



# National Consumer Credit Protection (National Credit Code) Regulations 2009<sup>1</sup>

## Select Legislative Instrument 2009 No.

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Consumer Credit Protection Act 2009*.

Dated 2009

Governor-General

By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**

Treasurer

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**DRAFT ONLY**

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## Part 1 Preliminary

### 1 Name of Regulations

These Regulations are the *National Consumer Credit Protection (National Credit Code) Regulations 2009*.

### 2 Commencement

These Regulations commence on **[TBA]**.

### 3 Definitions (QR 3)

In these Regulations:

*ADI* has the same meaning as in the *Banking Act 1959*.

*the Code* means the National Credit Code.

### 4 Forms (QR 4)

- (1) A reference in these Regulations to a form of a particular number is a reference to the form of that number in Schedule 1.
- (2) The number of a form need not appear on a document that is required to comply with the form.
- (3) A reference to a provision of the Code, or of these Regulations, to which a form relates need not appear on a document that is required to comply with the form.
- (4) The expression “credit provider”, “debtor”, “lessor” or “lessee” in a form may be replaced by the name of:
  - (a) the credit provider, debtor, lessor or lessee; or
  - (b) another expression that is explained in the form.
- (5) A document that is required to comply with a form need not contain any matter that is not relevant to the credit contract, mortgage, guarantee or consumer lease concerned. The consequential renumbering of items is permissible.

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*Note* @MISC11 of the Code makes provision with respect to forms. The section provides, among other things, that strict compliance with a form is not necessary and substantial compliance is sufficient.

## **5 Continued application of Part 11 of the Code and interpretation provisions (QR 5A)**

- (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 (the *prescribed provision or provisions*), does not apply to a particular matter; or
  - (c) a particular provision or provisions of the Code (the *prescribed provision or provisions*) does not apply to a particular matter.
- (2) The Code applies in relation to the particular matter and the prescribed provision or provisions to the extent necessary for the interpretation of the particular matter and the prescribed provision or provisions.
- (3) **Part 11** of the Code applies in relation to the particular matter and the prescribed provision or provisions to the extent the context permits.

## **6 Exempt credit — maximum account charges (QR 5)**

For **subsection 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* **Subsection 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.

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## 7 Additional exempt credit (QR 6)

The Code (except [Division 3 of Part 4 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* [Subsection 7 \(10\)](#) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

## 8 GIO Finance Limited's No Interest Loan Scheme — exemption from Code (QR 6A)

- (1) This regulation applies to the scheme (the *No Interest Loan Scheme*) that is operated by GIO Finance Limited ACN 002 812 704 in accordance with the deed of agreement executed on 26 June 1992 by the New South Wales Minister for Further Education, Training and Employment and GIO Finance Limited.
- (2) The Code does not apply to the provision of credit under the No Interest Loan Scheme.

*Note* [Subsection 7 \(10\)](#) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

## 9 Rental Purchase Plan — exemption from certain provisions of Code (QR 6B)

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.

*Note* [Subsection 7 \(10\)](#) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

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**10 Partnership loans — exemption from certain provisions of Code (QR 6C)**

- (1) The Code, other than:
- (a) **Part 1; and**
  - (b) **Division 3 of Part 4; and**
  - (c) **Divisions 4 and 5 of Part 5; and**
  - (d) **Part 7;**

does not apply to 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 regulation applies only to the provision of credit on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to which the Code applies to persons who are not partners of the firm.
- (3) For 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.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**11 Student loans — exemption from certain provisions of Code (QR 6D)**

- (1) The Code, other than **subsection 56 (1) and sections 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.

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(2) However, subsection (1) applies only if the institution or association gives the debtor and any guarantor the following things before the contract for the provision of credit is entered into by the debtor or the guarantee is signed by the guarantor:

- (a) a statement of the costs of the provision of credit, which must include any fees or charges payable and the interest rate applicable and may include other information;
- (b) a copy of the terms and conditions of the contract for the provision of credit.

(3) In this 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 given by section 4 of the *Higher Education Funding Act 1988*.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

## **12 Loans for conservation of heritage items — exemption from Code (QR 6E)**

- (1) The Code does not apply to the provision of credit under section 106 of the *Heritage Act 1977* of New South Wales.
- (2) The Code does not apply to the provision of credit under section 12 of the *Heritage Act 1993* of South Australia, but only in respect of loans made from the State Heritage Fund to owners of land constituting places entered in the State Heritage Register established under that Act.
- (3) The Code does not apply to the provision of credit under section 140 of the **Heritage Act 1995** of Victoria.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

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**13 ADIs — exemption from Code (QR 6F)**

The Code does not apply to the provision of credit by an ADI limited by the contract to a total period not exceeding 62 days.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**14 Estate administrators — exemption from certain provisions of Code (QR 6G)**

- (1) The Code, other than **sections 70 to 74**, 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:

- (a) the Commonwealth; or
- (b) a State or Territory; or
- (c) an authority of the Commonwealth or a State or Territory.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

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

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*, but only in respect of the provision of credit that is made and regulated under that Act.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

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**16 Firefighter's Benefit Fund of WA Incorporated — exemption from certain provisions of Code (QR 6I)**

The Code, other than **Division 3 of Part 2, Division 3 of Part 4 and Divisions 1 and 2 of Part 5**, does not apply to the provision of credit to a person by the Firefighter's Benefit Fund of WA Incorporated (the *fund*) if:

- (a) the person is a member of the fund; and
- (b) the application form by which the person applies for the 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.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**17 Charge card contracts — exemption of certain contracts from Code (QR 6J)**

- (1) The Code does not apply to the provision of credit under a charge card contract made available by any of the following credit providers:
  - (a) American Express Australia Limited ACN 108 952 085;
  - (b) American Express International Inc. ARBN 000 618 208;
  - (c) Diners Club Pty Limited ACN 004 343 051;
  - (d) Motorcharge Ltd ACN 008 962 132.

*Examples*

- 1 American Express Platinum Card.
- 2 Diners Club Personal Card.
- 3 Motorcharge Card.

- (2) In subsection (1):
  - charge card contract*** means a credit contract under which:
    - (a) credit is ordinarily obtained by the use of a card; and
    - (b) multiple advances of credit are contemplated; and

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- (c) the provision of an advance of credit is limited to a total period of not more than 62 days; and
  - (d) monthly or other periodic statements of account are provided to the debtor; and
  - (e) liquidated damages or charges for late payment are payable by the debtor if the debtor does not repay an advance of credit mentioned in a monthly or other periodic statement of account within a stated period.

*Note* **Subsection 7 (10)** of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

## **18 Mortgages — exemptions from Code (QR 7)**

- (1) The Code does not apply to the following mortgages:
  - (a) a mortgage relating to perishable goods, livestock, primary produce or food stuffs;
  - (b) a banker's right to combine accounts;
  - (c) a lien or charge arising by operation of any Act or law or by custom.
- (2) However, **sections 14 and 15** of the Code (relating to disclosures) apply in respect of a mortgage mentioned in paragraph (1) (a).
- (3) **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 regulation is made under **subsection 8 (3)** of the Code.

## **19 Guarantees — exemption from Code (Qr 8)**

The Code does not apply to any guarantee by the supplier under a tied loan contract or tied continuing credit contract.

*Note* This regulation is made under **subsection 9 (3)** of the Code.

## **20 Deemed mortgages for goods lease with option to purchase (QR 9)**

For **paragraph 10 (3) (f)** of the Code, the terms and conditions of a mortgage are set out in Form 1.

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*Note* **Section 10** of the Code treats a goods lease with an option to purchase to be a sale of goods by instalments for the purposes of the Code.

If the lease is a credit contract because of **subsection 6 (1)** of the Code, a mortgage containing the terms and conditions set out in the regulations is taken by **paragraph 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.

## **21 Declaration of purposes for which credit provided (QR 10)**

- (1) For **subsection 11 (7)** of the Code, the form of the declaration is:

“I/We declare that the credit to be provided to me/us by the credit provider is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.”

- (2) The declaration must contain the following warning immediately below the words of the declaration mentioned in subregulation (1) or, if the declaration is to be made by electronic communication, prominently displayed when (but not after) the person signs:

### **IMPORTANT**

You should **not** sign this declaration unless this loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

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

- (3) The declaration must contain:
- (a) the signature of each person making the declaration; and

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- (b) either:
- (i) the date on which the declaration is signed; or
  - (ii) the date on which it is received by the credit provider.

*Note* The Code applies only to credit provided or intended to be provided for:

- (a) personal, domestic or household purposes; or
- (b) the purchase, renovation or improvement of residential property used for investment purposes.

**Subsection 11 (2)** of the Code provides that credit is presumed not to be provided for Code purposes if the debtor declares, before entering into the credit contract, that the credit is to be applied wholly or predominantly for business or investment purposes (or for both purposes), other than investment in residential property.

The declaration is not effective unless it is substantially in the form required by the regulations.

## Part 2 Credit contracts

### 22 Statement about debtor's statutory rights and obligations (QR 11)

- (1) For **paragraph 14 (1) (b)** of the Code, an information statement must:
  - (a) be in writing; and
  - (b) be in accordance with Form 2.
- (2) The information statement may be in the form of a separate document or a part of the credit contract document.

*Note* **Paragraph 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.

In accordance with **subregulation 4 (5)**, 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.

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## 23 Comparison rate (QR 12)

- (1) This section applies if:
  - (a) a credit provider, before entering into a credit contract, informs the debtor of the comparison rate in accordance with **subsection 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 in accordance with **Part 9A** of the Code.
- (2) The comparison rate must be calculated as a nominal rate per annum, together with the compounding frequency, in accordance with this regulation.
- (3) The comparison rate is given by the formula:

$$n \times r \times 100\%$$

where:

$n$  is the number of repayments per annum to be made under the credit contract (annualised if the term of the contract is less than 12 months), except that:

- (a) if repayments are to be made weekly,  $n$  is 52.18; and
- (b) if repayments are to be made fortnightly,  $n$  is 26.09; and
- (c) if the contract does not provide for a constant interval between repayments,  $n$  is to be derived from the interval selected for the purposes of the definition of  $j$ .

$r$  is the solution of:

$$\sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

where:

$j$  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.

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$t$  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.

*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 **subsection 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

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- (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 the debtor does not make a requirement in relation to a matter mentioned in paragraph (a), (b) or (c), the credit provider may determine the matter.

- (9) In the case of a comparison rate under **Part 9A** of the Code:
- (a) the amount of credit and term are to be typical of the type of credit contract offered in the advertisement; and
- (b) a number of comparison rates may be included in the advertisement for different credit contracts if the amount of credit and term applicable to each of the rates are clearly stated.
- (10) At the time that the debtor is informed of the comparison rate under **subsection 14 (3)** of the Code, the debtor must be given the following warning by the credit provider in writing:

**“WARNING:** This comparison rate applies only to the example or examples given. Different amounts and terms will result in different comparison rates. Costs such as redraw fees or early repayment fees, and cost savings such as fee waivers, are not included in the comparison rate but may influence the cost of the loan.”

- (11) An advertisement that contains a comparison rate in accordance with **Part 9A** 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* **Subsection 14 (3)** of the Code provides that the credit provider may inform the debtor of the comparison rate before entering into the contract.

**Part 9A** 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.

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## 24 Pre-contractual statement (QR 13)

- (1) For **subsection 14 (4)** of the Code, the following financial information (*relevant financial information*) mentioned in **section 15** of the Code, which is to be contained in the precontractual statement, is prescribed:
  - (a) for **subsection 15 (3)** (Amount of credit):
    - (i) the amount of credit agreed to be provided (if ascertainable); or
    - (ii) if the amount is not ascertainable — the maximum amount of credit agreed to be provided, or the credit limit under the contract, (if any);
  - (b) for **subsection 15 (4)** (Annual percentage rate or rates) — the information mentioned in the subsection, other than the information mentioned in **subparagraph 15 (4) (c) (iii)**;
  - (c) for **subsection 15 (5)** (Calculation of interest charges) — the maximum duration of any interest free period under the credit contract;
  - (d) for **subsection 15 (6)** (Total amount of interest charges payable) — the information mentioned in the subsection;
  - (e) for **subsection 15 (7)** (Repayments) — the information mentioned in the subsection;
  - (f) for **subsection 15 (8)** (Credit fees and charges) — the information mentioned in **paragraphs 15 (8) (a) and (b)**, but only in respect of:
    - (i) retained credit fees and charges (being credit fees and charges retained by the credit provider and not passed on to or retained in reimbursement of an amount paid to a third party); and
    - (ii) lenders mortgage insurance.
- (2) The relevant financial information is to be set out:
  - (a) separately from the remainder of the information under **section 15** of the Code that is to be set out in the precontractual statement; and
  - (b) in tabular form (the *financial table*), in either portrait or landscape format.

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- (3) Additional information may be included in the financial table, but only in the following circumstances:
    - (a) any information mentioned in **subsection 15 (3), (4), (5) or (8)** of the Code that is not relevant financial information may be included with the relevant financial information;
    - (b) any other information mentioned in **subsection 15 (2) or subsections 15 (9) to (16)** of the Code may be included after the relevant financial information and any information included under paragraph (a).
  - (4) If the relevant financial information relates to more than 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 at the beginning of the precontractual statement, after any formal cover page or pages that have no substantive content. However:
    - (a) if the precontractual statement is not a separate document, the financial table is to be set out at the beginning of the proposed contract document; and
    - (b) the financial table may be preceded by information necessary to identify the loan.
  - (6) If the precontractual statement consists of more than 1 document, the financial table need not be repeated.
  - (7) If any of the relevant financial information can change under the credit contract because of a unilateral change by the credit provider:
    - (a) a clear statement must be made in the financial table that it is subject to change and that the change can be made without the debtor's consent; and
    - (b) single statement may be made for 2 or more items of information that are subject to change.
  - (8) An expression may be used for the purposes of the relevant financial information if the expression is defined in the precontractual statement.
  - (9) The relevant date of disclosure of the information in the financial table may be set out in the financial table.

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- (10) This regulation does not prevent a repetition of the relevant financial information in the financial table in any other form in connection with the remainder of the information under **section 15** of the Code that is to be set out in the precontractual statement.

*Note* **Paragraph 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 **subsection 14 (4)** of the Code, the regulations may specify the financial information that is to be contained in the precontractual statement, and prescribe the form in which the information must appear.

## **25 Additional disclosures about insurance financed by contract (QR 14)**

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

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

## **26 Additional disclosures about credit contracts to be signed by debtor (QR 15)**

- (1) For **subsection 15 (16)** of the Code, the information and warnings set out in Form 3 or 4, as relevant, are prescribed, but only if the credit contract document is to be signed by the debtor.
- (2) Form 3 is the relevant form if the document signed by the debtor constitutes an offer.
- (3) Form 4 is the relevant form if the document signed by the debtor constitutes the acceptance of an offer by the credit provider.
- (4) The information and warnings mentioned in subsection (1):
  - (a) are to be in the relevant form (including in the form of boxes); and

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

*Note* **Section 15** of the Code sets out the matters to be included in the credit contract document. **Subsection 15 (16)** 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.

## **27 Deduction of amount for interest charges (QR 16)**

**Subsection 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* **Subsection 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.

**Subsection 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.

## **28 Calculation of unpaid daily balances (QR 17)**

- (1) This regulation applies to the calculation of average unpaid daily balances if interest charges under a credit contract are determined under **subsection 26 (2)** of the Code for a month, a quarter or a half-year by applying the relevant fraction of the annual percentage rate.

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- (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* **Subsection 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, **subsection 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:

- (a) 12 (for a month); or
- (b) by 4 (for a quarter); or
- (c) by 2 (for a half-year);

to the relevant average unpaid daily balances for the period. The regulations may provide for the calculation of unpaid daily balances in these circumstances.

## **29 Early debit or payment of interest charges (QR 18)**

**Subsection 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.

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*Note* **Subsection 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. **Subsection 27 (3)** of the Code authorises the making of regulations that exempt from that prohibition the first payment of interest charges under the credit contract.

### **30 When statement of account not required (QR 19)**

For **paragraph 31 (3) (b)** of the Code, the level is \$10.

*Note* **Section 31** of the Code requires the credit provider to give the debtor periodic statements of account. **Subsection 31 (3)** sets out the circumstances in which a statement is not required to be given.

**Paragraph 31 (3) (b)** provides that a statement is not required if no amount has been debited or credited to the debtor's account during the statement period and the amount outstanding on the debtor's account is zero or below a level fixed by the regulations.

## **Part 3 Related mortgages and guarantees**

### **31 Mortgage arising from certain home ownership schemes — exemption from subsection 46 (1) of the Code (QR 19A)**

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

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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) **Subsection 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:
    - (i) an employee of that corporation; or
    - (ii) an employee of a corporation that is a related body 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.

## **32 Form of guarantees (QR 20)**

- (1) For **section 50** of the Code, a guarantee must contain the warning set out in Form 5.
- (2) The warning must comply with the following requirements:
- (a) it must be in the form of a box as indicated in Form 5;
  - (b) it must be set out immediately above (and on the same page as) the place where the guarantor (or at least 1 of the guarantors) is to sign the guarantee document;

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- (c) if the guarantors are to sign the guarantee document on separate pages, it must be set out in that way on each page.

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

### **33 Explanation about guarantor's rights and obligations (QR 21)**

- (1) For **paragraph 51 (1) (b)** of the Code, the document explaining the rights and obligations of a guarantor must be in accordance with Form 6.
- (2) The document may be a separate document or a part of the guarantee document.

*Note* **Paragraph 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 4 Changes to obligations under credit contracts, mortgages and guarantees**

### **34 Information about increases in the amount of credit (QR 22)**

- (1) For **subsection 65 (3)** of the Code, as much of the following information as is ascertainable is prescribed in respect of a credit contract (other than a continuing credit contract):
- (a) the date of the change in the contract;
  - (b) the unpaid daily balance at the date of the notice;
  - (c) the amount by which the amount of credit will be increased in accordance with the agreement;
  - (d) the persons, bodies or agents (including the credit provider) to whom the amount mentioned in paragraph (c) is to be paid and the amounts payable to them;

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- (e) the total of the amounts mentioned in paragraphs (b) and (c);
  - (f) details of any change to the annual percentage rate;
  - (g) details of any credit fees or charges that will be payable after the change in the contract;
  - (h) current repayment details, being:
    - (i) the number of repayments yet to be made; and
    - (ii) the amount of each of those repayments; and
    - (iii) the total amount of those repayments yet to be paid;
  - (i) the repayment details once the agreement is made, being:
    - (i) the number of repayments yet to be made once the agreement is made; and
    - (ii) the amount of each of those repayments; and
    - (iii) the total amount of those repayments; and
    - (iv) details of any changes in the times or frequency of repayment;
  - (j) if commission is to be paid by or to the credit provider for the introduction of credit business or business financed by the increased amount of credit under the contract — information of the kind mentioned in **subsection 15 (14)** of the Code;
  - (k) the proposed increase in the term of the contract;
  - (l) the proposed new expiry date for the contract.

*Note* **Subsection 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.

**Subsection 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 **paragraphs (1) (h) and (i)** relating to the total amount of repayments need only be included in the written notice given under **subsection 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.

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## Part 5                      Ending and enforcing credit contracts, mortgages and guarantees

### 35                      Information after surrender of goods (QR 23)

For [subsection 78 \(3\)](#) of the Code, the information required to be contained in a notice must include the information set out in Form 7.

*Note* [Section 78](#) of the Code enables a debtor of goods sold by instalments or mortgagor to surrender the goods. [Subsection 78 \(3\)](#) of the Code 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.

### 36                      Notice after direct debit default occurs (QR 23AA)

For [subsection 79A \(3\)](#) of the Code, the information required to be contained in a direct debit default notice is the information set out in Form 8.

### 37                      Notice after default occurs

For [paragraphs 80 \(3\) \(f\) and \(g\)](#) of the Code, the information set out in Form 9 is prescribed.

### 38                      Consent to enter premises (QR 24)

For [subsection 91 \(2\)](#) of the Code, consent by the occupier of premises to entry to the premises is taken to have been given only if the following requirements have been complied with:

- (a) a request to the occupier for entry to the premises must be made by the credit provider or agent by application in writing or by calling at the premises concerned;
- (b) if the request is made personally, it may only be made between the hours of 8a.m. to 8p.m. on any day other than a Sunday or public holiday;
- (c) the consent in writing must be in accordance with Form 10 and signed by the occupier;

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- (d) the document of consent is not to be presented to the occupier for signature with, or as part of, any other document (unless the other document, or the remainder of the other document, contains only the provisions of **section 91** of the Code).

*Note* **Subsection 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 **subsection 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.

### **39 Statement about mortgagor's rights and obligations (QR 25)**

For **paragraph 94 (1) (c)** of the Code, a statement of a mortgagor's rights and obligations must be a written statement in accordance with Form 11.

*Note* **Subsection 94 (1)** of the Code requires a credit provider that has taken possession of goods under a mortgage to give the mortgagor certain information, including a statement of the mortgagor's rights and obligations in the form set out in the regulations.

### **40 Information about proceeds of sale of mortgaged goods (QR 26)**

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

*Note* **Subsection 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                      Related sale contracts

### 41                      Rate of interest on damages (QR 27)

For subsection 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* **Subsection 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.

### 42                      Informing debtor of rights (QR 28)

For **subsection 126 (2)** of the Code, the information given by the credit provider to the debtor must be:

- (a) a written statement in accordance with Form 12; and
- (b) given to the debtor within 21 days of the termination of the tied loan contract or the tied continuing credit contract.

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

### 43                      Rebate of consideration (QR 29)

For subsection 126 (3) of the Code, the proportionate rebate of consideration is calculated using the formula:

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

where:

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

*S* is the number of whole months in the unexpired portion of the period for which maintenance was agreed to be provided.

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*T* is the number of whole months for which maintenance was agreed to be provided.

*Note* **Subsection 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.

**Subsection 126 (3)** of the Code provides that the regulations may prescribe the manner of calculating that proportionate rebate of consideration.

## **Part 8                      Related insurance contracts**

### **44                      Particulars of insurance entered into by credit provider (QR 30)**

- (1) For subsection 136 (2) of the Code, the prescribed particulars of the insurance that a credit provider is to give to the debtor are the key features of the credit-related insurance contract.
- (2) The key features of the contract are the following:
  - (a) the name of the insurer;
  - (b) the kind of insurance, the risks insured against and the exclusions;
  - (c) the beneficiaries under the policy;
  - (d) the expiry date of the policy;
  - (e) the premium payable (to the extent ascertainable);
  - (f) the fees and charges payable (to the extent ascertainable);
  - (g) the person by whom, and the person with whom, a claim may be made in respect of the policy, and the manner of making such a claim.
- (3) A particular mentioned in subregulation (2) may be given by providing a copy of the policy containing the particular.

*Note* **Subsection 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.

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**45 Proportionate rebate of consumer credit insurance premium (QR 31)**

For **subsection 138 (4)** of the Code, the proportionate rebate of premium is calculated using the formula:

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

where:

*P* is the amount of the premium paid (not including any amount payable in respect of a government charge).

*S* is the number of whole months in the unexpired portion of the period for which insurance was agreed to be provided.

*T* is the number of whole months for which insurance was agreed to be provided.

**46 Notice of right to cancel mortgaged property insurance (QR 32)**

For **subsection 139 (2)** of the Code, the information given to the debtor by the credit provider must be a written statement in accordance with Form 13.

*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. **Subsection 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.

**47 Proportionate rebate of premium for insurance over mortgaged property (QR 33)**

For **subsection 139 (3)** of the Code, the manner of calculating the proportionate rebate of premium is to calculate the sum of:

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

- 
- (b) 90% of the proportion of the amount of the premium for insurance paid in respect of the current period of the insurance contract attributable to the unexpired portion of that period consisting of whole months.

*Note* **Subsection 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 9A                      Comparison rates**

### **48                      Relevant comparison rate where annual percentage rate stated (QR 33A)**

For subsection 146F (2) of the Code, the designated amounts and terms for which a comparison rate is to be calculated are:

- (a) \$250 for a term of 2 weeks; and
- (b) \$1000 for a term of 6 months; and
- (c) \$2500 for a term of 2 years; and
- (d) \$10000 for a term of 3 years; and
- (e) \$30000 for a term of 5 years; and
- (f) \$150000 for a term of 25 years.

### **49                      Information about whether comparison rate relates to secured loan (QR 33B)**

For subsection 146G (2) of the Code, the following amounts of credit are prescribed as amounts for which a statement must be made as to whether a comparison rate is for a secured loan or an unsecured loan:

- (a) \$10 000;
- (b) \$30 000.

### **50                      Warnings about comparison rate (QR 33C)**

- (1) For subsection 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 other electronic display medium.

*Note* For a credit advertisement on an electronic display medium, [subsection 146I \(3\)](#) of the Code explains the way in which the warning must be given.

- (2) The warning may also contain a statement that the credit provider does not provide credit for an amount, or a term, or both, specified in a credit advertisement or comparison rate schedule.

- (3) The long statement is:

**“WARNING:** This comparison rate applies only to the example or examples given. Different amounts and terms will result in different comparison rates. Costs such as redraw fees or early repayment fees, and cost savings such as fee waivers, are not included in the comparison rate but may influence the cost of the loan.”

- (4) The short statement is:

**“WARNING:** This comparison rate is true only for the examples given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate.”

## **51 Calculation of comparison rates (QR 33F)**

- (1) For the purposes of this Part, comparison rates are to be calculated in accordance with this regulation.
- (2) The comparison rate must be calculated as a nominal rate per annum, together with the compounding frequency.
- (3) The comparison rate is calculated using the formula:

$$n \times r \times 100\%$$

where:

*n* is the number of repayments per annum to be made under the credit contract (annualised if the term of the contract is less than 12 months), except that:

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- (a) if repayments are to be made weekly,  $n$  is 52.18; and
  - (b) if repayments are to be made fortnightly,  $n$  is 26.09; and
  - (c) if the contract does not provide for a constant interval between repayments,  $n$  is to be derived from the interval selected for the purposes of the definition of  $j$ .

$r$  is the solution of 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.

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- (5) In the application of the formulae, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.

*Example*

If repayments are to be made on a fixed day each month, it may be assumed that repayments will be made on that day each month even though the credit contract provides for payment on the preceding or succeeding business day when the due date is not a business day.

- (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.

## **52 Matters that may be included in comparison rate schedules (QR 33HA)**

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

## **Part 10 Consumer leases**

### **53 Declaration about purpose of leases**

- (1) For [subsection 150 \(4\)](#) of the Code, the form of the declaration is:
- “I/We declare that the goods to be hired by me/us from the lessor are to be hired wholly or predominantly for business purposes.”
- (2) The declaration must contain the following warning immediately below the words of the declaration mentioned in subregulation (1) or, if the consumer lease is to be made by electronic communication, prominently displayed when (but not after) the person signs:

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**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 National Credit Code.

- (3) The declaration must contain:
- (a) the signature of each person making the declaration; and
  - (b) either the date on which the declaration is signed or the date on which it is received by the lessor.

*Note* The Code applies to consumer leases only if the goods are hired for personal, domestic or household purposes. **Subsection 150 (2)** of the Code provides that goods hired under a consumer lease are presumed not to be hired for those purposes if the lessee declares, before hiring the goods, that the goods are hired wholly or predominantly for business purposes.

The declaration is not effective unless it is substantially in the form required by the regulations.

**54 Explanation about rights and obligations of consumer lessees (QR 35)**

- (1) For **subsection 153 (1)** of the Code, a statement must:
- (a) be in writing; and
  - (b) be in accordance with Form 14.
- (2) The 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 statement must be given within 14 days after entering into the lease.

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## Part 11                      Miscellaneous

### 55                      Tolerances relating to disclosures (QR 36)

- (1) For **paragraph 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 **paragraph 158 (1) (a)** of the Code, information about any amount payable that:
  - (a) depends for its accuracy on an interest charge that is correct only because of a permissible tolerance under subsection (1); and
  - (b) is not inaccurate for any other reason);  
is also within permissible tolerances.
- (3) For this regulation and **regulation 56**:
  - (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 **paragraph 158 (1) (a)** of the Code, information disclosed about:
  - (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.

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- (5) However, an overstatement mentioned in subregulation (4):
- (a) does not affect the amounts payable under the credit contract; and
  - (b) is not within permissible tolerances for [section 159](#) of the Code unless it is within permissible tolerances because of [regulation 56](#).

## **56 Tolerances relating to amounts payable etc. (QR 37)**

- (1) For [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 the Commonwealth to charge (or obtain reimbursement in respect of) an amount of duty in the nature of receipts or financial institutions duty that is not within a permissible tolerance under paragraph (a) or (b), that amount is within permissible tolerances.
- (2) For [section 159](#) of the Code, an amount which depends for its accuracy on an interest charge that is correct only because of a permissible tolerance under subsection (1) (and is not inaccurate for any other reason) is within permissible tolerances.

*Note* [Section 159](#) of the Code provides that all amounts charged, payable or calculated under or in connection with a credit contract, mortgage, guarantee or consumer lease comply with the Code if they are within tolerances allowed by the regulations.

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**57 Additional assumptions relating to disclosures (QR 38)**

- (1) Disclosures for the purposes of the Code relating to interest charges, repayments and fees and charges may, if any repayment is to be made or interest charge or fee or charge is to be paid or debited on a particular day, be made on the assumption that:
  - (a) the repayment will be made or the interest charge or fee or charge paid or debited on that day even though it is not a business day; and
  - (b) the contract provides that the repayment is to be made or the interest charge or fee or charge paid or debited on the next preceding or succeeding business day.
- (2) Disclosures for the purposes of the Code relating to repayments and interest charges may also be made on the assumption that the amount of credit will be provided:
  - (a) on the date nominated for that purpose in the pre-contractual statement given under [section 14](#) of the Code; or
  - (b) if no date is nominated — on the relevant date of disclosure set out in the financial statement as mentioned in [subregulation 24 \(9\)](#); or
  - (c) if no date is so set out — the date on which the statement is given to the debtor.
- (3) Subregulation (2) does not apply to:
  - (a) a continuing credit contract; or
  - (b) a credit contract under which credit is provided progressively and the dates on which the credit is to be provided are not ascertainable.

**58 Contracts linked to loan account offset arrangements (QR 38A)**

- (1) Disclosures for the purposes of the Code relating to a credit contract linked to a loan account offset arrangement may be made on the assumption that the contract is not linked to the arrangement.

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- (2) If the amount of interest charges under a credit contract is affected by a loan account offset arrangement during a statement period:
- (a) the statement of account is to disclose the net interest charge debited under the credit contract during the statement period; and
  - (b) the statement of account must also show the amount by which the net interest differs from the interest charge that would otherwise have been payable under the credit contract if the interest charge had not been affected by the loan account offset arrangement.

## **59 Requirements for print or type (QR 39)**

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

*Note* **Paragraph 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.

- (2) For **paragraph 162 (1A) (b)** of the Code, if a credit contract, mortgage or guarantee or a notice given 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

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- (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.

## 60 Notices (QR 40)

- (1) For **subsections 171 (4) and (6)** of the Code, a nomination must be in the following form:
- (a) the nomination must contain the words:  
“I/We nominate [*full name of person nominated*] to receive notices and other documents under the National Credit Code on behalf of me/all of us.”;
  - (b) the nomination must contain a prominent statement:
    - (i) that each debtor, mortgagor or guarantor is entitled to receive a copy of any notice or other document under the Code; and
    - (ii) that, by signing the form, the debtor, mortgagor or guarantor is giving up the right to be provided with information direct from the credit provider;
  - (c) the nomination must contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that the person wishes to cancel the nomination.
- (2) For **subsection 171 (5)** of the Code, a consent must be in the following form:
- (a) the consent must contain the words:  
“We consent to notices and other documents under the National Credit Code to us being sent jointly to us at [*address for service*].”;
  - (b) the consent must contain a prominent statement:
    - (i) that each debtor, mortgagor or guarantor is entitled to receive a copy of any notice or other document under the Code; and
    - (ii) that, by signing the form, the debtor, mortgagor or guarantor is giving up the right to be provided with information separately from the credit provider;

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- (c) the consent must contain a prominent statement that any person who has signed the form can advise the credit provider at any time in writing that the person wishes to cancel the consent.

## **Part 12 Savings and transitional provisions**

### **Division 1 Reliance on State and Territory Consumer Credit Codes**

#### **61 References in documents to Consumer Credit Code of a State or Territory**

- (1) A person does not contravene a provision of these Regulations solely by:
- (a) providing or using a document (including a form) for the purpose of the provision; and
  - (b) referring in the document to a provision of the Consumer Credit Code of a State or Territory mentioned in subregulation (2) that has the same effect, or is the same in substance, as the provision of these Regulations.
- (2) The Consumer Credit Codes of the States and Territories are the following:
- (a) the *Consumer Credit (New South Wales) Code* referred to in the *Consumer Credit (New South Wales) Act 1995*;
  - (b) the *Consumer Credit (Victoria) Code* referred to in the **Consumer Credit (Victoria) Act 1995**;
  - (c) the *Consumer Credit (Queensland) Code* referred to in (and appended to) the *Consumer Credit (Queensland) Act 1994*;
  - (d) the *Consumer Credit (Western Australia) Code* referred to in the *Consumer Credit (Western Australia) Act 1996*;
  - (e) the *Consumer Credit (South Australia) Code* referred to in the *Consumer Credit (South Australia) Act 1995*;
  - (f) the *Consumer Credit (Tasmania) Code* referred to in the *Consumer Credit (Tasmania) Act 1996*.

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- (g) the Consumer Credit (Australian Capital Territory) Code referred to in the *Consumer Credit Act 1995* (ACT);
  - (h) the Consumer Credit (Northern Territory) Code referred to in the *Consumer Credit (Northern Territory) Act 1995*.
- (3) Subregulation (1) ceases to have effect at the end of the period of 2 years starting when this regulation commences.

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## Schedule 1      Forms

(subregulation 4 (1))

### Form 1      Prescribed terms and conditions of mortgage

paragraph 10 (3) (f) of the Code  
regulation 20 of the Regulations

- 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 paragraph 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 National 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.

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## Form 2 Information statement

paragraph 14 (1) (b) of the Code  
regulation 22 of the Regulations

### Things you should know about your proposed credit contract

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

If you have any concerns about your contract, contact the credit provider and, if you still have concerns, your credit provider's external dispute resolution scheme, or get legal advice.

### The contract

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

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

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

whichever happens first.

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

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

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

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

### **3 Can I terminate the contract?**

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

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

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

### **4 Can I pay my credit contract out early?**

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

### **5 How can I find out the pay out figure?**

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

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

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

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early

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termination charge (if your contract permits your credit provider to charge one) and other fees.

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

Yes, but only if your contract says so.

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

That depends on the type of change. For example—

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

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

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

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact your credit provider's external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is (name of external dispute resolution provider) and can be contacted at (insert telephone number, email/website and postal address).

Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre.

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You can also contact ASIC, the regulator, for information on 1300 300 630.

## **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.

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**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.

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Otherwise you may—

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

OR

- give the property to someone who may then take over the repayments, but only if your credit provider gives permission first.

If your credit provider won't give permission, you can contact their external dispute resolution scheme for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after 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

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after the occupier is informed in writing of the relevant section in the National 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.

Contact your credit provider's external dispute resolution scheme.

You can also go to court. You may wish to get legal advice, for example from a community legal centre, on how to do 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 the credit provider's external dispute resolution scheme or ASIC, or get legal advice.

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**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 CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS (INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER) AND CAN BE CONTACTED AT (INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS).**

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

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## Form 3 Disclosure about credit contracts

subsection 15 (16) of the Code  
subregulation 26 (2) of the Regulations

### IMPORTANT

#### BEFORE YOU SIGN

- \* READ THIS CONTRACT DOCUMENT so that you know exactly what contract you are entering into and what you will have to do under the contract.
- \* You should also read the information statement: “THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT”.
- \* Fill in or cross out any blank spaces.
- \* Get a copy of this contract document.
- \* **Do not sign** this contract document if there is anything you do not understand.

#### THINGS YOU MUST KNOW

- \* You can withdraw this offer at any time before the credit provider accepts it. When the credit provider does accept it, you are bound by it. However, you may end the contract before you obtain credit, or a card or other means is used to obtain goods or services for which credit is to be provided under the contract, by telling the credit provider in writing, but you will still be liable for any fees or charges already incurred.
- \* You **do not** have to take out consumer credit insurance unless you want to. 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.

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## Form 4 Disclosure about credit contracts

subsection 15 (16) of the Code  
subregulation 26 (3) of the Regulations

### IMPORTANT

#### BEFORE YOU SIGN

- \* READ THIS CONTRACT DOCUMENT so that you know exactly what contract you are entering into and what you will have to do under the contract.
- \* You should also read the information statement: "THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT".
- \* Fill in or cross out any blank spaces.
- \* Get a copy of this contract document.
- \* **Do not sign** this contract document if there is anything you do not understand.

#### THINGS YOU MUST KNOW

- \* Once you sign this contract document, you will be bound by it. However, you may end the contract before you obtain credit, or a card or other means is used to obtain goods or services for which credit is to be provided under the contract, by telling the credit provider in writing, but you will still be liable for any fees or charges already incurred.
- \* You **do not** have to take out consumer credit insurance unless you want to. 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.

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## Form 5 Disclosure about guarantee

section 50 of the Code  
regulation 32 of the Regulations

### IMPORTANT

#### BEFORE YOU SIGN

- \* READ THIS CONTRACT DOCUMENT AND THE CREDIT CONTRACT DOCUMENT.
- \* You should also read the information statement: "THINGS YOU SHOULD KNOW ABOUT GUARANTEES".
- \* You should obtain independent legal advice.
- \* You should also consider obtaining independent financial advice.
- \* You should make your own inquiries about the credit worthiness, financial position and honesty of the debtor.

#### THINGS YOU MUST KNOW

- \* Understand that, by signing this guarantee, you may become personally responsible instead of, or as well as, the debtor to pay the amounts which the debtor owes and the reasonable expenses of the credit provider in enforcing the guarantee.
- \* If the debtor does not pay you must pay. This could mean you lose everything you own including your home.
- \* You may be able to withdraw from this guarantee or limit your liability. Ask your legal adviser about this before you sign this guarantee.
- \* You are not bound by a change to the credit contract, or by a new credit contract, that increases your liabilities under the guarantee unless you have agreed in writing and have been given written particulars of the change or a copy of the new credit contract document.

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## Form 6 Information statement

section 51 (1) (b) of the Code  
regulation 33 of the Regulations

### Things you should know about guarantees

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

### Guarantees

#### 1 What is a guarantee?

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

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

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

#### 3 What documents should I be given?

Before you sign the guarantee you should get—

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

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

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

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

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

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

The credit provider must give you the requested information—

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

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

You may be charged a fee for the statement.

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

#### **5 How can I find out the payout figure?**

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

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

## **6 What other information can I get?**

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

- the guarantee; or
- any credit-related insurance contract (such as insurance on mortgaged property) the credit provider has; or
- a notice previously given to you, the debtor or the mortgagor under the National Credit Code.

The credit provider must give you the requested copy—

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

The credit provider may charge you a fee.

Your request can be made any time up to 2 years after the end of the credit contract.

## **7 Can I withdraw from my guarantee?**

You can withdraw from your guarantee at any time by written notice to the credit provider if the final credit contract is materially different from the proposed credit contract given to you before you signed the guarantee.

## **8 Can I limit my guarantee?**

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

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

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

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

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

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

**11 Should I get a copy of my mortgage?**

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

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

The law says you 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, you may contact the credit provider's external dispute resolution scheme for help. You should understand that you may owe money to the credit provider even after mortgaged property is sold.

External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is (name of external dispute resolution provider) and can be contacted at (insert telephone number, email/website and postal address).

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

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

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

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

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

The credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the

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occupier is informed in writing of the relevant section in the National Credit Code.

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

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

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

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

However, there will be no warning notice if—

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

**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.

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If you cannot come to a suitable arrangement, contact your credit provider's external dispute resolution scheme.

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

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

You can sue the debtor, but remember, if the debtor 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 WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS (INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER) AND CAN BE CONTACTED AT (INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS).**

---

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

**DRAFT ONLY**

---

**Form 7      Information after surrender of mortgaged goods**

**subsection 78 (3) of the Code  
regulation 35 of the Regulations**

.....

Date

TO: .....

(name of mortgagor)

.....

(address of mortgagor)

.....

.....

FROM: .....

(name of credit provider)

.....

(address of credit provider)

.....

Date

CONTACT PERSON: .....

(name, telephone number and address)

**DRAFT ONLY**

---

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 credit provider's external dispute resolution scheme immediately. If you are the debtor and have been **unemployed, sick** or there is **another good reason** why you are having problems making payments under your contract, then your contract may be able to be varied under the law to meet your situation.

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

---

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS (INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER) AND CAN BE CONTACTED AT (INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS).**

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

.....  
(name of person signing)

.....  
(position of person signing)

- \* *Delete if inapplicable.*
- \*\* *Indicate the daily, monthly or other rate at which enforcement expenses may accrue.*

---

## Form 8 Direct debit default notice

subsection 79A (3) of the Code  
regulation 36 of the Regulations

### DIRECT DEBITS FROM YOUR BANK ACCOUNT

A direct debit to your account has been dishonoured (not paid). Make sure you understand how your direct debit works and what to do if you have a problem.

#### Some useful tips on direct debits

*Make sure you have the correct account number.* Ensure that you have not used the wrong account number when making your payment, or that the direct debit has not been dishonoured due to the account being changed or closed.

*Read your Direct Debit Request Service Agreement carefully.* Make sure you understand how much the credit provider will withdraw from your account and when. Contact your credit provider if you need to change the dates on which the direct debit occurs.

*Have adequate funds in your account to meet your payments.* This will make sure you don't incur a fee for not having sufficient funds in your account.

*Check your bank statements.* Make sure your credit provider is withdrawing the correct amount at the right time.

*Cancelling your direct debit.* If it is allowed under your contract, you can cancel a direct debit with your credit provider or with the bank or financial institution where your account is held. However, you need to make sure you have made alternative payment arrangements with your credit provider so that you do not default on your payment. Your instruction to cancel a direct debit must be in writing. Contact your bank or financial institution a few days after you have sent your written notification to check that the direct debit has been cancelled.

---

*Resolving a problem with your direct debit.* If you have a problem with a direct debit you can make a complaint to your credit provider or the bank or financial institution where your account is held. You can also contact the credit provider's external dispute resolution scheme for assistance in resolving the complaint.

*Get further information.* If you have questions about direct debit authorities, talk to your bank or financial institution, your credit provider's external dispute resolution scheme, ASIC or a financial counsellor.

### **Are you unable to make a payment?**

If you can not make a payment, you must contact your credit provider immediately. Discuss the matter with them to see if they can come to some sort of written arrangement to repay your debt. The changes you can seek from them include:

- extending the term of your contract and either—
  - reducing the amount of each payment accordingly; or
  - delaying payments for a specified period; or
- delaying payments for a specified period.

If they are unable to come to an agreement with you, you can contact your credit provider's external dispute resolution scheme.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS (INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER) AND CAN BE CONTACTED AT (INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS).**

Alternatively, you can seek legal advice, for example from a community legal centre. There are other people, such as financial counsellors, who may be able to help.

---

**Form 9      Information about debtor's rights after default**

**section 80 of the Code  
regulation 37 of the Regulations**

**If you can not make a repayment:**

**1.    Contact us immediately**

Contact (insert name of person dealing with financial hardship applications and telephone number or email address) to discuss your situation. We may make changes to help you repay the debt. If so, we will put this agreement in writing.

You can ask us to:

- extend the term of your contract and reduce repayments;  
    or
- extend the term of your contract and delay payments for a set time, or
- delay payments for a set time.

If you want us to delay legal action against you, you must contact (insert contact name and telephone number) **before** (insert default notice period end date).

**IMPORTANT**

There is no guarantee that we will agree to change your repayments or postpone legal action.

After we receive your application, we will provide you with a written notice within 21 days stating whether or not we agree to the change.

If we agree, you will receive a written notice detailing the agreement within 30 days.

---

If we refuse, you can go to (insert name of external dispute resolution scheme) or a court. They may be able to order changes to your contract (see below).

## **2. Take action**

If we refuse your request to change your repayments, you can go to (insert name of relevant external dispute resolution scheme) by (insert contact details and method(s) for lodging complaints). You must apply as soon as we refuse your request or if we do not respond to you within a reasonable time.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS.**

Alternatively, you can ask a court to make changes to your repayments if:

- you can not make repayments due to temporary hardship (for example, illness, unemployment or some other good reason), and
- you expect to be able to make the repayments if the terms of your contract are changed, and
- the amount you have borrowed is less than \$500 000.

You can also ask a court to delay enforcement action against you. You may wish to get legal advice, for example from a community legal centre, on how to go about this.

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

---

**Form 10    Consent to enter premises**

**subsection 91(2) of the Code  
regulation 38 of the Regulations**

.....

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:\*\*

.....  
.....

---

**IMPORTANT**

YOU HAVE THE RIGHT TO REFUSE  
CONSENT. IF YOU DO THE CREDIT  
PROVIDER MAY GO TO COURT FOR  
PERMISSION TO ENTER THE  
PREMISES.

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

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

- \* *The name/signature of occupier.*
- \*\* *Insert brief details of the mortgaged goods.*

---

**Form 11    Notice after taking possession of  
mortgaged goods**

**paragraph 94 (1) (c) of the Code  
regulation 39 of the Regulations**

.....

Date

TO:

.....

(name of mortgagor)

.....

(address of mortgagor)

.....

FROM:

.....

(name of credit provider)

.....

(address of credit provider)

.....

(name, telephone and address)

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

**DRAFT ONLY**

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## 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 credit provider's external dispute resolution scheme immediately. If you are the debtor and have been **unemployed, sick** or there is **another good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

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

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS (INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER) AND CAN BE CONTACTED AT (INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS).**

.....

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

.....

(name of person signing)

.....

---

(position of person signing)

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

**DRAFT ONLY**

---

**Form 12    Notice of right to terminate maintenance services contract**

**subsection 126 (2) of the Code  
regulation 42 of the Regulations**

.....

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 YOUR CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

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.....

(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.*

**DRAFT ONLY**

---

**Form 13    Notice of right to cancel mortgaged  
property insurance**

**subsection 139 (2) of the Code  
regulation 46 of the Regulations**

.....

Date

TO:

.....

(name of debtor)

.....

(address of debtor)

.....

FROM:

.....

(name of credit provider)

.....

(address of credit provider)

.....

**DRAFT ONLY**

---

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 YOUR CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS (INSERT NAME OF EXTERNAL DISPUTE RESOLUTION PROVIDER) AND CAN BE CONTACTED AT (INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS).**

.....

---

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

.....

(name of person signing)

.....

(position of person signing)

---

## Form 14 Information statement

section 153 of the Code  
regulation 54 of the Regulations

### Things you should know about your consumer lease

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

### The lease

#### 1 How can I get details of my lease?

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

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

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

#### 2 What should my lease tell me?

You should read your lease carefully.

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

- details of the goods which have been hired; and
- any amount you have to pay before the goods are delivered; and

- 
- stamp duty and other government charges you have to pay; and
  - charges you have to pay which are not included in the rental payments; and
  - the amount of each rental payment; and
  - the date on which the first rental payment is due and either the dates of the other rental payments or the interval between them; and
  - the number of rental payments; and
  - the total amount of rent; and
  - when you can end your lease; and
  - what your obligations are (if any) when your lease ends.

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

If your lease does not tell you all these details, contact your credit provider's external dispute resolution scheme, or get legal advice, for example from a community legal centre, 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 should talk to your lessor. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact your credit provider's external dispute resolution scheme.

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Alternatively, you can go to court. You may also wish to get legal advice, for example from a community legal centre, and/or make a complaint to ASIC. ASIC can be contacted on 1300 300 630.

## **The goods**

**7 If my lessor writes asking me where the goods are, do I have to say where they are?**

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

**8 When can my lessor or its agent come into a residence to take possession of the goods?**

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

---

## 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 credit provider's external dispute resolution scheme 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 your credit provider's external dispute resolution scheme or ASIC, or get legal advice.

### 12 Do I have any other rights and obligations?

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

---

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. IF YOU REMAIN UNSATISFIED YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

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

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.