



National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 1)¹

Select Legislative Instrument 2010 No. 185

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

Dated 29 June 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS BOWEN
Minister for Financial Services, Superannuation and Corporate
Law

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1 Name of Regulations

These Regulations are the *National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 1)*.

2 Commencement

These Regulations commence on 1 July 2010.

3 Amendment of *National Consumer Credit Protection Regulations 2010*

Schedule 1 amends the *National Consumer Credit Protection Regulations 2010*.

4 Amendment of *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009*

Schedule 2 amends the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*.

**Schedule 1 Amendment of *National
Consumer Credit Protection
Regulations 2010***

(regulation 3)

[1] Regulation 9A, heading

omit

**9A The conditions on the licence — special purpose
funding entity**

insert

**9AA The conditions on the licence — special purpose
funding entity**

[2] Paragraph 20 (11) (d)

omit

acting on behalf of a licensee or registered person

[3] After regulation 24B

insert

**24C Persons exempt from certain provisions of Act —
credit relates to a residential investment property**

- (1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) paragraphs 128 (a) and 133 (1) (a) of the Act; and
 - (b) section 16 of the Code; and
 - (c) definitions in the Act as they apply to references in the provisions mentioned in paragraphs (a) and (b); and

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- (d) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) to (c).
- (2) A person is exempted if:
- (a) the person enters into a credit contract as a credit provider; and
 - (b) the credit is provided or intended to be provided wholly or predominantly for a purpose mentioned in subparagraph 5 (1) (b) (ii) or (iii) of the Code; and
 - (c) the person made the offer in relation to the contract before 1 July 2010; and
 - (d) the borrower accepted the offer on or after 1 July 2010.
- (3) 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.
- (4) This regulation ceases to have effect on 1 October 2010.

[4] After subregulation 25 (2)

insert

- (2A) 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
 - (iii) person 1 making arrangements enabling person 2 to contact the licensee, registered person or representative by means of a link that can be accessed from a website provided by or for person 1 or an associate of person 1; and

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- (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 subparagraph (a) (ii).

[5] Schedule 2, item 2.39, inserted subsection 74 (2)

substitute

- (2) The prescribed unlicensed carried over instrument lender:
 - (a) must not engage in a credit activity in relation to a carried over instrument (other than the credit activity that is engaged in solely by the lender being the credit provider under a credit contract or the lessor under a consumer lease); and
 - (b) must appoint, in writing, a licensee or registered person as the lender's representative to engage in a credit activity in relation to the carried over instrument (other than the credit activity that is engaged in solely by the lender being the status of the credit provider under a credit contract or the lessor under a consumer lease) on behalf of the lender.

Civil penalty: 2,000 penalty units.

Note: Having the status of a credit provider under a credit contract or a lessor under a consumer lease is itself a credit activity.

[6] Schedule 2, item 2.39, inserted section 75A, heading

substitute

75A Obligation for prescribed unlicensed carried over instrument lender if appointment of licensee or registered person ceases

[7] Schedule 2, item 2.39, inserted subsection 75A (1)*substitute*

- (1) This section applies if a licensee or registered person is appointed, in accordance with paragraph 74(2)(b), by a prescribed unlicensed carried over instrument lender to engage in a credit activity mentioned in that paragraph on behalf of the lender.

[8] Schedule 2, item 2.39, inserted paragraph 75A (2) (a)*omit*

registered person or unlicensed carried over instrument lender

insert

or registered person

[9] Schedule 2, item 2.39, inserted paragraph 75A (2) (b)*omit*

registered person or unlicensed carried over instrument lender

insert

or registered person

[10] Schedule 2, item 2.39, inserted subsection 75A (3)*substitute*

- (3) If the licensee's or registered person's appointment ceases under subsection (2):
- (a) section 74 applies to the prescribed unlicensed carried over instrument lender as if it required the lender to appoint another licensee or registered person to engage in a credit activity, as described in paragraph 74(2)(b), on behalf of the lender no later than 15 business days after the previous appointment ceased; and
 - (b) section 75 applies to the prescribed unlicensed carried over instrument lender in relation to the appointment.

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- [11] **Schedule 2, item 2.39, inserted subsections 75A (4) to (6)**
omit
- [12] **Schedule 2, item 2.39, inserted paragraph 75B (1) (a)**
after
notify ASIC
insert
, in the approved form,
- [13] **Schedule 2, item 2.39, inserted paragraph 75B (1) (b)**
omit
15 days
insert
15 business days
- [14] **Schedule 2, item 2.39, inserted subsection 75B (1), at the foot**
insert
Civil penalty: 2,000 penalty units.
- [15] **Schedule 2, item 2.52, substituted paragraph 104 (2) (b)**
omit
section 45
insert
section 47
- [16] **Schedule 3, item 3.4, inserted section 5, definition of *securitisation transaction***
omit

Schedule 2 Amendment of *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*

(regulation 4)

[1] Paragraph 11 (11) (d)

omit

acting on behalf of a licensee or registered person

[2] After subregulation 16 (2)

insert

(2A) 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
- (iii) person 1 making arrangements enabling person 2 to contact the licensee, registered person or representative by means of a link that can be accessed from a website provided by the referrer; and

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- (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 subparagraph (a) (ii).

[3] Regulation 36, heading

substitute

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

[4] Subregulation 36 (2)

omit

modified

[5] Subregulation 36 (2), note

add at the end

Schedule 2 to the *National Consumer Credit Protection Regulations 2010* also makes arrangements for carried over instruments.

[6] After subregulation 37 (2)

insert

- (3) Each provision of Chapter 3 of the Credit Act applies to the licensee or registered person at the time, or for the period, that applies in accordance with that Chapter, including, if relevant, that Chapter as affected by:
- (a) item 19 of Schedule 1 to the Act; or
 - (b) item 36 of Schedule 2 to the Act.

[7] After subregulation 38 (3)

insert

- (4) Each provision of Chapter 3 of the Credit Act applies to the unlicensed carried over instrument lender at the time, or for the period, that applies in accordance with that Chapter, including, if relevant, that Chapter as affected by:
- (a) section 19 of Schedule 1 to the Act; or
 - (b) item 36 of Schedule 2 to the Act.

Note

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