

Queensland



**CONSUMER CREDIT
(QUEENSLAND)
AMENDMENT ACT 1998**

Act No. 36 of 1998

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CONSUMER CREDIT (QUEENSLAND) AMENDMENT ACT 1998

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Queensland



Consumer Credit (Queensland) Amendment Act 1998

Act No. 36 of 1998

**An Act to amend the *Consumer Credit (Queensland) Act 1994* to make
changes to the Consumer Credit Code**

[Assented to 27 October 1998]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Consumer Credit (Queensland) Amendment Act 1998*.

Commencement

2.(1) This Act commences on a day to be fixed by proclamation, except as provided by subsection (2).

(2) Sections 4, 8(3), 9, 13, 14, 16(3), 18(1) and (2), 20, 22, 31(1), 34, 35(3), 36(2), 46, 50, 51, 60, and 65(3) to (6) commence on 1 November 1998.

Code amended

3. This Act amends the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994*.

Amendment of s 4 (Meaning of “credit” and “amount of credit”)

4. Section 4(2), after ‘deferred.’—

insert—

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

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

Amendment of s 7 (Provision of credit to which this Code does not apply)

5.(1) Section 7(9), ‘providing credit’—

omit, insert—

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

(2) Section 7(9), ‘credit provider provides credit’—

omit, insert—

‘credit provider provides credit to which this Code applies’.

Amendment of s 11 (Presumptions relating to application of Code)

6.(1) Section 11(3), ‘(or any other person who obtained the declaration’—

omit, insert—

‘(or any other relevant person who obtained the declaration’.

(2) Section 11(3), after ‘household purposes.’—

insert—

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

(3) Section 11(3), note—

omit.

Amendment of s 12 (Credit contract to be in form of written contract document)

7.(1) Section 12(b)—

omit, insert—

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

(2) Section 12—

insert—

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

- (a) by the debtor or a person authorised by the debtor accessing or drawing down credit to incur a liability; or
- (b) by any other act of the debtor or of any such authorised person that satisfies the conditions of the offer and constitutes an acceptance of the offer at law.

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

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

Amendment of s 15 (Matters that must be in contract document)

8.(1) Section 15(B)(a)—

omit, insert—

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

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

(2) Section 15(E), ‘assumptions in’—

omit, insert—

‘assumptions under’.

(3) Section 15(F)(a)(ii)—

omit, insert—

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

(4) Section 15(F), paragraph (b), ‘repayment.’—

omit, insert—

‘repayment.

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

(5) Section 15(N), paragraph (d), ‘premium.’—

omit, insert—

‘premium.

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

- (i) it is sufficient compliance with paragraphs (a) and (b) if the contract document contains the name of the general insurer and the total amount payable to the insurers (or, if it is not ascertainable, how it is calculated); and
- (ii) it is sufficient compliance with paragraph (d) relating to the amount of commission if the contract document contains the total amount of commission (expressed as a monetary amount or as a proportion of the premium) to be paid by the insurers.’.

Amendment of s 18 (Copy of contract for debtor)**9. Section 18(3)—**

omit, insert—

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

Amendment of s 19 (When debtor may terminate contract)

10. Section 19(1), ‘unless any credit has been obtained or attempted to be obtained under the contract’—

omit, insert—

‘unless—

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

Amendment of s 21 (Prohibited monetary obligations)

11. Section 21(1)(a), ‘fee’—

omit, insert—

‘credit fee’.

Amendment of s 24 (Early payments and crediting of payments)

12. Section 24(3)—

omit, insert—

‘(3) Despite subsection (2), a credit provider is not required to credit a payment under a credit contract before it is payable under the contract if the contract prohibits its early payment and—

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

- (b) the credit provider informs the debtor, before accepting the payment, that it will not be credited to the debtor until it becomes payable under the contract; or
- (c) the credit provider refunds the payment to the debtor.’.

Amendment of s 25 (Definitions relating to interest)

13.(1) Section 25(2), after ‘payments’—

insert—

‘or any other purposes’.

(2) Section 25(2), after ‘ends.’—

insert—

‘Different times of the day may be specified for different purposes.’.

Amendment of s 27 (Early debit or payment of interest charges prohibited)

14. Section 27—

insert—

‘**(4)** This section does not apply to the debit of an interest charge under a credit contract before the end of the period to which the charge applies if—

- (a) the charge is debited on the last day of the period; and
- (b) the amount debited is not treated by the credit provider as part of the unpaid daily balance for that day for the purpose of calculating interest charges under the contract.’.

Amendment of s 30 (Fees or charges passed on to other parties)

15.(1) Section 30(1), ‘in respect of an amount payable’—

omit, insert—

‘for an amount payable or to reimburse an amount paid’.

(2) Section 30(1), after ‘actual amount payable’—

insert—

‘or paid’.

(3) Section 30(4)—

omit.

Amendment of s 31 (Statements of account)

16.(1) Section 31(3)(b), after ‘statement period’—

insert—

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

(2) Section 31(3)—

insert—

‘(f) the debtor has died or is insolvent and the debtor’s personal representative or trustee in bankruptcy has not requested a statement of account.’.

(3) Section 31—

insert—

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

Amendment of s 32 (Information to be contained in statements of account)

17. Section 32(I), ‘(if not previously disclosed in accordance with this Code).’—

omit, insert—

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

In the case of consumer credit insurance that includes a contract of

general insurance within the meaning of the *Insurance Contracts Act 1984* (Cwlth)—

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

Amendment of s 34 (Statement of amount owing and other matters)

18.(1) Section 34(1)(c), after ‘amounts’—

insert—

‘currently’.

(2) Section 34(1)(d), after ‘amount’—

insert—

‘currently’.

(3) Section 34—

insert—

‘**(3A)** In the case of joint debtors or guarantors, the statement under this section need only be given to a debtor or guarantor who requests the statement and not, despite section 171, to each joint debtor or guarantor.’.

Amendment of s 36 (Disputed accounts)

19.(1) Section 36(4), ‘In any other case’—

omit, insert—

‘In the case of any other credit contract for which a statement of account is given’.

(2) Section 36—

insert—

‘(4A) In the case of a credit contract in respect of which a statement of account need not be and is not given for the period to which the disputed liability relates, the notice of dispute must be given to the credit provider not later than 3 months after the end of the contract.’

Insertion of new s 36A

20. Part 2, division 5, after section 36—

insert—

‘Dating and adjustment of debits and credits in accounts

‘**36A.(1)** For the purposes of this Code and the credit contract, a debit or a credit made by a credit provider to a debtor’s account is taken to have been made, and has effect, on the date assigned to the debit or credit, not on the date on which it is processed.

‘(2) A credit provider may subsequently adjust debits or credits to a debtor’s account, and the account balances, so as to accurately reflect the legal obligations of the debtor and the credit provider.

‘(3) However, subsections (1) and (2) do not permit a debit or a credit to be assigned a date other than the date on which it is processed, or the subsequent adjustment of a debit or a credit or account balance, if—

- (a) the assignment or adjustment is not consistent with the credit contract; or
- (b) the adjustment results in an interest charge that is more than the maximum amount permitted by the Code, as calculated on the basis of debits or credits to a debtor’s account consistent with the credit contract; or
- (c) the assignment or adjustment results in a contravention of section 24; or
- (d) the assignment of the date on which an interest charge is taken to be debited results in a debit being taken to be done before a time permitted under this Code.

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

Amendment of s 37 (Deferrals, waivers and changes under contracts)

21.(1) Section 37, after ‘or a deferral or waiver of an amount under an existing credit contract’—

insert—

‘or a postponement relating to an existing credit contract’.

(2) Section 37, ‘or waiver’ (second mention)—

omit, insert—

‘, waiver or postponement’.

(3) Section 37, ‘or the contract’—

omit, insert—

‘or the existing credit contract’.

(4) Section 37—

insert—

‘**(2)** In this section—

“**existing credit contract**” includes existing consumer lease.’.

Amendment of s 39 (Copy of mortgage for mortgagor)

22. Section 39—

insert—

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

Amendment of s 44 (Third party mortgages prohibited)

23. Section 44—

insert—

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

Amendment of s 51 (Disclosure)

24. Section 51(1), ‘Before the obligations under a credit contract are secured by a guarantee’—

omit, insert—

‘Before a guarantee is signed by the guarantor’.

Replacement of s 52 (Copies of documents for guarantor)

25. Section 52—

omit, insert—

‘Copies of documents for guarantor

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

- (a) a copy of the guarantee signed by the guarantor; and
- (b) a copy of the credit contract or proposed credit contract.

‘(2) Subsection (1)(a) does not apply if the credit provider has previously given the guarantor a copy of the guarantee document to keep and subsection (1)(b) does not apply if the credit provider has previously given the guarantor a copy of the credit contract or proposed credit contract to keep.’.

Amendment of s 53 (Guarantor may withdraw before credit is provided)

26. Section 53(1)(b), ‘or pre-contractual statement’—

omit.

Amendment of s 54 (Extension of guarantee)

27. Section 54(3), ‘does’—

omit, insert—

‘and section 51 (Disclosure) do’.

Amendment of s 55 (Limitation of guarantor's liability)

28. Section 55(2), 'or any other act or omission by, or circumstance affecting, the debtor'—

omit.

Amendment of s 56 (Increase in guarantor's liabilities)

29. Section 56(2)—

omit, insert—

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

- (a) a change of a kind referred to in section 58(2)(a) or (b); or
- (b) a change of which notice is required to be given under Division 1 of Part 4 (not being a change referred to in section 62(3) or 63); or
- (c) a change under section 68(2) or a postponement under section 88(2); or
- (d) a deferral or waiver of a debtor's obligations for a period not exceeding 90 days.'

Amendment of s 59 (Interest rate changes)

30. Section 59(4), '30 days'—

omit, insert—

'20 days'.

Amendment of s 60 (Repayment changes)

31.(1) Section 60(1), '30 days'—

omit, insert—

'20 days'.

(2) Section 60—

insert—

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

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

Amendment of s 61 (Credit fees and charges changes)

32. Section 61(1), ‘30 days’—

omit, insert—

‘20 days’.

Amendment of s 63 (Other unilateral changes by credit provider)

33.(1) Section 63(1), ‘30 days’—

omit, insert—

‘20 days’.

(2) Section 63(3), after ‘section 59, 60, 61 or 62’—

insert—

‘(or which would be required to be so given but for an exception provided in any such section)’.

Insertion of new s 63A

34. After section 63—

insert—

‘Particulars of matters as changed only required to be given under this Division in certain cases

‘63A. The credit provider may, under section 59, 60, 61 or 63, give a

person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider—

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

Amendment of s 65 (Changes by agreement)

35.(1) Section 65(1), ‘within 30 days’—

omit, insert—

‘not later than 30 days’.

(2) Section 65(3), after ‘credit contract’—

insert—

‘(other than a continuing credit contract)’.

(3) Section 65—

insert—

‘**(5)** The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider—

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

Amendment of s 67 (Notice of change)

36.(1) Section 67, ‘within 30 days’—

omit, insert—

‘not later than 30 days’.

(2) Section 67—

insert—

‘(2) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider—

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

Amendment of s 73 (Time limit)

37.(1) Section 73(1), ‘the credit provider writes off the relevant debt, whichever occurs first’—

omit, insert—

‘otherwise comes to an end’.

(2) Section 73(2), ‘credit provider writes off the relevant debt, whichever occurs first’—

omit, insert—

‘credit contract is rescinded or discharged or otherwise comes to an end’.

Amendment of s 76 (Statement of pay out figure)

38. Section 76, before penalty—

insert—

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

Amendment of s 78 (Surrender of mortgaged goods and goods subject to sale by instalments)

39.(1) Section 78(7), ‘total amount payable under the contract’—

omit, insert—

‘amount required to pay out the contract’.

(2) Section 78(8)(a), after ‘contract’—

insert—

‘or guarantee’.

(3) Section 78(8)—

insert—

‘(e) the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.’.

(4) Section 78(9), ‘net amount due under the credit contract’—

omit, insert—

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

Amendment of s 80 (Requirements to be met before credit provider can enforce credit contract or mortgage against defaulting debtor or mortgagor)

40.(1) Section 80(3), ‘during the period of 30 days’—

omit, insert—

‘during the period specified in the default notice for remedying the original default’.

(2) Section 80—

insert—

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

(3) Section 80(4)(c), ‘to do so’—

omit, insert—

‘to begin the enforcement proceedings’.

(4) Section 80(6), after ‘property’—

insert—

‘or other’.

(5) Section 80(6), second sentence—

omit, insert—

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

Amendment of s 86 (Postponement of exercise of rights)

41. Section 86(2), ‘under’—

omit, insert—

‘in respect of’.

Amendment of s 87 (Effect of negotiated postponement)

42.(1) Section 87(1), ‘, written notice of the conditions of postponement is given to the debtor, mortgagor or guarantor’—

omit.

(2) Section 87—

insert—

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

Maximum penalty—100 penalty units.

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

‘(5) If any of the conditions of a postponement are not complied with, a credit provider is not required to give a further default notice under this

Code to the debtor, mortgagor or guarantor with whom the postponement was negotiated before proceeding with enforcement proceedings.’.

Amendment of s 96 (Sale of goods by credit provider)

43.(1) Section 96(2), ‘total amount payable under the contract’—

omit, insert—

‘amount required to pay out the contract’.

(2) Section 96(3), ‘net amount due under the credit contract’—

omit, insert—

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

Amendment of s 98 (Compensation to mortgagor)

44. Section 98(1), after ‘practicable’—

insert—

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

Amendment of s 99 (Recovery of enforcement expenses)

45.(1) Section 99(1), after ‘the credit provider.’—

insert—

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

(2) Section 99—

insert—

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

Amendment of s 100 (Key requirements)

46.(1) Section 100, ‘100.’—

omit, insert—

‘100.(1)’.

(2) Section 100(1)(e) (as renumbered)—

omit, insert—

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

(3) Section 100(2)(d)—

omit, insert—

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

Amendment of s 117 (Linked credit providers and tied credit contracts)

47. Section 117(3), after ‘credit contract’ (first mention)—

insert—

‘(other than a continuing credit contract)’.

Amendment of s 119 (Right to damages under sale contract against both supplier and linked credit provider (cf. Trade Practices Act 1974 (Cwlth), s 73))

48. Section 119(1), after ‘in relation to the’—

insert—

‘sale’.

Amendment of s 124 (Termination of sale contract which is conditional on obtaining credit)

49. Section 124—

insert—

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

Amendment of s 125 (Termination of (or recredit under) tied credit contract if sale contract terminated)

50. Section 125—

insert—

‘(8) This section applies—

- (a) to the exercise by a purchaser of a right under this Code or any other law to rescind or discharge a sale contract; and
- (b) to a tied loan contract or a tied continuing credit contract, but only if the sale contract was the principal purpose for which the credit was provided.’.

Amendment of s 132 (Meaning of credit-related insurance contract)

51.(1) Section 132, heading—

omit, insert—

‘Interpretation and application’.

(2) Section 132—

insert—

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

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

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

Amendment of s 134 (Financing of insurance premiums over mortgaged property)

52. Section 134(1), second sentence—

omit.

Amendment of s 138 (Termination of consumer credit insurance contract if credit contract terminated)

53.(1) Section 138(4), after ‘section’—

insert—

‘, including the rebate payable where this section does not apply to the whole of a credit-related insurance contract’.

(2) Section 138—

insert—

‘**(6)** This section does not apply to a credit-related insurance contract, to the extent that it provides a benefit in the event of the death of the debtor, if a credit contract is terminated on the death of a debtor. However, it does apply to the credit-related insurance contract to the extent that it provides other benefits.’.

Amendment of s 140 (Advertising)

54. Section 140(3) and (4)—

omit, insert—

‘**(3) Annual percentage rate.** The advertisement need not contain an annual percentage rate, but must do so if the advertisement states the amount of any repayment. If the advertisement contains an annual percentage rate and credit fees and charges are payable, the advertisement must—

- (a) state that fees and charges are payable; or
- (b) specify the amount of the fees and charges payable; or
- (c) specify the amount of some of the fees and charges payable and state that other fees and charges are payable.

‘(4) Comparison rate. The advertisement may contain the comparison rate calculated as prescribed by the regulations and, if it does so, must be accompanied by the warnings set out in the regulations.’.

Amendment of s 143 (Interest rates which may be disclosed)

55. Section 143, ‘the annual percentage rate or rates’—

omit, insert—

‘expressed as a nominal percentage rate per annum’.

Amendment of s 146 (Canvassing of credit at home)

56. Section 146(1), ‘the person.’—

omit, insert—

‘a person who resides there.’.

Amendment of s 152 (Disclosures in consumer leases)

57. Section 152(1)(c), after ‘government charge’—

insert—

‘(other than on receipts or withdrawals)’.

Amendment of s 153 (Copy of lease etc. for lessee)

58. Section 153—

insert—

‘(2) Subsection (1) does not apply if the lessor has previously given the lessee a copy of the consumer lease to keep.

‘(3) Section 171 applies to this section as if references in that section to the credit provider were references to the lessor or a lease broker and as if references in that section to the debtor were references to the lessee.’.

Amendment of s 166 (Assignment by credit provider)

59. Section 166(3), after ‘debtor’—

insert—

‘, or would continue to do so if the debtor complied with the credit contract’.

Insertion of new s 169A

60. After section 169—

insert—

‘Indemnities

‘169A.(1) An indemnity for any liability under this Code is not void, and cannot be declared void, on the grounds of public policy, despite any rule of law to the contrary.

‘(2) The liabilities to which this section applies include the following—

- (a) a liability for any criminal or civil penalty incurred by any person under this Code;
- (b) a payment in settlement of a liability or alleged liability under this Code;
- (c) a liability under another indemnity for any liability under this Code.

‘(3) This section is subject to section 169(2).

‘(4) This section does not derogate from any other rights and remedies that exist apart from this section.

‘(5) This section extends to any indemnity obtained before the commencement of this section.’.

Replacement of s 171 (Giving notice or other document)

61. Section 171—

omit, insert—

‘Giving notice or other document

‘171.(1) Application. This section applies as follows—

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

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

‘(2) Unsuccessful attempts by credit provider. A credit provider is relieved from the obligation to give a notice or other document to a person if—

- (a) the credit provider has previously made a reasonable (but unsuccessful) attempt to give a notice or other document in accordance with this Code by leaving it at, or by sending it by post, telex, facsimile or similar facility to the appropriate address of the person under section 172; and
- (b) the credit provider has reasonable grounds for believing that the person can no longer be contacted at that address.

‘(3) Joint debtors etc—general obligation. In the case of joint debtors, mortgagors or guarantors, a notice or other document must be given to each debtor, mortgagor or guarantor, except as provided by this section.

‘(4) Joint debtors etc—nomination of one of them. A notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors by being given to one of the joint debtors, mortgagors or guarantors nominated by them to receive the notice or other document on their behalf. The notice or other document need not be addressed to all of them.

‘(5) Joint debtors etc—same address. A single copy of a notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors at the same address if each of them has consented to a single copy being given and the notice or other document is addressed jointly to them. The procedure prescribed by this subsection is an alternative to the procedure prescribed by subsection (4).

‘(6) Nominated persons generally. A notice or other document may be given to a person by being given to any other person nominated by the person to receive the notice or other document on his or her behalf. However—

- (a) a debtor, mortgagor or guarantor cannot nominate the credit provider or a person associated with the credit provider; and
- (b) a mortgagor cannot nominate the debtor if the mortgage is given by a guarantor; and
- (c) a guarantor cannot nominate the debtor.

‘(7) Legal practitioners. A notice or other document may be given to a person by being given to a legal practitioner acting for the person in the matter concerned.

‘(8) Withdrawal of nomination or consent. A nomination or consent under this section ceases to have effect if it is withdrawn by the person who made or gave it.

‘(9) Form of nomination or consent. A nomination or consent under this section (or the withdrawal of any such nomination or consent) must be in the form required by the regulations.’.

Amendment of s 172 (Manner of giving notice or other document)

62.(1) Section 172(1)(a)(ii) (first mention), ‘the address of the place of residence or business of the person last known to the person giving the notice or other document’—

omit, insert—

‘an appropriate address of the person’.

(2) Section 172(1), ‘(a) to a body corporate—’—

omit, insert—

‘(b) to a body corporate—’.

(3) Section 172(2) (first mention)—

renumber as section 172(4).

(4) Section 172(2) (second mention)—

renumber as section 172(5).

(5) Section 172—

insert—

‘(2) The appropriate address of a debtor, mortgagor, guarantor or consumer lessee for the purposes of subsection (1) is—

- (a) an address nominated in writing by that person to the person giving the notice or other document; or
- (b) if there is no such nomination, the address of the place of residence of that person last known to the person giving the notice or other document.

‘(3) An appropriate address of any other person for the purposes of subsection (1) is—

- (a) an address nominated in writing by that person to the person giving the notice or other document; or
- (b) the address of the place of residence or business of that person last known to the person giving the notice or other document.’.

Amendment of s 176 (Conduct of agents and related matters)

63.(1) Section 176(2), after ‘person’s behalf.’—

insert—

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

(2) Section 176(4)—

omit.

Insertion of new s 182A

64. After section 182—

insert—

‘Offences by officers, agents or employees

‘**182A.** An officer, agent or employee of a credit provider or other person may be prosecuted for an offence against this Code or the regulations (if liable for the offence) whether or not proceedings have been taken against the credit provider or other person.’.

Amendment of sch 1 (Principal definitions)

65.(1) Schedule 1, ‘In this Code,’—

omit, insert—

‘**1.(1)** In this Code,’.

(2) Schedule 1, definitions “ordinarily resident” and “predominant”—

omit.

(3) Schedule 1—

insert—

‘ **“retained credit fees and charges”** means credit fees and charges retained by the credit provider, other than credit fees and charges passed on to (or retained in reimbursement of an amount paid to)—

- (a) a third party that is not a related body corporate (for the purposes of the Corporations Law) of the credit provider; or
- (b) a financial institution that is such a related body corporate in respect of the provision of banking services that are provided to the credit provider by the financial institution on the same terms as those services are ordinarily provided to customers who are not related to or associated with the financial institution.’.

(4) Schedule 1, definition “credit fees and charges”, paragraph (b)—

omit, insert—

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

(5) Schedule 1, definition “credit fees and charges”, paragraph (c) ‘and duties’—

omit, insert—

‘, or duties,’.

(6) Schedule 1, definition “credit fees and charges”—

insert—

‘(d) enforcement expenses.’.

(7) Schedule 1—

insert—

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

- (a) the person and the credit provider are related bodies corporate for the purposes of the Corporations Law; or
- (b) the person is a supplier in respect of whom the credit provider is a linked credit provider; or
- (c) the person is an officer, agent or employee of the credit provider, or of any such related body corporate or supplier, acting in that capacity.’.