

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017**

**No.     , 2017**

*(Treasury)*

**A Bill for an Act to amend the *National Consumer  
Credit Protection Act 2009*, and for related purposes**

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1  
2 **A Bill for an Act to amend the *National Consumer***  
3 ***Credit Protection Act 2009*, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *National Consumer Credit Protection Amendment*  
7 *(Small Amount Credit Contract and Consumer Lease Reforms) Act*  
8 *2017*.

9 **2 Commencement**

- 10 (1) Each provision of this Act specified in column 1 of the table  
11 commences, or is taken to have commenced, in accordance with  
12 column 2 of the table. Any other statement in column 2 has effect  
13 according to its terms.  
14

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	12 months after the day this Act receives the Royal Assent.	

15 Note: This table relates only to the provisions of this Act as originally  
16 enacted. It will not be amended to deal with any later amendments of  
17 this Act.

- 18 (2) Any information in column 3 of the table is not part of this Act.  
19 Information may be inserted in this column, or information in it  
20 may be edited, in any published version of this Act.

21 **3 Schedules**

22 Legislation that is specified in a Schedule to this Act is amended or  
23 repealed as set out in the applicable items in the Schedule  
24 concerned, and any other item in a Schedule to this Act has effect  
25 according to its terms.

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No. , 2017 *National Consumer Credit Protection Amendment (Small Amount  
Credit Contract and Consumer Lease Reforms) Bill 2017* 1

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## Schedule 1 Amendments

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### 1 Schedule 1—Amendments

#### 2 *National Consumer Credit Protection Act 2009*

##### 3 **1 Subsection 5(1)**

4 Insert:

5 *consumer lease for household goods* has the same meaning as in  
6 section 204 of the National Credit Code.

7 *hardship notice* has the same meaning as in section 204 of the  
8 National Credit Code.

9 *household goods* has the same meaning as in section 204 of the  
10 National Credit Code.

11 *unsolicited invitation by another person* means a communication  
12 made by a person to a consumer that the person would have been  
13 prohibited from making under sections 124C or 133CF had the  
14 person been a licensee.

##### 15 **2 Section 111 (paragraph relating to Division 4)**

16 Repeal the paragraph, substitute:

17 Division 4 requires a licensee, before providing credit assistance to  
18 a consumer in relation to a credit contract, to make a preliminary  
19 assessment as to whether the contract will be unsuitable for the  
20 consumer. To do this, the licensee must make inquiries and  
21 verifications about the consumer's requirements, objectives and  
22 financial situation. It also imposes requirements in relation to  
23 recording the preliminary assessment that a small amount credit  
24 contract is not unsuitable. The licensee must give the consumer a  
25 copy of the assessment if requested.

##### 26 **3 Section 111 (paragraph relating to Division 7)**

27 Repeal the paragraph, substitute:

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Amendments **Schedule 1**

1 Division 7 prohibits a licensee from providing credit assistance to a  
2 consumer in relation to short-term credit contracts. It also imposes  
3 requirements on a licensee who makes representations about  
4 providing credit assistance in relation to small amount credit  
5 contracts. It also prohibits a licensee from making third party  
6 unsolicited small amount credit contract invitations.

## 7 **4 After section 116**

8 Insert:

### 9 **116A Recording the preliminary assessment for a small amount** 10 **credit contract**

11 (1) The licensee must:

- 12 (a) record in writing the preliminary assessment made for the  
13 purposes of paragraph 115(1)(c) or paragraph 115(2)(a) that a  
14 small amount credit contract is not unsuitable at the time the  
15 assessment is made; and  
16 (b) comply with any requirements for that written assessment  
17 determined by ASIC under subsection (2).

18 Civil penalty: 2,000 penalty units.

19 (2) ASIC may, by legislative instrument, determine the form and  
20 content of the written assessment for the purposes of  
21 subsection (1).

22 *Strict liability offence*

23 (3) A person commits an offence if:

- 24 (a) the person is subject to a requirement under subsection (1);  
25 and  
26 (b) the person engages in conduct; and  
27 (c) the conduct contravenes the requirement.

28 Criminal penalty: 50 penalty units.

29 (4) Subsection (3) is an offence of strict liability.

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## Schedule 1 Amendments

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1 Note: For strict liability, see section 6.1 of the *Criminal Code*.

2 **5 Subsection 118(3A)**

3 Repeal the subsection.

4 **6 After subsection 120(1)**

5 Insert:

6 (1A) Without limiting the provisions of this Act, the requirement to give  
7 a written copy of the assessment in subsection (1) may be met in  
8 accordance with the *Electronic Transactions Act 1999*.

9 **7 Subsection 123(3A)**

10 Repeal the subsection.

11 **8 Section 124B (heading)**

12 Repeal the heading, substitute:

13 **124B Licensee who makes representations about credit assistance in**  
14 **relation to small amount credit contracts must provide**  
15 **information etc.**

16 **9 Subsection 124B(1)**

17 Repeal the subsection, substitute:

18 (1) If a licensee represents that the licensee provides, or is able to  
19 provide, credit assistance to consumers in relation to small amount  
20 credit contracts, the licensee must provide information in  
21 accordance with any instrument made pursuant to subsection (1A).

22 Civil penalty: 2,000 penalty units.

23 (1A) ASIC may, by legislative instrument, determine:

- 24 (a) the information that must be provided by a licensee; and  
25 (b) how the information is to be provided; and  
26 (c) when the information is to be provided.

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1 **10 At the end of Division 7 of Part 3-1**

2 Add:

3 **124C Licensee not to make third party unsolicited small amount**  
4 **credit contract invitations**

5 *Requirement*

- 6 (1) A licensee must not make a third party unsolicited small amount  
7 credit contract invitation.

8 Civil penalty: 2,000 penalty units.

9 *Offence*

- 10 (2) A person commits an offence if:  
11 (a) the person is subject to a requirement under subsection (1);  
12 and  
13 (b) the person engages in conduct; and  
14 (c) the conduct contravenes the requirements.

15 Criminal penalty: 100 penalty units.

16 *Strict liability offence*

- 17 (3) A person commits an offence if:  
18 (a) the person is subject to a requirement under subsection (1);  
19 and  
20 (b) the person engages in conduct; and  
21 (c) the conduct contravenes the requirements.

22 Criminal penalty: 10 penalty units.

- 23 (4) Subsection (3) is an offence of strict liability.

24 Note: For strict liability, see section 6.1 of the *Criminal Code*.

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## Schedule 1 Amendments

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1                    *Meaning of third party unsolicited small amount credit contract*  
2                    *invitation*

3                    (5) A licensee makes a third party unsolicited small amount credit  
4                    contract invitation if:

5                    (a) the licensee makes any form of communication to a  
6                    consumer who is a person that the licensee knows:

7                    (i) is a debtor under a small amount credit contract; or

8                    (ii) was a debtor under a small amount credit contract at any  
9                    time in the 2 year period before the time the  
10                    communication is made; and

11                    (b) one or more of the following conditions is satisfied in  
12                    relation to the communication:

13                    (i) the communication offers to enter into a small amount  
14                    credit contract with the consumer; or

15                    (ii) the communication invites the consumer to apply for a  
16                    small amount credit contract; or

17                    (iii) the communication is about a small amount credit  
18                    contract referred to in paragraph (5)(a) and a reasonable  
19                    person would conclude that the licensee made the  
20                    communication to the consumer for the purpose (or for  
21                    purposes including the purpose) of encouraging the  
22                    consumer to consider applying for a small amount credit  
23                    contract.

24                    (6) The regulations may make provisions that apply to determining  
25                    whether a communication is covered by the definition in  
26                    subsection (5).

### 27                    **11 Section 125 (paragraph relating to Division 3)**

28                    Repeal the paragraph, substitute:

29                    

30                    Division 3 requires a licensee, before doing particular things (such  
31                    as entering into a credit contract), to make an assessment as to  
32                    whether the contract will be unsuitable. To do this, the licensee  
33                    must make inquiries and verifications about the consumer's  
34                    requirements, objectives and financial situation. It also imposes  
                     requirements in relation to recording the assessment that a small

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Amendments **Schedule 1**

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1 amount credit contract is not unsuitable. The licensee must give the  
2 consumer a copy of the assessment if requested.

## 3 **12 After section 129**

4 Insert:

### 5 **129A Recording the assessment for a small amount credit contract**

6 (1) The licensee must:

- 7 (a) record in writing the assessment made for the purposes of  
8 paragraph 128(c) that a small amount credit contract is not  
9 unsuitable at the time the assessment is made; and  
10 (b) comply with any requirements for that written assessment  
11 determined by ASIC under subsection (2).

12 Civil penalty: 2,000 penalty units.

13 (2) ASIC may, by legislative instrument, determine the form and  
14 content of the written assessment for the purposes of  
15 subsection (1).

16 *Strict liability offence*

17 (3) A person commits an offence if:

- 18 (a) the person is subject to a requirement under subsection (1);  
19 and  
20 (b) the person engages in conduct; and  
21 (c) the conduct contravenes the requirement.

22 Criminal penalty: 50 penalty units.

23 (4) Subsection (3) is an offence of strict liability.

24 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 25 **13 Subsection 131(3A)**

26 Repeal the subsection.

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## Schedule 1 Amendments

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1 **14 After subsection 132(2)**

2 Insert:

3 (2A) Without limiting the provisions of this Act, the requirement to give  
4 a written copy of the assessment in subsections (1) and (2) may be  
5 met in accordance with the *Electronic Transactions Act 1999*.

6 **15 Subsection 133(3A)**

7 Repeal the subsection.

8 **16 Section 133C (paragraph relating to Division 2)**

9 Repeal the paragraph, substitute:

10 Division 2 prohibits a licensee from entering into, or increasing the  
11 credit limit of, short-term credit contracts. It also imposes  
12 requirements on a licensee who makes representations about  
13 entering into small amount credit contracts and prohibits a licensee  
14 from entering into, or offering to enter into, small amount credit  
15 contracts in certain circumstances. It also prohibits a licensee from  
16 making unsolicited small amount credit contract invitations. It also  
17 provides that the consumer is not liable to pay certain fees and  
18 charges under small amount credit contracts in certain  
19 circumstances.

20 **17 Section 133CB (heading)**

21 Repeal the heading, substitute:

22 **133CB Licensee who makes representations in relation to small**  
23 **amount credit contracts must provide information etc.**

24 **18 Subsection 133CB(1)**

25 Repeal the subsection, substitute:

26 (1) If a licensee represents that the licensee enters into, or is able to  
27 enter into, small amount credit contracts with consumers under  
28 which the licensee would be the credit provider, the licensee must

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Amendments **Schedule 1**

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1 provide information in accordance with any instrument made  
2 pursuant to subsection (1A).

3 Civil penalty: 2,000 penalty units.

4 (1A) ASIC may by legislative instrument, determine:

5 (a) the information that must be provided by a licensee; and

6 (b) how the information is to be provided; and

7 (c) when the information is to be provided.

## 8 **19 Subsection 133CC(1)**

9 Repeal the subsection, substitute:

10 (1) A licensee must not enter into, or offer to enter into, a small  
11 amount credit contract with a consumer who will be the debtor  
12 under the contract if the repayments that would be required under  
13 the contract would not meet the requirements prescribed by the  
14 regulations.

15 Civil penalty: 2,000 penalty units.

16 Note: For example, the regulations may provide that the amount of a  
17 repayment must not exceed a specified percentage of the consumer's  
18 income.

## 19 **20 At the end of section 133CC**

20 Add:

21 *Civil effect*

22 (3) If a licensee enters into a small amount credit contract in  
23 contravention of subsection (1) then:

24 (a) each provision (the **void provisions**) of the small amount  
25 credit contract that imposes a monetary liability to pay a fee  
26 or charge of the kind described in paragraph 31A(1)(a) or (b)  
27 of the National Credit Code (whether or not that liability is  
28 imposed consistently with the National Credit Code) is void  
29 to the extent that the provision relates to the liability;

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## Schedule 1 Amendments

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- 1 (b) the debtor may recover as a debt due to the debtor any  
2 amount paid to the licensee under the void provisions to the  
3 extent that the amount relates to the liability.

### 4 **21 After section 133CC**

5 Insert:

#### 6 **133CD Licensee must not require or accept payment in relation to a** 7 **small amount credit contract etc.**

- 8 (1) A licensee, or a person prescribed by the regulations, must not  
9 require or accept payment by the debtor of a repayment under a  
10 small amount credit contract.

11 Criminal penalty: 100 penalty units.

- 12 (2) Subsection (1) does not apply to the extent that the repayment does  
13 not exceed the amount which meets the requirements prescribed by  
14 the regulations for the purposes of section 133CC.

15 *Civil effect*

- 16 (3) If a licensee or a person contravenes subsection (1):  
17 (a) the debtor is not liable (and is taken never to have been  
18 liable) to make the payment to the licensee or person; and  
19 (b) the debtor may recover as a debt due to the debtor the amount  
20 of any payment made by the debtor to the credit provider or  
21 person.

#### 22 **133CE Licensee must not enter into a small amount credit contract if** 23 **repayments are not equal**

- 24 (1) A licensee must not enter into, or offer to enter into, a small  
25 amount credit contract with a consumer who will be the debtor  
26 under the contract under which any of the following applies:  
27 (a) repayments required under the contract are not equal;  
28 (b) the interval between the date on which credit is first provided  
29 under the contract and the first payment date is longer than  
30 the interval between payment dates;

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- 
- 1 (c) the intervals between payment dates are not equal.
- 2 Civil penalty: 2,000 penalty units.
- 3 (2) For the purposes of paragraph (1)(a), repayments required under a  
4 small amount credit contract will be equal if:
- 5 (a) each repayment is of the same amount; or  
6 (b) each repayment except the last repayment is of the same  
7 amount and the difference between the amount of the last  
8 repayment and each other repayment is not more than 5%  
9 less than the amount of each other repayment; or  
10 (c) the repayments meet the conditions determined by ASIC  
11 under subsection (5).
- 12 (3) A **payment date** is the date on or by which a repayment is required  
13 to be made under the contract.
- 14 (4) For the purposes of paragraph (1)(c), if a small amount credit  
15 contract provides that:
- 16 (a) repayments are required to be made on a fixed day of each  
17 week, fortnight or month; and  
18 (b) if that fixed day falls on a day that is not a business day, the  
19 repayment is required on the immediately preceding or  
20 succeeding business day;  
21 the intervals between payment dates will be equal.
- 22 (5) ASIC may, by legislative instrument, determine conditions for the  
23 purpose of paragraph (2)(c).
- 24 *Strict liability offence*
- 25 (6) A person commits an offence if:
- 26 (a) the person is subject to a requirement under subsection (1);  
27 and  
28 (b) the person engages in conduct; and  
29 (c) the conduct contravenes the requirement.
- 30 Criminal penalty: 100 penalty units.
- 31 Note: For strict liability, see section 6.1 of the *Criminal Code*.
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## Schedule 1 Amendments

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1 (7) Subsection (6) is an offence of strict liability.

2 Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 3 **22 At the end of Division 2 of Part 3-2C**

4 Add:

#### 5 **133CF Licensee not to make unsolicited small amount credit** 6 **contract invitations**

##### 7 *Requirement*

8 (1) A licensee must not make an unsolicited small amount credit  
9 contract invitation.

10 Civil penalty: 2,000 penalty units.

##### 11 *Offence*

12 (2) A person commits an offence if:

- 13 (a) the person is subject to a requirement under subsection (1);  
14 and  
15 (b) the person engages in conduct; and  
16 (c) the conduct contravenes the requirement.

17 Criminal penalty: 100 penalty units.

##### 18 *Strict liability offence*

19 (3) A person commits an offence if:

- 20 (a) the person is subject to a requirement under subsection (1);  
21 and  
22 (b) the person engages in conduct; and  
23 (c) the conduct contravenes the requirement.

24 Criminal penalty: 10 penalty units.

25 (4) Subsection (3) is an offence of strict liability.

26 Note: For strict liability, see section 6.1 of the *Criminal Code*.

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*Meaning of unsolicited small amount credit contract invitation*

1  
2 (5) A licensee makes an unsolicited small amount credit contract  
3 invitation if:

4 (a) the licensee makes any form of communication to a  
5 consumer who:

6 (i) is a debtor under a small amount credit contract with the  
7 licensee as credit provider; or

8 (ii) was a debtor under a small amount credit contract with  
9 the licensee as credit provider at any time in the 2 year  
10 period before the time the communication is made; or

11 (iii) a person that the licensee knows:

12 (A) is a debtor under a small amount credit contract  
13 with another credit provider; or

14 (B) was a debtor under a small amount credit  
15 contract with another credit provider at any  
16 time in the 2 year period before the time the  
17 communication is made; and

18 (b) one or more of the following conditions is satisfied in  
19 relation to the communication:

20 (i) the communication offers to enter into a small amount  
21 credit contract with the consumer; or

22 (ii) the communication invites the consumer to apply for a  
23 small amount credit contract; or

24 (iii) the communication is about a small amount credit  
25 contract referred to in paragraph (5)(a) and a reasonable  
26 person would conclude that the licensee made the  
27 communication to the consumer for the purpose (or for  
28 purposes including the purpose) of encouraging the  
29 consumer to consider applying for a small amount credit  
30 contract.

31 (6) The regulations may make provisions that apply to determining  
32 whether a communication is covered by the definition in  
33 subsection (5).

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### 133CG Loss of charges

- 1
- 2 (1) This section applies to a small amount credit contract which:
- 3 (a) was entered between a consumer who is the debtor under the
- 4 contract and a licensee in the following circumstances:
- 5 (i) before the contract was entered into, the licensee had
- 6 made an unsolicited small amount credit contract
- 7 invitation to the consumer in contravention of
- 8 section 133CF; and
- 9 (ii) a reasonable person would conclude that the consumer
- 10 entered into that contract as a result of that invitation; or
- 11 (b) was entered between a consumer who is the debtor under the
- 12 contract and a licensee in the following circumstances:
- 13 (i) the licensee knew that:
- 14 (A) a licensee had made a third party unsolicited
- 15 small amount credit contract invitation in
- 16 contravention of section 124C; or
- 17 (B) an unsolicited invitation by another person had
- 18 been made to that consumer; and
- 19 (ii) a reasonable person would conclude the consumer
- 20 entered into that contract as a result of that unsolicited
- 21 invitation by another person.
- 22 (2) Each provision (the *void provisions*) of a contract to which this
- 23 section applies that imposes a monetary liability to pay a fee or
- 24 charge of the kind described in paragraph 31A(1)(a) or (b) of the
- 25 National Credit Code (whether or not the liability is imposed
- 26 consistently with the National Credit Code) is void to the extent
- 27 that the provision relates to the liability.
- 28 (3) The debtor may recover as a debt due to the debtor any amount
- 29 paid to the credit provider under the void provisions to the extent
- 30 that the amount relates to the liability.

### 23 Section 134 (paragraph relating to Division 4)

31 Repeal the paragraph, substitute:

32

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1 Division 4 requires a licensee, before providing credit assistance to  
2 a consumer in relation to a consumer lease, to make a preliminary  
3 assessment as to whether the lease will be unsuitable for the  
4 consumer. To do this, the licensee must make inquiries and  
5 verifications about the consumer's requirements, objectives and  
6 financial situation. It also imposes requirements in relation to  
7 recording the preliminary assessment that a consumer lease is not  
8 unsuitable. The licensee must give the consumer a copy of the  
9 assessment if requested.

## 10 **24 At the end of section 134**

11 Add:

12 Division 7 imposes requirements on a licensee who makes  
13 representations about providing credit assistance in relation to  
14 consumer leases for household goods.

## 15 **25 After section 139**

16 Insert:

### 17 **139A Recording the preliminary assessment for a consumer lease** 18 **for household goods**

- 19 (1) The licensee must:
- 20 (a) record in writing the preliminary assessment made for the
  - 21 purposes of paragraph 138(1)(c) or paragraph 138(2)(a) that a
  - 22 consumer lease for household goods is not unsuitable at the
  - 23 time the assessment is made; and
  - 24 (b) comply with any requirements for that written assessment
  - 25 determined by ASIC under subsection (2).

26 Civil penalty: 2,000 penalty units.

- 27 (2) ASIC may, by legislative instrument, determine the form and  
28 content of the written assessment for the purposes of  
29 subsection (1).

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1

*Strict liability offence*

2

(3) A person commits an offence if:

3

(a) the person is subject to a requirement under subsection (1);

4

and

5

(b) the person engages in conduct; and

6

(c) the conduct contravenes the requirement.

7

Criminal penalty: 50 penalty units.

8

(4) Subsection (3) is an offence of strict liability.

9

Note: For strict liability, see section 6.1 of the *Criminal Code*.

10

### **26 After subsection 140(1)**

11

Insert:

12

(1A) If:

13

(a) the goods to be hired under the lease are household goods;

14

and

15

(b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited;

16

17

the licensee must, in verifying the consumer's financial situation for the purposes of paragraph 138(1)(d), obtain and consider account statements that cover at least the immediately preceding period of 90 days.

18

19

20

21

22

(1B) Subsection (1A) does not limit paragraph (1)(c) of this section.

23

### **27 After subsection 143(1)**

24

Insert:

25

(1A) Without limiting the provisions of this Act, the requirement to give a written copy of the assessment in paragraph (1) may be met in accordance with the *Electronic Transactions Act 1999*.

26

27

28

### **28 At the end of Part 3-3**

29

Add:

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## 1 **Division 7—Special rules for consumer leases for** 2 **household goods**

### 3 **147A Licensee who makes representations about credit assistance in** 4 **relation to consumer leases for household goods must** 5 **provide information etc.**

#### 6 *Requirement*

- 7 (1) If a licensee represents that the licensee provides, or is able to  
8 provide, credit assistance to consumers in relation to consumer  
9 leases for household goods, the licensee must provide information  
10 in accordance with any instrument made pursuant to subsection (2).

11 Civil penalty: 2,000 penalty units.

- 12 (2) ASIC may, by legislative instrument, determine:  
13 (a) the information that must be provided by a licensee; and  
14 (b) how the information is to be provided; and  
15 (c) when the information is to be provided.

#### 16 *Offence*

- 17 (3) A person commits an offence if:  
18 (a) the person is subject to a requirement under subsection (1);  
19 and  
20 (b) the person engages in conduct; and  
21 (c) the conduct contravenes the requirement.

22 Criminal penalty: 50 penalty units.

## 23 **29 Section 148 (paragraph relating to Division 3)**

24 Repeal the paragraph, substitute:

25 Division 3 requires a licensee, before doing particular things (such  
26 as entering into a consumer lease), to make an assessment as to  
27 whether the lease is not unsuitable. To do this, the licensee must

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## Schedule 1 Amendments

1 make inquiries and verifications about the consumer's  
2 requirements, objectives and financial situation. It also imposes  
3 requirements in relation to recording an assessment that a  
4 consumer lease is not unsuitable. The licensee must give the  
5 consumer a copy of the assessment if requested.

### 30 At the end of section 148

6 Add:

8 Division 5 prohibits a licensee from entering into, or offering to  
9 enter into, a consumer lease for household goods in certain  
10 circumstances. It also imposes requirements on a licensee who  
11 makes representations about consumer leases for household goods.

### 31 After section 152

12 Insert:

#### 152A Recording the assessment for a consumer lease for household goods

16 (1) The licensee must:

- 17 (a) record in writing the assessment made for the purposes of  
18 paragraph 151(c) that a consumer lease for household goods  
19 is not unsuitable at the time the assessment is made; and  
20 (b) comply with any requirements for that written assessment  
21 determined by ASIC under subparagraph (2).

22 Civil penalty: 2,000 penalty units.

23 (2) ASIC may, by legislative instrument, determine the form and  
24 content of the written assessment for the purposes of subsection (1)  
25 above.

26 *Strict liability offence*

27 (3) A person commits an offence if:

- 28 (a) the person is subject to a requirement under subsection (1);  
29 and

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- 
- 1 (b) the person engages in conduct; and  
2 (c) the conduct contravenes the requirement.

3 Criminal penalty: 50 penalty units.

4 (4) Subsection (3) is an offence of strict liability.

5 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 6 **32 After subsection 153(1)**

7 Insert:

8 (1A) If:

- 9 (a) the goods to be hired under the lease are household goods;  
10 and  
11 (b) the consumer holds (whether alone or jointly with another  
12 person) an account with an ADI into which income payable  
13 to the consumer is credited;  
14 the licensee must, in verifying the consumer's financial situation  
15 for the purposes of paragraph 151(d), obtain and consider account  
16 statements that cover at least the immediately preceding period of  
17 90 days.

18 (1B) Subsection (1A) does not limit paragraph (1)(c).

## 19 **33 After subsection 155(2)**

20 Insert:

21 (2A) Without limiting the provisions of this Act, the requirement to give  
22 a written copy of the assessment in subsections (1) and (2) may be  
23 met in accordance with the *Electronic Transactions Act 1999*.

## 24 **34 At the end of Part 3-4**

25 Add:

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## Schedule 1 Amendments

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1 **Division 5—Consumer leases for household goods**

2 **156A Licensee must not enter into a consumer lease for household**  
3 **goods if the payments do not meet the prescribed**  
4 **requirements**

5 *Requirement*

- 6 (1) A licensee must not enter into, or offer to enter into, a consumer  
7 lease for household goods with a consumer who will be the lessee  
8 under the lease if the amount that would be required to be paid  
9 under the lease by the lessee would not meet the requirements  
10 prescribed by the regulations.

11 Civil penalty: 2,000 penalty units.

12 Note: For example, the regulations may provide that the amount of a  
13 payment must not exceed a specified percentage of the lessee's  
14 income.

15 *Offence*

- 16 (2) A person commits an offence if:  
17 (a) the person is subject to a requirement under subsection (1);  
18 and  
19 (b) the person engages in conduct; and  
20 (c) the conduct contravenes the requirement.

21 Criminal penalty: 50 penalty units.

22 *Civil effect*

- 23 (3) If a lessor enters into a consumer lease in contravention of  
24 subsection (1) then:  
25 (a) each provision (the *void provisions*) of the consumer lease  
26 that imposes a monetary liability on the lessee in excess of  
27 the base price of the goods hired under the lease (whether or  
28 not that liability is imposed consistently with the National  
29 Credit Code) is void to the extent that the provision relates to  
30 the liability;

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- 
- 1 (b) the lessee may recover as a debt due to the lessee any amount  
2 paid to the lessor under the void provisions to the extent that  
3 the amount relates to the liability.

4 **156B Lessor or prescribed person must not require or accept**  
5 **payments in relation to a consumer lease etc.**

- 6 (1) A lessor, or a person prescribed by the regulations, must not  
7 require or accept payment by the lessee of an amount under a  
8 consumer lease.

9 Criminal penalty: 100 penalty units.

- 10 (2) Subsection (1) does not apply to the extent that the amount does  
11 not exceed the amount which meets the requirements prescribed by  
12 the regulations for the purposes of section 156A.

13 *Civil effect*

- 14 (3) If a lessor or a person contravenes subsection (1):  
15 (a) the lessee is not liable (and is taken never to have been liable)  
16 to make the payment to the lessor or person; and  
17 (b) the lessee may recover as a debt due to the lessee the amount  
18 of any payment made by the lessee to the lessor or person.

19 **156C Licensee who makes representations about consumer leases**  
20 **for household goods must provide information etc.**

21 *Requirement*

- 22 (1) If a licensee represents that the licensee enters into, or is able to  
23 enter into, consumer leases for household goods with consumers  
24 under which the licensee would be the lessor, the licensee must  
25 provide information in accordance with any instrument made  
26 pursuant to subsection (2).

27 Civil penalty: 2,000 penalty units.

- 28 (2) ASIC may, by legislative instrument, determine:  
29 (a) the information that must be provided by a licensee; and

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## Schedule 1 Amendments

---

- 1 (b) how the information is to be provided; and  
2 (c) when the information is to be provided.

3 *Offence*

- 4 (3) A person commits an offence if:  
5 (a) the person is subject to a requirement under subsection (1);  
6 and  
7 (b) the person engages in conduct; and  
8 (c) the conduct contravenes the requirement.

9 Criminal penalty: 50 penalty units.

### 10 **35 At the end of section 160A**

11 Add:

12 Division 5 contains restrictions in relation to the use and disclosure  
13 of account statements and information contained in account  
14 statements.

### 15 **36 At the end of Part 3-6A**

16 Add:

### 17 **Division 5—Use or disclosure of account statements**

#### 18 **160F Application of this Division**

- 19 (1) This Division applies to a licensee who has received an account  
20 statement from a consumer in connection with:  
21 (a) a proposed small amount credit contract; or  
22 (b) a proposed consumer lease for household goods; or  
23 (c) a small amount credit contract; or  
24 (d) a consumer lease for household goods.
- 25 (2) This Division also applies to a person who has received an account  
26 statement from a person described in subsection (1).

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## 160G Permitted use and disclosure of account statements

A person to whom this Division applies may use or disclose an account statement or information contained in an account statement if:

- (a) the use or disclosure is necessary for the person to comply with their obligations under this Act or the National Credit Code; or
- (b) the use or disclosure is required or authorised by or under an Australian law or a court or tribunal order; or
- (c) for the purposes of considering a hardship notice.

## 160H Prohibited use of account statements

- (1) A person to whom this Division applies must not use or disclose an account statement or information contained in an account statement unless the use or disclosure is permitted under section 160G.

Civil penalty: 2,000 penalty units.

### *Offence*

- (2) A person commits an offence if:
- (a) the person is a person to whom this Division applies; and
  - (b) the person uses or discloses an account statement or information contained in an account statement; and
  - (c) the use or disclosure is not permitted by section 160G.

Criminal penalty: 100 penalty units.

### *Strict liability offence*

- (3) A person commits an offence if:
- (a) the person is a person to whom this Division applies; and
  - (b) the person uses or discloses an account statement or information contained in an account statement; and
  - (c) the use or disclosure is not permitted by section 160G.

Criminal penalty: 10 penalty units.

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1 (4) Subsection (3) is an offence of strict liability.

2 Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 3 **37 Section 323 (after the first paragraph)**

4 Insert:

5 

Division 1A has rules that prohibit schemes that are designed to 6 avoid the application of this Act.
--

### 7 **38 After Division 1 of Part 7-1**

8 Insert:

### 9 **Division 1A—Avoidance schemes**

#### 10 **323A Prohibition on avoidance in relation to small amount credit** 11 **contracts and consumer leases**

##### 12 *Prohibition on avoidance*

13 (1) A person must not (either alone or with others) enter into, or carry  
14 out (to any extent), a scheme if it is reasonable to conclude that a  
15 purpose of the person doing so is to prevent a contract (the  
16 ***contrived contract***) covered by the following paragraphs from  
17 being a small amount credit contract or a consumer lease:

- 18 (a) the contract is between a consumer and either the person or  
19 someone else who is or was connected with the person;  
20 (b) the contract is connected with the scheme.

21 Civil penalty: 2,000 penalty units.

##### 22 *Meaning of **scheme***

23 (2) A **scheme** is:

- 24 (a) any agreement, arrangement, understanding, promise or  
25 undertaking, whether express or implied; or  
26 (b) any scheme, plan, proposal, action, course of action or course  
27 of conduct, whether unilateral or otherwise.

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*Whether it is reasonable to draw conclusion as to purpose*

1  
2 (3) For the purpose of determining whether it is reasonable to draw a  
3 conclusion described in subsection (1):

4 (a) regard must be had to the extent to which the circumstances  
5 described in subsection (4) exist; and

6 (b) the more any of those circumstances exist, the more it is  
7 reasonable to draw that conclusion.

8 This does not limit the matters to which regard may be had in  
9 making the determination.

10 (4) The circumstances are as follows:

11 (a) the contrived contract or the scheme has a similar effect,  
12 operation or structure to a small amount credit contract or  
13 consumer lease but the contrived contract is not a small  
14 amount credit contract or consumer lease because of the  
15 artificiality or complexity of the contrived contract or scheme  
16 or because of one or more of the following:

17 (i) there are more parties to the contrived contract or  
18 scheme than is necessary for the provision of credit, or  
19 hire of goods, to the consumer;

20 (ii) there are more elements of the scheme than are  
21 necessary for the provision of credit to the consumer  
22 under a small amount credit contract or for the hire of  
23 goods to the consumer under a consumer lease;

24 (iii) the contrived contract deals with fewer transactions than  
25 are reasonable, but the scheme deals with at least as  
26 many transactions as are reasonable, for the provision of  
27 credit to the consumer under a small amount credit  
28 contract or for the hire of goods to the consumer under a  
29 consumer lease;

30 (b) the consumer has been or is to be charged in connection with  
31 the contrived contract an amount (however described) that, if  
32 the contrived contract were a small amount credit contract or  
33 consumer lease:

34 (i) would be a fee, charge or liability whose imposition is  
35 prohibited by section 23A or 31A of the National Credit  
36 Code; or

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## Schedule 1 Amendments

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- 1 (ii) the consumer would not be liable to pay because of the  
2 operation of section 175AB or 175AC of the National  
3 Credit Code;
- 4 (c) the consumer is required to pay under the contrived contract:
- 5 (i) repayments that, if the contrived contract was a small  
6 amount credit contract and another party to that contract  
7 had been a licensee, the consumer could not have been  
8 required to pay under the contract because of the  
9 operation of section 133CC, 133CD or 133CE; or
- 10 (ii) amounts that, if the contrived contract was a consumer  
11 lease and another party to that contract was a licensee,  
12 the consumer could not have lawfully been required to  
13 pay because of the operation of section 156A or 156B of  
14 the Act;
- 15 (d) if:
- 16 (i) the contrived contract was a small amount credit  
17 contract or a consumer lease; or
- 18 (ii) the scheme had resulted in the entry into a small amount  
19 credit contract or consumer lease with a consumer or the  
20 making of an offer to a consumer to enter into a small  
21 amount credit contract or a consumer lease;
- 22 the person or someone else connected to the person would, if  
23 they had been a licensee, have contravened any of the  
24 provisions in Parts 3-2C, 3-3, or 3-4;
- 25 (e) both of the following apply in relation to the consumer's  
26 financial obligations under the contrived contract or under  
27 any aspect of the scheme:
- 28 (i) the person or someone else connected with the person  
29 has secured or will secure the performance of those  
30 obligations by taking an interest in the consumer's  
31 principal place of residence, a motor vehicle of the  
32 consumer or goods of the consumer that are essential  
33 household property for the purposes of section 50 of the  
34 National Credit Code (the *mortgaged property*);
- 35 (ii) it is reasonable to assume that the person took the  
36 security because:
- 37 (A) the consumer would likely only be able to  
38 comply with their financial obligations under
-

# EXPOSURE DRAFT

Amendments **Schedule 1**

- 
- 1 the contract by selling the mortgaged property;  
2 or  
3 (B) the person did not make reasonable inquiries  
4 into whether the consumer would only be able  
5 to comply with their financial obligations under  
6 the contract (or under another aspect of the  
7 scheme) by selling the mortgaged property;
- 8 (f) the person, or someone who is or was connected with the  
9 person:
- 10 (i) represents to any consumer that the person or someone  
11 who is or was connected with the person could provide  
12 credit or finance (however described) or hire goods to a  
13 consumer where, if the consumer entered into a small  
14 amount credit contract or consumer lease whose terms  
15 comply with this Act, that contract would likely be  
16 unsuitable for that consumer for the reason described in  
17 paragraphs 123(2)(a), 133(2)(a), 146(2)(a) or 156(2)(a);  
18 or
- 19 (ii) represents that the person or someone who is connected  
20 with the person would provide credit or finance  
21 (however described) or hire goods where a reasonable  
22 person would conclude that the representation is  
23 directed to a class of consumers whose members are  
24 more likely than people who are not members of the  
25 class to, if they entered into a small amount credit  
26 contract or a consumer lease whose terms comply with  
27 this Act, have entered into a small amount credit  
28 contract or consumer lease that would likely be  
29 unsuitable for the reason described in paragraphs  
30 123(2)(a), 133(2)(a), 146(2)(a) or 156(2)(a);
- 31 (g) one or more suggestions are or were made to the consumer  
32 that the consumer give, in connection with the scheme or the  
33 contrived contract, information that:
- 34 (i) is not true, or does not accurately reflect the consumer's  
35 intention, when the information is, or is to be, given;  
36 and

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## Schedule 1 Amendments

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- 1 (ii) relates to a matter relevant to determining whether the  
2 contrived contract is a small amount credit contract or  
3 consumer lease;
- 4 (h) all of the following apply:
- 5 (i) before the scheme is carried out, the person, or someone  
6 who is or was connected with the person, carried on a  
7 business of providing credit or hiring goods to  
8 consumers in a different way (the *old way*);
- 9 (ii) there has been a change in the law relating to the  
10 providing of credit, or hiring of goods, to consumers  
11 since the business was carried on in the old way;
- 12 (iii) had whoever carried on the business continued to do so  
13 in the old way, he or she would, because of the change  
14 in the law, have been subject to obligations to which he  
15 or she was not subject when carrying on the business in  
16 the old way;
- 17 (i) the scheme is or has been advertised or promoted to  
18 consumers in a manner:
- 19 (i) that a reasonable person would conclude was likely to  
20 give consumers the impression that the scheme would  
21 likely result in an offer to enter into, or entry into, a  
22 small amount credit contract or consumer lease; or
- 23 (ii) that indicates that consumers will be provided with  
24 access to a small amount credit contract or consumer  
25 lease; and
- 26 that is inconsistent with the legal operation or effect of the  
27 scheme;
- 28 (j) the person, or someone who is connected with the person, has  
29 advertised or promoted the scheme in circumstances where  
30 they do not offer small amount credit contracts or consumer  
31 leases in the ordinary course of business;
- 32 (k) the person, or one or more others who are or were connected  
33 with the person, are or were inappropriate persons as defined  
34 in regulation 3 of the *National Consumer Credit Protection  
35 Regulations 2010*.



# EXPOSURE DRAFT

## Schedule 1 Amendments

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### 1 **323B Schemes and conduct that are not prohibited**

- 2 (1) Subsection 323A(1) does not apply to a scheme which is connected  
3 with a contract that:
- 4 (a) is a contract for the provision of credit to which the National  
5 Credit Code would apply apart from section 6, 203A or 203B  
6 of the National Credit Code; or
  - 7 (b) would be a consumer lease apart from section 171, 203A or  
8 203B of the National Credit Code.
- 9 (2) Subsection 323A(1) does not apply to conduct by a person if:
- 10 (a) the person is exempt from subsection 29(1) under section 109  
11 or regulations made for the purposes of section 110; or
  - 12 (b) both the following apply:
    - 13 (i) the conduct would be a credit activity if a contract  
14 connected with the scheme were a small amount credit  
15 contract or a consumer lease;
    - 16 (ii) credit activity of that kind is exempt from  
17 subsection 29(1) under section 109 or regulations made  
18 for the purposes of section 110.

### 19 **323C Further prohibition on avoidance in relation to small amount** 20 **consumer contracts and consumer leases**

#### 21 *Prohibition on avoidance*

- 22 (1) A person must not (either alone or with others) enter into, or carry  
23 out (to any extent), a scheme if it is reasonable to conclude that a  
24 purpose of the person doing so is to avoid the application of a  
25 provision of this Act that would apply in respect of:
- 26 (a) a consumer lease but not a credit contract; or
  - 27 (b) a small amount credit contract but not:
    - 28 (i) a consumer lease; or
    - 29 (ii) a credit contract that is not a small amount credit  
30 contract;
- 31 in relation to:
- 32 (c) the person; or

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- 
- 1 (d) any other person (a *connected person*) who has, or has had,  
2 any connection (whether of a business, family or other  
3 nature) with the person.

4 Civil penalty: 2,000 penalty units.

5 *Meaning of scheme*

- 6 (2) A *scheme* is:
- 7 (a) any agreement, arrangement, understanding, promise or  
8 undertaking, whether express or implied; or  
9 (b) any scheme, plan, proposal, action, course of action or course  
10 of conduct, whether unilateral or otherwise.

11 *Whether it is reasonable to draw conclusion as to purpose*

- 12 (3) For the purpose of determining whether it is reasonable to draw a  
13 conclusion described in subsection (1):
- 14 (a) regard must be had to the extent to which the circumstances  
15 described in subsection (4) exist; and  
16 (b) the more any of those circumstances exist, the more it is  
17 reasonable to draw that conclusion.

18 This does not limit the matters to which regard may be had in  
19 making the determination.

- 20 (4) The circumstances are as follows:
- 21 (a) each of the following apply:
- 22 (i) the person, or a connected person, has a practice of  
23 changing or otherwise altering the operation or effect of  
24 a credit contract or consumer lease after, or at the time,  
25 it has been entered into; and  
26 (ii) the effect of the change or alteration is disadvantageous  
27 to the consumer who is a debtor under the credit  
28 contract or the lessee under a consumer lease because it  
29 results in the avoidance of provisions of the Act that  
30 would otherwise have applied for the benefit of the  
31 consumer had they entered into a small amount credit  
32 contract or consumer lease; and

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## Schedule 1 Amendments

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- 1 (iii) the person, or a connected person, has made the change  
2 or alteration:  
3 (A) unilaterally; or  
4 (B) without reference to, or consideration of, the  
5 consumer's financial situation;  
6 (b) the circumstances prescribed by the regulations.

- 7 (5) A person commits an offence if:  
8 (a) the person is subject to a requirement under subsection (1);  
9 and  
10 (b) the person engages in conduct; and  
11 (c) the conduct contravenes the requirements.

12 Criminal penalty: 120 penalty units, or two years imprisonment,  
13 or both.

### 14 *Presumption of avoidance for certain schemes*

- 15 (6) For the purposes of subsection (1) (but not for the purposes of  
16 subsection (5)), if:  
17 (a) the person engages in conduct of the kind referred to in  
18 paragraph (1)(a) or (b) in relation to a scheme; and  
19 (b) the scheme is of a kind prescribed by the regulations or  
20 determined by ASIC under subsection (8);  
21 then it is presumed that it would be reasonable to conclude that the  
22 purpose, or one of the purposes, of the person engaging in that  
23 conduct was to avoid the application of a provision of this Act.
- 24 (7) Subsection (6) does not apply if the person proves that, having  
25 regard to the matters referred to in subsection (4), it would not be  
26 reasonable to conclude that the purpose, or one of the purposes, of  
27 the person engaging in that conduct was to avoid the application of  
28 a provision of this Act.
- 29 (8) ASIC may, by legislative instrument, determine a scheme for the  
30 purposes of subsection (6).

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## 1 **323D Exemption by ASIC**

2 (1) ASIC may, by legislative instrument, exempt a scheme, or class of  
3 schemes, from all or specified provisions of sections 323A and  
4 323C.

5 (2) An exemption may apply subject to any specific conditions  
6 imposed by ASIC.

## 7 **39 Section 335A**

8 Repeal the section.

## 9 **40 At the end of subsection 23A(1) of the *National Credit*** 10 ***Code***

11 Add:

12 Note: A penalty may be imposed for contravention of a key requirement in  
13 this subsection, but only at the time the credit contract is entered into:  
14 see Part 6.

## 15 **41 At the end of subsection 31A(1) of the *National Credit*** 16 ***Code***

17 Repeal the note, substitute:

18 Note 1: See section 39B for the maximum amount that may be recovered by  
19 the credit provider if there is a default in payment under the contract.

20 Note 2: A penalty may be imposed for contravention of a key requirement in  
21 this subsection: see Part 6.

## 22 **42 After section 31B of the *National Credit Code***

23 Insert:

## 24 **31C Prohibition on unexpired permitted monthly fees**

25 (1) A credit provider must not charge or require the payment of an  
26 unexpired permitted monthly fee if:

27 (a) the debtor pays out a small amount credit contract or a small  
28 amount credit contract is otherwise discharged; and

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1 (b) the date of the pay out or discharge is before the day on  
2 which the contract would have been paid out had the debtor  
3 paid all repayments required by the contract at the times  
4 required by the contract.

5 Civil penalty: 2,000 penalty units

6 (2) If a credit provider contravenes subsection (1):

7 (a) the debtor is not liable (and is taken never to have been  
8 liable) to make the payment to the credit provider or person;  
9 and

10 (b) the credit provider must refund any unexpired permitted  
11 monthly fee paid by the debtor to the credit provider as soon  
12 as practicable; and

13 (c) the debtor may recover as a debt due to the debtor the amount  
14 of any payment made by the debtor to the credit provider  
15 which has not been refunded in accordance with  
16 paragraph (b).

17 *Strict liability offence*

18 (3) A person commits an offence if:

19 (a) the person is subject to a requirement under subsection (1);  
20 and

21 (b) the person engages in conduct; and

22 (c) the conduct contravenes the requirement.

23 Criminal penalty: 100 penalty units.

24 (4) Subsection (3) is an offence of strict liability.

25 Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 26 **43 Subsection 72(3) (paragraph (a) of the note) of the** 27 ***National Credit Code***

28 After "such as", insert "family violence,".

### 29 **44 Subsection 82(2) of the *National Credit Code***

30 After "continuing credit contract", insert "or small amount credit  
31 contract".

---

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Amendments Schedule 1

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## 45 At the end of section 82 of the *National Credit Code*

Add:

(3) The amount required to pay out a small amount credit contract is the total of the following amounts:

- (a) the amount of credit;
- (b) all fees and charges payable by the debtor to the credit provider up to the date of termination excluding any unexpired permitted monthly fee;
- (c) reasonable enforcement expenses;

less any payments made under the contract and any rebate of premium under section 148.

## 46 After paragraph 111(1)(i) of the *National Credit Code*

Insert:

- (ia) subsection 23A(1)—but only at the time the credit contract is entered into;
- (ib) subsection 31A(1);

## 47 After subsection 111(1) of the *National Credit Code*

Insert:

(1A) For the purposes of this Division, a key requirement in connection with a consumer lease for household goods is any one of the requirements of this Code contained in the following provisions:

- (a) subsection 174(1A);
- (b) subsection 175AA(1).

## 48 After subsection 114(1A) of the *National Credit Code*

Insert:

(1B) On application being made by a lessee for an order in relation to a consumer lease, the maximum penalty that may be imposed by the court for a contravention of a key requirement is an amount not exceeding the difference between the total amount payable by the lessee under the consumer lease and the base price.

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---

1 **49 At the end of section 114 of the *National Credit Code***

2 Add:

3 (4) For the purposes of subsection (1B), the amount payable under a  
4 consumer lease to the extent it relates to amounts payable in the  
5 future is to be calculated on the assumptions in sections 180 and  
6 182.

7 **50 Subsection 171(1) of the *National Credit Code* (heading)**

8 Omit "or indefinite leases".

9 **51 Subsection 171(1) of the *National Credit Code***

10 Omit all the words after "or less".

11 **52 After subsection 171(1) of the *National Credit Code***

12 Insert:

13 *Leases for an indefinite period*

14 (1A) This Part does not apply to a consumer lease for an indefinite  
15 period unless:

16 (a) the lessor is a constitutional corporation; or

17 (b) the lease was entered into in the course of constitutional trade  
18 and commerce; or

19 (c) the lease was entered into using postal, telegraphic,  
20 telephonic, and other like services (within the meaning of  
21 paragraph 51(v) of the Constitution).

22 **53 After section 172 of the *National Credit Code***

23 Insert:

24 **172A Using postal, telegraphic, telephonic and other like services to**  
25 **enter into a consumer lease for an indefinite period**

26 A lessor must not use postal, telegraphic, telephonic, and other like  
27 services (within the meaning of paragraph 51(v) of the  
28 Constitution) to enter into a consumer lease for an indefinite period  
29 unless the lessor is a constitutional corporation.

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---

1 **54 Before subsection 174(1) of the *National Credit Code***

2 Insert:

3 *Requirements for all consumer leases*

4 **55 After subsection 174(1) of the *National Credit Code***

5 Insert:

6 *Requirements for consumer leases for household goods*

7 (1A) A consumer lease for household goods must disclose, in  
8 accordance with any instrument made pursuant to subsection (1B):

9 (a) the base price of the goods hired under the consumer lease;  
10 and

11 (b) the difference between the base price of the goods hired  
12 under the consumer lease and the total amount payable by the  
13 lessee under the lease;

14 (c) any other information required by an instrument made  
15 pursuant to subsection (1B).

16 Note: A penalty may be imposed for contravention of a key requirement in  
17 this subsection: see Part 6.

18 (1B) ASIC may, by legislative instrument, determine for the purposes of  
19 subsection (1A):

20 (a) further information that must be disclosed in the consumer  
21 lease; and

22 (b) the form of the disclosure.

23 **56 Before subsection 174(3) of the *National Credit Code***

24 Insert:

25 *Offence*

26 **57 At the end of section 174 of the *National Credit Code***

27 Add:

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## Schedule 1 Amendments

---

1 *Additional requirements for consumer leases for household goods*

2 (5) Before entering into a consumer lease for household goods, a  
3 lessor must provide information in accordance with any instrument  
4 made pursuant to subsection (6).

5 (6) ASIC may, by legislative instrument, determine for the purposes of  
6 subsection (5):

7 (a) the information that must be provided; and

8 (b) how the information is to be provided; and

9 (c) when the information is to be provided.

### 10 **58 After section 175A of the *National Credit Code***

11 Insert:

#### 12 **175AA Cap on fees and charges for consumer leases**

13 (1) A lessor must not enter into a consumer lease if the sum of the  
14 following two amounts is more than the permitted cap:

15 (a) the total amount payable by the lessee under the consumer  
16 lease including all applicable taxes; and

17 (b) any add on fees payable by the lessee.

18 Civil penalty: 2,000 penalty units.

19 Note: A penalty may be imposed for contravention of a key requirement in  
20 this subsection. See Part 6.

21 (2) For the purposes of subsection (1), the following amounts are not  
22 included in the total amount payable by the lessee under the  
23 consumer lease:

24 (a) a permitted delivery fee; or

25 (b) a permitted installation fee; or

26 (c) enforcement expenses of an amount not exceeding the  
27 amount which could be recovered by the lessor pursuant to  
28 179R(1).

29 (3) The *permitted cap* is the sum of the following amounts:

30 (a) the base price of the goods hired under the consumer lease;  
31 and

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- 
- 1 (b) the amount worked out by:
- 2 (i) in the case of a consumer lease for a fixed term,
- 3 multiplying the base price of the goods hired under the
- 4 consumer lease by 0.04 for each whole month of the
- 5 consumer lease to a maximum of 48 months; and
- 6 (ii) in the case of a consumer lease for an indefinite period,
- 7 multiplying the base price of the goods hired under the
- 8 consumer lease by 1.92.
- 9 (4) An ***add-on fee*** is any fee or charge that:
- 10 (a) either:
- 11 (i) the lessee is liable to pay to the lessor; or
- 12 (ii) the lessee is liable to pay to another person under an
- 13 agreement facilitated by or on behalf of the lessee; and
- 14 (b) relates to a service or product which either:
- 15 (i) facilitates or complements the lessee's use of the goods
- 16 hired under the consumer lease; or
- 17 (ii) is marketed by the lessor or another person as being
- 18 necessary or desirable to complement the lessee's use of
- 19 the goods hired under the consumer lease.
- 20 (5) For goods that are new, the ***base price*** of the goods is:
- 21 (a) where the recommended retail price of the goods is known at
- 22 the time the consumer lease is entered into, the lesser of the
- 23 following amounts:
- 24 (i) the recommended retail price (excluding any amount on
- 25 account of any goods and services tax) at the time the
- 26 consumer lease is entered into;
- 27 (ii) the agreed purchase price; or
- 28 (b) where the recommended retail price of the goods is not
- 29 known at the time the consumer lease is entered into, the
- 30 lesser of the following amounts:
- 31 (i) the market value of the goods at the time that the
- 32 consumer lease is entered into (excluding any amount
- 33 on account of any goods and services tax);
- 34 (ii) the agreed purchase price.

# EXPOSURE DRAFT

## Schedule 1 Amendments

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- 1 (6) For goods that are not new, the *base price* of the goods is the lesser  
2 of the agreed purchase price and:  
3 (a) where the date of manufacture and the recommended retail  
4 price of the goods at the date of manufacture is known at the  
5 time the consumer lease is entered into, the recommended  
6 retail price for the goods (excluding any amount on account  
7 of any goods and services tax) at the date of manufacture  
8 depreciated by 10% for each year or part of a year between  
9 the date of manufacture and the date that the consumer lease  
10 is entered into to a maximum depreciation of 30%; or  
11 (b) in any other case, the market value of the goods at the time  
12 the consumer lease is entered into (excluding any amount on  
13 account of any goods and services tax).
- 14 (7) An *agreed purchase price* is the amount for the goods to be hired  
15 under the consumer lease that is agreed, before or at the time the  
16 consumer lease is entered into, by the lessee and any one of the  
17 following:  
18 (i) the lessor;  
19 (ii) the seller of the goods; or  
20 (iii) another person who facilitates the entry into the consumer  
21 lease.
- 22 (8) A fee or charge is a *permitted delivery fee* if it:  
23 (a) is for the delivery to the lessee of the goods hired under the  
24 consumer lease; and  
25 (b) is limited to the reasonable cost of delivery of the goods to  
26 the lessee.
- 27 (9) ASIC may, by legislative instrument, declare that specified fees  
28 which relate to installation of particular kinds of goods are  
29 *permitted installation fees*.

### 30 **175AB Other consequences of imposing fees or charges above the** 31 **permitted cap**

#### 32 *Offence*

- 33 (1) A person commits an offence if:
-

# EXPOSURE DRAFT

Amendments **Schedule 1**

- 
- 1 (a) the person is subject to a requirement under  
2 subsection 175AA(1); and  
3 (b) the person engages in conduct; and  
4 (c) the conduct contravenes the requirement.

5 Criminal penalty: 100 penalty units.

6 *Civil effect*

- 7 (2) If a lessor enters into a consumer lease in contravention of  
8 subsection 175AA(1):  
9 (a) each provision (the *void provisions*) of the consumer lease  
10 that imposes a monetary liability on the lessee in excess of  
11 the base price of the goods hired under the lease (whether or  
12 not the liability is imposed consistently with this Code) is  
13 void to the extent that the provision relates to the liability;  
14 and  
15 (b) the lessee may recover as a debt due to the lessee any amount  
16 paid to the lessor under the void provisions to the extent that  
17 the amount relates to the liability.

18 **175AC Lessor or prescribed person must not require or accept**  
19 **payment in relation to consumer lease etc.**

- 20 (1) A lessor, or a person prescribed by the regulations, must not  
21 require or accept payment in relation to a consumer lease by the  
22 lessee of an amount described in paragraph 175AA(1)(a) or (b) that  
23 exceeds the permitted cap in relation to that consumer lease.

24 Criminal penalty: 100 penalty units.

- 25 (2) If a lessor or person contravenes subsection (1):  
26 (a) the lessee is not liable (and is taken never to have been liable)  
27 to make the payment to the lessor or person; and  
28 (b) the lessee may recover as a debt due to the lessee the amount  
29 of any payment made by the lessee to the lessor or person.

# EXPOSURE DRAFT

## Schedule 1 Amendments

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1 **59 Subsection 177B(3) (paragraph (a) of the note) of the**  
2 ***National Credit Code***

3 After "such as", insert "family violence,".

4 **60 Subsection 179(1) of the *National Credit Code***

5 Omit "before the end of a consumer lease".

6 **61 Subsection 179(2) of the *National Credit Code***

7 Omit "before the end of its fixed term".

8 **62 At the end of Division 10 of Part 11 of the *National Credit***  
9 ***Code***

10 Add:

11 **179VA Canvassing of consumer leases at home**

12 *Requirement*

13 (1) A lessor or a person who provides credit assistance must not visit a  
14 place of residence for the purpose of inducing a person who resides  
15 there to apply for or obtain a consumer lease for household goods,  
16 except by prior arrangement by the lessor or person who provides  
17 credit assistance with a person who resides there.

18 Civil penalty: 2,000 penalty units.

19 *Offence*

20 (2) A person commits an offence if:  
21 (a) the person is subject to a requirement under subsection (1);  
22 and  
23 (b) the person engages in conduct; and  
24 (c) the conduct contravenes the requirement.

25 Criminal penalty: 100 penalty units.

26 *Strict liability offence*

27 (3) A person commits an offence if:

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# EXPOSURE DRAFT

Amendments **Schedule 1**

- 
- 1 (a) the person is subject to a requirement under subsection (1);  
2 and  
3 (b) the person engages in conduct; and  
4 (c) the conduct contravenes the requirement.

5 Criminal penalty: 10 penalty units.

6 (4) Subsection (3) is an offence of strict liability.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 8 **Division 10A—Loss of Charges**

### 9 **179VB Loss of charges**

- 10 (1) This section applies to a consumer lease which:  
11 (a) was entered into between a lessee and a lessor in the  
12 following circumstances:  
13 (i) before the consumer lease was entered into, the lessor  
14 had visited the lessee's place of residence in  
15 contravention of section 179VA; and  
16 (ii) a reasonable person would conclude the consumer  
17 entered into the consumer lease as a result of that visit;  
18 or  
19 (b) was entered into between a lessee and a lessor in the  
20 following circumstances:  
21 (i) the lessor knew that:  
22 (A) a person who provides credit assistance had  
23 visited the lessee's place of residence in  
24 contravention of section 179VA; or  
25 (B) an unsolicited visit by another person had been  
26 made to that consumer; and  
27 (ii) a reasonable person would conclude the consumer  
28 entered into that consumer lease as a result of that visit.
- 29 (2) Each provision (the *void provisions*) of a consumer lease to which  
30 this section applies that imposes a monetary liability on the lessee  
31 in excess of the base price of the goods hired under the consumer

# EXPOSURE DRAFT

## Schedule 1 Amendments

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1 lease (whether or not the liability is imposed consistently with this  
2 Code) is void to the extent that the provision relates to the liability.

3 (3) The lessee may recover as a debt due to the lessee any amount paid  
4 to the lessor under the void provisions to the extent that the amount  
5 relates to the liability.

### 6 **63 Subsection 179W(1) of the *National Credit Code***

7 Before "Part 12", insert "Part 6 (relating to penalties for defaults)  
8 (excluding subsections 111(1), 111(2), 114(1) and 114(1A)), "

### 9 **64 Subsection 204(1) of the *National Credit Code***

10 Insert:

11 *base price*: see subsections 175AA(5) and 175AA(6).

12 *constitutional corporation* means a corporation to which  
13 paragraph 51(xx) of the Constitution applies.

14 *constitutional trade and commerce* means trade and commerce:

- 15 (a) between Australia and places outside Australia; or  
16 (b) between the States; or  
17 (c) between a State and a Territory; or  
18 (d) between 2 Territories; or  
19 (e) within a Territory.

20 *consumer lease for household goods* means a consumer lease  
21 where any of the goods hired under the lease are household goods.

22 *credit assistance* has the same meaning as in section 8 of the  
23 National Credit Act.

24 *household goods* means goods of a kind ordinarily acquired for  
25 domestic or household use but does not include motor vehicles.

26 *permitted cap*: see subsection 175AA(3).

### 27 **65 Subsection 204(1) of the *National Credit Code* (definition 28 of *market value*)**

29 After "credit contract", insert "or consumer lease".

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# EXPOSURE DRAFT

Amendments **Schedule 1**

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1 **66 Subsection 204(1) of the *National Credit Code***

2 Insert:

3 *unexpired permitted monthly fee* is, in respect of a small amount  
4 credit contract, each permitted monthly fee that is in respect of a  
5 month that commences after the date of pay out or other discharge  
6 of that contract.

7 *unsolicited visit by another person* means a visit to a person by  
8 another person (the *second person*) that the second person would  
9 have been prohibited from making under section 179VA had the  
10 second person been a lessor or a person who provides credit  
11 assistance.