

Queensland



**CONSUMER CREDIT  
LEGISLATION  
AMENDMENT ACT 1996**

**Act No. 38 of 1996**





# CONSUMER CREDIT LEGISLATION AMENDMENT ACT 1996

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Queensland



# **Consumer Credit Legislation Amendment Act 1996**

**Act No. 38 of 1996**

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**An Act to amend legislation about consumer credit**

*[Assented to 1 November 1996]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Consumer Credit Legislation Amendment Act 1996*.

### **Commencement**

2. The following provisions commence when the *Consumer Credit (Queensland) Act 1994*, section 4 commences—

- section 3
- part 2
- schedule.

### **Acts amended—schedule**

3. The schedule amends the Acts mentioned in it.

## **PART 2—AMENDMENT OF CREDIT ACT 1987**

### **Act amended**

4. This part amends the *Credit Act 1987*.



**Amendment of s 7 (Interpretation)**

**5.** Section 7(1), definition “**Fund**”, ‘Part 9A.’—

*omit, insert—*

‘the *Consumer Credit (Queensland) Act 1994*, section 51.’.

**Amendment of s 19 (Recognised States)**

**6.** Section 19, ‘order in council’—

*omit, insert—*

‘regulation’.

**Amendment of s 21 (Variation of application of Act)**

**7.(1)** Section 21(1), words before paragraph (a)—

*omit, insert—*

‘**(1)** A regulation may declare this Act, or the provisions of this Act stated in the regulation—’.

**(2)** Section 21(2) and (3) ‘An order in council’—

*omit, insert—*

‘A regulation’.

**(3)** Section 21(2) and (4), ‘the order’—

*omit, insert—*

‘the regulation’.

**(4)** Section 21(3) and (4), ‘such an order’—

*omit, insert—*

‘the regulation’.

**(5)** Section 21(4), ‘an order in council’—

*omit, insert—*

‘a regulation’.

(6) Section 21(5)—  
*omit.*

### **Insertion of new ss 21A and 21B**

8. After section 21—  
*insert—*

#### **‘Act not to apply to new credit contracts**

‘**21A.(1)** Subject to subsection (2), this Act does not apply to a credit contract made on or after the commencement of this section.

‘(2) This Act applies to—

- (a) a credit contract, other than a continuing credit contract, and to a mortgage or guarantee relating to such a credit contract—
  - (i) made on or after the commencement of this section if the offer to enter into it was made before the commencement; and
  - (ii) to which this Act would have applied if the credit contract had been made before the commencement; and
- (b) a credit contract, other than a continuing credit contract, and to a mortgage or guarantee relating to such a credit contract made on or after the commencement but within 1 month after the commencement if—
  - (i) the credit contract does not comply with the Consumer Credit (Queensland) Code; and
  - (ii) had the credit contract been made before the commencement, this Act would have applied to it and it would have complied with this Act.

#### **‘Act to continue to apply in certain cases**

‘**21B.(1)** Except as otherwise provided by this section, this Act continues to apply to—

- (a) a continuing credit contract entered into before the

commencement of this section, but only in respect of anything done or omitted to be done before the commencement; and

- (b) a credit contract of another kind entered into before the commencement in respect of anything done or omitted to be done, whether before or after the commencement; and
- (c) a mortgage or guarantee relating to a continuing credit contract mentioned in paragraph (a), but only in respect of anything done or omitted to be done before the commencement; and
- (d) a mortgage or guarantee relating to a credit contract mentioned in paragraph (b) in respect of anything done or omitted to be done, whether before or after the commencement.

‘(2) If the credit provider, under a contract to which this Act continues to apply, acts in accordance with the Consumer Credit (Queensland) Code, section 34, 35, 66 to 69, part 5 (except sections 75 to 77), 163, 171, 172 or 173, the credit provider is taken to have acted in accordance with the corresponding provision of this Act.

‘(3) Despite anything to the contrary in subsection (2), section 113(1)(b) continues to apply in respect of goods subject to a regulated mortgage.’.

### **Omission of pt 9, divs 1 and 2**

**9.** Part 9, divisions 1 and 2—

*omit.*

### **Omission of pt 9A (Consumer Credit Fund)**

**10.** Part 9A—

*omit.*

### **Amendment of s 155 (Governor in Council may fix maximum annual percentage rates)**

**11.(1)** Section 155(1), ‘The Governor in Council, by order in council,’—

*omit, insert—*

‘A regulation’.

(2) Section 155(2), ‘an order in council’—

*omit, insert—*

‘a regulation’.

(3) Section 155(4)—

*omit.*

### **Omission of ss 164–166**

12. Sections 164 to 166—

*omit.*

### **Omission of pt 11 (Administration)**

13. Part 11—

*omit.*

## **PART 3—AMENDMENT OF CONSUMER CREDIT (QUEENSLAND) ACT 1994**

### **Act amended**

14. This part amends the *Consumer Credit (Queensland) Act 1994*.

### **Replacement of s 3 (Definitions)**

15. Section 3—

*omit, insert—*

#### **‘Definitions for Act (other than Code)**

‘3. In this Act, other than the appendix—

“**annual report**” means the report on the department’s operations during a financial year prepared by the department’s accountable officer under

the *Financial Administration and Audit Act 1977*.

“**conduct deed**” see section 19 of this Act.

“**consumer credit**” means credit to which the Consumer Credit (Queensland) Code or the *Credit Act 1987* applies.

“**consumer credit law**” means this Act or the *Credit Act 1987*.

“**Consumer Credit (Queensland) Code**” means the provisions applying because of section 4 of this Act.

“**Consumer Credit (Queensland) Regulations**” means the provisions applying because of section 5 of this Act.

“**credit business**” means a business of providing consumer credit, and includes a business of providing consumer credit as part of, or incidentally to, carrying on another business.

“**credit business place**” see section 31 of this Act.

“**executive officer**”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“**inspector**” means a person appointed as an inspector under section 27 of this Act.

“**Ministerial Council**” means the Ministerial Council established under the Uniform Consumer Credit Laws Agreement 1993.

“**occupier**”, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

“**place**” includes premises, a place on land or waters and a vehicle.

“**prohibition order**” means an order under section 23 of this Act.

“**public place**” means a place the public is entitled to use, is open to the public or is used by the public, whether or not on payment of money.

“**unjust conduct**” see section 17 of this Act.

**‘Words and expressions in Act (other than Code)**

**‘3A.(1)** Words and expressions used in this Act, other than the appendix—

- (a) in relation to credit to which the Consumer Credit (Queensland) Code applies—have the meanings given by the Code; or
- (b) in relation to credit to which the *Credit Act 1987* applies—have the meanings given by that Act.

**‘(2)** Subsection (1) applies except so far as the context or subject matter otherwise indicates or requires.’.

**Insertion of new s 11A**

**16.** Part 5, before section 12—

*insert—*

**‘General regulation-making power for Queensland**

**‘11A.** The Governor in Council may make regulations under this Act, other than the appendix.’.

**Insertion of new s 12A**

**17.** After section 12—

*insert—*

**‘Approval of forms for Queensland**

**‘12A.** The chief executive may approve forms for use under this Act, other than the appendix.’.

**Insertion of new pts 6–10**

18. After part 5—

*insert—*

**‘PART 6—CONTROL OF CREDIT PROVIDERS’  
PRACTICES**

*‘Division 1—Preliminary*

**‘Purpose**

‘15. This part provides for controls over credit providers’ practices in addition to the controls provided for in the Consumer Credit (Queensland) Code and the *Credit Act 1987*.

**‘District Court to exercise jurisdiction**

‘16.(1) Each District Court has jurisdiction to hear and decide an application made under this part and to make an order authorised by this part.

‘(2) While exercising its jurisdiction under this part, a District Court is to be constituted by a judge sitting alone.

*‘Division 2—Unjust conduct by credit providers*

**‘Meaning of “unjust conduct”**

‘17. For this part, any of the following conduct by a credit provider is “unjust conduct”—

- (a) dishonest or unfair conduct;
- (b) anything done, or omitted to be done, in breach of a contract, whether or not a proceeding in relation to the breach has been brought;
- (c) contravening a consumer credit law or the *Credit (Rural Finance) Act 1996*.

**‘Dealing with unjust conduct**

**‘18.** If it appears to the chief executive that a credit provider has repeatedly engaged in unjust conduct in the course of a credit business, the chief executive may—

- (a) ask the credit provider to execute a deed prepared by the chief executive under section 19 of this Act; or
- (b) apply to a court for an order under section 21 of this Act.

**‘Conduct deeds**

**‘19.(1)** The chief executive may prepare a deed (a **“conduct deed”**), for execution by a credit provider, under which the credit provider agrees to—

- (a) stop engaging in stated conduct; or
- (b) conduct its credit business in a stated way; or
- (c) rectify the consequences of its past conduct in a stated way and within a stated time.

**‘(2)** A conduct deed may also contain other terms the chief executive considers appropriate.

**‘(3)** A conduct deed must state that it is made under this section.

**‘(4)** If a credit provider executes a conduct deed, the credit provider must comply with it.

Maximum penalty—500 penalty units.

**‘(5)** The chief executive may not apply for an order under section 21 of this Act in relation to particular conduct by a credit provider if—

- (a) the credit provider has executed a conduct deed; and
- (b) the conduct happened before the deed’s execution; and
- (c) the conduct is addressed by the deed; and
- (d) the credit provider has complied with the deed.



**‘Register of conduct deeds**

‘**20.(1)** The chief executive must keep a register of conduct deeds.

‘**(2)** If a credit provider executes a conduct deed, the chief executive must—

- (a) keep the executed deed and give a copy to the credit provider; and
- (b) record the prescribed particulars of the deed in the register.

‘**(3)** The register may be inspected by anyone, free of charge, during office hours.

**‘Court order restraining unjust conduct**

‘**21.(1)** On application by the chief executive, the court may make an order under this section if it is satisfied a credit provider has—

- (a) repeatedly engaged in unjust conduct in the course of a credit business; or
- (b) contravened a conduct deed it has executed.

‘**(2)** The court may make an order it considers appropriate, including, for example, that the credit provider—

- (a) stop engaging in stated conduct; or
- (b) conduct its credit business in a stated way; or
- (c) if it has contravened a conduct deed—comply with the deed; or
- (d) rectify the consequences of its past conduct in a stated way and within a stated time.

‘**(3)** If the credit provider is a corporation and the court is satisfied an executive officer of the corporation was involved in the unjust conduct or contravention of the conduct deed, the court may also make an order it considers appropriate about the officer’s future involvement in the credit provider’s conduct.

‘**(4)** A credit provider or executive officer must comply with an order made under this section.

Maximum penalty—500 penalty units.

**‘Variation or discharge of restraining order**

‘22. A court may vary or discharge an order made under section 21 of this Act on the application of the chief executive, a credit provider or another person affected by the order.

**‘Division 3—Prohibition from acting as credit provider****‘Court may make prohibition order**

‘23.(1) On application by the chief executive, the court may make an order—

- (a) prohibiting a person from providing consumer credit; or
- (b) restricting the way a person may provide consumer credit.

‘(2) The order—

- (a) may be made on terms the court considers appropriate; and
- (b) may be for a stated time or without any time limit.

‘(3) Subsection (1) applies if the court considers the person is not an appropriate person to provide consumer credit, or to provide consumer credit other than under a restriction stated in the order, having regard to whether the person—

- (a) has been convicted of an offence against a consumer credit law or the *Credit (Rural Finance) Act 1996*; or
- (b) has been convicted of an offence involving dishonesty; or
- (c) has carried on a business dishonestly or unfairly; or
- (d) is or has been a credit provider under a credit contract—
  - (i) the transaction giving rise to which has been reopened under the Consumer Credit (Queensland) Code, section 70<sup>1</sup> or the *Credit Act 1987*, part 9, division 3;<sup>2</sup> or

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<sup>1</sup> Section 70 (Court may reopen unjust transactions)

<sup>2</sup> Part 9 (Control of credit providers’ practices), division 3 (Reopening of regulated contracts and regulated mortgages)

- (ii) in relation to which a court has found, under the Consumer Credit (Queensland) Code, section 72,<sup>3</sup> that a fee, charge or change in a rate was unconscionable; or
- (e) has repeatedly engaged in unjust conduct in the course of a credit business; or
- (f) has contravened a conduct deed the person has executed; or
- (g) was involved, as an executive officer of a corporation, in a matter mentioned in paragraph (a) to (f) that applies to the corporation.

‘(4) A person must comply with an order under this section.

Maximum penalty—200 penalty units or 6 months imprisonment.

‘(5) In this section—

“**providing consumer credit**” includes being involved in providing consumer credit.

*Examples of being involved in providing consumer credit—*

1. Taking part in the management or control of a corporation or business that provides consumer credit.
2. Taking part in the negotiation of credit contracts as an employee or agent of a credit provider.

### ‘**Variation or discharge of prohibition order**

‘24. A court may vary or discharge a prohibition order on the application of the chief executive or a person affected by the order.

### ‘**Effect of prohibition order on pre-existing credit contracts**

‘25. A prohibition order made against a person does not operate in relation to a credit contract entered into before the order is made, so as to prevent the person—

- (a) receiving an amount under the contract; or
- (b) enforcing the contract; or

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<sup>3</sup> Section 72 (Court may review unconscionable interest and other charges)

- (c) unless it is a continuing credit contract, providing consumer credit under the terms of the contract existing at the time the order is made; or
- (d) providing consumer credit under the contract as varied or deferred after the order is made, but only if the variation or deferral is made at the debtor's request to enable the debtor to comply with the contract.

### **‘Civil penalty for contravening prohibition order**

**‘26.(1)** This section applies if a person (the **“prohibited person”**) provides consumer credit under a credit contract in contravention of a prohibition order.

**‘(2)** The prohibited person is not entitled to payment of any amount under the credit contract.

**‘(3)** Anyone who pays an amount under the credit contract to the prohibited person may recover the amount as a debt payable by the prohibited person.

**‘(4)** This section does not affect the liability of the prohibited person to be convicted of an offence.

## **‘PART 7—INVESTIGATION AND ENFORCEMENT**

### ***‘Division 1—Inspectors***

#### **‘Appointment of inspectors**

**‘27.(1)** The chief executive may appoint an officer or employee of the department as an inspector if—

- (a) the chief executive believes the officer or employee has the necessary expertise or experience to be an inspector; or
- (b) the officer or employee has satisfactorily completed a course of training approved by the chief executive.

‘(2) An inspector holds office for the term, and on the conditions, stated in the inspector’s instrument of appointment.

### **‘Powers of inspectors**

‘28.(1) An inspector—

- (a) has the powers given under this Act; and
- (b) is subject to the chief executive’s directions in exercising the powers.

‘(2) An inspector’s powers may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the chief executive to the inspector.

### **‘Identity card**

‘29.(1) The chief executive must give each inspector an identity card.

‘(2) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector for the consumer credit laws.

‘(3) A person who stops being an inspector must return the person’s identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(4) This section does not prevent the giving of a single identity card to a person for the consumer credit laws and other Acts or for other purposes.

### **‘Production and display of identity card**

‘30.(1) An inspector may exercise a power in relation to someone only if the inspector—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the identity card displayed so that it is clearly visible to the person.

‘(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

### *‘Division 2—Inspectors’ general powers*

#### **‘Entry to places**

‘31.(1) An inspector may enter a place if—

- (a) the inspector believes on reasonable grounds that the place is a credit business place and the entry is made when the place is open for the conduct of business or otherwise open for entry; or
- (b) its occupier consents to the entry; or
- (c) it is a public place; or
- (d) the entry is authorised by warrant.

‘(2) An inspector may also enter land around premises to gain access to the premises or to ask its occupier for consent to enter the premises.

‘(3) In this section—

“**credit business place**” means a place, other than a private dwelling, at which—

- (a) a credit business is carried on; or
- (b) there are documents relating to a credit business.

#### **‘Consent to entry**

‘32.(1) This section applies if an inspector intends to ask an occupier of a place for consent to enter the place.

‘(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

‘(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

‘(4) The acknowledgment must state the following—

- (a) that the occupier was told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier was not required to consent;
- (b) the purpose of the entry;
- (c) that the occupier gives the inspector consent to enter the place and exercise powers under this part;
- (d) the time and date the consent was given.

‘(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

‘(6) Subsection (7) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether the occupier of a place consented to an inspector entering the place under this part; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved the occupier consented to the entry.

‘(7) The court may presume the occupier did not consent.

### **‘Warrants to enter**

‘33.(1) An inspector may apply to a magistrate for a warrant for a place.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

‘(4) The magistrate may issue the warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against a consumer credit law; and
- (b) the evidence is, or may be within the next 7 days, at the place.

‘(5) The warrant must state the following—

- (a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector’s powers under this part;
- (b) the offence for which the warrant is sought;
- (c) the evidence that may be seized under the warrant;
- (d) the hours of the day or night when the place may be entered;
- (e) the date, within 14 days after the warrant’s issue, that the warrant ends.

**‘Warrants—applications made other than in person**

‘34.(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector’s remote location.

‘(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

‘(3) The inspector may apply for the warrant before the application is sworn.

‘(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to do so.



‘(5) If it is not reasonably practicable to fax a copy to the inspector—

- (a) the magistrate must tell the inspector—
  - (i) what the terms of the warrant are; and
  - (ii) the date and time the warrant was issued; and
- (b) the inspector must complete a form of warrant (the “**warrant form**”) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the warrant.

‘(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

‘(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the inspector completed a warrant form—the completed warrant form.

‘(8) On receiving the documents, the magistrate must attach them to the warrant.

‘(9) Subsection (10) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether a power exercised by an inspector was authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence.

‘(10) The court must presume that the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

**‘General powers after entering places**

‘**35.(1)** This section applies to an inspector who enters a place under section 31(1) of this Act.<sup>4</sup>

‘**(2)** For monitoring or enforcing compliance with a consumer credit law, the inspector may—

- (a) search any part of the place; or
- (b) inspect or photograph any part of the place or anything at the place; or
- (c) inspect, copy or take an extract from a document at the place; or
- (d) take to the place any persons, equipment or materials the inspector reasonably needs to exercise a power under this part; or
- (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the powers under paragraphs (a) to (d).

‘**(3)** A person must comply with a requirement under subsection (2)(e) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘**(4)** A requirement under subsection (2)(e) does not include a requirement to give information about an offence against a consumer credit law or to produce a document.<sup>5</sup>

‘**(5)** A person does not commit an offence under subsection (3) for failing to comply with a requirement unless the inspector has first warned the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

**‘Power to seize evidence**

‘**36.(1)** An inspector who enters a place under section 31(1) of this Act, other than under a warrant, may seize a thing at the place if—

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<sup>4</sup> Section 31 (Entry to places)

<sup>5</sup> For the power to require information about an offence against a consumer credit law, see section 43 of this Act. For the power to require documents to be produced, see section 44 of this Act.

- (a) the inspector reasonably believes the thing is evidence of an offence against a consumer credit law; and
- (b) if the entry was made with the occupier's consent—seizure of the thing is consistent with the purpose of the entry as told to the occupier when asking for the consent.

‘(2) An inspector who enters a place under a warrant may seize the evidence for which the warrant was issued.

‘(3) The inspector may also seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against a consumer credit law and the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence; or
- (b) the thing has just been used in committing an offence against a consumer credit law.

### ‘Powers supporting seizure

‘37.(1) Having seized a thing under this part, an inspector may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

‘(2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty—50 penalty units.

**‘Receipt for seized things**

‘**38.(1)** As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

‘**(2)** However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

‘**(3)** The receipt must describe generally each thing seized and its condition.

‘**(4)** This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing’s nature, condition and value).

**‘Return of seized things**

‘**39.(1)** An inspector must return a seized thing to its owner—

- (a) within a reasonable time; or
- (b) if a proceeding for an offence involving the thing is started within a reasonable time—at the end of the proceeding and any appeal from the proceeding.

‘**(2)** Despite subsection (1), an inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

**‘Access to seized things**

‘**40.(1)** Until a seized thing is returned, an inspector must allow its owner, or an agent of its owner, to inspect it and, if it is a document, to copy it.

‘**(2)** Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

**‘Powers to be exercised to cause least inconvenience**

‘**41.** An inspector must exercise a power under this division, in relation to a credit provider, in a way that causes as little inconvenience to the credit

provider's business as is practicable, having regard to the purpose for which the power is exercised.

*'Division 3—Other investigative powers*

**'Power to require name and address**

**'42.(1)** This section applies if—

- (a) an inspector finds a person committing an offence against a consumer credit law; or
- (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against a consumer credit law.

**'(2)** The inspector may require the person to state the person's name and residential address.

**'(3)** When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

**'(4)** The inspector may require the person to give evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address is false.

**'(5)** A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**'(6)** A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence; and
- (b) the person is not proved to have committed the offence.

**‘Power to require giving of information**

‘43.(1) This section applies if an inspector reasonably believes—

- (a) an offence against a consumer credit law has just been committed; and
- (b) a person may be able to give information about the offence.

‘(2) The inspector may, by written notice given to the person, require the person to give information about the offence.

‘(3) The notice must state that—

- (a) it is an offence to fail to give the information unless the person has a reasonable excuse; and
- (b) it is a reasonable excuse for a person to fail to give information if complying with the requirement might tend to incriminate the person.

‘(4) The person must give the information, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(5) It is a reasonable excuse for a person to fail to give information if complying with the requirement might tend to incriminate the person.

**‘Power to require production of certain documents**

‘44.(1) An officer may, by written notice given to a person, require the person to make available for inspection by an officer, or produce to the officer for inspection, at a reasonable time and place nominated by the officer, a document relating to a credit business.

‘(2) The notice must state that—

- (a) it is an offence to fail to comply with the requirement unless the person has a reasonable excuse; and
- (b) it is a reasonable excuse for a person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

‘(3) A person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(4) It is a reasonable excuse for a person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

‘(5) The officer may keep the document to copy it.

‘(6) If the officer copies the document, or an entry in the document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

‘(7) A person must comply with a requirement under subsection (6) unless the person has a reasonable excuse for not complying.

Maximum penalty—50 penalty units.

‘(8) The officer must return the document to the person as soon as practicable after copying it.

‘(9) In this section—

“**officer**” means an inspector or the chief executive.

#### **‘Unreadable documents**

‘45.(1) A power under section 44 of this Act to require production of a document includes, for an unreadable document, the power to require production of a printed document in the English language stating the information contained in the unreadable document.

‘(2) In subsection (1)—

“**unreadable document**” means a document that is not in writing, not written in the English language or is not decipherable on sight.

#### *‘Division 4—Other enforcement matters*

#### **‘False or misleading statements**

‘46.(1) A person must not state anything to an inspector that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

‘(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person’s knowledge.

### ‘Obstructing inspector

‘47. A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—50 penalty units.

### ‘Impersonating inspector

‘48. A person must not pretend to be an inspector.

Maximum penalty—100 penalty units or 6 months imprisonment.

### ‘Inspector to give notice of damage

‘49.(1) This section applies if—

- (a) an inspector damages something when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an inspector damages something.

‘(2) The inspector must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

‘(3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector’s or other person’s control, the inspector may state it in the notice.

‘(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

‘(5) This section does not apply to damage the inspector reasonably believes is trivial.

‘(6) In this section—

“**owner**”, of a thing, includes the person in possession or control of it.



**‘Compensation**

‘50.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person.

‘(2) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence brought against the person claiming compensation.

‘(3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

‘(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

**‘PART 8—CONSUMER CREDIT FUND****‘Establishment of fund**

‘51. The fund established under the *Credit Act 1987*, section 153A, within the trust and special funds of the public accounts, is continued under the name the Consumer Credit Fund.

**‘Payments to fund**

‘52.(1) The fund is the fund established and operated for the Consumer Credit (Queensland) Code, section 106.<sup>6</sup>

‘(2) The fund also consists of any other amounts paid into the fund including, for example, any of the following amounts—

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<sup>6</sup> Section 106 (Payment of penalty to fund)

- (a) an amount paid to the fund under the *Credit Act 1987*, section 87B;<sup>7</sup>
- (b) another amount paid to the fund by a credit provider;
- (c) interest and other income derived from the investment of amounts standing to the credit of the fund;
- (d) costs awarded to the chief executive by a court in a proceeding under this Act;
- (e) costs awarded to the registrar by a court in a proceeding under the *Credit Act 1987*.

### **‘Payments from fund**

**‘53.(1)** The Minister may approve the payment of an amount from the fund, on terms the Minister considers appropriate, for any of the following purposes—

- (a) providing financial counselling services to consumers;
- (b) giving legal advice to consumers about consumer credit;
- (c) improving knowledge about consumer credit.

**‘(2)** The chief executive may approve the payment of an amount from the fund for—

- (a) legal fees incurred by the chief executive, or costs awarded by a court against the chief executive, in a proceeding under this Act; or
- (b) legal fees incurred by the registrar, or costs awarded by a court against the registrar, in a proceeding under the *Credit Act 1987*; or
- (c) other expenses incurred in administering the consumer credit laws including, for example, salaries and training costs for officers of the department who administer or execute the laws.

**‘(3)** However, the total of all payments approved under subsection (2)(c) for a financial year must not be more than 30% of the highest balance of the fund for the financial year.

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<sup>7</sup> Section 87B (Court may direct payment to the Fund)

**‘Report on operations of fund**

‘54. The department’s annual report for a financial year must include a report on the operations of the fund during the year.

**‘PART 9—ADMINISTRATION*****‘Division 1—Offences*****‘Application of division**

‘55. This division does not apply to an offence against the Consumer Credit (Queensland) Code.<sup>8</sup>

**‘Offences are summary offences**

‘56. An offence against a consumer credit law is a summary offence.

**‘Start of offence proceedings**

‘57. A proceeding for an offence against a consumer credit law may be started within 3 years after the offence is committed.

**‘Liability for offences by corporations**

‘58.(1) The executive officers of a corporation must ensure the corporation complies with the consumer credit laws.

‘(2) If a corporation commits an offence against a provision of a consumer credit law, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

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<sup>8</sup> For the relevant provisions applying to the Code, see the Consumer Credit (Queensland) Code, part 11 (Miscellaneous), division 4 (Provisions relating to offences).

Maximum penalty—the penalty prescribed for the contravention of the provision by an individual.

‘(3) Evidence that a corporation has been convicted of an offence against a provision of a consumer credit law is evidence each of the corporation’s executive officers committed the offence of failing to ensure the corporation complies with the provision.

‘(4) However, it is a defence for an executive officer to prove—

- (a) the officer was not in a position to influence the corporation’s conduct in relation to the offence; or
- (b) if the officer was in a position to influence the corporation’s conduct in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision.

‘(5) In this section—

“**convicted**”, of an offence, means the corporation has been found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

### *‘Division 2—Miscellaneous*

#### **‘Chief executive may intervene**

‘59. The chief executive may intervene in a proceeding before a court under a consumer credit law and, on intervening, has standing to represent the public interest.

#### **‘Delegation**

‘60. The chief executive may delegate the chief executive’s powers under a consumer credit law to an appropriately qualified officer or employee of the department.

#### **‘Secrecy**

‘61.(1) A person who is, or has been, an officer of the department must

not—

- (a) make a record of protected information; or
- (b) disclose to a person protected information about another person.

Maximum penalty—50 penalty units.

‘(2) However, subsection (1) does not apply if the record is made or the information disclosed—

- (a) in the performance of a function under, or for, a consumer credit law; or
- (b) in a legal proceeding; or
- (c) with the consent of the person to whom the protected information relates; or
- (d) by the chief executive under subsection (3).

‘(3) If the chief executive considers it appropriate, the chief executive may disclose protected information to an officer of a Commonwealth department, or a department of another State, for the administration or execution of a law of the jurisdiction about providing credit to consumers.

‘(4) In this section—

“**officer**”, of a department, includes the chief executive and an employee of the department.

“**protected information**” means information about a person that comes to an officer’s knowledge in the course of, or because of, the officer’s functions under, or for, a consumer credit law.

### ‘Evidence

‘62.(1) In a proceeding under a consumer credit law, there is no need to prove the appointment of the Minister, the chief executive or an inspector.

‘(2) A signature purporting to be the signature of the Minister, the chief executive, an inspector or an officer or employee of the department is evidence of the signature it purports to be.

‘(3) A certificate stating that a stated document is an appointment or approval, or a copy of an appointment or approval, is evidence of the matter.

**‘Protection from liability**

**‘63.(1)** In this section—

**“official”** means—

- (a) the chief executive; or
- (b) an inspector; or
- (c) a person acting under an inspector’s direction.

**‘(2)** An official does not incur civil liability for an act done, or omission made, honestly and without negligence under a consumer credit law.

**‘(3)** A liability that would, apart from this section, attach to an official attaches instead to the State.

**‘Report on operation of consumer credit laws**

**‘64.** The department’s annual report for a financial year must include a report about the administration of the consumer credit laws during the year.

**‘PART 10—TRANSITIONAL****‘Transitional provision about undertakings and court orders**

**‘65.(1)** A deed executed by a credit provider under the *Credit Act 1987*, section 143 is taken to be a conduct deed executed under section 19 of this Act.<sup>9</sup>

**‘(2)** The register of undertakings kept under the *Credit Act 1987*, section 144 is continued under this Act as the register of conduct deeds kept under section 20 of this Act.<sup>10</sup>

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<sup>9</sup> Section 19 (Conduct deeds)

<sup>10</sup> Section 20 (Register of conduct deeds)

‘(3) An application by the registrar for a court order under the *Credit Act 1987*, section 145 that, at the commencement, had not been decided by the court, is taken to have been made under section 21 of this Act.<sup>11</sup>

‘(4) A court order under the *Credit Act 1987*, section 145 is taken to have been made under section 21 of this Act.

‘(5) An application by the registrar for a court order under the *Credit Act 1987*, section 147 that, at the commencement, had not been decided by the court, is taken to have been made under section 23 of this Act.<sup>12</sup>

‘(6) A court order under the *Credit Act 1987*, section 147 is taken to be an order made under section 23 of this Act.’.

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<sup>11</sup> Section 21 (Court order restraining unjust conduct)

<sup>12</sup> Section 23 (Court may make prohibition order)

## SCHEDULE

### CONSEQUENTIAL AND MINOR AMENDMENTS

section 3

### BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

**1. Schedule 5, section 1(4), after ‘the *Credit Act 1987*’—**

*insert—*

‘and the Consumer Credit (Queensland) Code, sections 80 and 91’.

### HIRE-PURCHASE ACT 1959

**1. Section 2(1), definition “hire-purchase agreement”—**

*insert—*

(e) that is a credit contract within the meaning of the Consumer Credit (Queensland) Code; or

(f) that is a contract for the hire of goods that, under the Consumer Credit (Queensland) Code, section 10(1), is to be regarded as a sale of goods by instalments under the Code.’.

**2. Section 2(3), from ‘, except where’ to ‘deemed to be credit sale contracts’—**

*omit.*



## SCHEDULE (continued)

**3. Section 2—***insert—***(4)** However, subsection (3) does not apply if the agreements—

- (a) are, or are taken to be, credit sale contracts within the meaning of the *Credit Act 1987*; or
- (b) are credit contracts within the meaning of the Consumer Credit (Queensland) Code; or
- (c) are to be regarded as sales of goods by instalments under the Consumer Credit (Queensland) Code.’.