

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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

No. , 2009

(Treasury)

**A Bill for an Act to deal with transitional and
consequential matters in connection with the
National Consumer Credit Protection Act 2009, and
for related purposes**

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1 **A Bill for an Act to deal with transitional and**
2 **consequential matters in connection with the**
3 ***National Consumer Credit Protection Act 2009*, and**
4 **for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *National Consumer Credit Protection*
10 (*Transitional and Consequential Provisions*) Act 2009.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 7 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	At the same time as section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.	
3. Schedule 2	The later of: (a) the day on which this Act receives the Royal Assent; and (b) the day on which section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 3	At the same time as section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Part 2—Dictionary

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4 Dictionary

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(1) In this Act:

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appeal or review proceedings, in relation to an order of a court or tribunal, means proceedings by way of appeal, or otherwise seeking review, of the order.

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carried over provision of the old Credit Code of a referring State or a Territory means a provision of the old Credit Code of that State or Territory that:

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- (a) was in force immediately before commencement; and
- (b) corresponds to a provision of the new Credit Code.

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civil penalty provision: a subitem of a Schedule to this Act (or an item of a Schedule to this Act that is not divided into subitems) is a ***civil penalty provision*** if:

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- (a) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subitem (or item); or
- (b) another provision of this Act specifies that the subitem (or item) is a civil penalty provision.

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commencement means the day section 3 of the National Credit Act commences.

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contract or other instrument includes credit contracts, mortgages, guarantees, consumer leases and sale contracts.

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corresponds: see section 5.

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enforcement proceedings, in relation to an order made by a court or tribunal, means:

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- (a) proceedings to enforce the order; or
- (b) any other proceedings in relation to a contravention of the order.

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interlocutory application means an application that:

- (a) is made during the course of proceedings; and

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- 1 (b) is for an order that is incidental to the principal object of
2 those proceedings, including, for example:
3 (i) an order about the conduct of those proceedings; or
4 (ii) an order assisting a party to those proceedings to present
5 their case in those proceedings; or
6 (iii) an order protecting or otherwise dealing with property
7 that is the subject matter of those proceedings;
8 but not including an order making a final determination of
9 existing rights or liabilities.

10 ***interlocutory order*** means:

- 11 (a) an order made in relation to an interlocutory application; or
12 (b) an order or direction about the conduct of proceedings.

13 ***interlocutory proceedings*** means proceedings:

- 14 (a) dealing only with; or
15 (b) to the extent it deals with;
16 an interlocutory application.

17 ***liability*** includes a duty or obligation.

18 ***made*** includes issued, given or published.

19 ***National Credit Act*** means the *National Consumer Credit*
20 *Protection Act 2009* and includes instruments made under that Act.

21 ***new Credit Code*** means Schedule 1 to the National Credit Act and
22 includes:

- 23 (a) regulations made under section 329 of the National Credit
24 Act for the purposes of that Schedule; and
25 (b) instruments made under subsection 6(14) or (17) of that
26 Schedule.

27 ***old Credit Code*** means the following:

- 28 (a) for New South Wales—the Consumer Credit (New South
29 Wales) Code, and the Consumer Credit (New South Wales)
30 Regulations, within the meaning of the *Consumer Credit*
31 *(New South Wales) Act 1995* of New South Wales, as in force
32 from time to time before commencement;
33 (b) for Victoria—the Consumer Credit (Victoria) Code, and the
34 Consumer Credit (Victoria) Regulations, within the meaning

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- 1 of the *Consumer Credit (Victoria) Act 1995* of Victoria, as in
2 force from time to time before commencement;
- 3 (c) for Queensland—the Consumer Credit (Queensland) Code,
4 and the Consumer Credit (Queensland) Regulations, within
5 the meaning of the *Consumer Credit (Queensland) Act 1994*
6 of Queensland, as in force from time to time before
7 commencement;
- 8 (d) for Western Australia—the Consumer Credit (Western
9 Australia) Code, and the Consumer Credit (Western
10 Australia) Code Regulations, within the meaning of the
11 *Consumer Credit (Western Australia) Act 1996* of Western
12 Australia, as in force from time to time before
13 commencement;
- 14 (e) for South Australia—the Consumer Credit (South Australia)
15 Code, and the Consumer Credit (South Australia)
16 Regulations, within the meaning of the *Consumer Credit*
17 *(South Australia) Act 1995* of South Australia, as in force
18 from time to time before commencement;
- 19 (f) for Tasmania—the Consumer Credit (Tasmania) Code, and
20 the Consumer Credit (Tasmania) Regulations, within the
21 meaning of the *Consumer Credit (Tasmania) Act 1996* of
22 Tasmania, as in force from time to time before
23 commencement;
- 24 (g) for the Australian Capital Territory—the Consumer Credit
25 (Australian Capital Territory) Code, and the Consumer Credit
26 (Australian Capital Territory) Regulations, within the
27 meaning of the *Consumer Credit Act 1995* of the Australian
28 Capital Territory, as in force from time to time before
29 commencement;
- 30 (h) for the Northern Territory—the Consumer Credit (Northern
31 Territory) Code, and the Consumer Credit (Northern
32 Territory) Regulations, within the meaning of the *Consumer*
33 *Credit (Northern Territory) Act 1995* of the Northern
34 Territory, as in force from time to time before
35 commencement.

36 ***old right or liability***: see subitem 11(1) or 12(1) of Schedule 1 to
37 this Act.

38 ***order*** of a court or tribunal includes any judgment, conviction or
39 sentence of the court or tribunal.

1 **preserved instrument** means an instrument that, because of item 10
2 of Schedule 1 to this Act, has effect after commencement as if it
3 were made under the new Credit Code.

4 **primary proceedings** means proceedings other than interlocutory
5 proceedings.

6 **proceedings** means proceedings, whether criminal or civil, before a
7 court or tribunal.

8 **registered** means registered under item 12 of Schedule 2 to this
9 Act.

10 **registered person** means a person who is registered under item 12
11 of Schedule 2 to this Act.

12 **registered to engage in a credit activity:** a person is registered to
13 engage in a credit activity if the person is registered, and the
14 registration authorises the person to engage in the credit activity.

15 **registration** means registration under item 12 of Schedule 2 to this
16 Act.

17 **representative** of a person means:

- 18 (a) if the person is a registered person:
- 19 (i) a credit representative of the registered person; or
 - 20 (ii) an employee or director of the registered person; or
 - 21 (iii) an employee or director of a related body corporate of
22 the registered person; or
 - 23 (iv) any other person acting on behalf of the registered
24 person; or
- 25 (b) in any other case:
- 26 (i) an employee or director of the person; or
 - 27 (ii) an employee or director of a related body corporate of
28 the person; or
 - 29 (iii) any other person acting on behalf of the person.

30 **right** includes an interest or status.

31 **sale contract:** has the same meaning as in section 125 of the new
32 Credit Code.

1 *substituted right or liability*: see subitem 11(2) or 12(3) of
2 Schedule 1 to this Act.

3 *this Act* includes instruments made under this Act.

4 *tribunal* means tribunal in Australia.

5 (2) In this Act, expressions that are defined in the National Credit Act
6 (other than in the new Credit Code) have the same meanings as
7 they have in that Act.

8 **5 Meaning of *corresponds***

9 (1) A provision (the *old provision*) of the old Credit Code of a
10 referring State or a Territory *corresponds* to a provision (the *new*
11 *provision*) of the new Credit Code (and vice versa) if:

12 (a) the old provision and the new provision are substantially the
13 same, unless the regulations specify that the 2 provisions do
14 not correspond; or

15 (b) the regulations specify that the 2 provisions correspond.

16 Note: The range of provisions of the new Credit Code that may be
17 corresponding provisions for the purposes of this Act is affected by
18 item 12 of Schedule 1 to this Act, which takes certain provisions of
19 the old Credit Code to be included in the new Credit Code.

20 (2) For the purposes of paragraph (1)(a), differences of all or any of
21 the following kinds are not sufficient to mean that 2 provisions are
22 not substantially the same:

23 (a) differences in the numbering of the provisions;

24 (b) differences of a minor technical nature (for example,
25 differences in punctuation, or differences that are attributable
26 to the correction of incorrect cross references) or of style;

27 (c) the fact that:

28 (i) the old provision allowed a tribunal to exercise powers
29 but the new provision only allows a court to do so; or

30 (ii) the old provision allowed proceedings to be brought in a
31 tribunal but the new provision only allows proceedings
32 to be brought in a court; or

33 (iii) the old provision allowed or required a particular
34 agency to exercise powers or perform functions but the
35 new provision allows or requires ASIC to do so;

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- 1 (d) other differences that are attributable to the fact that the new
2 Credit Code applies as a Commonwealth law;
3 (e) other differences of a kind prescribed by the regulations.
- 4 (3) Subsection (2) is not intended to otherwise limit the circumstances
5 in which 2 provisions are, for the purposes of paragraph (1)(a),
6 substantially the same.
- 7 (4) The regulations may provide that a specified provision of the old
8 Credit Code of a referring State or a Territory does, or does not,
9 correspond to a specified provision of the new Credit Code.

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Part 3—Other matters

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6 Regulations may deal with transitional matters

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- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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- (2) 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.

The regulations have effect despite anything else in this Act.

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- (3) The regulations may provide that certain provisions of this Act are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under this section may be expressed to take effect from a date before the regulations are registered under that Act.

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- (5) If:
- (a) regulations are expressed to take effect from a date (the **registration date**) before the regulations are registered under the *Legislative Instruments Act 2003*; and
 - (b) a person engaged in conduct before the registration date; and
 - (c) apart from the retrospective effect of the regulations, the conduct would not have contravened:
 - (i) this Act; or
 - (ii) the National Credit Act (including the new Credit Code) as it applies because of this Act;

1 then a court must not convict the person of an offence, or order the
2 person to pay a pecuniary penalty, in relation to the conduct on the
3 grounds that it contravened either of those Acts.

4 (6) The provisions of this Act that provide for regulations to deal with
5 matters do not limit each other.

6 **7 Acquisition of property**

7 (1) A provision of this Act does not apply, and is taken never to have
8 applied, to the extent that the operation of the provision would
9 result in an acquisition of property from a person otherwise than on
10 just terms.

11 (2) In subsection (1), *acquisition of property* and *just terms* have the
12 same meanings as in paragraph 51(xxxi) of the Constitution.

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Schedule 1—Transition from the old Credit Codes to the National Credit Act

Part 1—Introduction

1 Guide to this Schedule

This Schedule deals with the transition from the regime provided for in the old Credit Codes of the referring States and the Territories to the new regime provided for in the National Credit Act (including the new Credit Code) and Schedule 2 to this Act.

Regulations made under section 6 may also deal with that transition. Those regulations may provide for matters in addition to those provided in this Schedule and they may modify how this Schedule applies.

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2 **Part 2—Transition from the old Credit Codes to the**
3 **new Credit Code**

4 **Division 1—Object of this Part**

5 **2 Object of this Part**

6 (1) The object of this Part is to provide for a smooth transition from the
7 regime provided for in the old Credit Code of a referring State or a
8 Territory to the regime provided for in the new Credit Code, so that
9 natural persons, bodies corporate and other bodies are, to the greatest
10 extent possible, put in the same position immediately after
11 commencement as they would have been if:

12 (a) that old Credit Code had, from time to time when it was in
13 force, been valid Commonwealth legislation applying in that
14 State or Territory; and

15 (b) the new Credit Code (to the extent it contains provisions that
16 correspond to provisions of the old Credit Code as in force
17 immediately before commencement) were a continuation of
18 that old Credit Code as so applying.

19 Note: The new Credit Code contains provisions that correspond to many of the provisions of
20 the old Credit Code.

21 (2) In resolving any ambiguity as to the meaning of any of the other
22 provisions of this Part, an interpretation that is consistent with the object
23 of this Part is to be preferred to an interpretation that is not consistent
24 with that object.

25 **Division 2—Treatment of contracts and other**
26 **instruments made before commencement**

27 **3 Application of the new Credit Code**

28 (1) The new Credit Code does not apply in relation to a contract or other
29 instrument that was made before commencement.

30 (2) Despite subitem (1), the new Credit Code applies in relation to a
31 contract or other instrument (the *old instrument*) that:

32 (a) was made before commencement; and

Schedule 1 Transition from the old Credit Codes to the National Credit Act

Part 2 Transition from the old Credit Codes to the new Credit Code

- 1 (b) was in force immediately before commencement; and
2 (c) the old Credit Code of a referring State or a Territory applied
3 to immediately before commencement;

4 in the same way it would apply if the old instrument had been made
5 after commencement.

- 6 (3) Despite subitem (2), the following provisions of the new Credit Code do
7 not apply to the old instrument:
8 (a) section 5;
9 (b) subsection 6(2);
10 (c) section 13;
11 (d) subsections 50(2), (3), (4), (5) and (8);
12 (e) subsections 72(5) and 94(4);
13 (f) section 172.

14 (4) Sections 6, 11 and 150 of the old Credit Code of a referring State or a
15 Territory, as in force immediately before commencement, apply to the
16 old instrument after commencement as if those provisions were
17 sections 5, 13 and 172 of the new Credit Code.

18 (5) The following provision applies to the old instrument after
19 commencement as if the provision were subsection 72(5) of the new
20 Credit Code:

21 *Application*

22 (5) This section and sections 73 to 75 do not apply to a credit contract
23 under which the maximum amount of credit that is or may be
24 provided is more than an amount equal to 110% of the amount of
25 the average loan size for the purchase of new dwellings in New
26 South Wales as set out in the Table of Housing Finance
27 Commitments in the most recent publication entitled *Housing*
28 *Finance, Australia*, as published from time to time by the
29 Australian Bureau of Statistics.

30 (6) The following provision applies to the old instrument after
31 commencement as if the provision were subsection 94(4) of the new
32 Credit Code:

33 (4) This Division does not apply to a credit contract in respect of
34 which the maximum amount of credit that is or may be provided is
35 more than an amount equal to 110% of the amount of the average

1 loan size for the purchase of new dwellings in New South Wales as
2 set out in the Table of Housing Finance Commitments in the most
3 recent publication entitled *Housing Finance, Australia*, as
4 published from time to time by the Australian Bureau of Statistics.

5 **Division 3—Treatment of court and tribunal proceedings**
6 **and orders**

7 **4 Treatment of proceedings brought in a court under the old**
8 **Credit Code before commencement**

- 9 (1) This item applies to proceedings (the *old proceedings*) in relation to
10 which the following paragraphs are satisfied:
- 11 (a) the proceedings were brought in a court before
12 commencement;
 - 13 (b) the proceedings were brought in relation to a provision (the
14 *old provision*) of the old Credit Code of a referring State or a
15 Territory;
 - 16 (c) the proceedings were not enforcement proceedings, or appeal
17 or review proceedings, in relation to an order of a court;
 - 18 (d) the proceedings had not been concluded or terminated before
19 commencement;
 - 20 (e) either:
 - 21 (i) if the proceedings are primary proceedings—no final
22 determination of any of the existing rights or liabilities
23 at issue in the proceedings had been made before
24 commencement; or
 - 25 (ii) if the proceedings are interlocutory proceedings—this
26 item applies to the primary proceedings to which the
27 interlocutory proceedings relate.

28 Note: This item does not apply to proceedings in a tribunal that were brought under the old
29 Credit Code before commencement. For proceedings in a tribunal, see item 6.

- 30 (2) Proceedings (the *new proceedings*) equivalent to the old proceedings
31 are, on commencement, taken to have been brought in the same court,
32 exercising federal jurisdiction under the provision of the new Credit
33 Code that corresponds to the old provision.

34 Note: This means that the new proceedings will stay in the same court as the old proceedings,
35 but the court will now be exercising federal jurisdiction for the new proceedings.

Schedule 1 Transition from the old Credit Codes to the National Credit Act

Part 2 Transition from the old Credit Codes to the new Credit Code

1 (3) To the extent that the old proceedings, before commencement, related to
2 old rights or liabilities, the new proceedings relate to the substituted
3 rights and liabilities in relation to those old rights or liabilities.

4 Note 1: See items 11 and 12 for the creation of substituted rights and liabilities.

5 Note 2: In all cases, there will be a provision of the new Credit Code that corresponds to the
6 relevant old provision, either because the new Credit Code actually contains a provision
7 that corresponds to the relevant old provision or because the new Credit Code, because
8 of item 12, is taken to include the relevant old provision.

9 (4) The following provisions apply in relation to the new proceeding:

10 (a) the parties to the new proceedings are the same as the parties
11 to the old proceedings;

12 (b) subject to subitems (5) and (6) and to any order to the
13 contrary made by the court, the court must deal with the new
14 proceedings as if the steps that had been taken for the
15 purposes of the old proceedings before commencement had
16 been taken for the purposes of the new proceedings.

17 (5) If:

18 (a) an interlocutory order was made before commencement for
19 the purpose of, or in relation to, the old proceedings; and

20 (b) that interlocutory order was in force immediately before
21 commencement;

22 the rights and liabilities of all persons (including rights and liabilities
23 arising wholly or partly because of conduct occurring before
24 commencement) are taken to be, for all purposes, the same as if the
25 interlocutory order had instead been made by the same court, in the
26 exercise of federal jurisdiction, for the purpose of, or in relation to, the
27 new proceedings.

28 (6) The court may make orders doing all or any of the following:

29 (a) cancelling or varying rights or liabilities that a person has
30 because of subitem (5);

31 (b) substituting other rights or liabilities for rights or liabilities a
32 person has because of subitem (5);

33 (c) adding rights or liabilities to the rights or liabilities a person
34 has because of subitem (5);

35 (d) enforcing, or otherwise dealing with conduct contrary to, a
36 right or liability a person has because of subitem (5) in the
37 same way as it could enforce, or deal with, the right, liability
38 or conduct if the right or liability had arisen under or because

1 of an order made by the court in the exercise of federal
2 jurisdiction under the new Credit Code.

3 **5 References to court proceedings and orders in the new**
4 **Credit Code**

5 (1) A reference in the new Credit Code to the bringing of proceedings, or
6 the taking of a step in proceedings, in a court under or in relation to a
7 provision of the new Credit Code includes a reference to the bringing of
8 proceedings, or the taking of the equivalent step in proceedings, in a
9 court before commencement under or in relation to the corresponding
10 provision of the old Credit Code of a referring State or a Territory.

11 Note: This subitem only relates to proceedings in a court (not proceedings in a tribunal). For
12 proceedings in a tribunal, see item 6.

13 (2) A reference in the new Credit Code to an order made by a court under
14 or in relation to a provision of the new Credit Code includes a reference
15 to an order made by a court before commencement under or in relation
16 to the corresponding provision of the old Credit Code of a referring
17 State or a Territory.

18 Note: This subitem only relates to orders of a court (not orders of a tribunal). For orders of a
19 tribunal, see item 6.

20 (3) Nothing in subitem (2) is taken to produce a result that would:
21 (a) make a person liable, under the new Credit Code, to any
22 penalty (whether civil or criminal) provided for in an order
23 referred to in subitem (2); or
24 (b) enable enforcement proceedings, or appeal or review
25 proceedings, in relation to such an order to be taken in a court
26 under the new Credit Code; or
27 (c) enable proceedings by way of appeal, or other review, of
28 such an order to be taken in a court under the new Credit
29 Code.

30 (4) If, after commencement, an order referred to in subitem (2) is varied or
31 set aside on appeal or review, subitem (2) applies, or is taken to have
32 applied, from the time from which the variation or setting aside takes or
33 took effect, as if:

34 (a) if the order is varied—the order had been made as so varied;
35 or
36 (b) if the order is set aside—the order had not been made.

- 1 (5) Despite, subitems (1) and (2), the regulations may provide that
2 subitem (1) or (2) does not apply in relation to a particular reference or
3 class of references in the new Credit Code.

4 **6 Treatment of tribunal proceedings and orders under the old**
5 **Credit Code before or after commencement**

- 6 (1) The new Credit Code does not apply in relation to:
7 (a) proceedings that are brought in a tribunal under the old
8 Credit Code of a referring State or a Territory before or after
9 commencement; or
10 (b) orders that are made by a tribunal under the old Credit Code
11 of a referring State or a Territory before or after
12 commencement; or
13 (c) rights or liabilities arising in relation to proceedings that are
14 brought in, or orders that are made by, a tribunal under the
15 old Credit Code of a referring State or a Territory before or
16 after commencement.
- 17 (2) This Act and the National Credit Act are not intended to exclude or
18 limit the operation of a law of a referring State or a Territory relating to:
19 (a) proceedings that are brought in a tribunal under the old
20 Credit Code of a referring State or a Territory before or after
21 commencement; or
22 (b) orders that are made by a tribunal under the old Credit Code
23 of a referring State or a Territory before or after
24 commencement; or
25 (c) rights or liabilities arising in relation to proceedings that are
26 brought in, or orders that are made by, a tribunal under the
27 old Credit Code of a referring State or a Territory before or
28 after commencement.

29 **7 Interlocutory proceedings**

30 For the purpose of this Part, if interlocutory proceedings (the *first*
31 *proceedings*) relate to other interlocutory proceedings (the *second*
32 *proceedings*), the first proceedings are taken to relate also to the
33 primary proceedings to which the second proceedings relate.

1 **Division 4—General transitional provisions relating to**
2 **other things done etc. under the old Credit**
3 **Code**

4 **8 Limitations on scope of this Division**

- 5 (1) This Division has effect subject to Divisions 2 and 3 (which deal with
6 matters in more specific terms).
- 7 (2) This Division does not apply in relation to:
8 (a) an order made by a court or tribunal before commencement;
9 or
10 (b) a right or liability under an order made by a court or tribunal
11 before commencement; or
12 (c) proceedings brought (including appeal, review or
13 enforcement proceedings) in a court or tribunal before
14 commencement, or a step in such proceedings; or
15 (d) a right to:
16 (i) appeal to a court or tribunal against an order made by a
17 court or tribunal before commencement; or
18 (ii) apply to a court or tribunal for review of such an order;
19 or
20 (iii) bring appeal or review proceedings, or enforcement
21 proceedings, in relation to such an order.
- 22 Note: Division 3 deals with orders and proceedings made or begun in courts or tribunals
23 before commencement, and with related matters.
- 24 (3) Despite paragraph (2)(c), items 11 and 12 apply to any right or liability
25 to which proceedings to which item 4 applies relate.
- 26 (4) Except as mentioned in subitems (1) to (3), Divisions 2 and 3, and
27 regulations made under section 6, do not limit this Division.

28 **9 Provisions of this Division may have an overlapping effect**

- 29 (1) This Division deals at a broad level with concepts and matters in a way
30 that is intended to achieve the object of this Part as set out in item 2.
- 31 (2) Some of the provisions of this Division will (depending on the
32 situation) have an effect that overlaps or interacts to some extent with
33 the effect of other provisions of this Division. This is intended, and the

1 provisions of this Division should be not be regarded as dealing with
2 mutually exclusive situations.

3 **10 Things done by or under carried over provisions continue**
4 **to have effect**

5 (1) A thing that:

6 (a) was done before commencement by, under, or for the
7 purposes of, a carried over provision of the old Credit Code
8 of a referring State or a Territory; and

9 (b) had an ongoing significance (see subitems (3) and (4))
10 immediately before commencement for the purposes of that
11 that Code;

12 has effect (and may be dealt with) after commencement, for the
13 purposes of the new Credit Code, as if it were done by, under, or for the
14 purposes of, the corresponding provision of the new Credit Code.

15 Note: This item does not apply in relation to things done before commencement that relate to
16 court or tribunal orders or proceedings: see subitem 8(2).

17 (2) Without limiting subitem (1), examples of things done include:

18 (a) the making of an instrument or order (but not including the
19 making of an order by a court or tribunal); and

20 (b) the making of an application or claim (but not including the
21 making of an application or claim to a court or tribunal); and

22 (c) the granting of an application or claim (but not including the
23 granting of an application or claim by a court or tribunal);
24 and

25 (d) the making of an appointment or delegation; and

26 (e) the commencement of a procedure or the taking of a step in a
27 procedure (but not including the bringing of proceedings in a
28 court or tribunal); and

29 (f) requiring a person to do, or not to do, something (but not
30 including a requirement contained in an order made by a
31 court or tribunal); and

32 (g) the giving of a notice or document.

33 (3) A thing done by, under, or for the purposes of, a carried over provision
34 of the old Credit Code of a referring State or a Territory had an **ongoing**
35 **significance** immediately before commencement for the purposes of
36 that Code if:

- 1 (a) if the thing done was the making of an instrument or order—
2 the instrument or order was still in force immediately before
3 commencement; or
4 (b) if the thing done was the making of an application or claim—
5 the application or claim had not been decided, and had not
6 otherwise ceased to have effect, before commencement; or
7 (c) if the thing done was the granting of an application or
8 claim—the thing granted had not been revoked, and had not
9 otherwise ceased to have effect, before commencement; or
10 (d) if the thing done was the making of an appointment or
11 delegation—the appointment or delegation had not been
12 revoked, and had not otherwise ceased to have effect, before
13 commencement; or
14 (e) if the thing done was the commencement of a procedure or
15 the taking of a step in a procedure—the procedure was still in
16 progress immediately before commencement or was
17 otherwise still having an effect; or
18 (f) if the thing done was requiring a person to do, or not to do
19 something—the requirement was still in force immediately
20 before commencement; or
21 (g) if the thing done was the giving of a notice or document, or
22 the doing of some other thing—the notice or document (or
23 the giving of the notice or document), or the thing (or the
24 doing of the thing), had an ongoing effect or significance
25 immediately before commencement for the purposes of the
26 old Credit Code of the State or Territory.
- 27 (4) Despite subitem (3), the regulations may provide that a specified thing
28 done under, or for the purposes of, a carried over provision of the old
29 Credit Code of a referring State or a Territory did, or did not, have an
30 ongoing significance immediately before commencement for the
31 purposes of that Code.

32 **11 Creation of equivalent rights and liabilities to those that**
33 **existed before commencement under carried over**
34 **provisions of the old Credit Code**

- 35 (1) This item applies in relation to a right or liability (the *old right or*
36 *liability*), whether civil or criminal, that:

Schedule 1 Transition from the old Credit Codes to the National Credit Act

Part 2 Transition from the old Credit Codes to the new Credit Code

1 (a) was acquired, accrued or incurred under a carried over
2 provision of the old Credit Code of a referring State or a
3 Territory; and

4 (b) was in existence immediately before commencement.

5 Note: This item does not apply in relation to a right or liability under orders made by a court
6 or tribunal before commencement: see subitem 8(2).

7 (2) On commencement, the person acquires, accrues or incurs a right or
8 liability (the *substituted right or liability*), equivalent to the old right or
9 liability, under the corresponding provision of the new Credit Code, as
10 if that provision applied to the conduct or circumstances that gave rise
11 to the old right or liability.

12 Note: If a time limit applied in relation to the old right or liability under the old Credit Code,
13 that same time limit (calculated from the same starting point) will apply under the new
14 Credit Code to the substituted right or liability: see subitem 13(3).

15 (3) A procedure, proceeding or remedy in relation to the substituted right or
16 liability may be brought after commencement under the new Credit
17 Code, as if that provision applied to the conduct or circumstances that
18 gave rise to the old right or liability.

19 Note: For pre-commencement proceedings in relation to substituted rights and liabilities, see
20 item 4.

21 **12 Creation of equivalent rights and liabilities to those that**
22 **existed before commencement under repealed**
23 **provisions of the old Credit Code**

24 (1) This item applies in relation to a right or liability (the *old right or*
25 *liability*), whether civil or criminal, that:

26 (a) was acquired, accrued or incurred under a provision of the
27 old Credit Code of a referring State or a Territory that was no
28 longer in force immediately before commencement; and

29 (b) was in existence immediately before commencement.

30 Note: This item does not apply in relation to a right or liability under orders made by a court
31 or tribunal before commencement: see subitem 8(2).

32 (2) For the purposes of subitems (3) and (4), the new Credit Code is taken
33 to include:

34 (a) the provision of the old Credit Code (with such modifications
35 (if any) as are necessary) under which the old right or
36 liability was acquired, accrued or incurred; and

1 (b) the other provisions of the old Credit Code (with such
2 modifications (if any) as are necessary) that applied in
3 relation to the old right or liability;

4 other than to the extent that the provision relates to proceedings in, or
5 orders of, a tribunal.

6 (3) On commencement, the person acquires, accrues or incurs a right or
7 liability (the *substituted right or liability*), equivalent to the old right or
8 liability, under the provision taken to be included in the new Credit
9 Code by paragraph (2)(a), as if that provision applied to the conduct or
10 circumstances that gave rise to the old right or liability.

11 Note: If a time limit applied in relation to the old right or liability under the old Credit Code,
12 that same time limit (calculated from the same starting point) will apply under the new
13 Credit Code to the substituted right or liability: see subitem 13(3).

14 (4) A procedure, proceeding or remedy in relation to the substituted right or
15 liability may be instituted after commencement under the provisions
16 taken to be included in the new Credit Code by subitem (2), as if those
17 provisions applied to the conduct or circumstances that gave rise to the
18 old right or liability.

19 Note: For pre-commencement proceedings in relation to substituted rights and liabilities, see
20 item 4.

21 **13 Old Credit Code time limits etc.**

22 (1) An old Credit Code time limit (see subitem (2)):

23 (a) the starting point of which:

24 (i) was known or had been determined before
25 commencement (whether that starting point occurred or
26 would occur before, on or after commencement); or

27 (ii) would have become known, or have been determined,
28 after commencement if the old Credit Code of the
29 referring State or the Territory had continued to apply
30 (whether that starting point would have occurred before,
31 on or after commencement); and

32 (b) that had not ended at or before commencement;

33 continues to run, or starts or started to run, as if that same time limit
34 (starting from the same starting point) were applicable under the new
35 Credit Code.

36 (2) An *old Credit Code time limit* includes:

- 1 (a) a period for the doing of a thing specified or determined
2 under the old Credit Code of a referring State or a Territory;
3 or
4 (b) a period specified or determined under a provision of the old
5 Credit Code of a referring State or a Territory as the duration
6 of a particular instrument or status.

7 (3) If:

- 8 (a) under the old Credit Code of a referring State or a Territory, a
9 process, a status of a person or body, or an instrument,
10 commenced from a particular time before commencement;
11 and
12 (b) that process, status or instrument is continued after
13 commencement for the purposes of the new Credit Code by a
14 provision of this Schedule;

15 that process, status or instrument as so continued is still taken to
16 have commenced from the time referred to in paragraph (a).

17 (4) If an old Credit Code time limit related to an old right or liability, the
18 same time limit applies in relation to the substituted right or liability.

19 **14 Preservation of significance etc. of events or**
20 **circumstances**

21 (1) An event, circumstance or other thing:

- 22 (a) that occurred or arose before commencement under or as
23 mentioned in a provision of the old Credit Code of a referring
24 State or a Territory; and
25 (b) that had a particular significance, status or effect for the
26 purposes of a carried over provision of that Code (including
27 because of an interpretive provision);

28 has that same significance, status and effect after commencement for
29 the purposes of the provision of the new Credit Code that corresponds
30 to that carried over provision.

31 (2) Without limiting subitem (1), an event, circumstance or other thing had
32 a particular significance for the purposes of a carried over provision of
33 the old Credit Code of a referring State or a Territory if:

- 34 (a) the carried over provision created an obligation in relation to
35 the event, circumstance or thing (whenever it arose); or

- 1 (b) the carried over provision provided for the event,
2 circumstance or thing to be dealt with in a particular way; or
3 (c) the carried over provision stated that the event, circumstance
4 or thing (whenever it arose) was to be disregarded for the
5 purposes of that provision or was not covered by that
6 provision.

7 **15 References in the new Credit Code generally include**
8 **references to events, circumstances or things that**
9 **happened or arose before commencement**

- 10 (1) A reference in the new Credit Code to an event, circumstance or thing
11 of a particular kind that happens or arises, or that has happened or
12 arisen, is taken to include a reference to an event, circumstance or thing
13 of that kind that happened or arose at a time before commencement,
14 unless a contrary intention is expressed.
- 15 (2) The fact that the provision uses only the present tense in referring to an
16 event, circumstance or thing is not, of itself, to be regarded as an
17 expression of a contrary intention.
- 18 (3) Nothing in subitem (1) is taken to produce a result that a right or
19 liability exists under a provision of the new Credit Code that relates
20 solely to events, circumstances or things that occurred before
21 commencement.
- 22 Note: Instead, an equivalent right or liability will be created by item 11 or 12.
- 23 (4) Despite subitem (1), the regulations may provide that subitem (1) does
24 not apply in relation to a particular reference or class of references in
25 the new Credit Code.

26 **16 References to things taken or deemed to be the case etc.**

27 If:

- 28 (a) a law of a referring State or a Territory had effect before
29 commencement:
- 30 (i) to take or deem something to have happened or to be the
31 case, or to have a particular effect, under or for the
32 purposes of the old Credit Code of that State or
33 Territory (or a provision of that Code); or
34 (ii) to give something an effect for the purposes of the old
35 Credit Code of that State or Territory (or a provision of
36 that Code) that it would not otherwise have had; and
-

- 1 (b) that effect was continuing immediately before
2 commencement;
3 this Part applies as if that thing had actually happened or were actually
4 the case, or as if that thing actually had that other effect.

5 **17 Penalty units in relation to pre-commencement conduct**
6 **remain at \$100**

- 7 (1) If, because of this Part, an offence can be prosecuted after
8 commencement in relation to conduct that occurred solely before
9 commencement, the amount of a penalty unit in relation to that offence
10 is \$100.
11 (2) Subitem (1) has effect despite section 4AA of the *Crimes Act 1914*.

1

2

Part 3—Application of the National Credit Act (other than the new Credit Code) and Schedule 2 to this Act

3

4

5

18 Application of the National Credit Act

6

Application of National Credit Act generally

7

- (1) The National Credit Act does not apply in relation to a contract or other instrument made before commencement, subject to item 3 (which deals with the application of the new Credit Code).

8

9

10

Note 1: For example, a person does not engage in a credit activity after commencement merely because the person is the credit provider under a credit contract made before commencement.

11

12

13

Note 2: See item 3 for the application of the new Credit Code to contracts and other instruments made before commencement.

14

15

- (2) Despite subitem (1), the regulations may provide for the application of the National Credit Act to a person (including the licensing of that person) in relation to credit activities engaged in after commencement in relation to a contract or other instrument that:

16

17

18

19

(a) was made before commencement; and

20

(b) was in force immediately before commencement; and

21

(c) the old Credit Code of a referring State or a Territory applied to immediately before commencement.

22

23

Application of Part 4-3 of the National Credit Act

24

- (3) Despite subitem (1), Part 4-3 of the National Credit Act (which deals with the jurisdiction and procedure of courts) applies to proceedings brought under the new Credit Code after commencement in relation to a contract or other instrument that:

25

26

27

28

(a) was made before commencement; and

29

(b) was in force immediately before commencement; and

30

(c) the old Credit Code of a referring State or a Territory applied to immediately before commencement.

31

1 *Application of regulations made under the National Credit Act*

- 2 (4) Despite subitem (1), regulations made under section 329 of the National
3 Credit Act for the purposes of section 330 of that Act or the new Credit
4 Code may make provision in relation to proceedings brought after
5 commencement in relation to a contract or other instrument that:
6 (a) was made before commencement; and
7 (b) was in force immediately before commencement; and
8 (c) the old Credit Code of a referring State or a Territory applied
9 to immediately before commencement.

10 **19 Application of Chapter 3 of the National Credit Act**

- 11 (1) Chapter 3 of the National Credit Act (which deals with responsible
12 lending conduct) applies in relation to conduct engaged in on and after
13 1 January 2011 in relation to a contract or other instrument made after
14 commencement.
15 (2) Subitem (1) is subject to subitems 18(2) and 20(2) (which deal with
16 regulations that provide for the application to a person of the National
17 Credit Act and Schedule 2 to this Act).

18 **20 Application of Schedule 2 to this Act**

- 19 (1) Schedule 2 to this Act (which deals with registration) does not apply in
20 relation to a contract or other instrument made before commencement.
21 (2) Despite subitem (1), the regulations may provide for the application of
22 Schedule 2 to a person (including the registration of that person) in
23 relation to credit activities engaged in after commencement in relation
24 to a contract or other instrument that:
25 (a) was made before commencement; and
26 (b) was in force immediately before commencement; and
27 (c) the old Credit Code of a referring State or a Territory applied
28 to immediately before commencement.

1

2

Part 4—Transitional provisions relating to ASIC

3

21 Regulations about ASIC’s approach during the transitional period

4

5

The regulations may provide for the approach ASIC must take in the administration of this Act or the National Credit Act during the period starting on commencement and ending on 30 June 2011 or a later day prescribed by the regulations.

6

7

8

9

22 Regulations about transfer of information etc. to ASIC

10

The regulations may provide for the transfer of information, documents, assets or liabilities to ASIC from:

11

12

(a) a referring State or a Territory; or

13

(b) an authority of a referring State or a Territory.

14

23 ASIC’s role in relation to appeal, review or enforcement proceedings

15

16

(1) ASIC has the functions and powers in relation to appeal, review or enforcement proceedings that are expressed to be conferred on it by or under a law of the Commonwealth or a Territory.

17

18

19

(2) ASIC also has the functions and powers in relation to appeal, review or enforcement proceedings that are expressed to be conferred on it by or under a law of a referring State. However, ASIC:

20

21

22

(a) is not subject to any directions in the performance of such functions or the exercise of such powers; and

23

24

(b) is not under a duty to perform such functions or exercise such powers.

25

26

(3) If a Minister of a referring State or a Territory appoints a person (other than ASIC) to bring or continue appeal, review or enforcement proceedings in the State or Territory, ASIC may give the person any information and documents that ASIC has in relation to the proceedings.

27

28

29

30

31

(4) In this item:

32

appeal, review or enforcement proceedings means:

33

(a) appeal or review proceedings; or

Schedule 1 Transition from the old Credit Codes to the National Credit Act
Part 4 Transitional provisions relating to ASIC

- 1 (b) enforcement proceedings;
2 in relation to an order made by a court.

3 Note: This item does not apply to tribunal orders or proceedings.

1
2 **Schedule 2—Registration of persons to**
3 **engage in credit activities**

4 **Part 1—Introduction**

5 **1 Guide to this Schedule**

6 This Schedule is about the registration of persons to engage in
7 credit activities. Registration is a transitional authorisation to
8 engage in credit activities. It applies in the period before all
9 persons who engage in credit activities are required to be licensed
10 under Chapter 2 of the National Credit Act.

11 Regulations made under section 6 may also deal with transitional
12 matters relating to the registration of persons to engage in credit
13 activities. Those regulations may provide for matters in addition to
14 those provided in this Schedule and they may modify how this
15 Schedule applies.

16 This Part deals with how certain provisions of Part 1-2 (which
17 deals with definitions) of the National Credit Act apply in relation
18 to this Schedule.

19 Divisions 1 and 2 of Part 2 set out requirements that apply to
20 persons who engage in credit activities during particular
21 transitional periods.

22 Division 3 of Part 2 deals with how the requirements in Division 3
23 of Part 2-1 (which deals with certain requirements in relation to
24 credit activities) of the National Credit Act apply in relation to
25 registered persons.

26 Part 3 deals with how a person becomes registered, the conditions
27 on registration, the obligations of a registered person, and the
28 suspension and cancellation of registration.

29 Part 4 deals with how other provisions of the National Credit Act
30 apply in relation to registered persons. These provisions include
31 Part 2-3 (which deals with credit representatives and other
32 representatives), Part 2-4 (which deals with banning and

Schedule 2 Registration of persons to engage in credit activities

Part 1 Introduction

1 disqualification) and Divisions 2 and 4 of Part 2-5 (which deal with
2 financial records and auditors) of the National Credit Act.

3 Part 5 deals with exemptions from, and modifications of, certain
4 provisions of this Schedule.

5 Part 6 allows regulations to provide for infringement notices in
6 relation to the civil penalty provisions and offences in this
7 Schedule.

8 **2 Application of Part 1-2 of the National Credit Act**

9 Part 1-2 (which deals with definitions) of the National Credit Act
10 applies as if the references in sections 10, 14, 15 and 16 to “this Act”
11 were references to “this Act and Schedule 2 to the Transitional Act”.

12 Note: Expressions that are defined in the National Credit Act (other than the new Credit Code)
13 have the same meanings in this Act as they have in the National Credit Act: see
14 subsection 4(2).

1

2 **Part 2—Transitional prohibitions relating to credit**
3 **activities**

4 **Division 1—Prohibition that applies only from 1 January**
5 **2010 to 30 June 2010, or in other prescribed**
6 **period**

7 **3 Application of this Division**

8 This Division applies during the period that:

- 9 (a) starts on 1 January 2010, or a later day prescribed by the
10 regulations; and
11 (b) ends on 30 June 2010, or a later day prescribed by the
12 regulations.

13 **4 Prohibition on engaging in credit activities if not registered**
14 **or licensed during the period**

15 *Prohibition on engaging in credit activities if not registered or*
16 *licensed*

- 17 (1) A person must not engage in a credit activity unless:
18 (a) the person is registered to engage in the credit activity; or
19 (b) the person holds a licence authorising the person to engage in
20 the credit activity.

21 Civil penalty: 2,000 penalty units.

22 *Offence*

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

27 Criminal penalty: 200 penalty units, or 2 years imprisonment, or
28 both.

1 *Defence*

- 2 (3) For the purposes of subitems (1) and (2), it is a defence if:
- 3 (a) the person engages in the credit activity on behalf of another
- 4 person (the *principal*); and
- 5 (b) the person is:
- 6 (i) an employee or director of the principal or of a related
- 7 body corporate of the principal; or
- 8 (ii) a credit representative of the principal; and
- 9 (c) the person's conduct in engaging in the credit activity is
- 10 within the authority of the principal; and
- 11 (d) the principal is registered to engage in the credit activity, or
- 12 holds a licence authorising the principal to engage in the
- 13 credit activity.

14 Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the

15 matter in subitem (3): see subsection 13.3(3) of the *Criminal Code*.

16 **Division 2—Prohibition that applies only from 1 July**

17 **2010 to 30 June 2011, or in other prescribed**

18 **period**

19 **5 Application of this Division**

- 20 This Division applies during the period that:
- 21 (a) starts on 1 July 2010, or a later day prescribed by the
- 22 regulations; and
- 23 (b) ends on 30 June 2011, or a later day prescribed by the
- 24 regulations.

25 **6 Prohibition on engaging in credit activities in certain**

26 **circumstances during the period**

27 *Prohibition on engaging in credit activities in certain*

28 *circumstances*

- 29 (1) A person must not engage in a credit activity unless:
- 30 (a) the person:
- 31 (i) is registered to engage in the credit activity; and
- 32 (ii) has applied for a licence authorising the person to
- 33 engage in the credit activity in accordance with
- 34 section 36 of the National Credit Act; or

1 (b) the person holds a licence authorising the person to engage in
2 the credit activity.

3 Civil penalty: 2,000 penalty units.

4 *Offence*

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

9 Criminal penalty: 200 penalty units, or 2 years imprisonment, or
10 both.

11 *Defence*

- 12 (3) For the purposes of subitems (1) and (2), it is a defence if:
13 (a) the person engages in the credit activity for or on behalf of
14 another person (the *principal*); and
15 (b) the person is:
16 (i) an employee or director of the principal or of a related
17 body corporate of the principal; or
18 (ii) a credit representative of the principal; and
19 (c) the person's conduct in engaging in the credit activity is
20 within the authority of the principal; and
21 (d) the principal:
22 (i) is registered to engage in the credit activity, and has
23 applied for a licence authorising the principal to engage
24 in the credit activity in accordance with section 36 of
25 the National Credit Act; or
26 (ii) holds a licence authorising the principal to engage in the
27 credit activity.

28 Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the
29 matter in subitem (3): see subsection 13.3(3) of the *Criminal Code*.

30 **Division 3—Application of Division 3 of Part 2-1 of the**
31 **National Credit Act in relation to registered**
32 **persons and this Schedule**

33 **7 Application of this Division**

- 1 This Division applies during the period that:
2 (a) starts at commencement; and
3 (b) ends on 30 June 2011, or a later day prescribed by the
4 regulations.

5 **8 Application of section 30 of the National Credit Act**

6 Section 30 (which deals with prohibitions on holding out and
7 advertising etc.) of the National Credit Act applies as if:

- 8 (a) the reference in paragraph 30(1)(a) of the National Credit Act
9 to a person holding a licence were a reference to a person
10 holding a licence or being registered; and
11 (b) the reference in paragraph 30(1)(b) of the National Credit Act
12 to a person holding a licence authorising the person to engage
13 in a particular credit activity were a reference to a person
14 holding a licence authorising the person to engage in a
15 particular credit activity, or being registered to engage in a
16 particular credit activity; and
17 (c) the reference in paragraph 30(1)(c) of the National Credit Act
18 to a requirement to hold a licence were a reference to a
19 requirement to hold a licence or be registered; and
20 (d) the reference in paragraph 30(1)(e) of the National Credit Act
21 to a licensee were a reference to a licensee or registered
22 person; and
23 (e) the reference in subsection 30(2) of the National Credit Act
24 to contravening section 29 of the National Credit Act were a
25 reference to contravening section 29 of the National Credit
26 Act or item 4 or 6 of this Schedule.

27 **9 Application of section 31 of the National Credit Act**

28 Section 31 (which deals with a prohibition on conducting business with
29 unlicensed persons) of the National Credit Act applies as if:

- 30 (a) the reference in subsection 31(1) to a licensee were a
31 reference to a registered person or licensee; and
32 (b) the reference in subsection 31(1) to contravening section 29
33 of the National Credit Act were a reference to contravening
34 section 29 of the National Credit Act or item 4 or 6 of this
35 Schedule.

36 **10 Application of section 32 of the National Credit Act**

1 Section 32 (which deals with a prohibition on charging a fee etc.) of the
2 National Credit Act applies as if the reference in subsection 32(1) to
3 section 29 of that Act were a reference to section 29 of that Act or
4 item 4 or 6 of this Schedule.

1

2

Part 3—Registration of persons who engage in credit activities

3

4

Division 1—How to become registered

5

11 Applying to be registered

6

(1) A person may apply to be registered by lodging an application with ASIC.

7

8

(2) The application must be lodged during the period that:

9

(a) starts on 1 November 2009, or a later day prescribed by the regulations; and

10

11

(b) ends on 31 December 2009, or a later day prescribed by the regulations.

12

13

(3) The application must be in the approved form.

14

12 When a person may be registered

15

When ASIC must register a person

16

(1) ASIC must register a person (the *applicant*) if (and must not register the applicant unless):

17

18

(a) the applicant has applied to be registered in accordance with item 11; and

19

20

(b) the application makes a statement that the applicant is a member of an approved external dispute resolution scheme; and

21

22

23

(c) the application makes the statement set out in subitem (2) in relation to each of the following persons:

24

25

(i) the applicant;

26

(ii) if the applicant is a body corporate—each director or secretary of the body corporate who would perform duties in relation to the credit activities to be authorised by the registration;

27

28

29

(iii) if the applicant is a partnership or the trustees of a trust—each partner or trustee who would perform duties

30

31

1 in relation to the credit activities to be authorised by the
2 registration.

3 (2) For the purposes of paragraph (1)(c), the statement is that:

- 4 (a) a banning order or disqualification order under Part 2-4 of the
5 National Credit Act is not in force against the person; and
6 (b) a banning order or disqualification order under Division 8 of
7 Part 7.6 of the *Corporations Act 2001* is not in force against
8 the person; and
9 (c) the person is not banned from engaging in a credit activity
10 under a law of a State or Territory; and
11 (d) if the person is or has been registered—the person’s
12 registration is neither suspended nor cancelled; and
13 (e) an Australian financial services licence of the person is
14 neither suspended, nor has been cancelled within the last 7
15 years, under:
16 (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii)
17 of the *Corporations Act 2001* (which deals with
18 suspension or cancellation because of mental or
19 physical incapacity); or
20 (ii) section 915C of the *Corporations Act 2001* (which deals
21 with suspension or cancellation after offering a hearing);
22 and
23 (f) if the person is not the trustees of a trust—the person is not
24 insolvent; and
25 (g) if the person is a natural person:
26 (i) the person is not disqualified from managing
27 corporations under Part 2D.6 of the *Corporations Act*
28 *2001*; and
29 (ii) the person has not been convicted, within 10 years
30 before the application is made, of serious fraud; and
31 (iii) a prescribed State or Territory order is not in force
32 against the person.

33 *ASIC may refuse to register a person in certain circumstances*

34 (3) Despite subitem (1), ASIC may refuse to register a person if ASIC has
35 reason to believe that:

- 36 (a) the application is false in a material particular or materially
37 misleading; or
-

1 (b) there is an omission of a material matter from the application.

2 *Notice of decision on application*

3 (4) ASIC must give the applicant written notice of:

- 4 (a) ASIC's decision on the application; and
5 (b) if the decision is to register the applicant—the day on which
6 the applicant becomes registered; and
7 (c) if the decision is not to register the applicant—the reasons for
8 the decision.

9 *When applicant becomes registered*

10 (5) The applicant becomes registered when ASIC enters the applicant's
11 name on a credit register as a registered person.

12 **13 Basis on which a person is registered**

13 A person who is registered under this Division is registered on the basis
14 that:

- 15 (a) conditions on the registration may be imposed, varied or
16 revoked under item 14 or 15; and
17 (b) the registration may be suspended under item 22, 23, 24 or
18 25; and
19 (c) the registration may be cancelled under item 20, 21, 22, 23,
20 24 or 25; and
21 (d) the registration may be varied under item 26; and
22 (e) the registration may be cancelled, revoked, terminated or
23 varied by or under later legislation; and
24 (f) no compensation is payable if:
25 (i) conditions on the registration are imposed, varied or
26 revoked as referred to in paragraph (a); or
27 (ii) the registration is suspended, cancelled, varied, revoked
28 or terminated as referred to in paragraphs (b) to (e).

29 **Division 2—The conditions on the registration**

30 **14 The conditions on the registration**

31 *ASIC may impose, vary or revoke conditions on registrations*

32 (1) ASIC may, at any time:

- 1 (a) impose conditions, or additional conditions, on a person's
2 registration; and
3 (b) vary or revoke conditions imposed on a person's registration.

- 4 (2) ASIC may do so:
5 (a) on its own initiative; or
6 (b) if the registered person lodges an application with ASIC for
7 the imposition, variation or revocation.
8 (3) The application must be in the approved form.

9 *Notice and effect of imposition, variation or revocation of*
10 *conditions*

- 11 (4) ASIC must give the registered person written notice of the imposition,
12 variation or revocation of the conditions. The imposition, variation or
13 revocation of the conditions comes into force on the day specified in the
14 notice, which must not be before the day on which the decision to
15 impose, vary or revoke the conditions was made.

16 *ASIC must give the registered person a hearing*

- 17 (5) Despite subitem (1), ASIC may only impose conditions or additional
18 conditions, or vary or revoke the conditions, on the registration after
19 giving the registered person an opportunity:
20 (a) to appear, or be represented, at a hearing before ASIC that
21 takes place in private; and
22 (b) to make submissions to ASIC in relation to the conditions.

23 This subitem does not apply to ASIC imposing conditions when a
24 person becomes registered.

25 *Condition in relation to credit activities authorised*

- 26 (6) ASIC must ensure that the registration is subject to a condition that
27 specifies the credit activities or classes of credit activities that the
28 registered person is authorised to engage in.

29 *Regulations may prescribe conditions*

- 30 (7) The registration is subject to such other conditions as are prescribed by
31 the regulations. However, ASIC cannot vary or revoke those conditions.

1 **15 Registration conditions—special procedures for**
2 **APRA-regulated bodies**

3 *Special procedures for APRA-regulated bodies (other than ADIs)*

4 (1) If the registered person, or a related body corporate, is a body (the
5 **APRA body**) regulated by APRA (other than an ADI), then the
6 following provisions apply:

7 (a) ASIC cannot:

8 (i) impose, vary or revoke a condition on the registration
9 that, in ASIC's opinion, has or would have the result of
10 preventing the APRA body from being able to carry on
11 all or any of its usual activities (being activities in
12 relation to which APRA has regulatory or supervisory
13 responsibilities); or

14 (ii) vary a condition so that it would, in ASIC's opinion,
15 become a condition that would have a result as
16 described in subparagraph (i);

17 unless ASIC has first consulted APRA about the proposed
18 action;

19 (b) if ASIC imposes, varies or revokes a condition on the
20 registration and paragraph (a) does not apply to that action,
21 ASIC must, within one week, inform APRA of the action that
22 has been taken.

23 *Special procedures for ADIs*

24 (2) If the registered person, or a related body corporate, is an ADI, then the
25 following provisions apply:

26 (a) subject to paragraphs (b) and (c), the powers that ASIC
27 would otherwise have under item 14:

28 (i) to impose, vary or revoke a condition on the registration
29 that, in ASIC's opinion, has or would have the result of
30 preventing the ADI from being able to carry on all or
31 any of its banking business (within the meaning of the
32 *Banking Act 1959*); or

33 (ii) to vary a condition so that it would, in ASIC's opinion,
34 become a condition that would have a result as
35 described in subparagraph (i);

36 are instead powers of the Minister;

- 1 (b) the following provisions apply in relation to a power to
2 which paragraph (a) applies:
- 3 (i) the procedures for the exercise of the power are the
4 same as would apply if ASIC could exercise the power,
5 except that the Minister must not exercise the power
6 unless he or she has first considered advice from ASIC
7 on the proposed action, being advice given after ASIC
8 has consulted APRA about the proposed action;
- 9 (ii) ASIC (rather than the Minister) must still conduct any
10 hearing required under paragraph 14(5)(a) and receive
11 any submissions under paragraph 14(5)(b);
- 12 (c) if ASIC imposes, varies or revokes a condition on the
13 registration and paragraph (a) does not apply to that action,
14 ASIC must, within one week, inform APRA of the action that
15 has been taken.

16 **Division 3—Obligations of registered persons**

17 **16 General conduct obligations of registered persons**

18 *Obligation to be a member of an approved external dispute* 19 *resolution scheme*

- 20 (1) During the period that:
- 21 (a) starts on 1 November 2009, or a later day prescribed by the
22 regulations; and
- 23 (b) ends on 30 June 2011, or a later day prescribed by the
24 regulations;
- 25 a registered person must be a member of an approved external dispute
26 resolution scheme.

27 *Other general conduct obligations of registered persons*

- 28 (2) Subitem (3) applies during the period that:
- 29 (a) starts on 1 January 2010, or a later day prescribed by the
30 regulations; and
- 31 (b) ends on 30 June 2011, or a later day prescribed by the
32 regulations.
- 33 (3) A registered person must:

- 1 (a) do all things necessary to ensure that the credit activities
2 authorised by the registration are engaged in efficiently,
3 honestly and fairly; and
4 (b) comply with the conditions on the registration; and
5 (c) comply with the credit legislation; and
6 (d) take reasonable steps to ensure that its representatives
7 comply with the credit legislation; and
8 (e) take reasonable steps to ensure that clients of the registered
9 person are not disadvantaged by any conflict of interest that
10 arises wholly or partly in relation to credit activities engaged
11 in by the registered person or its representatives; and
12 (f) comply with any other obligations that are prescribed by the
13 regulations.

14 **17 Obligation to provide a statement or obtain an audit report**
15 **if directed by ASIC**

16 *Notice to registered person to provide a statement*

- 17 (1) ASIC may give a registered person a written notice directing the
18 registered person to lodge with ASIC a written statement containing
19 specified information about the credit activities engaged in by the
20 registered person or its representatives.
- 21 (2) Notices under subitem (1):
- 22 (a) may be given at any time; and
23 (b) may be given to one or more particular registered persons, or
24 to each registered person in one or more classes of registered
25 persons, or to all registered persons; and
26 (c) may require all the same information, or may contain
27 differences as to the information they require; and
28 (d) may require a statement containing information to be
29 provided on a periodic basis, or each time a particular event
30 or circumstance occurs, without ASIC having to give a
31 further written notice.

32 *Notice to registered person to obtain an audit report*

- 33 (3) ASIC may also give a registered person a written notice directing the
34 registered person to obtain an audit report, prepared by a suitably
35 qualified person specified in the notice, on a statement, or each

1 statement in a class of statements, under subitem (1) before the
2 statement is given to ASIC.

3 (4) A notice under subitem (3) is not a legislative instrument.

4 *Notice must specify day by which registered person must comply*

5 (5) A notice given under this item must specify the day by which the
6 registered person must comply with the notice (which must be a
7 reasonable period after the notice is given). ASIC may extend the day
8 by giving a written notice to the registered person.

9 *Requirement to comply with notice*

10 (6) The registered person must comply with a notice given under this item
11 within the time specified in the notice.

12 Civil penalty: 2,000 penalty units.

13 *Offence*

14 (7) A person commits an offence if:
15 (a) the person is subject to a requirement under subitem (6); and
16 (b) the person engages in conduct; and
17 (c) the conduct contravenes the requirement.

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

20 *Strict liability offence*

21 (8) A person commits an offence if:
22 (a) the person is subject to a requirement under subitem (6); and
23 (b) the person engages in conduct; and
24 (c) the conduct contravenes the requirement.

25 Criminal penalty: 10 penalty units.

26 (9) Subitem (8) is an offence of strict liability.

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

28 **18 Obligation to give ASIC information required by the**
29 **regulations**

1 *Regulations may require registered person to give information*

2 (1) The regulations may require a registered person, or each registered
3 person in a class of registered persons, to give ASIC specified
4 information about the credit activities engaged in by the registered
5 person or its representatives.

6 *Requirement to comply with regulations*

7 (2) If regulations under subitem (1) require a registered person to give
8 ASIC information, the registered person must give ASIC that
9 information.

10 Civil penalty: 2,000 penalty units.

11 *Offence*

12 (3) A person commits an offence if:
13 (a) the person is subject to a requirement to give ASIC
14 information under subitem (2); and
15 (b) the person engages in conduct; and
16 (c) the conduct contravenes the requirement.

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

19 *Strict liability offence*

20 (4) A person commits an offence if:
21 (a) the person is subject to a requirement to give ASIC
22 information under subitem (2); and
23 (b) the person engages in conduct; and
24 (c) the conduct contravenes the requirement.

25 Criminal penalty: 10 penalty units.

26 (5) Subitem (4) is an offence of strict liability.

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

28 **19 Obligation to provide ASIC with assistance if reasonably**
29 **requested**

1 *Requirement to provide assistance*

2 (1) If ASIC, or a person authorised by ASIC, reasonably requests assistance
3 from a registered person in relation to whether the registered person and
4 its representatives are complying with the credit legislation, the
5 registered person must give ASIC or the authorised person the requested
6 assistance.

7 Civil penalty: 2,000 penalty units.

8 (2) If the request is in writing, it is not a legislative instrument.

9 *Offence*

10 (3) A person commits an offence if:
11 (a) the person is subject to a requirement to give ASIC or an
12 authorised person assistance under subitem (1); and
13 (b) the person engages in conduct; and
14 (c) the conduct contravenes the requirement.

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

17 *Assistance may include showing ASIC credit books etc.*

18 (4) The assistance referred to in subitem (1) may include showing ASIC the
19 person's credit books or giving ASIC other information.

20 **Division 4—When registrations can be suspended,
21 cancelled or varied**

22 **20 Cancellation because of grant or refusal of licence**

23 If:
24 (a) a person is registered; and
25 (b) the person applies for a licence under section 36 of the
26 National Credit Act; and
27 (c) ASIC grants, or refuses to grant, the person the licence;
28 then the person's registration is cancelled.

29 Note: See subitem 29(2) for when the cancellation comes into force.

30 **21 Cancellation of all registrations on 30 June 2011 or other
31 prescribed day**

1 The registration of every registered person is cancelled at the end of
2 30 June 2011, or a later day prescribed by the regulations.

3 **22 Suspension or cancellation for failure to apply for a**
4 **licence when directed by ASIC**

- 5 (1) ASIC may give a written notice to a registered person, directing the
6 person to apply for a licence by a day specified in the notice (which
7 must be at least 28 days after the day the notice is given). ASIC may
8 extend the day by giving a written notice to the person.
- 9 (2) If the person does not apply for the licence in accordance with
10 section 36 of the National Credit Act by the day specified in the notice,
11 ASIC may suspend or cancel the person's registration.
- 12 (3) A notice given under subitem (1) is not a legislative instrument.

13 **23 Suspension or cancellation without hearing**

- 14 (1) ASIC may suspend or cancel a registered person's registration if:
15 (a) the registered person lodges with ASIC an application for the
16 suspension or cancellation; or
17 (b) the registered person ceases to engage in credit activities; or
18 (c) a banning order or disqualification order under Part 2-4 of the
19 National Credit Act is in force against the registered person;
20 or
21 (d) a banning order or disqualification order under Division 8 of
22 Part 7.6 of the *Corporations Act 2001* is in force against the
23 registered person; or
24 (e) the registered person is banned from engaging in a credit
25 activity under a law of a State or Territory; or
26 (f) an Australian financial services licence of the registered
27 person is suspended, or has been cancelled within the last 7
28 years, under:
29 (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii)
30 of the *Corporations Act 2001* (which deals with
31 suspension or cancellation because of mental or
32 physical incapacity); or
33 (ii) section 915C of the *Corporations Act 2001* (which deals
34 with suspension or cancellation after offering a hearing);
35 or

- 1 (g) if the registered person is not the trustees of a trust—the
2 registered person is insolvent; or
3 (h) the registered person is a single natural person and:
4 (i) is disqualified from managing corporations under
5 Part 2D.6 of the *Corporations Act 2001*; or
6 (ii) is convicted of serious fraud; or
7 (iii) is incapable of managing his or her affairs because of
8 physical or mental incapacity; or
9 (iv) a prescribed State or Territory order is in force against
10 the registered person; or
11 (i) the registered person is not a single natural person and a
12 prescribed State or Territory order is in force against any of
13 the following persons:
14 (i) if the registered person is a body corporate—a director
15 or secretary of the body corporate who performs duties
16 in relation to credit activities;
17 (ii) if the registered person is a partnership or the trustees of
18 a trust—a partner or trustee who performs duties in
19 relation to credit activities.
20 (2) An application for suspension or cancellation of a registration must be
21 in the approved form.

22 **24 Suspension or cancellation after offering a hearing**

- 23 (1) ASIC may suspend or cancel a registered person's registration (subject
24 to complying with subitem (3)) if:
25 (a) the registered person has contravened an obligation under
26 item 16 (which deals with general conduct obligations of
27 registered persons); or
28 (b) ASIC has reason to believe that the registered person is likely
29 to contravene an obligation under that item; or
30 (c) the application for the registration:
31 (i) was false in a material particular or materially
32 misleading; or
33 (ii) omitted a material matter; or
34 (d) if the registered person is not a single natural person—any of
35 the matters set out in subitem (2) applies to any of the
36 following persons:

Schedule 2 Registration of persons to engage in credit activities
Part 3 Registration of persons who engage in credit activities

- 1 (i) if the registered person is a body corporate—a director
2 or secretary of the body corporate who performs duties
3 in relation to credit activities;
4 (ii) if the registered person is a partnership or the trustees of
5 a trust—a partner or trustee who performs duties in
6 relation to credit activities.

- 7 (2) For the purposes of paragraph (1)(d), the matters are the following:
8 (a) a banning order or disqualification order under Part 2-4 of the
9 National Credit Act is in force against the person;
10 (b) a banning order or disqualification order under Division 8 of
11 Part 7.6 of the *Corporations Act 2001* is in force against the
12 person;
13 (c) the person is banned from engaging in a credit activity under
14 a law of a State or Territory;
15 (d) an Australian financial services licence of the person is
16 suspended, or has been cancelled within the last 7 years,
17 under:
18 (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii)
19 of the *Corporations Act 2001* (which deals with
20 suspension or cancellation because of mental or
21 physical incapacity); or
22 (ii) section 915C of the *Corporations Act 2001* (which deals
23 with suspension or cancellation after offering a hearing);
24 (e) the person is insolvent;
25 (f) the person is disqualified from managing corporations under
26 Part 2D.6 of the *Corporations Act 2001*;
27 (g) the person is convicted of serious fraud;
28 (h) the person is incapable of managing his or her affairs because
29 of physical or mental incapacity.

- 30 (3) ASIC may only suspend or cancel a person's registration under this
31 item after giving the person an opportunity:
32 (a) to appear, or be represented, at a hearing before ASIC that
33 takes place in private; and
34 (b) to make submissions to ASIC on the matter.

35 **25 Suspension and cancellation—special procedures for**
36 **APRA-regulated bodies**

1 *Special procedures for APRA-regulated bodies (other than ADIs)*

2 (1) If a registered person, or a related body corporate, is a body (the **APRA**
3 **body**) regulated by APRA (other than an ADI), then the following
4 provisions apply:

5 (a) ASIC cannot suspend or cancel the registered person's
6 registration if doing so would, in ASIC's opinion, have the
7 result of preventing the APRA body from being able to carry
8 on all or any of its usual activities (being activities in relation
9 to which APRA has regulatory or supervisory
10 responsibilities), unless ASIC has first consulted APRA
11 about the proposed action;

12 (b) if ASIC suspends or cancels the registered person's
13 registration and paragraph (a) does not apply to that action,
14 ASIC must, within one week, inform APRA of the action that
15 has been taken.

16 *Special procedures for ADIs*

17 (2) If:

18 (a) a registered person is an ADI; or

19 (b) a related body corporate of a registered person is an ADI, and
20 cancellation or suspension of the registered person's
21 registration would, in ASIC's opinion, have the result of
22 preventing the ADI from being able to carry on all or any of
23 its banking business (within the meaning of the *Banking Act*
24 *1959*);

25 then the following provisions have effect:

26 (c) subject to paragraph (d), the powers that ASIC would
27 otherwise have under this Division to cancel or suspend the
28 registered person's registration, or to revoke a suspension to
29 which this subitem applied, are instead powers of the
30 Minister;

31 (d) the procedures for the exercise of a power to which
32 paragraph (c) applies are the same as would apply if ASIC
33 could exercise the power, except that the Minister must not
34 exercise the power unless he or she has first considered
35 advice from ASIC on the proposed action, being advice given
36 after ASIC has consulted APRA about the proposed action;

- 1 (e) ASIC (rather than the Minister) must still conduct any
2 hearing required under paragraph 24(3)(a) and receive any
3 submissions under paragraph 24(3)(b).

4 **26 Varying registrations**

5 ASIC may vary a person's registration to take account of a change in
6 the person's name.

7 Note: The conditions on the registration can be varied under item 14.

8 **27 Effect of suspension**

- 9 (1) A suspended registration has no effect while it remains suspended.
10 (2) Subitem (1) has effect subject to item 31 (which deals with the
11 continued effect of some suspended or cancelled registrations).

12 **28 Revocation of suspension**

13 ASIC may at any time revoke the suspension of a person's registration.

14 **29 Date of effect, notice and publication of variation, 15 cancellation or suspension etc.**

- 16 (1) ASIC must give a registered person written notice of a variation,
17 suspension, revocation of a suspension, or cancellation of the person's
18 registration.
19 (2) A variation, suspension, revocation of a suspension, or cancellation of a
20 person's registration (other than a cancellation under item 21) comes
21 into force when the notice is given to the person.
22 (3) As soon as practicable after the notice is given to the person, ASIC must
23 publish a notice of the action on ASIC's website. The notice must state
24 when the variation, suspension, revocation of a suspension, or
25 cancellation of the person's registration came into force.

26 **30 Statement of reasons**

27 A notice of suspension or cancellation given to a registered person must
28 be accompanied by a statement of reasons for the action taken.

29 **31 ASIC may allow registration to continue in force**

- 30 (1) If ASIC gives a written notice of suspension or cancellation to a
31 registered person, ASIC may include in the notice terms specifying that
-

- 1 the registration continues in force as though the suspension or
2 cancellation had not happened for the purposes of specified provisions
3 of this Schedule in relation to specified matters, a specified period, or
4 both.
- 5 (2) If ASIC includes terms in a notice under subitem (1), the registration
6 continues in force in accordance with the terms of the notice.

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Part 4—Application of other provisions of the National Credit Act in relation to registered persons and this Schedule

3

4

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32 Application of this Part

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This Part (other than item 36) applies during the period that:

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(a) starts at commencement; and

8

(b) ends on 30 June 2011, or a later day prescribed by the regulations.

9

10

33 Application of Part 2-3 of the National Credit Act

11

Application of Part 2-3 of National Credit Act

12

(1) Part 2-3 (which deals with credit representatives and other representatives of licensees) of the National Credit Act applies as if:

13

14

(a) all references to a licensee were references to a registered person or licensee; and

15

16

(b) all references to licensees were references to registered persons or licensees; and

17

18

(c) all references to a licensee's licence were references to a registered person's registration or licensee's licence; and

19

20

(d) the reference in subsection 67(1) of the National Credit Act to a person holding a licence authorising the person to engage in the credit activity were a reference to a person holding a licence authorising the person to engage in the credit activity, or being registered to engage in the credit activity.

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25

Credit representatives of registered person taken to be credit representatives of licensee

26

27

(2) If:

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(a) a credit representative of a registered person has been authorised under subsection 64(1) or 65(1) of the National Credit Act (as those subsections apply because of subitem (1)); and

29

30

31

(b) the registered person is granted a licence under the National Credit Act; and

32

33

1 (c) at the time the licence is granted, the authorisation of the
2 credit representative is in force;

3 then the authorisation of the credit representative under subsection
4 64(1) or 65(1) of the National Credit Act (as those subsections apply
5 because of subitem (1)) is taken to have been an authorisation of the
6 credit representative as a credit representative of the licensee under
7 subsection 64(1) or 65(1) of the National Credit Act (as those
8 subsections apply otherwise than because of subitem (1)).

9 **34 Application of Part 2-4 of the National Credit Act**

10 Part 2-4 (which deals with banning and disqualification of persons from
11 engaging in credit activities) of the National Credit Act applies as if:

12 (a) the references in paragraph 80(1)(a) and (5)(a) of the
13 National Credit Act to a licence were references to a
14 registration or licence; and

15 (b) the reference in paragraph 80(5)(b) of the National Credit Act
16 to section 54 of the National Credit Act were a reference to
17 section 54 of the National Credit Act or item 23 of this
18 Schedule; and

19 (c) the reference in paragraph 86(1)(a) of the National Credit Act
20 to a licence were a reference to a registration or licence.

21 **35 Application of Divisions 2 and 4 of Part 2-5 of the National** 22 **Credit Act**

23 (1) Division 2 of Part 2-5 (which deals with financial records of licensees)
24 of the National Credit Act applies as if all references to a licensee were
25 references to a registered person or licensee.

26 (2) Division 4 of Part 2-5 (which deals with matters relating to audit
27 reports) of the National Credit Act applies as if:

28 (a) all references to a licensee were references to a registered
29 person or a licensee; and

30 (b) the reference in paragraph 102(1)(a) of the National Credit
31 Act to an audit report required under subsection 49(3) of the
32 National Credit Act in relation to a licensee were a reference
33 to an audit report required under subsection 49(3) of that Act
34 in relation to a licensee, or an audit report required under
35 subitem 17(3) of this Schedule in relation to a registered
36 person; and

Schedule 2 Registration of persons to engage in credit activities

Part 4 Application of other provisions of the National Credit Act in relation to registered persons and this Schedule

- 1 (c) the reference in paragraph 106(a) of the National Credit Act
2 to audit reports referred to in subsection 102(1) of the
3 National Credit Act included a reference to the audit reports
4 required under subitem 17(3) of this Schedule.

5 **36 Application of Chapter 3 of the National Credit Act**

- 6 (1) Chapter 3 (which deals with responsible lending conduct) of the
7 National Credit Act applies, during the period that:
8 (a) starts on 1 January 2011; and
9 (b) ends on 30 June 2011, or a later day prescribed by the
10 regulations;
11 as if:
12 (c) all references to a licensee were references to a registered
13 person or licensee; and
14 (d) all references to licensees were references to registered
15 persons or licensees.
- 16 (2) Despite subitem (1), the following provisions of Chapter 3 of the
17 National Credit Act do not apply in relation to registered persons:
18 (a) paragraphs 113(2)(d), 126(2)(d), 127(2)(d), 136(2)(d),
19 149(2)(d), 150(2)(d) and 160(3)(d) (which deal with
20 including Australian credit licence numbers in credit guides);
21 (b) subparagraphs 113(2)(h)(i), 126(2)(e)(i), 127(2)(e)(i),
22 136(2)(h)(i), 149(2)(e)(i), 150(2)(e)(i) and 160(3)(f)(i)
23 (which deal with including information about internal dispute
24 resolution procedures in credit guides).

25 **37 Application of Chapter 4 of the National Credit Act**

- 26 (1) Chapter 4 (which deals with remedies) of the National Credit Act
27 applies as if:
28 (a) all references to “this Act” were references to “this Act and
29 Schedule 2 to the Transitional Act”; and
30 (b) all references to civil penalty provisions included references
31 to civil penalty provisions within the meaning of this Act.
- 32 (2) Section 180 (which deals with orders in relation to unlawful credit
33 activities) of the National Credit Act applies as if the reference in
34 paragraph 180(1)(b) to contravening section 29 of that Act were a
35 reference to contravening section 29 of that Act or item 4 or 6 of this
36 Schedule.
-

1 **38 Application of Chapter 5 of the National Credit Act**

2 (1) Chapter 5 (which deals with administration) of the National Credit Act
3 applies as if all references to “this Act” were references to “this Act and
4 Schedule 2 to the Transitional Act”.

5 (2) Section 243 (which deals with qualified privilege for information given
6 to ASIC) of the National Credit Act applies as if:

7 (a) the reference in subparagraph 243(1)(c)(i) to section 37 of the
8 National Credit Act were a reference to section 37 of that Act
9 or item 12 of this Schedule; and

10 (b) the reference in subparagraph 243(1)(c)(ii) to section 54 or
11 55 of the National Credit Act were a reference to section 54
12 or 55 of that Act, or item 23 or 24 of this Schedule.

13 **39 Application of Chapter 7 of the National Credit Act**

14 Chapter 7 (which deals with miscellaneous matters) of the National
15 Credit Act, other than sections 329, 331 and 338, applies as if all
16 references to “this Act” were references to “this Act and Schedule 2 to
17 the Transitional Act”.

1

2

Part 5—Exemptions and modifications relating to this Schedule

3

4

40 Provisions to which this Part applies

5

The provisions to which this Part applies are:

6

(a) Divisions 1 and 2 of Part 2 (which deal with requirements to be registered etc. to engage in credit activities); and

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(b) Part 3 (which deals with the registration of persons to engage in credit activities); and

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(c) definitions in this Act and the National Credit Act, as they apply to references in the provisions referred to in paragraphs (a) and (b); and

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(d) instruments made for the purposes of any of the provisions referred to in paragraphs (a) to (c).

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41 Exemptions and modifications by ASIC

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Exemptions and modifications

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(1) ASIC may:

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(a) exempt a person from all or specified provisions to which this Part applies; or

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(b) exempt a credit activity that is engaged in relation to a specified credit contract, mortgage, guarantee or consumer lease from all or specified provisions to which this Part applies; or

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(c) declare that provisions to which this Part applies apply in relation to a person, or a credit activity referred to in paragraph (1)(b), as if specified provisions were omitted, modified or varied as specified in the declaration.

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(2) An exemption or declaration under subitem (1) is not a legislative instrument.

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(3) ASIC may, by legislative instrument:

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(a) exempt a class of persons from all or specified provisions to which this Part applies; or

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- 1 (b) exempt a credit activity (other than a credit activity referred
2 to in paragraph (1)(b)) from all or specified provisions to
3 which this Part applies; or
4 (c) exempt a class of credit activities from all or specified
5 provisions to which this Part applies; or
6 (d) declare that provisions to which this Part applies apply in
7 relation to a credit activity (other than a credit activity
8 referred to in paragraph (1)(b)), or a class of persons or credit
9 activities, as if specified provisions were omitted, modified
10 or varied as specified in the declaration.

11 *Conditions on exemptions*

- 12 (4) An exemption may apply unconditionally or subject to specified
13 conditions. A person to whom a condition specified in an exemption
14 applies must comply with the condition. The court may order the person
15 to comply with the condition in a specified way. Only ASIC may apply
16 to the court for the order.

17 *Publication of exemptions and declarations*

- 18 (5) An exemption or declaration under subitem (1) must be in writing and
19 ASIC must publish notice of it on its website.

20 *Special rules in relation to offences*

- 21 (6) If conduct of a person would not have constituted an offence if a
22 particular declaration under paragraph (1)(c) or (3)(d) had not been
23 made, that conduct does not constitute an offence unless, before the
24 conduct occurred:

- 25 (a) the text of the declaration was published by ASIC on its
26 website; or
27 (b) ASIC gave written notice setting out the text of the
28 declaration to the person;

29 (in addition to complying with the requirements of the *Legislative*
30 *Instruments Act 2003* if the declaration is made under subitem (3)).

- 31 (7) In a prosecution for an offence to which subitem (6) applies, the
32 prosecution must prove that paragraph (6)(a) or (b) was complied with
33 before the conduct occurred.

34 **42 Exemptions and modifications by the regulations**

Schedule 2 Registration of persons to engage in credit activities
Part 5 Exemptions and modifications relating to this Schedule

- 1 The regulations may:
- 2 (a) exempt a person or class of persons from all or specified
- 3 provisions to which this Part applies; or
- 4 (b) exempt a credit activity or a class of credit activities from all
- 5 or specified provisions to which this Part applies; or
- 6 (c) provide that the provisions to which this Part applies apply as
- 7 if specified provisions were omitted, modified or varied as
- 8 specified in the regulations.

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2 **Part 6—Regulations relating to infringement notices**

3 **43 Regulations—infringement notices**

4 *Infringement notices for civil penalties*

5 (1) The regulations may provide for a person who is alleged to have
6 contravened a civil penalty provision in this Schedule to pay a penalty
7 to the Commonwealth as an alternative to civil proceedings.

8 (2) The penalty must not exceed one-fourtieth of the maximum penalty that
9 a court could impose on the person for contravention of that provision.

10 *Infringement notices for offences*

11 (3) The regulations may provide for a person who is alleged to have
12 committed an offence against this Schedule that is stated to be an
13 offence of strict liability to pay a penalty to the Commonwealth as an
14 alternative to prosecution.

15 (4) The penalty must not exceed one-fifth of the maximum penalty that a
16 court could impose on the person for that offence.

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Schedule 3—Consequential amendments

Australian Securities and Investments Commission Act 2001

1 At the end of subsection 12A(1)

Add:

- ; (i) the *National Consumer Credit Protection Act 2009*;
- (j) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

Corporations Act 2001

2 Section 913C

Before “ASIC”, insert “(1)”.

3 At the end of section 913C

Add:

(2) If:

- (a) a person is granted an Australian financial services licence;
and
- (b) the person holds an Australian credit licence (within the meaning of the *National Consumer Credit Protection Act 2009*);

the licence number that ASIC gives to the Australian financial services licence held by that person must be the same number as the person’s Australian credit licence number (within the meaning of that Act).