

EXPOSURE DRAFT



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National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021

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 2021

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 (Debt Management Services) Regulations 2021*.

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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Schedule 1—Amendments

National Consumer Credit Protection Regulations 2010

1 Subregulation 3(1)

Insert:

credit reporting assistance: see regulation 4C.

debt management assistance: see regulation 4B.

debt management service: see subregulation 4A(2).

2 After regulation 4

Insert:

4A Debt management services

Prescribed credit activity

- (1) For the purposes of item 6 of the table in subsection 6(1) of the Act, the provision of a debt management service is a prescribed activity.

Meaning of debt management service

- (2) A person provides a *debt management service* if the person:
 - (a) provides debt management assistance to a consumer; or
 - (b) provides credit reporting assistance to a consumer.

4B Meaning of *debt management assistance*

- (1) A person provides *debt management assistance* to a consumer if, by dealing directly with the consumer or the consumer's agent in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:
 - (a) suggests that the consumer apply for:
 - (i) a change to a credit contract for which the consumer is the debtor; or
 - (ii) a deferral or waiver of an amount under a credit contract for which the consumer is the debtor; or
 - (iii) a postponement relating to a credit contract for which the consumer is the debtor; or
 - (b) assists the consumer to apply for:
 - (i) a change to a credit contract for which the consumer is the debtor; or
 - (ii) a deferral or waiver of an amount under a credit contract for which the consumer is the debtor; or
 - (iii) a postponement relating to a credit contract for which the consumer is the debtor; or
 - (c) suggests that the consumer:

- (i) make a complaint or claim to the credit provider, AFCA, ASIC or the Information Commissioner, in relation to a credit contract for which the consumer is the debtor; or
- (ii) give a hardship notice (within the meaning of the Code) to the credit provider under a credit contract for which the consumer is the debtor; or
- (iii) institute proceedings or take any other action in relation to a credit contract for which the consumer is the debtor; or
- (d) assists the consumer to:
 - (i) make a complaint or claim to the credit provider, AFCA, ASIC or the Information Commissioner, in relation to a credit contract for which the consumer is the debtor; or
 - (ii) give a hardship notice (within the meaning of the Code) to the credit provider under a credit contract for which the consumer is the debtor; or
 - (iii) institute proceedings or take any other action in relation to a credit contract for which the consumer is the debtor.

It does not matter whether the person does so on the person's own behalf or on behalf of another person.

- (2) However, a person does not provide *debt management assistance* unless a fee, charge or other amount is paid or payable by or on behalf of the consumer in relation to the assistance.
- (3) For the purposes of subregulation (2), it is immaterial if the fee, charge or other amount is paid or payable to the provider of the assistance or to any other person.

4C Meaning of *credit reporting assistance*

- (1) A person provides *credit reporting assistance* to a consumer if, by dealing directly with the consumer or the consumer's agent in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:
 - (a) suggests that the consumer apply for a change to information collected or held by a credit reporting body (within the meaning of the *Privacy Act 1988*) in relation to a credit contract for which the consumer is the debtor; or
 - (b) assists the consumer to apply for a change to information collected or held by a credit reporting body (within the meaning of the *Privacy Act 1988*) in relation to a credit contract for which the consumer is the debtor; or
 - (c) suggests that the consumer:
 - (i) make a complaint or claim to the credit provider, AFCA or ASIC, regarding information collected or held by a credit reporting body in relation to a credit contract for which the consumer is the debtor; or
 - (ii) institute proceedings or take any other action regarding information collected or held by a credit reporting body in relation to a credit contract for which the consumer is the debtor; or
 - (d) assists the consumer to:

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Schedule 1 Amendments

- (i) make a complaint or claim to the credit provider, AFCA or ASIC, regarding information collected or held by a credit reporting body in relation to a credit contract for which the consumer is the debtor; or
- (ii) institute proceedings or take any other action regarding information collected or held by a credit reporting body in relation to a credit contract for which the consumer is the debtor.

It does not matter whether the person does so on the person's own behalf or on behalf of another person.

- (2) However, a person does not provide *credit reporting assistance* unless a fee, charge or other amount is paid or payable by or on behalf of the consumer in relation to the assistance.
- (3) For the purposes of subregulation (2), it is immaterial if the fee, charge or other amount is paid or payable to the provider of the assistance or to any other person.

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

Omit "indirection", substitute "indirect".

4 Paragraph 20(12)(c)

Omit "indirection", substitute "indirect".

5 Subregulation 24(4)

Omit "A", substitute "Subject to subregulation (4A), a".

6 At the end of paragraph 24(4)(d)

Add "or debt management services".

7 After subregulation 24(4)

Insert:

- (4A) For the purposes of subregulation (4), the credit activity is not exempted if:
 - (a) the credit activity is the provision of a debt management service; and
 - (b) a third party holds out or advertises to consumers that the lawyer is able to provide a debt management service; and
 - (c) there is an arrangement between the third party and the lawyer by which the third party regularly refers persons for the purpose of being provided a debt management service.

8 At the end of Part 6-3

Add:

49J Application and transitional—Schedule 1 to the *National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021*

Application of debt management service reforms—general

- (1) The debt management service amendments apply (subject to this regulation) in relation to a debt management service provided on or after 1 July 2021,

regardless of whether the arrangement under which the service is provided is entered into before, on or after 1 July 2021.

Application of debt management service reforms—application for and grant of licences etc.

- (2) Despite subregulation (1), the debt management service amendments apply on and after the commencement of Schedule 1 to the *National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021* for the purposes of:
- (a) Divisions 2, 3, 4 and 6 of Part 2-2 of the Act (which are about licensing of persons who engage in credit activities); and
 - (b) Part 2-3 of the Act (which is about credit representatives).

Transitional arrangements

- (3) Subregulation (4) applies if:
- (a) before 1 July 2021, a person lodges an application in the approved form for:
 - (i) a licence authorising the person to provide a debt management service; or
 - (ii) ASIC to vary the conditions on the person's licence by authorising the person to provide a debt management service; and
 - (b) at the start of 1 July 2021, the application has not been withdrawn by the applicant, or dealt with by ASIC; and
 - (c) the person is a member of the AFCA scheme at all times in the period (the ***transition period***) that:
 - (i) starts at the start of 1 July 2021; and
 - (ii) ends when the application is withdrawn by the applicant, or dealt with by ASIC, whichever happens first.

Note: ASIC may deal with the application by granting, or refusing to grant, the licence (see section 37 of the Act), by granting, or refusing to grant, the variation (see sections 45 and 46A of the Act), or by refusing to receive the application (see section 218 of the Act).

- (4) The person is treated as not providing a debt management service during the transition period.

Definitions

- (5) In this regulation:

debt management service amendments means the amendments made by items 1, 2, 5, 6 and 7 of Schedule 1 to the *National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021*.