



# National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 3)<sup>1</sup>

## Select Legislative Instrument 2010 No. 303

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

Dated 24 November 2010

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

BILL SHORTEN  
Assistant Treasurer

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**1 Name of Regulations**

These Regulations are the *National Consumer Credit Protection Legislation Amendment Regulations 2010 (No. 3)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**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*.

**5**      **Amendment of *National Consumer Credit Protection (Fees) Regulations 2010***

Schedule 3 amends the *National Consumer Credit Protection (Fees) Regulations 2010*.

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## Schedule 1      **Amendments of *National Consumer Credit Protection Regulations 2010***

(regulation 3)

**[1]      Subregulation 3 (1), definition of *exempt special purpose funding entity***

*after*

regulation 23B

*insert*

or 23C

**[2]      Subregulation 9AA (2)**

*omit*

notify ASIC, in an approved form, that

*insert*

lodge with ASIC a notice, in an approved form, stating that

**[3]      Paragraph 9AA (3) (b)**

*omit*

notify ASIC

*insert*

lodge with ASIC a notice, in an approved form and stating that the service agreement was entered into,

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**[4] Paragraph 9AA (4) (a)**

*omit*

notify ASIC, in an approved form, that

*insert*

lodge with ASIC a notice, in an approved form, stating that

**[5] Paragraph 9AA (4) (b)**

*omit*

notify ASIC

*insert*

lodge the notice

**[6] Paragraph 9AA (5) (a)**

*omit*

notify ASIC, in an approved form, of

*insert*

lodge with ASIC a notice, in an approved form, setting out

**[7] Paragraph 9AA (5) (b)**

*omit*

notify ASIC

*insert*

lodge the notice

**[8] Paragraph 19 (2) (a)**

*after*

auditor

*insert*

or an authorised audit company

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**[9] Paragraph 19 (3) (b)***omit*

notify ASIC

*insert*

lodge with ASIC a notice, in the approved form,

**[10] Paragraph 19 (5) (b)***omit*

notify ASIC

*insert*

lodge with ASIC a notice, in the approved form,

**[11] Part 2-4, Subdivision 1.1, heading***substitute***Subdivision 1.1 Persons exempt from being licensed****[12] Subregulation 20 (3)***substitute*

(3) A person is exempted if:

(a) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a trustee within the meaning of the *Bankruptcy Act 1966*; or

(ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee; or

(b) the person engages in a credit activity while:

(i) performing functions, or exercising powers, as a controller within the meaning of the *Corporations Act 2001*, provisional liquidator, or liquidator (whether appointed by a court or otherwise); or

- 
- (ii) performing functions, or exercising powers, incidental to the person's appointment as a controller, provisional liquidator or liquidator; or
  - (c) the person engages in a credit activity while performing functions, or exercising powers, as a person appointed by a court to engage in a credit activity; or
  - (d) the person engages in a credit activity while performing functions, or exercising powers, as the Public Trustee acting under a law of a State or Territory; or
  - (e) the person engages in a credit activity while:
    - (i) performing functions, or exercising powers, as an administrator within the meaning of the *Corporations Act 2001*; or
    - (ii) performing functions, or exercising powers, incidental to the person's appointment as an administrator; or
  - (f) the person engages in a credit activity while:
    - (i) performing functions, or exercising powers, as a controlling trustee within the meaning of section 187 of the *Bankruptcy Act 1966*; or
    - (ii) performing functions, or exercising powers, incidental to the person's appointment as a controlling trustee; or
  - (fa) the person engages in a credit activity while:
    - (i) performing functions, or exercising powers, as a trustee of a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*; or
    - (ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee of a personal insolvency agreement; or
  - (g) the person engages in a credit activity while:
    - (i) performing functions, or exercising powers, as a trustee or person administering a compromise or arrangement between a body corporate and another person or person; or
    - (ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee or person of that kind; or

- 
- (h) the person engages in a credit activity while performing functions, or exercising powers, as a personal representative of a deceased person other than a deceased licensee; or
  - (i) subject to subregulation (4), the person engages in a credit activity while performing functions, or exercising powers, as a personal representative of a deceased licensee; or
  - (j) the person engages in a credit activity while performing functions, or exercising powers, as a registered debt agreement administrator preparing and administering a debt agreement under Part IX of the *Bankruptcy Act 1966*; or
  - (k) the person engages in a credit activity while:
    - (i) performing functions, or exercising powers, as a registered trustee under Part X of the *Bankruptcy Act 1966* in the ordinary course of activities as a registered trustee that is reasonably regarded as a necessary part of those activities; or
    - (ii) performing functions, or exercising powers, incidental to the person's appointment as a registered trustee; or
  - (l) the person engages in a credit activity while:
    - (i) performing functions, or exercising powers, as a registered liquidator within the meaning of the *Corporations Act 2001* in the ordinary course of activities as a registered liquidator that is reasonably regarded as a necessary part of those activities; or
    - (ii) performing functions, or exercising powers, incidental to the person's appointment as a registered liquidator.

**[13] Sub-subparagraph 21 (3) (c) (i) (B)**

*omit*

subparagraph (i);

*insert*

sub-subparagraph (A);



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**[14] Subregulation 23C (3), note 1**

*omit*

the fund raising special purpose entity

*insert*

the securitisation entity

**[15] Paragraph 24 (1) (a)**

*omit*

Part 5 of Schedule 2 to the Transitional Act

*insert*

Part 2-6 of the Act

**[16] Part 2-4, after Subdivision 1.2**

*insert*

**Subdivision 1.3 Persons exempt from matters other than  
being licensed**

**24A ADI or registrable corporation exempt from  
responsible lending contract obligations — loan  
application received before 1 January 2011**

- (1) For paragraph 164 (a) of the Act, this regulation exempts certain persons engaging in a credit activity from Parts 3-2 and 3-4 of the Act.
- (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

*Applications for credit or consumer lease made before  
1 January 2011*

- (3) A person is exempted if the person:
- (a) is an ADI or a registrable corporation under the *Financial Sector (Collection of Data) Act 2001*; and
  - (b) engages in the credit activity in relation to an application for credit or a consumer lease which the person received from a consumer during the period starting on 1 October 2010 and ending on 31 December 2010.
- (4) The exemption ceases on 1 April 2011.

**[17] Subparagraph 25 (5) (c) (ii)**

*after*

the consumer's name

*insert*

and contact details

**[18] After regulation 25J**

*insert*

**25K Modification — credit card contracts**

- (1) For paragraph 164 (d) of the Act, this regulation applies to a licensee that enters into a credit contract with a consumer in the form of issuing a credit card.
- (2) The provisions of the Act to which Part 3-7 of the Act applies apply as if paragraph 128 (a) were modified to read:
- ‘(a) provide a consumer with a credit card for the purpose of entering a credit contract that is formed or entered by:
    - (i) the use by a consumer of the credit card to obtain credit from the licensee; or
    - (ii) the activation by a consumer of the credit card by arrangement with the licensee;’.

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**25L Modification — assignees of credit providers, lessors, mortgagees and beneficiaries of a guarantee**

For paragraph 164 (d) of the Act, the provisions of the Act to which Part 3-7 of the Act applies apply as if section 10 were modified by adding the following subsection after subsection 10 (2):

- ‘(3) A person mentioned in paragraph (1)(b) is not a credit provider, lessor, mortgagee or beneficiary of a guarantee under a credit contract, consumer lease, mortgage or guarantee while the original credit provider, lessor, mortgagee or beneficiary of the guarantee under the credit contract, consumer lease, mortgage or guarantee continues to receive payments from the debtor, or would continue to do so if the debtor complied with the credit contract, consumer lease, mortgage or guarantee.’.

**[19] Sub-subparagraph 28A (1) (a) (i) (B)**

*substitute*

- (B) holds an Australian credit licence, or has applied for an Australian credit licence in an application on which ASIC has not made a decision; and

**[20] Subparagraph 28A (1) (b) (ii)**

*substitute*

- (ii) holds an Australian credit licence or has applied for an Australian credit licence;

**[21] Paragraph 28A (1) (c)**

*substitute*

- (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 and any letter or other material;

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**[22] Subparagraph 28A (1) (d) (i)***substitute*

- (i) provides credit assistance in relation to a credit contract connected with the agreement mentioned in paragraph (c) between the credit provider and the provider of credit assistance; and

**[23] Subregulation 28A (2)***substitute*

- (2) The credit assistance provider is exempted from Division 4 and Division 6 of Part 3-1 of the Act in relation to:
  - (a) a credit contract connected with the agreement mentioned in paragraph (1) (c) between the credit provider and the provider of credit assistance; and
  - (b) an increase in the credit limit of the credit contract.
- (3) Despite subregulation (2):
  - (a) the credit assistance provider is jointly and severally liable with the credit provider to pay any compensation which the credit provider is ordered to pay to the consumer under section 178 of the Act as a consequence of a breach by the credit provider of Division 4 of Part 3-2 of the Act in relation to a credit contract (including an increase in the credit limit of a contract) connected with the agreement mentioned in paragraph (1) (c) between the credit provider and the provider of credit assistance; and
  - (b) without prejudice to any other rights or remedies to which a credit provider may be entitled, the credit assistance provider is entitled to be indemnified by the credit provider against any loss or damage suffered by the credit assistance provider through the operation of paragraph (a).

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**[24] After regulation 65B**

*insert*

**65C Residential investment property loans — exemption from Code**

The Code does not apply to the provision of credit if:

- (a) the credit is provided for the purpose of investment in residential property; and
- (b) the credit is not provided for the purpose of investment in a single residence; and
- (c) the total amount if the credit provided, or to be provided, is more than \$5 000 000.

*Note* Subsection 6 (13) of the Code provides that the regulations may exclude the provision of credit of any class from the Code.

**[25] Schedule 2, item 2.23, inserted subsection 49 (3A) of the Act, subheading**

*substitute*

*Requirement to lodge audit report*

**[26] Schedule 2, item 2.23, inserted subsection 49 (3A) of the Act**

*omit*

provide to ASIC

*insert*

lodge with ASIC

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**[27] Schedule 2, item 2.25, inserted subsection 49 (10) of the Act**

*omit*

provide the audit report to ASIC

*insert*

lodge the audit report with ASIC

**[28] Schedule 2, item 2.27, substituted section 52 of the Act, heading**

*substitute*

**52 Obligation to lodge certain matters with ASIC**

**[29] Schedule 2, item 2.27, substituted subsection 52 (1) of the Act, subheading**

*substitute*

*Requirement to lodge report of contravention or likely contravention*

**[30] Schedule 2, item 2.27, substituted subsection 52 (1) of the Act**

*omit*

give ASIC a written report

*insert*

lodge a written report with ASIC

**[31] Schedule 2, item 2.39, inserted section 75 of the Act, heading**

*substitute*

**75 Lodgment obligations for prescribed unlicensed carried over instrument lender**

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**[32] Schedule 2, item 2.39, inserted subsection 75 (1) of the Act**

*substitute*

- (1) If a licensee or registered person is appointed by a prescribed unlicensed carried over instrument lender to act on the lender's behalf, the lender must lodge with ASIC, no later than 15 business days after the appointment is made:
- (a) a copy of the appointment under section 74; and
  - (b) a document, in an approved form, setting out the following information:
    - (i) the basis, under section 5A, on which the lender is a prescribed unlicensed carried over instrument lender;
    - (ii) the licensee's or registered person's name (including the licensee's or registered person's principal business name if any);
    - (iii) the postal address of the licensee or registered person;
    - (iv) if the principal business address of the licensee or registered person is different from the postal address—the principal business address.

Civil penalty: 2,000 penalty units.

**[33] Schedule 2, item 2.39, inserted subsection 75B (1) of the Act**

*substitute*

- (1) If a person is a prescribed unlicensed carried over instrument lender because a matter mentioned in subsection 5A (1) applies to the person and the matter ceases to apply to the person, the person must lodge with ASIC a notice, in an approved form and no later than 15 business days after the day on which the matter ceases to apply to the person, that the matter has ceased to apply to the person.

Civil penalty: 2,000 penalty units.

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**[34] Schedule 2, item 2.39, inserted section 76 of the Act, heading**

*substitute*

**76 Lodgement obligation for licensee or registered person acting on behalf of prescribed unlicensed carried over instrument lender**

**[35] Schedule 2, item 2.39, inserted subsection 76 (1) of the Act**

*omit*

notify ASIC in an approved form of the appointment

*insert*

lodge with ASIC a notice, in an approved form, of the appointment

**[36] Schedule 3, item 3.24, inserted section 112 of the Act**

*omit*

proposed

**[37] Schedule 3, item 3.24, inserted paragraph 112 (a) of the Act**

*omit*

will be

*insert*

is or will be



---

**[38] Schedule 3, item 3.45, inserted section 159A of the Act**

*after*

a credit provider

*insert*

or lessor

**[39] Schedule 3, item 3.45, inserted paragraph 159A (a) of the Act**

*after*

the credit provider

*insert*

or lessor

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

(regulation 4)

**[1]      Subregulation 10A (2)**

*omit*

notify ASIC, in an approved form, that

*insert*

lodge with ASIC a notice, in an approved form, stating that

**[2]      Paragraph 10A (3) (b)**

*omit*

notify ASIC

*insert*

lodge with ASIC a notice, in an approved form and stating that the service agreement was entered into,

**[3]      Paragraph 10A (4) (a)**

*omit*

notify ASIC, in an approved form, that

*insert*

lodge with ASIC a notice, in an approved form, stating that

---

**[4] Paragraph 10A (4) (b)**

*omit*

notify ASIC

*insert*

lodge the notice

**[5] Paragraph 10A (5) (a)**

*omit*

notify ASIC, in an approved form, of

*insert*

lodge with ASIC a notice, in an approved form, setting out

**[6] Paragraph 10A (5) (b)**

*omit*

notify ASIC

*insert*

lodge the notice

**[7] Subregulation 11 (3)**

*substitute*

(3) A person is exempted if:

(a) the person engages in a credit activity while:

- (i) performing functions, or exercising powers, as a trustee within the meaning of the *Bankruptcy Act 1966*; or
- (ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee; or

- (b) the person engages in a credit activity while:
  - (i) performing functions, or exercising powers, as a receiver, receiver and manager, provisional liquidator, or liquidator (whether appointed by a court or otherwise); or
  - (ii) performing functions, or exercising powers, incidental to the person's appointment as a receiver, receiver and manager, provisional liquidator or liquidator; or
- (c) the person engages in a credit activity while performing functions, or exercising powers, as a person appointed by a court to engage in a credit activity; or
- (d) the person engages in a credit activity while performing functions, or exercising powers, as the Public Trustee acting under a law of a State or Territory; or
- (e) the person engages in a credit activity while:
  - (i) performing functions, or exercising powers, as an administrator within the meaning of the *Corporations Act 2001*; or
  - (ii) performing functions, or exercising powers, incidental to the person's appointment as an administrator; or
- (f) the person engages in a credit activity while:
  - (i) performing functions, or exercising powers, as a controlling trustee within the meaning of section 187 of the *Bankruptcy Act 1966*; or
  - (ii) performing functions, or exercising powers, incidental to the person's appointment as a controlling trustee; or
- (g) the person engages in a credit activity while:
  - (i) performing functions, or exercising powers, as a trustee or person administering a compromise or arrangement between a body corporate and another person or person; or
  - (ii) performing functions, or exercising powers, incidental to the person's appointment as a trustee or person of that kind; or

- 
- (h) the person engages in a credit activity while performing functions, or exercising powers, as a personal representative of a deceased person other than a deceased licensee; or
  - (i) subject to subregulation (4), the person engages in a credit activity while performing functions, or exercising powers, as a personal representative of a deceased licensee; or
  - (j) the person engages in a credit activity while performing functions, or exercising powers, as a registered debt agreement administrator preparing and administering a debt agreement under Part IX of the *Bankruptcy Act 1966*.

**Schedule 3 Amendments of *National Consumer Credit Protection (Fees) Regulations 2010***

(regulation 5)

**[1] Schedule 1, Table 1**

*after each mention of*  
the applicant

*insert*

or the licensee

**[2] Schedule 1, Table 1, column 3, paragraph (b)**

*after*

total amount of credit

*insert*

, or the total amount of rent payable by consumers under  
consumer leases,

**[3] Schedule 1, Table 1, column 3, paragraph (c)**

*omit*

a loan being made

*insert*

the provision of credit

**[4] Schedule 1, item 2.2**

*omit*

a notice to a licensee to provide

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**[5] Schedule 1, items 2.4 and 2.5**

*omit*

**[6] Schedule 1, after item 2.9**

*insert*

2.9A	Lodgment of a report under section 104 of the National Credit Act	no fee
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**[7] Schedule 1, after item 2.14**

*insert*

2.14A	Lodgment of an application for relief under subsection 171 (4) of Schedule 1 to the National Credit Act (the National Credit Code)	\$100
2.14B	Lodgment of an application for relief under subsection 171 (6) of Schedule 1 to the National Credit Act (the National Credit Code)	\$100
2.14C	Lodgment of an application for relief under subsection 203A (1) of Schedule 1 to the National Credit Act (the National Credit Code)	\$100
2.14D	Lodgment of an application for relief under subsection 203A (3) of Schedule 1 to the National Credit Act (the National Credit Code)	\$100

**[8] Schedule 1, item 2.23A**

*substitute*

2.23A	Lodgment of information under a provision of: (a) the National Credit Regulations; or (b) the National Credit Act as modified by a provision of the National Credit Regulations; that relates to an unlicensed carried over lender	no fee
2.23AA	Lodgment of notification of appointment under subregulation 19 (3) of the National Credit Regulations	no fee

2.23AB Lodgment of notification of appointment under subregulation 19 (5) of the National Credit Regulations no fee

**[9] Schedule 1, items 2.23F and 2.23G**

*substitute*

2.23F Lodgment of information under a provision of: no fee  
(a) the National Credit Regulations; or  
(b) the National Credit Act as modified by a provision of the National Credit Regulations;  
that relates to a special purpose funding entity

**[10] Schedule 1, item 2.23K**

*omit*

carried over instruments

*insert*

an unlicensed carried over instrument lender

**[11] Schedule 1, after item 2.23K**

*insert*

2.23L Lodgment of information under a provision of the Transitional Regulations that relates to a special purpose funding entity no fee

**[12] Schedule 2, item 1, paragraph (c)**

*substitute*

- (c) a registered person; or
- (d) a person or entity whose details are included in any other register that ASIC is required to keep under the National Credit Act or the Transitional Act



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**[13] Schedule 2, item 1**

*omit*

If the extract includes particulars in relation to more than 1 licensee, credit representative or registered person, a separate fee is applicable for each licensee, credit representative or registered person

*insert*

If the extract includes particulars in relation to more than 1 person or entity, a separate fee is applicable for each person or entity

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**Note**

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