



Default Notices – an Overview

Section 6Q Notice (Privacy Act)

What are the notice requirements?

- A written notice to individual informing them of an overdue payment and requesting payment of that amount.
- To the last known address of the customer.
- Amount that is overdue can then be reported to a CRB, but only once that amount is 60 days overdue.

When must they be given?

- Prior to disclosing default information to a CRB.
- Where a full account balance falls due (and notice has previously been provided for only the arrears amount) it is necessary to issue a separate section 6Q notice for the full account balance amount.

Can it be combined with another notice?

- Yes, there is no reason why one item of correspondence cannot constitute both a section 6Q notice and a section 88 notice.
- It cannot be combined with a section 21D notice, per draft clause 9.3 of the CR Code (see notes under s21D Notice).

Section 21D Notice (Privacy Act)

What are the notice requirements?

- A notice in writing stating a credit provider intends to disclose default information to a credit reporting body.
- Specifies the amount which is 60 days overdue (the same amount as specified in the section 6Q notice), less any payments made since issue of the section 6Q notice, and provides the customer "one last chance" to pay it.
- It is possible that a number of outstanding section 6Q notices can be grouped into one section 21D notice (although all amounts must be 60 days overdue).

When must they be given?

- At least 14 days prior to disclosing default information to a credit reporting body, and not more than 3 months prior to disclosure, per draft clause 9.3 of the CR Code. (The 3 month limit provides proximity to the listing, which is a proximity requirement that has been proposed by industry, although this is yet to be settled. This means that the customer is afforded an additional 14 day to 3 month time period to pay).

Can it be combined with another notice?

- It cannot be combined with a section 6Q notice - paragraph 9.3 expressly disallows this consistent with the OAIC's interpretation of Part IIIA. If the section 6Q notice is not combined with a section 88 Notice, the section 21D notice could be combined in this way. But this would not work if the section 88 notice achieves the acceleration of the debt – because until the notice elapses the accelerated amount is not overdue.

Section 88 Notice (National Credit Code)

What are the notice requirements?

- A notice required prior to commencing enforcement action for a regulated credit contract (per the NCC). Details default under the credit contract and action necessary to rectify the default.

When must they be given?

- 30 days prior to commencing enforcement action, which would then include listing the default information (allowing time for service of 5 days).
- If an acceleration clause is included, a listing of the accelerated amount can only be made 60 days after expiry of the section 88 notice period (a total period of approximately 95 – 97 days).

Can it be combined with another notice?

- Yes, it can be combined with a section 6Q notice. As noted above, caution should be exercised when combining it with a section 21D notice, and it cannot be combined where a debt is being accelerated (for the reasons stated above).

Possible timeline for notices issued for accelerated debt*:

1 January 2013	Account becomes due, \$150 due, total balance \$3,000
15 January 2013	Combined Section 88/Section 6Q notice issued nominating the overdue amount as \$150 (which will be 60 days overdue at 2 March 2013), with

	acceleration clause identifying \$3,000 due and owing if default not paid within required time
19 February 2013	Section 88 notice expires, accelerated balance falls due
19 February 2013	Section 6Q notice issued nominating the overdue amount as \$3,000
6 April 2013	Issue section 21D notice specifying intention to list \$3,000 overdue amount (which, in 14 days from this date, will be 60 days overdue)
20 April 2013 – 5 July 2013	Requisite “default information” notification period for disclosing default information to a CRB for the amount of \$3,000 (14 days to 3 months from the date of issue of the section 21D notice)

*This assumes an accelerated debt is being listed. There will be no need for two separate 6Q notices where the debt being listed is an arrears amount only.