





# **Financial Sector Reform Act 2022**

**No. 87, 2022**

***An Act to amend the *National Consumer Credit Protection Act 2009*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Financial Sector Reform Act 2022

No. 87, 2022

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## ***An Act to amend the *National Consumer Credit Protection Act 2009*, and for related purposes***

[Assented to 12 December 2022]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Financial Sector Reform Act 2022*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</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 after this Act receives the Royal Assent.	13 December 2022
6. Schedule 4, Parts 1 and 2	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	12 June 2023
7. Schedule 4, Part 3	The seventh day after this Act receives the Royal Assent.	19 December 2022
8. Schedule 4, Part 4	The day after this Act receives the Royal Assent.	13 December 2022
9. Schedule 4, Parts 5 and 6	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	12 June 2023
10. Schedule 4, Part 7	The day after this Act receives the Royal Assent.	13 December 2022

Note: This table relates only to the provisions of this Act as originally enacted.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

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

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 4—Consumer credit reforms**

### **Part 1—Small amount credit contracts**

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

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

Insert:

*repayment date*: see subsection 133CD(3).

*unsolicited communication to a consumer*: see subsection 133CF(2).

##### **2 Section 111 (paragraph beginning “Division 7”)**

Repeal the paragraph, substitute:

<p>Division 7 prohibits a licensee from providing credit assistance to a consumer in relation to short-term credit contracts, and imposes requirements on a licensee who makes representations about providing credit assistance in relation to small amount credit contracts. It also imposes requirements in relation to recording the preliminary assessment that a small amount credit contract is not unsuitable.</p>
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##### **3 Subsection 117(1A)**

Omit “obtain and consider account statements that cover”, substitute “obtain and consider information about each transaction on the account, and the balances of the account, during”.

##### **4 Subsection 118(3A)**

Repeal the subsection.

##### **5 Subsection 123(3A)**

Repeal the subsection.

##### **6 Section 124B**

Repeal the section, substitute:

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**124B Licensee who makes representations about credit assistance in relation to small amount credit contracts must display and give information**

*Requirement*

- (1) If a licensee represents that the licensee provides, or is able to provide, credit assistance to consumers in relation to small amount credit contracts, the licensee must:
- (a) display information; and
  - (b) give information to consumers;
- in accordance with any determination made by ASIC under subsection (2).

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine one or more of the following matters relating to licensees that make representations described in subsection (1):
- (a) the information that the licensees must display;
  - (b) how the licensees must display the information;
  - (c) when the licensees must display the information;
  - (d) the information that the licensees must give to consumers;
  - (e) how the licensees must give the information to consumers;
  - (f) when the licensees must give the information to consumers.
- (3) In making the determination under subsection (2), ASIC must take into account the risks associated with small amount credit contracts and the alternatives that may be available to consumers.

*Offence*

- (4) 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: 50 penalty units.

**124C Written documentation required in relation to the preliminary assessment for a small amount credit contract**

- (1) If, in a preliminary assessment made for the purposes of paragraph 115(1)(c) or (2)(a), the licensee assesses that a small amount credit contract is not unsuitable for a consumer, before providing credit assistance to the consumer by:
- (a) suggesting that the consumer apply, or assisting the consumer to apply, for the small amount credit contract; or
  - (b) suggesting that the consumer apply, or assisting the consumer to apply, for the increase to the credit limit of the small amount credit contract which is the subject of that preliminary assessment; or
  - (c) suggesting that the consumer remain in the small amount credit contract;

the licensee must document in writing and in accordance with any requirements determined by ASIC under subsection (2):

- (d) the preliminary assessment; and
- (e) the inquiries and verification made for the purposes of paragraph 115(1)(d) or (2)(b) in relation to that preliminary assessment.

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine the form in which the matters in paragraphs (1)(d) and (e) are to be documented in writing.
- (3) Before making a determination under subsection (2), ASIC must:
- (a) consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*); and
  - (b) have regard to any submissions made by the Information Commissioner because of that consultation.

**7 Subsection 130(1A)**

Omit “obtain and consider account statements that cover”, substitute “obtain and consider information about each transaction on the account, and the balances of the account, during”.

**8 Subsection 131(3A)**

Repeal the subsection.

**9 Subsection 133(3A)**

Repeal the subsection.

**10 Section 133C (paragraph beginning “Division 2”)**

Repeal the paragraph, substitute:

Division 2 prohibits a licensee from entering into, or increasing the credit limit of, short-term credit contracts. It also imposes requirements on a licensee who makes representations about entering into small amount credit contracts and prohibits a licensee from entering into, or offering to enter into, small amount credit contracts in certain circumstances. Division 2 imposes requirements in relation to recording the assessment that a small amount credit contract is not unsuitable and prohibits a licensee from making certain unsolicited communications in relation to small amount credit contracts. It also provides that the consumer is not liable to pay certain fees and charges under small amount credit contracts in certain circumstances.

**11 Section 133CB**

Repeal the section, substitute:

**133CB Licensee who makes representations in relation to small amount credit contracts must display and give information**

*Requirement*

- (1) If a licensee represents that the licensee enters into, or is able to enter into, small amount credit contracts with consumers under which the licensee would be the credit provider, the licensee must:
  - (a) display information; and
  - (b) give information to consumers;in accordance with any determination made by ASIC under subsection (2).

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine one or more of the following matters relating to licensees that make representations described in subsection (1):
- (a) the information that the licensees must display;
  - (b) how the licensees must display the information;
  - (c) when the licensees must display the information;
  - (d) the information that the licensees must give to consumers;
  - (e) how the licensees must give the information to consumers;
  - (f) when the licensees must give the information to consumers.
- (3) In making a determination under subsection (2), ASIC must take into account the risks associated with small amount credit contracts and the alternatives that may be available to consumers.

*Offence*

- (4) 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: 50 penalty units.

## **12 Subsection 133CC(1)**

Repeal the subsection (not including the heading), substitute:

- (1) A licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if the repayments that would be required under the contract would not meet the requirements prescribed by the regulations.

Civil penalty: 5,000 penalty units.

Note: For example, the regulations may provide that the amount of a repayment must not exceed a specified percentage of the consumer's income.

### **13 At the end of section 133CC**

Add:

*Loss of certain fees and charges*

- (3) If a licensee enters into a small amount credit contract in contravention of subsection (1), then:
- (a) the consumer is not liable (and is taken never to have been liable) to pay a fee or charge of a kind mentioned in paragraph 31A(1)(a), (b), (c) or (d) of the National Credit Code under that small amount credit contract (whether or not the liability is imposed consistently with the National Credit Code); and
  - (b) the consumer may recover as a debt due to the consumer any amounts paid by the consumer that, in accordance with paragraph (a) of this subsection, the consumer is not liable to pay (or is taken never to have been liable to pay).

### **14 At the end of Division 2 of Part 3-2C**

Add:

#### **133CD Licensee must not enter into a small amount credit contract if repayment amounts and intervals are not equal**

*Requirement*

- (1) A licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if any of the following applies:
- (a) repayments that would be required under the contract are not equal;
  - (b) the intervals between repayment dates would not be equal;
  - (c) the interval between the date on which credit would be first provided under the contract and the first repayment date would be longer than twice the interval between the first repayment date and the second repayment date.

Civil penalty: 5,000 penalty units.

- (2) For the purposes of paragraph (1)(a), repayments that would be required under a small amount credit contract are taken to be equal if:
- (a) each repayment is of the same amount; or
  - (b) both of the following apply:
    - (i) each repayment (other than the last repayment) is the same amount;
    - (ii) the last repayment is up to 5% less than each other repayment; or
  - (c) the repayments meet the conditions determined by ASIC under subsection (5).
- (3) A **repayment date** in relation to a small amount credit contract is the date on or by which a repayment is required to be made under the contract.
- (4) For the purposes of paragraph (1)(b), if a small amount credit contract provides that:
- (a) repayments that would be required under the contract are to be made on or by a fixed day of each week, fortnight or month; and
  - (b) if that fixed day falls on a day that is not a business day—the repayment would be required to be made on or by the immediately preceding or succeeding business day;
- the intervals between repayment dates are taken to be equal.
- (5) ASIC may, by legislative instrument, determine conditions for the purposes of paragraph (2)(c).
- (6) Nothing in this section is intended to limit the regulations which may be made for the purposes of section 133CC.

*Offence*

- (7) 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.

*Strict liability offence*

- (8) 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: 10 penalty units.

- (9) Subsection (8) is an offence of strict liability.

**133CE Written documentation required in relation to the assessment for a small amount credit contract**

- (1) If, in an assessment made for the purposes of paragraph 128(c), the licensee assesses that a small amount credit contract is not unsuitable for a consumer, before:
- (a) entering into the small amount credit contract with the consumer; or
  - (b) making an unconditional representation to the consumer that the licensee considers that the consumer is eligible to enter into the small amount credit contract with the licensee; or
  - (c) increasing the credit limit of the small amount credit contract which is the subject of that assessment; or
  - (d) making an unconditional representation to the consumer that the licensee considers that the credit limit of the small amount credit contract between the consumer and the licensee will be able to be increased;

the licensee must document in writing and in accordance with any requirements determined by ASIC under subsection (2):

- (e) the assessment; and
- (f) the inquiries and verification made for the purposes of paragraph 128(d) in relation to that assessment.

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine the form in which the matters in paragraphs (1)(e) and (f) are to be documented in writing.

- (3) Before making a determination under subsection (2), ASIC must:
- (a) consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*); and
  - (b) have regard to any submissions made by the Information Commissioner because of that consultation.

**133CF Licensee not to make certain unsolicited communications in relation to a small amount credit contract**

*Prohibition on certain unsolicited communications*

- (1) A licensee must not make, or arrange for the making of, an unsolicited communication to a consumer (whether orally, in writing or by electronic means) that contains:
- (a) an offer to the consumer to enter into a small amount credit contract; or
  - (b) an invitation to the consumer to apply for a small amount credit contract;
- if any of the following apply:
- (c) the consumer is, or has at any time been, a debtor under a small amount credit contract with the licensee;
  - (d) the consumer has at any time applied for a small amount credit contract with the licensee;
  - (e) the consumer:
    - (i) is, or has at any time been, a debtor under a small amount credit contract with another credit provider; or
    - (ii) has at any time applied for a small amount credit contract with another credit provider;and a reasonable person in the licensee's position would, if the person undertook such inquiries as are reasonable in the circumstances, be aware of the matter in subparagraph (i) or (ii) (whichever applies).

Civil penalty: 5,000 penalty units.

*Meaning of unsolicited communication to a consumer*

- (2) An **unsolicited communication to a consumer** is a communication to a consumer or a consumer's agent that is made by a person by

dealing directly with the consumer or the consumer's agent in any of the following circumstances:

- (a) no prior request has been made by the consumer to the licensee for that communication;
- (b) the consumer has made a prior request to the licensee for that communication and that request was solicited by or on behalf of the licensee;
- (c) circumstances of a kind prescribed by the regulations.

However, the regulations may prescribe that specified kinds of communications are not unsolicited communications to which this section applies.

*Offence*

- (3) 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.

*Loss of certain fees and charges*

- (4) If:
  - (a) a licensee makes an unsolicited communication to a consumer in contravention of subsection (1); and
  - (b) the licensee enters into a small amount credit contract with that consumer within 30 days after that unsolicited communication is made;then:
  - (c) the consumer is not liable (and is taken never to have been liable) to pay a fee or charge of a kind mentioned in paragraph 31A(1)(a), (b), (c) or (d) of the National Credit Code under that small amount credit contract (whether or not the liability is imposed consistently with the National Credit Code); and
  - (d) the consumer may recover as a debt due to the consumer any amounts paid by the consumer that, in accordance with

paragraph (c) of this subsection, the consumer is not liable to pay (or is taken never to have been liable to pay).

## **15 After section 31B of the *National Credit Code***

Insert:

### **31C Prohibition on unexpired monthly fees in relation to small amount credit contracts**

#### *Requirement*

- (1) A credit provider must not require or accept payment by the debtor under a small amount credit contract of an unexpired monthly fee.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

- (2) An ***unexpired monthly fee*** in relation to a small amount credit contract is each permitted monthly fee that is in respect of a month that commences after the date on which the contract is paid out.
- (3) If a credit provider contravenes subsection (1) in relation to a small amount credit contract:
- (a) the debtor is not liable (and is taken never to have been liable) to make the payment of the unexpired monthly fee to the credit provider; and
  - (b) the debtor may recover as a debt due to the debtor the amount of any payment of the unexpired monthly fee made by the debtor to the credit provider.

#### *Offence*

- (4) 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.

*Strict liability 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: 10 penalty units.

- (6) Subsection (5) is an offence of strict liability.

**16 Subsection 72(3) of the *National Credit Code*  
(paragraph (a) of the note)**

After “such as”, insert “family violence,”.

**17 Paragraph 82(2)(b) of the *National Credit Code***

Repeal the paragraph, substitute:

- (b) either:
- (i) for a credit contract that is not a small amount credit contract—the interest charges and all other fees and charges payable by the debtor to the credit provider up to the date of termination; or
  - (ii) for a small amount credit contract—all fees and charges payable by the debtor to the credit provider up to the date of termination, excluding any unexpired monthly fee;

**18 After paragraph 111(1)(i) of the *National Credit Code***

Insert:

- (ia) section 31C;

**19 Subsection 204(1) of the *National Credit Code***

Insert:

*unexpired monthly fee*: see subsection 31C(2).

## **Part 2—Consumer leases**

### *National Consumer Credit Protection Act 2009*

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

Insert:

*consumer lease for household goods* has the same meaning as in section 204 of the National Credit Code.

*household goods* has the same meaning as in section 204 of the National Credit Code.

#### **21 At the end of section 134**

Add:

Division 7 imposes requirements on a licensee who makes representations about providing credit assistance in relation to consumer leases for household goods. It also imposes requirements in relation to recording the preliminary assessment that a consumer lease is not unsuitable.
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#### **22 After subsection 140(1)**

Insert:

(1A) If:

- (a) the consumer lease is a consumer lease for household goods; and
- (b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited;

the licensee must, in verifying the consumer's financial situation for the purposes of paragraph 138(1)(d), obtain and consider information about each transaction on the account, and the balances of the account, during at least the immediately preceding period of 90 days.

(1B) Subsection (1A) does not limit paragraph (1)(c).

## 23 At the end of Part 3-3

Add:

### **Division 7—Special rules for consumer leases for household goods**

#### **147A Licensee who makes representations about credit assistance in relation to consumer leases for household goods must display and give information**

##### *Requirement*

- (1) If a licensee represents that the licensee provides, or is able to provide, credit assistance to consumers in relation to consumer leases for household goods, the licensee must:
  - (a) display information; and
  - (b) give information to consumers;in accordance with any determination made by ASIC under subsection (2).

Civil penalty: 5,000 penalty units.
- (2) ASIC may, by legislative instrument, determine one or more of the following matters relating to licensees that make representations described in subsection (1):
  - (a) the information that the licensees must display;
  - (b) how the licensees must display the information;
  - (c) when the licensees must display the information;
  - (d) the information that the licensees must give to consumers;
  - (e) how the licensees must give the information to consumers;
  - (f) when the licensees must give the information to consumers.
- (3) In making a determination under subsection (2), ASIC must take into account the risks associated with consumer leases for household goods and the alternatives that may be available to consumers.

##### *Offence*

- (4) 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: 50 penalty units.

**147B Written documentation required in relation to the preliminary assessment for a consumer lease for household goods**

- (1) If, in a preliminary assessment made for the purposes of paragraph 138(1)(c) or (2)(a), the licensee assesses that a consumer lease for household goods is not unsuitable for a consumer, before providing credit assistance to the consumer by:
  - (a) suggesting that the consumer apply for a particular consumer lease with a particular lessor; or
  - (b) assisting the consumer to apply for a particular consumer lease with a particular lessor; or
  - (c) suggesting that the consumer remain in a particular consumer lease with a particular lessor;the licensee must document in writing and in accordance with any requirements determined by ASIC under subsection (2):
  - (d) the preliminary assessment; and
  - (e) the inquiries and verification made for the purposes of paragraph 138(1)(d) or (2)(b) in relation to that preliminary assessment.

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine the form in which the matters in paragraphs (1)(d) and (e) are to be documented in writing.
- (3) Before making a determination under subsection (2), ASIC must:
  - (a) consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*); and
  - (b) have regard to any submissions made by the Information Commissioner because of that consultation.

**24 At the end of section 148**

Add:

Division 5 prohibits a licensee from entering into, or offering to enter into, a consumer lease for household goods in certain circumstances and imposes requirements on a licensee who makes representations about consumer leases for household goods. It also imposes requirements in relation to recording an assessment that a consumer lease is not unsuitable.

**25 After subsection 153(1)**

Insert:

(1A) If:

- (a) the consumer lease is a consumer lease for household goods;  
and
- (b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited;

the licensee must, in verifying the consumer's financial situation for the purposes of paragraph 151(d), obtain and consider information about each transaction on the account, and the balances of the account, during at least the immediately preceding period of 90 days.

(1B) Subsection (1A) does not limit paragraph (1)(c).

**26 At the end of Part 3-4**

Add:

## **Division 5—Special rules for consumer leases for household goods**

### **156A Licensee who makes representations about consumer leases for household goods must display and give information**

#### *Requirement*

- (1) If a licensee represents that the licensee enters into, or is able to enter into, consumer leases for household goods with consumers under which the licensee would be the lessor, the licensee must:
- (a) display information; and
  - (b) give information to consumers;
- in accordance with any determination made by ASIC under subsection (2).

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine one or more of the following matters relating to licensees that make representations described in subsection (1):
- (a) the information that the licensees must display;
  - (b) how the licensees must display the information;
  - (c) when the licensees must display the information;
  - (d) the information that the licensees must give to consumers;
  - (e) how the licensees must give the information to consumers;
  - (f) when the licensees must give the information to consumers.

#### *Offence*

- (3) 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: 50 penalty units.

**156B Licensee must not enter into a consumer lease for household goods if the payments do not meet the prescribed requirements**

*Requirement*

- (1) A licensee must not enter into, or offer to enter into, a consumer lease for household goods with a consumer who will be the lessee under the lease if the amount that would be required to be paid under the lease by the lessee would not meet the requirements prescribed by the regulations.

Civil penalty: 5,000 penalty units.

Note: For example, the regulations may provide that the amount of a payment must not exceed a specified percentage of the lessee's income.

*Offence*

- (2) 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: 50 penalty units.

*Loss of certain amounts*

- (3) If the licensee enters into a consumer lease for household goods in contravention of subsection (1), then:
- (a) the lessee is not liable (and is taken never to have been liable) to pay any amount under that consumer lease that exceeds the base price of the goods hired under that consumer lease (whether or not the liability is imposed consistently with the National Credit Code); and
  - (b) the lessee may recover as a debt due to the lessee any amounts paid by the lessee that, in accordance with paragraph (a) of this subsection, the lessee is not liable to pay (or is taken never to have been liable to pay).

**156C Written documentation required in relation to the assessment for a consumer lease for household goods**

- (1) If, in an assessment made for the purposes of paragraph 151(c), the licensee assesses that a consumer lease for household goods is not unsuitable for a consumer, before:
- (a) entering into the consumer lease with the consumer; or
  - (b) making an unconditional representation to the consumer that the licensee considers that the consumer is eligible to enter a consumer lease with the licensee;
- the licensee must document in writing and in accordance with any requirements determined by ASIC under subsection (2):
- (c) the assessment; and
  - (d) the inquiries and verification made for the purposes of paragraph 151(d) in relation to that assessment.

Civil penalty: 5,000 penalty units.

- (2) ASIC may, by legislative instrument, determine the form in which the matters in paragraphs (1)(c) and (d) are to be documented in writing.
- (3) Before making a determination under subsection (2), ASIC must:
- (a) consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*); and
  - (b) have regard to any submissions made by the Information Commissioner because of that consultation.

**27 Part 6 of the *National Credit Code* (at the end of the heading)**

Add “and lessors”.

**28 After subsection 111(2) of the *National Credit Code***

Insert:

- (2A) For the purposes of this Division, a **key requirement** in connection with a consumer lease is any one of the requirements of this Code contained in the following provisions:
- (a) subsection 174(1A);

- (b) subsection 175AA(1);
- (c) subsection 175AA(2);
- (d) section 179VA.

### **29 Subsections 112(1) and (2) of the *National Credit Code***

Repeal the subsections, substitute:

- (1) An application for an order under this Division may be made by:
  - (a) a party to a credit contract or consumer lease; or
  - (b) a guarantor in relation to a credit contract; or
  - (c) ASIC.
- (2) A debtor, lessee or guarantor may not make an application for an order under this Division in respect of a contravention in connection with a contract or consumer lease if the contravention is or has been subject to an application for an order made by the credit provider, lessor or ASIC anywhere in Australia under this Code.

### **30 Subsection 113(1) of the *National Credit Code***

Repeal the subsection (not including the heading), substitute:

- (1) The court must, on an application being made, by order declare whether or not the credit provider or lessor has contravened a key requirement in connection with the credit contract or contracts concerned, or consumer lease or leases concerned.

### **31 Subsection 113(2) of the *National Credit Code***

After “credit provider” (wherever occurring), insert “or lessor”.

### **32 Subsection 113(3) of the *National Credit Code***

Repeal the subsection, substitute:

*Prudential standing*

- (3) The court, in considering the imposition of a penalty, must have regard primarily to the prudential standing of:
  - (a) any credit provider or lessor concerned; or
  - (b) any subsidiary of the credit provider or lessor (within the meaning of the *Corporations Act 2001*);

if the credit provider, lessor or subsidiary takes deposits or is a borrowing corporation (within the meaning of that Act). However, the court is to have regard to that prudential standing only if the credit provider or lessor requests the court to do so.

**33 Paragraph 113(4)(a) of the *National Credit Code***

Before “the conduct”, insert “in the case of a credit contract—”.

**34 After paragraph 113(4)(a) of the *National Credit Code***

Insert:

- (aa) in the case of a consumer lease—the conduct of the lessor and lessee before and after the consumer lease was entered into;

**35 Paragraph 113(4)(c) of the *National Credit Code***

After “debtor”, insert “or lessee”.

**36 Paragraphs 113(4)(d), (e) and (f) of the *National Credit Code***

After “credit provider”, insert “or lessor”.

**37 Paragraph 113(4)(g) of the *National Credit Code***

Repeal the paragraph, substitute:

- (g) any action taken by the credit provider or lessor to remedy the contravention or compensate the debtor or lessee or to prevent further contraventions;

**38 After section 114 of the *National Credit Code***

Insert:

**114A Penalty if application made by lessee**

- (1) On application being made by a lessee for an order in relation to a consumer lease, the maximum penalty that may be imposed by the court for a contravention of a key requirement is an amount not exceeding the difference between:
  - (a) the total amount payable by the lessee under the consumer lease; and

- (b) the base price of the goods hired under the lease.
- (2) The court may, however, impose a greater penalty if the lessee satisfies the court that the lessee has suffered a loss. The amount of the penalty is to be not less than the amount of the loss.
- (3) For the purposes of paragraph (1)(a), the amount payable under a consumer lease to the extent it relates to amounts payable in the future is to be calculated on the assumptions in sections 180 and 182.

### **39 Section 115 of the *National Credit Code* (heading)**

After “debtor”, insert “, lessee”.

### **40 Subsection 115(1) of the *National Credit Code***

Repeal the subsection, substitute:

- (1) An amount of penalty ordered by the court to be paid may:
  - (a) if the order was made on an application by a debtor or a guarantor in relation to a credit contract—be set off by the debtor or guarantor against any amount that is due or becomes due to the credit provider under the contract; or
  - (b) if the order was made on an application by a lessee in relation to a consumer lease—be set off by the lessee against any amount that is due or becomes due to the lessor under the lease.

If there is no such amount, the amount of the penalty is a debt due by the credit provider or lessor to the debtor, lessee or guarantor

### **41 Subsection 115(3) of the *National Credit Code***

Repeal the subsection, substitute:

- (3) An order made on application by a debtor, a lessee or a guarantor may include such directions as the court considers appropriate relating to the payment of the amount owed by the debtor or lessee, or the credit provider or lessor, as a result of the order.

### **42 Sections 116 to 119 of the *National Credit Code***

Repeal the sections, substitute:

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### **116 Penalty if application made by credit provider, lessor or ASIC**

- (1) On application being made by a credit provider, a lessor or ASIC for an order, the maximum penalty that may be imposed by the court for a contravention of a key requirement relating to a contract affected by the application is an amount calculated so that the total penalty for all contraventions of the requirement in Australia (as disclosed by the credit provider or lessor) does not exceed 5,000 penalty units.
- (2) However, section 167B of the National Credit Act applies in the same way in relation to the contravention of a key requirement as it would apply in relation to a civil penalty provision under that Act.

### **117 Payment of penalty**

An amount of penalty ordered by the court to be paid on an application for an order made by a credit provider, a lessor or ASIC must be paid by the credit provider or lessor to ASIC on behalf of the Commonwealth.

### **118 Compensation for debtor, lessee or guarantor**

- (1) The court may, on application by a debtor, a lessee or a guarantor, order that the credit provider or lessor pay to the debtor, lessee or guarantor an amount by way of compensation for loss arising from the contravention of a key requirement.
- (2) The court may only order an amount to be paid by way of compensation if the debtor, lessee or guarantor satisfies the court that the debtor, lessee or guarantor has suffered a loss arising from the contravention. The amount of compensation is not to exceed the amount of the loss.
- (3) The court may not make an order under this section if the debtor, lessee or guarantor has previously obtained or been refused a penalty referred to in section 115 relating to the same contravention.
- (4) An amount payable under this section does not affect the amount of a penalty for the purposes of section 116.

**119 General provisions relating to applications by credit providers, lessors or ASIC**

- (1) An application for an order by a credit provider, a lessor or ASIC:
  - (a) may apply to any one or more credit contracts or consumer leases; and
  - (b) may apply to all or any class of credit contracts entered into by the credit provider or lessor during a specified period (for example, all credit contracts entered into during a specified period which are affected by a specified contravention).
- (2) The court may require notice of any such application to be published by notice, in a form approved by the court, in a newspaper circulating throughout one or more States or Territories, as the court determines.
- (3) Notice of an application by a credit provider or lessor must be given by the credit provider or lessor to ASIC.

**43 Section 120 of the *National Credit Code* (at the end of the heading)**

Add “and lessees”.

**44 At the end of section 120 of the *National Credit Code***

Add “or lessees”.

**45 Subsection 121(1) of the *National Credit Code***

Repeal the subsection, substitute:

- (1) The court may, before disposing of an application by a debtor, lessee or guarantor for an order under this Division, make such directions as it considers appropriate to protect the interests of the debtor, lessee or guarantor concerned.

**46 Paragraph 121(2)(a) of the *National Credit Code***

After “guarantor”, insert “, or the lessee’s obligations,”.

**47 Subsection 121(4) of the *National Credit Code***

After “credit provider”, insert “or lessor”.

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#### **48 Subsection 124(1) of the *National Credit Code***

After “credit provider” (wherever occurring), insert “or lessor”.

#### **49 After subsection 174(1) of the *National Credit Code***

Insert:

(1A) A consumer lease for household goods must also contain:

- (a) the base price of the goods hired under the consumer lease;  
and
- (b) the difference between:
  - (i) the base price of the goods hired under the lease; and
  - (ii) the total amount payable by the lessee in connection with the lease (including any applicable taxes and any add-on fees, but not including an amount described in subsection 175AA(4)); and
- (c) any other information required by the regulations.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

#### **50 After section 175A of the *National Credit Code***

Insert:

##### **175AA Cap on fees and charges for consumer leases**

*Overall cap for every consumer lease*

- (1) A lessor must not enter into, or vary, a consumer lease so that the total amount that would be payable by the lessee in connection with the lease (including any applicable taxes and any add-on fees) is more than the permitted cap for the lease.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

*Monthly cap for consumer lease for indefinite period*

- (2) A lessor must not enter into, or vary, a consumer lease for an indefinite period so that the total amount that would be payable by the lessee in connection with the lease (including any applicable

taxes and any add-on fees) in any month is more than  $\frac{1}{48}$  of the permitted cap for the lease.

Note: A penalty may be imposed for contravention of a key requirement in this subsection: see Part 6.

*What is an **add-on fee**?*

- (3) An **add-on fee** for a consumer lease is any fee or charge (whether an interest charge or not) for which the following conditions are met:
- (a) the fee or charge is one that:
    - (i) the lessee is liable to pay to the lessor; or
    - (ii) the lessee is liable to pay to another person under an agreement facilitated by or on behalf of the lessor or the other person;
  - (b) the fee or charge relates to a service or product that either:
    - (i) facilitates or complements the lessee's use of the goods hired under the consumer lease; or
    - (ii) is marketed or offered by the lessor or another person as being complementary to the lessee's use of the goods hired under the consumer lease;
  - (c) either:
    - (i) failure by the lessee to pay the fee or charge, or to acquire a service or product to which the fee or charge relates, affects the lessee's rights or obligations under the consumer lease; or
    - (ii) the lessor or another person has represented to the lessee that failure by the lessee to pay the fee or charge, or to acquire a service or product to which the fee or charge relates, will or may affect the lessee's rights or obligations under the consumer lease.

*Amounts that do not count against caps*

- (4) For the purposes of subsections (1) and (2), the following amounts are not included in the total amount payable by the lessee in connection with the consumer lease:
- (a) a fee or charge that is payable in the event of a default in payment under the consumer lease;

- (b) enforcement expenses of an amount not exceeding the amount which could be recovered by the lessor under subsection 179R(1).

*What is the **permitted cap**?*

- (5) The **permitted cap** for a consumer lease is the sum of the following amounts:
  - (a) the base price of the goods hired under the consumer lease;
  - (b) the amount worked out by multiplying the base price of the goods hired under the consumer lease by:
    - (i) in the case of a consumer lease for a fixed term—0.04 multiplied by the number of whole months of the consumer lease, up to a maximum of 48 months; or
    - (ii) in the case of a consumer lease for an indefinite period—1.92;
  - (c) the permitted delivery fee (if any) for the consumer lease;
  - (d) the permitted installation fees (if any) for the consumer lease;
  - (e) the permitted add-on fees (if any) for the consumer lease.

*What is the **base price of goods**?*

- (6) The **base price** of the goods hired under a consumer lease is the amount worked out in accordance with the regulations.

*What is a **permitted delivery fee**?*

- (7) A fee or charge is a **permitted delivery fee** for a consumer lease if it:
  - (a) is for the delivery to the lessee, at the lessee's request, of the goods hired under the consumer lease; and
  - (b) is limited to the reasonable cost of delivery of the goods to the lessee.

*What are **permitted installation fees**?*

- (8) ASIC may, by legislative instrument, declare that specified fees which relate to installation of particular kinds of goods hired under a consumer lease are **permitted installation fees** for the lease.

*What are permitted add-on fees?*

- (9) ASIC may, by legislative instrument, declare that specified add-on fees for a consumer lease are *permitted add-on fees* for the lease.

**175AB Imposing fees or charges above the permitted cap—offence**

A person commits an offence if:

- (a) the person is subject to a requirement under subsection 175AA(1) or (2); and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

**175AC Lessee may recover fees and charges exceeding base price if cap is breached**

If a lessor contravenes subsection 175AA(1) or (2) in relation to a consumer lease:

- (a) the lessee is not liable (and is taken never to have been liable) to pay any amount under the consumer lease that exceeds the base price of the goods hired under the consumer lease (whether or not the liability is imposed consistently with this Code); and
- (b) the lessee may recover as a debt due to the lessee the amount of any payment made by the lessee that, in accordance with paragraph (a), the lessee is not liable to pay.

**51 Subsection 177B(3) of the *National Credit Code* (paragraph (a) of the note)**

After “such as”, insert “family violence,”.

**52 At the end of Subdivision C of Division 8 of Part 11 of the *National Credit Code***

Add:

**179GA Limit on amount that may be recovered if there is default under a consumer lease**

- (1) If there is a default in payment under a consumer lease and the regulations prescribe a way of working out a limit on the amount that may be recovered for the default, the lessor must not recover more than the limit for the default.

Civil penalty: 5,000 penalty units.

- (2) Any provision of the lease that confers a greater right is void to the extent that it does so. If an amount is in fact recovered in excess of this limitation, it may be recovered back.
- (3) This section does not apply to enforcement expenses.

Note: Section 179R deals with enforcement expenses.

**53 At the end of Division 10 of Part 11 of the *National Credit Code***

Add:

**179VA Canvassing of consumer leases for household goods**

*Requirement*

- (1) A lessor must not make, or arrange for the making of, an unsolicited communication to consumer if:
- (a) the communication is for the purpose of inducing the consumer to apply for, or obtain, a consumer lease for household goods; and
  - (b) when the consumer receives the communication, the consumer is in the physical presence of the lessor or the person making the communication; and
  - (c) when the consumer receives the communication, the consumer is in:
    - (i) a public place; or
    - (ii) a place that is not a business premises of a business of the lessor; or
    - (iii) a stall that is being used by the lessor or by the person making the communication; or

- (iv) an aircraft, vehicle or vessel that is being used by the lessor or by the person making the communication.

*Offence*

- (2) 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.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Criminal penalty: 10 penalty units.

*Loss of certain amounts*

- (4) If:
- (a) a lessor makes, or arranges for the making of, an unsolicited communication to a consumer in contravention of subsection (1); and
  - (b) the lessor enters into a consumer lease for household goods with that consumer within 30 days after that unsolicited communication is made;

then:

- (c) the consumer is not liable (and is taken never to have been liable) to pay any amount under that consumer lease that exceeds the base price of the goods hired under that consumer lease (whether or not the liability is imposed consistently with the National Credit Code); and
- (d) the consumer may recover as a debt due to the consumer any amounts paid by the consumer that, in accordance with paragraph (c) of this subsection, the consumer is not liable to pay (or is taken never to have been liable to pay).

**179VB Using postal, telegraphic, telephonic or other like services to enter into a consumer lease for an indefinite period**

*Requirement*

- (1) A lessor must not use postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution) to enter into a consumer lease for an indefinite period if the lessor is not a constitutional corporation.

Civil penalty: 5,000 penalty units.

*Offence*

- (2) 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.

**179VC Entering into a consumer lease for an indefinite period in the course of constitutional trade and commerce**

*Requirement*

- (1) A lessor must not, in the course of constitutional trade and commerce, enter into a consumer lease for an indefinite period unless the lessor is a constitutional corporation.

Civil penalty: 5,000 penalty units.

*Offence*

- (2) 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.

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

Insert:

*add-on fee*: see subsection 175AA(3).

*base price*: see subsection 175AA(6).

*consumer lease for household goods* means a consumer lease to which Part 11 applies where any of the goods hired under the lease are household goods, but does not include a consumer lease where the goods hired under the lease include:

- (a) motor vehicles; or
- (b) vehicles that:
  - (i) are not for use on a road; and
  - (ii) are of a kind intended primarily for use by persons with restricted mobility; or
- (c) goods that are ordinarily used for accommodation (either permanently or temporarily).

*credit assistance* has the same meaning as in section 8 of the National Credit Act.

*household goods* means goods of a kind ordinarily acquired for domestic or household purposes.

#### **55 Subsection 204(1) of the *National Credit Code* (definition of market value)**

After “credit contract”, insert “or consumer lease”.

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

Insert:

*permitted add-on fee*: see subsection 175AA(9).

*permitted cap*: see subsection 175AA(5).

*permitted delivery fee*: see subsection 175AA(7).

*permitted installation fees*: see subsection 175AA(8).

## **Part 3—Proscribed referrals**

### *National Consumer Credit Protection Act 2009*

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

Insert:

*proscribed referral*: see subsection 160G(2).

#### **58 At the end of section 160A**

Add:

Division 6 prohibits licensees that carry on a business of providing credit under small amount credit contracts from making certain kinds of referrals (called proscribed referrals) in certain circumstances.

#### **59 At the end of Part 3-6A**

Add:

## **Division 6—Proscribed referrals**

### **160G Prohibition on proscribed referrals**

#### *Prohibition*

- (1) A licensee that carries on a business of providing credit under small amount credit contracts must not make a proscribed referral if:
  - (a) the licensee is a constitutional corporation; or
  - (b) the referral is made in the course of carrying on that business;  
or
  - (c) the referral is made in the course of carrying on the business of banking, other than State banking (within the meaning of paragraph 51(xiii) of the Constitution) not extending beyond the limits of the State concerned; or

- (d) the referral is made using a service to which paragraph 51(v) of the Constitution applies.

Civil penalty: 5,000 penalty units.

*What is a proscribed referral?*

- (2) A referral of one or more persons (the *referred persons*) to another person or persons (the *recipients* of the referral) is a **proscribed referral** if, at the time when the referral is made, it is reasonable to believe that one or more of the referred persons would or might, as a direct or indirect result of the referral (including as a result of conduct that any of the recipients of the referral engages in as a result of the referral), enter into a contract or arrangement that satisfies the following conditions:
- (a) under the contract or arrangement, credit is to be, or may be, provided to the referred person;
  - (b) the provision of that credit under the contract or arrangement would not be a provision of credit to which the National Credit Code applies.

Note: For the kinds of provision of credit to which the National Credit Code does or does not apply, see sections 5 and 6 of that Code.

- (3) For the purposes of subsection (2), a recipient of a proscribed referral need not be a person who would or might be a provider of credit under a contract or arrangement of the kind mentioned in that subsection.
- (4) For the purposes of subsection (2), a referral of one or more persons to another person or persons includes (but is not limited to) the provision of information about the first-mentioned person or persons to the second-mentioned person or persons, whether or not the first-mentioned person or persons are aware of the provision of that information.
- (5) To avoid doubt, it does not matter for the purposes of subsection (2) whether any person actually has, or had, the belief mentioned in that subsection.

## **Part 4—Avoidance**

### *National Consumer Credit Protection Act 2009*

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

Insert:

*avoidance purpose*: see subsection 323A(2).

*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.

*constitutional trade and commerce* means trade and commerce:

- (a) between Australia and places outside Australia; or
- (b) between the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories; or
- (e) within a Territory.

*scheme* means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise; or
- (c) any combination of 2 or more things that are schemes because of paragraph (a) or (b).

#### **61 Section 323**

After:

This Part deals with miscellaneous matters.

insert:

Division 1A has rules that prohibit schemes that are designed to avoid the application of this Act in relation to small amount credit

contracts and consumer leases or to avoid the application of product intervention orders.

## 62 After Division 1 of Part 7-1

Insert:

### Division 1A—Avoidance schemes

#### 323A Schemes for avoidance purposes

##### *General prohibition*

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

- (a) enter into a scheme;
- (b) begin to carry out a scheme;
- (c) carry out a scheme;

if, having regard to any matters as required under subsection 323B(1) or (3), it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was an avoidance purpose.

Civil penalty: 5,000 penalty units.

##### *What is an avoidance purpose?*

- (2) Each of the following is an **avoidance purpose**:
- (a) to prevent a contract from being a small amount credit contract or a consumer lease;
  - (b) to cause a contract to cease to be a small amount credit contract or a consumer lease;
  - (c) to avoid the application of a provision of this Act to a small amount credit contract or a consumer lease;
  - (d) to avoid the application of a provision of this Act to a contract that has ceased to be a small amount credit contract or a consumer lease;
  - (e) to avoid the application of a product intervention order made under Part 6-7A.

*Constitutional corporations*

- (3) A constitutional corporation must not, either alone or with other persons, engage in any of the following conduct:
- (a) enter into a scheme;
  - (b) begin to carry out a scheme;
  - (c) carry out a scheme;
- if, having regard to any matters as required under subsection 323B(1) or (3), it would be reasonable to conclude that the purpose, or one of the purposes, of the constitutional corporation engaging in that conduct was an avoidance purpose.

Civil penalty: 5,000 penalty units.

*Constitutional trade and commerce*

- (4) A person must not in the course of constitutional trade and commerce, either alone or with others, engage in any of the following conduct:
- (a) enter into a scheme;
  - (b) begin to carry out a scheme;
  - (c) carry out a scheme;
- if, having regard to any matters as required under subsection 323B(1) or (3), it would be reasonable to conclude that the purpose, or one of the purposes, of the person engaging in that conduct was an avoidance purpose.

Civil penalty: 5,000 penalty units.

*Use of communications service*

- (5) A person must not use postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution), either alone or with other persons, in order to engage in any of the following conduct:
- (a) enter into a scheme;
  - (b) begin to carry out a scheme;
  - (c) carry out a scheme;
- if, having regard to any matters as required under subsection 323B(1) or (3), it would be reasonable to conclude that

the purpose, or one of the purposes, of the person engaging in that conduct was an avoidance purpose.

Civil penalty: 5,000 penalty units.

*Prohibitions independent of each other*

- (6) To avoid doubt, subsections (1), (3), (4) and (5) are independent from and do not limit each other.

Note: However, a person can be ordered to pay a pecuniary penalty under only one of those subsections in relation to the same conduct: see section 175.

*Offence*

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (3), (4) or (5); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

### **323B Whether it is reasonable to draw conclusion as to purpose**

*Avoidance purposes relating to contracts*

- (1) Regard must be had to the following matters in determining, for the purposes of section 323A, whether it would be reasonable to conclude that a purpose of a person (the **first person**) entering into or carrying out (to any extent) a scheme was an avoidance purpose relating to a contract:
- (a) whether the scheme or the contract was, is or would be:
    - (i) a means of providing a consumer with credit in a manner more complex, or more costly to the consumer, than a small amount credit contract would have been; or
    - (ii) a means of providing a consumer with financial accommodation equivalent to providing the consumer with credit in a manner more complex, or more costly to the consumer, than a small amount credit contract would have been; or

- (iii) a means of enabling a consumer to have the use of goods in a manner more complex, or more costly to the consumer, than a consumer lease would have been;
  - (b) whether representations were made (by the first person or anyone else, and whether in an advertisement or otherwise) about the scheme or the contract, or about schemes or contracts of that kind, that:
    - (i) were similar to representations made (by the first person or anyone else, and whether in an advertisement or otherwise) about small amount credit contracts or consumer leases; or
    - (ii) were made to persons in a group similar to a group of persons to whom representations about small amount credit contracts or consumer leases were made (by the first person or anyone else, and whether in an advertisement or otherwise);
  - (c) any matters prescribed by the regulations.
- (2) Subsection (1) does not limit the matters to which regard may be had in making a determination described in that subsection.

*Avoidance purposes relating to product intervention orders*

- (3) In determining, for the purposes of section 323A, whether it would be reasonable to conclude that a purpose of a person entering into or carrying out (to any extent) a scheme was a purpose referred to in paragraph 323A(2)(e), regard must be had to any matters prescribed by the regulations.
- (4) Subsection (3) does not limit the matters to which regard may be had in making a determination described in that subsection.

**323C Presumption of avoidance for certain schemes in civil cases**

- (1) For the purposes of subsection 323A(1), (3), (4) or (5), it is reasonable to conclude that a person entered into or carried out a scheme for an avoidance purpose if:
- (a) the scheme is of a kind prescribed by the regulations; or
  - (b) the scheme is of a kind determined by ASIC under subsection (3).

- (2) A conclusion that this section provides for has effect except so far as the contrary is proved by the person, having regard to any matters as required under subsection 323B(1) or (3).
- (3) ASIC may, by legislative instrument, determine a scheme, or a class of schemes, for the purposes of this section.
- (4) This section does not have effect for the purposes of subsection 323A(7).

**323D Exemption by ASIC**

- (1) ASIC may, by legislative instrument, exempt a scheme, or class of schemes, from all or specified provisions of section 323A.
- (2) An exemption may apply subject to any specific conditions imposed by ASIC.

## **Part 5—Consumer leases for indefinite terms**

### *National Consumer Credit Protection Act 2009*

#### **63 Subsection 171(1) of the *National Credit Code* (heading)**

Omit “*or indefinite*”.

#### **64 Subsection 171(1) of the *National Credit Code***

Omit all the words after “or less”.

#### **65 After subsection 171(1) of the *National Credit Code***

Insert:

*Leases for an indefinite period*

- (1A) This Part does not apply to a consumer lease for an indefinite period unless:
- (a) the lessor is a constitutional corporation at the time that the lease is entered into; or
  - (b) the lease was entered into in the course of constitutional trade and commerce; or
  - (c) the lease was entered into using postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution).

#### **66 Subsection 175H(1) of the *National Credit Code***

Omit “not later than 90 days before the end of the fixed term of a consumer lease”, substitute “by the time specified in subsection (1A)”.

#### **67 After subsection 175H(1) of the *National Credit Code***

Insert:

- (1A) The time by which the statement required by subsection (1) must be given is:
- (a) in the case of a consumer lease for an indefinite period—before the end of the period of 7 business days after:

- (i) the lessor receives a request for the statement from the lessee; or
  - (ii) if the lessor does not receive such a request before the consumer lease ends—the day that the consumer lease ends; or
- (b) in the case of a consumer lease for a fixed term—not later than 90 days before the end of the fixed term of the consumer lease.

**68 Before subsection 179(1) of the *National Credit Code***

Insert:

*Early termination of consumer leases for fixed terms*

**69 Subsection 179(1) of the *National Credit Code***

After “consumer lease”, insert “for a fixed term”.

**70 After subsection 179(1) of the *National Credit Code***

Insert:

*Consumer leases for indefinite periods*

- (1A) A lessee under a consumer lease for an indefinite period may, at any time, end the lease by returning the goods hired under the lease to the lessor:
- (a) during ordinary business hours; or
  - (b) at such other time as may be agreed with the lessor or fixed by the court on the application of the lessee.

**71 Before subsection 179(2) of the *National Credit Code***

Insert:

*Amount payable by lessee on termination*

**72 Subsection 179(2) of the *National Credit Code***

Omit “before the end of its fixed term”.

**73 Subsection 204(1) of the *National Credit Code***

Insert:

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***constitutional corporation*** has the same meaning as in section 5 of the National Credit Act.

***constitutional trade and commerce*** has the same meaning as in section 5 of the National Credit Act.

## Part 6—Consequential and other amendments

### *National Consumer Credit Protection Act 2009*

#### 74 Subsection 5(1)

Insert:

*constrained document*: see subsection 160CA(1).

*constrained information*: see subsection 160CA(1).

*hardship notice* has the same meaning as in section 204 of the National Credit Code.

#### 75 Section 160A (after the paragraph beginning “Division 2”)

Insert:

Division 2A restricts the use and disclosure of certain documents and information.
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#### 76 After Division 2 of Part 3-6A

Insert:

### **Division 2A—Use or disclosure of certain documents and information**

#### **160CA Application of this Division**

- (1) This Division applies to a person who:
  - (a) is or was a licensee who has received or obtained a document (a *constrained document*) prescribed by the regulations, or information (*constrained information*) prescribed by the regulations, in connection with:
    - (i) a proposed small amount credit contract; or
    - (ii) a small amount credit contract; or
    - (iii) a proposed consumer lease for household goods; or
    - (iv) a consumer lease for household goods; or

- (b) is or was a licensee who has obtained information (also ***constrained information***) as required under subsection 117(1A), 130(1A), 140(1A) or 153(1A) for the purposes of verifying a consumer's financial situation; or
  - (c) has received or obtained a constrained document, or constrained information, from a person described in paragraph (a) or (b) of this subsection.
- (2) However, this Division does not apply to a person in relation to:
- (a) a constrained document; or
  - (b) information contained in a constrained document; or
  - (c) constrained information;
- that is about the financial affairs of the person (either alone or with others).

### **160CB Prohibition on use or disclosure of certain documents and information**

#### *Requirement*

- (1) A person must not use or disclose:
- (a) a constrained document; or
  - (b) information contained in a constrained document; or
  - (c) constrained information.

Civil penalty: 5,000 penalty units.

#### *Offence*

- (2) A person commits an offence if:
- (a) the person uses or discloses a document or information; and
  - (b) any of the following apply:
    - (i) the document is a constrained document;
    - (ii) the information is contained in a constrained document;
    - (iii) the information is constrained information.

Criminal penalty: 100 penalty units.

*Strict liability offence*

- (3) A person commits an offence if the person uses or discloses:
- (a) a constrained document; or
  - (b) information contained in a constrained document; or
  - (c) constrained information.

Criminal penalty: 10 penalty units.

- (4) Subsection (3) is an offence of strict liability.

*Defence*

- (5) For the purposes of subsection (1), (2) or (3) it is a defence if the use or disclosure by the person is:
- (a) a disclosure to another person (the *recipient*) of:
    - (i) a constrained document; or
    - (ii) information contained in a constrained document; or
    - (iii) constrained information;that is about the financial affairs of the recipient (either alone or with others); or
  - (b) necessary for the person to comply with the person's obligations under this Act; or
  - (c) required or authorised by or under a law of the Commonwealth, or of a State or Territory, or a court or tribunal order; or
  - (d) for the purposes of considering a hardship notice; or
  - (e) for the purposes of assisting ASIC to perform its functions or exercise its powers; or
  - (f) for the purposes of allowing the operator of the AFCA scheme to perform its functions or exercise its powers.

Note: For the purposes of subsection (2) or (3), a defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

**77 Section 335A**

Repeal the section.

## **Part 7—Application provisions**

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

#### **78 In the appropriate position**

Insert:

### **Schedule 19—Application provisions for Schedule 4 to the Financial Sector Reform Act 2022**

#### **1 Definitions**

In this Schedule:

*amending Schedule* means Schedule 4 to the *Financial Sector Reform Act 2022*.

#### **2 Amendments of the National Credit Act—repeal of rebuttable presumptions**

The repeals of the following provisions of the National Credit Act, as made by Part 1 of the amending Schedule, apply for the purposes of proceedings relating to a contravention of a provision of the National Credit Act if the proceedings commence on or after the commencement of that Part:

- (a) subsection 118(3A);
- (b) subsection 123(3A);
- (c) subsection 131(3A);
- (d) subsection 133(3A).

#### **3 Amendments of the National Credit Act—representations and communications**

- (1) The amendment, addition or insertion of the following sections of the National Credit Act, as made by Parts 1 and 2 of the amending Schedule, applies in relation to representations made on or after the day those Parts commence:

- (a) section 124B;

- (b) section 133CB;
  - (c) section 147A;
  - (d) section 156A.
- (2) Section 133CF of the National Credit Act, as added by Part 1 of the amending Schedule, applies in relation to:
- (a) the making of an unsolicited communication on or after the day that Part commences; and
  - (b) the arranging for the making of an unsolicited communication if the arrangement is entered into on or after that day.

#### **4 Amendments of the National Credit Act—assessments**

The amendment, addition or insertion of the following sections of the National Credit Act, as made by Parts 1 and 2 of the amending Schedule, applies in relation to preliminary assessments and assessments made on or after the day those Parts commence:

- (a) section 124C;
- (b) section 133CE;
- (c) section 147B;
- (d) section 156C.

#### **5 Amendments of the National Credit Act—inquiries and verifications**

The amendments of the following sections of the National Credit Act, as made by Parts 1 and 2 of the amending Schedule, apply in relation to verifications made on or after the day those Parts commence:

- (a) section 117;
- (b) section 130;
- (c) section 140;
- (d) section 153.

## **6 Amendments of the National Credit Act—payments required under small amount credit contracts or consumer leases**

The amendment, addition or insertion of the following sections of the National Credit Act, as made by Parts 1 and 2 of the amending Schedule, applies in relation to small amount credit contracts or consumer leases entered into or offers made to enter into small amount credit contracts or consumer leases, on or after the day those Parts commence:

- (a) section 133CC;
- (b) section 133CD;
- (c) section 156B.

## **7 Application of section 160G of the National Credit Act—proscribed referrals**

Section 160G of the National Credit Act, as added by Part 3 of the amending Schedule, applies to a referral by a licensee if:

- (a) the referral is made on or after the commencement of that Part; and
- (b) the licensee was not, immediately before that commencement, under a contractual obligation to make the referral.

## **8 Application of Division 1A of Part 7-1 of the National Credit Act—avoidance schemes**

- (1) Division 1A of Part 7-1 of the National Credit Act, as inserted by Part 4 of the amending Schedule, applies to conduct that relates to schemes connected with a contract if:
  - (a) the contract was:
    - (i) entered into on or after the day that Part 4 of the amending Schedule commences; or
    - (ii) amended, on or after that day, to extend the term of the contract; and
  - (b) the conduct occurs on or after the day that Part 4 of the amending Schedule commences.
- (2) Division 1A of Part 7-1 of the National Credit Act, as inserted by Part 4 of the amending Schedule, also applies to conduct that relates to

schemes connected with a product intervention order made under Part 6-7A of the National Credit Act if the conduct occurs on or after the day that Part 4 of the amending Schedule commences, whether the product intervention order came into force before, or comes into force on or after, that day.

**9 Application of section 160CB of the National Credit Act—  
use or disclosure of documents and information**

Section 160CB of the National Credit Act, as inserted by Part 6 of the amending Schedule, applies to a use or disclosure of:

- (a) a constrained document; or
- (b) information contained in a constrained document; or
- (c) constrained information;

if the use or disclosure occurs on or after the day that Part commences.

**10 Application of section 31C of the new Credit Code—  
unexpired monthly fees**

Section 31C of the new Credit Code, as inserted by Part 1 of the amending Schedule, applies to small amount credit contracts entered into on or after the day that Part commences.

**11 Application of subsection 82(2) of the new Credit Code—  
paying out credit contracts**

Subsection 82(2) of the new Credit Code, as amended by Part 1 of the amending Schedule, applies in relation to small amount credit contracts entered into before, on or after the day that Part commences.

**12 Amendments of the new Credit Code—consumer leases**

- (1) The amendment, addition or insertion of the following sections of the new Credit Code, as made by Parts 2 and 5 of the amending Schedule, applies in relation to consumer leases entered into on or after the day those Parts commence:
  - (a) section 111;
  - (b) section 112;
  - (c) section 113;
  - (d) section 114A;
  - (e) section 115;

- (f) section 116;
  - (g) section 117;
  - (h) section 118;
  - (i) section 119;
  - (j) section 120;
  - (k) section 121;
  - (l) section 124;
  - (m) section 171;
  - (n) section 174;
  - (o) section 175AA;
  - (p) section 175AC;
  - (q) section 175H;
  - (r) section 179;
  - (s) section 179GA;
  - (t) section 179VB;
  - (u) section 179VC.
- (2) The insertion of sections 175AA and 175AC of the new Credit Code, as made by Part 2 of the amending Schedule, also applies in relation to the variation on or after the day that Part commences of consumer leases (whether entered into before, on or after that day).

### **13 Application of section 179VA of the new Credit Code— canvassing of consumer leases for household goods**

Section 179VA of the new Credit Code, as added by Part 2 of the amending Schedule, applies in relation to:

- (a) the making of an unsolicited communication on or after the day that Part commences; and
- (b) the arranging for the making of an unsolicited communication if the arrangement is entered into on or after that day.

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*[Minister's second reading speech made in—  
House of Representatives on 8 September 2022  
Senate on 25 October 2022]*

*(87/22)*

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