



HEIDTMAN & CO.

LAWYERS

YOUR RIGHTS UNDER CREDIT CONTRACTS

When Will A Credit Contract Be Regulated?

Credit will be regulated if:

- the debtor is an individual or a strata corporation;
- credit is intended to be provided predominantly for personal, domestic or household purposes;
- the credit provider is intending to charge for the provision of credit; or
- credit is being supplied in the course of a business of providing credit or as part of, or incidentally to any other business of the credit provider.



Which Types Of Credit Contracts Does The Code Regulate?

- Loan contracts, which include personal loans, bank term loans and housing loan contracts, entered into after 1 November 1999 regardless of the amount of the loan.
- Contracts for the sale of goods or services by installments where the requirement to make payment is deferred.
- Consumer leases such as contracts for the hire of goods under which the hirer does not have a right or obligation to purchase the goods.
- Continuing credit contracts, including pre-Code continuing contracts.

What Are Borrower's Rights Before The Contract?

The Code prohibits a credit provider

or advertiser from:

- including any false or misleading representations in a credit advertisement;
- Harassing a person to apply for credit or enter into a credit contract or a related transaction; or
- Credit hawking that is, personally visiting a consumer at their home or place of business without prior arrangement in order to induce them to apply for or obtain credit.

A fine can be imposed for contravention of these provisions, and the credit provider is liable to the consumer for any loss the consumer has suffered as a result of entering into the contract.

What Are The Pre-contractual Requirements?

The credit provider is required to give the borrower a signed copy of the contract within 14 days of the contract being made. Either at the time of the contract or within 14 days of the contract being entered into, the credit provider must also give the borrower a statement headed, 'Things You Should Know About Your Credit Sale or Loan Contract'. This statement sets out the general rights and obligations of both parties under the Act.



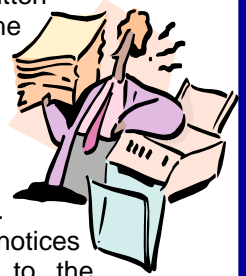
Rights During The Life Of The Regulated Contract

Both the Act and the Code provide borrowers with ongoing rights during

the life of the contract, including the right to information, the right to notices and the right to a variation of a contract in certain circumstances.

Copies of Documents

A debtor or guarantor can, at any time, make a written request to the credit provider for a copy of the contract and any other document signed by them. In addition, any notices previously given to the borrower, mortgagor or guarantor may also be obtained. The credit provider has to provide the requested documents within 14 days if the contract was entered into within 1 year or less, or within 30 days if the contract was entered into more than one year before the request was made.



Statement of Account

Statements of account must be provided under the Code within a certain period depending upon the type of contract. For a continuing card based credit contract, a statement must be provided at least every 40 days. For a non-card based continuing contract, statement of accounts are to be provided by agreement, however the statement of account must not be provided any later than a 3 month period.

The obligation to give a regular statement of account only applies



LEVEL 29, BT TOWER, 1 MARKET STREET, SYDNEY NSW 2000 TEL: (02) 9267 3388 FAX: (02) 9267 3688
 E-MAIL: mailbox@heidtmans.com.au WEBSITE: www.heidtmans.com.au ADDRESS: PO Box Q77 QVB Post Shop NSW 1230

PARTNERS: DAVID HEIDTMAN, PETER CARKAGIS, ALAN McMURRAN, PENELOPE CABLE, MANUEL THEOS
CONSULTANT: WILLIAM MALOS **SENIOR ASSOCIATE:** MICHAEL TZIRTZILAKIS
ASSOCIATES: ANNE McDONALD, VANESSA MARQUEZ-VALLEJO, ADAM MAZZAFERRO

to continuing credit contracts. However, there are exceptions to the requirement to give regular statements. For instance, where there is a contract with a fixed rate of interest, or where the account has been in arrears for some time, then the credit provider does not have to provide a statement. A debtor or guarantor can also make a written or oral request to the credit provider at any time during the contract for a statement of the amount owing.

Incorrect Statement

A borrower who has a credit contract has a right to query any amount (or anything else) appearing in a statement of account, which they believe, is incorrect. If the debtor has a continuing credit contract, the debtor must raise the dispute or query with the credit provider before the payment is due. In all other cases, a dispute should be raised with the credit provider within 30 days of receiving the disputed statement.

If the credit provider agrees with the debtor as to the disputed amount, it must give the debtor 'reasonable detail' of how the disputed liability arose and either the debtor or the credit provider may apply to have the disputed liability determined by a court.



Variations To a Contract

Credit providers are permitted to enter into a credit contract, which is more flexible than a contract regulated by the Act. For instance, a credit provider can enter into a contract with a borrower, which allows for a variation on the interest rate or the fees and the charges imposed upon the contract. The Code does, however, require in most circumstances that the borrower be notified of such variations unless the contract itself identifies how and when the variation will occur. There is also no requirement to give prior notice of the change if the debtor's obligations are being reduced although the details of the variation should be given to the debtor in the

next statement. Changes to fees and other charges in the contract are permitted, only if the contract authorises the change.

The Act also allows a contract to be varied in limited circumstances as long as all parties agree the variation to and certain notification requirements are satisfied.

Hardship Variations

Both the *Credit Act* and the *Consumer Credit Code* make it possible for the obligations under a regulated credit contract, consumer lease, mortgage or guarantee to be varied so that debtors (not mortgagors or guarantors) are better able to manage in situations of hardship.

Generally, the borrower would need to show that the hardship suffered has arisen as a result of illness, unemployment or some other reasonable and unexpected cause. If for one of these reasons the borrower encounters difficulty or hardship in maintaining repayments, the first step they should take is to try to negotiate with the credit provider for a variation of the terms of the contract. As long as the varied agreement does not breach the requirements of either the Act or the Code for the charging of fees or interest and the variation is properly documented, there is no limit to type of agreement which may be reached between the parties.



A debtor or the lessee may apply to a credit provider to vary the contract only if the maximum amount of credit that is, or may be provided under the contract is \$125,000 or less. The variation sought must be:

- to extend the period or reduce the payments
- postpone payments for a specified period, or
- to extend the period of the loan and postpone the payments for a specified period.

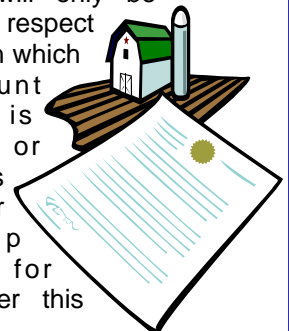
A lessee, but not a borrower can also seek a change to the annual percentage rate.

The borrower who seeks a variation should be in a position to demonstrate that they would be reasonably able to comply with their obligations if the terms of the contract were changed.

If the credit provider refuses to agree to a variation, the Code allows the debtor or lessee to go to court to seek an order that the contract be varied. The court has the power to stay any enforcement proceedings under the credit contract, or to make other orders as it sees fit, until the application has been determined.

Credit (Home Finance Contracts) Act

If a debtor has a home finance contract entered into before 1 November 1996, and is unable to meet his/her contractual obligations under their home finance contract, s/he may have a right under the *Credit (Home Finance Contracts) Act* to seek a variation of his/her contract in exactly the same way as under the Act or the Code discussed above. As at November 1996, such a variation will only be accessible in respect of contracts in which the amount financed is \$125,000 or less. There is no right for hardship variation for contracts over this amount.



Pay-out Figure

At any time during any regulated contract, a debtor or guarantor can write to the credit provider asking for a pay-out figure, and for details of how the figure was calculated. The credit provider must give a pay-out figure in writing within seven days of a written request.



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