

EXPOSURE DRAFT

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Inserts for

Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Rationalisation of ending ASIC instruments (Tranche 2)

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1, Part 1	1 October 2023	1 October 2023.
2. Schedule 2, Part 2	The day after this instrument is registered.	

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Schedule 1—Amendments

Part 1—Precontractual disclosure

National Consumer Credit Protection Regulations 2010

1 Subregulation 3(1)

Insert:

electronic document retrieval system: see regulation 72C.

precontractual document means any of the following:

- (a) a precontractual statement mentioned in paragraph 16(1)(a) of the Code;
- (b) a document forming part of a precontractual statement;
- (c) a notice varying a precontractual statement;
- (d) an information statement mentioned in paragraph 16(1)(b) of the Code.

2 Regulation 26 (paragraph (e) of the definition of *disclosure document*)

Repeal the paragraph.

3 After regulation 72

Insert:

72A Precontractual disclosure—requirements for giving documents other than personally

- (1) This regulation applies in relation to a credit provider giving a precontractual document to a debtor for the purposes of section 16 of the Code unless the credit provider, or an agent of the credit provider, delivers the document physically:
 - (a) to the debtor personally; or
 - (b) to a person acting on the debtor's behalf.

Example: This regulation applies in relation to the credit provider:

- (a) emailing or posting a precontractual document to a debtor; or
 - (b) giving a precontractual document to a debtor in the way specified by regulation 72C (electronic document retrieval system).
- (2) For the purposes of paragraph (1)(b), a person is not acting on the debtor's behalf if the person is engaging in credit activities.
 - (3) For the purposes of paragraph 16(9)(c) of the Code, the following requirement is specified: the credit provider must be satisfied on reasonable grounds that the debtor has received the precontractual document.
 - (4) For the purposes of subregulation (3):
 - (a) the credit provider is taken not to be satisfied that the debtor has received the precontractual document if the debtor has told the credit provider that the debtor has not received the document (unless the debtor has subsequently told the credit provider that the debtor has received the document); and
 - (b) subject to paragraph (a), reasonable grounds on which to be satisfied that the debtor has received the document include the following:

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- (i) if the document was given to the debtor in the way specified by regulation 72C—that the debtor has told the credit provider that the debtor has retrieved the document from the relevant information system;
- (ii) in any other case—the document was properly addressed to the debtor and sent to that address (including an electronic address).

72B Precontractual disclosure—requirements for giving documents by means involving electronic communication

- (1) For the purposes of paragraph 16(9)(b) of the Code, a credit provider must not give a precontractual document to a debtor for the purposes of section 16 of the Code by a particular means involving electronic communication unless:
 - (a) the debtor, after being informed of the matters set out in subregulation (2), consents to the credit provider giving precontractual documents to the debtor by that means; and
 - (b) the precontractual document is given in such a manner that it is reasonable to expect that the debtor will be able to save the document to an electronic file and print it.
- (2) For the purposes of paragraph (1)(a), the matters are that, if the debtor consents to the credit provider giving precontractual documents to the debtor by that particular means:
 - (a) the credit provider might not give precontractual documents to the debtor in paper form in the future; and
 - (b) the debtor should regularly check for electronic communications from the credit provider about precontractual documents; and
 - (c) such consent may be withdrawn at any time.

Note: Regulation 72A provides additional requirements for giving precontractual documents to debtors by means of electronic communication.

72C Precontractual disclosure—making documents available by for retrieval on an electronic document retrieval system

- (1) For the purposes of subsection 16(8) of the Code, a credit provider may give a precontractual document to a debtor for the purposes of section 16 of the Code by:
 - (a) notifying the debtor, in accordance with subregulation (3), that the precontractual document is available for retrieval by the debtor on an electronic document retrieval system; and
 - (b) making the precontractual document available for retrieval by the debtor, in accordance with the notification, for a reasonable period after the credit provider gives the notification to the debtor.

Note: This regulation does not limit the ways in which a credit provider may give a precontractual document to a debtor for the purposes of section 16 of the Code.

- (2) The credit provider is taken to give the precontractual document to the debtor at the first time:
 - (a) that occurs at or after the time the credit provider gives the debtor the notification mentioned in paragraph (1)(a); and
 - (b) at which the precontractual document is available for retrieval by the debtor as mentioned in paragraph (1)(b).

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- (3) For the purposes of paragraph (1)(a), the notice must:
- (a) state that the precontractual document is a precontractual statement, a document forming part of a precontractual statement, a variation of a precontractual statement or an information statement (whichever is applicable); and
 - (b) include any information relating to the precontractual document that the debtor needs in order to be able to retrieve the document.

Example: Paragraph (b)—the document’s electronic address or any password protecting the document.

- (4) The precontractual document is available for retrieval by a debtor on an ***electronic document retrieval system*** if the document is available on an information system for retrieval by electronic communication by the debtor.

Note: Regulations 72A and 72B provide additional requirements for giving precontractual documents to debtors by means of electronic communication.

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Part 2—Other amendments

National Consumer Credit Protection Regulations 2010

4 Paragraph 28L(1)(m)

Repeal the paragraph.

5 Paragraph 28L(3)(b)

After “nature of”, insert “the”.