



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

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 11 November 2021

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
	<i>National Consumer Credit Protection Regulations 2010</i>	2

1 Name

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

2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	13 November 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

National Consumer Credit Protection Regulations 2010

1 At the end of Part 3.6

Add:

28RB Exemption relating to small businesses

Licensees providing credit assistance in relation to applications for credit contracts, or increases to credit limits

- (1) For the purposes of paragraph 164(a) of the Act, a person that is a licensee is exempted from Divisions 4 and 6 of Part 3-1 of the Act (other than subsection 115(2) and sections 119 and 124 of the Act) in relation to conduct engaged in by the person on a day in relation to a consumer if:
 - (a) the day occurs in the exemption period (see subregulation (7)); and
 - (b) the conduct consists of providing credit assistance to the consumer in relation to an application by the consumer to:
 - (i) enter into a credit contract with a credit provider (see paragraphs 115(1)(a) and 123(1)(a) of the Act); or
 - (ii) increase the credit limit of a credit contract between the consumer and a credit provider (see paragraphs 115(1)(b) and 123(1)(b) of the Act); and
 - (c) the credit to be provided, or intended to be provided, under:
 - (i) the credit contract; or
 - (ii) the increase to the credit limit of the credit contract;is genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (d) those purposes are not merely minor or incidental in relation to:
 - (i) if subparagraph (c)(i) applies—the overall purposes of the credit contract; or
 - (ii) if subparagraph (c)(ii) applies—the overall purposes of the increase mentioned in that subparagraph.

Licensees providing credit assistance in relation to remaining in credit contracts

- (2) For the purposes of paragraph 164(a) of the Act, a person that is a licensee is exempted from subsection 115(2) and sections 119 and 124 of the Act in relation to conduct engaged in by the person on a day in relation to a consumer if:
 - (a) the day occurs in the exemption period (see subregulation (7)); and
 - (b) the conduct consists of providing credit assistance to the consumer by suggesting that the consumer remain in a credit contract with a credit provider (see subsections 115(2) and 124(1) of the Act); and
 - (c) any of the following apply:
 - (i) the credit provided under the credit contract was genuinely for the purposes of a small business operated by the consumer (whether alone or with others);

-
- (ii) if the credit limit of the credit contract was increased one or more times—the credit provided under at least one of the increased limits was genuinely for the purposes of a small business operated by the consumer (whether alone or with others);
 - (iii) if any remaining credit is available under the credit contract—the consumer intends for all or part of the remaining credit to be applied genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (d) those purposes are not merely minor or incidental in relation to:
 - (i) if subparagraph (c)(i) applies—the overall purposes of the credit contract; or
 - (ii) if subparagraph (c)(ii) applies—the overall purposes of the increase mentioned in that subparagraph; or
 - (iii) if subparagraph (c)(iii) applies—the overall purposes of the remaining credit mentioned in that subparagraph.

Licensees or exempt special purpose funding entities that are credit providers under credit contracts

- (3) For the purposes of paragraph 164(a) of the Act, a person that is a licensee or an exempt special purpose funding entity is exempted from Divisions 3 and 4 of Part 3-2 of the Act in relation to conduct engaged in by the person on a day in relation to a consumer if:
 - (a) the day occurs in the exemption period (see subregulation (7)); and
 - (b) the conduct consists of:
 - (i) entering into a credit contract with the consumer (see paragraphs 128(a) and 133(1)(a) of the Act); or
 - (ii) making representations to the consumer in relation to entering into a credit contract with the consumer (see paragraph 128(aa) of the Act); or
 - (iii) increasing the credit limit of a credit contract with the consumer (see paragraphs 128(b) and 133(1)(b) of the Act); or
 - (iv) making representations to the consumer in relation to increasing the credit limit of a credit contract with the consumer (see paragraph 128(ba) of the Act); and
 - (c) the credit to be provided, or intended to be provided, by the person to the consumer under:
 - (i) the credit contract; or
 - (ii) the increase to the credit limit of the credit contract;
 is genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (d) those purposes are not merely minor or incidental in relation to:
 - (i) if subparagraph (c)(i) applies—the overall purposes of the credit contract; or
 - (ii) if subparagraph (c)(ii) applies—the overall purposes of the increase mentioned in that subparagraph.

Licensees providing credit assistance in relation to applications for consumer leases

- (4) For the purposes of paragraph 164(a) of the Act, a person that is a licensee is exempted from Divisions 4 and 6 of Part 3-3 of the Act (other than subsection 138(2) and sections 142 and 147 of the Act) in relation to conduct engaged in by the person on a day in relation to a consumer if:
- (a) the day occurs in the exemption period (see subregulation (7)); and
 - (b) the conduct consists of providing credit assistance to the consumer in relation to an application by the consumer to enter into a consumer lease with a lessor (see subsections 138(1) and 146(1) of the Act); and
 - (c) the goods to be hired under the consumer lease are genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (d) those purposes are not merely minor or incidental in relation to the overall purposes of the consumer lease.

Licensees providing credit assistance in relation to remaining in consumer leases

- (5) For the purposes of paragraph 164(a) of the Act, a person that is a licensee is exempted from subsection 138(2) and sections 142 and 147 of the Act in relation to conduct engaged in by the person on a day in relation to a consumer if:
- (a) the day occurs in the exemption period (see subregulation (7)); and
 - (b) the conduct consists of providing credit assistance to the consumer by suggesting that the consumer remain in a consumer lease with a lessor (see subsections 138(2) and 147(1) of the Act); and
 - (c) either:
 - (i) the goods hired under the consumer lease were genuinely for the purposes of a small business operated by the consumer (whether alone or with others); or
 - (ii) the consumer intends for all or some of the goods hired under the consumer lease to be used genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (d) those purposes are not merely minor or incidental in relation to the overall purposes of the consumer lease.

Licensees or exempt special purpose funding entities that are lessors under consumer leases

- (6) For the purposes of paragraph 164(a) of the Act, a person that is a licensee or an exempt special purpose funding entity is exempted from Divisions 3 and 4 of Part 3-4 of the Act in relation to conduct engaged in by the person on a day in relation to a consumer if:
- (a) the day occurs in the exemption period (see subregulation (7)); and
 - (b) the conduct consists of:
 - (i) entering into a consumer lease with the consumer (see paragraph 151(a) and subsection 156(1) of the Act); or

-
- (ii) making representations to the consumer in relation to entering a consumer lease with the consumer (see paragraph 151(b) of the Act); and
 - (c) the goods to be hired under the consumer lease are genuinely for the purposes of a small business operated by the consumer (whether alone or with others); and
 - (d) those purposes are not merely minor or incidental in relation to the overall purposes of the consumer lease.

Definitions

(7) In this regulation:

exemption period means the period that:

- (a) starts on 3 October 2021; and
- (b) ends at the earlier of:
 - (i) the start of 3 October 2024; and
 - (ii) immediately before Parts 1 and 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Act 2021* commence.

small business has the same meaning as in section 5 of the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.