



ASIC
Australian Securities &
Investments Commission

ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 28 September 2020

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under item 41 of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

4 Definitions

In this instrument:

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

Part 2—Declaration

5 Notice requirement

- (1) Part 3 of Schedule 2 to the Transitional Credit Act applies in relation to all persons as if that Part were modified or varied by, after item 19, inserting:

“19A Obligation on certain persons to give notice to ASIC

- (1) Subitem (2) applies to a person (*lender*) who is a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 if both of the following apply:
- (a) the lender is a credit provider or lessor in relation to the carried over instrument at any time after 30 June 2010;
 - (b) the lender is neither of the following:
 - (i) a licensee;
 - (ii) a person exempt from the requirement to hold a licence under the National Credit Act.
- (2) The lender must lodge with ASIC a notice in the approved form containing 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) whether the lender is a member of the AFCA scheme;

- (h) an estimate of the date on which the longest running carried over instrument will be finalised, if payments are made in accordance with the terms of the instrument;
- (i) if the lender is a prescribed unlicensed carried over instrument lender—the grounds on which the lender is a prescribed unlicensed carried over instrument lender; and
- (j) any other information requested by ASIC.

The notice must be lodged with ASIC on the first day paragraphs (1)(a) and (b) both apply in relation to the lender.

Civil penalty: 2,000 penalty units.

- (3) The lender does not have to comply with subitem (2) if the lender has lodged the notice with ASIC up to 6 weeks before it must be so lodged under that subitem.
- (4) The information contained in the notice must be current at the date the notice is lodged with ASIC.

Offence

- (5) A person commits an offence if:
 - (a) the person is subject to a requirement under subitem (2); 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

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

Criminal penalty: 10 penalty units

- (7) Subitem (6) is an offence of strict liability.

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

- Note 1: The declaration in this instrument substantially produces the effect that item 39A of Schedule 2 to the Transitional Credit Act (as notionally inserted by regulation 16E of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010* as in force on 24 May 2010) would have had but for some drafting anomalies. As a result of those anomalies, that item did not have any operation.
- Note 2: A prescribed unlicensed carried over instrument lender is defined in subsection 5(1) and section 5A of the *National Consumer Credit Protection Act 2009* (as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*).