

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No.

Issued by the Authority of the Treasurer

National Consumer Credit Protection Act 2009

National Consumer Credit Regulations 2009

The *National Consumer Credit Protection Act 2009* (the Act) applies to the provision of certain kinds of credit, to certain credit contracts and to related matters.

Section M500 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section M510 of the Act authorises the making of regulations that:

- provide for a person who is alleged to have committed an offence against the Act that is stated to be an offence of strict liability to pay a penalty to the Commonwealth as an alternative to prosecution; and
- provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to civil proceedings.

For a person who is alleged to have committed an offence against this Act, the penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for that offence. For a person who is alleged to have contravened a civil penalty provision, the penalty must not exceed one-twentieth of the maximum penalty that a court could impose on the person for contravention of that provision.

The infringement notice regime will be administered by the Australian Securities and Investments Commission (ASIC).

Regulations INF.1 to INF.13 set out an infringement notice scheme. Details of the regulations appear in the [Attachment](#).

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

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on **TBA**.

ATTACHMENT***DETAILS OF THE NATIONAL CREDIT (CONSUMER CREDIT CODE) REGULATIONS 2009***Regulation INF.1 – Purpose of Part

Regulation INF.1 explains that the Part sets out an infringement notice scheme in accordance with section M510 of the Act.

The regulation explains that it is not obligatory to give an infringement notice, and then sets out a number of legal consequences that apply whether or not an infringement notice is issued. In particular, the issuing of an infringement notice does not affect a person's liability under the Act if the person does not pay the penalty set out in an infringement notice.

Regulation INF.2 – Definitions for Part

Regulation INF.2 defines words and expressions that are used in regulations INF.1 to INF.13.

Regulation INF.3 – When an infringement notice can be given

Regulation INF.3 requires an authorised officer (who must be a staff member of ASIC) to have:

- reasonable grounds to believe that a person has committed an offence against the Act that is stated to be an offence of strict liability; or
- reasonable grounds to believe that a person has contravened a civil penalty provision;

before giving the person an infringement notice.

The regulation sets a time limit of 12 months on giving an infringement notice, but allows the authorised officer to withdraw an infringement notice and give a new notice within that period.

Regulation INF.4 – Contents of infringement notice

Regulation INF.4 provides that the form of an infringement notice is set out in Schedule INF. The notice may include other information.

Regulation INF.5 – Amount of penalty if infringement notice given

Regulation INF.5 sets the amounts of the penalty payable under an infringement notice by individuals and bodies corporate. The amounts are consistent with the maximum amount permitted in section INF5 of the Act.

Regulation INF.6 – Extension of time to pay penalty

Regulation INF.6 permits the extension of time in which to pay a penalty under an infringement notice, subject to specified conditions.

Regulation INF.7 – Payment of penalty by installments

Regulation INF.7 permits the payment of a penalty under an infringement notice by installments, subject to specified conditions.

Regulation INF.8 – Time for payment of penalty

Regulation INF.8 sets out the period in which a penalty under an infringement notice must be paid. The period is 28 days after the day on which the notice is given to the recipient, unless the recipient takes action such as requesting an extension of time to pay the penalty or requesting permission to pay the penalty by installments.

Regulation INF.9 – Effect of payment of penalty

Regulation INF.9 sets out the consequences if a person pays a penalty under an infringement notice:

- the person's liability is discharged; and
- no prosecution or civil proceedings may be brought against the person; and
- the person is not taken to have admitted guilt; and
- the recipient is not taken to have been convicted.

Regulation INF.10 – Withdrawal of infringement notice by nominated person

Regulation INF.10 permits an infringement notice to be withdrawn by a nominated person, subject to specified conditions.

Regulation INF.11 – Withdrawal of infringement notice by authorised officer

Regulation INF.11 permits an authorised officer to withdraw an infringement notice, subject to specified conditions.

Regulation INF.12 – Notice of withdrawal of infringement notices

Regulation INF.12 sets out the contents of a notice withdrawing an infringement notice.

Regulation INF.13 – Refund of penalty

Regulation INF.13 provides that if an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

Schedule INF

Schedule INF sets out the form of an infringement notice.