



National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 2)¹

Select Legislative Instrument 2010 No. 235

I, MARIE BASHIR, Administrator of the Government 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 19 July 2010

MARIE BASHIR
Administrator

By Her Excellency's Command

CRAIG EMERSON
Minister for Competition Policy and Consumer Affairs

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1 Name of Regulations

These Regulations are the *National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 2)*.

2 Commencement

These Regulations commence as follows:

- (a) 1 October 2010 — item [1] of Schedule 1; and
- (b) on the day after they are registered — the remainder.

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 2010*

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

2	<i>National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 2)</i>	2010, 235
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Schedule 1 **Amendments of *National Consumer Credit Protection Regulations 2010***

(regulation 3)

[1] **Subregulation 3 (1), definition of *unsolicited contact***

substitute

unsolicited contact includes contact with a consumer by a person or an associate of the person in relation to the supply of goods and services by the person to the consumer:

- (a) in the following circumstances:
 - (i) the contact is the first contact made by the person;
 - (ii) the contact is made in person from a non-standard business premises; or
- (b) in the following circumstances:
 - (i) the contact is made by the person or an associate of the person;
 - (ii) the contact is not the first contact made by the person or an associate of the person;
 - (iii) the first contact was made in person from a non-standard business premises; or
- (c) in the following circumstances:
 - (i) the consumer provided the consumer's contact details to the person for the sole purpose of being contacted by the person in relation to the supply of goods or services by the person to the consumer;
 - (ii) the contact is not the first contact made by the person;
 - (iii) the contact is made on or after the day 3 months after the consumer provided the contact details;
 - (iv) the contact is not authorised contact; or

(d) in the following circumstances:

- (i) the consumer did not provide the consumer's contact details to the person for the sole purpose of being contacted by the person in relation to the supply of goods or services by the person to the consumer;
- (ii) the contact is not described in paragraph (a) or (b);
- (iii) the contact is not authorised contact.

[2] Regulation 5

substitute

5 Prescribed orders

For the definition of *prescribed State or Territory order* in subsection 5 (1) of the Act, orders made under an Act specified in the following table are prescribed.

Item	Act
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New South Wales

1.1	<i>Crimes (Criminal Organisations Control) Act 2009</i>
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Queensland

3.1	<i>Criminal Organisation Act 2009</i>
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South Australia

5.1	<i>Serious and Organised Crime (Control) Act 2008</i>
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[3] After regulation 9AA

insert

9AB Conditions for licensee — referrals

- (1) For subsection 45 (7) of the Act, a licensee who engages in a credit activity, on or after 1 October 2010, as a consequence of being a licensee described in subregulation 25 (5) is subject to the conditions set out in this regulation.

Note The licensee, or a representative of the licensee, provides the credit activity to a person by contacting the person after a referral by the referrer described in subregulation 25 (5).

Register of referrers

- (2) The licensee must keep, or have access to, a register of the referrers described in subregulation 25 (5):
 - (a) with which the licensee has an agreement of the kind described in paragraph 25 (5) (a); or
 - (b) who have been made a written offer of the kind described in sub-subparagraph 25 (5) (b) (ii) (B).
- (3) The register must include:
 - (a) the referrer's name and contact details; and
 - (b) the date and means by which the referrer was advised in writing of the way in which the referrer may engage in credit activities under the agreement; and
 - (c) the day on which the referrer first engaged in the conduct described in subparagraph 25 (5) (c) (ii) under the agreement.

Note The conduct is giving to the licensee, registered person or representative the consumer's name.

- (4) The licensee must make the register available to ASIC on request.

Contact after referral

- (5) The licensee may only contact the consumer described in subregulation 25 (5) if he or she does so within 10 business days after receiving the referral from the referrer described in that subregulation.
- (6) If the licensee contacts the consumer in person, the licensee must begin the discussion with the consumer (after the licensee has identified itself) by statements to the following effect:
 - (a) 'I am contacting you because we have been provided with your contact details by [name of referrer]. Can you confirm that you agreed with [name of referrer] to have us contact you?';

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- (b) if a payment of commission or a financial benefit may be given to the referrer — ‘before we continue, I would like to let you know that if you take up any of our products or services, *[name of referrer]* may receive the following financial benefits *[brief description]*’;
 - (c) ‘are you happy to continue this discussion?’.
- (7) If the licensee contacts the consumer by letter or email, the licensee must include statements to the following effect at the start of the letter or email:
- (a) the licensee is contacting the consumer as a result of being provided with their contact details by the referrer (identifying the referrer by name);
 - (b) the referrer may receive a financial benefit or payment.

[4] Paragraph 9A (5) (b)

omit

the licensee’s

insert

the lender’s

[5] Subparagraphs 9A (6) (b) (i) and (ii)

substitute

- (i) at the time it became an unlicensed carried over instrument lender; or
- (ii) as described in documents lodged with ASIC after it became an unlicensed carried over instrument lender;

[6] Subregulation 20 (9)

omit

[7] Subregulation 21 (4)

omit

[8] After regulation 23C

insert

**23D Persons exempt from requiring a licence —
employment agencies**

- (1) For paragraph 110 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from:
- (a) section 29 of 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 Section 29 of the Act provides that a person must not engage in a credit activity if the person does not hold 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) The person is exempted if the person engages in a credit activity while performing functions, or exercising powers, in the following circumstances:

- (a) the person provides a person to a licensee, registered person or a representative of a licensee or registered person; and
- (b) that person engages in a credit activity on behalf of the licensee or registered person only as a person described in regulation 25H or 25I.

Note Regulation 25H relates to temporary staff. Regulation 25I relates to locums.

- (4) For paragraph 110 (c) of the Act, the provisions of the Act to which Part 2-6 of Chapter 2 of the Act applies apply in relation to the person as if subsection 29 (4) of the Act were omitted.

[9] After subregulation 25 (3)*insert*

- (4) A credit activity is exempted if:
- (a) a person (the ***referrer***) engages in a credit activity before 1 October 2010; and
 - (b) the activity consists only of:
 - (i) the referrer informing another person (the ***consumer***) that a licensee or registered person, or a representative of a licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and
 - (ii) the referrer giving to the licensee, registered person or representative the consumer's name and contact details; and
 - (iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and
 - (c) the referrer is not banned from engaging in the credit activity under:
 - (i) a law of a State or Territory; or
 - (ii) Part 2-4 of the Act; and
 - (d) at the time the activity is engaged in, the referrer discloses to the consumer:
 - (i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and
 - (ii) any benefits, including commission, that the referrer, or an associate of the referrer, may receive that are attributable to the activity; and
 - (e) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and

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- (f) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (g) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person.
- (5) A credit activity is exempted if:
- (a) a person (the **referrer**) engages in a credit activity on or after 1 October 2010 under an agreement with the licensee or registered person or a representative of the licensee or registered person; and
 - (b) the agreement:
 - (i) specifies the conduct in which the referrer can engage as conduct to which the exemption applies; and
 - (ii) is:
 - (A) in writing only; or
 - (B) based on an offer made in writing by the licensee, registered person or representative that has been accepted by the referrer; and
 - (c) the activity consists only of:
 - (i) the referrer informing another person (the **consumer**) that the 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) the referrer giving to the licensee, registered person or representative the consumer's name within 5 business days after informing the consumer; and
 - (iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and
 - (d) the referrer is not banned from engaging in the credit activity under:
 - (i) a law of a State or Territory; or

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- (ii) Part 2-4 of the Act; and
 - (e) at the time the activity is engaged in, the referrer discloses to the consumer:
 - (i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and
 - (ii) any benefits, including commission, that the referrer, or an associate of the referrer, may receive that are attributable to the activity; and
 - (f) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (g) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (h) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person; and
 - (i) the referrer does not conduct a business as part of which the referrer contacts persons face-to-face from non-standard business premises.

[10] Regulation 25G

substitute

25G Modifications — special purpose funding entity

- (1) For paragraphs 110 (c) and 164 (d) of the Act, the provisions to which Parts 2-6 and 3-7 of the Act apply apply in relation to:
 - (a) a special purpose funding entity; or
 - (b) a licensee or registered person who is a party to a servicing agreement with a special purpose funding entity;as if the provisions were modified as set out in Schedule 3.

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- (2) For paragraph (1) (a), each modification in Schedule 3 applies in relation to the special purpose funding entity from the time, or to the extent, that the obligation would apply to the licensee or registered person mentioned in paragraph (1) (b), in accordance with:
- (a) item 19 of Schedule 1 to the Transitional Act; or
 - (b) item 36 of Schedule 2 to that Act;
- if the licensee or registered person were the credit provider or the lessor.

25H Modifications — temporary staff

- (1) For paragraphs 110 (c) and 164 (d) of the Act, this regulation applies in relation to a person if:
- (a) the person's services are used by a licensee or registered person for a period of not more than 24 months (including any extension or rollover of a contract of engagement); and
 - (b) the person performs substantially the same duties as an employee of the licensee or registered person; and
 - (c) the person is subject to the same, or substantially the same, control and direction as an employee when the person is engaging in credit activities; and
 - (d) the person was not engaged because the person possesses particular skills or experience that would prevent the licensee or registered person from exercising the control and supervision over the person, when the person is engaging in credit activities, that the licensee or registered person can exercise over its employees; and
 - (e) the person is not remunerated predominantly by way of commission; and
 - (f) the licensee or registered person does not hold out or represent to consumers that the person is acting other than as an employee.
- (2) The provisions of the Act to which Part 2-6 and Part 3-7 of the Act apply apply as if paragraph 65 (6) (c) and sections 71 and 158 of the Act were omitted.

25I Modifications — locums

- (1) For paragraph 110 (c) of the Act, this regulation applies to a person who:
 - (a) is engaged to replace an employee of a licensee or registered person who is absent from work in that capacity and reasonably expected to return to work; and
 - (b) performs substantially the same duties as the employee; and
 - (c) is subject to the same, or substantially the same, control and direction as the employee when the person is engaging in credit activities.
- (2) The provisions of the Act to which Part 2-6 of Chapter 2 of the Act applies apply as if each provision that refers to an employee of a licensee or registered person were modified by referring to:
 - (a) an employee; and
 - (b) a person described in subregulation (1).

25J Modification — exempted persons

- (1) For paragraph 110 (c) of the Act, this regulation applies to:
 - (a) a person who is exempted from provisions of the Act under subregulation 20 (11), 25 (4) or (5); and
 - (b) a person who acts on behalf of the person.
- (2) Section 33 of the Act applies as if it were modified to include provision for section 128 of the Code to apply to any representation, warranty or statement made (whether orally or in writing) by the person in relation to a credit contract or consumer lease:
 - (a) offered by a licensee or registered person; and
 - (b) to which the person's exemption relates.

[11] After regulation 28

insert

28A Exemption — credit assistance provider with shared responsibility for credit contract

- (1) For paragraph 164 (a) of the Act, this regulation applies to a person in the following circumstances:
- (a) the person is:
 - (i) a credit assistance provider that:
 - (A) is an authorised deposit-taking institution (within the meaning of subsection 5 (1) of the *Banking Act 1959*); and
 - (B) holds an Australian credit licence; and
 - (C) engages in conduct under an agreement with the credit provider; or
 - (ii) a credit representative of a credit assistance provider mentioned in subparagraph (i);
 - (b) the credit provider:
 - (i) is an authorised deposit-taking institution (within the meaning of subsection 5 (1) of the *Banking Act 1959*); and
 - (ii) holds an Australian credit licence;
 - (c) the agreement between the credit provider and the credit assistance provider allows the credit provider to use the credit assistance provider's name or any other words, phrases, initials or logo associated with the credit assistance provider on the credit contract;
 - (d) the credit assistance provider:
 - (i) assists a consumer to complete a credit application for a credit contract on behalf of the credit provider; and
 - (ii) gives to the credit provider the consumer's details and any other information requested by the credit provider (if it is a reasonable request) in order to enable the credit provider to make an assessment about the credit contract under section 130 of the Act.

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- (2) The credit assistance provider is exempted from Division 4 of Part 3-1 of the Act in relation to credit contracts given to the credit provider mentioned in paragraph (1) (b).

28B Exemption — providing credit in relation to a residential investment property

- (1) For paragraph 164 (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) 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).
- (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.

[12] After regulation 65A

insert

65B Exemption — providing credit in relation to a residential investment property

- (1) Section 16 of the Code does not apply to a person to the extent that:
- (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.

Note Section 203B of the Code provides, among other things, that the regulations may exempt a person or a class of persons from all or specified provisions of the Code.

- (2) This regulation ceases to have effect on 1 October 2010.

[13] Regulation 111A, heading

substitute

111A Exemption from Code — persons who are not members of approved external dispute resolution scheme

[14] Subregulation 111A (1)

substitute

- (1) For section 203B of the Code, this regulation applies to:
- (a) a person who is an unlicensed carried over instrument lender; and
 - (b) a person who is exempt under section 109 or 110 of the Act from the requirement to hold a licence; and

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- (c) a person who is exempt under item 41 or 42 of Schedule 2 to the Transitional Act from the requirement to be registered;

who is not a member of an approved external dispute resolution scheme.

[15] Subregulation 111A (2)

omit each mention of

lender

insert

person

[16] Before paragraph 111A (3) (a)

insert

(aa) subparagraph 72 (3) (b) (i);

(ab) subparagraph 72 (3) (b) (ii);

[17] Schedule 2, item 2.5, inserted paragraph 5A (2) (c)

after the first mention of

partnership or

insert

a trustee of a

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

(regulation 4)

[1] After regulation 10A

insert

10B The conditions on the registration — referrals

- (1) For subitem 14 (7) of Schedule 2 to the Act, the registration is subject to the conditions set out in this regulation if the registered person engages in a credit activity, on or after 1 October 2010, as a consequence of being a registered person described in subregulation 16 (5).

Note The registered person, or a representative of the registered person, provides the credit activity to a person by contacting the person after a referral by the referrer described in subregulation 16 (5).

Register of referrers

- (2) The registered person must keep a register of the referrers described in subregulation 16 (5):
- (a) with which the registered person has an agreement of the kind described in paragraph 16 (5) (a); or
 - (b) who have been made a written offer of the kind described in sub-subparagraph 16 (5) (b) (ii) (B).
- (3) The register must include:
- (a) the referrer's name and contact details; and
 - (b) the date and means by which the referrer was advised, in writing, of the way in which the referrer may engage in credit activities under the agreement; and

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- (c) the day on which the referrer first engaged in the conduct described in subparagraph 16 (5) (c) (ii) under the agreement.

Note The conduct is giving to the licensee, registered person or representative the consumer's name.

- (4) The referrer must make the register available to ASIC on request.

Contact after referral

- (5) The registered person may only contact the consumer described in subregulation 16 (5) if he or she does so within 10 business days after receiving the referral from the referrer described in that subregulation.
- (6) If the registered person contacts the consumer in person, the registered person must begin the discussion with the consumer (after the registered person has identified itself) by statements to the following effect:
- (a) 'I am contacting you because we have been provided with your contact details by *[name of referrer]*. Can you confirm that you agreed with *[name of referrer]* to have us contact you?';
 - (b) if a payment of commission or a financial benefit may be given to the referrer — 'before we continue, I would like to let you know that if you take up any of our products or services, *[name of referrer]* may receive the following financial benefits *[brief description]*';
 - (c) 'are you happy to continue this discussion?'.
- (7) If the registered person contacts the consumer by letter or email, the registered person must include statements to the following effect at the start of the letter or email:
- (a) the registered person is contacting the consumer as a result of being provided with their contact details by the referrer (identifying the referrer by name);
 - (b) the referrer may receive a financial benefit or payment.

[2] Subregulation 14C (1)

omit

paragraph 110 (a) of the Act,

insert

paragraph 42 (a) of Schedule 2 to the Act,

[3] After regulation 14C

insert

**14D Persons exempt from requiring registration —
employment agencies**

- (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) 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.

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- (3) The person is exempted if the person engages in a credit activity while performing functions, or exercising powers, in the following circumstances:
- (a) the person provides a person to a licensee, registered person or a representative of a licensee or registered person; and
 - (b) that person engages in a credit activity on behalf of the licensee or registered person only as a person described in regulation 16D.

Note Regulation 16D relates to locums and temporary staff.

- (4) For paragraph 42 (c) of Schedule 2 to the Act, the provisions of the Act to which Part 5 of Schedule 2 to the Act applies apply in relation to the person as if subitems 4 (4) and 6 (4) of Schedule 2 to the Act were omitted.

[4] After subregulation 16 (3)

insert

- (4) A credit activity is exempted if:
- (a) a person (the ***referrer***) engages in a credit activity before 1 October 2010; and
 - (b) the activity consists only of:
 - (i) the referrer informing another person (the ***consumer***) 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) the referrer giving to the licensee, registered person or representative the consumer's name and contact details; and
 - (iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and

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- (c) the referrer is not banned from engaging in the credit activity under:
 - (i) a law of a State or Territory; or
 - (ii) Part 2-4 of the National Credit Act; and
 - (d) at the time the activity is engaged in, the referrer discloses to the consumer:
 - (i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and
 - (ii) any benefits, including commission, that the referrer, or an associate of the referrer, may receive that are attributable to the activity; and
 - (e) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (f) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (g) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person.
- (5) A credit activity is exempted if:
- (a) a person (the *referrer*) engages in a credit activity on or after 1 October 2010 under an agreement with the licensee or registered person or a representative of the licensee or registered person; and
 - (b) the agreement:
 - (i) specifies the conduct in which the referrer can engage as conduct to which the exemption applies; and
 - (ii) is:
 - (A) in writing only; or
 - (B) based on an offer made in writing by the licensee, registered person or representative that has been accepted by the referrer; and

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- (c) the activity consists only of:
 - (i) the referrer informing another person (the **consumer**) that the 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) the referrer giving to the licensee, registered person or representative the consumer's name within 5 business days after informing the consumer; and
 - (iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and
 - (d) the referrer is not banned from engaging in the credit activity under:
 - (i) a law of a State or Territory; or
 - (ii) Part 2-4 of the National Credit Act; and
 - (e) at the time the activity is engaged in, the referrer discloses to the consumer:
 - (i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and
 - (ii) any benefits, including commission, that the referrer, or an associate of the referrer, may receive that are attributable to the activity; and
 - (f) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (g) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and
 - (h) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person; and

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- (i) the referrer does not conduct a business as part of which the referrer contacts persons face-to-face from non-standard business premises.

[5] Part 4, Division 2, after Subdivision 2.1

insert

Subdivision 2.2 Modifications — locums and temporary staff

16D Application of Subdivision

This Subdivision is made for paragraph 42 (c) of Schedule 2 to the Act and applies to a person who:

- (a) is engaged to replace an employee of a registered person who is absent from work in that capacity and reasonably expected to return to work; and
- (b) performs substantially the same duties as the employee; and
- (c) is subject to the same, or substantially the same, control and direction as an employee when the person is engaging in credit activities.

16E References to employee

The provisions of the Act to which Part 5 of Schedule 2 to the Act applies apply as if each provision that refers to an employee of a registered person were modified by referring to:

- (a) an employee; and
- (b) a person described in regulation 16D.

[6] Subregulation 35 (2), second occurring

renumber as subregulation (3)

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>.