

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No.**

Issued by the Authority of the Minister for Financial Services, Superannuation and Corporate Law

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

*National Consumer Credit Protection (Transitional and Consequential Provisions) Amendment Regulations 2010*

The *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act) sets out the transitional and consequential arrangements to support the transfer of the regulation of credit from the States and Territories to the Commonwealth.

Section 6 of the Transitional Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Schedule 1 to the Transitional Act deals with the transition from the regime provided in the old Credit Code to the new consumer credit regime provided for in both the *National Consumer Credit Protection Act 2009* (Credit Act) and Schedule 2 to the Transitional Act, including:

- the application of the existing legislation or the proposed legislation to legal proceedings that arose before the change;
- the rights or liabilities a person may have under the existing legislation; and
- the extent to which the existing legislation may continue to have effect under the Credit Act.

Schedule 2 to the Transitional Act sets out the requirement for persons engaging in credit activities to become registered with the Australian Securities and Investments Commission (ASIC), prior to applying for an Australian credit licence (ACL).

Schedule 3 to the Transitional Act includes consequential amendments to other laws.

The purpose of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Amendment Regulations 2010* is to deal with transitional matters such as the treatment of court proceedings; the application of the Credit Act and the Transitional Act to contracts made before commencement; conditions of registration; exemptions and infringement notices.

Details of the Regulations appear in the Attachment.

The Transitional Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence as follows: (a) 1 April 2010 – regulations 1 to 3 and Schedule 1; and (b) 1 July 2010 – Schedule 2.

### Regulation 1 – Name of Regulations

Regulation 1 provides that the name of the Regulations is the *National Consumer Credit Protection (Transitional and Consequential Provisions) Amendment Regulations 2010* (Amendment Regulations).

### Regulation 2 – Commencement

Regulation 2 provides that specified parts of the Amendment Regulations commence on different dates. The regulation states that regulations 1 to 3 and Schedule 1 of the Amended Regulations commence on 1 April 2010; and Schedule 2 commences on 1 July 2010.

### Regulation 3 – Amendment of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009*

Regulation 3 provides for Schedules 1 and 2 to amend the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009* (Regulations).

## **Schedule 1 Amendments commencing on 1 April 2010**

### **Part 1 Preliminary**

Part 1 of Schedule 1 defines additional words and expressions that are used in regulation 3 of the Regulations. This includes defining terms such as *associate, financial counselling association, financial counselling service and securitisation entity*.

### Regulation 3A – Meaning of Associate

Regulation 3A explains the circumstances under which a person will become an associate of a primary person. A person will become an associate of a primary person if the person's interests and the primary person's interests are linked by virtue of their being in a formal relationship (for example, that between a director and a company) or an informal relationship (for example, where the parties have not entered into an agreement but act together to pursue a common objective).

### **Part 2 Transitional provisions**

### Regulation 6A – References to the *National Consumer Credit Protection Regulations 2010*

This regulation provides that from 1 April 2010 to immediately before 1 July 2010 the following will apply:

- the exemptions from the requirement to be registered in relation to specified credit activities; and
- the contents required to be included in the form that ASIC uses for infringement notices.

These exemptions from the requirement to be registered will apply in respect of credit activities where the credit supplied is already largely, but not entirely, exempt from the requirements of the National Credit Code (Code). These exempt credit activities include pawnbroking, the provision of credit where the amount of credit to be provided does not exceed \$50, and the provision of credit by a higher educational institution to a student of the institution on the grounds of hardship or of an emergency.

## Regulation 6B – Modification of the Transitional Act

This regulation provides for the modification of the Transitional Act.

Subsection 6(3) of the Transitional Act enables the making of regulations which provide that certain provisions of the Transitional Act are taken to be modified as set out in the regulations and that these provisions then have effect as if they were so modified.

Given the series of changes to the implementation timetable for the National Consumer Credit Protection Reform Package and clarification of the policy intent on the operation of the registration period, it is necessary to modify certain provisions in the Transitional Act to ensure commencement of the registration period and relevant obligations from 1 April 2010.

### **Part 3 Application of Schedule 2 to the Act to contracts and other instruments made before commencement**

Part 3 of Schedule 1 of the Transitional Act specifically states that the registration, licensing and responsible lending conduct provisions do not apply to contracts and other instruments that were made before commencement, except to the extent this is provided for in the regulations.

Part 3 of these regulations sets out the way in which the provisions of the Credit Act and the Transitional Act apply to persons engaging in credit activities in respect of these contracts and instruments (defined as carried over instruments in section 4 of the Transitional Act). The regulations impose these requirements as follows:

- Division 3 of Schedule 1 – applies the registration requirements and obligations in a modified way.
- Division 1 of Schedule 2 – applies the licensing requirements and obligations in a modified way.
- Division 2 of Schedule 2 – applies responsible lending conduct obligations in relation to conduct engaged in after commencement.

#### **Division 3 - Application of Schedule 2 to the Act to contracts and other instruments made before commencement**

This Division applies the registration requirements and obligations in a modified way to persons engaging in credit activities in respect of carried over instruments..

## Regulation 15 – Preliminary

This regulation sets out the application of Division 3, as follows:

- This Division only applies to persons who are engaging in credit activities:
  - within the meaning of items 1, 3, 4 and 5 of the table in subsection 6(1) of the Credit Act (that is, being a party to a credit contract, consumer lease, mortgage or guarantee); and
  - subsequent to the commencement of these regulations and in respect of carried over instruments.

The effect of regulation 15 is that Division 3 applies to persons who have entered into credit

contracts or consumer leases before commencement of the regulations, and continues to apply while those contracts are still in force. These persons are therefore subject to the obligations in regulations 16 to 21.

#### Regulation 16 – Person may apply to be registered or automatically be registered

This regulation sets out:

- the prohibitions that will apply to registered persons in relation to registration requirements. The prohibitions include the requirements that a person must not hold out to be a registered person or to be exempt from registration or to be acting on behalf of a registered person. The prohibitions will apply from the start of 1 April 2010 (as modified by regulation 6B in these Amendment Regulations) to 30 June 2011 (or a later date prescribed by the regulations).
- The processes involved in an application to be registered. These are:
  - if a person lodges an application to be registered and does so between 1 April 2010 and 30 June 2010, ASIC must register that person;
  - where the person is not registered as at 30 June 2010 and has not applied to be registered, but is engaging in credit activities, ASIC may decide to automatically register the person, and where this is the case, ASIC must give the person written notice advising them of the decision to grant them a licence, no earlier than 28 days after the notice is given to the person;
  - If ASIC decides to register a person, ASIC must also give the person written notice of the day on which the registration will take effect, and of any conditions imposed on the registration.

#### Regulation 17 – Conditions on the registration

This regulation details the nature of the conditions that can be imposed on a registered person by ASIC as follows:

- Items 14 and 15 of Schedule 2 of the Transitional Act (which set out ASIC's power to impose conditions on a registration) apply, subject to the specific modifications set out below.
- If the person is only engaging in credit activities in respect of carried over contracts, ASIC must impose a condition that only authorises the registered person to engage in credit activities in respect of those contracts. In practice, this will mean that the registered person is restricted to collecting debts outstanding under carried over instruments.
- ASIC cannot impose a condition where the effect of that condition would be to prevent the registered person from collecting debts outstanding under carried over instruments.
- ASIC has power to impose conditions regulating the way in which a registered person is collecting such debts.

The effect of these variations is that where a registered person is collecting debts in a way that warrants regulatory intervention ASIC can, for example, impose a condition providing that the debts must be collected by a third party or that debtors can only be contacted at specified times. However, ASIC cannot impose a condition that, directly or indirectly, would prevent the registered person collecting those debts.

#### Regulation 18 – Obligations of registered persons

This regulation sets out the obligations that apply to persons who are granted a licence where they only engage in credit activities in respect of carried over instruments. The obligations are to:

- do all things necessary to ensure that the credit activities authorised by the registration are engaged in efficiently, honestly and fairly;
- comply with any conditions imposed by ASIC on the registration;
- comply with the Credit Act and Transitional Act (credit legislation), subject to section 7 of the Transitional Act;
- take reasonable steps to ensure that its representatives comply with the credit legislation (subject to section 7 of the Transitional Act); and
- take reasonable steps to ensure that clients of the registered person are not disadvantaged by any conflict of interest that arises wholly or partly in relation to credit activities engaged in by the registered person or by their representatives.

Section 7 of the Transitional Act provides that a provision does not apply to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms. It is not anticipated that the Regulations create an acquisition of property other than on just terms, but the reference to section 7 has been included, for the avoidance of doubt, to address this situation.

Regulation 18 also provides that items 17 to 19 of Schedule 2 of the Transitional Act apply in relation to the registered person. These items impose a number of specific obligations on registered persons, including the obligation to provide a statement or obtain an audit report if directed by ASIC.

#### Regulation 19 – Suspension, cancellation and variation of registration

This regulation specifies ASIC's powers to suspend cancel or vary a registration granted to a person who engages in credit activities in respect of a carried over instrument as follows:

- Division 4 of Part 3 of Schedule 2 of the Transitional Act applies to the extent permitted by the regulations.
- Item 23 of Schedule 2 is modified so that ASIC may only suspend or cancel a registration if:
  - The registered person does not engage or ceases to engage in credit activities;
  - The registered person is banned from engaging in a credit activity under a law of a State or Territory;
  - The registered person is insolvent (except where they are the trustees of a trust); or

- The registered person is a single natural person and is incapable of managing his or her affairs because of physical or mental incapacity.
- Items 20 and 26 to 31 of Schedule 2 of the Transitional Act apply in relation to the registered person. In general terms these provisions have the following effect:
  - Item 20 provides that if a registered person applies for a licence under section 36 of the Credit Act; and ASIC grants, or refuses to grant, the person the licence then the person's registration is cancelled.
  - Item 26 provides that ASIC may vary a person's registration to reflect a change in the name of the person.
  - Item 27 relates to the effect of a suspension of a registration.
  - Item 28 provides that ASIC may revoke the suspension of a registration.
  - Item 29 includes requirements in respect of the notice and publication and date of effect of a variation, suspension, revocation of a suspension or a cancellation of a registration.
  - Item 30 requires ASIC to provide a statement of reasons when a registered person is given notice of a suspension or cancellation of their registration.
  - Item 31 allows a registration to continue in force, for limited purposes notwithstanding a cancellation or suspension of the registration.

#### Regulation 20 – Parts 4 and 5 of Schedule 2 to apply

This regulation specifies that Parts 4 and 5 of Schedule 2 apply in relation to a person who engages in credit activities in respect of a carried over instrument. The general effect of these Parts is:

- Part 4 applies a number of provisions of the Credit Act to these persons, including the provisions in respect of banning or disqualifying persons who engage in credit activities.
- Part 5 allows for the effect of the Transitional Act to be modified, by regulation or exemptions by ASIC.

## **Part 4 Registration**

#### Regulation 21 – The conditions on the registration

Subsection 14(7) of the Transitional Act provides that the registration is subject to the conditions set out in the regulation.

The regulation requires a registered person to notify ASIC of specified matters including:

- changes to particulars entered in the Australian Credit Register established under Part 5-1 of the Credit Act (for example, changes in the name or contact details of the licensee) where the changes are not a direct result of an act by ASIC;
- changes to particulars in relation to the authorisation of a credit representative to engage in a credit activity on behalf of the registered person, and changes to authorisations, where the

registered person has no obligation to notify ASIC under the provisions in section 71 of the Credit Act and the changes are not a direct result of an act by ASIC.

- certain matters relevant to the registration, including changes in control and, except in respect of bodies regulated by Australian Prudential Regulation Authority, events that may have a material adverse impact on the financial position of the registered person.

This regulation imposes conditions in respect of a range of technical or practical arrangements that ensure registered persons provide ASIC with information that is current and relevant. This information enhances ASIC's capacity to effectively carry out its regulatory functions in respect of supervising those licensees. It also assists ASIC to ensure that when persons, both consumers and industry bodies, seek information from the Australian Credit Register that this data is current.

Subregulations 21(8), 21(9) and 21(13) require a registered person to:

- respond within 10 business days to requests by persons, by providing free of charge, evidence of:
  - its registration for inspection by that person;
  - an authorisation of any of its credit representatives; and
- take reasonable steps to ensure that each of its credit representatives is able to supply, free of charge, evidence of its authorisation by the registered person within 10 business days of a request by a person.

These requirements are intended to allow consumers to be satisfied that the person they are dealing with is properly authorised to engage in credit activities under the Credit Act.

## **Part 5 Exemptions**

Section 42 of the Transitional Act allows regulations to exempt certain persons engaging in credit activities from the requirements to be registered. Regulations 22 to 28 provide for exemptions and modifications, so that persons meeting the criteria in these regulations do not need to comply with the registration requirements.

### Regulation 22 – Persons exempt from being registered – general

Subregulation 22(3) provides that the following persons are exempted from being a registered person where they engage in credit activities, while they perform functions, or exercise powers, in any of the following capacities or circumstances:

- an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*;
- a receiver, receiver and manager, provisional liquidator or liquidator;
- a person appointed by a court to engage in a credit activity;
- the Public Trustee of a State or Territory;
- an administrator of a body corporate;
- an administrator of a deed of company arrangement executed by a body corporate;
- a trustee or person administering a compromise or arrangement;

- a personal representative of a deceased person, other than a deceased registered person;
- a personal representative of a deceased registered person (with subregulation 22(4) limiting the period of the exemption until either six months have elapsed, the estate had been distributed or the personal representative has been removed);
- a person administering a bankrupt estate or the winding up of a body corporate or partnership; and
- registered debt agreement administrators, where they are preparing or administering debt agreements under Part IX of the *Bankruptcy Act 1966*.

These exemptions cover a range of situations where a third party may be acting to assist or act on behalf of a registered person, borrower or consumer, because of specific circumstances where being registered is unnecessary (for example, the registered person has become insolvent). Requiring these third parties to be licensed would be unnecessary given that their function is to finalise the operation of the business.

Subregulation 22(2) provides that a person is only exempted to the extent they are engaging in the specified credit activity. This means, for example, the exemption for registered debt agreement administrators only applies to the extent they are preparing or administering debt agreements, and allows these persons to negotiate with credit providers on behalf of consumers, without needing to be licensed.

Subregulation 22(5) provides an exemption for financial counselling agencies that may engage in credit activities in the course of providing their services. The exemption only applies where the agency meets certain conditions, including that:

- no fees or charges are payable by the client for any aspect of the activities provided;
- the financial counsellor is appropriately trained to engage in the activities; and
- the financial counsellor is a member of, or is eligible for membership of, a financial counselling association.

Regulation 3 defines *financial counselling association* to mean the peak bodies for financial counselors in Australia.

This exemption will allow financial counselling services, which are predominantly funded by government, to continue to provide advice and assistance to consumers in financial difficulty, without needing to meet the requirements applying to licence holders. The exemption is consistent with that provided for financial counsellors under ASIC Class Order 03/1069, in respect of activities that would otherwise require them to hold an Australian financial services licence.

Subregulation 22(6) provides an exemption from the requirement to be registered where a person is:

- a related body corporate of the registered person;
- engaging in credit activities:
  - only on behalf of that registered person; and
  - only because its employees and directors are engaging in credit activities on behalf of that registered person; and

- the person is not engaging in credit activities listed in items 1(a) and (b) or 3(a) and (b) of the table in subsection 6(1) of the Credit Act (that is, lending activities in its own right).

The exemption is consistent with the defence to the prohibition on engaging in credit activities in subsection 29(3) of the Credit Act. That provision provides a defence for the employees and directors of a related body corporate, but not the body corporate itself. This regulation exempts the related body corporate where it only engages in credit activities through its employees where they are acting on behalf of the licensed body corporate.

Subregulation 22(7) provides an exemption from the requirement to be registered where a 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. These persons are exempt as they are generally subject to other forms of oversight or accountability.

Subregulation 22(8) provides an exemption from the requirement to be registered where a person is authorised:

- to engage in credit activities either by:
  - an Act of the Commonwealth or a State or Territory; or
  - a licence or registration issued or granted under an Act of the Commonwealth or a State or Territory (other than an Australian credit licence issued under the Credit Act or a registration under the Transitional Act); and
  - the person only engages in credit activities to the extent they are authorised by the Act, licence or registration.

The purpose of subregulation 22(8) is to provide for an exemption from the requirement to be registered where a person is authorised to engage in credit activities under legislation other than the Credit Act or the Transitional Act. It will usually be the case that such authorisations are limited or that the entity only engages in credit activities in a way incidental to other activities, given that the Credit Act and the Transitional Act are intended to be the primary sources of regulation for those engaging in credit activities.

Subregulation 22(9) provides that this exemption will not apply to debt collectors following the expiration of the 12 month period for the specific exemption for this class of persons in regulation 22.

Subregulation 22(10) provides an exemption from the requirement to be registered for persons where:

- the person is an organisation that provides services and makes benefits available to its members, and an incidental benefit is that members are eligible to apply to enter into a particular credit contract or consumer lease; and
- the person provides credit services in relation to the particular credit contracts or consumer leases, and does not otherwise provide credit services.

The reference to ‘being eligible to apply to enter into a particular credit contract or consumer lease’ contemplates that as a result of membership a consumer may receive offers to enter into credit contracts or consumer leases, either from the organisation directly or from credit providers or lessors, after they have been provided with membership details of the consumer.

The exemption will apply if the services and benefits are made available either to:

- members of the organisation; or
- an entity within the organisation.

The reference to an entity within the organisation allows the exemption to operate flexibly and addresses the situation where the benefits are provided through a particular program within the organisation, so that a consumer only becomes a member of the entity within the organisation operating the program but not the organisation itself.

The exemption can only be relied upon where the following conditions are met:

- the organisation provides services to its members;
- becoming eligible to receive offers to enter into a particular credit contract or consumer lease is incidental to other benefits provided by the organisation – that is, the organisation’s primary function is to provide other benefits to members (so that, for example, the only benefit is the ability to apply to enter into a particular credit contract or consumer lease, the organisation would need to be licensed);
- the organisation has no reason to believe that that the credit contract or consumer lease will be unsuitable for its members - this does not require the organisation to positively investigate whether the credit is unsuitable, but would prevent it relying on the exemption where it is positively aware that the credit is unsuitable;
- the person only provides credit services in relation to the particular credit contracts or consumer leases to members, and does not otherwise provide credit services; and
- the predominant purpose of the credit or lease is a purpose other than financing the supply or purchase of services, or the hiring of goods from the organisation, the entity within the organisation or an associate of the organisation.

Subregulation 22(11) provides an exemption for charities who provide credit services to low income consumers. Generally these low income consumers would not normally qualify for other credit products from mainstream lenders.

In relation to credit, these charities perform not-for-profit credit services for the benefit of low income consumers in association with credit providers, usually an ADI, through programs designed specifically for low income consumers. The credit provider or lessor will still need to be licensed in relation to providing credit or consumer leases to consumers under the Credit Act. In order to qualify for the exemption, the charity must not receive any payment as a direct consequence of the provision of the service to the individual client.

#### Regulation 23 – Persons exempt from being registered – debt collectors

Regulation 23 provides that persons are exempt from the need to be registered where they:

- engage in credit activities by:
  - demanding and receiving payments from borrowers or guarantors under credit contracts or consumer leases; or
  - enforcing rights in relation to taking possession of property secured by a mortgage, or goods hired under a consumer lease;

- hold either a licence or authorisation under one or more of the Acts listed in subregulation 23(5). This subregulation specifies the State and Territory Acts which currently regulate debt collectors; and
- are authorised in writing by a registered person or a licensee to engage in the credit activities.

Subregulation 23(4) provides that the exemption only applies for a 12 month period from the date that Chapter 2 of the regulations commences.

Debt collectors are already subject to licensing requirements in every State and in the Northern Territory. The exemption means that debt collectors are not subject to dual licensing regimes. The sunset period in the regulation will require Commonwealth and State and Territory governments to consider which level of government should be responsible for licensing after this time.

#### Regulation 24 – Persons exempt from being registered – third parties

Regulation 24 provides that persons are exempt from the need to be registered where they only engage in credit activities on behalf of a credit provider, a mortgagee or a person who is the beneficiary of a guarantee, in a limited or minimal way, by:

- selling or transporting property of a debtor, mortgagor or guarantor; or
- giving or sending notices or documents to a debtor, mortgagor or guarantor that the licensee is required by law to give or send to the debtor, mortgagor or guarantor.

#### Regulation 25 – Persons exempt from being registered – providers of point of sale credit services

Regulation 25 provides an exemption for providers of point of sale credit services. The structure of the regulation is that:

- it will exempt persons providing credit services in specified circumstances (in general terms where they are acting as an intermediary to finance the sale of goods or services from the intermediary); and
- the exemption is limited so that it will not operate in some particular situations (for example, in relation to the unsolicited or door-to-door sale of goods or services).

Subregulation 25(3) provides that these persons are exempt from the need to be registered where they meet the following criteria:

- they are a supplier of goods or services who only engages in credit activities by providing credit services;
- the relationship between the supplier and credit providers or lessors is such that they are linked credit providers or linked lessors; and
- the linked credit provider or linked lessor is a licensee or registered person.

Subregulation 25(4) extends the definition of linked credit provider in section 127 of the Code to also cover consumer leases. The effect of the subregulation is that a credit provider or lessor will be linked with the supplier where there is a commercial or business relationship between the two parties, including where:

- there is a contract, arrangement or understanding between them relating to the supply to the supplier of goods, or to the business carried on by the supplier; or

- the supplier;
  - regularly refers consumers to the linked credit provider or linked lessor; or
  - consumers can sign application forms or credit contracts or consumer leases at the premises of the supplier.

Subregulation 25(5) modifies the definition of services in subsection 204(1) of the Credit Act. The effect of the subregulation is that the supplier will be exempt if the services they provide fall within the definition. The definition of services is broad, and includes credit services that are provided to facilitate the supply of goods and services to the consumer.

However, a person will not be able to rely on the exemption where the services they are providing fall within the two specific exclusions, that is:

- where the item being supplied is an interest in land – a supplier cannot rely on the exemption, for example, where they are a property developer arranging loans to finance the sale of units or town houses they had built; and
- where the services being supplied are services relating to credit or consumer leases regulated by the Credit Act (other than credit services) – a supplier cannot rely on the exemption where the services being provided are, for example, debt reduction services advising consumers how to repay their home loan more quickly.

Notwithstanding that a person otherwise satisfies the criteria for the exemption they will need to be registered in the following circumstances:

- where the supplier is a related body corporate of the linked credit provider or linked lessor (except where the supplier is engaging in credit activities only because its employees and directors are engaging in credit activities on behalf of the linked credit provider or linked lessor – this qualification allows the exemption to operate consistently with that in subregulation 22(6)); and
- where the supply of the goods or services is the result of an unsolicited meeting or phone call to the consumer - a supplier cannot rely on the exemption where, for example, the goods or services are being provided as a result of door-to-door canvassing.

#### Regulation 26 – Persons exempt from being registered – securitisation entity

Regulation 26 provides an exemption for securitisation entities where they meet the following criteria:

- The person is a securitisation entity;
- The person is party to or has rights under an origination agreement – this refers to an agreement under which the person may acquire assets (usually a right to receive an income stream, with assets limited to a credit contract, consumer lease, mortgage or guarantee);
- The person is party to a servicing agreement – this refers to an agreement with a third party to perform functions on behalf of the person;
- The person has entered into a management agreement with:

- a licensee or a registered person in relation to the assets covered by the origination agreement; and
- the agreement has terms that enable borrowers to exercise rights against the licensee or the registered person as if they were the legal assignee.

The purpose of the regulation is to exempt securitisation entities where they are legal assignees of rights under credit contracts, consumer leases, mortgages or guarantees. The exemption allows a securitisation entity to continue to operate through third parties with whom it has entered into agreements, provided that consumers can exercise rights against a third party as if they were the legal assignee.

#### Regulation 27 – Activities exempt from being credit activities

Regulation 27 exempts the following credit activities from the Transitional Act:

- credit assistance provided by a lawyer in the ordinary course of legal activities;
- credit activities undertaken by a registered tax agent in the ordinary course of the tax agent's business;
- where the only credit activities engaged in is engaging in communications that consist only of passing on factual information to the consumer;
- responding to requests for information in relation to the cost of a credit contract, or the terms or conditions of a credit contract; or
- activity done in the course of work of a kind ordinarily done by clerks or cashiers.

#### *Activities undertaken by lawyers*

The following conduct by lawyers is exempted by subregulations 27(2) and (3):

- the provision of credit assistance in their professional capacity as a lawyer – this would encompass activities such as the provision of legal advice on credit contracts, consumer leases or mortgages and assisting a consumer in applying for a credit contract by completing a document on the client's instructions.
- engaging in credit activities on the instructions of a client where the credit activities is a necessary part of acting on those instructions (provided that the lawyer does not hold out or advertise that they are able to provide credit services).

These exemptions will enable lawyers to act for either borrowers or licensees without needing to be registered, where their conduct comes within the ordinary course of the activities of a lawyer, or is otherwise within the exemption.

#### *Activities undertaken by registered tax agents*

Some activities undertaken by a registered tax agent in the ordinary course of the tax agent's business may constitute engaging in credit activities. This conduct is exempted in subregulation 27(5) where:

- the tax agent engages in the credit activity in the ordinary course of activities as a tax agent; and

- the credit activity is only providing credit services; and
- the credit activity is not providing a certificate or assessment relating to whether a consumer will be able to meet financial obligations under a credit contract or consumer lease.

A report by ASIC, *Protecting wealth in the family home*<sup>1</sup>, identified the role of accountants in providing certificates in relation to borrowers' capacity to meet repayments as a structural element in equity-stripping practices, and a method of lenders transferring risks arising from a default by the borrower to a third party.

Accordingly, tax agents are not exempted where they are in some way expressing an opinion as to the capacity of the consumer to meet financial obligations under a credit contract or consumer lease. However, they will be exempt where, for example, they provide a statement of financial position to assist a client in applying for finance, but express no view as to whether the consumer can meet the repayments.

#### *Passing on prepared documents*

Subregulations 27(6) and (7) provide exemptions in respect of conduct which consists only of passing on, publishing, distributing or otherwise disseminating a document on behalf of a registered person. This conduct is excluded where it amounts to acting as an intermediary or, in some cases, providing credit assistance.

The exemption in subregulation 27(6) operates in the following circumstances:

- the person only engages in credit activities by that person (person 1) passing on, publishing, distributing or otherwise disseminating a document that was provided by another person (person 2); and
- person 2 is a registered person and is not acting on behalf of person 1;
- 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;
- person 1 is not a registered person; and
- a consumer would reasonably understand that the credit activities are being engaged in by person 2, either because:
  - they are advised by person 1 that person 2 is the registered person, and they are provided with their registration number; or
  - a reasonable person would not consider that person 1 is the registered person in relation to credit activities being engaged in by person 2.

The exemption in subregulation 27(7) applies in similar circumstances but with the following variations:

- where person 1 allows person 2 to use person 1's name, logo or trade mark in relation to a credit activity engaged in by person 2; then

---

<sup>1</sup> *Protecting wealth in the family home: An examination of refinancing in response to mortgage stress*, Report No. 119, March 2008.

- the requirement that 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 does not apply.

These exemptions are intended to include publishers and internet portal operators, and cover situations such as passing on a document that, for example, contains information about a particular credit contract or is an application for credit.

#### *Passing on some types of factual information*

The purpose of subregulation 27(8) is to exempt communications in relation to the provision of information about the cost or terms of a contract. The exemption provides that this conduct does not, by itself, constitute engaging in credit activities where:

- the factual information is limited to information about either the cost or likely cost of a credit contract or lease, or the terms and conditions of a credit contract or lease;
- the information is only provided in response to a request by a person, and is not provided in an unsolicited way; and
- the provider could have complied with the request by giving the other person information about one or more other credit contracts or leases, but elected not to do so.

#### *Clerks and Cashiers*

Subregulation 27(9) exempts an activity if it is done in the course of work of a kind ordinarily done by clerks or cashiers. If a consumer asks a person to assist him in filling in the application form for a credit product (for example, photocopying documents provided by the consumer or faxing a completed application form) the assistance provided by the person may be a credit activity as the person is assisting the consumer to apply for a credit contract. This would mean, for example, that a person undertaking these functions on behalf of a licensee or a credit representative would not need to be licensed.

This exemption ensures that conduct of this nature, which is more appropriately characterised as administrative, does not constitute engaging in a credit activity.

#### Regulation 28 – Activities exempt from being registered

Regulation 28 exempts the following activities from the requirement to be registered:

- Subregulation 28(2) exempts activities where a person's role is limited to being a referrer between a consumer and a registered person; and
- Subregulation 28(3) exempts credit activities where they are in relation to provisions of credit that have been largely, but not entirely, exempted from the requirements of the Code.

#### *Referrer Exemptions*

A person engages in credit activities if they act as an intermediary between a consumer and a credit provider or lessor (section 9 of the Credit Act). A person will be exempted where they act as an intermediary by giving the consumer contact information about a registered person or their representative.

The exemption is intended to allow referral networks to operate without needing to be registered where a person's role is minimal and limited to giving the registered person and the consumer the opportunity to contact each other. Where there is a payment or potential financial benefit to the referrer they can only rely on the exemption if the consumer is advised of this, so that they are made aware of the interest of the referrer.

#### *Exemption where credit largely excluded from the Code*

Subregulation 28(3) is an exemption from a requirement to be registered where a person only engages in credit activities in relation to credit where the credit is already largely, but not entirely, exempt from the requirements of the Code.

Where a particular class of credit has been largely excluded from the Code, then the same policy considerations that led to the application of the Code being modified mean it is also appropriate that credit activities in respect of such a class, should be exempt from the registration requirements.

The exemption applies to persons who engage in a credit activity in respect of the provisions of credit mentioned in subsection 6(9) or 6(11) of the Code; or regulations 51, 53, 54, 55, 56, 59, 60 or 62 of the *National Consumer Credit Protection Regulations 2010*.

For example, subsection 6(9) of the Code excludes pawnbroking transactions from all provisions of the Code except the sections allowing unjust contracts to be reopened. It is not appropriate to require pawnbrokers to meet the obligations imposed on registered persons.

Also, subsection 6(11) of the Code excludes the provision of credit by an employer to an employee or former employee, subject to specified conditions.

Lastly, the exclusions in the *National Consumer Credit Protection Regulations 2010* include, for example: where the amount of credit to be provided does not exceed \$50; where there is no insurance financed under the contract; and where credit is provided by a higher educational institution to a student of the institution on the grounds of hardship or of an emergency.

## Part 6 Infringement notices

### Regulation 29 – Purpose of Part

This regulation explains Part 6 sets out an infringement notice scheme in accordance with item 43 Schedule 2 of the Act.

The regulation explains that it is not obligatory to give an infringement notice, and then sets out a number of legal consequences that apply whether or not an infringement notice is issued. In particular, the issuing of an infringement notice does not affect a person's liability under the Act if the person does not pay the penalty set out in an infringement notice.

### Regulation 30 – Definitions for Part

The regulation defines words and expressions that are used in regulations 31 to 41.

### Regulation 31 – When an infringement notice can be given

This regulation requires ASIC to have:

- reasonable grounds to believe that a person has committed an offence against the Act that is stated to be an offence of strict liability; or

- reasonable grounds to believe that a person has contravened a civil penalty provision in subitem 19(1) of Schedule 2 of the Act;

before giving the person an infringement notice.

The regulation sets a time limit of 12 months on giving an infringement notice, but allows ASIC to withdraw an infringement notice and give a new notice within that period.

#### Regulation 32 – Contents of infringement notice

This regulation provides that the form of an infringement notice is set out in Schedule 1 to the *National Consumer Credit Protection Regulations 2010*. The notice may include other information that ASIC considers necessary.

#### Regulation 33 – Amount of penalty if infringement notice given

This regulation sets the amounts of the penalty payable under an infringement notice by individuals and bodies corporate. The amounts are consistent with the maximum amount permitted under item 43 of Schedule 2 of the Act.

#### Regulation 34 – Extension of time to pay penalty

This regulation permits the extension of time in which to pay a penalty under an infringement notice, subject to specified conditions.

#### Regulation 35 – Payment of penalty by installments

This regulation permits the payment of a penalty under an infringement notice by installments, subject to specified conditions.

#### Regulation 36 – Time for payment of penalty

This regulation sets out the period in which a penalty under an infringement notice must be paid. The period is 28 days after the day on which the notice is given to the recipient, unless the recipient takes action such as requesting an extension of time to pay the penalty or requesting permission to pay the penalty by installments.

#### Regulation 37 – Effect of payment of penalty

This regulation sets out the consequences if a person pays a penalty under an infringement notice:

- the person's liability is discharged; and
- no prosecution or civil proceedings may be brought by the Commonwealth against the person; and
- the person is not taken to have admitted guilt; and
- the recipient is not taken to have been convicted or found guilty.

If a person pays a penalty under an infringement notice for the alleged contravention of a civil penalty provision, a consumer, or ASIC acting on behalf of a consumer is not prevented from commencing a civil proceeding for compensation or other orders under section 178 or 179 of the Act, for conduct the subject of the paid infringement notice.

#### Regulation 38 – Withdrawal of infringement notice by nominated person

This regulation permits an infringement notice to be withdrawn by a nominated person, subject to specified conditions.

#### Regulation 39 – Withdrawal of infringement notice by ASIC

This regulation permits ASIC to withdraw an infringement notice, subject to specified conditions.

#### Regulation 40 – Notice of withdrawal of infringement notices

This regulation sets out the contents of a notice withdrawing an infringement notice.

#### Regulation 41 – Refund of penalty

This regulation provides that if an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

### **Schedule 2 Amendments commencing on 1 July 2010**

#### Regulation 5 – Application of new Credit Code to particular sale contracts

Regulation 5 provides that sections 10, 11 and 12 of the National Credit Code (which relate to the sale of land or goods by instalments) do not apply to the provision of credit, before 29 May 2009 (Start Date). This regulation replicates the legal effect of section 187 of the Uniform Consumer Credit Code; that is, sections 10, 11 and 12 do not apply to the provision of credit, before the Start Date, for a sale of land or goods by instalments.

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

Regulation 6 provides that when a State or Territory “Government Consumer Agency” is a party to an existing court proceeding, it is acting as an agent of the ASIC. This will allow the States and Territories to continue to complete these existing proceedings; and keep any compensation monies or damages awarded by a court in those old proceedings.

### **Part 3 Application of the National Credit Act and Schedule 2 to the Act to contracts and other instruments made before commencement**

Part 3 of Schedule 1 of the Transitional Act specifically states that the registration, licensing and responsible lending conduct provisions do not apply to contracts and other instruments that were made before commencement, except to the extent this is provided for in the regulations.

Part 3 of these regulations sets out the way in which the provisions of the Credit Act and the Transitional Act apply to persons engaging in credit activities in respect of these contracts and instruments (defined as carried over instruments in section 4 of the Transitional Act). The regulations impose these requirements as follows:

- Division 1 of Schedule 2 – applies the licensing requirements and obligations in a modified way.
- Division 2 of Schedule 2 – applies responsible lending conduct obligations in relation to conduct engaged in after commencement.
- Division 3 of Schedule 1 – applies the registration requirements and obligations in a modified way (discussed in detail above).

## **Division 1 - Application of the National Credit Act (other than Chapter 3) to contracts and other instruments made before commencement**

This Division applies the licensing requirements and obligations to persons in relation to these contracts in a modified way.

### Regulation 7 – Preliminary

This regulation sets out the application of Division 1, as follows:

- The Credit Act applies to persons engaging in credit activities in respect of carried over instruments to the extent specified in Divisions 1 and 2 of Part 3 of these regulations.
- This Division only applies to persons who are engaging in credit activities:
  - within the meaning of items 1(a), 3(a), 4(a) and 5(a) of the table in subsection 6(1) of the Credit Act (that is, being a party to a credit contract, consumer lease, mortgage or guarantee);
  - in relation to carried over instruments; and
  - subsequent to the commencement of these regulations.
- Part 1-2 of the Credit Act (which contains the definitions of words and phrases in the Act) applies in relation to the person. This ensures that there is a consistency in interpretation between the Act and these regulations.

The effect of regulation 7 is that Divisions 1 and 2 apply to persons who have entered into credit contracts or consumer leases before commencement of the regulations, and continues to apply while those contracts are still in force. These persons are therefore subject to the obligations in regulations 8 to 14.

However, where the person also intends to continue to engage in credit activities after the commencement of the Credit Act, the licensing requirements and obligations and entry requirements apply in full.

### Regulation 8 – Person may apply for a licence or automatically be granted a licence

This regulation sets out the different processes for Australian credit licences to be granted to persons to the extent they are engaging in credit activities (other than credit services) in relation to carried over instruments. These processes are:

- Where the person is registered as at 30 June 2010 – the person will automatically be granted a licence.
- Where the person is not registered as at 30 June 2010 but applies for a licence – they will automatically be granted a licence on application.
- Where the person is not registered as at 30 June 2010 and does not apply for a licence – ASIC may decide to automatically grant a licence to the person, and, where this is the case, the following procedure applies:
  - ASIC must give the person written notice advising them of the decision to grant them a licence, no earlier than 28 days after the notice is given to the person.

- ASIC must also give the person written notice of the day on which the licence will take effect, and of any conditions imposed on the licence.
- The licence comes into force on the day specified in the notice, which must not be before the day on which the decision to grant the licence was made or 1 July 2010.

Subregulation 8(7) applies sections 35, 43 and 44 of the Credit Act to any grant of a licence. In general terms these provisions have the following effect:

- Section 35 provides that a licensee can only engage in credit activities to the extent authorised by any conditions on that licence.
- Section 43 requires ASIC to allocate an Australian credit licence number to a licence.
- Section 44 of that Act specifies the basis on which the licence is granted (for example, that the conditions on the licence may be varied by ASIC).

#### Regulation 9 – Conditions on the licence

This regulation details the nature of the conditions that can be imposed on a licence by ASIC as follows:

- Division 4 of Part 2-2 of the Credit Act (which relates to ASIC's power to impose conditions on a licence) applies subject to the modifications set out below.
- If the person is only engaging in credit activities in relation to carried over instruments as specified in regulation 7, ASIC must impose a condition that only authorises the licensee to engage in those credit activities. In practice, this will mean that the licensee is restricted to collecting debts outstanding under carried over instruments. That is, this licence will not authorise a person to engage in credit activities in relation to new contracts.
- ASIC cannot impose a condition where the effect of that condition would be to prevent the licensee from collecting debts outstanding under carried over instruments.
- ASIC has power to impose conditions regulating the way in which a licensee is collecting such debts.

The effect of these variations is that where a licensee is collecting debts in a way that warrants regulatory intervention ASIC can, for example, impose a condition providing that the debts must be collected by a third party or that debtors can only be contacted at specified times. However, ASIC cannot impose a condition that, directly or indirectly, would prevent the licensee collecting those debts.

#### Regulation 10 – Obligations of licensees

This regulation sets out the obligations that apply to persons who are granted a licence where they engage in credit activities in respect of carried over instruments. The obligations are to:

- do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly;
- comply with any conditions imposed by ASIC on their licence;
- comply with the credit legislation (subject to section 336 of the Credit Act);

- take reasonable steps to ensure that its representatives comply with the credit legislation (subject to section 336 of the Credit Act);
- have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or by its representatives; and
- have an internal dispute resolution procedure that complies with standards or requirements made or approved by ASIC and covers disputes in relation to the credit activities engaged in by the licensee or by its representatives.

These obligations are principle based and it is intended that licensees can be flexible in adopting practices that suit their organisation. Subsection 47(2) of the Credit Act expressly provides that compliance with the obligations in paragraphs 47(1)(b), (g), (k) and (l) of the Credit Act is to be determined according to the nature, scale and complexity of the credit activities engaged in by the licensee. Where a licensee is only engaging in collection activity, it will only need to address this activity when complying with these obligations..

The obligations in section 47 continue as long as a person is licensed. It is unlikely that a licensee can meet all the obligations in the same way over time, and there is therefore a need for licensees to monitor and review the way in which they address these requirements, and to alter their practices in the light of experience and changes in the operating environment.

The first requirement is that a licensee must do all things necessary to ensure that the credit activities authorised by the registration are engaged in efficiently, honestly and fairly. This requires the licensee to conduct itself in a way that is consistent with, and reflects an appreciation of, the need to meet community standards of efficiency, honesty and fairness. The efficiency criterion cannot be used to justify conduct that is unfair or dishonest.

The licensee must also do all things necessary to meet this requirement. This is a higher requirement than in relation to other obligations (for example, a licensee is only required to take reasonable steps to ensure that its representatives comply with the credit legislation).

It is unlikely that the licensee will be complying with the ‘efficiently, honestly and fairly’ obligation if it is failing to comply with the other obligations. However, the ‘efficiently, honestly and fairly’ obligation is also

A licensee must comply with any conditions imposed by ASIC on their licence, including any standard conditions included in the *National Consumer Credit Protection Regulations 2010* applying to all licensees.

A licensee must comply with the credit legislation. This requires the licensee to conduct their business with an appreciation of the credit legislation, and the need to conduct their business with respect for the law. They need to consider their application to all aspects of their operation, but especially in their dealings with consumers as the regulation of this relationship is one of the main areas addressed in the legislation. The most important obligations that the licensee will need to comply with are those in Parts 4 and 5 of the Code, relating to hardship variations, and the requirements applying to enforcement of credit contracts (and the equivalent provisions in respect of consumer leases).

A licensee must take reasonable steps to ensure that its representatives comply with the credit legislation. Where the licensee may breach the credit legislation because of the conduct of its representatives, rather than its own conduct, then it will need to adopt procedures which reflect this. For example, where the licensee has a number of credit representatives in a range of different

locations it will need to adopt different procedures to ensure it is complying than a licensee with a single retail outlet.

Where a breach of the legislation has occurred, whether as a result of the conduct of a representative or otherwise, then the licensee would need to consider whether the circumstances of the breach are such that it is likely to reoccur, and, if so, to take action to address this to ensure it complies in the future.

The obligations on licensees to comply with the credit legislation, and to take reasonable steps to ensure that its representatives comply with the credit legislation, are expressed to be subject to section 336 of the Credit Act. It is not anticipated that the regulations create an acquisition of property other than on just terms, but the reference to section 336 has been included, for the avoidance of doubt, to address this situation.

A licensee must have in place adequate arrangements to ensure that their clients are not disadvantaged by any conflict of interest that arises wholly or partly in relation to credit activities engaged in by the licensee or by its representatives.

This obligation only applies to conflicts of interests where an interest of the licensee conflicts with a legal obligation or duty that person owes to their client, including where that obligation arises under statute, at common law or under a contract between the licensee and the client. It does not otherwise require a licensee to take action in respect of different interests of parties where they do not constitute a conflict of interest at law.

The following example illustrates the intended application of this requirement in respect of a licensee's collection activities. This example does not provide guidance on the other general obligations, including, for example, the obligation to act efficiently, honestly and fairly.

**Example: Conflict of interest**

A lender is selling the borrower's property pursuant to a power of sale under a mortgage. The lender sells the property to a company controlled by a director of the lender. The property is sold for less than its market value, but for an amount sufficient to extinguish the liability of the borrowers to the lender. There is a conflict of interest between the interests of the lender and the borrower, and the borrower has been disadvantaged (*Australia and New Zealand Banking Group Ltd v Bangadilly Pastoral Company Pty Ltd* [1978] HCA 21; 139 CLR 195).

The licensee must have an internal dispute resolution procedure that complies with standards or requirements made or approved by ASIC and covers disputes in relation to the credit activities engaged in by the licensee. It is expected that these standards would cover matters such as transparency, that is, the internal dispute resolution procedures are in writing and known to its representatives where it is relevant to their functions or duties. The standards will be particularly relevant to small businesses and to those who do not have previous experience of internal dispute resolution procedures. A licensee will be expected to respond to any complaints in a manner that both complies with these standards, and that is efficient, honest and fair.

Regulation 10 also provides that Division 5 of Part 2-2 of the Credit Act relates to the obligations of licensees, subject to the modifications to the obligations in section 47 as discussed above. This means that sections 49 to 53 of the Credit Act apply in relation to the licensee. These sections impose a number of specific obligations on licensees, including the obligation to provide a statement or obtain an audit report if directed by ASIC, and the obligation to lodge an annual compliance certificate.

Regulation 11 – Suspension, cancellation and variation of licence

This regulation specifies ASIC's powers to suspend cancel or vary a licence granted to a person who engages in credit activities in respect of a carried over instrument as follows:

- Division 6 of Part 2-2 of the Credit Act applies to the extent permitted by the regulations subject to the modification of section 54 set out below.
- Section 54 of the Credit Act is modified so that ASIC may only suspend or cancel a licence if:
  - The licensee does not engage or ceases to engage in credit activities, or
  - If the licensee is a natural person – that person becomes incapable of managing his or her affairs because of physical or mental incapacity; or
  - If the licensee is a body corporate, partnership or trustees of a trust – a key person (as defined in subparagraphs 3(b) and (c) of this regulation) who performs duties in relation to credit activities becomes incapable of managing their affairs because of physical or mental incapacity.
- Sections 57 to 62 of the Credit Act apply in relation to the licensee. In general terms these provisions have the following effect:
  - Section 57 provides that ASIC may vary a person's licence to reflect a change in the name of the person.
  - Section 58 relates to the effect of a suspension of a licence.
  - Section 59 provides that ASIC may revoke the suspension of a licence.
  - Section 60 includes requirements in respect of the notice and publication and date of effect of a variation, suspension, revocation of a suspension or a cancellation of a licence.
  - Section 61 requires ASIC to provide a statement of reasons when a licensee is given notice of a suspension or cancellation of the licensee's licence.
  - Section 62 allows a licence to continue in force for limited purposes notwithstanding cancellation or suspension of the licence.

#### Regulation 12 – Banning or disqualification of persons from engaging in credit activities

This regulation provides for the application of the power to ban individuals from engaging in credit activities in Part 2-4 of the Credit Act as follows:

- Part 2-4 of the Credit Act applies to the extent permitted under these regulations to persons other than licensees, including, for example, the representatives of a licensee.
- Where a banning or disqualification order is made under either section 80 or section 86, the order does not have effect to the extent it would have the effect of preventing the licensee from collecting debts owing under a carried over instrument.

#### Regulation 13 – Application of Parts 2-5 and 2-6 of the National Credit Act

This regulation provides for the application of Parts 2-5 and 2-6 of the Credit Act to licensees as follows:

- Part 2-5 of the Credit Act (other than Division 3) applies, and requires licensees to meet requirements in relation to their financial records, including keeping accurate records in respect of repayments made under credit contracts and consumer leases.
- Part 2-6 of the Credit Act applies in relation to the person, and allows for these persons to be exempted from particular provisions of that Act, or for their effect to be modified.

### **Division 2 Application of Chapter 3 of the National Credit Act to contracts and other instruments made before commencement**

This Division applies some of the responsible lending conduct requirements in Chapter 3 of the Credit Act to carried over contracts. The only requirements that can apply are those that impose obligations in respect of conduct occurring subsequent both to commencement of these regulation and to the contract having been entered into, so that obligations arising before these points in time are excluded.

#### Regulation 14 - Application of Chapter 3 of the National Credit Act

This regulation specifies the persons it applies to and the obligations they must meet.

It applies to licensees:

- who, in relation to a carried over contract, provide credit assistance that is either:
  - suggesting a person remain in a credit contract or a consumer lease; or
  - suggesting a person increase the credit limit of their credit contract or assisting them to do so.
- who, in their capacity as a credit provider, propose to increase the credit limit of a credit contract with the debtor under that contract.

The requirements that apply to these persons are included in item 19 in Schedule 2 of the Transitional Act. The responsible lending obligations apply as follows:

- if the licensee is neither an Authorised Deposit-taking Institution (ADI) nor a registrable corporation – the licensee must, from 1 July 2010, the substantive responsible lending obligations listed in subitem 19(2) (to the extent those obligations apply to the activities discussed above), and must comply with the remaining responsible lending obligations from 1 January 2011.
- if the licensee is an ADI or a registrable corporation – the licensee must comply with the responsible lending obligations from 1 January 2011, again to the extent those obligations apply to the activities discussed above.