

EXPOSURE DRAFT



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National Consumer Credit Protection Amendment (Mortgage Brokers) Regulations 2019

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 2019

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

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1 Name

This instrument is the *National Consumer Credit Protection Amendment (Mortgage Brokers) Regulations 2019*.

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	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Main amendments

Schedule 1—Main amendments

National Consumer Credit Protection Regulations 2010

1 Subregulation 3(1) (definition of *associate*)

Repeal the definition.

2 Subregulation 3(1)

Insert:

campaign-based benefit: see regulation 28VD.

clawback requirements: see regulation 28VE.

drawdown amount: see regulation 28VB.

volume-based benefit: see regulation 28VC.

3 Before subregulation 4(1)

Insert:

(1A) This regulation is made for the purposes of subsection 15A(2) of the Act.

4 At the end of Chapter 3

Add:

Part 3.8—Mortgage brokers and mortgage intermediaries

Division 1—Interpretation

28V References to providing credit services to a consumer

To avoid doubt, a reference in this Part to a licensee, or a representative of a licensee, providing a credit service to a consumer includes both:

- (a) the licensee or representative providing credit assistance to the consumer;
- and
- (b) the licensee or representative acting as an intermediary between a credit provider and the consumer.

Division 2—What is conflicted remuneration?

28VA Monetary benefit given in certain circumstances not conflicted remuneration

- (1) This regulation is made for the purposes of paragraph 158NA(b) of the Act.

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Main amendments **Schedule 1**

Benefit given by a consumer

- (2) A monetary benefit given to a licensee, or a representative of a licensee, is not conflicted remuneration if the benefit is given by a consumer in relation to a credit service provided to the consumer by the licensee or representative.

Other mortgage broker and mortgage intermediary remuneration

- (3) A monetary benefit given (whether directly or indirectly) to a licensee, or a representative of a licensee, is not conflicted remuneration if:
- (a) the benefit relates to a credit service provided by the licensee or representative to a consumer in relation to a credit contract; and
 - (b) the benefit is not a volume-based benefit; and
 - (c) the benefit is not a campaign-based benefit; and
 - (d) for a credit contract that relates to:
 - (i) the provision of credit wholly or predominantly for the purpose of purchasing residential property; or
 - (ii) the provision of credit wholly or predominantly for the purpose of refinancing credit that was provided wholly or predominantly for the purpose of purchasing residential property;the benefit is of a kind referred to in subregulation (4); and
 - (e) the clawback requirements are satisfied in relation to the benefit (if applicable).
- (4) For the purposes of paragraph (3)(d), the benefit must be one of the following:
- (a) an amount given on the basis of the credit service provided to the consumer in relation to the credit contract, without reference to a particular amount of credit provided to, or drawn down by, the consumer under the credit contract;
 - (b) a benefit that is calculated as a percentage of an amount that is no more than the drawdown amount for the credit contract;
 - (c) a benefit that is a combination of either or both of paragraphs (a) and (b).

28VB Drawdown amount for credit contract relating to purchase of residential property

If:

- (a) an amount of credit is, or is to be, provided to a consumer under a credit contract; and
- (b) the credit is provided, or intended to be provided, wholly or predominantly for the purpose of:
 - (i) purchasing residential property; or
 - (ii) refinancing credit that has been provided wholly or predominantly for the purpose of purchasing residential property;

the ***drawdown amount*** for the credit contract is so much of the amount of credit as is used for that purpose within 90 days after the day on which the credit contract is entered into by the consumer.

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Schedule 1 Main amendments

28VC Volume-based benefits

A benefit is a *volume-based benefit* if:

- (a) access to the benefit, or the value of the benefit, is wholly or partly dependent on the total amount of credit available or drawn down under credit contracts, or credit contracts of a particular class:
 - (i) that have been entered into by consumers, or a class of consumers; and
 - (ii) in relation to which the consumers, or the class of consumers, were provided credit services by a licensee, or a representative of a licensee; or
- (b) access to the benefit, or the value of the benefit, is wholly or partly dependent on the number of credit contracts, or the number of credit contracts of a particular class:
 - (i) that have been entered into by consumers, or a class of consumers; and
 - (ii) in relation to which the consumers, or the class of consumers, were provided credit services by a licensee, or a representative of a licensee.

28VD Campaign-based benefits

A benefit is a *campaign-based benefit* if:

- (a) the benefit is given to a licensee, or a representative of a licensee, in relation to a credit service provided to a consumer in relation to a credit contract; and
- (b) access to the benefit, or the value of the benefit, is wholly or partly dependent on the credit service being provided, or the consumer entering the credit contract, during a particular limited period (the *campaign period*); and
- (c) either or both of the following apply:
 - (i) the same benefit would not ordinarily be accessible in relation to the same provision of the credit service by the licensee or representative before or after the campaign period;
 - (ii) the value of the benefit is more than the benefit that would ordinarily be given in relation to the same provision of the credit service by the licensee or representative before or after the campaign period.

28VE Clawback requirements

- (1) This regulation applies if:
 - (a) a monetary benefit is, or will be, given to a licensee or a representative of a licensee; and
 - (b) the benefit is in relation to a credit service provided by the licensee or representative to a consumer in relation to a credit contract; and
 - (c) the arrangement under which the benefit is payable includes an obligation (the *repayment obligation*) to repay all or part of the benefit if the consumer is in default under the credit contract or wholly or partly discharges the credit contract.

- (2) The *clawback requirements* in relation to the benefit are:
- (a) the repayment obligation must not apply for more than 2 years after the day on which the credit contract is entered into by the consumer; and
 - (b) the repayment obligation must not require repayment of an amount greater than the benefit given to the licensee or representative; and
 - (c) the consumer must not be subject to an obligation to pay an amount as a result of an amount being required to be repaid under the repayment obligation.

28VF Non-monetary benefit given in certain circumstances not conflicted remuneration

- (1) This regulation is made for the purposes of paragraph 158NA(b) of the Act.

Infrequent benefit valued less than \$300

- (2) A non-monetary benefit given to a licensee, or representative of a licensee, who provides credit services to consumers is not conflicted remuneration if:
- (a) the value of the benefit is less than \$300 for each licensee, or each representative of a licensee, who is the final recipient of the benefit; and
 - (b) identical or similar benefits are not given on a frequent or regular basis.

Education or training

- (3) A non-monetary benefit given to a licensee, or representative of a licensee, who provides credit services to consumers is not conflicted remuneration if:
- (a) the benefit has a genuine education or training purpose; and
 - (b) the benefit is relevant to the carrying on of a business of providing credit services to consumers; and
 - (c) for a benefit that is the provision of an education or training course—the requirements in subregulation (4) are satisfied in relation to the course; and
 - (d) for a benefit that is not the provision of an education or training course—the dominant purpose of the benefit is education and training.
- (4) For the purposes of paragraph (3)(c), the requirements are:
- (a) education or training activities for the professional development of the participants in the course must take up at least:
 - (i) 75% of the time spent on the course; or
 - (ii) 6 hours a day;whichever is the lesser; and
 - (b) the participant, or the participant's employer or licensee, must pay for the costs of:
 - (i) the participant's travel and accommodation relating to the course; and
 - (ii) the participant attending events and functions held in conjunction with the course.

Note: An example for subparagraph (b)(ii) is the cost of day trips or dinners.

- (5) In this regulation:

education or training course includes a conference or seminar.

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Schedule 1 Main amendments

IT support

- (6) A non-monetary benefit given to a licensee, or representative of a licensee, who provides credit services to consumers is not conflicted remuneration if:
- (a) the benefit is the provision of information technology software or support; and
 - (b) the benefit is related to the provision of credit services to consumers in relation to credit contracts with the benefit provider.

Benefit given by a consumer

- (7) A non-monetary benefit given to a licensee, or representative of a licensee, is not conflicted remuneration if the benefit is given:
- (a) by a consumer to the licensee or representative; and
 - (b) in relation to a credit service provided by the licensee or representative to the consumer in relation to a credit contract.

Division 3—Circumstances in which conflicted remuneration must not be accepted

28VG Circumstances in which a licensee must not accept conflicted remuneration

- (1) This regulation is made for the purposes of section 158NB of the Act.
- (2) A licensee must not accept conflicted remuneration if the conflicted remuneration relates to:
 - (a) credit assistance provided by the licensee to a consumer in relation to a credit contract; or
 - (b) whether or how the licensee acts as an intermediary between a credit provider and consumer in relation to a credit contract.
- (3) However, subregulation (2) does not apply in relation to a credit service provided to a consumer in relation to a credit contract by a credit representative acting within the scope of the credit representative's actual or apparent authority from the licensee.

28VH Circumstances in which a credit representative must not accept conflicted remuneration

- (1) This regulation is made for the purposes of subsection 158NC(1) of the Act.
- (2) A credit representative of a licensee must not accept conflicted remuneration if the conflicted remuneration relates to:
 - (a) credit assistance provided to a consumer in relation to a credit contract by the credit representative acting within the scope of the credit representative's actual or apparent authority from the licensee; or
 - (b) whether or how the credit representative acts as an intermediary between a credit provider and consumer in relation to a credit contract while acting within the scope of the credit representative's actual or apparent authority from the licensee.

Division 4—Circumstances in which conflicted remuneration must not be given

28VI Circumstances in which an employer must not give conflicted remuneration

- (1) This regulation is made for the purposes of subsections 158ND(1) and (2) of the Act.
- (2) An employer of a licensee must not give conflicted remuneration to the licensee, or a representative of the licensee (other than a credit representative), if it would be a contravention of section 158NB of the Act for the licensee or representative to accept the conflicted remuneration.
- (3) An employer of a credit representative of a licensee must not give conflicted remuneration to the credit representative if it would be a contravention of subsection 158NC(1) of the Act for the credit representative to accept the conflicted remuneration.

28VJ Circumstances in which a credit provider must not give conflicted remuneration

- (1) This regulation is made for the purposes of subsections 158NE(1) and (2) of the Act.
- (2) A credit provider must not give conflicted remuneration to a licensee, or a representative of the licensee (other than a credit representative), if it would be a contravention of subsection 158NB(1) of the Act for the licensee or representative to accept the conflicted remuneration.
- (3) A credit provider must not give conflicted remuneration to a credit representative of a licensee if it would be a contravention of subsection 158NC(1) of the Act for the credit representative to accept the conflicted remuneration.

28VK Circumstances in which a mortgage intermediary must not give conflicted remuneration

- (1) This regulation is made for the purposes of subsections 158NF(1) and (2) of the Act.
- (2) A mortgage intermediary must not give conflicted remuneration to a licensee, or a representative of the licensee (other than a credit representative), if it would be a contravention of section 158NB of the Act for the licensee or representative to accept the conflicted remuneration.
- (3) A mortgage intermediary must not give conflicted remuneration to a credit representative of a licensee if it would be a contravention of subsection 158NC(1) of the Act for the credit representative to accept the conflicted remuneration.

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Schedule 2 Consequential amendments

Schedule 2—Consequential amendments

National Consumer Credit Protection Regulations 2010

1 Paragraph 9AB(6)(b)

Omit “commission”, substitute “indirect remuneration”.

2 Paragraphs 20(5)(b), (c) and (d)

Omit “(whether by way of commission or otherwise)”, substitute “(including as indirection remuneration)”.

3 Paragraph 20(12)(c)

Omit “(whether by way of commission or otherwise)”, substitute “(including as indirection remuneration)”.

4 Subparagraphs 25(2)(b)(i) and (ii)

Omit “commission”, substitute “indirect remuneration”.

5 Subparagraphs 25(2A)(b)(i) and (ii)

Omit “commission”, substitute “indirect remuneration”.

6 Subparagraphs 25(4)(d)(i) and (ii)

Omit “commission”, substitute “indirect remuneration”.

7 Subparagraphs 25(5)(e)(i) and (ii)

Omit “commission”, substitute “indirect remuneration”.

8 Paragraph 25H(1)(e)

Omit “commission”, substitute “indirect remuneration”.

9 Regulation 26 (paragraph (b) of the definition of *product designer*)

Omit “commission”, substitute “indirect remuneration”.

10 Regulation 26 (definition of *trail commission*)

Omit “a commission”, substitute “indirect remuneration”.

11 Regulation 26 (definition of *trail commission*)

Omit “includes commission”, substitute “includes indirect remuneration”.

12 Regulation 26 (definition of *volume bonus arrangement*)

Omit “commission”, substitute “indirect remuneration”.

13 Subregulation 26A(2)

Omit “a commission” (wherever occurring), substitute “indirect remuneration”.

14 Paragraphs 26A(2)(a) and (b)

Omit “commission”, substitute “indirect remuneration”.

15 Paragraphs 26A(3)(b), (c) and (d)

Omit “commission”, substitute “indirect remuneration”.

16 Regulation 27 (heading)

Omit “**commission**”, substitute “**indirect remuneration**”.

17 Subparagraph 27(2)(a)(ii)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

18 Subregulation 27(3)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

19 Subregulation 27A(2) (heading)

Omit “*Commissions*”, substitute “*Indirect remuneration*”.

20 Subregulation 27A(2)

Omit “a commission” (wherever occurring), substitute “indirect remuneration”.

21 Paragraphs 27A(2)(a) and (b)

Omit “commission”, substitute “indirect remuneration”.

22 Paragraphs 27A(4)(b), (c) and (d)

Omit “commission”, substitute “indirect remuneration”.

23 Regulation 27B (heading)

Omit “**commission**”, substitute “**indirect remuneration**”.

24 Subparagraph 27B(2)(a)(ii)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

25 Regulation 28G (heading)

Omit “**commissions**”, substitute “**indirect remuneration**”.

26 Subregulation 28G(2)

Omit “commissions”, substitute “indirect remuneration”.

27 Paragraph 28G(2)(a) (not including the example)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

28 Paragraph 28G(2)(a) (example)

Omit “A commission”, substitute “Indirect remuneration”.

29 Paragraphs 28G(2)(b), (c) and (d)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

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Schedule 2 Consequential amendments

30 Paragraph 28G(2)(d)

Omit “commissions”, substitute “indirect remuneration”.

31 Subregulation 28G(2) (note)

Repeal the note.

32 Subregulation 28G(5)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

33 Subregulation 28G(6)

Omit “a commission”, substitute “indirect remuneration”.

34 Paragraphs 28G(6)(a) and (b)

Omit “commission”, substitute “amount of indirect remuneration”.

35 Paragraph 28G(6)(c)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

36 Subregulation 28G(6) (example)

Omit “A commission”, substitute “Indirect remuneration”.

37 Paragraphs 28G(7)(a) and (b)

Omit “commission”, substitute “indirect remuneration”.

38 Subregulation 28G(8)

Omit “commission”, substitute “indirect remuneration”.

39 Regulation 28H (heading)

Omit “commissions”, substitute “indirect remuneration”.

40 Subregulations 28H(2), (3) and (4)

Omit “commission”, substitute “indirect remuneration”.

41 Paragraph 28R(3)(a)

Omit “commissions”, substitute “indirect remuneration”.

42 Paragraphs 28R(3)(b) and (c)

Omit “commission” (wherever occurring), substitute “indirect remuneration”.

43 Subregulation 28R(4)

Omit “commissions”, substitute “indirect remuneration”.