SUPREME COURT OF QUEENSLAND

CITATION:	*Re: Esanda Finance Corporation Ltd* [2004] QSC 257
PARTIES:	**ESANDA FINANCE CORPORATION LIMITED** ABN 64 003 346 043 (applicant) **v** **THE CHIEF EXECUTIVE, DIRECTOR GENERAL OF THE QUEENSLAND DEPARTMENT OF TOURISM, FAIR TRADING AND WINE INDUSTRY DEVELOPMENT** (respondent)
FILE NO/S:	2851 of 2002
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	19 August 2004
DELIVERED AT:	Brisbane
HEARING DATE:	17 August 2004
JUDGE:	White J
ORDER:	**It is declared pursuant to s 102(1) of the *Consumer Credit (Queensland) Code*, that the Applicant contravened key requirements of the Code referred to in ss100 (1)(c), 100 (1)(e), 100 (1)(h) and 100 (1)(i) in respect of each of the Credit Contracts referred to in Annexure A to the Agreed Statement of Facts which is Exhibit 1 in these proceedings.** **It is ordered:** **1. Pursuant to s 102(2) of the *Consumer Credit (Queensland) Code*, that the Applicant pay a civil penalty in the sum of $10,700, such sum to be paid to the Department of Tourism, Fair Trading and Wine Industry Development within 14 days of the date of this Order, for payment by the Department into the Consumer Credit Fund established and operated under s 52 of the *Consumer Credit (Queensland) Act* 1994.** **2. The Applicant will send to each of the persons**

referred to in Annexure A to Exhibit 1 by ordinary pre-paid post a letter substantially in the terms which is Exhibit 2 within 21 days of the date of this Order.

3. **During the period commencing on the date on which the letter referred to in paragraph 2 is sent and ceasing not earlier than 2 months following that date, the Applicant will provide a toll free telephone enquiry service available to the persons referred to in Annexure A to Exhibit 1 to be serviced by an officer of the Applicant with knowledge of the matters the subject of this Application, who is to seek to answer any such enquiries and, in the event he is unable to do so, to inform the debtor that they may obtain independent advice from the Respondent or their own solicitors.**

4. **While any Credit Contract referred to in Annexure A to Exhibit 1 remains on foot, the Applicant will, with respect to each such contract, comply with the requirements of the *Consumer Credit (Queensland) Code.***

5. **That any collection or enforcement activity by the Applicant in respect of any of the Credit Contracts referred to in Annexure A to Exhibit 1 will be conducted or controlled by designated officers of the Applicant within the Applicant's Collections Department situated at its head office.**

6. **The Applicant is not to seek to recover the following amounts owing to it by the named debtors in respect of the named Credit Contracts:**

Contract No.	Debtor Name	Amount
451776852	Morley-Sollitt	$ 8,977.43
451733838	Smith	$ 9,845.30
451783913	Cherry	$ 13,980.03
451753626	De Young	$ 12,599.99
451735604	Frost	$ 3,866.69
451829563	Jarrett	$ 17,037.29
451761474	Linderberg	$ 7,014.06
451774216	Chidgey	$ 9,128.86

451828341	**Neuss**	**$ 21,712.40**
451773686	**Doyle**	**$ 14,660.55**
		$119,042.60

7. **The Applicant pay the Respondent its expenses incurred in investigating the matters the subject of this Application being a sum not more than $1,000.00.**

8. **The Applicant pay the Respondent's costs of this Application on the standard basis.**

CATCHWORDS: CONSUMER CREDIT – CREDIT PROTECTION – REGULATED CONTRACTS AND REGULATED MORTGAGES – NON-COMPLIANCE WITH ACT – PENALTIES – where applicant contravened the *Consumer Credit (Queensland) Code* in respect of certain finance contracts relating to the purchase of motor vehicles – where contracts for finance were ones wholly or predominantly for personal, domestic or household purposes and subject to the disclosure and other provisions of the Code – considerations relevant to the determination of penalty

Consumer Credit (Queensland) Act 1994, s 4, s 59 *Consumer Credit (Queensland) Code*, s 6, s 11, s 14, s 15, s 15D, s15 G, s 15N, s 21, s 100, s 101, s 102(2), s102(4), s 107, s 111

Avco Financial Services v The Chief Executive, Department of Tourism, Racing and Fair Trading [2004] QSC 211, considered
Custom Credit Corporation Limited (in liq) v The Department of Tourism, Racing and Fair Trading (2002) ASC 155-056, considered
Re Suncorp Metway Limited (2000) 2 Qd R 668, cited

COUNSEL: I R Perkins for the applicant
J M Horton for the respondent

SOLICITORS: Deacons for the applicant
Crown Solicitor for the respondent

[1] Esanda Finance Corporation Limited ("Esanda") has brought an application seeking certain orders pursuant to s 101(1) of the *Consumer Credit (Queensland) Code* ("the Code") which applies as a law of Queensland pursuant to s 4 of the *Consumer Credit (Queensland) Act* 1994. The Chief Executive of the Queensland Department of Tourism, Fair Trading and Wine Industry Development has intervened pursuant

to s 59 of the Act. He was joined as a party to Esanda's application by order of Mackenzie J made 19 April 2002. By s 111 of the Code he thereby has standing to represent the public interest and the interests of debtors. No debtors have appeared or sought to be otherwise represented on this application.

[2] The application is made under Part 6 of the Code – Civil Penalties for Defaults of Credit Providers. By its application Esanda seeks a declaration whether or not it has contravened key requirements of the Code in connection with certain finance contracts relating to the purchase of motor vehicles over a period from 1999 to 2001 and consequential orders. The application sought that there be no amount payable as a civil penalty pursuant to s 102(2) of the Code but the parties have now reached an agreement as to the amount of penalty and have further reached agreement that a declaration ought to be made that Esanda has contravened key requirements of the Code in respect of the subject contracts.

[3] In brief the contracts for finance were ones wholly or predominantly for personal, domestic or household purposes and subject to the disclosure and other provisions of the Code but in respect of which declarations had been made that the credit was to be provided wholly or predominantly for business purposes. Accordingly, they were not subject to the Code requirements, s 11.

[4] The parties have agreed on a statement of facts.

[5] Esanda is a credit provider within the meaning of the Code. It supplies its products to purchasers of motor vehicles both directly and through motor dealers. Honeycombes Used Cars Pty Ltd trading as "Honeycombes Cars & 4WD's" ("Honeycombes") has been a member of Esanda's dealer network for over 40 years. A Mr Len Brown ("Brown") was employed at Honeycombes premises at Moorooka between 30 September 1999 and 18 September 2001 as its finance and insurance representative. Brown reported to Mr Ken Bridges who was the manager at Moorooka. Mr Bridges was dismissed on 3 August 2001 and Brown on 18 September 2001 from employment at Honeycombes. Prior to that employment Brown had been employed in the finance industry for some years including by Pacific Toyota and Capital Corp Finance & Leasing Pty Ltd in Cairns.

[6] During a visit by Esanda's relationship manager, Mr Anthony Burke, to Honeycombes in February 2001 he overheard Brown discussing motor vehicle finance with a customer. He was concerned that although the customer's occupation was such that it would seem unlikely that the use of a new vehicle would be for business or investment purposes Brown had offered the customer a "chattel mortgage" a product suitable for finance not subject to the Code. When Burke returned to his office he confirmed that the customer had applied for a chattel mortgage and, due to his concerns, he reported the matter. After intensive investigation 107 contracts with 157 borrowers were identified which may have fallen into a category of borrowers who were correctly consumers but who had been offered non-consumer contracts which fell outside the operation of the Code. In each case Esanda was supplied with business use declarations and 95 out of 97 were witnessed by Brown. The remaining 10 dealer settlement fax checklists were witnessed by Brown.

[7] In brief compass, a consumer who enters into a chattel mortgage as opposed to a consumer loan contract does not have the benefit of the Code's disclosure

requirements. It is not contended that the customers who entered into the chattel mortgage contracts sustained any financial losses which are quantifiable. Rather, they have lost the chance to "shop around" for a more advantageous loan and lost the benefits of certain aspects of the loan contract.

[8] The procedure which typically occurred when a customer elected to seek finance from Esanda to purchase a motor vehicle from a member of Esanda's dealer network was for the sales person to refer the customer to the dealer's finance and insurance person (Brown) who obtained the necessary information to complete an application for finance. This information included the purpose or purposes for which the customer intended to use the vehicle, that is, whether or not it was for personal, domestic or household purposes. The details were then completed on Esanda's online credit assessment computer system which automatically processed the application. If the application was approved the program generated all the necessary documentation for the proposed transaction including the finance contract. If the proposed contract was not one to which the Code applied a declaration of purpose in accordance with s 11(2) of the Code was included. Section 11(2) provides

> "Credit is presumed conclusively for the purposes of this Code not to be provided wholly or predominantly for personal, domestic or household purposes if the debtor declares, before entering into the credit contract, that the credit is to be applied wholly or predominantly for business or investment (or for both purposes)."

The documents were then faxed to Esanda and checked in its documents/settlement section for all non-Code contracts. One of the matters checked was that the customer had made a business use declaration. If the documents were in order the contract was accepted and settlement of the contract was authorised by Esanda to the dealer who arranged for delivery of the motor vehicle to the customer. Esanda paid the dealer direct net the amount of any trade-in or deposit.

[9] During the period when the contracts were entered into Esanda paid Honeycombes a retail commission and, if applicable, a monthly volume incentive as consideration for referring credit applications. The amount payable (exclusive of the volume incentive) was calculated by reference to the margin between the contract interest rate and a preset base interest rate. Until March 2001 the base interest rate in respect of non-consumer transactions was set at 0.50 per cent less that the rate for consumer transactions. This had the effect that Honeycombes would earn slightly more commission income on a non-consumer transaction than it would on a consumer transaction, assuming that each of these transactions had the same contract interest rate. During the relevant period Brown's remuneration, in addition to a weekly retainer, included a commission of 10 per cent of the incentive payments and commissions earned by Honeycombes from finance and/or insurance contracts effected by Brown. That commission increased to 11 per cent if Honeycombes received more that $25,000 in one month.

[10] After Mr Burke notified his concerns about Brown's practices at Honeycombes, Mr Paul Wilde, the legislation and compliance coordinator of Esanda was assigned to investigate the Honeycombes contracts. On 26 March 2001 Esanda notified the Department of Equity and Fair Trading (Queensland) (then the name of the relevant authority) of its investigations. On 6 April 2001 Esanda's State manager dealer and

solicitor interviewed Brown who asserted that in determining the appropriate type of financial product in each case he acted on the basis of statements made by the customers about their intended use of the motor vehicles.

[11] Subsequently Wilde reviewed a list of all contracts referred by Honeycombes between August 1999 and March 2001 and eliminated those where the customer was a corporation or where it was apparent from the type of vehicle acquired that the purpose of its acquisition was not wholly or predominantly personal, domestic or household.

[12] On 5 June 2001 Esanda's solicitors informed the respondent of its intention to commence proceedings which it did on 26 March 2002 following a review of all the contracts.

[13] Other steps were taken by Esanda subsequent to the discovery of the potential breaches of the Code to ensure compliance with the Code. On 16 March 2001 it issued instructions that no further enforcement action was to be taken in respect of those contracts that were or had been subject to enforcement action at that time pending the issue of the present proceedings. There were six such contracts. After the issue of these proceedings enforcement action has been commenced in respect of six further contracts and in each the default notices that were served have been given in accordance with s 80 of the Code. Of the 12 contracts that have been enforced the vehicle had been repossessed in 9 cases. In one case the customer and the vehicle could not be located. The residual debts due to Esanda on those contracts were almost $120,000.

[14] On 14 September 2001, after its initial investigation, Esanda informed Honeycombes that it would no longer accept any finance proposals in which Brown had any involvement.

[15] On 19 April 2002 Mackenzie J ordered Esanda to send each of the relevant borrowers a letter setting out the background of the proceedings, the key applicable provisions of the Code which ought to have been incorporated in a consumer contract, information about the proceedings and the way in which the borrowers could participate in the application should they so desire. Esanda received only 15 responses none of whom indicated any wish to take part in these proceedings. Four advised Esanda that their vehicles were acquired wholly or predominantly for business purposes and those contracts have been excluded.

[16] Had the contract been documented in accordance with the Code, borrowers would have executed a "Loan Contract" and a separate document entitled "Esanda Loan Terms and Conditions" which reflected Esanda's obligations as credit provider to a consumer under the Code. The following are the relevant points of difference between the "chattel mortgage" contract and the loan contract.

- Clause 12 of the loan contract provides in accordance with s 80 of the Code for a 30 day default notice to be served before enforcement action is taken and the balance of the loan becomes repayable.
- Clause 7 of the chattel mortgage provides for enforcement action to be taken and for the "Recoverable Amount" to become payable without demand if default continues for seven days.

- Clause 8 of the loan contract provides for the payment of enforcement expenses that are "reasonably incurred" whereas cl 3(c) of the chattel mortgage does no expressly contain that limitation.

The schedule to the chattel mortgage provides a lower level of disclosure than in the loan contract in the following respects

- description of any additional securities to be held by Esanda
- method of calculation of interest charges
- the total amount of ascertainable fees and charges
- details of credit related insurance contracts and any commission payable in respect of those contracts (if ascertainable)
- the amount (if ascertainable) of commission payable to the dealer or broker
- the information and warnings prescribed by reg 15 of the *Consumer Credit Regulation* 1995.

[17] Since March 2001 all default notices served by Esanda in respect of the subject contracts have complied with the Code irrespective of the nature of the contract document.

[18] Prior to the commencement of the Code on 1 November 1996 Esanda prepared a detailed workbook explaining the requirements of the Code, the penalties for non-compliance and changes being made to Esanda's policies, instructions and documentation as a result of the Code for the use of relevant finance brokers and members of Esanda's dealer network. Esanda provided training courses to each member of its dealer network to ensure understanding of the steps needed for compliance with the requirements of the Code and the importance of compliance with the Code. When he commenced employment at Honeycombes in Brisbane Brown advised Esanda that he did not require any further training with respect to the use of Esanda's software program or compliance with legal requirements in relation to credit contracts, including the Code, because of his previous employment with Pacific Toyota and Capital Corp Finance and Leasing where he had received compliance training. Esanda did not insist that he undergo further training.

[19] Other than this proceeding Esanda has made one application to a court or tribunal under s 101 of the Code. No application has been made in Australia against Esanda under either s 101 or s 107 of the Code. On 6 October 2000 the ACT Credit Tribunal ordered by consent that no amount was payable by Esanda as civil penalty in relation to that one application. Wilde has deposed that to the best of his knowledge, information and belief, Esanda has never been the subject of any pecuniary penalty imposed by a court or a tribunal, under either a credit act or code. Apart from this proceeding no issue of credit code compliance has been raised in relation to Honeycombes or any of its employees.

[20] After March 2001 Esanda manually scrutinised all non-Code finance applications submitted by Honeycombes to ensure that there was no reason to believe that the credit proposed to be provided was in fact to be applied wholly or predominantly for personal, domestic or household services. On 22 March 2001 a bulletin was sent to all members of Esanda's dealer network reminding them of relevant aspects of ss 6 and 11 of the Code. On 14 September 2001 Esanda informed Honeycombes

that it would no longer accept any finance proposals in which Brown had any involvement.

[21] On 1 March 2001 Esanda altered the structure of the commissions and other payments made to dealers to eliminate any discrepancy between amounts payable in respect of Code regulated contracts and non-regulated contracts so as to remove any temptation to engage in conduct similar to that of Brown.

[22] In December 2001 Esanda released an online training program for employees in its dealer network. It included a module relating to compliance with the Code. Participants in the program are tested as they work through the various modules. Esanda monitors completion rates and pass rates. A person who completes a module at less than 80 per cent is required to undertake it again. At the time a bulletin was sent to all dealers.

[23] Esanda concedes that it did not comply with the key requirements specified in s 100(1)(c), (e) and (i) of the Code and, where applicable, in s 100(1)(h) in respect of each of the subject contracts. These provision relate to ss 15D, 15G(a),(b) but only in respect of retained credit fees and charges, s 21(1) but only at the time the credit contract is entered into and, where relevant, s 15N(a) and (b).

[24] Section 15 of the Code provides that the contract document must contain certain matters. Section 15D concerns the method of calculation of the interest charges payable under the contract and the frequency with which interest charges are to be debited under the contract. Section 15G (a) and (b) concerns a statement of credit fees and charges which are payable under the contract. Section 21(1) prohibits a credit contract from imposing a monetary liability on the debtor in respect of a credit fee or charge prohibited by the Code, or an amount of a fee or a charge exceeding the amount that may be charged consistently with the Code, or an interest charge under the contract exceeding the amount that may be charged consistently with the Code. Section 15N (a) and (b) requires the credit provider if it knows that the debtor is to enter into a credit related insurance contract and the insurance is to be financed under the credit contract, to provide the name of the insurer and the amount payable to the insurer or if it is not ascertainable how it is calculated.

[25] Section 14 of the Code provides that a credit provider must not enter into a credit contract unless the credit provider has given the debtor a pre-contractual statement setting out the matters required by s 15 to be included in the contract document and an information statement in the form required by the regulations of the debtor's statutory rights and obligations. The statements must be given before the contract is entered into or before the debtor makes an offer to enter into the contract whichever first occurs.

[26] In light of the admissions made by Esanda it is unnecessary to consider more closely the breaches. I am satisfied they have occurred. What remains is what, if any, penalty order ought be made by the court. Section 102(2) of the Code enables the court to make an order in accordance with Division 6 requiring the credit provider to pay an amount as a civil penalty if it is of the opinion that the credit provider has contravened a key requirement. In considering the imposition of a civil penalty the court must have regard to the matters set out in s 102(4). They are, relevantly,

> "(a) the conduct of the credit provider ... before and after the credit contract was entered into;
> (b) whether the contravention was deliberate or otherwise;
> (c) the loss or other detriment (if any) suffered by the debtors as a result of the contravention;
> (d) when the credit provider first became aware, or ought reasonably to have become aware, of the contravention;
> (e) any systems or procedures of the credit provider to prevent or identify contraventions;
> (f) whether the contravention could have been prevented by the credit provider;
> (g) any action taken by the credit provider to remedy the contravention or compensate the debtor or to prevent further contraventions;
> (h) the time taken to make the application and the nature of the application;
> (i) any other matter the Court considers relevant."

[27] It is not submitted by Mr Perkins that I ought not impose a penalty. There have been breaches of key provisions. Those breaches in a real sense deprived the consumers of important protections by way of disclosure which the legislation was designed to give.

[28] Each of the matters set out in s 102(4) must be given due regard

(a) the conduct of the credit provider before and after the credit contract was entered into

(d) when the credit provider first became aware, or ought reasonably to have become aware of the contravention

(e) any systems or procedures of the credit provider to prevent or identify the contraventions

(f) whether the contravention could have been prevented by the credit provider

It is convenient to group these matters together. The various activities associated with them have been described above. It was the structure put in place by Esanda of differential commissions which rewarded non-consumer transactions above consumer transactions which allowed Brown to engage in non-complying conduct. A rigorous risk assessment/management program by Esanda would have identified this potential for breach. There is no suggestion that Esanda did not otherwise have appropriate structures in place to prepare its staff and outside dealers for the advent of the consumer legislation and continued to have programs in place for training new staff.

[29] After the breaches were identified Esanda cooperated with the respondent and engaged in remedial programs to educate more completely its staff and others who dealt in/sold Esanda products.

[30] Mr Horton for the respondent has mentioned that Brown was permitted not to undergo further training when he moved to Moorooka. As to that, if a person is

intent on dishonesty not amount of re-training in proper procedures would result in any different outcome.

[31] *(b) Whether the contravention was deliberate or otherwise*

Clearly the contravention was not deliberate on the part of Esanda.

[32] *(c) the loss or other detriment (if any) suffered by the debtor as a result of the contravention*

No monetary loss has been identified in respect of any of the 107 contracts. What occurred was, in effect, the loss of an opportunity to compare on an equal footing credit contracts offered in the market. It seems very likely that the defaulting consumers are better off financially as a consequence of the breaches since Esanda will not pursue them for the difference between the price realised on sale of repossessed vehicles and the original cost of the vehicles to an amount of almost $120,000. Since the identification of the breaches the other contracts have been treated by Esanda as if they were contracts entered into under the Code.

[33] *(g) any action taken by the credit provider to remedy the contravention or compensate the debtor or to prevent further contraventions*

The steps which have been taken to eliminate non-compliance with the Code have been set out above but included scrutinising all non-Code finance applications submitted to Honeycombes during the period that Brown was employed to ascertain if the credit provided was wholly or predominantly for personal, domestic or household purposes. It informed Honeycombes that it would not longer accept any finance proposals in which Mr Brown had an involvement since Esanda believed that it was a deliberate act on Brown's part. It altered the structure of the commissions and other payments. It sent a bulletin to all members of its dealer network reminding them of the relevant aspects of the Code and it released an online training program for its employees which were assessed to a high level.

[34] As mentioned above no further enforcement action was taken against defaulters and all notices once breaches were identified were served in compliance with the requirements of the Code.

[35] *(i) any other matter the court considers relevant*

It is relevant that Esanda took the initiative promptly to identify the breaches and inform the respondent and, after reasonable investigations had been made, made the application to the court. I agree, with respect with the observation of Muir J in *Avco Financial Services v The Chief Executive, Department of Tourism, Racing and Fair Trading* [2004] QSC 211 unreported decision of 16 July 2004 where his Honour noted the importance of encouraging candour on the part of credit providers by giving proper recognition to such positive conduct in the determination of penalties as well as recognising cooperation with the relevant authorities. This was a case where it would have been very easy to allow Brown's activities to go unexamined. It is also relevant that the applicant has incurred substantial costs in investigating the breaches and in liaising with the respondent, *Re Suncorp Metway Limited* (2000) 2 Qd R 668 at 675.

[36] It is also relevant that the number of contracts involved is limited to 107 unlike the large number of contracts in many of the cases which come before this court (45,000 in *Avco*, 1,030 contracts in *Suncorp Metway*) although it must also be recognised that the borrowers consumer rights were compromised in a serious way.

[37] In many cases the parties have reached agreement about the quantum of a civil penalty. In some the court has not endorsed that agreement as in *Custom Credit Corporation Limited (in liq) v The Department of Tourism, Racing and Fair Trading* (2002) ASC 155-056 where Fryberg J increased the agreed amount from $40,000 to $300,000. That was in a case where the estimate of how much the defaulting financier had or was likely to benefit was some $624,000. Here there is no suggestion there was any financial benefit to Esanda. In other cases where there has been agreement the court has declined to impose a penalty, for example, *Re Suncorp Metway Limited*. I accept the submission of Mr Perkins that this is not a case where no penalty should be imposed. The breaches were quite significant even though they resulted in no monetary benefit to Esanda or detriment to the consumer. I accept the guidance offered to the court in the form of the joint agreement that a penalty of $10,700 is appropriate.

[38] There is one further observation to make. The draft letter which was tendered which will be sent to the 107 borrowers is a lengthy and, with respect to the drafter, a rather dense document which of its nature it probably must be. I have, however, suggested to counsel that at the beginning of the letter the borrowers ought to be reassured that the contents of the letter involve them in no detriment or potential detriment and that it is to their benefit to peruse it. The risk is that some borrowers, at least, might be dissuaded from persevering with the letter to the end which there tells them how they might contact Esanda to discuss matters the subject of the letter and to let them know that their rights and obligations under the credit contract are unaffected by Esanda's application to the court.

Orders

[39] It is declared pursuant to s 102(1) of the *Consumer Credit (Queensland) Code*, that the Applicant contravened key requirements of the Code referred to in ss100 (1)(c), 100 (1)(e), 100 (1)(h) and 100 (1)(i) in respect of each of the Credit Contracts referred to in Annexure A to the Agreed Statement of Facts which is Exhibit 1 in these proceedings.

It is ordered:

1. Pursuant to s 102(2) of the *Consumer Credit (Queensland) Code*, that the Applicant pay a civil penalty in the sum of $10,700, such sum to be paid to the Department of Tourism, Fair Trading and Wine Industry Development within 14 days of the date of this Order, for payment by the Department into the Consumer Credit Fund established and operated under s 52 of the *Consumer Credit (Queensland) Act* 1994.

2. The Applicant will send to each of the persons referred to in Annexure A to Exhibit 1 by ordinary pre-paid post a letter substantially in the terms which is Exhibit 2 within 21 days of the date of this Order.

3. During the period commencing on the date on which the letter referred to in paragraph 2 is sent and ceasing not earlier than 2 months following that date, the Applicant will provide a toll free telephone enquiry service available to the persons referred to in Annexure A to Exhibit 1 to be serviced by an officer of the Applicant with knowledge of the matters the subject of this Application, who is to seek to answer any such enquiries and, in the event he is unable to do so, to inform the debtor that they may obtain independent advice from the Respondent or their own solicitors.

4. While any Credit Contract referred to in Annexure A to Exhibit 1 remains on foot, the Applicant will, with respect to each such contract, comply with the requirements of the *Consumer Credit (Queensland) Code.*

5. That any collection or enforcement activity by the Applicant in respect of any of the Credit Contracts referred to in Annexure A to Exhibit 1 will be conducted or controlled by designated officers of the Applicant within the Applicant's Collections Department situated at its head office.

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