

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 85

Issued by authority of the Minister for Financial Services and Superannuation

National Consumer Credit Protection Act 2009

National Consumer Credit Protection Amendment Regulation 2013 (No. 2)

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 *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Credit Enhancements Act) amended the Credit Act (including the National Credit Code) to introduce a number of reforms to the regulation of reverse mortgages.

The Regulation amends the *National Consumer Credit Protection Regulations 2010* (Principal Credit Regulations) to support the reforms introduced by the Credit Enhancements Act.

Specifically, the Regulation:

- introduces additional responsible lending obligations so that a credit licensee's assessment of whether or not a reverse mortgage is unsuitable must include reasonable inquiries about the borrower's potential future needs;
- introduces a presumption that a reverse mortgage is unsuitable if it involves a loan to value ratio (calculated by dividing the amount of credit owed under the credit contract for the reverse mortgage by the value of the reverse mortgaged property x 100) above those prescribed (depending upon the borrower's age);
- prescribes the methods via which credit licensees can provide a consumer with the projections of their home equity;
- prescribes the reverse mortgage information statement (which must be given to all consumers before the licensee makes a preliminary assessment in connection with a reverse mortgage);
- prescribes the form of disclosure that must be given to a borrower if a credit contract for a reverse mortgage does not provide protections for persons who are not borrowers to reside in the mortgaged property; and
- prescribes how credit providers must keep records of nomination and withdraws of a borrower's consent for a person to reside in the mortgaged property.

Details of the Regulation are set out in [Attachment A](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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

The Regulation was subject to targeted industry consultation during December 2012 via the Equity Release Consultation Working Group. This group is convened by the Department of the Treasury, and comprised of representatives from reverse mortgage lenders, legal, seniors and consumer advocate groups and the reverse mortgage industry body SEQUAL. Changes were made to the unsuitability presumption to give greater flexibility to credit providers. Changes were also made to the information statement, simplifying its readability while ensuring it remains technically accurate and effective.

The provision which prescribes the methods via which credit licensees can provide a consumer with projections of home equity commence the day following registration.

The remaining provisions commence on 1 June 2013.

Details of the *National Consumer Credit Protection Amendment Regulation 2013 (No. 2)*

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *National Consumer Credit Protection Amendment Regulation 2013 (No. 2)*.

Section 2 – Commencement

This section provides that the provisions of the Regulation commence as set out in the Table. The Table provides that:

- Sections 1 to 4 and the amendments in Schedule 1 commence the day after the Regulation is registered.
- The amendments in Schedule 2 commence on 1 June 2013.

Section 3 – Authority

This section provides that the Regulation is made under the *National Consumer Credit Protection Regulations 2010* (Principal Credit Regulations).

Section 4 – Schedule

This section provides that the instruments referred to in Schedules 1 and 2 are amended as specified by the items in each Schedule.

Schedule 1 – Amendments commencing day after registration

Item [1] inserts section 28LD into the Principal Credit Regulations.

Section 133DB of the Credit Act requires licensees to provide consumers with projections of the equity in their home under a reverse mortgage using an equity projection calculator from a website approved by the Australian Securities and Investments Commission (ASIC). Subsection 28LD(1) allows these projections to be given either by:

- mail
- email; or
- any other form of written or electronic communication agreed to by the consumer.

Subsection 28LD(2) requires licensees to generate the equity projections for a consumer in accordance with any instructions for the making of the projections included by ASIC on the relevant website.

Schedule 2 – Amendments commencing 1 June 2013

Item [1] inserts section 28HA into the Principal Credit Regulations. In relation to a credit contract for a reverse mortgage, credit assistance providers and credit providers will be required to make reasonable inquiries about a consumer's requirements and objectives in meeting future needs.

If credit is provided in relation to a reverse mortgage, these additional inquiries about the consumer's requirements and objectives in meeting possible future needs must include, but are not limited to:

- possible need for aged care accommodation expenses; and
- whether the consumer intends to leave equity in their home to their estate.

These additional inquiries will require credit licensees to discuss with reverse mortgage applicants, not just the short term effects of the reverse mortgage, but also how the loan may affect the borrower's options as they age, or impact the amount of equity they can leave to their estate. This will allow reverse mortgage applicants to better balance the short term need to access equity in their home against the long term impacts of reducing their home equity.

While there will be no certainty about the amount of equity that may exist at any point in the future, the intention of this provision is to require opening a discussion of possible future needs with the consumer, and the outcome of the conversation would reflect this uncertainty.

Item [2] inserts section 28LC into the Principal Credit Regulations. Section 28LC prescribes when a credit contract for a reverse mortgage is presumed to be unsuitable for the purposes of paragraphs 118(2)(c) and 131(2)(c) or is presumed to be unsuitable for the purposes of paragraphs 123(2)(c) and 133(2)(c) of the *National Consumer Credit Protection Act 2009* (the Credit Act). A contract is presumed to be unsuitable if the loan to value ratio under the loan would exceed the prescribed amount when the loan is entered into.

The prescribed amounts are:

- if the youngest borrower is 55 years or younger – 15 per cent
- if the youngest borrower is over 55 years– 15 per cent plus 1 per cent for each year the borrower is over 55.

The use of a presumption allows reverse mortgage lenders some flexibility to negotiate the loan to value ratio with a borrower and provide a loan to value ratio higher than those prescribed if they have sufficient reason (and evidence) that the higher ratio meets the borrower's requirements and objectives.

For example, a reverse mortgage is provided to a consumer at age 65 with a loan to value ratio of 25 per cent (allowed under the prescribed amounts). When the consumer is 70, they require an amount to fix their roof. While the value of their house has risen, so has the amount of their mortgage, and the amount required to fix the roof would exceed the prescribed allowed loan to value ratio. A further lump sum could be provided to the consumer to fix the roof if evidence is provided of the need for this amount, and that the consumer is aware of the higher ratio, and in this instance, is not intending to leave a substantial amount of equity to their estate.

Item [3] inserts section 28LE into the Principal Credit Regulations. Section 133DB of the Credit Act requires licensees to give consumers a reverse mortgage information statement. Section 28LE prescribes Schedule 5A as the information statement.

The reverse mortgage information statement provides key information to inform consumers about the features of reverse mortgages and the risks commonly associated with them. Credit providers and people providing credit assistance are required to provide consumers with this information statement.

Item [4] inserts section 74A into the Principal Credit Regulations. If a credit contract for a reverse mortgage does not include a tenancy protection provision section 18B of the National Credit Code requires licensees to inform a debtor the contract does not include such a provision, before providing a credit service or entering into the contract. Section 74A prescribes Form 7A for the purposes of informing the debtor of this, with the Form included as Form 7A in Schedule 1 of the Principal Credit Regulations.

This form provides consumers with disclosure information that the rights of any spouse, partner or other resident in the consumer's home would be affected by the reverse mortgage, and provides information of where the consumer can get further information regarding reverse mortgages.

Item [5] inserts section 110A into the Principal Credit Regulations. Subsection 185A(1) of the Code requires licensees to keep records of a debtor's nomination that a person may reside in the mortgaged property on the same terms as themselves. Records of revocations of these nominations must also be kept.

Section 110A requires credit licensees to keep records:

- for current nominations and revocations – the record must include a statement that it is current and the date which the nomination or revocation was given; and
- for nominations or revocations which are no longer in effect – the record must include the date on which the nomination was revoked or the revocation ceased to have effect because a new nomination was made.

All records must be kept for the period in which they are in effect.

Items [6] and [7] set out Form 7A and the information statement as referred to in Items [3] and [4].

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 Regulation 2013 (No. 2)

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 Legislative Instrument is to:

- introduce additional responsible lending obligations so that credit licensees assessment of whether or not a reverse mortgage is unsuitable must include reasonable inquiries about the borrowers potential future needs;
- introduce a presumption that a reverse mortgage is unsuitable if it involves a loan to value ratio above those prescribed (depending upon the borrower's age);
- prescribe the methods which credit licensees can provide a consumer with projections of their home equity;
- prescribe the reverse mortgage information statement;
- prescribe the form of disclosure a credit licensee must use to disclose that a credit contract for a reverse mortgage does not provide protections for persons who are not borrowers to reside in the mortgaged property;
- prescribe how credit providers must keep records of nomination and withdraws of a borrowers consent for a person to reside in the mortgaged property.

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.