

# EXPOSURE DRAFT



EXPOSURE DRAFT (04/03/2024)

## National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2024

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2024

David Hurley  
Governor-General

By His Excellency's Command

Stephen Jones [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Assistant Treasurer  
Minister for Financial Services

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## 1 Name

This instrument is the *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2024*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	<i>[To commence at the same time as the associated amendments of the National Consumer Credit Protection Act 2009]</i>	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

## 3 Authority

This instrument is made under the *National Consumer Credit Protection Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments  
Part 1 Main amendments

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## Schedule 1—Amendments

### Part 1—Main amendments

#### *National Consumer Credit Protection Regulations 2010*

##### 1 Before subparagraph 28LCF(2)(b)(i)

Insert:

- (ia) 2 or more low cost credit contracts; or

##### 2 Subparagraph 28LCF(2)(b)(iii)

Repeal the subparagraph, substitute:

- (iii) a combination of low cost credit contracts, small amount credit contracts or medium amount credit contracts, being a combination that includes contracts of at least 2 of those kinds; and

##### 3 After Part 3.4

Insert:

### Part 3.4A—Additional rules relating to low cost credit contracts

#### Division 1—Preliminary

##### 28HAA Scope of this Part

This Part:

- (a) applies to a licensee if the licensee has made an election under subsection 133BXA(1) of the Act and has not revoked the election; and
- (b) applies to such a licensee in relation to a credit contract if the credit contract is a low cost credit contract covered by the election.

Note: Under subsection 133BXA(1) of the Act, a licensee may elect that Part 3-2BA of the Act apply to the licensee in relation to some or all low cost credit contracts.

##### 28HAB Definitions

In this Part:

*unsuitability assessment policy* has the same meaning as in Part 3-2BA of the Act.

#### Division 2—Unsuitable low cost credit contracts

##### 28HAC When inquiries etc. must be made

For the purposes of paragraph 133BXC(b) of the Act, the prescribed period is 120 days.

## 28HAD Inquiries about financial situation of consumer

- (1) For the purposes of subsection 130(2) of the Act, this regulation prescribes inquiries that a licensee must make for the purposes of paragraph 130(1)(b) of the Act before making an assessment of whether a low cost credit contract will be unsuitable for a consumer if the contract is entered, or the credit limit of the contract is increased, in the period covered by the assessment.

### *Credit information*

- (2) If:
- (a) the value of the low cost credit contract when the contract is entered or after the credit limit is increased (whichever applies) will be less than \$2,000; and
  - (b) the consumer is an individual;
- then the licensee must seek to obtain from a credit reporting body any information of the following kinds held by the body:
- (c) identification information (within the meaning of the *Privacy Act 1988*) about the individual;
  - (d) details of any information requests (within the meaning of the *Privacy Act 1988*) that have been made in relation to the individual;
  - (e) default information (within the meaning of subsection 6Q(1) or (2) of the *Privacy Act 1988*) about the individual;
  - (f) payment information (within the meaning of the *Privacy Act 1988*) about the individual;
  - (g) personal insolvency information (within the meaning of the *Privacy Act 1988*) about the individual;
  - (h) information about the individual that is information covered by paragraph 6N(k) of the *Privacy Act 1988* (which covers certain kinds of publicly available information);
  - (i) new arrangement information (within the meaning of the *Privacy Act 1988*) about the individual;
  - (j) court proceedings information (within the meaning of the *Privacy Act 1988*) about the individual.

Note: Under subsection 5(1) of the Act, **credit reporting body** has the same meaning as in the *Privacy Act 1988*.

- (3) If:
- (a) the value of the low cost credit contract when the contract is entered or after the credit limit is increased (whichever applies) will be \$2,000 or greater; and
  - (b) the consumer is an individual;
- then the licensee must seek to obtain from a credit reporting body any information of the following kinds held by the body:
- (c) information referred to in any of paragraphs (2)(c) to (j);
  - (d) information about consumer credit (within the meaning of the *Privacy Act 1988*) provided to the individual that is consumer credit liability information (within the meaning of that Act) about the individual.

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**Schedule 1** Amendments  
**Part 1** Main amendments

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- (4) To avoid doubt, nothing in this regulation requires or authorises a credit reporting body to disclose information referred to in any of paragraphs (2)(c) to (j), or in paragraph (3)(d), to a licensee.

*Other information*

- (5) The licensee must also seek to obtain information that the licensee reasonably believes to be substantially correct about the following:
- (a) the income of the consumer;
  - (b) the expenditure of the consumer;
  - (c) any low cost credit contracts, small amount credit contracts or consumer leases to which the consumer is currently a party.

## **Division 3—Unsuitability assessment policies**

### **28HAE Authority for this Division**

This Division is made for the purposes of subsection 133BXH(3) of the Act.

### **28HAF Reviewing and updating unsuitability assessment policies**

- (1) A licensee must conduct regular reviews of the licensee's unsuitability assessment policy.
- (2) In deciding when to conduct a review of the policy, the licensee must have regard to the licensee's obligations under subsection 133BXH(2) of the Act (unsuitability assessment policy must be effective).
- (3) As part of each review, the licensee must:
- (a) assess whether the policy has facilitated, and will continue to facilitate, compliance by the licensee with sections 128 and 131 of the Act (which deal with assessments of unsuitability), as those sections apply in relation to low cost credit contracts; and
  - (b) identify any changes to the policy that would enable the policy to better facilitate such compliance.
- (4) For each review, the licensee must ensure that the licensee has regard to information and evidence that the licensee reasonably believes:
- (a) is accurate; and
  - (b) provides an appropriate basis for assessing the policy as mentioned in paragraph (3)(a) and identifying changes to the policy as mentioned in paragraph (3)(b).
- (5) If, as part of a review, the licensee identifies changes to the policy of the kind mentioned in paragraph (3)(b), the licensee must ensure that the policy is revised to incorporate those changes as soon as is practicable.

## **4 After Part 7-1**

Insert:



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## Part 7-1A—Low cost credit contracts

### 69E Definition of *low cost credit contract*—fees and charges

- (1) For the purposes of paragraph 13C(1)(d) of the Code, this regulation prescribes requirements that relate to fees or charges that are, or may be, payable under a contract under which credit is, or may be, provided.

Note: A contract under which credit is, or may be, provided must satisfy these requirements in order to be a low cost credit contract within the meaning of the Code.

#### *Total amount of fees and charges (other than default fees and charges)*

- (2) The total amount of fees and charges (other than default fees and charges) that are, or may be, payable under the contract (the *eligible contract*) in a 12-month period must not exceed the maximum amount for the 12-month period under the following table.

Maximum amount for a 12-month period		
Item	Column 1 If:	Column 2 Then the maximum amount for a 12-month period is:
1	the debtor is not already a party to a low cost credit contract with the credit provider, or with an associate of the credit provider, when the eligible contract is entered into	(a) for the 12-month period commencing when the debtor enters into the eligible contract—\$200; and (b) for any later 12-month period during which the eligible contract is in effect—\$125
2	when the eligible contract is entered into: (a) the debtor is already, or was within the previous 12 months, a party to a low cost credit contract with the credit provider or with an associate of the credit provider; and (b) neither the credit provider nor the associate of the credit provider is an ADI	(a) for the 12-month period commencing when the debtor enters into the eligible contract—nil; and (b) for any later 12-month period during which the eligible credit contract is in effect—nil

#### *Total amount of default fees and charges*

- (3) The total amount of default fees and charges that are, or may be, payable under the eligible contract in a month of the contract must not exceed the maximum amount for the month of the contract under the following table.

Maximum amount for a month of the contract		
Item	Column 1 If:	Column 2 Then the maximum amount for a month of the contract is:
1	the debtor is not already a party to a low cost credit contract with the credit provider, or	\$10

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Schedule 1 Amendments  
Part 1 Main amendments

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<b>Maximum amount for a month of the contract</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If:</b>	<b>Then the maximum amount for a month of the contract is:</b>
	with an associate of the credit provider, when the eligible contract is entered into	
2	when the eligible contract is entered into: (a) the debtor is already, or was within the previous 12 months, a party to a low cost credit contract with the credit provider or with an associate of the credit provider; and (b) neither the credit provider nor the associate of the credit provider is an ADI	nil

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- (4) For the purposes of subregulation (3), each of the following is a month of the eligible contract:
- (a) the month commencing when the debtor enters into the eligible contract;
  - (b) any later month during which the eligible contract is in effect.

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Amendments **Schedule 1**  
Other amendments **Part 2**

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## **Part 2—Other amendments**

### *National Consumer Credit Protection Regulations 2010*

#### **5 Subsection 79C(1)**

Omit “subsection 39C(1)”, substitute “section 39C”.

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