

Queensland



**CONSUMER CREDIT
(QUEENSLAND)
AMENDMENT BILL 2002**

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CONSUMER CREDIT (QUEENSLAND) AMENDMENT BILL 2002

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2002

A BILL

FOR

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

The Parliament of Queensland enacts—	1
Clause 1 Short title	2
This Act may be cited as the <i>Consumer Credit (Queensland) Amendment Act 2002</i> .	3 4
Clause 2 Commencement	5
This Act commences on a day to be fixed by proclamation.	6
Clause 3 Code amended	7
This Act amends the Consumer Credit Code set out in the appendix to the <i>Consumer Credit (Queensland) Act 1994</i> .	8 9
Clause 4 Insertion of new s 113A	10
Part 6, division 1—	11
<i>insert—</i>	12
‘113A Time limit for application for orders under this Division	13
‘(1) Proceedings under this Division for a declaration of contravention and the imposition of a civil penalty for a contravention may not be brought after 6 years from the day the contravention happened.	14 15 16
‘(2) Subsection (1) applies despite any Act relating to the limitation of time for commencing actions.	17 18
‘(3) In this section—	19
“contravention” means contravention of a key requirement.’.	20
Clause 5 Amendment of s 140 (Advertising)	21
(1) Section 140(1), after ‘section’—	22
<i>insert—</i>	23
‘and, until the expiry of Part 9A, with the provisions of Division 2 of that Part’.	24 25

(2) At the end of section 140(4)—	1
<i>insert—</i>	2
‘This subsection does not apply while Part 9A has effect.’.	3
Clause 6 Insertion of new part 9A	4
After part 9—	5
<i>insert—</i>	6
‘PART 9A—COMPARISON RATES	7
<i>‘Division 1—Preliminary</i>	8
‘146A Object of Part	9
‘(1) The object of this Part is to assist consumers to identify the true cost of credit offered by credit providers.	10 11
‘(2) In order to achieve that object, this Part—	12
(a) makes it mandatory for credit providers to include the comparison rate in advertisements for consumer credit (other than under continuing credit contracts) if an interest rate is advertised; and	13 14 15 16
(b) requires credit providers, linked suppliers and finance brokers to supply consumers with schedules of comparison rates for any such consumer credit.	17 18 19
The comparison rate will reflect the total cost of credit arising from interest charges and other prescribed credit fees and charges.	20 21
‘146B Part not to apply to continuing credit contracts	22
‘(1) This Part does not apply to advertising or other matters about the provision of credit under continuing credit contracts.	23 24
‘(2) Accordingly, a reference in this Part to the provision of credit (or to a credit contract or related matters) does not include a reference to the provision of credit under a continuing credit contract (or to a continuing credit contract or matters related to such a contract).	25 26 27 28

‘146C Definitions	1
‘In this Part—	2
“comparison rate schedule” see section 146J.	3
“consumer credit product” means any form of facility for the provision of credit (other than under a continuing credit contract) provided to debtors by a credit provider.	4 5 6
“credit advertisement” means an advertisement in any form or medium that states or implies that credit is available, but (for the avoidance of doubt) does not include—	7 8 9
(a) notices or other documents required or authorised to be given under this Code; or	10 11
(b) a publication that only lists reference rates.	12
“finance broker” means a person who carries on the business of negotiating, or acting as intermediary to obtain, credit for persons other than the employer or principal of the person so negotiating or acting.	13 14 15 16
“name” , of a consumer credit product, means the usual name or description by which the credit provider describes or advertises the product.	17 18 19
‘146D Expiry of Part	20
‘This Part expires on the third anniversary of its commencement.	21
<i>Note—</i>	22
Section 14(3) provides that a credit provider may, before entering into a credit contract, inform the debtor of the comparison rate. Section 140(4) continues (after the expiry of this Part) the provision that an advertisement about the availability of consumer credit may contain the comparison rate.	23 24 25 26
<i>‘Division 2—Comparison rate in credit advertising</i>	27
‘146E Comparison rate mandatory in advertisements containing annual percentage rate	28 29
‘(1) A credit advertisement must contain the relevant comparison rate in accordance with this Part if it contains an annual percentage rate.	30 31

‘(2) A credit advertisement may contain the relevant comparison rate in accordance with this Part even if it does not contain an annual percentage rate.

Note—

Section 140(1) makes it an offence (maximum penalty—100 penalty units) if a person publishes a credit advertisement that does not comply with this Division.

‘146F The relevant comparison rate

‘(1) The relevant comparison rate for the purposes of section 146E is the comparison rate calculated for whichever of the designated amounts and terms most closely represents the typical amount of credit and term initially provided by the credit provider for the consumer credit product being advertised.

‘(2) The designated amounts and terms are the amounts and terms prescribed by a regulation for the purposes of this section.

‘(3) The credit advertisement may contain more than one relevant comparison rate.

‘146G Information about comparison rate

‘(1) The credit advertisement must clearly state the name of the consumer credit product, the amount of credit and the term to which each comparison rate applies.

‘(2) If the comparison rate is calculated for an amount of credit prescribed by a regulation for the purposes of this subsection, the credit advertisement must clearly state—

- (a) that the comparison rate is for a secured loan if it has been calculated on the basis that a mortgage or guarantee is taken by the credit provider; or
- (b) that the comparison rate is for an unsecured loan if it has not been so calculated.

The word “secured” or “unsecured” in connection with the amount of credit for which the comparison rate is calculated is a sufficient description for the purposes of this subsection.

‘(3) The credit advertisement must clearly state that a comparison rate schedule will be available at the premises of the credit provider, finance broker or supplier to which the advertisement relates.

‘146H Warning about comparison rate

‘(1) A comparison rate in a credit advertisement must be accompanied by a warning about the accuracy of the comparison rate that is prescribed by a regulation.

‘(2) If a comparison rate schedule comprises 2 or more documents, a separate warning must be given on each document.

‘(3) The warning may be given in conjunction with the basis on which the comparison rate is calculated, that is, that the comparison rate is accurate only for the specified amount of credit and specified term.

‘146I Other requirements for comparison rate

‘(1) A comparison rate in any credit advertisement must be identified as a comparison rate.

‘(2) A comparison rate in any credit advertisement must not be less prominent than—

(a) any annual percentage rate stated in the advertisement; and

(b) the amount of any repayment stated in the advertisement.

‘(3) The following applies to credit advertisements on television, the Internet or other electronic display medium—

(a) if the annual percentage rate is in spoken form and not displayed on the screen in text, the comparison rate must also be in spoken form;

(b) if the annual percentage rate is displayed on the screen in text, the comparison rate must also be displayed on the screen in text and may be in spoken form;

(c) if the comparison rate is in spoken form, the warning and other information may be either in spoken form or displayed on the screen in text;

(d) if the comparison rate is displayed on the screen in text, the warning and other information must also be displayed on the screen in text.

‘Division 3—Comparison rate schedules**‘146J The comparison rate schedule**

‘The comparison rate schedule is a schedule that lists, in accordance with this Part, comparison rates for consumer credit products of a credit provider.

‘146K When comparison rate schedule to be provided to consumers

‘(1) Premises of credit provider. A credit provider is required to display and make available for collection by members of the public copies of the relevant comparison rate schedule at any premises of the credit provider—

- (a) at which the credit provider displays or makes available for collection by members of the public copies of documents advertising the consumer credit products of the credit provider; or
- (b) at which members of the public may lodge applications for credit in person.

‘(2) Premises of finance broker. A finance broker is required to display and make available for collection by members of the public copies of the relevant comparison rate schedule or schedules at any premises of the finance broker—

- (a) at which the finance broker displays or makes available for collection by members of the public copies of documents advertising the consumer credit products of credit providers; or
- (b) at which members of the public may lodge applications for credit in person.

‘(3) Premises of linked suppliers. A supplier is required to display and make available for collection by members of the public copies of the relevant comparison rate schedule or schedules at any premises of the supplier—

- (a) at which the supplier displays or makes available for collection by members of the public copies of documents advertising the consumer credit products of credit providers who are linked credit providers of the supplier; or
- (b) at which members of the public may lodge applications for credit in person.

Note—

Section 117 defines “linked credit provider” for the purposes of the Code.

‘(4) Internet sites etc. A credit provider, finance broker or supplier who makes material advertising consumer credit products available on an Internet site, or on any other public electronic system, under the control of the credit provider, finance broker or supplier is to ensure that electronic access to the relevant comparison rate schedule is also available to members of the public who access that material.

‘(5) Provision of credit applications. A credit provider, finance broker or supplier is to ensure that a copy of the relevant comparison rate schedule accompanies any application for credit that is sent or given by the credit provider, finance broker or supplier to any prospective debtor.

‘146L Relevant comparison rate schedule

‘(1) The relevant comparison rate schedule or schedules for the purposes of section 146K are as follows—

- (a) in the case of the premises of a credit provider—a schedule or schedules for all of the consumer credit products of the credit provider;
- (b) in the case of the premises of a finance broker—a schedule or schedules for the consumer credit products of each credit provider with which the broker deals (except as provided by subsection (2));
- (c) in the case of the premises of a supplier—a schedule or schedules for the consumer credit products of each linked credit provider;
- (d) in the case of an Internet site or any other public electronic system—a schedule or schedules for the consumer credit product or products of each credit provider concerned;
- (e) in the case of an application for credit—a schedule or schedules for the consumer credit product or products to which the application relates.

‘(2) If a finance broker deals with the consumer credit products of more than 6 credit providers, comparison rate schedules are only required to be displayed under section 146K(2) for at least 6 credit providers (one for each of the credit providers with whose products the broker mainly deals).

‘146M Comparison rates to be listed in schedule

‘(1) The comparison rates required to be listed in a relevant comparison rate schedule for the purposes of section 146K¹ are the comparison rates calculated for each of the designated amounts of credit and terms for the consumer credit product or products concerned.

‘(2) The designated amounts and terms are the amounts and terms prescribed by a regulation for the purposes of this section.

‘(3) The comparison rate schedule for any consumer credit product need not list any of the above amounts that are not generally available in connection with that consumer credit product. If an amount is generally available, it is to be listed in the comparison rate schedule whether or not it is generally available for the term prescribed under subsection (2) for that amount.

‘(4) In the case of a comparison rate that is calculated for an amount of credit prescribed by a regulation for the purposes of this subsection, the comparison rate schedule must clearly state—

- (a) that the comparison rate is for a secured loan if it has been calculated on the basis that a mortgage or guarantee is taken by the credit provider; or
- (b) that the comparison rate is for an unsecured loan if it has not been so calculated.

The word “secured” or “unsecured” in connection with the amount of credit for which the comparison rate is calculated is a sufficient description for the purposes of this subsection.

‘(5) The comparison rate schedule must clearly state—

- (a) the name of the consumer credit product, the amount of credit and the term applicable to each comparison rate listed in the schedule; and
- (b) the annual percentage rate for each such amount of credit and term.

‘146N Form of comparison rate schedule

‘(1) A comparison rate schedule is to take the form of—

¹ Section 146K (When comparison rate schedule to be provided to consumers)

(a) a printed document (comprising one or more pages); or	1
(b) text displayed on a screen, where access to the schedule is to be made available on an Internet site, or on any other public electronic system.	2 3 4
‘(2) Comparison rates for different consumer credit products of a credit provider may be shown on a single or several comparison rate schedules.	5 6
‘146O Warning about comparison rates	7
‘(1) The comparison rates in a comparison rate schedule must be accompanied by a warning about the accuracy of the comparison rate that is prescribed by a regulation.	8 9 10
‘(2) If a comparison rate schedule comprises 2 or more documents, a separate warning must be given on each document.	11 12
‘(3) If a comparison rate schedule is displayed in text on a screen, a regulation may require more than one warning to be given.	13 14
‘146P Other requirements for comparison rate schedules	15
‘(1) A comparison rate schedule must comply with the following requirements—	16 17
(a) the schedule must have “comparison rate schedule” as its title;	18
(b) the schedule must clearly state the name of the credit provider providing the consumer credit product to which it relates (if the credit provider is ascertainable);	19 20 21
(c) the schedule must clearly state the date of its issue.	22
‘(2) A comparison rate schedule may contain—	23
(a) the name of the finance broker or supplier who displays the schedule or makes it available; and	24 25
(b) information for the purposes of contacting the credit provider, finance broker or supplier named in the schedule.	26 27
‘(3) A comparison rate schedule is not to contain any information other than that required or permitted by or under this Code.	28 29

‘146Q Offence for noncompliance with this Division	1
‘A credit provider, finance broker or supplier that contravenes a requirement of this Division is guilty of an offence.	2 3
Maximum penalty—100 penalty units.	4
<i>‘Division 4—Miscellaneous</i>	5
‘146R Calculation of comparison rates	6
‘(1) A regulation may make provision about the way in which comparison rates are to be calculated for the purposes of this Part.	7 8
‘(2) For the purposes of calculating the relevant comparison rate, credit fees or charges are not ascertainable and need not be included in the calculation if their imposition or amount is dependent on events that may or may not happen (unless a regulation under this section otherwise provides).	9 10 11 12
‘146S Compliance grace period following changes in interest or fees	13
‘A credit advertisement or comparison rate schedule does not cease to comply with this Part merely because of a change in the annual percentage rate or in any credit fees or charges during the period of 7 days after the change takes effect.	14 15 16 17
‘146T Regulations—exemptions and other matters	18
‘A regulation may make provision about the following—	19
(a) exempting any class of persons or matters from the operation of any provision of this Part;	20 21
(b) requirements with which a credit advertisement containing a comparison rate, or a comparison rate schedule, must comply.’.	22 23
Clause 7 Amendment of pt 12 (Transitional provision for Consumer Credit (Queensland) Amendment Act 2001)	24 25
(1) Part 12, heading—	26
omit, insert—	27

‘PART 12—TRANSITIONAL PROVISIONS	1
<i>‘Division 1—Transitional provision for Consumer Credit (Queensland) Amendment Act 2001’.</i>	2 3
(2) After section 185—	4
<i>insert—</i>	5
<i>‘Division 2—Transitional provision for Consumer Credit (Queensland) Amendment Act 2002</i>	6 7
‘186 Time limits under s 113A for certain civil penalty orders	8
‘(1) Section 113A does not apply in relation to a contravention of a key requirement that happened more than 2 years before the commencement of the section.	9 10 11
‘(2) Subject to subsection (1), section 113A ² applies to a contravention of a key requirement that happened before the commencement of the section.’.	12 13 14

2 Section 113A (Time limit for application for orders under this Division)