

National Consumer Credit Protection Regulations 2010 (Draft)

Persons exempt from requirement to hold an ACL

- Regulations 20 - 25
- those who engage in credit activities as
 - receiver or trustee under bankruptcy act
 - receiver or liquidator
 - administrator of company or deed of company arrangement
 - personal representatives of deceased persons
 - registered debt agreement administrators
- financial counselling agencies
 - no fees and charges payable by client
 - financial counsellor must be appropriately trained
- related body corporate of licensee
 - engaging in credit activities on behalf of that licensee and only because its employees and directors are engaging in activities on behalf of the licensee
- organisations that makes benefit available to members and an incidental benefit is that the member is eligible to enter into a credit contract
- debt collectors
 - demanding and receiving payment from borrowers or guarantors under credit contracts or consumer leases
 - enforcing rights in relation to taking possession of property secured by mortgage or goods hired under lease
 - license under state and territory regimes
 - authorised in writing by licensee to engage in credit activities
- point of sale credit services
 - where acting as an intermediary to finance
- securitisation entities
 - means a body corporate that: (a) carries on a business that consists of managing, by way of a securitisation transaction, some or all of the economic risk associated with assets, liabilities or investments (whether the body corporate assumes the risk from another person or creates the risk itself);

National Consumer Credit Code

- Schedule 1 of the Credit Act
- Exemptions from the Code
 - credit for < \$50
 - partnership loans
 - student loans
 - loans for conservation of heritage items
 - ADI's
 - estate administrators
 - charge card contracts
 - guarantee by supplier under tied loan credit contract
 - credit provided to directors and employees

Infringement notices

- Regulations 36 - 48
- when ASIC is required to issue them
- what information is to be included
- Section 331

Audit reports

- Regulation 17
- must include
 - the opinion of auditor as to whether trust accounts have been properly maintained
 - whether auditor has received all necessary records
- Section 100

When deciding whether to cancel a license, ASIC must consider

- Regulation 15
- any failure to lodge an annual compliance certificate
- false or misleading information in an annual compliance certificate
- Section 55

Licensee obligations

- Section 47
- Regulation 10
 - When approving an internal dispute resolution processes ASIC must consider
 - size of the business
 - range of credit activities they engaged in
 - nature of their customer base
 - likely number and complexity of complaints
- Regulation 12
 - Exempt
 - ADIs and insurance companies regulated by APRA
 - companies in same corporate group where licensee has guarantee from the ADI (ASIC must approve in writing)
 - licensee engaged in lending activities and not credit services
- Regulation 13
 - display licence number
 - on documents required to be provided under responsible lending obligations
 - printed advertisements
 - National Credit Code documents i.e. credit contracts
- Regulation 14
 - Annual compliance certificate to be lodged with ASIC must be signed by CEO

Exempt activities

- Regulation 26
- credit assistance provided by lawyers
- credit activities undertaken by registered tax agent
- where only credit activity is to communicate factual information to consumer
- in ordinary course of work of clerks or cashiers
- responding to request for information in relation to costs or terms and conditions of credit contract
- activities where a persons role is limited to being a referred between a consumer and a licensee

Time for which credit providers can rely on suitability assessment

- Regulation 27
- where credit being used to finance the purchase of a residential property secured by a mortgage
 - extended from 90 to 120 days

Streamlined application process

- Regulation 8
- Classes of applicants that can be streamlined
 - persons authorised to engage in credit activities under a law of a State or Territory where the effect of that law is that those persons are already subject to obligations similar to those in the Credit Act
 - persons authorised by APRA to carry on business as a provider of lenders' mortgage insurance

Conditions of the credit licence

- Regulation 9
- Section 45
- All ACL holders must notify ASIC if
 - Changes to particulars of credit registers (i.e. name or contact details of licensee)
 - Same as AFSL holders
 - Changes in control of the licensee (must notify ASIC within 10 days). Changes in control include changes to:
 - the capacity to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the licensee
 - directly or indirectly holding more than one half of the issued share capital of the licensee (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital)
 - the capacity to control the composition of the licensee's board or governing body
 - Details of and any changes to authorizations of credit agents

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