

EXPOSURE DRAFT



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National Consumer Credit Protection (Non-ADI Credit Standards) Determination 2020

I, Josh Frydenberg, Treasurer, make the following determination.

Dated 2020

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]
Treasurer

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *National Consumer Credit Protection (Non-ADI Credit Standards) Determination 2020*.

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 later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Schedule 1 to the <i>National Consumer Credit Protection Amendment (Supporting Economic Recovery) Act 2020</i> .	

Note: This table relates only to the provisions of this instrument as originally made.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 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) licensee;
- (b) non-ADI credit conduct.

In this instrument:

Act means the *National Consumer Credit Protection Act 2009*.

non-ADI credit contract: a credit contract is a *non-ADI credit contract* if:

- (a) the contract is not a small amount credit contract; and

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Part 1 Preliminary

Section 4

(b) the credit provider under the contract is not an ADI.

small business has the same meaning as in section 5 of the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.

Part 2—Standards relating to systems etc.

5 Simplified outline

This Part specifies requirements for systems, policies and processes a licensee must establish and maintain if the licensee:

- (a) enters, or increases the credit limit of, a non-ADI credit contract; or
- (b) makes representations to a consumer about entering, or increasing the credit limit of, a non-ADI credit contract.

The requirements relate to ensuring the licensee makes assessments based on criteria set out in this instrument, and makes decisions consistently with those assessments.

The assessment is based primarily on whether the consumer could comply with the consumer's financial obligations without substantial hardship.

There is an exception for small business credit.

6 Requirements for systems, policies and processes relating to conduct

- (1) For the purposes of section 133EA of the Act, the requirements that a licensee's systems, policies and processes relating to non-ADI credit conduct must comply with are set out in this Part.

Note: Regulation 25G of the *National Consumer Credit Protection Regulations 2010* affects the operation of this standard in relation to special purpose funding entities.

Exception for small business credit

- (2) Despite subsection (1), the licensee's systems, policies and processes are not required to cover non-ADI credit conduct if:
 - (a) the credit to be provided, or intended to be provided, by the licensee to the consumer under:
 - (i) the non-ADI credit contract; or
 - (ii) the increase in the credit limit of the non-ADI credit contract;is genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (b) those purposes are not merely minor or incidental in relation to:
 - (i) if subparagraph (a)(i) applies—the overall purposes of the credit contract; or
 - (ii) if subparagraph (a)(ii) applies—the overall purposes of the increase mentioned in that subparagraph.

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Part 2 Standards relating to systems etc.

Section 7

7 Credit assessment criteria

- (1) The systems, policies and processes must be adequate to ensure that the licensee does not engage in non-ADI credit conduct unless the licensee has established criteria that:
 - (a) enable the licensee to assess whether it is likely that the consumer will be able to comply with the consumer's financial obligations under the contract without substantial hardship if the credit contract is entered, or the credit limit is increased; and
 - (b) allow for the assessment to be proportionate to the nature, type and size of the credit; and
 - (c) require the assessment to consider each relevant factor referred to in subsection (2).
- (2) The factors are as follows:
 - (a) the purpose of the credit to be provided, or intended to be provided, by the licensee to the consumer under:
 - (i) the non-ADI credit contract; or
 - (ii) the increase in the credit limit of the non-ADI credit contract;
 - (b) the structure of the credit to be provided, or intended to be provided, by the licensee to the consumer under:
 - (i) the non-ADI credit contract; or
 - (ii) the increase in the credit limit of the non-ADI credit contract;
 - (c) the consumer's sources of repayment, including the consumer's income and cash flow;
 - (d) the current risk profile of the consumer, including:
 - (i) the consumer's total indebtedness; and
 - (ii) other obligations the consumer has to make payments;
 - (e) the consumer's repayment history and the capacity the consumer would have to repay the credit without substantial hardship in a range of situations involving reasonably foreseeable changes in the obligations of the consumer under the contract, including:
 - (i) a change from a fixed interest rate to a floating interest rate, or from a floating interest rate to a fixed interest rate; and
 - (ii) if the non-ADI credit contract provides, or would provide, for a limited period in which only interest must be repaid—a requirement to repay both principal and interest;
 - (f) the consumer's reasonably foreseeable expenses;
 - (g) the proposed terms and conditions of the non-ADI credit contract.

8 Credit assessment

- (1) The systems, policies and processes must be adequate to ensure that the licensee does not engage in non-ADI credit conduct unless the licensee has made an assessment that:

- (a) assesses whether it is likely that the consumer will be able to comply with the consumer's financial obligations under the contract without substantial hardship if the credit contract is entered, or the credit limit is increased; and
- (b) is made against the criteria established by the licensee in accordance with section 7; and
- (c) is consistent with section 9; and
- (d) complies with the information requirements in subsection (2) of this section.

Information requirements

- (2) An assessment complies with the information requirements if the licensee:
 - (a) obtains adequate information to undertake the assessment; and
 - (b) makes reasonable inquiries, and takes reasonable steps, to verify the consumer's sources of repayment referred to in paragraph 7(2)(c); and
 - (c) makes reasonable inquiries, and takes reasonable steps, to verify the consumer's current risk profile referred to in paragraph 7(2)(d); and
 - (d) subject to paragraphs (b) and (c) of this subsection, and at the licensee's discretion, relies on information provided by the consumer, unless there are reasonable grounds to believe it is unreliable; and
 - (e) makes reasonable inquiries about the consumer's expenses referred to in paragraph 7(2)(f) including, at the licensee's discretion, making reasonable estimates of those expenses; and
 - (f) takes reasonable steps to verify the accuracy and completeness of information provided about a consumer by a third party.

9 When the assessment must be that the consumer could not repay without substantial hardship

- (1) For the purposes of paragraph 8(1)(c), the assessment must be that a consumer will be unable to comply with the consumer's financial obligations under the contract without substantial hardship if a circumstance referred to in a subsection of this section would exist if the credit contract is entered or the credit limit is increased.

Principal place of residence

- (2) This circumstance exists if:
 - (a) the consumer could only comply with the consumer's financial obligations under the contract by selling the consumer's principal place of residence; and
 - (b) at the time of making the assessment, the consumer does not intend to sell the consumer's principal place of residence in order to comply with those financial obligations.
- (3) This circumstance exists if the consumer could only comply with the consumer's financial obligations under the contract by failing to meet the consumer's obligations to make rental payments in relation to the consumer's principal place of residence.

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Part 2 Standards relating to systems etc.

Section 10

Credit card contract

- (4) This circumstance exists if:
 - (a) the credit contract is a credit card contract; and
 - (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within 3 years.

10 Approval must be consistent with assessment

- (1) The systems, policies and processes must be adequate to ensure that the licensee does not engage in non-ADI credit conduct unless:
 - (a) the licensee has approved the conduct; and
 - (b) the approval complies with subsection (2).
- (2) An approval complies with this subsection unless the assessment made by the licensee in accordance with sections 8 and 9 was that the consumer would be unable to comply with the consumer's financial obligations under the contract without substantial hardship if the credit contract is entered or the credit limit is increased.

11 Adequacy of systems, policies and processes

In considering for the purposes of this Part whether systems, policies and processes are adequate, the nature, scale and complexity of the non-ADI credit conduct engaged in by the licensee must be taken into account.

Part 3—Standards relating to documents

12 Simplified outline

A licensee must give a consumer a copy of an assessment if requested.

13 Giving the consumer the assessment

- (1) If, before entering the credit contract or increasing the credit limit, the consumer requests the licensee for a copy of the assessment, the licensee must give the consumer a written copy of the assessment before entering the contract or increasing the credit limit.

Note 1: The consequences of not complying with this subsection are set out in section 133ED of the Act.

Note 2: The licensee is not required to give the consumer a copy of the assessment if the contract is not entered or the credit limit is not increased.

- (2) If, during the period that:
- (a) starts on the day (the *credit day*) the credit contract is entered or the credit limit is increased; and
 - (b) ends 7 years after that day;
- the consumer requests the licensee for a copy of the assessment, the licensee must give the consumer a written copy of the assessment:
- (c) if the request is made within 2 years of the credit day—before the end of 7 business days after the day the licensee receives the request; and
 - (d) otherwise—before the end of 21 business days after the day the licensee receives the request.

Note: The consequences of not complying with this subsection are set out in section 133ED of the Act.

- (3) However, if the rights of a credit provider under a credit contract have been assigned to the licensee, the following apply:
- (a) paragraph (2)(c) has effect as if the reference in that paragraph to 7 business days were instead a reference to 15 business days; and
 - (b) paragraph (2)(d) has effect as if the reference in that paragraph to 21 business days were instead a reference to 25 business days.