

# EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill 2012**

**No.     , 2012**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
consumer credit, and for related purposes**



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# EXPOSURE-DRAFT

1     **A Bill for an Act to amend the law relating to**  
2     **consumer credit, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *National Consumer Credit Protection*  
6                     *Amendment (Credit Reform Phase 2) Act 2012*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 to 7	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.  
12

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Small business lending **Schedule 2**  
Main amendments **Part 1**

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## Schedule 2—Small business lending

### Part 1—Main amendments

#### *National Consumer Credit Protection Act 2009*

##### **1 Subsection 5(1)**

Insert:

*small business* means a business that:

- (a) has less than the following number of employees:
  - (i) if the business is or includes the manufacture of goods—100 people;
  - (ii) otherwise—20 people; or
- (b) has no employees.

##### **2 After subsection 5(1) of the *National Credit Code***

Insert:

*Small business credit contracts*

- (1A) This Code applies to the provision of credit (and to the credit contract and related matters) if, when the credit contract is entered into or (in the case of precontractual obligations) is proposed to be entered into:
- (a) the debtor is a person (whether or not a natural person or strata corporation); and
  - (b) the credit is provided or intended to be provided predominantly for the purposes of a small business; and
  - (c) a charge is or may be made for providing the credit; and
  - (d) either or both of the following apply:
    - (i) the credit provider provides, or will provide, the credit in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the credit provider;
    - (ii) a person acts as an intermediary between the credit provider and the debtor in relation to the contract.

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## Schedule 2 Small business lending

### Part 1 Main amendments

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1 **3 At the end of section 5 of the *National Credit Code***

2 Add:

3 (5) For the purposes of this Part, credit is provided predominantly for  
4 the purposes of a small business if:

- 5 (a) more than half of the credit is intended to be used for those  
6 purposes; or  
7 (b) in the case where the credit is intended to be used to obtain  
8 goods or services for use for different purposes—the goods  
9 or services are intended to be most used for those purposes.

10 **4 Section 169 of the *National Credit Code***

11 Omit “a natural person or strata corporation under which that person or  
12 corporation”, substitute “a person under which that person”.

13 **5 Before paragraph 170(1)(a) of the *National Credit Code***

14 Insert:

- 15 (aa) the lessee is a natural person or strata corporation; and

16 **6 After subsection 170(1) of the *National Credit Code***

17 Insert:

18 *Small business consumer leases*

19 (1A) This Part applies to a consumer lease if, when the lease is entered  
20 into:

- 21 (a) the lessee is a person (whether or not a natural person or  
22 strata corporation); and  
23 (b) the goods are hired predominantly for the purposes of the  
24 small business; and  
25 (c) a charge is or may be made for hiring the goods; and  
26 (d) any of the following apply:  
27 (i) the charge for hiring the goods, together with any other  
28 amount payable under the consumer lease, exceeds the  
29 cash price of the goods;  
30 (ii) the lease is a regulated fixed term lease;  
31 (iii) the lease is a regulated indefinite lease;  
32 (e) either or both of the following apply:



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Small business lending **Schedule 2**  
Main amendments **Part 1**

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- 1 (i) the lessor hires the goods in the course of, as part of, or  
2 incidentally to, a business carried on by the lessor in this  
3 jurisdiction;  
4 (ii) a person acts as an intermediary between the lessor and  
5 the lessee in relation to the lease.

6 **7 At the end of section 170 of the *National Credit Code***

7 Add:

- 8 (5) For the purposes of this Part, goods are hired predominantly for the  
9 purposes of a small business if:  
10 (a) more than half of the goods are intended to be used for those  
11 purposes; or  
12 (b) in the case where the same goods are intended to be used for  
13 different purposes—the goods are intended to be most used  
14 for those purposes.  
15

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Schedule 2 Small business lending

Part 2 Other amendments

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1

2

## Part 2—Other amendments

3

### *National Consumer Credit Protection Act 2009*

4

#### **8 Subsection 5(1) (definition of *consumer*)**

5

Repeal the definition, substitute:

6

*consumer* means:

7

(a) in relation to a credit contract (other than a small business credit contract) or consumer lease (other than a small business consumer lease)—a natural person or strata corporation; and

8

9

10

11

12

13

(b) in relation to a small business credit contract or small business consumer lease—a person (whether or not a natural person or strata corporation).

14

#### **9 Subsection 5(1)**

15

Insert:

16

*protected small business credit contract*: see subsection 133FB(3).

17

#### **10 Subsection 5(1)**

18

Insert:

19

*small business consumer lease* has the same meaning as in section 204 of the National Credit Code.

20

21

#### **11 Subsection 5(1)**

22

Insert:

23

*small business credit contract* has the same meaning as in section 204 of the National Credit Code.

24

25

#### **12 At the end of section 112**

26

Add:

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Small business lending **Schedule 2**  
Other amendments **Part 2**

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1 *Small business credit contracts*

2 (3) This Part does not apply in relation to credit assistance provided by  
3 a licensee to a consumer in relation to a small business credit  
4 contract.

5 Note: Part 3-2F has special responsible lending rules that apply to those that  
6 provide credit assistance to consumers in relation to small business  
7 credit contracts.

## 8 **13 At the end of section 125A**

9 Add:

10 *Small business credit contracts*

11 (2) This Part does not apply in relation to a licensee that is a credit  
12 provider under a small business credit contract.

13 Note: Part 3-2F has special responsible lending rules that apply to credit  
14 providers under small business credit contracts.

## 15 **14 At the end of section 133AAA**

16 Add:

17 *Small business credit contracts*

18 (2) This Part does not apply in relation to a licensee that is a credit  
19 provider under a small business credit contract.

20 Note: Part 3-2F has special responsible lending rules that apply to credit  
21 providers under small business credit contracts.

## 22 **15 At the end of section 133BAA**

23 Add:

24 *Small business credit contracts*

25 (2) This Part does not apply in relation to a licensee that is a credit  
26 provider under a small business credit contract.

27 Note: Part 3-2F has special responsible lending rules that apply to credit  
28 providers under small business credit contracts.

## 29 **16 At the end of section 133CAA**

30 Add:

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## Schedule 2 Small business lending

### Part 2 Other amendments

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1 *Small business credit contracts*

2 (2) This Part does not apply in relation to a licensee that is a credit  
3 provider under a small business credit contract.

4 Note: Part 3-2F has special responsible lending rules that apply to credit  
5 providers under small business credit contracts.

#### 6 **17 At the end of section 133DAA**

7 Insert:

8 *Small business credit contracts*

9 (2) This Part does not apply in relation to a licensee that is a credit  
10 provider under a small business credit contract.

11 Note: Part 3-2F has special responsible lending rules that apply to credit  
12 providers under small business credit contracts.

#### 13 **18 Before Part 3-3**

14 Insert:

### 15 **Part 3-2F—Small business credit contracts**

#### 16 **Division 1—Introduction**

##### 17 **133FA Guide to this Part**

18 This Part has rules that apply to those who provide credit  
19 assistance for, or are credit providers under, small business credit  
20 contracts. These rules are more limited than the responsible lending  
21 rules in Parts 3-1, 3-2, 3-2A, 3-2B, 3-2C or 3-2D that apply to  
22 other types of credit contracts.

23 Under these rules, it does not matter whether the credit assistance  
24 provider or credit provider is a licensee.

25 Some of these rules only apply to certain types of small business  
26 credit contracts, called “protected small business credit contracts”.

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Small business lending **Schedule 2**  
Other amendments **Part 2**

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All of these rules are aimed at better informing consumers and preventing them from being in unsuitable small business credit contracts.

Division 2 deals with those who provide credit assistance for small business credit contracts. It requires them to give the consumer a quote before providing credit assistance. If the contract is a protected small business credit contract, it also requires them to make inquiries and prohibits them from providing credit assistance if the contract will be unsuitable for the consumer.

Division 3 deals with credit providers under small business credit contracts. It requires them to give the consumer a disclosure document before entering into, or increasing the credit limit of, a small business credit contract with the consumer. If the contract is a protected small business credit contract, it also requires them to make inquiries and prohibits them from entering into, or increasing the credit limit of, the contract if the contract is unsuitable for the consumer.

## 18 **133FB Application of this Part**

### 19 *Application of this Part*

- 20 (1) This Part applies in relation to small business credit contracts.
- 21 (2) Subdivision B of Division 2 and Subdivision B of Division 3 only  
22 apply in relation to small business credit contracts that are  
23 protected small business credit contracts.

### 24 *Meaning of protected small business credit contract*

- 25 (3) A small business credit contract is a ***protected small business***  
26 ***credit contract*** if:
- 27 (a) the consumer's obligations under the contract are or will be  
28 secured by a mortgage over residential property of the  
29 consumer or another person; and
- 30 (b) when the contract is entered into, the credit is provided  
31 predominantly for the purposes of enabling the consumer to  
32 comply with the consumer's financial obligations under

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## Schedule 2 Small business lending

### Part 2 Other amendments

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- 1 another contract (the *defaulting contract*) between the  
2 consumer and the credit provider or another person; and  
3 (c) before the contract is entered into, the consumer had failed to  
4 comply with the consumer's financial obligations under the  
5 defaulting contract.
- 6 (4) For the purposes of paragraph (3)(b), credit is provided  
7 predominantly for the purposes referred to in that paragraph if:  
8 (a) more than half of the credit provided is intended to be used  
9 for those purposes; or  
10 (b) in the case where the credit is intended to be used to obtain  
11 goods or services for use for different purposes—the goods  
12 or services are intended to be most used for those purposes.

## 13 **Division 2—Providers of credit assistance for small** 14 **business credit contracts**

### 15 **Subdivision A—Obligations that apply for all small business** 16 **credit contracts**

#### 17 **133FC Obligation to give quote for providing credit assistance**

##### 18 *Obligation to give quote*

- 19 (1) A person must not provide credit assistance to a consumer by:  
20 (a) suggesting that the consumer apply, or assisting the consumer  
21 to apply, for a particular small business credit contract with a  
22 particular credit provider; or  
23 (b) suggesting that the consumer apply, or assisting the consumer  
24 to apply, for an increase to the credit limit of a particular  
25 small business credit contract with a particular credit  
26 provider; or  
27 (c) suggesting that the consumer remain in a particular small  
28 business credit contract with a particular credit provider;  
29 unless:  
30 (d) the person has given the consumer a quote in accordance  
31 with subsection (2); and  
32 (e) the consumer has signed and dated that quote or otherwise  
33 indicated the consumer's acceptance of it (and the day that

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Small business lending **Schedule 2**  
Other amendments **Part 2**

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1 happens) in the manner (if any) prescribed by the regulations;  
2 and  
3 (f) the person has given the consumer a copy of the accepted  
4 quote.

5 Civil penalty: 2,000 penalty units.

6 (2) The quote must:

7 (a) be in writing; and

8 (b) give information about the credit assistance and other  
9 services that the quote covers; and

10 (c) specify the maximum amount that will be payable by the  
11 consumer to the person in relation to the person's credit  
12 assistance and other services; and

13 (d) give information about what that amount relates to,  
14 including:

15 (i) the maximum amount of the person's fee for providing  
16 the credit assistance and other services; and

17 (ii) the maximum amount of charges that will be incurred  
18 by the person for matters associated with providing the  
19 credit assistance and other services; and

20 (iii) the maximum amount of fees or charges that will be  
21 payable by the person to another person on the  
22 consumer's behalf; and

23 (e) state whether the maximum amount or any other amount will  
24 be payable by the consumer to the person if a protected small  
25 business credit contract is not entered into, or a credit limit is  
26 not increased; and

27 (f) if the person intends to lodge a caveat in relation to land in  
28 relation to an amount payable by the consumer for the  
29 person's credit assistance or other services—inform the  
30 consumer of the person's intention and specify any other  
31 information that is prescribed by the regulations.

32 *Manner of giving quote*

33 (3) The person must give the quote to the consumer in the manner (if  
34 any) prescribed by the regulations.

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## Schedule 2 Small business lending

### Part 2 Other amendments

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1                    *No demanding payment of amount exceeding quoted amount*

2                    (4) The person must not request or demand payment of an amount that  
3                    exceeds the maximum amount set out in the quote.

4                    Civil penalty:            2,000 penalty units.

5                    *No requirement to give quote*

6                    (5) Subsections (1) and (4) do not apply if the person does not require  
7                    the consumer to pay a fee or charge to the person for providing the  
8                    credit assistance.

9                    *No demanding payment before credit assistance provided*

10                   (6) The person must not request or demand payment of an amount for  
11                   the person's credit assistance before the person provides the  
12                   assistance.

13                   Civil penalty:            2,000 penalty units.

### 14                   **Subdivision B—Obligations or prohibitions that apply only for** 15                   **protected small business credit contracts**

#### 16                   **133FD Obligation to make inquiries**

17                   (1) A person must not provide credit assistance to a consumer on a day  
18                   by:

19                          (a) suggesting that the consumer apply, or assisting the consumer  
20                          to apply, for a particular protected small business credit  
21                          contract with a particular credit provider; or

22                          (b) suggesting that the consumer apply, or assisting the consumer  
23                          to apply, for an increase to the credit limit of a particular  
24                          protected small business credit contract with a particular  
25                          credit provider;

26                   unless the person has, within 90 days (or other period prescribed by  
27                   the regulations) before that day, made the inquiries in accordance  
28                   with section 133FE.

29                   Civil penalty:            2,000 penalty units.

30                   (2) A person must not provide credit assistance to a consumer on a day  
31                   by suggesting that the consumer remain in a particular protected



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Small business lending **Schedule 2**  
Other amendments **Part 2**

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1 small business credit contract with a particular credit provider  
2 unless the person has, within 90 days (or other period prescribed by  
3 the regulations) before that day, made the inquiries and verification  
4 in accordance with section 133FE.

5 Civil penalty: 2,000 penalty units.

## 6 **133FE The inquiries that must be made**

- 7 (1) For the purposes of subsection 133FD(1) or (2), the person must:
- 8 (a) make reasonable inquiries about the consumer's requirements  
9 and objectives in relation to the contract; and
  - 10 (b) inquire whether the consumer or other person who owns the  
11 residential property that:
    - 12 (i) has a mortgage that secures the consumer's financial  
13 obligations under the contract; or
    - 14 (ii) will have a mortgage that will secure the consumer's  
15 financial obligations under the contract;
- 16 is prepared to lose ownership of that property should the  
17 consumer be unable to comply with those obligations; and
- 18 (c) if the consumer's financial obligations under the defaulting  
19 contract referred to in paragraph 133FB(3)(b) are secured by  
20 a mortgage over residential property of the consumer or  
21 another person—make reasonable inquiries about whether  
22 the consumer thinks that entering into, or increasing the  
23 credit limit of, the contract will enable the consumer or other  
24 person to obtain a higher price from the sale of that property.

25 Civil penalty: 2,000 penalty units.

- 26 (2) The regulations may prescribe particular inquiries that must be  
27 made or taken, or do not need to be made or taken, for the purposes  
28 of paragraph (1)(a), (b) or (c).

## 29 **133FF Prohibition on suggesting, or assisting with, unsuitable** 30 **contracts**

31 *Prohibition on suggesting, or assisting with, unsuitable contracts*

- 32 (1) A person must not provide credit assistance to a consumer by:

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## Schedule 2 Small business lending

### Part 2 Other amendments

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- 1 (a) suggesting that the consumer apply, or assisting the consumer  
2 to apply, for a particular protected small business credit  
3 contract with a particular credit provider; or  
4 (b) suggesting that the consumer apply, or assisting the consumer  
5 to apply, for an increase to the credit limit of a particular  
6 protected small business credit contract with a particular  
7 credit provider;  
8 if the contract will be unsuitable for the consumer under  
9 subsection (2).

10 Civil penalty: 2,000 penalty units.

11 *When the contract will be unsuitable*

- 12 (2) The contract will be unsuitable for the consumer if, at the time the  
13 person provides the credit assistance, it is likely that:  
14 (a) the contract will not meet the consumer's requirements or  
15 objectives; or  
16 (b) the consumer or other person who owns the residential  
17 property that:  
18 (i) has a mortgage that secures the consumer's financial  
19 obligations under the contract; or  
20 (ii) will have a mortgage that will secure the consumer's  
21 financial obligations under the contract;  
22 is not prepared to lose ownership of that property should the  
23 consumer be unable to comply with those obligations; or  
24 (c) if the consumer's financial obligations under the defaulting  
25 contract referred to in paragraph 133FB(3)(b) are secured by  
26 a mortgage over residential property of the consumer or  
27 another person—the consumer does not think that entering  
28 into, or increasing the credit limit of, the contract will enable  
29 the consumer or other person to obtain a higher price from  
30 the sale of that property;  
31 if the contract is entered into in the period proposed for it to be  
32 entered into, or the credit limit is increased in the period proposed  
33 for it to be increased.

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Small business lending **Schedule 2**  
Other amendments **Part 2**

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1 *Information to be used to determine if contract will be unsuitable*

- 2 (3) For the purposes of determining under subsection (2) whether the  
3 contract will be unsuitable, only information that satisfies both of  
4 the following paragraphs is to be taken into account:  
5 (a) the information is about a matter that the person is required to  
6 make inquiries about under section 133FE;  
7 (b) at the time the person provides the credit assistance:  
8 (i) the person had reason to believe that the information  
9 was true; or  
10 (ii) the person would have had reason to believe that the  
11 information was true if the person had made the  
12 inquiries that the person was required to make under  
13 section 133FE.

14 *Contract not unsuitable under regulations*

- 15 (4) The regulations may prescribe particular situations in which a  
16 protected small business credit contract is taken not to be  
17 unsuitable for a consumer, despite subsection (2).

18 *Offence*

- 19 (5) A person commits an offence if:  
20 (a) the person is subject to a requirement under subsection (1);  
21 and  
22 (b) the person engages in conduct; and  
23 (c) the conduct contravenes the requirement.

24 Criminal penalty: 100 penalty units, or 2 years imprisonment, or  
25 both.

26 **133FG Prohibition on suggesting to consumers to remain in**  
27 **unsuitable contract**

28 *Prohibition on suggesting to remain in unsuitable contract*

- 29 (1) A person must not provide credit assistance to a consumer by  
30 suggesting that the consumer remain in a particular protected small  
31 business credit contract with a particular credit provider if the  
32 contract is unsuitable for the consumer under subsection (2).

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## Schedule 2 Small business lending

### Part 2 Other amendments

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1 Civil penalty: 2,000 penalty units.

2 *When the contract is unsuitable*

- 3 (2) The contract is unsuitable for the consumer if, at that time the  
4 person provides the credit assistance:
- 5 (a) the contract does not meet the consumer's requirements or  
6 objectives; or
  - 7 (b) the consumer or other person who owns the residential  
8 property that has a mortgage that secures the consumer's  
9 financial obligations under the contract is not prepared to lose  
10 ownership of that property should the consumer be unable to  
11 comply with those obligations; or
  - 12 (c) if the consumer's financial obligations under the defaulting  
13 contract referred to in paragraph 133FB(3)(b) are secured by  
14 a mortgage over residential property of the consumer or  
15 another person—the consumer does not think that remaining  
16 in the contract will enable the consumer or other person to  
17 obtain a higher price from the sale of that property.

18 *Information to be used to determine if contract is unsuitable*

- 19 (3) For the purposes of determining under subsection (2) whether the  
20 contract is unsuitable, only information that satisfies both of the  
21 following paragraphs is to be taken into account:
- 22 (a) the information is about a matter that the person is required to  
23 make inquiries about under section 133FE;
  - 24 (b) at the time the person provides the credit assistance:
    - 25 (i) the person had reason to believe that the information  
26 was true; or
    - 27 (ii) the person would have had reason to believe that the  
28 information was true if the person had made the  
29 inquiries the person was required to make under  
30 section 133FE.

31 *Contract not unsuitable under regulations*

- 32 (4) The regulations may prescribe particular situations in which a  
33 protected small business contract is taken not to be unsuitable for a  
34 consumer, despite subsection (2).

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Small business lending **Schedule 2**  
Other amendments **Part 2**

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## *Offence*

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1);  
and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units, or 2 years imprisonment, or both.

## *Defence*

- (6) For the purposes of subsections (1) and (5), it is a defence if:
- (a) the person suggested that the consumer remain in the protected small business credit contract because, after making reasonable inquiries, the person reasonably believed that there was no other small business credit contract that was appropriate for the consumer; and
  - (b) in the case where the defaulting contract referred to in paragraph 133FB(3)(b) is a credit contract—the person informed the consumer that there is a procedure under sections 72 and 94 of the National Credit Code for consumers in hardship.

Note: For the purposes of subsection (5), a defendant bears an evidential burden in relation to the matters in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) For the purposes of subsection (6), the regulations may prescribe:
- (a) particular inquiries that must be made, or do not need to be made; and
  - (b) particular circumstances in which a small business credit contract is, or is not, appropriate for a consumer; and
  - (c) particular information that must be taken into account to determine whether a small business credit contract is appropriate for a consumer.

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Schedule 2 Small business lending

Part 2 Other amendments

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1 **Division 3—Credit providers under small business credit**  
2 **contracts**

3 **Subdivision A—Obligations that apply for all small business**  
4 **credit contracts**

5 **133FH Obligation to disclose**

- 6 (1) A credit provider must not:
- 7 (a) enter into a small business credit contract with a consumer  
8 who will be the debtor under the contract; or
- 9 (b) increase the credit limit of a small business credit contract  
10 with a consumer who is the debtor under the contract;
- 11 if the credit provider has not given the consumer a disclosure  
12 document in accordance with subsection (2).
- 13 Civil penalty: 2,000 penalty units.
- 14 (2) The disclosure document must be in writing and set out the  
15 following matters:
- 16 (a) if the amount of credit is ascertainable—that amount;
- 17 (b) the annual percentage rate or rates under the contract and, if  
18 there is more than one rate, how each rate applies;
- 19 (c) if the contract has a fixed interest rate or is a contract  
20 prescribed by the regulations—the total amount of interest  
21 charges payable under the contract;
- 22 (d) if more than one repayment is to be made under the contract  
23 and the contract is not a continuing credit contract:
- 24 (i) the amount of the repayments or the method of  
25 calculating the amount; and
- 26 (ii) the number of the repayments, if ascertainable; and
- 27 (iii) if the contract has a fixed interest rate or is a contract  
28 prescribed by the regulations—the total amount of the  
29 repayments, if ascertainable; and
- 30 (iv) when the first repayment is to be paid, if ascertainable,  
31 and the frequency of payment of repayments;
- 32 (e) if the contract provides for a minimum repayment—the  
33 amount of that repayment, if ascertainable, but, if not, the  
34 method of calculation of the minimum repayment;
-

# EXPOSURE-DRAFT

Small business lending **Schedule 2**  
Other amendments **Part 2**

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- 1 (f) a statement of the credit fees and charges that are, or may  
2 become, payable under the contract, and when each such fee  
3 or charge is payable, if ascertainable;  
4 (g) the amount of any such fee or charge, if ascertainable, but, if  
5 not, the method of calculation of the fee or charge, if  
6 ascertainable;  
7 (h) the total amount of credit fees and charges payable under the  
8 contract to the extent that it is ascertainable.
- 9 (3) The disclosure document may be the proposed contract document  
10 or be a separate document.

## 11 **Subdivision B—Obligations and prohibitions that apply only** 12 **for protected small business credit contracts**

### 13 **133FI Obligation to make inquiries**

14 A credit provider must not:

- 15 (a) enter into a protected small business credit contract with a  
16 consumer who will be the debtor under the contract; or  
17 (b) increase the credit limit of a protected small business credit  
18 contract with a consumer who is the debtor under the  
19 contract;

20 on a day unless the credit provider has, within 90 days (or other  
21 period prescribed by the regulations) before that day, made the  
22 inquiries in accordance with section 133FJ.

23 Civil penalty: 2,000 penalty units.

### 24 **133FJ The inquiries that must be made**

- 25 (1) For the purposes of section 133FI, the credit provider must:  
26 (a) make reasonable inquiries about the consumer's requirements  
27 and objectives in relation to the contract; and  
28 (b) inquire whether the consumer or other person who owns the  
29 residential property that:  
30 (i) has a mortgage that secures the consumer's financial  
31 obligations under the contract; or  
32 (ii) will have a mortgage that will secure the consumer's  
33 financial obligations under the contract;

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## Schedule 2 Small business lending

### Part 2 Other amendments

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1 is prepared to lose ownership of that property should the  
2 consumer be unable to comply with those obligations; and  
3 (c) if the consumer's financial obligations under the defaulting  
4 contract referred to in paragraph 133FB(3)(b) are secured by  
5 a mortgage over residential property of the consumer or  
6 another person—make reasonable inquiries about whether  
7 the consumer thinks that entering into, or increasing the  
8 credit limit of, the contract will enable the consumer or other  
9 person to obtain a higher price from the sale of that property.

10 Civil penalty: 2,000 penalty units.

11 (2) The regulations may prescribe particular inquiries or steps that  
12 must be made or taken, or do not need to be made or taken, for the  
13 purposes of paragraph (1)(a), (b) or (c).

#### 14 **133FK Prohibition on entering etc. unsuitable contracts**

##### 15 *Prohibition on entering etc. unsuitable contracts*

16 (1) A credit provider must not:  
17 (a) enter into a protected small business credit contract with a  
18 consumer who will be the debtor under the contract; or  
19 (b) increase the credit limit of a protected small business contract  
20 with a consumer who is the debtor under the contract;  
21 if the contract is unsuitable for the consumer under subsection (2).

22 Civil penalty: 2,000 penalty units.

##### 23 *When the contract is unsuitable*

24 (2) The contract is unsuitable for the consumer if, at the time it is  
25 entered into or the credit limit is increased:  
26 (a) the contract does not meet the consumer's requirements or  
27 objectives; or  
28 (b) the consumer or other person who owns the residential  
29 property that:  
30 (i) has a mortgage that secures the consumer's financial  
31 obligations under the contract; or  
32 (ii) will have a mortgage that will secure the consumer's  
33 financial obligations under the contract;



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Small business lending **Schedule 2**  
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- 1 is not prepared to lose ownership of that property should the  
2 consumer be unable to comply with those obligations; or  
3 (c) if the consumer's financial obligations under the defaulting  
4 contract referred to in paragraph 133FB(3)(b) are secured by  
5 a mortgage over residential property of the consumer or  
6 another person—the consumer does not think that entering  
7 into, or increasing the credit limit of, the contract will enable  
8 the consumer or other person to obtain a higher price from  
9 the sale of that property.

10 *Information to be used to determine if contract will be unsuitable*

- 11 (3) For the purposes of determining under subsection (2) whether the  
12 contract will be unsuitable, only information that satisfies both of  
13 the following paragraphs is to be taken into account:  
14 (a) the information is about a matter that the person is required to  
15 make inquiries about under section 133FJ;  
16 (b) at the time of the contract is entered into or the credit limit is  
17 increased:  
18 (i) the credit provider had reason to believe that the  
19 information was true; or  
20 (ii) the credit provider would have had reason to believe  
21 that the information was true if the credit provider had  
22 made the inquiries that the person was required to make  
23 under section 133FJ.

24 *Contract not unsuitable under regulations*

- 25 (4) The regulations may prescribe particular situations in which a  
26 protected small business credit contract is taken not to be  
27 unsuitable for a consumer, despite subsection (2).

28 *Offence*

- 29 (5) A person commits an offence if:  
30 (a) the person is subject to a requirement under subsection (1);  
31 and  
32 (b) the person engages in conduct; and  
33 (c) the conduct contravenes the requirement.

34 Criminal penalty: 100 penalty units, or 2 years imprisonment, or  
35 both.

# EXPOSURE-DRAFT

Schedule 2 Small business lending

Part 2 Other amendments

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1 **19 Section 135 (heading)**

2 Repeal the heading, substitute:

3 **135 This Part does not apply to lessors who provide credit assistance**

4 **20 At the end of Division 1 of Part 3-3**

5 Add:

6 **135A This Part does not apply to small business consumer leases**

7 This Part does not apply in relation to credit assistance provided by  
8 a licensee to a consumer in relation to a small business consumer  
9 lease.

10 Note: Part 3-4A has special responsible lending rules that apply to those that  
11 provide credit assistance to consumers in relation to small business  
12 consumer leases.

13 **21 At the end of Division 1 of Part 3-4**

14 Add:

15 **148A This Part does not apply to small business consumer leases**

16 This Part does not apply in relation to a licensee that is a lessor  
17 under a small business consumer lease.

18 Note: Part 3-4A has special responsible lending rules that apply to lessors  
19 under small business consumer leases.

20 **22 After Part 3-4**

21 Insert:

22 **Part 3-4A—Small business consumer leases**

23 **Division 1—Introduction**

24 **156AA Guide to this Part**

25 

This Part has rules that apply to those who provide credit 26 assistance for, or are lessors under, small business consumer leases.
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Small business lending **Schedule 2**  
Other amendments **Part 2**

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These rules are more limited than the responsible lending rules in Parts 3-3 and 3-4 that apply to other types of consumer leases.

Under these rules, it does not matter whether the credit assistance provider or the lessor is a licensee.

These rules are aimed at better informing consumers and preventing them from being in unsuitable small business consumer leases.

Division 2 deals with those who provide credit assistance for small business consumer leases. It requires them to give the consumer a quote before providing credit assistance.

Division 3 deals with lessors under small business consumer leases. It requires them to give the consumer a disclosure document before entering into a small business consumer lease with the consumer.

## 15 **Division 2—Providers of credit assistance for small** 16 **business consumer leases**

### 17 **156AB Obligation to give quote for providing credit assistance**

#### 18 *Obligation to give quote*

- 19 (1) A person must not provide credit assistance to a consumer by:  
20 (a) suggesting that the consumer apply, or assisting the consumer  
21 to apply, for a particular small business consumer lease with  
22 a particular lessor; or  
23 (b) suggesting that the consumer remain in a particular small  
24 business consumer lease with a particular lessor;  
25 unless:  
26 (c) the person has given the consumer a quote in accordance  
27 with subsection (2); and  
28 (d) the consumer has signed and dated that quote or otherwise  
29 indicated the consumer's acceptance of it (and the day that  
30 happens) in the manner (if any) prescribed by the regulations;  
31 and

# EXPOSURE-DRAFT

## Schedule 2 Small business lending

### Part 2 Other amendments

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- 1 (e) the person has given the consumer a copy of the accepted  
2 quote.
- 3 Civil penalty: 2,000 penalty units.
- 4 (2) The quote must:
- 5 (a) be in writing; and
- 6 (b) give information about the credit assistance and other  
7 services that the quote covers; and
- 8 (c) specify the maximum amount that will be payable by the  
9 consumer to the person in relation to the person's credit  
10 assistance and other services; and
- 11 (d) give information about what that amount relates to,  
12 including:
- 13 (i) the maximum amount of the person's fee for providing  
14 the credit assistance and other services; and
- 15 (ii) the maximum amount of charges that will be incurred  
16 by the person for matters associated with providing the  
17 credit assistance and other services; and
- 18 (iii) the maximum amount of fees or charges that will be  
19 payable by the person to another person on the  
20 consumer's behalf; and
- 21 (e) state whether the maximum amount or any other amount will  
22 be payable by the consumer to the person if a consumer lease  
23 is not entered into; and
- 24 (f) if the person intends to lodge a caveat in relation to land in  
25 relation to an amount payable by the consumer for the  
26 person's credit assistance or other services—inform the  
27 consumer of the person's intention and specify any other  
28 information that is prescribed by the regulations.

29 *Manner of giving quote*

- 30 (3) The person must give the quote to the consumer in the manner (if  
31 any) prescribed by the regulations.

32 *No demanding payment of amount exceeding quoted amount*

- 33 (4) The person must not request or demand payment of an amount that  
34 exceeds the maximum amount set out in the quote.

35 Civil penalty: 2,000 penalty units.

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# EXPOSURE-DRAFT

Small business lending **Schedule 2**  
Other amendments **Part 2**

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1                    *No demanding payment before credit assistance provided*

2                    (5) The person must not request or demand payment of an amount for  
3                    the person's credit assistance before the person provides the  
4                    assistance.

5                    Civil penalty:            2,000 penalty units.

## 6                    **Division 3—Lessors under small business consumer leases**

### 7                    **156AC Obligation to disclose**

8                    (1) A lessor must not enter into a small business consumer lease with a  
9                    consumer who will be the lessee under the lease if the lessor has  
10                    not given the consumer a disclosure document in accordance with  
11                    subsection (2).

12                    Civil penalty:            2,000 penalty units.

13                    (2) The disclosure document must be in writing and set out the  
14                    following matters, if ascertainable:

15                    (a) a description or identification of the goods hired under the  
16                    lease;

17                    (b) the amount or value of any consideration to be paid or  
18                    provided by the lessee before the delivery of the goods;

19                    (c) the amount of any stamp duty or other government charge  
20                    (other than on receipts or withdrawals) payable by the lessee  
21                    in relation to the lease;

22                    (d) the amount of any other charges not included in the rental  
23                    payable under the lease, and a description of those charges;

24                    (e) the amount of each rental payment to be made under the  
25                    lease;

26                    (f) the date the first rental payment is due and either:

27                    (i) the dates subsequent rental payments are due; or

28                    (ii) the interval between rental payments;

29                    (g) if the lessee's obligations under the lease are or will be  
30                    secured by an interest in, or power over, property:

31                    (i) a statement to that effect; and

32                    (ii) a description of that property;

33                    (h) the number of rental payments to be made by the lessee, and  
34                    the total amount of rental payable under the lease;

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## Schedule 2 Small business lending

### Part 2 Other amendments

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- 1 (i) a statement of the conditions on which the lessee may  
2 terminate the lease;
- 3 (j) a statement of the liabilities (if any) of the lessee on  
4 termination of the lease.
- 5 (3) The disclosure document may be the proposed lease document or  
6 be a separate document.

#### 23 Before subsection 5(1) of the *National Credit Code*

8 Insert:

9 *Credit contracts (other than small business credit contracts)*

#### 24 Before subsection 170(1) of the *National Credit Code*

11 Insert:

12 *Consumer leases (other than small business consumer leases)*

#### 25 After subsection 171(3) of the *National Credit Code*

14 Insert:

- 15 (3A) Without limiting subsection (3), the regulations may exclude a  
16 consumer lease from the application of this Part if:
- 17 (a) the amount payable under the lease, as referred to in  
18 section 170, exceeds or may exceed a specified amount; or  
19 (b) the lessor under the lease is of a specified class.

#### 26 At the end of Division 5 of Part 12 of the *National Credit Code*

22 Add:

#### 203D Exemptions for small business credit contracts and small business consumer leases

- 25 (1) Sections 14 to 168 do not apply in relation to small business credit  
26 contracts.
- 27 (2) Sections 173 to 187 do not apply in relation to small business  
28 consumer leases.

#### 27 Subsection 204(1) of the *National Credit Code*

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Small business lending **Schedule 2**  
Other amendments **Part 2**

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1                   Insert:

2                             *small business consumer lease* means a consumer lease covered  
3                             by subsection 170(1A).

4       **28 Subsection 204(1) of the *National Credit Code***

5                   Insert:

6                             *small business credit contract* means a credit contract covered by  
7                             subsection 5(1A).

8

# EXPOSURE-DRAFT

Schedule 3 Investment lending

Part 1 Main amendments

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## Schedule 3—Investment lending

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### Part 1—Main amendments

4

#### *National Consumer Credit Protection Act 2009*

5

##### **1 Paragraph 5(1)(b) of the *National Credit Code***

6

Repeal the paragraph, substitute:

7

(b) the credit is provided or is intended to be provided  
predominantly for one or more of the following purposes:

8

9

(i) personal purposes;

10

(ii) domestic purposes;

11

(iii) household purposes;

12

(iv) investment purposes; and

13

##### **2 Subsections 5(3) and (4) of the *National Credit Code***

14

Repeal the subsections, substitute:

15

*Purposes for which credit is provided*

16

(4) For the purposes of this Part, credit is provided predominantly for  
personal, domestic, household or investment purposes if:

17

18

(a) more than half of the credit is intended to be used for one or  
more of those purposes; or

19

20

(b) in the case where the credit is intended to be used to obtain  
goods or services for use for different purposes—the goods  
or services are intended to be most used for one or more of  
those purposes.

21

22

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24

##### **3 Paragraphs 13(2)(a), (b) and (c) of the *National Credit Code***

25

Repeal the paragraphs, substitute:

26

(a) personal purposes;

27

(b) domestic purposes;

28

(c) household purposes;

29

(d) investment purposes;

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# EXPOSURE-DRAFT

Investment lending **Schedule 3**  
Other amendments **Part 2**

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## 2 **Part 2—Other amendments**

### 3 *National Consumer Credit Protection Act 2009*

#### 4 **4 Subsection 5(1)**

5 Insert:

6 *financial product* has the same meaning as in Division 3 of  
7 Part 7.1 of Chapter 7 of the *Corporations Act 2001*.

#### 8 **5 Subsection 5(1)**

9 Insert:

10 *investment credit contract*: see subsection 133EB(2).

#### 11 **6 Subsection 5(1)**

12 Insert:

13 *product* means real or personal property of every description,  
14 whether situated in Australia or anywhere else and whether  
15 tangible or intangible, and includes an interest in any such real or  
16 personal property.

#### 17 **7 Subsection 5(1)**

18 Insert:

19 *protected investment credit contract*: see subsection 133EB(4).

#### 20 **8 Subsection 5(1)**

21 Insert:

22 *regulated product (home-secured) investment credit contract*: see  
23 subsection 133EB(6).

#### 24 **9 Subsection 5(1)**

25 Insert:

26 *unregulated product investment credit contract*: see subsection  
27 133EB(8).

# EXPOSURE-DRAFT

## Schedule 3 Investment lending

### Part 2 Other amendments

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1     **10 Section 111 (first paragraph)**

2             Omit “to a licensee that will be the credit provider under the credit  
3             contract”, substitute “in some circumstances (see section 112)”.

4     **11 Section 112 (heading)**

5             Repeal the section, substitute:

6     **112 When this Part does not apply**

7             *Credit assistance provided by credit provider*

8             (1) This Part does not apply in relation to credit assistance provided by  
9             a licensee in relation to a credit contract if the licensee is or will be  
10            the credit provider under the contract.

11            *Investment credit contracts*

12            (2) This Part does not apply in relation to credit assistance provided by  
13            a licensee to a consumer in relation to an investment credit  
14            contract.

15            Note:     Part 3-2E has special responsible lending rules that apply to licensees  
16                        that provide credit assistance to consumers in relation to protected  
17                        investment credit contracts.

18     **12 Section 125 (at the end of the first paragraph)**

19             Add “However, these rules do not apply in some circumstances (see  
20             section 125A).”.

21     **13 After section 125**

22             Insert:

23     **125A When this Part does not apply**

24             *Investment credit contracts*

25             (1) This Part does not apply in relation to a licensee that is a credit  
26             provider under an investment credit contract.

27             Note:     Part 3-2E has special responsible lending rules that apply to licensees  
28                        that are credit providers under protected investment credit contracts.

29     **14 Paragraph 133(1)(b)**

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# EXPOSURE-DRAFT

Investment lending **Schedule 3**  
Other amendments **Part 2**

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1 Omit “wholly or”.

2 **15 Section 133A (at the end of the first paragraph)**

3 Add “However, it does not apply in some circumstances (see  
4 section 133AAA).”.

5 **16 After section 133A**

6 Insert:

7 **133AAA When this Part does not apply**

8 *Protected investment credit contracts*

9 (1) This Part does not apply in relation to a licensee that is a credit  
10 provider under a protected investment credit contract.

11 Note: Part 3-2E has special responsible lending rules that apply to credit  
12 providers under protected investment credit contracts.

13 **17 Section 133B (at the end of the first paragraph)**

14 Add “However, it does not apply in some circumstances (see  
15 section 133BAA).”.

16 **18 After section 133B**

17 Insert:

18 **133BAA When this Part does not apply**

19 *Protected investment credit contracts*

20 (1) This Part does not apply in relation to a licensee that is a credit  
21 provider under a protected investment credit contract.

22 Note: Part 3-2E has special responsible lending rules that apply to credit  
23 providers under protected investment credit contracts.

24 **19 Section 133C (at the end of the first paragraph)**

25 Add “However, it does not apply in some circumstances (see  
26 section 133CAA).”.

27 **20 After section 133C**

28 Insert:

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# EXPOSURE-DRAFT

## Schedule 3 Investment lending

### Part 2 Other amendments

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1 **133CAA When this Part does not apply**

2 *Protected investment credit contracts*

- 3 (1) This Part does not apply in relation to a licensee that is a credit  
4 provider under a protected investment credit contract.

5 Note: Part 3-2E has special responsible lending rules that apply to credit  
6 providers under protected investment credit contracts.

7 **21 Section 133DA (at the end of the first paragraph)**

8 Add “However, these rules do not apply in some circumstances (see  
9 section 133DAA).”.

10 **22 After section 133DA**

11 Insert:

12 **133DAA When this Part does not apply**

13 *Protected investment credit contracts*

- 14 (1) This Part does not apply in relation to a licensee that is a credit  
15 provider under a protected investment credit contract.

16 Note: Part 3-2E has special responsible lending rules that apply to credit  
17 providers under protected investment credit contracts.

18 **23 After Part 3-2D**

19 Insert:

20 **Part 3-2E—Protected investment credit contracts**

21 **Division 1—Introduction**

22 **133EA Guide to this Part**

23 This Part has rules that apply to licensees that provide credit  
24 assistance for, or are credit providers under, certain types of  
25 investment credit contracts, called “protected investment credit  
26 contracts”. These rules are more limited than the responsible  
27 lending rules in Parts 3-1, 3-2, 3-2A, 3-2B, 3-2C or 3-2D that apply  
28 to other types of credit contracts.

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Investment lending **Schedule 3**  
Other amendments **Part 2**

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There are 2 types of protected investment credit contracts—regulated product (home secured) investment credit contracts and unregulated product investment credit contracts (see section 133EB). Some of these rules only apply to unregulated product investment credit contracts.

All of these rules are aimed at better informing consumers and preventing them from being in unsuitable protected investment credit contracts.

Division 2 deals with licensees that provide credit assistance for protected investment credit contracts. It requires them to give the consumer a quote before providing credit assistance. It also requires them to make inquiries and it prohibits them from providing credit assistance if the contract will be unsuitable for the consumer.

Division 3 deals with licensees that are credit providers under protected investment credit contracts. It requires them to make inquiries and also prohibits them from entering into, or increasing the credit limit of, a protected investment credit contract if the contract is unsuitable for the consumer.

## 20 **133EB Application of this Part to protected investment credit** 21 **contracts**

### 22 *Application of this Part*

- 23 (1) This Part only applies in relation to investment credit contracts that  
24 are protected investment credit contracts.

### 25 *Meaning of investment credit contract*

- 26 (2) A credit contract is an *investment credit contract* if, when the  
27 contract is entered into, the credit is provided or is intended to be  
28 provided predominantly for investment purposes, other than:  
29 (a) to purchase, renovate or improve residential property for  
30 investment purposes; or  
31 (b) to refinance credit that has been provided predominantly to  
32 purchase, renovate or improve residential property for  
33 investment purposes.

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## Schedule 3 Investment lending

### Part 2 Other amendments

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- 1 (3) For the purposes of subsection (2), credit is provided  
2 predominantly for investment purposes (other than those referred  
3 to in paragraph (2)(a) or (b)) if:  
4 (a) more than half of the credit is intended to be used for those  
5 investment purposes; or  
6 (b) in the case where the credit is intended to be used to obtain  
7 goods or services for use for different purposes—the goods  
8 or services are intended to be most used for those investment  
9 purposes.

#### 10 *Meaning of protected investment credit contract*

- 11 (4) An investment credit contract is a ***protected investment credit***  
12 ***contract*** if:  
13 (a) when the contract is entered into, the credit that is provided  
14 for investment purposes is provided predominantly for one or  
15 more of the following purposes:  
16 (i) for the purposes of the consumer acquiring a financial  
17 product from a person who is not prohibited from  
18 providing that product under the *Corporations Act*  
19 *2001*;  
20 (ii) for the purposes of the consumer acquiring a financial  
21 product from a person who is prohibited from providing  
22 that product under the *Corporations Act 2001*;  
23 (iii) for the purposes of the consumer acquiring a product  
24 that is not a financial product; and  
25 (b) in the case where the credit that is provided for investment  
26 purposes is provided predominantly or partly for the purposes  
27 referred to in subparagraph (a)(i)—the consumer's  
28 obligations under the contract are or will be secured by a  
29 mortgage over the consumer's principal place of residence.

- 30 (5) For the purposes of paragraph (4)(a), credit is provided  
31 predominantly for the purposes referred to in  
32 subparagraph (4)(a)(i), (ii) or (iii) if:  
33 (a) more than half of the credit provided for investment purposes  
34 is intended to be used for one or more of those purposes; or  
35 (b) in the case where the credit is intended to be used to obtain  
36 goods or services for use for different purposes—the goods  
37 or services are intended to be most used for one or more of  
38 those purposes.

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Investment lending **Schedule 3**  
Other amendments **Part 2**

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1                    *Meaning of **regulated product (home-secured) investment credit***  
2                    *contract*

3                    (6) A protected investment credit contract is a **regulated product**  
4                    **(home-secured) investment credit contract** if, when the contract is  
5                    entered into:

- 6                           (a) the credit that is provided for the investment purposes  
7                                       referred to in paragraph (4)(a) is provided predominantly for  
8                                       the purposes referred to in subparagraph (4)(a)(i); and  
9                           (b) the consumer's obligations under the contract are or will be  
10                                       secured by a mortgage over the consumer's principal place of  
11                                       residence.

12                    (7) For the purposes of paragraph (6)(a), credit is provided  
13                    predominantly for the purposes referred to in  
14                    subparagraph (4)(a)(i) if:

- 15                           (a) more than half of the credit provided for investment purposes  
16                                       is intended to be used for those purposes; or  
17                           (b) in the case where the credit is intended to be used to obtain  
18                                       goods or services for use for different purposes—the goods  
19                                       or services are intended to be most used for those purposes.

20                    *Meaning of **unregulated product investment credit contract***

21                    (8) A protected investment credit contract is an **unregulated product**  
22                    **investment credit contract** if, when the contract is entered into:

- 23                           (a) the credit that is provided for the investment purposes  
24                                       referred to in paragraph (4)(a) is provided predominantly for  
25                                       either or both of the purposes referred to in  
26                                       subparagraph (4)(a)(ii) or (iii); and  
27                           (b) any requirements prescribed by the regulations in relation to  
28                                       the contract are satisfied.

29                    (9) For the purposes of paragraph (8)(a), credit is provided  
30                    predominantly for the purposes referred to in  
31                    subparagraph (4)(a)(ii) or (iii) if:

- 32                           (a) more than half of the credit provided for investment purposes  
33                                       is intended to be used for either or both of those purposes; or  
34                           (b) in the case where the credit is intended to be used to obtain  
35                                       goods or services for use for different purposes—the goods

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1 or services are intended to be most used for either or both of  
2 those purposes.

3 **Division 2—Licensees that provide credit assistance for**  
4 **protected investment credit contracts**

5 **Subdivision A—Obligation to give quote for providing credit**  
6 **assistance**

7 **133EC Obligation to give quote for providing credit assistance**

8 *Requirement to give quote*

- 9 (1) A licensee must not provide credit assistance to a consumer by:  
10 (a) suggesting that the consumer apply, or assisting the consumer  
11 to apply, for a particular protected investment credit contract  
12 with a particular credit provider; or  
13 (b) suggesting that the consumer apply, or assisting the consumer  
14 to apply, for an increase to the credit limit of a particular  
15 protected investment credit contract with a particular credit  
16 provider; or  
17 (c) suggesting that the consumer remain in a particular protected  
18 investment credit contract with a particular credit provider;  
19 unless:  
20 (d) the licensee has given the consumer a quote in accordance  
21 with subsection (2); and  
22 (e) the consumer has signed and dated that quote or otherwise  
23 indicated the consumer's acceptance of it (and the day that  
24 happens) in the manner (if any) prescribed by the regulations;  
25 and  
26 (f) the licensee has given the consumer a copy of the accepted  
27 quote.

28 Civil penalty: 2,000 penalty units.

- 29 (2) The quote must:  
30 (a) be in writing; and  
31 (b) give information about the credit assistance and other  
32 services that the quote covers; and



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- 1 (c) specify the maximum amount that will be payable by the  
2 consumer to the licensee in relation to the licensee's credit  
3 assistance and other services; and  
4 (d) give information about what that amount relates to,  
5 including:  
6 (i) the maximum amount of the licensee's fee for providing  
7 the credit assistance and other services; and  
8 (ii) the maximum amount of charges that will be incurred  
9 by the licensee for matters associated with providing the  
10 credit assistance and other services; and  
11 (iii) the maximum amount of fees or charges that will be  
12 payable by the licensee to another person on the  
13 consumer's behalf; and  
14 (e) state whether the maximum amount or any other amount will  
15 be payable by the consumer to the licensee if a protected  
16 investment credit contract is not entered into or a credit limit  
17 is not increased; and  
18 (f) give information about:  
19 (i) any commissions that the licensee, or an employee,  
20 director or credit representative of the licensee, is likely  
21 to receive, directly or indirectly, in relation to the  
22 protected investment credit contract; and  
23 (ii) a reasonable estimate of the amounts of those  
24 commissions or the range of those amounts; and  
25 (iii) the method for working out those amounts; and  
26 (g) comply with any other requirements prescribed by the  
27 regulations.

28 *Manner of giving quote*

- 29 (3) The licensee must give the quote to the consumer in the manner (if  
30 any) prescribed by the regulations.

31 *No demanding payment of amount exceeding quoted amount*

- 32 (4) The licensee must not request or demand payment of an amount  
33 that exceeds the maximum amount set out in the quote.

34 Civil penalty: 2,000 penalty units.

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1                    *No demanding payment before credit assistance provided*

2                    (5) The licensee must not request or demand payment of an amount for  
3                    the licensee's credit assistance before the licensee provides the  
4                    assistance.

5                    Civil penalty:            2,000 penalty units.

6                    *Caveats*

7                    (6) The licensee must not lodge, or threaten to lodge, a caveat in  
8                    relation to land to induce the consumer to pay an amount to the  
9                    licensee for the licensee's credit assistance or other services.

10                  Civil penalty:            2,000 penalty units.

### 11                  **Subdivision B—Obligation to make inquiries and verify**

#### 12                  **133ED Obligation to make inquiries and verify**

13                  (1) A licensee must not provide credit assistance to a consumer on a  
14                  day by:

15                          (a) suggesting that the consumer apply, or assisting the consumer  
16                          to apply, for a particular protected investment credit contract  
17                          with a particular credit provider; or

18                          (b) suggesting that the consumer apply, or assisting the consumer  
19                          to apply, for an increase to the credit limit of a particular  
20                          protected investment credit contract with a particular credit  
21                          provider;

22                          unless the licensee has, within 90 days (or other period prescribed  
23                          by the regulations) before that day, made the inquiries and  
24                          verification in accordance with section 133EE.

25                  Civil penalty:            2,000 penalty units.

26                  (2) A licensee must not provide credit assistance to a consumer on a  
27                  day by suggesting that the consumer remain in a particular  
28                  protected investment credit contract with a particular credit  
29                  provider unless the licensee has, within 90 days (or other period  
30                  prescribed by the regulations) before that day, made the inquiries  
31                  and verification in accordance with section 133EE.

32                  Civil penalty:            2,000 penalty units.

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## 133EE The inquiries and verification that must be made

- (1) For the purposes of subsection 133ED(1) or (2), the licensee must:
- (a) make reasonable inquiries about the consumer's requirements and objectives in relation to the contract; and
  - (b) if the consumer's obligations under the contract are or will be secured by a mortgage over the consumer's principal place of residence—inquire whether the consumer is prepared to lose ownership of that residence should the consumer be unable to comply with the consumer's financial obligations under the contract; and
  - (c) make reasonable inquiries about the consumer's financial situation; and
  - (d) take reasonable steps to verify the consumer's financial situation; and
  - (e) make any inquiries prescribed by the regulations about any matter prescribed by the regulations; and
  - (f) take any steps prescribed by the regulations to verify any matter prescribed by the regulations.

Civil penalty: 2,000 penalty units.

- (2) The regulations may prescribe particular inquiries or steps that must be made or taken, or do not need to be made or taken, for the purposes of paragraph (1)(a), (b), (c) or (d).

### *Modification for particular contracts*

- (3) If the contract is a regulated product (home-secured) investment credit contract, then disregard paragraphs (1)(c), (d), (e) and (f).

## Subdivision C—Obligation to disclose fees, commissions etc.

### 133EF Fees, commissions etc.

#### *Requirement for disclosure*

- (1) A licensee must, at the same time as providing credit assistance to a consumer by:
- (a) suggesting that the consumer apply, or assisting the consumer to apply, for a particular protected investment credit contract with a particular credit provider; or

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- 1 (b) suggesting that the consumer apply, or assisting the consumer  
2 to apply, for an increase to the credit limit of a particular  
3 protected investment credit contract with a particular credit  
4 provider; or  
5 (c) suggesting that the consumer remain in a particular protected  
6 investment credit contract with a particular credit provider;  
7 give the consumer a credit proposal disclosure document in  
8 accordance with subsection (2).

9 Civil penalty: 2,000 penalty units.

- 10 (2) The credit proposal disclosure document must contain the  
11 following:
- 12 (a) the total amount of any fees or charges that the consumer is  
13 liable to pay to the licensee in relation to the contract and the  
14 method used for working out that amount;
  - 15 (b) a reasonable estimate of the total amount of any commissions  
16 that the licensee, or an employee, director or credit  
17 representative of the licensee, is likely to receive in relation  
18 to the contract and the method used for working out that  
19 amount;
  - 20 (c) a reasonable estimate of the total amount of any fees or  
21 charges that the consumer is likely to be liable to pay to the  
22 credit provider in relation to applying for the contract;
  - 23 (d) a reasonable estimate of the total amount of any fees or  
24 charges that the consumer is likely to be liable to pay to any  
25 other person in relation to applying for the contract;
  - 26 (e) if the credit is to be used to pay any of the amounts in the  
27 above paragraphs—a reasonable estimate of the likely  
28 amount of credit that will be available to the consumer after  
29 payments under paragraphs (a), (c) and (d) are made.
- 30 (3) For the purposes of paragraph (2)(b), the regulations may  
31 prescribe:
- 32 (a) the method for working out amounts of commissions; and
  - 33 (b) how amounts of commissions must be described.

34 *Manner of giving credit proposal disclosure document*

- 35 (4) The licensee must give the credit proposal disclosure document to  
36 the consumer in the manner (if any) prescribed by the regulations.

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1 **133EG No profiting from fees etc. paid to third parties**

2 *Requirement not to profit*

- 3 (1) If, in the course of providing credit assistance to a consumer in  
4 relation to a protected investment credit contract, a licensee pays  
5 an amount (the *third party amount*) to another person on behalf of  
6 the consumer, the licensee must not request or demand payment of  
7 an amount, as reimbursement for the third party amount, that  
8 exceeds the third party amount.

9 Civil penalty: 2,000 penalty units.

10 *Offence*

- 11 (2) A person commits an offence if:  
12 (a) the person is subject to a requirement under subsection (1);  
13 and  
14 (b) the person engages in conduct; and  
15 (c) the conduct contravenes the requirement.

16 Criminal penalty: 25 penalty units, or 6 months imprisonment,  
17 or both.

18 **Subdivision D—Prohibition on suggesting, or assisting with,  
19 unsuitable protected investment credit contracts**

20 **133EH Prohibition on suggesting, or assisting with, unsuitable  
21 contracts**

22 *Prohibition on suggesting, or assisting with, unsuitable contracts*

- 23 (1) A licensee must not provide credit assistance to a consumer by:  
24 (a) suggesting that the consumer apply, or assisting the consumer  
25 to apply, for a particular protected investment credit contract  
26 with a particular credit provider; or  
27 (b) suggesting that the consumer apply, or assisting the consumer  
28 to apply, for an increase to the credit limit of a particular  
29 protected investment credit contract with a particular credit  
30 provider;  
31 if the contract will be unsuitable for the consumer under  
32 subsection (2).
-

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1 Civil penalty: 2,000 penalty units.

2 *When the contract will be unsuitable*

3 (2) The contract will be unsuitable for the consumer if, at the time the  
4 licensee provides the credit assistance, it is likely that:

5 (a) the consumer will be unable to comply with the consumer's  
6 financial obligations under the contract, or could only comply  
7 with substantial hardship; or

8 (b) the contract will not meet the consumer's requirements or  
9 objectives; or

10 (c) if the consumer's obligations under the contract are or will be  
11 secured by a mortgage over the consumer's principal place of  
12 residence—the consumer is not prepared to lose ownership of  
13 that residence should the consumer be unable to comply with  
14 the consumer's financial obligations under the contract; or

15 (d) if the regulations prescribe circumstances in which a  
16 protected investment credit contract is unsuitable—those  
17 circumstances will apply to the contract;

18 if the contract is entered into in the period proposed for it to be  
19 entered into, or the credit limit is increased in the period proposed  
20 for it to be increased.

21 *Information to be used to determine if contract will be unsuitable*

22 (3) For the purposes of determining under subsection (2) whether the  
23 contract will be unsuitable, only information that satisfies both of  
24 the following paragraphs is to be taken into account:

25 (a) the information is about a matter that the licensee is required  
26 to make inquiries about or verify under section 133EE;

27 (b) at the time the licensee provides the credit assistance:

28 (i) the licensee had reason to believe that the information  
29 was true; or

30 (ii) the licensee would have had reason to believe that the  
31 information was true if the licensee had made the  
32 inquiries or verification that the licensee was required to  
33 make under section 133EE.

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Investment lending **Schedule 3**  
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1 *Modification for particular contracts*

- 2 (4) If the credit contract is a regulated product (home-secured)  
3 investment credit contract, then, for the purposes of determining  
4 under subsection (2) whether the contract will be unsuitable,  
5 disregard paragraphs (2)(a) and (d).

6 *Contract not unsuitable under regulations*

- 7 (5) The regulations may prescribe particular situations in which a  
8 protected investment credit contract is taken not to be unsuitable  
9 for a consumer, despite subsection (2).

10 *Offence*

- 11 (6) A person commits an offence if:  
12 (a) the person is subject to a requirement under subsection (1);  
13 and  
14 (b) the person engages in conduct; and  
15 (c) the conduct contravenes the requirement.

16 Criminal penalty: 100 penalty units, or 2 years imprisonment, or  
17 both.

18 **133EI Prohibition on suggesting to consumers to remain in**  
19 **unsuitable contracts**

20 *Prohibition on suggesting to remain in unsuitable contracts*

- 21 (1) A licensee must not provide credit assistance to a consumer by  
22 suggesting that the consumer remain in a particular protected  
23 investment credit contract with a particular credit provider if the  
24 contract is unsuitable for the consumer under subsection (2).

25 Civil penalty: 2,000 penalty units.

26 *When the contract is unsuitable*

- 27 (2) The contract is unsuitable for the consumer if, at that time the  
28 licensee provides the credit assistance:  
29 (a) the consumer is, or is likely to be, unable to comply with the  
30 consumer's financial obligations under the contract, or only  
31 able to comply with substantial hardship; or

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- 1 (b) the contract does not meet the consumer's requirements or  
2 objectives; or  
3 (c) if the consumer's obligations under the contract are secured  
4 by a mortgage over the consumer's principal place of  
5 residence—the consumer is not prepared to lose ownership of  
6 that residence should the consumer be unable to comply with  
7 the consumer's financial obligations under the contract; or  
8 (d) if the regulations prescribe circumstances in which a  
9 protected investment credit contract is unsuitable—those  
10 circumstances apply to the contract.

#### 11 *Information to be used to determine if contract is unsuitable*

- 12 (3) For the purposes of determining under subsection (2) whether the  
13 contract is unsuitable, only information that satisfies both of the  
14 following paragraphs is to be taken into account:  
15 (a) the information is about a matter that the licensee is required  
16 to make inquiries about or verify under section 133EE;  
17 (b) at the time the licensee provides the credit assistance:  
18 (i) the licensee had reason to believe that the information  
19 was true; or  
20 (ii) the licensee would have had reason to believe that the  
21 information was true if the licensee had made the  
22 inquiries or verification that the licensee was required to  
23 make under section 133EE.

#### 24 *Modification for particular contracts*

- 25 (4) If the credit contract is a regulated product (home-secured)  
26 investment credit contract, then, for the purposes of determining  
27 under subsection (2) whether the contract is unsuitable, disregard  
28 paragraphs (2)(a) and (d).

#### 29 *Contract not unsuitable under regulations*

- 30 (5) The regulations may prescribe particular situations in which a  
31 protected investment credit contract is taken not to be unsuitable  
32 for a consumer, despite subsection (2).

#### 33 *Offence*

- 34 (6) A person commits an offence if:
-



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- 1 (a) the person is subject to a requirement under subsection (1);  
2 and  
3 (b) the person engages in conduct; and  
4 (c) the conduct contravenes the requirement.

5 Criminal penalty: 100 penalty units, or 2 years imprisonment, or  
6 both.

7 *Defence*

- 8 (7) For the purposes of subsections (1) and (6), it is a defence if the  
9 licensee suggested that the consumer remain in the protected  
10 investment credit contract because, after making reasonable  
11 inquiries, the licensee reasonably believed that there was no other  
12 protected investment credit contract that was not unsuitable for the  
13 consumer.

14 Note: For the purposes of subsection (6), a defendant bears an evidential  
15 burden in relation to the matter in subsection (7) (see subsection  
16 13.3(3) of the *Criminal Code*).

- 17 (8) For the purposes of subsection (7), the regulations may prescribe  
18 particular inquiries that must be made, or do not need to be made.

19 **Division 3—Licensees that are credit providers under**  
20 **protected investment credit contracts**

21 **133EJ Obligation to make inquiries and verify**

22 A licensee that is a credit provider must not:

- 23 (a) enter into a protected investment credit contract with a  
24 consumer who will be the debtor under the contract; or  
25 (b) increase the credit limit of a protected investment credit  
26 contract with a consumer who is the debtor under the  
27 contract;

28 on a day unless the licensee has, within 90 days (or other period  
29 prescribed by the regulations) before that day, made the inquiries  
30 and verification in accordance with section 133EK.

31 Civil penalty: 2,000 penalty units.

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1 **133EK The inquiries and verification that must be made**

2 *Requirement to make inquiries*

3 (1) For the purposes of section 133EJ, the licensee must:

- 4 (a) make reasonable inquiries about the consumer's requirements  
5 and objectives in relation to the contract; and  
6 (b) if the consumer's obligations under the contract are or will be  
7 secured by a mortgage over the consumer's principal place of  
8 residence—inquire whether the consumer is prepared to lose  
9 ownership of that residence should the consumer be unable to  
10 comply with the consumer's financial obligations under the  
11 contract; and  
12 (c) make reasonable inquiries about the consumer's financial  
13 situation; and  
14 (d) take reasonable steps to verify the consumer's financial  
15 situation; and  
16 (e) make any inquiries prescribed by the regulations about any  
17 matter prescribed by the regulations; and  
18 (f) take any steps prescribed by the regulations to verify any  
19 matter prescribed by the regulations.

20 Civil penalty: 2,000 penalty units.

21 (2) The regulations may prescribe particular inquiries or steps that  
22 must be made or taken, or do not need to be made or taken, for the  
23 purposes of paragraph (1)(a), (b), (c) or (d).

24 *Modification for particular contracts*

25 (3) If the contract is a regulated product (home-secured) investment  
26 credit contract, then disregard paragraphs (1)(c), (d), (e) and (f).

27 **133EL Prohibition on entering, or increasing the credit limit of,  
28 unsuitable contracts**

29 *Prohibition on entering etc. unsuitable contracts*

30 (1) A licensee that is a credit provider must not:

- 31 (a) enter into a protected investment credit contract with a  
32 consumer who will be the debtor under the contract; or
-

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- 1 (b) increase the credit limit of a protected investment credit  
2 contract with a consumer who is the debtor under the  
3 contract;  
4 if the contract is unsuitable for the consumer under subsection (2).

5 Civil penalty: 2,000 penalty units.

6 *When the contract is unsuitable*

- 7 (2) The contract is unsuitable for the consumer if, at the time it is  
8 entered into or the credit limit is increased:  
9 (a) it is likely that the consumer will be unable to comply with  
10 the consumer's financial obligations under the contract, or  
11 could only comply with substantial hardship; or  
12 (b) the contract does not meet the consumer's requirements or  
13 objectives; or  
14 (c) if the consumer's obligations under the contract are or will be  
15 secured by a mortgage over the consumer's principal place of  
16 residence—the consumer is not prepared to lose ownership of  
17 that residence should the consumer be unable to comply with  
18 the consumer's financial obligations under the contract; or  
19 (d) if the regulations prescribe circumstances in which a credit  
20 contract is unsuitable—those circumstances apply to the  
21 contract.

22 *Information to be used to determine if contract will be unsuitable*

- 23 (3) For the purposes of determining under subsection (2) whether the  
24 contract will be unsuitable, only information that satisfies both of  
25 the following paragraphs is to be taken into account:  
26 (a) the information is about a matter that the licensee is  
27 required to make inquiries about or verify under  
28 section 133EK;  
29 (b) at the time of the contract is entered into or the credit limit is  
30 increased:  
31 (i) the licensee had reason to believe that the information  
32 was true; or  
33 (ii) the licensee would have had reason to believe that the  
34 information was true if the licensee had made the  
35 inquiries or verification that the licensee was required to  
36 make under section 133EK.

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1 *Modification for particular contracts*

- 2 (4) If the credit contract is a regulated product (home-secured)  
3 investment credit contract, then, for the purposes of determining  
4 under subsection (2) whether the contract will be unsuitable,  
5 disregard paragraphs (2)(a) and (d).

6 *Contract not unsuitable under regulations*

- 7 (5) The regulations may prescribe particular situations in which a  
8 protected investment credit contract is taken not to be unsuitable  
9 for a consumer, despite subsection (2).

10 *Offence*

- 11 (6) A person commits an offence if:  
12 (a) the person is subject to a requirement under subsection (1);  
13 and  
14 (b) the person engages in conduct; and  
15 (c) the conduct contravenes the requirement.

16 Criminal penalty: 100 penalty units, or 2 years imprisonment, or  
17 both.

18 **133EM Involvement in contraventions of the Corporations Act**

19 If:

- 20 (a) a licensee that is a credit provider either:  
21 (i) enters into a protected investment credit contract with a  
22 consumer who will be the debtor under the contract; or  
23 (ii) increases the credit limit of a protected investment  
24 credit contract with a consumer who is the debtor under  
25 the contract; and  
26 (b) the consumer's obligations under the contract are or will be  
27 secured by a mortgage over the consumer's principal place of  
28 residence; and  
29 (c) the consumer uses the credit provided under the contract  
30 wholly or partly to acquire a financial product from a person;  
31 and  
32 (d) the person contravenes section 911A or 911B of the  
33 *Corporations Act 2001* (requirement to hold an Australian

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1 financial services licence) in relation to providing the  
2 financial product to the consumer;  
3 then the licensee must not be involved in that contravention.

4 Civil penalty: 2,000 penalty units.

## 5 **24 At the end of section 179**

6 Add:

7 (8) If:

8 (a) the defendant is a credit provider who has contravened  
9 section 133EM; and

10 (b) the plaintiff, or ASIC on behalf of the plaintiff, applies for an  
11 order under this section to let the plaintiff reside in the  
12 plaintiff's place of residence to prevent or reduce loss or  
13 damage suffered, or likely to be suffered, by the plaintiff  
14 vacating the place;

15 then, without limiting the powers of the court under this section,  
16 the court must consider the order appropriate to prevent or reduce  
17 the loss or damage and make the order unless the court is satisfied  
18 that the order would adversely affect a person other than the debtor  
19 and the defendant.

## 20 **25 Subsection 13(2)**

21 Omit "wholly or" (wherever occurring).

## 22 **26 Subsection 13(3)**

23 Omit "wholly or".

## 24 **27 Paragraph 170(1)(a) of the *National Credit Code***

25 Repeal the paragraph, substitute:

26 (a) the goods are hired predominantly for one or more of the  
27 following purposes:

- 28 (i) personal purposes;  
29 (ii) domestic purposes;  
30 (iii) household purposes; and

## 31 **28 Subsection 170(4) of the *National Credit Code***

32 Repeal the subsection, substitute:

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1

*Purposes for which goods are hired*

2

(4) For the purposes of this Part, goods are hired predominantly for personal, domestic or household purposes if:

3

4

(a) more than half of the goods are intended to be used for one or more of those purposes; or

5

6

(b) in the case where the same goods are intended to be used for different purposes—the goods are intended to be most used for one or more of those purposes.

7

8

## 29 After section 203B of the *National Credit Code*

9

Insert:

10

## 203C Exemptions for investment credit contracts

11

12

The following provisions do not apply in relation to investment credit contracts:

13

14

(a) sections 14 to 75;

15

(b) section 82 to 168.

16

## 30 Subsection 204(1) of the *National Credit Code*

17

Insert:

18

*investment credit contract* has the same meaning as in subsection 133EB(2) of the National Credit Act.

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## **Schedule 4—Private lending**

### **Part 1—Main amendments**

#### *National Consumer Credit Protection Act 2009*

##### **1 Paragraph 5(1)(d) of the *National Credit Code***

Repeal the paragraph, substitute:

(d) either or both of the following apply:

- (i) the credit provider provides, or will provide, the credit in the course of, as part of or incidentally to, a business carried on in this jurisdiction by the credit provider;
- (ii) a person acts as an intermediary between the credit provider and the debtor in relation to the contract.

##### **2 Subsection 5(2) of the *National Credit Code***

Repeal the subsection.

##### **3 Paragraph 170(1)(c) of the *National Credit Code***

Repeal the paragraph, substitute:

(c) either or both of the following apply:

- (i) the lessor hires the goods in the course of, as part of or incidentally to, a business carried on by the lessor in this jurisdiction;
- (ii) a person acts as an intermediary between the lessor and the lessee in relation to the lease.

##### **4 Subsection 170(2) of the *National Credit Code***

Repeal the subsection.

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Schedule 4 Private lending

Part 2 Other amendments

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1

2

## Part 2—Other amendments

3

### *National Consumer Credit Protection Act 2009*

4

#### 5 Paragraphs 9(a) and (b)

5

Repeal the paragraphs, substitute:

6

(a) acts as an intermediary (whether directly or indirectly) between a credit provider and a consumer wholly or partly for the purposes of:

7

8

9

(i) securing a contract between the credit provider and the consumer, being a contract that, if paragraph 5(1)(d) of the National Credit Code were disregarded, would be a credit contract; or

10

11

12

13

(ii) increasing the credit limit of credit contract between the credit provider and the consumer; or

14

15

(b) acts as an intermediary (whether directly or indirectly) between a lessor and a consumer wholly or partly for the purposes of:

16

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18

(i) securing a lease between the lessor and the consumer, being a lease that, if paragraph 170(1)(c) of the National Credit Code were disregarded, would be a consumer lease; or

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22

(ii) extending the term of a consumer lease between the lessor and the consumer.

23

24

#### 6 Subsection 204(1) of the *National Credit Code*

25

Insert:

26

*acts as an intermediary* has the same meaning as in section 9 of the National Credit Act.

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# EXPOSURE-DRAFT

Consumer leases **Schedule 5**  
Main amendments **Part 1**

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## Schedule 5—Consumer leases

### Part 1—Main amendments

#### *National Consumer Credit Protection Act 2009*

##### **1 Paragraph 170(1)(b) of the *National Credit Code***

Repeal the paragraph, substitute:

(b) a charge is or may be made for hiring the goods; and

(ba) any of the following apply:

(i) the charge for hiring the goods, together with any other amount payable under the consumer lease, exceeds the cash price of the goods;

(ii) the lease is a regulated fixed term lease;

(iii) the lease is a regulated indefinite lease; and

##### **2 After section 170 of the *National Credit Code***

Insert:

##### **170A Regulated fixed term leases and regulated indefinite leases**

(1) A consumer lease is a *regulated fixed term lease* if it satisfies the following:

(a) the term of the lease is for a fixed period;

(b) at the time of entering into the lease, the lessor or a prescribed person has the requisite belief that the lessee wants to use the goods (whether while those goods are hired under the lease or otherwise) for a fixed, minimum or approximate period (the *use period*) that is longer than the term of the lease;

(c) if the term of the lease had instead been for the use period, the charge for hiring the goods, together with any other amount payable under the lease, would have exceeded the cash price of the goods.

(2) A consumer lease is a *regulated indefinite lease* if it satisfies the following:

(a) the term of the lease is for an indefinite period;

# EXPOSURE-DRAFT

## Schedule 5 Consumer leases

### Part 1 Main amendments

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- 1 (b) at the time of entering into the lease, the lessor or a  
2 prescribed person has the requisite belief that the lessee  
3 wants to use the goods (whether while those goods are hired  
4 under the lease or otherwise) for a fixed, minimum or  
5 approximate period (the *use period*);
- 6 (c) if the term of the lease had instead been for the use period,  
7 the charge for hiring the goods, together with any other  
8 amount payable under the lease, would have exceeded the  
9 cash price of the goods.
- 10 (3) If, at the time of entering into a consumer lease, the lessor or a  
11 prescribed person has the requisite belief that the lessee wants to  
12 use the goods (whether while those goods are hired under the lease  
13 or otherwise) for an indefinite period, then:
- 14 (a) if the term of the lease is for a fixed period—the lease is a  
15 *regulated fixed term lease*; and
- 16 (b) if the term of the lease is for an indefinite period—the lease  
17 is a *regulated indefinite lease*.
- 18 (4) If:
- 19 (a) a lessee enters into a regulated fixed term lease (the *relevant*  
20 *lease*) with the lessor; and
- 21 (b) at the time of entering into the relevant lease, the lessor or a  
22 prescribed person has the requisite belief that the lessee  
23 wants to use the goods (whether while those goods are hired  
24 under the relevant lease or otherwise) for a fixed, minimum  
25 or approximate period (the *use period*) that is longer than the  
26 term of the relevant lease; and
- 27 (c) during the use period, the lessee enters into one or more  
28 consumer leases (the *later lease*) with the lessor; and
- 29 (d) the later lease is:
- 30 (i) for the same goods, or for goods of the same kind, as the  
31 relevant lease; and
- 32 (ii) on the same or similar terms as the relevant lease;
- 33 then:
- 34 (e) if the term of the later lease is for a fixed period—the later  
35 lease is a *regulated fixed term lease*; and
- 36 (f) if the term of the later lease is for an indefinite period—the  
37 later lease is a *regulated indefinite lease*.
-

# EXPOSURE-DRAFT

Consumer leases **Schedule 5**  
Main amendments **Part 1**

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- 1 **3 Subsection 171(1) of the *National Credit Code***  
2 Repeal the subsection.  
3

# EXPOSURE-DRAFT

Schedule 5 Consumer leases

Part 2 Other amendments

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2 **Part 2—Other amendments**

3 ***National Consumer Credit Protection Act 2009***

4 **4 Subparagraph 199(3)(b)(iv)**

5 Omit “paragraph 170(1)(b)”, substitute “section 170”.

6 **5 Subsection 13(3) of the *National Credit Code***

7 Repeal the subsection, substitute:

8 (3) However, the declaration is ineffective if, when the declaration was  
9 made, the credit provider or a prescribed person had the requisite  
10 belief that the credit was in fact to be applied wholly or  
11 predominantly for a Code purpose.

12 **6 Before subsection 170(3)**

13 Insert:

14 *Amount payable under consumer lease*

15 **7 Subsection 170(3) of the *National Credit Code***

16 Omit “this section”, substitute “this Part”.

17 **8 Subsection 172(3) of the *National Credit Code***

18 Repeal the subsection, substitute:

19 (3) However, the declaration is ineffective if, when the declaration was  
20 made, the lessor or a prescribed person had the requisite belief that  
21 the goods were in fact hired wholly or predominantly for personal,  
22 domestic or household purposes.

23 **9 Subsection 204(1) of the *National Credit Code***

24 Insert:

25 *regulated fixed term lease*: see subsection 170A(1) and paragraphs  
26 170A(3)(a) and (4)(e).

27 **10 Subsection 204(1) of the *National Credit Code***

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# EXPOSURE-DRAFT

Schedule 6 Anti-avoidance

Part 1 Main amendments

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## Schedule 6—Anti-avoidance

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### Part 1—Main amendments

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#### *National Consumer Credit Protection Act 2009*

5

#### **1 After Division 1 of Part 7-1**

6

Insert:

7

#### **Division 1A—Avoidance schemes**

8

#### **323A Prohibition on avoiding this Act or the Transitional Act**

9

##### *Prohibition on avoidance*

10

(1) A person must not, either alone or with others, engage in any of the following conduct:

11

12

(a) enter into a scheme;

13

(b) begin to carry out a scheme;

14

(c) carry out a scheme;

15

if, having regard to the matters referred to in subsection (3), it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a provision of this Act or the Transitional Act in relation to:

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(d) the person; or

21

(e) any other person (a *connected person*) who has, or has had, any connection (whether of a business, family or other nature) with the person.

22

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24

Civil penalty: 2,000 penalty units.

25

##### *Meaning of scheme*

26

(2) A *scheme* is:

27

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or

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# EXPOSURE-DRAFT

Anti-avoidance **Schedule 6**  
Main amendments **Part 1**

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- 1 (b) any scheme, plan, proposal, action, course of action or course  
2 of conduct, whether unilateral or otherwise.

3 *Matters to have regard to*

- 4 (3) For the purposes of subsection (1), the matters are as follows:  
5 (a) the manner in which the scheme was entered into or carried  
6 out;  
7 (b) the form and substance of the scheme;  
8 (c) the time the scheme was entered into and the length of the  
9 period during which the scheme was carried out;  
10 (d) the result in relation to the operation of this Act or the  
11 Transitional Act that, but for this Part, would be achieved by  
12 the scheme;  
13 (e) any change in the financial position of the person, or a  
14 connected person, that has resulted, will result, or may  
15 reasonably be expected to result, from the scheme;  
16 (f) any other consequence for the person, or a connected person,  
17 of the scheme having been entered into or carried out;  
18 (g) the nature of any connection (whether of a business, family  
19 or other nature) between the person and a connected person;  
20 (h) any similarities between a credit contract, mortgage,  
21 guarantee or consumer lease and a contract that:  
22 (i) is between a consumer and the person or a connected  
23 person; and  
24 (ii) is connected with the scheme;  
25 (i) any representation connected with the scheme made by the  
26 person, or a connected person, to a consumer;  
27 (j) whether the person, or a connected person, before beginning  
28 to carry out the scheme, carried on a business of providing  
29 credit to which the Code applies or consumer leases;  
30 (k) whether the person, or a connected person, before entering a  
31 contract with a consumer connected with the scheme,  
32 considered the consumer's ability to comply with the  
33 consumer's financial obligations under the contract;  
34 (l) any change in the conduct of a person, or a connected person,  
35 following amendments to this Act or the Transitional Act;  
36 (m) any other matter prescribed by the regulations;  
37 (n) any other relevant matter.
-

# EXPOSURE-DRAFT

## Schedule 6 Anti-avoidance

### Part 1 Main amendments

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#### *Offence*

2

(4) A person commits an offence if:

3

(a) the person is subject to a requirement under subsection (1);

4

and

5

(b) the person engages in conduct; and

6

(c) the conduct contravenes the requirement.

7

Criminal penalty: 200 penalty units, or 2 years imprisonment, or both.

8

9

#### *Presumption of avoidance for certain schemes*

10

(5) For the purposes of subsection (1) (but not for the purposes of subsection (4)), if:

11

12

(a) the person engages in conduct of the kind referred to in paragraph (1)(a), (b) or (c) in relation to a scheme; and

13

14

(b) the scheme is of a kind prescribed by the regulations or determined by ASIC under subsection (7);

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16

then it is presumed that it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a provision of this Act or the Transitional Act.

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(6) Subsection (5) does not apply if the person proves that, having regard to the matters referred to in subsection (3), it would not be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was to avoid the application of a provision of this Act or the Transitional Act.

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(7) ASIC may, by legislative instrument, determine a scheme for the purposes of subsection (5).

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# EXPOSURE-DRAFT

Anti-avoidance **Schedule 6**  
Other amendments **Part 2**

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## 2 **Part 2—Other amendments**

### 3 *National Consumer Credit Protection Act 2009*

#### 4 **2 Subsection 5(1)**

5 Insert:

6 *scheme*: see subsection 323A(2).

#### 7 **3 Section 180 (heading)**

8 Omit “unlawful credit activities”, substitute “particular  
9 contraventions”

#### 10 **4 Paragraph 180(1)(a)**

11 Omit “a credit activity”, substitute “conduct”.

#### 12 **5 Paragraph 180(1)(b)**

13 Omit “activity”, substitute “conduct”.

#### 14 **6 At the end of paragraph 180(1)(b)**

15 Add:

16 (iv) section 323A (which is about avoiding the application  
17 of this Act or the Transitional Act);

#### 18 **7 Section 323 (after the first paragraph)**

19 Insert:

20 

Division 1A has rules that prohibit schemes that are designed to 21 avoid the application of this Act or the Transitional Act.
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#### 22 **8 Subsection 334(1)**

23 Repeal the subsection.

#### 24 **9 Paragraph 334(3)(c)**

25 Omit “(1) or”.

# EXPOSURE-DRAFT

Schedule 6 Anti-avoidance

Part 2 Other amendments

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- 1 **10 Subsection 191(1) of the *National Credit Code***  
2 Repeal the subsection.  
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# EXPOSURE-DRAFT

Miscellaneous amendments **Schedule 7**

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## **Schedule 7—Miscellaneous amendments**

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### *National Consumer Credit Protection Act 2009*

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#### **1 At the end of Division 4 of Part 1-2**

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Add:

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#### **16A Things being done predominantly for particular purposes**

8

A reference in this Act to a thing being done predominantly for particular purposes includes a reference to the thing being done wholly for those purposes.

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# EXPOSURE-DRAFT

Schedule 8 Application provisions

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## Schedule 8—Application provisions

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

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[To be drafted.]