

Version No. 002
Credit Regulations 2004
S.R. No. 165/2004
Version as at 7 March 2008

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1 Objective

The objective of these Regulations is to prescribe—

- (a) matters included in and excluded from certain definitions; and
- (b) particular action to be undertaken by a registrar of the Tribunal; and
- (c) methods of calculation; and
- (d) the duration of a notice period; and
- (e) a statement prohibited in advertising; and
- (f) descriptive terms to be used in certain documents; and
- (g) requirements for print or type in documents; and
- (h) certain forms and require compliance with their positioning and lay-out.

2 Authorising provision

These Regulations are made under section 167 of the **Credit Act 1984**¹.

3 Commencement

These Regulations come into operation on 25 January 2005.

4 Definition

- (1) In these Regulations, *the Act* means the **Credit Act 1984**.
- (2) A reference in these Regulations to a Form is a reference to a Form in Schedule 1.
- (3) If a Form suggests or requires the insertion of information in a blank space, that Form is a Form in compliance with these Regulations only when each item of information is inserted as suggested or required.

5 Goods prescribed as farm machinery

The following goods are prescribed as farm machinery for the purposes of section 5(1) of the Act—

- (a) a boat within the meaning of the **Fisheries Act 1968** (as in force immediately before its repeal) that is used or intended to be used for the taking of fish within the meaning of that Act;
- (b) fishing gear or any other implement, apparatus or device for taking or facilitating the taking of fish.

6 Statutory rebate in relation to prescribed insurance charges

For the purposes of paragraph (b) of the definition of *statutory rebate* in section 5(1) of the Act—

- (a) the prescribed insurance charges are—
 - (i) amounts referred to in items 1(e)(iv), 1(e)(v) and 1(e)(vii) of Schedule 2 to the Act; and
 - (ii) amounts referred to in items 1(b)(iii), 1(b)(iv) and 1(b)(vi) of Schedule 4 to the Act; and

- (iii) amounts referred to in items 1(k)(iii), 1(k)(iv) and 1(k)(vi) of Schedule 7 to the Act; and
- (b) the prescribed manner of ascertaining the statutory rebate is by applying the following formula—

$$Y = \frac{PS (S + 1)}{T (T + 1)}$$

where—

"Y" is the amount of the statutory rebate;

"P" is the amount of insurance charges;

"S" is the number of whole months in the unexpired portion of the period for which insurance was agreed to be provided;

"T" is the number of whole months for which insurance was agreed to be provided.

7 Transfer of proceedings from Tribunal to court

If proceedings are transferred pursuant to section 6(4) of the Act to a court that is not empowered to make rules in respect of the transfer, the principal registrar of the Tribunal must—

- (a) prepare and certify a copy of the record of the proceedings; and
- (b) file the copy in the office of the principal registrar; and
- (c) deliver, or cause to be delivered, the whole of the record to the court.

8 Prescribed method for calculation of accrued credit charge

- (1) For the purposes of section 11(2) of the Act, an applicable method is followed if the amount of the credit charge which has accrued at a particular time is calculated by adding together the amounts ascertained by applying the monthly percentage rate to the unpaid monthly balances (being monthly balances up to that time, including the monthly balance for the month in which the accrued credit charged is calculated)—
 - (a) in the case of a credit sale contract—of the amount financed; or
 - (b) in the case of a loan contract—of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time.
 - (2) For the purposes of section 11(2) of the Act, an applicable method for calculating the amount of the credit charge which has accrued at a particular time is by application of the formula set out in Schedule 1 to the Act, that Schedule being, for the purpose of that application, read and construed as if it had been amended by inserting at the end of item 3(c) the following—

"; and

 - (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided."
-

(3) In this regulation—

- (a) *monthly percentage rate* means the rate determined by dividing the annual percentage rate by 12; and
- (b) *monthly balances* means monthly balances obtained by application of the actuarial method.

9 Unilateral variation of credit sale contracts and loan contracts

For the purposes of section 41(1) of the Act, the prescribed period is 7 clear days.

10 Descriptive terms to be used in certain documents

- (1) In a statement of account referred to in section 61 of the Act, a matter specified in Column 1 of Schedule 2 must be described or referred to by the term specified opposite that matter in Column 2 of Schedule 2.
- (2) A credit provider who gives a statement of account referred to in section 61 of the Act to a debtor and does not comply with the requirements of subregulation (1) is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

11 Information in default notice

For the purposes of section 107(3)(d) of the Act, Form 1 is the prescribed information.

12 Notice after taking possession of mortgaged goods

For the purposes of section 112 of the Act, Form 2 is the prescribed notice.

13 Advertisements—prohibited statement

For the purposes of section 121 of the Act, a statement of a rate of interest that is expressed otherwise than as an annual percentage rate is prescribed as a prohibited statement.

14 Notice of intended proceedings against guarantor

For the purposes of section 138(3)(c) of the Act, Form 3 is the prescribed notice.

15 Statement for guarantor under contract of guarantee

For the purposes of section 142 of the Act, Form 4 is the prescribed statement.

16 Person authorised to certify assignment of will etc.

For the purposes of section 150 of the Act, an assignment referred to in that section must be executed in the presence of, and certified by—

- (a) a magistrate; or
- (b) the Registrar of the County Court; or
- (c) a legal practitioner within the meaning of the **Legal Practice Act 1996** instructed and employed independently of the proposed assignee.

17 Prescribed requirements for print and type in documents

- (1) For the purposes of section 151(2)(b) of the Act—
 - (a) subject to paragraph (c), if any print or type is produced directly or indirectly by a method or process under which each character occupies a space of the same width, that print or type must not be smaller than 12-pitch;
 - (b) subject to paragraph (c), print or type produced by a method or process other than that referred to in paragraph (a) must be in one of the type faces specified in Schedule 3 or a type face identical in appearance to a specified type face and of, or larger than, the size of 10 point; and
-

(c) if there is in any printed or typed document a blank space in which further print or type is subsequently inserted by a method or process by which each character occupies a space of the same width, that latter print or type, when inserted, must not be smaller than 13-pitch.

(2) In this regulation—

character includes a letter, figure, symbol, punctuation mark and space between adjacent characters;

12-pitch means of dimensions such that any selected passage of print or type 25 mm in length includes no more than 12 characters and *13-pitch* has a corresponding meaning.

18 Prescribed requirements for reproduction of print or type

If the dimensions of the face measurement of print or type in a document comply with regulation 17 and that document is photographed, reproduced or copied, the face measurement of the print or type in the document produced by that photograph, reproduction or copy must, for the purposes of section 151(2)(b) of the Act, be not less than 95 per cent of the face measurement of the print or type in the original document.

19 Lay-out of certain documents

(1) Subject to sections 152 and 153 of the Act, if a notice, statement or document containing information prescribed by a Form is required to be given, served or delivered to a debtor, mortgagor or guarantor, the notice, statement or document must be in all respects—

(a) paragraphed; and

- (b) contrasted by means of bold type face or otherwise, so as to give effect to the prominence of print or type; and
- (c) set out in the contrasting print or type of upper and lower case; and
- (d) enclosed within, or containing, lines, squares or rectangles—

as appears in the Form.

- (2) A credit provider who gives, serves or delivers, or who causes to be given, served or delivered, a notice, statement or document that does not comply with subregulation (1) is guilty of an offence and liable to a penalty not exceeding 5 penalty units.
-

SCHEDULE

SCHEDULE 1

FORM 1

Regulation 11

WHAT SHOULD I DO NOW THAT I HAVE RECEIVED THIS NOTICE?

1. You should discuss this matter with your credit provider or mortgagee as soon as possible. You may be able to work out some other arrangement about your contract. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

The person to contact is
(name or title of officer/s)

of
(name of credit provider or mortgagee)

.....
(address)

Telephone No/s

2. If you cannot come to a suitable arrangement with your credit provider or mortgagee, contact Consumer Affairs Victoria immediately. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

There are other people, such as financial counsellors, who may be able to help.

3. If you disagree with anything in this notice, including what it says you owe, contact Consumer Affairs Victoria or get legal advice immediately.

FORM 2

Regulation 12

**NOTICE AFTER TAKING POSSESSION OF
MORTGAGED GOODS**

CREDIT ACT (Section 112)

....., 20....
(Date)

TO:
(name of mortgagor)
.....
(address of mortgagor)
.....
.....

FROM:
(name of mortgagee)
.....
(address of mortgagee)
.....
.....

The law says that you must be given this information.
This information tells you some of your rights and obligations and
some of the options open to you.

DETAILS YOU SHOULD KNOW

Description of the goods:
.....
Date the goods were taken:
The goods were taken because:
.....

As at the date of this Notice, the cost of enforcing the mortgage (such as the cost of taking the goods) is \$.....

Your mortgagee's estimate of the value of the goods is \$.....

HOW TO GET THE GOODS BACK

IF YOU WANT THE GOODS IT IS PARTICULARLY IMPORTANT FOR YOU TO DO ONE OF THE THINGS LISTED BELOW AS SOON AS POSSIBLE. IF YOU DO NOT ACT WITHIN 21 DAYS AFTER YOU GET THIS NOTICE, YOUR MORTGAGEE MAY SELL THE GOODS.

EITHER

* You can get the goods back if you pay \$..... and fix up any reasons why the goods were taken. This amount of \$..... is calculated as follows:

Arrears	\$
Enforcement Expenses	\$
TOTAL	\$

OR

* You can pay the net balance due to the mortgagee worked out to the actual day you pay out your contract. If you do this you can get the goods back and you do not have any further obligations.

To give you an idea of what the net balance due may be, two figures are given below. The first is the net balance due at the date of this notice. The second is the balance calculated 21 days from that date. Any difference is the result of further payments or charges that fall due between the two dates.

1. Net balance due on...../...../..... = \$.....
2. Net balance due on...../...../..... = \$.....

* IF YOU DO NOTHING, YOU WILL LOSE THE GOODS.

SALE OF THE GOODS

The law says that your mortgagee must get the best price reasonably obtainable for the goods.

If you want to, you can introduce a buyer to your mortgagee. This has to be done in writing and the buyer must be willing to pay the mortgagee's estimate of the value of the goods. Keep a copy of what you write.

Your mortgagee has to accept the buyer's offer, with one exception. The exception is where your mortgagee claims to be able to sell the goods for a price higher than the estimate of their value. In this case, the buyer has to be willing to pay this higher price if he or she still wants the goods. However if the buyer does not buy the goods at the higher price, the law says the higher price must still be taken off the amount you owe.

Your letter introducing the buyer has to reach your mortgagee before the goods are sold. If you post the letter, it is best to send it by certified mail. Then you can check that it was delivered. If you take it to your mortgagee's office, you should get an employee to sign and date something to say that your letter has been received. Make sure you keep anything that was signed by the employee.

FINALISING THE CONTRACT

No matter how the goods are sold, the money they bring in will be taken off the amount you owe.

If the goods are sold for more than what you owe, you get back what is left after—

- * your mortgagee gets the money owing under your mortgage;
- * any person holding a prior or subsequent mortgage over the goods gets the money owing under that mortgage; and
- * all costs of the sale have been paid.

If the sale price of the goods does not cover the full balance on your contract, you have to pay the difference.

GENERAL

You should discuss this matter with your mortgagee as soon as possible. You may be able to work out some alternative arrangement about your contract and mortgage. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

The person to contact is
(name or title of officer/s)

of
(name of mortgagee or agent)

(Office address)
.....

(Postal address)
.....

Telephone No/s

If you cannot come to a suitable arrangement with your mortgagee, contact Consumer Affairs Victoria immediately. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract or mortgage, then your contract may be able to be varied under the law to meet your situation.

There are other people, such as financial counsellors, who may be able to help.

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE
INFORMATION, CONTACT CONSUMER AFFAIRS
VICTORIA OR GET LEGAL ADVICE**

.....
(Signature of mortgagee or agent)

FORM 3

Regulation 14

GUARANTORS—NOTICE OF INTENDED LEGAL ACTION

CREDIT ACT (Section 138)

.....
(Date)

TO:
(name of guarantor)
.....
(address of guarantor)
.....
.....

FROM:
(name of credit provider)
.....
(address of credit provider)
.....

After 14 days from the time you receive this Notice

.....
(name of credit provider)

intends to take legal action against you under your contract of guarantee. The credit provider's reasons are given at the end of this Notice.

You will also find at the end of this Notice—

- * the amount the credit provider says you owe at the date of this Notice.
- * details to identify your contract of guarantee.
- * details to identify the debtor's credit contract.

You should discuss this matter with the credit provider as soon as possible. You may be able to work out some alternative arrangement about the amount you owe.

The person to contact is
(name or title of officer/s)

of:
(name of credit provider)

.....
(address of credit provider)

Telephone:

If you cannot come to a suitable arrangement with the credit provider, contact Consumer Affairs Victoria immediately. If you have been **unemployed, sick** or there is another **good reason** why you have problems repaying the amount owing, then your contract may be able to be varied under the law to meet your situation.

There are other people, such as financial counsellors, who may be able to help.

If you disagree with anything in this Notice including what it says you owe, contact Consumer Affairs Victoria or get legal advice immediately.

REASONS FOR INTENDED LEGAL ACTION

Under your contract of guarantee, you agreed to pay money owing under a credit contract between

..... and
(name of debtor)

.....
(name of credit provider)

if the debtor defaulted under the contract.

The debtor has defaulted under the contract in the following ways:
(Specify details of default by debtor)

.....

Also, the debtor cannot be found even though the following inquiries have been made: (Specify details of inquiries)

.....

.....

The credit provider now wants you to pay out the debtor's contract, and the reasonable costs of enforcing the guarantee.

AMOUNT THE CREDIT PROVIDER CLAIMS YOU OWE

As at the date of this Notice the credit provider claims you owe \$..... This amount is calculated as follows:

Net balance due under debtor's credit contract:	\$
Reasonable costs of enforcing your contract of guarantee:	\$
TOTAL	\$

DETAILS OF THE CONTRACT

Your contract of guarantee:

Date:

Contract No. (if any):

Debtors's credit contract:

Date:

Contract No. (if any):

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION ABOUT WHAT TO DO NEXT, CONTACT CONSUMER AFFAIRS VICTORIA OR GET LEGAL ADVICE.

.....
(Signature of credit provider or agent)

FORM 4

Regulation 15

THINGS YOU SHOULD KNOW ABOUT GUARANTEES

CREDIT ACT (Section 142)

The law says the credit provider must give you this information about your **contract of guarantee**.

This information tells you about some of the rights and obligations of yourself and the credit provider. It does not state the terms and conditions of your contract.

GUARANTEES

1. What is a guarantee?

A promise by you that the person who is getting credit under a credit contract will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract as soon as the money is asked for.

2. How do I know how much the debtor is borrowing and the credit charges?

These details are on the copy of the credit contract or offer that the debtor signed. You should have been given a copy of that contract or offer before you signed the guarantee papers.

3. What documents should I be given?

- * The document you are reading now.
- * A copy of your contract.
- * A copy of the credit contract or offer signed by the debtor.

4. What other information can I get?

If you have guaranteed repayment of a **credit sale contract** or a **loan contract**, you can write to the credit provider and ask for—

- * an extra copy of your contract of guarantee;
- * an extra copy of the debtor's credit sale contract or loan contract;
- * a copy of any other document signed by the debtor (for example, a mortgage) or by you;
- * a statement of the debtor's repayments under the credit sale contract or loan contract;
- * details of any insurance cover financed by the debtor's credit sale contract or loan contract.

When writing to the credit provider, you must pay any fee that the law says the credit provider can charge.

The credit provider will write back to you within 14 days after receiving your request.

But the credit provider has to give you this information only once in any period of 3 months.

- * You can write to the credit provider and ask for the net balance due (pay-out figure) under the credit contract guaranteed by you. You will get this information within 7 days after the credit provider receives your request. If you want to, you can also ask for details of how the balance is worked out.

But the credit provider has to give you this information only once in any period of 3 months.

5. Can I cancel my contract of guarantee?

You may be able to under certain circumstances. For exact details, contact Consumer Affairs Victoria or get legal advice.

IF THE DEBTOR DEFAULTS

6. Do I get any warning that the credit provider wants to take action against the debtor?

In most cases, yes. You get the same warning as the debtor. You get a notice in writing telling you why the credit provider wants to take action against the debtor. It also tells you what the debtor has to do to stop the action. The debtor has at least one month to try and fix up the problem. You should discuss the matter with the debtor immediately.

7. Can the credit provider take action against me without taking action against the debtor at the same time?

No, except where—

- * the debtor cannot be found; or
- * the debtor's financial affairs are being handled under bankruptcy law; or
- * a court has declared that action can be taken against you without action being taken against the debtor.

8. If the debtor cannot be found and the credit provider intends to take legal action against me do I get any warning?

Yes. You get a notice giving you at least 14 days' warning.

9. Exactly how much do I have to pay the credit provider if the debtor defaults?

You have to pay what the debtor owes the credit provider, plus the credit provider's costs in having you honour your contract of guarantee.

GENERAL

10. What can I do if I am asked to pay out the credit contract and I cannot pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying. If you cannot come to a suitable arrangement, contact Consumer Affairs Victoria for help. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

There are other people, such as financial counsellors, who may be able to help.

11. If I pay out money for a debtor, is there any way I can get it back?

You can sue the debtor. But remember, if the debtor cannot pay the credit provider, he or she probably cannot pay you back for a while, if at all.

12. What happens if I go guarantor for someone who is under 18 when he or she signs a credit contract?

You are responsible for the full debt if the contract of guarantee had a clear and obvious warning near your signature. The warning had to tell you that the courts might not let you sue the debtor if you have to pay out the credit contract for him or her.

13. Do I have any other rights and obligations?

Yes. The law does give you other rights and obligations. You should also READ YOUR CONTRACT carefully.

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AFFAIRS VICTORIA OR GET LEGAL ADVICE.

PLEASE KEEP THIS SUMMARY. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.

SCHEDULE 2

Regulation 10(1)

**SPECIFIED DESCRIPTIVE TERMS FOR USE IN A STATEMENT
OF ACCOUNT REFERRED TO IN SECTION 61 OF THE ACT**

<i>Column 1</i>	<i>Column 2</i>
<i>Matters Described or Referred to</i>	<i>Descriptive Terms</i>
1. The date of the last day of the billing cycle.	Statement date.
2. The amount owed by the debtor under the contract—	
(a) on the first day of the billing cycle;	Opening balance.
(b) on the last day of the billing cycle.	Closing balance.
3. Amounts payable by the debtor to the credit provider in respect of—	
(a) charges for installation of the goods;	Installation charges.
(b) charges for maintenance of the goods;	Maintenance charges.
(c) charges for delivery of the goods to the debtor;	Delivery charges.
(d) insurance of mortgaged property (not being compulsory insurance);	Mortgage property insurance.
(e) insurance against loss of the security interest of a mortgagee by reason of any Act;	Title insurance.
(f) insurance against sickness of, accidental injury to, or disability or death of, the debtor or debtors;	Consumer credit insurance.
(g) life insurance of the debtor or debtors;	Life insurance.
(h) insurance against unemployment of the debtor or debtors;	Unemployment insurance.
(i) insurance against loss of profits by the debtor or debtors.	Loss of profits insurance.
4. The amount of the credit charge in respect of the billing cycle.	Credit charge.
5. The date by which a payment by the debtor is requested.	Due date.

Credit Regulations 2004

Sch. 2

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<i>Column 1</i>	<i>Column 2</i>
<i>Matters Described or Referred to</i>	<i>Descriptive Terms</i>
6. The Act.	Credit Act.
7. Any one of these Regulations.	Credit Regulation.
8. The Director or the Minister for Consumer Affairs, Consumer Affairs Victoria, the Department of Justice, the Secretary to the Department of Justice.	Consumer Affairs Victoria.

SCHEDULE 3

Regulation 17(1)(b)

**PRINT OR TYPE FOR USE IN DOCUMENTS UNDER
CREDIT ACT**

Avante Garde
Avante Garde Book
Avante Garde Medium Bold
American Typewriter
American Typewriter Medium
American Typewriter Bold
Baskerville
Baskerville Roman
Baskerville Roman Italic
Baskerville Roman Bold
Bembo
Bembo Roman
Bembo Roman Italic
Bembo Bold
Bodoni
Bodoni Roman
Bodoni Roman Italic
Bodoni Bold
Century Old Style
Century Old Style Roman
Century Old Style Roman Italic
Century Old Style Bold
Century School Book
Century School Book Roman
Century School Book Roman Italic
Century School Book Bold
Clarendon
Clarendon Roman
Clarendon Roman Italic
Clarendon Bold
Claro
Claro Light

Claro Medium
Claro Medium Italic
Claro Demi-Bold
De Vinne
De Vinne Roman
De Vinne Roman Italic
De Vinne Bold
Gill Sans
Gill Sans Medium
Gill Sans Medium Italic
Gill Sans Bold
Gloucester Old Style
Gloucester Old Style Roman
Gloucester Old Style Roman Italic
Gloucester Old Style Bold
Helvetica
Helvetica Light
Helvetica Medium
Helvetica Medium Italic
Helvetica Bold
ITC Cheltenham Bold
ITC Cheltenham Light
Karnak Intermediate
Karnak Intermediate Roman
Karnak Intermediate Roman Italic
Karnak Intermediate Bold
Megaron
Megaron Light
Megaron Medium
Megaron Medium Italic
Megaron Bold
Metro
Metro Italic
Metro Bold
Musica
Musica Roman
Musica Roman Italic
Musica Bold
Old Style
Old Style Roman

Old Style Roman Italic
Old Style Bold
Optima
Optima Roman
Optima Roman Italic
Optima Bold
Plantin
Plantin Roman
Plantin Roman Italic
Plantin Bold
Press Roman Bold
Press Roman Medium
Record Gothic
Rockwell Light
Rockwell Medium
Rockwell Italic
Rockwell Bold
Souvenir
Souvenir Light
Souvenir Light Italic
Souvenir Medium
Souvenir Bold
Times (or English)
Times (or English) Roman
Times (or English) Roman Italic
Times (or English) Bold
Univers
Univers Light
Univers Medium
Univers Medium Italic
Univers Bold
Zapf
Zapf Medium

ENDNOTES

1. General Information

The Credit Regulations 2004, S.R. No. 165/2004 were made on 14 December 2004 by the Governor in Council under section 167 of the **Credit Act 1984**, No. 10097/1984 and came into operation on 25 January 2005: regulation 3.

The Credit Regulations 2004 will sunset 10 years after the day of making on 14 December 2014 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Credit Regulations 2004 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

¹ Reg. 2: Sections 19B(2) and 19B(3) of the **Credit Act 1984** provide—

- (2) If the credit provider under a contract to which this Act continues to apply acts in accordance with a provision of section 34, 35, 66 to 69, Part 5 (except sections 75 to 77), 163, 171, 172 or 173 of the Consumer Credit (Victoria) Code, the credit provider is deemed to have acted in accordance with the corresponding provision of this Act.
- (3) Despite anything to the contrary in subsection (2), section 112(1)(b) continues to apply in respect of goods subject to a regulated mortgage.