





# **Consumer Credit Legislation Amendment (Enhancements) Act 2012**

**No. 130, 2012**

**An Act to amend the law relating to consumer  
credit and consumer protection, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
<b>Schedule 1—Enhancements</b>		4
Part 1—Protection of debtor in cases of hardship		4
<i>National Consumer Credit Protection Act 2009</i>		4
Part 2—Remedies for unfair or dishonest conduct by credit service providers		9
<i>National Consumer Credit Protection Act 2009</i>		9
Part 3—Representations about eligibility to enter credit contracts, consumer leases etc. without assessing unsuitability		13
<i>National Consumer Credit Protection Act 2009</i>		13
Part 4—Prohibition on certain representations and other matters		15
<i>National Consumer Credit Protection Act 2009</i>		15
Part 5—Civil remedies for contravention of the National Credit Code		21
<i>National Consumer Credit Protection Act 2009</i>		21
Part 6—Miscellaneous amendments		22
<i>National Consumer Credit Protection Act 2009</i>		22
Part 7—Technical corrections		26
<i>National Consumer Credit Protection Act 2009</i>		26
<b>Schedule 2—Reverse mortgages</b>		28
Part 1—Definitions		28
Division 1—Definition of reverse mortgage		28
<i>National Consumer Credit Protection Act 2009</i>		28
Division 2—Other definitions		29
<i>National Consumer Credit Protection Act 2009</i>		29

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Part 2—Provisions applying to licensees	31
<i>National Consumer Credit Protection Act 2009</i>	31
Part 3—Provisions applying to credit providers generally	38
<i>National Consumer Credit Protection Act 2009</i>	38
<b>Schedule 3—Short-term and small amount credit contracts</b>	48
<i>National Consumer Credit Protection Act 2009</i>	48
<b>Schedule 4—Caps on costs etc. for credit contracts</b>	57
<i>National Consumer Credit Protection Act 2009</i>	57
<b>Schedule 5—Consumer leases</b>	71
<i>National Consumer Credit Protection Act 2009</i>	71
<b>Schedule 6—Application provisions</b>	105
<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>	105
<b>Schedule 7—Lay-by agreements etc.</b>	110
<i>Competition and Consumer Act 2010</i>	110



# **Consumer Credit Legislation Amendment (Enhancements) Act 2012**

**No. 130, 2012**

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**An Act to amend the law relating to consumer  
credit and consumer protection, and for related  
purposes**

*[Assented to 17 September 2012]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Consumer Credit Legislation  
Amendment (Enhancements) Act 2012*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 September 2012
2. Schedule 1	1 March 2013.	1 March 2013
2A. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	18 September 2012
2B. Schedule 2, Part 2	1 March 2013.	1 March 2013
2C. Schedule 2, items 12 to 14	1 March 2013.	1 March 2013
2D. Schedule 2, item 15	The day after this Act receives the Royal Assent.	18 September 2012
2E. Schedule 2, items 16 to 18	1 March 2013.	1 March 2013
2F. Schedule 2, items 19 and 20	The day after this Act receives the Royal Assent.	18 September 2012
2G. Schedule 2, items 21 and 22	1 March 2013.	1 March 2013
2H. Schedule 2, item 23	The day after this Act receives the Royal Assent.	18 September 2012
2J. Schedule 2, items 24 to 26	1 March 2013.	1 March 2013
2K. Schedule 3	1 March 2013.	1 March 2013
3. Schedule 4	1 July 2013.	1 July 2013
4. Schedule 5	1 March 2013.	1 March 2013

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4A. Schedule 6	The day after this Act receives the Royal Assent.	18 September 2012
5. Schedule 7	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 September 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Enhancements

### Part 1—Protection of debtor in cases of hardship

#### *National Consumer Credit Protection Act 2009*

##### **1 Section 72 of the *National Credit Code***

Repeal the section, substitute:

##### **72 Changes on grounds of hardship**

###### *Hardship notice*

- (1) If a debtor considers that he or she is or will be unable to meet his or her obligations under a credit contract, the debtor may give the credit provider notice (a **hardship notice**), orally or in writing, of the debtor's inability to meet the obligations.

Note: If the debtor gives the credit provider a hardship notice, there may be requirements (beyond those in section 88) that the credit provider must comply with before beginning enforcement proceedings—see section 89A.

###### *Further information*

- (2) Within 21 days after the day of receiving the debtor's hardship notice, the credit provider may give the debtor notice, orally or in writing, requiring the debtor to give the credit provider specified information within 21 days of the date of the notice stated in the notice. The information specified must be relevant to deciding:
  - (a) whether the debtor is or will be unable to meet the debtor's obligations under the contract; or
  - (b) how to change the contract if the debtor is or will be unable to meet those obligations.
- (3) The debtor must comply with the requirement.

Note: The credit provider need not agree to change the credit contract, especially if the credit provider:

- (a) does not believe there is a reasonable cause (such as illness or unemployment) for the debtor's inability to meet his or her obligations; or

- (b) reasonably believes the debtor would not be able to meet his or her obligations under the contract even if it were changed.

*Notice of decision on changing credit contract*

- (4) The credit provider must, before the end of the period identified under subsection (5), give the debtor a notice:
- (a) that is in the form (if any) prescribed by the regulations and records the fact that the credit provider and the debtor have agreed to change the credit contract; or
  - (b) that is in the form (if any) prescribed by the regulations and states:
    - (i) the credit provider and the debtor have not agreed to change the credit contract; and
    - (ii) the reasons why they have not agreed; and
    - (iii) the name and contact details of the approved external dispute resolution scheme of which the credit provider is a member; and
    - (iv) the debtor's rights under that scheme.

Civil penalty: 2,000 penalty units.

- (5) The credit provider must give the notice before the end of the period identified using the table.

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<b>Period for giving notice</b>	
<b>If:</b>	<b>The period is:</b>
1 The credit provider does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2 The credit provider requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the stated date of the notice under subsection (2)
3 The credit provider requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

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*Regulations may prescribe shorter periods for credit contracts*

- (6) The regulations may provide for subsections (2), (3), (4) and (5) to have effect in relation to credit contracts prescribed by the regulations as if a particular reference in subsection (2) or (5) to a

**Schedule 1** Enhancements

**Part 1** Protection of debtor in cases of hardship

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number of days were a reference to a lesser number of days prescribed by the regulations.

**2 Subsection 73(1) of the *National Credit Code***

Omit “on any such application”, substitute “to change the credit contract as a result of a hardship notice by the debtor”.

**3 Subsection 74(1) of the *National Credit Code***

Omit “in accordance with the application”, substitute “as a result of a hardship notice by the debtor”.

**4 Subsection 74(2) of the *National Credit Code***

Repeal the subsection, substitute:

- (2) The court may, after allowing the applicant, the credit provider and any guarantor a reasonable opportunity to be heard:
  - (a) by order change the credit contract (but not so as to reduce the amount ultimately payable by the debtor to the credit provider under the contract), and make such other orders as it thinks fit; or
  - (b) refuse to change the credit contract.

**5 Subparagraphs 88(3)(f)(i) and (ii) of the *National Credit Code***

Repeal the subparagraphs, substitute:

- (i) give a hardship notice under section 72; or
- (ii) give a postponement request under section 94; or

**6 After section 89 of the *National Credit Code***

Insert:

**89A Effect of hardship notices on enforcement**

- (1) This section applies if:
  - (a) a credit provider is required to give a default notice under section 88 before beginning enforcement proceedings; and
  - (b) before or after the credit provider gives the default notice, the debtor gives the credit provider a hardship notice (the *current hardship notice*) under section 72; and
  - (c) either:

- (i) in the 4 months before the day the current hardship notice is given, the debtor had not given the credit provider another hardship notice; or
  - (ii) in that 4-month period, the debtor had given the credit provider one or more other hardship notices, but the credit provider reasonably believes that the basis on which the current hardship notice was given is materially different from the bases on which the other hardship notices were given.
- (2) The credit provider must not begin enforcement proceedings against the debtor unless:
- (a) the credit provider has given the debtor a notice under paragraph 72(4)(b), in response to the current hardship notice, stating that the credit provider and debtor have not agreed to change the credit contract; and
  - (b) the period of 14 days, starting on the day the credit provider gives the notice under paragraph 72(4)(b), has expired.

Criminal penalty: 50 penalty units.

Note: The credit provider must allow the debtor at least 30 days from the date of the default notice to remedy the default—see section 88. The 14-day period in subsection (2) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

- (3) However, the credit provider may take possession of mortgaged goods if the credit provider reasonably believes that:
- (a) the debtor or mortgagor has removed or disposed of the mortgaged goods, or intends to remove or dispose of them, without the credit provider's permission; or
  - (b) urgent action is necessary to protect the goods.
- (4) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **7 Subsection 94(1) of the *National Credit Code***

Repeal the subsection, substitute:

### *Postponement request*

- (1) A debtor, mortgagor or guarantor who has been given a default notice under section 88 or a demand for payment under section 90

may, at any time before the end of the period specified in the notice or demand, request (a *postponement request*), orally or in writing, that the credit provider negotiate a postponement of:

- (a) the enforcement proceedings; or
- (b) any action taken under such proceedings; or
- (c) the operation of any applicable acceleration clause.

### **8 Subsection 94(2) of the *National Credit Code***

Omit “makes the request”, substitute “gives the postponement request”.

### **9 Subsections 94(3) and (4) of the *National Credit Code***

Repeal the subsections, substitute:

#### *Enforcement proceedings*

- (3) If the debtor, mortgagor or guarantor gives the postponement request, the credit provider must not begin enforcement proceedings unless:
  - (a) the credit provider has given the debtor, mortgagor or guarantor a notice under subsection (2) in response to the postponement request; and
  - (b) the period of 14 days, starting on the day the credit provider gives the notice under subsection (2), has expired.

Criminal penalty: 50 penalty units.

Note: The credit provider must allow the debtor or mortgagor at least 30 days from the date of the default notice to remedy the default—see section 88. The 14-day period in subsection (3) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

- (4) However, the credit provider may take possession of mortgaged goods if the credit provider reasonably believes that:
  - (a) the debtor or mortgagor has removed or disposed of the mortgaged goods, or intends to remove or dispose of them, without the credit provider’s permission; or
  - (b) urgent action is necessary to protect the goods.
- (5) Subsections (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Part 2—Remedies for unfair or dishonest conduct by credit service providers**

### *National Consumer Credit Protection Act 2009*

#### **10 After section 180**

Insert:

#### **180A Orders to remedy unfair or dishonest conduct by credit service providers**

- (1) The court may make one or more of the orders described in subsection (2) if the court is satisfied that:
  - (a) a person (the *defendant*) provided a credit service to a consumer (the *plaintiff*); and
  - (b) the defendant engaged in conduct that:
    - (i) was connected with the provision of the service; and
    - (ii) was unfair or dishonest; and
  - (c) the conduct had one or more of the following results:
    - (i) the plaintiff entered a credit contract, consumer lease, mortgage or guarantee that the plaintiff would not have entered apart from the conduct;
    - (ii) the plaintiff entered a credit contract, consumer lease, mortgage or guarantee whose terms were different from a credit contract, consumer lease, mortgage or guarantee the plaintiff would have entered apart from the conduct;
    - (iii) the plaintiff became liable to pay fees, costs or charges to the defendant or someone else.
- (2) The orders are as follows:
  - (a) an order that the defendant take, or refrain from taking, specified action;
  - (b) an order that the defendant pay the plaintiff a specified amount;
  - (c) an order that a specified amount is not due or owing by the plaintiff to the defendant;
  - (d) any other order the court considers appropriate to:

**Schedule 1** Enhancements

**Part 2** Remedies for unfair or dishonest conduct by credit service providers

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- (i) redress the unfairness or dishonesty; or
  - (ii) prevent the defendant from profiting from the plaintiff by engaging in the conduct;
- except an order that affects a credit contract, consumer lease, mortgage or guarantee to which the conduct related.

*Determining whether conduct was unfair or dishonest*

- (3) In determining whether conduct was unfair or dishonest, the court:
- (a) must have regard to the extent (if any) to which one or more of the circumstances described in subsection (4) existed; and
  - (b) must consider it more likely that the conduct was unfair or dishonest the more any of those circumstances existed and the more any of them affected the plaintiff's interests.

This does not limit the matters to which the court may have regard.

- (4) The circumstances are as follows:
- (a) the plaintiff was at a special disadvantage in dealing with the defendant in relation to the transaction involving:
    - (i) the conduct; and
    - (ii) a credit contract, consumer lease, mortgage or guarantee to which the conduct related; and
    - (iii) any other contract requiring the plaintiff to make payments for the purposes of which it is reasonable to expect the plaintiff would or did enter such a credit contract, consumer lease, mortgage or guarantee;
  - (b) the plaintiff was a member of a class whose members were more likely than people who were not members of the class to be at such a disadvantage;
  - (c) if the plaintiff was a member of a class referred to in paragraph (b)—a reasonable person would consider that the conduct was directed at that class;
  - (d) the plaintiff was unable, or considered himself or herself unable, to make:
    - (i) a credit contract with a credit provider other than the credit provider to which the conduct related; or
    - (ii) a consumer lease with a lessor other than the lessor to which the conduct related; or
    - (iii) a mortgage with a mortgagee other than the mortgagee to which the conduct related; or

- (iv) a guarantee with a beneficiary other than the beneficiary to which the conduct related;
- (e) the conduct involved a technique that:
  - (i) should not in good conscience have been used; or
  - (ii) manipulated the plaintiff;
- (f) the defendant could determine or significantly influence the terms of a contract covered by subparagraph (a)(ii) or (iii);
- (g) the terms of the transaction described in paragraph (a) were less favourable to the plaintiff than the terms of a comparable transaction.

*When order may be made*

- (5) The court may make the order only if:
  - (a) the plaintiff or ASIC (on behalf of the plaintiff) applies for an order under this section; and
  - (b) the application is made within 6 years of the day the defendant first started engaging in the conduct.

*Applications for order*

- (6) For the purposes of paragraph (5)(a), ASIC may make an application on behalf of the plaintiff, but only if the plaintiff has given consent in writing before the application is made.

*Recovery of amount as a debt*

- (7) If the court makes an order that the defendant pay an amount specified in the order to the plaintiff, the plaintiff may recover the amount as a debt due to the plaintiff.

*When this section does not apply*

- (8) This section does not apply to the provision of credit assistance by a person who is (or after the provision of the assistance becomes):
  - (a) a credit provider under the credit contract to which the assistance relates; or
  - (b) a lessor under the consumer lease to which the assistance relates; or
  - (c) a mortgagee under a mortgage in relation to the credit contract to which the assistance relates; or

**Schedule 1** Enhancements

**Part 2** Remedies for unfair or dishonest conduct by credit service providers

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- (d) a beneficiary of a guarantee in relation to the credit contract to which the assistance relates.

**11 Section 184**

Add at the end “or another Act”.

**Part 3—Representations about eligibility to enter  
credit contracts, consumer leases etc.  
without assessing unsuitability**

*National Consumer Credit Protection Act 2009*

**12 Section 125 (paragraph relating to Division 3)**

Omit “entering or increasing the credit limit of a credit contract”,  
substitute “doing particular things (such as entering a credit contract)”.

**13 Division 3 of Part 3-2 (heading)**

Repeal the heading, substitute:

**Division 3—Obligation to assess unsuitability**

**14 Section 128 (heading)**

Repeal the heading, substitute:

**128 Obligation to assess unsuitability**

**15 After paragraph 128(a)**

Insert:

- (aa) make an unconditional representation to a consumer that the licensee considers that the consumer is eligible to enter a credit contract with the licensee; or

**16 After paragraph 128(b)**

Insert:

- ; or (ba) make an unconditional representation to a consumer that the licensee considers that the credit limit of credit contract between the consumer and the licensee will be able to be increased;

**17 Section 148 (paragraph relating to Division 3)**

Omit “entering a consumer lease”, substitute “doing particular things (such as entering a consumer lease)”.

**Schedule 1** Enhancements

**Part 3** Representations about eligibility to enter credit contracts, consumer leases etc. without assessing unsuitability

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**18 Division 3 of Part 3-4 (heading)**

Repeal the heading, substitute:

**Division 3—Obligation to assess unsuitability**

**19 Section 151**

Repeal the section, substitute:

**151 Obligation to assess unsuitability**

A licensee must not:

- (a) enter a consumer lease with a consumer who will be the lessee under the lease; or
- (b) make an unconditional representation to a consumer that the licensee considers that the consumer is eligible to enter a consumer lease with the licensee;

on a day (the *lease day*) unless the licensee has, within 90 days (or other period prescribed by the regulations) before the lease day:

- (c) made an assessment that:
  - (i) is in accordance with section 152; and
  - (ii) covers a period in which the lease day occurs; and
- (d) made the inquiries and verification in accordance with section 130.

Civil penalty: 2,000 penalty units.

**20 Section 152**

Omit “paragraph 151(a)”, substitute “paragraph 151(c)”.

**21 Subsection 153(1)**

Omit “paragraph 151(b)”, substitute “paragraph 151(d)”.

## **Part 4—Prohibition on certain representations and other matters**

### *National Consumer Credit Protection Act 2009*

#### **22 Section 27 (paragraph relating to Division 3)**

Omit “, charging fees for unlicensed conduct, and giving misleading information”, substitute “, and charging fees for unlicensed conduct”.

#### **23 Division 3 of Part 2-1 (heading)**

Repeal the heading, substitute:

### **Division 3—Other prohibitions relating to the requirement to be licensed**

#### **24 Section 33**

Repeal the section.

#### **25 After Part 3-6**

Insert:

## **Part 3-6A—Miscellaneous rules**

### **Division 1—Introduction**

#### **160A Guide to this Part**

This Part has a number of miscellaneous rules that require responsible lending conduct when engaging in credit activities or particular types of credit activities. Some of these rules apply to a person even if the person is not required to be licensed.

Division 2 prohibits licensees from making particular representations when providing a credit service to a consumer.

Division 3 prohibits a person (whether licensed or not) from giving false or misleading information in the course of engaging in a credit activity.

Division 4 may require a credit provider or lessor (whether licensed or not) to give notice when, and in some cases before, giving an employer of a debtor or lessee an authorisation by the debtor or lessee to make deductions from amounts payable by the employer to the debtor or lessee.

## Division 2—Representations

### 160B “Independent”, “impartial” or “unbiased” etc.

- (1) A licensee must not, in providing or offering to provide a credit service to a consumer, use any of the following terms (either alone or in combination with other words or letters) in a representation to the consumer about the licensee, the service or the licensee’s actions in providing the service:
- (a) the word “independent”;
  - (b) the word “impartial”;
  - (c) the word “unbiased”;
  - (d) another term (whether or not in English) that is of similar import to a word mentioned in paragraph (a), (b) or (c).

Civil penalty: 2,000 penalty units.

#### *Defences*

- (2) For the purposes of subsection (1), it is a defence if:
- (a) the licensee does not receive any of the following:
    - (i) commissions (apart from commissions that are rebated in full to the licensee’s clients);
    - (ii) other gifts or benefits from a credit provider or a lessor that may reasonably be expected to influence the licensee; and
  - (b) in providing a credit service, the licensee operates free from direct or indirect restrictions relating to the credit contracts and consumer leases to which the service relates (except

- restrictions imposed on the licensee by this Act or by an Australian credit licence); and
- (c) in providing a credit service, the licensee operates without any conflicts of interest that might:
    - (i) arise from the licensee's associations or relationships with credit providers and lessors; and
    - (ii) reasonably be expected to influence the licensee in providing the service; and
  - (d) neither of the following persons receives any commission, gift, or benefit, covered by paragraph (a):
    - (i) the licensee's employer (if any);
    - (ii) any other person prescribed (whether by reference to a class of person or otherwise) by the regulations.
- (3) For the purposes of subsection (1), it is a defence if the representation uses any of the terms in the negative (for example, a representation that the licensee is not independent).

#### **160C “Financial counsellor” etc.**

- (1) A licensee must not, in providing or offering to provide a credit service to a consumer, use any of the following terms (either alone or in combination with other words or letters) in a representation to the consumer about the licensee, the service or the licensee's actions in providing the service:
- (a) the phrase “financial counsellor”;
  - (b) the phrase “financial counselling”;
  - (c) another term (whether or not in English) that:
    - (i) is of similar import to a phrase mentioned in paragraph (a) or (b); and
    - (ii) is prescribed by the regulations.

Civil penalty: 2,000 penalty units.

#### *Defences*

- (2) For the purposes of subsection (1), it is a defence if regulations made for the purposes of paragraph 110(a) exempt the licensee from section 29 in relation to a credit activity because the licensee engages in the activity as part of a financial counselling service.

- (3) For the purposes of subsection (1), it is a defence if:
- (a) the licensee is providing, or offering to provide, the credit service on behalf of another person (the *principal*); and
  - (b) the licensee is a representative of the principal; and
  - (c) regulations made for the purposes of paragraph 110(a) exempt the principal from section 29 in relation to a credit activity because the principal engages in the activity as part of a financial counselling service; and
  - (d) the licensee's actions in providing or offering to provide the credit service are within the authority of the principal.
- (4) For the purposes of subsection (1), it is a defence if the representation uses any of the terms in the negative (for example, a representation that the licensee is not a financial counsellor).

### Division 3—Giving misleading information

#### 160D Prohibition on giving misleading information etc.

*Prohibition on giving misleading information etc.*

- (1) A person (the *giver*) must not, in the course of engaging in a credit activity, give information or a document to another person if the giver knows, or is reckless as to whether, the information or document is:
- (a) false in a material particular; or
  - (b) materially misleading.

Civil penalty: 2,000 penalty units.

*Offence*

- (2) A person commits an offence if:
- (a) the person gives information or a document to another person; and
  - (b) the person does so in the course of engaging in a credit activity; and
  - (c) the information or document is false in a material particular or materially misleading.

Criminal penalty: 100 penalty units, or 2 years imprisonment, or both.

## **Division 4—Giving authorisation for deductions by employer of debtor or lessee**

### **160E Requirements for giving authorisation to employer**

- (1) This section applies to a credit provider or lessor giving, or intending to give, an employer of a debtor or lessee who is party to a credit contract or consumer lease with the credit provider or lessor an instrument that:
  - (a) was made by the debtor or lessee; and
  - (b) authorises the employer to:
    - (i) make one or more deductions from one or more amounts payable by the employer in relation to the performance of work by the debtor or lessee; and
    - (ii) pay the deductions to the credit provider or lessor.

*Credit provider or lessor must give statement to employer*

- (2) If the credit contract or consumer lease is of a kind prescribed by the regulations, the credit provider or lessor must give the employer a statement, in the form prescribed by the regulations for that kind of contract or lease, with the instrument.

Civil penalty: 2,000 penalty units.

*Credit provider or lessor must give 7 days' notice to defaulting debtor or lessee*

- (3) If the debtor or lessee is in default under the credit contract or consumer lease, the credit provider or lessor must give the debtor or lessee at least 7 days' notice, in a form prescribed by the regulations, of the intention of the credit provider or lessor to give the instrument to the employer.

Civil penalty: 2,000 penalty units.

- (4) To avoid doubt, subsection (3) does not apply if there are not regulations in force prescribing a form for the purposes of that subsection.

**Schedule 1** Enhancements

**Part 4** Prohibition on certain representations and other matters

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*Subsections (2) and (3) do not apply to some credit contracts*

- (5) Subsections (2) and (3) do not apply in relation to a credit contract for the provision of credit relating to the provision of goods or services to the debtor in connection with the debtor's remuneration, or other benefits, for the debtor's employment.

## **Part 5—Civil remedies for contravention of the National Credit Code**

### *National Consumer Credit Protection Act 2009*

#### **26 Section 124 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

#### **124 Civil effect of contraventions**

#### **27 Subsection 124(1) of the *National Credit Code***

Omit “(other than one for which a civil effect is specifically provided by Division 1 or by any other provision of this Code)”.

#### **28 Subsection 124(2) of the *National Credit Code***

Repeal the subsection, substitute:

- (2) An application for the exercise of the court’s powers under this section may be made by:
  - (a) a person affected by the contravention; or
  - (b) ASIC on behalf of a person affected by the contravention, if the person has consented in writing to ASIC making the application; or
  - (c) ASIC (on its own behalf).

## Part 6—Miscellaneous amendments

### *National Consumer Credit Protection Act 2009*

#### **29 Subsection 19(1) of the *National Credit Code***

Omit “a contract document”, substitute “a new contract document”.

#### **30 Section 32 of the *National Credit Code***

Repeal the section, substitute:

#### **32 Fees or charges in relation to third parties**

##### *When this section applies*

- (1) This section applies if a fee or charge is payable by a debtor to the credit provider for an amount (the ***third party amount***) payable or paid by the credit provider to another person, body or agency.

##### *Third party amount ascertainable at time of debtor payment*

- (2) If, when the fee or charge is paid by the debtor to the credit provider, the third party amount is ascertainable, then the amount of the fee or charge must not exceed the third party amount.

##### *Third party amount not ascertainable at time of debtor payment*

- (3) If:
  - (a) when the fee or charge is paid by the debtor to the credit provider, the third party amount is not ascertainable; and
  - (b) after the fee or charge is paid, the credit provider ascertains the third party amount; and
  - (c) the third party amount is less than the amount of the fee or charge paid;then the credit provider must refund or credit the difference to the debtor.

##### *Determining third party amount*

- (4) The third party amount is to be determined by:

- (a) taking into account any discount, rebate or other allowance that is received or receivable by the credit provider or a related body corporate (within the meaning of the *Corporations Act 2001*); and
- (b) disregarding any rebate on tax payable by the credit provider or a related body corporate (within the meaning of that Act).

**31 Paragraph 36(1)(c) of the *National Credit Code***

Repeal the paragraph, substitute:

- (c) any amounts currently overdue and the dates they became due;

**32 Paragraph 36(1)(d) of the *National Credit Code***

Omit “became due”, substitute “becomes due”.

**33 Subsection 38(4) of the *National Credit Code***

Omit “of receiving the statement of account in which the amount, or part of that amount, was first shown”, substitute “after the day the debtor receives the statement of account in which the amount, or part of that amount, is first shown”.

**34 Subsection 38(5) of the *National Credit Code***

Omit “after the end of the contract”, substitute “after the day the contract ends”.

**35 Subsection 38(6) of the *National Credit Code***

Omit “at least 30 days have elapsed from the time the written explanation or advice as to agreement was given”, substitute “the period of 30 days, starting on the day the credit provider gives the written explanation or advice as to agreement, has expired”.

**36 At the end of subsection 38(6) of the *National Credit Code***

Add:

Criminal penalty: 50 penalty units.

**37 Subsection 38(9) of the *National Credit Code***

Omit “Subsection (8) is an offence”, substitute “Subsections (6) and (8) are offences”.

**38 Division 6 of Part 2 of the *National Credit Code***

Repeal the Division, substitute:

**Division 6—Certain transactions not to be treated as new contracts**

**40 Changes etc. under contracts**

If:

(a) there is:

(i) a change to an existing credit contract that results in further credit being provided; or

(ii) a deferral or waiver of an amount under an existing credit contract; or

(iii) a postponement relating to an existing credit contract; and

(b) the change, deferral, waiver or postponement is made in accordance with this Code or the existing credit contract;

then the change, deferral, waiver or postponement is not to be treated as creating a new credit contract for the purposes of this Code.

**39 Subsection 71(1) of the *National Credit Code***

Omit “under a credit contract”, substitute “under an existing credit contract”.

**40 Subsection 83(1) of the *National Credit Code* (penalty)**

Repeal the penalty.

**41 Subsection 83(3) of the *National Credit Code***

Omit “after the request”, substitute “after the day the request”.

**42 Subsection 83(5) of the *National Credit Code***

Repeal the subsection (not including the note), substitute:

(5) Subsection (3) is an offence of strict liability.

**43 Subsection 87(2) of the *National Credit Code***

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Omit “direct debit default notice under this section within 10 business days”, substitute “notice, complying with this section, within 14 days”.

**44 Subsection 87(3) of the *National Credit Code***

Omit “direct debit default”.

**45 Paragraphs 88(5)(a) and (d) of the *National Credit Code***

Omit “believes on reasonable grounds”, substitute “reasonably believes”.

**46 Subsection 88(6) of the *National Credit Code***

Omit “believes on reasonable grounds”, substitute “reasonably believes”.

**47 Subsection 89(1) of the *National Credit Code***

After “a default notice”, insert “under section 88”.

**48 Paragraphs 93(1)(c), (2)(a) and (2)(d) of the *National Credit Code***

Omit “believes on reasonable grounds”, substitute “reasonably believes”.

**49 Subsection 95(1) of the *National Credit Code***

Omit “The default notice or demand for payment”, substitute “A default notice under section 88 or a demand for payment under section 90”.

**50 Subsection 98(1) of the *National Credit Code***

Omit “within 7 days”, substitute “, within 7 days after the day the notice is given to the mortgagor,”.

**51 Section 206 of the *National Credit Code***

Repeal the section.

## Part 7—Technical corrections

### *National Consumer Credit Protection Act 2009*

#### **52 Section 129**

Omit “128(1)(c)”, substitute “128(c)”.

Note: This item fixes an incorrect cross-reference.

#### **53 Subsection 130(1)**

Omit “128(1)(d)”, substitute “128(d)”.

Note: This item fixes an incorrect cross-reference.

#### **54 Paragraph 181(b)**

After “order under”, insert “section”.

#### **55 Subparagraph 88(3)(g)(i) of the *National Credit Code***

Omit “or”, substitute “and”.

#### **56 Subsection 127(2) of the *National Credit Code***

Omit “*tied continuing credit* contract”, substitute “*tied continuing credit contract*”.

#### **57 Section 129 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

#### **129 Right to damages under sale contract against both supplier and linked credit provider**

Note: This item removes a reference to a repealed provision.

#### **58 Section 130 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

#### **130 Limits on debtor’s right of action against linked credit provider**

Note: This item removes a reference to a repealed provision.

#### **59 Section 131 of the *National Credit Code* (heading)**

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Repeal the heading, substitute:

**131 Liability of supplier to linked credit provider**

Note: This item removes a reference to a repealed provision.

**60 Section 132 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

**132 Interest may be awarded**

Note: This item removes a reference to a repealed provision.

**61 Section 133 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

**133 Subrogation of credit provider**

Note: This item removes a reference to a repealed provision.

**62 Subsection 204(1) of the *National Credit Code* (definition  
of *approved external dispute resolution scheme*)**

After “has”, insert “the”.

## Schedule 2—Reverse mortgages

### Part 1—Definitions

#### Division 1—Definition of reverse mortgage

##### *National Consumer Credit Protection Act 2009*

#### 1 Subsection 5(1)

Insert:

*reverse mortgage* has the same meaning as in section 13A of the National Credit Code.

#### 2 At the end of Part 1 of the *National Credit Code*

Add:

#### 13A Reverse mortgages

- (1) For the purposes of this Code, an arrangement is a *reverse mortgage* if the arrangement involves a credit contract, except a bridging finance contract, and a mortgage over a dwelling or land securing a debtor's obligations under the contract and either:
  - (a) the conditions in subsections (2) and (3) are met; or
  - (b) the arrangement is of a kind declared by ASIC under subsection (4) and is made on or after the commencement of that declaration.

##### *Conditions*

- (2) The first condition is that the debtor's total liability under the credit contract or mortgage may exceed (to a limited or unlimited extent) the maximum amount of credit that may be provided under the contract without the debtor being obliged to reduce that liability to or below that maximum amount.

Note: The debtor's total liability can exceed the maximum amount of credit because interest and some other fees and charges are not included in an amount of credit: see subsection 3(2).

- (3) The second condition is that, if the regulations prescribe any prerequisites for the arrangement to be a reverse mortgage, those prerequisites are met.

*Declarations by ASIC*

- (4) ASIC may by legislative instrument declare specified kinds of arrangements involving a credit contract and a mortgage over a dwelling or land securing a debtor's obligations under the contract to be reverse mortgages.

**3 Subsection 204(1) of the *National Credit Code***

Insert:

*reverse mortgage*: see section 13A.

**Division 2—Other definitions**

***National Consumer Credit Protection Act 2009***

**4 Subsection 5(1)**

Insert:

*reverse mortgage information statement* means a document relating to reverse mortgages that complies with the regulations.

**5 Subsection 204(1) of the *National Credit Code***

Insert:

*bridging finance contract*: a credit contract is a *bridging finance contract* if:

- (a) when the contract is made, the debtor:
  - (i) reasonably expects to receive a lump sum before the term of the contract ends; and
  - (ii) intends to discharge the debtor's obligations under the contract so far as possible with that sum; and
- (aa) the term of the contract is 2 years or less; and
- (b) the conditions (if any) prescribed by the regulations are met.

**6 Subsection 204(1) of the *National Credit Code***

Insert:

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***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**7 Subsection 204(1) of the *National Credit Code***

Insert:

***practising lawyer*** means a person who is admitted to the legal profession by a federal court or a Supreme Court of a State or Territory and holds a practising certificate (however described) entitling the person to practise that profession.

**8 Subsection 204(1) of the *National Credit Code***

Insert:

***reverse mortgaged property***, in relation to a credit contract for a reverse mortgage, means a dwelling or land that has been mortgaged to secure a debtor's obligations under the contract.

## **Part 2—Provisions applying to licensees**

### *National Consumer Credit Protection Act 2009*

#### **9 At the end of section 133**

Add:

Note: Sections 178 and 179 provide for remedies for anyone who suffers, or is likely to suffer, loss or damage because of a breach of this section. For example, if a consumer makes an unsuitable credit contract with a licensee, rather than making a not unsuitable credit contract for a reverse mortgage, a person who suffered, or is likely to suffer, loss as a result may be able to get court orders under section 178 or 179 to put the person in a position like the one they would have been in had the consumer entered into the contract for the reverse mortgage.

#### **10 Before Part 3-3**

Insert:

## **Part 3-2D—Licensees and reverse mortgages**

### **133DA Guide to this Part**

This Part has rules that apply to licensees that provide credit services or are credit providers.

Before providing credit assistance, or entering into a credit contract, for a reverse mortgage, licensees must provide projections of the debtor's equity in the property that may be covered by the reverse mortgage.

Licensees must also make reverse mortgage information statements available on their websites and on request.

Licensees must not inaccurately use terms like "reverse mortgage" in making representations about credit contracts and mortgages.

**133DB Giving projections of equity before providing credit assistance or entering credit contract**

*Requirement to give projections*

- (1) Before a licensee makes a preliminary assessment for the purposes of paragraph 115(1)(c) or (2)(a), or an assessment for the purposes of paragraph 128(c), in connection with a credit contract with a consumer for a reverse mortgage, the licensee must:
- (a) show the consumer in person, or give the consumer in a way prescribed by the regulations, projections that:
    - (i) relate to the value of the dwelling or land that may become reverse mortgaged property, and the consumer's indebtedness, over time if the consumer were to enter into a contract for a reverse mortgage; and
    - (ii) are made in accordance with the regulations by using a website approved by ASIC; and
  - (b) give the consumer a printed copy of the projections; and
  - (c) tell the consumer in person the things (if any) that relate to reverse mortgages and are prescribed by the regulations; and
  - (d) give the consumer a reverse mortgage information statement.

Civil penalty: 2,000 penalty units.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Criminal penalty: 50 penalty units.

*Defences for not giving projections*

- (3) For the purposes of paragraphs (1)(a) and (b), and of subsection (2) so far as it relates to either of those paragraphs, it is a defence if the licensee reasonably believes that:
- (a) another person has:
    - (i) shown the consumer in person projections described in paragraph (1)(a); and

- (ii) given the consumer a printed copy of the projections;  
and
- (b) the projections are the same, or substantially the same, as those paragraph (1)(a) requires the licensee to show the consumer.

Note: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) For the purposes of paragraphs (1)(a) and (b), and of subsection (2) so far as it relates to either of those paragraphs, it is a defence if the circumstances prescribed by the regulations exist.

Note: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

*Defence for not giving reverse mortgage information statement*

- (5) For the purposes of paragraph (1)(d), and of subsection (2) so far as it relates to that paragraph, it is a defence if the licensee reasonably believes that another person has given the consumer a reverse mortgage information statement in the last 90 days.

Note: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

**133DC Making reverse mortgage information statement available on website of credit provider or credit assistance provider**

*When this section applies*

- (1) This section applies if a licensee:
  - (a) is:
    - (i) a person who provides, or holds himself or herself out as able to provide, credit assistance relating to credit contracts for reverse mortgages; or
    - (ii) a credit provider under one or more credit contracts for a reverse mortgages; and
  - (b) has a website that provides information about such contracts.

*Requirement*

- (2) The licensee must make available through the website a reverse mortgage information statement.

Civil penalty: 2,000 penalty units.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Criminal penalty: 50 penalty units.

**133DD Making reverse mortgage information statement available in other situations**

*When this section applies*

- (1) This section applies if:
- (a) a licensee is:
    - (i) a person who provides, or holds himself or herself out as able to provide, credit assistance relating to credit contracts for reverse mortgages; or
    - (ii) a credit provider under one or more credit contracts for reverse mortgages; and
  - (b) either:
    - (i) a consumer asks the licensee (otherwise than by using a website of the licensee) for a reverse mortgage information statement; or
    - (ii) the regulations require a consumer, in circumstances prescribed by the regulations, to be given a reverse mortgage information statement; and
  - (c) the consumer gives the licensee the consumer's name, and the contact details required by the regulations.

*Requirement*

- (2) The licensee must, in accordance with any requirements prescribed by the regulations, give the consumer a reverse mortgage information statement.

Civil penalty: 2,000 penalty units.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

*Defences*

- (4) For the purposes of subsections (2) and (3), it is a defence if:
- (a) the licensee has given the consumer, or reasonably believes that someone else has given the consumer, a reverse mortgage information statement; or
  - (b) the licensee:
    - (i) is a credit provider under one or more credit contracts for reverse mortgages; and
    - (ii) reasonably believes that the consumer would not be eligible to make a credit contract with the licensee for a reverse mortgage; or
  - (c) there exist circumstances prescribed by regulations as circumstances in which the licensee is not required to give the consumer a reverse mortgage information statement.

Note: For the purposes of subsection (3), a defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

### **133DE Representations that use the term “reverse mortgage” etc.**

#### *Credit service providers*

- (1) A licensee must not, in providing or offering to provide a credit service to a consumer, use either of the following terms (either alone or in combination with other words or letters) in a representation to the consumer about an actual or proposed credit contract or mortgage:
- (a) the phrase “reverse mortgage”;
  - (b) another term (whether or not in English) of similar import to the phrase “reverse mortgage”.

Civil penalty: 2,000 penalty units.

#### *Credit providers*

- (2) A licensee that is a credit provider must not use either of the following terms (either alone or in combination with other words or letters) in a representation to a consumer about an actual or proposed credit contract or mortgage:
- (a) the phrase “reverse mortgage”;
  - (b) another term (whether or not in English) of similar import to the phrase “reverse mortgage”.

Civil penalty: 2,000 penalty units.

#### *Defence*

- (3) For the purposes of subsections (1) and (2), it is a defence if:
- (a) the representation truly represents that a credit contract:
    - (i) is or will be a credit contract for a reverse mortgage; or
    - (ii) is not or will not be a credit contract for a reverse mortgage; or
  - (b) the representation truly represents that a mortgage:
    - (i) is or will be part of a reverse mortgage; or
    - (ii) is not or will not be part of a reverse mortgage.

### **11 At the end of section 179**

Add:

*Presumption in favour of certain orders*

- (6) Subsection (7) applies if:
- (a) the defendant is a credit provider who has contravened section 133 by entering into, or increasing the credit limit of, a credit contract (the *illegal contract*) that is not a credit contract for a reverse mortgage; and
  - (b) the debtor's obligations under the illegal contract are secured by a mortgage over the debtor's principal place of residence; and
  - (c) the court is satisfied that, at any time in the period in which an assessment needed to be made to comply with section 128 in relation to the illegal contract:
    - (i) there was a credit provider (whether the defendant or not) offering credit through a reverse mortgage (whether or not the credit provider actually made such an offer to the debtor); and
    - (ii) the debtor would have been eligible to enter into a credit contract for the reverse mortgage; and
    - (iii) the credit contract for the reverse mortgage would not have been unsuitable for the debtor under section 133; and
  - (d) the plaintiff, or ASIC on behalf of the plaintiff, applies for an order under this section to let the plaintiff reside in the place to prevent or reduce loss or damage suffered or likely to be suffered by the plaintiff vacating the place.
- (7) The court must consider the order appropriate to prevent or reduce the loss or damage and make the order unless the court is satisfied that the order would adversely affect a person other than the debtor and the defendant.

## **Part 3—Provisions applying to credit providers generally**

### ***National Consumer Credit Protection Act 2009***

#### **12 After subsection 17(15) of the *National Credit Code***

Insert:

*Provisions for person other than debtor to occupy reverse mortgaged property*

- (15A) If the credit contract for a reverse mortgage is to make provision for a person other than the debtor to occupy the reverse mortgaged property, the contract document must contain provisions that have the following effect (whether or not the document also contains other provisions relating to such occupation by such a person):
- (a) the debtor may at any time (before, when or after the contract is made):
    - (i) nominate to the credit provider a person who is to be allowed to occupy the property (whether alone or with other persons); and
    - (ii) revoke such a nomination by notice given to the credit provider;
  - (b) while a nomination described in paragraph (a) is in force, the nominated person has the same rights (against the credit provider) to occupy the property as the debtor has or would have apart from the death of the debtor or vacation of the property by the debtor.

Note: Other provisions contained in the contract document may, for example, limit the kinds of persons whom the debtor may nominate to the credit provider as persons who are to be allowed to occupy the property.

#### **13 After section 18 of the *National Credit Code***

Insert:

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**18A Provisions that must not be included in credit contract for reverse mortgage**

- (1) A credit provider must not enter into a credit contract for a reverse mortgage that provides a basis for beginning enforcement proceedings relating to the contract for an event described in subsection (3).
- (2) A credit provider must not agree to change, or unilaterally change, a credit contract for a reverse mortgage so that it provides a basis for beginning enforcement proceedings relating to the contract for an event described in subsection (3).
- (3) For the purposes of subsections (1) and (2), the events are as follows:
  - (a) the debtor failing to inform the credit provider that another person occupies the reverse mortgaged property;
  - (b) the debtor failing, when the debtor occupies the reverse mortgaged property, to give the credit provider evidence that the debtor, or another person nominated by the debtor to the credit provider, occupies or occupied the reverse mortgaged property;
  - (c) the debtor leaving the reverse mortgaged property unoccupied while it is the debtor's principal place of residence;
  - (d) the debtor failing to pay a cost to a person other than the credit provider within 3 years after the payment became due;
  - (e) the debtor failing to comply with a provision of the credit contract if the contract does not make it clear how the debtor is to comply with the provision;
  - (f) the debtor breaching another credit contract with the credit provider;
  - (g) an event that involves an act or omission by the debtor and is prescribed by the regulations.

**18B Disclosure if credit contract for reverse mortgage does not protect tenancy of person other than debtor**

- (1) This section applies if a proposed credit contract for a reverse mortgage does not include a provision (a *tenancy protection*

## Schedule 2 Reverse mortgages

### Part 3 Provisions applying to credit providers generally

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*provision*) for a person other than the debtor to have a right against the credit provider to occupy the reverse mortgaged property.

- (2) A person must not provide a credit service relating to the contract unless the person has told the debtor, in writing in the form (if any) prescribed by the regulations, that the contract does not include a tenancy protection provision.

Criminal penalty: 50 penalty units.

- (3) Subsection (2) does not apply if the person is or will be the credit provider under the contract.

- (4) The credit provider must not enter into the contract unless the credit provider has told the debtor, in writing in the form (if any) prescribed by the regulations, that the contract does not include a tenancy protection provision.

Criminal penalty: 50 penalty units.

- (5) An offence against subsection (2) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **18C Independent legal advice before entry into credit contract for reverse mortgage**

- (1) The regulations may regulate or prohibit the entry by a credit provider into a credit contract for a reverse mortgage if the debtor has not obtained legal advice, in accordance with the regulations, about the contract or reverse mortgage.
- (2) The regulations may provide for offences and civil penalties for contraventions of regulations made for the purposes of subsection (1).
- (3) The penalties for offences described in subsection (2) must not be more than 50 penalty units for an individual or 250 penalty units for a body corporate.
- (4) The civil penalties described in subsection (2) must not be more than 500 penalty units for an individual or 2,500 penalty units for a body corporate.

**14 At the end of section 22 of the *National Credit Code***

Add:

- (3) Subsection (1) does not apply to a contravention of a requirement of section 18B.

**15 At the end of section 26 of the *National Credit Code***

Add:

- (6) A credit contract for a reverse mortgage may not prohibit an early payment that:
  - (a) is made in the circumstances described in paragraph 86A(1)(a); and
  - (b) is of the amount described in paragraph 86A(1)(b).

**16 After paragraph 33(2)(a) of the *National Credit Code***

Insert:

- (aa) in the case of a continuing credit contract for a reverse mortgage—12 months; or

**17 After paragraph 33(2)(b) of the *National Credit Code***

Insert:

- (ba) in the case of a reverse mortgage not involving a continuing credit contract—12 months; or

**18 After section 67 of the *National Credit Code***

Insert:

**67A Changes to tenancy protection in credit contracts for reverse mortgages**

A purported change to a credit contract for a reverse mortgage that makes provision for a person other than the debtor to occupy the reverse mortgaged property is void so far as the change purports to:

- (a) remove a provision required by subsection 17(15A) to be contained in the contract document; or
- (b) vary the contract so as to limit:
  - (i) the ability of the debtor to nominate to the credit provider a person who is to be allowed to occupy the

reverse mortgaged property (whether alone or with other persons); or

- (ii) the rights of a person nominated by the debtor to the credit provider to occupy the property.

### **19 Division 1 of Part 5 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

#### **Division 1—Ending of credit contract by debtor etc.**

##### **Subdivision A—Paying out contract etc.**

### **20 After section 86 of the *National Credit Code***

Insert:

#### **Subdivision B—Ending of reverse mortgage by credit provider receiving value of reverse mortgaged property**

##### **86A Application of this Subdivision**

- (1) This Subdivision applies in relation to a credit contract for a reverse mortgage and a mortgage securing the debtor's obligations under the contract if:
  - (a) the debtor's accrued liability (whether or not due and payable) under the contract is more than the amount (the *adjusted market value*) worked out under subsection (2) for the reverse mortgaged property; and
  - (b) the credit provider receives an amount at least equal to the adjusted market value for the reverse mortgaged property either:
    - (i) as a payment accepted from the debtor under the credit contract; or
    - (ii) as proceeds of the sale by the credit provider of the reverse mortgaged property.
- (2) The adjusted market value for the reverse mortgaged property is the amount worked out by:
  - (a) working out the market value of the property in accordance with the regulations (if any); and

(b) adjusting that value in accordance with the regulations (if any).

Regulations for the purposes of paragraph (b) may prescribe different adjustments to be made in different circumstances.

### **86B Discharge of debtor's obligations under credit contract and discharge of mortgage**

- (1) The debtor's obligations under the credit contract are discharged by force of this subsection.
- (2) The mortgage securing those obligations is discharged by force of this subsection.

Note: This section does not apply in some cases: see section 86E.

### **86C Credit provider must pay debtor excess of receipt over adjusted market value for reverse mortgaged property**

If the amount received by the credit provider exceeds the adjusted market value for the reverse mortgaged property, the credit provider must pay the excess to the debtor.

Note 1: If the credit provider contravenes this requirement, the court may order the credit provider to compensate anyone affected by the contravention: see section 124.

Note 2: This section does not apply in some cases: see section 86E.

### **86D Credit provider must not demand or accept further payments**

- (1) The credit provider must not:
  - (a) purport to require payment under the credit contract; or
  - (b) accept a payment purportedly under the credit contract.

Note 1: If the credit provider contravenes this requirement, the court may order the credit provider to compensate anyone affected by the contravention: see section 124.

Note 2: This section does not apply in some cases: see section 86E.

- (2) To avoid doubt, subsection (1) does not apply to the payment (if any) that is described in subparagraph 86A(1)(b)(i) and caused this Subdivision to apply.

### **86E Cases in which sections 86B, 86C and 86D do not apply**

Sections 86B, 86C and 86D do not apply if:

- (b) the debtor engaged in fraud, or made a misrepresentation, relating to the reverse mortgage before, at or after the time the credit contract was made; or
- (c) circumstances prescribed by the regulations exist.

### **86F Relationship between this Subdivision and other provisions**

This Subdivision does not limit any of the other provisions of this Division.

### **Subdivision C—Notice of first direct debit default**

#### **21 Subsections 88(1) and (2) of the *National Credit Code***

Repeal the subsections, substitute:

*Enforcement of credit contract*

- (1) A credit provider must not begin enforcement proceedings against a debtor in relation to a credit contract unless:
  - (a) the debtor is in default under the credit contract; and
  - (b) the credit provider has given the debtor, and any guarantor, a default notice, complying with this section, allowing the debtor a period of at least 30 days from the date of the notice to remedy the default; and
  - (c) the default has not been remedied within that period; and
  - (d) if the credit contract is for a reverse mortgage, the credit provider has spoken to one of the following persons by telephone or in person in that period and has thus both confirmed that the debtor received the default notice and informed the person of the consequences of failure to remedy the default, or has made reasonable efforts to do so:
    - (i) the debtor;
    - (ii) a practising lawyer representing the debtor;
    - (iii) a person with a power of attorney relating to the debtor's financial affairs.

Criminal penalty: 50 penalty units.

Note: If a debtor or guarantor has given a credit provider a hardship notice or a postponement request there may be extra requirements that the credit provider must comply with before beginning enforcement proceedings: see sections 89A and 94.

*Enforcement of mortgage*

- (2) A credit provider must not begin enforcement proceedings against a mortgagor to recover payment of money due or take possession of, sell, appoint a receiver for or foreclose in relation to property subject to a mortgage, unless:
- (a) the mortgagor is in default under the mortgage; and
  - (b) the credit provider has given the mortgagor a default notice, complying with this section, allowing the mortgagor a period of at least 30 days from the date of the notice to remedy the default; and
  - (c) the default has not been remedied within that period.
  - (d) if the mortgage secures an obligation under a credit contract for a reverse mortgage, the credit provider has spoken to one of the following persons by telephone or in person in that period and has thus both confirmed that the mortgagor received the default notice and informed the person of the consequences of failure to remedy the default, or has made reasonable efforts to do so:
    - (i) the mortgagor;
    - (ii) a practising lawyer representing the mortgagor;
    - (iii) a person with a power of attorney relating to the mortgagor's financial affairs.

Criminal penalty: 50 penalty units.

Note: If a mortgagor has given a credit provider a postponement request there may be extra requirements that the credit provider must comply with before beginning enforcement proceedings: see section 94.

**22 After subsection 88(7) of the *National Credit Code***

Insert:

*Some defaults are not a basis for a default notice*

- (7A) So far as a notice purporting to be a default notice relates to an alleged default under a credit contract for a reverse mortgage that

is an event described in subsection 18A(3), the notice is not a default notice for the purposes of any of the following provisions:

- (a) subsections (1) and (2) of this section;
- (b) section 93.

Note: This has the effect that:

- (a) if the credit provider begins enforcement proceedings relating to the alleged default the credit provider will contravene subsection (1) or (2) of this section (unless subsection (5) of this section applies); and
- (b) section 93 will affect the operation of an acceleration clause on the basis of the alleged default.

(7B) To avoid doubt, subsection (7A) does not affect the status of the notice as a default notice for the purposes of section 89, 94 or 95.

## **23 At the end of Division 2 of Part 5 of the *National Credit Code***

Add:

### **93A Extra requirements for enforcing reverse mortgage if debtor's liability exceeded value of reverse mortgaged property**

- (1) This section applies in relation to a credit contract for a reverse mortgage and a mortgage securing the debtor's obligations under the contract if:
  - (a) Subdivision B of Division 1 applies in relation to the contract and the mortgage (see section 86A); and
  - (b) just before the amount was received by the credit provider as described in paragraph 86A(1)(b), the debtor's accrued liability described in paragraph 86A(1)(a) exceeded that amount; and
  - (c) one or more of the conditions in section 86E are met (so that sections 86B, 86C and 86D do not apply).
- (2) If section 88 requires the credit provider to give the debtor or mortgagor a default notice before beginning enforcement proceedings to recover any of the excess, the credit provider must not begin them unless:
  - (a) the default notice given to the debtor or mortgagor specifies:
    - (i) the amount received by the credit provider; and
    - (ii) the debtor's accrued liability just before that amount was received; and

- (iii) the conditions in section 86E that are met; and
- (b) if the credit provider knows of a practising lawyer acting for the debtor or mortgagor and the credit provider gave the debtor or mortgagor the default notice by means other than giving it to the lawyer—the credit provider has given the lawyer a copy of the default notice at the same time as, or as soon as practicable after, giving the debtor or mortgagor the notice.

Criminal penalty: 50 penalty units.

**24 After paragraph 111(1)(h) of the *National Credit Code***

Insert:

- (ha) subsection 17(15A);

**25 After paragraph 111(2)(e) of the *National Credit Code***

Insert:

- (ea) subsection 17(15A);

**26 After section 185 of the *National Credit Code***

Insert:

**185A Records of nominations of persons to occupy reverse mortgaged properties**

- (1) A credit provider under a credit contract for a reverse mortgage that provides for the debtor to nominate to the credit provider a person who is to be allowed to occupy the reverse mortgaged property, and to revoke such a nomination, must keep in accordance with the regulations a record of any such nominations and revocations.
- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

## Schedule 3—Short-term and small amount credit contracts

### *National Consumer Credit Protection Act 2009*

#### **1 Subsection 5(1)**

Insert:

***short-term credit contract:*** a credit contract is a ***short-term credit contract*** if:

- (a) the contract is not a continuing credit contract; and
- (b) the credit provider under the contract is not an ADI; and
- (c) the credit limit of the contract is \$2,000 (or such other amount as is prescribed by the regulations) or less; and
- (d) the term of the contract is 15 days or less; and
- (e) the contract meets any other requirements prescribed by the regulations.

#### **2 Subsection 5(1)**

Insert:

***small amount credit contract:*** a credit contract is a ***small amount credit contract*** if:

- (a) the contract is not a continuing credit contract; and
- (b) the credit provider under the contract is not an ADI; and
- (c) the credit limit of the contract is \$2,000 (or such other amount as is prescribed by the regulations) or less; and
- (d) the term of the contract is at least 16 days but not longer than 1 year (or such other number of years as is prescribed by the regulations); and
- (e) the debtor's obligations under the contract are not, and will not be, secured; and
- (f) the contract meets any other requirements prescribed by the regulations.

#### **3 At the end of section 111**

Add:

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Division 7 prohibits a licensee from providing credit assistance to a consumer in relation to short-term credit contracts. It also imposes requirements on a licensee who makes representations about providing credit assistance in relation to small amount credit contracts.

#### **4 After subsection 117(1)**

Insert:

(1A) If:

- (a) the credit contract is a small amount credit contract; and
- (b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited;

the licensee must, in verifying the consumer's financial situation for the purposes of paragraph 115(1)(d), obtain and consider account statements that cover at least the immediately preceding period of 90 days.

(1B) Subsection (1A) does not limit paragraph (1)(c) of this section.

#### **5 After subsection 118(3)**

Insert:

(3A) If the contract is a small amount credit contract (the *relevant contract*) and either of the following apply:

- (a) at the time of the preliminary assessment:
  - (i) the consumer is a debtor under another small amount credit contract; and
  - (ii) the consumer is in default in payment of an amount under that other contract;
- (b) in the 90-day period before the time of the preliminary assessment, the consumer has been a debtor under 2 or more other small amount credit contracts;

then, for the purposes of paragraph (2)(a), it is presumed that the consumer could only comply with the consumer's financial obligations under the relevant contract with substantial hardship, unless the contrary is proved.

#### **6 After subsection 123(3)**

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Insert:

- (3A) If the contract is a small amount credit contract (the *relevant contract*) and either of the following apply:
- (a) at the time the licensee provides the credit assistance:
    - (i) the consumer is a debtor under another small amount credit contract; and
    - (ii) the consumer is in default in payment of an amount under that other contract;
  - (b) in the 90-day period before the time the licensee provides the credit assistance, the consumer has been a debtor under 2 or more other small amount credit contracts;
- then, for the purposes of paragraph (2)(a), it is presumed that the consumer could only comply with the consumer's financial obligations under the relevant contract with substantial hardship, unless the contrary is proved.

## **7 At the end of Part 3-1**

Add:

### **Division 7—Special rules for short-term and small amount credit contracts**

#### **124A Prohibition on providing credit assistance in relation to short-term credit contracts**

##### *Prohibition*

- (1) A licensee must not provide credit assistance to a consumer by:
- (a) suggesting that the consumer apply, or assisting the consumer to apply, for a short-term credit contract; or
  - (b) suggesting that the consumer apply, or assisting the consumer to apply, for an increase to the credit limit of a particular short-term credit contract with a particular credit provider.

Civil penalty: 2,000 penalty units.

##### *Offence*

- (2) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1);  
and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

**124B Licensee who makes representations about credit assistance in relation to small amount credit contracts must display information etc.**

*Requirement*

- (1) If a licensee represents that the licensee provides, or is able to provide, credit assistance to consumers in relation to small amount credit contracts:
  - (a) the licensee must display information in accordance with the regulations at a place prescribed by the regulations; and
  - (b) the licensee must ensure that any website of the licensee complies with the requirements prescribed by the regulations.

Civil penalty: 2,000 penalty units.

*Offence*

- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1);  
and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

**8 After subsection 130(1)**

Insert:

- (1A) If:
  - (a) the credit contract is a small amount credit contract; and
  - (b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited;

the licensee must, in verifying the consumer's financial situation for the purposes of paragraph 128(d), obtain and consider account statements that cover at least the immediately preceding period of 90 days.

(1B) Subsection (1A) does not limit paragraph (1)(c) of this section.

**9 At the end of subsection 131(1) (before the note)**

Add:

Civil penalty: 2,000 penalty units.

**10 Subsection 131(2) (penalty)**

Repeal the penalty.

**11 After subsection 131(3)**

Insert:

(3A) If the contract is a small amount credit contract (the *relevant contract*) and either of the following apply:

- (a) at the time of the assessment:
  - (i) the consumer is a debtor under another small amount credit contract; and
  - (ii) the consumer is in default in payment of an amount under that other contract;
- (b) in the 90-day period before the time of the assessment, the consumer has been a debtor under 2 or more other small amount credit contracts;

then, for the purposes of paragraph (2)(a), it is presumed that the consumer could only comply with the consumer's financial obligations under the relevant contract with substantial hardship, unless the contrary is proved.

**12 After subsection 133(3)**

Insert:

(3A) If the contract is a small amount credit contract (the *relevant contract*) and either of the following apply:

- (a) at the time it is entered or the credit limit is increased:
  - (i) the consumer is a debtor under another small amount credit contract; and

- (ii) the consumer is in default in payment of an amount under that other contract;
  - (b) in the 90-day period before the time it is entered or the credit limit is increased, the consumer has been a debtor under 2 or more other small amount credit contracts;
- then, for the purposes of paragraph (2)(a), it is presumed that the consumer could only comply with the consumer's financial obligations under the relevant contract with substantial hardship, unless the contrary is proved.

### **13 After Part 3-2B**

Insert:

## **Part 3-2C—Licensees that are credit providers under credit contracts: additional rules relating to short-term and small amount credit contracts**

### **Division 1—Introduction**

#### **133C Guide to this Part**

This Part has rules that apply to licensees who are, or are to be, credit providers under short-term credit contracts and small amount credit contracts. It applies in addition to the general rules in Part 3-2.

Division 2 prohibits a licensee from entering into, or increasing the credit limit of, short-term credit contracts. It also imposes requirements on a licensee who makes representations about entering into small amount credit contracts and prohibits a licensee from entering into, or offering to enter into, small amount credit contracts in certain circumstances.

## **Division 2—Short-term and small amount credit contracts**

### **133CA Prohibition on entering, or increasing the credit limit of, short-term credit contracts**

#### *Prohibition*

- (1) A licensee must not:
  - (a) enter a short-term credit contract with a consumer who will be the debtor under the contract; or
  - (b) increase the credit limit of a short-term credit contract with a consumer who is the debtor under the contract.

Civil penalty: 2,000 penalty units.

#### *Offence*

- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

### **133CB Licensee who makes representations about small amount credit contracts must display information etc.**

#### *Requirement*

- (1) If a licensee represents that the licensee enters into, or is able to enter into, small amount credit contracts with consumers under which the licensee would be the credit provider:
  - (a) the licensee must display information in accordance with the regulations at a place prescribed by the regulations; and
  - (b) the licensee must ensure that any website of the licensee complies with the requirements prescribed by the regulations.

Civil penalty: 2,000 penalty units.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1);  
and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

**133CC Licensee must not enter into a small amount credit contract if the repayments do not meet the prescribed requirements**

*Requirement*

- (1) A licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if:
- (a) the consumer is included in a class of consumers prescribed by the regulations; and
  - (b) the repayments that would be required under the contract would not meet the requirements prescribed by the regulations.

Civil penalty: 2,000 penalty units.

Note: For example, the regulations may provide that the amount of a repayment must not exceed a specified percentage of the consumer's income.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1);  
and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

**14 Paragraph 180(1)(b)**

Repeal the paragraph, substitute:

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- (b) the engaging in the activity contravenes any of the following:
  - (i) section 29 (which requires the holding of a licence);
  - (ii) section 124A (which prohibits the provision of credit assistance in relation to short-term credit contracts);
  - (iii) section 133CA (which prohibits credit providers from entering into short-term credit contracts etc.);

## **15 After section 335**

Insert:

### **335A Review relating to small amount credit contracts**

- (1) The Minister must cause an independent review of the following matters to be undertaken as soon as practicable after 1 July 2015:
  - (a) the operation of the following provisions:
    - (i) subsections 117(1A), 118(3A), 123(3A), 130(1A), 131(3A) and 133(3A) of this Act;
    - (ii) Division 7 of Part 3-1 of this Act;
    - (iii) Part 3-2C of this Act;
  - (b) whether a national database of small amount credit contracts should be established;
  - (c) whether any additional provisions relating to small amount credit contracts should be included in this Act and/or the National Credit Code.
- (2) The review must be undertaken by 3 persons who, in the Minister's opinion, possess appropriate qualifications to undertake the review.
- (3) The persons who undertake the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.
- (5) The report is not a legislative instrument.

## **Schedule 4—Caps on costs etc. for credit contracts**

### ***National Consumer Credit Protection Act 2009***

#### **1A At the end of paragraph 335A(1)(a)**

Add:

- (iv) sections 23A, 31A, 31B, 39A and 39B of the National Credit Code;

#### **1 Subsections 17(4) to (6) of the *National Credit Code***

Omit “The contract”, substitute “In the case of a credit contract other than a small amount credit contract, the contract”.

#### **2 Section 23 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

#### **23 Prohibited monetary obligations—general**

#### **3 Subsection 23(1) of the *National Credit Code***

After “credit contract”, insert “(other than a small amount credit contract)”.

#### **4 After section 23 of the *National Credit Code***

Insert:

#### **23A Prohibited monetary obligations—small amount credit contracts**

- (1) A small amount credit contract must not impose a monetary liability on the debtor:
  - (a) in respect of an interest charge (including a default rate of interest) under the contract; or
  - (b) in respect of a fee or charge prohibited by this Code; or
  - (c) in respect of an amount of a fee or charge exceeding the amount that may be charged consistently with this Code.

- (2) If a provision of a small amount credit contract imposes a monetary liability prohibited by subsection (1) then:
- (a) each provision (the *void provisions*) of the contract that imposes a monetary liability of a kind referred to in that subsection (whether or not the liability is imposed consistently with this Code) is void to the extent that the provision relates to the liability; and
  - (b) the debtor may recover as a debt due to the debtor any amount paid to the credit provider under the void provisions to the extent that the amount relates to the liability.

**5 Section 24 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

**24 Offences related to prohibited monetary obligations—credit providers**

**6 After subsection 24(1) of the *National Credit Code***

Insert:

- (1A) A credit provider must not:
- (a) enter into a small amount credit contract on terms imposing a monetary liability prohibited by subsection 23A(1); or
  - (b) require or accept payment of an amount in respect of a monetary liability that cannot be imposed consistently with this Code.

Criminal penalty: 100 penalty units.

**7 Subsection 24(2) of the *National Credit Code***

Omit “Subsection (1) is an offence”, substitute “Subsections (1) and (1A) are offences”.

**8 After section 24 of the *National Credit Code***

Insert:

**24A Offences related to prohibited monetary obligations—credit assistance providers**

- (1) A person must not provide credit assistance to a consumer by:

- (a) suggesting that the consumer apply for a particular small amount credit contract with a particular credit provider; or
- (b) assisting the consumer to apply for a particular small amount credit contract with a particular credit provider;

if the person knows, or is reckless as to whether, the contract will contravene subsection 23A(1).

Criminal penalty: 50 penalty units.

- (2) If a person provides credit assistance to a consumer that is prohibited by subsection (1):
  - (a) the consumer is not liable (and is taken never to have been liable) to pay any fees or charges to the person in relation to:
    - (i) the credit assistance; or
    - (ii) any other services provided by the person in connection with the credit assistance; and
  - (b) the consumer may recover as a debt due to the consumer the amount of any such fees or charges paid by the consumer to the person.

## **9 After section 27 of the *National Credit Code***

Insert:

### **27A Application of this Division**

This Division does not apply to a small amount credit contract.

## **10 Section 31 of the *National Credit Code***

Before “The regulations”, insert “(1)”.

## **11 At the end of section 31 of the *National Credit Code***

Add:

- (2) Subsection (1) does not apply to a small amount credit contract.

## **12 After section 31 of the *National Credit Code***

Insert:

**31A Restrictions on fees and charges for small amount credit contracts**

- (1) A small amount credit contract must not impose or provide for fees and charges if the fees and charges are not of the following kind:
  - (a) a permitted establishment fee;
  - (b) a fee or charge (a *permitted monthly fee*) that is payable on a monthly basis starting on the day the contract is entered into;
  - (c) a fee or charge that is payable in the event of a default in payment under the contract;
  - (d) a government fee, charge or duty payable in relation to the contract.

Note: See section 39B for the maximum amount that may be recovered by the credit provider if there is a default in payment under the contract.

- (1A) Despite subsection (1), a small amount credit contract must not impose or provide for a permitted establishment fee if any of the amount of credit to be provided under the contract is to refinance any of the amount of credit provided to the debtor under another small amount credit contract.

*Permitted establishment fee*

- (2) A *permitted establishment fee* is a fee or charge the amount of which must not exceed 20% of the adjusted credit amount in relation to the small amount credit contract.

*Maximum amount of permitted monthly fee*

- (3) The amount of a permitted monthly fee that may be imposed or provided for under a small amount credit contract must not exceed 4% of the adjusted credit amount in relation to the contract.

**31B Credit provider or prescribed person must not require or accept payment of a fee or charge in relation to a small amount credit contract etc.**

- (1) A credit provider, or a person prescribed by the regulations, must not require or accept payment by the debtor of a fee or charge in relation to:
  - (a) a small amount credit contract; or

- (b) the provision of the amount of credit under a small amount credit contract; or
- (c) a thing that is connected with a small amount credit contract or the provision of the amount of credit under such a contract.

Criminal penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the fee or charge is:
  - (a) a fee or charge that may be imposed or provided for by the small amount credit contract under section 31A; or
  - (b) a fee or charge prescribed by the regulations.
- (3) If a credit provider or person contravenes subsection (1):
  - (a) the debtor is not liable (and is taken never to have been liable) to make the payment to the credit provider or person; and
  - (b) the debtor may recover as a debt due to the debtor the amount of any payment made by the debtor to the credit provider or person.

### **13 After Division 4 of Part 2 of the *National Credit Code***

Insert:

#### **Division 4A—Annual cost rate of certain credit contracts**

##### **32A Prohibitions relating to credit contracts if the annual cost rate exceeds 48%**

###### *Entering into a credit contract*

- (1) A credit provider must not enter into a credit contract if the annual cost rate of the contract exceeds 48%.

Criminal penalty: 50 penalty units.

###### *Provision of credit assistance*

- (2) A person must not provide credit assistance to a consumer by suggesting that the consumer apply, or assisting the consumer to apply, for a particular credit contract with a particular credit

provider if the person knows, or is reckless as to whether, the annual cost rate of the contract exceeds 48%.

Criminal penalty: 50 penalty units.

- (3) If a person provides credit assistance to a consumer that is prohibited by subsection (2):
- (a) the consumer is not liable (and is taken never to have been liable) to pay any fees or charges to the person in relation to:
    - (i) the credit assistance; or
    - (ii) any other services provided by the person in connection with the credit assistance; and
  - (b) the consumer may recover as a debt due to the consumer the amount of any such fees or charges paid by the consumer to the person.

*Application*

- (4) This section does not apply if:
- (a) the credit provider is an ADI; or
  - (b) the credit contract is a small amount credit contract or bridging finance contract.

**32AA Prohibition relating to the annual cost rate of credit contracts—later increases of the annual percentage rate etc.**

- (1) If:
- (a) a credit provider is a party to a credit contract (other than a small amount credit contract or bridging finance contract); and
  - (b) the credit provider is not an ADI; and
  - (c) either or both of the following things (the *varied matters*) occur after the contract is entered into:
    - (i) the annual percentage rate under the contract increases;
    - (ii) an amount referred to in subsection 32B(3) that is prescribed by the regulations increases;
- the credit provider contravenes this subsection if the annual cost rate of the contract would have exceeded 48% at the time the contract was entered into if that or those varied matters had been

taken into account at that time for the purposes of calculating the annual cost rate of the contract.

- (2) A credit provider must not contravene subsection (1).

Criminal penalty: 50 penalty units.

### **32B Calculation of annual cost rate**

- (1) The annual cost rate of a credit contract must be calculated as a nominal rate per annum, together with the compounding frequency, 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:

- (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*** in subsection (2).

***r*** is the solution of the equation specified in subsection (2).

- (2) The equation for the purposes of the definition of ***r*** in subsection (1) is:

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

where:

***A<sub>j</sub>*** is the amount of credit to be provided under the credit contract at time ***j*** (the value of ***j*** for the provision of the first amount of credit is taken to be zero).

***C<sub>j</sub>*** is the credit cost amount (if any) for the credit contract that is payable by the debtor at time ***j*** in addition to the repayments ***R<sub>j</sub>***.

***F*** is:

- (a) if the credit contract is a medium amount credit contract—\$400 (or such other amount as is prescribed by the regulations); or
- (b) if the credit contract is not a medium amount credit contract and an amount is prescribed by the regulations in relation to the contract—that amount; or
- (c) otherwise—\$0.

$j$  is the time, measured as a multiple (not necessarily integral) of:

- (a) if the credit contract does not provide for a constant interval between contractual repayments—an interval of any kind selected by the credit provider as the unit of time; or
- (b) otherwise—the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract.

$R_j$  is the repayment to be made at time  $j$ .

$t$  is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected), that will elapse between:

- (a) the time when the first amount of credit is provided under the credit contract; and
- (b) the time when the last repayment is to be made under the contract.

*Credit cost amount*

- (3) The **credit cost amount** for the credit contract is the sum of the following amounts if they are ascertainable:
  - (a) the amount of credit fees and charges payable in relation to the contract;
  - (b) the amount of a fee or charge payable by the debtor (whether or not payable under the contract) to:
    - (i) any person (whether or not associated with the credit provider) for an introduction to the credit provider; or
    - (ii) any person (whether or not associated with the credit provider) for any service if the person has been introduced to the debtor by the credit provider; or

- (iii) the credit provider for any service relating to the provision of credit, other than a service referred to in subparagraph (ii);
  - (c) any other amount prescribed by the regulations.
- (4) For the purposes of subsection (3), the amounts referred to in that subsection:
  - (a) include an amount that is payable even if the credit is not provided; but
  - (b) do not include an amount of a government fee, charge or duty payable in relation to the credit contract.
- (4A) Despite subsection (3), the regulations may provide that a specified amount, or an amount included in a specified class, is not an amount referred to in paragraph (3)(a) or (b).

*Tolerances and assumptions etc.*

- (5) The annual cost rate must be correct to at least the nearest one hundredth of 1% per annum.
- (6) In calculating the annual cost rate, 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.
- (7) The tolerances and assumptions under sections 180 to 182 apply to the calculation of the annual cost rate.

*Continuing credit contracts*

- (8) If the credit contract is a continuing credit contract, the following assumptions also apply to the calculation of the annual cost rate of the contract:
  - (a) that the debtor has drawn down the maximum amount of credit that the credit provider has agreed to provide under the contract;
  - (b) that the debtor will pay the minimum repayments specified in the contract;

- (c) if credit is provided in respect of payment by the credit provider to a third person in relation to goods or services or cash supplied by that third person to the debtor from time to time—that the debtor will not be supplied with any further goods or services or cash;
- (d) if credit is provided in respect of cash supplied by the credit provider to the debtor from time to time—that the debtor will not be supplied with any further cash.

**14 Subsection 34(6) of the *National Credit Code***

Omit “A statement”, substitute “In the case of a credit contract other than a small amount credit contract, a statement”.

**15 After Division 5 of Part 2 of the *National Credit Code***

Insert:

**Division 5A—Additional rules relating to small amount credit contracts**

**39A Limit on the application of amount of credit provided under a small amount credit contract**

- (1) No part of the amount of credit provided under a small amount credit contract may be applied to pay an amount (the *prohibited credit amount*) to:
  - (a) the credit provider; or
  - (b) a person prescribed by the regulations.
- (2) Subsection (1) does not apply to:
  - (a) an amount of a permitted establishment fee, or a permitted monthly fee, payable in relation to the small amount credit contract; or
  - (b) an amount of a government fee, charge or duty payable in relation to the small amount credit contract; or
  - (ba) if some or all of the amount of credit (the *refinanced amount*) is to refinance some or all of the amount of credit provided by the credit provider to the debtor under another small amount credit contract—the refinanced amount; or
  - (c) an amount prescribed by the regulations.

- (3) If subsection (1) is contravened in relation to a small amount credit contract:
- (a) the debtor is not liable (and is taken never to have been liable) to repay the prohibited credit amount to the credit provider; and
  - (b) the debtor may recover as a debt due to the debtor any amount paid to the credit provider to the extent that it relates to the prohibited credit amount.

**39B Limit on amount that may be recovered if there is default under a small amount credit contract**

- (1) If there is a default in payment under a small amount credit contract, the maximum amount that may be recovered (whether by repayments under the contract or otherwise) by the credit provider in relation to the contract must not exceed an amount that is twice the adjusted credit amount in relation to the contract.
- (2) Any provision of the small amount credit contract that confers a greater right is void to the extent that it does so. If an amount is in fact recovered in excess of this limitation, it may be recovered back.
- (3) This section does not apply to enforcement expenses.

**39C Credit provider must do prescribed things if a default in payment by direct debit occurs**

- (1) If:
- (a) the amount of repayments under a small amount credit contract are to be paid by way of direct debit; and
  - (b) the direct debit has been authorised by the debtor; and
  - (c) a default in the payment of an amount of a repayment occurs;
- the credit provider must do the things prescribed by the regulations.

Criminal penalty: 50 penalty units.

- (2) In this section, *direct debit* has the same meaning as in section 87.

**16 At the end of subsection 111(1) of the *National Credit Code***

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Add:

- ; (j) subsection 32A(1);
- (k) subsection 32AA(2).

**17 After paragraph 111(2)(f) of the *National Credit Code***

Insert:

- (fa) subsection 32A(1);
- (fb) subsection 32AA(2);

**18 Subsection 114(1) of the *National Credit Code***

After “order”, insert “in relation to a credit contract other than a small amount credit contract”.

**19 After subsection 114(1) of the *National Credit Code***

Insert:

- (1A) On application being made by a debtor or a guarantor for an order in relation to a small amount credit contract, the maximum penalty that may be imposed by the court for a contravention of a key requirement is an amount not exceeding the sum of the following amounts:
  - (a) the amount of the permitted establishment fee payable in relation to the contract;
  - (b) the total amount of the permitted monthly fees payable in relation to the contract based on the term of the contract when it was made.

**20 Subsection 204(1) of the *National Credit Code***

Insert:

*adjusted credit amount*, in relation to a small amount credit contract, means the first amount of credit that is, or is to be, provided under the contract.

Note: Some amounts are to be disregarded in working out the first amount of credit (see subsection (3)).

**21 Subsection 204(1) of the *National Credit Code***

Insert:

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**annual cost rate** of a credit contract means the annual cost rate of the contract calculated in accordance with section 32B.

## **22 Subsection 204(1) of the *National Credit Code***

Insert:

**credit cost amount**: see subsection 32B(3).

## **22A Subsection 204(1) of the *National Credit Code***

Insert:

**medium amount credit contract**: a credit contract is a **medium amount credit contract** if:

- (a) the contract is not a continuing credit contract; and
- (b) the credit provider under the contract is not an ADI; and
- (c) the credit limit of the contract is:
  - (i) at least \$2,001 (or such other amount as is prescribed by the regulations); but
  - (ii) not more than \$5,000 (or such other amount as is prescribed by the regulations); and
- (d) the term of the contract is at least 16 days but not longer than 2 years (or such other number of years as is prescribed by the regulations); and
- (e) the contract meets any other requirements prescribed by the regulations.

## **23 Subsection 204(1) of the *National Credit Code***

Insert:

**permitted establishment fee**: see paragraph 31A(1)(a).

## **24 Subsection 204(1) of the *National Credit Code***

Insert:

**permitted monthly fee**: see subsection 31A(2).

## **25 Subsection 204(1) of the *National Credit Code***

Insert:

**prohibited credit amount**: see subsection 39A(1).

**26 Subsection 204(1) of the *National Credit Code***

Insert:

*small amount credit contract* has the same meaning as in section 5 of the National Credit Act.

**27 At the end of section 204 of the *National Credit Code***

Add:

- (3) In working out the first amount of credit that is, or is to be, provided under a small amount credit contract for the purposes of the definition of *adjusted credit amount* in subsection (1), the following amounts are to be disregarded:
  - (a) if some or all of the amount of a fee or charge (the *fee amount*) payable in relation to the contract forms, or is to form, part of the first amount of credit that is, or is to be, provided under the contract—the fee amount;
  - (b) if subsection 39A(1) is contravened in relation to the contract—the prohibited credit amount;
  - (c) any other amount prescribed by the regulations.

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## Schedule 5—Consumer leases

### *National Consumer Credit Protection Act 2009*

#### **1 Subsection 5(1) (definition of lessor)**

Omit “means the lessor under a consumer lease”, substitute “has the same meaning as in section 204 of the National Credit Code”.

#### **2 Subsection 5(1) (definition of *value of a credit contract, mortgage, guarantee or consumer lease*)**

Repeal the definition.

#### **3 Subsection 5(1)**

Insert:

*value* of a credit contract, mortgage, guarantee or consumer lease: see section 199.

#### **4 Paragraph 147(7)(b)**

Omit “sections 72 and 94”, substitute “sections 177B and 179H”.

#### **5 Subsection 147(7) (note 1)**

Omit “Note 1”, substitute “Note”.

#### **6 Subsection 147(7) (note 2)**

Repeal the note.

#### **7 Subsection 199(2) (table items 2, 3, 6, 7, 9 and 12)**

Omit “, guarantee or consumer lease”, substitute “or guarantee”.

#### **8 Subsection 199(2) (at the end of the table)**

Add:

14	Section 175F of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed
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## Schedule 5 Consumer leases

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		by the regulations—that higher amount.
15	Subsection 175G(6) of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.
16	Section 177D of the National Credit Code	not applicable.
17	Section 177E of the National Credit Code	not applicable.
18	Section 177F of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.
19	Section 179K of the National Credit Code	not applicable.
20	Section 179Q of the National Credit Code	the value of the consumer lease to which the order relates is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.
21	Subsection 179R(3) of the National Credit Code	the order is for an amount that is not more than: (a) \$40,000; or (b) if a higher amount is prescribed by the regulations—that higher amount.

### 9 Subsection 199(3)

Omit “*of a credit contract, mortgage, guarantee or consumer lease*”, substitute “of a credit contract, mortgage, guarantee or consumer lease”.

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**10 Paragraph 200(1)(b)**

Omit “or 96”, substitute “, 96, 177D or 179K”.

**11 Subsection 76(8) of the *National Credit Code***

Repeal the subsection.

**12 Subsection 87(6) of the *National Credit Code***

Repeal the subsection.

**13 Section 92 of the *National Credit Code***

Repeal the section.

**14 Subsection 173(1) of the *National Credit Code***

Repeal the subsection, substitute:

- (1) A consumer lease must be in the form of a written lease document:
  - (a) signed by the lessor and the lessee; and
  - (b) containing the information required by this Division.
- (1A) Subject to subsection (2), a consumer lease may consist of one or more separate documents.

**15 After subsection 173(2) of the *National Credit Code***

Insert:

- (2A) In the case of a lease 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.

**16 After section 173 of the *National Credit Code***

Insert:

**173A Other forms of consumer lease**

- (1) The regulations may authorise other ways of making a consumer lease that do not involve a written document.
- (2) In that case, the provisions of this Division apply with such modifications as are prescribed by the regulations.

**17 After section 174 of the *National Credit Code***

Insert:

**174A Alteration of consumer lease document**

- (1) An alteration of (including an addition to) a new consumer lease document by the lessor after it is signed by the lessee is ineffective unless the lessee has agreed in writing to the alteration.
- (2) This section does not apply to an alteration having the effect of reducing the lessee's liabilities under the consumer lease.

**18 After section 175 of the *National Credit Code***

Insert:

**Division 4—Fees and charges**

**175A Prohibited consumer lease fees or charges**

The regulations may specify:

- (a) consumer lease fees or charges; or
  - (b) classes of consumer lease fees or charges;
- that are prohibited for the purposes of this Code.

**175B Fees or charges in relation to third parties**

*When this section applies*

- (1) This section applies if a fee or charge is payable by a lessee to the lessor for an amount (the ***third party amount***) payable or paid by the lessor to another person, body or agency.

*Third party amount ascertainable at time of lessee payment*

- (2) If, when the fee or charge is paid by the lessee to the lessor, the third party amount is ascertainable, then the amount of the fee or charge must not exceed the third party amount.

*Third party amount not ascertainable at time of lessee payment*

- (3) If:

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- (a) when the fee or charge is paid by the lessee to the lessor, the third party amount is not ascertainable; and
  - (b) after the fee or charge is paid, the lessor ascertains the third party amount; and
  - (c) the third party amount is less than the amount of the fee or charge paid;
- then the lessor must refund or credit the difference to the lessee.

*Determining third party amount*

- (4) The third party amount is to be determined by:
  - (a) taking into account any discount, rebate or other allowance that is received or receivable by the lessor or a related body corporate (within the meaning of the *Corporations Act 2001*); and
  - (b) disregarding any rebate on tax payable by the lessor or a related body corporate (within the meaning of that Act).

## **Division 5—Lessor’s obligation to account**

### **Subdivision A—Ongoing statements of account**

#### **175C Statements of account**

- (1) A lessor must give to the lessee, or arrange for the lessee to be given, periodic statements of account in accordance with this Subdivision.  
  
Criminal penalty: 100 penalty units.
- (2) The maximum period for a statement of account is 12 months.
- (3) A statement of account need not be given if:
  - (a) the lessee was in default under the consumer lease during the statement period and the lessor has commenced enforcement proceedings; or
  - (b) the lessee has died or is insolvent and the lessee’s personal representative or trustee in bankruptcy has not requested a statement of account.
- (4) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **175D Information to be contained in statements of account**

A statement of account must contain the information prescribed by the regulations.

### **175E Statement of amount owing and other matters**

- (1) A lessor must, at the request of a lessee and within the time specified by this section, provide a statement of all or any of the following:
  - (a) any amounts credited to the lessee's account during a period specified in the request;
  - (b) any amounts currently overdue and the date they became due;
  - (c) any amount currently payable and the date it becomes due;
  - (d) any other information prescribed by the regulations.

Criminal penalty: 100 penalty units.

- (2) The statement must be given:
  - (a) within 14 days, if all information requested relates to a period 1 year or less before the request is given; or
  - (b) within 30 days, if any information requested relates to a period more than 1 year before the request is given.
- (3) A statement under this section may be given orally but if the request for the statement is made in writing the statement must be given in writing.
- (4) In the case of joint lessees, the statement under this section need only be given to a lessee who requests the statement and not, despite section 194, to each joint lessee.
- (5) A lessor is not required to provide a further written statement under this section if it has, within the 3 months before the request is given, given such a statement to the person requesting it.
- (6) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **175F Court may order statement of account to be provided**

If a statement of account is not provided within the time required by this Subdivision, the court may, on the application of the lessee,

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order the lessor to provide the statement or itself determine the amounts in relation to which the statement was sought.

### **175G Disputed accounts**

- (1) If:
  - (a) a liability is entered against a lessee under a consumer lease; and
  - (b) the lessee, by written notice to the lessor, disputes the liability;then the lessor must give the lessee a written notice explaining in reasonable detail how the liability arises.
- (2) A written notice need not be given if the lessor agrees with the lessee as to the disputed amount and gives the lessee a written notice advising of the agreed liability.
- (3) In the case of a consumer lease for which a statement of account is given, the notice of dispute must be given to the lessor within 30 days after the day the lessee receives the statement of account in which the amount, or part of that amount, is first shown.
- (4) In the case of a consumer lease 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 lessor not later than 3 months after the day the lease ends.
- (5) The lessor must not begin enforcement proceedings on the basis of a default arising from the disputed liability until the period of 30 days, starting on the day the lessor gives the written explanation or advice as to agreement, has expired.

Criminal penalty: 50 penalty units.
- (6) A lessee or lessor may apply to the court to have the court determine a disputed liability and, if satisfied that a liability is genuinely disputed, the court may determine the matters in dispute and make such consequential orders as it thinks just.
- (7) If an application is made to the court under this section within 30 days after the day the written explanation is given, the lessor must not, without leave of the court, begin enforcement proceedings on the basis of a default arising from the disputed liability.

Criminal penalty: 50 penalty units.

- (8) Subsections (5) and (7) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (9) This section does not affect a dispute not dealt with, or not arising, under this section.

### **Subdivision B—End of lease statements**

#### **175H End of lease statement**

- (1) A lessor must arrange for the lessee to be given, not later than 90 days before the end of the fixed term of a consumer lease, a statement containing the information prescribed by the regulations.

Criminal penalty: 100 penalty units.

- (2) Subsection (1) does not apply in the circumstances (if any) prescribed by the regulations.
- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **Division 6—Certain transactions not to be treated as new consumer leases**

#### **175J Changes etc. under consumer leases**

If:

- (a) there is:
- (i) a change to an existing consumer lease that results in further goods being provided; or
  - (ii) a deferral or waiver of an amount under an existing consumer lease; or
  - (iii) a postponement relating to an existing consumer lease; and
- (b) the change, deferral, waiver or postponement is made in accordance with this Code or the existing consumer lease;

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then the change, deferral, waiver or postponement is not to be treated as creating a new consumer lease or a credit contract for the purposes of this Code.

## **Division 7—Changes to obligations under consumer leases**

### **Subdivision A—Changes by agreement of parties**

#### **177A Changes by agreement**

- (1) If the parties under an existing consumer lease agree to change its terms, the lessor must, not later than 30 days after the date of the agreement, give to the lessee a written notice setting out:
  - (a) particulars of the change in the terms of the consumer lease; and
  - (b) any information required by the regulations.

Criminal penalty: 100 penalty units.

- (2) Subsection (1) does not apply to a change which defers or otherwise reduces the obligations of the lessee for a period not exceeding 90 days.
- (3) This section does not apply to a change made under Subdivision B.
- (4) The lessor may, under subsection (1), give a lessee particulars only of a matter as changed instead of particulars of the change, but only if the lessor:
  - (a) makes it clear to the lessee that the matter has changed; or
  - (b) issues to the lessee a new set of terms and conditions relating to the consumer lease.
- (5) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Subdivision B—Changes on grounds of hardship and unjust transactions**

### **177B Changes on grounds of hardship**

#### *Hardship notice*

- (1) If a lessee considers that he or she is or will be unable to meet his or her obligations under a consumer lease, the lessee may give the lessor notice (a **hardship notice**), orally or in writing, of the lessee's inability to meet the obligations.

Note: If the lessee has given the lessor a hardship notice, there may be extra requirements (beyond those in section 179D) that the lessor must comply with before beginning enforcement proceedings—see section 179F.

#### *Further information*

- (2) Within 21 days after the day of receiving the lessee's hardship notice, the lessor may give the lessee notice, orally or in writing, requiring the lessee to give the lessor specified information within 21 days of the date of the notice stated in the notice. The information specified must be relevant to deciding:
  - (a) whether the lessee is or will be unable to meet the lessee's obligations under the lease; or
  - (b) how to change the lease if the lessee is or will be unable to meet those obligations.
- (3) The lessee must comply with the requirement.

Note: The lessor need not agree to change the consumer lease, especially if the lessor:

- (a) does not believe there is a reasonable cause (such as illness or unemployment) for the lessee's inability to meet his or her obligations; or
- (b) reasonably believes the lessee would not be able to meet his or her obligations under the lease even if it were changed.

#### *Notice of decision on changing consumer lease*

- (4) The lessor must, before the end of the period identified under subsection (5), give the lessee a notice:

- (a) that is in the form (if any) prescribed by the regulations and records the fact that the lessor and the lessee have agreed to change the consumer lease; or
- (b) that is in the form (if any) prescribed by the regulations and states:
- (i) the lessor and the lessee have not agreed to change the consumer lease; and
  - (ii) the reasons why they have not agreed; and
  - (iii) the name and contact details of the approved external dispute resolution scheme of which the lessor is a member; and
  - (iv) the lessee's rights under that scheme.

Civil penalty: 2,000 penalty units.

- (5) The lessor must give the notice before the end of the period identified using the table.

<b>Period for giving notice</b>		
	<b>If:</b>	<b>The period is:</b>
1	The lessor does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2	The lessor requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the stated date of the notice under subsection (2)
3	The lessor requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

*Regulations may prescribe shorter periods for consumer leases*

- (6) The regulations may provide for subsections (2), (3), (4) and (5) to have effect in relation to consumer leases prescribed by the regulations as if a particular reference in subsection (2) or (5) to a number of days were a reference to a lesser number of days prescribed by the regulations.

### **177C Notice of change**

- (1) A lessor that enters into an agreement with a lessee to change the consumer lease as a result of a hardship notice by the lessee must,

not later than 30 days after the date of the agreement, give to the lessee a written notice setting out:

- (a) particulars of the change in the terms of the lease; and
- (b) any information required by the regulations.

Criminal penalty: 50 penalty units.

- (2) The lessor may, under subsection (1), give the lessee particulars only of a matter as changed instead of particulars of the change, but only if the lessor:
  - (a) makes it clear to the lessee that the matter has changed; or
  - (b) gives to the lessee a new set of terms and conditions relating to the lease.
- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **177D Changes by court**

- (1) If a lessor does not change a consumer lease as a result of a hardship notice by a lessee, the lessee may apply to the court to change the terms of the lease.
- (2) The court may, after allowing the applicant and the lessor a reasonable opportunity to be heard:
  - (a) by order change the lease (but not so as to reduce the amount ultimately payable by the lessee to the lessor under the lease), and make such other orders as it thinks fit; or
  - (b) refuse to change the lease.
- (3) The court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under the lease, and make such other orders as it thinks fit, until the application has been determined.

### **177E Lessor may apply for variation of change**

- (1) A lessor under a consumer lease that has been changed by an order under subsection 177D(2) may apply to the court for an order varying or revoking the order.
- (2) A lessor subject to a stay of enforcement proceedings or other order under subsection 177D(3) may apply to the court for an order varying or revoking the stay or order.

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- (3) On an application under this section, the court may vary or revoke the order or stay to which the application relates as it thinks fit, or may refuse the application.

### **177F Court may reopen unjust transactions**

#### *Power to reopen unjust transactions*

- (1) The court may, if satisfied on the application of a lessee that, in the circumstances relating to the relevant consumer lease at the time it was entered into or changed (whether or not by agreement), the lease or change was unjust, reopen the transaction that gave rise to the lease or change.

#### *Matters to be considered by court*

- (2) In determining whether a term of a particular consumer lease is unjust in the circumstances relating to it at the time it was entered into or changed, the court is to have regard to the public interest and to all the circumstances of the case and may have regard to the following:
- (a) the consequences of compliance, or noncompliance, with all or any of the provisions of the lease;
  - (b) the relative bargaining power of the parties;
  - (c) whether or not, at the time the lease was entered into or changed, its provisions were the subject of negotiation;
  - (d) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the lease or the change;
  - (e) whether or not any of the provisions of the lease impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the lease;
  - (f) whether or not the lessee, or a person who represented the lessee, was reasonably able to protect the interests of the lessee because of his or her age or physical or mental condition;
  - (g) the form of the lease and the intelligibility of the language in which it is expressed;
  - (h) whether or not, and if so when, independent legal or other expert advice was obtained by the lessee;

- (i) the extent to which the provisions of the lease or change and their legal and practical effect were accurately explained to the lessee and whether or not the lessee understood those provisions and their effect;
- (j) whether the lessor or any other person exerted or used unfair pressure, undue influence or unfair tactics on the lessee and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics;
- (k) whether the lessor took measures to ensure that the lessee understood the nature and implications of the transaction and, if so, the adequacy of those measures;
- (l) whether at the time the lease was entered into or changed, the lessor knew, or could have ascertained by reasonable inquiry at the time, that the lessee could not pay in accordance with its terms or not without substantial hardship;
- (m) whether the terms of the transaction or the conduct of the lessor is justified in the light of the risks undertaken by the lessor;
- (n) the terms of other comparable transactions involving other lessors and, if the injustice is alleged to result from excessive costs, the costs payable in comparable cases;
- (o) any other relevant factor.

*Representing lessee*

- (3) For the purposes of paragraph (2)(f), a person is taken to have represented a lessee if the person represented the lessee, or assisted the lessee to a significant degree, in the negotiations process prior to, or at, the time the consumer lease was entered into or changed.

*Unforeseen circumstances*

- (4) In determining whether a consumer lease is unjust, the court is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the lease was entered into or changed.

*Conduct*

- (5) In determining whether to grant relief in respect of a consumer lease that it finds to be unjust, the court may have regard to the

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conduct of the parties to the proceedings in relation to the lease since it was entered into or changed.

*Application*

- (6) This section does not apply to a change to a consumer lease under this Subdivision.

### **177G Orders on reopening of transactions**

The court may, if it reopens a transaction under this Subdivision, do any one or more of the following, despite any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation:

- (a) reopen an account already taken between the parties to the transaction;
- (b) relieve the lessee from payment of any amount in excess of such amount as the court, having regard to the risk involved and all other circumstances, considers to be reasonably payable;
- (c) set aside either wholly or in part or revise or alter an agreement made in connection with the transaction;
- (d) give judgement for or make an order in favour of a party to the transaction of such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the consumer lease;
- (e) give judgement or make an order against a person for delivery of goods to which the lease relates and which are in the possession of that person;
- (f) make ancillary or consequential orders.

### **177H Applications by ASIC**

- (1) This section applies if ASIC considers that it is in the public interest to make an application under this Subdivision.
- (2) ASIC may make an application under this Subdivision and has standing to represent the public interest.
- (3) The application:
  - (a) may apply to any one or more consumer leases; and

- (b) may apply to all or any class of consumer leases entered into by a lessor during a specified period (for example, all leases entered into during a specified period that are affected by a specified matter for which relief is sought).

**177J Time limit**

An application may not be brought under this Subdivision more than 2 years after the relevant consumer lease is terminated, discharged or otherwise comes to an end.

**177K Joinder of parties**

- (1) If it appears to the court that a person other than a lessor (a *third party*) has shared in the profits of, or has a beneficial interest prospectively or otherwise in, a consumer lease that the court holds to be unjust, the court may make an order about the third party that the court considers appropriate.
- (2) However, before making an order about the third party, the court must:
- (a) join the third party as a party to the proceedings; and
  - (b) give the third party an opportunity to appear and be heard in the proceedings.

**19 Section 176 of the *National Credit Code***

Repeal the section.

**20 Division 3 of Part 11 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

**Division 8—Repossession, termination and enforcement of consumer leases**

**Subdivision A—Repossession of goods under consumer lease**

**21 Section 177 of the *National Credit Code***

Repeal the section.

**22 After section 178 of the *National Credit Code***

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Insert:

## **Subdivision B—Termination of consumer lease by lessee**

### **178A Termination before goods have been provided**

- (1) If:
  - (a) a consumer lease has been entered into; and
  - (b) the goods hired under the lease have not been provided;then the lessee may, by written notice to the lessor, terminate the lease.
- (2) Nothing in subsection (1) prevents the lessor from retaining or requiring payment of fees or charges incurred before the termination and which would have been payable under the consumer lease.

### **23 Section 179 of the *National Credit Code* (heading)**

Repeal the heading, substitute:

### **179 Termination after goods have been provided**

### **24 After section 179 of the *National Credit Code***

Insert:

### **179A Statement of amount payable on termination**

- (1) A lessor must, at the written request of a lessee, provide a written statement of the amount required to terminate a consumer lease as at such date as the lessee specifies. If so requested, the lessor must also provide details of the items which make up that amount.
- (2) The statement must also contain:
  - (a) a statement to the effect that the amount payable to terminate the lease may change according to the date on which it is paid; and
  - (b) a statement to the effect that the lessee has no right to own the goods if the lease is terminated; and
  - (c) a statement to the effect that the lessee must return the goods to the lessor by a specified date; and
  - (d) any other matters prescribed by the regulations.

- (3) A lessor must give a statement, complying with this section, within 7 days after the day the request is given to the lessor.

Criminal penalty: 50 penalty units.

- (4) In the case of joint lessees, the statement need only be given to the lessee who requests the statement and not, despite section 194, to each joint lessee.

- (5) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**179B Court may determine amount payable on termination if lessor does not**

- (1) If the lessor does not provide a statement of the amount payable to terminate a consumer lease in accordance with this Subdivision after a request is duly made by a lessee, the court may, on the application of the lessee, determine:

- (a) the amount payable on the date of determination; and
- (b) the amount by which it increases daily; and
- (c) the period for which the determination is applicable.

- (2) The consumer lease is discharged if:

- (a) the goods hired under the lease are returned to the lessor within the applicable period; and
- (b) an amount calculated in accordance with the determination is tendered to the lessor within the applicable period.

**179C One-off notice to be given the first time a direct debit default occurs**

- (1) This section applies if:

- (a) a lessee authorises payment of an amount for a consumer lease by direct debit; and
- (b) default occurs; and
- (c) it is the first occasion the default occurs.

- (2) The lessor must give the lessee a notice, complying with this section, within 14 days of the default occurring.

Criminal penalty: 50 penalty units.

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- (3) The notice must contain the information prescribed by the regulations.
  - (4) Subsection (2) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the *Criminal Code*.
  - (5) This section does not affect any other requirement under this Code to give a notice.

### **Subdivision C—Enforcement of consumer leases**

#### **179D Requirements to be met before lessor can enforce consumer lease against defaulting lessee**

##### *Enforcement of consumer lease*

- (1) A lessor must not begin enforcement proceedings against a lessee in relation to a consumer lease unless:
  - (a) the lessee is in default under the lease; and
  - (b) the lessor has given the lessee a default notice, complying with this section, allowing the lessee a period of at least 30 days from the date of the notice to remedy the default; and
  - (c) the default has not been remedied within that period.

Criminal penalty: 50 penalty units.

Note: If a lessee has given a lessor a hardship notice or a postponement request there may be extra requirements that the lessor must comply with before beginning enforcement proceedings—see sections 179F and 179H.

##### *Default notice requirements*

- (2) A default notice must contain a prominent heading at its top stating that it is a default notice and specify:
  - (a) the default; and
  - (b) the action necessary to remedy the default; and
  - (c) a period for remedying the default; and
  - (d) the date after which enforcement proceedings in relation to the default, and, if relevant, repossession of goods hired under the lease may begin if the default has not been remedied; and

- (e) the information prescribed by the regulations about the lessee's right to:
  - (i) give a hardship notice under section 177B; or
  - (ii) give a postponement request under section 179H; or
  - (iii) make an application to the court under sections 177D and 179K; and
- (f) the information prescribed by the regulations about:
  - (i) the approved external dispute resolution scheme of which the lessor is a member; and
  - (ii) the lessee's rights under that scheme; and
- (g) that a subsequent default of the same kind that occurs during the period specified for remedying the original default may be the subject of enforcement proceedings without further notice if it is not remedied within the period; and
- (h) that, under the *Privacy Act 1988*, the debt may be included in a credit reporting agency's credit information file about the lessee if:
  - (i) the debt remains overdue for 60 days or more; and
  - (ii) the lessor has taken steps to recover all or part of the debt; and
- (i) any other information prescribed by the regulations.

*When default notice not required*

- (3) A lessor is not required to give a default notice or to wait until the period specified in the default notice has elapsed, before beginning enforcement proceedings, if:
  - (a) the lessor reasonably believes that it was induced by fraud on the part of the lessee to enter into the consumer lease; or
  - (b) the lessor has made reasonable attempts to locate the lessee but without success; or
  - (c) the court authorises the lessor to begin the enforcement proceedings; or
  - (d) the lessor reasonably believes that the lessee has disposed of goods hired under the lease, or intends to dispose of such goods, contrary to the terms of the lease; or
  - (e) the lessee becomes insolvent after entering into the consumer lease.

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*Non-remedial default*

- (4) If the lessor reasonably believes that a default is not capable of being remedied:
  - (a) the default notice need only specify the default; and
  - (b) the lessor may begin the enforcement proceedings after the period of 30 days from the date of the notice.

*Strict liability*

- (5) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**179E Defaults may be remedied**

- (1) If a default notice under section 179D states that the lessor intends to take action because the lessee is in default under the consumer lease, the lessee may remedy the default within the period specified in the notice, and the lease is then reinstated and any acceleration clause cannot operate.
- (2) A lessee does not remedy the default if, at the end of the period, the lessee is in default under the consumer lease because of the breach specified in the notice or because of a subsequent breach of the same type.

**179F Effect of hardship notices on enforcement**

- (1) This section applies if:
  - (a) a lessor is required to give a default notice under section 179D before beginning enforcement proceedings; and
  - (b) before or after the lessor gives the default notice, the lessee gives the lessor a hardship notice (the **current hardship notice**) under section 177B; and
  - (c) either:
    - (i) in the 4 months before the current hardship notice is given, the lessee had not given the lessor another hardship notice; or
    - (ii) in that 4-month period, the lessee had given the lessor one or more other hardship notices, but the lessor reasonably believes that the basis on which the current hardship notice was given is materially different from

the bases on which the other hardship notices were given.

- (2) The lessor must not begin enforcement proceedings against the lessee unless:
- (a) the lessor has given the lessee a notice under paragraph 177B(4)(b), in response to the current hardship notice, stating that the lessor and the lessee have not agreed to change the consumer lease; and
  - (b) the period of 14 days, starting on the day the lessor gave the notice under paragraph 177B(4)(b), has expired.

Criminal penalty: 50 penalty units.

Note: The lessor must allow the lessee at least 30 days from the date of the default notice to remedy the default—see section 179D. The 14-day period in subsection (2) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

- (3) However, the lessor may take possession of goods hired under a consumer lease if the lessor reasonably believes that:
- (a) the lessee has removed or disposed of the goods, or intends to remove or dispose of them; or
  - (b) urgent action is necessary to protect the goods.
- (4) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **179G Requirements to be met before lessor can enforce an acceleration clause**

- (1) An acceleration clause of a consumer lease is to operate only if:
- (a) the lessee is in default under the lease; and
  - (b) the lessor has given to the lessee a default notice under section 179D; and
  - (c) the default notice contains an additional statement of:
    - (i) the manner in which the liabilities of the lessee under the consumer lease would be affected by the operation of the acceleration clause; and
    - (ii) the amount required to terminate the lease (as accelerated); and

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- (d) the default has not been remedied within the period specified in the default notice (unless the lessor reasonably believes that the default is not capable of being remedied).
- (2) However, a lessor is not required to give a default notice under section 179D or to wait until the period specified in the default notice has elapsed before bringing an acceleration clause into operation, if:
- (a) the lessor reasonably believes that it was induced by fraud on the part of the lessee to enter into the consumer lease; or
  - (b) the lessor has made reasonable attempts to locate the lessee but without success; or
  - (c) the court authorises the lessor not to do so; or
  - (d) the lessor reasonably believes that the lessee has removed or disposed of goods hired under a consumer lease, or intends to remove or dispose of goods hired under the lease, or that urgent action is necessary to protect the goods.

## **Subdivision D—Postponement of enforcement proceedings**

### **179H Postponement of exercise of rights**

#### *Postponement request*

- (1) A lessee who has been given a default notice under section 179D may, at any time before the end of the period specified in the notice, request (a ***postponement request***), orally or in writing, that the lessor negotiate a postponement of:
- (a) the enforcement proceedings; or
  - (b) any action taken under such proceedings; or
  - (c) the operation of any applicable acceleration clause.

#### *Lessor's notice about postponement*

- (2) If the lessee gives the postponement request, the lessor must, within 21 days after the day of receiving the request, give the person a written notice:
- (a) that states whether or not the lessor agrees to negotiate a postponement; and
  - (b) if the lessor does not agree to negotiate—that states:

- (i) the name of the approved external dispute resolution scheme of which the lessor is a member; and
- (ii) the person's rights under that scheme; and
- (iii) the reasons for not agreeing to negotiate.

Criminal penalty: 30 penalty units.

*Enforcement proceedings*

- (3) If the lessee gives the postponement request, the lessor must not begin enforcement proceedings unless:
  - (a) the lessor has given the lessee a notice under subsection (2) in response to the postponement request; and
  - (b) the period of 14 days, starting on the day the lessor gives the notice under subsection (2), has expired.

Criminal penalty: 50 penalty units.

Note: The lessor must allow the lessee at least 30 days from the date of the default notice to remedy the default—see section 179D. The 14-day period in subsection (3) may end before, at the same time as, or after the end of the period for remedying the default specified in the default notice.

- (4) However, the lessor may take possession of goods hired under the consumer lease if the lessor reasonably believes that:
  - (a) the lessee has removed or disposed of the goods, or intends to remove or dispose of them; or
  - (b) urgent action is necessary to protect the goods.

*Strict liability*

- (5) Subsections (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **179J Effect of negotiated postponement**

- (1) A default notice under section 179D is taken, for the purposes of this Code, not to have been given if a postponement is negotiated with the lessor under section 179H and the lessee complies with the conditions of postponement.
- (2) A lessor must give written notice of the conditions of a postponement referred to in subsection (1) not later than 30 days

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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.

Criminal penalty: 100 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) A lessor that is required to give notice under section 177A (which deals with changes to leases by agreement) in relation to a postponement is not required to comply with subsection (2).
- (5) If any of the conditions of a postponement are not complied with, a lessor is not required to give a further default notice under this Code to the lessee with whom the postponement was negotiated before proceeding with enforcement proceedings.

### **179K Postponement by court**

- (1) If the lessee is unable to negotiate a postponement, the lessee may apply to the court for a postponement.
- (2) After allowing the applicant and the lessor a reasonable opportunity to be heard, the court may:
- (a) order the postponement to which the application relates; or
  - (b) refuse to order the postponement; or
  - (c) make such other orders as it thinks fit.
- (3) The court may, if it thinks it appropriate in the circumstances, stay any enforcement proceedings under the consumer lease until the application has been determined.

### **179L Lessor may apply for variation of postponement order**

- (1) A lessor that is subject to an order under this Subdivision may apply to the court for variation of the order.
- (2) On such an application, the court may:
- (a) vary the order to which the application relates as it thinks fit; or
  - (b) refuse to vary the order; or
  - (c) revoke the order.

**Subdivision E—Enforcement procedures for goods hired under a consumer lease**

**179M Information as to location of goods hired under a consumer lease**

- (1) A lessor may, by written notice to a lessee, require the lessee to inform the lessor, within 7 days after the day the notice is given to the lessee, where the goods hired under the consumer lease are and, if the goods are not in the lessee's possession, to give the lessor all information in the lessee's possession that might assist the lessor to trace the goods.
- (2) A lessee who contravenes a notice under this section commits an offence.

Criminal penalty: 50 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**179N Entry to residential property to take possession of goods**

- (1) A lessor, or an agent of a lessor, must not enter any part of premises used for residential purposes for the purpose of taking possession of goods hired under a consumer lease unless:
  - (a) the court has authorised the entry; or
  - (b) the occupier of the premises has, after being informed in writing of the provisions of this section, consented in writing to the entry.
- (2) The regulations may provide for procedures for the obtaining and giving of consent for the purposes of this section and may set out the circumstances in which consent is or is not taken to have been given.
- (3) If premises are entered in contravention of this section by a lessor or an agent of a lessor, the lessor commits an offence.

Criminal penalty: 50 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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**179P Court may order entry**

The court may, on the application of a lessor that is entitled to take possession of goods hired under a consumer lease, authorise the lessor to enter residential premises for the purpose of taking possession of the goods.

**179Q Order for possession**

- (1) The court may, on the application of a lessor that is entitled to take possession of goods hired under a consumer lease, order a person who has possession of the goods to deliver them to the lessor:
  - (a) at a specified time or place; or
  - (b) within a specified period.
- (2) The court may, on the application of a lessor or other person required to deliver goods to a lessor, by order vary the place at which or time or period within which goods must be delivered to the lessor.
- (3) A person who contravenes an order under this section commits an offence.

Criminal penalty: 30 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**Subdivision F—Enforcement expenses****179R Recovery of enforcement expenses**

- (1) A lessor must not recover or seek to recover enforcement expenses from a lessee in excess of those reasonably incurred by the lessor. Enforcement expenses of a lessor extend to those reasonably incurred by the use of the staff and facilities of the lessor.
- (2) Any provision of the consumer lease that appears to confer a greater right is void. If enforcement expenses are in fact recovered in excess of this limitation, they may be recovered back.
- (3) If there is a dispute between the lessor and the lessee about the amount of enforcement expenses that may be recovered by the

lessor, the court may, on application by any of the parties to the dispute, determine the amount of that liability.

## **Division 9—Linked lessors and tied consumer leases**

### **Subdivision A—Interpretation and application**

#### **179S Linked lessors and tied consumer leases**

- (1) For the purposes of this Code, a *linked lessor* of a supplier means a lessor:
  - (a) with whom the supplier has a contract, arrangement or understanding relating to:
    - (i) the supply to the supplier of goods in which the supplier deals; or
    - (ii) the business carried on by the supplier of supplying goods; or
    - (iii) the provision to persons of a consumer lease for the hire of goods supplied by the supplier to the lessor; or
  - (b) to whom the supplier, by arrangement with the lessor, regularly refers persons for the purpose of being provided with a consumer lease; or
  - (c) whose forms of contract or forms of application or offers for a consumer lease are, by arrangement with the lessor, made available to persons by the supplier; or
  - (d) with whom the supplier has a contract, arrangement or understanding under which applications for a consumer lease or offers to be provided with a consumer lease from the lessor may be signed by persons at the premises of the supplier.
- (2) A *tied consumer lease* is a consumer lease entered into between a lessor and a lessee where:
  - (a) the lessee enters into the lease to hire goods supplied by the supplier to the lessor; and
  - (b) at the time the lease is entered into the lessor is a linked lessor of the supplier.

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**Subdivision B—Liability of lessors for suppliers’  
misrepresentations****179T Lessor liable for supplier’s misrepresentations about hired  
goods**

- (1) If there is a tied consumer lease, any representation, warranty or statement made (whether orally or in writing) by the supplier, or any person acting on behalf of the supplier, to the lessee in relation to:
  - (a) goods hired under the lease; or
  - (b) the lease; or
  - (c) services, supplied or arranged by the lessor, that are incidental to the hire of goods under the lease;gives the lessee the same rights against the lessor as the lessee would have had if it had been made by the lessor.
- (2) Without prejudice to any other rights or remedies to which a lessor may be entitled, a lessor is entitled to be indemnified by the person who made the representation, warranty or statement, and any person on whose behalf it was made, against any damage suffered by the lessor through the operation of this section.

**Division 10—Conduct relating to consumer leases****179U False or misleading representations**

- (1) A person must not make a false or misleading representation:
  - (a) in relation to a matter that is material to entry into a consumer lease or a related transaction; or
  - (b) in attempting to induce another person to enter into a consumer lease or a related transaction.

Criminal penalty: 50 penalty units.

- (2) It is a defence to prosecution for an offence against this section if a person charged proves that he or she reasonably believed that the representation was not false or misleading.
- (3) A person who suffers loss as a result of a contravention of this section by another person may recover the amount of the loss from:

- (a) that other person; or
- (b) any other person involved in the contravention.

### **179V Harassment**

A lessor or supplier must not harass a person in attempting to get that person to:

- (a) apply for a consumer lease; or
- (b) enter into a consumer lease or a related transaction.

Criminal penalty: 100 penalty units.

## **Division 11—Other Code provisions applicable to consumer leases**

### **179W Application of certain Code provisions to consumer leases**

- (1) Part 12 (relating to miscellaneous matters) and subsection 204(2) (definition of *associated*) apply in relation to a consumer lease in the same way as they apply in relation to a credit contract.
- (2) For the purposes of the application of those provisions:
  - (a) references to a credit provider are to be read as references to a lessor; and
  - (b) references to a debtor are to be read as references to a lessee; and
  - (c) references to a credit contract or contract are to be read as references to a consumer lease; and
  - (d) references to a linked credit provider are to be read as references to a linked lessor.

### **25 Subsection 204(1) of the *National Credit Code* (definition of *acceleration clause*)**

Repeal the definition, substitute:

*acceleration clause* means:

- (a) in relation to a credit contract or mortgage—a term of a credit contract or mortgage providing that:
  - (i) on the occurrence or non-occurrence of a particular event, the credit provider becomes entitled to immediate payment of all, or a part, of an amount under the

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- contract that would not otherwise have been immediately payable; or
- (ii) whether or not on the occurrence or non-occurrence of a particular event, the credit provider has a discretion to require repayment of the amount of credit otherwise than by repayments fixed, or determined on a basis stated, in the contract;
- but does not include any such term in a credit contract or mortgage that is an on demand facility; or
- (b) in relation to a consumer lease—a term of a consumer lease providing that:
- (i) on the occurrence or non-occurrence of a particular event, the lessor becomes entitled to immediate payment of all, or a part, of an amount under the lease that would not otherwise have been immediately payable; or
- (ii) whether or not on the occurrence or non-occurrence of a particular event, the lessor has a discretion to require payment of an amount payable under a lease otherwise than by repayments fixed, or determined on a basis stated, in the lease.

## **26 Subsection 204(1) of the *National Credit Code***

Insert:

***Bulk Electronic Clearing System*** means the system established by the Australian Payments Clearing Association to manage the conduct of the exchange and settlement of bulk electronic low value transactions and includes any replacement system.

## **27 Subsection 204(1) of the *National Credit Code***

Insert:

***consumer lease fees or charges*** means fees or charges payable in connection with a consumer lease, but does not include:

- (a) enforcement expenses; or
- (b) government charges, or duties, on receipts or withdrawals.

## **28 Subsection 204(1) of the *National Credit Code* (definition of *default notice*)**

Repeal the definition, substitute:

***default notice:***

- (a) in relation to credit contracts, mortgages and guarantees—see section 88; and
- (b) in relation to consumer leases—see section 179D.

**29 Subsection 204(1) of the *National Credit Code***

Insert:

***direct debit***, in relation to the payment of an amount, means the debiting of an amount against an account with a financial institution that is processed through the Bulk Electronic Clearing System, as specified and authorised in writing by:

- (a) in relation to the payment by a debtor of an amount for a credit contract—the debtor; and
- (b) in relation to the payment by a lessee of an amount for a consumer lease—the lessee.

**30 Subsection 204(1) of the *National Credit Code* (definition of enforcement proceedings)**

Repeal the definition, substitute:

***enforcement proceedings*** means:

- (a) for a credit contract, consumer lease or guarantee—proceedings in a court to recover a payment due under the contract, lease or guarantee; or
- (b) for a consumer lease or mortgage—taking possession of property under the lease or mortgage; or
- (c) for a mortgage—taking any other action to enforce the mortgage.

**31 Subsection 204(1) of the *National Credit Code***

Insert:

***hardship notice:***

- (a) in relation to credit contracts—see subsection 72(1); and
- (b) in relation to consumer leases—see subsection 177B(1).

**32 Subsection 204(1) of the *National Credit Code***

Insert:

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*lessee* means the lessee under a consumer lease to which Part 11 applies, and includes a prospective lessee.

**33 Subsection 204(1) of the *National Credit Code***

Insert:

*lessor* means the lessor under a consumer lease to which Part 11 applies, and includes a prospective lessor.

**34 Subsection 204(1) of the *National Credit Code***

Insert:

*linked lessor*: see subsection 179S(1).

**35 Subsection 204(1) of the *National Credit Code***

Insert:

*on demand facility* means a credit contract or mortgage under which:

- (a) the total amount outstanding under the contract or mortgage is repayable at any time on demand by the credit provider; and
- (b) there is no agreement, arrangement or understanding between the credit provider and the debtor or mortgagor that repayment will only be demanded on the occurrence or non-occurrence of a particular event.

**36 Subsection 204(1) of the *National Credit Code***

Insert:

*postponement request*:

- (a) in relation to credit contracts, mortgages or guarantees—see subsection 94(1); and
- (b) in relation to consumer leases—see subsection 179H(1).

**37 Subsection 204(1) of the *National Credit Code***

Insert:

*tied consumer lease*: see subsection 179S(2).

**38 Subsection 204(1) of the *National Credit Code***

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Insert:

*unjust* includes unconscionable, harsh or oppressive.

## **Schedule 6—Application provisions**

### *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*

#### **1 Schedule 4 (heading)**

Repeal the heading, substitute:

### **Schedule 4—Application and transitional provisions for the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011**

#### **2 Part 1 of Schedule 4 (heading)**

Repeal the heading.

#### **3 Item 1 of Schedule 4**

Omit “In this Part”, substitute “In this Schedule”.

#### **4 At the end of the Act**

Add:

### **Schedule 5—Application provisions for the Consumer Credit Legislation Amendment (Enhancements) Act 2012**

## **Part 1—Definition**

### **1 Definition**

In this Schedule:

*amending Act* means the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*.

## **Part 2—Schedule 1 (enhancements) to the amending Act**

### **2 Section 128 of the National Credit Act**

The amendments of section 128 of the National Credit Act made by Schedule 1 to the amending Act apply in relation to representations made on or after the commencement of that Schedule.

### **3 Section 180A of the National Credit Act**

Section 180A of the National Credit Act, as inserted by Schedule 1 to the amending Act, applies in relation to credit services provided on or after the commencement of that Schedule.

### **4 Sections 32 and 40 of the new Credit Code**

The amendments of sections 32 and 40 of the new Credit Code made by Schedule 1 to the amending Act apply in relation to credit contracts entered into on or after the commencement of that Schedule.

### **5 Sections 72, 73, 74 and 88 of the new Credit Code**

The amendments of sections 72, 73, 74 and 88 of the new Credit Code made by Schedule 1 to the amending Act apply in relation to credit contracts made on or after the commencement of that Schedule.

### **6 Section 89A of the new Credit Code**

Section 89A of the new Credit Code, as inserted by Schedule 1 to the amending Act, applies in relation to credit contracts, mortgages and guarantees entered into on or after the commencement of that Schedule.

### **7 Section 94 of the new Credit Code**

The amendments of section 94 of the new Credit Code made by Schedule 1 to the amending Act apply in relation to credit contracts, mortgages and guarantees entered into on or after the commencement of that Schedule.

### **8 Section 124 of the new Credit Code**

The amendments of section 124 of the new Credit Code made by Schedule 1 to the amending Act apply in relation to applications made on or after the commencement of that Schedule, whether the contraventions occurred before, on or after that commencement.

## **Part 3—Schedule 2 (reverse mortgages) to the amending Act**

### **9 Subsections 179(6) and (7) of the National Credit Act**

Subsections 179(6) and (7) of the National Credit Act, as added by item 11 of Schedule 2 to the amending Act, apply in relation to credit contracts entered into on or after the commencement of that item.

### **10 Subsection 17(15A) of the new Credit Code**

Subsection 17(15A) of the new Credit Code, as inserted by item 12 of Schedule 2 to the amending Act, applies in relation to credit contracts entered into on or after the commencement of that item.

### **11 Section 18A of the new Credit Code**

Section 18A of the new Credit Code, as inserted by item 13 of Schedule 2 to the amending Act, applies to entry into, and changes to, credit contracts on or after the commencement of that item.

### **12 Subsection 26(6) of the new Credit Code**

Subsection 26(6) of the new Credit Code, as added by item 15 of Schedule 2 to the amending Act, applies in relation to credit contracts entered into on or after the commencement of that item.

### **13 Section 33 of the new Credit Code**

The amendments of section 33 of the new Credit Code made by items 16 and 17 of Schedule 2 to the amending Act apply to credit contracts entered into before, on or after the commencement of those items.

### **14 Section 67A of the new Credit Code**

Section 67A of the new Credit Code, as inserted by item 18 of Schedule 2 to the amending Act, applies in relation to credit contracts entered into on or after the commencement of that item.

### **15 Subdivision B of Division 1 of Part 5 of the new Credit Code**

Subdivision B of Division 1 of Part 5 of the new Credit Code, as inserted by item 20 of Schedule 2 to the amending Act, applies in relation to credit contracts and mortgages entered into on or after the commencement of that item.

**16 Subsections 88(1) and (2) of the new Credit Code**

The amendment of subsections 88(1) and (2) of the new Credit Code made by item 21 of Schedule 2 to the amending Act applies to credit contracts and mortgages entered into before, on or after the commencement of that item.

**17 Subsections 88(7A) and (7B) of the new Credit Code**

Subsections 88(7A) and (7B) of the new Credit Code, as inserted by item 22 of Schedule 2 to the amending Act, apply in relation to credit contracts and mortgages entered into on or after the commencement of that item.

**18 Section 93A of the new Credit Code**

Section 93A of the new Credit Code, as added by item 23 of Schedule 2 to the amending Act, applies in relation to credit contracts and mortgages entered into on or after the commencement of that item.

**19 Section 185A of the new Credit Code**

Section 185A of the new Credit Code, as inserted by item 26 of Schedule 2 to the amending Act, applies in relation to credit contracts entered into on or after the commencement of that item.

**Part 4—Schedule 3 (short-term and small amount credit contracts) to the amending Act**

**20 Paragraphs 124A(1)(b) and 133CA(1)(b) of the National Credit Act**

Paragraphs 124A(1)(b) and 133CA(1)(b) of the National Credit Act, as inserted by Schedule 3 to the amending Act, apply in relation to short-term credit contracts entered into before, on or after the commencement of that Schedule.

**Part 5—Schedule 4 (caps on costs etc. for credit contracts) to the amending Act**

**21 Sections 23A, 31A, 31B, 39A, 39B and 39C and subsection 114(1A) of the new Credit Code**

Sections 23A, 31A, 31B, 39A, 39B and 39C and subsection 114(1A) of the new Credit Code, as inserted by Schedule 4 to the amending Act, apply in relation to small amount credit contracts entered into on or after the commencement of that Schedule.

**21A Section 32AA and paragraphs 111(1)(k) and (2)(fb) of the new Credit Code**

Section 32AA and paragraphs 111(1)(k) and (2)(fb) of the new Credit Code, as inserted by Schedule 4 to the amending Act, apply in relation to credit contracts entered into on or after the commencement of that Schedule.

**Part 6—Schedule 5 (consumer leases) to the amending Act**

**22 Subsection 199(2) of the National Credit Act**

The amendments of subsection 199(2) of the National Credit Act made by Schedule 5 to the amending Act apply in relation to consumer leases entered into on or after the commencement of that Schedule.

**23 Part 11 of the new Credit Code**

The amendments in relation to Part 11 of the new Credit Code made by Schedule 5 to the amending Act apply in relation to consumer leases entered into on or after the commencement of that Schedule.

## **Schedule 7—Lay-by agreements etc.**

### ***Competition and Consumer Act 2010***

**1 Subsection 96(1) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**2 Subsection 96(2) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**3 Subsection 96(3) of Schedule 2**

Omit “consumer goods” (wherever occurring), substitute “goods”.

**4 Subsection 96(4) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**5 Subsection 97(1) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**6 Subsection 97(2) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**7 Subsection 97(3) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**8 Section 98 of Schedule 2**

Omit “consumer goods” (wherever occurring), substitute “goods”.

**9 Subsection 103(1) of Schedule 2**

Omit “consumer goods”, substitute “goods supplied to a consumer”.

**10 Subsection 188(1) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**11 Subsection 189(1) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**12 Subsection 189(3) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**13 Subsection 190(1) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**14 Paragraph 190(2)(c) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**15 Subsection 191(1) of Schedule 2**

Omit “consumer goods”, substitute “goods”.

**16 At the end of Schedule 2**

Add:

**Chapter 6—Application and transitional provisions**

**Part 1—Application and transitional provisions relating to the Consumer Credit Legislation Amendment (Enhancements) Act 2012**

**288 Application of amendments relating to lay-by agreements**

The amendments made by items 1 to 8 and 10 to 15 of Schedule 7 to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* apply to lay-by agreements entered into on or after the commencement of those items.

**289 Application of amendment relating to repairs**

The amendment made by item 9 of Schedule 7 to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* applies to notices to be given in relation to the repair of goods accepted on or after the commencement of that item.

**290 Saving of regulations relating to repairs**

**Schedule 7** Lay-by agreements etc.

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Despite the amendment made to subsection 103(1) of Schedule 2 to the *Competition and Consumer Act 2010* by item 9 of Schedule 7 to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*, regulations that:

- (a) were made for the purposes of that subsection; and
- (b) were in force immediately before the commencement of that item;

continue in force (and may be dealt with) as if they were made for the purposes of that subsection as amended by that item.

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*[Minister's second reading speech made in—  
House of Representatives on 21 September 2011  
Senate on 14 August 2012]*

(209/11)

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112      *Consumer Credit Legislation Amendment (Enhancements) Act 2012*      No. 130, 2012