



Credit Contracts and Consumer Finance Amendment Regulations 2004

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 11th day of October 2004

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 138 of the Credit Contracts and Consumer Finance Act 2003, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

1	Title	15	Other information
2	Commencement	16	Model disclosure statement may be divided into 2 parts
3	Assumptions		<i>Other key information concerning consumer credit contract</i>
4	New regulations 11 to 17 substituted	17	Other key information
11	Calculation of reasonable estimate of creditor's loss if interest rate fixed for part of term	5	Schedule amended
	<i>Model disclosure statements</i>	6	New Schedule 2 added
12	Model disclosure statements		
13	Terms and conditions for use of model disclosure statements		
14	Format and layout may not be modified		

Schedule

New Schedule 2 of principal regulations

Regulations

1 Title

- (1) These regulations are the Credit Contracts and Consumer Finance Amendment Regulations 2004.
- (2) In these regulations, the Credit Contracts and Consumer Finance Regulations 2004¹ are called “the principal regulations”.

¹ SR 2004/240

2 Commencement

These regulations come into force on 1 April 2005.

3 Assumptions

Regulation 6 of the principal regulations is amended by omitting the words “the Schedule”, and substituting the expression “Schedule 1”.

4 New regulations 11 to 17 substituted

The principal regulations are amended by revoking regulation 11, and substituting the following regulations and headings:

“11 Calculation of reasonable estimate of creditor’s loss if interest rate fixed for part of term

- “(1) For the purposes of section 54(1)(a) of the Act, a reasonable estimate of a creditor’s loss arising from a full prepayment of a fixed rate contract may be determined in accordance with the following formula:

$$LRE = VFP - u$$

where—

LRE is the reasonable estimate of the creditor’s loss arising from the full prepayment

VFP is the value of forgone payments calculated in accordance with subclause (2)

u is the unpaid balance at the time of the full prepayment.

- “(2) The value of forgone payments is calculated in accordance with the following formula:

$$VFP = p \times \left(\frac{1 - v^n}{\frac{i}{f}} \right) \times (1 + i)^{\frac{d}{365}} \\ + v^n \times (1 + i)^{\frac{d}{365}} \times EB$$

where—

VFP is the value of forgone payments

p is the amount of each payment payable under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

v is calculated in accordance with subclause (3)

n is the number of payments yet to be made under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

f is the number of payments to be made per year under the fixed rate contract during the fixed interest period in which the contract is fully prepaid

i is the annual fixed interest rate determined in accordance with subclauses (4) and (5) and expressed as a decimal fraction

d is the number of days between the payment due date that immediately precedes the date of full prepayment and the date of full prepayment

EB is the expected unpaid balance at the end of the fixed interest period in which the fixed rate contract is fully prepaid calculated in accordance with subclause (6).

“(3) The variable *v* is calculated in accordance with the following formula:

$$v = \frac{1}{1 + \frac{i}{f}}$$

where—

i is the annual fixed interest rate determined in accordance with subclauses (4) and (5) and expressed as a decimal fraction

f is the number of payments to be made per year under the fixed rate contract during the fixed interest period in which the contract is fully prepaid.

“(4) The annual fixed interest rate *i* is the annual fixed interest rate that at the date of full prepayment of the fixed rate contract the creditor usually offers on a fixed rate contract that—

“(a) is of the same or a similar type as the fixed rate contract that is to be fully prepaid; and

“(b) has a fixed interest period that is—

“(i) equal to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid; or

“(ii) closest to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid, whether shorter or longer (if the creditor does not offer a contract with a fixed interest period equal to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid).

“(5) If more than 1 annual fixed interest rate applies under subclause (4)(b)(ii), the annual fixed interest rate *i* is the higher or highest of those annual fixed interest rates.

“(6) The expected unpaid balance at the end of the fixed interest period is calculated in accordance with the following formula:

$$EB = u + IC - TP$$

where—

EB is the expected unpaid balance at the end of the fixed interest period in which the fixed rate contract is fully prepaid

u is the unpaid balance at the time of the full prepayment

IC is the total amount of the interest charges that would have been paid in accordance with the contract during the unexpired portion of the fixed interest period in which the fixed rate contract is fully prepaid

TP is the total of all payments that would have been paid in accordance with the contract during the unexpired portion of the fixed interest period in which the fixed rate contract is fully prepaid.

“(7) If a reasonable estimate of a creditor’s loss arising from a full prepayment determined in accordance with the formula in subclause (1) is less than zero, then the reasonable estimate of that creditor’s loss arising from the full prepayment is zero.

Example

A debtor is advanced \$5,000 under a fixed rate contract. The contract is for a term of 2 years. For the first year the interest rate is fixed at 12% and the 12 monthly payments are \$235.37. For the remainder of the term a floating interest rate applies. Full prepayment of the contract is made after 6 months and 5 days (5 days since the last payment due date) when the unpaid balance is \$3,865.66. At the date of full prepayment, the annual fixed interest rate that the creditor usually charges on a fixed rate contract of the same or a similar type as the fixed rate contract that is to be fully prepaid with a term of 6 months (6 months being the nearest term to the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid) is 10%. During the unexpired portion of the fixed interest period of the fixed rate contract that is to be fully prepaid, total payments of \$1,412.22 would have been payable ($\$235.37 \times 6$ months), including total interest charges of \$195.67. Applying the above formula, a reasonable estimate of the creditor's loss arising from the full prepayment is calculated as follows:

$$p = \$235.37$$

$$n = 6$$

$$i = 0.1$$

$$f = 12$$

$$v = \frac{1}{1 + \frac{0.1}{12}} = 0.991735538$$

$$d = 5$$

$$u = \$3,865.66$$

$$IC = \$195.67$$

$$TP = \$1,412.22$$

$$EB = \$3,865.66 + \$195.67 - \$1,412.22 \\ = \$2,649.11$$

$$VFP = \$235.37 \times \left(\frac{1 - (0.991735538)^6}{\frac{0.1}{12}} \right) \times (1 + 0.1)^{\frac{5}{365}} \\ + (0.991735538)^6 \times (1 + 0.1)^{\frac{5}{365}} \times \$2,649.11 \\ = \$3,897.45$$

$$LRE = \$3,897.45 - \$3,865.66 = \$31.79$$

A reasonable estimate of the creditor's loss is \$31.79.

Note: For the purpose of this example only, calculations have been rounded to 9 decimal places.

*“Model disclosure statements***“12 Model disclosure statements**

For the purposes of section 34 of the Act—

- “(a) the model disclosure statement that may be used for the disclosure of information under section 17(1) of the Act for a consumer credit contract other than a revolving credit contract is set out in Form 1 of Schedule 2:
- “(b) the model disclosure statement that may be used for the disclosure of information under section 17(1) of the Act for a revolving credit contract is set out in Form 2 of Schedule 2:
- “(c) the model disclosure statements in Schedule 2 must be used in accordance with regulations 13 to 16.

“13 Terms and conditions for use of model disclosure statements

“(1) A model disclosure statement may be—

- “(a) printed in any font and font size that is easily readable by a reasonable person:
- “(b) printed in any colour or colours:
- “(c) formatted with or without the use of borders or boxes around the text:
- “(d) extended to provide sufficient space or lines in each box to enable completion of the required information in accordance with subclause (2).

“(2) A model disclosure statement must be completed by—

- “(a) inserting in legible type or writing all of the information required by section 17(1) of the Act to be disclosed that is applicable to a particular consumer credit contract:
- “(b) omitting any information (including any alternative information requirement) that is not applicable to the particular consumer credit contract, either by deleting that information from the model disclosure statement or by clearly striking through the space on the model disclosure statement for the disclosure of that information:
- “(c) omitting the square brackets and the words in those square brackets that provide guidance for completion of the forms.

“(3) A model disclosure statement may not be completed by inserting the words ‘not applicable’ to indicate that a requirement to disclose information is not applicable to a particular consumer credit contract.

“14 **Format and layout may not be modified**

Except as provided in these regulations, the format and layout of a model disclosure statement may not be modified.

“15 **Other information**

“(1) The following information may be included in a model disclosure statement in addition to the information that must otherwise be disclosed in accordance with the Act and these regulations:

“(a) the name and address of the debtor:

“(b) any name, logo, mark, design, or other information relating to the creditor if that information is included in a manner that is not likely to deceive or mislead a reasonable person or detract from the information that is required to be disclosed by the Act.

“(2) Except as provided in subclause (1), no other information may be included in a model disclosure statement.

“16 **Model disclosure statement may be divided into 2 parts**

If a model disclosure statement is included as part of 1 or more documents, the model disclosure statement may be divided into no more than 2 parts with 1 part comprising only the statement relating to the debtor’s right to cancel under section 27 of the Act.

“Other key information concerning consumer credit contract

“17 **Other key information**

“(1) For the purposes of paragraph (v) of Schedule 1 of the Act the information set out in subclause (2) is information that is key information concerning a consumer credit contract.

“(2) The information referred to in subclause (1) is a description of the credit fees that are, or may become, payable by the debtor to, or for the benefit of, the creditor in connection with the

credit contract (unless the credit fee is disclosed under paragraph (c) or paragraph (n) of Schedule 1 of the Act), including—

- “(a) when each of those credit fees is payable, if ascertainable; and
- “(b) the amount of each of those credit fees if ascertainable, but, if not, the method of calculation of the fee.”

5 Schedule amended

The Schedule of the principal regulations is amended by revoking the heading “Schedule”, and substituting the heading “Schedule 1”.

6 New Schedule 2 added

The principal regulations are amended by adding, as Schedule 2, the Schedule 2 set out in the Schedule.

r 6

Schedule New Schedule 2 of principal regulations

r 12

Schedule 2 Model disclosure statements

Form 1

DISCLOSURE STATEMENT FOR CONSUMER CREDIT CONTRACTS (other than revolving credit contracts)

Statement Date / /

IMPORTANT—The creditor is required to provide you with this disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003. This document sets out the key information about your consumer credit contract. You should read it thoroughly. If you do not understand anything in this document, you should seek independent advice. You should keep this disclosure statement and a copy of your consumer credit contract in a safe place.

This disclosure statement must be provided to you within 5 working days of the day on which the contract is made. The law gives you a limited right to cancel the consumer credit contract. See the statement of right to cancel below and your consumer credit contract for full details of your right to cancel. **Note that strict time limits apply.**

FULL NAME AND ADDRESS OF CREDITOR This is the person providing you the credit.

You may send notices to the creditor by: • writing to the creditor at the creditor's postal address; or • sending a fax to the number specified (if any); or • sending an email to the address specified (if any).	Name:
	Physical address:
	Postal address:
	Fax:
	Email:

CREDIT DETAILS

Initial unpaid balance This is the amount you owe as at the date of this statement (including any fees charged by the creditor). \$..... made up of: \$..... [describe any advance, charge, fee, optional service, etc] \$..... \$..... Less \$..... [eg, payment received, deposit, trade-in allowance, etc] \$.....
--

Subsequent advance(s) This amount (or these amounts) will be provided to you by the creditor on the date(s) specified. \$..... [description, timing] \$..... [description, timing]

Total advances This is the total amount of all advances made or to be made to you. \$.....
--

PAYMENTS You are required to make each payment of the amount specified and by the time specified.

Timing of payments Frequency..... First payment..... Last payment.....	Number of payments	Amount of each payment \$.....	Total amount of payments \$.....
---	-----------------------------	-----------------------------------	-------------------------------------

INTEREST

Annual interest rate(s) % fixed for the whole term of the contract, being..... [specify term of the contract]; or % fixed for part of the term of the contract, being..... [specify period during which the annual interest rate is fixed]; or the base rate [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates]; or % above/below base rate [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates]
--

Total interest charges This is the total amount of the interest charges payable under the contract. \$.....

Interest free period days/weeks/months/years. When interest will begin to accrue:
--

Schedule 2—continued
Form 1—continued

Method of charging interest

Interest charges are calculated by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate by 365. Interest is charged to your account [specify frequency, eg, monthly, fortnightly]; or Interest charges are calculated and charged at the end of each..... [specify period, eg, month, fortnight] by multiplying the average unpaid daily balance for the preceding..... [specify period, eg, month, fortnight] by a [specify frequency, eg, monthly, fortnightly] interest rate. The [specify frequency, eg, monthly, fortnightly] interest rate is calculated by dividing the annual interest rate by..... [specify number of periods in a year, eg 12, 26]; or Interest charges are calculated by [specify description of other method of charging interest and frequency with which interest charges are debited].

CREDIT FEES AND CHARGES

The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract. Your credit contract may allow the creditor to vary this/these fee(s) and charge(s).
\$ [amount or, if not ascertainable, method of calculation] [description, timing]
\$ [amount or, if not ascertainable, method of calculation] [description, timing]
Administration costs and fees payable on full prepayment are disclosed under the full prepayment heading.

CONTINUING DISCLOSURE

The creditor may be required to provide you with regular statements. The statements will give you information about your account. Statements will be provided [specify frequency, eg, monthly]

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS

Security interest

The creditor has an interest in the property listed below to secure performance of your obligations under the contract, or the payment of money payable under the contract, or both. If you fail to meet your commitments under the contract, then to the extent of the security interest, the creditor may be entitled to repossess and sell this property.
..... [description of security interest, property, and extent to which debtor's obligations to creditor are secured]
..... [description of security interest, property, and extent to which debtor's obligations to creditor are secured]

Default interest charges and default fees

In the event of a default in payment and while the default continues you must pay the default interest charges. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the creditor to vary these fees and charges.
Default interest is [description of the amount and how and when default interest charges become payable]
Default fees:
\$ [description of the amount and how and when default fees become payable]
\$

FULL PREPAYMENT

If you pay the unpaid balance in full before the final payment is due (full prepayment), you may be required to pay a fee or charge to compensate the creditor for any loss resulting from the full prepayment. The creditor may have suffered a loss if the creditor's current interest rate is lower than the interest rate applying to your original consumer credit contract. You may also have to pay the creditor's administrative costs relating to the full prepayment.
The amount you may have to pay to compensate the creditor for the loss is calculated using the formula prescribed in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004; or [alternative procedure]
Administrative costs/fees \$ [description]

Schedule 2—continued

Form 1—continued

RIGHT TO CANCEL

Statement of right to cancel

The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

How to cancel

If you want to cancel this contract you must give written notice to the creditor.

*You must also—

- (a) return to the creditor any advance and any other property received by you under the contract (but you cannot do this if you have taken possession of any goods or if you bought any property at an auction or if the contract is for the sale of services that have been performed); or
- (b) pay the cash price of the property or services within 15 working days of the day you give notice.

[*Delete if the credit contract does not involve a credit sale.]

†You must also return to the creditor any advance and any other property received by you under the contract.

[†Delete if the credit contract involves a credit sale.]

Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 3 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, email) you must give notice that you intend to cancel within 5 working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within 7 working days after they were posted.

Saturdays, Sundays, and national public holidays are not counted as working days.

What you may have to pay if you cancel

If you cancel the contract the creditor can charge you—

- (a) the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and
- *(b) interest for the period from the day you received the property or services until the day you either pay the cash price for the property or services or return the property to the creditor.

[*Delete if the credit contract does not involve a credit sale.]

†(b) interest for the period from the day you received the advance until the day you repay the advance.

[†Delete if the credit contract involves a credit sale.]

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is being unreasonable in any way, you should seek legal advice immediately.

Schedule 2—continued

Form 2

DISCLOSURE STATEMENT FOR
REVOLVING CREDIT CONTRACTS

Statement Date
/ /

IMPORTANT—The creditor is required to provide you with this disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003. This document sets out the key information about your consumer credit contract. You should read it thoroughly. **If you do not understand anything in this document, you should seek independent advice.** You should keep this disclosure statement and a copy of your consumer credit contract in a safe place.

This disclosure statement must be provided to you within 5 working days of the day on which the contract is made. The law gives you a limited right to cancel the consumer credit contract. See your consumer credit contract for full details of your right to cancel. **Note that strict time limits apply.**

FULL NAME AND ADDRESS OF CREDITOR This is the person providing you the credit.

You may send notices to the creditor by:
• writing to the creditor at the creditor's postal address; or
• sending a fax to the number specified (if any); or
• sending an email to the address specified (if any).

Name:.....
Physical address:
Postal address:
Fax:
Email:

CONTINUING DISCLOSURE

Continuing disclosure statements
The creditor is required to provide you with regular statements. The statements will give you information about your account (eg, any interest or fees charged during the statement period) and the amount and timing of your next payment.
Statements will be provided [specify frequency, eg, monthly, fortnightly]

INITIAL UNPAID BALANCE This is the amount you owe as at the date of this statement (including any fees charged by the creditor).

\$..... made up of: \$..... [describe any advance, charge, fee, optional service, etc]
\$.....
\$.....
Less
\$..... [eg, payment received, etc]
\$.....

PAYMENTS

Minimum payment
You may choose to pay more than the minimum payment.
\$.....; or
.....% of the unpaid balance as at the end of each statement period; or
The minimum payment is calculated by.....
[description of other method of calculating minimum payment]

When payments are due
Payments must be made..... [specify frequency, eg, monthly, fortnightly]
The date that payments are due will be specified in your continuing disclosure statements.

CREDIT DETAILS

Annual interest rate(s)
Current annual interest rate (this rate may vary); or
.....% fixed for [specify period]; or
the base rate [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates]; or
.....% above/below base rate [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates].

Credit Limit
\$.....

Method of charging interest
Interest charges are calculated by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate by 365. Interest is charged to your account
..... [specify frequency, eg, monthly, fortnightly]; or
Interest charges are calculated by [specify description of other method of charging interest and frequency with which interest charges are debited].

Interest free period
.....days/weeks/months/years. When interest will begin to accrue:

Schedule 2—continued

Form 2—continued

CREDIT FEES AND CHARGES

The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract.

Your credit contract may allow the creditor to vary this/these fee(s) and charge(s).

\$ [amount or, if not ascertainable, method of calculation] [description, timing]

\$ [amount or, if not ascertainable, method of calculation] [description, timing]

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS

Security interest

The creditor has an interest in the property listed below to secure performance of your obligations under the contract or the payment of money under the contract, or both. **If you fail to meet your commitments under the contract, then to the extent of the security interest the creditor may be entitled to repossess and sell this property.**

..... [description of security interest, property, and extent to which debtor's obligations to creditor are secured]

..... [description of security interest, property, and extent to which debtor's obligations to creditor are secured]

Default interest charges and default fees

You must pay the default interest charges in the event of a default in payment and while the default continues, or in the event of you causing the credit limit under the contract to be exceeded and while the credit limit is exceeded. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the creditor to vary these fees and charges.

Default interest is [description of the amount and how and when default interest charges become payable]

Default fees:

\$ [description of the amount and how and when default fees become payable]

\$ [description of the amount and how and when default fees become payable]

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 April 2005, amend the Credit Contracts and Consumer Finance Regulations 2004 (“the principal regulations”).

These regulations—

- substitute a *new regulation 11* of the principal regulations, which prescribes a method that may be used for calculating a reasonable estimate of a creditor’s loss arising from a full prepayment of a fixed interest rate consumer credit contract if the interest rate is fixed for part of the term of the contract (but not for the whole term). This method compares the unpaid balance of the contract as at the date of the full prepayment with the value of future payments that the creditor would

receive if the amount fully prepaid is re-lent at the creditor's prevailing interest rates for the unexpired portion of the fixed interest period, and takes into account the expected value of the unpaid balance at the end of the fixed interest period:

- insert a new schedule into the principal regulations comprising 2 model disclosure statements. These model disclosure statements (for credit contracts other than revolving credit contracts and for revolving credit contracts) may be used by creditors for the purpose of making initial disclosure under section 17(1) of the Credit Contracts and Consumer Finance Act 2003 (the **Act**). The use of these model disclosure statements is subject to certain requirements (for example, creditors must ensure that all of the information required to be disclosed is included). Creditors are not obliged to use the model disclosure statements. However, a creditor under a consumer credit contract who uses a model disclosure statement in accordance with the prescribed requirements is to be treated as having complied with the disclosure standards in section 32(1)(a), (c), and (d) of the Act:
- for the purposes of Schedule 1 of the Act, prescribe as key information concerning a consumer credit contract a description of the credit fees and charges that are, or may become, payable by the debtor to, or for the benefit of, the creditor in connection with a credit contract. Such credit fees and charges would include, for example, application fees paid by the debtor to the creditor immediately before entering into the credit contract.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 October 2004.

These regulations are administered in the Ministry of Consumer Affairs.
