

Western Australia

LEGISLATIVE ASSEMBLY

## **Consumer Credit (Western Australia) Amendment Bill 1999**

**A Bill for**

**An Act to amend the *Consumer Credit (Western Australia) Act 1996*  
to make changes to the *Consumer Credit (Western Australia) Code*.**

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Consumer Credit (Western Australia) Amendment Act 1999*.

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2. **Commencement**

This Act comes into operation on a day fixed by proclamation.

3. **Amendments effected by this Act**

5 The amendments in this Act are to the *Consumer Credit (Western Australia) Code* set out in the Appendix to the *Consumer Credit (Western Australia) Act 1996*\*.

[\* Act No. 30 of 1996.

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 55.]*

10 4. **Section 4 amended**

Section 4(2) is amended by inserting after “deferred.” the following sentence —

“

The “**amount of credit**” does not include —

- 15 (a) any interest charge under the contract; or
- (b) any fee or charge —
- (i) that is to be or may be debited after credit is first provided under the contract; and
- 20 (ii) that is not payable in connection with the making of the contract or the making of a mortgage or guarantee related to the contract.

”.

5. **Section 7 amended**

25 Section 7(9) is amended as follows:

- (a) by deleting “providing credit” and inserting instead —

“

providing credit to which this Code applies to employees or former employees and to others

30 ”;

- (b) by deleting “credit provider provides credit” and inserting instead —

“

credit provider provides credit to which this Code applies

”.

**6. Section 11 amended**

Section 11(3) is amended as follows:

- (a) by deleting “(or any other person who obtained the declaration” and inserting instead —

“

(or any other relevant person who obtained the declaration

”;

- (b) by inserting after “household purposes.” the following sentence —

“

For the purposes of this subsection, a relevant person is a person associated with the credit provider or a finance broker (or a person acting for a finance broker) through whom the credit was obtained.

”;

- (c) by deleting the note to subsection (3).

**7. Section 12 amended**

Section 12 is amended as follows:

- (a) by inserting before “A credit” the subsection designation “(1)”;

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- (b) by deleting paragraph (b) and inserting the following paragraph instead —

“

5

- (b) a written contract document signed by the credit provider and constituting an offer to the debtor that is accepted by the debtor in accordance with the terms of the offer.

”;

- (c) by inserting at the end the following subsections —

10

“

- (2) An offer may be accepted by the debtor for the purposes of subsection (1)(b) —

15

- (a) by the debtor or a person authorized by the debtor accessing or drawing down credit to incur a liability; or

- (b) by any other act of the debtor or of any such authorized person that satisfies the conditions of the offer and constitutes an acceptance of the offer at law.

20

- (3) The credit provider, or a person associated with the credit provider, may not be authorized by the debtor for the purposes of subsection (2). However, this subsection does not prevent the debtor authorizing the credit provider to debit the debtor's account.

25

- (4) In the case of a contract document consisting of more than one document, it is sufficient compliance with this section if one of the documents is duly signed and the other documents are referred to in the signed document.

30

”.

**8. Section 15 amended**

Section 15 is amended as follows:

- (a) by deleting section 15(B)(a) and inserting the following paragraph instead —

5

“

- (a) If the amount of credit to be provided is ascertainable —

10

- (i) that amount; and  
(ii) the persons, bodies or agents (including the credit provider) to whom it is to be paid and the amounts payable to each of them, but only if both the person, body or agent and the amount are ascertainable.

15

”;

- (b) by deleting from section 15(E) “assumptions in” and inserting instead —

“ assumptions under ”;

20

- (c) by deleting section 15(F)(a)(ii) and “and” after it and inserting the following subparagraphs instead —

“

25

- (ii) if ascertainable, the number of the repayments; and  
(iia) if ascertainable, the total amount of the repayments, but only if the contract would, on the assumptions under sections 158 and 160, be paid out within 7 years of the date on which credit is first provided under the contract; and

30

”;

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- (d) by deleting from section 15(F)(b) “repayment.” and inserting instead —

“

repayment.

5

Paragraph (a) does not apply to minimum repayments under a continuing credit contract.

”;

- (e) by deleting from section 15(N)(d) “premium.” and inserting instead —

10

“

premium.

15

In the case of consumer credit insurance that includes a contract of general insurance within the meaning of the *Insurance Contracts Act 1984* (Cwlth) —

20

- (i) it is sufficient compliance with paragraphs (a) and (b) if the contract document contains the name of the general insurer and the total amount payable to the insurers (or, if it is not ascertainable, how it is calculated); and

25

- (ii) it is sufficient compliance with paragraph (d) relating to the amount of commission if the contract document contains the total amount of commission (expressed as a monetary amount or as a proportion of the premium) to be paid by the insurers.

”.

**9. Section 18 amended**

Section 18(3) is repealed and the following subsection is inserted instead —

“

- 5           (3) Subsection (2) does not apply if the credit provider has previously given the debtor a copy of the contract document to keep.

”.

**10. Section 19 amended**

10           Section 19(1) is amended by deleting “unless any credit has been obtained or attempted to be obtained under the contract.” and inserting instead —

“

unless —

- 15           (a) any credit has been obtained under the contract;  
                  or  
                  (b) a card or other means of obtaining credit provided to the debtor by the credit provider has been used to acquire goods or services for which credit is to  
20           be advanced under the contract.

”.

**11. Section 21 amended**

Section 21(1)(a) is amended by deleting “fee” and inserting instead —

25           “ credit fee ”.

**12. Section 24 amended**

Section 24(3) is repealed and the following subsection is inserted instead —

“

- 30           (3) Despite subsection (2), a credit provider is not required to credit a payment under a credit contract before it is

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payable under the contract if the contract prohibits early payment and —

- 5                   (a) the credit provider informs the debtor, as soon as practicable after the credit provider becomes aware of the payment, that it will not be credited to the debtor (or that any credit will be reversed) until it becomes payable under the contract, and the debtor elects to leave the payment with the credit provider; or
- 10                   (b) the credit provider informs the debtor, before accepting the payment, that it will not be credited to the debtor until it becomes payable under the contract; or
- 15                   (c) the credit provider refunds the payment to the debtor.

”.

**13. Section 25 amended**

Section 25(2) is amended as follows:

- 20                   (a) by inserting after “payments” —  
“ or any other purposes ”;
- (b) by inserting after “ends.” the following sentence —  
“
- Different times of the day may be specified for different purposes.

”.

**14. Section 27 amended**

After section 27(3) the following subsection is inserted —

- “
- 30                   (4) This section does not apply to the debit of an interest charge under a credit contract before the end of the period to which the charge applies if —
- (a) the charge is debited on the last day of the period; and



- (b) the amount debited is not treated by the credit provider as part of the unpaid daily balance for that day for the purpose of calculating interest charges under the contract.

”.

**15. Section 30 amended**

Section 30 is amended as follows:

- (a) in subsection (1) by deleting “in respect of an amount payable” and inserting instead —

“

for an amount payable or to reimburse an amount paid

”;

- (b) in subsection (1) by inserting after “actual amount payable” —

“ or paid ”;

- (c) by repealing subsection (4).

**16. Section 31 amended**

Section 31 is amended as follows:

- (a) in subsection (3)(b) by inserting after “statement period” —

“

(other than debits for government charges, or duties, on receipts or withdrawals)

”;

- (b) after subsection (3)(e) by deleting the full stop and inserting —

“

; or

- (f) the debtor has died or is insolvent and the debtor’s personal representative or trustee in

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bankruptcy has not requested a statement of account.

”;

- (c) after subsection (3) by inserting the following subsection —

“

- (4) A separate statement of account may, but need not, be given in respect of each or any number of the credit facilities provided under a credit contract.

”.

**17. Section 32 amended**

Section 32(I) is amended by deleting “(if not previously disclosed in accordance with this Code).” and inserting instead —

“

(if not previously disclosed in accordance with this Code).

In the case of consumer credit insurance that includes a contract of general insurance within the meaning of the *Insurance Contracts Act 1984* (Cwlth) —

- (i) it is sufficient compliance with paragraph (a) if the statement of account contains the name of the general insurer, the total amount payable to the insurers and the kind of insurance; and
- (ii) it is sufficient compliance with paragraph (b) if the statement of account contains the total amount of commission (expressed as a monetary amount or as a proportion of the premium) to be paid by the insurers.

”.

**18. Section 34 amended**

Section 34 is amended as follows:

- (a) in subsection (1)(c) by inserting after “amounts” —  
“ currently ”;
- 5 (b) in subsection (1)(d) by inserting after “amount” —  
“ currently ”;
- (c) after subsection (3) by inserting the following  
subsection —  
“  
10 (3A) In the case of joint debtors or guarantors, the statement  
under this section need only be given to a debtor or  
guarantor who requests the statement and not, despite  
section 171, to each joint debtor or guarantor.  
”.

15 **19. Section 36 amended**

Section 36 is amended as follows:

- (a) in subsection (4) by deleting “In any other case” and  
inserting instead —  
“  
20 In the case of any other credit contract for which a  
statement of account is given  
”,
- (b) after subsection (4) by inserting the following  
subsection —  
25 “  
(4A) In the case of a credit contract in respect of which a  
statement of account need not be and is not given for  
the period to which the disputed liability relates, the  
notice of dispute must be given to the credit provider  
30 not later than 3 months after the end of the contract.  
”.

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**20. Section 36A inserted**

After section 36 the following section is inserted in Division 5 of Part 2 —

“

- 5           **36A. Dating and adjustment of debits and credits in accounts**
- (1) For the purposes of this Code and the credit contract, a debit or a credit made by a credit provider to a debtor's account is taken to have been made, and has effect, on
- 10           the date assigned to the debit or credit, not on the date on which it is processed.
- (2) A credit provider may subsequently adjust debits or credits to a debtor's account, and the account balances, so as to accurately reflect the legal obligations of the
- 15           debtor and the credit provider.
- (3) However, subsections (1) and (2) do not permit a debit or a credit to be assigned a date other than the date on which it is processed, or the subsequent adjustment of a debit or a credit or account balance, if —
- 20           (a) the assignment or adjustment is not consistent with the credit contract; or
- (b) the adjustment results in an interest charge that is more than the maximum amount permitted by the Code, as calculated on the basis of debits
- 25           or credits to a debtor's account consistent with the credit contract; or
- (c) the assignment or adjustment results in a contravention of section 24; or
- 30           (d) the assignment of the date on which an interest charge is taken to be debited results in a debit being taken to be done before a time permitted under this Code.

- (4) An adjustment by a credit provider under subsection (2) does not affect any liability of a credit provider under Part 6.

”.

5     **21.     Section 37 amended**

Section 37 is amended as follows:

- (a) by inserting before “The” the subsection designation “(1)”;
- (b) by inserting after “or a deferral or waiver of an amount under an existing credit contract” —
- 10     “
- or a postponement relating to an existing credit contract
- ”;
- (c) by deleting “or waiver” in the second place where it occurs and inserting instead —
- 15     “ , waiver or postponement ”;
- (d) by deleting “or the contract” and inserting instead —
- “ or the existing credit contract ”;
- (e) by inserting at the end the following subsection —
- 20     “
- (2) In this section —
- “**existing credit contract**” includes existing consumer lease.
- 25     ”.

**22.     Section 39 amended**

Section 39 is amended as follows:

- (a) by inserting before “If” the subsection designation “(1)”;

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(b) by inserting at the end the following subsection —

“

(2) This section does not apply if the credit provider has previously given the mortgagor a copy of the mortgage document to keep.

”.

**23. Section 44 amended**

After section 44(4) the following subsection is inserted —

“

(5) In this section, a reference to a credit contract or guarantee includes a reference to a proposed credit contract or proposed guarantee.

”.

**24. Section 51 amended**

Section 51(1) is amended by deleting “Before the obligations under a credit contract are secured by a guarantee” and inserting instead —

“ Before a guarantee is signed by the guarantor ”.

**25. Section 52 replaced**

Section 52 is repealed and the following section is inserted instead —

“

**52. Copies of documents for guarantor**

(1) A credit provider must, not later than 14 days after a guarantee is signed and given to the credit provider, give the guarantor —

(a) a copy of the guarantee signed by the guarantor; and

(b) a copy of the credit contract or proposed credit contract.

(2) Subsection (1)(a) does not apply if the credit provider has previously given the guarantor a copy of the credit contract or proposed credit contract to keep.

”.

**26. Section 53 amended**

Section 53(1)(b) is amended by deleting “or pre-contractual statement”.

**27. Section 54 amended**

Section 54(3) is amended by deleting “does” and inserting instead —

“ and section 51 (Disclosure) do ”.

**28. Section 55 amended**

Section 55(2) is amended by deleting “or any other act or omission by, or circumstance affecting, the debtor”.

**29. Section 56 amended**

Section 56(2) is repealed and the following subsection is inserted instead —

(2) This section does not apply to an increase in liabilities resulting from —

(a) a change of a kind referred to in section 58(2)(a) or (b); or

(b) a change of which notice is required to be given under Division 1 of Part 4 (not being a change referred to in section 62(3) or 63); or

(c) a change under section 68(2) or a postponement under section 88(2); or

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- (d) a deferral or waiver of a debtor's obligations  
for a period not exceeding 90 days.

”.

**30. Section 59 amended**

5 Section 59(4) is amended by deleting “30 days” and inserting  
instead —

“ 20 days ”.

**31. Section 60 amended**

Section 60 is amended as follows:

10 (a) in subsection (1) by deleting “30 days” and inserting  
instead —

“ 20 days ”;

(b) after subsection (2) by inserting the following  
subsections —

15 “

(2A) If the amount or frequency or time for payment of  
instalments or minimum repayments is not specified in  
the credit contract but is determined by a method of  
calculation so specified, this section requires the credit  
20 provider to give particulars only of any change in that  
method of calculation.

(2B) This section does not apply to a change that occurs  
while the credit contract does not require any  
repayment of the amount of credit provided.

25 ”.

**32. Section 61 amended**

Section 61(1) is amended by deleting “30 days” and inserting  
instead —

“ 20 days ”.



**33. Section 63 amended**

Section 63 is amended as follows:

- (a) in subsection (1) by deleting “30 days” and inserting  
instead —  
5 “ 20 days ”;
- (b) in subsection (3) by inserting after “section 59, 60, 61 or  
62” —  
“  
10 (or which would be required to be so given but for an  
exception provided in any such section)  
”.

**34. Section 63A inserted**

After section 63 the following section is inserted —

- “
- 15 **63A. Particulars of matters as changed only required to  
be given under this Division in certain cases**
- The credit provider may, under section 59, 60, 61 or  
63, give a person particulars only of a matter as  
changed instead of particulars of the change, but only if  
20 the credit provider —
- (a) makes it clear to the person that the matter has  
changed; or
  - (b) issues to the person a new set of terms and  
conditions relating to the credit contract,  
25 mortgage or guarantee.
- ”.

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**35. Section 65 amended**

Section 65 is amended as follows:

- (a) in subsection (1) by deleting “within 30 days” and inserting instead —  
5 “ not later than 30 days ”;
- (b) in subsection (3) by inserting after “credit contract” —  
“ (other than a continuing credit contract) ”;
- (c) by inserting after subsection (4) the following subsection —  
10 “  
(5) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider —  
15 (a) makes it clear to the person that the matter has changed; or  
(b) issues to the person a new set of terms and conditions relating to the credit contract, mortgage or guarantee.  
20 ”.

**36. Section 67 amended**

Section 67 is amended as follows:

- (a) by inserting before “A credit” the subsection designation “(1)”;
- 25 (b) by deleting “within 30 days” and inserting instead —  
“ not later than 30 days ”;
- (c) by inserting at the end the following subsection —  
“  
30 (2) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead

of particulars of the change, but only if the credit provider —

- (a) makes it clear to the person that the matter has changed; or
- 5 (b) issues to the person a new set of terms and conditions relating to the credit contract.

”.

**37. Section 73 amended**

Section 73 is amended as follows:

- 10 (a) in subsection (1) by deleting “the credit provider writes off the relevant debt, whichever occurs first” and inserting instead —
  - “ otherwise comes to an end ”;
- 15 (b) in subsection (2) by deleting “the credit provider writes off the relevant debt, whichever occurs first” and inserting instead —

“

the credit contract is rescinded or discharged or otherwise comes to an end

20

”.

**38. Section 76 amended**

Section 76 is amended by inserting after the penalty at the foot of subsection (3) the following subsection —

“

- 25 (4) In the case of joint debtors or guarantors, the statement under this section need only be given to a debtor or guarantor who requests the statement and not, despite section 171, to each joint debtor or guarantor.

”.

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**39. Section 78 amended**

Section 78 is amended as follows:

- (a) in subsection (7) by deleting “total amount payable under the contract” and inserting instead —
- 5 “ amount required to pay out the contract ”;
- (b) in subsection 8(a) by inserting after “contract” in the second place where it occurs —
- “ or guarantee ”;
- (c) after subsection (8)(d) by deleting the full stop and inserting instead —
- 10 “
- ;
- (e) the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.
- 15 “;
- (d) in subsection (9) by deleting “net amount due under the credit contract” and inserting instead —
- “
- 20 amount required to pay out the credit contract or the amount due under the guarantee
- ”.

**40. Section 80 amended**

Section 80 is amended as follows:

- 25 (a) in subsection (3) by deleting “during the period of 30 days” and inserting instead —
- “
- during the period specified in the default notice for remedying the original default
- 30 “;

- (b) by inserting after subsection (3) the following subsection —

“

- (3A) **Combined notices.** Default notices that may be given under subsections (1) and (2) may be combined in one document if given to a person who is both a debtor and a mortgagor.

”;

- (c) in subsection (4)(c) by deleting “to do so” and inserting instead —

“ to begin the enforcement proceedings ”;

- (d) in subsection (6) by inserting after “property” —

“ or other ”;

- (e) in subsection (6) by deleting the second sentence and inserting instead —

“

Nothing in this section prevents a notice to a defaulting mortgagor under other legislation being issued at the same time, or in the same document, as the default notice under this section.

”.

**41. Section 86 amended**

Section 86(2) is amended by deleting “under” and inserting instead —

“ in respect of ”.

**42. Section 87 amended**

Section 87 is amended as follows:

- (a) in subsection (1) by deleting “, written notice of the conditions of postponement is given to the debtor, mortgagor or guarantor”;

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- (b) by inserting after subsection (2) the following subsections —

“

- (3) A credit provider must give written notice of the conditions of a postponement referred to in subsection (1) not later than 30 days after agreement is reached on the postponement. The notice must set out the consequences under subsection (5) if the conditions of the postponement are not complied with.

Penalty: \$10 000.

- (4) A credit provider that is required to give notice under section 65 in relation to a postponement is not required to comply with subsection (3).

- (5) If any of the conditions of a postponement are not complied with, a credit provider is not required to give a further default notice under this Code to the debtor, mortgagor or guarantor with whom the postponement was negotiated before proceeding with enforcement proceedings.

”.

**43. Section 96 amended**

Section 96 is amended as follows:

- (a) in subsection (2) by deleting “total amount payable under the contract” and inserting instead —

“ amount required to pay out the contract ”;

- (b) in subsection (3) by deleting “net amount due under the credit contract” and inserting instead —

“

amount required to pay out the credit contract or the amount due under the guarantee

”.

**44. Section 98 amended**

Section 98(1) is amended by inserting after “practicable” —

“

, or at a time agreed between the credit provider and  
the mortgagor,

”.

**45. Section 99 amended**

Section 99 is amended as follows:

- (a) in subsection (1) by inserting after “the credit provider.”  
the following sentence —

“

Enforcement expenses of a credit provider extend to  
those reasonably incurred by the use of the staff and  
the facilities of the credit provider.

”;

- (b) by repealing subsection (3) and inserting the following  
subsection instead —

“

- (3) If there is a dispute between the credit provider and the  
debtor, mortgagor or guarantor about the amount of  
enforcement expenses that may be recovered by the  
credit provider, the Court may, on application by any  
of the parties to the dispute, determine the amount of  
that liability.

”.

**46. Section 100 amended**

Section 100 is amended as follows:

- (a) by deleting paragraph (1)(e) and inserting instead —

“

- (e) section 15(G)(a) and (b) — but only in respect  
of retained credit fees and charges;

”;

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(b) by deleting paragraph (2)(d) and inserting instead —

“

(d) section 15(G)(a) and (b) — but only in respect  
of retained credit fees and charges;

”.

**47. Section 117 amended**

Section 117(3) is amended by inserting after “credit contract” in  
the first place where it occurs —

“ (other than a continuing credit contract) ”.

**48. Section 119 amended**

Section 119(1) is amended by inserting after “in relation to  
the” —

“ sale ”.

**49. Section 124 amended**

Section 124 is amended by inserting after subsection (3) the  
following subsection —

“

(4) This section does not apply to a sale contract for the  
supply of rights in relation to, and interests in, real  
property unless the supplier was aware that the purchaser  
intended to obtain the credit from the supplier or from a  
linked credit provider of the supplier.

”.

**50. Section 125 amended**

Section 125 is amended by inserting after subsection (7) the  
following subsection —

“

(8) This section applies —

(a) to the exercise by a purchaser of a right under  
this Code or any other law to rescind or  
discharge a sale contract; and



- (b) to a tied loan contract or a tied continuing credit contract, but only if the sale contract was the principal purpose for which the credit was provided.

5

”.

**51. Section 132 replaced**

Section 132 is repealed and the following section is inserted instead —

“

10

**132. Interpretation and application**

- (1) For the purposes of this Code, a **“credit-related insurance contract”** is a contract for insurance of any of the following kinds in connection with a credit contract —

15

- (a) insurance over mortgaged property;
- (b) consumer credit insurance;
- (c) insurance of a nature prescribed for the purposes of this section by the regulations.

20

- (2) This Code does not apply to insurance over mortgaged property that —

- (a) is insurance for an extended period of warranty for goods; or
- (b) is insurance over property that is not mortgaged to secure obligations under the credit contract.

25

- (3) This Code does not apply to consumer credit insurance in connection with a credit contract unless the contract for consumer credit insurance insures the obligations of the debtor under the credit contract.

”.

**52. Section 134 amended**

**53. Section 138 amended**

- 5 (a) in subsection (4) by inserting after “section” —  
 “  
 , including the rebate payable where this section does  
 not apply to the whole of a credit-related insurance  
 contract  
 10 ”;
- (b) after subsection (5) by inserting the following  
 subsection —  
 “  
 15 (6) This section does not apply to a credit-related  
 insurance contract, to the extent that it provides a  
 benefit in the event of the death of the debtor, if a  
 credit contract is terminated on the death of a debtor.  
 However, it does apply to the credit-related insurance  
 contract to the extent that it provides other benefits.  
 20 ”

- “
- 25           (3) **Annual percentage rate.** The advertisement need not  
contain an annual percentage rate, but must do so if the  
advertisement states the amount of any repayment. If  
the advertisement contains an annual percentage rate  
and credit fees and charges are payable, the  
30           advertisement must —
- (a) state that fees and charges are payable; or

- 5
- (b) specify the amount of the fees and charges payable; or
  - (c) specify the amount of some of the fees and charges payable and state that other fees and charges are payable.
- 10
- (4) **Comparison rate.** The advertisement may contain the comparison rate calculated as prescribed by the regulations and, if it does so, must be accompanied by the warnings set out in the regulations. ”.

**55. Section 143 amended**

Section 143 is amended by deleting “the annual percentage rate or rates” and inserting instead —

“ expressed as a nominal percentage rate per annum ”.

15 **56. Section 146 amended**

Section 146(1) is amended by deleting “the person.” and inserting instead —

“ a person who resides there. ”.

**57. Section 152 amended**

20 Section 152(1)(c) is amended by inserting after “government charge” —

“ (other than on receipts or withdrawals) ”.

**58. Section 153 amended**

Section 153 is amended as follows:

- 25
- (a) by inserting before “A lessor” the subsection designation “(1)”;

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- (b) by inserting after the penalty the following subsections —

“

- 5 (2) Subsection (1) does not apply if the lessor has previously given the lessee a copy of the consumer lease to keep.
- 10 (3) Section 171 applies to this section as if references in that section to the credit provider were references to the lessor or a lease broker and as if references in that section to the debtor were references to the lessee.

”.

**59. Section 166 amended**

Section 166(3) is amended by inserting after “debtor” —

“

- 15 , or would continue to do so if the debtor complied with the credit contract

”.

**60. Section 169A inserted**

After section 169 the following section is inserted —

20 “

**169A. Indemnities**

- (1) An indemnity for any liability under this Code is not void, and cannot be declared void, on the grounds of public policy, despite any rule of law to the contrary.
- 25 (2) The liabilities to which this section applies include the following —
- (a) a liability for any criminal or civil penalty incurred by any person under this Code;
- 30 (b) a payment in settlement of a liability or alleged liability under this Code;

- (c) a liability under another indemnity for any liability under this Code.
- (3) This section is subject to section 169(2).
- (4) This section does not derogate from any other rights and remedies that exist apart from this section.
- (5) This section extends to any indemnity obtained before the commencement of this section.

”.

**61. Section 171 replaced**

Section 171 is repealed and the following section is inserted instead —

“

**171. Giving notice or other document**

- (1) **Application.** This section applies as follows —
  - (a) This section applies (subject to this subsection) to notices or other documents that are required to be given for the purposes of this Code.
  - (b) This subsection and subsections (3) and (7) apply, but the remainder of this section does not apply, to pre-contractual notices and statements and notices given under section 14.
  - (c) Subsections (4), (5) and (6) do not apply to default notices.
  - (d) This section applies despite the provisions of any other section of this Code (except sections 34(3A) and 76(4)) to the contrary.

Note: Examples of notices or other documents to which this section applies are those required to be given under sections 18, 31, 34, 39, 51, 52 and 76.

- (2) **Unsuccessful attempts by credit provider.** A credit provider is relieved from the obligation to give a notice or other document to a person if —
- (a) the credit provider has previously made a reasonable (but unsuccessful) attempt to give a notice or other document in accordance with this Code by leaving it at, or by sending it by post, telex, facsimile or similar facility to the appropriate address of the person under section 172; and
- (b) the credit provider has reasonable grounds for believing that the person can no longer be contacted at that address.
- (3) **Joint debtors etc. — general obligation.** In the case of joint debtors, mortgagors or guarantors, a notice or other document must be given to each debtor, mortgagor or guarantor, except as provided by this section.
- (4) **Joint debtors etc. — nomination of one of them.** A notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors by being given to one of the joint debtors, mortgagors or guarantors nominated by them to receive the notice or other document on their behalf. The notice or other document need not be addressed to all of them.
- (5) **Joint debtors etc. — same address.** A single copy of a notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors at the same address if each of them has consented to a single copy being given and the notice or other copy is addressed jointly to them. The procedure prescribed by this subsection is an alternative to the procedure prescribed by subsection (4).

- 5 (6) **Nominated persons generally.** A notice or other document may be given to a person by being given to another person nominated by the person to receive the notice or other document on his or her behalf.  
However —
- 10 (a) a debtor, mortgagor or guarantor cannot nominate the credit provider or a person associated with the credit provider; and
- (b) a mortgagor cannot nominate the debtor if the mortgage is given by a guarantor; and
- (c) a guarantor cannot nominate the debtor.
- 15 (7) **Legal practitioners.** A notice or other document may be given to a person by being given to a legal practitioner acting for the person in the matter concerned.
- (8) **Withdrawal of nomination or consent.** A nomination or consent under this section ceases to have effect if it is withdrawn by the person who made or gave it.
- 20 (9) **Form of nomination or consent.** A nomination or consent under this section (or the withdrawal of any such nomination or consent) must be in the form required by the regulations.
- ”.

## 62. Section 172 amended

25 Section 172 is amended as follows:

- (a) in subsection (1)(a)(ii) by deleting “the address of the place of residence or business of the person last known to the person giving the notice or other document” and inserting instead —
- 30 “ an appropriate address of the person ”;
- (b) by renumbering subsection (2) as subsection (4);

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- (c) by renumbering subsection (3) as subsection (5);
- (d) by inserting after subsection (1) the following subsections —

“

- 5 (2) The appropriate address of a debtor, mortgagor, guarantor or consumer lessee for the purposes of subsection (1) is —
  - (a) an address nominated in writing by that person to the person giving the notice or other document; or
  - 10 (b) if there is no such nomination, the address of the place of residence of that person last known to the person giving the notice or other document.
- (3) An appropriate address of any other person for the purposes of subsection (1) is —
  - 15 (a) an address nominated in writing by that person to the person giving the notice or other document; or
  - (b) the address of the place of residence or business of that person last known to the person giving the notice or other document.

”.

**63. Section 176 amended**

Section 176 is amended as follows:

- 25 (a) in subsection (2) by inserting after “person’s behalf.” the following sentence —

“

30 This subsection does not prevent a credit provider from authorizing a person associated with the credit provider to enter into a credit contract on behalf of the credit provider.

”;

- (b) by repealing subsection (4).



**64. Section 182A inserted**

After section 182 the following section is inserted —

“

**182A. Offences by officers, agents or employees**

5 An officer, agent or employee of a credit provider or  
other person may be prosecuted for an offence against  
this Code or the regulations (if liable for the offence)  
whether or not proceedings have been taken against the  
credit provider or other person.

10

”.

**65. Schedule 1 amended**

- (1) Schedule 1 is amended by inserting before “In this Code” the  
clause designation “1.”.
- 15 (2) Schedule 1 is amended by deleting the definitions of “ordinarily  
resident” and “predominant”.
- (3) Schedule 1 is amended after the definition of “regulation” by  
inserting the following definition —

“

- 20 “**retained fees and credit charges**” means credit fees and  
charges retained by the credit provider, other than  
credit fees and charges passed on to (or retained in  
reimbursement of an amount paid to) —
- (a) a third party that is not a related body corporate  
(for the purposes of the Corporations Law) of the  
25 credit provider; or
  - (b) a financial institution that is such a related body  
corporate in respect of the provision of banking  
services that are provided to the credit provider  
by the financial institution on the same terms as  
30 those services are ordinarily provided to  
customers who are not related to or associated  
with the financial institution.

”;

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(4) Schedule 1 is amended in the definition of “credit fees and charges” as follows:

(a) by deleting paragraph (b) and inserting the following paragraph instead —

“

(b) any fees or charges that are payable to or by a credit provider in connection with a credit contract in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available (not being annual fees or charges in connection with continuing credit contracts under which credit is ordinarily obtained only by the use of a card); or

”;

(b) in paragraph (c) by deleting “and duties” and inserting instead —

“ or duties ”;

(c) after paragraph (c) by inserting the following word and paragraph —

“

or

(d) enforcement expenses;

”.

(5) At the end of Schedule 1 the following clause is inserted —

“

2. For the purposes of this Code, a person is “**associated**” with a credit provider if —

(a) the person and the credit provider are related bodies corporate for the purposes of the Corporations Law; or

(b) the person is a supplier in respect of whom the credit provider is a linked credit provider; or

- (c) the person is an officer, agent or employee of the credit provider, or of any such related body corporate or supplier, acting in that capacity.

”.

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