



National Consumer Credit Protection Amendment Regulations 2011 (No. 2)¹

Select Legislative Instrument 2011 No. 40

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Consumer Credit Protection Act 2009*.

Dated 23 March 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

WAYNE SWAN
Treasurer

1 Name of Regulations

These Regulations are the *National Consumer Credit Protection Amendment Regulations 2011 (No. 2)*.

2 Commencement

These Regulations commence on 1 July 2011.

3 Amendment of *National Consumer Credit Protection Regulations 2010*

Schedule 1 amends the *National Consumer Credit Protection Regulations 2010*.

Schedule 1 Amendment

(regulation 3)

[1] After Part 7-2

insert

Part 7-2A Prohibited credit fees and charges

79A Termination fees for certain credit contracts

- (1) For section 31 of the Code, a credit fee or charge is prohibited if:
 - (a) it is provided for in a credit contract entered into on or after 1 July 2011; and
 - (b) it is to be paid on or in relation to the termination of the credit contract, whether the liability to make the payment is incurred at that time or at an earlier time; and
 - (c) any of the amount of credit provided under the credit contract is secured over residential property.

- (2) However, subregulation (1) does not apply to:
- (a) a credit fee or charge that is:
 - (i) a break fee; or
 - (ii) a discharge fee; or
 - (b) a credit fee or charge that is incurred before the termination of a credit contract that is terminated before any credit has been provided under the credit contract.
- (3) In this regulation:
- break fee** means a credit fee or charge that relates:
- (a) only to the early repayment of an amount provided under a credit contract for a fixed rate loan; and
 - (b) only to the portion of the loan that is fixed; and
 - (c) to the difference between the fixed interest rate and the prevailing rate at which credit is provided by the credit provider under that class of credit contract.
- discharge fee** means a credit fee or charge that only reimburses the credit provider for the reasonable administrative cost of terminating the credit contract.
- fixed rate loan** means a credit contract under which the annual percentage rate is fixed, for an agreed term, for the whole or a part of the amount due under the credit contract.
- (4) For the definition of discharge fee, a cost is a **reasonable administrative cost** only if it does not exceed a reasonable estimate of the average reasonable administrative cost to the credit provider of terminating that class of credit contract.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.