

REGULATION AND COMMENTARY	QUESTIONS FOR STAKEHOLDERS
<p><b>28XXA -small amount credit contracts - requirements for warning on licensee's premises.</b></p> <p><b>Schedule 7 – prescribed notice</b></p> <p>As set out in the Consumer Credit Legislation Amendments (Enhancements) Bill 2012 (Enhancements Bill), in subsections 124B(1) and 133CB(1), small amount lenders are subject to disclosure requirements on their premises. The regulation sets out the requirements for the location of the notice, and the content.</p> <p>A licensee must display a clearly visible warning as set out in <b>Schedule 7</b>, with the typeface, font size and location of the warning prescribed.</p>	<ul style="list-style-type: none"> <li>• Are there comments on the requirements in respect of the location of the notice?</li> <li>• Are there comments on the requirements in respect of the content of the notice?</li> </ul>
<p><b>28XXB - small amount credit contracts - requirements for warning on licensee's website.</b></p> <p><b>Schedule 8 – prescribed notice</b></p> <p>As set out in the Enhancements Bill (in subsections 124B(1) and 133CB(1)), small amount lenders are subject to disclosure requirements on their website. The regulation sets out the requirements for the location of the notice.</p> <p>The licensee's website must display on access by the consumer, two separate warnings as set out in <b>Schedule 8</b>, with the typeface, font size and location of the warning prescribed.</p> <p>The first warning must be in the form of an icon displaying the words 'Warning About Borrowing' and must be visible on pages of the website referring predominantly to small amount credit contracts (this recognises that some small amount lenders also operate in different business areas). Clicking on the link would bring up the relevant warning.</p> <p>The second warning would appear whenever a consumer clicks on the relevant link which would take them directly to an application form, and must be physically closed before they can access the application form.</p>	<ul style="list-style-type: none"> <li>• Are there comments on the requirements in respect of the location of the notice?</li> <li>• Are there comments on the requirements in respect of the content of the notice?</li> </ul>

<p><b>28XXC – Authorisation for deduction</b></p> <p><b>Schedule 9 – prescribed form</b></p> <p>The regulation prescribes a form that must be provided to the employer when a credit provider or lessor is arranging to have repayments made directly from the employee’s salary.</p> <p>Deductions need to commence within one month of the form being signed by the lessee or the debtor.</p>	<ul style="list-style-type: none"> <li>• As deductions need to commence within one month of the form being signed by the lessee or the debtor, is there a need to provide a second form where the lessee or debtor may be in default?</li> <li>• Should the credit provider or lessor be able to combine the form with their existing payment authorisation deductions?</li> </ul>
<p><b>28S - Licensee must not enter into a small amount credit contract if the repayments do not meet the prescribed requirements</b></p> <p>The regulation provides that a licensee will not be permitted to enter a consumer into a small amount credit contract if the consumer is eligible for a Pensioners Concession Card, over 50 per cent of their income is from social security payments and the repayments going towards small amount loans exceeds 20 per cent of their total income (Protected Income Amount).</p> <p>The proposed formula for determining a person's income (and therefore the amount of the repayments) is based on calculating the consumer's average daily income against the average daily repayment for all existing and proposed small amount contracts.</p>	<ul style="list-style-type: none"> <li>• What are stakeholders’ views on whether the regulation should apply to consumers who are eligible for a Pensioners Concession Card?</li> <li>• What are stakeholders’ views on the formula in the regulation for determining the maximum amount of the repayments?</li> <li>• Do stakeholders consider an alternative formula would be preferable, and if so why?</li> </ul>
<p><b>28XXD - Unsuitable credit contracts - prescribed circumstances</b></p> <p>This regulation addresses potential avoidance of the caps on costs through ‘loan-splitting’, where the consumer would be provided with two concurrent loans for smaller amounts instead of a single loan for a higher amount.</p> <p>The regulation provides that such credit contracts will be unsuitable under the responsible lending obligations.</p>	<ul style="list-style-type: none"> <li>• Is the regulation effective in addressing potential avoidance through ‘loan-splitting’?</li> </ul>
<p><b>79AB - Credit provider or prescribed person must not require or accept payment of fee or charge in relation to small amount credit contract etc</b></p> <p>This regulation addresses potential avoidance of the cap on costs in respect of small amount credit contracts, by prohibiting arrangements where the consumer incurs costs charged by a third party.</p>	<ul style="list-style-type: none"> <li>• Are there any situations where third party fees should be allowed?</li> <li>• Are there any other current avoidance practices in relation to existing caps under State legislation where fees should be prohibited?</li> </ul>

<p>The provision extends to small amount credit contracts the prohibition that applies to other credit contracts in subparagraph 32B(3)(b)(ii).</p>	
<p><b>79AC - Prohibition relating to annual cost rate of credit contracts - later increases of annual percentage rate etc</b></p> <p>This regulation addresses potential avoidance of the cap on costs in respect of credit contracts other than small amount credit contracts.</p> <p>The regulation provides that two classes of fees will be taken into account in determining whether a credit provider has exceeded the annual cost rate over the life of the contract under subsection 32AA(1) (even where they may not have done so before entering into the contract, under subsection 32A(1)).</p> <p>The classes of fees to be taken into account are:</p> <ul style="list-style-type: none"> <li>• in relation to medium amount credit contracts – any fee or charge that falls within the definition in subsection 32B(3); and</li> <li>• in relation to credit contracts other than medium amount credit contracts – an establishment fee or deferred establishment fee where the debtor increases the amount of their repayments as a result of a request by the credit provider.</li> </ul>	<ul style="list-style-type: none"> <li>• In relation to medium amount credit contracts, are there any fees or charges that fall within the definition in subsection 32B(3) that should be allowed in calculating the annual cost rate?</li> <li>• In relation to addressing avoidance of the cap through establishment fees, is the regulation effective in addressing this practice?</li> </ul>
<p><b>79C - Default in payment by direct debit under small amount credit contract</b></p> <p>This regulation addresses the risk of fees accruing to a debtor's account through repeated unsuccessful use of a direct debit. The regulation requires the credit provider to make reasonable attempts to contact the debtor in order to clarify why the direct debit is being rejected (in circumstances where a debtor is in default and likely to be in financial hardship).</p> <p>The regulation imposes this obligation once a credit provider has twice sought to obtain a specific repayment through reliance on the direct debit (that is, the attempt must be made in respect of the same repayment). The obligation does not apply where there has been an unsuccessful attempt in relation to a repayment and then a successful debiting, followed later by a second unsuccessful attempt in relation to a different repayment.</p>	<ul style="list-style-type: none"> <li>• Is it sufficient to require a credit provider contacts the debtor and advise them the direct debit has been unsuccessful, or should the credit provider be under some additional obligation?</li> <li>• Should the obligation apply after two unsuccessful attempts, or after a greater number?</li> </ul>