

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

National Consumer Credit Protection Act 2009

Treasury Laws Amendment Instrument 2024: Small Business Exemption

Section 329 of the *National Consumer Credit Protection Act 2009* (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.

Paragraph 164(a) of the Act provides that regulations may exempt a person or class of persons from all or specified provisions in Chapter 3 of the Act, which outlines the responsible lending obligations.

The *Treasury Laws Amendment Instrument 2024: Small Business Exemption* (the Regulations) amends the *National Consumer Credit Protection Regulations 2010* (the Principal Regulations) to extend the existing time-limited exemption from responsible lending obligations for small businesses for a further two years.

Consumer credit laws, including the responsible lending obligations in Chapter 3 of the Act, do not generally apply to business and commercial lending. However, these laws will apply to mixed-purpose loans (for example, where a small business or sole trader applies for a single loan to be used for both personal and commercial purposes) unless the 'predominant' purpose of the loan is business-related.

In April 2020, a time-limited exemption was added to the Principal Regulations as a temporary measure to support timely access to finance for small businesses during the COVID-19 pandemic. The exemption provides that certain mixed-purpose small business loans are exempt from the responsible lending obligations so long as there is a 'genuine' business purpose that is not minor or incidental. This effectively replaced the *predominant purpose test* with a *genuine purpose test* for small businesses. The exemption means a mixed-purpose small business loan is not subject to the responsible lending obligations where the loan has a real business purpose that is not insignificant or peripheral to the loan.

For the purposes of the exemption, a small business is one that has fewer than 100 employees or revenue of \$5 million or less in the previous financial year.

The exemption was initially put in place for a period of six months but has since been extended three times. This exemption is due to expire on 3 October 2024.

Although the exemption has been in place for nearly four years, that does not necessarily cover the full life of a business loan: short-term business loans may have terms of between six to 18 months, but longer-term loans are often for periods of five to seven years. Extending the exemption will provide an additional two years of data to inform a future decision on whether the exemption should be made permanent, allowed to expire, or modified to improve its effectiveness.

Paragraph 28RB(7)(b) of the Principal Regulations defines the relevant *exemption period* as the period that ends at the earlier of:

- i. the start of 3 October 2024; and
- ii. immediately before Parts 1 and 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Act 2021* commence.

Item 1 in Schedule 1 amends this definition of *exemption period* so that the exemption period ends at the start of 3 October 2026.

Item 1 in Schedule 1 also removes the redundant reference to the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Act 2021* in subparagraph 28RB(7)(b)(ii). The National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 was not enacted before Parliament was prorogued ahead of the 2022 election.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations are subject to disallowance under section 42 of the *Legislation Act 2003* and will be repealed automatically by section 48A of that Act.

The Regulations commence the day after the instrument is registered on the Federal Register of Legislation.

The Office of Impact Analysis (OIA) has been consulted (ref: OIA24-07263) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.