

EXPOSURE DRAFT EXPLANATORY MATERIAL

Issued by authority of the Treasurer

National Consumer Credit Protection Act 2009

National Consumer Credit Protection Regulations 2010

National Consumer Credit Protection Amendment (A New Regulatory Framework for the Provision of Consumer Credit) Regulations 2020

The *National Consumer Credit Protection Act 2009* (the Act) provides for the licensing of credit activities, the imposition of responsible lending obligations and requirements in relation to credit contracts and consumer leases.

Section 329 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In September 2020, the Government announced that it would undertake consumer credit reforms aimed at reducing the cost and time that it takes consumers and businesses to access credit so that consumers can continue to spend and business can invest and create jobs.

A new regulatory framework for the provision of consumer credit is established by the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (the Amending Bill).

Schedule 1 to the Amending Bill removes the existing responsible lending obligations for credit contracts except in relation to small amount credit contracts (SACCs), SACC-equivalent loans by Authorised Deposit-taking Institutions (ADIs) and consumer leases.

Schedule 1 to the Amending Bill will also enable the making of new non-ADI credit standards by subordinate instrument. These standards apply in relation to credit contracts where the contract is not a SACC, and where the credit provider is not an ADI.

The Government will also introduce legislation to increase consumer protections for SACCs and consumer leases.

The purpose of the *National Consumer Credit Protection Amendment (A New Regulatory Framework for the Provision of Consumer Credit) Regulations 2020* (the Amending Regulations) is to limit or repeal certain provisions that are affected or made redundant by the Amending Bill's removal of responsible lending obligations for credit contracts other than SACCs, SACC-equivalent loans by ADIs and consumer leases. The Amending Regulations also make consequential changes as a result of the introduction of the framework for non-ADI credit standards.

The Act does not specify any conditions that need to be met before the power to make the Amending Regulations is exercised. Details of the Amending Regulations are set out in the Attachment. The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulations commence on the later of the day after registration and 1 March 2021.

Details of the National Consumer Credit Protection Amendment (A New Regulatory Framework for the Provision of Consumer Credit) Regulations 2020

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *National Consumer Credit Protection Amendment (A New Regulatory Framework for the Provision of Consumer Credit) Regulations 2020* (the Amending Regulations).

Section 2 – Commencement

The Amending Regulations commence on the later of the day after registration and 1 March 2021.

Section 3 – Authority

The Amending Regulations are made under the *National Consumer Credit Protection Act 2009* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 of Schedule 1 repeals current regulation 25K, which is redundant because the Amending Bill limits the enabling provisions in the Act to SACCs, SACC-equivalent loans by ADIs and consumer leases. This item also inserts a new regulation 25K which modifies the definition of ***non-ADI credit conduct*** in subsection 133EA(5) of the Act when related to credit card contracts. The modification adds an additional form of conduct which would be considered non-ADI credit conduct, that is, a licensee providing a consumer with a credit card for the purpose of entering a credit contract. This is similar to the former version of regulation 25K, which modified the operation of paragraph 128(a) of the Act in relation to credit cards.

Item 2 of Schedule 1 repeals certain provisions of the *National Consumer Credit Protection Regulations 2010* that are made redundant because the Amending Bill limits the enabling provisions in the Act to SACCs, SACC-equivalent loans by ADIs and consumer leases:

- regulation 28HA, which is about making certain inquiries in relation to reverse mortgages;
- regulation 28J, which is about the timing of inquiries, verification and unsuitability assessments for mortgages; and
- regulation 28LC, which is about unsuitability of reverse mortgages.

The requirement to make inquiries in relation to a consumer's possible need for aged care, currently contained in paragraph 28HA(2)(a), is reflected in section 133DB of the Act as amended by the Amending Bill.

Item 4 of Schedule 1 limits regulation 28LCF to SACCs, which is about unsuitable credit contracts and loan splitting. Previously, this regulation has required a credit provider to assess a credit contract as unsuitable where the consumer's requirements and objectives are to receive an identified amount of credit and the credit provider arranges for the identified amount of credit to be provided by two or more small or medium amount credit contracts or a combination thereof.

This will no longer apply where the arrangement is comprised only of medium amount credit contracts, given that the Amending Bill limits the requirement to conduct unsuitability assessments to SACCs, SACC-equivalent loans by ADIs and consumer leases.

Items 3 and 5 make consequential amendments to the heading to regulation 28LCF (Item 3) and to repeal a redundant reference in that regulation to multiple medium amount credit contracts (Item 5).

Item 6 repeals regulation 28N, which ceased to have effect on 1 October 2011.

Item 7 reduces the period of the temporary exemption from the responsible lending exemptions provided for in regulation 28RB (relating to the Coronavirus economic response) from 2 April 2021 to the end of the day before the Bill commences.

However, the exemption for credit contracts with a partial small business purpose will be made permanent in the new non-ADI credit standard.

For SACCs, SACC-equivalent loans by ADIs and consumer leases, the full set of responsible lending obligations in Chapter 3 of the Act apply on the day the Bill commences.

Item 8 updates regulation 38 to prescribe the civil penalty provisions in subsection 133EB(1) and section 133EC of the Act as subject to infringement notices. These provisions relate to a licensee establishing, maintaining, documenting and implementing systems, policies and processes required by a non-ADI credit standard.

Items 10 and 11 amend Schedule 3 to the Regulations to modify Part 3-2E of the Act and the non-ADI credit standard respectively, as they apply in relation to special purpose funding entities. These modifications ensure consistency with the current Schedule 3 to the Regulations. Schedule 3 applies certain provisions of the Act to an exempt special purpose funding entity where the Act ordinarily applies to a licensee, and to exempt those provisions from applying to certain licensees with a servicing agreement with the special purpose funding entity.

Items 9 and 11 make consequential amendments to Schedule 3 to the Regulations by dividing the Schedule into two Parts. Part 1 makes modifications to the Act and Part 2 makes modifications to instruments made under the Act (including the non-ADI credit standards).