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

Select Legislative Instrument No. 85, 2013

I, Quentin Bryce AC CVO, 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 16 May 2013

Quentin Bryce
Governor-General

By Her Excellency's Command

William Richard Shorten
Minister for Financial Services and Superannuation

OPC50200 - A

Contents

1 Name of regulation

This regulation is the *National Consumer Credit Protection Amendment Regulation 2013 (No. 2)*.

2 Commencement

Each provision of this regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this regulation not elsewhere covered by this table	The day after this regulation is registered.	
2. Schedule 1	The day after this regulation is registered.	
3. Schedule 2	1 June 2013.	1 June 2013

3 Authority

This regulation is made under the *National Consumer Credit Protection Act 2009*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration

National Consumer Credit Protection Regulations 2010

1 At the end of Part 3.5

Add:

28LD Reverse mortgages—projections of home equity

(1) For the purposes of paragraph 133DB(1)(a) of the Act, a projection may be given by the licensee to the consumer in the following way:

(a) by mail;

(b) by email;

(c) by another form of written or electronic communication agreed to by the consumer.

(2) For the purposes of subparagraph 133DB(1)(a)(ii) of the Act, the licensee must make the projections in accordance with any instructions for the making of the projections included on the website approved by ASIC for that subparagraph.

Schedule 2—Amendments commencing 1 June 2013

National Consumer Credit Protection Regulations 2010

1 Before regulation 28J

Insert:

28HA Reverse mortgages—credit assistance providers and credit providers to make reasonable inquiries

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

(a) section 115 (obligations of credit assistance providers before providing credit assistance for credit contracts);

(b) section 128 (obligations of credit providers before entering credit contracts or increasing credit limits).

(2) For the purposes of paragraphs 117(1)(d) and 130(1)(d) of the Act, if the credit to be provided under the credit contract will be used to secure a reverse mortgage over a dwelling or land, the licensee must make reasonable inquiries about the consumer's requirements and objectives in meeting possible future needs, including:

(a) a possible need for aged care accommodation; and

(b) whether the consumer prefers to leave equity in the dwelling or land to the consumer's estate.

Note: The licensee's inquiries about the consumer's requirements and objectives are not necessarily limited to the matters referred to in paragraphs (2)(a) and (b).

2 After regulation 28LB

Insert:

28LC Reverse mortgages—presumption of unsuitability of credit contract if certain loan to value ratios exist

(1) This regulation:

(a) is made for the purposes of the following provisions of the Act:
   (i) paragraph 164(d);
   (ii) paragraph 118(2)(c) (when the credit contract must be assessed as unsuitable—entering the contract or increasing the credit limit), as modified by subregulation (2);
   (iii) paragraph 123(2)(c) (prohibition on suggesting or assisting consumers to enter, or increase the credit limit under, unsuitable credit contracts), as modified by subregulation (3);
   (iv) paragraph 131(2)(c) (when credit contract must be assessed as unsuitable), as modified by subregulation (4);
   (v) paragraph 133(2)(c) (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts), as modified by subregulation (5); and
(b) sets out circumstances in which a credit contract is unsuitable.

Modifications of Act

(2) For the purposes of paragraph 164(d) of the Act, the provisions to which Part 3-7 of the Act applies apply as if paragraph 118(2)(c) of the Act were varied to read:

“(c) if the regulations prescribe circumstances in which a credit contract is:
   (i) unsuitable; or
   (ii) unsuitable unless the contrary is proved;
 those circumstances will apply to the contract;”.

(3) For the purposes of paragraph 164(d) of the Act, the provisions to which Part 3-7 of the Act applies apply as if paragraph 123(2)(c) of the Act were varied to read:

“(c) if the regulations prescribe circumstances in which a credit contract is:
   (i) unsuitable; or
   (ii) unsuitable unless the contrary is proved;

those circumstances will apply to the contract;".

(4) For the purposes of paragraph 164(d) of the Act, the provisions to which Part 3-7 of the Act applies apply as if paragraph 131(2)(c) of the Act were varied to read:

"(c) if the regulations prescribe circumstances in which a credit contract is:

(i) unsuitable; or

(ii) unsuitable unless the contrary is proved;

those circumstances will apply to the contract;".

(5) For the purposes of paragraph 164(d) of the Act, the provisions to which Part 3-7 of the Act applies apply as if paragraph 133(2)(c) of the Act were varied to read:

"(c) if the regulations prescribe circumstances in which a credit contract is:

(i) unsuitable; or

(ii) unsuitable unless the contrary is proved;

those circumstances will apply to the contract;".

Circumstances

(6) A circumstance in which a credit contract is unsuitable unless the contrary is proved is that:

(a) the credit contract is part of an arrangement that is a reverse mortgage; and

(b) at the time the credit contract is entered into, the youngest borrower under the reverse mortgage is 55 or younger; and

(c) the loan to value ratio of the mortgage is higher than 15%.

(7) A circumstance in which a credit contract is unsuitable unless the contrary is proved is that:

(a) the credit contract is part of an arrangement that is a reverse mortgage; and

(b) at the time the credit contract is entered into, the youngest borrower under the reverse mortgage is older than 55; and

(c) the loan to value ratio of the mortgage is the sum of;

(i) 15%; and

(ii) 1% for each year that the borrower is older than 55.

Note: Examples of unsuitable loan to value ratios are:

(a) if the youngest borrower is 60, a loan to value ratio that exceeds 20% is unsuitable unless the contrary is proved; and

(b) if the youngest borrower is 70, a loan to value ratio that exceeds 30% is unsuitable unless the contrary is proved.

(8) In this regulation:

loan to value ratio, in relation to a reverse mortgage over a reverse mortgaged property, is:

$$\frac{A \times 100}{B}$$

where:

A is the amount of credit owed under the credit contract for the reverse mortgage.

B is the value of the reverse mortgaged property.

3 At the end of Part 3.5

Add:

28LE Reverse mortgage information statement

For the purposes of the definition of ***reverse mortgage information statement*** in subsection 5(1) of the Act, Schedule 5A sets out the document.

4 After regulation 74

Insert:

74A Reverse mortgages—disclosure about credit contract not including tenancy protection provision

For the purposes of subsections 18B(2) and (4) of the Code, Form 7A is prescribed.

5 After regulation 110

Insert:

110A Reverse mortgages—manner of keeping nominations or revocations

(1) This regulation is made for the purposes of subsection 185A(1) of the Code.

(2) If a nomination is current, or a revocation is still in effect because a new nomination of a person has not been made, the record of the nomination or revocation must include:

(a) a statement that the nomination or revocation is current; and

(b) the date the nomination or revocation was given.

(3) If a nomination is revoked, or a revocation is no longer in effect because a new nomination of a person has been made, the record of the nomination or revocation must include:

(a) the date the nomination was revoked; or

(b) the date the revocation ceased to have effect because the new nomination was made.

(4) The record of the nomination or revocation must be kept during the period for which the nomination or revocation is in effect.

6 After Form 7 of Schedule 1

Insert:

Form 7A—Disclosure about credit contracts (reverse mortgages)

subsections 18B(2) and (4) of the Code
regulation 74A of the Regulations

The rights of any spouse, partner or other resident in your home will be affected by this reverse mortgage

IMPORTANT
THIS NOTICE INFORMS YOU HOW THIS REVERSE MORTGAGE WILL AFFECT THE RIGHTS OF OTHER PEOPLE LIVING IN YOUR HOME.

When this reverse mortgage needs to be repaid, if another person (including a spouse, partner or other family member) is living in your house THEY WILL HAVE TO MOVE OUT SO YOUR HOUSE CAN BE SOLD.

BEFORE YOU SIGN THE CONTRACT FOR THIS REVERSE MORTGAGE - You should carefully consider whether you want other people to continue living in the house, even if, for example, you move into aged care accommodation. To help you, you may wish to obtain independent legal advice.

If it is important to you that other people who live with you continue to have the right to remain in your home, then you should:

- find a reverse mortgage that provides rights to other residents;
- consider options other than a reverse mortgage.

If you need further information, go to **www.moneysmart.gov.au**.

MoneySmart shows you how reverse mortgages work.

Or call the Australian Securities and Investment Commission infoline on *[provider to insert ASIC number]*.

The National Information Centre on Retirement Incomes [NICRI] also provides a free independent telephone information service to consumers covering all aspects of reverse mortgages. To speak to an information officer from NICRI call *[provider to insert NICRI number]*.

7 After Schedule 5

Insert:

Schedule 5A—Reverse mortgage information statement

Note: See regulation 28LE.

The Reverse Mortgage Information Statement is an Australian Government requirement under the *National Consumer Credit Protection Act 2009*

KEY INFORMATION ABOUT REVERSE MORTGAGES

What is a reverse mortgage?

A reverse mortgage allows you to borrow money using the equity in your home as security. The loan may be taken as a lump sum, an income stream, a line of credit or a combination of these options. Interest is charged like any other loan, but you usually don't need to make repayments while you live in your home. The loan must be repaid in full if you sell your home or die or, in most cases, if you move into aged care. Typically, you are charged a higher interest rate on a reverse mortgage than for a standard home loan.

How will I be charged interest?

You will be charged interest on the loan amount you borrow. Fees and interest are added to the loan balance as you go, and the interest compounds. This means you will pay **interest on your interest**, plus on any fees or charges added to the loan. Over time, the amount you owe the lender will increase, and the longer you have the loan, the more the interest compounds and the bigger the amount you will have to repay.

For example, if you take out a reverse mortgage of $50,000, the effect of compound interest means that in 10 years' time you will owe more than twice that amount, as the table below illustrates.

Loan term	Interest	Total amount owing
1 year	$4,420	$54,420
2 years	$9,230	$59,230
10 years	$66,632	$116,632

This example assumes a fixed rate of 8.5% compounded monthly with no fees applying and no repayments being made.

How much equity will I have left after my reverse mortgage is repaid?

The amount of equity you have left in your home after repaying your reverse mortgage will depend on how much money you borrow, the interest rate and how long you have the loan, and the value of your home when it is sold.

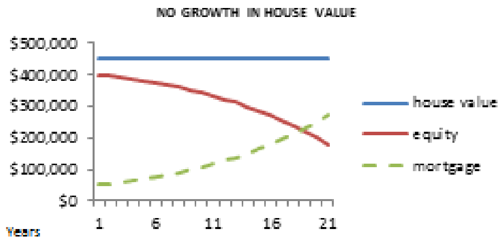
To understand how a reverse mortgage works, let's say the value of your home is $450,000 and you take out a reverse mortgage of $50,000, leaving you with $400,000 in equity.

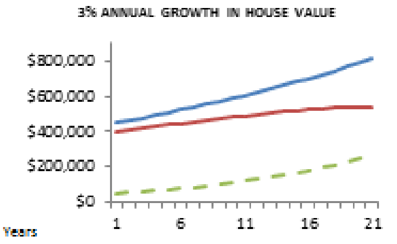
What if the value of your home stays the same?

Over 20 years, your debt will grow from $50,000 to $272,060. If the value of your home stays the same over this time, your remaining equity will be $177,940 (see Graph 1, below).

What if the value of your home goes up?

If the value of your home goes up at the rate of 3% per year, after 20 years your home will be worth $812,750 so your remaining equity will be $540,690 (see Graph 2, below).





This example assumes a fixed rate of 8.5% compounded monthly with no fees applying and no repayments being made.

A REVERSE MORTGAGE MAY NOT BE SUITABLE FOR EVERYONE. WHAT ARE THE ISSUES TO CONSIDER IN DECIDING IF IT IS RIGHT FOR YOU?

How will the loan affect your future choices?	When thinking about a reverse mortgage, you need to consider both your current and future needs. The more you borrow now, and the younger you are when you borrow it, the less equity you will have in your home to pay for your needs as you age. How might your health and living situation have changed in 10, 20 or 30 years' time? If you use up too much of your equity too soon, you may not be able to afford future costs such as high medical expenses, the need to move into aged care accommodation, essential home maintenance or the purchase of a motor vehicle.
How much will you have to repay?	You can only estimate how much you will end up owing. The exact amount to repay will depend on how much money you borrow, the interest rate and how long you have the loan, and the value of your home when it is sold.
Will I owe more than what my home is worth?	By law, lenders must guarantee that when your reverse mortgage contract ends and your home is sold to repay the loan, you will not have to pay back more than the value of your home. This is known as a "no negative equity guarantee". There are a few exceptions to this rule.
Will other people living in your home be affected?	Generally reverse mortgages have to be repaid when you move out (for example, into aged care) or die. If you are the homeowner and someone else is living with you, the other resident may have to move out when the loan has to be repaid. Some reverse mortgage contracts may protect the rights of the other resident by allowing them to stay in the home. If you want this option, make sure you discuss this with your lender before taking out a reverse mortgage.
Will you be able to leave your children an inheritance?	A reverse mortgage will reduce the amount of equity in your home you can leave to your children or other beneficiaries. You may wish to discuss this with your family.
Are there alternatives more appropriate for you?	There may be alternatives to taking out a reverse mortgage that may be more suitable for your needs. These can include downsizing, making arrangements with other family members, accessing government benefits, loans (such as the pension loans scheme) using savings or selling other assets or home reversion schemes.
Will you incur costs for repaying the loan early?	Break fees may apply when a fixed interest reverse mortgage is ended early. Break fees can be very high. Depending on the size of the loan and how long you have had it, these fees may be thousands of dollars. Note: inclusion of this box is not required for reverse mortgages with no break fees.
Will your pension change?	A reverse mortgage may affect your pension or other Government entitlements. You can contact the Department of Human Services (Centrelink) on [Note 1] to talk to a Financial Information Service Officer about how your pension may be affected. Note 1: Provider to insert the Department of Human Services number.

SOURCES OF OTHER INFORMATION

ASIC's MoneySmart: To find out more about reverse mortgages, including a reverse mortgage calculator to help you work out how much equity you may have in the future, visit the Australian Securities and Investments Commission's free consumer website at www.moneysmart.gov.au or call [Note 2]. Note 2: Provider to insert the ASIC Info line number.

National Information Centre on Retirement Investments: NICRI offers a free independent telephone service to help consumers understand reverse mortgage products. To speak to an information officer from NICRI call (toll free) [Note 3]. Note 3: Provider to insert the NICRI Info line number. Note: This line is not required if NICRI no longer provides a free independent telephone information service.