

National Consumer Credit Protection Reform Package

The Australian Credit Licence (ACL) legislation will have its own Act, and the Consumer Credit Code will become a schedule to the Act. It is not part of the Corporations Act, but it will be regulated by ASIC. ACLs will be issued by ASIC.

- Consumer leases**
- Personal Loans
 - Mortgages
 - Credit Cards
 - Overdrafts
 - Housing Loans
 - Pay Day Loans
 - Hire of Goods
 - Guarantees
 - Continuing Credit Accounts
 - Other products (the bill also covers "non-standard" products. Check the legislation to see what is caught)
- Yes, if:**
- You are a representative of an ACL holder
 - You are a lawyer
 - You are a financial counsellor
 - Credit < 62 days - except if fees/charges > 9% of loan or if interest rate > 24%pa
 - Credit without prior agreement (eg. when a bank account overdrawn but no overdraft facility) - Continuing credit where no interest is paid and account charges not exceed \$200 in the 1st year or \$125 in later years
 - The debit is part of a joint debit and credit facility
 - Consumer leases of goods as part of employee's employment package or benefits
- No, if:**
- Consumer leases for fixed period of 4 months or less or which are for an indefinite period
 - Insurance premiums by instalment where there is no cancellation fee or liability to pay if contract ends early
 - Pawnbrokers and trustees of estates - some exceptions e.g. unjust transactions
 - Employee loans - some exceptions
 - Other products (the bill also covers "non-standard" products. Check the legislation to see what is caught)
 - Point-of-sale retailers (e.g. car dealerships) that facilitate credit assistance
- 12 Month Exemptions**
- Debt collectors that hold a state or territory licence and are authorised by a lender to collect a debt
- Further industry consultation to occur*

The Bill only applies if you engage in a **credit activity**. That is you either: provide **credit** or provide **credit services** to natural persons or strata corps and the credit is wholly or predominantly for personal, household or domestic use.

- Credit activity**
- Provide credit
 - apply for credit
 - apply for increase in credit
 - remain in current credit contract or lease
 - Provide a credit service
 - Assist
 - apply for provision of credit
 - apply for an increase in credit
 - Suggest
 - apply for credit
 - apply for increase in credit
 - remain in current credit contract or lease
 - Act as an intermediary
 - Intermediary between a credit provider and a consumer for the purposes of securing a provision of credit for the consumer.
 - or between lessor and consumer

Timeline:

- Register to apply between 1 April 2010 and 30 June 2010
- Apply for ACL between 1 July 2010 and 31 December 2010
- New entrants to the credit market will have to apply for ACL from 1 July 2010

Licence Fees

- \$450 - Individuals
- \$21,000 - Institutions with >100 employees

Payable on application and per year thereafter

- Licensee Obligations**
- Similar to Chapter 7 obligations (912A Corporations Act 2001) for Australian Financial Services Licensees
 - General conduct obligations CP110
 - Conflicts of Interest
 - Training and responsibility for Representatives CP113
 - Internal & External Dispute Resolution CP 112
 - Compensation arrangements CP111
 - Documented compliance system
 - Adequate financial resources CP 111
 - Adequate risk management systems
 - Cannot provide credit if contract unsuitable
 - ACL numbers in documents
 - Competence CP 113
- No breach reporting!**

Authorisation of Credit Representatives

- Similar to Authorised Reps under Ch 7 of Corporations Act 2001
- Also similar provisions relating to registration with ASIC, liability of licensees, etc

- National Consumer Credit Protection Bill 2009
- National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009
- National Consumer Credit Protection (Fees) Bill 2009

- Disclosure Obligations (responsible lending requirements)**
- Similar to FSG
 - Similar to ROA
 - Similar to fees component of SOA
 - Quote certain costs before providing assistance
 - Even Issuers just have Credit Guide
 - Must give as soon as practicable after it becomes apparent to the licensee that it is likely to provide "credit assistance" to a consumer.
 - But credit provider must still make assessment of suitability according to a whole range of factors
 - Client can request assessment
 - Credit provider must also make reasonable inquiries about the consumer
 - total fees and charges
 - Give at same time as providing credit assistance
 - use CP 115
 - Credit providers are not required to perform many of the credit assistance obligations when providing credit assistance in relation to their own proprietary credit products
 - These responsible lending obligations will now commence 1 July 2010 (from 1 January 2011 for ADI's and RFC's)

- Written Credit Contracts**
- Precontractual disclosure
 - Method of calculation of interest charges
 - Total amount of interest payable
 - Repayments info
 - Default rates
 - Commissions payable
 - Must accept early repayments unless contract spec prohibits

- Penalties for non-compliance**
- Civil penalties up to \$220,000 for an individual and \$1.1 million for corporation
 - Compensation orders
 - Criminal offences - max 2 yrs imprisonment + 100 penalty units
 - Injunctions
 - Adverse publicity orders
 - Cancellation, suspension or variation of ACL
 - ASIC infringement notices

HOLLEY NETHERCOTE
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