EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

National Consumer Credit Protection Act 2009

National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025

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

The purpose of the *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025* (Regulations) is to amend the *National Consumer Credit Protection Regulations 2010* (Credit Regulations) to support amendments made by the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (BNPL Act) to the Credit Act and the Credit Code (i.e. Schedule 1 to the Credit Act) to establish a regulatory framework for low cost credit contracts (LCCC), and may include buy now pay later (BNPL) contracts.

A LCCC is a BNPL contract, or another kind of contract prescribed by the Credit Regulations, under which credit may be provided and which satisfies prescribed requirements relating to fees, charges and other matters as set out in the Credit Regulations.

The new regulatory framework for LCCCs is intended to maintain the benefits of consumer access to credit products, such as BNPL, while providing appropriate and proportionate consumer protections. The BNPL Act amends the Credit Act and Credit Code to:

- ensure that LCCCs are a form of credit regulated under the Credit Act and extend the application of the Credit Code to cover LCCCs;
- require providers of LCCCs to hold and maintain an Australian credit licence and comply with the relevant licensing requirements and licensee obligations, with some modifications to ensure regulation is proportionate;
- establish a modified Responsible Lending Obligations (RLO) framework, which LCCC licensees can elect to be subject to, that scales according to the risks posed to consumers, including requiring providers of LCCCs to develop and review a written policy on assessing whether the LCCC will be unsuitable for the consumer; and
- extend anti-avoidance protections to prevent providers of LCCCs from structuring their business models to avoid regulation.

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The Regulations support the BNPL Act amendments by prescribing:

- inquiries that must be made about a consumer's financial situation;
- requirements for a LCCC licensee's unsuitability assessment policy, including the content of the policy and conducting reviews of and updating the policy;
- the maximum level of fees or charges (fee caps) a LCCC licensee can charge on a consumer in a 12-month period for the credit contract to be considered a LCCC;
- the information that must be included in a first default in payment notice for LCCCs; and
- medical financing at no cost to the consumer is not a BNPL arrangement.

Application and transitional provisions provide that the fee caps apply to LCCCs entered into before the commencement of the Regulations that remain in-force after the commencement of the Regulations so that fees or charges incurred after commencement count towards the relevant cap. These provisions would also provide that information that must be provided to a consumer after a default applies to defaults that occur on or after the commencement of the Regulations.

The Credit Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations were publicly consulted on between 12 March 2024 and 9 April 2024. As part of this consultation, 27 submissions were received, including 4 confidential submissions. Parties that made submissions included consumer groups, BNPL credit providers, credit reporting agencies, peak bodies and the Australia Securities and Investments Commission, among others.

Consequently, amendments were made to the Regulations which included:

- amending exemptions for Authorised Deposit-taking Institutions (ADIs) so that they would be subject to the same obligations as non-ADI BNPL providers;
- amending the operation of the caps on fees or charges to balance consumer protections with facilitating the existing business models of BNPL providers; and
- allowing certain healthcare credit arrangements to be exempted from being treated as a BNPL arrangement where the merchant and provider are related parties, the credit provided is at no cost to the consumer, and the credit provided is in connection with the supply of a service by the merchant for which a Medicare rebate is payable.

A further targeted consultation was undertaken between 5 February 2025 and 12 February 2025. As part of this consultation, 14 submissions were received, including 3 confidential submissions. Parties that made submissions included BNPL credit providers, industry groups together with consumer and legal organisations. No changes were made to the Regulations arising from the consultation.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to sunsetting and disallowance.

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The Regulations commence on the later of the start of the day after the Regulations are registered and immediately after the commencement of Parts 2 to 10 of Schedule 2 to the BNPL Act. This means that the Regulations will commence on 10 June 2025 unless Parts 2 to 10 of Schedule 2 to the BNPL Act are commenced earlier by proclamation.

Details of the Regulations are set out in Attachment A.

A Statement of Compatibility with Human Rights is at Attachment B. The Regulations may engage the right to protection from arbitrary or unlawful interference with privacy under article 17 of the ICCPR by requiring LCCC licensees to seek to obtain various pieces of credit-related information about individual consumers from credit reporting bodies. These requirements are reasonable, necessary, and proportionate to the objective of assessing an individual consumer's suitability to enter an LCCC as existing legal safeguards ensure the information cannot be disclosed or used beyond the defined purpose.

The Office of Impact Analysis has been (OIA) has been consulted on (OIA ID: OBPR22-02725) and agreed that an Impact Analysis was required in relation to introduction of the regulatory regime established by the BNPL Act. The full text of the Impact Analysis has already been included in the Explanatory Memorandum to the BNPL Act, which received Royal Assent on 10 December 2024 and is not required to be replicated here. The regulatory costs in relation to introduction of the BNPL regulatory regime is estimated to be $15.0 million per year, averaged over ten years.

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ATTACHMENT A

Details of the *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025*

Section 1 – Name

This section provides that the name of the instrument is the *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025* (Regulations).

Section 2 – Commencement

The Regulations commence on the later of the start of the day after the Regulations are registered and immediately after the commencement of Parts 2 to 10 of Schedule 2 to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (BNPL Act).

Section 3 – Authority

The Regulations are made under the *National Consumer Credit Protection Act 2009* (Credit Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument is amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Credit contracts that are low cost credit contracts

Low cost credit contract (LCCC) is defined in section 13E of Schedule 1 to the Credit Act (i.e. the Credit Code). A LCCC is a contract under which credit is, or may be, provided under the contract and the contract is a buy now pay later (BNPL) contract, or another kind of contract prescribed by the *National Consumer Credit Protection Regulations 2010* (Credit Regulations).

Fee caps for low cost credit contracts

Item 9 inserts Part 7-1A into the Credit Regulations. Part 7-1A relates to BNPL arrangements and BNPL contracts. Part 7-1A contains the new regulation 69G. Regulation 69G is made under paragraph 13E(1)(d) of the Credit Code and supports the definition of LCCC by prescribing the requirements relating to fees or charges that are, or may be, payable under a credit contract for that credit contract to be a LCCC.

Subregulation 69G(2) provides that for a contract to be a LCCC, the fees or charges that are, or may be, payable under the relevant contract must not be able to result in a breach of a cap during the relevant fee period.

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The Note to subregulation 69G(2) cross refers to the definition of ‘fee period’ in subregulation 69(4). That subregulation defines ‘fee period’ as meaning the period of 12 months beginning on the later of the earliest day on which the debtor ever became a debtor under a LCCC with the credit provider, and the day on which the ‘delayed commencement time’ (within the meaning of item 8 of Schedule 2 to the BNPL Act) occurred; and then each subsequent 12 month period.

The intended effect of the definition of fee period is that the first fee period will commence on 10 June 2025 (as that is when Schedule 2, Parts 2 to 10 of the BNPL Act commence) or such earlier date as may be fixed by Proclamation (the Proclamation date), if the consumer has a LCCC in force with a credit provider at that time – i.e. because they entered into a LCCC before 10 June 2025 or the Proclamation date but the LCCC is still in force after 10 June 2025 or the Proclamation date.

If a consumer does not have a LCCC in force with a credit provider as at 10 June 2025 or the Proclamation date, the first fee period will commence when the consumer first enters into a LCCC with the credit provider after 10 June 2025 or the Proclamation date.

The first fee period will last 12 months, at which point the subsequent fee periods begin. Each subsequent fee period also lasts for 12 months. The fee periods do not reset. They are continuing from when the first fee period begins. What this means is that when a fee period ends, the next fee period begins. It is not based on when a consumer enters into a LCCC for the purposes of subsequent fee periods commencing. Further, if a consumer closes an account with a credit provider and then opens an account with that same credit provider at a later time, this will not cause the fee period to reset to the first fee period – the LCCC or LCCCs between the credit provider and the consumer would be subject to the relevant subsequent fee period cap.

Subregulation 69G(3) sets caps for the two kinds of fees or charges that can be levied on a debtor by a credit provider. The first kind of fees or charges is fees or charges other than default fees or charges (other fees). The second kind of fees or charges is default fees or charges (default fees).

In the first fee period (i.e. the first 12-month period), the cap for other fees is $200. This means that a consumer cannot be levied more than $200 in other fees in the first fee period. If default fees also are, or may be, payable under the relevant LCCC and each other LCCC that is entered into and in force between the credit provider and the debtor during that 12-month period, the cap for default fees is $120. This means that a consumer cannot be levied more than $320 in fees or charges in the first fee period (comprising up to $200 in other fees and up to $120 in default fees).

In subsequent fee periods (i.e. each 12-month period after the first fee period is a subsequent fee period), a consumer cannot be levied more than $125 in other fees during the 12-month period. If default fees also are, or may be, payable during that period, the cap for default fees is $120. This means that a consumer cannot be levied more than $245 in fees or charges in a subsequent fee period (comprising up to $125 in other fees and up to $120 in default fees).

If no other fees are, or may be, payable under the relevant LCCC and each other LCCC that is entered into and in force between the credit provider and the debtor during that 12-month period, the cap for default fees in the first fee period is $320. In subsequent fee

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periods, a consumer cannot be levied more than $245 in default fees if no other fees are, or may be, payable during that 12-month period.

The caps apply in aggregate across all LCCCs between a credit provider and a debtor in a fee period. In other words, there is not a new cap for each LCCC entered into or in-force during the fee period.

The effect of the caps is that there is no circumstance in which a consumer can be levied more than $320 in the first fee period and $245 in a subsequent fee period by a credit provider in relation to all the LCCCs between them and the consumer in the fee period.

The operation of the cap seeks to balance protecting consumers from high fees or charges and facilitating the maintenance of the commercial models that credit providers who currently provide credit that would be a LCCC currently use.

Low cost credit contracts issued by an ADI

Regulation 58 of the Credit Regulations provides that the Credit Code will not apply to the provision of credit by an Authorised deposit-taking institution (ADI) limited by the contract to a total period not exceeding 62 days. Items 5 and 6 amend regulation 58 to provide that this exemption does not apply to a BNPL contract issued by an ADI that is otherwise not a LCCC, meaning that the issuance of such credit is covered by the Credit Code. Regulation 58 is otherwise disapplied in relation to LCCCs by subparagraph 13C(2)(b)(iv) of the Credit Code.

The policy intent is that BNPL contracts that are not otherwise LCCCs issued by ADIs are covered by the Credit Code so that such credit issued by banks and other ADIs does not have a regulatory advantage over non-ADI credit providers and consumers are protected by the existing full RLO regime.

Credit contracts that are not low cost credit contracts

Part 7-1A of the Credit Regulations, which is inserted by item 9, also contains the new regulation 69F, which, for the purposes of subsection 13D(2) of the Credit Code (which provides for the meaning of BNPL arrangement and BNPL contract), prescribes arrangements or a series of arrangements that are not BNPL arrangements.

Subregulation 69F(2) provides that a medical financing arrangement at no cost to the consumer, including that the consumer does not pay any fees or charges, would not be a BNPL arrangement. For a medical financing arrangement to not be a BNPL arrangement it must have the following characteristics:

- the merchant is a related body corporate of the BNPL provider;
- the merchant supplies a service to the consumer;
- the service is a service for which a medicare benefit is payable under Part II of the *Health Insurance Act 1973*; and
- the BNPL provider provides credit to the consumer at no cost to the consumer.

The policy intent is to exempt arrangements where a medical provider provides treatment and funding via separate legal entities to enable the patient to claim Medicare reimbursement prior to paying for the treatment, thus minimising the patient's out-of-

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pocket costs. This arrangement ensures compliance with the *Health Insurance Act 1973*. The exemption is appropriately limited and does not expose consumers to increased risk as there is no cost (including no fees or charges) to the consumer under these arrangements.

Disclosure requirements for LCCCs

Item 1 amends the definition of precontractual document in regulation 3 of the Credit Regulations. Precontractual document is defined to have any of four meanings. Paragraph (d) of the definition provides that a precontractual document is an information statement mentioned in paragraph 16(1)(b) of the Credit Code. Item 1 amends paragraph (d) of the definition to add paragraph 16(1A)(b) to the definition, thereby including the requirements relating to LCCCs, which are provided for in subsection 16(1A) of the Credit Code.

Items 10 and 11 amend regulation 70 of the Credit Regulations to apply the requirements relating to the information statement about a debtor's statutory rights and obligations to also cover LCCCs. This is achieved by adding reference to paragraph 16(1A)(b) of the Credit Code to subregulation 70(1) and the Note to subregulation 70(2), thereby including the information statement requirements relating to LCCCs, which are provided for in paragraph 16(1A)(b) of the Credit Code.

Regulation 28L provides the disclosure documents that a licensee is required to give a consumer under the Credit Act may be given electronically. Item 2 amends regulation 28L of the Credit Regulations by inserting subregulation 28L(1A), which provides that regulation 28L does not apply in relation to paragraphs 28L(1)(a), (b), (c), (d), (e), (k) or (l) if the disclosure document relates to a LCCC. The reason for disapplying regulation 28L insofar as the disclosure documents relate to a LCCC in these instances is that section 331 of the Credit Act provides for giving information or documents in connection with LCCCs and allows the licensee to provide the consumer with the information or documents exclusively in electronic form.

Circumstances in which a LCCC will be unsuitable

Regulation 28LCF of the Credit Regulations prescribes the circumstances in which a credit contract is unsuitable. Item 3 amends subparagraph 28LCF(2)(b)(iii) of the Credit Regulations to extend the prescribed circumstances where a credit contract is unsuitable for a consumer to include where credit is provided, or to be provided, as part of an arrangement involving a combination of LCCCs, small amount credit contracts (SACCs) or medium amount credit contracts, where 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.

Additional rules relating to low cost credit contracts

Item 4 inserts Part 3-4A into the Credit Regulations. Part 3-4A outlines the additional rules relating to LCCCs for the purposes of sections 128 to 131 of the Credit Act.

Division 1 contains regulations 28HAA and 28HAB.

Regulation 28HAA of the Credit Regulations outlines the scope of Part 3-4A. For Part 3-4A to apply to a licensee, the licensee must have elected under subsection 133BXA(1) of

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the Credit Act for Part 3-2BA of the Credit Act, which provides for the modified RLO regime, to apply to some or all of its LCCC offerings, and the relevant credit contract must be an LCCC covered by the election. This is further highlighted in the Note to regulation 28HAA.

If a licensee does not elect to be subject to Part 3-2BA, they are instead subject to the existing full RLO regime provided for in Divisions 1 to 4 of Part 3-2 of the Credit Act in relation to LCCCs they offer.

Division 2 contains regulations 28HAC and 28HAD. These regulations establish when inquiries about and verification of the financial situation of a consumer must be made and what particular inquiries must be made about the consumer's financial situation.

When inquiries etc. must be made

Section 133BXB of the Credit Act allows for modification of the licensee's obligations to assess unsuitability under section 128 of the Credit Act. Under sections 128 and 133BXB, the obligation to assess unsuitability must be undertaken within 90 days (or other period prescribed by the Credit Regulations) before the 'credit day'. Regulation 28HAC of the Credit Regulations modifies the timing of when inquiries etc. must be made for the purposes of LCCCs by providing that, for the purpose of paragraph 133BXB(b) of the Credit Act, the prescribed period is 120 days.

Inquiries about a consumer's financial situation

Section 133BXC of the Credit Act modifies the operation of section 130 by setting out matters that are intended to scale up or down what is 'reasonable' for the purposes of the inquiries and verification steps required by paragraphs 130(1)(a), (b) and (c) of the Credit Act.

The Note for subsection 133BXC(3) of the Credit Act indicates that the particular things that a LCCC licensee must do in order to satisfy their obligations under paragraphs 130(1)(a) to (c) in relation to LCCCs may vary from case-to-case and may be less onerous in some cases than in others depending on matters such as those covered by subsection 133BXC(3).

Pursuant to subsection 130(2) of the Credit Act, regulation 28HAD of the Credit Regulations sets out particular inquiries about a consumer's financial situation that a licensee must make for the purposes of paragraph 130(1)(b) of the Credit Act before making an assessment of whether a LCCC will be unsuitable for a consumer if the contract is entered, or the credit limit of the contract is increased, in the period of assessment.

Regulation 28HAD is intended to ensure that, regardless of how the factors set out at subsection 133BXC(3) of the Credit Act scale what constitutes reasonable inquiries and verification for the purposes of subsection 130(1) of the Credit Act, there are certain inquiries that are made in all circumstances, regardless of the LCCC, consumer or credit provider. Therefore, regulation 28HAD effectively sets a floor for what is required from credit providers to comply with subsection 130(1) of the Credit Act. Ultimately, to comply with subsection 130(1), the credit provider will need to determine what constitutes reasonable inquiries and verifications having regard to the factors set out in subsection 133BXC(3) of the Credit Act.

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Subregulation 28HAD(2)(a) requires a licensee to seek to obtain other credit information mentioned in subregulation 28HAD(3) from a credit reporting body where the value of all LCCCs in force between the consumer and the LCCC licensee is less than $2,000 and the consumer is an individual.

Subregulation 28HAD(3) lists the other information that a LCCC licensee must seek to obtain as being:

- identification information (within the meaning of the Privacy Act) about the individual;
- details of any information requests (within the meaning of the Privacy Act) that have been made in relation to the individual;
- default information (within the meaning of subsection 6Q(1) or (2) of the Privacy Act) about the individual;
- payment information (within the meaning of the Privacy Act) about the individual;
- personal insolvency information (within the meaning of the Privacy Act) about the individual;
- information about the individual that is information covered by paragraph 6N(k) of the Privacy Act (which covers certain kinds of publicly available information);
- new arrangement information (within the meaning of the Privacy Act) about the individual; and
- court proceedings information (within the meaning of the Privacy Act) about the individual.

This information aligns with the data contained in what is commonly known as a 'negative credit check' with a credit reporting body. The Note to subregulation 28HAD(3) informs that, under subsection 5(1) of the Credit Act, 'credit reporting body' has the same meaning as in the *Privacy Act 1988* (Privacy Act).

If the value of the LCCC being entered into and all LCCCs in force between the consumer and the LCCC licensee is $2,000 or greater, at the time the new LCCC is entered into or after the credit limit is increased, whichever applies, and the consumer is an individual, paragraph 28HAD(2)(b) provides that the licensee must seek to obtain from a credit reporting body, the information required by subregulation 28HAD(3) as well as information required by subregulation 28HAD(4), which is information about consumer credit (within the meaning of the Privacy Act) provided to the individual that is consumer credit liability information (within the meaning of the Privacy Act) about the individual.

This information aligns with the data contained in what is a commonly known as a 'partial credit check' with a credit reporting body.

The requirement for a licensee to seek to obtain this other information from a credit reporting body acknowledges that some of this information may not exist for each consumer. It also reflects that there are circumstances in which a credit reporting body is legally not able to provide certain types of credit information – for example, because of time limits, bans in place, or the application of the Privacy (Credit Reporting) Code 2024. Therefore, a licensee can be compliant with regulation 28HAD despite not obtaining all the other information identified in subregulations 28HAD(3) and (4). However, the policy intent is that a licensee will have made reasonable efforts to obtain that information. In

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practice, this would require a licensee to comply with the Principles of Reciprocity and Data Exchange (PRDE) in order to obtain partial credit information from a PRDE-signatory credit reporting body. It is expected that credit reporting bodies engaged by the licensee will be signatories to the PRDE dated 6 January 2021 and published by the Australian Retail Credit Association, as amended from time to time. The PRDE could, in 2025, be viewed on the Australian Retail Credit Association website (https://www.arca.asn.au/prde).

The requirement for a LCCC licensee to seek to obtain this other information as part of the modified RLO framework is directed at both assessing whether a credit contract will be unsuitable for a consumer and to create a record of credit inquiry (an information request) by that licensee on the consumer's credit report. This report will indicate to other credit providers that the consumer may have an existing LCCC liability, as information requests are part of the information providers must seek to obtain.

Subregulation 28HAD(5) confirms that nothing in subregulations 28HAD(3) and (4) requires or authorises a credit reporting body to disclose the information referred to in any of subregulation 28HAD(2) to a licensee.

Subregulation 28HAD(6) requires a licensee to also seek to obtain other information about the consumer that the licensee reasonably believes is substantially correct. That information is:

- the income of the consumer;
- the expenditure of the consumer; and
- any LCCCs, SACCs, or consumer leases to which the consumer is currently a party.

As the information required to be obtained by subregulation 28HAD(6) is additional to the information required by subregulations 28HAD(3) and (4), it is intended that a licensee could use information they obtained pursuant to those obligations to determine whether they reasonably believe that the information obtained under subregulation 28HAD(6) is substantially correct, where relevant and depending on the circumstances. For example, if the information obtained for the purposes of subregulation 28HAD(6) is incongruent with other information gathered under subregulations 28HAD(3) and (4), the credit provider cannot reasonably believe that the information is substantially correct.

Depending on the circumstances, a benchmark could also be considered by a credit provider to test whether the information could be reasonably believed to be substantially correct because it is within the range expected for a person in broadly similar circumstances to the consumer. Alternatively, the benchmark may indicate that the information provided may not be true. A LCCC licensee may need to regularly monitor and review benchmarks and how to use them to ensure the benchmarks remain appropriate – for example, by assessing data on defaults, complaints, and dispute resolution.

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Unsuitability assessment policies

The new Part 3-4A of the Credit Regulations also includes Division 3, which contains regulations 28HAE and 28HAF.

Regulation 28HAE identifies that Division 3 is made for the purposes of subsection 133BXG(3) of the Credit Act. Subsection 133BXG(1) of the Credit Act requires a licensee to have a written policy, defined as an ‘unsuitability assessment policy’, which sets out how the licensee will comply with the requirements in sections 128 and 131 of the Credit Act. Section 128 requires a licensee to assess unsuitability before entering into a credit contract with a consumer. Section 131 provides for when a credit contract must be assessed as unsuitable. Subsection 133BXG(3) of the Credit Act requires a licensee to comply with any requirements relating to unsuitability assessment policies that are prescribed by the Credit Regulations.

Regulation 28HAB of the Credit Regulations provides for the definition of ‘unsuitability assessment policy’. Unsuitability assessment policy is defined by reference to Part 3-2BA of the Credit Act.

Regulation 28HAF outlines the requirements for a licensee to review and update its unsuitability assessment policy.

Subregulation 28HAF(1) requires a licensee to conduct regular reviews of its unsuitability assessment policy. This subsection is informed by subregulation 28HAF(2), which provides that a licensee must have regard to its obligations under subsection 133BXG(2) of the Credit Act in deciding when to conduct a review of the policy. Subsection 133BXG(2) provides that the licensee must ensure that its unsuitability assessment policy is one that, if followed, makes it likely that the licensee will comply with sections 128 and 131.

Subregulation 28HAF(3) sets out that when undertaking a review of its unsuitability assessment policy, a licensee must assess whether the policy has been and will continue to be one that, if followed, makes it reasonably likely the licensee will comply with sections 128 and 131 of the Credit Act, as those sections apply in relation to LCCCs. The licensee must also identify any changes to the policy that would make it more likely that, if the policy is followed, the licensee will comply with those sections, as they apply in relation to LCCCs.

Compliance with subregulation 28HAF(3) is contingent on fulfilment of subregulation 28HAF(4), which outlines the requirements for the information and evidence that a licensee must have regard to when carrying out a review. The licensee must reasonably believe the information and evidence to be accurate, and that they provide an appropriate basis for assessing the policy and identifying any changes to the policy that are deemed necessary. This would be expected to include information or evidence on poor consumer outcomes that indicates unsuitable lending may have occurred. At a minimum, this should include the rates at which debts are being partially or fully written off, measures of the rates of arrears, relevant complaints data (both under internal and external dispute resolution processes) and hardship data. The licensee is already obliged to collect complaints data and information on consumer outcomes in order to comply with its Design and Distribution Obligations and must have regard to the nature of the Target Market under paragraph 133BXC(3)(b) of the Credit Act.

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Subregulation 28HAF(5) requires that if a licensee identifies any changes to its unsuitability assessment policy that would make it more likely that, if the policy is followed, the licensee will comply with sections 128 and 131 of the Credit Act, as those sections apply to LCCCs, the licensee must, as soon as practicable, ensure that the policy is revised to incorporate those changes. It is expected that a licensee would revise the policy if it has identified that the policy does not enable it to comply with sections 128 and 131 of the Credit Act, or if the licensee identifies that it could more fully comply with these obligations.

Other amendments

Items 7, 8, 13, 15, 16 and 17 amend the Credit Regulations to give effect to the change of language from 'direct debit default' to 'first default in payment' in the Credit Act effected by the BNPL Act.

Items 7 and 8 amend regulation 69 of the Credit Regulations, which relates to the requirement for a licensee to give a consumer a default notice under section 87 of the Credit Code. Regulation 69 is amended by substituting 'first default in payment' for 'direct debit default' in the regulation heading and in subregulations 69(1) and (2). These amendments are to ensure consistency with the heading to Subdivision C of Division 1 of Part 5 of the Credit Code and section 87 of the Credit Code, both of which use the language 'first default in payment' rather than 'direct debit default'.

Items 13 to 17 amend regulation 85 of the Credit Regulations, which provides for the information to be contained in a default notice. Items 14 and 17 also amend regulation 85 by adding a subregulation 85(2) and amending the existing chapeau to be subregulation 85(1).

Item 13 amends the heading to regulation 85 of the Credit Regulations to substitute 'first default in payment' for 'direct debit default'. Item 16 amends subregulation 85(1) to substitute 'first default in payment' for 'direct debit default' in the second column of the provision's table.

Item 15 further amends subregulation 85(1) of the Credit Regulations to give effect to the amendment caused by item 16 of these regulations.

Item 17 amends regulation 85 of the Credit Regulations by adding subregulation 85(2), which sets out the information that a first default in payment notice must contain. That information is:

- that there has been a default in payment of an amount under the LCCC;
- how to arrange for payment of the amount;
- the licensee's internal dispute resolution procedures and financial hardship processes; and
- the external dispute resolution procedures available with the Australian Financial Complaints Authority (i.e. AFCA).

For further clarity on the standard of information required and examples of the types of information that is expected to be included in a default notice, credit providers should be guided by forms prescribed under subregulation 85(1), including Credit Form 11 and Credit Form 11A.

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Item 12 amends subregulation 79C(1) of the Credit Regulations to omit the reference to subsection 39C(1) and substitute section 39C. This amendment is consequential to amendments made by the BNPL Act to repeal subsection 39C(2) of the Credit Code which is no longer necessary.

Application provisions

To support the commencement of the Regulations with the commencement of the BNPL Act amendments to the Credit Act and Credit Code, item 18 adds regulation 49L at the end of Part 6-3 of the Credit Regulations.

Regulation 49L is an application and transitional provision.

Subregulation 49L(1) provides that regulation 69G, which is the fee cap provision, applies to LCCCs entered into before, on or after the commencement of Part 1 of Schedule 2 to the BNPL Act. This means that a LCCC entered into before the commencement of the fee cap regime in regulation 69G but still in force when regulation 69G commences will be subject to the caps set out in subregulation 69G(3) from that commencement date.

Subregulation 49L(2) provides that the amendments to regulations 69, 79C and 85 (made by items 7, 8 and 12 to 17 of the Regulations) apply in relation to a default that occurs on or after the commencement, which is the later of the start of the day after the Regulations are registered; and immediately after the commencement of Parts 2 to 10 of Schedule 2 to the BNPL Act.

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ATTACHMENT B

Statement of Compatibility with Human Rights

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

National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025

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 purpose of the *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025* (the Regulations) is to amend the *National Consumer Credit Protection Regulations 2010* (Credit Regulations) to support amendments made by the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (BNPL Act) to the Credit Act and the Credit Code (i.e. Schedule 1 to the Credit Act) to establish a regulatory framework for low cost credit contracts (LCCC), and may include buy now pay later (BNPL) contracts.

A LCCC is contract under which credit is, or may be, provided under the contract and the contract is a buy now pay later (BNPL) contract, or another kind of contract prescribed by the Credit Regulations. The new regulatory framework for LCCCs is intended to maintain the benefits of consumer access to credit products, such as BNPL, while providing appropriate and proportionate consumer protections.

The Regulations support the BNPL Act amendments by prescribing: inquiries that must be made about a consumer's financial situation; requirements for a LCCC licensee's unsuitability assessment policy, including the content of the policy and conducting reviews of and updating the policy; the maximum level of fees or charges a LCCC licensee can charge on a consumer in a 12-month period for the credit contract to be considered a LCCC; the information that must be included in a first default in payment notice for LCCCs; and medical financing at no cost to the consumer is not a BNPL arrangement.

Human rights implications

This Legislative Instrument engages the following right:

- The right to protection from arbitrary or unlawful interference with privacy under article 17 of the ICCPR.

  <u>*Right to Privacy*</u>

  Article 17(1) of the ICCPR provides for the right to not be subjected to arbitrary or unlawful interference with an individual's privacy. In order for the interference with privacy not to be 'arbitrary', any interference must be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality to the end sought and necessity in the circumstances.

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Subregulation 28HAD to the regulations may engage the right to privacy by obliging LCCC licensees to seek to obtain various pieces of credit-related information about individual consumers from credit reporting bodies. LCCC licensees must seek to obtain certain information depending on whether the value of the LCCC being entered into and all LCCCs in force between the consumer and the LCCC licensee is less than $2,000 or $2,000 or greater, at the time the new LCCC is entered into or after the credit limit is increased, whichever applies, and the consumer is an individual.

When the value of the LCCC being entered into and all LCCCs in force between the consumer and the LCCC licensee is less than $2,000, the information includes identification information about the individual; details of information requests made in relation to the individual; default information about the individual; the individual's payment and personal insolvency information; new arrangement information and court proceedings information about the individual; and certain kinds of publicly available information about the individual covered by paragraph 6N(k) of the *Privacy Act 1988* (Privacy Act). All these terms are defined as in the Privacy Act.

When the value of the LCCC being entered into and all LCCCs in force between the consumer and the LCCC licensee is $2,000 or greater, the LCCC licensee must seek to obtain the abovementioned information as well as information about consumer credit (within the meaning of the Privacy Act) provided to the individual that is consumer credit liability information (within the meaning of the Privacy Act).

The requirement for a LCCC licensee to seek to obtain this information is directed at both assessing whether a credit contract will be unsuitable for a consumer and to create a record of credit inquiry (an information request) by that licensee on the consumer's credit report. This report will indicate to other credit providers that the consumer may have an existing LCCC liability, as information requests are part of the information providers must seek to obtain. The information an LCCC licensee must seek to obtain is consistent with the data contained in what is commonly known as a 'negative credit check' (in relation to LCCCs with a value less than $2,000) or a 'partial credit check' (in relation to LCCCs with a value of $2,000 or more) with a credit reporting body and will be effective in achieving both requirements' aims.

These requirements are reasonable, necessary, and proportionate to the objective of assessing an individual consumer's suitability to enter an LCCC as existing legal safeguards ensure the information cannot be disclosed or used beyond the defined purpose.

The regulations indicate that the personal information of consumers may only be collected and used for particular purposes, that is, to facilitate assessments of unsuitability to enter LCCCs. Credit reporting bodies remain bound by various existing legal frameworks, including the *Privacy (Credit Reporting) Code 2024* and the *Principles of Reciprocity and Data Exchange* (PRDE), to ensure they do not mishandle or inappropriately share this information. Subregulation 28HAD(5) also clarifies that a licensee is not forced to attempt to obtain information if it is illegal for a credit reporting body to share. Further, LCCC licensees are bound to the PRDE in their attempts to obtain this relevant information and cannot distribute the information to third parties in accordance with the Privacy Act.

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Other general existing privacy safeguards continue to apply, that is, the Privacy Act applies to the handling of personal information and information relating to credit reporting.

Conclusion

The Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary, and proportionate.

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