National Consumer Credit Protection Amendment Regulation 2012 (No. 4)1

Select Legislative Instrument 2012 No. 314

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

Dated 6 December 2012

QUENTIN BRYCE

Governor-General

By Her Excellency’s Command

WILLIAM RICHARD SHORTEN

Minister for Financial Services and Superannuation

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1 Name of regulation

 This regulation is the *National Consumer Credit Protection Amendment Regulation 2012 (No. 4)*.

2 Commencement

 This regulation commences as follows:

 (a) on the day after it is registered—sections 1 to 3;

 (b) on 1 March 2013—Schedule 1;

 (c) on 1 July 2013—Schedule 2.

3 Amendment of *National Consumer Credit Protection Regulations 2010*

 Schedules 1 and 2 amend the *National Consumer Credit Protection Regulations 2010.*

Schedule 1 Amendments commencing on 1 March 2013

(section 3)

[] Before Part 3.6

insert

28XXA Small amount credit contracts—requirements for warning on licensee’s premises

 (1) For paragraphs 124B (1) (a) and 133CB (1) (a) of the Act:

 (a) any premises from which a licensee engages in credit activities is prescribed; and

 (b) any premises from which the licensee engages in credit activities must display a warning; and

 (c) the warning must:

 (i) be as set out in Schedule 7; and

 (ii) be in poster form; and

 (iii) be A4 in size; and

 (iv) unless otherwise illustrated in Schedule 7, be in typeface that is:

 (A) 18 points in size; and

 (B) in bold font; and

 (v) include the word ‘WARNING’:

 (A) printed at the top of the poster; and

 (B) in bold font; and

 (vi) include the words ‘Do you really need a loan today?’:

 (A) printed immediately below the word ‘WARNING’; and

 (B) in typeface that is 36 points in size; and

 (C) in bold font; and

 (vii) include the words ‘This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*’:

 (A) printed at the bottom of the poster; and

 (B) in typeface that is 8 points in size; and

 (d) unless the licensee is prohibited, by the owner of the premises or under any requirement relating to the premises, from displaying a notice on the point of public entry, or a front window, of the premises:

 (i) the warning must be displayed on the point of public entry or a front window; and

 (ii) if the warning is displayed on a front window, it must be displayed as close as practicable to the point of public entry; and

 (iii) the warning must be visible before entering the premises; and

 (e) the warning must also be displayed in an area inside the premises where it is visible from the location at which a consumer would deal with the licensee or a representative of the licensee.

 (2) If the premises:

 (a) are not enclosed; or

 (b) are of a kind where a consumer can approach the licensee, or a representative of the licensee, without going through a door;

the warning must be displayed so that it is visible on a counter, desk, table or other item of furniture at which the licensee or a representative of the licensee would deal with the consumer.

Examples

1   A stand at an exhibition.

2   An open booth in a shopping centre.

28XXB Small amount credit contracts—requirements for warning on licensee’s website

 For paragraphs 124B (1) (b) and 133CB (1) (b) of the Act, the requirements for a licensee’s website are as follows:

 (a) a hyperlink, in the form of a boxed icon and the words ‘Warning about Borrowing’, must appear on the homepage and  any webpage which contains information about the benefits or characteristics of small amount credit contracts and be displayed in a size that is not smaller than it would appear on the webpage using Arial font and 12 points in size;

 (b) the hyperlink must be in the form shown in Schedule 8;

 (c) the hyperlink must open a warning;

 (d) the warning must:

 (i) be as set out in Schedule 9; and

 (ii) use the typeface known as Arial; and

 (iii) unless otherwise illustrated in Schedule 9, be displayed in a size that is not smaller than it would appear on the webpage using Arial font and 10 points in size; and

 (iv) include the words ‘WARNING – Do you really need a loan today?’:

 (A) at the start of the warning; and

 (B) in bold font; and

 (v) include the words ‘This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*’, displayed in a size that is not smaller than it would appear on the webpage using Arial font and 8 points in size;

 (e) an identical warning must immediately appear when a person clicks on an access point or link that would take the person to a webpage where the person can apply for a small amount credit contract;

 (f) an application form for a small amount credit contract must not be able to be accessed until the identical warning is closed or acknowledged.

Example for paragraph (f)

The acknowledgement can be done by clicking on a ‘progress with application’ button offered on the page.

28XXC Credit assistance in relation to small amount credit contracts—requirements for warning during telephone contact

 (1) For section 164 of the Act, the provisions to which Part 3-7 of the Act applies apply as if Division 7 of Part 3-1 of the Act were modified by inserting the following section after section 124B:

124BA Licensee who makes representations about credit assistance in relation to small amount credit contracts must give information by telephone

Requirement

 (1) If:

 (a) a licensee represents that the licensee provides, or is able to provide, credit assistance to consumers in relation to small amount credit contracts; and

 (b) a consumer communicates with the licensee by telephone in relation to the credit assistance; and

 (c) the licensee reasonably believes that the consumer has not, in the previous 30 days, sighted the warning referred to in either regulation 28XXA or 28XXB of the *National Consumer Credit Protection Regulations 2010* as a result of visiting premises from which the licensee engages in credit activities or as a result of using a website of the licensee;

the licensee must give information in accordance with the regulations as part of dealing with the consumer and comply with any other requirements prescribed in the regulations.

Civil penalty: 2,000 penalty units.

Note: If the consumer has visited premises from which the licensee engages in credit activities, or used a website of the licensee, the consumer should already have seen a consumer warning required by this Act.

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.

 (2) For subsection 124BA (1) of the Act, as modified by subregulation (1):

 (a) the licensee must:

 (i) read the statement:

 ‘It is an Australian Government requirement to provide you with the following information’;

 to the consumer as part of the telephone communication mentioned in that subsection; and

 (ii) read the text of the warning in Schedule 7, except for the sentence:

 ‘This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*’;

 to the consumer as part of the telephone communication mentioned in that subsection; and

 (iii) send the consumer the warning in Schedule 9; and

 (iv) reasonably believe that the consumer has received the warning mentioned in subparagraph (iii) before providing credit assistance in relation to a small amount credit contract; and

 (b) the licensee must not provide credit assistance to the consumer, as a result of the telephone communication, if the licensee has not been able to comply with paragraph (a).

28XXD Small amount credit contracts—requirements for warning during telephone contact

 (1) For section 164 of the Act, the provisions to which Part 3-7 of the Act applies apply as if Division 2 of Part 3-2C of the Act were modified by inserting the following section after section 133CB:

133CBA Licensee who makes representations about small amount credit contracts must give information by telephone

Requirement

 (1) If:

 (a) 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; and

 (b) a consumer communicates with the licensee by telephone in relation to a small amount credit contract of that kind; and

 (c) the licensee reasonably believes that the consumer has not, in the previous 30 days, sighted the warning referred to in either regulation 28XXA or 28XXB of the *National Consumer Credit Protection Regulations 2010* as a result of visiting premises from which the licensee engages in credit activities or as a result of using a website of the licensee;

the licensee must give information in accordance with the regulations as part of dealing with the consumer and comply with any other requirements prescribed in the regulations.

Civil penalty: 2,000 penalty units.

Note: If the consumer has visited premises from which the licensee engages in credit activities, or used a website of the licensee, the consumer should already have seen a consumer warning required by this Act.

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.

 (2) For subsection 133CBA (1) of the Act, as modified by subregulation (1):

 (a) the licensee must:

 (i) read the statement:

 ‘It is an Australian Government requirement to provide you with the following information’;

 to the consumer as part of the telephone communication mentioned in that subsection; and

 (ii) read the text of the warning in Schedule 7, except for the sentence:

 ‘This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*’;

 to the consumer as part of the telephone communication mentioned in that subsection; and

 (iii) send the consumer the warning in Schedule 9; and

 (iv) reasonably believe that the consumer has received the warning mentioned in subparagraph (iii) before entering into a small amount credit contract with the consumer; and

 (b) the licensee must not enter into, or offer to enter into, a small amount credit contract, as a result of the telephone communication, if the licensee has not been able to comply with paragraph (a).

28XXE Authorisation for deduction

 (1) For subsection 160E (2) of the Act, a kind of credit contract or consumer lease is any credit contract or consumer lease under which a credit provider or lessor intends to give an employer an instrument as described in subsection 160E (1) of the Act.

*Note*   Subsection 160E (2) of the Act relates to credit contracts or consumer leases of a kind prescribed by the regulations.

 (2) For subsection 160E (2) of the Act, the form of statement is set out in Schedule 10.

*Note*   Schedule 10 sets out the statement within a form of document that a credit provider or lessor may use as the instrument authorising the employer to pay amounts directly to the credit provider or lessor. To comply with the Act, the statement must comply with Schedule 10 whether or not the credit provider or lessor chooses to use the document as the formal instrument.

[] After Part 3.6

insert

Part 3.7 Licensees that are credit providers under credit contracts—additional rules relating to small amount credit contracts

28S Licensee must not enter into small amount credit contract if repayments do not meet prescribed requirements

 (1) For subsection 133CC (1) of the Act, this regulation sets out:

 (a) a class of consumers; and

 (b) requirements for repayments that would be required under a small amount credit contract (the ***proposed contract***).

*Note*   Under subsection 133CC (1) of the Act, 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:

(a) the consumer is included in a class of consumers prescribed by the regulations; and

(b) the repayments that would be required under the contract would not meet the requirements prescribed by the regulations.

 (2) The class of consumers is consumers who receive at least 50% of their gross income as payments under the *Social Security Act 1991*.

 (3) The requirement for the repayments that would reasonably be expected to be paid in each payment cycle of income under the proposed contract is that the total amount of repayments under each small amount credit contract for which the consumer is a debtor, including the proposed contract, in a payment cycle of income during the term of the proposed contract must not exceed 20% of the consumer’s gross income for that payment cycle of income.

 (4) For subregulation (3):

 (a) treat a payment cycle of income as the period during which the consumer receives the predominant amount of his or her income payments under the *Social Security Act 1991*; and

 (b) using the same information as was used for the purposes of section 128 of the Act, and having regard to the repayments under the proposed contract, work out, for each payment cycle of income during the term of the proposed small amount credit contract:

 (i) the consumer’s expected gross income; and

 (ii) the repayments that the consumer reasonably expects to pay under each small amount credit contract to which the consumer is a party; and

 (c) work out the expected gross income for each payment cycle of income during the term of the proposed small amount credit contract; and

 (d) work out the total amount of repayments that the consumer:

 (i) has paid under each small amount credit contract for which the consumer is a debtor immediately before the time the consumer would enter into the proposed small amount credit contract; and

 (ii) reasonably expects to continue making after entering into the proposed small amount credit contract.

[] After Schedule 6

insert

Schedule 7 Warning about small amount credit contracts—warning on premises

(subparagraph 28XXA (1) (c) (i))

Do you really need a loan today?\*

It can be expensive to borrow small amounts of money and borrowing may not

solve your money problems

Check your options before you borrow:

* For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor
* Talk to your electricity, gas, phone or water provider to work out a payment plan
* If you are on government benefits, ask for an advance payment from Centrelink: 13 17 94

Go to **www.moneysmart.gov.au —**

MoneySmart shows you how small amount loans work and suggests other options that may help you.

\* This statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*.

Schedule 8 Form of hyperlink

(paragraph 28XXB (b))

 Warning about Borrowing

Schedule 9 Warning about small amount credit contracts—warning on websites

(subparagraph 28XXB (d) (i))

 **Do you really need a loan today?\***

It can be expensive to borrow small amounts of money
and borrowing may not solve your money problems.

Check your options before you borrow:

* For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor
* Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan
* If you are on government benefits, ask if you can receive an advance from [Centrelink](http://www.humanservices.gov.au/): Phone: 13 17 94

The Government’s MoneySmart website shows you how small amount loans work and suggests other options that may help you.

\* This statement is an Australian Government requirement under the
*National Consumer Credit Protection Act 2009*.

Schedule 10 Employer authorisation—prescribed form of statement

(subregulation 28XXE (2))

***[Form]*  Consent to make direct deductions from salary or wages**

**Subsection 160E (2) of the Act**

***[Regulation 28XXC of the Regulations]***

TO: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(name of employer of debtor/lessee)

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(address of employer of debtor/lessee)

FROM: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(name of credit provider/lessor)

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(Australian credit licence number)

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(address of credit provider/lessor)

*Complete all of the following information (except as indicated)* ***before*** *signing the form*

Date of first deduction:

Date of last deduction:

Amount of each deduction:

|  |
| --- |
| **IMPORTANT**YOU CAN CANCEL THIS DEDUCTION REQUEST DIRECTLY WITH YOUR EMPLOYER AT ANY TIME.IF YOU CANCEL THIS DEDUCTION REQUEST YOU WILL BE IN DEFAULT IF YOU DO NOT MAKE ALTERNATIVE ARRANGEMENTS TO MAKE REPAYMENTS. |

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(signature of debtor/lessee giving consent)

I confirm I have been provided with a copy of this form.

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(signature of debtor/lessee giving consent)

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Date of signing

*The following information is optional*

|  |
| --- |
| **INFORMATION TO THE EMPLOYER**These arrangements relate to a contract between your employee and a third party. You are not liable for any failure of your employee to make payments to that person.Your employee may ask you to cancel these arrangements at any time or may vary them by completing a new form. |

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(signature of employer)

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Date of signing

Schedule 2 Amendments commencing on 1 July 2013

(section 3)

[] After regulation 28XXE

insert

28XXF Unsuitable credit contracts—prescribed circumstances

 (1) This regulation is made for the following provisions of the Act:

 (a) paragraph 118 (2) (c) (when the credit contract must be assessed as unsuitable—entering contract or increasing the credit limit);

 (b) paragraph 123 (2) (c) (prohibition on suggesting or assisting consumers to enter, or increase the credit limit under, unsuitable credit contracts);

 (c) paragraph 131 (2) (c) (when credit contract must be assessed as unsuitable);

 (d) paragraph 133 (2) (c) (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts).

 (2) A credit contract is unsuitable for a consumer if:

 (a) the consumer’s requirements and objectives are to receive an identified amount of credit; and

 (b) the credit contract is part of an arrangement by which the identified amount of credit is provided, or to be provided, by:

 (i) 2 or more small amount credit contracts; or

 (ii) 2 or more medium amount credit contracts; or

 (iii) a combination of small amount credit contracts and medium amount credit contracts; and

 (c) the amount that is payable under the combination of credit contracts (in circumstances in which there is no default by the debtor) is higher than the maximum amount that could be charged under a single credit contract under section 32A of the Code.

Example

The consumer’s requirements and objectives are to receive the sum of $3,300. This could be provided by a medium amount credit contract for $3,300.

However, the credit provider offers to enter into 2 small amount credit contracts with the consumer. The amount of credit under each contract is $1,500 and each term is 12 months. The credit provider is only prepared to advance $3,000 in total, and not $3,300, because the consumer cannot afford the higher repayments that would be required if the amount of credit under these 2 contracts were $3,300.

The consumer agrees to this as the consumer still has a need for $3,000.

The amount payable under each small amount credit contract is an upfront fee of 20% of the amount of $1,500, and a monthly fee of 4% of this amount, or charges of $1,020 for each contract, and total charges of $2,040. The maximum amount that could be charged under a medium amount credit contract for $3,000 would be interest charges of $768 plus an additional fee of $400—a total of $1,168. The consumer has therefore been charged an additional amount of $872.

Each of the 2 small amount credit contracts would be unsuitable.

[] After regulation 79A

insert

79AB Credit provider or prescribed person must not require or accept payment of fee or charge in relation to small amount credit contract etc

 For subsection 31B (1) of the Code, a person who has been introduced to a debtor by a credit provider to provide a service in relation to a small amount credit contract is a prescribed person (whether or not the person is associated with the credit provider).

*Note*   Section 31B of the Code applies to a credit provider or a person prescribed by the regulations.

79AC Prohibition relating to annual cost rate of credit contracts—later increases of annual percentage rate etc

 (1) For subparagraph 32AA (1) (c) (ii) of the Code, an amount is a prescribed amount if it:

 (a) is referred to in subsection 32B (3) of the Code; and

 (b) is payable in relation to a medium amount credit contract.

 (2) For subparagraph 32AA (1) (c) (ii) of the Code, an amount is a prescribed amount if:

 (a) it is referred to in subsection 32B (3) of the Code; and

 (b) it is not payable in relation to a medium amount credit contract; and

 (c) the credit provider has a practice of requesting debtors to increase the amount of repayments above the amount the debtor is required to pay under the credit contract; and

 (d) the debtor becomes liable to pay the fee as a result of making increased repayments because of a request by the credit provider.

*Note*   Subparagraph 32AA (1) (c) (ii) of the Code refers to an amount referred to in subsection 32B (3) of the Code that is prescribed by the regulations. Section 32AA of the Code applies if the prescribed amount increases after a credit contract is entered into and other circumstances occur.

[] After Part 7-2A

insert

Part 7-2B Additional rules in relation to small amount credit contracts

79C Default in payment by direct debit under small amount credit contract

 (1) For subsection 39C (1) of the Code, the credit provider must refrain from seeking a repayment due under a small amount credit contract by relying on a direct debit request if:

 (a) the credit provider has twice sought to obtain the repayment using the direct debit request; and

 (b) the credit provider:

 (i) has not told the debtor that the direct debit requests have been unsuccessful; or

 (ii) has not made reasonable attempts to contact the debtor.

 (2) If the credit provider receives the repayment to which subregulation (1) relates:

 (a) subregulation (1) ceases to apply; and

 (b) the credit provider may seek repayments due under the small amount credit contract by relying on a direct debit request.

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003.* See [www.comlaw.gov.au](http://www.comlaw.gov.au/).