

Western Australia

## **Credit Regulations 1985**

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## Credit Regulations 1985

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Western Australia

Credit Act 1984

## **Credit Regulations 1985**

### **1. Citation**

These regulations may be cited as the *Credit Regulations 1985*<sup>1</sup>.

### **2. Commencement**

These regulations shall come into operation on 31 March 1985.

### **3. Interpretation**

- (1) In these regulations, unless the context otherwise requires —  
“**form**” means a form in Schedule 1;  
“**the Act**” means the *Credit Act 1984*.
- (2) Where a form suggests or requires the insertion of information in a blank space, that form shall be a form in compliance with this regulation only when each item of information is inserted as suggested or required.
- (3) Notwithstanding that a form includes the words “an independent body”, the substitution of the words “the State Administrative Tribunal” for the words “an independent body” when using the form is not a failure to comply with this regulation.

*[Regulation 3 amended in Gazette 30 Dec 2004 p. 6914.]*

**r. 3A**

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

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

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

*[Regulation 3A amended in Gazette 10 January 1986 p.137; 25 November 1988 p.4761.]*

**4. Exclusion from definition of “credit sale contract”**

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

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

*[Regulation 4 amended in Gazette 10 January 1986 p.137.]*

**5. Goods prescribed as farm machinery**

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

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

fisherman's licence issued under the *Fisheries Act 1905*<sup>2</sup>.

[Regulation 5 amended in Gazette 10 January 1986 p.137.]

## 6. Statutory rebate in relation to prescribed insurance charges

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

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

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

Where —

- "Y" is the amount of the statutory rebate;
- "P" is the amount of insurance charges;
- "S" is the number of whole months in the unexpired portion of the period for which insurance was agreed to be provided;
- "T" is the number of whole months for which insurance was agreed to be provided.

[Regulation 6 amended in Gazette 10 Jan 1986 p. 137.]

## 7. Transfer of proceedings from Tribunal to court

Where proceedings are to be transferred pursuant to section 6(4) of the Act to a court that is not empowered to make rules in respect of the transfer, the executive officer (as defined in

section 3(1) of the *State Administrative Tribunal Act 2004*) of the Tribunal shall —

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

*[Regulation 7 amended in Gazette 10 January 1986 p.137; 30 Dec 2004 p. 6914.]*

**8. Prescribed method for calculation of accrued credit charge**

- (1) For the purposes of section 11(2)(c) of the Act, an applicable method is followed where the amount of the credit charge which has accrued at a particular time is calculated by adding together the amounts ascertained by applying the monthly percentage rate to the unpaid monthly balances (being monthly balances up to that time, including the monthly balance for the month in which the accrued credit charge is calculated) —
  - (a) in the case of a credit sale contract — of the amount financed; or
  - (b) in the case of a loan contract — of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time.
- (2) In subregulation (1) —
  - (a) **“monthly percentage rate”** means the rate determined by dividing the annual percentage rate by 12; and
  - (b) **“monthly balances”** means monthly balances obtained by application of the actuarial method.
- (3) For the purposes of section 11(2) of the Act, an applicable method for calculating the amount of the credit charge which has accrued at a particular time is by application of the formula set out in Schedule 1 to the Act, that Schedule being, for the



purpose of that application, read and construed as if it has been amended —

- (a) by omitting after clause 3(b) the word “and”; and
- (b) by inserting at the end of clause 3(c) the following —

“

; and

- (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided.

”.

*[Regulation 8 amended in Gazette 10 January 1986 pp.137-8.]*

#### **9. Form of mortgage of goods**

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

*[Regulation 9 amended in Gazette 10 January 1986 p.138.]*

#### **10. Notice for credit sale and loan contracts**

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

*[Regulation 10 amended in Gazette 10 January 1986 p.138.]*

**11. Statement for credit sale and loan contracts**

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

*[Regulation 11 amended in Gazette 10 January 1986 p.138.]*

**12. Notice for add-on contracts**

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

*[Regulation 12 amended in Gazette 10 January 1986 p.138.]*

**13. Applicable method of determining annual percentage rate**

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

*[Regulation 13 amended in Gazette 10 January 1986 p.138.]*

**14. Unilateral variation of credit sale and loan contracts**

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

**14A. Prescribed charges in relation to continuing credit contracts**

- (1) For the purposes of sections 53 and 54 of the Act the following charges are prescribed in relation to a continuing credit contract —
  - (a) fees payable for registration of a mortgage relating to the contract;
  - (b) fees payable to discharge a mortgage in force before the relevant date;
  - (c) fees payable to the Land Titles Office for searching records;
  - (d) stamp duty payable in relation to a mortgage relating to the contract;

- (e) stamp duty payable in relation to a contract of guarantee, being a contract of guarantee in respect of the obligations of the debtor under the contract;
  - (f) fees payable for lodgement of a caveat under the *Transfer of Land Act 1893*, where the estate or interest referred to in the caveat relates to the contract;
  - (g) fees payable to a duly qualified legal practitioner (not being the credit provider or an employee of the credit provider) authorised to prepare documents for the contract or for a mortgage relating to the contract entered into before the relevant date; and
  - (h) fees payable to a licensed valuer within the meaning of the *Land Valuers Licensing Act 1978* (not being the credit provider or an employer of the credit provider) for preparation of a valuation of property the subject of a mortgage relating to the contract.
- (2) In this regulation “**relevant date**”, in relation to a regulated continuing credit contract, means the date on which the contract is entered into.

*[Regulation 14A inserted in Gazette 10 October 1986 pp.3874-5.]*

**15. Statement for continuing credit contracts**

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

*[Regulation 15 amended in Gazette 10 January 1986 p.138.]*

**16. Information in default notice**

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

*[Regulation 16 amended in Gazette 10 January 1986 p.138.]*

**17. Notice after taking possession of mortgaged goods**

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

*[Regulation 17 amended in Gazette 10 January 1986 p.138.]*

**18. Notice in bills of exchange taken as security**

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

*[Regulation 18 amended in Gazette 10 January 1986 p.138.]*

**18A. Advertisements — prohibited statement**

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

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

**19. Descriptive terms to be used in certain documents**

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

- (b) enters into a regulated loan contract;
- (c) gives a notice under section 59 of the Act to a debtor; or
- (d) gives a statement of account referred to in section 61 of the Act to a debtor,

that does not comply with the requirements of —

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

is guilty of an offence.

Penalty: \$500.

*[Regulation 19 amended in Gazette 10 January 1986 p.138.]*

## **20. Particulars of insurance**

- (1) For the purpose of section 130(2)(b) of the Act, the prescribed particulars are —
  - (a) the relevant subject-matter;
  - (b) the amount for which the relevant subject matter is insured or the manner in which that amount may be determined;
  - (c) each amount paid and payable under the contract of insurance in respect of the relevant subject-matter;
  - (d) the period for which insurance is provided;
  - (e) the circumstances in which, the person by whom, and the person to whom, a claim may be made in respect of the contract of insurance, and the manner of making the claim;
  - (f) the risks to which the contract of insurance relates in respect of the relevant subject-matter; and

(g) the name and address of the insurer and the insured.

- (2) In subregulation (1), “**the relevant subject-matter**” means that part of the subject-matter of the contract of insurance in which the debtor has a beneficial interest.

*[Regulation 20 amended in Gazette 10 January 1986 p.138.]*

**21. Notice of intended proceedings against guarantor**

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

*[Regulation 21 amended in Gazette 10 January 1986 p.138.]*

**22. Statement for guarantor under contract of guarantee**

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

*[Regulation 22 amended in Gazette 10 January 1986 p.138.]*

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

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

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

*[Regulation 23 amended in Gazette 10 January 1986 p.138.]*

**24. Prescribed requirements for print and type in documents**

- (1) For the purposes of section 151(2)(b) of the Act —
- (a) subject to paragraph (c), where any print or type is produced directly or indirectly by a method or process under which each character occupies a space of the same width, that print or type shall be not smaller than 12-pitch;

- (b) subject to paragraph (c), print or type produced by a method or process other than that referred to in paragraph (a), shall be in one of the type faces specified in Schedule 7, or a type face or font identical in appearance to a specified type face, and of or larger than the size of 10 point;
- (c) where there is in any printed or typed document a blank space in which further print or type is subsequently inserted by a method or process by which each character occupies a space of the same width, that latter print or type shall, when inserted, be not smaller than 13-pitch.
- (2) In subregulation (1) —
- “**character**” includes a letter, figure, symbol, punctuation mark and space between adjacent characters;
- “**12-pitch**” means of dimensions such that any selected passage of print or type 25 mm in length includes no more than 12 characters and “**13-pitch**” has a corresponding meaning.

*[Regulation 24 amended in Gazette 10 January 1986 p.138; 8 October 1993 p.5437.]*

## 25. Prescribed requirements for reproduction of print or type

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

*[Regulation 25 amended in Gazette 10 January 1986 p.138.]*

## 26. Lay-out of certain documents

- (1) Subject to sections 152 and 153 of the Act, where a notice, statement or document containing information prescribed by a form is required to be given, served or delivered to a debtor,

mortgagor or guarantor, the notice, statement or document shall be in all respects —

- (a) paragraphed;
- (b) contrasted by means of bold type face or otherwise, so as to give effect to the prominence of print or type;
- (c) set out in the contrasting print or type of upper and lower case; and
- (d) enclosed within, or containing, lines, squares or rectangles,

as appears in the form.

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

Penalty: \$500.

*[Regulation 26 amended in Gazette 10 January 1986 p.138.]*

**27. Charges to be included in amount financed**

- (1) For the purposes of clause 1(g) of Schedule 2 to the Act and clause 1(d) of Schedule 4 to the Act, the following charges are prescribed in relation to a credit sale contract or a loan contract —
  - (a) fees payable for registration of a mortgage relating to the contract;
  - (b) fees payable to discharge a mortgage in force before the relevant date;
  - (c) fees payable to the Land Titles Office for searching records;
  - (d) stamp duty payable in relation to a contract of guarantee, being a contract of guarantee in respect of the obligations of the debtor under the contract;



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- (e) stamp duty payable in relation to a mortgage relating to the contract, being a mortgage proposed to be entered into on or after the relevant date;
  - (f) fees payable for lodgement of a caveat under the *Transfer of Land Act 1893*, where the estate or interest referred to in the caveat relates to the regulated contract;
  - (g) fees payable to a licensed valuer within the meaning of the *Land Valuers Licensing Act 1978* (not being the credit provider or an employee of the credit provider) for preparation of a valuation of property the subject of a mortgage relating to the regulated contract;
  - (h) fees payable to the Commissioner for Consumer Affairs<sup>3</sup> for a certificate of entries, or a statement that there are no entries, under the *Chattel Securities Act 1987*;
  - (i) fees payable to the Commissioner for Consumer Affairs<sup>3</sup> for the registration of a security interest in relation to registrable goods under the *Chattel Securities Act 1987*.
- (2) In this clause “**relevant date**”, in relation to a credit sale contract or a loan contract, means the date on which the contract is entered into on or, if the contract is entered into by acceptance by the credit provider of an offer by the debtor, the date on which the offer is made.
- (2a) In addition to the charges set out in subregulation (1), administrative charges, not exceeding the amount prescribed under section 57 of the *Credit Unions Act 1979*<sup>4</sup>, charged by a Credit Union registered under that Act in respect of or in relation to the registration or discharge of a bill of sale are prescribed charges for the purpose of clause (1)(d) of Schedule 4 to the Act.

*[Regulation 27 inserted in Gazette 10 October 1986 p.3875;  
amended in Gazette 5 August 1988 p.2630.]*

**28. Prescribed risk**

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

*[Regulation 28 inserted in Gazette 29 March 1985 p.1143;  
amended in Gazette 10 January 1986 p.138.]*

**Schedule 1**  
**Form 1**

[Reg. 9]

**PRESCRIBED TERMS AND CONDITIONS OF MORTGAGE**

**1.**

In this mortgage —

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

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

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

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

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

**2.**

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

**3.**

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

- (a) the debtor has made a fraudulent misrepresentation that induced the supplier to enter into the hiring contract;
- (b) the debtor has, contrary to a term of the hiring contract, attempted to dispose of, or encumber (by mortgage, lien or charge), the subject goods;
- (c) the debtor has, contrary to a term of the hiring contract —

- (i) failed to keep the subject goods in good order and repair; or
- (ii) failed to keep the subject goods insured or registered;
- (d) the debtor has made default in the payment of any instalment or other monetary sum due under the hiring contract and has failed to remedy the default within one month (or such longer period as the supplier allows) after being required in writing by the supplier to do so;
- (e) the debtor has made default in any other obligation under the hiring contract which is likely to affect directly the value of the supplier's security, and has failed to remedy the default within one month (or such longer period as the supplier allows) after being required in writing by the supplier to do so; or
- (f) the debtor has returned the subject goods to the supplier, or has given notice in writing to the supplier that the debtor cannot continue to observe the obligations imposed by the hiring contract.

**4.**

Nothing in clause 3 affects the operation of any statute or of any principle of law or equity applicable to the rights and duties of the debtor and supplier in relation to each other.

**Form 2**

[Reg. 10(1)]

**IMPORTANT**

**BEFORE YOU SIGN**

- \* READ THIS OFFER, so that you know exactly what contract you are entering into and what you will have to do under the contract.
- \* Fill in or cross out any blank spaces.
- \* Get a copy of this offer.
- \* Get Consumer Affairs<sup>3</sup> or someone else you can trust to explain anything you do not fully understand.

**THINGS YOU MUST KNOW**

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

**WARNING**

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

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**Form 3**

[Reg. 10(2)]

**IMPORTANT**

**BEFORE YOU SIGN**

- \* READ THIS OFFER, so that you know exactly what contract you are entering into and what you will have to do under the contract.
- \* Fill in or cross out any blank spaces.
- \* Get a copy of this offer.
- \* Get Consumer Affairs<sup>3</sup> or someone else you can trust to explain anything you do not fully understand.

**THINGS YOU MUST KNOW**

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

**WARNING**

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

**Form 4**

[Reg. 11]

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

CREDIT ACT (Section 34)

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

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

**THE CONTRACT**

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

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

**2. What should my contract tell me?**

You should **read your contract** carefully.

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

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

If your contract does not tell you all of these details, contact Consumer Affairs<sup>3</sup> or get legal advice, as you may have rights against your credit provider.

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

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

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

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

**4. Can I pay out my contract early?**

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

**5. How can I find out the amount owing?**

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

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

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

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

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

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

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



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

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

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

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

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

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

Yes. You can ask to have an independent body decide whether the fee was reasonable. Contact Consumer Affairs<sup>3</sup> on how to go about this.

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

Yes. You can have an independent body look into the contract. Contact Consumer Affairs<sup>3</sup> or get legal advice.

**INSURANCE**

**12. Do I have to take out insurance?**

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

**13. Will I get details of my insurance cover?**

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

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

Yes.

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

Yes. The insurer will write to you.

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

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

**MORTGAGES**

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

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

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

The law says you cannot sell the property unless you have your mortgagee's permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

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

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

**20. Should I get a copy of my mortgage?**

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

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

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

your contract to be varied, repayments to be deferred, or action postponed.

If you cannot come to a suitable arrangement with your mortgagee and you want to keep the mortgaged property, contact Consumer Affairs<sup>3</sup> for help or seek financial counselling immediately.

Otherwise you may:

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

**OR**

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

**OR**

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

If your mortgagee won't give permission contact Consumer Affairs<sup>3</sup> for help.

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

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

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

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

Your mortgagee can take the property without giving notice if:

- \* there is a good reason to think that you are going to sell, hide, damage or get rid of the property; or
- \* there is a good reason to think you deliberately misled your mortgagee when you entered into your mortgage; or

- \* your mortgagee has been unable to locate you after making reasonable efforts to do so.

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

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

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

Only if your mortgagee has a court order.

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

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

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

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

**GENERAL**

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

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

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

Contact Consumer Affairs<sup>3</sup> for help.

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

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

**28. Can my credit provider take action against me?**

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being harassed or threatened, contact Consumer Affairs<sup>3</sup> or the Trade Practices Commission, or get legal advice.

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

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

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

**30. Do I have any other rights and obligations?**

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

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AFFAIRS<sup>3</sup> OR GET LEGAL ADVICE.**

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

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**Form 5**

[Reg. 12]

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

CREDIT ACT (Section 37)

**THE COOLING-OFF PERIOD**

**1. What is a cooling-off period?**

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

**2. How long is my cooling-off period?**

At least 10 days.

**3. When does the cooling-off period start?**

As soon as you sign the add-on agreement.

**4. When does the cooling-off period end?**

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

**CANCELLING THE ADD-ON CONTRACT**

**5. How do I cancel my contract?**

Write to your credit provider. In your letter:

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

Keep a copy of your letter.

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

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

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

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

**7. Where should I send the letter to?**

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

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

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

**AFTER THE CONTRACT IS CANCELLED**

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

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

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

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

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION,  
CONTACT CONSUMER AFFAIRS<sup>3</sup> OR GET LEGAL ADVICE.**



**Form 6**

[Reg. 15]

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

**CREDIT ACT (Section 58)**

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

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

**THE CONTRACT**

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

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

**2. What details should be included?**

The details should include:

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

If your contract does not tell you all of these details, contact Consumer Affairs<sup>3</sup> or get legal advice, as you may have rights against your credit provider.

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

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



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

Yes, but only if your contract says so.

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

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

**6. How do I know what I owe?**

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

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

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

Yes. You do not get a statement if:

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

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

You may be able to have an independent body look into the contract. Contact Consumer Affairs<sup>3</sup> for details or get legal advice.

**BILLING ERRORS**

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

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

Make sure your letter has the following details:

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

**10. When should I send the letter?**

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

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

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

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

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

**GENERAL**

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

Yes.

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

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

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

Contact Consumer Affairs<sup>3</sup> for help.

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

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

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

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being harassed or threatened, contact Consumer Affairs<sup>3</sup> or the Trade Practices Commission, or get legal advice.

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

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

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

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

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

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

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

**19. Do I have to take out insurance?**

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

**20. Do I have any other rights and obligations?**

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

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AFFAIRS<sup>3</sup> OR GET LEGAL ADVICE.

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

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Form 7

[Reg. 16]

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

1. You should discuss this matter with your credit provider or mortgagee as soon as possible. You may be able to work out some other arrangement about your contract. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.  
The person to contact is .....  
(name or title of officer/s)  
of .....  
(name of credit provider or mortgagee)  
.....  
(address)  
.....  
Telephone No./s: .....
2. If you cannot come to a suitable arrangement with your credit provider or mortgagee, contact Consumer Affairs<sup>3</sup> immediately. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.  
There are other people, such as financial counsellors, who may be able to help.
3. If you disagree with anything in this notice, including what it says you owe, contact Consumer Affairs<sup>3</sup> or get legal advice immediately.

**Form 8**

[Reg. 17]

**NOTICE AFTER TAKING POSSESSION OF MORTGAGED GOODS**

CREDIT ACT (Section 112)

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

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

.....  
(address of mortgagor)

.....  
.....

FROM: .....  
(name of mortgagee)

.....  
(address of mortgagee)

.....  
.....

The law says that you must be given this information.

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

**DETAILS YOU SHOULD KNOW**

Description of the goods:.....

Date the goods were taken:.....

The goods were taken because:.....

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

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

---

**HOW TO GET THE GOODS BACK**

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

**EITHER**

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

Arrears .....	\$
Enforcement Expenses .....	\$
TOTAL .....	\$

**OR**

- \* You can pay the nett balance due to the mortgagee worked out to the actual day you pay out your contract. If you do this you can get the goods back and you do not have any further obligations.

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

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

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

**SALE OF THE GOODS**

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

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

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

does not buy the goods at the higher price, the law says the higher price must still be taken off the amount you owe.

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

### **FINALISING THE CONTRACT**

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

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

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

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



---

**GENERAL**

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

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

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

(Office address) .....

(Postal address) .....

Telephone No./s: .....

If you cannot come to a suitable arrangement with your mortgagee, contact Consumer Affairs<sup>3</sup> immediately. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract or mortgage, then your contract may be able to be varied under the law to meet your situation.

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

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION,  
CONTACT CONSUMER AFFAIRS<sup>3</sup> OR GET LEGAL ADVICE.**

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

\_\_\_\_\_

**Form 9**

[Reg. 18]

CREDIT ACT (Section 120)

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

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**Form 10**

[Reg. 21]

**GUARANTORS — NOTICE OF INTENDED LEGAL ACTION**

CREDIT ACT (Section 138)

....., 20.....

Date

TO: .....

(name of guarantor)

.....

(address of guarantor)

.....

.....

FROM: .....

(name of credit provider)

.....

(address of credit provider)

.....

.....

After 14 days from the time you receive this Notice

.....

(name of credit provider)

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

You will also find at the end of this Notice:

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

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

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

of.....  
(name of credit provider)

.....  
(address of credit provider)

.....  
Telephone No./s:.....

If you cannot come to a suitable arrangement with the credit provider, contact Consumer Affairs<sup>3</sup> immediately. If you have been **unemployed, sick** or there is another **good reason** why you have problems repaying the amount owing, then your contract may be able to be varied under the law to meet your situation.

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

If you disagree with anything in this Notice including what it says you owe, contact Consumer Affairs<sup>3</sup> or get legal advice immediately.

**REASONS FOR INTENDED LEGAL ACTION**

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

.....  
(name of credit provider)

if the debtor defaulted under the contract.

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

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

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

**AMOUNT THE CREDIT PROVIDER CLAIMS YOU OWE**

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

This amount is calculated as follows:

\$

Nett balance due under debtor's credit contract:

Reasonable costs of enforcing your contract of guarantee: \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**DETAILS OF THE CONTRACT**

Your contract of guarantee: —

Date:

Contract No. (if any):

Debtor's credit contract: —

Date:

Contract No. (if any):

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION  
ABOUT WHAT TO DO NEXT, CONTACT CONSUMER AFFAIRS<sup>3</sup> OR  
GET LEGAL ADVICE.

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

\_\_\_\_\_

**Form 11**

[Reg. 22]

**THINGS YOU SHOULD KNOW ABOUT GUARANTEES**

CREDIT ACT (Section 142)

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

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

**GUARANTEES**

**1. What is a guarantee?**

A promise by you that the person who is getting credit under a credit contract will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract as soon as the money is asked for.

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

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

**3. What documents should I be given?**

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

**4. What other information can I get?**

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

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

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

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

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

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

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

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

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

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

**5. Can I cancel my contract of guarantee?**

You may be able to under certain circumstances. For exact details, contact Consumer Affairs<sup>3</sup> or get legal advice.

**IF THE DEBTOR DEFAULTS**

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

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

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

No, except where:

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

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

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

**9. Exactly how much do I have to pay the credit provider if the debtor defaults?**

You have to pay what the debtor owes the credit provider, plus the credit provider's costs in having you honour your contract of guarantee.



**GENERAL**

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

Talk to the credit provider and see if some arrangement can be made about paying. If you cannot come to a suitable arrangement, contact Consumer Affairs<sup>3</sup> for help. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

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

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

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

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

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

**13. Do I have any other rights and obligations?**

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

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION,  
CONTACT CONSUMER AFFAIRS<sup>3</sup> OR GET LEGAL ADVICE.**

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

*[Schedule 1 inserted in Gazette 10 January 1986 pp.138-50.]*

## **Schedule 2**

[Reg. 13]

### **Annual percentage rate — Applicable methods**

**1. Method No. 1**

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

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

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

where —

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

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

where —

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

**2. Method No. 2**

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

**3. Interpretation**

For the purposes of clause 1 of this Schedule —

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

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

**Schedule 3**

[Reg. 19(1)]

**Specified descriptive terms for use in a credit sale contract**

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

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

**Credit Regulations 1985**  
**Schedule 3**

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<b>Column 1</b>	<b>Column 2</b>
<b>Matters Described or Referred to</b>	<b>Descriptive Terms</b>
9. The Commissioner or the Department of Consumer Affairs <sup>3</sup>	Consumer Affairs <sup>3</sup>

*[Schedule 3 amended in Gazette 10 January 1986 p.150.]*

## Schedule 4

[Reg. 19(2)]

### Specified descriptive terms for use in a loan contract

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

**Credit Regulations 1985**  
**Schedule 4**

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

*[Schedule 4 amended in Gazette 10 January 1986 p.150.]*



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**Schedule 5**

[Reg. 19(3)]

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

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

*[Schedule 5 amended in Gazette 10 January 1986 p.150.]*

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**Schedule 6**

[Reg. 19(4)]

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

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

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

*[Schedule 6 amended in Gazette 10 January 1986 p.150.]*

**Schedule 7**

[Reg. 24(1)(b)]

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

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

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

*[Schedule 7 amended in Gazette 10 January 1986 p.150;  
10 October 1986 p.3875; 8 October 1993 p.5437; 24 March 1995  
p.1092.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Credit Regulations 1985* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Credit Regulations 1985</i>	8 Mar 1985 p. 876-900	31 Mar 1985 (see r. 2)
<i>Credit Amendment Regulations 1985</i>	29 Mar 1985 p. 1143	31 Mar 1985 (see r. 2)
<i>Credit Amendment Regulations (No. 2) 1985</i>	10 Jan 1986 p. 137-50	10 Jan 1986
<i>Credit Amendment Regulations 1986</i>	10 Oct 1986 p. 3874-5	10 Oct 1986
<i>Credit Amendment Regulations 1988</i>	5 Aug 1988 p. 2630	29 Aug 1988 (see r. 2)
<i>Credit Amendment Regulations (No. 2) 1988</i>	25 Nov 1988 p. 4761	25 Nov 1988
<i>Credit Amendment Regulations 1993</i>	8 Oct 1993 p. 5437	8 Oct 1993
<i>Credit Amendment Regulations 1995</i>	24 Mar 1995 p. 1092	24 Mar 1995
<i>Credit Amendment Regulations 2004</i>	30 Dec 2004 p. 6914	1 Jan 2005 (see r 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

<sup>2</sup> Repealed by the *Fish Resources Management Act 1994* (No. 53 of 1994).

<sup>3</sup> Under the *Public Sector Management Act 1994* the names of departments can be changed. At the date of this reprint the former Department of Consumer Affairs is called the Ministry of Fair Trading and the former Commissioner for Consumer Affairs is called the Commissioner for Fair Trading.

<sup>4</sup> Repealed by the *Financial Institutions (Western Australia) Act 1992* (No. 30 of 1992).