

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE-DRAFT

Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

(Government)

(1) Clause 2, page 2 (table item 2), omit the table item, substitute:

2. Schedule 1	1 March 2013.	1 March 2013
2A. Schedule 2, Part 1	Immediately after the commencement of Part 2 of Schedule 1 to the <i>National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011.</i>	1 July 2012
2B. Schedule 2, Part 2	1 March 2013.	1 March 2013
2C. Schedule 2, items 12 to 14	1 March 2013.	1 March 2013
2D. Schedule 2, item 15	Immediately after the commencement of Part 2 of Schedule 1 to the <i>National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011.</i>	1 July 2012
2E. Schedule 2, items 16 to 18	1 March 2013.	1 March 2013
2F. Schedule 2, items 19 and 20	Immediately after the commencement of Part 2 of Schedule 1 to the <i>National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011.</i>	1 July 2012
2G. Schedule 2, items 21 and 22	1 March 2013.	1 March 2013
2H. Schedule 2, item 23	Immediately after the commencement of Part 2 of Schedule 1 to the <i>National</i>	1 July 2012

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*Consumer Credit Protection Amendment
(Home Loans and Credit Cards) Act 2011.*

2J. Schedule 2, items 24 to 26 1 March 2013. 1 March 2013

2K. Schedule 3 1 March 2013. 1 March 2013

[commencement of reverse mortgage provisions]

(2) Clause 2, page 2 (table item 4), omit the table item, substitute:

4. Schedule 5 1 March 2013. 1 March 2013

4A. Schedule 6 Immediately after the commencement of Schedule 2 to the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011.* 1 July 2012

[commencement of consumer lease provisions]

(3) Schedule 1, item 1, page 3 (line 12) to page 4 (line 5), omit subsections 72(2) to (4), substitute:

Note: If a debtor has given a credit provider a hardship notice, there may be requirements (beyond those in section 88) that the credit provider must comply with before beginning enforcement proceedings—see section 89A.

Further information

(2) Within 21 days after the day of receiving the debtor's hardship notice, the credit provider may give the debtor a notice requiring the debtor to give the credit provider within 21 days specified information relevant to deciding whether and how to change the credit contract to address the debtor's inability to meet the debtor's obligations under the contract.

(3) The debtor must comply with the requirement.

Note: If the debtor does not comply with the requirement, the credit provider may refuse to agree to change the credit contract.

Notice of decision on changing credit contract

(4) The credit provider must, before the end of the period identified under subsection (5), give the debtor a notice:

(a) that is in the form (if any) prescribed by the regulations and records the fact that the credit provider and the debtor have agreed to change the credit contract; or

(b) that is in the form (if any) prescribed by the regulations and states:

(i) the credit provider and the debtor have not agreed to change the credit contract; and

(ii) the reasons why they have not agreed; and

(iii) the name and contact details of the approved external dispute resolution scheme of which the credit provider is a member; and

(iv) the debtor's rights under that scheme.

Civil penalty: 2,000 penalty units.

(5) The credit provider must give the notice before the end of the period identified using the table.

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Period for giving notice

	If:	The period is:
1	The credit provider does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2	The credit provider requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the day of making the requirement
3	The credit provider requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

[hardship]

- (4) Schedule 1, item 6, page 5 (lines 17 to 19), omit “paragraph 72(2)(b), in response to the current hardship notice, stating that the credit provider does not agree to negotiate a change to”, substitute “paragraph 72(4)(b), in response to the current hardship notice, stating that the credit provider and debtor have not agreed to change”.

[hardship]

- (5) Schedule 1, item 6, page 5 (lines 20 and 21), omit “lessor gives the notice under paragraph 72(2)(b)”, substitute “credit provider gives the notice under paragraph 72(4)(b)”.

[hardship]

- (6) Schedule 1, item 15, page 12 (line 16), omit “represent”, substitute “make an unconditional representation”.

[assessing unsuitability]

- (7) Schedule 1, item 16, page 12 (line 21), omit “represent”, substitute “make an unconditional representation”.

[assessing unsuitability]

- (8) Schedule 1, item 19, page 13 (line 8), omit “represent”, substitute “make an unconditional representation”.

[assessing unsuitability]

- (9) Schedule 1, item 25, page 14 (line 17) to page 15 (line 3), omit section 160A, substitute:

160A Guide to this Part

This Part has a number of miscellaneous rules that require responsible lending conduct when engaging in credit activities or particular types of credit activities. Some of these rules apply to a person even if the person is not required to be licensed.

Division 2 prohibits licensees from making particular representations when providing a credit service to a consumer.

Division 3 prohibits a person (whether licensed or not) from giving false or misleading information in the course of engaging in a credit activity.

Division 4 may require a credit provider or lessor (whether licensed or not) to give notice when, and in some cases before, giving an employer of a debtor or lessee an authorisation

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by the debtor or lessee to make deductions from amounts payable by the employer to the debtor or lessee.

[employer payment authorisation]

(10) Schedule 1, item 25, page 17 (after line 27), at the end of Part 3-6A, add:

Division 4—Giving authorisation for deductions by employer of debtor or lessee

160E Requirements for giving authorisation to employer

- (1) This section applies to a credit provider or lessor giving, or intending to give, an employer of a debtor or lessee who is party to a credit contract or consumer lease with the credit provider or lessor an instrument that:
- (a) was made by the debtor or lessee; and
 - (b) authorises the employer to:
 - (i) make one or more deductions from one or more amounts payable by the employer in relation to the performance of work by the debtor or lessee; and
 - (ii) pay the deductions to the credit provider or lessor.

Credit provider or lessor must give statement to employer

- (2) If the credit contract or consumer lease is of a kind prescribed by the regulations, the credit provider or lessor must give the employer a statement, in the form prescribed by the regulations for that kind of contract or lease, with the instrument.

Civil penalty: 2,000 penalty units.

Credit provider or lessor must give 7 days' notice to defaulting debtor or lessee

- (3) If the debtor or lessee is in default under the credit contract or consumer lease, the credit provider or lessor must give the debtor or lessee at least 7 days' notice, in a form prescribed by the regulations, of the intention of the credit provider or lessor to give the instrument to the employer.

Civil penalty: 2,000 penalty units.

- (4) To avoid doubt, subsection (3) does not apply if there are not regulations in force prescribing a form for the purposes of that subsection.

[employer payment authorisation]

(11) Schedule 2, item 2, page 25 (line 25), omit “less than”, substitute “or below”.

[reverse mortgage definition]

(12) Schedule 2, item 5, page 26 (after line 26), after paragraph (a) of the definition of **bridging finance contract** in subsection 204(1), insert:

(aa) the term of the contract is 2 years or less; and

[bridging finance contract definition]

(13) Schedule 2, item 10, page 29 (line 8), after “show the consumer in person”, insert “, or give the consumer in a way prescribed by the regulations,”.

[equity projections]

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- (14) Schedule 2, item 13, page 36 (line 15), after “failing”, insert “, when the debtor occupies the reverse mortgaged property,”.

[prohibited provisions]

- (15) Schedule 2, item 13, page 36 (line 23), at the end of paragraph 18A(3)(d), add “within 3 years after the payment became due”.

[prohibited provisions]

- (16) Schedule 2, item 20, page 41 (lines 1 to 4), omit paragraph 86E(a).

[negative equity]

- (17) Schedule 3, item 4, page 51 (line 11), after “amount”, insert “credit”.

[technical correction]

- (18) Schedule 5, item 18, page 73 (lines 9 to 31), omit subsections 177B(2) to (4), substitute:

Note: If a lessee has given a lessor a hardship notice, there may be extra requirements (beyond those in section 179D) that the lessor must comply with before beginning enforcement proceedings—see section 179F.

Further information

- (2) Within 21 days after the day of receiving the lessee’s hardship notice, the lessor may give the lessee a notice requiring the lessee to give the lessor within 21 days specified information relevant to deciding whether and how to change the consumer lease to address the lessee’s inability to meet the lessee’s obligations under the lease.

- (3) The lessee must comply with the requirement.

Note: If the lessee does not comply with the requirement, the lessor may refuse to agree to change the lease.

Notice of decision on changing consumer lease

- (4) The lessor must, before the end of the period identified under subsection (5), give the lessee a notice:
- (a) that is in the form (if any) prescribed by the regulations and records the fact that the lessor and the lessee have agreed to change the consumer lease; or
 - (b) that is in the form (if any) prescribed by the regulations and states:
 - (i) the lessor and the lessee have not agreed to change the consumer lease; and
 - (ii) the reasons why they have not agreed; and
 - (iii) the name and contact details of the approved external dispute resolution scheme of which the lessor is a member; and
 - (iv) the lessee’s rights under that scheme.

Civil penalty: 2,000 penalty units.

- (5) The lessor must give the notice before the end of the period identified using the table.

Period for giving notice

If:	The period is:
1 The lessor does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2 The lessor requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the day of making the requirement

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Period for giving notice

If:	The period is:
3 The lessor requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

[hardship]

(19) Schedule 5, item 24, page 84 (lines 18 to 20), omit “paragraph 177B(2)(b), in response to the current hardship notice; stating that the lessor does not agree to negotiate a change to”, substitute “paragraph 177B(4)(b), in response to the current hardship notice, stating that the lessor and the lessee have not agreed to change”.

[hardship]

(20) Schedule 5, item 24, page 84 (line 23), omit “paragraph 177B(2)(b)”, substitute “paragraph 177B(4)(b)”.

[hardship]

(21) Schedule 6, item 4, page 99 (line 4), omit “inserted by”, substitute “added by item 11 of”.

[commencement of reverse mortgage provisions]

(22) Schedule 6, item 4, page 99 (line 6), omit “that Schedule”, substitute “that item”.

[commencement of reverse mortgage provisions]

(23) Schedule 6, item 4, page 99 (line 8), after “inserted by”, insert “item 12 of”.

[commencement of reverse mortgage provisions]

(24) Schedule 6, item 4, page 99 (line 10), omit “that Schedule”, substitute “that item”.

[commencement of reverse mortgage provisions]

(25) Schedule 6, item 4, page 99 (line 12), after “inserted by”, insert “item 13 of”.

[commencement of reverse mortgage provisions]

(26) Schedule 6, item 4, page 99 (line 14), omit “that Schedule”, substitute “that item”.

[commencement of reverse mortgage provisions]

(27) Schedule 6, item 4, page 99 (line 16), after “added by”, insert “item 15 of”.

[commencement of reverse mortgage provisions]

(28) Schedule 6, item 4, page 99 (line 18), omit “that Schedule”, substitute “that item”.

[commencement of reverse mortgage provisions]

(29) Schedule 6, item 4, page 99 (line 20), after “made by”, insert “items 16 and 17 of”.

[commencement of reverse mortgage provisions]

(30) Schedule 6, item 4, page 99 (line 22), omit “the Schedule”, substitute “those items”.

[commencement of reverse mortgage provisions]

(31) Schedule 6, item 4, page 99 (line 24), after “inserted by”, insert “item 18 of”.

[commencement of reverse mortgage provisions]

(32) Schedule 6, item 4, page 99 (line 26), omit “that Schedule”, substitute “that item”.

[commencement of reverse mortgage provisions]

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- (33) Schedule 6, item 4, page 99 (line 30), after “inserted by”, insert “item 20 of”.
[commencement of reverse mortgage provisions]
- (34) Schedule 6, item 4, page 99 (line 32), omit “that Schedule”, substitute “that item”.
[commencement of reverse mortgage provisions]
- (35) Schedule 6, item 4, page 100 (line 3), after “made by”, insert “item 21 of”.
[commencement of reverse mortgage provisions]
- (36) Schedule 6, item 4, page 100 (lines 4 and 5), omit “that Schedule”, substitute “that item”.
[commencement of reverse mortgage provisions]
- (37) Schedule 6, item 4, page 100 (line 7), after “inserted by”, insert “item 22 of”.
[commencement of reverse mortgage provisions]
- (38) Schedule 6, item 4, page 100 (line 9), omit “that Schedule”, substitute “that item”.
[commencement of reverse mortgage provisions]
- (39) Schedule 6, item 4, page 100 (line 11), after “added by”, insert “item 23 of”.
[commencement of reverse mortgage provisions]
- (40) Schedule 6, item 4, page 100 (line 13), omit “that Schedule”, substitute “that item”.
[commencement of reverse mortgage provisions]
- (41) Schedule 6, item 4, page 100 (line 15), after “inserted by”, insert “item 26 of”.
[commencement of reverse mortgage provisions]
- (42) Schedule 6, item 4, page 100 (line 17), omit “that Schedule”, substitute “that item”.
[commencement of reverse mortgage provisions]