

EXPOSURE DRAFT

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9

10
11

Inserts for
**National Consumer Credit Protection
Amendment (Supporting Economic
Recovery) Bill 2020: A new regulatory
framework for the provision of consumer
credit**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	1 March 2021.	1 March 2021

EXPOSURE DRAFT

Schedule 1—A new regulatory framework for the provision of consumer credit

Part 1—Amendments

National Consumer Credit Protection Act 2009

1 Subsection 5(1)

Insert:

low limit credit contract: a credit contract is a *low limit credit contract* if:

- (a) the contract is a small amount credit contract; or
- (b) the contract would be a small amount credit contract if paragraph (b) of the definition of *small amount credit contract* (which is about credit providers who are not ADIs) were disregarded.

non-ADI credit conduct: see subsection 133EA(5).

non-ADI credit standard means a standard determined under section 133EA.

3 Section 111 (paragraph beginning “Division 4”)

Omit “Division 4 requires a licensee, before providing credit assistance to a consumer in relation to a credit contract”, substitute “Division 4 applies only in relation to low limit credit contracts. It requires a licensee, before providing credit assistance to a consumer in relation to a low limit credit contract”.

4 Section 111 (paragraph beginning “Division 6”)

Repeal the paragraph, substitute:

Division 6 applies only in relation to low limit credit contracts. It prohibits a licensee from providing credit assistance to a consumer in relation to a low limit credit contract if the contract will be unsuitable for the consumer.

5 Paragraph 113(2)(i)

Repeal the paragraph, substitute:

EXPOSURE DRAFT

1 (i) give information about the licensee’s obligations under
2 sections 120 and 123 in relation to low limit credit contracts;
3 and

4 **6 Division 4 of Part 3-1 (heading)**

5 Before “credit contracts”, insert “low limit”.

6 **7 Section 115 (heading)**

7 Before “credit contracts”, insert “low limit”.

8 **8 Paragraphs 115(1)(a) and (b)**

9 Before “credit contract”, insert “low limit”.

10 **9 Subsection 115(2)**

11 Before “credit contract”, insert “low limit”.

12 **10 Section 116 (heading)**

13 Before “credit contract”, insert “low limit”.

14 **11 Paragraph 116(1)(b)**

15 Before “credit contract”, insert “low limit”.

16 **12 Paragraph 116(2)(b)**

17 Before “credit contract”, insert “low limit”.

18 **13 Paragraph 117(1)(a)**

19 Before “credit contract”, insert “low limit”.

20 **14 Subsection 117(1A)**

21 Repeal the subsection, substitute:

22 (1A) If the consumer holds (whether alone or jointly with another
23 person) an account with an ADI into which income payable to the
24 consumer is credited, the licensee must, in verifying the
25 consumer’s financial situation for the purposes of
26 paragraph 115(1)(d), obtain and consider account statements that
27 cover at least the immediately preceding period of 90 days.

28 **15 Section 118 (heading)**

29 Before “credit contract”, insert “low limit”.

EXPOSURE DRAFT

1 **16 Subsection 118(1)**

2 Before “credit contract” (wherever occurring), insert “low limit”.

3 **17 Subsection 118(3AA)**

4 Repeal the subsection.

5 **18 Subsection 118(3A)**

6 Omit “the contract is a small amount credit contract (the *relevant*
7 *contract*) and”.

8 **19 Subsection 118(3A)**

9 Omit “under the relevant contract”, substitute “under the contract”.

10 **20 Section 119 (heading)**

11 Omit “the credit contract”, substitute “the low limit credit contract”.

12 **21 Subsection 119(1)**

13 Before “credit contract”, insert “low limit”.

14 **22 Subsection 119(3A)**

15 Repeal the subsection.

16 **23 Division 6 of Part 3-1 (heading)**

17 Before “credit contracts”, insert “low limit”.

18 **24 Section 123 (heading)**

19 Before “credit contracts”, insert “low limit”.

20 **25 Paragraphs 123(1)(a) and (b)**

21 Before “credit contract”, insert “low limit”.

22 **26 Subsection 123(3AA)**

23 Repeal the subsection.

24 **27 Subsection 123(3A)**

25 Omit “the contract is a small amount credit contract (the *relevant*
26 *contract*) and”.

27 **28 Subsection 123(3A)**

28 Omit “under the relevant contract”, substitute “under the contract”.

EXPOSURE DRAFT

1 **29 Section 124 (heading)**

2 Before “credit contracts”, insert “low limit”.

3 **30 Subsection 124(1)**

4 Before “credit contract”, insert “low limit”.

5 **31 Subsection 124(3A)**

6 Repeal the subsection.

7 **32 Part 3-2 (heading)**

8 Omit “: general rules”.

9 **33 Section 125 (paragraph beginning “This Part”)**

10 Omit “These rules are aimed at better informing consumers and
11 preventing them from being in unsuitable credit contracts.”.

12 **34 Section 125 (paragraph beginning “Division 3”)**

13 Omit “Division 3 requires a licensee, before doing particular things
14 (such as entering a credit contract)”, substitute “Division 3 applies only
15 in relation to low limit credit contracts. It requires a licensee, before
16 doing particular things (such as entering a low limit credit contract)”.

17 **35 Section 125 (paragraph beginning “Division 4”)**

18 Repeal the paragraph, substitute:

19

Division 4 applies only in relation to low limit credit contracts. It 20 prohibits a licensee from entering or increasing the credit limit of a 21 low limit credit contract that is unsuitable for a consumer.

22 **36 Paragraph 126(2)(f)**

23 Repeal the paragraph, substitute:

24 (f) give information about the licensee’s obligations under
25 sections 132 and 133 in relation to low limit credit contracts;
26 and

27 **37 Division 3 of Part 3-2 (heading)**

28 After “unsuitability”, insert “of low limit credit contract”.

29 **38 Section 128 (at the end of the heading)**

30 Add “of low limit credit contract”.

EXPOSURE DRAFT

1 **39 Paragraphs 128(a), (aa) and (b)**

2 Before “credit contract”, insert “low limit”.

3 **40 Paragraph 128(ba)**

4 Before “credit contract”, insert “a low limit”.

5 **41 Section 129 (heading)**

6 Before “credit contract”, insert “low limit”.

7 **42 Paragraph 129(b)**

8 Before “credit contract”, insert “low limit”.

9 **43 Paragraph 130(1)(a)**

10 Before “credit contract”, insert “low limit”.

11 **44 Section 131 (heading)**

12 Before “credit contract”, insert “low limit”.

13 **45 Subsection 131(1)**

14 Before “credit contract”, insert “low limit”.

15 **46 Subsection 131(3AA)**

16 Repeal the subsection.

17 **47 Subsection 131(3A)**

18 Omit “the contract is a small amount credit contract (the *relevant*

19 *contract*) and”.

20 **48 Subsection 131(3A)**

21 Omit “under the relevant contract”, substitute “under the contract”.

22 **49 Subsection 132(1)**

23 Before “credit contract”, insert “low limit”.

24 **50 Paragraph 132(2)(a)**

25 Before “credit contract”, insert “low limit”.

26 **51 Division 4 of Part 3-2 (heading)**

27 Before “credit contracts”, insert “low limit”.

EXPOSURE DRAFT

1 **52 Section 133 (heading)**

2 Before “credit contracts”, insert “low limit”.

3 **53 Paragraphs 133(1)(a) and (b)**

4 Before “credit contract”, insert “low limit”.

5 **54 Subsection 133(3AA)**

6 Repeal the subsection.

7 **55 Subsection 133(3A)**

8 Omit “the contract is a small amount credit contract (the *relevant*

9 *contract*) and”.

10 **56 Subsection 133(3A)**

11 Omit “under the relevant contract”, substitute “under the contract”.

12 **57 Section 133C (paragraph beginning “This Part”)**

13 Omit “general”.

14 **58 Subsection 133DB(1)**

15 Omit “Before a licensee makes a preliminary assessment for the

16 purposes of paragraph 115(1)(c) or (2)(a), or an assessment for the

17 purposes of paragraph 128(c), in connection with a credit contract with

18 a consumer for a reverse mortgage”, substitute “Before a licensee

19 engages in conduct covered by subsection (1A) in relation to a

20 consumer”.

21 **59 Before paragraph 133DB(1)(a)**

22 Insert:

- 23 (aa) make inquiries about the consumer’s requirements and
- 24 objectives in meeting possible future aged care
- 25 accommodation needs including the time (if any) at which
- 26 the consumer is likely to incur costs for future aged care
- 27 accommodation and the likely amount of those costs; and

28 **60 After paragraph 133DB(1)(b)**

29 Insert:

- 30 (ba) compare the likely amount of aged care accommodation costs
- 31 with the projections; and

EXPOSURE DRAFT

61 After subsection 133DB(1)

Insert:

(1A) This subsection covers conduct that consists of a licensee:

- (a) suggesting that a consumer apply, or assisting a consumer to apply, for a particular credit contract for a reverse mortgage with a particular credit provider; or
- (b) suggesting that a consumer apply, or assisting a consumer to apply, for an increase to the credit limit of a particular credit contract for a reverse mortgage with a particular credit provider; or
- (c) suggesting that the consumer remain in a particular credit contract for a reverse mortgage with a particular credit provider; or
- (d) entering a credit contract for a reverse mortgage with a consumer who will be the debtor under the contract; or
- (e) making an unconditional representation to a consumer that the licensee considers that the consumer is eligible to enter a credit contract for a reverse mortgage with the licensee; or
- (f) increasing the credit limit of a credit contract for a reverse mortgage with a consumer who is the debtor under the contract; or
- (g) making an unconditional representation to a consumer that the licensee considers that the credit limit of a credit contract for a reverse mortgage between the consumer and the licensee will be able to be increased.

62 After Part 3-2D

Insert:

EXPOSURE DRAFT

1 **Part 3-2E—Licensees that are credit providers** 2 **under credit contracts: additional rules for** 3 **non-ADI credit conduct**

4 **Division 1—Introduction**

5 **133E Guide to this Part**

6 This Part has rules that apply to licensees in relation to credit
7 contracts (other than small amount credit contracts), where the
8 credit provider is not an ADI.

9 The Part provides that the Minister may make standards specifying
10 requirements for systems, policies and processes a licensee must
11 establish and maintain.

12 **Division 2—Standards for conduct relating to non-ADI** 13 **credit conduct**

14 **133EA Non-ADI credit standards**

15 *Power to make standards*

- 16 (1) The Minister may, by legislative instrument, determine non-ADI
17 credit standards that specify requirements with which a licensee's
18 systems, policies and processes relating to non-ADI credit conduct
19 must comply.
- 20 (2) The non-ADI credit standards may require a licensee to give a
21 consumer a copy of a document at a time, and in a manner,
22 specified in the standard.
- 23 (3) The non-ADI credit standards may be of general application or
24 may be limited as provided in the determination.
- 25 (4) Without limiting subsection 33(3A) of the *Acts Interpretation Act*
26 *1901*, the non-ADI credit standards may make different provision
27 in relation to:
28 (a) different situations; or
29 (b) different activities; or
30 (c) different classes of licensees.

EXPOSURE DRAFT

Non-ADI credit conduct

- 1
- 2 (5) **Non-ADI credit conduct** is conduct that consists of a licensee:
- 3 (a) entering a credit contract covered by subsection (6) with a
- 4 consumer who will be the debtor under the contract; or
- 5 (b) making an unconditional representation to a consumer that
- 6 the licensee considers that the consumer is eligible to enter a
- 7 credit contract covered by subsection (6) with the licensee; or
- 8 (c) increasing the credit limit of a credit contract covered by
- 9 subsection (6) with a consumer who is the debtor under the
- 10 contract; or
- 11 (d) making an unconditional representation to a consumer that
- 12 the licensee considers that the credit limit of a credit contract
- 13 covered by subsection (6) between the consumer and the
- 14 licensee will be able to be increased.

15 *Non-ADI credit contracts*

- 16 (6) This subsection covers a credit contract if:
- 17 (a) the contract is not a small amount credit contract; and
- 18 (b) the credit provider under the contract is not an ADI.

19 **133EB Licensee must establish and maintain systems, processes and**

20 **policies**

- 21 (1) A licensee must not engage in non-ADI credit conduct if:
- 22 (a) the non-ADI credit standards specify requirements relating to
- 23 systems, policies and processes relating to that conduct; and
- 24 (b) either:
- 25 (i) the licensee has not established, or does not maintain,
- 26 systems, policies and processes that comply with those
- 27 requirements; or
- 28 (ii) the licensee does not have a written plan that documents
- 29 the systems, policies and processes the licensee has
- 30 established, and maintains, that comply with those
- 31 requirements.

32 Civil penalty: 5,000 penalty units.

- 33 (2) A licensee must retain a plan described in subparagraph (1)(b)(ii)
- 34 for 7 years after the end of the period to which the plan relates.

35 Civil penalty: 5,000 penalty units.

EXPOSURE DRAFT

1 **133EC Licensee must not repeatedly fail to implement systems,**
2 **processes and policies**

3 If:

4 (a) the non-ADI credit standards specify requirements relating to
5 non-ADI credit conduct; and

6 (b) a licensee has established, and maintains, systems, policies
7 and processes that comply with those requirements;

8 the licensee must not repeatedly fail to implement those systems,
9 policies and processes when engaging in that conduct.

10 Civil penalty: 5,000 penalty units.

11 **133ED Giving a consumer a document**

12 (1) If the non-ADI credit standards require a licensee to give a
13 consumer a copy of a document at a time, the licensee must give
14 the consumer a copy of the document at that time.

15 Civil penalty: 5,000 penalty units.

16 (2) The licensee must give the consumer a copy of the document in the
17 manner (if any) specified in the standards.

18 (3) The licensee must not request or demand payment of an amount for
19 giving the consumer a copy of the document.

20 Civil penalty: 5,000 penalty units.

21 *Strict liability offence*

22 (4) A person commits an offence if:

23 (a) the person is subject to a requirement under subsection (1) or
24 (3); and

25 (b) the person engages in conduct; and

26 (c) the conduct contravenes the requirement.

27 Criminal penalty: 50 penalty units.

28 (5) Subsection (4) is an offence of strict liability.

29 **63 Part 3-5A (heading)**

30 Repeal the heading, substitute:

EXPOSURE DRAFT

1 **Part 3-5A—Best interests obligations and** 2 **remuneration**

3 **64 Section 158K**

4 Repeal the section.

5 **65 Subsection 158L(1)**

6 Repeal the subsection, substitute:

- 7 (1) This Subdivision applies in relation to credit assistance provided
8 by a licensee to a consumer in relation to a credit contract if:
- 9 (a) the licensee is a mortgage broker; or
 - 10 (b) all of the following apply:
 - 11 (i) the licensee carries on a business of providing credit
12 assistance in relation to credit contracts;
 - 13 (ii) the licensee does not perform the obligations, or
14 exercise the rights, of a credit provider in relation to the
15 majority of those credit contracts;
 - 16 (iii) in carrying on the business, the licensee provides credit
17 assistance in relation to credit contracts offered by more
18 than one credit provider.

19 **66 Section 158LD**

20 Repeal the section, substitute:

21 **158LD Application of this Subdivision**

22 This Subdivision applies in relation to credit assistance provided to
23 a consumer in relation to a credit contract by a credit representative
24 acting within the scope of the credit representative's actual or
25 apparent authority from a licensee, if:

- 26 (a) either the credit representative or the licensee is a mortgage
27 broker; or
 - 28 (b) all of the following apply:
 - 29 (i) the credit representative carries on a business of
30 providing credit assistance in relation to credit
31 contracts;
 - 32 (ii) neither the credit representative nor the licensee
33 performs the obligations, or exercises the rights, of a
34 credit provider in relation to the majority of those credit
35 contracts;
-

EXPOSURE DRAFT

-
- 1 (iii) in carrying on the business, the credit representative
2 provides credit assistance in relation to credit contracts
3 offered by more than one credit provider; or
4 (c) all of the following apply:
5 (i) the licensee carries on a business of providing credit
6 assistance in relation to credit contracts;
7 (ii) the licensee does not perform the obligations, or
8 exercise the rights, of a credit provider in relation to the
9 majority of those credit contracts;
10 (iii) in carrying on the business, the licensee provides credit
11 assistance in relation to credit contracts offered by more
12 than one credit provider.

13 **67 Division 4 of Part 3-5A (heading)**

14 Repeal the heading, substitute:

15 **Division 4—Mortgage brokers and mortgage**
16 **intermediaries: conflicted remuneration**

17 **68 Section 160A (paragraph beginning “Division 5”)**

18 Repeal the paragraph.

19 **69 Division 5 of Part 3-6A**

20 Repeal the Division.

EXPOSURE DRAFT

1 **Part 2—Application provisions**

2 *National Consumer Credit Protection (Transitional and*
3 *Consequential Provisions) Act 2009*

4 **70 In the appropriate position**

5 Insert:

6 **Schedule 19—Application and transitional**
7 **provisions for Schedule 1 to the**
8 **National Consumer Credit Protection**
9 **Amendment (Supporting Economic**
10 **Recovery) Act 2020**

11 **Part 1—Definitions**

12 **1 Definitions**

13 *amending Act* means the *National Consumer Credit Protection*
14 *Amendment (Supporting Economic Recovery) Act 2020*.

15 **Part 2—Schedule 1 (new regulatory framework) to**
16 **the amending Act**

17 **2 Application of amendments of Part 3-1 of the National**
18 **Credit Act**

19 The amendments of Part 3-1 of the National Credit Act made by
20 Schedule 1 to the amending Act apply to credit assistance provided on
21 or after 1 March 2021, whether the credit contract in relation to which
22 the assistance is provided is entered before, on or after 1 March 2021.

23 **3 Application of amendments of Part 3-2, 3-2C and 3-2D of**
24 **the National Credit Act**

25 (1) The amendments of Parts 3-2, 3-2C and 3-2D of the National Credit Act
26 made by Schedule 1 to the amending Act apply:

27 (a) so far as the amendments relate to entering a credit
28 contract—to credit contracts entered on or after 1 March
29 2021; and

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13

(b) so far as the amendments relate to remaining in a credit contract, or increasing the credit limit of a credit contract—to credit contracts entered before, on or after 1 March 2021.

(2) To avoid doubt, section 132 of the National Credit Act, as in force immediately before 1 March 2021, continues to apply in relation to assessments made before 1 March 2021.

4 Application of amendments of Part 3-5A of the National Credit Act

The amendments of Part 3-5A of the National Credit Act by Schedule 1 to the amending Act apply in relation to the provision of credit assistance to a consumer on or after 1 March 2021 (whether or not the assistance was sought, or commenced being provided, before that day).