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## FAIR TRADING

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CONSUMER CREDIT (WESTERN AUSTRALIA) ACT 1996  
CONSUMER CREDIT AMENDMENT REGULATION 1998

Made by the Governor in Executive Council.

**Citation**

1. These regulations may be cited as the *Consumer Credit Amendment Regulation 1998*.

**Commencement**

2. These regulations come into operation on 29 May 1998.

**Principal regulations**

3. In these regulations the *Consumer Credit Regulation 1996*\* is referred to as the principal regulations.

[\* *Published in Gazette 18 October 1996, pp. 5525-5600.*  
*For amendments to 29 April 1998 see 1997 Index to Legislation of Western Australia, Table 4, pp. 44-5.*]

**Section 21 repealed and section 21 substituted**

4. Section 21 of the principal regulations is repealed and the following section is substituted —

“

**Explanation about guarantor's rights and obligations**

**21.** (1) For the purposes of section 51 (1) (b) of the Code, the information document is to be a written document in Form 5A.

(2) The information document referred to in subsection (1) 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.

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#### **Section 51A amended**

5. Section 51A of the principal regulations is amended by deleting “31 May 1998” and substituting the following —

“ 1 December 1998 ”.

#### **Schedule amended**

6. The Schedule to the principal regulations is amended by deleting Form 5A and substituting the following form —

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#### **FORM 5A**

section 51 (1) (b) of the Code  
section 21 of this 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 one 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 one 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 one 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 judgment 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.**

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.