entered into within 12 months after the commencement of the Code.
- (2) Section 27 of the Code does not prohibit a requirement for payment of or the debit of an interest charge before the end of the day to which the interest charge applies if —
 - (a) it is permitted under the credit contract; and
 - (b) that payment is not demanded or debited more than 21 days in advance of the end of the day to which the interest charge applies.
- (3) In this section —
“**securitised program**” means a program —

- (a) involving the funding, or proposed funding, of credit that has been or is to be provided by a credit provider by the issue of instruments or entitlements to investors; and
- (b) under which payments to investors in respect of those instruments or entitlements are principally derived, directly or indirectly, from repayments in respect of credit so provided.

51. First statement of opening balance for pre-Code continuing credit contracts

Section 33 of the Code does not apply to the first statement of account given under the Code for a pre-Code continuing credit contract.

52. Variation of existing pre-Code non-continuing credit contracts to increase credit

Section 65(3) of the Code applies to a pre-Code credit contract that is not a continuing credit contract, despite section 42 of this regulation.

53. Variation of existing contracts imposing monetary liabilities prohibited by Code

- (1) If a pre-Code continuing credit contract to which the Code applies imposes a monetary liability prohibited by the Code, the credit provider may, by notice to the debtor, unilaterally change the contract so that it does not impose such a liability.
- (2) Any such change must not increase the obligations of the debtor under the contract.
- (3) Any such change may be made to take effect from the day on which the Code first applies to the contract, even though the notice of the change is not given to the debtor until after that day.

- (4) Part 6 of the Code does not apply to the imposition of a monetary liability prohibited by the Code in a pre-Code continuing credit contract, being a liability imposed before the Code begins to apply to the contract.

54. Application of Code—hardship and unjust transactions with respect to pre-Code continuing credit contracts

- (1) Sections 66 to 69 of the Code (relating to changes on grounds of hardship) apply to applications in respect of any pre-Code continuing credit contract even though the cause of the hardship arose before the commencement of the Code.
- (2) Sections 70 and 72 of the Code (relating to re-opening unjust transactions and unconscionable charges) do not apply, except as provided by subsection (3), in respect of —
- (a) a pre-Code continuing credit contract; or
 - (b) a mortgage or guarantee relating to such a contract that is made before the Code commences to apply to the contract.
- (3) If the provisions of a pre-Code continuing credit contract, or such a mortgage or guarantee, are varied after that commencement, sections 70 and 72 of the Code apply in respect of the contract, mortgage or guarantee, but —
- (a) the operation of the contract, mortgage or guarantee before that commencement may not be affected; and
 - (b) the court may have regard to anything that is unjust or unconscionable only if it is attributable to the variation.

55. Previous default notice

- (1) A default notice referred to in section 80 of the Code includes, in the case of enforcement proceedings for a default under a pre-Code credit contract to which the Code applies, a default notice for that default duly given before the commencement of the Code under the law then in force.

- (2) Accordingly —
- (a) a further default notice need not be given under the Code in respect of that default; and
 - (b) the default notice is taken to be a default notice under section 80 of the Code for the purposes of section 85 and the other provisions of the Code.

56. Application of Code—related sale contracts

Part 7 of the Code does not apply to anything done or omitted to be done in respect of a sale contract that is related to a pre-Code continuing credit contract if it was done or omitted before the Code begins to apply to that credit contract.

57. Application of Code—consumer leases

The Code does not apply to a consumer lease —

- (a) entered into before the commencement of the Code; or
- (b) entered into after the commencement of the Code if the offer by the lessor or lessee to enter into the lease was made before the commencement of the Code.

Division 3 — Special transitional provisions

58. Credit fees and charges

- (1) Paragraph (b) of the definition of “**credit fees and charges**” in schedule 1 to the Code does not apply to a fee or charge referred to in subsection (5).
- (2) For the purposes of the Code, credit fees and charges do not include any fees or charges that are payable to or by a credit provider in connection with a credit contract in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available.
- (3) Despite subsection (2), an annual fee or charge in connection with a continuing credit contract under which credit is ordinarily

obtained only by the use of a card is a credit fee or charge for the purposes of the Code.

- (4) For the purposes of the Code, enforcement expenses are not credit fees and charges.
- (5) This section applies to a fee or charge payable in connection with —
 - (a) a pre-Code credit contract to which the Code applies; and
 - (b) any other credit contract entered into not later than 2 years after the commencement of the Code.

59. Matters to be included in contract document

- (1) The amount of credit required under section 15(B) of the Code to be included in the contract document does not include —
 - (a) any interest charge under the contract; or
 - (b) any fee or charge that —
 - (i) is to be or may be debited to the debtor's account after credit is first provided under the contract; and
 - (ii) is not payable in connection with the making of the contract or the making of a mortgage or guarantee related to the contract.
- (2) The requirement under section 15(F)(a)(ii) of the Code that a contract document contain the total amount of the repayments applies to a credit contract only if the contract would, on the assumptions in sections 158 and 160 of the Code, be paid out within 7 years of the date on which credit is first provided under the contract.
- (3) The prescribed information to be contained in the pre-contractual statement relating to section 15(B) and (F)(a)(ii) of the Code is the information under those requirements as changed by this section.

- (4) This section applies to credit contracts entered into not later than 2 years after the commencement of the Code.

60. Copies of contracts and mortgages for debtors

- (1) Section 18(2) of the Code does not apply if, when the credit provider gives the debtor a copy of the contract document to sign and return to the credit provider, the credit provider gives the debtor a copy of the contract document signed by the credit provider to keep.
- (2) Section 39 of the Code does not apply if, when the credit provider gives the debtor a copy of the mortgage document to sign and return to the credit provider, the credit provider gives the debtor a copy of the mortgage document to keep.
- (3) This section applies to credit contracts and mortgages entered into not later than 2 years after the commencement of the Code.

61. End of day for purposes of credit contracts

- (1) Section 25(2) of the Code extends to specifying, for any purpose or purposes under a credit contract, when a day ends. Different times may be specified for different purposes.
- (2) This section applies —
- (a) to pre-Code credit contracts to which section 25(2) of the Code applies; and
 - (b) to any other credit contracts entered into not later than 2 years after the commencement of the Code.

62. Early debit of interest charges

- (1) Section 27 of the Code does not apply to the debit of an interest charge under a credit contract before the end of the period to which the charge applies if —
- (a) the charge is debited on the last day of the period; and
 - (b) the amount debited is not treated by the credit provider as part of the unpaid daily balance for that day for the

purpose of calculating interest charges under the contract.

- (2) This section applies to debits made not later than 2 years after the commencement of the Code.

63. Dating and adjustment of debits and credits in accounts

- (1) Except as provided by this section, for the purposes of the Code (including section 27) and the credit contract, a debit or a credit made by a credit provider to a debtor's account is taken to have been made, and has effect, on the date assigned to the debit or credit, not on the date on which it is processed.
- (2) Except as provided by this section, a credit provider may subsequently adjust debits or credits to a debtor's account, and the account balances, so as to accurately reflect the legal obligations of the debtor and the credit provider.
- (3) However, subsections (1) and (2) do not permit a debit or a credit to be assigned a date other than the date on which it is processed, or the subsequent adjustment of a debit or credit or account balance, if —
- (a) the assignment or adjustment is not consistent with the credit contract; or
 - (b) the adjustment results in an interest charge that is more than the maximum amount permitted by the Code, as calculated on the basis of debits or credits to a debtor's account consistent with the credit contract; or
 - (c) the assignment or adjustment results in a contravention of section 24 of the Code; or
 - (d) the assignment of the date on which an interest charge is taken to be debited results in a debit being taken to be done before a time permitted under the Code or this regulation.

- (4) For the purposes of section 32(K) of the Code, a statement of account must set out any adjustments made under this section during the statement period.
- (5) This section applies to adjustments of, and debits and credits to, debtors' accounts made not later than 2 years after the commencement of the Code.
- (6) This section does not affect the operation of section 18 of this regulation.
- (7) An adjustment by a credit provider under subsection (2) does not affect any liability of a credit provider under part 6 of the Code.

64. Statements of account for multiple facility contracts

- (1) Sections 31 and 32 of the Code apply so that a separate statement of account may be, but is not required to be, given in respect of any or all credit facilities provided under a credit contract.
- (2) This section applies —
 - (a) to pre-Code credit contracts to which sections 31 and 32 of the Code apply; and
 - (b) to any other credit contracts entered into not later than 2 years after the commencement of the Code.

65. Requirements for statements of amounts owing

- (1) A credit provider is not required under section 34(1)(c) or (d) of the Code to provide information in a statement under that section about amounts which are not then currently overdue or payable.
- (2) This section applies —
 - (a) to pre-Code credit contracts to which section 34 of the Code applies; and

- (b) to any other credit contracts entered into not later than 2 years after the commencement of the Code.

66. Particulars of interest rate changes

- (1) A credit provider is only required under section 59(2) of the Code to give the debtor particulars of the new rate or rates or, if a rate is determined by referring to a reference rate, the new reference rate.
- (2) Subsection (1) applies only if the credit provider —
 - (a) makes it clear to the debtor that the rate has changed; or
 - (b) issues to the debtor a new set of terms and conditions relating to the credit contract.
- (3) This section applies to a change that occurs not later than 2 years after the commencement of the Code.

67. Particulars of repayment changes

- (1) A credit provider is only required under section 60(1)(a) and (2) of the Code to give the debtor particulars of the matter as changed.
- (2) Subsection (1) applies only if the credit provider —
 - (a) makes it clear to the debtor that the matter has changed; or
 - (b) issues to the debtor a new set of terms and conditions relating to the credit contract.
- (3) A credit provider must give the written notice required under section 60(1) of the Code not later than 20 days before the change takes effect.
- (4) This section applies to a change that occurs not later than 2 years after the commencement of the Code.

68. Particulars of credit fees and charges changes

- (1) A credit provider is only required under section 61(1)(a), (2) and (3) of the Code to give the debtor particulars of the matter as changed.
- (2) Subsection (1) applies only if the credit provider —
 - (a) makes it clear to the debtor that the matter has changed;
or
 - (b) issues to the debtor a new set of terms and conditions relating to the credit contract.
- (3) This section applies to a change that occurs not later than 2 years after the commencement of the Code.

69. Particulars of unilateral changes by credit provider

- (1) A credit provider is only required under section 63(1)(a) and (2) of the Code to give the other party particulars of the matter as changed.
- (2) Subsection (1) applies only if the credit provider —
 - (a) makes it clear to the debtor that the matter has changed;
or
 - (b) issues to the debtor a new set of terms and conditions relating to the credit contract.
- (3) This section applies to a change that occurs not later than 2 years after the commencement of the Code.

70. Agreed changes to contracts, mortgages and guarantees

- (1) A credit provider is only required under section 65(1)(a) of the Code to give the other party particulars of the matter as changed.
- (2) Subsection (1) applies only if the credit provider —
 - (a) makes it clear to the debtor that the matter has changed;
or

- (b) issues to the debtor a new set of terms and conditions relating to the credit contract.
- (3) The information required to be given under section 22(c) of this regulation, and section 65(3) of the Code, in relation to the amount by which the amount of credit is increased by agreement, does not include —
 - (a) any interest charge under the contract; or
 - (b) any fee or charge that —
 - (i) is to be or may be debited to the debtor's account after credit is first provided under the agreement to increase the amount of credit; and
 - (ii) is not payable in connection with the making of the agreement or the making of the mortgage or guarantee related to the agreement.
- (4) The requirements under section 22(h) and (i) of this regulation, and section 65(3) of the Code, to include the total amount of repayments yet to be made in information provided apply only if the credit contract would, on the assumptions in sections 158 and 160 of the Code, be paid out within 7 years of the date of the notice.
- (5) This section applies to a change that occurs not later than 2 years after the commencement of the Code.

71. Particulars of changes on grounds of hardship

- (1) A credit provider is only required under section 67 of the Code to give the debtor, and any guarantor, particulars of the matter as changed.
- (2) Subsection (1) applies only if the credit provider —
 - (a) makes it clear to the debtor that the matter has changed; or
 - (b) issues to the debtor a new set of terms and conditions relating to the credit contract.

- (3) This section applies to a change that occurs not later than 2 years after the commencement of the Code.

72. Key requirements

- (1) Section 100 of the Code applies so that any requirements of section 15, 21, 32 or 33 of the Code that are modified by this regulation are taken to be requirements of the Code (where applicable) for the purposes of section 100 of the Code.
- (2) Section 100(1)(e) and (i) and (2)(d) and (f) of the Code apply so that the key requirements referred to in those provisions do not apply to credit fees and charges that are government fees or government charges.
- (3) This section applies —
- (a) to pre-Code credit contracts to which section 100 of the Code applies; and
 - (b) to any other credit contracts entered into not later than 2 years after the commencement of the Code.

73. Termination of insurance contracts

Section 125 of the Code does not apply to a sale contract if the contract is a contract of consumer credit insurance cancelled under section 64A of the *Insurance Contracts Act 1984* (Cwlth) not later than 2 years after the commencement of the Code.

74. Application of Code to related insurance contracts

- (1) The Code does not apply to a contract for insurance over mortgaged property in connection with a credit contract unless the property is mortgaged to secure obligations under the credit contract.
- (2) The Code does not apply to a contract for consumer credit insurance in connection with a credit contract unless the contract for consumer credit insurance insures the obligations of the debtor under the credit contract.

- (3) This section applies to contracts of insurance entered into not later than 2 years after the commencement of the Code.

75. Contribution to civil penalties by participants in programs

- (1) A credit provider who is ordered to pay a civil penalty under part 6 of the Code may recover —
- (a) the amount of the civil penalty; and
 - (b) any other money ordered to be paid by the credit provider, or legal costs or other costs or expenses payable or incurred by the credit provider, related to the order;

from the nominated credit provider for the purposes of the credit contract concerned.

- (2) A credit provider who agrees to pay an amount of money to a debtor or other person in settlement of an application for an order under part 6 may recover the amount, and any legal costs or other costs or expenses payable or incurred by the credit provider related to the application, from the nominated credit provider for the purposes of the credit contract concerned.
- (3) A person is a nominated credit provider for the purposes of a credit contract if the person and the credit provider have agreed in writing, before the commencement of section 169A of the Code (as inserted by the amending Act), that the person is the nominated credit provider for the purposes of this section and the person is involved in the credit program of which the credit contract is part.
- (4) The liability of a nominated credit provider under this section is subject to the terms of the agreement under which the nominated credit provider agrees to be the nominated credit provider.
- (5) For the avoidance of doubt, a credit provider under a credit program who holds the rights under a credit contract, mortgage or guarantee on trust for another may recover any amount

payable by the credit provider as referred to in subsection (1) or (2) from the assets of the trust, subject to the terms of the trust.

(6) This section applies only to credit contacts, entered into before the commencement of section 169A of the Code (as inserted by the amending Act), that are part of a credit program, including a public mortgage trust program, a securitised program or a bare trustee program —

(a) involving the funding, or proposed funding, of credit that has been or is to be provided, or the purchase of a person's rights under a credit contract, mortgage or guarantee, by the issue of instruments or entitlements to investors and under which payments to investors in respect of those instruments or entitlements are principally derived, directly or indirectly from payments in respect of the credit provided; or

(b) involving the provision of credit by a credit provider who holds the rights under a credit contract, mortgage or guarantee on trust for another and under which payments to the beneficiary under the trustee program are principally derived, directly or indirectly from payments in respect of the credit provided.

(7) In this section —

“amending Act” means the *Consumer Credit (Queensland) Amendment Act 1998*.

76. Recovery by nominated credit provider

A nominated credit provider who is required to pay an amount of money to a credit provider as a consequence of section 75 may recover that money from another person involved in the credit program if —

(a) the nominated credit provider and the person have agreed in writing that the person is a person liable to pay the amount under this section; and

- (b) the amount is payable under the terms of the agreement under which the person agrees to be so liable.

77. Effect of ss 75–76

Sections 75 and 76 do not derogate from any other rights and remedies that exist apart from those sections.

Division 4 — Transitional provisions arising from amending Act

78. Definition

In this division —

“**amending Act**” means the *Consumer Credit (Queensland) Amendment Act 1998*.

79. Inclusion of additional information in financial table

Information relating to the period over which repayments are to be made may continue to be, but need not be, included in the information required to be provided in the precontractual statement, as set out in section 13 of this regulation, despite the amendment of section 15F of the Code by the amending Act.

80. Changes to key requirements

Nothing done by the amending Act affects any liability of a person under part 6, division 1 in respect of a contravention of a key requirement that occurred before the amendment by that Act of the provision containing the key requirement.

81. Limitation of guarantor’s liability

Section 55 of the Code, as in force before its amendment by the amending Act, continues to apply to a guarantee signed before the commencement of the amendment but ceases to so apply if the guarantor’s liabilities are increased in accordance with section 56 of the Code.

82. Nominations to receive notices

A nomination given under section 171(3) of the Code, and in force immediately before the repeal of that provision, is taken to have been given under section 171(4) of the Code, as inserted by the amending Act. Any such nomination may be withdrawn by the person who gave it.

Schedule

Forms

section 4

Form 1

section 10(3)(f) of the Code

section 9 of the regulation

PRESCRIBED TERMS AND CONDITIONS OF MORTGAGE

1. In this mortgage —
 - “**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 section 10(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.
 - “**the Code**” means the Consumer Credit Code.
2. The mortgagor gives and the supplier takes a mortgage of the goods.
3. The mortgagor’s right or obligation to purchase the goods, which is contained in the hire contract, is extinguished.
4. Subject to item 5, the supplier may take possession of the goods, or may take possession of, and sell, the goods if—
 - (a) the supplier was induced by fraud on the part of the mortgagor to enter into the hire contract; or
 - (b) the mortgagor, contrary to a term of the hire contract, has attempted to assign or dispose of the goods; or
 - (c) the mortgagor, contrary to a term of the hire contract, has —
 - (i) failed to keep the goods in good order and repair; or
 - (ii) failed to keep the goods insured or registered; or

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

Form 2

section 14(1)(b) of the Code

section 11 of the regulation

INFORMATION STATEMENT

**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 your credit provider and, if you still have concerns, your Government Consumer Agency, or get legal advice.

THE CONTRACT

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

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

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

whichever happens first.

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

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep.

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

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

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

3. Can I terminate the contract?

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

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

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

4. Can I pay my credit contract out early?

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

5. How can I find out the pay out figure?

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

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

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

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

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

Yes, but only if your contract says so.

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

That depends on the type of change. For example —

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

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

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

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement. If that is not successful you could apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

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.

11. Will I get details of my insurance cover?

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

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

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

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

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

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

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

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

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

MORTGAGES

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

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

16. Should I get a copy of my mortgage?

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

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

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

The law says you cannot 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 cannot do with the property.

18. What can I do if I find that I cannot 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 contact your Government Consumer Agency 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 mortgaged property is sold.

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

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

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

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

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

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

GENERAL

22. 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. You can ask your credit provider to change your contract in a number of ways, for example—

- 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.

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

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 changed to meet your situation.

You may be able to apply to the court. Contact your Government Consumer Agency or get legal advice on how to go about this.

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

24. 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 unduly harassed or threatened, contact your Government Consumer Agency or the Trade Practices Commission, 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 DOUBTS, OR WANT MORE INFORMATION,
CONTACT YOUR GOVERNMENT CONSUMER AGENCY OR GET
LEGAL ADVICE. PLEASE KEEP THIS INFORMATION STATEMENT.
YOU MAY WANT SOME INFORMATION FROM IT AT A LATER
DATE.**

Form 3A

section 15(O) of the Code

section 15(2)(a) of the regulation

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. If this contract document says so, you must take out insurance

*If you take out insurance, the credit provider cannot insist on any particular insurance company.

*If this contract document says so, the credit provider can vary the annual percentage rate (the interest rate), the repayments and the fees and charges and can add new fees and charges without your consent.

*If this contract document says so, the credit provider can charge a fee if you pay out your contract early.

Form 3B

section 15(O) of the Code
section 15(2)(b) of the regulation

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. If this contract document says so, you must take out insurance over any mortgaged property.

*If you take out insurance, the credit provider cannot insist on any particular insurance company.

*If this contract document says so, the credit provider can vary the annual percentage rate (the interest rate), the repayments and the fees and charges and can add new fees and charges without your consent.

*If this contract document says so, the credit provider can charge a fee if you pay out your contract early.

Form 4

section 50 of the Code

section 20 of the regulation

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| <p>IMPORTANT</p> <p>BEFORE YOU SIGN</p> <p>*READ THIS GUARANTEE DOCUMENT AND THE CREDIT CONTRACT DOCUMENT.</p> <p>*You should also read the information statement: "THINGS YOU SHOULD KNOW ABOUT GUARANTEES."</p> <p>*You should obtain independent legal advice.</p> <p>*You should also consider obtaining independent financial advice.</p> <p>*You should make your own inquiries about the credit worthiness, financial position and honesty of the debtor.</p> | <p>THINGS YOU MUST KNOW</p> <p>*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.</p> <p>*If the debtor does not pay you must pay. This could mean you lose everything you own including your home.</p> <p>*You may be able to withdraw from this guarantee or limit your liability. Ask your legal adviser about this before you sign this guarantee.</p> <p>*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.</p> |
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Form 5

section 51(1)(b) of the Code

section 21 of the regulation

INFORMATION STATEMENT

THINGS YOU SHOULD KNOW ABOUT GUARANTEES

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

GUARANTEES

1. What is a guarantee?

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

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

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

3. What documents should I be given?

Before you sign the guarantee you should get —

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

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

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

- the signed guarantee (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.

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 Consumer 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?

Yes, by written notice to the credit provider, if —

- you do so before the debtor gets any credit under the credit contract; or
- at any time if the final credit contract is materially different from the proposed credit contract given to you before you signed the guarantee.

8. Can I limit my guarantee?

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

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

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

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

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

A mortgage means that you give the credit provider certain rights over any property you mortgage. If you default under your guarantee, you

can lose that property and you might still owe money to the credit provider.

11. Should I get a copy of my mortgage?

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

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

The law says you cannot 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 cannot do with the property.

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

See the answer to question 22.

Otherwise you may —

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

OR

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

If the credit provider won't give permission contact your Government Consumer Agency for help.

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

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

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

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

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

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

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

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

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

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

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

However, there will be no warning notice if —

- there is a good reason to think the debtor committed a fraud to persuade the credit provider to enter into the contract; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the court says so; or

- there is a good reason to think that the debtor has, or will, remove or dispose of mortgaged goods without the credit provider's consent, or that urgent action is necessary to protect mortgaged property.

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

When —

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

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

You may not. See the answer to question 17.

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

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

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

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

GENERAL

22. What can I do if I am asked to pay out the credit contract and I 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 the Government Consumer Agency. 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 cannot pay the credit provider, he or she probably cannot 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 YOU WANT MORE INFORMATION, CONTACT THE GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE.

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

Form 5A

section 51(1)(b) of the Code

section 21 of the regulation

INFORMATION STATEMENT

THINGS YOU SHOULD KNOW ABOUT GUARANTEES

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

GUARANTEES

1. What is a guarantee?

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

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

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

3. What documents should I be given?

Before you sign the guarantee you should get —

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

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

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

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

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

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

The credit provider must give you the requested information —

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

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

You may be charged a fee for the statement.

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

5. How can I find out the payout figure?

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

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

6. What other information can I get?

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

- the guarantee; or
- any credit-related insurance contract (such as insurance on mortgaged property) the credit provider has; or

- a notice previously given to you, the debtor or the mortgagor under the Consumer 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.

If, when the credit contract was entered into, the debtor was ordinarily resident in a place other than Western Australia, you can also withdraw from your guarantee by written notice to the credit provider before the debtor gets any credit under the credit contract.

If, when the credit contract was entered into, the debtor was ordinarily resident in Western Australia, you can also withdraw from your guarantee by written notice to the credit provider before the debtor gets any credit under the credit contract provided that either—

- the debtor also terminates or has terminated the credit contract under section 19 (the section of the Consumer Credit Code which enables the debtor to terminate the credit contract before any credit has been obtained or attempted to be obtained under the contract);

or
- the debtor has not entered into a contract with another person in reliance on the availability of the credit subject to the guarantee.

8. Can I limit my guarantee?

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

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

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

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

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

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

11. Should I get a copy of my mortgage?

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

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

The law says you cannot 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 cannot do with the property.

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

See the answer to question 22.

Otherwise you may —

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

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

If the credit provider won't give permission contact your Government Consumer Agency for help.

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

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

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

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

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

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

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

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

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

- why the credit provider wants to take action; and
- what can be done to stop it (if the default can be remedied); and

- that if the same sort of default is committed within 30 days of the date of the notice and is not remedied within that period, the credit provider can take action without further notice.

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

However, there will be no warning notice if —

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

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

When —

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

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

You may not. See the answer to question 17.

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

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

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

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

GENERAL

22. What can I do if I am asked to pay out the credit contract and I 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 the Government Consumer Agency. 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 cannot pay the credit provider, he or she probably cannot 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 YOU WANT MORE INFORMATION, CONTACT THE GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE.

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

Form 6

section 78(3) of the Code
section 23 of the regulation

INFORMATION AFTER SURRENDER OF MORTGAGED GOODS

Date

TO:

(name of mortgagor)

(address of mortgagor)

FROM:

(name of credit provider)

(address of credit provider)

CONTACT PERSON:

(name, telephone number and address)

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

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

DETAILS YOU SHOULD KNOW

Description of the goods:

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

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

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

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

HOW TO GET THE GOODS RETURNED OR NOT SOLD

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

IF YOU DO NOTHING, YOU MAY LOSE THE GOODS.

SALE OF GOODS

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

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

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

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

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

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

FINALISING THE CONTRACT

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

- the amount owing under your mortgage (which cannot be more than the amount owing under the contract); and
- any amount owing under a prior mortgage of the goods; and
- any amount owing under a subsequent mortgage of the goods which the credit provider knows about; and
- the credit provider's reasonable expenses of enforcing the mortgage; and
- the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.

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

- what the sale price was; and
- the net proceeds of the sale; and
- the amount credited to you; and
- 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 cannot come to a suitable arrangement with the credit provider, contact the Government Consumer Agency 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.

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 THE GOVERNMENT CONSUMER
AGENCY OR GET LEGAL ADVICE.**

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

.....
(name of person signing)

.....
(position of person signing)

* *Delete if inapplicable.*

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

Form 7

section 91(2) of the Code
section 24 of the regulation

CONSENT TO ENTER PREMISES

Date

TO:

(name of credit provider)

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:**

.....
.....

| |
|---|
| <p>IMPORTANT YOU HAVE THE RIGHT TO REFUSE CONSENT. IF YOU DO THE CREDIT PROVIDER MAY GO TO COURT FOR PERMISSION TO ENTER THE PREMISES.</p> |
|---|

.....
(signature of occupier giving consent) *

**Consumer Credit (Western Australia) Code Regulations
Schedule**

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

* *The name/signature of occupier.*

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

Form 8

section 94(1)(c) of the Code
section 25 of the regulation

NOTICE AFTER TAKING POSSESSION OF MORTGAGED GOODS

Date

TO:

(name of mortgagor)

(address of mortgagor)

FROM:

(name of credit provider)

(address of credit provider)

(name, telephone number and address)

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

DETAILS YOU SHOULD KNOW

Description of the goods:

Date the goods were taken:

The goods were taken because:

.....

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

\$

The cost of the goods remaining in the credit provider's possession is

\$ per*

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

HOW TO GET THE GOODS BACK

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

EITHER

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

| | |
|----------------------------|-----------|
| Arrears | \$ |
| Enforcement expenses | \$ |
| TOTAL | \$ |

OR

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

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

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

IF YOU DO NOTHING, YOU WILL LOSE THE GOODS.

SALE OF GOODS

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

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

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

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

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

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

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

FINALISING THE CONTRACT

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

- the amount owing under your mortgage (which cannot 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 referred to above have been deducted; and
- the amount due under the credit contract or the amount of any surplus due to you; and
- details of any further recovery action that might be taken against you under the credit contract if you are the debtor.

GENERAL

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

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

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

If you cannot come to a suitable arrangement with the credit provider, contact the Government Consumer Agency 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.

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 THE GOVERNMENT CONSUMER
AGENCY OR GET LEGAL ADVICE.**

.....
(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.*

Form 9

section 126(2) of the Code
section 28 of the regulation

**NOTICE OF RIGHT TO TERMINATE MAINTENANCE SERVICES
CONTRACT**

Date

TO:

(name of debtor)

(address of debtor)

FROM:

(name of credit provider)

(address of credit provider)

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

- terminate your maintenance services contract with
..... dated
..... (“**supplier**”); and
- recover from the supplier a proportionate rebate of the amount you have paid under the maintenance services contract.

You must tell the supplier in writing if you want to terminate the maintenance services contract.

The proportionate rebate must be calculated in accordance with the law.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION,
CONTACT THE GOVERNMENT CONSUMER AGENCY OR GET
LEGAL ADVICE.**

.....
(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.*

Form 10

section 139(2) of the Code

section 32 of the regulation

**NOTICE OF RIGHT TO CANCEL MORTGAGED PROPERTY
INSURANCE**

Date

TO:

(name of debtor)

(address of debtor)

FROM:

(name of credit provider)

(address of credit provider)

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

- terminate your insurance contract over mortgaged property financed under the credit contract; and
- recover from the insurer a proportionate rebate of premium paid under the insurance contract.

Your insurer will not terminate the insurance contract unless you ask the insurer in writing to do so. If you terminate the insurance, you will not be covered in the event of loss or damage to the property.

According to our records your insurer is

The mortgaged property is —

.....
.....
.....

The proportionate rebate of insurance must be calculated in accordance with the law.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION,
CONTACT THE GOVERNMENT CONSUMER AGENCY OR GET
LEGAL ADVICE.**

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

.....
(name of person signing)

.....
(position of person signing)

Form 11

section 153 of the Code
section 35 of the regulation

INFORMATION STATEMENT

THINGS YOU SHOULD KNOW ABOUT YOUR CONSUMER LEASE

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

THE LEASE

1. How can I get details of my lease?

Your lessor must give you a copy of your consumer lease with this statement. Both documents must be given to you within 14 days after the lessor enters into the consumer lease, unless you already have a copy of the consumer lease.

If you want another copy of your lease write to your lessor and ask for one. Your lessor may charge you a fee. Your lessor has to give you a copy —

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

2. What should my lease tell me?

You should read your lease carefully.

Your lease should tell you about your obligations, and include information on matters such as —

- details of the goods which have been hired; and
- any amount you have to pay before the goods are delivered; and
- stamp duty and other government charges you have to pay; and
- charges you have to pay which are not included in the rental payments; and

- the amount of each rental payment; and
- the date on which the first rental payment is due and either the dates of the other rental payments or the interval between them; and
- the number of rental payments; and
- the total amount of rent; and
- when you can end your lease; and
- what your obligations are (if any) when your lease ends.

This information only has to be included in your lease if it is possible to give it at the relevant times.

If your lease does not tell you all these details, contact the Government Consumer Agency, or get legal advice 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.

6. Is there anything I can do if I think that my lease is unjust?

Yes. You can apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

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 Consumer Credit Code.

GENERAL

9. What do I do if I cannot make a rental payment?

Get in touch with your lessor immediately. Discuss the matter and see if you can come to some arrangement. For example, you could ask your lessor —

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

10. What if my lessor and I cannot agree on a suitable arrangement?

You can apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

If you have been **unemployed, sick** or there is **another good reason** why you are having problems with your lease, then your lease may be able to be changed to meet your situation.

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

11. Can my lessor take action against me?

Yes, if you are in default under your lease. But the law says that you cannot be unduly harassed or threatened for rental payments. If you think you are being unduly harassed or threatened, contact the Government Consumer Agency or the Trade Practices Commission, or get legal advice.

12. Do I have any other rights and obligations?

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

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION,
CONTACT THE GOVERNMENT CONSUMER AGENCY OR GET
LEGAL ADVICE. PLEASE KEEP THIS INFORMATION STATEMENT.
YOU MAY WANT SOME INFORMATION FROM IT AT A LATER
DATE.**

Notes

¹ This is a compilation of the *Consumer Credit (Western Australia) Code Regulations*² and includes the amendments made by the other written laws referred to in the following table^{1a}.

Compilation table

| Citation | Gazettal | Commencement |
|---|---|---|
| <i>Consumer Credit (Western Australia) Code Regulations</i> | 9 Jul 2003 p. nil (effective date see notes to regulations) | 9 Jul 2003 (see the <i>Consumer Credit (Western Australia) Act 1996</i> s. 6 and the regulations in force under Pt. 4 of the <i>Consumer Credit (Queensland) Act 1994</i>) |
| <i>Consumer Credit (Western Australia) Code Regulations Amendment Order 2004</i> | 31 Dec 2004 p. 7132-4 | 31 Dec 2004 (see cl. 2) |
| <i>Consumer Credit (Western Australia) Code Regulations Amendment Order 2006</i> ³ | 13 Jun 2006 p. 2051-4 | 13 Jun 2006 |
| <i>Consumer Credit (Western Australia) Code Regulations Amendment Order (No. 2) 2006</i> ⁴ | 13 Jun 2006 p. 2054-6 | 13 Jun 2006 |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Citation | Gazettal | Commencement |
|--|--------------------------|---|
| <i>Consumer Credit (Western Australia) Code Regulations Amendment Order (No. 4) 2006</i> s. 4-9 ⁵ | 29 Sep 2006 p. 4250-3 | Operative on commencement of the <i>Queensland Consumer Credit and Trade Measurement Amendment Act 2006</i> s. 4 (see s. 2) |

² The *Consumer Credit (Western Australia) Regulations 1996* came into operation on 1 November 1996. They were repealed on 9 July 2003 by the *Consumer Credit (Western Australia) Amendment Act 2003* s.10(2).

Section 6(1) of the *Consumer Credit (Western Australia) Act 1996* applies the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* (as in force on 9 July 2003) as regulations in force for the purposes of the *Consumer Credit (Western Australia) Code*.

The regulations, as applied and amended, may be cited as the *Consumer Credit (Western Australia) Code Regulations*.

If the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* are amended, the Governor may, by order under section 6(2) of the WA Act, amend the *Consumer Credit (Western Australia) Code Regulations*.

³ A draft of this order (as the *Consumer Credit (Western Australia) Code Regulations Amendment Order 2005*) was approved by the Legislative Assembly on 22 November 2005 (see Hansard p. 7624-5) and by the Legislative Council on 4 May 2006 (see Hansard p. 2164).

⁴ A draft of this order (as the *Consumer Credit (Western Australia) Code Regulations Amendment Order (No. 2) 2005*) was approved by the Legislative Assembly on 12 October 2005 (see Hansard p. 6204-5) and by the Legislative Council on 4 May 2006 (see Hansard p. 2164-6).

⁵ On the date as at which this compilation was prepared, the *Consumer Credit (Western Australia) Code Regulations Amendment Order (No. 4) 2006* s. 4-9 had not come into operation. They read as follows:

“

4. Section 10 amended

Section 10(2) is amended by inserting after “above words” —

“

or, if the declaration is to be made by electronic communication, prominently displayed when (but not after) the person signs

”.

5. Section 13 amended

Section 13(5) is repealed and the following subsection is inserted instead —

“

- (5) The financial table is to be set out at the beginning of the precontractual statement. If the precontractual statement consists of more than one document, the financial table need not be repeated. 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. The financial table may be preceded by information necessary to identify the loan.

”.

6. Section 15 amended

Section 15(3) is amended by deleting paragraphs (b) and (c) and inserting the following paragraph instead —

“

- (b) they are to be set out immediately above (and on the same page as) each place where the debtor (or at least 1 of the debtors) is to sign the contract document or, if a contract is made by electronic communication, the information and warnings must be prominently displayed when (but not after) the debtor (or if 2 or more debtors, each debtor) signs.

”

7. Section 34 amended

Section 34 is amended by inserting after “above words” —

“

or, if a consumer lease is made by electronic communication, prominently displayed when (but not after) the person signs

”

8. Section 39 amended

- (1) Section 39 is amended by inserting before “For” the subsection designation “(1)”.
- (2) After the note in section 39 the following subsection is inserted —

“

- (2) For the purposes of section 162(1A)(b) of the Code, if a credit contract, mortgage or guarantee or a notice transmitted by a credit provider under the Code is transmitted by electronic communication —
 - (a) the electronic communication must not incorporate any image, message, advertisement or other feature that distracts, or is reasonably likely to distract, the recipient or otherwise reduces or interferes, or is reasonably likely to reduce or interfere, with the recipient’s ability to understand the credit contract, mortgage or guarantee or notice; and
 - (b) if an image, message, advertisement or other feature accompanies or is associated with the electronic communication, it must be readily distinguishable from the credit contract, mortgage or guarantee or notice; and
 - (c) the recipient must be readily able to scroll through the whole of the credit contract, mortgage or guarantee or notice; and

- (d) the full address (not being a post office box) and telephone number at which the credit provider may be contacted must be included in the credit contract, mortgage or guarantee or notice.

”

9. Section 39A inserted

After section 39 the following section is inserted —

“

39A. Exemptions in relation to electronic communications

For the purposes of section 164A(3) of the Code, the following transactions, documents or information, or classes of transactions, documents or information, must not be made, given or provided by electronic communication —

- (a) a guarantee to which the Code applies under section 9 of the Code;
- (b) a copy of a guarantee given under section 52(1)(a) of the Code;
- (c) a copy of a credit contract given under section 52(1)(b) of the Code;
- (d) a copy of a contract document given under section 54(2)(a) of the Code;
- (e) a notice setting out particulars of the change in the terms of the credit contract under section 56(1)(a) of the Code;
- (f) a default notice under section 80(1) of the Code;
- (g) a default notice under section 80(2) of the Code;
- (h) information concerning the provisions of section 91 of the Code provided to the occupier of premises under section 91(1)(b) of the Code;
- (i) a request for entry to premises under section 24(a) of these regulations;
- (j) a consent to enter premises under section 24(c) of these regulations;
- (k) a notice under section 94(1) of the Code;
- (l) a demand made on the supplier under section 120(5)(a) of the Code;
- (m) a demand made on the supplier under section 120(6)(a) of the Code;
- (n) a notice of intention to repossess under section 156(1) of the Code;

- (o) a transaction on which duty is only charged under the laws of this jurisdiction if the transaction is effected or evidenced by an instrument or document in hard copy form;
- (p) an instrument on which duty is only charged under the laws of this jurisdiction if the instrument is in hard copy form.

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Note: A draft Order (the Consumer Credit (Western Australia) Code Regulations Amendment Order (No. 2) 2006) containing these provisions was approved by the Legislative Assembly on 28 June 2006 (see Hansard p. 4458-9) and by the Legislative Council on 29 June 2006 (see Hansard p. 4546-9).

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