

- Major changes**
1. Licensing regime
  2. Responsible lending
  3. ASIC's role

Applies to the provision of credit for personal use, and related matters, including the establishment of a licensing regime for persons engaged in credit activities

**National Consumer Credit Protection Act 2009 (Cth)**

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

National Consumer Credit Protection (Fees) Act 2009

**Chapter 1 - Preliminary**

- Commencement 1 July 2010
- Definitions
  - credit activity
  - credit assistance
  - credit contract
  - credit provider
  - credit service
  - mortgage
  - guarantee
  - lease
  - assignee
- Application of the Act interaction between state and territory laws

**Chapter 2 - Licensing of person who engage in credit activities**

- Requirement to be licensed
  - prohibition on engaging in credit activities without a licence
    - offence 200 penalty units / 2 yrs imprisonment
  - defences
    - director or employee of principal or of a related body corporate of a principal
    - credit representative
  - other prohibitions
    - holding out
    - giving misleading information
- How to get an ACL
  - apply to ASIC after 1 July 2010
  - when ASIC must grant an ACL
  - matters ASIC must consider - fit & proper
  - when an ACL may be granted - ADIs
  - when an ACL must not be granted
- Conditions
  - ASIC may impose conditions on a licensee
- Obligations
  - general conduct obligations
  - requirements for compensation arrangements
  - to give ASIC certain information
- Suspension and variation
  - suspension without a hearing
  - suspension after offering a hearing
  - ASIC may vary licence to take account of a change of name
- Credit representatives
  - licensee may authorise credit representative
  - body corporate credit representatives may sub-authorise natural persons
  - obligation to notify ASIC
  - liability of licensees for representatives
- Banning of persons from engaging in credit activities
  - ASIC's power to make banning orders
- Financial records, trust accounts and audit reports
  - obligation to keep financial records
  - obligation of credit service licensees to maintain trust account

**Chapter 3 - Responsible lending conduct**

- Licensees that provide credit assistance in relation to credit contracts
  - credit guide
  - quote
  - preliminary unsuitability assessment
  - credit proposal disclosure document
- Licensees that are credit providers under credit contracts
  - credit guide
  - final unsuitability assessment
- Licensees that provide credit assistance in relation to consumer leases
  - credit guide
  - quote
  - preliminary unsuitability assessment
- Licensees that are lessors under consumer leases
  - credit guide
  - unsuitability assessment
- Credit representatives
  - credit guide of ACL holder and own credit guide
- Licensee or credit representative debt collectors
  - credit guide

**Chapter 4 - Remedies**

- Civil penalty provisions
  - declaration of contravention
  - pecuniary penalty
  - link to criminal proceedings
- Power of the Court to grant remedies
  - injunctions
  - compensation orders
  - adverse publicity orders
- Jurisdiction and procedure of Courts
- Criminal proceedings
  - ASIC may lay charge

**Chapter 5 - Administration**

- Registers relating to credit activities
  - ASIC must establish and maintain
- Documents lodged with ASIC
  - must be in approved form
- Concealment or falsification of credit books
  - prohibition on knowingly making false and misleading statements
- Fees imposed by the National Consumer Credit Protection (Fees) Act 2009 (Cth)
- General administrative matters
  - must not obstruct or hinder ASIC

**Chapter 6 - Compliance and enforcement**


- Investigations
  - ASIC has power to investigate
  - Minister may direct investigations
- Examination of persons
  - ASIC can require person to attend
- Inspection of books and audit information gathering powers
  - ASIC may inspect books without charge
  - ASIC may give notice to produce
- Proceedings after an investigation
  - ASIC may prosecute
  - ASIC may bring civil proceedings
- Hearings
  - ASIC may hold hearings
  - Conduct of hearings etc
- Offences
- ASICs power in relation to contraventions of Ch 6
- Evidentiary use of certain material
  - statements made under examination
  - copies of books etc

**Chapter 7 - Miscellaneous**

- Liability of persons for conduct of their agents
  - body corporate liability
  - persons other than bodies corporate
- Review of ASIC decisions
  - can apply to AAT for review
- Regulations
  - may prescribe certain matters

**Schedule 1 - National Credit Code**

see separate mind map



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