



National Consumer Credit Protection Amendment Regulation 2012 (No.)¹

Select Legislative Instrument 2012 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *National Consumer Credit Protection Act 2009*.

Dated 2012

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Treasurer

CONSULTATION DRAFT

1 Name of regulation

This regulation is the *National Consumer Credit Protection Amendment Regulation 2012* (No.).

2 Commencement

This regulation commences on ^Date^.

3 Amendment of *National Consumer Credit Protection Regulations 2010*

Schedule 1 amends the *National Consumer Credit Protection Regulations 2010*.

Schedule 1 Amendments

(section 3)

[1] After regulation 105

insert

105A Information to be contained in statement of account

For section 175D of the Code, the information that must be contained in a statement of account is a disclosure that the lessee will not own the goods at the end of the consumer lease.

105B Information to be contained in statement of account about amount owing and other matters

For paragraph 175E (1) (d) of the Code, the other information to be contained in a statement of account is the following:

- (a) the dates on which the statement period begins and ends;
- (b) particulars of any amounts paid by the lessee to the lessor during the statement period;

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- (c) particulars of any amounts credited to the lessee's account during the statement period;
 - (d) particulars of payments debited from the lessee's account and paid to a third party during the statement period;
 - (e) any corrections to information contained in a previous statement of account.

Example for paragraph (d)

Insurance

105C Information to be contained in end of lease statement

For subsection 175H (1) of the Code, the information to be contained in an end of lease statement is the following:

- (a) the date when the consumer lease ends;
- (b) a statement that the goods leased under the consumer lease must be returned;
- (c) the date when the goods must be returned, and the particulars of how and where the goods are to be returned;
- (d) the amounts the lessee is liable to pay if the goods are not returned, expressed as an amount for each month that the goods are not returned;
- (e) a statement as to whether the lessor is prepared to negotiate the sale of the goods;
- (f) if the lessor is prepared to negotiate the sale of the goods:
 - (i) an estimate of the sale price of the goods; and
 - (ii) contact details for the person through whom the goods can be purchased.

105D Circumstances in which lessor is not required to provide an end of lease statement

For subsection 175H (2) of the Code, the circumstances in which the lessor is not required to provide an end of lease statement are:

- (a) the lessor wrote off the debt of the lessee under the consumer lease during the statement period and no further amount has been debited or credited to the account during the statement period; or

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- (b) the lessee was in default under the consumer lease during the statement period and the lessor has commenced enforcement proceedings; or
 - (c) the lessee has died, or is insolvent, and the lessee's personal representative or trustee in bankruptcy has not requested a statement of account.

105E Information to be contained in written notice about change by agreement to consumer lease

For paragraph 177A (1) (b) of the Code, the information to be contained in a written notice about a change by agreement to a consumer lease is the following:

- (a) the date of the change in the consumer lease;
- (b) particulars of any change in respect of goods hired under the consumer lease;
- (c) the amounts of any fees or charges payable after the change;
- (d) particulars of any amounts payable to third parties after the change;
- (e) the repayment details under the consumer lease:
 - (i) before the change; and
 - (ii) after the change;
- (f) the amounts of any commission to be paid by or to the lessee in relation to the change;
- (g) the period of time by which the term of the consumer lease is increased;
- (h) the proposed new expiry date for the consumer lease.

Example for paragraph (d)

Insurance

105F Hardship notice from lessor about agreement to negotiate change to consumer lease

For paragraph 177B (2) (a), a hardship notice must:

- (a) be in writing; and
- (b) be in accordance with Form 18.

[Subject to separate consultation].

105G Principles to determine amount payable on early termination of consumer lease

[Subject to separate consultation].

105H Information to be contained in statement of amount payable on termination of consumer lease

For paragraph 179A (2) (d) of the Code, the matters that must be contained in a statement of amount payable on the termination of a consumer lease are the following:

- (a) a statement as to whether the lessor is prepared to negotiate the sale of the goods;
- (b) if the lessor is prepared to negotiate the sale of the goods:
 - (i) an estimate of the sale price of the goods; and
 - (ii) contact details for the person through whom the goods can be purchased.

105I Exemption for lessors from giving one-off notice about direct debit default

- (1) For section 203B of the Code, subsection 179C (2) of the Code does not apply to a lessor if the default mentioned in subsection 179C (1) is rectified before the lessor is required to give the direct debit default notice under subsection 179C (2).
- (2) If:
 - (a) the default is rectified before the lessor is required to give the direct debit default notice under subsection 179C (2); and
 - (b) the lessor does not give the direct debit default notice; the default is not taken to be the first occasion the default occurs for paragraph 179C (1) (c).

Note Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

105J Information to be contained in one-off notice about direct debit default

For subsection 179C (3) of the Code, the information required to be contained in a one-off notice about a direct debit default is the information set out in Form 19.

105K Information to be contained in default notice

For paragraphs 179D (2) (e), (f) and (i) of the Code, the information required to be contained in a default notice is the information set out in Form 20.

105L Consent to enter residential property to take possession of goods

For subsection 179N (2) of the Code, consent by the occupier of premises to entry to the premises is taken to have been given only if the following requirements have been complied with:

- (a) a request to the occupier for entry to the premises must be made by the lessor or agent by application in writing or by calling at the premises concerned;
- (b) if the request is made personally, it may only be made between the hours of 8 am and 8 pm on any day other than a Sunday or public holiday;
- (c) the consent in writing must be in accordance with Form 21 and signed by the occupier;
- (d) the document of consent is not to be presented to the occupier for signature with, or as part of, any other document (unless the other document, or the remainder of the other document, contains only the provisions of section 179N of the Code).

Note 1 Subsection 179N (1) of the Code provides that a lessor, or an agent of the lessor, must not enter any part of premises used for residential purposes for the purpose of taking possession of goods hired under a consumer lease unless the court has authorised entry or the occupier of the premises (after being informed in writing of the provisions of section 179N) has consented in writing to the entry.

Note 2 Under subsection 179N (2) of the Code, the regulations may provide procedures for the purposes of section 179 and set out circumstances in which consent is or is not taken to have been given.

[2] Schedule 1, after Form 17

Insert

Form 18 *[Subject to separate consultation].*

Form 19 Direct debit default notice

subsection 179C(2) of the Code
regulation 105I of the Regulations

DIRECT DEBITS FROM YOUR BANK ACCOUNT

A direct debit repayment has been dishonoured (not paid). Contact us [*insert telephone number or email address*] to arrange to make your payment. Check your direct debit request before your next payment is due. Make sure you understand how your direct debit works and what to do if you have a problem.

Are you unable to make a payment?

If you cannot make a payment, you should contact us immediately. Depending on your circumstances, we may make changes to the repayments under your contract to help you repay the debt.

You can ask us to:

- extend the term of your contract and reduce repayments; or
- extend the term of your contract and delay payments for a set time; or
- delay payments for a set time without extending the term of your contract.

If we refuse your request, you can ask us to reconsider. If we still refuse, you can go to [*insert name of relevant external dispute resolution scheme*] by [*insert contact details and method(s) for lodging complaints*]. You should apply as soon as we refuse your request or if we do not respond to you within 21 days.

EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS.

Alternatively, you can seek legal advice, for example from a community legal centre or Legal Aid. There are other people, such as financial counsellors, who may be able to help.

Some useful tips on direct debits

Make sure you have the correct account number. Ensure that you have not given the wrong account number, or that the direct debit has not been dishonoured due to the account being changed or closed.

Read your Direct Debit Request Service Agreement carefully. Make sure you understand how much we will withdraw from your account and when we will withdraw it. Contact us if you need to change the dates on which the direct debit occurs.

Have adequate funds in your account to meet your payments. This will ensure you don't default again or incur a fee for not having sufficient funds in your account.

Check your bank statements. Make sure we are withdrawing the correct amount at the right time.

Cancelling your direct debit. In most situations, you can cancel a direct debit with us or with the bank or financial institution where your account is held (provided you comply with any specific requirements). However, you need to make sure you have made alternative payment arrangements with us so that you do not default on your payment. Your instruction to cancel a direct debit may have to be in writing. Contact your bank or financial institution a few days after you have sent your written notification to check that the direct debit has been cancelled.

Resolving a problem with your direct debit. If you have a problem with a direct debit you can make a complaint to us or to the bank or financial institution where your account is held. You can also contact our external dispute resolution scheme for assistance in resolving the complaint if you were unable to resolve it with us. Our external dispute resolution scheme is [*insert name of external dispute resolution scheme*] and can be contacted at [*insert telephone number, email/website and postal address*].

Get further information. If you have questions about direct debit authorities, talk to your bank or financial institution.

Form 20 Default notice – information about lessee’s rights after default

**paragraph 179D(1)(b) of the Code
regulation 105K of the Regulations**

If you cannot make a repayment:

1. Contact us immediately

Contact us [*insert telephone number or email address for dealing with financial hardship applications*] to discuss your situation. If there is a reason why you cannot make repayments we may be able to help you by agreeing to vary your contract. The sooner you contact us the easier it will be to assist you.

You have specific legal rights to request changes to be made to your contract to help you repay the debt if:

- you cannot make repayments due to hardship (for example, illness, unemployment or some other good reason); and
- you expect to be able to make the repayments if the terms of your contract are changed; and

You may request that we:

- extend the term of your contract and reduce repayments; or
- extend the term of your contract and delay payments for a set time; or
- delay payments for a set time without extending the term of your contract.

Alternatively, you may request that we negotiate with you to postpone any further action that we may take against you.

If you do not contact us **before** [*insert default notice period end date*], we may commence further action against you.

IMPORTANT

There is no guarantee that we will agree to change your contract or postpone any further action.

After we receive your application, we will provide you with a written notice within 21 days stating whether or not we agree to the change.

If we agree, you will receive a written notice detailing the agreement within 30 days.

If we refuse, we will provide you with reasons. You have the right to have the decision reviewed.

2. Right to review

If we refuse your request to change your lease, you can ask us to reconsider. If we still refuse, or if we do not respond to your request within 21 days, you can go to [*insert name of relevant external dispute resolution scheme*] by [*insert contact details and method(s) for lodging complaints*]. You should apply as soon as we refuse your request or fail to respond.

EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS.

If we fail to respond, we may have breached our obligation to you. You can contact ASIC on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

Alternatively, if we refuse, you can ask a court to make changes to your lease.

You can also ask a court to delay enforcement action against you. You may wish to get legal advice, for example from a community legal centre or Legal Aid, on how to go about this.

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

* *You can find out what the relevant threshold is by contacting us or referring to ASIC's website at <http://www.asic.gov.au> or contacting ASIC on 1300 300 630.*

Form 21 Consent to enter premises

**subsection 179N(1) of the Code
paragraph 105L (c) of the Regulations**

.....

Date

TO:

(name of lessor)

.....

(Australian credit licence number)

FROM:

(name of occupier)

.....

(address of occupier's premises)

.....

.....

(‘the premises’)

I consent to the lessor entering the premises for the purpose of taking possession of the hired goods described below.

The hired goods are:*

.....
.....

.....
.....

IMPORTANT

YOU HAVE THE RIGHT TO REFUSE
CONSENT. IF YOU DO THE LESSOR
MAY GO TO COURT FOR PERMISSION
TO ENTER THE PREMISES.

.....

(signature of occupier giving consent)

.....

(name, address and signature of lessor's
representative by whom the consent was obtained)

** Insert brief details of the hired goods.*

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.