

The Australian Credit Licence (ACL) legislation has its own Act, and the Consumer Credit Code has 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 Act also covers "non-standard" products. Check the legislation to see what is caught)

Need an ACL?

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 >5% 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 debt is part of a joint debit and credit facility
- Consumer leases of goods as part of employee's employment package or benefits
- 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 Act also covers "non-standard" products. Check the legislation to see what is caught)
- Point-of-sale providers (e.g. car dealerships) that facilitate credit assistance
- Clerks/cashiers
- Passing on factual information in response to a request

No, if:

- Debt collectors that hold a state or territory licence and are authorised by a lender to collect a debt

Until 1 July 2011 - Further industry consultation to occur

The Act 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 purposes or residential investment

Exemptions

Credit activity

Provide credit

within meaning of the Act

Provide a credit service

Provide credit assistance

- Suggest
 - apply for credit
 - apply for increase in credit
 - remain in current credit contract or lease
- Assist
 - apply for provision of credit
 - apply for an increase in credit

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

Varies depending on

individual or body corporate
the total amount of credit advanced and credit in applications submitted to providers in the preceding financial year from \$450 to \$21,000

Payable on application and per year thereafter

National Consumer Credit Protection Reform Package

Similar to Chapter 7 obligations (912A Corporations Act 2001) for Australian Financial Services Licensees

Licensee Obligations

- General conduct obligations RG 205
- Conflicts of Interest
- Training and responsibility for Representatives RG 206
- Internal & External Dispute Resolution CP 112
- Compensation arrangements RG 207
- Documented compliance system RG 205
- Adequate financial resources RG 207
- Adequate risk management systems
- Responsible lending RG 209
- ACL numbers in documents
- Competence RG 208

No breach reporting!

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

Authorisation of Credit Representatives

To commence on 1 July 2010

National Consumer Credit Protection Act 2009

To commence on 1 July 2010

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

To commence on 1 July 2010

National Consumer Credit Protection (Fees) Act 2009

Disclosure Obligations (responsible lending requirements)

Similar to FSG

No PDS equivalent: issuer info to go in Credit Guide

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.

Quote certain costs before providing assistance

Similar to ROA

But credit provider must still make assessment of suitability according to a whole range of factors

Credit provider must also make reasonable inquiries about the consumer

Client can request assessment

Unsuitability Test

Credit Proposal Disclosure Document

total fees and charges

Give at same time as providing credit assistance

Similar to fees component of SOA

see 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

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