Australian Securities and Investments Commission

National Consumer Credit Protection Act 2009 –
Paragraphs 163(1)(a) and (d) – Exemption and Declaration
National Credit Code – Subsection 203A(1) – Exemption

Enabling power

1. The Australian Securities and Investments Commission ***(ASIC)*** makes this instrument under:

   (a) paragraphs 163(1)(a) and (d) of the *National Consumer Credit Protection Act 2009* (the ***Act***); and

   (b) subsection 203A(1) of the National Credit Code (the ***Code***).

   Note: The Code is found in Schedule 1 to the Act.

Title

2. This instrument is ASIC Instrument 26-0626.

Commencement

3. This instrument commences on the date it is signed.

Exemptions

4. The Licensee does not have to comply with Division 3 (other than section 132) and Division 4 of Part 3-2 of Chapter 3 of the Act in relation to a New Credit Contract.

5. The Licensee does not have to comply with section 14 of the Code in relation to a New Credit Contract to the extent that compliance with that section would otherwise require the Variation Notice to be referred to in the document signed by each debtor under that contract.

Declarations

6. The provisions to which Part 3-7 of Chapter 3 of the Act applies apply to the Licensee in relation to the entry by the Licensee into a New Credit Contract with a consumer as if section 132 of the Act was modified or varied by inserting after subsection 132(6):

   "(7) If the licensee has entered into or offered to enter into a credit contract with a consumer that replaces, or is intended to replace, by way of refinance an earlier credit contract between the licensee and the same consumer—a reference to an assessment for the purposes of this section includes an assessment made by the licensee under paragraph 128(c) in relation to its entry into the earlier credit contract."

Where exemptions apply

7. Subject to paragraph 8, the exemptions in paragraph 4 apply in relation to the entry by the Licensee into a New Credit Contract with a consumer where each of the following is satisfied:

(a) the consumer has an existing branded home loan credit contract;

(b) as part of the Migration, the Licensee makes an unconditional representation to the consumer that the consumer is eligible to enter into a New Credit Contract with the Licensee or offers to enter into, or enters into, a New Credit Contract with the consumer, which New Credit Contract will:

(i) have a credit limit that does not exceed the sum of the unpaid balance of the loan and accrued interest and fees and any early payments available to be redrawn (available redraw) under the existing branded home loan credit contract (if there are no early payments available to be redrawn, the available redraw will be zero);

(ii) have the same parties as under the existing branded home loan credit contract;

(iii) have an annual percentage rate that as at the disclosure date stated in the New Credit Contract is not greater than the amount of the annual percentage rate that applied to the existing branded home loan credit contract on that disclosure date (although the calculation of the annual percentage rate may differ);

(iv) have a term that does not exceed that remaining under the existing branded home loan credit contract by more than one month;

(v) if the existing branded home loan credit contract has a period during which interest only repayments must be made, that period does not exceed that remaining under the existing branded home loan credit contract by more than one month;

(vi) has a repayment type and interest rate type that is the same as that under an existing branded home loan credit contract;

(vii) if the consumer had an ability to redraw under the existing branded home loan credit contract, has an ability to redraw;

(viii) if the existing branded home loan credit contract reflects a basic home loan, reflects a basic home loan; and

(ix) if a consumer had package benefits in relation to the existing branded home loan credit contract, has package benefits in relation to it.

8. The exemption in paragraph 4 does not apply in relation to the entry into the New Credit Contract with the consumer if immediately before the day on which the Licensee makes an unconditional representation of the kind described in subparagraph 7(b), or offers to enter into a New Credit Contract, a consumer:

(a) has been in default in payment under the existing branded home loan credit contract to which that representation or offer or New Credit Contract relates for 30 days or more; or

(b) has an agreement with the Licensee for changes to be made to reduce payment obligations for a period under that existing branded home loan credit contract as a result of a hardship notice and that period has not expired or has a current hardship application under section 72 of the Code that is being assessed by the Licensee.

9. The exemption in paragraph 5 applies where each of the following is satisfied:

(a) the New Credit Contract includes a Variation Notice that is given to each prospective debtor under the New Credit Contract before or at the time the other documents that form part of the New Credit Contract are given to that prospective debtor; and

(b) each debtor under the New Credit Contract signs a document which forms part of the New Credit Contract and which refers to each of the other documents that comprise the New Credit Contract except the Variation Notice.

Where declarations apply

10. The declaration in paragraph 6 applies in relation to the Licensee in relation to a consumer if:

(a) the consumer and the Licensee have entered into a New Credit Contract or the consumer and the Licensee would have entered into a New Credit Contract had the consumer taken up an offer by the Licensee for a New Credit Contract; and

(b) the consumer requests from the Licensee a written copy of the assessment prepared by the Licensee under paragraph 128(c) of the Act in relation to the existing branded home loan credit contract or New Credit Contract.

Conditions

11. The exemptions in paragraph 4 are subject to the conditions in paragraphs 12 to 14.

Opt-in and execution requirements

12. The Licensee must not enter into a New Credit Contract with a consumer unless:

(a) the Licensee has given the consumer a choice between entering into the New Credit Contract and remaining in the existing branded home loan credit contract; and

(b) the consumer has agreed to enter into the New Credit Contract by signing a document that forms part of the New Credit Contract and refers to each other document that comprises the New Credit Contract, other than the Variation Notice.

Credit contracts—individuals only

13. If each debtor under the existing branded home loan credit contract, and each provider of a mortgage or guarantee in relation to that contract, is an individual, the Licensee must, at or before the time it first makes an unconditional representation or offer of the kind described in subparagraph 7(b), give the consumer:

(a) the Variation Notice; and

(b) a cover letter that:

(i) states that the terms and conditions of the New Credit Contract differ from those of the existing branded home loan credit contract;

(ii) describes the material differences between those terms and conditions, including any differences in fees and charges;

(iii) states that accepting the offer is optional and that if the consumer does not enter into the New Credit Contract, the existing branded home loan credit contract will continue without change, cost or penalty;

(iv) states that the consumer should carefully review the terms and conditions of the New Credit Contract before deciding whether to enter into it; and

(v) states that the consumer's payment arrangements under the existing branded home loan credit contract will not transfer automatically to the New Credit Contract, that the consumer will need to set up new payment arrangements and how the consumer can set up new payment arrangements.

Credit contracts involving a company

14. If a debtor under the existing branded home loan credit contract, or a provider of a mortgage or guarantee in relation to that contract, is a company, the Licensee must, at or before the time it first makes an unconditional representation or offer of the kind described in subparagraph 7(b), give the consumer:

(a) the Variation Notice; and

(b) a cover letter that:

(i) states that the terms and conditions of the New Credit Contract differ from those of the existing branded home loan credit contract;

(ii) describes the material differences between those terms and conditions, including any differences in fees and charges;

(iii) states that accepting the offer is optional and that if the consumer does not enter into the New Credit Contract, the existing branded home loan credit contract will continue without change, cost or penalty;

(iv) states that the consumer should carefully review the terms and conditions of the New Credit Contract before deciding whether to enter into it;

(v) states that the consumer's payment arrangements under the existing branded home loan credit contract will not transfer automatically to the New Credit Contract, that the consumer will need to set up new payment arrangements, and how the consumer can set up new payment arrangements; and

(vi) includes, in a separate highlighted or boxed section at or near the beginning of the cover letter:

(A) a clear and prominent statement that offset arrangements are not available under the New Credit Contract and that, if the consumer uses an offset account to reduce the interest payable under the existing branded home loan credit contract, the consumer should carefully consider whether the New Credit Contract is appropriate for the consumer's needs;

(B) a clear and prominent statement that the consumer should consider, when deciding whether to use a redraw facility as an alternative to an offset account to reduce interest payments, that a redraw facility operates differently to an offset account, that there may be different tax implications for the consumer and that the consumer may wish to seek independent advice; and

(C) a clear and prominent statement that automatic payment and direct debit arrangements are not available under the New Credit Contract and an explanation of how repayments under that contract can be made.

Interpretation

15. In this instrument:

basic home loan means a home loan under which monthly service or administration fees are not payable.

consumer has the meaning given in section 5 of the Act.

credit contract has the meaning given in section 5 of the Act.

existing branded home loan credit contract means a home loan credit contract branded St.George, Bank of Melbourne or BankSA.

interest rate type means variable annual percentage rate.

Licensee means Westpac Banking Corporation ABN 33 007 457 141 Australian Credit Licence 233714.

Migration means the migration of business or wealth products from a system or systems which administer St.George, Bank of Melbourne or BankSA branded products to a system or systems which administer Westpac branded products.

New Credit Contract means a credit contract between a consumer and the Licensee that replaces, by way of refinance, an existing branded home loan credit contract between the consumer and the Licensee.

package benefits means a package purchased by a consumer that bundles a home loan product and provides benefits such as reduced interest rates or fees.

redraw means an ability to redraw in relation to early payment.

repayment type means interest only or principal and interest.

Variation Notice means a notice that varies the terms of an offer to enter into a New Credit Contract to the effect that:

(a) the Licensee will provide an amount of credit under the New Credit Contract that is the sum of the unpaid balance of the loan and accrued interest and fees and any early payments available for redraw under the existing branded home loan credit contract immediately before the funds under the New Credit Contract are first drawn down; and

(b) the loan term and any interest only term is no greater than one month longer than the loan term or interest only term remaining under the existing branded home loan credit contract at the time the funds under the New Credit Contract are drawn down.

Westpac branded products means products bearing the brand ‘Westpac’.

Dated this 10th day of August 2026

Signed by Emily Ingleton
as a delegate of the Australian Securities and Investments Commission