



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

Select Legislative Instrument 2010 No. 45 as amended

made under the

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

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Contents

Part 1	Preliminary	
1	Name of Regulations [see Note 1]	5
2	Commencement [see Note 1]	5
3	Definitions	5
4	Meaning of <i>associate</i>	6
Part 2	Transitional provisions	
5	Transfer of assets or liabilities to ASIC	9
6	Application of new Credit Code to particular sale contracts	10
7	Treatment of proceedings brought under old Credit Code before commencement	11
8	References to the <i>National Consumer Credit Protection Regulations 2010</i>	12
Part 3	Registration	
10	The conditions on the registration	13
Part 4	Exemptions and modifications	
Division 1	Exemptions	
Subdivision 1.1	Persons exempt from being registered	
11	Persons exempt from being registered — general	16
12	Persons exempt from being registered — debt collectors	22
13	Persons exempt from being registered — third parties	24
14	Persons exempt from being registered — providers of point of sale credit services	26
14A	Persons exempt from requiring a licence — providers of point of sale credit services for a credit card	30
14B	Persons exempt from registration — special purpose funding entity	34
Subdivision 1.2	Exempt credit activities	
15	Activities exempt from being credit activities	35
16	Activities exempt from being registered	38

		Page
Division 2	Modifications	
16A	Purpose of Division	40
Subdivision 2.1	Modifications — registered person party to servicing agreement with special purpose funding entity	
16B	Application of Subdivision	40
16C	Modification of paragraph 14 (1) (a) of Schedule 2 to Act	40
Subdivision 2.2	Modifications — carried over instrument lender	
16D	Application of Subdivision	40
16E	Modification of Schedule 2 to Act — carried over instrument lender	41
Part 4A	Notification obligations — unlicensed carried over instrument lender	41
Part 5	Infringement notices	
17	Purpose of Part 5	43
18	Definitions for Part 5	44
19	When an infringement notice can be given	44
20	Contents of infringement notice	45
21	Amount of penalty if infringement notice given	45
22	Extension of time to pay penalty	46
23	Payment of penalty by instalments	47
24	Time for payment of penalty	47
25	Effect of payment of penalty	48
26	Withdrawal of infringement notice by nominated person	50
27	Withdrawal of infringement notice by ASIC	51
28	Notice of withdrawal of infringement notices	51
29	Refund of penalty	51
Part 6	Carried over instruments	
30	Purpose of Part	52
31	Application of Part	52
32	Application of Chapter 2 of National Credit Act to credit provider or lessor for carried over instrument before 1 July 2010	52
33	Application of Chapter 2 of National Credit Act if not credit provider or lessor for carried over instrument before 1 July 2010	52
<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010</i>		3

	Page
34 Application of Schedule 2 to the Act if credit provider or lessor for carried over instrument before 1 July 2010	53
35 Application of Schedule 2 to the Act if not credit provider or lessor for carried over instrument before 1 July 2010	53
36 Application of section 213 and modified Chapter 2 of National Credit Act	53
Notes	55

Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*.

2 Commencement [see Note 1]

These Regulations commence:

- (a) on the day after they are registered — regulations 1 to 5; and
- (b) on 1 April 2010 — regulations 8 and 9, and Parts 3 to 5; and
- (c) on 1 July 2010 — the remainder.

3 Definitions

- (1) In these Regulations:

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

associate has the meaning given by regulation 4.

authorised contact has the meaning given by subregulation 3 (1) of the National Credit Regulations.

credit card has the meaning given by subregulation 3 (1) of the National Credit Regulations.

financial counselling association has the same meaning as in *ASIC Class Order [CO 03/1063]*.

financial counselling service means a counselling and advocacy service provided predominantly for the purpose of assisting individuals who are in financial difficulty to resolve their problems.

licensee has the meaning given by subsection 5 (1) of the National Credit Act.

National Credit Regulations means the *National Consumer Credit Protection Regulations 2010*.

Regulation 4

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 1966*.

unlicensed carried over instrument lender has the meaning given by modified section 5 of the National Credit Act as mentioned in item 2.4 of Schedule 2 to the National Credit Regulations.

unsolicited contact has the meaning given by subregulation 3 (1) of the National Credit Regulations.

- (2) In these Regulations, a provision of the National Credit Act modified in accordance with Division 2 of Part 2-4 of the National Credit Regulations is referred to as **modified**.

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

Regulation 4

- (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 one or both of the following occurs:
- (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, as 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.

Regulation 4

- (8) For the purposes of proceedings in relation to a matter mentioned in these Regulations in which it is alleged that a person (*person 1*) was an associate of another person by virtue of paragraph (5) (b) or (e), person 1 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 person 1 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.

Regulation 5

Part 2 Transitional provisions**5 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.

Regulation 6

- (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 information, documents, records and instruments, regardless of whether they are in hard copy 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.

6 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.

Regulation 7

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.

7 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 same meaning as in 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) The party may continue to exercise the powers or perform the functions of the party under the old Credit Code for the purposes of the new proceedings, despite ASIC's equivalent powers and functions under the National Credit Act.

Note Paragraph 6 (2) (b) of the Act provides that the 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.

Regulation 8

8 References to the *National Consumer Credit Protection Regulations 2010*

From 1 April 2010 to immediately before 1 July 2010, the references in paragraphs 16 (3) (b) and 20 (a) of these Regulations to the *National Consumer Credit Protection Regulations 2010* are taken to be references to those Regulations as if those Regulations had commenced.

Note Paragraph 6 (2) (a) of the Act provides that the regulations may prescribe matters of a transitional nature (including matters of an application or saving nature) arising out of the enactment of the National Credit Act.

Part 3 Registration

10 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
 - (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 individual 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 an individual 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 individual's identity; and
 - (b) whether the individual has already been allocated a number by ASIC as a credit representative.

Regulation 10

- (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 evidence of an authorisation of any of its credit representatives:
- (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.
- (9) The registered person must take reasonable steps to ensure that each of its credit representatives supplies evidence 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.

Regulation 10

- (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) 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
 - (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, within 10 business days, evidence of its registration for inspection by that person.

Regulation 11

Part 4 Exemptions and modifications

Division 1 Exemptions

Subdivision 1.1 Persons exempt from being registered

11 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
 - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
 - (c) regulations or other instruments made for the purposes of any of the provisions mentioned 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 authorising the person to engage in the credit activity.

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 authorising the person to engage in the credit activity; or
 - (b) holds a licence authorising the person to engage in the credit activity.
- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

Note If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) 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, provisional liquidator, or liquidator (whether appointed by a court or otherwise);

Regulation 11

- (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 (4), 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 preparing and administering a debt agreement under Part IX of the *Bankruptcy Act 1966*.
- (4) Paragraph (3) (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.
- (5) A person is exempted if:
- (a) the person (the *financial counselling agency*) engages in the credit activity as part of a financial counselling service; and
 - (b) 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; and

Regulation 11

- (c) 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; and
 - (d) 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; and
 - (e) no fees or charges (however described) are payable by or on behalf of the client in relation to the credit activity or any other aspect of the financial counselling service; and
 - (f) the financial counselling agency:
 - (i) does not engage in a credit activity that is not covered by paragraphs (a) to (e); and
 - (ii) takes all reasonable steps to ensure that none of its representatives engages in a credit activity that is not covered by paragraphs (a) to (e); and
 - (g) 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
 - (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.
- (6) A person is exempted if:
- (a) the person:

Regulation 11

- (i) is a related body corporate of a registered person; and
 - (ii) is engaging in credit activities only on behalf of the registered person; and
 - (iii) is engaging in credit activities only because its employees and directors are engaging in credit activities on behalf of the registered person; and
 - (b) the credit activities in which the person engages are not those mentioned in:
 - (i) paragraph (a) or (b) of item 1 of the table in subsection 6 (1) of the National Credit Act; or
 - (ii) paragraph (a) or (b) of item 3 of the table in subsection 6 (1) of the National Credit Act.
- (7) A person is exempted if 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.
- (8) Subject to subregulation (9), if a person is authorised to engage in particular credit activities by:
- (a) an Act of the Commonwealth or a State or Territory (other than the Act, the National Credit Act or an Act mentioned in subregulation (10)); or
 - (b) a licence or registration issued or granted under an Act of the Commonwealth or a State or Territory (other than the Act, the National Credit Act or an Act mentioned in subregulation (10));
- the person is exempted to the extent that the person is engaging in the credit activities in which the person is authorised to engage under that Act, licence or registration.
- (9) If a person would have been exempted under regulation 12 except that 12 calendar months have passed since the day this Chapter commences, the person is not exempted under subregulation (8).

Note Subregulation 12 (4) provides that a person to whom subregulation 12 (3) applies is only exempted for 12 calendar months starting on the day this Chapter commences.

Regulation 11

- (10) For paragraphs (8) (a) and (b), the Acts are:
- (a) the *Finance Brokers Control Act 1975* (WA); and
 - (b) the *Credit (Administration) Act 1984* (WA); and
 - (c) the *Consumer Credit (Administration) Act 1996* (ACT).
- (11) A person is exempted if:
- (a) the person is an organisation that provides services and makes benefits available to members of:
 - (i) the organisation; or
 - (ii) a program or facility operated or conducted by or within the organisation; and
 - (b) an incidental benefit of membership of the organisation, program or facility is that members are eligible:
 - (i) to apply for a particular credit contract or consumer lease offered by a licensee or a registered person; or
 - (ii) to obtain services or benefits under a particular credit contract or consumer lease offered by a licensee or a registered person; and
 - (d) the organisation provides credit services (within the meaning given by section 7 of the National Credit Act) in relation to the particular credit contract or consumer lease to members or persons likely to become members acting on behalf of a licensee or registered person under a contract or agreement with the licensee or registered person; and
 - (e) it would not ordinarily be the case that:
 - (i) the credit to be provided under the credit contract is provided predominantly for the payment for services, goods or benefits provided by the organisation or an associate of the organisation; or
 - (ii) the goods to be hired under the consumer lease are supplied by the organisation or an associate of the organisation.
- (12) A person is exempted if:
- (a) either:
 - (i) the person:

Regulation 11

- (A) is a charitable body (within the same meaning as in *ASIC Class Order [CO 02/184]*); and
 - (B) is engaging in credit activities by providing a credit service in relation to credit contracts or consumer leases provided by a licensed or registered credit provider or lessor; or
 - (ii) the person:
 - (A) is not a charitable body (within the same meaning as in *ASIC Class Order [CO 02/184]*); and
 - (B) is engaging in credit activities by providing a credit service in relation to credit contracts or consumer leases provided by an ADI; and
 - (b) the credit contracts or consumer leases are offered as part of a program designed for low income consumers who are entitled:
 - (i) to hold a Health Care Card or Pension Concession Card; or
 - (ii) to receive Family Tax Benefit Part A; and
 - (c) the only remuneration (whether by way of commission or otherwise) is payable to, or on behalf of, the person by any other person in relation to any action by, or on behalf of, the client arising from providing the credit service is payments made by a third party that has no existing relationship with the client.
- (13) A person is exempted if:
- (a) the person engages in credit activities mentioned in:
 - (i) paragraph (c) of item 1 of the table in subsection 6 (1) of the National Credit Act; or
 - (ii) paragraph (c) of item 3 of the table in subsection 6 (1) of the National Credit Act; or
 - (iii) paragraph (b) of item 4 of the table in subsection 6 (1) of the National Credit Act; or
 - (iv) paragraph (b) of item 5 of the table in subsection 6 (1) of the National Credit Act; and

Regulation 12

- (b) the person engages in the credit activities while performing the statutory obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee under:
 - (i) the *Privacy Act 1988*; or
 - (ii) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

12 Persons exempt from being registered — debt collectors

- (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
 - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
 - (c) regulations or other instruments made for the purposes of any of the provisions mentioned 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 authorising the person to engage in the credit activity.

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 authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

Note If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if:
 - (a) the person engages in a credit activity mentioned in:
 - (i) paragraph (c) of item 1 of the table in subsection 6 (1) of the National Credit Act, on behalf of a credit provider who is a licensee or a registered person; or

Regulation 12

- (ii) paragraph (c) of item 3 of the table in subsection 6 (1) of that Act, on behalf of the lessor who is a licensee or a registered person; or
 - (iii) paragraph (b) of item 4 of the table in subsection 6 (1) of that Act, on behalf of a mortgagee who is a licensee or a registered person; or
 - (iv) paragraph (b) of item 5 of the table in subsection 6 (1) of that Act, on behalf of the other person who is a licensee or a registered person; and
- (b) the person only performs the obligations, or exercises the rights, mentioned in those paragraphs in relation to:
- (i) demanding and receiving payments from:
 - (A) borrowers or guarantors under credit contracts; or
 - (B) lessees under consumer leases; and
 - (ii) enforcing rights in relation to taking possession of:
 - (A) property secured by a mortgage; or
 - (B) goods hired under a consumer lease; and
- (c) either:
- (i) the person:
 - (A) holds a licence or authorisation to engage in an activity mentioned in paragraph (a) under one or more of the Acts mentioned in subregulation (5); or
 - (B) is authorised to act on behalf of a person holding a licence or authorisation of a kind mentioned in subparagraph (i); or
 - (ii) the person:
 - (A) is not required to hold a licence or authorisation, or be authorised to act on behalf of a person who holds a licence or authorisation, to engage in an activity mentioned in paragraph (a) in a State or Territory; and
 - (B) the person is not prohibited from engaging in an activity mentioned in paragraph (a) by an order of a court or a law of the State or Territory; and

Regulation 13

- (d) the person is authorised in writing by a registered person or a licensee to engage in an activity mentioned in paragraph (a).
- (4) The person is exempted for 12 calendar months starting on the day on which these Regulations commence.
- (5) For subparagraph (3) (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 Investigation Agents Act 1995* (SA);
 - (f) the *Security and Investigations Agents Act 2002* (Tas);
 - (g) the *Commercial and Private Agents Licensing Act* (NT).

13 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 mentioned in paragraph (a); and
 - (c) instruments made for the purposes of any of the provisions mentioned 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 authorising the person to engage in the credit activity.

That item also provides that it is a defence if the person is a credit representative of a person who is registered or holds a licence authorising the person to engage in the credit activity.

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 authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

Regulation 13

That item also provides 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 authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

Note If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if:

- (a) the person engages in a credit activity by selling, storing or transporting property of a debtor, lessor, mortgagor or guarantor on behalf of:

- (i) a credit provider who is a licensee or a registered person; or
- (ii) a mortgagee who is a licensee or a registered person; or
- (iii) a person who is the beneficiary of a guarantee who is a licensee or a registered person; or
- (iv) a lessor who is a licensee or a registered person; or

- (b) the person engages in a credit activity by giving or sending to a debtor, lessee, mortgagor or guarantor, on behalf of:

- (i) a credit provider who is a licensee or a registered person; or
- (ii) a mortgagee who is a licensee or a registered person; or
- (iii) a person who is the beneficiary of a guarantee who is a licensee or a registered person;
- (iv) a lessor who is a licensee or a registered person;

a notice or document that the person mentioned in subregulation (i), (ii), (iii) or (iv) is obliged by law to give or send to the debtor, lessee, mortgagor or guarantor.

Regulation 14

14 Persons exempt from being registered — providers of point of sale credit services

- (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 to the Act; and
 - (ii) definitions in the Act, as they apply to references in the provisions mentioned in subparagraph (i); and
 - (iii) instruments made for the purposes of any of the provisions mentioned 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 authorising the person to engage in the credit activity.

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 authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity.

Note If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.

- (3) A person is exempted if:

- (a) the person is:
 - (i) a supplier of goods or services (the *supplier*); or
 - (ii) a related body corporate of the supplier; or
 - (iii) engaging in a credit activity primarily on the premises of the supplier with the agreement of the supplier; and

Regulation 14

- (b) the person is:
- (i) on behalf of a relevant credit provider for a credit contract or proposed credit contract, performing the obligations or exercising the rights of the relevant credit provider in relation to the contract or proposed contract; or
 - (ii) on behalf of a relevant lessor for a consumer lease or proposed consumer lease, performing the obligations or exercising the rights of the lessor under the lease or proposed lease; or
 - (iii) on behalf of a relevant mortgagee for a mortgage or proposed mortgage, performing the obligations or exercising the rights of the mortgagee under the mortgage or proposed mortgage; or
 - (iv) on behalf of a relevant beneficiary of a guarantee or proposed guarantee, performing the obligations or exercising the rights of the beneficiary in relation to the guarantee; or
 - (v) providing credit services in relation to a credit contract or consumer lease offered or provided by a relevant credit provider or relevant lessor; and
- (c) if:
- (i) the person is acting on behalf of the credit provider for a credit contract or proposed credit contract that is a loan contract or engaging in credit services in relation to a loan contract; and
 - (i) the credit provided under the loan contract or the credit that would be provided if the loan contract were entered into will wholly or predominantly be used to pay for goods or services supplied by the supplier; and
- (d) if:
- (i) the person is acting on behalf of the credit provider of a credit contract or proposed credit contract that is a continuing credit contract or engaging in credit services in relation to a continuing credit contract; and

Regulation 14

- (ii) the credit initially provided under the continuing credit contract or the credit that would be initially provided under the continuing credit contract if it were entered into will wholly or predominantly be used to pay for goods or services supplied by the supplier; and
 - (e) if:
 - (i) the person is acting on behalf of a lessor for a consumer lease or proposed consumer lease or engaging in credit services in relation to a consumer lease; and
 - (ii) payments made under the lease or payments that would be made under the lease if the lease were entered into will wholly or predominantly be used to pay the lessor for the hire of goods supplied by the supplier.
- (3A) The person is not exempted if the person supplies goods or services to the consumer as a result of unsolicited contact with the consumer.
- (3B) In this regulation:
- relevant credit provider** for a credit contract or proposed credit contract, means the credit provider for the contract or proposed contract if the credit provider is a:
- (a) licensee or registered person; and
 - (b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).
- relevant lessor** for a consumer lease or proposed consumer lease, means the lessor under the lease or proposed lease if the lessor is a:
- (a) licensee or registered person; and
 - (b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).
- relevant mortgagee** for a mortgage or proposed mortgage, means the mortgagee under the mortgage or proposed mortgage if the mortgagee is a:
- (a) licensee or registered person; and

Regulation 14

- (b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).

relevant beneficiary of a guarantee or proposed guarantee, means the beneficiary of the guarantee or proposed guarantee if the beneficiary is a:

- (a) licensee or registered person; and
(b) linked credit provider or lessor of the supplier mentioned in subparagraph (3) (a) (i).

- (4) 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

Regulation 14A

- (d) with whom the supplier has a contract, arrangement or understanding under which:
 - (i) contracts; or
 - (ii) applications; or
 - (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.
- (5) 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 to provide that *services*:
 - (a) includes:
 - (i) insurance; or
 - (ii) professional services; or
 - (iii) a right to services; and
 - (b) does not include:
 - (i) rights in relation to, and interest in, real property; or
 - (ii) services relating to credit or consumer leases that are regulated under the National Credit Act, or would be regulated under that Act if entered into, (other than credit services within the meaning given by section 7 of that Act).

14A Persons exempt from requiring a licence — providers of point of sale credit services for a credit card

- (1) For paragraph 42 (c) 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
 - (b) definitions in the Act, as they apply to references in the provisions mentioned in paragraph (a); and
 - (c) instruments made for the purpose of any of the provisions mentioned 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 the specified period unless the person is registered or holds a licence authorising the person to engage in the credit activity.

Regulation 14A

That item also provides that it is a defence if the person is a credit representative of the person who is registered or holds a licence authorising the person to engage in the credit activity.

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

- (a) is registered and has applied for a licence authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

That item also provides 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 authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (2) The person is exempted only to the extent that the person is engaging in the specified credit activity in relation to a continuing credit contract under which a credit card is provided.

Note If the person also engages in a credit activity that is not the subject of an exemption under the Act or the National Credit Act, the person is not exempted in relation to that credit activity.

- (3) The person is exempted if:
 - (a) the person is:
 - (i) a supplier of goods or services; or
 - (ii) a related body corporate of a supplier of goods or services; or
 - (iii) engaging in a credit activity primarily on the premises of a supplier of goods or services with the agreement of the supplier; and
 - (b) the person meets the requirements of subregulation (4) or (5).
- (4) For paragraph (3) (b), the requirements are that the person is performing the obligations or exercising the rights of a credit provider in relation to a credit contract or proposed credit contract:
 - (a) on behalf of the credit provider who is a linked credit provider of the supplier and is a licensee or registered person; and

Regulation 14A

- (b) in relation to a continuing credit contract under which a credit card is:
 - (i) provided or would be provided if the contract were entered into; and
 - (ii) branded or co-branded with the name of the supplier or a related body corporate of the supplier or any other words, phrase, initials or logo associated with the supplier or related body corporate.
- (5) For paragraph (3) (b), the requirements are that the person is providing credit services in relation to a continuing credit card contract under which a credit card is provided or would be provided if the contract were entered into and the:
 - (a) credit provider for the continuing credit contract is a linked credit provider of the supplier and is a licensee or registered person; and
 - (b) credit card is branded or co-branded with the name of the supplier or a related body corporate of the supplier or any other words, phrase, initials or logo associated with the supplier or related body corporate.
- (6) The person is not exempted if the person supplies goods or services to the consumer as a result of unsolicited contact with the consumer.
- (7) For paragraph 42 (c) of Schedule 2 to the Act, the definition of ***linked credit provider*** of a supplier in section 127 of the Code applies as if it were modified for the purposes of this exemption to provide that a ***linked credit provider*** of a supplier means a credit provider:
 - (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 of supplying goods or services carried on by the supplier; or
 - (iii) the provision of credit:
 - (A) to persons to whom goods or services are supplied by the supplier; and
 - (B) for payment for the goods or services; or

Regulation 14A

- (b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit; or
 - (c) whose:
 - (i) forms of contract; or
 - (ii) forms of application; or
 - (iii) offers for credit;are, by arrangement with the credit provider, 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
 - (iii) offers for credit;from the credit provider may be signed by persons at the premises of the supplier.
- (8) For paragraph 42 (c) of Schedule 2 to the Act, the definition of *services* in subsection 204 (1) of the Code applies as if it were modified for the purposes of this exemption to provide that *services*:
- (a) includes:
 - (i) insurance; or
 - (ii) professional services; or
 - (iii) a right to services; and
 - (b) does not include:
 - (i) rights in relation to, and interest in, real property; or
 - (ii) services relating to credit or consumer leases that are regulated under the Act, or would be regulated under the Act if entered into, other than credit services within the meaning given by section 7 of the National Credit Act.

Regulation 14B

14B Persons exempt from registration — special purpose funding entity

- (1) For paragraph 42 (a) of Schedule 2 to the Act, this regulation applies to a special purpose funding entity engaging in a credit activity and exempts the special purpose funding entity 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 mentioned in paragraph (a); and
 - (c) instruments made for the purpose of any of the provisions mentioned 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 the specified period unless the person is registered or holds a licence authorising the person to engage in the credit activity.

That item also provides that it is a defence if the person is a credit representative of the person who is registered or holds a licence authorising the person to engage in the credit activity.

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

- (a) is registered and has applied for a licence authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

That item also provides 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 authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (2) The special purpose funding entity is exempted only to the extent that it is engaging in the specified credit activity.

Note If the special purpose funding entity also engages in a credit activity that is not the subject of an exemption under the Act or the National Credit Act, it is not exempted in relation to that credit activity.

- (3) The special purpose funding entity is exempted if:
- (a) it is party to a servicing agreement; and
 - (b) it is party to or has rights under an origination agreement; and
 - (c) it is a member of an approved external dispute resolution scheme; and

Regulation 15

- (d) if it is a body corporate — each director or secretary of the body corporate is not an inappropriate person; and
- (e) if it is a trust — each trustee of the trust is not an inappropriate person.

Subdivision 1.2 Exempt credit activities

15 Activities exempt from being credit activities

- (1) For paragraphs 42 (b) and (c) of Schedule 2 to the Act, this regulation:
 - (a) 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; and
 - (b) modifies specified provisions for the purposes of the exemption mentioned in paragraph (a).
- (2) Subject to subregulation (3), the following credit 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;
 - (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) For subregulation (2), the credit activity is exempted only if the lawyer providing the credit assistance does not hold out or advertise to consumers that he or she is able to provide credit services.
- (4) A credit activity (other than the provision of credit assistance mentioned in subregulation (2)) 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

Regulation 15

- (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 the following:
 - (i) the payment of professional charges in relation to those activities;
 - (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;
 - (d) the lawyer does not hold out or advertise to consumers that he or she is able to provide credit services.
- (5) 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 2 of the *Tax Agent Services Act 2009*;
 - (ii) the tax agent engages in the credit activity in the ordinary course of activities as a tax agent; and
 - (b) it is a credit activity mentioned in item 2 of the table in subsection 6 (1) of the National Credit Act; and
 - (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.
- (6) 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 that was provided or approved by another person (*person 2*); and
 - (b) person 2:
 - (i) is not acting on behalf of person 1; and
 - (ii) is a licensee or a registered person; and

Regulation 15

- (c) person 1 is not otherwise required to hold an Australian credit licence to engage in credit activities; and
 - (d) either:
 - (i) for a consumer in relation to the credit activity mentioned in paragraph (a):
 - (A) person 1 advises the consumer that person 2 is a licensee or a registered person; and
 - (B) if person 2 is a licensee — person 1 gives the consumer the licence number of person 2; or
 - (ii) a reasonable person would not consider that person 1 is the licensee or registered person in relation to credit activities being engaged in by person 2; and
 - (e) person 2 approved the content of the document.
- (7) A credit activity is exempted if:
- (a) the credit activity consists only of a person (*person 1*) allowing another person (*person 2*) to use person 1's business name, logo or trade mark in relation to:
 - (i) the passing on, publishing, distributing or other dissemination of a document; or
 - (ii) a credit contract, consumer lease, mortgage or guarantee provided or offered by person 2; or
 - (iii) a credit activity engaged in by person 2; and
 - (b) person 2:
 - (i) is not acting on behalf of person 1; and
 - (ii) is a licensee or a registered person; and
 - (c) person 1 is not otherwise required to hold an Australian credit licence to engage in credit activities; and
 - (d) either:
 - (i) for a consumer in relation to a credit activity mentioned in paragraph (a):
 - (A) the person performing the credit activity advises the consumer that person 2 is a licensee or a registered person; and
 - (B) if person 2 is a licensee — the person performing the credit activity gives the consumer the licence number of person 2; and

Regulation 16

- (ii) a reasonable person would not consider that person 1 is the licensee or registered person in relation to credit activities being engaged in by person 2.
- (8) A credit activity is exempted if:
 - (a) the credit activity consists only 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 offered by a licensee or a registered person;
 - (ii) terms and conditions of a credit contract or a consumer lease offered by a licensee or a registered person; and
 - (b) the provider could have complied with the request by giving the inquirer equivalent information about one or more other credit contracts or consumer leases offered by a licensee or a registered person; and
 - (c) the provider did not give the inquirer that equivalent information.
- (9) 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.
- (10) For paragraph 42 (c) of Schedule 2 to the Act, the definition of *lawyer* in subsection 5(1) of the National Credit Act is modified for the purposes of this regulation to provide that *lawyer* means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

16 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 mentioned in paragraph (a); and

Regulation 16

- (c) regulations or other instruments made for the purposes of any of the provisions mentioned 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 authorising the person to engage in the credit activity.

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 authorising the person to engage in the credit activity; or
(b) holds a licence authorising the person to engage in the credit activity.

- (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 licensee or registered person, or a representative of the licensee or 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 licensee, registered person or representative; and
- (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; and
- (c) the disclosure mentioned in paragraph (b) is provided in the same form as the information mentioned in paragraph (a).

- (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 52, 54, 55, 56, 57, 60, 61 or 63 of the *National Consumer Credit Protection Regulations 2010*.

Regulation 16A

Division 2 Modifications

16A Purpose of Division

The purpose of this Division is to set out modifications of Schedule 2 to the Act.

Subdivision 2.1 Modifications — registered person party to servicing agreement with special purpose funding entity

16B Application of Subdivision

This Subdivision is made for paragraph 42 (c) of Schedule 2 to the Act and applies to a registered person who is party to a servicing agreement with a special purpose funding entity.

16C Modification of paragraph 14 (1) (a) of Schedule 2 to Act

Item 14, of Schedule 2 to the Act applies to the registered person as if it were modified by substituting the following paragraph for paragraph 14 (1) (a):

- (a) impose conditions or additional conditions on a registered person who is a party to a servicing agreement with a special purpose funding entity, including a condition requiring the registered person to cease engaging in a credit activity on behalf of the special purpose funding entity; and

Subdivision 2.2 Modifications — carried over instrument lender

16D Application of Subdivision

This Subdivision is made for paragraph 42 (c) of Schedule 2 to the Act and applies to a carried over instrument lender.

16E Modification of Schedule 2 to Act — carried over instrument lender

Schedule 2 to the Act applies to the carried over instrument lender as if it were modified by inserting the following Part 4A after Part 4 of the Schedule:

Part 4A Notification obligations — unlicensed carried over instrument lender

39A Obligation on unlicensed carried over instrument lender to give ASIC information

- (1) In the period starting 24 May 2010 and ending 30 June 2010, an unlicensed carried over instrument lender must give ASIC the following information:
- (a) the lender's name (including the lender's principal business name if any);
 - (b) the name of:
 - (i) if the lender is a body corporate — each director or secretary of the body corporate; and
 - (ii) if the lender is a partnership or the trustees of a trust — each partner or trustee;
 - (c) the postal address of the lender;
 - (d) if the principal business address of the lender is different from the postal address — the principal business address;
 - (e) if the lender has an Australian Business Number — the Australian Business Number;
 - (f) the number of carried over instruments held by the lender and the total amount owed to the lender under the instruments;
 - (g) if the lender is a member of an approved external dispute resolution scheme — the name of the scheme;
 - (h) an estimate of the date on which the longest running instrument will be finalised, if payments are made in accordance with the terms of the instrument;
 - (i) if the lender will be required to engage in credit activities through a registered person or licensee under modified section 74 of the National Credit Act — the reason why the lender will be required to engage in the credit activities through the registered person or licensee;

Regulation 16E

(j) any other information requested by ASIC.

Civil penalty: 2,000 penalty units.

Offence

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

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

Strict liability offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1);
and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes this requirement.

Criminal penalty: 10 penalty units.

- (4) Subsection (3) is an offence of strict liability.

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

Part 5 Infringement notices

17 Purpose of Part 5

- (1) The purpose of this Part is to set out a scheme under item 43 of Schedule 2 to the Act under which:
 - (a) a person who is alleged to have committed an offence against the Act that is stated to be an offence of strict liability may pay a penalty to the Commonwealth as an alternative to prosecution; and
 - (b) a person who is alleged to have contravened a civil penalty provision may pay a penalty to the Commonwealth as an alternative to civil proceedings.
- (2) This Part does not require an infringement notice to be given to a person for the alleged commission of an offence or contravention of a civil penalty provision.
- (3) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if an infringement notice is not given to the person.
- (4) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if:
 - (a) an infringement notice is given to the person; and
 - (b) the person does not pay the penalty stated in the notice in accordance with regulation 24.
- (5) This Part does not limit or otherwise affect:
 - (a) the penalty that a court could impose on the person for the offence; or
 - (b) the penalty that a court could impose on the person for contravention of the civil penalty provision.

Regulation 18

18 Definitions for Part 5

In this Part:

infringement notice means an infringement notice under regulation 19.

infringement notice offence means:

- (a) an offence against the Act that is stated to be an offence of strict liability; or
- (b) a contravention of the civil penalty provision in subitem 19 (1) of Schedule 2 to the Act.

nominated person, in relation to an infringement notice, means the person specified in the notice as the nominated person.

Note The nominated person is responsible for the administration of the infringement notice for the purposes of the payment of a penalty and the withdrawal of the notice.

recipient, in relation to an infringement notice, means the person to whom the notice is given under regulation 19.

19 When an infringement notice can be given*Alleged commission of offence against the Act*

- (1) If ASIC has reasonable grounds to believe that a person has committed an offence against the Act that is stated to be an offence of strict liability, ASIC may give to the person an infringement notice relating to the alleged commission of the offence.
- (2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.
- (3) If an infringement notice given to a person in relation to the alleged commission of a particular offence is withdrawn, ASIC may give the person a new infringement notice in relation to the alleged commission.

Example for subregulation (3)

An infringement notice given to a person in relation to the alleged commission of a particular offence may be withdrawn, and a new infringement notice given to the person in relation to that alleged commission, if the original infringement notice contained an error.

Regulation 21

Alleged contravention of civil penalty provision

- (4) If ASIC has reasonable grounds to believe that a person has contravened the civil penalty provision in subitem 19 (1) of Schedule 2 to the Act, ASIC may give to the person an infringement notice relating to the alleged contravention.
- (5) The infringement notice must be given within 12 months after the day on which the civil penalty provision is alleged to have been contravened.
- (6) If an infringement notice given to a person in relation to the alleged contravention of the civil penalty provision is withdrawn, ASIC may give the person a new infringement notice in relation to the alleged contravention.

Example for subregulation (6)

An infringement notice given to a person in relation to the alleged contravention of the civil penalty provision may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

20 Contents of infringement notice

An infringement notice:

- (a) must be in accordance with Form 3 in Schedule 1 to the *National Consumer Credit Protection Regulations 2010*; and
- (b) may contain any other information that ASIC considers necessary.

21 Amount of penalty if infringement notice given

- (1) The penalty payable under an infringement notice for an alleged commission of an offence against the Act that is stated to be an offence of strict liability is:
 - (a) for an individual — one-fifth of the maximum penalty that a court could impose on the person for that offence; and
 - (b) for a body corporate — the maximum penalty that a court could impose on an individual for that offence.

Regulation 22

- (2) The penalty payable under an infringement notice for an alleged contravention of the civil penalty provision in subitem 19 (1) of Schedule 2 to the Act is:
- (a) for an individual — 50 penalty units; and
 - (b) for a body corporate — 250 penalty units.

Note Under item 43 of Schedule 2 to the Act:

- (a) the penalty for an offence against the Act that is stated to be an offence of strict liability must not exceed one-fifth of the maximum penalty that a court could impose on the person for that offence; and
- (b) the penalty for a contravention of a civil penalty provision must not exceed one-fortieth of the maximum penalty that a court could impose on the person for contravention of that provision.

22 Extension of time to pay penalty

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the penalty stated in the notice.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) grant or refuse a further period not longer than the period sought (but less than 28 days); and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) If the nominated person has not granted, or refused to grant, the further period within 14 days after receiving the application, the nominated person is taken to have refused to grant the further period.

Regulation 24

23 Payment of penalty by instalments

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for permission to pay the amount of the infringement notice penalty by instalments.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application; and
 - (c) specify the amount and frequency of the instalments that the recipient proposes to pay.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) grant or refuse to grant permission for payment by instalments; and
 - (b) give the recipient written notice of the decision, including:
 - (i) if permission is granted — the amount and frequency of the instalments; and
 - (ii) if permission is refused — the reasons for refusal.
- (4) If the nominated person has not granted, or refused to grant, permission for payment by instalments within 14 days after receiving the application, the nominated person is taken to have refused to grant permission for payment by instalments.

24 Time for payment of penalty

- (1) The penalty stated in an infringement notice must be paid within:
 - (a) 28 days after the day on which the notice is given to the recipient; or
 - (b) another period required by this regulation.
- (2) If the recipient applies for a further period of time in which to pay the penalty, and the application is granted, the penalty must be paid within the further period allowed.

Regulation 25

- (3) If the recipient applies for a further period of time in which to pay the penalty, and the application is refused or is taken to have been refused, the penalty must be paid within the later of:
- (a) 7 days after:
 - (i) the notice of the refusal is given to the recipient; or
 - (ii) the application is taken to have been refused; and
 - (b) 28 days after the day on which the infringement notice was given to the recipient.
- (4) If the recipient applies for permission to pay the penalty by instalments, and permission is granted, the penalty must be paid in accordance with the permission.
- (5) If the recipient applies for permission to pay the penalty by instalments, and permission is refused or is taken to have been refused, the penalty must be paid within the later of:
- (a) 7 days after:
 - (i) the notice of the refusal is given to the recipient; or
 - (ii) the application is taken to have been refused; and
 - (b) 28 days after the day on which the infringement notice was given to the recipient.
- (6) If the recipient applies for the notice to be withdrawn, and the application is refused or is taken to have been refused, the penalty must be paid within the later of:
- (a) 7 days after:
 - (i) the notice of the refusal is given to the recipient; or
 - (ii) the application is taken to have been refused; and
 - (b) 28 days after the day on which the infringement notice was given to the recipient.

25 Effect of payment of penalty*Alleged commission of offence against the Act*

- (1) If:
- (a) an infringement notice is given in relation to an alleged commission of an offence against the Act that is stated to be an offence of strict liability; and

Regulation 25

- (b) the infringement notice is not withdrawn; and
 - (c) the recipient pays the penalty stated in the notice in accordance with regulation 24;
- the consequences mentioned in subregulation (2) apply.

(2) The effects are:

- (a) any liability of the recipient for the alleged offence is discharged; and
- (b) no prosecution may be brought against the recipient for the alleged offence; and
- (c) the recipient is not taken to have admitted guilt in respect of the alleged offence; and
- (d) the recipient is not taken to have been convicted of the offence.

Alleged contravention of civil penalty provision

(3) If:

- (a) an infringement notice is given in relation to an alleged contravention of the civil penalty provision in subitem 19 (1) of Schedule 2 to the Act; and
- (b) the infringement notice is not withdrawn; and
- (c) the recipient pays the penalty stated in the notice in accordance with regulation 24;

the consequences mentioned in subregulation (4) apply.

(4) The effects are:

- (a) any liability of the recipient for the alleged contravention is discharged; and
- (b) no civil proceedings may be brought by the Commonwealth against the recipient for the alleged contravention; and
- (c) the recipient is not taken to have admitted guilt in respect of the alleged contravention; and

Regulation 26

- (d) the recipient is not taken to have been found guilty of the contravention.

Note This regulation does not prevent a consumer from commencing a civil proceeding against the recipient under section 178 or 179 of the National Credit Act. ASIC is not prevented from applying for an order on behalf of a plaintiff in accordance with those sections. Sections 178 and 179 of that Act apply to registered persons and Schedule 2 of the Act under item 37 of Schedule 2 to the Act.

26 Withdrawal of infringement notice by nominated person

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for the infringement notice to be withdrawn.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) withdraw or refuse to withdraw the notice; and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) Without limiting subregulation (3), the nominated person may withdraw the infringement notice after taking into account the following matters:
 - (a) whether the recipient:
 - (i) has been previously convicted of an offence against the Act; or
 - (ii) has been previously found to have contravened a civil penalty provision;
 - (b) the circumstances in which the commission or contravention set out in the infringement notice offence specified in the notice is alleged to have occurred;

Regulation 29

- (c) whether an infringement notice has previously been given to the recipient in relation to an infringement notice offence of the same kind as the offence specified in the notice, and in relation to which the recipient paid the penalty under the notice;
 - (d) any other relevant matter.
- (5) If the nominated person has not withdrawn, or refused to withdraw, the notice within 14 days after receiving the application, the nominated person is taken to have refused to withdraw the notice.

27 Withdrawal of infringement notice by ASIC

- (1) ASIC may withdraw an infringement notice given by ASIC without an application under regulation 26 having been made.
- (2) Without limiting subregulation (1), ASIC may withdraw the infringement notice after taking into account a matter mentioned in paragraph 26 (4) (a), (b), (c) or (d).

28 Notice of withdrawal of infringement notices

- (1) A notice withdrawing an infringement notice must include the following information:
 - (a) the full name, or surname and initials, and address of the recipient;
 - (b) the date the infringement notice was given;
 - (c) the infringement notice's unique identification code.
- (2) The notice must also state that the notice is withdrawn.

29 Refund of penalty

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.

Regulation 30

Part 6 Carried over instruments**30 Purpose of Part**

The purpose of this Part is to set out the requirements for registration, licensing or other statutory obligations applicable to a person who engages in a credit activity in relation to a carried over instrument.

31 Application of Part

This Part applies to a person who engages in a credit activity in relation to a carried over instrument.

32 Application of Chapter 2 of National Credit Act to credit provider or lessor for carried over instrument before 1 July 2010

For subitem 18 (2) of Schedule 1 to the Act, Chapter 2 (other than section 29) of the National Credit Act applies to the person in relation to credit activity engaged in in relation to the carried over instrument if the person:

- (a) was the credit provider, lessor, mortgagor or beneficiary of a guarantee in relation to the instrument immediately before 1 July 2010; and
- (b) applies for a licence under section 36 of the National Credit Act.

Note Under subitem 3 (2) of Schedule 1 to the Act, the National Credit Code applies in relation to a carried over instrument.

33 Application of Chapter 2 of National Credit Act if not credit provider or lessor for carried over instrument before 1 July 2010

For subitem 18 (2) of Schedule 1 to the Act, Chapter 2 of the National Credit Act applies to the person in relation to the credit activity engaged in in relation to the carried over instrument if the person was not the credit provider, lessor,

Regulation 36

mortgagor or beneficiary of a guarantee in relation to the instrument immediately before 1 July 2010.

Note Under subitem 3 (2) of Schedule 1 to the Act, the National Credit Code applies in relation to a carried over instrument.

34 Application of Schedule 2 to the Act if credit provider or lessor for carried over instrument before 1 July 2010

For subitem 20 (2) of Schedule 1 to the Act, Schedule 2 to the Act (not including items 4 and 6) applies to the person in relation to the credit activity engaged in in relation to the carried over instrument if the person:

- (a) was the credit provider, lessor, mortgagor or beneficiary of a guarantee in relation to the instrument immediately before 1 July 2010; and
- (b) applies for registration under item 11 of Schedule 2 to the Act.

Note Under subitem 3 (2) of Schedule 1 to the Act, the National Credit Code applies in relation to a carried over instrument.

35 Application of Schedule 2 to the Act if not credit provider or lessor for carried over instrument before 1 July 2010

For subitem 20 (2) of Schedule 1 to the Act, Schedule 2 to the Act applies to the person in relation to the credit activity engaged in in relation to the carried over instrument if the person was not the credit provider, lessor, mortgagor or beneficiary of a guarantee in relation to the instrument immediately before 1 July 2010.

Note Under subitem 3 (2) of Schedule 1 to the Act, the National Credit Code applies in relation to a carried over instrument.

36 Application of section 213 and modified Chapter 2 of National Credit Act

- (1) For subitem 18 (2) of Schedule 1 to the Act, this regulation applies to the person if the person:

Regulation 36

- (a) immediately before 1 July 2010, was a credit provider, lessor, mortgagor or beneficiary of a guarantee in relation to a carried over instrument; and
 - (b) on or after 1 July 2010, has been the credit provider or lessor in relation to the carried over instrument on a continuous basis; and
 - (c) is not any of the following persons:
 - (i) a licensee;
 - (ii) a registered person;
 - (iii) a person who is exempt from a requirement to hold a licence under the National Credit Act or to be a registered person under the Act.
- (2) Section 213 of the National Credit Act and modified Chapter 2 of the National Credit Act apply to the person in relation to a credit activity engaged in in relation to the carried over instrument.

Note Under subitem 3 (2) of Schedule 1 to the Act, the National Credit Code applies in relation to a carried over instrument.

Notes to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*

Note 1

The *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010* (in force under the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*) as shown in this compilation comprise Select Legislative Instrument 2010 No. 45 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2010 No. 45	12 Mar 2010 (see F2010L00633)	Rr. 1–5: 13 Mar 2010 R. 8 and Parts 3–5 (Rr. 10–29): 1 Apr 2010 R. 9: (a) Remainder: 1 July 2010	
2010 No. 60	26 Mar 2010 (see F2010L00743)	27 Mar 2010	—
2010 No. 107	21 May 2010 (see F2010L01371)	24 May 2010	—

(a) Regulation 9 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010* was repealed by SLI 2010 No. 60 before it came into force.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 3.....	am. 2010 No. 107
Part 4	
Heading to Part 4.....	rs. 2010 No. 107
Division 1	
Heading to Div. 1 of Part 4...	ad. 2010 No. 107
Subdivision 1.1	
Heading to Subdiv. 1.1 of Div. 1	ad. 2010 No. 107
R. 11.....	am. 2010 No. 107
R. 14.....	am. 2010 No. 107
R. 14A.....	ad. 2010 No. 107
R. 14B.....	ad. 2010 No. 107
Subdivision 1.2	
Heading to Subdiv. 1.2 of Div. 1	ad. 2010 No. 107
R. 15.....	am. 2010 No. 107
Division 2	
Div. 2 of Part 4.....	ad. 2010 No. 107
R. 16A.....	ad. 2010 No. 107
Subdivision 2.1	
R. 16B.....	ad. 2010 No. 107
R. 16C	ad. 2010 No. 107
Subdivision 2.2	
R. 16D	ad. 2010 No. 107
R. 16E.....	ad. 2010 No. 107
Part 6	
Part 6.....	ad. 2010 No. 107
R. 30.....	ad. 2010 No. 107
R. 31.....	ad. 2010 No. 107
R. 32.....	ad. 2010 No. 107
R. 33.....	ad. 2010 No. 107
R. 34.....	ad. 2010 No. 107
R. 35.....	ad. 2010 No. 107
R. 36.....	ad. 2010 No. 107