

# ASIC CLASS ORDER [CO 14/41]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

### National Credit Code

The Australian Securities and Investments Commission (*ASIC*) makes Class Order [CO 14/41] under subsection 203A(3) of the National Credit Code (the *Code*).

Under subsection 203A(3) ASIC may exempt a class of persons, credit contracts or consumer leases from all or specified provisions of the Code.

#### 1. Background

The *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (the *Amendment Act*) amended the *National Consumer Credit Protection Act 2009* (the *Credit Act*), including the Code, to introduce a number of reforms to the regulation of hardship variations. Where a consumer is experiencing financial difficulties in repaying their loan, a consumer may ask their credit provider to vary or change their loan repayments under the hardship provisions of the Credit Act.

The Amendment Act introduced changes to the pre-existing hardship application processes, with the relevant provisions in effect from 1 March 2013. Contracts that were entered into prior to 1 March 2013 remain subject to the pre-existing hardship variation provisions. This has the effect of creating two hardship systems.

The *National Consumer Credit Protection Amendment Regulations 2013 (No. 1)* (the *Amendment Regulations*) amended the *National Consumer Credit Protection Regulations 2010* (the *Principal Credit Regulations*) to provide transitional exemptions for credit providers and lessors from the obligation to record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change a contract (or consumer lease) in a hardship variation. The exemptions will last until 1 March 2014 and are intended to allow ASIC time to consult with stakeholders to develop a permanent solution.

The procedures for processing hardship variation applications require credit providers and lessors to record any changes to the contract and provide written notice to the debtor or lessee, even where the parties come to an agreement for a simple arrangement (that is, any agreement that defers or reduces the obligations of a debtor or lessee for a period of no more than 90 days). To minimise the administrative burden on industry the Amendment Regulations exempt credit providers and lessors from the obligation to provide written notice setting out the particulars of any changes to the terms of the contract in the case of simple arrangements.

These transitional exemptions are provided in regulations 69A and 69B of the Principal Credit Regulations.

## **2. Purpose of the class order**

The purpose of this class order is to extend the transitional exemptions in regulations 69A and 69B for an interim period in order to:

- facilitate consistency between the old and new hardship processes;
- reduce the administrative burden for industry;
- make it easier for consumers to seek variations to contracts; and
- allow ASIC time to complete its consultations and make its recommendations to Treasury.

## **3. Operation of the class order**

This class order provides relief from requirements in the Code for a credit provider or lessor to:

- record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change the contract (or consumer lease) in a hardship variation; and
- provide written notice setting out the particulars of any changes in the terms of the contract (or consumer lease) in the case of simple arrangements.

The relief has effect from 2 March 2014 to 1 March 2015.

## **4. Consultation**

Treasury conducted extensive consultation with stakeholders (including ASIC, individual credit providers and industry bodies) as part of the development and implementation of the Amendment Act. The problems addressed by the Amendment Regulations were identified by industry stakeholders during this consultation process.

ASIC has consulted with stakeholders (including industry bodies, individual credit providers and consumer advocates) in relation to the transitional exemptions included in the Amendment Regulations and is continuing these consultations. As part of these consultations industry stakeholders have requested an extension of the transitional exemptions to allow:

- ASIC and relevant stakeholders adequate time to complete the consultations; and
- industry sufficient time to make any necessary adjustments to ensure compliance with any changes that are made to Principal Credit Regulations.

## **Statement of Compatibility with Human Rights**

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

### **ASIC Class Order [CO 14/41]**

This class order 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 class order**

This class order provides relief from requirements in the *National Credit Code* for a credit provider or lessor to:

- record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change the contract (or consumer lease) in a hardship variation; and
- provide written notice setting out the particulars of any changes in the terms of the contract (or consumer lease) in the case of simple arrangements.

In so doing, it extends by one year relief to the same effect given by regulations 69A and 69B of the *National Consumer Credit Protection Regulations 2010*.

#### **Human rights implications**

This class order does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This class order is compatible with human rights as it does not raise any human rights issues.