

**Reprint
as at 6 March 2015**



**Credit Contracts and Consumer
Finance Amendment Act 2014**

Public Act 2014 No 33
Date of assent 6 June 2014
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Credit Contracts and Consumer Finance Amendment Act 2014.

2 Commencement

- (1) Sections 3 and 77 to 79 and Schedule 1 (other than clause 3 of Schedule 1AA inserted into the principal Act by that schedule) come into force on the day after the date on which this Act receives the Royal assent.
- (2) The item relating to section 44 of the Personal Property Securities Act 1999 in Schedule 3 comes into force on the day after the date on which this Act receives the Royal assent (and section 82 of this Act applies for the purposes of that item as if it were in force).
- (3) The item relating to the Fair Trading Act 1986 in Schedule 3 comes into force on 17 June 2014 (and section 82 of this Act applies for the purposes of that item as if it were in force).
- (4) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates and for different purposes.
- (5) To the extent that it is not previously brought into force under subsection (1), (2), (3), or (4), the rest of this Act comes into

force on the day that is 12 months after the date on which this Act receives the Royal assent.

- (6) In this section, **provision** includes any item, or any part of an item, in any of the schedules.

Section 2(4): section 82 brought into force, but only for the purpose of the item in Schedule 3 relating to the Private Security Personnel and Private Investigators Act 2010, on 6 March 2015, by the Credit Contracts and Consumer Finance Amendment Act 2014 Commencement Order 2015 (LI 2015/26).

3 Principal Act

This Act amends the Credit Contracts and Consumer Finance Act 2003 (the **principal Act**).

4 Section 3 replaced (Purposes)

Replace section 3 with:

“3 Purposes

- “(1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land.
- “(2) It is also the purpose of this Act—
- “(a) to promote the confident and informed participation in markets for credit by consumers; and
 - “(b) to promote and facilitate fair, efficient, and transparent markets for credit; and
 - “(c) to protect the interests of consumers under credit contracts, consumer leases, and buy-back transactions of land, both when those agreements are entered into and for their duration; and
 - “(d) to provide remedies for debtors, lessees, and occupiers (including consumers) in relation to—
 - “(i) oppressive credit contracts, consumer leases, and buy-back transactions of land; and
 - “(ii) oppressive conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land.
- “(3) To achieve the purposes referred to in subsections (1) and (2), this Act—
- “(a) requires creditors under consumer credit contracts and transferees under buy-back transactions of land to be

- responsible lenders, both when they provide credit or finance and for the duration of those agreements; and
- “(b) provides for the disclosure of adequate information to consumers under consumer credit contracts and consumer leases (both before entry into, and before variation of, such agreements)—
 - “(i) to enable consumers to distinguish between competing credit or lease arrangements; and
 - “(ii) to enable consumers to be informed of the terms of consumer credit contracts or consumer leases before they become irrevocably committed to them; and
 - “(iii) to enable consumers to monitor the performance of consumer credit contracts; and
 - “(iv) in the case of consumer leases, to make clear to consumers that consumer leases are not consumer credit contracts; and
 - “(c) provides rules about interest charges, credit fees, default fees, and payments in relation to consumer credit contracts; and
 - “(d) enables consumers to seek reasonable changes to consumer credit contracts on the grounds of unforeseen hardship; and
 - “(e) provides for the disclosure of adequate information to consumers under buy-back transactions of land and for independent legal advice to those consumers—
 - “(i) to inform consumers of the terms, the effects, and the implications of those transactions before they become irrevocably committed to them; and
 - “(ii) to enable consumers to monitor the performance of those transactions; and
 - “(f) provides rules about fees in relation to buy-back transactions of land; and
 - “(g) provides, in relation to credit contracts that include or involve a security interest,—
 - “(i) rules that apply in relation to the creditor’s rights to repossess consumer goods; and

- “(ii) corresponding rights for consumers and third parties that are affected by the exercise of the creditor’s rights; and
- “(h) applies, as appropriate, the requirements, disclosure obligations, rules, and remedies specified in paragraphs (a) to (g) in relation to guarantors.”

5 Section 4 amended (Overview)

- (1) After section 4(a), insert:
 - “(ab) Part 1A contains provisions relating to lenders’ responsibilities, including provisions for the development of a Responsible Lending Code and requirements to make publicly available standard form contract terms and information about the costs of borrowing:”.
- (2) After section 4(c), insert:
 - “(ca) Part 3A contains provisions relating to repossession of consumer goods under credit contracts:”.

6 Section 5 amended (Interpretation)

- (1) In section 5, replace the definition of **advance** with:
 - “**advance** means—
 - “(a) money provided to the debtor or to another person to the order of the debtor:
 - “(b) a pre-existing monetary obligation of the debtor that is paid, discharged, or consolidated by the creditor:
 - “(c) the cash price of any property or services that are—
 - “(i) purchased by the debtor from the creditor; or
 - “(ii) the subject of an agreement between the debtor and the creditor under which the debtor either is required to purchase the property or services from the creditor or has an option to make such a purchase:
 - “(d) in the case of the use of a credit card to purchase property or services from a person who is not the creditor or to obtain money, the agreed price of the property or services or the monetary amount, as the case may be:
 - “(e) in relation to a credit contract to which Part 3A applies that secures the obligations of the debtor as guarantor

under a guarantee, the amount of the guarantor's liability to the creditor under the guarantee".

- (2) In section 5, replace the definition of **credit fees** with:
- “**credit fees** means fees or charges payable by the debtor under a credit contract, or payable by the debtor to, or for the benefit of, the creditor in connection with a credit contract, and—
- “(a) includes—
- “(i) establishment fees:
 - “(ii) prepayment fees as defined in section 43(2) (whether in relation to part prepayments or full prepayments):
 - “(iii) insurance premiums payable for credit-related insurance if the creditor requires the debtor to obtain insurance cover from a particular insurer or particular insurers:
 - “(iv) fees and charges payable as referred to in section 45 if the other person, body, or agency referred to in that section is an associated person of the creditor; but
- “(b) does not include—
- “(i) interest charges:
 - “(ii) charges for an optional service:
 - “(iii) default fees:
 - “(iv) government charges, duties, taxes, or levies:
 - “(v) fees and charges payable as referred to in section 45 if the other person, body, or agency referred to in that section is not an associated person of the creditor”.

(3) In section 5, definition of **buy-back fees**, after “a particular insurer”, insert “or particular insurers”.

(4) In section 5, replace the definition of **guarantor** with:

“**guarantee** means a guarantee, indemnity, or liability given, assumed, or undertaken by a guarantor

“**guarantor**, in relation to a credit contract,—

“(a) means a natural person who—

 - “(i) guarantees the performance of a debtor's obligations under the contract; or

- “(ii) indemnifies a creditor against any loss that the creditor may incur in connection with the contract; or
 - “(iii) assumes liability for performing the obligations of a debtor under the contract; but
 - “(b) does not include such a person to the extent that the person indemnifies a creditor against any loss that the creditor may incur in connection with the contract under a contract of insurance”.
- (5) In section 5, definition of **interest charge**, after “credit contract”, insert “(and includes a default interest charge)”.
- (6) In section 5, definition of **security interest**, delete “, consumer lease,”.
- (7) In section 5, insert in their appropriate alphabetical order:
- “**consumer goods** means goods that are used or acquired for use primarily for personal, domestic, or household purposes
 - “**costs of borrowing**, in relation to a consumer credit contract or a credit contract to which Part 3A applies, means any or all of the following costs:
 - “(a) a credit fee:
 - “(b) a default fee:
 - “(c) interest charges
 - “**costs of the buy-back transaction**, in relation to a buy-back transaction, means any or all of the following costs:
 - “(a) the rent payable under the right to occupy:
 - “(b) the fees and charges that are payable under the transaction
 - “**costs of the lease**, in relation to a consumer lease, means any or all of the following costs:
 - “(a) payments to be made by the lessee under the lease:
 - “(b) fees or charges that are payable on a breach of the lease by the lessee or on the enforcement of the lease by the lessor
 - “**creditor’s agent** means a person authorised by a creditor to repossess consumer goods on behalf of the creditor, and includes such a person who is an employee of the creditor
 - “**default**, in Part 3A, means 1 or more breaches of a credit contract by the debtor sufficient, according to the terms of the

contract, to give rise to the creditor's right to repossess the consumer goods

“**dispute resolution scheme** means an approved dispute resolution scheme within the meaning of section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

“**financing statement**, in Part 3A, has the same meaning as in section 135 of the Personal Property Securities Act 1999

“**infringement fee** and **infringement notice** have the meanings set out in section 105A

“**infringement offence** has the meaning set out in section 102A

“**lender** has the meaning set out in section 9B

“**lender responsibility principles** means the principles set out in section 9C(2)

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**post-repossession notice** means a notice under section 83V

“**prescribed** means prescribed by regulations made under this Act

“**public holiday** means a day specified in section 44(1) of the Holidays Act 2003

“**purchase money security interest** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999

“**register of financial service providers** means the register of financial service providers established and maintained under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

“**repossession** means the exercise, or purported exercise, of the creditor's rights under a credit contract relating to consumer goods to take possession of those goods, or keys and access devices relating to those goods, whether or not the cred-

itor was previously in actual possession of those goods, keys, or access devices; and **repossess** has a corresponding meaning
“**repossession warning notice** means a notice under section 83G

“**residential premises** means a building, or part of a building, that is a house, flat, townhouse, home unit, or similar dwelling erected, or currently used, primarily and principally as a residence, and includes any land, improvements, or appurtenances belonging to the dwelling or usually enjoyed with it

“**Responsible Lending Code** or **Code** means the Code prepared and issued under section 9G and brought into force under section 9H

“**standard form contract terms**—

- “(a) means standard form contract terms that are intended to be contained (in whole or in part) in a class of agreements (as defined in section 9B) and that—
 - “(i) have been printed or otherwise prepared by, or on behalf of, the lender; and
 - “(ii) are used by the lender in concluding, or as a basis for concluding, such agreements; and
- “(b) includes standard form contract terms of a contract, an arrangement, a repayment waiver, or an extended warranty referred to in section 9B(3) or (4)”.

7 Section 8 amended (Meaning of buy-back transaction)

(1) Replace section 8(1)(e) with:

- “(e) the occupier is a natural person; and
- “(f) the relevant finance is to be used, or is intended to be used, wholly or predominantly for personal, domestic, investment, or household purposes.”

(2) After section 8(1), insert:

- “(1A) For the purposes of subsection (1)(f), the predominant purpose for which the relevant finance is to be used is—
 - “(a) the purpose for which more than 50% of the relevant finance is intended to be used; or
 - “(b) if the relevant finance is intended to be used to obtain goods or services for use for different purposes, the pur-

pose for which the goods or services are intended to be most used.

“(1B) The reference to intention in subsections (1)(f) and (1A) is a reference to the occupier’s intention.

“(1C) In this section, **relevant finance** means—

- “(a) the money provided to the occupier or to another person to the order of the occupier in connection with the transaction; or
- “(b) the amount of a payment, discharge, or consolidation of a pre-existing monetary obligation of the occupier in connection with the transaction.”

8 New section 8B inserted (Provisions affecting application of amendments to this Act)

After section 8A, insert:

“**8B Provisions affecting application of amendments to this Act** Schedule 1AA contains application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2014 (*see* section 141A).”

9 New Part 1A inserted

After section 9, insert:

“Part 1A

“Lender responsibilities

“9A Outline of Part

“(1) This Part provides for lender responsibility principles that must be complied with by creditors under certain credit contracts and transferees under buy-back transactions.

“(2) In relation to those principles, this Act provides for—

- “(a) the court to make compensation and other orders, or to grant an injunction, in respect of a breach of the principles (*see* sections 93(aa) and 96(1)(aa));
- “(b) creditors to make decisions on hardship applications under section 55 in compliance with the principles (*see* section 57A);
- “(c) creditors to comply with the principles in relation to a repossession of consumer goods (*see* sections 83E(1)(c) and 83Q):

- “(d) a District Court to order persons not to act as creditors, lessors, or transferees if those persons have failed, more than once, to comply with the principles (*see* section 108(1)(a)(v)):
- “(e) the court to have regard to compliance with the principles when deciding whether to reopen an agreement under Part 5 (*see* section 124(1)(b)).
- “(3) This Part also provides for requirements to make publicly available standard form contract terms and information about the costs of borrowing.

“Interpretation

“9B Interpretation

- “(1) In this Part, unless the context otherwise requires,—
 - “**agreement** means—
 - “(a) a consumer credit contract or a credit contract to which Part 3A applies:
 - “(b) a buy-back transaction
 - “**borrower** means any person who has entered into, or is seeking to enter into, an agreement with a lender
 - “**finance** means finance provided under a buy-back transaction
 - “**lender** means—
 - “(a) a creditor under a consumer credit contract or a credit contract to which Part 3A applies:
 - “(b) a transferee under a buy-back transaction
 - “**relevant guarantee** means a guarantee given, or proposed to be given, in respect of—
 - “(a) a consumer credit contract; or
 - “(b) a credit contract to which Part 3A applies
 - “**relevant insurance contract** means, in relation to a lender, a credit-related insurance contract entered into, or to be entered into, by a borrower if—
 - “(a) the borrower has also entered into, or is seeking to enter into, an agreement with the lender; and
 - “(b) the insurance is arranged by the lender.
- “(2) For the purposes of this Part, insurance is arranged by the lender if 1 or more of the following applies:
 - “(a) the lender is the insurer:

- “(b) the lender acts as the agent of the insurer in relation to the insurance:
 - “(c) the lender receives a commission in relation to the insurance:
 - “(d) the lender requires the borrower to obtain the insurance from a particular insurer or particular insurers:
 - “(e) the lender has in place any arrangement that has the effect of requiring the borrower to obtain the insurance from a particular insurer or particular insurers:
 - “(f) the insurance is financed under the agreement entered into by the borrower and the lender.
- “(3) If a security interest is or may be taken in connection with an agreement, the contract or arrangement that creates or provides for the security interest is to be treated as forming part of the agreement for the purposes of this Part.
- “(4) If an agreement involves a repayment waiver or an extended warranty, the repayment waiver or extended warranty is to be treated as forming part of the agreement for the purposes of this Part.

“Principles

“9C Lender responsibility principles

- “(1) Every lender must comply with the lender responsibility principles.
- “(2) The lender responsibility principles are that every lender must, at all times,—
- “(a) exercise the care, diligence, and skill of a responsible lender—
 - “(i) in any advertisement for providing credit or finance under an agreement; and
 - “(ii) before entering into an agreement to provide credit or finance and before taking a relevant guarantee; and
 - “(iii) in all subsequent dealings with a borrower in relation to an agreement or a guarantor in relation to a relevant guarantee; and
 - “(b) comply with all the lender responsibilities specified in subsections (3), (4), and (5).

- “(3) The lender responsibilities are that a lender must, in relation to an agreement with a borrower,—
- “(a) make reasonable inquiries, before entering into the agreement, so as to be satisfied that it is likely that—
 - “(i) the credit or finance provided under the agreement will meet the borrower’s requirements and objectives; and
 - “(ii) the borrower will make the payments under the agreement without suffering substantial hardship; and
 - “(b) assist the borrower to reach an informed decision as to whether or not to enter into the agreement and to be reasonably aware of the full implications of entering into the agreement, including by ensuring that—
 - “(i) any advertising is not, or is not likely to be, misleading, deceptive, or confusing to borrowers; and
 - “(ii) the terms of the agreement are expressed in plain language in a clear, concise, and intelligible manner; and
 - “(iii) any information provided by the lender to the borrower is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing; and
 - “(c) assist the borrower to reach informed decisions in all subsequent dealings in relation to the agreement, including by ensuring that—
 - “(i) any variation to the agreement is expressed in plain language in a clear, concise, and intelligible manner; and
 - “(ii) any information provided by the lender to the borrower after the agreement has been entered into is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing; and
 - “(d) treat the borrower and their property (or property in their possession) reasonably and in an ethical manner, including—

- “(i) when breaches of the agreement have occurred or may occur or when other problems arise:
- “(ii) when a debtor under a consumer credit contract suffers unforeseen hardship (*see* section 55):
- “(iii) during a repossession process (including by taking all reasonable steps to ensure that goods and property are not damaged during the process, that repossessed goods are adequately stored and protected, and that the right to enter premises is not exercised in an unreasonable manner); and
- “(e) ensure, in the case of an agreement to which Part 5 applies, that—
 - “(i) the agreement is not oppressive:
 - “(ii) the lender does not exercise a right or power conferred by the agreement in an oppressive manner:
 - “(iii) the lender does not induce the borrower to enter into the agreement by oppressive means; and
- “(f) meet all the lender’s legal obligations to the borrower, including under this Act, the Fair Trading Act 1986, the Consumer Guarantees Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Advisers Act 2008, which include—
 - “(i) obligations in relation to disclosure, credit fees, unforeseen hardship applications, and credit repossession under this Act; and
 - “(ii) prohibitions on false or misleading representations and unfair contract terms under the Fair Trading Act 1986; and
 - “(iii) the guarantee that the service of providing credit and any other services will be carried out with reasonable care and skill under the Consumer Guarantees Act 1993.
- “(4) The lender responsibilities are also that a lender must, in relation to a relevant guarantee that is taken by the lender,—
 - “(a) make reasonable inquiries, before the guarantee is given, so as to be satisfied that it is likely that the guarantor will be able to comply with the guarantee without suffering substantial hardship; and

- “(b) assist the guarantor to reach an informed decision as to whether or not to give the guarantee and to be reasonably aware of the full implications of giving the guarantee, including by ensuring that—
 - “(i) the terms of the guarantee are expressed in plain language in a clear, concise, and intelligible manner; and
 - “(ii) any information provided by the lender to the guarantor is not presented in a manner that is or is likely to be misleading, deceptive, or confusing; and
 - “(c) treat the guarantor reasonably and in an ethical manner, including when breaches of a credit contract to which the guarantee applies have occurred or may occur or when other problems arise; and
 - “(d) ensure, in the case of a guarantee that is to be treated as forming part of a credit contract for the purposes of Part 5 under section 119, that—
 - “(i) the guarantee is not oppressive;
 - “(ii) the lender does not exercise a right or power conferred by the guarantee in an oppressive manner;
 - “(iii) the lender does not induce the guarantor to give the guarantee by oppressive means; and
 - “(e) meet all the lender’s legal obligations to the guarantor, including under the Acts specified in subsection (3)(f).
- “(5) The lender responsibilities are also that a lender must, in relation to a relevant insurance contract,—
- “(a) make reasonable inquiries, before the contract is entered into, so as to be satisfied that it is likely that—
 - “(i) the insurance provided under the contract will meet the borrower’s requirements and objectives; and
 - “(ii) the borrower will make the payments under the contract without suffering substantial hardship; and
 - “(b) assist the borrower to reach an informed decision as to whether or not to enter into the contract and to be reasonably aware of the full implications of entering into the contract, including by ensuring that—

- “(i) any advertising distributed by the lender is not, or is not likely to be, misleading, deceptive, or confusing to borrowers; and
 - “(ii) any information provided by the lender to the borrower is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing.
- “(6) Subsections (3)(b)(iii) and (c)(ii), (4)(b)(ii), and (5)(b)(ii) do not apply to information that is subject to section 32(1).
- “(7) For the purposes of the inquiries required under subsections (3)(a), (4)(a), and (5)(a), the lender may rely on information provided by the borrower or guarantor unless the lender has reasonable grounds to believe the information is not reliable.

“9D Proceedings for breach of legal obligations under other Acts

- “(1) This section applies if, in relation to a legal obligation referred to in section 9C(3)(f) or (4)(e),—
- “(a) conduct by a person constitutes a breach of an Act (other than this Act); and
 - “(b) proceedings have been commenced under that other Act in respect of that conduct.
- “(2) Proceedings may not be commenced under this Act in respect of the same conduct on the basis of a breach of section 9C(3)(f) or (4)(e).
- “(3) Subsection (2) applies unless the court orders otherwise.
- “(4) This section does not prevent proceedings from being commenced as a result of a breach of section 9C(2)(a), (3)(a) to (e), or (4)(a) to (d).

“Responsible Lending Code

“9E Purpose of Responsible Lending Code

- “(1) The purpose of the Responsible Lending Code is to—
- “(a) elaborate on the lender responsibility principles specified in section 9C(2); and
 - “(b) offer guidance on how those principles may be implemented by lenders.
- “(2) The Responsible Lending Code is not binding.

“(3) However, in any proceedings relating to this Act, evidence of a lender’s compliance with the provisions of the Responsible Lending Code is to be treated as evidence of compliance with the lender responsibility principles.

“9F Content of Responsible Lending Code

“(1) In order to achieve its purpose, the Responsible Lending Code may set out any, or all, of the following:

“(a) the nature and extent of inquiries a lender should make before entering into an agreement, before a relevant guarantee is given, or before a relevant insurance contract is entered into:

“(b) the processes, practices, or procedures that a lender should follow—

“(i) to ensure that advertising for providing credit or finance under agreements is not, or is not likely to be, misleading, deceptive, or confusing to borrowers:

“(ii) when making reasonable inquiries referred to in section 9C(3)(a), (4)(a), and (5)(a) so as to be satisfied of the matters referred to in those paragraphs:

“(iii) to give the assistance referred to in section 9C(3)(b) and (c), (4)(b), and (5)(b) (including where the borrower’s or guarantor’s first language is not English):

“(iv) to ensure that the lender treats borrowers, guarantors, and their property (or property in their possession) reasonably and in an ethical manner:

“(v) in the case of an agreement or a guarantee to which Part 5 applies, to ensure that the agreement or guarantee is not oppressive, the lender does not exercise a right or power conferred by the agreement or guarantee in an oppressive manner, and the lender does not induce the borrower to enter into the agreement, or the guarantor to give the guarantee, by oppressive means:

“(vi) to promote or facilitate compliance with the legal obligations referred to in section 9C(3)(f) and

- (4)(e) (for example, by reference to compliance programmes):
- “(vii) to ensure that fees are not unreasonable in terms of section 41, 80, or 82:
 - “(c) the circumstances in which the lender should require or recommend independent legal advice to be obtained:
 - “(d) the processes, practices, or procedures that a lender should follow for the purposes of Part 3A:
 - “(e) any other matter that promotes or facilitates the lender responsibility principles (set out in section 9C(2)) and that is not inconsistent with any other enactment.
- “(2) The Code may also contain different provisions in relation to particular—
- “(a) lenders or classes of lenders:
 - “(b) borrowers or classes of borrowers:
 - “(c) guarantors or classes of guarantors:
 - “(d) agreements or classes of agreements.

“How Responsible Lending Code made and administered

“9G Preparation and issue of Responsible Lending Code

- “(1) The Minister must prepare and issue the Responsible Lending Code.
- “(2) The Minister may use any process that the Minister considers appropriate to develop the Code, but must—
- “(a) publish a draft Code and release it to the public:
 - “(b) consult persons, or representatives of such persons, that the Minister considers will be substantially affected by the Code:
 - “(c) consider comments received on the draft Code:
 - “(d) prepare a revised Code in response to comments received:
 - “(e) consult the Minister of Commerce and the Minister of Finance:
 - “(f) consider comments received from those Ministers:
 - “(g) issue the Code.

“9H Responsible Lending Code comes into force by notice in Gazette

- “(1) After the Minister has issued the Code, as provided for in section 9G(2), the Minister must give notice in the *Gazette* of the date or dates on which the provisions of the Code come into force.
- “(2) The notice may state different dates for different provisions, but no date may be before the 28th day after the date on which the notice is published in the *Gazette*.
- “(3) Each provision in the Code comes into force on the date stated in the notice that applies to the provision.
- “(4) The Code and the notice are each disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- “(5) The Ministry must ensure that the Code is available at all reasonable times on an Internet site maintained by or on behalf of the Ministry.

“9I Amendment of Responsible Lending Code

- “(1) The Minister may, at any time, amend or replace the Responsible Lending Code.
- “(2) Sections 9G and 9H apply, with any necessary modifications, to any amendment to, or replacement of, the Code.
- “(3) However, in the case of a minor amendment that does not materially affect the Code, the Minister need not comply with section 9G(2)(a) to (f).

*“Publication of standard form contract terms
and disclosure of costs of borrowing*

“9J Publication of standard form contract terms

- “(1) Every lender who, in relation to an agreement, uses standard form contract terms must ensure that those terms are publicly available in accordance with this section.
- “(2) For the purposes of subsection (1), a lender does not use particular standard form contract terms if the lender has ceased to offer agreements that contain those terms.

- “(3) For the purposes of subsection (1),—
- “(a) if the lender has an Internet site, the lender must display prominently and clearly a copy of the standard form contract terms on that site; and
 - “(b) if the lender operates from business premises that are accessible to the public, the lender must display prominently and clearly on those premises a notice that a copy of those terms is available on request (free of charge).
- “(4) The lender must, immediately after receiving the request of any person, supply a copy of its standard form contract terms, free of charge, to that person (regardless of whether subsection (3) applies).
- “(5) The lender may, for the purposes of subsection (4), supply the copy by way of an electronic communication if the person who made the request consents to receive the copy in that manner.

“**9K Publication of costs of borrowing**

- “(1) Every creditor must ensure that information about all the costs of borrowing in relation to every class of credit contract offered by that creditor is publicly available in accordance with this section.
- “(2) In this section, **credit contract** means a consumer credit contract or credit contract to which Part 3A applies.
- “(3) For the purposes of subsection (1),—
- “(a) if the creditor has an Internet site, the creditor must display prominently and clearly on that site the creditor’s credit fees, default fees, and annual rates of interest (and default interest charge rates) in relation to every class of credit contract referred to in subsection (1); and
 - “(b) if the creditor operates from business premises that are accessible to the public, the creditor must display prominently and clearly on those premises a notice that a copy of the information about those credit fees, default fees, and rates is available on request (free of charge).
- “(4) The creditor must, immediately after receiving the request of any person, supply a copy of the information referred to in

subsection (1), free of charge, to that person (regardless of whether subsection (3) applies).

- “(5) Information about rates of interest may be expressed by reference to a range.
- “(6) Information made publicly available under this section must—
- “(a) contain the prescribed information; and
 - “(b) be in the prescribed form (if any).

“9L Extended meaning of business premises

- “(1) In sections 9J and 9K, **business premises** includes a vehicle, stand, or stall from which goods are offered or exposed for sale, or from which goods may be ordered, if those goods may be sold under a credit sale.
- “(2) In subsection (1), **vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998.”

10 Section 11 amended (Meaning of consumer credit contract)

- (1) Replace section 11(1)(b) with:
- “(b) the credit is to be used, or is intended to be used, wholly or predominantly for personal, domestic, or household purposes; and”.
- (2) After section 11(1), insert:
- “(1A) For the purposes of subsection (1)(b), the predominant purpose for which the credit is to be used is—
- “(a) the purpose for which more than 50% of the credit is intended to be used; or
 - “(b) if the credit is intended to be used to obtain goods or services for use for different purposes, the purpose for which the goods or services are intended to be most used.
- “(1B) The reference to intention in subsections (1)(b) and (1A) is a reference to the debtor’s intention.”

11 Section 14 amended (Effect of declaration)

In section 14(1) and (2), replace “primarily” with “wholly or predominantly”.

12 Section 15 amended (Certain contracts not consumer credit contracts)

In section 15(1)(a), replace “the day the contract is made” with “the day the contract is entered into”.

13 New section 15A inserted (Part does not apply to pawnbroking contract)

After section 15, insert:

“15A Part does not apply to pawnbroking contract

- “(1) This Part does not apply to a pawnbroking contract if—
- “(a) the contract was entered into by a pawnbroker in the ordinary course of the pawnbroker’s business in accordance with the Secondhand Dealers and Pawnbrokers Act 2004; and
 - “(b) in the case that the pledger is in default of his or her obligations under the pawnbroking contract or does not redeem his or her pawned goods on or before the redemption date, the pawnbroker’s only right of recourse is under section 63 of the Secondhand Dealers and Pawnbrokers Act 2004.
- “(2) In this section, **pawnbroker** has the same meaning as in section 4 of the Secondhand Dealers and Pawnbrokers Act 2004.”

14 Section 16 amended (Lease of goods treated as consumer credit contract)

- (1) In section 16(1), after “credit sale”, insert “, a credit contract,”.
- (2) Replace section 16(1)(b) with:
 - “(b) the goods are hired, or intended to be hired, wholly or predominantly for personal, domestic, or household purposes; and”.
- (3) After section 16(1), insert:
 - “(1A) For the purposes of subsection (1)(b), the predominant purpose for which the goods are hired is, if the goods are intended to be used for different purposes, the purpose for which the goods are intended to be most used.
 - “(1B) The reference to intention in subsections (1)(b) and (1A) is a reference to the lessee’s intention.”
- (4) After section 16(2), insert:

- “(3) If subsection (1) applies,—
- “(a) the lessor under the lease is to be treated as a creditor;
and
 - “(b) the lessee under the lease is to be treated as a debtor;
and
 - “(c) this Act applies with all other necessary modifications
as if the lease were a credit sale, a credit contract, and a
consumer credit contract.
- “(4) If a lease is to be treated as a credit contract under subsection
(1), then, for the purposes of the Financial Service Providers
(Registration and Dispute Resolution) Act 2008,—
- “(a) the lease is to be treated as a credit contract; and
 - “(b) the lessor under the lease is to be treated as a creditor;
and
 - “(c) that Act applies with all other necessary modifications
as if the lease were a credit contract.”

15 Section 17 amended (Initial disclosure)

- (1) Replace section 17(1) with:
- “(1) Every creditor under a consumer credit contract must ensure
that disclosure of as much of the key information set out in
Schedule 1 as is applicable to the contract is made to every
debtor under the contract before the contract is entered into.”
- (2) In section 17(2), replace “contract—” with “contract before
the contract is entered into.”
- (3) Repeal section 17(2)(a) and (b).

**16 Section 19 amended (Content of continuing disclosure
statement)**

- (1) In section 19(h), replace “percentages)” with “percentages);
and”.
- (2) After section 19(h), insert:
- “(i) in the case of a credit card contract, a prescribed min-
imum repayment warning (for example, to warn that
if the debtor makes only a minimum payment each
month, the debtor will pay more interest and it will
take the debtor longer to pay off the unpaid balance)

and other prescribed information in connection with payments under a credit card contract.”

- (3) In section 19, insert as subsection (2):
- “(2) For the purposes of subsection (1)(i),—
- “(a) a **credit card contract** is a revolving credit contract under which credit is ordinarily obtained only by the use of a credit card:
- “(b) a **credit card** is—
- “(i) a card of a kind commonly known as a credit card; or
- “(ii) a card of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit; or
- “(iii) anything else that may be used as a card referred to in subparagraph (i) or (ii).”

17 Section 21 amended (Continuing disclosure not required)
Repeal section 21(1)(a).

18 Section 22 amended (Disclosure of agreed changes)

- (1) In section 22(3), replace “Disclosure is not required under this section in relation to a change that—” with “Despite subsection (2), disclosure may, instead of being made in accordance with that subsection, be made in accordance with subsection (4), but only if the change is one that—”.
- (2) Replace section 22(3)(d) with:
- “(d) increases any credit limit under the consumer credit contract.”
- (3) After section 22(3), insert:
- “(4) The disclosure referred to in subsection (3) may be made, at the creditor’s discretion, either—
- “(a) within 5 working days of the day on which the change takes effect; or
- “(b) if the creditor is required to make continuing disclosure under section 18, at the same time as the creditor provides the debtor with the next continuing disclos-

ure statement (as required under that section) after the change takes effect.”

19 Section 23 amended (Disclosure of changes following exercise of power)

- (1) After section 23(1)(c), insert:

“(d) the amount of a credit limit under the contract.”
- (2) In section 23(5), replace “Disclosure is not required under this section in relation to—” with “Despite subsection (3), disclosure may, instead of being made in accordance with that subsection, be made in accordance with subsection (6), but only in relation to—”.
- (3) Repeal section 23(5)(a)(iii).
- (4) Replace section 23(5)(b) with:

“(b) a change of any class prescribed by regulations to be a class of change to which this subsection applies.”
- (5) After section 23(5), insert:

“(6) The disclosure referred to in subsection (5) may be made, at the creditor’s discretion,—

 - “(a) within 5 working days of the day on which the change takes effect; or
 - “(b) if the creditor is required to make continuing disclosure under section 18, at the same time as the creditor provides the debtor with the next continuing disclosure statement (as required under that section) after the change takes effect.”

20 Section 24 amended (Request disclosure)

- (1) Replace section 24(2)(g) with:

“(g) a continuing disclosure statement containing as much of the information specified in section 19 as is applicable to the consumer credit contract for any reasonable statement period specified by the debtor or guarantor.”
- (2) After section 24(2), insert:

“(2A) Subsection (2)(g) does not apply if, under section 21, disclosure under section 18 is not required.

- “(2B) Every debtor or guarantor under a consumer credit contract may also request in writing that the creditor provide them with a copy of—
- “(a) any disclosure statement that was provided, or that should have been provided, before the date on which the request is made:
 - “(b) the contract between the debtor and the creditor.”
- (3) After section 24(4), insert:
- “(5) *See* section 9J(4) (which allows any person to request a copy of the standard form contract terms used by a creditor).”

21 Section 25 amended (Disclosure of guarantee)

- (1) Replace section 25(2) with:
- “(2) The copy of the terms of the guarantee must be given or sent, and disclosure of the key information concerning each consumer credit contract that the creditor and the debtor enter into and to which the guarantee applies at the time the guarantee is given must be made, before the guarantee is given.”
- (2) In section 25(3), replace “15 working days of the day on which the contract is made” with “5 working days of the day on which the contract is entered into”.

22 New section 26A inserted (Disclosure of transfer of rights of creditor under consumer credit contract)

After section 26, insert:

“26A Disclosure of transfer of rights of creditor under consumer credit contract

- “(1) Every creditor who transfers (whether by assignment or operation of law) the rights of that person under a consumer credit contract to another creditor (the **new creditor**) must ensure that the disclosure of the following information is made to every debtor and guarantor under the contract:
- “(a) the name, address, and other contact details of the new creditor:
 - “(b) the new creditor’s registration number under the register of financial service providers and the name under which the new creditor is registered under that register:

- “(c) the name and contact details of the dispute resolution scheme of which the new creditor is a member (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the new creditor to be a member of such a scheme):
 - “(d) the date on which the rights were, or are to be, transferred to the new creditor:
 - “(e) the impact (if any) of the transfer on the debtor:
 - “(f) that the transfer does not affect the terms of the contract that the debtor entered into (other than terms relating to the identity of the creditor).
- “(2) Disclosure under this section must be made within 10 working days of the day on which the transfer takes effect.
- “(3) This section does not apply in the prescribed circumstances (being circumstances that relate to securitisation or covered bond arrangements or similar arrangements).”

23 Section 27 amended (Right to cancel consumer credit contract)

In section 27(1), replace “3 working days” with “5 working days” in each place.

24 Section 30 replaced (Effect of cancellation)

Replace section 30 with:

“30 Effect of cancellation

- “(1) If a consumer credit contract is cancelled under section 27(1)(b), the following rules apply:
- “(a) the rights and obligations of the parties under the contract cease; and
 - “(b) the creditor must, as soon as is reasonably practicable,—
 - “(i) return any property that the creditor has received under the contract to the party from whom it was received; and
 - “(ii) release every security interest taken in connection with the contract, other than any part of a security interest that—

- “(A) relates to obligations of the debtor or guarantor that are not directly related to the contract; and
 - “(B) is capable of being enforced despite paragraph (a); and
 - “(c) the creditor must calculate—
 - “(i) the amounts due to the creditor; and
 - “(ii) the amounts due to the debtor; and
 - “(d) the difference between the amounts calculated in accordance with paragraph (c) must be paid by the creditor to the debtor, or by the debtor to the creditor, as the case may be.
- “(2) The calculation under subsection (1)(c) must be made on the basis that—
- “(a) no debtor under the contract is liable to pay any part of the interest charges, fees, or charges provided for in the contract other than—
 - “(i) interest charges on the unpaid balance for the period during which the credit was provided (at the same rate that would have been payable over that period if the contract had not been cancelled); and
 - “(ii) any reasonable expenses necessarily incurred by the creditor in connection with the contract and the cancellation of the contract; and
 - “(iii) if property is returned to a creditor that has been damaged while in the possession of a debtor, the cost of repairing the damage; and
 - “(b) if the debtor has already paid any interest charges, fees, or charges provided for in the contract that the debtor is not liable to pay under paragraph (a), the amount paid is due to the debtor under subsection (1)(c)(ii).
- “(3) In addition, if a consumer credit contract is cancelled under section 27(1)(b),—
- “(a) no guarantor under the contract is liable to pay any part of the interest charges, fees, or charges provided for in the contract other than the interest charges, expenses, or costs referred to in subsection (2)(a)(i) to (iii) (if those amounts are payable under the guarantee); and

“(b) the creditor must repay any interest charges, fees, or charges already received by the creditor from the guarantor that the guarantor is not liable to pay under paragraph (a).”

25 Section 31 amended (Effect of credit sale cancellation)

In section 31, replace “section 30(1)(b) to (e)” with “section 30(1)(b) to (d) and (3)”.

26 Section 32 amended (Disclosure standards)

(1) After section 32(1)(b), insert:

“(ba) if required by the regulations, be made in the form prescribed by regulations for the purposes of this paragraph; and”.

(2) After section 32(1), insert:

“(1A) If subsection (1)(ba) applies and a person gives disclosure in the prescribed form in the manner required by the regulations, the person is to be treated as having complied with the requirements of subsection (1)(a), (c), and (d).”

27 Section 34 replaced (Model forms)

Replace section 34 with:

“34 Creditor, etc, may voluntarily use model disclosure statement if not required to use mandatory form

“(1) This section applies if a person is not required to use a form prescribed for the purposes of section 32(1)(ba).

“(2) If the person uses a model disclosure statement prescribed by regulations for the purposes of this section in the manner required by those regulations, the person is to be treated as having complied with the requirements of section 32(1)(a), (c), and (d).”

28 Section 40 amended (Default interest charges)

(1) In section 40(2)(a), replace “and while the default continues” with “, in respect of the amount of the default, and while the default continues”.

(2) After section 40(2), insert:

“(2A) Subsection (2B) applies if—

- “(a) there has been a default in payment under a consumer credit contract; and
 - “(b) the consumer credit contract provides that an amount payable under the contract becomes payable (or may be called up as becoming payable) earlier than would be the case if there had not been a default; and
 - “(c) the consumer credit contract is not an on demand facility.
- “(2B) The higher rate referred to in subsection (2) may not be imposed on any amount that becomes payable earlier as referred to in subsection (2A).
- “(2C) In subsection (2A)(c), an **on demand facility** means a credit contract under which—
- “(a) the total unpaid balance is repayable at any time on demand by the creditor; and
 - “(b) there is no agreement, arrangement, or understanding between the creditor and the debtor that repayment will only be demanded on the occurrence or non-occurrence of a particular event.”

29 Section 41 replaced (Unreasonable credit fee or default fee)

Replace section 41 with:

“41 Unreasonable credit fee or default fee

A consumer credit contract must not provide for a credit fee or a default fee that is unreasonable.”

30 Section 43 replaced (Prepayment fees)

Replace section 43 with:

“43 Prepayment fees

“(1) A prepayment fee payable—

- “(a) on a part prepayment is unreasonable if, and only if, the fee exceeds a reasonable estimate of the creditor’s loss arising from the part prepayment:
- “(b) on a full prepayment is unreasonable if, and only if, it exceeds a reasonable estimate of the creditor’s loss arising from the full prepayment as calculated in accordance with section 54.

- “(2) For the purposes of this section and section 44, a **prepayment fee** is a fee or charge that relates only to—
- “(a) a part prepayment or a full prepayment in respect of a fixed-rate contract; and
 - “(b) the portion of the unpaid balance for which the interest rate is fixed for an agreed period; and
 - “(c) the part of the creditor’s loss—
 - “(i) that arises from the part prepayment or full prepayment; and
 - “(ii) that is a result of differences in interest rates.
- “(3) A creditor may also, in relation to a part prepayment or a full prepayment, impose a credit fee relating to administrative costs (and whether that fee is unreasonable must be determined in accordance with section 44(1)).
- “(4) In this section, **fixed-rate contract** means a credit contract under which an interest rate is fixed for an agreed period for the whole or a part of the unpaid balance.”

31 Section 44 replaced (Other credit fees and default fee)

Replace section 44 with:

“44 Credit fees other than establishment fees and prepayment fees

- “(1) In determining whether a credit fee is unreasonable, the court must have regard to, in relation to the matter giving rise to the fee, whether the fee reasonably compensates the creditor for any cost incurred by the creditor (including the cost of providing a service to the debtor if the fee relates to the provision of a service).
- “(2) In determining whether the fee reasonably compensates the creditor for any cost referred to in subsection (1), the court must have regard to reasonable standards of commercial practice.
- “(3) Subsection (1) does not apply if the credit fee is—
- “(a) an establishment fee (*see* section 42); or
 - “(b) a prepayment fee (*see* section 43).

“44A Default fees

- “(1) In determining whether a default fee is unreasonable, the court must have regard to, in relation to the matter giving rise to the fee, whether the fee reasonably compensates the creditor for the following:
- “(a) any cost incurred by the creditor:
 - “(b) a reasonable estimate of any loss incurred by the creditor as a result of the debtor’s acts or omissions.
- “(2) In determining whether the fee reasonably compensates the creditor for any cost and loss referred to in subsection (1), the court must have regard to reasonable standards of commercial practice.

“44B Compliance with Code is evidence that fees are not unreasonable

For the purposes of this subpart, evidence of a creditor’s compliance with the provisions of the Responsible Lending Code referred to in section 9F(1)(b)(vii) is to be treated as evidence that a credit fee or a default fee is not unreasonable.”

32 Section 45 amended (Fees or charges passed on by creditor)

Replace section 45(5) with:

- “(5) Nothing in this section prevents a reasonable commission from being paid, or payable, to a creditor in connection with any credit-related insurance taken out by the debtor.
- “(6) However, despite subsection (5), a creditor must not charge a commission if—
- “(a) the creditor requires the debtor to obtain the insurance from a particular insurer or particular insurers; or
 - “(b) the creditor has in place any arrangement that has the effect of requiring the debtor to obtain the insurance from a particular insurer or particular insurers; or
 - “(c) the insurance is financed under the credit contract and the creditor has, in relation to the credit-related insurance contract, breached section 9C(5) in any respect.”

33 Section 48 amended (Recovery of payments)

Replace section 48(1) with:

- “(1) If a debtor makes any payment to a creditor that, by virtue of this Act, the creditor is not entitled to receive, the creditor must, as soon as practicable,—
- “(a) refund the payment to the debtor; or
 - “(b) credit the payment against any amount otherwise owing by the debtor to the creditor.”

34 Section 51 amended (Amount required for full prepayment)

Replace section 51(1) with:

- “(1) The amount required for the full prepayment of the consumer credit contract must be no more than the sum of the following, less the amount or amounts referred to in 1 or more of sections 52, 52A, and 52B (as applicable):
- “(a) the unpaid balance at the time of the full prepayment; and
 - “(b) a credit fee to reasonably compensate the creditor for any administrative cost incurred by the creditor in relation to the full prepayment (being a credit fee that is not unreasonable under section 41); and
 - “(c) a fee or charge that does not exceed a reasonable estimate of the creditor’s loss arising from the full prepayment, as calculated in accordance with section 54.”

35 Section 52 amended (Rebate of insurance)

(1) Replace section 52(1) with:

- “(1) In the case of a consumer credit insurance contract that is financed under the consumer credit contract, an amount to be deducted under section 51 is an amount equal to a proportionate rebate of the premium paid under the insurance contract.”
- (2) In section 52(5)(d), after “particular insurer”, insert “or particular insurers”.

36 New sections 52A and 52B inserted

After section 52, insert:

“52A Rebate of repayment waiver

- “(1) In the case of a repayment waiver, an amount to be deducted under section 51 is an amount equal to a proportionate rebate of the additional consideration paid for that waiver.
- “(2) The rebate must be calculated using the procedure (if any) prescribed for the purposes of this section.

“52B Rebate of extended warranty

- “(1) In the case of an extended warranty, an amount to be deducted under section 51 is an amount equal to a proportionate rebate of the additional consideration paid for that warranty.
- “(2) The rebate must be calculated using the procedure (if any) prescribed for the purposes of this section.”

37 Section 55 amended (Changes on grounds of unforeseen hardship)

After section 55(1), insert:

- “(1A) An application under subsection (1) must—
- “(a) be in writing; and
 - “(b) be given to the creditor; and
 - “(c) specify the reasonable cause (for example, illness, injury, loss of employment, or the end of a relationship) for the debtor’s inability to meet the debtor’s obligations under the consumer credit contract.
- “(1B) A debtor who makes an application under this section is not entitled to make another application in relation to the same consumer credit contract unless—
- “(a) the application is made not less than 4 months after the previous application is made; or
 - “(b) in the case of an application that is made less than 4 months after the previous application is made,—
 - “(i) the creditor agrees to consider the application; or
 - “(ii) the reasons for the debtor seeking the change under section 56 are materially different from the reasons given in the previous application.”

38 Section 57 amended (Application may not be made in certain circumstances)

- (1) Replace section 57(1)(a) with:
- “(a) the debtor is in default of his or her obligation to make payments and, in relation to that default, the debtor—
 - “(i) has been in default for 2 weeks or more after receiving a repossession warning notice (*see* section 83G) or a notice under section 119 of the Property Law Act 2007; or
 - “(ii) has failed to make 4 or more consecutive periodic payments by or on the due dates; or
 - “(iii) has been in default for 2 months or more; or”.
- (2) Repeal section 57(1)(b).
- (3) Replace section 57(2) with:
- “(2) However, subsection (1)(a) does not prevent an application being made after the debtor has remedied the default (to the extent that it can be remedied).”

39 New section 57A inserted (Obligations of creditor in relation to application)

After section 57, insert:

“57A Obligations of creditor in relation to application

- “(1) On receipt of an application by a debtor under section 55, the creditor must do the following:
- “(a) within 5 working days after receiving the application, acknowledge receipt of the application by giving a written notice to the debtor:
 - “(b) within 10 working days after receiving the application, request any further information from the debtor (but only if that further information is necessary to decide the application) by giving a written notice to the debtor:
 - “(c) within 20 working days after receiving the application,—
 - “(i) in compliance with the lender responsibility principles (*see* section 9C), decide whether to agree to change the consumer credit contract in accordance with the application; and

- “(ii) give written notice to the debtor of that decision; and
 - “(iii) if the creditor does not agree to change the consumer credit contract in accordance with the application, give written notice to the debtor setting out—
 - “(A) the creditor’s reasons for that decision; and
 - “(B) a clear summary of the debtor’s rights under section 58.
- “(2) However, if the creditor has requested further information in accordance with subsection (1)(b), the time within which the creditor must comply with subsection (1)(c) is the later of—
- “(a) 10 working days after receiving the further information; and
 - “(b) 20 working days after making the request under subsection (1)(b).
- “(3) A creditor—
- “(a) must not charge any credit fee in relation to an application (whatever the outcome of the application) if that fee would not, in the absence of the application, be otherwise payable;
 - “(b) must, if Part 3A applies, comply with section 83J (which prevents enforcement action until the application is decided).
- “(4) However, if the application is successful, nothing in subsection (3)(a) prevents a creditor from charging a credit fee that reasonably compensates the creditor for the costs incurred by the creditor in documenting the changes to the credit contract.”

40 Section 58 amended (Changes by court)

Replace section 58(1) with:

- “(1) A debtor who has made an application under section 55 may apply to the court to change the terms of a consumer credit contract if—
- “(a) the creditor fails, within the time specified in section 57A(1)(c) or (2), to notify the debtor of its decision on the application; or

“(b) the creditor does not agree to change the consumer credit contract in accordance with the application.”

41 New section 59A inserted (How notices may be given)

After section 59, insert:

“59A How notices may be given

- “(1) Any notice or other document required or authorised by sections 55 to 57A to be given to any person must be in writing and is sufficiently given if—
- “(a) it is delivered to that person; or
 - “(b) it is left at that person’s usual or last known place of residence or business or at an address specified for that purpose in the consumer credit contract; or
 - “(c) it is posted in a letter addressed to that person by name at that place of residence or business or address; or
 - “(d) it is sent by way of an electronic communication to the address specified by that person for this purpose.
- “(2) If the person is absent from New Zealand, the notice or other document may be given to the person’s agent in New Zealand.
- “(3) If the person is deceased, the notice or other document may be given to the person’s personal representatives.
- “(4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document must be given in such a manner as may be directed by an order of the court.
- “(5) If the notice or other document is sent to any person—
- “(a) by post, it is to be treated as having been received on the fourth working day after the day on which the letter is posted (and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted);
 - “(b) by electronic communication, it is to be treated as having been received on the second working day after the day on which the notice or document is sent.
- “(6) Despite anything in this section, the court may in any case make an order directing the manner in which any notice or other document is to be given, or make an order dispensing with the giving of the notice or document.”

42 Section 60 amended (Consumer leases)

- (1) Replace section 60(1)(b) with:

“(b) the goods are hired, or intended to be hired, wholly or predominantly for personal, domestic, or household purposes; and”.
- (2) After section 60(1), insert:

“(1A) For the purposes of subsection (1)(b), the predominant purpose for which the goods are hired is, if the goods are intended to be used for different purposes, the purpose for which the goods are intended to be most used.

“(1B) The reference to intention in subsections (1)(b) and (1A) is a reference to the lessee’s intention.”

43 Section 62 amended (Declaration concerning consumer lease)

In section 62(1) and (2), replace “primarily” with “wholly or predominantly”.

44 Section 66 repealed (Variation disclosure not required)

Repeal section 66.

45 Section 69 amended (Restrictions on credit-related insurance, repayment waivers, and extended warranties)

Repeal section 69(3).

46 Section 70 amended (Disclosure of credit-related insurance, repayment waiver, or extended warranty)

- (1) In section 70(1), replace “within 15 working days of the day on which the credit-related insurance is arranged” with “before the credit-related insurance is arranged”.
- (2) In section 70(2), replace “within 15 working days of the day on which the repayment waiver or extended warranty is arranged” with “before the repayment waiver or extended warranty is arranged”.
- (3) In section 70(3)(d), after “particular insurer” insert “or particular insurers”.

- 47 Section 78 repealed (Variation disclosure not required)**
Repeal section 78.
- 48 Section 79 amended (Request disclosure for buy-back transactions)**
After section 79(4), insert:
“(5) See section 9J(4) (which allows any person to request a copy of the standard form contract terms used by a transferee).”
- 49 Section 80 amended (Unreasonable buy-back fees or buy-back default fees)**
Repeal section 80(2) to (4).
- 50 Section 82 amended (Unreasonable fees payable to buy-back promoter or associated person)**
Repeal section 82(2) to (4).
- 51 New Part 3A inserted**
After section 83, insert:
“Part 3A
“Repossession of consumer goods under credit contract
“Subpart 1—Preliminary provisions
“83A Outline of Part
This Part sets out—
“(a) the rules that apply—
“(i) before a creditor or creditor’s agent may repossess consumer goods (which includes repossessing keys or other access devices in relation to consumer goods); and
“(ii) at the time of repossession; and
“(iii) following the repossession; and
“(b) the rights and responsibilities of debtors and creditors in relation to consumer goods that have been, or are liable to be, repossessed; and
“(c) a prohibition against security interests over certain consumer goods.

“83B References to credit contracts include security agreements

- “(1) This section applies, unless the context otherwise requires, for the purposes of—
- “(a) this Part; and
 - “(b) Part 1A (to the extent that it relates to credit contracts to which this Part applies); and
 - “(c) any other provision of this Act that relates to—
 - “(i) the enforcement, application, or effect of this Part (for example, the definition of repossession in section 5); or
 - “(ii) the enforcement, application, or effect of Part 1A (to the extent referred to in paragraph (b)).
- “(2) If a security interest in consumer goods is or may be taken in connection with a credit contract,—
- “(a) the contract or arrangement that creates or provides for the security interest is to be treated as forming part of the credit contract; and
 - “(b) references to a creditor must be treated as including the secured party within the meaning of section 16 of the Personal Property Securities Act 1999; and
 - “(c) references to a debtor must be treated as including the debtor within the meaning of section 16 of the Personal Property Securities Act 1999.
- “(3) Subsection (2) applies even if a party to the contract or arrangement referred to in subsection (2)(a) is not a party to the credit contract (for example, a guarantor who has given a security interest over consumer goods to secure the guarantor’s obligations under a guarantee that was given in respect of the credit contract).
- “(4) This Part applies whether or not a financing statement has been registered under the Personal Property Securities Act 1999 in respect of the security interest.

“83C Application of Part

- “(1) This Part applies where a credit contract provides that a creditor has a right to do 1 or more of the following:
- “(a) repossess consumer goods over which there is a security interest:

- “(b) enter premises, or enter premises when an occupier is not present, for—
 - “(i) the purpose of repossessing consumer goods over which there is a security interest; or
 - “(ii) any other purpose in connection with consumer goods over which there is a security interest.
- “(2) If a credit contract creates or provides for a security interest in both consumer goods and other goods, this Part applies only in relation to the consumer goods.
- “(3) Subsection (1) does not limit subparts 3 and 6.
“Compare: 1997 No 85 ss 5, 6

“**83D Part does not create right to repossess, etc**

- “(1) This Part does not confer a right to repossess consumer goods, or a right to enter premises, or a right to enter premises when an occupier is not present.
- “(2) This Part is to be read subject to this section.
“Compare: 1997 No 85 s 6(2), (3)

“Subpart 2—Rules that apply before
repossession

“**83E Circumstances in which creditor can repossess consumer goods**

- “(1) Neither a creditor nor a creditor’s agent may repossess consumer goods, unless—
 - “(a) either—
 - “(i) the debtor is in default under the credit contract; or
 - “(ii) the goods are at risk; and
 - “(b) the creditor has, before repossessing the goods, fully complied with requirements imposed on the creditor under this Part that must be complied with before the goods are repossessed; and
 - “(c) the creditor complies, in relation to the repossession, with the lender responsibility principles set out in Part 1A that are relevant to the repossession.
- “(2) In this Part, consumer goods are **at risk** if the creditor believes, on reasonable grounds, that those goods have been, or will

be, destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of the relevant credit contract.

- “(3) However, consumer goods are not at risk merely because another creditor has, in relation to those consumer goods, given the debtor a repossession warning notice.
- “(4) In any case where it is necessary to decide whether the goods were, or are, at risk, the creditor has the onus of proving that the grounds relied on were, or are, reasonable.

“Compare: 1997 No 85 s 7

“**83F Duty to ensure goods are specifically identified**

- “(1) A creditor must, before exercising a right referred to in section 83C in relation to consumer goods, ensure that—
- “(a) the goods are specifically identified in the credit contract (whether or not the goods are subject to a purchase money security interest); or
- “(b) if the goods were acquired by the debtor after the credit contract has been entered into,—
- “(i) the following requirements are satisfied:
- “(A) the parties to the contract have agreed to change the contract to specifically identify the goods in the credit contract; and
- “(B) in the case of a consumer credit contract, there has been disclosure of the full particulars of that change as required by section 22; or
- “(ii) the debtor has acquired the goods as a replacement for the goods that were specifically identified in that credit contract.
- “(2) For the purposes of determining whether consumer goods are **specifically identified**,—
- “(a) the goods are specifically identified if the credit contract contains an adequate description of the goods by item that enables the goods to be identified; and
- “(b) it is insufficient to merely describe the goods by kind.

“Compare: 1999 No 126 s 36(1)(b)(i)

“83G Creditor must serve repossession warning notice on debtor and other persons before taking possession of consumer goods

- “(1) Every creditor intending to repossess consumer goods must, before repossessing those goods, serve a notice (a **repossession warning notice**) on—
- “(a) the debtor; and
 - “(b) every guarantor of the debtor in respect of the relevant credit contract; and
 - “(c) if section 83I(1) applies, each of the persons referred to in section 129(1) of the Personal Property Securities Act 1999; and
 - “(d) every person who—
 - “(i) is known by the creditor to have a security interest in the consumer goods; or
 - “(ii) has registered a financing statement in the name of the debtor that refers to the consumer goods; or
 - “(iii) has registered a financing statement containing the serial number of the consumer goods as required or authorised by regulations made under the Personal Property Securities Act 1999.
- “(2) However, subsection (1) does not apply if the goods are at risk (see section 83E(2)).
- “(3) The repossession warning notice must—
- “(a) be in writing; and
 - “(b) contain as much of the key information set out in Schedule 3A as is applicable to the credit contract; and
 - “(c) include any additional prescribed information; and
 - “(d) be in the prescribed form (if any); and
 - “(e) be served on the debtor at least 15 days before repossession occurs; and
 - “(f) if the default is capable of being remedied, give the debtor at least 15 days before repossession occurs to remedy the default.
- “(4) A repossession warning notice expires 60 days after it has been served on the debtor and, after that time,—
- “(a) the notice is of no effect; and

“(b) the creditor has no right to repossess the goods in reliance upon that notice.

“(5) Any period during which the creditor is prevented from taking or continuing any enforcement action under section 83J must be excluded when determining whether a repossession warning notice has expired under subsection (4).

“(6) Nothing in subsection (4) prevents a creditor from serving a further repossession warning notice that complies with this section.

“Compare: 1997 No 85 ss 8, 9

“83H Debtor may voluntarily deliver consumer goods

“(1) A debtor may, following receipt of a repossession warning notice, voluntarily deliver the consumer goods identified in that notice to the creditor at the place specified in that notice under paragraph (h)(ii) of Schedule 3A.

“(2) Subsection (1) is subject to section 83I(2).

“(3) If consumer goods are voluntarily delivered in accordance with subsection (1), subpart 5 applies with all necessary modifications as if the voluntary delivery were a repossession under subpart 4.

“83I Rules relating to accessions (goods that are installed in, or affixed to, other goods)

“(1) Every creditor intending to repossess an accession that is a consumer good (as provided for under section 109 of the Personal Property Securities Act 1999) must, in addition to complying with this Part, comply with sections 125 to 131 of that Act.

“(2) Despite section 83H, a debtor may not voluntarily deliver consumer goods that are, or include, accessions.

“(3) In this section, **accessions** has the meaning given to it in section 16 of the Personal Property Securities Act 1999.

“83J Effect of debtor’s complaint or application on grounds of unforeseen hardship on creditor’s rights to enforce credit contract

- “(1) Neither a creditor nor a creditor’s agent may take any enforcement action in relation to consumer goods (whether under this Part or in accordance with a credit contract) if the debtor has made—
- “(a) a written complaint to the creditor in relation to any enforcement action and that complaint has not been resolved; or
 - “(b) an application to the creditor under section 55 and that application has not been decided.
- “(2) If the creditor or creditor’s agent has already commenced any enforcement action before a written complaint in relation to that enforcement action or any other enforcement action is made, or an application under section 55 is made, to the creditor, no further action may be taken to continue or complete that enforcement action until the complaint has been resolved or the application has been decided.
- “(3) However, despite subsections (1) and (2), if the relevant consumer goods are at risk (*see* section 83E(2)), the creditor may repossess the goods but must not take any further enforcement action.
- “(4) If the creditor and debtor have not reached agreement and settled the complaint referred to in subsection (1)(a) or (2), the creditor may provide the debtor with a written notice that—
- “(a) specifies the creditor’s position on the complaint; and
 - “(b) states that the notice has been provided for the purposes of this subsection; and
 - “(c) states that the debtor may refer the complaint to the creditor’s dispute resolution scheme; and
 - “(d) contains the name and contact details of that scheme; and
 - “(e) states that the complaint will be treated as resolved for the purposes of this section if the debtor does not refer the complaint to that scheme within 14 days of the notice being provided (and, accordingly, the creditor may take or continue enforcement action in relation to the consumer goods).

- “(5) For the purposes of this section, a complaint is resolved when—
- “(a) the creditor and debtor have reached agreement and settled the complaint; or
 - “(b) the complaint has been—
 - “(i) referred to the dispute resolution scheme of which the creditor is a member; and
 - “(ii) resolved or otherwise determined in accordance with the scheme’s rules (including where the scheme ceases considering the complaint for any reason); or
 - “(c) if the creditor has provided the debtor with the written notice referred to in subsection (4),—
 - “(i) 14 days have elapsed since the debtor was provided with the notice; and
 - “(ii) the debtor has not, within that period, referred the complaint to the dispute resolution scheme.
- “(6) In this Part, **enforcement action** means any of the following:
- “(a) giving a repossession warning notice:
 - “(b) repossessing, or entering premises for the purpose of repossessing, consumer goods over which there is a security interest:
 - “(c) selling, offering for sale, or disposing of the consumer goods that have been repossessed:
 - “(d) any action to recover any amount owing by the debtor to the creditor under the credit contract after the consumer goods are sold under subpart 5 (*see* sections 83ZI(1)(d) and 83ZM).
- “(7) In this section, an application under section 55 is decided when the creditor gives written notice of the creditor’s decision under section 57A(1)(c)(ii).
- “(8) To avoid doubt, the creditor or the creditor’s agent may, subject to this Part, to any court order, and to any terms on which the complaint was resolved, take, or continue, the enforcement action referred to in subsection (1) or (2) from the time that the complaint has been resolved or (in the case of an unsuccessful application under section 55) the application has been decided.

“83K Subsequent complaints

- “(1) This section applies if—
- “(a) the debtor makes a written complaint to the creditor in relation to an enforcement action (the **original complaint**); and
 - “(b) the debtor subsequently makes another written complaint to the creditor in relation to an enforcement action (the **subsequent complaint**).
- “(2) The subsequent complaint does not, under section 83J, prevent the creditor or a creditor’s agent from taking or continuing enforcement action in relation to consumer goods unless—
- “(a) the subsequent complaint is made not less than 4 months after the original complaint is made; or
 - “(b) in the case of a subsequent complaint that is made less than 4 months after the original complaint is made,—
 - “(i) the creditor agrees to consider the complaint; or
 - “(ii) the basis or grounds of the subsequent complaint are materially different from the basis or grounds of the original complaint.

“Subpart 3—Disabling devices

“83L Use of disabling device

- “(1) This section applies where a credit contract provides that the creditor—
- “(a) has a security interest over consumer goods to which a disabling device is connected; and
 - “(b) has a right to activate the disabling device.
- “(2) Neither a creditor nor a creditor’s agent may activate a disabling device unless—
- “(a) there has been a breach of the credit contract by the debtor that is sufficient, according to the terms of the contract, to give rise to the creditor’s right to activate the disabling device; and
 - “(b) the creditor or the creditor’s agent has given the debtor reasonable notice, in advance of the activation,—
 - “(i) that the disabling device is to be activated; and
 - “(ii) about what action the debtor may take to prevent the disabling device being activated.

- “(3) In this section and section 83M,—
- “**activated**, in relation to a disabling device, means that the disabling function of the device has been switched on, with the result that—
- “(a) the debtor is prevented from using the consumer goods; or
 - “(b) the debtor’s use of the consumer goods is limited; or
 - “(c) the creditor is able to locate the consumer goods; or
 - “(d) the creditor is able to achieve any other similar outcome that is of a direct or indirect benefit to the creditor in relation to the relevant credit contract
- “**disabling device** means a device that is attached to consumer goods, the functions of which, when activated, include 1 or more of the following:
- “(a) preventing the consumer goods from being used;
 - “(b) limiting the debtor’s use of the consumer goods;
 - “(c) enabling the creditor to locate the consumer goods;
 - “(d) achieving any other similar outcome that is of direct or indirect benefit to the creditor in relation to the relevant credit contract.

“**83M Connection or use of disabling device in connection with certain goods prohibited**

- “(1) A credit contract may not provide for the connection of a disabling device to, or the use of a disabling device in connection with, a consumer good described in section 83ZN(1)(a) or prescribed for the purposes of section 83ZN(1)(c).
- “(2) A provision of a credit contract that contravenes subsection (1) is of no effect to the extent of the contravention.
- “(3) Every creditor under a credit contract must ensure that the contract does not contravene this section.

“Subpart 4—Rules that apply at time of
repossession

“**83N Creditor must allow debtor time to remedy default or at
least 15 days to elapse**

- “(1) Neither a creditor nor a creditor’s agent may repossess consumer goods in respect of which a repossession warning notice has been served unless—
- “(a) the period for remedying the default specified in the notice has expired and the debtor has failed to remedy the default complained of in so far as it is capable of being remedied; or
 - “(b) in a case where the default is not capable of being remedied, at least 15 days have elapsed since the notice was served on the debtor.
- “(2) Neither a creditor nor a creditor’s agent may hold keys or other devices that enable access to the consumer goods unless—
- “(a) the debtor has, after a repossession warning notice has been served, voluntarily made the keys or other device available to the creditor or agent; or
 - “(b) the relevant consumer goods have been repossessed in accordance with this Act.
- “(3) Subsection (2) does not prevent a creditor’s agent from holding the agent’s tools of the trade that are customarily used by repossession agents or repossession employees.
- “(4) However, subsection (1) does not apply if the goods are at risk (*see* section 83E(2)).

“Compare: 1997 No 85 s 10

“**83O Documents to be produced on entry**

- “(1) Every creditor or creditor’s agent who exercises a right of entry of premises for the purpose of repossessing consumer goods must, on first entering the premises if anyone is present, and, if requested, at any subsequent time, produce the following documents:
- “(a) a copy of the repossession warning notice (unless one was not required under section 83G(2)); and
 - “(b) a copy of the credit contract; and

- “(c) a copy of the creditor’s or creditor’s agent’s licence or certificate of approval under the Private Security Personnel and Private Investigators Act 2010, as the case may be; and
 - “(d) in the case of a creditor’s agent, evidence reasonably capable of establishing the person’s authority to repossess the consumer goods on behalf of the creditor; and
 - “(e) if a repossession warning notice was not required under section 83G(2), a document setting out the debtor’s name, the address from which the goods will be repossessed, the creditor’s contact details, and the reason why the goods are being repossessed; and
 - “(f) a written statement that specifies that the premises have been entered and the date of entry, and an inventory of consumer goods to be taken; and
 - “(g) a written statement setting out the debtor’s rights under this Part following the repossession of goods and the debtor’s right to make a complaint about the creditor’s or creditor’s agent’s conduct; and
 - “(h) in the case of an entry outside the hours specified in section 83S or on a Sunday or a public holiday, the debtor’s written consent to the exercise of the right of entry.
- “(2) If a document has been produced to a debtor under subsection (1) (whether on first entering the premises or at a subsequent time), the debtor is not entitled to make a subsequent request under subsection (1) for the same document to be produced again.

“Compare: 1997 No 85 s 17

“83P Entry if occupier not present

- “(1) This section applies if a creditor or creditor’s agent enters premises for the purpose of repossessing consumer goods, or for any other purpose in connection with consumer goods, when the occupier of the premises is not present (subject to subsection (3)).
- “(2) The creditor or creditor’s agent must, before leaving the premises, leave a notice in writing in a prominent place—
 - “(a) specifying that the premises have been entered and the date of entry; and

- “(b) containing an inventory of any consumer goods that have been repossessed; and
 - “(c) accompanied by a copy of the documents referred to in section 83O(1) (other than paragraph (f)).
- “(3) Subsection (2)(b) and (c) applies only if the creditor or creditor’s agent enters the premises for the purpose of repossessing consumer goods.
- “(4) The creditor or creditor’s agent must take the steps that are reasonably practicable to ensure that the premises are not left obviously open.
- “Compare: 1997 No 85 s 18

“83Q Creditor must exercise right to enter premises in accordance with lender responsibility principles

- “(1) A creditor must, in exercising the right to enter premises, act in accordance with the lender responsibility principles (*see* section 9C).
- “(2) This section applies whether the right to enter premises is exercised—
- “(a) for the purpose of repossessing consumer goods; or
 - “(b) for any other purpose in connection with consumer goods.
- “Compare: 1997 No 85 s 14

“83R Creditor must not enter premises if complaint not resolved or unforeseen hardship application not decided

Nothing in this subpart limits section 83J (which provides that neither a creditor nor a creditor’s agent may exercise a right to repossess consumer goods or enter premises if the debtor has made a written complaint to the creditor in relation to any enforcement action and that complaint has not been resolved or an application has been made to the creditor under section 55 and that application has not been decided).

“83S Creditor must not enter residential premises at certain times

- “(1) Neither a creditor nor a creditor’s agent may exercise a right to enter residential premises other than between the hours of 6 am and 9 pm.
- “(2) A creditor or a creditor’s agent who has exercised a right to enter residential premises between the hours of 6 am and 9 pm must not remain at those premises after 9 pm.
- “(3) A creditor or a creditor’s agent must not exercise a right to enter residential premises—
- “(a) at any time on a Sunday; or
 - “(b) at any time on a public holiday.
- “(4) However, subsection (1), (2), or (3) (as the case may be) does not apply if the debtor has consented, in writing, to permit the creditor or creditor’s agent to enter the premises outside the period between the hours of 6 am and 9 pm or at any time on a Sunday or a public holiday, provided that the consent is not sought or given—
- “(a) before the debtor is in default under the credit contract; or
 - “(b) when the creditor or the creditor’s agent is at the premises to repossess the consumer goods; or
 - “(c) outside the period between the hours of 6 am and 9 pm; or
 - “(d) at any time on a Sunday; or
 - “(e) at any time on a public holiday.
- “(5) This section applies whether the right to enter premises is exercised—
- “(a) for the purpose of repossessing consumer goods; or
 - “(b) for any other purpose in connection with consumer goods.

“Compare: 1997 No 85 s 15

“83T Restrictions applying in relation to persons repossessing consumer goods

- “(1) No creditor who is required to be registered under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 may exercise any rights in relation to

repossessing consumer goods (including entering residential premises) unless that creditor is registered.

“(2) No creditor may authorise, allow, or permit a repossession agent or repossession employee to repossess consumer goods (including by entering residential premises) unless that person is licensed or holds a certificate of approval.

“(3) No repossession agent or repossession employee may exercise any rights in relation to repossessing consumer goods (including entering residential premises) unless that person is—

“(a) specifically authorised to do so by the creditor; and

“(b) licensed or holds a certificate of approval.

“(4) If a creditor is not licensed and does not hold a certificate of approval, the creditor may not personally enter residential premises for the purpose of repossessing consumer goods (and any such repossession must be carried out through a repossession agent or repossession employee who meets the requirements of subsection (3)(a) and (b)).

“(5) In this section,—

“**certificate of approval** means a certificate issued under section 54 of the Private Security Personnel and Private Investigators Act 2010

“**licensed** means licensed in accordance with Part 2 of the Private Security Personnel and Private Investigators Act 2010

“**registered** means registered in accordance with Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

“**repossession agent** has the same meaning as in section 8A of the Private Security Personnel and Private Investigators Act 2010

“**repossession employee** has the same meaning as in section 16A of the Private Security Personnel and Private Investigators Act 2010 (but does not include the creditor).

“Compare: 1997 No 85 s 16

“Subpart 5—Rules that apply after
repossession of consumer goods

“**83U Interpretation**

In this subpart, unless the context otherwise requires, **auction** means a process in which goods are offered for sale by auction or by any other bidding process in which the most recent bid made for the goods is disclosed to other participants and potential participants.

“**83V Notice to be given to debtor, guarantor, and other creditors after repossession of consumer goods**

- “(1) A creditor must serve a post-repossession notice on the debtor and every other person referred to in section 83G(1) within 14 days of the repossession.
- “(2) The post-repossession notice must—
- “(a) be in writing; and
 - “(b) contain as much of the key information set out in Schedule 3B as is applicable to the relevant credit contract; and
 - “(c) include any additional prescribed information; and
 - “(d) be in the prescribed form (if any).
- “(3) If a post-repossession notice is not served as required by this subpart,—
- “(a) the costs of repossessing the consumer goods must be borne by the creditor; and
 - “(b) the creditor is not entitled to recover those costs from the debtor or the guarantor.

“Compare: 1997 No 85 ss 20, 21, 22

“**83W Creditor must not sell consumer goods until 15 days after post-repossession notice**

- “(1) If a creditor has repossessed any consumer goods, the creditor must not sell, offer for sale, or dispose of the consumer goods until after the expiry of 15 days from the date of service of the post-repossession notice on the debtor.
- “(2) However, subsection (1) does not apply if—

- “(a) the sale, offer, or disposal was with the written consent of the debtor, and that consent was given after the consumer goods had been repossessed; or
 - “(b) after the consumer goods are repossessed, the debtor or the debtor’s agent gives the creditor a written notice that requires the creditor to offer the goods for sale within the 15 days referred to in subsection (1); or
 - “(c) the disposal was temporary and for the purposes of storage or repair of the goods.
- “(3) If subsection (2)(b) applies, the creditor must offer the goods for sale as soon as is reasonably practicable after being required to do so by the debtor.
- “Compare: 1997 No 85 s 23

**“83X Consequences of selling within 15 days of
post-repossession notice**

- “(1) This section applies if the creditor contravenes section 83W(1).
- “(2) The liability of the debtor under the credit contract is limited to—
- “(a) the advance under the credit contract; and
 - “(b) if the credit contract secures the performance of some obligation other than the payment of money, the performance of that obligation.
- “(3) The creditor must repay any money already paid to the creditor by any person on account of, or in satisfaction of, any liability of the debtor in respect of the credit contract not referred to in subsection (2).
- “(4) Except as provided for in subsection (2), the debtor’s liability to the creditor under the credit contract is extinguished.
- “Compare: 1997 No 85 s 24

“83Y Creditor must offer consumer goods for sale

- “(1) The creditor must offer the consumer goods for sale as soon as is reasonably practicable after the expiration of 15 days from the date of service of the post-repossession notice on the debtor.
- “(2) This section does not apply if—

- “(a) the debtor has made a written complaint in relation to any enforcement action (in which case section 83J applies); or
 - “(b) the debtor reinstates the credit contract under section 83ZB; or
 - “(c) the debtor introduces a buyer under section 83ZD and the buyer completes the purchase of the consumer goods; or
 - “(d) the debtor settles the credit contract under section 83ZE.
- “(3) Despite subsection (2)(a),—
- “(a) after the complaint referred to in that paragraph has been resolved (as referred to in section 83J(5)), the creditor is subject to the duty in subsection (1); but
 - “(b) any period during which the creditor is prevented from taking or continuing any enforcement action under section 83J must be excluded when determining the number of days from the date of service of the post-repossession notice on the debtor.

“Compare: 1997 No 85 s 25

“83Z Rules relating to sale by creditor

- “(1) When selling repossessed consumer goods (which may be by any method that meets the requirements of this subsection), the creditor must—
- “(a) ensure that every aspect of the sale, including the manner, time, place, and terms, is commercially reasonable; and
 - “(b) take reasonable care to obtain the best price reasonably obtainable for the goods as at the time of sale.
- “(2) The creditor must give the debtor and every other person referred to in section 83G(1) reasonable notice of the proposed sale (including the method of sale and the time, the place, and any reserve price placed on the goods, as applicable to the method of sale).
- “(3) If the sale is by auction or tender, the creditor, the debtor, and every other person referred to in section 83G(1) are each entitled to bid or to submit tenders, as the case may be, and if the creditor is the successful bidder or tenderer, the consumer

goods, for the purposes of this subpart, are deemed to have been sold for the amount of the creditor's bid or tender.

“(4) The onus of proving that the consumer goods have been sold in accordance with this section is on the creditor.

“(5) Subsection (1) does not apply if—

“(a) the debtor introduces a buyer under section 83ZD and the buyer completes the purchase of the consumer goods; or

“(b) the debtor forces a sale under section 83ZF.

“Compare: 1997 No 85 s 26

“83ZA Debtor may obtain valuation of consumer goods before sale

“(1) The debtor is entitled to obtain, at the debtor's expense, 1 valuation of the consumer goods as at the time of repossession.

“(2) The rules relating to valuations are as follows:

“(a) the valuation may take place at any time after the creditor repossesses the consumer goods, but before the creditor sells or agrees to sell the consumer goods in accordance with this subpart:

“(b) the debtor must request access to the consumer goods by giving reasonable notice to the creditor:

“(c) the creditor must permit the debtor's valuer such access to the consumer goods as is reasonably necessary to enable the valuation of the consumer goods to take place:

“(d) the debtor's valuer must carry out the valuation at a reasonable time:

“(e) the debtor's valuer has no right to remove the consumer goods unless the creditor gives consent to the removal:

“(f) the debtor may accompany his or her valuer when the valuation takes place.

“Compare: 1997 No 85 s 27

“83ZB Debtor's right to reinstate credit contract

“(1) The debtor may, at any time after the creditor has repossessed the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this subpart, reinstate the credit contract by—

- “(a) paying to the creditor the amount required to reinstate the contract; or
 - “(b) if the contract secures the performance of an obligation other than the payment of money, performing any accrued obligations.
- “(2) In this section,—
- “**accrued obligations** means any obligations that have fallen due for performance under the credit contract and that have not been performed
- “**amount required to reinstate the contract** means the aggregate of—
- “(a) any amounts that have fallen due for payment under the credit contract and that have not been paid, including, without limitation, interest charges, credit fees, and default fees, but excluding, if the contract provides that, in the event of a default, any part of the unpaid balance becomes payable (or may be called up as becoming payable) earlier than would be the case if there had not been a default, that part of the unpaid balance that would not have fallen due but for that provision; and
 - “(b) the reasonable costs of the creditor of, and incidental to, repossessing, holding, storing, repairing, maintaining, valuing, and preparing for the sale of the consumer goods and of returning them to the order of the debtor; and
 - “(c) the costs reasonably and actually incurred by the creditor in doing anything necessary to remedy any default by the debtor.
- “(3) The costs referred to in paragraphs (b) and (c) of the definition of amount required to reinstate the contract are subject to subpart 6 of Part 2 (which applies with all necessary modifications as if any cost that is imposed is a credit fee or a fee or charge to which section 45 applies (as the case may be)).

“Compare: 1997 No 85 s 28

“**83ZC Consequences of reinstating credit contract**

If the right to reinstate the credit contract is exercised under section 83ZB,—

- “(a) upon receipt of the amount required to reinstate the contract (*see* section 83ZB(2)), or confirmation of the performance of the accrued obligations, the creditor must immediately return the consumer goods to the debtor; and
- “(b) the debtor is deemed to receive and hold the returned consumer goods under the terms of the credit contract as if the default had not occurred and the creditor had not repossessed the consumer goods.

“Compare: 1997 No 85 s 29

“83ZD Debtor’s right to introduce buyer

- “(1) The debtor may, at any time after the creditor has repossessed the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this subpart, require the creditor to sell the consumer goods to any person, introduced by the debtor, who or that is prepared to purchase the consumer goods for cash at a price not less than the estimated value of the consumer goods set out in the post-repossession notice served on the debtor.
- “(2) This right may be exercised by giving to the creditor a notice in writing signed by the debtor or the debtor’s agent.

“Compare: 1997 No 85 s 30

“83ZE Debtor’s right to settle credit contract

- “(1) The debtor may, at any time after the creditor has repossessed the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this subpart, settle the debtor’s obligations under the credit contract—
 - “(a) by paying to the creditor the amount required to settle the contract; or
 - “(b) if the contract secures the performance of an obligation other than the payment of money, by performing that obligation.
- “(2) In this section, the **amount required to settle the contract** means the balance of the advance outstanding, together with any interest charges, credit fees, and default fees payable under the credit contract, and includes—

- “(a) the reasonable costs of the creditor of, and incidental to, repossessing, holding, storing, repairing, maintaining, valuing, and preparing the sale of the consumer goods and of returning them to the order of the debtor; and
 - “(b) the costs reasonably and actually incurred by the creditor in doing anything necessary to remedy any default by the debtor.
- “(3) The costs referred to in subsection (2)(a) and (b) are subject to subpart 6 of Part 2 (which applies with all necessary modifications as if any cost that is imposed is a credit fee or a fee or charge to which section 45 applies (as the case may be)).
- “(4) If the right to settle the credit contract is exercised,—
- “(a) upon receipt of that amount, or confirmation of the performance of that obligation, the creditor must immediately return the consumer goods to the debtor; and
 - “(b) the contract terminates, with the rights and obligations of the parties to it satisfied.
- “Compare: 1997 No 85 s 31

“83ZF Debtor’s right to force sale

- “(1) If the consumer goods have not been sold within 30 working days, the debtor may require the creditor to put the consumer goods up for sale by auction.
- “(2) The period of 30 working days commences with the date on which the creditor repossesses the consumer goods.
- “(3) The following rules apply to a sale required under subsection (1):
- “(a) the debtor must require the sale by notice in writing to the creditor, signed by the debtor or the debtor’s agent; and
 - “(b) the auction must be held within 2 months after the date that notice is given; and
 - “(c) the creditor must give the debtor and every other person referred to in section 83G(1) reasonable notice of—
 - “(i) the time and place of the auction; or
 - “(ii) if the auction is via the Internet, the times at which the auction will begin and end (including the circumstances (if any) in which the auction

may end before the end time given in the notice);
and

“(d) the creditor and the debtor are each entitled to bid at the auction; and

“(e) there must be no reserve price.

“(4) Nothing in section 83J limits the creditor’s duty to comply with this section.

“Compare: 1997 No 85 s 32

“83ZG Disposal of consumer goods to purchaser for value and in good faith

“(1) A purchaser for value and in good faith who takes possession of consumer goods sold by a creditor takes the consumer goods free from the following interests:

“(a) the interest of the debtor:

“(b) any interest subordinate to that of the debtor:

“(c) the interest of the creditor:

“(d) any interest subordinate to that of the creditor.

“(2) Subsection (1) applies whether or not registrations relating to any security interests referred to in subsection (1) have been removed from the register of personal property securities established under the Personal Property Securities Act 1999.

“Compare: 1997 No 85 s 32A

“83ZH Extinguishment of creditor’s security interest and subordinate security interests on sale

“(1) If consumer goods have been sold under section 83Z or 83ZF, the following interests are extinguished on the sale of the consumer goods:

“(a) the security interest of the creditor who sold the consumer goods:

“(b) all security interests in the consumer goods and their proceeds that are subordinate to the security interest of the creditor who sold the consumer goods.

“(2) In subsection (1), **proceeds** has the same meaning as in section 16 of the Personal Property Securities Act 1999.

“Compare: 1997 No 85 s 32B

**“83ZI Creditor to give statement of account to debtor,
guarantor, and other interested persons**

- “(1) If consumer goods are sold pursuant to section 83Z or 83ZF, the creditor must, within 7 days after the sale of the consumer goods, give the debtor and every other person referred to in section 83G(1) a statement of account in writing, showing—
- “(a) the amount of the gross proceeds of sale:
 - “(b) the amount of the costs of, and incidental to, the sale:
 - “(c) the amount required to settle the contract under section 83ZE as at the date of the sale:
 - “(d) the balance owing by the creditor to the debtor, or by the debtor to the creditor, as the case may be.
- “(2) If more than 1 item of consumer goods has been sold separately, the statement of account must, if practicable, show the amount of the gross proceeds of sale of each item (as well as a total amount).

“Compare: 1997 No 85 s 33

“83ZJ Distribution of surplus

- “(1) If a creditor has sold consumer goods under section 83Z or 83ZF, the creditor must pay the following persons the amount of any surplus by satisfying the claims of those persons in the following order:
- “(a) any person who has registered a financing statement in the name of the debtor over the consumer goods that were sold where—
 - “(i) the registration was effective immediately before the consumer goods were sold; and
 - “(ii) the security interest relating to that registration was subordinate to the security interest of the creditor who sold the consumer goods:
 - “(b) any other person who has given the creditor notice that that person claims an interest in the consumer goods that were sold and in respect of which the creditor is satisfied that that person has a legally enforceable interest in the consumer goods:
 - “(c) the debtor.

“(2) The security interests to which subsection (1)(a) applies must be paid in the order of their priority as determined by Part 7 or 8 of the Personal Property Securities Act 1999.

“(3) Subsection (1) applies despite the extinguishment of a security interest under section 83ZH.

“Compare: 1997 No 85 s 34

“83ZK Surplus may be paid into court

“(1) The creditor may pay the surplus into court if there is a question as to who is entitled to receive payment under section 83ZJ.

“(2) The surplus may be paid out only on an application by a person claiming an entitlement to the surplus.

“Compare: 1997 No 85 s 34A

“83ZL Debtor’s, etc, right to recover surplus

The persons referred to in section 83ZJ are entitled to recover the amount of any surplus from the creditor.

“Compare: 1997 No 85 s 34B

“83ZM Limit on creditor’s right to recover from debtor

“(1) This section applies if—

“(a) consumer goods (or, where multiple goods are subject to the credit contract, any 1 or more of those goods) are sold under this subpart; and

“(b) the net proceeds of sale are less than the amount required to settle the contract under section 83ZE as at the date of the sale.

“(2) If this section applies, the debtor’s liability to the creditor under the credit contract is limited to the difference between the amount required to settle the contract as at the date of the sale and the net proceeds of the sale.

“(3) To avoid doubt,—

“(a) after the sale, the creditor is not entitled to, and must not claim, any amounts in addition to the amount specified in subsection (2), including—

- “(i) any further interest payments that would, had the sale not taken place, have been payable in respect of the credit contract; or
- “(ii) any interest under the Judicature Act 1908; or
- “(iii) any other payments that are in addition to the amount required to settle the contract under section 83ZE; and
- “(b) if the sale is of 1 or more goods (but not all the goods) that are subject to the same credit contract, the debtor’s liability to the creditor under the contract is the amount referred to in subsection (2); and
- “(c) no interest payments or other payments accrue in respect of any unsold goods (whether or not they have been offered for sale and whether or not they are retained by the debtor) after the date of the sale of the first item under paragraph (b).

“Compare: 1997 No 85 s 35

“Subpart 6—Prohibitions relating to security interest over certain consumer goods

“83ZN Credit contract may not provide for security interest over certain consumer goods

- “(1) A credit contract may not provide for a security interest over—
 - “(a) consumer goods of the following kind:
 - “(i) beds and bedding:
 - “(ii) cooking equipment, including cooking stoves:
 - “(iii) medical equipment:
 - “(iv) portable heaters:
 - “(v) washing machines:
 - “(vi) refrigerators:
 - “(b) documents of the following kind:
 - “(i) travel documents:
 - “(ii) identification documents:
 - “(iii) bank cards:
 - “(c) any other consumer goods, or documents, prescribed by regulations made under this Act.
- “(2) Subsection (1)(a) and (c) do not prevent the consumer goods referred to in those paragraphs from being subject to a purchase money security interest.

- “(3) Every creditor under a credit contract must ensure that the contract does not contravene this section.
- “(4) Nothing in this section prevents a security interest over a good specified in subsection (1)(a)(i) to (vi) that is not a consumer good (for example, a bed that is part of the inventory of a retailer).

“83ZO Contravening provision of no effect

A provision of a credit contract that contravenes section 83ZN is of no effect to the extent of the contravention.

“83ZP Exclusion for fixtures

Nothing in this subpart applies to a thing that has been affixed to any building or land in such a manner that it becomes part of the structure of the building or otherwise becomes integral to the land.

“Subpart 7—Miscellaneous provisions

“83ZQ Service of notices

- “(1) Any notice or other document required or authorised by this Part to be served on or given to any person must be in writing and is sufficiently served or given if—
- “(a) it is delivered to that person; or
 - “(b) it is left at that person’s usual or last known place of residence or business or at an address specified for that purpose in an agreement; or
 - “(c) it is posted in a letter addressed to that person by name at that place of residence or business or address; or
 - “(d) it is sent by way of an electronic communication to the address specified by that person for this purpose.
- “(2) Subsection (1)(d) does not apply to a repossession warning notice or a post-repossession notice.
- “(3) This section does not apply in relation to section 83O.
- “(4) If the person is absent from New Zealand, the notice or other document may be served on or given to the person’s agent in New Zealand.
- “(5) If the person is deceased, the notice or other document may be served on or given to the person’s personal representatives.

- “(6) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document must be served or given in such manner as may be directed by an order of the court.
- “(7) If the notice or other document is sent to any person—
- “(a) by post, it is to be treated as having been received on the fourth working day after the day on which the letter is posted (and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted):
- “(b) by electronic communication, it is to be treated as having been received on the second working day after the day on which the notice or document is sent.
- “(8) Despite anything in this section, the court may in any case make an order directing the manner in which any notice or other document is to be served or given, or make an order dispensing with the service or giving of the notice or document.
- “(9) This section does not apply to notices or other documents served or given in any proceedings in any court.

“Compare: 1997 No 85 s 38

“83ZR Part does not limit application of rules relating to conduct of servants or agents

Nothing in this Part limits section 113(b) (which applies section 90 of the Commerce Act 1986 (conduct by servants or agents) for the purposes of this Act).”

52 Section 86 amended (Jurisdiction of District Courts)

- (1) After section 86(2)(b), insert:
- “(ba) in the case of an application for an order under any of the provisions of this Act, the relief claimed does not exceed \$200,000; or”.
- (2) After section 86(2), insert:
- “(2A) Subsection (2)(b) does not limit subsection (2)(a), (ba), or (c).”

- 53 Section 87 amended (Jurisdiction of Disputes Tribunals)**
In section 87(1), replace “sections 41, 69, 80, 82, 90, 93, 120, and 122” with “sections 90, 93, 94A, 120, and 122”.
- 54 New section 87A inserted (Jurisdiction of dispute resolution schemes)**
After section 87, insert:
- “87A Jurisdiction of dispute resolution schemes**
This subpart does not limit the jurisdiction of a dispute resolution scheme in respect of any statutory obligation under this Act (*see* section 63(1)(g) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008).”
- 55 Section 88 amended (Creditors, lessors, transferees, and buy-back promoters liable for statutory damages)**
- (1) In the heading to section 88, after “Creditors,”, insert “creditors’ agents,”.
 - (2) After section 88(1), insert:
 - “(1A) The debtor under a credit contract is entitled to recover from—
 - “(a) the creditor under the contract the amount of the statutory damages set out in section 89 if the creditor or the creditor’s agent breaches, in connection with the contract, any of the provisions of Part 3A; and
 - “(b) the creditor’s agent the amount of the statutory damages set out in section 89 if the creditor’s agent breaches, in connection with the contract, any of the provisions of Part 3A.
 - “(1B) However, if a creditor’s agent breaches, in connection with a contract, any of the provisions of Part 3A, the debtor is not entitled, under subsection (1A), to recover the amount of statutory damages from—
 - “(a) the creditor’s agent if the debtor has already recovered that amount from the creditor:
 - “(b) the creditor if the debtor has already recovered that amount from the creditor’s agent.”
 - (3) In section 88(6), after “consumer credit contract,”, insert “other credit contract,”.

56 Section 89 amended (Amount of statutory damages)

- (1) In section 89(1)(a) and (b), replace “and credit fees” with “, credit fees, and default fees”.
- (2) In section 89(1)(c) and (d) and (2), replace “\$3,000” with “\$6,000”.
- (3) In section 89(1)(d)(iii), after “consumer credit contract”, insert “or other credit contract”.
- (4) In section 89(3), replace “\$100” with “\$200” in each place.
- (5) In section 89(4), after “consumer credit contract,”, insert “other credit contract,”.

57 Section 90 amended (Enforcement of statutory damages)

- (1) In section 90(1), after “consumer credit contract”, insert “or other credit contract”.
- (2) In section 90(1), after “creditor,”, insert “a creditor’s agent,”.
- (3) Replace section 90(3) with:
“(3) An application under this section may be made at any time within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.”

58 Section 91 amended (Court may reduce statutory damages)

In section 91(1), after “consumer credit contract”, insert “or other credit contract”.

59 Section 93 amended (Court’s general power to make orders)

- (1) In section 93, after “conduct of any creditor,”, insert “creditor’s agent,”.
- (2) Replace section 93(a) with:
“(aa) a breach of any of the provisions of section 9C (lender responsibility principles) or of sections 9J and 9K:
“(a) a breach of any of the provisions of Part 2, 3, or 3A:”
- (3) In section 93(b), (c), (d), and (e), replace “those provisions” with “the provisions of section 9C, 9J, or 9K or of Part 2, 3, or 3A”.

60 Section 94 amended (Court orders)

After section 94(1)(c), insert:

“(ca) an order that—

“(i) a fee imposed in contravention of section 41, 80, or 82, and any interest paid or payable in relation to that fee, must be reduced by a specified amount, in which case—

“(A) only the reduced fee or interest is payable to the creditor, transferee, buy-back promoter, or associated person (as the case may be); or

“(B) if the fee or interest has been paid or debited under the consumer credit contract or buy-back transaction, the creditor, transferee, buy-back promoter, or associated person (as the case may be) must refund the amount by which the fee or interest was reduced; or

“(ii) no credit fee, default fee, buy-back fee, buy-back default fee, or other fee may be imposed or debited (in which case no fee, and no interest on that fee, is payable to the creditor, transferee, buy-back promoter, or associated person (as the case may be)); or

“(iii) if the court makes an order under subparagraph (ii) and the fee or interest has already been paid or debited, the creditor, transferee, buy-back promoter, or associated person must,—

“(A) if the fee or interest has been paid, refund the amount of that fee and any interest paid in relation to that fee:

“(B) if the fee or interest has been debited, reverse that transaction:

“(cb) in the case of a breach of section 69(1), an order that—

“(i) the insurance, repayment waiver, or extended warranty be annulled on any terms and conditions that the court thinks fit:

“(ii) all or part of the premium or any other amount payable in relation to the insurance, repayment

waiver, or extended warranty be reimbursed to the debtor or lessee by the creditor or lessor:
“(cc) any other order that the court thinks fit for the purpose of giving effect to an order under paragraph (ca) or (cb):”.

61 New section 94A inserted (Court orders in relation to repossessions)

After section 94, insert:

“94A Court orders in relation to repossessions

- “(1) The court may make all or any of the orders referred to in this section if the court finds that a person (whether or not that person is a party to any proceedings) has suffered loss or damage by the conduct of any creditor, or creditor’s agent, that constitutes, or would constitute, a breach of any of the provisions of Part 3A.
- “(2) In any proceedings relating to a breach of Part 3A, the court must have regard to the following matters:
“(a) the conduct of the parties;
“(b) the nature of the default;
“(c) any other matters the court considers appropriate.
- “(3) The court may make an order granting any relief that is reasonable, and for that purpose—
“(a) relief may be granted on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the court, in the circumstances of each case, thinks fit; and
“(b) in the case of an application relating to a repossession, relief may include compensation for non-financial loss, stress, humiliation, and inconvenience; and
“(c) relief may include a variation in the terms of the credit contract.
- “(4) In any legal proceedings in relation to a credit contract after the creditor has repossessed the consumer goods, the court before which such proceedings are brought may, subject to the jurisdiction of the particular court, vary or discharge any judgment or order of any other court against the debtor for recovery of money so far as is necessary to give effect to a set-off against

any amount owing to the debtor under the provisions of sections 83ZJ and 83ZM.

“Compare: 1997 No 85 ss 12, 13, 36”.

62 Section 95 amended (Miscellaneous provisions concerning court’s general power to make orders)

- (1) In section 95(1),—
 - (a) after “93”, insert “or 94A”; and
 - (b) after “consumer credit contract,”, insert “other credit contract,”; and
 - (c) after “transaction”, insert “, as the case may be”.
- (2) Replace section 95(2) with:

“(2) An application for an order under section 93 or 94A may be made at any time within 3 years after the date on which the loss or damage was discovered or ought reasonably to have been discovered.”
- (3) In section 95(3), after “93”, insert “or 94A”.
- (4) In section 95(4), after “93”, insert “or 94A”.

63 Section 96 amended (Injunctions)

- (1) Replace section 96(1)(a) with:

“(aa) a breach of any of the provisions of section 9C (lender responsibility principles) or of sections 9J and 9K:
“(a) a breach of any of the provisions of Parts 2, 3, and 3A:”.
- (2) In section 96(1)(b), (c), (d), (e), and (f), replace “those provisions” with “the provisions of section 9C, 9J, or 9K or of Part 2, 3, or 3A”.

64 Section 99 amended (Enforcement of consumer credit contract prohibited)

- (1) After section 99(1)(b), insert:

“(ba) enforce any right in relation to the costs of borrowing;
or
“(bb) require the debtor or any other person to make a full prepayment or a part prepayment on the basis of a failure by the debtor or other person to pay the costs of borrowing; or”.
- (2) After section 99(1), insert:

- “(1A) Neither the debtor nor any other person is liable for the costs of borrowing in relation to any period during which the creditor has failed to comply with section 17 or 22.
- “(1B) The period referred to in subsection (1A)—
- “(a) starts on the date of the failure; and
 - “(b) ends only at the close of the day on which the disclosure under section 17 or 22 is made.
- “(1C) However, subsection (1A) does not apply in relation to fees or charges payable as referred to in section 45 unless the other person, body, or agency referred to in that section is an associated person of the creditor.”

65 New sections 99A and 99B inserted

After section 99, insert:

“99A Enforcement of rights of repossession, etc, prohibited

If the notice requirements under section 83G or 83V, as the case may be, have not been complied with, no creditor that fails to so comply may, before a notice is given, enforce any rights that the creditor otherwise has under Part 3A.

“99B Enforcement prohibited if creditor unregistered

- “(1) If a creditor who is required to be registered under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 is not registered under that Act,—
- “(a) neither the creditor nor any other person may, in relation to a credit contract to which the creditor is a party,—
 - “(i) enforce any right in relation to the costs of borrowing; or
 - “(ii) require the debtor or any other person to make a full prepayment or a part prepayment on the basis of a failure by the debtor or other person to pay the costs of borrowing; and
 - “(b) neither the debtor nor any other person is liable for the costs of borrowing under such a contract in relation to any period during which the creditor is unregistered.
- “(2) However, subsection (1)(b) does not apply in relation to fees or charges payable to another person, body, or agency as re-

ferred to in section 45 unless that person, body, or agency is an associated person of the creditor.

- “(3) On becoming registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the creditor may enforce the creditor’s rights in relation to the costs of borrowing, but only—
- “(a) if the creditor has given written notice to the debtor, containing the information specified in subsection (5); and
 - “(b) in relation to the costs of borrowing directly attributable to periods after such notice has been given to the debtor.
- “(4) Subsection (3) is subject to any other provision of this Act that prohibits enforcement of the credit contract.
- “(5) The notice required under subsection (3)(a) must clearly inform the debtor—
- “(a) that the creditor is now registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
 - “(b) of the date on which the creditor became registered; and
 - “(c) of the name and contact details of the dispute resolution scheme of which the creditor is a member; and
 - “(d) that the debtor is, from the date on which the notice was given, liable for the costs of borrowing; and
 - “(e) that the debtor has no liability for the costs of borrowing that would otherwise have accrued before the date on which the notice was given.”

66 Section 101 amended (Enforcement of consumer lease prohibited)

- (1) After section 101(b), insert:
- “(ba) enforce any right in relation to the costs of the lease; or
 - “(bb) require the lessee or any other person to make a payment of an amount before that amount is payable under the lease on the basis of a failure by the lessee or other person to pay the costs of the lease; or”.
- (2) In section 101, insert as subsections (2) to (4):

- “(2) Neither the lessee nor any other person is liable for the costs of the lease in relation to any period during which the lessor has failed to comply with section 64 or 65.
- “(3) The period referred to in subsection (2)—
- “(a) starts on the date of the failure; and
 - “(b) ends only at the close of the day on which the disclosure under section 64 or 65 is made.
- “(4) However, subsection (2) does not apply in relation to fees or charges payable by a lessee for an amount payable, or to reimburse an amount paid, by the lessor to another person, body, or agency unless the person, body, or agency is an associated person of the lessor.”

67 Section 102 amended (Enforcement of buy-back transaction prohibited)

- (1) After section 102(b), insert:
- “(ba) enforce any right in relation to the costs of the buy-back transaction; or
 - “(bb) require the occupier or any other person to make a payment of an amount before that amount is payable under the buy-back transaction on the basis of a failure by the occupier or other person to pay the costs of the buy-back transaction; or”.
- (2) In section 102, insert as subsections (2) to (4):
- “(2) Neither the occupier nor any other person is liable for the costs of the buy-back transaction in relation to any period during which the transferee has failed to comply with section 72 or 77.
- “(3) The period referred to in subsection (2)—
- “(a) starts on the date of the failure; and
 - “(b) ends only at the close of the day on which the disclosure under section 72 or 77 is made.
- “(4) However, subsection (2) does not apply in relation to fees or charges payable to another person, body, or agency as referred to in section 81 unless that person, body, or agency is an associated person of the transferee.”

68 Section 103 replaced (Offences)

Replace section 103 with:

“102A Infringement offences

- “(1) Every creditor, lessor, or transferee who is subject to a disclosure section commits an offence if—
- “(a) both of the following apply:
 - “(i) a paragraph in Schedule 1, 2, or 3 or section 19(1) requires information to be contained in the disclosure statement that is to be given or sent for the purposes of the disclosure section; and
 - “(ii) the creditor, lessor, or transferee breaches the disclosure section by failing to include any information in the disclosure statement for the purposes of that paragraph; or
 - “(b) the creditor, lessor, or transferee breaches the disclosure section by failing to give or send to the debtor, guarantor, lessee, or occupier a copy of the relevant terms within the time for giving or sending the copy of those terms that is specified in that section.
- “(2) Subsection (1) does not apply to a complete failure to give or send a disclosure statement to a debtor, guarantor, lessee, or occupier in accordance with a disclosure section (but such a breach is an offence under section 103).
- “(3) Every creditor, lessor, or transferee who is subject to section 24, 67, or 79 commits an offence if the creditor, lessor, or transferee breaches that section.
- “(4) Every lender who is subject to section 9J commits an offence if the lender breaches section 9J(4).
- “(5) Every creditor who is subject to Part 3A commits an offence if both of the following apply:
 - “(a) a paragraph in Schedule 3A requires information to be contained in the repossession warning notice that is to be served for the purposes of section 83G; and
 - “(b) the creditor breaches section 83G by failing to include any information in the repossession warning notice for the purposes of that paragraph.
- “(6) Every creditor or creditor’s agent who is subject to Part 3A commits an offence if the creditor or creditor’s agent breaches

section 83O(1) by failing to produce a document or information referred to in a paragraph of that subsection.

- “(7) Subsections (5) and (6) do not apply to a complete failure to serve a repossession warning notice on a debtor in accordance with section 83G or a complete failure to comply with section 83O(1) (but such a breach is an offence under section 103).
- “(8) A person who commits an offence under this section is liable on conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$10,000; and
 - “(b) in the case of a body corporate, to a fine not exceeding \$30,000.
- “(9) In this Act, **infringement offence** means an offence under this section.
- “(10) *See* sections 105A to 105F (which relate to infringement offences).
- “(11) In this section,—
- “**disclosure section** means any of sections 17, 18, 25, 64, 70, and 72
 - “**relevant terms** means, in relation to—
- “(a) section 17, the terms of the contract referred to in section 17(2):
 - “(b) section 25, the terms of the guarantee referred to in section 25(1)(a):
 - “(c) section 64, the terms of the lease referred to in section 64(2):
 - “(d) section 70, the terms of the credit-related insurance, repayment waiver, or extended warranty referred to in section 70(1) or (2) (as the case may be):
 - “(e) section 72, the terms of the buy-back transaction referred to in section 72(2).

“**103 Other offences**

- “(1) Every creditor, creditor’s agent, lessor, transferee, or buy-back promoter who breaches any of the provisions of sections 17 to 74, 76 to 82, 83E, 83F, 83G, 83O, 83P, 83S, 83T, and 83ZN commits an offence and is liable on conviction,—

- “(a) in the case of an individual, to a fine not exceeding \$200,000; and
 - “(b) in the case of a body corporate, to a fine not exceeding \$600,000.
- “(2) However, a breach of section 83E(1)(c) is not an offence under subsection (1).
- “(3) Every transferee who breaches section 75 commits an offence and is liable on conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$200,000, or both; and
 - “(b) in the case of a body corporate, to a fine not exceeding \$600,000.
- “(4) Every person who acts in breach of an order made under section 108 commits an offence and is liable on conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200,000, or both; and
 - “(b) in the case of a body corporate, to a fine not exceeding \$600,000.
- “(5) Conduct that constitutes an offence under section 102A does not constitute an offence under this section.”

69 Section 105 replaced (When proceedings may be commenced for certain offences)

Replace section 105 with:

“105 When proceedings may be commenced

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against section 102A or 103 ends on the date that is 3 years after the date on which the matter giving rise to the breach was discovered or ought reasonably to have been discovered.

“Compare: 1986 No 121 s 40(3)”

70 New sections 105A to 105F inserted

After section 105, insert:

“105A Infringement fee, etc, defined

- “(1) In this Act, unless the context otherwise requires,—
- “**infringement fee** means the amount, not exceeding \$2,000, that is prescribed by regulations made under section 105F as the amount payable in respect of an infringement offence for which an infringement notice has been issued
- “**infringement notice** means a notice, in the form prescribed by regulations made under section 105F and issued under section 105C, in respect of an infringement offence.
- “(2) *See* section 102A (which relates to infringement offences).

“105B Infringement offence alleged

- “(1) If a person is alleged to have committed an infringement offence, the person may either—
- “(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
- “(b) be served with an infringement notice.
- “(2) Proceedings commenced in the way described in subsection (1)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- “Compare: 1992 No 122 s 165A

“105C Issue of infringement notice

- “(1) The Commission may issue an infringement notice to a person if the Commission believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- “(2) The Commission may revoke an infringement notice before the infringement fee is paid, or before an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- “(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.
- “Compare: 1992 No 122 s 165B

“105D Procedural requirements for infringement notices

- “(1) An infringement notice may be served on a person (a **recipient**) who is alleged to have committed an infringement offence—
- “(a) by delivering it, or a copy of it, personally to the recipient; or
 - “(b) by sending it, or a copy of it, by post, addressed to the recipient at the recipient’s last known place of residence or business.
- “(2) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under subsection (1)(b) must be treated as having been served on the recipient on the date it was posted.
- “(3) An infringement notice must be in the form prescribed by regulations made under section 105F and must contain—
- “(a) details of the alleged infringement offence that are sufficient to fully and fairly inform the recipient of the time, place, and nature of the alleged infringement offence; and
 - “(b) the amount of the infringement fee; and
 - “(c) an address at which the infringement fee may be paid; and
 - “(d) the time within which the infringement fee must be paid; and
 - “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - “(f) a statement that the recipient has a right to request a hearing; and
 - “(g) a statement of what will happen if the recipient does not pay the fee and does not request a hearing; and
 - “(h) any other prescribed matters.
- “(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and in that case, section 21 of the Summary Proceedings Act 1957 applies, with all necessary modifications.

“(5) Reminder notices must be prescribed by regulations made under section 105F and must contain the information referred to in subsection (3).

“Compare: 1992 No 122 s 165C

“105E What Commission does with infringement fees

The Commission must pay all infringement fees received into a Crown Bank Account.

“Compare: 1992 No 122 s 165D

“105F Regulations relating to infringement offences

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes:

- “(a) prescribing the form of infringement notices and reminder notices:
- “(b) prescribing any matters that must be included in those notices:
- “(c) prescribing the amount of the infringement fee.”

71 Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters)

(1) Replace section 108(1)(a)(v) with:

“(v) has failed, more than once, to comply with any of the provisions of this Act (including, to avoid doubt, the lender responsibility principles (*see* section 9C(2)); or”.

(2) After section 108(1), insert:

“(1A) However, a District Court may not make an order under subsection (1) on the basis of—

- “(a) a conviction referred to in subsection (1)(a)(i) if—
 - “(i) the court is satisfied that the direct and indirect consequences of the order would be out of all proportion to the gravity of the offence for which the person was convicted; and
 - “(ii) the person has no other convictions for an offence against this Act or for a crime involving dishon-

esty (as defined in section 2(1) of the Crimes Act 1961):

- “(b) the person being a buy-back promoter referred to in subsection (1)(a)(iv) if—
 - “(i) the court is satisfied that the direct and indirect consequences of the order would be out of all proportion to the gravity of any misconduct of the buy-back promoter in connection with the buy-back transaction; and
 - “(ii) the buy-back promoter has not been connected with any other reopening of a buy-back transaction under section 120.”

72 Section 111 amended (Role and functions of Commission under this Act)

- (1) After section 111(2)(a), insert:
 - “(ab) monitor the conduct of creditors and creditors’ agents in the exercise of their rights under Part 3A and under the relevant credit contract; and
 - “(ac) issue infringement notices for infringement offences; and”.
- (2) In section 111(2)(d), after “creditors,”, insert “debtors,”.

73 Section 119 amended (Collateral contracts and linked transactions)

In section 119(1), after “security interest”, insert “or guarantee” in each place.

74 Section 124 replaced (Guidelines for reopening credit contracts, consumer leases, and buy-back transactions)

Replace section 124 with:

“124 Guidelines for reopening credit contracts, consumer leases, and buy-back transactions

- “(1) In deciding whether section 120 applies and whether to reopen a credit contract, consumer lease, or buy-back transaction (an **arrangement**), the court must, to the extent that the following matters are applicable in the particular circumstances, have regard to:

- “(a) all the circumstances relating to the making of the arrangement, or the exercise of any right or power conferred by the arrangement, or the inducement to enter into the arrangement; and
- “(b) whether the creditor or transferee has, in relation to any aspect of the arrangement (including the creditor’s or transferee’s conduct in entering into the arrangement), complied with the lender responsibility principles (*see* section 9C(2)); and
- “(c) the relative bargaining power of the parties; and
- “(d) whether, taking account of the particular characteristics of the debtor, lessee, or occupier (for example, his or her age or physical or mental condition), that person, or the person’s representative, was reasonably able to protect that person’s interests; and
- “(e) in the case of a credit contract, whether the contract is a consumer credit contract; and
- “(f) whether, before entering into the arrangement, the debtor, lessee, or occupier obtained independent legal or other professional advice in relation to that arrangement; and
- “(g) whether the creditor, lessor, or transferee, or any person acting in the interests of that person, subjected the debtor, lessee, or occupier to unfair pressure or tactics or otherwise unfairly influenced the debtor, lessee, or occupier to enter into the arrangement and, if so, the nature and extent of that unfair conduct; and
- “(h) the terms of other arrangements under which the debtor, lessee, or occupier could have obtained the same or substantially similar credit, hired goods, or finance from a person other than the creditor, lessor, or transferee, including—
 - “(i) the costs of borrowing, costs of the lease, or costs of the buy-back transaction (as the case may be) under those other arrangements; and
 - “(ii) whether the arrangement under consideration imposes significantly more onerous terms on the debtor, lessee, or occupier than would be imposed under those other arrangements; and

- “(i) the amount payable by the debtor, lessee, or occupier under the arrangement; and
 - “(j) the amount of any payment required as a condition of the full prepayment under the arrangement, including the creditor’s expenses and the likelihood that the amount repaid could be reinvested on similar terms; and
 - “(k) the form of the arrangement, including whether it is expressed in plain language in a clear, concise, and intelligible manner; and
 - “(l) whether the terms of the arrangement—
 - “(i) allow the debtor, lessee, or transferee to be reasonably able to comply with his or her obligations under the arrangement; and
 - “(ii) are reasonably necessary to protect the interests of the creditor, lessor, or transferee; and
 - “(m) the length of time the debtor, lessee, or occupier has had to remedy any default; and
 - “(n) if the creditor, lessor, or transferee has refused to release, or has agreed to release subject to conditions, a security interest relating to the arrangement, the obligations secured by the security interest and the extent of security that remains after the release or conditional release; and
 - “(o) whether action by the creditor, lessor, or transferee in relation to the enforcement of, or recovery under, the arrangement was lawful in the circumstances; and
 - “(p) any other matters that the court thinks fit.
- “(2) If a guarantee is treated as forming part of the credit contract under section 119(1), the references to the debtor in subsection (1)(d), (f), (g), (i), and (l) must, in relation to the guarantee, be treated as including the guarantor.”

75 Section 134 amended (Right to set-off)

In section 134(1), after “93”, insert “or 94A”.

76 Section 135 amended (No contracting out)

After section 135(1), insert:

“(1A) Section 56 of the Sale of Goods Act 1908 must be read as subject to this section.”

77 Section 138 amended (Regulations)

- (1) After section 138(1)(a), insert:
 - “(ab) exempting any credit contract or other agreement or class of credit contract or other agreement from the application of any provision or provisions of this Act, and prescribing the terms and conditions (if any) of the exemption:
 - “(ac) prescribing matters for the purposes of section 19(1)(i), including what warning and other information must be contained, how the warning and information must be presented, how amounts or other matters are calculated or determined, and the circumstances (if any) in which the warning or information is not required:”.
- (2) Replace section 138(1)(d) with:
 - “(d) prescribing any class of change to a matter to which section 23(5) applies:”.
- (3) After section 138(1)(d), insert:
 - “(da) prescribing circumstances for the purposes of section 26A(3):
 - “(db) prescribing matters for the purposes of section 32(1)(ba), including prescribing—
 - “(i) 1 or more forms:
 - “(ii) when a form must be used:
 - “(iii) information or warnings that must be included in the form that are in addition to the key information set out in Schedule 1 or other information required by this Act:
 - “(dc) prescribing the particular matters required to meet all or any of the requirements under this Act for publication, disclosure, notice, or other provision of information:
 - “(dd) prescribing the form of statements that must be used to meet all or any of the requirements under this Act for publication, disclosure, notice, or other provision of information:

- “(de) prescribing how the information to be disclosed must be presented, including, but not limited to, requirements as to the precise manner of disclosure.”.
- (4) In section 138(1)(e), after “model disclosure statements”, insert “for the purposes of section 34”.
- (5) After section 138(1)(h), insert:
“(ha) prescribing, for the purposes of section 52A or 52B, the procedure for calculating a proportionate rebate of any additional consideration paid for a repayment waiver or extended warranty.”.
- (6) After section 138(1)(j), insert:
“(ja) prescribing consumer goods or documents for the purposes of section 83ZN(1)(c):”.
- (7) After section 138(1), insert:
“(1A) Regulations may be made under subsection (1)(a) or (ab) only on the recommendation of the Minister, and the Minister may make a recommendation only if he or she—
“(a) has had regard to the purposes of this Act set out in section 3; and
“(b) is satisfied that the exemption would not cause significant detriment to debtors under credit contracts, lessees under consumer leases, or occupiers under buy-back transactions; and
“(c) is satisfied, in the case of—
“(i) subsection (1)(a), that compliance with the provisions of this Act relating to consumer credit contracts would, in the circumstances, require a creditor or a class of creditors to comply with requirements that are unduly onerous or burdensome:
“(ii) subsection (1)(ab), that compliance with the relevant provision or provisions would, in the circumstances, require a creditor, lessor, or transferee or a class of creditors, lessors, or transferees to comply with requirements that are unduly onerous or burdensome.
- “(1B) If the Minister makes a recommendation under subsection (1A) relating to an exemption in regulations made under subsection (1)(a) or (ab), the Minister’s reasons for making the

recommendation (including why the exemption is appropriate) must be published together with the regulations.

“(1C) Regulations may be made under subsection (1)(da) only on the recommendation of the Minister, and the Minister may make a recommendation only if he or she is satisfied that the circumstances that are prescribed relate to a securitisation or covered bond arrangement or any similar arrangement.

“(1D) For the purposes of subsection (1)(db) to (de), regulations may prescribe different requirements for different types or classes of disclosure, persons who are required to make disclosure, contracts, leases, transactions, or other circumstances.”

78 New section 141A inserted (Application, savings, and transitional provisions relating to amendments to Act)

After section 141, insert:

“141A Application, savings, and transitional provisions relating to amendments to Act

The application, savings, and transitional provisions set out in Schedule 1AA, which relate to amendments made to this Act after 1 January 2014, have effect for the purposes of this Act.”

79 New Schedule 1AA inserted

Before Schedule 1, insert the Schedule 1AA set out in Schedule 1 of this Act.

80 Schedule 1 amended

(1) In Schedule 1, after paragraph (a), insert:

“(aa) the trading name of the creditor (if different from its full name specified under paragraph (a)).”

(2) In Schedule 1, replace paragraph (q) with:

“(q) a description of any security interest that is or may be taken in connection with the contract, including a clear explanation of—

“(i) the nature of the security interest; and

“(ii) the property that is, or is proposed to be, subject to the security interest; and

“(iii) the extent to which the debtor’s obligations to the creditor are secured by the security interest, including whether, if the creditor’s rights under the security were to be exercised, the debtor would, or may, remain indebted to the creditor (if there is a shortfall in the proceeds of the sale of the property that is subject to the security interest); and

“(iv) what the consequences would be if the debtor were to give a security interest over the property referred to in subparagraph (ii) to a person other than the creditor and, as a result, the debtor were to be in breach of the contract, including whether the property that would be subject to the security interest would be liable to repossession:

“Disabling devices

“(qa) whether a disabling device is to be attached to consumer goods that are subject to a security interest referred to in paragraph (q) and, if so, a clear description of—

“(i) how the device functions; and

“(ii) when the device might be activated; and

“(iii) how, if the consumer goods are required in an emergency situation, the debtor may obtain the use of the goods:”.

(3) In Schedule 1, replace paragraph (s) with:

“(s) a statement of the debtor’s cancellation rights under section 27:

“Debtor’s right to apply for relief on grounds of unforeseen hardship

“(sa) a statement of the debtor’s right under section 55, and advice as to how an application under that section may be made:”.

(4) In Schedule 1, after paragraph (u), insert:

“Dispute resolution

“(ua) the name and contact details of the dispute resolution scheme of which the creditor is a member (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the creditor to be a member of such a scheme):

*“Registration under Financial Service Providers
(Registration and Dispute Resolution) Act 2008*

“(ub) the creditor’s registration number under the register of financial service providers:

“(uc) the name under which the creditor is registered on that register.”.

81 New Schedules 3A and 3B inserted

After Schedule 3, insert the Schedules 3A and 3B set out in Schedule 2 of this Act.

82 Consequential amendments to, or repeals of, other Acts

Amend or repeal the Acts specified in Schedule 3 as set out in that schedule.

Schedule 1

s 79

New Schedule 1AA inserted

Schedule 1AA

ss 8B, 141A

**Application, savings, and transitional
provisions relating to amendments made
to this Act after 1 January 2014**

1 Interpretation

In this schedule,—

2014 Act means the Credit Contracts and Consumer Finance Amendment Act 2014

principal Act means the Credit Contracts and Consumer Finance Act 2003.

**Credit Contracts and Consumer Finance
Amendment Act 2014**

2 Minister may prepare Responsible Lending Code before commencement of Part 1A

- (1) The Minister may exercise or perform a power or duty under sections 9G to 9I (as inserted by the 2014 Act) before section 9 of the 2014 Act comes into force.
- (2) Any consultation undertaken before section 9 of the 2014 Act comes into force that is of the kind referred to in section 9G(2)(b) or (e) must be treated as the consultation required for the purposes of that section (even if the consultation occurs before the enactment of the 2014 Act).
- (3) The Minister must ensure that the Responsible Lending Code first comes into force no later than 12 months after the date on which the 2014 Act receives the Royal assent.

3 Application of amendments to existing agreements

- (1) Except as provided for in subclauses (2) and (3),—
 - (a) the amendments to the principal Act in the 2014 Act do not apply to existing agreements; and
 - (b) the principal Act and the Credit (Repossession) Act 1997, as in force immediately before the commencement of this clause, continue to apply for the purposes of those agreements.

Schedule 1AA—*continued*

- (2) The amendments referred to in subclause (1) apply in relation to existing agreements as follows:
- (a) the amendments made by section 20 of the 2014 Act (request disclosure) apply only in relation to requests made on or after the commencement of that section:
 - (b) the amendments made by sections 18, 19, 44, and 47 of the 2014 Act (variation disclosure) apply only to variations that take effect on or after the commencement of those sections:
 - (c) the amendments made by section 16 of the 2014 Act (continuing disclosure statements) apply only to continuing disclosure statements that are, or required to be, given or sent on or after the commencement of that section:
 - (d) the amendments made by section 22 of the 2014 Act (disclosure of transfers) apply only to transfers that take effect on or after the commencement of that section:
 - (e) the amendments made by sections 37 to 41 of the 2014 Act (hardship applications) apply only to applications made on or after the commencement of those sections:
 - (f) the lender responsibility principles (*see* section 9C(2) of the principal Act, as inserted by section 9 of the 2014 Act) apply only to the following:
 - (i) a variation of a contract where the variation takes effect on or after the commencement of section 9 of the 2014 Act:
 - (ii) an application under section 55 of the principal Act made on or after the commencement of section 9 of the 2014 Act.
- (3) If a provision of the principal Act as amended or inserted by the 2014 Act applies in relation to an existing agreement under subclause (2), sections 93 and 96 of the principal Act (as amended by sections 59 and 63 of the 2014 Act) apply to a breach of that provision in relation to the existing agreement if the breach occurs on or after the commencement of this clause.

Schedule 1AA—*continued*

- (4) In this clause, **existing agreement** means any credit contract, security agreement, lease, buy-back transaction, or other contract or arrangement—
- (a) to which the principal Act or the Credit (Repossession) Act 1997 (as in force before this clause came into force) applies; and
 - (b) that was entered into before this clause came into force.
-

Schedule 2

s 81

New Schedules 3A and 3B inserted**Schedule 3A**

s 83G(3)(b)

**Key information concerning repossession
warning notice**

The following information is the key information concerning a credit contract as is applicable:

- (a) the full name and address of the debtor and address from which goods will be repossessed:
- (b) the full name and contact details of the creditor:
- (c) the date of the credit contract:
- (d) the nature and amount of default under the credit contract:
- (e) if the default is capable of being remedied, a statement—
 - (i) that the debtor must, within a time specified in the statement (being at least 15 days after the notice is served on the debtor), remedy the default; and
 - (ii) about how the default must be remedied; and
 - (iii) that if the debtor does not comply with requirements relating to remedying the default, the creditor intends to repossess the goods specified in the notice:
- (f) if the default is not capable of being remedied, a statement that the creditor intends to repossess the goods specified in the notice on or after a specified date (being a date not less than 15 days after the notice is served on the debtor):
- (g) sufficient information to enable the identification of the goods to be repossessed:
- (h) a statement—
 - (i) informing the debtor that the debtor has the right to voluntarily deliver the goods specified in the repossession warning notice to the creditor, and that the process and rules after the delivery of those goods will be in accordance with the process and rules that apply after a repossession; and
 - (ii) specifying a reasonable place to which the debtor may voluntarily deliver the goods for the purposes of exercising that right:

Schedule 3A—*continued*

- (i) a checklist of the conditions that must be met before a creditor has the right to repossess goods, or has the authority to enter premises to repossess those goods, including,—
 - (i) in relation to a right to repossess goods,—
 - (A) that there is a credit contract that provides that the creditor has a security interest in the goods to be repossessed; and
 - (B) that credit contract—
 - specifically identifies those goods; and
 - gives the creditor the right to enter the debtor’s premises and to repossess those goods; and
 - (C) that the debtor is in default; and
 - (D) that a repossession warning notice must have been served on the debtor at least 15 days before the repossession occurs:
 - (ii) in relation to an authority to enter premises to repossess goods,—
 - (A) that the person carrying out the repossession is licensed or holds a certificate of approval and, if a creditor’s agent is undertaking the repossession, that that person has the authority to repossess the goods on behalf of the creditor; and
 - (B) if the person carrying out the repossession is entering premises outside the hours between 6 am and 9 pm or on a Sunday or a public holiday, the creditor has the prior written consent of the debtor to do so:
- (j) the expiry date of the notice (*see* section 83G(4)) and a statement that the notice is of no effect after that date:
- (k) details about the debtor’s right to seek relief in circumstances of unforeseen hardship:
- (l) details about what the debtor needs to do if he or she disputes some aspect of the proposed repossession, including—
 - (i) details about the dispute resolution process; and

Schedule 3A—*continued*

- (ii) that, if a written complaint has been made, repossession may not proceed until that complaint has been resolved; and
 - (iii) the contact details of the dispute resolution scheme of which the creditor is a member:
- (m) where a repossession warning notice is sent to a guarantor, advice to the guarantor that—
- (i) the notice is being sent to the guarantor in his or her capacity as guarantor of the named debtor; and
 - (ii) the guarantor has rights in relation to the proposed repossession, details of those rights, and what the guarantor may do to protect his or her position.
-

Schedule 3B
**Key information concerning
post-repossession notice**

s 83V(2)(b)

The following information is the key information concerning a credit contract as is applicable:

- (a) the full name and address of the debtor:
- (b) the full name and contact details of the creditor:
- (c) the date of the credit contract:
- (d) the date of the repossession:
- (e) a list of the goods repossessed:
- (f) the creditor's estimate of the value of the goods repossessed:
- (g) a statement of what it means to reinstate the credit contract or to settle the credit contract (including a brief description of the consequences of reinstating or settling the credit contract):
- (h) a statement informing the debtor that the debtor may reinstate or settle the contract, and what the debtor must do to reinstate or settle the contract, including,—
 - (i) in relation to the reinstatement of the contract,—
 - (A) the creditor's estimate of the total amount required to be paid to reinstate the contract; and
 - (B) details of how that total is reached, including the amount of arrears in payments of the instalments due (including interest charges, credit fees, and default fees), and a breakdown of the costs referred to in section 83ZB(2):
 - (ii) in relation to the settlement of the contract,—
 - (A) the creditor's estimate of the total amount required to be paid to settle that contract and the amounts that may comprise that total; and
 - (B) details of how that total amount is reached, including the balance of the advance outstanding (together with interest charges, credit fees, and default fees payable under the contract), and a breakdown of the costs referred to in section 83ZE(2); and
 - (C) the obligations that the debtor must fulfil to settle the contract:
- (i) a statement setting out that, if the contract is not reinstated or settled,—

Schedule 3B—*continued*

- (i) the repossessed goods will be sold; and
- (ii) in that case, the debtor will be—
 - (A) liable for the difference between the debtor's liability and the net proceeds of the sale of the goods; or
 - (B) if the net proceeds of the sale of the goods are more than enough to cover the liability, entitled to a refund:
- (j) a statement that the repossessed goods may not be sold until after the expiry of 15 days from the date of service of the notice on the debtor (unless the debtor consents to an earlier sale or requires the creditor to offer the goods for sale within the 15 days):
- (k) details about the debtor's right to seek relief in circumstances of unforeseen hardship:
- (l) a statement that—
 - (i) the debtor is entitled, at any time after the creditor repossesses the goods but before the creditor sells or agrees to sell the goods, to obtain a valuation of the goods at the debtor's expense; and
 - (ii) the creditor must give the debtor or the debtor's valuer access to the goods to enable the valuation to be completed:
- (m) a statement that—
 - (i) the debtor has a right at any time before the creditor sells or agrees to sell the consumer goods, to require the creditor to sell the goods to a person introduced by the debtor, being a person who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods specified under paragraph (f); and
 - (ii) if the debtor exercises that right, the debtor must give to the creditor a written notice of the exercise of the right that is signed by the debtor or the debtor's agent:
- (n) a statement that—
 - (i) if the goods have not been sold within 30 working days after the date of the repossession, the debtor is entitled to require the creditor to put the goods up for sale by auction; and

Schedule 3B—*continued*

- (ii) if the debtor exercises that right, the debtor must require the sale by a written notice to the creditor that is signed by the debtor or the debtor's agent:
 - (o) where a post-repossession notice is sent to a guarantor, advice to the guarantor that—
 - (i) the notice is being sent to the guarantor in his or her capacity as guarantor of the named debtor; and
 - (ii) the guarantor has rights in relation to the repossession, details of those rights, and what the guarantor may do to protect his or her position.
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Schedule 3

s 82

**Consequential amendments to, or repeals
of, other Acts****Credit (Repossession) Act 1997 (1997 No 85)**

Repeal.

Disputes Tribunals Act 1988 (1988 No 110)

In Schedule 1, Part 2, repeal the item relating to the Credit (Repossession) Act 1997.

Electronic Transactions Act 2002 (2002 No 35)

In the Schedule, Part 2, replace the item relating to the Credit (Repossession) Act 1997 with:

“**Credit Contracts and Consumer Finance Act 2003 (2003 No 52)**
“Section 83O”.

Fair Trading Act 1986 (1986 No 121)

In section 36B(4), after “that Act”, insert “if no interest charges, and no credit fees, are payable under the layby sale agreement”.

After section 36B(4), insert:

- “(5) In subsection (4) and in this subsection,—
- “**associated person** has the same meaning as in section 8A of the Credit Contracts and Consumer Finance Act 2003
 - “**credit fees**—
 - “(a) means fees or charges payable by a consumer under a layby sale agreement, or payable by a consumer to, or for the benefit of, the supplier in connection with a layby sale agreement; and
 - “(b) includes—
 - “(i) a fee or charge payable on a breach of a layby sale agreement by a consumer or on the enforcement of a layby sale agreement by a supplier:
 - “(ii) a fee or charge payable by a consumer for an amount payable, or to reimburse an amount paid, by the supplier to an associated person of the supplier; but
 - “(c) does not include—

Fair Trading Act 1986 (1986 No 121)—*continued*

- “(i) a cancellation charge referred to in section 36F:
- “(ii) charges for an optional service:
- “(iii) government charges, duties, taxes, or levies:
- “(iv) a fee or charge payable by a consumer for an amount payable, or to reimburse an amount paid, by the supplier to another person who is not an associated person of the supplier

“**interest charge** means a charge that accrues over time and is determined by applying a rate to the whole or any part of the outstanding amount that the consumer is required to pay to the supplier under the layby sale agreement (and includes any additional interest charge payable on a breach of a layby sale agreement by a consumer).”

Income Tax Act 2007 (2007 No 97)

In section FA 15(4)(a), replace “costs and expenses referred to in section 31(2)(c) and (d) of the Credit (Repossession) Act 1997” with “costs referred to in section 83ZE(2)(a) and (b) of the Credit Contracts and Consumer Finance Act 2003”.

Insolvency Act 2006 (2006 No 55)

In section 129, replace “**cash price, consumer goods, creditor, debtor, and post-possession notice** have the same meanings as in section 2(1) of the Credit (Repossession) Act 1997” with “**cash price, consumer goods, creditor, debtor, and post-repossession notice** have the same meanings as in section 5 of the Credit Contracts and Consumer Finance Act 2003”.

In section 130(2), replace “postpossession” with “post-repossession”.

In section 131(1)(a), replace “section 30 of the Credit (Repossession) Act 1997” with “section 83ZD of the Credit Contracts and Consumer Finance Act 2003”.

In section 131(1)(b), replace “section 25 of the Credit (Repossession) Act 1997” with “section 83Y of the Credit Contracts and Consumer Finance Act 2003”.

In section 131(1)(b), replace “section 31” with “section 83ZE”.

Insolvency Act 2006 (2006 No 55)—*continued*

In section 131(2), replace “the Credit (Repossession) Act 1997” with “Part 3A of the Credit Contracts and Consumer Finance Act 2003”.

In section 132(2), replace “section 35 of the Credit (Repossession) Act 1997” with “section 83ZM of the Credit Contracts and Consumer Finance Act 2003”.

In section 132(3)(a)(i), replace “post-possession” with “post-repossession”.

In section 132(3)(a)(ii), replace “section 33 of the Credit (Repossession) Act 1997” with “section 83ZI of the Credit Contracts and Consumer Finance Act 2003”.

In section 132(3)(b), replace “sections 20 to 36 of the Credit (Repossession) Act 1997” with “subpart 5 of Part 3A of the Credit Contracts and Consumer Finance Act 2003”.

Personal Property Securities Act 1999 (1999 No 126)

In section 44, before the example, insert as subsection (2):

- “(2) However, in relation to an appropriation of after-acquired property that is consumer goods, such appropriation—
- “(a) must be made by the debtor, either personally or by the debtor’s agent; and
 - “(b) cannot be made by the creditor acting as the debtor’s attorney or agent.”

Replace section 105 with:

“105 Application of this Part

- “(1) Except as provided for in subsection (2), this Part applies to all security interests.
- “(2) This Part does not apply to the following security interests:
- “(a) security interests created or provided for by—
 - “(i) a transfer of an account receivable or chattel paper; or
 - “(ii) a lease for a term of more than 1 year that does not secure payment or performance of an obligation; or
 - “(iii) a commercial consignment that does not secure payment or performance of an obligation:

Personal Property Securities Act 1999 (1999 No 126)—continued

- “(b) security interests in consumer goods to which Part 3A of the Credit Contracts and Consumer Finance Act 2003 applies, other than security interests in relation to accessions (see section 83I of that Act).”

Private Security Personnel and Private Investigators Act 2010 (2010 No 115)

In section 4, insert in their appropriate alphabetical order:

“**consumer goods** has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003

“**creditor** has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003, and includes a creditor referred to in section 83B(2)(b) of that Act

“**repossession agent** has the meaning given to it in section 8A

“**repossession employee** has the meaning given to it in section 16A”.

In section 5(4)(b), after “destruction agent,”, insert “repossession agent,”.

New section 8A: insert after section 8:

“**8A Meaning of repossession agent**

In this Act, **repossession agent** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business of repossessing consumer goods on behalf of a creditor.”

New section 16A: insert after section 16:

“**16A Meaning of repossession employee**

In this Act, **repossession employee**—

“(a) means an individual who in the course of his or her employment, or engagement as a contractor, by a repossession agent or a creditor repossesses, or holds himself or herself out as being authorised to repossess, consumer goods; and

“(b) includes a creditor who carries out a repossession himself or herself, regardless of whether the creditor is, in fact, an employee.”

In the heading to section 20, after “**definition of**”, insert “**repossession employee**,”.

**Private Security Personnel and Private Investigators Act 2010
(2010 No 115)**—*continued*

In section 20(1), before “17”, insert “16A,” in each place.

After section 23(1)(d), insert:

“(da) a repossession agent.”

After section 44(1)(d), insert:

“(da) a repossession employee.”

After section 45(1), insert:

“(1A) No person, not being the holder of a licence, may employ, engage as a contractor, or permit to act as a repossession employee any individual who does not hold a certificate of approval as a repossession employee.”

In section 53(1)(a), after “14,”, insert “16A,”.

Replace section 55(b) with:

“(b) in the case of a crowd controller employee or a repossession employee, as a responsible employee of any person.”

In section 60(2)(a), after “14,”, insert “16A,”.

In section 55, insert as subsection (2):

“(2) Subject to this Act, to the Credit Contracts and Consumer Finance Act 2003, and to any conditions imposed by the Authority, a certificate of approval that is held by a creditor referred to in section 16A(b) authorises the creditor to carry out a repossession of consumer goods himself or herself.”

After section 62(f)(iii), insert:

“(iiia) offence under section 103(1) of the Credit Contracts and Consumer Finance Act 2003 that involves a breach of any provision of Part 3A of that Act; or”.

After section 63(1)(a)(i), insert:

“(ia) offence under section 103(1) of the Credit Contracts and Consumer Finance Act 2003 that involves a breach of any provision of Part 3A of that Act; or”.

In section 69, after “engages any”, insert “repossession employee or”.

**Private Security Personnel and Private Investigators Act 2010
(2010 No 115)—continued**

In section 70, after “engages any”, insert “repossession employee or” in each place.

In section 110(1)(a), replace “a property guard,” with “a repossession agent, property guard,”.

In section 110(1)(b), replace “a property guard employee,” with “a repossession employee, property guard employee,”.

In section 114(1)(k), after “or engage”, insert “repossession employees or”.

After section 126, insert:

**“126A Transitional provisions relating to repossession agents
and repossession employees**

- “(1) A person who is a repossession agent within the meaning of section 8A is not required to hold a licence under this Act in respect of that class of business until the specified date.
- “(2) A person who performs the work of a repossession employee described in section 16A is not required to hold a certificate of approval under this Act in respect of that class of work until the specified date.
- “(3) In this section, **specified date** means the date that is specified for the purpose of this section by the Governor-General by Order in Council.
- “(4) In the case of an applicant for a licence as a repossession agent, section 62(j) must be applied as if the ground for disqualification is that the individual has not, within the preceding 5 years, had 12 months’ relevant experience—
- “(a) of carrying on a business of repossessing consumer goods on behalf of a creditor (whether that business is carried on by himself or herself or in partnership with any other person); or
- “(b) of repossessing consumer goods in the course of his or her employment, or engagement as a contractor, by a person who carries on a business referred to in paragraph (a) or by a creditor.
- “(5) Subsection (4) also applies for the purposes of section 63(1)(f) (as well as section 62(j)).

**Private Security Personnel and Private Investigators Act 2010
(2010 No 115)**—*continued*

“(6) Subsections (4) and (5) do not apply to applications for licences made after the day that is 5 years after the date on which this section comes into force.”

Property Law Act 2007 (2007 No 91)

In section 77, replace “the Credit (Repossession) Act 1997” with “Part 3A of the Credit Contracts and Consumer Finance Act 2003”.

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, insert after paragraph (h):

“(ha) section 105C of the Credit Contracts and Consumer Finance Act 2003; or”.

Reprints notes

1 *General*

This is a reprint of the Credit Contracts and Consumer Finance Amendment Act 2014 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Credit Contracts and Consumer Finance Amendment Act 2014 Commencement Order 2015 (LI 2015/26)
