

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Superannuation, Financial Services and Financial Technology, and Parliamentary Secretary to the Treasurer

Corporations Act 2001
National Consumer Credit Protection Act 2009

Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020
National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020

Section 1364 of the *Corporations Act 2001* (the Corporations Act) and section 329 of the *National Consumer Credit Protection Act 2009* (the Credit Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* (the AFSL Exemption Regulations) and the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* (the ACL Exemption Regulations) provide for conditional exemptions from the Australian Financial Services Licence (AFSL) and Australian Credit Licence (ACL) requirements to allow the testing of financial services and credit activities relating to certain financial and credit products. Eligible persons can use the AFSL and ACL exemptions concurrently.

The purpose of the AFSL Exemption Regulations and the ACL Exemption Regulations (collectively referred to as the Regulations) is to create a 'regulatory sandbox' to encourage and support the design and delivery of new financial and credit services that will benefit consumers and businesses. The regulatory sandbox will help overcome regulatory burdens and costs that may hinder businesses in developing innovative offerings.

The regulatory sandbox will enable FinTech and other firms to bring innovative services and products to market faster and at lower cost, while still providing for important consumer outcomes such as dispute resolution and consumer compensation arrangements.

AFSL Exemption Regulations

The AFSL Exemption Regulations apply to certain eligible persons, and provides an exemption from the AFSL requirements for the purposes of testing financial services relating to certain financial products with both retail and wholesale clients. To rely on the exemption, an eligible person must provide a notice to the Australian Securities and Investments Commission (ASIC) that includes particular information and details. The notice must be lodged in the prescribed form.

A start-up business may develop additional offerings as their business grows, or may require several attempts at testing before launching a successful business model or new financial service. In recognition of this, an eligible person can rely on the AFSL Exemption Regulations multiple times in particular circumstances. However, an eligible person cannot test a particular financial service in relation to a particular type of financial product which they, or a company in their company group, have tested before under the AFSL Exemption Regulations.

The exemption lasts for a period of no more than 24 months for each financial service provided in relation to each type of financial product, being tested by an eligible person.

There are certain ongoing conditions and requirements that an eligible person must satisfy in order to rely on the AFSL Exemption Regulations. These include exposure limits for retail clients, aggregate exposure limits across all clients, notification requirements and maintaining certain procedures, memberships and arrangements.

ACL Exemption Regulations

The ACL Exemption Regulations provide eligible persons with an exemption from the ACL requirements so that they can test certain credit activities in relation to certain credit contracts.

An eligible person can rely on the ACL Exemption Regulations multiple times in certain circumstances. However, an eligible person cannot rely on the exemption if they are testing a particular credit activity that they, or a company within their company group, have tested before under the ACL Exemption Regulations.

The exemption lasts for a period of no more than 24 months for each type of credit activity.

Similar to the AFSL Exemption Regulations, in order for an eligible person to rely on the ACL Exemption Regulations, they must satisfy certain ongoing conditions and requirements. To rely on the exemption, an eligible person must provide a notice to ASIC that includes particular information and details. The notice must be in the approved form.

Requirements and conditions for the exemptions

To access an exemption, an eligible person must notify ASIC of their intention to rely on the exemption to test a financial service and/or credit activity. Once a notification is lodged with ASIC, a 30 day notification period will begin where ASIC can review the notification and could decide to prevent the person from accessing the exemption in some circumstances. The person's exemption will start the day after the 30 day notification period ends.

To rely on the exemptions, an eligible person must satisfy a number of ongoing conditions. The exemptions automatically cease if any of these conditions are breached. These conditions include:

- restrictions on the kinds of financial products and credit products an eligible person can provide financial services or credit activities for;
- retail client exposure limits applying to financial services provided in relation to general financial products; and

- an aggregate exposure limit of \$5 million that applies to all financial services and credit activities provided by an eligible person and their related body corporates under the exemptions.

An eligible person's exemption can also cease to apply if:

- the person notifies ASIC that they are no longer relying on the exemption; or
- ASIC notifies the person that the exemption no longer applies either in relation to a specific financial service or credit activity or to the person more generally.

A person who is relying on the exemption must also comply with certain applicable:

- disclosure obligations to clients;
- dispute resolution arrangements;
- client money and statement of advice obligations provided for in the Corporations Act; and
- responsible lending obligations, requirements for responding to requests for hardship variations, and unfair contact term protections provided for in the Credit Act.

The crowd-sourced funding intermediary obligations under the Corporations Act must also be complied with where a person is providing a crowd-sourced funding service.

If an eligible person relying on an exemption does not meet one or more of these requirements, ASIC may either provide notification to that person that they can no longer rely on the exemption, or apply to the Federal Court for an order that the person comply with the particular requirement.

A person relying on the exemption is in most cases expected to apply to ASIC for an AFSL or ACL during the exemption period. Applying for an AFSL or ACL early will allow ASIC sufficient time to assess the application and make a decision before the 24 month exemption period concludes and avoid disrupting the applicant's business.

The unconscionable conduct and consumer protection provisions in the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) apply to people who are exempt under the sandbox.

A person who is exempt under the sandbox is a 'provider' within the meaning of section 961 of the Corporations Act, and therefore the best interest obligations under Division 2 of Part 7.7A of the Corporations Act would apply. A person who is relying on the exemption is required to operate in the best interest of their clients by providing appropriate advice, adequate disclosure if the advice is based on incomplete or inaccurate information and to prioritise their client's best interest in order to meet the best interest obligations provided for in the Corporations Act.

The Acts do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

An exposure draft of the Regulations and accompanying explanatory materials were released for public consultation from 24 October 2017 to 1 December 2017. Eight written submissions were received through the consultation process. In addition Treasury held three roundtable consultation meetings with relevant stakeholders. The feedback received was considered in the final Regulations, with further changes made to ensure the Regulations would work as intended. The Regulations have also been updated to take into account other legislative reforms.

Details of the Regulations' are set out in [Attachments A and B](#).

The Regulations' are legislative instruments for the purposes of the *Legislation Act 2003*.

The Regulations' commence on 1 September 2020.

The Office of Best Practice Regulation (OBPR) has been consulted (OBPR ID #21926) and a regulation impact statement is not required. The regulatory cost saving for this measure is estimated to be \$0.6 million per year.

A statement of Compatibility with Human Rights is at [Attachment C](#)

Details of the Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020

Part 1 – Preliminary

Section 1 – Name

This section provides that the title of the instrument is the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

Section 2 – Commencement

This section provides that the AFSL Exemption Regulations commence on 1 September 2020.

Section 3 - Authority

This section provides that the AFSL Exemption Regulations are made under the *Corporations Act 2001*.

Section 4 – Simplified outline of this instrument

This section provides a simplified outline of the conditional exemption from the AFSL requirements to test the provision of eligible financial services in relation to specific eligible financial products.

Section 5 – Definitions

This section sets out the meaning of some of the key words or terms used in the AFSL Exemption Regulations. In accordance with the *Legislation Act 2003*, the definitions provided for in the Corporations Act automatically flow through to this instrument. For example, the expression ‘makes non-cash payments’ has the same meaning as in section 763D of the Corporations Act.

Part 2 – Exemption from financial services licensing requirements for testing in the FinTech sandbox

Section 6 – Exemption for testing eligible financial services in the FinTech sandbox

This section provides that an eligible person is exempt from the requirement to have an AFSL for the purpose of testing certain eligible financial services in relation to certain types of financial products if the conditions outlined below are satisfied.

The exemption is only available for eligible persons

Under the definition of an ‘eligible person’ in section 5, a person will be able to access the exemption to test a financial service in relation to certain types of financial products as long as the person is not:

- authorised by an AFSL to provide the financial service in relation to that kind of financial product;
- an authorised representative of an AFSL holder for the provision of the financial service in relation to that kind of financial product;

- an operator of a financial market or clearing and settlement facility; and
- a related body corporate of a person who is:
 - authorised by an AFSL to provide the financial service in relation to that kind of financial product; or
 - an authorised representative of an AFSL holder for the provisions of the financial service in relation to that type of financial product.

There are also specific eligibility requirements that apply to natural persons and foreign companies. A natural person must be an Australian citizen or permanent resident in order to be an eligible person. A foreign company will only be an eligible person if the company is registered under Division 2 of Part 5B.2 of the Corporations Act.

If a person does become authorised to provide a financial service in relation to a kind of financial product, the exemption will automatically cease to apply for the provision of financial services relating to that kind of financial product.

In addition, a person will not be eligible to rely on the exemption to test a financial service in relation to a particular type of financial product, if they or their related body corporates have previously used the exemption to provide that financial service in relation to that particular type of financial product. The restriction applies to prevent testing of the same type of product numerous times.

For example, if Sahara and Sun Co. previously completed a 24 month period of testing a digital financial advice model in relation to general insurance under the AFSL Exemption Regulations, Sahara and Sun Co. (and its related body corporates) cannot rely on the exemption again to test financial advice in relation to general insurance products issued by different general insurance companies. However, Sahara and Sun Co. can rely on the exemption for a second time in order to test a digital distribution model by which it arranges for the issuance of superannuation products.

Types of financial services that can be provided

The eligible financial services (as per the definition in section 5) that can be tested under the exemption include:

- providing financial product advice in relation to a particular kind of eligible financial product;
- applying for or acquiring a particular kind of eligible financial product;
- issuing, varying or disposing of a non-cash payment facility;
- arranging for the issuing, varying or disposing of a particular kind of eligible financial product; and
- providing a crowd-funding service.

Eligible persons can act as agents or principals in relation to insurance products.

Notification to ASIC

In order to rely on the exemption, a person must first notify ASIC that they intend to start relying on the exemption to provide an eligible financial service in relation to a particular kind of eligible financial product (see section 16 for the information that must be included in the notification to ASIC). The notification must be in the prescribed form. Under section 350 of the Corporations Act, the form to be used may be approved by ASIC if the form has not been prescribed in the Regulations.

ASIC has 30 days to respond to the notification (the 30 day notification period). If ASIC does not respond within the 30 days then the exemption is taken to start the day after the 30 day notification period ends.

Section 7 – Duration of the exemption

The exemption applies to an eligible person for a maximum period of 24 months for each eligible financial service provided in relation to a particular kind of financial product. The exemption period commences the day after the 30 day notification period finishes.

The 24 month period is a fixed period that cannot be extended, paused or reset. The time period applies for each exemption notification provided to ASIC.

For example, Pitt Street Tech is already using an exemption for dealing in general insurance products under the regulatory sandbox. The exemption lasts for 24 months. After six months of testing, Pitt Street Tech decides to notify ASIC that they now also wish to deal in a life risk insurance product. The exemption to test dealing in a life risk insurance product will last for 24 months. As each exemption lasts 24 months, the exemption for dealing in a life risk insurance product will finish six months after the exemption for dealing in a general insurance product. The \$5 million aggregate client exposure cap is the overall cap for all products that Pitt Street Tech and its related entities can test for all activities under the Regulations (see section 13 for more details on the aggregate exposure limit).

An eligible person will cease to be exempt prior to the end of their 24 month testing period, in the following situations:

- if they breach any of the conditions in Part 3 of the AFSL Exemption Regulations or Part 3 of the ACL Exemption Regulations (including exposure limits and types of financial products that exempt financial services can be provided in relation to); or
- if ASIC determines that the eligible person can no longer rely on the exemption for reasons detailed in section 14, including where the eligible person fails to satisfy conditions in Part 5 or where the eligible person fails to comply with best interest obligations in providing the financial service; or
- if the eligible person determines that they wish to cease relying on the exemption before the end of the 24 month testing period, and that person notifies ASIC in accordance with section 15.

Section 8 – Grounds for ASIC deciding that the exemption is not available

ASIC may decide that the exemption is not available after considering the notification based on one or more of the following grounds:

- ASIC is not satisfied the application is made in the appropriate form by an eligible person to test an eligible financial service;
- ASIC is not satisfied the provision of the eligible financial service will result or be likely to result, in net a benefit to the public (the public benefit test);
- ASIC is not satisfied the financial service is new, or a new adaptation/improvement of another financial service (the innovation test);
- ASIC reasonably believes that the person has not complied with conditions prescribed in the AFSL Exemption Regulations for another eligible financial service that the provider has or had an exemption for;
- ASIC reasonably believes the person (or in the case of a body corporate, a relevant officer) would not satisfy the fit and proper test in section 913BA of the Corporations Act, if the application was assumed to be an application for an AFSL with the appropriate authorisation;
- ASIC reasonably believes the person has failed to act fairly, efficiently, or honestly in providing financial services or engaging in credit activities;
- ASIC reasonably believes that the purpose for obtaining the exemption is to effectively continue or recommence providing a financial service that has already been provided by the person or a related body corporate under the AFSL exemption;
- the provider has failed to comply with the best interest obligations under Division 2 of Part 7.7A of the Corporations Act in relation to the provision of another eligible financial service;
- ASIC reasonably believes that continuing to provide the financial service would result or is likely to result in significant detriment to retail or wholesale clients; or
- an exemption made under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* is or has been cancelled.

Any decisions made by ASIC are subject to Administrative Appeals Tribunal (AAT) review.

Part 3 – When exemption ceases before the end of the testing period

Division 1 – When exemption ceases automatically

Section 9 – Not meeting certain limits will cause the exemption to cease automatically

The exemption from the AFSL regime in the Corporations Act is subject to a number of requirements. Section 9 provides that a breach of the most important conditions (contained in sections 10-13) will result in the automatic termination of the person's exemption. The requirements include:

- a prohibition on providing financial services in relation to particular types of financial products (derivatives and margin lending facilities) for wholesale clients (see section 10);
- only providing financial services in relation to prescribed types of financial products for retail clients (for a complete list see section 11);
- individual exposure limits on the amount each retail investor can commit to invest as a result of financial services provided by the eligible person (section 12); and
- aggregate exposure limits on the total value of financial products that an eligible person can provide financial services in relation to (section 13).

The termination applies to all financial services and credit activities being tested under the AFSL Exemption Regulations and the ACL Exemption Regulations.

Section 10 – Exempt financial services that can be provided to wholesale clients

This section provides that a person can rely on the AFSL Exemption Regulations to provide financial services to wholesale clients, in relation to all financial products except for derivatives and margin lending facilities.

Section 11 – Exempt financial services that can be provided to retail clients

A person can rely on the AFSL Exemption Regulations to provide financial services to retail clients relating to the following types of financial products:

- a deposit-taking facility issued by an authorised deposit-taking institution regulated by Australian Prudential Regulation Authority (APRA);
- a non-cash payment facility issued by an authorised deposit-taking institution regulated by APRA;
- a general insurance product issued by a general insurer authorised by APRA, except for a consumer credit insurance product;
- a life insurance product issued by a life insurer authorised by APRA;
- a superannuation product that is issued by an APRA-regulated superannuation fund;
- an interest in a simple managed investment scheme;
- a Commonwealth debenture, stock or bond;
- a listed domestic or international security on an official list of a prescribed financial market or an approved foreign market; and
- a security specified in a regulation made for the purposes of paragraph 738G(1)(c) of the Corporations Act, if the person is providing a crowd-funding service.

A person can also rely on the AFSL Exemption Regulations to provide financial services to retail clients that includes the issuing, varying or disposing of a non-cash payment facility.

Section 12 – Exposure limits for exempt financial services – total limit for products for each retail client

For a person to use the exemption, they must remain within the prescribed exposure limits for retail clients. The exposure limits for retail clients apply on a per client per provider basis. This ensures that a person using the exemption can provide financial services relating to various kinds of financial products to each retail client while ensuring that retail clients are not exposed to excessive levels of risk from a firm relying on a licensing exemption.

Retail clients can commit to invest no more than \$10,000 as a result of financial services relating to general financial products.

The limits apply in relation to commitments made by retail clients resulting from the financial services provided to them. A person will not be in breach of these limits if a retail client makes other commitments outside of the advice provided.

There is no individual cap for eligible general insurance products, life risk insurance products, superannuation products, deposit products, and non-cash payment products made available by an authorised deposit-taking institution. The \$5 million aggregate client exposure cap does however, apply in relation to these products (see section 13 below).

Section 13 – Exposure limits for exempt financial services – total limit for all exempt services etc.

A person relying on an exemption must not exceed the prescribed aggregate exposure limit across all clients and products. Under this aggregate client investment cap, all of the following amounts added together cannot exceed \$5 million:

- all amounts committed by all clients in relation to all kinds of financial products the person provides financial services for;
- all amounts of the gross premiums that all clients have committed to in relation to general insurance and life risk insurance products the person provides financial services for;
- all amounts that all clients contribute to superannuation products the person provides financial services for; and
- all amounts of credit activity under the ACL Exemption Regulations.

Once a person reaches or exceeds the \$5 million aggregate client exposure cap, they will no longer be able to rely on the exemption to provide any further financial services.

The \$5 million aggregate client exposure cap applies across to all clients, products and across all related entities for all current and past uses of an exemption under either of the Regulations.

Division 2 – Other ways exemption can cease

Section 14 - Exemption ceases because of ASIC decision

ASIC may provide written notice cancelling a person's exemption from the AFSL requirements. The cancellation can relate to one or all of the exemptions the person is relying on. The cancellation takes effect from the date specified in the notice. ASIC may provide notice to cancel a person's exemption under the following circumstances:

- one or more of the grounds for preventing a person from using the sandbox provided for in paragraphs 8(c) to (j) of the AFSL Regulations later start to apply to the provider and financial service;
- the person has not complied with conditions prescribed in the AFSL Exemption Regulations;
- the provider has failed to comply with the best interest obligations under Division 2 of Part 7.7A of the Corporations Act in relation to providing personal financial advice; or
- ASIC reasonably believes that continuing to provide the financial service would result or is likely to result in significant detriment to retail or wholesale clients, however ASIC may wish to issue a make-good order (see section 24) before cancelling the exemption.

Any decisions made by ASIC are subject to AAT review.

Section 15 – Exemption ceases if provider notifies ASIC

A person relying on an exemption may notify ASIC if they wish to cancel their exemption, before the 24 month period expires. The cancellation will take effect from the day specified in the notice but this date must not be prior to the date the notice is lodged with ASIC.

Part 4 – Requirements for the exemption to exist

Section 16 – Lodging a valid notification for eligible financial services

A person seeking to rely on the exemption to test a financial service must notify ASIC of their intention to do so prior to starting to provide the financial service. The notice must be in the appropriate form and comply with the requirements specified in section 16 of the AFSL Exemption Regulations. A failure to do this will mean that the person will not be covered under the exemption and the person would be breaching the AFSL requirements (see section 8 above for an explanation of ASIC's ability to prevent access to the AFSL exemption).

Part 5 – Conditions for the exemption

Section 17 – Condition – notifying all clients before providing an exempt financial service

A person relying on the exemption must provide the information prescribed in section 17 to all its clients before providing them with a financial service. The purpose of this is to inform clients that the financial service is provided under an AFSL exemption and ensure there is an appropriate level of disclosure.

Section 18 – Condition – notifying retail clients before providing an exempt financial service

This section prescribes additional information that must be disclosed to all retail clients before a person provides them with a financial service under the exemption. The information includes details about the remuneration (including commissions) the person could benefit from and details of relevant relationships and information about available dispute resolution systems.

Section 19 – Condition – notifying clients while providing an exempt financial service

A person relying on an exemption is required to notify all their clients and ASIC within ten business days if the events prescribed in paragraph 19(a) eventuate. However, notification to ASIC is not required when the provider becomes authorised by an AFSL, or an authorised representative of a financial services licensee, to provide the financial service.

Section 20 – Condition – maintaining certain procedures, memberships and arrangements

This section prescribes the dispute resolution and compensation arrangements a person is required to maintain in order to provide financial services under the exemption. A person is required to:

- establish and maintain an internal dispute resolution process;
- be an Australian Financial Complaints Authority (AFCA) scheme member (AFCA scheme is a defined term in Chapter 7 of the Corporations Act) for the purposes of dealing with complaints against the provider made by retail clients in connection with the financial service; and
- establish and maintain adequate professional indemnity insurance for the purposes of providing compensation to retail clients.

The professional indemnity insurance and AFCA membership requirements apply for 12 months after an applicant stops using the AFSL exemption in relation to each financial service tested.

Section 21 – Condition – statements of advice

A person relying on the exemption is required to provide a Statement of Advice when personal advice is given to a retail client.

Section 22 – Condition – client money obligations

A person relying on the exemption is required to meet the client money obligations when dealing with their client's money. This will ensure client money is being handled in accordance with the existing rules under the Corporations Act.

Section 23 – Condition – financial product disclosure

A person relying on the exemption is required to provide a product disclosure document to a retail client.

Section 24 – Condition – make-good order

ASIC may issue a make-good order to a provider if ASIC believes the provision of a financial service by a person relying on the exemption has resulted, or is likely to result, in significant detriment to retail or wholesale clients. If ASIC issues a make-good order, a person must comply with the order. The order may stipulate changes to the eligible financial service. A person who has been issued with this order must comply within 30 days by notifying ASIC when the changes required by ASIC have been made. If the provider does not notify ASIC within 30 days, ASIC may cancel their exemption under section 14.

Before issuing this order, under the rules of natural justice, ASIC is expected to consult the affected parties, including the provider.

An order made under subsection 24(2) will not be a legislative instrument as decisions by ASIC are subject to AAT review and are covered by the exemption in table item 19 in section 6 of the *Legislation (Exemptions and other Matters) Regulation 2015*.

Part 6 – Related matters

Section 25 – Related matters – exempt intermediaries for Crowd-Sourced Funding offers

A person relying on the exemption to test a crowd-sourced funding (CSF) service, must meet the obligations in Chapter 6D of the Corporations Act. That is, the person is taken to be a CSF intermediary and therefore must comply with the obligations for CSF intermediaries set out under the Corporations Act. CSF intermediary obligations include, the CSF gatekeeping obligations, ensuring the CSF offer document meets the specified requirements and complying with the obligations to notify people if the offer document is defective.

Details of the National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020

Section 1 – Name

This section provides that the title of the instrument is the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020*.

Section 2 – Commencement

This section provides that the ACL Exemption Regulations commence on 1 September 2020.

Section 3 – Authority

This section provides that the ACL Exemption Regulations is made under the *National Consumer Credit Protection Act 2009*.

Section 4 – Simplified outlined of this instrument

This section provides a simplified outline of the conditional exemption from the ACL requirements to test eligible credit activities.

Section 5 – Definitions

This section sets out the meaning of some of the key words or terms used in the ACL Exemption Regulations. In accordance with paragraph 13(1)(b) of the *Legislation Act 2003*, the definitions provided for in the Credit Act automatically flow through to this instrument.

Part 2 – Exemption from credit activity licensing requirements for testing in the FinTech sandbox

Section 6 – Exemption for testing eligible credit activities in the FinTech sandbox

This section provides that an eligible person is exempt from the requirement to have an ACL for the purpose of testing eligible credit activities (as defined in section 5) if the conditions outlined below are satisfied.

The exemption is only available for eligible persons

Under the definition of an ‘eligible person’ in section 5, a person will be able to access the exemption to test a credit activity if the person is not:

- authorised by an ACL to engage in the credit activity;
- a credit representative authorised to engage in the credit activity on behalf of an ACL holder; and
- a related body corporate of a person that is authorised by an ACL to provide the credit activity or a credit representative authorised to engage in the credit activity on behalf of an ACL holder.

There are also specific eligibility requirements that apply to natural persons and foreign companies. A natural person must be an Australian citizen or permanent resident in order to be an eligible person. A foreign company will only be an eligible person if the company is registered under Division 2 of Part 5B.2 of the Corporations Act.

If a person does become authorised to provide the credit activity, the exemption will automatically cease to apply for that credit activity.

In addition, a person will not be eligible for the exemption if they or their related body corporates have previously used the exemption to provide the credit activity. A person and their related body corporates will therefore only be able to test each of the two types of eligible credit activities once.

Types of credit activities that can be provided under the exemption

The eligible credit activities (as defined in section 5) that can be tested under the exemption include the provision of credit contracts and credit services which relate to a credit contract (or proposed credit contract) with:

- a term that does not exceed four years; and
- a credit limit of more than \$2,000 and less than \$25,000.

However, a credit activity is not eligible if the relevant contract is:

- a reverse mortgage, or a small amount credit contract; or
- secured by a charge or lien over a consumer's household property covered by subregulation 6.03(2) of the *Bankruptcy Regulations 1996*.

Notification to ASIC

In order to access the exemption, a person must first notify ASIC that they intend to start relying on the exemption to provide an eligible credit activity (see section 13 for the information that must be included in the notification to ASIC). The notification must be lodged to ASIC in the form approved by ASIC.

ASIC has 30 days to respond to the notification (the 30 day notification period). If ASIC does not respond within the 30 days then the exemption is taken to start the day after the 30 day notification period ends.

Section 7 – Duration of the exemption

The exemption applies to an eligible person for a maximum period of 24 months for each eligible credit activity. The exemption period commences the day after the 30 day notification period finishes.

The 24 month period is a fixed amount that cannot be extended, paused or reset. The time period applies for each notification to ASIC (see section 13 for the information that must be included in the notification to ASIC).

An eligible person will cease to be exempt prior to the end of their 24 month testing period in the following situations:

- if they breach any of the conditions in Part 3 of the ACL Exemption Regulations or Part 3 of the AFSL Exemption Regulations (including exposure limits); or

- if ASIC determines that the eligible person can no longer rely on the exemption for reasons detailed in section 11, including where the eligible person fails to satisfy conditions in Part 5 or where the credit activity has resulted in significant detriment to one or more consumers; or
- if the eligible person determines that they wish to cease relying on the exemption before the end of the 24 month testing period, and that person notifies ASIC in accordance with section 12.

Section 8 – Grounds for ASIC deciding that the exemption is not available

ASIC may decide that the exemption is not available after considering the notification based on one or more of the following grounds:

- ASIC is not satisfied that the application is made in the appropriate form by an eligible person to test an eligible credit activity;
- ASIC is not satisfied that the provision of the eligible credit activity will result or be likely to result, in a net benefit to the public (public benefit test);
- ASIC is not satisfied the financial service is new, or a new adaptation/improvement of another credit activity (the innovation test);
- ASIC reasonably believes that the person has not complied with conditions prescribed in the ACL Exemption Regulations for another eligible credit activity that the provider has or had an exemption for;
- ASIC reasonably believes the person (or in the case of a body corporate, a relevant officer) would not satisfy the fit and proper test in section 37A of the Credit Act, if the application was assumed to be an application for an ACL;
- ASIC reasonably believes the person has failed to act fairly, efficiently, or honestly in credit activities or in providing financial services;
- ASIC reasonably believes that the purpose for obtaining the exemption is to effectively continue or recommence providing a credit activity that was obtained by another person;
- ASIC reasonably believes that engaging in the credit activity is likely to result in significant detriment to consumers; or
- an exemption made under the AFSL Exemption Regulations is or has been cancelled.

Any decisions made by ASIC are subject to Administrative Appeals Tribunal (AAT) review.

Part 3 – When exemption ceases before the end of the testing period

Division 1 – When exemption ceases automatically

Section 9 – Not meeting certain limits will cause the exemption to cease automatically

The exemption from the ACL regime in the Credit Act is subject to a number of requirements. Section 9 provides that a breach of these requirements (contained in section 10) will result in the automatic termination of the person's exemption.

The requirements include:

- a cap on the total amount of activity a person can undertake on the basis of the exemption (see section 10); and
- a breach of an equivalent condition under the AFSL Exemption Regulations.

The termination applies to all credit activities and financial services being tested under the Regulations.

Section 10 – Exposure limits for exempt credit activities – total limit for all activities etc.

A person relying on an exemption must not exceed the prescribed aggregate exposure limit across all clients.

Under this aggregate client investment cap, all of the following amounts added together cannot exceed \$5 million:

- all amounts of credit activity; and
- all amounts committed by all clients under the AFSL Exemption Regulations.

Once a person reaches or exceeds the \$5 million aggregate client exposure cap, the person will no longer be able to rely on the exemption to provide any further financial services or credit activities.

The \$5 million aggregate client exposure cap applies across all clients, products and across all related entities for all current and past uses of an exemption under either of the Regulations.

Division 2 – Other ways exemption can cease

Section 11 – Exemption ceases because of ASIC decision

ASIC may provide written notice cancelling a person's exemption from the ACL requirements. The cancellation can relate to one of the person's exemptions or all of the exemptions the person is relying on. The cancellation takes effect from the date specified in the notice. ASIC may provide notice to cancel a person's exemption under the following circumstances:

- one or more of the grounds for preventing a person from using the sandbox provided for in paragraphs 8(c) to (i) of the ACL Exemption Regulations later start to apply to the provider and the credit activity;
- the person has not complied with the conditions prescribed in ACL Exemption Regulations;
- ASIC reasonably believes that continuing to provide the credit activity would result in significant detriment to clients, however ASIC may wish to issue a make-good order (see section 18) before cancelling the exemption.

Any decisions made by ASIC are subject to AAT review.

Section 12 – Exemption ceases if provider notifies ASIC

A person relying on an exemption may notify ASIC if they wish to cancel their exemption. The cancellation will take effect from the day specified in the notice but this date must not be prior to the date the notice is lodged with ASIC.

Part 4 – Requirements for the exemption to exist

Section 13 – Lodging a valid notification for eligible credit activities

A person seeking to rely on an exemption to test a credit activity must notify ASIC of their intention to do so before starting to provide the credit activity. The notice must be in the approved form and comply with the requirements specified in section 13 of the ACL Exemption Regulations. A failure to do this will mean that the person will not be covered under the exemption and the person would be breaching the ACL requirements (see section 8 above for an explanation of ASIC’s ability to prevent access to the exemption).

Part 5 – Conditions for the exemption

Section 14 – Condition – notifying all consumers before engaging in an exempt credit activity

A person relying on the exemption must provide the information prescribed in section 14 to all its clients before engaging in a credit activity with them. The purpose of this is to inform clients that the credit activity is provided under an ACL exemption and ensure there is an appropriate level of disclosure.

Section 15 – Condition – notifying consumers while engaging in an exempt credit activity

A person relying on an exemption is required to notify all their consumers and ASIC within ten business days if the events prescribed in paragraph 15(a) eventuate. However, notification to ASIC is not required when the provider becomes an ACL holder, or becomes an authorised credit representative of a licensee, to engage in the credit activity.

Section 16 – Condition – maintaining certain procedures, memberships and arrangements

This section prescribes the dispute resolution and compensation arrangements a person is required to maintain in order to provide credit activities under the exemption. A person is required to:

- establish and maintain an internal dispute resolution process;
- be an AFCA scheme member (AFCA scheme is a defined term in section 5 of the Credit Act) for the purposes of dealing with complaints against the provider made by the consumers; and
- establish and maintain adequate professional indemnity insurance for the purposes of providing compensation to consumers.

The professional indemnity insurance and AFCA membership requirements apply for 12 months after an applicant stops using the ACL exemption in relation to each credit activity tested.

Section 17 – Condition – other obligations

A person relying on the exemption is required to meet the following obligations while providing a credit activity under the exemption:

- the responsible lending obligations under Chapter 3 of the Credit Act;
- the special rules for short-term contracts provided for in section 124A and Part 3-2C of the Credit Act;
- the limits on the fees and charges under Division 4A of Part 2 and Division 3 of Part 4 of the National Credit Code; and
- the unfair contract terms rules in Subdivision BA of Division 2 of Part 2 of the ASIC Act.

Section 18 – Condition – make-good order

ASIC may issue a make-good order to a provider if ASIC believes that the engagement in a credit activity by a person relying on the exemption has resulted, or is likely to result, in significant detriment to consumers. If ASIC issues a make-good order, a person must comply with the order. The order may stipulate changes to the eligible credit activity. A person who has been issued with this order must comply within 30 days by notifying ASIC when the changes required by ASIC have been made. If the provider does not notify ASIC within 30 days, ASIC may cancel their exemption under section 11.

Before issuing this order, under the rules of natural justice, ASIC is expected to consult the affected parties, including the provider.

An order made under subsection 18(2) will not be a legislative instrument as decisions by ASIC are subject to AAT review and are covered by the exemption in table item 19 in section 6 of the *Legislation (Exemptions and other Matters) Regulation 2015*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020

National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* and the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* provide for conditional exemptions from the Australian Financial Services Licence (AFSL) and Australian Credit Licence (ACL) requirements to allow the testing of financial services and credit activities relating to certain financial and credit products.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.