



Queensland

Consumer Credit (Queensland) and Other Acts Amendment Act 2008

Act No. 26 of 2008



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Contents

		Page
Part 1	Preliminary	
1	Short title	4
2	Commencement	4
Part 2	Amendment of Consumer Credit (Queensland) Act 1994	
3	Act amended in pt 2	4
4	Amendment of s 14 (Maximum annual percentage rate)	4
5	Replacement of pt 10, hdg (Transitional)	5
6	Insertion of new pt 10, div 2	5
	Division 2 Transitional provision for Consumer Credit (Queensland) and Other Acts Amendment Act 2008, part 2	
	66 Transitional provision about maximum annual percentage rate	6
Part 3	Amendment of Legal Profession Act 2007	
7	Act amended	6
8	Amendment of s 24 (Prohibition on engaging in legal practice when not entitled)	6
9	Replacement of s 342 (Costs of assessment)	9
	342 Costs of assessment	10
10	Insertion of new ch 10	10
	Chapter 10 Other transitional provision	
	770 Transitional provision for the Consumer Credit (Queensland) and Other Acts Amendment Act 2008 .	10
Part 4	Amendment of Security Providers Act 1993	
11	Act amended in pt 4	11
12	Amendment of s 7 (Who is a security officer)	11
13	Amendment of s 10 (Application)	11

Contents

14	Amendment of s 11 (Entitlement to licences—individuals)	12
15	Amendment of s 12C (Use of information obtained under s 12, 12A or 12B)	12
16	Amendment of s 14 (Decision on application)	13
17	Replacement of s 14B (Statutory conditions)	13
	14B Statutory conditions	13
18	Amendment of s 15 (Imposed conditions)	14
19	Amendment of sch 2 (Dictionary)	15



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Consumer Credit (Queensland) and Other Acts Amendment Act 2008

Act No. 26 of 2008

An Act to amend the *Consumer Credit (Queensland) Act 1994*, the *Legal Profession Act 2007* and the *Security Providers Act 1993* for particular purposes

[Assented to 9 May 2008]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Consumer Credit (Queensland) and Other Acts Amendment Act 2008*.

2 Commencement

- (1) Parts 2 and 3 commence on a day to be fixed by proclamation.
- (2) Part 4 commences immediately after all the provisions of the *Security Providers Amendment Act 2007* have commenced.

Part 2 Amendment of Consumer Credit (Queensland) Act 1994

3 Act amended in pt 2

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

4 Amendment of s 14 (Maximum annual percentage rate)

- (1) Section 14(2)—

insert—

‘Note—

The effect of subsection (2) is that a provision of a contract is void to the extent it imposes a monetary liability in excess of the maximum annual percentage rate prescribed under subsection (1) and that any excess

amount paid under the contract may be recovered. In addition the credit provider commits an offence for entering into the contract.’

(2) Section 14—

insert—

‘(3) A regulation may require that, for calculating the annual percentage rate of a credit contract for subsection (1), not only interest charges but all credit fees and charges under the credit contract are to be included.

‘(4) If a provision of a contract is void to a particular extent because of this section and section 21(2) of the Code, nothing in this section affects the powers of the Court under part 4, division 3 of the Code in relation to the other provisions of the contract.

Note—

Part 4, division 3 of the Code allows (among other things) the Court to reopen unjust transactions.’.

5 Replacement of pt 10, hdg (Transitional)

Part 10, heading—

omit, insert—

‘Part 10 Transitional provisions

‘Division 1 Transitional provision for Consumer Credit Legislation Amendment Act 1996’.

6 Insertion of new pt 10, div 2

After section 65—

insert—

[s 7]

‘Division 2 Transitional provision for Consumer Credit (Queensland) and Other Acts Amendment Act 2008, part 2

‘66 Transitional provision about maximum annual percentage rate

- ‘(1) This section applies if a maximum annual percentage rate is prescribed for a credit contract or class of credit contract under section 14(1) after the commencement of this section.
- ‘(2) A regulation may provide that the prescribed maximum annual percentage rate applies to a credit contract entered into before the day the maximum annual percentage rate is prescribed if, after the day—
- (a) the interest charges or credit fees or charges under the credit contract are increased, or a new fee or charge is imposed, whether or not the increase is made, or a new fee or charge is imposed, under the contract; or
 - (b) the period of the credit contract is extended, whether or not under the contract, other than under section 66 of the Code.’.

Part 3 Amendment of Legal Profession Act 2007

7 Act amended

This part amends the *Legal Profession Act 2007*.

8 Amendment of s 24 (Prohibition on engaging in legal practice when not entitled)

- (1) Section 24(2)(e)—
omit.

-
- (2) Section 24(2)(f)—
renumber as section 24(2)(e).
- (3) Section 24—
insert—
- ‘(3A) It is declared that neither a PAMDA licensee nor a PAMDA employee is engaging in legal practice only because the licensee or employee provides, prepares or completes a property contract or other document as part of performing either of the following (each of which is a **PAMDA licensee’s work**)—
- (a) the work of a PAMDA licensee;
 - (b) other work ancillary or incidental to the work of a PAMDA licensee and part of the ordinary course of business undertaken generally by a PAMDA licensee.
- ‘(3B) However, a PAMDA licensee’s work does not include—
- (a) giving legal advice in relation to a property contract or other document; or
 - (b) providing, preparing or completing a document prescribed under a regulation.
- ‘(3C) For subsection (3A), it is immaterial that a fee is charged by the PAMDA licensee for a transaction in relation to which the PAMDA licensee or PAMDA employee provides, prepares or completes a property contract or other document.
- ‘(3D) However, it is material as to whether or not a person who is a PAMDA licensee or PAMDA employee is engaging in legal practice in this jurisdiction if the person commits an offence against the *Property Agents and Motor Dealers Act 2000*, section 578.
- ‘(3E) A PAMDA licensee or PAMDA employee **prepares or completes** a property contract or other document—
- (a) by inserting information in a blank space, or crossing or leaving out an alternative included, in the property contract or other document; or

[s 8]

- (b) by inserting a term into, or altering a term of, the property contract or other document if—
 - (i) the insertion or alteration—
 - (A) is authorised by a party to the proposed property contract or other document as an insertion or alteration; or
 - (B) is given in writing to the licensee or employee by a party to the proposed property contract or other document as an insertion or alteration; or
 - (C) was previously prepared by an Australian legal practitioner, whether or not in connection with the property contract or other document; and

Note for subparagraph (C)—

The provision allows the use of a precedent.
 - (ii) the licensee or employee does not change the insertion or alteration except in relation to—
 - (A) changing a detail about the transaction that is the subject of the property contract or other document; or
 - (B) crossing or leaving out an alternative, or changing the grammatical form of words, of the insertion or alteration.

Example of preparing or completing a property contract—

A PAMDA licensee gives a property contract to a seller to sign. The licensee has prepared or completed the property contract by printing the relevant form from the REIQ website and by filling in required details, including the names and addresses of the seller and buyer and the address and description of the property. The licensee also crossed out words when there were alternatives set out in the property contract.

Also the PAMDA licensee inserted 2 special conditions into the property contract. The first special condition is one the seller gave to the licensee because the property is located within a gated community and the condition related to the standard covenants for the community. The second special condition is about financing and the licensee used a special condition known by the PAMDA licensee to have been prepared by an

Australian legal practitioner for another transaction but changed details to ensure the property contract read properly.’.

(4) Section 24(7), definitions *filling in* and *PAMDA licensee*—
omit.

(5) Section 24(7)—
insert—

‘other document means—

- (a) an approved form, under an Act, relevant to a PAMDA licensee’s work; or
- (b) a document provided, prepared or completed as part of a PAMDA licensee’s work in connection with transactions relevant to a property contract;

but does not include a property contract or a document of a kind prescribed under a regulation as mentioned in subsection (3B)(b).

PAMDA employee means an employee of a PAMDA licensee, whether or not the employee is also a PAMDA licensee.

PAMDA licensee means the holder of a licence under the *Property Agents and Motor Dealers Act 2000*, that is prescribed under a regulation.

property contract means—

- (a) a form of contract or agreement generally recognised and accepted for use by PAMDA licensees when carrying out activities authorised by the *Property Agents and Motor Dealers Act 2000* in dealing with real property or an interest in real property; or
- (b) a form of contract or agreement, or a proposed contract or agreement, relating to real property or an interest in real property that was previously prepared by an Australian legal practitioner.’.

9 Replacement of s 342 (Costs of assessment)

Section 342—

[s 10]

omit, insert—

‘342 Costs of assessment

- ‘(1) A costs assessor must decide the costs of a costs assessment.
- ‘(2) Unless the costs assessor otherwise orders, the law practice to which the legal costs are payable or were paid must pay the costs of the costs assessment if—
 - (a) on the assessment, the legal costs are reduced by 15% or more; or
 - (b) the costs assessor is satisfied the law practice failed to comply with division 3.
- ‘(3) Unless the costs assessor otherwise orders if, under subsection (2), the law practice is not liable to pay the costs of the costs assessment, the costs of the assessment must be paid by the party ordered by the costs assessor to pay those costs.’

10 Insertion of new ch 10

After section 769—

insert—

‘Chapter 10 Other transitional provision

‘770 Transitional provision for the Consumer Credit (Queensland) and Other Acts Amendment Act 2008

- ‘(1) This section applies in relation to a person who, immediately before the commencement of this section, was—
 - (a) the president, the deputy president or the immediate past president (each of whom is a *relevant officer*); or
 - (b) a council member, other than a relevant officer.
- ‘(2) The law society’s power to make rules under section 696 includes power to allow a relevant officer to continue to hold office until 31 December 2008.

-
- ‘(3) Also, the law society’s power to make rules under section 696 includes power to allow a council member, other than a relevant officer, to continue to hold office as a council member until 31 December 2009.
- ‘(4) A rule made as mentioned in subsection (2) or (3) has effect despite anything to the contrary in section 685 or 686.
- ‘(5) The following applies to this section—
- (a) subsection (2) expires on 1 January 2009;
 - (b) the remaining provisions expire on 1 January 2010.’.

Part 4 Amendment of Security Providers Act 1993

11 Act amended in pt 4

This part amends the *Security Providers Act 1993*.

12 Amendment of s 7 (Who is a security officer)

Section 7(1), ‘with or without a guard dog,’—
omit.

13 Amendment of s 10 (Application)

(1) Section 10(3), from ‘sought’ to ‘under the licence.’—
omit, insert—

‘sought.’.

(2) Section 10—

insert—

‘(3A) The applicant must also state in the application—

[s 14]

- (a) if it is for carrying out the functions of a security officer—the category of functions intended to be carried out under the licence; or
- (b) if it is for carrying out the functions of a security firm—the security firm services intended to be supplied under the licence.’.

14 Amendment of s 11 (Entitlement to licences—individuals)

(1) Section 11(2)(a)—

omit, insert—

‘(a) is either—

- (i) 18 years or more; or
- (ii) for a class 2 licence for carrying out the functions of a security equipment installer—an apprentice or trainee security equipment installer; and’.

(2) Section 11(2)(b) and (2A), after ‘functions’—

insert—

‘, or the category of functions,’.

(3) Section 11(6)—

insert—

‘***apprentice or trainee*** means an apprentice or trainee within the meaning of the *Vocational Education, Training and Employment Act 2000*.’.

15 Amendment of s 12C (Use of information obtained under s 12, 12A or 12B)

Section 12C(5)(b) and (6)(b), ‘out of the’—

omit, insert—

‘out the’.

16 Amendment of s 14 (Decision on application)

- (1) Section 14(3)(b), after ‘licence’—

insert—

‘under section 15’.

- (2) Section 14(3A), ‘licence.’—

omit, insert—

‘licence and, for a security officer, the category of functions that may be carried out under the licence.’.

17 Replacement of s 14B (Statutory conditions)

Section 14B—

omit, insert—

‘14B Statutory conditions

- ‘(1) A restricted licence is subject to the conditions that the licensee—

- (a) may carry out only—

(i) for a security provider other than a security officer—the functions of each type of security provider stated in the licence; or

(ii) for a security officer—the category of functions of a security officer stated in the licence; and

- (b) when carrying out the functions must be under appropriate direct supervision.

- ‘(2) An unrestricted licence is subject to the condition that, if required in writing by the chief executive, the licensee must complete relevant approved training—

- (a) on renewal of the licence; or

(b) at 1 or more stated intervals during the term of the licence; or

(c) both on renewal of the licence and at 1 or more stated intervals during the term of the licence.

[s 18]

- ‘(3) The chief executive may make a requirement under subsection (2) only if satisfied the relevant approved training is required—
- (a) because of an increased risk to public safety or protection of property since the licensee’s latest successful completion of an approved training course or relevant approved training; or
 - (b) to update the licensee’s competency for carrying out the functions, or the category of functions, of a security provider authorised under the licence.

- ‘(4) A licensee must comply with the statutory conditions of the licence.

Note—

See section 21(1)(b) for a contravention of a condition of a licence.

- ‘(5) No appeal lies against a decision of the chief executive made under subsection (2).

- ‘(6) A court or tribunal must dismiss a proceeding started in contravention of subsection (5).

- ‘(7) In this section—

decision includes a decision affected by jurisdictional error.

relevant approved training, in relation to an unrestricted licence, means training approved by the chief executive for carrying out—

- (a) for a security provider other than a security officer—the functions of each type of security provider stated in the licence; or
- (b) for a security officer—the category of functions of a security officer stated in the licence.

Example of relevant approved training—

1 or more components of an approved training course’.

18 Amendment of s 15 (Imposed conditions)

Section 15(2)—

omit, insert—

- ‘(2) Without limiting subsection (1), for a security firm licence, the imposed conditions may include a condition that the licensee must monitor, at stated intervals, whether or not its employees who are employed as security providers are complying with this Act.’

19 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *appropriate licence*, *approved training course*, *statutory conditions* and *unrestricted licence—*

omit.

- (2) Schedule 2—

insert—

‘appropriate licence means—

- (a) for a security provider other than a security officer—a class 1 or class 2 unrestricted licence authorising the licensee to carry out the functions of the types of security provider stated in the licence; or
- (b) for a security provider who is a security officer—
- (i) a class 1 unrestricted licence authorising the licensee to carry out the category of functions of a security officer stated in the licence; or
- (ii) a class 1 restricted licence authorising the licensee to carry out the category of functions of a security officer stated in the licence, under appropriate direct supervision; or
- (c) for a security provider other than a security firm or security officer—a class 1 or class 2 restricted licence authorising the licensee to carry out the functions of the types of security provider stated in the licence, under appropriate direct supervision.

approved training course, for carrying out the functions or a category of functions of a particular type of security provider,

[s 19]

means a training course approved by the chief executive for the carrying out of the functions or the category of functions.

cash in transit category, of functions of a security officer, means the carrying out of the activities of personally guarding, patrolling or watching another person's cash or other valuables while they are in transit or being stored in connection with their transit.

category, of functions of a security officer, means—

- (a) cash in transit category; or
- (b) dog patrol category; or
- (c) monitoring category; or
- (d) unarmed category.

dog patrol category, of functions of a security officer, means the carrying out of the activities of personally guarding, patrolling or watching another person's property with a dog.

functions, of a security provider—

- (a) means the carrying out of the activities mentioned in a following provision—
 - (i) for a bodyguard—section 4A;
 - (ii) for a crowd controller—section 5;
 - (iii) for a private investigator—section 6;
 - (iv) for a security adviser—section 6A;
 - (v) for a security equipment installer—section 6B;
 - (vi) for a security firm—section 8; or
- (b) for a security officer, means 1 or more categories of functions of a security officer.

monitoring category, of functions of a security officer, means the carrying out of the activities mentioned in section 7(1)(b).

statutory condition, of a licence, means a condition to which the licence is subject under section 14B(1) or (2).

unarmed category, of functions of a security officer, means the carrying out of the activities of personally guarding, patrolling or watching another person's property—

- (a) other than as mentioned in section 7(1)(b); and
- (b) without a weapon within the meaning of the *Weapons Act 1990*.

unrestricted licence means a licence for carrying out, other than under appropriate direct supervision—

- (a) for a security provider other than a security officer—the functions of each type of security provider stated in the licence; or
- (b) for a security officer—the category of functions of a security officer stated in the licence.’.