

# EXPOSURE DRAFT



EXPOSURE DRAFT

## **National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Scott Morrison [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Treasurer

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EXPOSURE DRAFT



# EXPOSURE DRAFT

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## Contents

<b>Part 1—Preliminary</b>	1
1 Name.....	1
2 Commencement .....	1
3 Authority.....	1
4 Simplified outline of this instrument.....	1
5 Definitions .....	2
<b>Part 2—Exemption from credit activity licensing requirements for testing in the FinTech sandbox</b>	4
6 Exemption for testing eligible credit activities in the FinTech sandbox .....	4
7 Duration of the exemption .....	4
<b>Part 3—When exemption ceases before the end of the testing period</b>	5
<b>Division 1—When exemption ceases automatically</b>	5
8 Not meeting certain limits will cause the exemption to cease automatically .....	5
9 Limit on total number of consumers .....	5
10 Exposure limits for exempt credit activities—total limit for all activities etc. ....	5
<b>Division 2—Other ways exemption can cease</b>	7
11 Exemption ceases because of ASIC decision.....	7
12 Exemption ceases if provider notifies ASIC .....	7
<b>Part 4—Requirements for the exemption to exist</b>	8
13 Notifying ASIC of eligible credit activities .....	8
<b>Part 5—Conditions for the exemption</b>	10
14 Condition—notifying all consumers before engaging in an exempt credit activity .....	10
15 Condition—notifying consumers while engaging in an exempt credit activity .....	10
16 Condition—maintaining certain procedures, memberships and arrangements.....	11
17 Condition—other obligations.....	11



## Part 1—Preliminary

### 1 Name

This instrument is the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017*.

### 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 the end of the period of 3 months beginning on the day this instrument is registered.	

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 Simplified outline of this instrument

An eligible person may use an exemption from the licensing requirements in Part 2-2 of the Act to test eligible credit activities. To get the exemption, the person needs to give ASIC a notice and satisfy certain requirements (see Part 4).

There are 2 kinds of eligible credit activities. The exemption can become available at the same time, or at different times, for those 2 kinds. However, the exemption cannot become available a second time to test the same kind of credit activity.

Each exemption lasts up to 24 months.

Each exemption is subject to conditions that limit the exposure of the person's consumers to the credit activities, including the total investment activity under

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

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the exemptions and any exemptions under the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

Each exemption will cease automatically if the person fails to meet these limits (see Division 1 of Part 3), or if the person ceases to be an eligible person.

Each exemption is also subject to other conditions (see Part 5). Failing to meet these conditions may result in ASIC cancelling the exemption or applying to the Court for an order that the person comply with the conditions.

Only one member of a group of related bodies corporate can use an exemption at any one time.

## 5 Definitions

In this instrument:

**Chapter 5 body corporate** has the same meaning as in the *Corporations Act 2001*.

**controlling entity**, of an eligible person, means an entity (within the meaning of the *Corporations Act 2001*) who, whether alone or together with one or more associates (within the meaning of that Act) of the entity, controls the eligible person.

**eligible credit activity** means a credit activity that:

- (a) is covered by item 1 or 2 of the table in subsection 6(1) of the Act; and
- (b) has a related credit contract, or proposed credit contract, (the **relevant contract**);

if each of the following paragraphs applies to the relevant contract:

- (c) the relevant contract is not a reverse mortgage or a small amount credit contract;
- (d) none of the amount of credit that may be provided under the relevant contract is secured by a charge or lien over a consumer's household property covered by subregulation 6.03(2) of the *Bankruptcy Regulations 1996* (worked out as if the consumer were a bankrupt);
- (e) the credit limit of the relevant contract is more than \$2,000 but does not exceed \$25,000;
- (f) the term of the relevant contract does not exceed 4 years.

**eligible person**, for an eligible credit activity, means a person who:

- (a) is none of the following:
  - (i) a person authorised by a licence to engage in the eligible credit activity;
  - (ii) a credit representative of a licensee for engaging in the eligible credit activity;
  - (iii) a related body corporate of a body corporate referred to in subparagraph (i) or (ii);

- (iv) a natural person who is neither an Australian citizen, nor a permanent resident, within the meaning of the *Australian Citizenship Act 2007*; and
- (b) if the person is a foreign company—is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.

***provider*** has the meaning given by section 6.

***testing period*** has the meaning given by section 7.

***the Act*** means the *National Consumer Credit Protection Act 2009*.

# EXPOSURE DRAFT

## Part 2 Exemption from credit activity licensing requirements for testing in the FinTech sandbox

### Section 6

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## Part 2—Exemption from credit activity licensing requirements for testing in the FinTech sandbox

### 6 Exemption for testing eligible credit activities in the FinTech sandbox

For the purposes of paragraph 110(1)(a) of the Act, a person (the *provider*) is exempt from subsection 29(1) of the Act for engaging in an eligible credit activity during the period referred to in section 7 of this instrument if:

- (a) the provider is an eligible person for the eligible credit activity; and
- (b) the provider satisfies subsection 13(1) (about notifying ASIC) of this instrument for the eligible credit activity.

Note: The provider will automatically cease to be exempt if the provider becomes licensed to engage in the eligible credit activity, or otherwise ceases to be an eligible person for the eligible credit activity (see the definition of *eligible person* in section 5).

### 7 Duration of the exemption

The period (the *testing period*), of the provider's exemption under section 6 for the eligible credit activity, is the 24 months starting on the 14th day after the day the provider lodges with ASIC a notice in accordance with paragraph 13(1)(a) for the eligible credit activity.

Note: The exemption may end earlier (see Part 3).



# EXPOSURE DRAFT

When exemption ceases before the end of the testing period **Part 3**

When exemption ceases automatically **Division 1**

Section 8

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## **Part 3—When exemption ceases before the end of the testing period**

### **Division 1—When exemption ceases automatically**

#### **8 Not meeting certain limits will cause the exemption to cease automatically**

Each of the provider's exemptions under section 6 for eligible credit activities ceases to apply if (and when) the provider fails to meet:

- (a) a condition in a section of this Division for any of those eligible credit activities; or
- (b) a condition in a section of Division 1 of Part 3 of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017* for an eligible financial service (within the meaning of those Regulations) for which the provider has an exemption under those Regulations.

#### **9 Limit on total number of consumers**

The provider meets the condition in this section for an eligible credit activity if, during the credit activity's testing period, the provider engages in the credit activity with no more than 100 consumers.

#### **10 Exposure limits for exempt credit activities—total limit for all activities etc.**

- (1) The provider meets the condition in this section for an eligible credit activity if the provider ensures that no more than a total of \$5 million made up of the following:
  - (a) the value of credit contracts entered into in relation to eligible credit activities;
  - (b) sum insureds for eligible general insurance products;
  - (c) sum insureds for eligible life risk insurance products;
  - (d) contributions in eligible superannuation products;
  - (e) investments in other kinds of financial product;arises as the result of commitments referred to in subsections (2) and (3).
- (2) For the purposes of paragraph (1)(a), the commitments are those of consumers to enter into credit contracts as the result of the engaging in of eligible credit activities if:
  - (a) either the provider, or a related body corporate of the provider, has or has had an exemption under section 6 for each of the eligible credit activities; and
  - (b) each eligible credit activity was engaged in during that credit activity's testing period; and
  - (c) the eligible credit activities were engaged in by the provider or a related body corporate of the provider.

# EXPOSURE DRAFT

**Part 3** When exemption ceases before the end of the testing period

**Division 1** When exemption ceases automatically

## Section 10

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- (3) For the purposes of paragraphs (1)(b) to (e), the commitments are those of persons to invest in financial products as the result of the provision of eligible financial services if:
- (a) either the provider, or a related body corporate of the provider, has or has had an exemption under section 6 of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017* for each of the eligible financial services; and
  - (b) the provision of each of the eligible financial services happened during that service's testing period (within the meaning of those Regulations); and
  - (c) the eligible financial services were provided by the provider or a related body corporate of the provider.

- (4) In this section:

***eligible financial service*** has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

***eligible general insurance product*** has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

***eligible life risk insurance product*** has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

***eligible superannuation product*** has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

***financial product*** has the same meaning as in the *Corporations Act 2001*.

# EXPOSURE DRAFT

When exemption ceases before the end of the testing period **Part 3**

Other ways exemption can cease **Division 2**

Section 11

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## Division 2—Other ways exemption can cease

### 11 Exemption ceases because of ASIC decision

- (1) ASIC may, by written notice given to the provider, cancel the provider's exemption under section 6 for an eligible credit activity if:
  - (a) a condition in section 14, 15, 16 or 17 is not met for:
    - (i) the eligible credit activity; or
    - (ii) any other eligible credit activity for which the provider has or has had an exemption under section 6; or
  - (b) ASIC reasonably believes that:
    - (i) if the provider is a natural person—the provider is not a fit and proper person to engage in credit activities; or
    - (ii) if the provider is a body corporate—any director, secretary or senior manager of the provider, who would perform duties in relation to credit activities on behalf of the provider, is not a fit and proper person to engage in credit activities; or
  - (c) ASIC reasonably believes the provider has failed to act fairly, efficiently or honestly in engaging in credit activities or in providing financial services (within the meaning of the *Corporations Act 2001*); or
  - (d) ASIC reasonably believes that a purpose for obtaining the provider's exemption was to continue or recommence an exemption under section 6 that was earlier obtained by another person; or
  - (e) any exemption of the provider under the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017* is or has been cancelled under section 13 of those Regulations.

Subsection 37(3) of the Act applies to paragraph (b) in a corresponding way to the way that subsection applies to paragraph 37(2)(h) of the Act.

Note: Before, or instead of, acting under this section for a failure to meet a condition in paragraph (a), ASIC could seek an order for the provider to comply with the condition (see subsection 110(3) of the Act).

- (2) The cancellation takes effect on the day specified in the notice, which must not be a day before the notice is given to the provider.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by ASIC under subsection (1).

Note: This subsection is made for the purposes of paragraph 327(1)(i) of the Act.

### 12 Exemption ceases if provider notifies ASIC

- (1) The provider's exemption under section 6 ceases to apply for an eligible credit activity if the provider lodges with ASIC a written notice to that effect.
- (2) The cancellation takes effect on the day specified in the notice, which must not be a day before the notice is lodged with ASIC.

# EXPOSURE DRAFT

## Part 4 Requirements for the exemption to exist

### Section 13

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## Part 4—Requirements for the exemption to exist

### 13 Notifying ASIC of eligible credit activities

- (1) The provider satisfies this subsection for an eligible credit activity (the *current credit activity*) if:
- (a) the provider lodges with ASIC a written notice, to which subsection (2) applies, that states that the provider is proposing to use the exemption under section 6 for the current credit activity; and
  - (b) if the provider, or a related body corporate of the provider, has earlier obtained an exemption under section 6 for another eligible credit activity—that other credit activity is not covered by the same item of the table in subsection 6(1) of the Act as the current credit activity; and
  - (c) no related body corporate of the provider currently has:
    - (i) an exemption under section 6 for an eligible credit activity; or
    - (ii) an exemption under section 6 of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*; and
  - (d) no related body corporate of the provider has lodged with ASIC:
    - (i) a notice to which subsection (2) applies; or
    - (ii) a notice to which subsection 15(2) of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017* applies;during the 14-day period ending at the time the notice under paragraph (a) is lodged.

Note: A consequence of this subsection is that only one member of a group of related bodies corporate can ever use the exemption to test credit activities at any one time.

- (2) This subsection applies to a notice if the notice includes the following:
- (a) the provider's name, address and contact details;
  - (b) the address of the provider's website (if any);
  - (c) if the provider is a natural person:
    - (i) the person's date of birth; and
    - (ii) whether the person is or has been declared bankrupt, or is or has been an insolvent under administration; and
    - (iii) whether the person has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings in any country, or is currently party to any proceedings that may result in the person being the subject of such findings or judgment; and
    - (iv) a bankruptcy register search for the person, of the bankruptcy registers maintained by the Inspector-General in Bankruptcy or the Australian Financial Security Authority, that is no more than 12 months old; and

# EXPOSURE DRAFT

Requirements for the exemption to exist **Part 4**

## Section 13

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- (v) a national police history check for the person, conducted by the Australian Federal Police or the police force of a State or Territory, that is no more than 12 months old;
- (d) if the provider is a body corporate:
  - (i) the provider's ABN, ACN and ARBN, (within the meaning of the *Corporations Act 2001*) if any; and
  - (ii) the name of each director, and controlling entity (if any), of the provider; and
  - (iii) for each director and controlling entity who is a natural person, the information referred to in paragraph (c) about that natural person; and
  - (iv) the name and contact details of a contact person who is a natural person who can be contacted in relation to the notice;
- (e) if the provider is:
  - (i) a licensee; or
  - (ii) a credit representative of a licensee; or
  - (iii) a related body corporate of a person referred to in subparagraph (i) or (ii);that licensee's Australian credit licence number;
- (f) a description of each eligible credit activity for which the provider is proposing to use the exemption under section 6;
- (g) the name of any person (including any related body corporate of the provider), other than an employee or director:
  - (i) of the provider; or
  - (ii) of any related body corporate of the provider;whose role includes being responsible for making significant decisions about the ongoing provision of each eligible credit activity covered by paragraph (f), and a description of that role;
- (h) a description of the procedures, memberships and arrangements by which the provider will meet the condition in section 16 (about dispute resolution and compensation) for each eligible credit activity covered by paragraph (f).

Note: The same notice may specify 2 eligible credit activities. If it does, each of them will be the subject of a separate exemption under section 6 (assuming the other eligibility criteria are satisfied).

- (3) For the purposes of subparagraph (2)(c)(iv) or (v), it is sufficient if the notice includes a copy of the search or check that has been certified by a lawyer to be a true copy.

# EXPOSURE DRAFT

## Part 5 Conditions for the exemption

### Section 14

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## Part 5—Conditions for the exemption

### 14 Condition—notifying all consumers before engaging in an exempt credit activity

The condition in this section is met for an eligible credit activity if, before engaging in the credit activity with a consumer, the provider clearly and prominently discloses to the consumer that:

- (a) the provider is not authorised by an Australian credit licence to engage in the credit activity; and
- (b) the provider is not a credit representative of a licensee for engaging in the credit activity; and
- (c) the credit activity is being provided under an exemption provided under the *National Consumer Credit Protection (FinTech Sandbox Regulatory Licensing Exemption) Regulations 2017*; and
- (d) some of the normal protections associated with receiving credit activities or credit services from a licensee will not apply; and
- (e) the provider will notify the consumer in writing if any of the events referred to in paragraph 15(b) (which the provider must list) happens.

### 15 Condition—notifying consumers while engaging in an exempt credit activity

The condition in this section is met for an eligible credit activity if:

- (a) the provider is engaging in the credit activity with one or more consumers; and
- (b) the provider notifies each of those consumers in writing within 10 business days after the happening of any of the following events:
  - (i) the provider has ceased to engage in credit activities;
  - (ii) the provider has become a Chapter 5 body corporate, or under a foreign law has started to be in a similar position to a Chapter 5 body corporate;
  - (iii) the provider has become bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
  - (iv) the provider has compounded with his or her creditors, or has made an assignment of his or her remuneration for the benefit of his or her creditors;
  - (v) the provider has become authorised by an Australian credit licence to engage in the credit activity;
  - (vi) the provider has become a credit representative of a licensee for engaging in the credit activity;
  - (vii) the provider has ceased to rely on an exemption provided under the *National Consumer Credit Protection (FinTech Sandbox Regulatory Licensing Exemption) Regulations 2017*;
  - (viii) the credit activity has materially changed;
  - (ix) the credit activity is no longer being offered to new consumers.

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## **16 Condition—maintaining certain procedures, memberships and arrangements**

The condition in this section is met for an eligible credit activity if the provider:

- (a) establishes and maintains an internal dispute resolution procedure that:
  - (i) complies with the standards, and requirements, made or approved for the purposes of subparagraph 47(1)(h)(i) of the Act; and
  - (ii) covers disputes in relation to the engaging in of the credit activity; and
- (b) is a member of one or more approved external dispute resolution schemes that together cover complaints by consumers in connection with the engaging in of the credit activity; and
- (c) establishes and maintains arrangements that:
  - (i) include holding professional indemnity insurance; and
  - (ii) are approved by ASIC in writing as adequate;  
for compensating the provider's consumers for loss or damage suffered because of breaches of the Act, or of the conditions in this instrument by the provider or its representatives; and
- (d) continues the memberships referred to in paragraph (b), and the arrangements referred to in paragraph (c), for at least 12 months after the end of the credit activity's testing period.

## **17 Condition—other obligations**

The condition in this section is met for an eligible credit activity if the provider complies with:

- (a) Chapter 3 of the Act (other than paragraphs 113(2)(d), 126(2)(d) and 127(2)(d), section 124A and Part 3-2C), as if the provider were a licensee for the purposes of that Chapter; and
- (b) section 124A and Part 3-2C of the Act, to the extent that those provisions relate to short-term credit contracts, as if the provider were a licensee for the purposes of those provisions; and
- (c) Division 4A of Part 2, and Division 3 of Part 4, of the National Credit Code, as if the provider were a credit provider; and
- (d) Subdivision BA of Division 2 of Part 2 of the ASIC Act, as if the relevant contract (see paragraph (b) of the definition of *eligible credit activity* in section 5 of this instrument) for the credit activity were a consumer contract (within the meaning of subsection 12BF(3) of that Act);

in relation to engaging in the credit activity during the testing period for the eligible class of credit activities that includes the credit activity.