

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (27/04/2009)

If you have any comments on this exposure draft, they should be sent to
consumercredit@treasury.gov.au by 22 May 2009.

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

No. , 2009

(Treasury)

**A Bill for an Act to deal with transitional and
consequential matters in connection with the**

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*National Consumer Credit Protection Act 2009, and
for related purposes*

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1 **A Bill for an Act to deal with transitional and**
2 **consequential matters in connection with the**
3 ***National Consumer Credit Protection Act 2009*, and**
4 **for related purposes**

5 The Parliament of Australia enacts:

6 **^T1 Short title**

7 This Act may be cited as the *National Consumer Credit Protection*
8 *(Transitional and Consequential Provisions) Act 2009*.

9 **^T2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.

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1

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	At the same time as Chapter 2 of the <i>National Consumer Credit Protection Act 2009</i> commences.	

2

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

3

4

5

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

6

7

8

^T3 Schedule(s)

9

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

10

11

12

13

2 *National Consumer Credit Protection (Transitional and Consequential Provisions) Bill*
2009 No. , 2009

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Registration of persons to engage in credit activities **Schedule 1**
Preliminary **Part 1**

Schedule 1—Registration of persons to engage in credit activities

Part 1—Preliminary

^TL1 Guide to this Schedule

This Schedule is about the registration of persons to engage in credit activities. Registration is a transitional authorisation to engage in credit activities that applies in the period before all persons who engage in credit activities are required to be licensed under Chapter 2 of the Consumer Credit Act.

Divisions 1 and 2 of Part 2 set out requirements that apply to persons who engage in credit activities during certain periods between commencement and 1 July 2011.

Division 3 of Part 2 deals with how the requirements in Division 2 of Part 2-1 of Chapter 2 of the Consumer Credit Act apply in relation to registered persons.

Part 3 deals with how a person becomes registered, the obligations of registered persons, and the suspension and cancellation of registrations.

Part 4 deals with how Part 2-3 (which deals with credit representatives and representatives), Part 2-4 (which deals with banning and disqualification) and Division 1 of Part 2-5 (which deals with financial records) of the Consumer Credit Act apply in relation to registered persons.

Part 5 deals with exemptions from, and modifications of, the requirement to be registered and from certain conduct obligations of registered persons.

^TL5 Definitions

(1) In this Schedule:

commencement means the day Chapter 2 of the Consumer Credit Act commences.

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Schedule 1 Registration of persons to engage in credit activities

Part 1 Preliminary

- 1 **Consumer Credit Act** means the *National Consumer Credit Protection*
2 *Act 2009*.
- 3 **registered** means registered under item ^TL55.
- 4 **registered to engage in a credit activity**: a person is registered to engage
5 in a credit activity if the person is registered, and the registration
6 authorises the person to engage in the credit activity.
- 7 **representative** of a person means:
- 8 (a) if the person is a registered person:
- 9 (i) a credit representative of the registered person; or
10 (ii) an employee or director of the registered person; or
11 (iii) an employee or director of a related body corporate of
12 the registered person; or
13 (iv) any other person acting on behalf of the registered
14 person; or
- 15 (b) in any other case:
- 16 (i) an employee or director of the person; or
17 (ii) an employee or director of a related body corporate of
18 the person; or
19 (iii) any other person acting on behalf of the person.
- 20 (2) In this Schedule, unless a contrary intention appears, expressions that
21 are defined in the Consumer Credit Act (other than in Schedule 1 to that
22 Act) have the same meanings as they have in the Consumer Credit Act.
23

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Registration of persons to engage in credit activities **Schedule 1**
Transitional requirements relating to credit activities **Part 2**

1 **Part 2—Transitional requirements relating to credit**
2 **activities**

3 **Division 1—Requirement that applies only between**
4 **1 January 2010 and 30 June 2010**

5 **^TL20 When this Division applies**

6 This Division applies during the period that:

- 7 (a) starts at the start of 1 January 2010; and
8 (b) ends at the end of 30 June 2010.

9 **^TL25 Prohibition on engaging in credit activities if not**
10 **registered or licensed**

11 *Prohibition on engaging in credit activities if not registered or*
12 *licensed*

- 13 (1) A person must not engage in a credit activity if:
14 (a) the person is not registered to engage in the credit activity;
15 and
16 (b) the person does not hold a licence authorising the person to
17 engage in the credit activity.

18 Civil penalty: 2,000 penalty units.

19 *Offence*

- 20 (2) A person commits an offence if:
21 (a) the person is subject to a requirement under subitem (1); and
22 (b) the person engages in conduct; and
23 (c) the conduct contravenes the requirement.

24 Criminal penalty: 200 penalty units, or 2 years imprisonment, or
25 both.

26 *Defences*

- 27 (3) For the purposes of subitems (1) and (2), it is a defence if the person or
28 the credit activity is covered by:
29 (a) an exemption made by ASIC under item ^TL185; or

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Schedule 1 Registration of persons to engage in credit activities

Part 2 Transitional requirements relating to credit activities

- 1 (b) an exemption prescribed in regulations made under item
2 ^TL190;
3 that applies for the purposes of this item.

4 Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the
5 matter in subitem (3) (see subsection 13.3(3) of the *Criminal Code*).

- 6 (4) For the purposes of subitems (1) and (2), it is a defence if:
7 (a) the person engages in the credit activity on behalf of another
8 person (the *principal*); and
9 (b) the person is:
10 (i) an employee or director of the principal or of a related
11 body corporate of the principal; or
12 (ii) a credit representative of the principal; and
13 (c) the person's conduct in engaging in the credit activity is
14 within the authority of the principal; and
15 (d) the principal is registered to engage in the credit activity, or
16 holds a licence authorising the principal to engage in the
17 credit activity.

18 Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the
19 matter in subitem (4) (see subsection 13.3(3) of the *Criminal Code*).
20

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Registration of persons to engage in credit activities **Schedule 1**
Transitional requirements relating to credit activities **Part 2**

1 **Division 2—Requirement that applies only between**
2 **1 July 2010 and 30 June 2011**

3 **^TL30 When this Division applies**

4 This Division applies during the period that:

- 5 (a) starts at the start of 1 July 2010; and
6 (b) ends at the end of 30 June 2011.

7 **^TL35 Prohibition on engaging in credit activities in certain**
8 **circumstances**

9 *Prohibition on engaging in credit activities in certain*
10 *circumstances*

- 11 (1) A person must not engage in a credit activity if:
12 (a) the person:
13 (i) is not registered to engage in the credit activity; or
14 (ii) is registered to engage in the credit activity, but has not
15 applied for a licence authorising the person to engage in
16 the credit activity in accordance with section ^LIC150
17 of the Consumer Credit Act; and
18 (b) the person does not hold a licence authorising the person to
19 engage in the credit activity.

20 Penalty: 200 penalty units, or 2 years imprisonment, or both.

21 *Offence*

- 22 (2) A person commits an offence if:
23 (a) the person is subject to a requirement under subitem (1); and
24 (b) the person engages in conduct; and
25 (c) the conduct contravenes the requirement.

26 Criminal penalty: 200 penalty units, or 2 years imprisonment, or
27 both.

28 *Defences*

- 29 (3) For the purposes of subitems (1) and (2), it is a defence if the person or
30 the credit activity is covered by:
31 (a) an exemption made by ASIC under item ^TL185; or

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Part 2 Transitional requirements relating to credit activities

- 1 (b) an exemption prescribed in regulations made under item
2 ^TL190;
3 that applies for the purposes of this item.

4 Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the
5 matter in subitem (3) (see subsection 13.3(3) of the *Criminal Code*).

- 6 (4) For the purposes of subitems (1) and (2), it is a defence if:
7 (a) the person engages in the credit activity for or on behalf of
8 another person (the *principal*); and
9 (b) the person is:
10 (i) an employee or director of the principal or of a related
11 body corporate of the principal; or
12 (ii) a credit representative of the principal; and
13 (c) the person's conduct in engaging in the credit activity is
14 within the authority of the principal; and
15 (d) the principal:
16 (i) is registered to engage in the credit activity, and has
17 applied for a licence authorising the principal to engage
18 in the credit activity in accordance with section
19 ^LIC150 of the Consumer Credit Act; or
20 (ii) holds a licence authorising the principal to engage in the
21 credit activity.

22 Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the
23 matter in subitem (4) (see subsection 13.3(3) of the *Criminal Code*).
24

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Registration of persons to engage in credit activities **Schedule 1**
Transitional requirements relating to credit activities **Part 2**

1 **Division 3—Application of Division 2 of Part 2-1 of**
2 **Chapter 2 of the Consumer Credit Act**

3 **^TL40 When this Division applies**

4 This Division applies during the period that:

- 5 (a) starts at commencement; and
6 (b) ends at the end of 30 June 2011.

7 **^TL42 Application of section ^LIC90 (Prohibitions on holding**
8 **out and advertising)**

9 Section ^LIC90 of the Consumer Credit Act applies as if:

- 10 (a) the reference in paragraph ^LIC90(1)(a) of the Consumer
11 Credit Act to a person holding a licence were a reference to a
12 person holding a licence or being registered; and
13 (b) the reference in paragraph ^LIC90(1)(b) of the Consumer
14 Credit Act to a person holding a licence authorising the
15 person to engage in a particular credit activity were a
16 reference to a person holding a licence authorising the person
17 to engage in a particular credit activity, or being registered to
18 engage in a particular credit activity; and
19 (c) the reference in paragraph ^LIC90(1)(c) of the Consumer
20 Credit Act to a requirement to hold a licence were a reference
21 to a requirement to hold a licence or be registered; and
22 (d) the reference in paragraph ^LIC90(1)(e) of the Consumer
23 Credit Act to a licensee were a reference to a licensee or
24 registered person; and
25 (e) the reference in subsection ^LIC90(3) of the Consumer
26 Credit Act to a person who contravenes section ^LIC75 of
27 the Consumer Credit Act were a reference to a person who
28 contravenes section ^LIC75 of the Consumer Credit Act or
29 items ^TL25 or ^TL35 of this Act.

30 **^TL45 Application of section ^LIC92 (Prohibition on**
31 **conducting business with unlicensed persons)**

32 Section ^LIC92 of the Consumer Credit Act applies as if the reference
33 in subsection ^LIC92(1) to a person contravening section ^LIC75 of the
34 Consumer Credit Act were a reference to a person contravening section
35 ^LIC75 of the Consumer Credit Act or items ^TL25 or ^TL35 of this
36 Act.

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Schedule 1 Registration of persons to engage in credit activities

Part 2 Transitional requirements relating to credit activities

1 **^TL48 Application of section ^LIC94 (Prohibition on charging**
2 **a fee for engaging in credit activities when unlicensed**
3 **etc.)**

4 Section ^LIC94 of the Consumer Credit Act applies as if the reference
5 in section ^LIC94(1) to a person who contravenes, or would contravene,
6 section ^LIC75 of the Consumer Credit Act were a reference to a
7 person who contravenes, or would contravene, section ^LIC75 of the
8 Consumer Credit Act or items ^TL25 or ^TL35 of this Act.
9

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Registration of persons to engage in credit activities **Schedule 1**
Registration of persons who engage in credit activities **Part 3**

1 **Part 3—Registration of persons who engage in credit** 2 **activities**

3 **Division 1—How to become registered**

4 **^TL50 Applying to be registered**

- 5 (1) A person may apply to be registered by lodging an application with
6 ASIC during the period that:
- 7 (a) starts at the start of 1 November 2009; and
 - 8 (b) ends at the end of 31 December 2010.
- 9 (2) The application must be in the approved form.
- 10 (3) The application must be lodged electronically with ASIC, unless ASIC
11 otherwise approves.

12 **^TL55 When a person may be registered**

13 *When ASIC must register a person*

- 14 (1) ASIC must register a person (the *applicant*) if:
- 15 (a) the applicant has applied to be registered in accordance with
16 item ^TL50; and
 - 17 (b) the application makes a statement that the applicant is a
18 member of an approved external dispute resolution scheme;
19 and
 - 20 (c) the application makes the statement set out in subitem (2) in
21 relation to each of the following persons:
 - 22 (i) the applicant;
 - 23 (ii) if the applicant is a body corporate—each director or
24 secretary of the body corporate who would perform
25 duties in relation to the registration;
 - 26 (iii) if the applicant is a partnership or the trustees of a
27 trust—each partner or trustee who would perform duties
28 in relation to the registration.
- 29 (2) For the purposes of paragraph (1)(c), the statement is that:
- 30 (a) a banning order or disqualification order under Part 2-4 of
31 Chapter 2 of the Consumer Credit Act is not in effect against
32 the person; and

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Schedule 1 Registration of persons to engage in credit activities

Part 3 Registration of persons who engage in credit activities

- 1 (b) a banning order or disqualification order under Division 8 of
2 Part 7.6 of the *Corporations Act 2001* is not in effect against
3 the person; and
4 (c) the person is not banned from engaging in a credit activity
5 under a law of a State or Territory; and
6 (d) if the person is or has been registered—the person’s
7 registration is not suspended or has not been cancelled; and
8 (e) an Australian financial services licence of the person is not
9 suspended, or has not been cancelled within the last 7 years,
10 under:
11 (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii)
12 of the *Corporations Act 2001* (which deal with
13 suspension or cancellation because of mental or
14 physical incapacity); or
15 (ii) section 915C of the *Corporations Act 2001* (which deals
16 with suspension or cancellation after offering a hearing);
17 and
18 (f) the person is not insolvent; and
19 (g) if the person is a natural person, the person:
20 (i) is not disqualified from managing corporations under
21 Part 2D.6 of the *Corporations Act 2001*; and
22 (ii) has not been convicted, within 10 years before the
23 application is made, for serious fraud.

24 *ASIC may refuse to register a person in certain circumstances*

- 25 (3) Despite subitem (1), ASIC may refuse to register a person if ASIC has
26 reason to believe that:
27 (a) the application is false in a material particular or materially
28 misleading; or
29 (b) there is an omission of a material matter from the application.

30 *Notice of decision on application*

- 31 (4) ASIC must give the applicant written notice of:
32 (a) ASIC’s decision on the application; and
33 (b) if the decision is to register the applicant—the day on which
34 the applicant becomes registered; and
35 (c) if the decision is not to register the applicant—the reasons for
36 the decision.

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Registration of persons to engage in credit activities **Schedule 1**
Registration of persons who engage in credit activities **Part 3**

1 *When a person becomes registered*

2 (5) The applicant becomes registered when ASIC enters the name of the
3 person on the register as a registered person.
4

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Schedule 1 Registration of persons to engage in credit activities

Part 3 Registration of persons who engage in credit activities

1 **Division 2—The conditions on the registration**

2 **^TL60 The conditions on the registration**

3 *ASIC may impose, vary or revoke conditions on registrations*

- 4 (1) ASIC may, at any time:
- 5 (a) impose conditions, or additional conditions, on a person's
- 6 registration; and
- 7 (b) vary or revoke conditions imposed on a person's registration.

- 8 (2) ASIC may do so:
- 9 (a) on its own initiative; or
- 10 (b) if the registered person lodges an application with ASIC for
- 11 the imposition, variation or revocation.

- 12 (3) The application must be in the approved form.

13 *Notice and effect of imposition, variation or revocation of*

14 *conditions*

- 15 (4) ASIC must give the registered person written notice of the imposition,
- 16 variation or revocation of the conditions. The imposition, variation or
- 17 revocation of the conditions takes effect when the notice is given to the
- 18 person.

19 *ASIC must give the registered person a hearing*

- 20 (5) Despite subitem (1), ASIC may only impose conditions or additional
- 21 conditions, or vary or revoke the conditions, on the registration after
- 22 giving the registered person an opportunity:
- 23 (a) to appear, or be represented, at a hearing before ASIC that
- 24 takes place in private; and
- 25 (b) to make submissions to ASIC in relation to the conditions.

26 This subitem does not apply to ASIC imposing conditions when a

27 person becomes registered.

28 *Condition in relation to credit activities authorised*

- 29 (6) ASIC must ensure that the registration is subject to a condition that
- 30 specifies the credit activities or classes of credit activities that the
- 31 registered person is authorised to engage in.

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Registration of persons to engage in credit activities **Schedule 1**
Registration of persons who engage in credit activities **Part 3**

1 *Regulations may prescribe conditions*

2 (7) The registration is subject to such other conditions as are prescribed by
3 the regulations. However, ASIC cannot vary or revoke those conditions.

4 **^TL65 Registration conditions—special procedures for**
5 **APRA-regulated bodies**

6 *Special procedures for APRA-regulated bodies other than ADIs*

7 (1) If the registered person, or a related body corporate, is a body (the
8 *APRA body*) regulated by APRA, other than an ADI, then the following
9 provisions apply:

10 (a) ASIC cannot:

11 (i) impose, vary or revoke a condition on the registration
12 that, in ASIC's opinion, has or would have the result of
13 preventing the APRA body from being able to carry on
14 all or any of its usual activities (being activities in
15 relation to which APRA has regulatory or supervisory
16 responsibilities); or

17 (ii) vary a condition so that it would, in ASIC's opinion,
18 become a condition that would have a result as
19 described in subparagraph (i);

20 unless ASIC has first consulted APRA about the proposed
21 action;

22 (b) if ASIC imposes, varies or revokes a condition on the
23 registration and paragraph (a) does not apply to that action,
24 ASIC must, within one week, inform APRA of the action that
25 has been taken.

26 *Special procedures for ADIs*

27 (2) If the registered person, or a related body corporate, is an ADI, then the
28 following provisions apply:

29 (a) subject to paragraphs (b) and (c), the powers that ASIC
30 would otherwise have under item ^TL60:

31 (i) to impose, vary or revoke a condition on the registration
32 that, in ASIC's opinion, has or would have the result of
33 preventing the ADI from being able to carry on all or
34 any of its banking business (within the meaning of the
35 *Banking Act 1959*); or

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Schedule 1 Registration of persons to engage in credit activities

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- 1 (ii) to vary a condition so that it would, in ASIC's opinion,
2 become a condition that would have a result as
3 described in subparagraph (i);
4 are instead powers of the Minister;
- 5 (b) the following provisions apply in relation to a power to
6 which paragraph (a) applies:
- 7 (i) the procedures for the exercise of the power are the
8 same as would apply if ASIC could exercise the power,
9 except that the Minister must not exercise the power
10 unless he or she has first considered advice from ASIC
11 on the proposed action, being advice given after ASIC
12 has consulted APRA about the proposed action;
- 13 (ii) ASIC (rather than the Minister) must still conduct any
14 hearing required under paragraph ^TL60(5)(a) and
15 receive any submissions under paragraph ^TL60(5)(b);
- 16 (c) if ASIC imposes, varies or revokes a condition on the
17 registration and paragraph (a) does not apply to that action,
18 ASIC must, within one week, inform APRA of the action that
19 has been taken.

20 *Failure to comply does not invalidate action*

- 21 (3) A failure to comply with a requirement of subitem (1) or (2) to consult
22 or inform APRA about, or to consider advice from ASIC about, an
23 imposition, variation or revocation of a condition does not invalidate the
24 action taken.
25

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Registration of persons to engage in credit activities **Schedule 1**
Registration of persons who engage in credit activities **Part 3**

1 **Division 3—Obligations of registered persons**

2 **^TL70 General conduct obligations of registered persons**

3 *General conduct obligations*

- 4 (1) A registered person must:
- 5 (a) do all things necessary to ensure that the credit activities
 - 6 authorised by the registration are engaged in efficiently,
 - 7 honestly and fairly; and
 - 8 (b) comply with the conditions on the registration; and
 - 9 (c) comply with the credit legislation; and
 - 10 (d) take reasonable steps to ensure that its representatives
 - 11 comply with the credit legislation; and
 - 12 (e) be a member of an approved external dispute resolution
 - 13 scheme; and
 - 14 (f) take reasonable steps to ensure that clients of the registered
 - 15 person are not disadvantaged by any conflict of interest that
 - 16 arises wholly or partly in relation to credit activities engaged
 - 17 in by the registered person or its representatives; and
 - 18 (g) comply with any other obligations that are prescribed by the
 - 19 regulations.

20 *Exemptions*

- 21 (2) Subitem (1) does not apply to the extent that the person or the credit
- 22 activity is covered by:
- 23 (a) an exemption made by ASIC under item ^TL185; or
 - 24 (b) an exemption prescribed in regulations made under item
 - 25 ^TL190;
- 26 that applies for the purposes of this item.

27 **^TL75 Obligation to provide a statement or obtain an audit**

28 **report if directed by ASIC**

29 *Notice to registered person to provide a statement*

- 30 (1) ASIC may give a registered person a written notice directing the
- 31 registered person to give ASIC a written statement containing specified
- 32 information about the credit activities engaged in by the registered
- 33 person or its representatives.

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Schedule 1 Registration of persons to engage in credit activities

Part 3 Registration of persons who engage in credit activities

- 1 (2) Notices under subitem (1):
2 (a) may be sent out at any time; and
3 (b) may be sent to one or more particular registered persons, or
4 to each registered person in one or more classes of registered
5 persons, or to all registered persons; and
6 (c) may require all the same information, or may contain
7 differences as to the information they require; and
8 (d) may require a statement containing information to be
9 provided on a periodic basis, or each time a particular event
10 or circumstance occurs, without ASIC having to give a
11 further written notice.

12 *Notice to registered person to obtain an audit report*

- 13 (3) ASIC may also give a registered person a written notice directing the
14 registered person to obtain an audit report, prepared by a suitably
15 qualified person specified in the notice, on a statement, or each
16 statement in a class of statements, under subitem (1) before the
17 statement is given to ASIC.

18 *Notice must specify day by which registered person must comply*

- 19 (4) A notice given under this item must specify the day by which the
20 registered person must comply with the notice (which must be a
21 reasonable period after the notice is given). ASIC may extend the day
22 by giving a written notice to the registered person.

23 *Requirement to comply with notice*

- 24 (5) The registered person must comply with a notice given under this item
25 within the time specified in the notice.

26 Civil penalty: 2,000 penalty units.

27 *Offence*

- 28 (6) A person commits an offence if:
29 (a) the person is subject to a requirement under subitem (5); and
30 (b) the person engages in conduct; and
31 (c) the conduct contravenes the requirement.

32 Criminal penalty: 25 penalty units, or 6 months imprisonment,
33 or both.

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Registration of persons to engage in credit activities **Schedule 1**
Registration of persons who engage in credit activities **Part 3**

1 *Strict liability offence*

- 2 (7) A person commits an offence if:
- 3 (a) the person is subject to a requirement under subitem (5); and
- 4 (b) the person engages in conduct; and
- 5 (c) the conduct contravenes the requirement.

6 Criminal penalty: 10 penalty units.

- 7 (8) Subitem (7) is an offence of strict liability.

8 Note: For strict liability, see section 6.1 of the Criminal Code.

9 **^TL80 Obligation to provide information required by the**
10 **regulations**

11 *Regulations may require registered person to provide information*

- 12 (1) The regulations may require a registered person, or each registered
13 person in a class of registered persons, to provide ASIC with specified
14 information about the credit activities engaged in by the registered
15 person.

16 *Requirement to comply with regulations*

- 17 (2) If regulations under subitem (1) require a registered person to provide
18 ASIC with information, the registered person must provide ASIC with
19 that information.

20 Civil penalty: 2,000 penalty units.

21 *Offence*

- 22 (3) A person commits an offence if:
- 23 (a) the person is subject to a requirement under subitem (2); and
- 24 (b) the person engages in conduct; and
- 25 (c) the conduct contravenes the requirement.

26 Criminal penalty: 25 penalty units, or 6 months imprisonment,
27 or both.

28 *Strict liability offence*

- 29 (4) A person commits an offence if:
- 30 (a) the person is subject to a requirement under subitem (2); and

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- 1 (b) the person engages in conduct; and
2 (c) the conduct contravenes the requirement.

3 Criminal penalty: 10 penalty units.

4 (5) Subitem (4) is an offence of strict liability.

5 Note: For strict liability, see section 6.1 of the Criminal Code.

6 **^TL85 Obligation to notify ASIC of certain matters**

7 *Requirement to give report of contravention or likely* 8 *contravention*

- 9 (1) If a registered person becomes aware of a contravention, or likely
10 contravention, mentioned in subitem (3), the registered person must
11 give ASIC a written report on the matter as soon as practicable, and in
12 any case within 10 business days after becoming aware of the
13 contravention or likely contravention.

14 Civil penalty: 2,000 penalty units.

15 *Offence*

- 16 (2) A person commits an offence if:
17 (a) the person is subject to a requirement under subitem (1); and
18 (b) the person engages in conduct; and
19 (c) the conduct contravenes the requirement.

20 Criminal penalty: 50 penalty units, or 1 year imprisonment, or
21 both.

22 *When there is a contravention or likely contravention*

- 23 (3) For the purposes of subitem (1), there is a contravention, or likely
24 contravention, if:
25 (a) the registered person contravenes, or is likely to contravene
26 this Act (other than paragraph ^TL70(c)), the Consumer
27 Credit Act or the ASIC Act; and
28 (b) the contravention, or likely contravention, is significant,
29 having regard to the following:
30 (i) the number or frequency of similar previous
31 contraventions;

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- 1 (ii) the impact of the contravention or likely contravention
2 on the registered person's ability to engage in the credit
3 activities authorised by the registration;
4 (iii) the extent to which the contravention or likely
5 contravention indicates that the registered person's
6 arrangements to ensure compliance with its obligations
7 is inadequate;
8 (iv) the actual or potential financial loss to clients of the
9 registered person, or the registered person itself, arising
10 from the contravention or likely contravention.

- 11 (4) For the purposes of subitem (3), a registered person is likely to
12 contravene an obligation referred to in that subitem if, and only if, the
13 person is no longer able to comply with the obligation.

14 *When a report is taken to be lodged by APRA-regulated body*

- 15 (5) A report referred to in subitem (1) is taken to have been given to ASIC
16 if:
17 (a) the registered person is a body regulated by APRA; and
18 (b) the report is received by APRA in accordance with the terms
19 of an agreement between APRA and ASIC under which
20 APRA is to act as ASIC's agent in relation to such reports.
- 21 (6) A report referred to in subitem (1) is taken to be have been given to
22 ASIC if:
23 (a) the registered person is a body regulated by APRA; and
24 (b) the auditor or actuary of the registered person gives APRA a
25 written report about the contravention or likely
26 contravention; and
27 (c) the report is given before, or within 10 business days after,
28 the registered person becomes aware of the contravention or
29 likely contravention.

30 **^TL90 Obligation to provide ASIC with assistance if**
31 **reasonably requested**

32 *Requirement to provide assistance*

- 33 (1) If ASIC, or a person authorised by ASIC, reasonably requests assistance
34 from a registered person in relation to whether the registered person and
35 its representatives are complying with the credit legislation, the

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1 registered person must give ASIC or the authorised person the requested
2 assistance.

3 Civil penalty: 2,000 penalty units.

4 (2) If the request is in writing, it is not a legislative instrument.

5 *Offence*

6 (3) A person commits an offence if:

7 (a) the person is subject to a requirement to give ASIC or an
8 authorised person assistance under subitem (1); and

9 (b) the person engages in conduct; and

10 (c) the conduct contravenes the requirement.

11 Criminal penalty: 25 penalty units, or 6 months imprisonment,
12 or both.

13 *Assistance may include showing ASIC books etc.*

14 (4) The assistance referred to in subitem (1) may include showing ASIC the
15 person's books or giving ASIC other information.
16

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1 **Division 4—When registrations can be varied,**
2 **suspended or cancelled**

3 **^TL95 Cancellation because of grant or refusal of licence**

4 If:

- 5 (a) a person is registered; and
6 (b) the person applies for a licence; and
7 (c) ASIC grants, or refuses to grant, the person the licence;
8 then the person's registration is cancelled.

9 **^TL100 Cancellation of all registrations on 30 June 2011**

10 The registration of every registered person is cancelled at the end of
11 30 June 2011.

12 **^TL105 Suspension or cancellation for failure to apply for a**
13 **licence when directed by ASIC**

- 14 (1) ASIC may give a written notice to a registered person, directing the
15 person to apply for a licence by a day specified in the notice (which
16 must be at least 28 days after the day the notice is given).
- 17 (2) If the person does not apply for the licence in accordance with section
18 ^LIC150 of the Consumer Credit Act by the day specified in the notice,
19 ASIC may suspend or cancel the person's registration.

20 **^TL110 Suspension or cancellation without hearing**

- 21 (1) ASIC may suspend or cancel a person's registration if:
22 (a) the person applies for the suspension or cancellation; or
23 (b) the person ceases to engage in credit activities; or
24 (c) a banning order or disqualification order under Part 2-4 of
25 Chapter 2 of the Consumer Credit Act is in effect against the
26 person; or
27 (d) a banning order or disqualification order under Division 8 of
28 Part 7.6 of the *Corporations Act 2001* is in effect against the
29 person; or
30 (e) the person is banned from engaging in a credit activity under
31 a law of a State or Territory; or

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- 1 (f) an Australian financial services licence of the person is
2 suspended, or has been cancelled within the last 7 years,
3 under:
4 (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii)
5 of the *Corporations Act 2001* (which deal with
6 suspension or cancellation because of mental or
7 physical incapacity); or
8 (ii) section 915C of the *Corporations Act 2001* (which deals
9 with suspension or cancellation after offering a hearing);
10 or
11 (g) the person is insolvent; or
12 (h) if the person is a natural person, the person:
13 (i) is disqualified from managing corporations under
14 Part 2D.6 of the *Corporations Act 2001*; or
15 (ii) is convicted of serious fraud; or
16 (iii) is incapable of managing his or her affairs because of
17 physical or mental incapacity.
- 18 (2) An application for suspension or cancellation of a registration must be
19 in the approved form.

20 **^TL115 Suspension or cancellation after offering a hearing**

- 21 (1) ASIC may suspend or cancel a person's registration (subject to
22 complying with subitem (3)) if:
23 (a) the person has contravened an obligation under item ^TL70;
24 or
25 (b) ASIC has reason to believe that the person is likely to
26 contravene an obligation under ^TL70; or
27 (c) the application for the registration:
28 (i) was false in a material particular or materially
29 misleading; or
30 (ii) omitted a material matter; or
31 (d) if the person is not a single natural person—any of the
32 matters set out in subitem (2) applies to any of the following
33 persons:
34 (i) if the person is a body corporate—a director or secretary
35 of the body corporate who performs duties in relation to
36 the registration;

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- 1 (ii) if the person is a partnership or the trustees of a trust—a
2 partner or trustee who performs duties in relation to the
3 registration.
- 4 (2) For the purposes of paragraph (1)(d), the matters are the following:
- 5 (a) a banning order or disqualification order under Part 2-4 of
6 Chapter 2 of the Consumer Credit Act is in effect against the
7 person;
- 8 (b) a banning order or disqualification order under Division 8 of
9 Part 7.6 of the *Corporations Act 2001* is in effect against the
10 person;
- 11 (c) the person is banned from engaging in a credit activity under
12 a law of a State or Territory;
- 13 (d) an Australian financial services licence of the person is
14 suspended, or has been cancelled within the last 7 years,
15 under:
- 16 (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii)
17 of the *Corporations Act 2001* (which deal with
18 suspension or cancellation because of mental or
19 physical incapacity); or
- 20 (ii) section 915C of the *Corporations Act 2001* (which deals
21 with suspension or cancellation after offering a hearing);
- 22 (e) the person is insolvent;
- 23 (f) the person is disqualified from managing corporations under
24 Part 2D.6 of the *Corporations Act 2001*;
- 25 (g) the person is convicted of serious fraud;
- 26 (h) the person is incapable of managing his or her affairs because
27 of physical or mental incapacity.
- 28 (3) ASIC may only suspend or cancel a person's registration under this
29 item after giving the person an opportunity:
- 30 (a) to appear, or be represented, at a hearing before ASIC that
31 takes place in private; and
32 (b) to make submissions to ASIC on the matter.

33 **^TL120 Suspension and cancellation—special procedures for** 34 **APRA-regulated bodies**

National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009
No. , 2009 25

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Schedule 1 Registration of persons to engage in credit activities

Part 3 Registration of persons who engage in credit activities

1 *Special procedures for APRA-regulated bodies other than ADIs*

2 (1) If a registered person, or a related body corporate, is a body (the **APRA**
3 **body**) regulated by APRA, other than an ADI, the following provisions
4 apply:

5 (a) ASIC cannot suspend or cancel the registered person's
6 registration if doing so would, in ASIC's opinion, have the
7 result of preventing the APRA body from being able to carry
8 on all or any of its usual activities (being activities in relation
9 to which APRA has regulatory or supervisory
10 responsibilities), unless ASIC has first consulted APRA
11 about the proposed action;

12 (b) if ASIC suspends or cancels the registered person's
13 registration and paragraph (a) does not apply to that action,
14 ASIC must, within one week, inform APRA of the action that
15 has been taken.

16 *Special procedures for ADIs*

17 (2) If:

18 (a) a registered person is an ADI; or

19 (b) a related body corporate of a registered person is an ADI, and
20 cancellation or suspension of the registered person's
21 registration would, in ASIC's opinion, have the result of
22 preventing the ADI from being able to carry on all or any of
23 its banking business (within the meaning of the *Banking Act*
24 *1959*);

25 the following provisions have effect:

26 (c) subject to paragraph (d), the powers that ASIC would
27 otherwise have under this Division to cancel or suspend the
28 registered person's registration, or to revoke a suspension to
29 which this subitem applied, are instead powers of the
30 Minister;

31 (d) the procedures for the exercise of a power to which
32 paragraph (c) applies are the same as would apply if ASIC
33 could exercise the power, except that the Minister must not
34 exercise the power unless he or she has first considered
35 advice from ASIC on the proposed action, being advice given
36 after ASIC has consulted APRA about the proposed action;

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- 1 (e) ASIC (rather than the Minister) must still conduct any
2 hearing required under paragraph ^TL115(3)(a) and receive
3 any submissions under paragraph ^TL115(3)(b).

4 *Failure to comply does not invalidate action*

- 5 (3) A failure to comply with a requirement of subitem (1) or (2) to consult
6 or inform APRA about, or to consider advice from ASIC about, a
7 cancellation or suspension, or a revocation of a suspension, of a
8 registration does not invalidate the action taken.

9 **^TL125 Varying registrations**

- 10 (1) ASIC may vary a person's registration to take account of a change in
11 the person's name if the person lodges with ASIC an application for the
12 variation.

- 13 (2) The application must be in the approved form.

14 Note: The conditions on the registration can be varied under item ^TL60.

15 **^TL130 Effect of suspension**

- 16 (1) A suspended registration has no effect while it remains suspended.

- 17 (2) Subitem (1) has effect subject to item ^TL150 (which deals with the
18 continued effect of some suspended or cancelled registrations).

19 **^TL135 Revocation of suspension**

20 ASIC may at any time revoke the suspension of a person's registration.

21 **^TL140 Date of effect, notice and publication of variation, 22 cancellation or suspension**

- 23 (1) ASIC must give a registered person written notice of a variation,
24 suspension, revocation of a suspension, or cancellation of the person's
25 registration.

- 26 (2) A variation, suspension, revocation of a suspension, or cancellation of a
27 person's registration (other than a cancellation under item ^TL100)
28 takes effect when the notice is given to the person.

- 29 (3) As soon as practicable after the notice is given to the person, ASIC must
30 publish a notice of the action on ASIC's website. The notice must state
31 when the action took effect.

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Schedule 1 Registration of persons to engage in credit activities

Part 3 Registration of persons who engage in credit activities

1 **^TL145 Statement of reasons**

2 A notice of suspension or cancellation given to a registered person must
3 be accompanied by a statement of reasons for the action taken.

4 **^TL150 ASIC may allow registration to continue in effect**

- 5 (1) In the written notice of suspension or cancellation that ASIC gives to
6 the registered person, ASIC may include terms specifying that the
7 registration continues in effect as though the suspension or cancellation
8 had not happened for the purposes of specified provisions of this Act in
9 relation to specified matters, a specified period, or both.
- 10 (2) If ASIC includes terms in a notice under subitem (1), the registration
11 continues in effect in accordance with the terms of the notice.
12

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Registration of persons to engage in credit activities **Schedule 1**
Application of other provisions of Chapter 2 of the Consumer Credit Act to registered
persons **Part 4**

1 **Part 4—Application of other provisions of Chapter 2**
2 **of the Consumer Credit Act to registered**
3 **persons**

4 **^TL155 When this Part applies**

5 This Part applies during the period that:

- 6 (a) starts at commencement; and
7 (b) ends at the end of 30 June 2011.

8 **^TL160 Application of Part 2-3 of Chapter 2 (Credit**
9 **representatives and other representatives) of the**
10 **Consumer Credit Act to registered persons**

11 Part 2-3 of Chapter 2 of the Consumer Credit Act (which deals with
12 credit representatives and other representatives of licensees) applies as
13 if:

- 14 (a) all references to a licensee were references to a registered
15 person or licensee; and
16 (b) all references to licensees were references to registered
17 persons or licensees; and
18 (c) all references to a licensee's licence were references to a
19 registered person's registration or licensee's licence; and
20 (d) the reference in subsection ^LIC265(1) of the Consumer
21 Credit Act to a person holding a licence authorising the
22 person to engage in the credit activity were a reference to a
23 person holding a licence authorising the person to engage in
24 the credit activity, or being registered to engage in the credit
25 activity.

26 **^TL165 Application of Part 2-4 of Chapter 2 (Banning and**
27 **disqualification from engaging in credit activities) of**
28 **the Consumer Credit Act to registered persons**

29 Part 2-4 of the Consumer Credit Act (which deals with banning and
30 disqualification of persons from engaging in credit activities) applies as
31 if:

- 32 (a) the reference in paragraph ^LIC315(1)(a) of the Consumer
33 Credit Act to ASIC suspending or cancelling a licence of the
34 person were a reference to ASIC suspending or cancelling a
35 registration or licence of the person; and

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Part 4 Application of other provisions of Chapter 2 of the Consumer Credit Act to registered persons

- 1 (b) the reference in paragraph ^LIC315(4)(a) of the Consumer
2 Credit Act to ASIC having suspended or cancelled a licence
3 of the person were a reference to ASIC having suspended or
4 cancelled a registration or licence of the person; and
5 (c) the reference in paragraph ^LIC315(4)(b) of the Consumer
6 Credit Act to a suspension or cancellation taking place
7 without hearing under section ^LIC205 of the Consumer
8 Credit Act were a reference to a suspension or cancellation
9 taking place without hearing under item ^TL110 of this Act
10 or section ^LIC205 of the Consumer Credit Act.

11 **^TL170 Application of Division 1 of Part 2-5 of Chapter 2**
12 **(Financial records of licensees) of the Consumer Credit**
13 **Act to registered persons**

14 Division 1 of Part 5 of the Consumer Credit Act (which deals with
15 financial records of licensees) applies as if all references to a licensee
16 were references to a registered person or licensee.
17

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Registration of persons to engage in credit activities **Schedule 1**
Exemptions and modifications **Part 5**

1 **Part 5—Exemptions and modifications**

2 **^TL180 Provisions to which this Part applies**

3 The provisions to which this Part applies are:

- 4 (a) items ^TL25 and ^TL35 (which deal with requirements to be
5 registered or licensed etc.); and
- 6 (b) section ^TL70 (which deals with general conduct obligations
7 of registered persons); and
- 8 (c) definitions in this Act and the Consumer Credit Act, as they
9 apply to references in the provisions referred to in
10 paragraphs (a) and (b); and
- 11 (d) regulations or other instruments made for the purposes of any
12 of the provisions referred to in paragraphs (a) to (c).

13 **^TL185 Exemptions and modifications by ASIC**

14 (1) ASIC may:

- 15 (a) exempt a person from all or specified provisions to which
16 this Part applies; or
- 17 (b) exempt a credit activity from all or specified provisions to
18 which this Part applies; or
- 19 (c) declare that provisions to which this Part applies apply in
20 relation to a person or credit activity as if specified
21 provisions were omitted, modified or varied as specified in
22 the declaration.

23 (2) An exemption or declaration under subitem (1) is not a legislative
24 instrument.

25 (3) ASIC may, by legislative instrument:

- 26 (a) exempt a class of persons from all or specified provisions to
27 which this Part applies; or
- 28 (b) exempt a class of credit activities from all or specified
29 provisions to which this Part applies; or
- 30 (c) declare that provisions to which this Part applies apply in
31 relation to a class of persons or credit activities, as if
32 specified provisions were omitted, modified or varied as
33 specified in the declaration.

34 (4) An exemption may apply unconditionally or subject to specified
35 conditions. A person to whom a condition specified in an exemption

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Schedule 1 Registration of persons to engage in credit activities

Part 5 Exemptions and modifications

- 1 applies must comply with the condition. The court may order the person
2 to comply with the condition in a specified way. Only ASIC may apply
3 to the court for the order.
- 4 (5) An exemption or declaration under subitem (1) must be in writing and
5 ASIC must publish notice of it on its website.
- 6 (6) If conduct (including an omission) of a person would not have
7 constituted an offence if a particular declaration under paragraph (1)(c)
8 or (3)(c) had not been made, that conduct does not constitute an offence
9 unless, before the conduct occurred:
- 10 (a) the text of the declaration was published by ASIC on its
11 website; or
- 12 (b) ASIC gave written notice setting out the text of the
13 declaration to the person;
- 14 (in addition to complying with the requirements of the *Legislative*
15 *Instruments Act 2003* if the declaration is made under subitem (3)).
- 16 (7) In a prosecution for an offence to which subitem (6) applies, the
17 prosecution must prove that paragraph (6)(a) or (b) was complied with
18 before the conduct occurred.

19 **^TL190 Exemptions and modifications by regulations**

20 The regulations may:

- 21 (a) exempt a person or class of persons from all or specified
22 provisions to which this Part applies; or
- 23 (b) exempt a credit activity or a class of credit activities from all
24 or specified provisions to which this Part applies; or
- 25 (c) provide that the provisions to which this Part applies apply as
26 if specified provisions were omitted, modified or varied as
27 specified in the regulations.