



# National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009<sup>1</sup>

Select Legislative Instrument 2009 No.

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

Dated 2009

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Treasurer

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## EXPOSURE DRAFT

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## Part 1 Preliminary

### 1 Name of Regulations

These Regulations are the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009*.

### 2 Commencement

These Regulations commence as follows:

- (a) on the day item 22 of Schedule 1 to the Act commences — regulation 8;
- (b) on the day the remainder of Schedule 1 to the Act commences — the remainder.

### 3 Definitions

In these Regulations:

*Act* means the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

*associate* has the meaning given by regulation 4.

*financial counselling association* means any of the following:

- (a) the Australian Financial Counselling and Credit Reform Association Incorporated;
- (b) the Financial and Consumer Rights Council Inc (Vic);
- (c) the Financial Counsellors Association of NSW Inc;
- (d) the Financial Counsellors Association of Western Australia;
- (e) the Financial Counsellors Association of Queensland;
- (f) the Financial Counsellors Credit Reform Association Northern Territory;
- (g) the South Australian Financial Counsellors Association Incorporated.

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***financial counselling service*** means a counselling and advocacy service provided predominantly for the purpose of assisting individuals who are in financial difficulty due to circumstances such as debt over-commitment, unemployment, sickness or family breakdown.

***holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

***prescribed State or Territory order*** has the meaning given by the National Credit Act and the regulations made for that definition.

***registered debt agreement administrator*** means a person registered by the Insolvency and Trustee Service Australia as a debt agreement administrator under Part IX of the *Bankruptcy Act 1996*.

***subsidiary***, in relation to a body corporate, means a body corporate that is a subsidiary of the first-mentioned body by virtue of Division 6 of Part 1.2 of the Corporations Act.

#### **4 Meaning of associate**

- (1) This regulation has effect for the purposes of interpreting a reference (the ***associate reference***), in relation to a person (the ***primary person***), to an associate.
- (2) A person is not an associate of the primary person except as provided in this regulation.
- (3) Nothing in this regulation limits the generality of anything else in it.
- (4) If the primary person is a body corporate, the associate reference includes a reference to:
  - (a) a director or secretary of the body; and
  - (b) a related body corporate; and
  - (c) a director or secretary of a related body corporate.
- (5) An associate reference includes a reference to:
  - (a) a person in partnership with whom the primary person engages in a credit activity; and

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- (b) subject to subregulation (8), a person who is a partner of the primary person otherwise than because of the engaging in a credit activity in partnership with the primary person; and
  - (c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting; and
  - (d) a director of a body corporate of which the primary person is also a director and that engages in a credit activity; and
  - (e) subject to subregulation (8), a director of a body corporate of which the primary person is also a director and that does not engage in a credit activity; and
  - (f) a person in concert with whom the primary person is acting, or proposes to act, in respect of the matter to which the associate reference relates; and
  - (g) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way, in respect of the matter to which the associate reference relates.
- (6) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this regulation, the associate reference includes a reference to that other person.
- (7) A person is not an associate of another person by virtue of subregulation (5), or by virtue of subregulation (6) as it applies in relation to subregulation (5), merely because of one or both of the following:
- (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;
  - (b) one, a client, gives specific instructions to the other, whose ordinary business includes engaging in a credit activity, to enter into a credit contract on the client's behalf in the ordinary course of that business.

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- (8) For the purposes of proceedings in relation to a matter mentioned in these Regulations in which it is alleged that a person was an associate of another person by virtue of paragraph (5) (b) or (e), the first-mentioned person is not taken to have been an associate of the other person in relation to a matter by virtue of that paragraph unless it is proved that the first-mentioned person knew, or ought to have known, at that time, the material particulars of that matter.
- (9) A reference to an associate, in relation to an entity (other than a body corporate) that:
- (a) engages in a credit activity; and
  - (b) is constituted by 2 or more persons;
- includes a reference to an associate of any of those persons.

## **Part 2 Transitional provisions**

### **5 Application of new Credit Code to particular sale contracts**

- (1) This regulation applies if:
- (a) a provision of credit was made before 29 May 2009; and
  - (b) the provision of credit was for a sale of land or goods by instalments under a contract; and
  - (c) immediately before commencement of the new Credit Code, an old Credit Code applies to the provision of credit.
- (2) For subsection 6 (2) of the Act, sections 10, 11 and 12 of the new Credit Code do not apply to the provision of credit.

*Note* Subsection 6 (2) of the Act provides that the regulations may prescribe matters of a transitional nature (including matters of an application or saving nature):

- (a) arising out of the enactment of the National Credit Act; or
- (b) relating to the transition from the application of provisions of the old Credit Codes, or related laws, of the referring States and the Territories to the application of provisions of the National Credit Act.

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## **6 Treatment of proceedings brought under old Credit Code before commencement**

- (1) This regulation applies if:
  - (a) a party to old proceedings under subitem 4 (1) of Schedule 1 to the Act was a Government Consumer Agency (within the meaning given by the old Credit Code of a referring State or Territory) of a State or Territory; and
  - (b) the party to the old proceedings had powers and functions under the old Credit Code that relate to the old proceedings; and
  - (c) the party to the old proceedings is a party to new proceedings under paragraph 4 (4) (a) of Schedule 1 to the Act; and
  - (d) under the National Credit Act, ASIC has equivalent powers and functions to the powers and functions mentioned in paragraph (b).
- (2) If the party exercises the powers or performs the functions of the party for the purposes of the new proceedings, the party is taken to be acting as an agent of ASIC.

*Note* Paragraph 6 (2) (b) of the Act provides that regulations may prescribe matters of a transitional nature relating to the transition from the application of provisions of the old Credit Codes, or related laws, of the referring States and the Territories to the application of provisions of the National Credit Act.

## **7 ASIC's approach during the transitional period**

- (1) For item 21 of Schedule 1 to the Act, during the period starting on commencement of the Act and ending on 30 June 2011, ASIC must undertake extensive industry consultation, and work closely and cooperatively with stakeholders, to:
  - (a) develop guidance material; and
  - (b) explain and clarify the requirements of the National Credit Act.
- (2) For subregulation (1), ASIC may publish consultation papers, regulatory guides and information sheets.

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## 8 Transfer of assets or liabilities to ASIC

- (1) For the purposes of item 22 of Schedule 1 to the Act, a transfer agreement may be entered into between:
  - (a) ASIC (or on behalf of ASIC); and
  - (b) a referring State or Territory.
- (2) The transfer agreement may determine how assets or liabilities relating to the regulation of credit providers may be transferred to ASIC from:
  - (a) a referring State or Territory; or
  - (b) an authority of a referring State or Territory.
- (3) This regulation does not prevent assets or liabilities being transferred to ASIC otherwise than in accordance with a transfer agreement.
- (4) The transfer agreement has effect in accordance with this regulation to the extent that it is within the Commonwealth's legislative power to give the agreement that effect.

### *Transfer of assets*

- (5) A transfer agreement may determine that all or any of the following things happen on a specified date, not being a date before the transfer date:
  - (a) specified assets vest in ASIC without any conveyance, transfer or assignment;
  - (b) specified instruments in relation to specified assets continue to have effect after the assets vest in ASIC, as if specified references in the instruments were references to ASIC;
  - (c) ASIC becomes the previous owner's successor in law in relation to specified assets immediately after the assets vest in ASIC.
- (6) For subregulation (5), assets or instruments may be specified by description, by inclusion in a specified class or in some other way.
- (7) For this regulation, *assets* includes:
  - (a) information, documents, records and instruments; and

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- (b) assets in hardcopy or in an electronic format.

*Transfer of liabilities*

- (8) A transfer agreement may determine that all or any of the following things happen on a specified date, not being a date before the transfer date:
  - (a) specified liabilities vest in ASIC;
  - (b) specified instruments in relation to specified liabilities continue to have effect after the liabilities vest in ASIC, as if specified references in the instruments were references to ASIC;
  - (c) ASIC becomes the previously liable person's successor in law in relation to specified liabilities immediately after the liabilities vest in ASIC.
- (9) For subregulation (8), liabilities or instruments may be specified by description, by inclusion in a class or in some other way.

## **Part 4                      Registration**

### **9                      The conditions on the registration**

- (1) For subitem 14 (7) of Schedule 2 to the Act, the registration is subject to the conditions set out in this regulation.
- (2) If:
  - (a) there is a change in a matter particulars of which are entered in the credit register for registered persons; and
  - (b) the change is not a direct consequence of an act by ASIC; the registered person must lodge particulars of the change with ASIC, in the approved form, within 10 business days after the change occurs.
- (3) If:
  - (a) there is a change in a matter particulars of which are entered in the credit register for credit representatives; and
  - (b) the change is not required to be reported in accordance with section 71 of the National Credit Act; and

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- (c) the change is not a direct consequence of an act by ASIC; the registered person must ensure that particulars of the change are lodged with ASIC in the approved form within 10 business days after the change occurs.
- (4) The registered person must ensure that each credit representative of the registered person that may give an authorisation to another credit representative is aware of the requirements in section 71 of the National Credit Act.
- (5) The registered person must ensure that, before the registered person authorises a credit representative to engage in a credit activity on its behalf as mentioned in section 64 of the National Credit Act, reasonable inquiries are made to establish:
- (a) the credit representative's identity; and
  - (b) whether the credit representative has already been allocated a number by ASIC as a credit representative.
- (6) The registered person must ensure that, before a body corporate that is a credit representative of the registered person authorises an individual to engage in a credit activity on behalf of the registered person as mentioned in section 65 of the National Credit Act, reasonable inquiries are made to establish:
- (a) the individual's identity; and
  - (b) whether the individual has already been allocated a number by ASIC as a credit representative.
- (7) The registered person must ensure that, if:
- (a) ASIC has allocated a number to a credit representative; and
  - (b) the registered person, or a body corporate that has authorised an individual to engage in a credit activity on behalf of the registered person as mentioned in section 65 of the National Credit Act, lodges a document with ASIC that refers to the credit representative;
- the document refers to the number.
- (8) The registered person must provide a copy of an authorisation of any of its credit representatives:
- (a) on request by any person; and
  - (b) free of charge; and

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- (c) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which it received the request.
- (9) The registered person must take reasonable steps to ensure that each of its credit representatives supplies a copy of its authorisation by the registered person:
- (a) on request by any person; and
  - (b) free of charge; and
  - (c) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which it received the request.
- (10) If the registered person becomes aware of any change in control of the registered person, the registered person must lodge with ASIC particulars of the change, in the approved form, not later than 10 business days after the change.
- (11) For subregulation (10):
- (a) a change in control, in relation to a registered person, includes a transaction, or a series of transactions in a period of 12 months, that results in a person having control of the registered person (either alone or together with associates of the person); and
  - (b) control, in relation to a registered person, means:
    - (i) if the registered person is a body corporate:
      - (A) having 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 registered person; or
      - (B) directly or indirectly holding more than one half of the issued share capital of the registered person (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); or
    - (ii) the capacity to control the composition of the registered person's board or governing body; or

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- (iii) the capacity to determine the outcome of decisions about the registered person's financial and operating policies.
- (12) For subparagraph (11) (b) (iii), the following matters must be taken into account in determining whether a person has the capacity to determine the outcome of decisions about the registered person's financial and operating policies:
- (a) the practical influence the person can exert (rather than the rights it can enforce);
  - (b) any practice or pattern of behaviour affecting the registered person's financial or operating policies is to be taken into account (whether or not it involves a breach of an agreement or a breach of trust).
- (13) On the request of any person, the registered person must make available a copy of its registration within a reasonable time for inspection by that person.
- (14) If:
- (a) the registered person is not a body regulated by APRA; and
  - (b) an event occurs that may make a material adverse change to the financial position of the registered person by comparison with its financial position:
    - (i) at the time of the application for registration; or
    - (ii) as described in documents lodged with ASIC after the application for registration;
- the registered person must lodge with ASIC in the approved form a notice setting out particulars of the event as soon as practicable, and in any case not later than 3 business days, after the registered person becomes aware of the event.

## **Part 5 Exemptions**

### **10 Persons exempt from being registered — general**

- (1) For paragraph 42 (a) of Schedule 2 to the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) items 4 and 6 of Schedule 2 to the Act; and

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- (b) definitions in the Act, as they apply to references in the provisions referred to in paragraph (a); and
  - (c) regulations or other instruments made for the purposes of any of the provisions referred to in paragraphs (a) and (b).

*Note* Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is registered or holds a licence.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is:

- (a) registered and has applied for a licence; or
- (b) holds a licence.

- (2) A person is exempted if the person engages in a credit activity while performing functions, or exercising powers, in any of the following capacities or circumstances:
  - (a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*;
  - (b) as a receiver, receiver and manager, or liquidator (whether appointed by a court or otherwise);
  - (c) as a person appointed by a court to engage in a credit activity;
  - (d) as the Public Trustee acting under a law of a State or Territory;
  - (e) as an administrator of a body corporate;
  - (f) as an administrator of a deed of company arrangement executed by a body corporate;
  - (g) as a trustee or person administering a compromise or arrangement between a body corporate and another person or persons;
  - (h) as a personal representative of a deceased person other than a deceased registered person;
  - (i) subject to subregulation (3), as a personal representative of a deceased registered person;
  - (j) in the administration of a bankrupt estate or in the winding up of a body corporate or partnership;
  - (k) as a registered debt agreement administrator administering a debt agreement under Part IX of the *Bankruptcy Act 1966*.

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- (3) Paragraph (2) (i) only applies until the first of the following events takes place:
- (a) the end of 6 months after the death of the registered person;
  - (b) the removal or discharge of the personal representative;
  - (c) the final distribution of the registered person's estate.
- (4) A person is exempted if the following circumstances exist:
- (a) the person is a financial counselling agency;
  - (b) the credit activity is engaged in as part of a financial counselling service;
  - (c) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:
    - (i) engaging in the credit activity; or
    - (ii) any other aspect of the provision of the financial counselling service;
  - (d) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, a representative of the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:
    - (i) engaging in the credit activity; or
    - (ii) any other aspect of the provision of the financial counselling service;
  - (e) no remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, an associate of the financial counselling agency by any person in relation to any action by, or on behalf of, the client arising from:
    - (i) engaging in the credit activity; or
    - (ii) any other aspect of the provision of the financial counselling service;
  - (f) the financial counselling agency takes all reasonable steps to ensure that each person who engages in credit activities on its behalf:
    - (i) is a member of, or is eligible to be a member of, a financial counselling association; and

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- (ii) has undertaken appropriate training to ensure that the person has adequate skills and knowledge to engage satisfactorily in the credit activity and any other aspect of the provision of the financial counselling service.
- (5) A person is exempted if:
- (a) the person is:
    - (i) a related body corporate of a registered person; and
    - (ii) engaging in credit activities on behalf of the registered person; or
  - (b) the person is a public body or authority, or a local government body or authority, constituted under an Act of the Commonwealth or a State or Territory.
- (6) If a person is authorised, by an Act of the Commonwealth or a State or Territory, to engage in particular credit activities, the person is exempted so far as the person is engaging in the credit activities the person is authorised to engage in under that Act.
- (7) A person is exempted if:
- (a) the person is an organisation that provides services and makes benefits available to members of the organisation; and
  - (b) a benefit of membership of the organisation is that members are able to enter into a particular credit contract or consumer lease; and
  - (c) the person provides a credit service (within the meaning given by section 7 of the National Credit Act) in relation to the particular credit contract or consumer lease; and
  - (d) the person does not otherwise engage in credit services.

**11 Persons exempt from being registered — persons holding a licence under a State or Territory Act**

- (1) For paragraph 42 (a) of Schedule 2 to the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) items 4 and 6 of Schedule 2 to the Act; and

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- (b) definitions in the Act, as they apply to references in the provisions referred to in paragraph (a); and
  - (c) regulations or other instruments made for the purposes of any of the provisions referred to in paragraphs (a) and (b).

*Note* Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is registered or holds a licence.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is:

- (a) registered and has applied for a licence; or
- (b) holds a licence.

- (2) A person is exempted if:
  - (a) the person only engages in a credit activity within the meaning of:
    - (i) paragraph (c) of item 1 of the table in subsection 6 (1) of the National Credit Act, on behalf of a credit provider; or
    - (ii) paragraph (b) of item 4 of the table in subsection 6 (1) of that Act, on behalf of a mortgagee; or
    - (iii) paragraph (b) of item 5 of the table in subsection 6 (1) of that Act, on behalf of the other person; and
  - (b) the person only performs the obligations, or exercises the rights, referred to in those paragraphs in relation to:
    - (i) demanding and receiving payments from borrowers or guarantors under credit contracts; and
    - (ii) enforcing rights in relation to taking possession of property secured by a mortgage; and
  - (c) the person:
    - (i) holds a licence or authorisation to engage in an activity mentioned in paragraph (a) under 1 or more of the Acts mentioned in subregulation (4); or
    - (ii) is authorised to act on behalf of a person holding a licence or authorisation of a kind mentioned in subparagraph (i); and
  - (d) the person is authorised in writing by a registered person or a licensee to engage in an activity mentioned in paragraph (a).

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- (3) The person is exempted for 12 calendar months starting on the day these Regulations commence.
- (4) For subparagraph (2) (c) (i), the Acts are the following:
- (a) the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW);
  - (b) the **Private Agents Act 1966** (Vic);
  - (c) the *Property Agents and Motor Dealers Act 2000* (Qld);
  - (d) the *Debt Collectors Licensing Act 1964* (WA);
  - (e) the *Security and Investigations Agents Act 1995* (SA);
  - (f) the *Security and Investigations Agents Act 2002* (Tas);
  - (g) the *Commercial and Private Agents Licensing Act* (NT).

## 12 Persons exempt from being registered — third parties

- (1) For paragraph 42 (a) of Schedule 2 of the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) items 4 and 6 of Schedule 2 to the Act; and
  - (b) definitions in the Act, as they apply to references in the provisions referred to in paragraph (a); and
  - (c) instruments made for the purposes of any of the provisions referred to in paragraphs (a) and (b).

*Note* Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is registered or holds a licence.

That item also provides, among other things, that it is a defence if the person is a credit representative of a person who is registered or holds a licence.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person:

- (a) is registered and has applied for a licence; or
- (b) holds a licence.

That item also provides, among other things, that it is a defence if the person is a credit representative of a person who:

- (a) is registered and has applied for a licence; or
- (b) holds a licence.

- (2) A person is exempted if:

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- (a) the person only engages in a credit activity by selling or transporting property of a debtor or guarantor on behalf of:
    - (i) a credit provider; or
    - (ii) a mortgagee; or
    - (iii) a person who is the beneficiary of a guarantee; or
  - (b) the person only engages in a credit activity by giving or sending to a debtor or guarantor, on behalf of:
    - (i) a credit provider; or
    - (ii) a mortgagee; or
    - (iii) a person who is the beneficiary of a guarantee;  
a notice or document that the person mentioned in subregulation (i), (ii) or (iii) is obliged by law to give or send to the debtor or guarantor.

**13 Persons exempt from being registered — providers of point of sale credit assistance**

- (1) For paragraphs 42 (a) and (c) of Schedule 2 to the Act, this regulation:
  - (a) exempts certain persons engaging in a credit activity from:
    - (i) items 4 and 6 of Schedule 2 the Act; and
    - (ii) definitions in the Act, as they apply to references in the provisions referred to in subparagraph (i); and
    - (iii) instruments made for the purposes of any of the provisions referred to in subparagraphs (i) and (ii); and
  - (b) modifies specified provisions for the purposes of the exemption under paragraph (a).

*Note* Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is registered or holds a licence.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is:

- (a) registered and has applied for a licence; or
- (b) holds a licence.

- (2) A person is exempted if:
  - (a) the person is a supplier of goods or services; and

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- (b) the supplier is providing credit services (within the meaning of section 7 of the National Credit Act) in relation to a credit contract or consumer lease; and
  - (c) the credit provider or lessor in relation to the credit contract or consumer lease is a linked credit provider or linker lessor of the supplier.
- (3) For paragraph 42 (c) of Schedule 2 to the Act, the definition of ***linked credit provider*** of a supplier in section 127 of Schedule 1 to the National Credit Act is modified for the purposes of this exemption so that it provides that a ***linked credit provider or linked lessor*** of a supplier means a credit provider or lessor:
- (a) with whom the supplier has a contract, arrangement or understanding relating to:
    - (i) the supply to the supplier of goods in which the supplier deals; or
    - (ii) the business carried on by the supplier of:
      - (A) supplying goods or services; or
      - (B) causing goods to be supplied to the consumer by way of a consumer lease; or
    - (iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services; or
  - (b) to whom the supplier, by arrangement with the credit provider or lessor, regularly refers persons for the purpose of obtaining credit or being provided with a consumer lease; or
  - (c) whose:
    - (i) forms of contract; or
    - (ii) forms of application; or
    - (iii) offers for credit; or
    - (iv) offers to be provided with a consumer lease; are, by arrangement with the credit provider or lessor, made available to persons by the supplier; or
  - (d) with whom the supplier has a contract, arrangement or understanding under which:
    - (i) contracts; or
    - (ii) applications; or

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- (iii) offers for credit; or
  - (iv) offers to be provided with a consumer lease;  
from the credit provider or lessor may be signed by  
persons at the premises of the supplier.
- (4) For paragraph 42 (c) of Schedule 2 to the Act, the definition of *services* in subsection 204 (1) of Schedule 1 to the National Credit Act is modified for the purposes of this exemption so that it provides *services*:
- (a) includes:
    - (i) rights in relation to, and interest in, real property; or
    - (ii) insurance; or
    - (iii) professional services; or
    - (iv) a right to services; and
  - (b) does not include services relating to credit or consumer leases that are regulated under the National Credit Act.
- (5) The exemption does not apply to a person if:
- (a) the person is a related body corporate of the linked credit provider or linked lessor; or
  - (b) the supplying of goods or services to the consumer is the result of:
    - (i) an unsolicited meeting with the consumer; or
    - (ii) an unsolicited telephone call to the consumer.

#### **14 Activities exempt from being credit activities**

- (1) For paragraph 42 (b) of Schedule 2 to the Act, this regulation exempts certain credit activities, or classes of credit activities, from all of the provisions to which Part 5 of Schedule 2 to the Act applies.

*Note* Item 40 of Schedule 2 to the Act identifies the provisions to which Part 5 of Schedule 2 to the Act applies.

- (2) The following activities are exempted:
- (a) the providing of credit assistance by a lawyer in his or her professional capacity in relation to matters of law, legal interpretation or the application of the law to any facts;

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- (b) the providing of any credit assistance not mentioned in paragraph (a) by a lawyer in the ordinary course of activities as a lawyer that is reasonably regarded as a necessary part of those activities.
- (3) A credit activity is exempted if it is engaged in by a lawyer in the following circumstances:
- (a) the lawyer is acting:
    - (i) on the instructions of a client, an associate of the client or a relative of the client; and
    - (ii) in his or her professional capacity; and
    - (iii) in the ordinary course of his or her activities as a lawyer;
  - (b) the credit activity can reasonably be regarded as a necessary part of those activities;
  - (c) the lawyer has not received, and will not receive, from the client or from another person on behalf of the client a benefit in connection with those activities other than:
    - (i) the payment of professional charges in relation to those activities; and
    - (ii) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client.
- (4) A credit activity is exempted if:
- (a) it is engaged in by a tax agent in the following circumstances:
    - (i) the tax agent is registered under Part VIIA of the *Income Tax Assessment Act 1936*;
    - (ii) the tax agent engages in the credit activity in the ordinary course of activities as a tax agent; and
  - (b) it is not a credit activity mentioned in:
    - (i) paragraph (a) of item 1 of the table in subsection 6 (1) of the National Credit Act; or
    - (ii) paragraph (a) of item 3 of the table in subsection 6 (1) of the National Credit Act; and

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- (c) it does not involve providing a certificate or assessment (however described) relating to whether a consumer will be able to meet financial obligations under a credit contract or consumer lease.
- (5) A credit activity is exempted if:
- (a) the credit activity consists only of a person (*person 1*) passing on, publishing, distributing or otherwise disseminating a document; and
  - (b) the document was provided by another person (*person 2*); and
  - (c) person 2 is not acting on behalf of person 1; and
  - (d) person 1 is not a registered person; and
  - (e) person 1 does not select the content of the document, modify the content of the document or otherwise exercise control over the content of the document; and
  - (f) a reasonable person would not consider that person 1 provided, endorsed or otherwise assumed responsibility for the information contained in the document.
- (6) A credit activity is exempted if:
- (a) the credit activity consists of a person (*the provider*) giving to another person (*the inquirer*), in response to a request made by the inquirer to the provider, information about:
    - (i) the cost, or an estimate of the likely cost, of a credit contract or a consumer lease;
    - (ii) terms and conditions of a credit contract or a consumer lease; and
  - (b) the provider could have complied with the request by giving the inquirer equivalent information about 1 or more other credit contracts or consumer leases; and
  - (c) the provider did not give the inquirer that equivalent information.
- (7) A credit activity is exempted if it is engaged in by a clerk or cashier in the ordinary course of activities as a clerk or cashier.

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## 15 Activities exempt from being registered

- (1) For paragraph 42 (b) of Schedule 2 to the Act, this regulation exempts certain credit activities from:
  - (a) items 4 and 6 of Schedule 2 to the Act; and
  - (b) definitions in the Act, as they apply to references in the provisions referred to in paragraph (a); and
  - (c) regulations or other instruments made for the purposes of any of the provisions referred to in paragraphs (a) and (b).

*Note* Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is registered or holds a licence.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during a specified period unless the person is:

- (a) registered and has applied for a licence; or
- (b) holds a licence.

- (2) A credit activity is exempted if:
  - (a) the activity consists only of:
    - (i) a person (*person 1*) informing another person (*person 2*) that a registered person, or a representative of the registered person, is able to provide a particular credit activity or a class of credit activities; and
    - (ii) person 1 giving person 2 information about how person 2 may contact the registered person or representative;
  - (b) at the time the activity is engaged in, person 1 discloses to person 2:
    - (i) any benefits, including commission, that person 1, or an associate of person 1, may receive in respect of the activity; and
    - (ii) any benefits, including commission, that person 1, or an associate of person 1, may receive that are attributable to the activity;
  - (c) the disclosure mentioned in paragraph (b) is provided in the same form as the information mentioned in paragraph (a).

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- (3) A credit activity is exempted if it is a credit activity engaged in in respect of the provision of credit mentioned in:
- (a) subsection 6 (9) or (11) of Schedule 1 to the National Credit Act; or
  - (b) regulation 7, 9, 10, 11, 12, 15 or 16 of the *National Consumer Credit Protection Regulations 2009*.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.