



National Consumer Credit Regime

The National Consumer Credit Protection Act 2009 (Cth) (Act) introduces a new national consumer credit protection code. The Act imposes new licensing and other obligations for businesses that undertake a credit activity.

What is a credit activity?

A credit activity includes, but is not limited to, a person:

- providing credit under a credit contract or consumer lease;
- providing a credit service or assistance to a consumer in respect of a credit contract or consumer lease;
- acting as an intermediary between a consumer and a credit provider; and
- benefiting from mortgages or guarantees relating to a credit contract.

A credit contract is a contract by which credit is provided. This typically includes home loans, personal loans and credit cards.

Who is caught by this regime?

The Act will apply to credit providers such as banks, credit unions and finance companies and credit assistance providers such as mortgage and finance brokers. It will also apply to entities that may, as an incidental part of their business, act as intermediaries between a consumer and credit provider. For example, some financial planning groups, accounting firms and estate agents may have relationships with lenders where they make recommendations about, and refer clients to, certain preferred lenders.

However, certain professionals such as lawyers and registered tax agents are, under certain circumstances, exempt from the obligations under the Act where the service is, among other things, provided in the ordinary course of their business and they are compensated for the provision of those services only. The exemptions will not apply to services that include recommendations about particular lenders or credit products.

What does the consumer credit regime mean for your business?

The key premise of the Act is that persons providing a credit activity must be licensed and must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer.

A credit contract will be unsuitable where:

- it does not meet the consumer's requirements and objectives; or
- the consumer will be unable to meet the repayments, either at all or only with substantial hardship.

What should you do to get licensed?

If your business is carrying on credit activities, you must register with ASIC between 1 April and 30 June 2010. ASIC has advised that entities who lodge their registration application after 18 June 2010 will not be guaranteed registration by 30 June 2010. If you engage in credit activities and do not register by 30 June 2010, you cannot continue to provide credit activities beyond that date.

Once you are registered, you will have between 1 July 2010 and 31 December 2010 to apply for a credit licence with ASIC. The credit licensing regime is fairly detailed and requires applicants to meet ongoing competency, financial and compensation requirements. All entities engaged in credit activities must hold a credit licence by 30 June 2011.

Should you have any questions or would like further advice in relation to the national consumer credit regime, please contact:

Khaled Bajhau | Senior Associate

T: +61 3 9242 4713

E: khaled.bajhau@madgwicks.com.au

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