

EXPOSURE DRAFT



EXPOSURE DRAFT (06/01/2014)

National Consumer Credit Protection Amendment (Small Amount Credit Contracts) Regulation 2014

Select Legislative Instrument No. , 2014

(Assistant Treasurer)

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1 Name of regulation

This regulation is the *National Consumer Credit Protection Amendment (Small Amount Credit Contracts) Regulation 2014*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

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

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

National Consumer Credit Protection Regulations 2010

1 After regulation 4

Insert:

4D Meaning of *small amount credit contract—credit limit*

- (1) For paragraph (c) of the definition of *small amount credit contract* in subsection 5(1) of the Act, subregulation (2) applies if all of the following apply in relation to a credit contract:
 - (a) the first amount of credit that is, or is to be, provided under the contract is not more than \$2,480;
 - (b) the first amount of credit that is, or is to be, provided under the contract includes an amount (the *first fees and charges*) representing either or both of:
 - (i) an establishment fee; and
 - (ii) a fee or charge that will be payable on a monthly basis under the contract and that covers the first month of the credit contract;
 - (c) interest is not charged under the credit contract;
 - (d) the first amount of credit that is, or is to be, provided under the contract would be not more than \$2,000 if the first fees and charges were disregarded.
- (2) The prescribed amount of the credit limit is the amount of the first amount of credit that is, or is to be, provided under the contract.

Note: The effect of subregulation (2) is that a small amount credit contract will be able to make credit of up to \$2,000 available to a consumer in the first amount of credit that is, or is to be, provided under the contract after any first fees and charges are disregarded.
- (3) For paragraph (c) of the definition of *small amount credit contract* in subsection 5(1) of the Act, if subregulation (2) does not apply, the prescribed amount of the credit limit is \$2,000.

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Amendments **Schedule 1**

2 After regulation 50

Insert:

50A Small amount credit contract—fees and charges

For paragraph 6(1)(b) of the Code:

- (a) credit fees and charges imposed or provided for under a contract are taken to include a fee or charge specified in the following table if the fee or charge is a credit fee or charge within the meaning of section 204 of the Act; and
- (b) the fee or charge is taken to be included whether or not it is payable under the contract.

Fees and charges

Item	Fee or charge
1	A fee or charge payable in connection with the supply of the amount of credit provided under the contract.
2	A fee or charge payable in connection with the consumer receiving an amount of credit provided under the contract as cash, or by transfer to an ADI account.
3	A fee or charge payable in connection with the management or repayment of the amount of credit provided under the contract.

Example 1: A fee for providing the credit through a stored value card.

Example 2: A fee or charge for obtaining a membership (however described) which is a prerequisite to the debtor obtaining access to a service to receive funds paid by cheque as cash.

Example 3: Account keeping fees (however described).

3 Regulation 51

Repeal the regulation, substitute:

51 Exempt credit—maximum account charges

For subsection 6(5) of the Code, the prescribed maximum charge in relation to a continuing credit contract is specified in the following table.

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Schedule 1 Amendments

Prescribed maximum charge		
Item	If...	the prescribed maximum charge is...
1	the debtor is not already a party to a continuing credit contract with the credit provider, or an associate of the credit provider, when the continuing credit contract is entered into	For the period of 12 months commencing when the debtor enters into the continuing credit contract—\$200 For any subsequent period of 12 months during which the continuing credit contract is in effect—\$125
2	both of the following apply when the continuing credit contract (the <i>new contract</i>) is entered into: (a) the debtor is already a party to a continuing credit contract with the credit provider, or an associate of the credit provider; (b) neither the credit provider nor the associate of the credit provider is an ADI	For the period of 12 months commencing when the debtor enters into the new contract—nil For any subsequent period of 12 months during which the new credit contract is in effect—nil

Note: Subsection 6(5) of the Code provides that the Code does not apply to the provision of credit under a continuing credit contract if the only charge that is or may be made for providing the credit is a periodic or other fixed charge that does not vary according to the amount of credit provided. However, the Code applies if the charge exceeds the maximum charge (if any) prescribed by the regulations.

4 After regulation 79A

Insert:

79AE Small amount credit contracts (fees and charges)—prescribed persons

For subsection 31B(1) of the Code, a person specified in the following table is a prescribed person.

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Amendments **Schedule 1**

Prescribed persons

Item Person

1 A person who introduces a debtor to a credit provider (whether or not the person is associated with the credit provider)

2 A person who has been introduced to a debtor by a credit provider to provide a service in relation to a small amount credit contract (whether or not the person is associated with the credit provider)

- Note: Section 31B of the Code relates to fees and charges in relation to:
- (a) a small amount credit contract; or
 - (b) the provision of the amount of credit under a small amount credit contract; or
 - (c) a thing that is connected with a small amount credit contract or the provision of the amount of credit under such a contract.

Section 31B applies to a credit provider or a person prescribed by the regulations.