

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

*National Consumer Credit Protection Act 2009*

*National Consumer Credit Protection Amendment (Small Business Exemption No. 2) Regulations 2021*

The *National Consumer Credit Protection Act 2009* (the Act) provides for the licensing of credit activities, the imposition of responsible lending obligations and requirements in relation to credit contracts and consumer leases.

Section 329 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

In April 2020, the *National Consumer Credit Protection Amendment (Coronavirus Economic Response Package) Regulations 2020* amended the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations) to temporarily exempt certain credit providers from responsible lending obligations under the Act where particular conditions were met (the small business exemption).

This targeted adjustment for a period of six months was intended to support the timely flow of credit to small businesses in light of the rapidly evolving challenges posed by the coronavirus pandemic. In October 2020, the *National Consumer Credit Protection Amendment (Responsible Lending Obligations) Regulations 2020* (the October 2020 Regulations) extended the small business exemption for a further six months.

In September 2020, the Government announced that it would undertake consumer credit reforms aimed at reducing the cost and time that it takes consumers and businesses to access credit so that consumers can continue to spend and business can invest and create jobs. The *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (the Bill) that is before the Parliament will implement these reforms by establishing a new regulatory framework for the provision of consumer credit.

Schedule 1 to the Bill will remove existing responsible lending obligations relating to the unsuitability of credit contracts, except in relation to small amount credit contracts (SACCs), SACC- equivalent loans by authorised deposit-taking institutions (ADIs), and consumer leases.

On 19 March 2021, the Treasurer released a media release titled ‘Government extends credit relief for small businesses’ stating that the small business exemption would be extended until the Government secures passage of its consumer credit reforms through the Senate. Additionally, the Treasurer confirmed that the extension of the small business exemption will continue to provide the certainty and confidence necessary to allow small businesses to access credit in a timely and efficient manner.

On 2 April 2021, the *National Consumer Credit Protection Amendment (Small Business Exemption) Regulations 2021* (the April 2021 Regulations) commenced. They aligned the end of the small business exemption with the earlier of one year and the commencement of the Bill which gives effect to the removal of responsible lending obligations. The April 2021 Regulations ensured that the responsible lending obligations were not reimposed on a portion of credit activity (that has a partial small business purpose) between the expiry date set by the October 2020 Regulations and the earlier of 3 October 2021 and the commencement of the relevant parts of the Bill.

The Bill has not yet commenced and regulation 28RB of the Credit Regulations, which provides for the small business exemption, ceased to apply after 3 October 2021. Accordingly, the purpose of the *National Consumer Credit Protection Amendment (Small Business Exemption No. 2) Regulations 2021* (the Regulations) is to amend the Credit Regulations to align the end date of the small business exemption with the commencement of the relevant parts of the Bill or a period of three years if this occurs first. This ensures the small business exemption continues to apply until the relevant parts of the Bill commence or for a period of three years otherwise.

The Act does not specify any conditions that need to be met before the power to make the Regulations is exercised.

Public consultation on the Regulations was not undertaken as the amendments are minor or machinery in nature and are required to reinstate a regulation that has been repealed. The effect of the Regulations is consistent with the April 2021 Regulations. Public consultation on the substance of the April 2021 Regulations was conducted between 4 November 2020 and 20 November 2020, together with an exposure draft of the Bill and the proposed non-ADI credit standards. Fifty-eight submissions were received on the exposure draft package. Feedback from stakeholders predominantly related to the Bill and the non-ADI standards.

Details of the Regulations are set out in [Attachment A](#). The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after registration.

The Regulations apply retrospectively from 3 October 2021 to align with the repeal date of the previous regulations of 3 October 2021. On 19 March 2021, the Government announced that the small business exemption would apply until the Government secured passage of the Bill through Parliament. Industry and the regulator have been acting in reliance on, and consistent with, this announcement. The April 2021 Regulations giving effect to this announcement were repealed on 3 October 2021 before the exemption period specified in that regulation had ended. This regulation will reinstate the small business exemption and the intended exemption end date. This ensures continuity, and consistency, with the Government's announcement that the small business exemption would be extended until the Government secures passage of its consumer credit reforms through the Senate.

A Regulation Impact Statement was prepared for the consumer credit reforms. It is available in Chapter 2 of the explanatory memorandum for the Bill.

A statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the *National Consumer Credit Protection Amendment (Small Business Exemption No. 2) Regulations 2021***

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *National Consumer Credit Protection Amendment (Small Business Exemption No. 2) Regulations 2021* (the Regulations).

**Section 2 – Commencement**

Schedule 1 to the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

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

**Section 4 – Schedule**

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

**Schedule 1 – Amendments**

Item 1 reinstates regulation 28RB of the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations), which sets out the temporary small business exemption relating to the coronavirus economic response. This provides a temporary exemption from responsible lending obligations under the Act for certain credit providers where particular conditions are met, including that there is a partial small business purpose (the small business exemption).

Item 1 also omits regulation 28RB(8) of the Credit Regulations and modifies the definition of ***exemption period*** in regulation 28RB(7). These amendments ensure the small business exemption continues to apply until commencement of the new framework for the provision of consumer credit – that is, immediately before Parts 1 and 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Act 2021* (the Amending Act) commence provided this occurs within three years.

From the time Parts 1 and 2 of Schedule 1 to the Amending Act commence, the responsible lending obligations are reinstated for credit with a partial small business purpose in relation to SACCs, SACC- equivalent loans by ADIs and consumer leases.

For other types of credit, the amendments made by item 1 prevent the obligations from being temporarily reimposed for credit with a partial small business purpose, ahead of the commencement of the Amending Act.

The new non- ADI credit standard will contain an ongoing exemption for non-ADI credit contracts with a partial small business purpose.

**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 (Small Business Exemption No. 2) Regulations 2021**

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**

This Legislative Instrument reinstates the temporary exemption from responsible lending obligations that are contained under the *National Consumer Credit Protection Act 2009*, relating to the coronavirus economic response and covering credit with a partial small business purpose. The instrument also makes an amendment to the exemption period to prevent the responsible lending obligations from being temporarily reimposed on a portion of credit activity (that has a partial small business purpose) ahead of their removal by the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Act 2021*.

**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.