



# National Consumer Credit Protection Amendment Regulation 2012 (No. )<sup>1</sup>

**Select Legislative Instrument 2012 No.**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *National Consumer Credit Protection Act 2009*.

Dated 2012

Governor-General

By Her Excellency's Command`

WILLIAM RICHARD SHORTEN  
Minister for Financial Services and Superannuation

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**DRAFT ONLY**

**1 Name of regulation**

This regulation is the *National Consumer Credit Protection Amendment Regulation 2012* (No. ).

**2 Commencement**

This regulation commences as follows:

- (a) on the day after it is registered—sections 1 to 3;
- (b) on 1 March 2013—Schedule 1;
- (c) on 1 July 2013—Schedule 2.

**3 Amendment of *National Consumer Credit Protection Regulations 2010***

Schedules 1 and 2 amend the *National Consumer Credit Protection Regulations 2010*.

**Schedule 1 Amendments commencing on 1 March 2013**

(section 3)

**[1] Before Part 3.6**

*insert*

**28XXA Small amount credit contracts—requirements for warning on licensee’s premises**

- (1) For paragraphs 124B (1) (a) and 133CB (1) (a) of the Act:
  - (a) any premises from which a licensee conducts business is prescribed; and
  - (b) any premises from which the licensee conducts business must display a warning; and
  - (c) the warning must:
    - (i) be as set out in Schedule 7; and

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- (ii) be in poster form; and
  - (iii) be A4 in size; and
  - (iv) use the typeface known as Arial; and
  - (v) unless otherwise illustrated in Schedule 7, be in typeface that is:
    - (A) 18 points in size; and
    - (B) in normal weighted regular font; and
  - (vi) include the word ‘WARNING’:
    - (A) printed at the top of the poster; and
    - (B) in bold font; and
  - (vii) include the words ‘Do you really need a loan today?’:
    - (A) printed immediately below the word ‘WARNING’; and
    - (B) in typeface that is 36 points in size; and
    - (C) in bold font; and
  - (viii) include the words ‘This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*’:
    - (A) printed at the bottom of the poster; and
    - (B) in typeface that is 8 points in size; and
- (d) the warning must be displayed:
- (i) on the front door or window of the premises, as near to the entry point as possible; and
  - (ii) in an area inside the premises where it is immediately visible upon entering the premises.

**28XXB Small amount credit contracts—requirements for warning on licensee’s website**

For paragraphs 124B (1) (b) and 133CB (1) (b) of the Act, the requirements for a licensee’s website are as follows:

- (a) a hyperlink in the form of a boxed icon containing the words ‘Warning about Borrowing’ must appear and be reasonably visible on any webpage where a significant proportion of the information on the page is about small amount credit contracts;

- (b) the hyperlink must open a warning;
- (c) the warning must:
  - (i) be as set out in Schedule 8; and
  - (ii) use the typeface known as Arial; and
  - (iii) unless otherwise illustrated in Schedule 8, be in typeface that is:
    - (A) 10 points in size; and
    - (B) in normal weighted regular font; and
  - (iv) include the words ‘WARNING – Do you really need a loan today?’:
    - (A) at the start of the warning; and
    - (B) in bolded font; and
  - (v) include the words ‘This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*’:
    - (A) at the end of the warning; and
    - (B) in typeface that is 8 points in size;
- (d) an identical warning must immediately appear when a person clicks on an access point or link that takes the person directly to an application form to apply for a small amount credit contract;
- (e) an application form for a small amount credit contract must not be able to be accessed until the identical warning is closed.

### **28XXC Authorisation for deduction**

- (1) For subsection 160E (2) of the Act, this regulation applies to a credit contract or lease under which:
  - (a) a credit provider or lessor gives an employer of a debtor or lessee an instrument mentioned in subsection 160E (1) of the Act; and
  - (b) the first deduction under the instrument must be made within one month after the debtor or lessee sign the instrument.
- (2) For subsection 160E (2) of the Act, the form of statement is set out in Schedule 9.

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[2] **After Part 3.6**

*insert*

**Part 3.7**                    **Licenses that are credit providers under credit contracts: additional rules relating to small amount credit contracts**

**28S**                    **Licensee must not enter into small amount credit contract if repayments do not meet prescribed requirements**

- (1) For subsection 133CC (1) of the Act, this regulation sets out:
- (a) a class of consumers; and
  - (b) requirements for repayments that would be required under a small amount credit contract (the *proposed contract*).

*Note* Under subsection 133CC (1) of the Act, a licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if:

- (a) the consumer is included in a class of consumers prescribed by the regulations; and
  - (b) the repayments that would be required under the contract would not meet the requirements prescribed by the regulations.
- (2) The class of consumers is persons:
- (a) who are qualified for a pensioner concession card in accordance with section 1061ZA of the *Social Security Act 1991*; and
  - (b) for whom one or more payments under that Act constitute at least 50% of the person's income.

- (3) The requirement for the repayments that would be required under the proposed contract is that the total amount of repayments on a day (the *calculation day*) under each small amount credit contract, including the proposed contract, for which the consumer is a debtor, is no more than 20% of the consumer's income, worked out as follows:
- (a) work out the consumer's average daily income during the year immediately before the calculation day;
  - (b) for each small amount credit contract, including the proposed contract:
    - (i) work out the unpaid balance of the contract at the commencement of the calculation day; and
    - (ii) work out the average unpaid balance of the contract by dividing the unpaid balance by the number of days in the remaining period of the contract;
  - (c) add up each average unpaid balance under paragraph (b);
  - (d) calculate the total under paragraph (c) as a percentage of the consumer's average daily income.

*Example*

The consumer may already be a debtor under several small amount credit contracts which have different repayment days. To determine whether the total amount of repayments that the consumer needs to make under all of those contracts would be no more than 20% of the consumer's income, it is necessary to add up the average unpaid balances of the contracts and compare the total with the consumer's average daily income.

**[3] After Schedule 6**

*insert*

**Schedule 7 Warning about small amount credit contracts—premises**

(regulation 28XXA)

**WARNING\***

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# Do you really need a loan today?

Short-term loans are expensive and may not solve your money problems

Check your options before you borrow:

- Call the free National Financial Helpline: 1800 007 007
- Talk to your electricity, gas, phone or water provider to work out a payment plan
- If you are on government benefits, ask for an advance payment from Centrelink: 13 17 94

Go to [www.moneySMART.gov.au](http://www.moneySMART.gov.au) - MoneySmart shows you how short-term loans work and suggests other options that may help you.

\* This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*.

## **Schedule 8      Warning about small amount credit contracts—websites**

(regulation 28XXB)

### **WARNING\* - Do you really need a loan today?**

Short-term loans are expensive and may not solve your money problems.

Check your options before you borrow:

- Call the free National Financial Helpline: 1800 007 007
- Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan
- If you are on government benefits, ask if you can receive an advance from Centrelink: Phone: 13 17 94

MoneySmart shows you how short-term loans work and suggests other options that may help you.

\* This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*.

## **Schedule 9      Employer authorisation—prescribed form of statement**

(regulation 28XXC)

### **[Form]      Consent to make direct deductions from salary**

**Subsection 160E (2) of the Act**

***[Regulation 28XXC of the Regulations]***

TO: .....



(name of employer of debtor/lessee)

.....

.....

(address of employer of debtor/lessee)

FROM:

.....

(name of credit provider/lessor)

.....

(Australian credit licence number)

.....

(address of credit provider/lessor)

I consent to my employer making the following deductions  
DIRECTLY FROM MY SALARY to meet repayments under a contract  
with the above credit provider:

Date of first deduction:

Date of last deduction:

Amount of each deduction:

**DRAFT ONLY**

**IMPORTANT**

YOU CAN CANCEL THIS DEDUCTION REQUEST DIRECTLY WITH YOUR EMPLOYER AT ANY TIME.

IF YOU CANCEL THIS DEDUCTION REQUEST YOU WILL BE IN DEFAULT IF YOU DO NOT MAKE ALTERNATIVE ARRANGEMENTS TO MAKE REPAYMENTS.

.....

(signature of debtor/lessee giving consent)

I confirm I have been provided with a copy of this form.

.....

(signature of debtor/lessee giving consent)

.....

Date of signing

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## Schedule 2      Amendments commencing on 1 July 2013

(section 3)

### [1]      After regulation 28XXC

*insert*

#### **28XXD    Unsuitable credit contracts—prescribed circumstances**

- (1) This regulation is made for the following provisions of the Act:
  - (a) paragraph 118 (2) (c) (when the credit contract must be assessed as unsuitable—entering contract or increasing the credit limit);
  - (b) paragraph 123 (2) (c) (prohibition on suggesting or assisting consumers to enter, or increase the credit limit under, unsuitable credit contracts);
  - (c) paragraph 131 (2) (c) (when credit contract must be assessed as unsuitable);
  - (d) paragraph 133 (2) (c) (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts).
- (2) A credit contract is unsuitable for a consumer if:
  - (a) the credit contract is arranged in conjunction with at least one other credit contract for the consumer; and
  - (b) the consumer's requirements and objectives are to receive the amount of credit provided under the combination of credit contracts; and
  - (c) the amount of credit provided under the combination of credit contracts could have been provided under a single credit contract; and
  - (d) the amount that is payable under the combination of credit contracts (in circumstances where there is no default by the debtor) is higher than the maximum amount that could be charged under a single credit contract under section 32A of the Code.

*Example*

The consumer's requirements and objectives are to receive the amount of \$3300.

This could be provided by a medium amount credit contract for \$3300 (with a term of 12 months), under which the maximum amount that could be charged would be interest charges of \$845 plus an additional fee of \$400, or a total of \$1245.

However, the credit provider offers to enter into 2 small amount credit contracts with the consumer. The amount of credit under each contract is \$1500 and the term is 12 months. The amount payable under each contract is an upfront fee of 20% of the amount of \$1500, and a monthly fee of 4% of this amount, or charges of \$1020 for each contract, and total charges of \$2040. The credit provider is only prepared to advance \$3000 in total because the repayments are higher than would be the case under a medium amount credit contract for \$3300. The consumer agrees to this.

Each of the 2 small amount contracts would be unsuitable.

**[2] After Regulation 79A**

*insert*

**79AB Credit provider or prescribed person must not require or accept payment of fee or charge in relation to small amount credit contract etc**

For subsection 31B (1) of the Code, 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 is a prescribed person (whether or not the person is associated with the credit provider).

*Note* Section 31B of the Code applies to a credit provider or a person prescribed by the regulations.

**79AC Prohibition relating to annual cost rate of credit contracts—later increases of annual percentage rate etc**

- (1) For subparagraph 32AA (1) (c) (ii) of the Code, an amount is a prescribed amount if it is:
  - (a) referred to in subsection 32B (3) of the Code; and
  - (b) payable in relation to a medium amount credit contract.

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- (2) For subparagraph 32AA (1) (c) (ii) of the Code, an amount is a prescribed amount if it:
- (a) is referred to in subsection 32B (3) of the Code; and
  - (b) is not payable in relation to a medium amount credit contract; and
  - (c) is payable as an establishment fee, a deferred establishment fee or a fee under any other description because:
    - (i) the credit provider requests the debtor to increase the amount of at least 50% of the repayments due under the credit contract; and
    - (ii) the credit provider makes the request within 1 month of entering into the credit contract; and
    - (iii) the debtor makes arrangements to pay the additional amount.

*Note* Subparagraph 32AA (1) (c) (ii) of the Code refers to an amount referred to in subsection 32B (3) of the Code that is prescribed by the regulations. Section 32AA of the Code applies if the prescribed amount increases after a credit contract is entered into and other circumstances occur.

**[4] After Part 7-2A**

*insert*

**Part 7-2B Additional rules relation to  
small amount credit contracts**

**79C Default in payment by direct debit under small  
amount credit contract**

- (1) For subsection 39C (1) of the Code, the credit provider must refrain from seeking a repayment due under a small amount credit contract by relying on a direct debit request if:
- (a) the credit provider has twice sought to obtain the repayment using the direct debit request; and

- (b) the credit provider has not:
  - (i) told the debtor that the direct debit requests have been unsuccessful; or
  - (ii) made reasonable attempts to contact the debtor.
- (2) A credit provider may resume to seek repayments due under a small amount credit contract by relying on a direct debit request once the repayment mentioned in subregulation (1) has been made.

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.comlaw.gov.au](http://www.comlaw.gov.au).