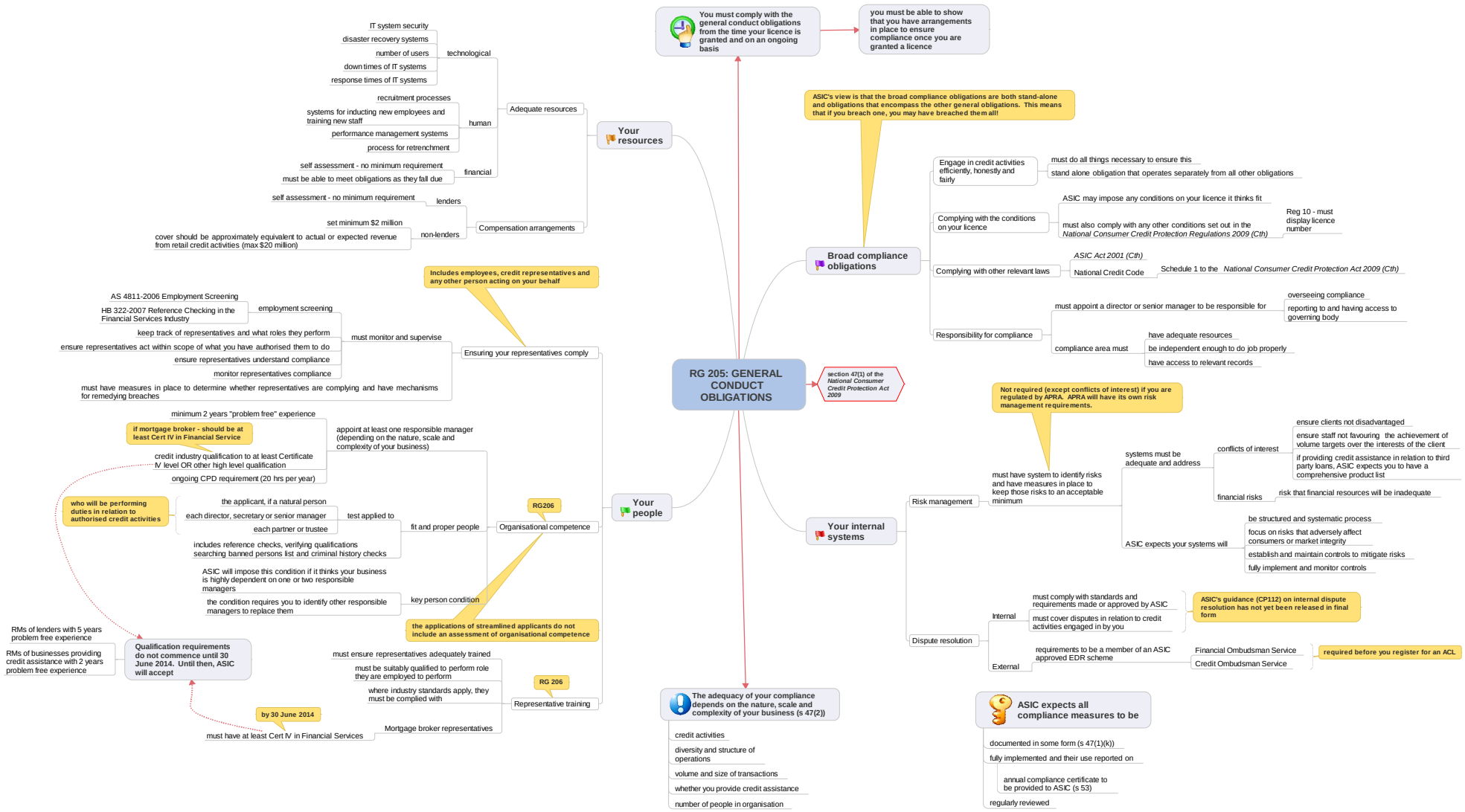
RG 205: GENERAL CONDUCT OBLIGATIONS
section 47(1) of the National Consumer Credit Protection Act 2009
You must comply with the general conduct obligations from the time your licence is granted and on an ongoing basis
you must be able to show that you have arrangements in place to ensure compliance once you are granted a licence
ASIC's view is that the broad compliance obligations are both stand-alone and obligations that encompass the other general obligations. This means that if you breach one, you may have breached them all!
Your resources
Adequate resources
technological
IT system security
disaster recovery systems
number of users
down times of IT systems
response times of IT systems
human
recruitment processes
systems for inducting new employees and training new staff
performance management systems
process for retrenchment
financial
self assessment - no minimum requirement
must be able to meet obligations as they fall due
Compensation arrangements
lenders
self assessment - no minimum requirement
non-lenders
set minimum $2 million
cover should be approximately equivalent to actual or expected revenue from retail credit activities (max $20 million)
Your people
Includes employees, credit representatives and any other person acting on your behalf
Ensuring your representatives comply
must monitor and supervise
employment screening
AS 4811-2006 Employment Screening
HB 322-2007 Reference Checking in the Financial Services Industry
keep track of representatives and what roles they perform
ensure representatives act within scope of what you have authorised them to do
ensure representatives understand compliance
monitor representatives compliance
must have measures in place to determine whether representatives are complying and have mechanisms for remedying breaches
appoint at least one responsible manager (depending on the nature, scale and complexity of your business)
minimum 2 years "problem free" experience
if mortgage broker - should be at least Cert IV in Financial Service
credit industry qualification to at least Certificate IV level OR other high level qualification
ongoing CPD requirement (20 hrs per year)
who will be performing duties in relation to authorised credit activities
RG206
Organisational competence
fit and proper people
test applied to
the applicant, if a natural person
each director, secretary or senior manager
each partner or trustee
includes reference checks, verifying qualifications
searching banned persons list and criminal history checks
key person condition
ASIC will impose this condition if it thinks your business is highly dependent on one or two responsible managers
the condition requires you to identify other responsible managers to replace them
the applications of streamlined applicants do not include an assessment of organisational competence
RG 206
Representative training
must ensure representatives adequately trained
must be suitably qualified to perform role they are employed to perform
where industry standards apply, they must be complied with
Mortgage broker representatives
by 30 June 2014
must have at least Cert IV in Financial Services
Qualification requirements do not commence until 30 June 2014. Until then, ASIC will accept
RMs of lenders with 5 years problem free experience
RMs of businesses providing credit assistance with 2 years problem free experience
Broad compliance obligations
Engage in credit activities efficiently, honestly and fairly
must do all things necessary to ensure this
stand alone obligation that operates separately from all other obligations
Complying with the conditions on your licence
ASIC may impose any conditions on your licence it thinks fit
must also comply with any other conditions set out in the National Consumer Credit Protection Regulations 2009 (Cth)
Reg 10 - must display licence number
Complying with other relevant laws
ASIC Act 2001 (Cth)
National Credit Code
Schedule 1 to the National Consumer Credit Protection Act 2009 (Cth)
Responsibility for compliance
must appoint a director or senior manager to be responsible for
overseeing compliance
reporting to and having access to governing body
compliance area must
have adequate resources
be independent enough to do job properly
have access to relevant records
Your internal systems
Not required (except conflicts of interest) if you are regulated by APRA. APRA will have its own risk management requirements.
Risk management
must have system to identify risks and have measures in place to keep those risks to an acceptable minimum
systems must be adequate and address
conflicts of interest
ensure clients not disadvantaged
ensure staff not favouring the achievement of volume targets over the interests of the client
if providing credit assistance in relation to third party loans, ASIC expects you to have a comprehensive product list
financial risks
risk that financial resources will be inadequate
ASIC expects your systems will
be structured and systematic process
focus on risks that adversely affect consumers or market integrity
establish and maintain controls to mitigate risks
fully implement and monitor controls
Dispute resolution
Internal
must comply with standards and requirements made or approved by ASIC
must cover disputes in relation to credit activities engaged in by you
ASIC's guidance (CP112) on internal dispute resolution has not yet been released in final form
External
requirements to be a member of an ASIC approved EDR scheme
Financial Ombudsman Service
Credit Ombudsman Service
required before you register for an ACL
The adequacy of your compliance depends on the nature, scale and complexity of your business (s 47(2))
credit activities
diversity and structure of operations
volume and size of transactions
whether you provide credit assistance
number of people in organisation
ASIC expects all compliance measures to be
documented in some form (s 47(1)(k))
fully implemented and their use reported on
annual compliance certificate to be provided to ASIC (s 53)
regularly reviewed