

National Consumer Credit Laws

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The transfer of regulation of credit from State and Territory agencies to the Australian Securities and Investments Commission (ASIC) from 1 November 2009 will substantially increase ASIC's responsibilities. This transition will make ASIC the national regulator for consumer credit and finance broking and see ASIC take the regulatory reins over home loans, personal loans, credit cards, overdrafts, lines of credit and other products and services.

The National Consumer Credit Protection Bill, which when passed as law will be administered by ASIC, is designed to provide an increased level of consumer protection, a reduction in red tape for Australian businesses, and an internationally competitive consumer credit regime with nationally consistent regulation and enforcement.

How credit was legislated in the past

Previously ASIC shared responsibility for credit regulation with the state and territory government's fair trading and business and consumer affairs agencies. These agencies had sole responsibility for the detailed regulation of consumer credit under the Uniform Consumer Credit Code (UCCC). The UCCC focuses on pre-contractual disclosure and a limited range of conduct requirements. For example, such things as:

- what information must be given to consumers before they borrow money;
- the form and content of loan, mortgage and guarantee

- contracts; and
- information that must be supplied to borrowers in account statements.

The current regulation under the UCCC is commonly criticised as either duplicated, patchy, confusing, very hard to change or even non-existent. As a result, some consumers receive poor or inadequate advice, while opportunistic product promoters use gaps in existing regulation to take advantage of vulnerable investors.

ASIC has had regulatory responsibility for consumer protection in relation to financial services since 1998 and for some limited aspects of consumer credit since 2002. In particular, the ASIC Act currently prohibits conduct that is misleading or deceptive or unconscionable in relation to credit products and services.

While consumer credit is currently excluded from the Corporations Act 2001, ASIC already regulates some aspects of consumer credit. In particular, the ASIC Act 2001 prohibits conduct that is misleading or deceptive, or is likely to mislead or deceive, in relation to credit products and services.

The ASIC Act (see reg 2B(1)) defines a 'credit facility' broadly:

- credit cards
- small business overdraft facilities
- investment loans
- hire purchase agreements
- personal and home loans

- mortgages and guarantees which secure borrowings
- negotiable instruments including bills of exchange, and promissory notes used to provide credit.

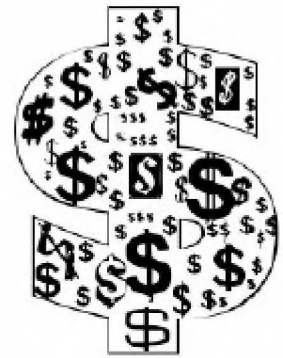
This jurisdiction has allowed ASIC to regulate conduct involved in the giving of advice or other services about credit, and the activities of finance brokers.

In the Northern Territory office, ASIC's consumer protection work in relation to credit has primarily focused on the regulation of 'book up' practices, credit issues associated with motor vehicle purchases and 'buy now pay later' schemes associated with purchasing furniture and white goods. Our work has focused on vulnerable consumers getting into debt they can't service and has involved enforcement and compliance activities, research and policy initiatives, hosting 'book-up' and 'remote lending' forums, producing educational publications and supporting financial literacy programs.

Implementation and how it will work

In 2008, the Council of Australian Governments agreed that the Commonwealth Government should take over responsibility for the regulation of consumer credit. The new credit regime is being implemented in two phases.

The first phase was the introduction of the legislation to give the Commonwealth responsibility, in



June. The second phase is planned for mid 2010 with the introduction of legislation to enact the reforms under Phase Two of the National Consumer Credit Action Plan.

What will be required

The requirement for providers of consumer credit and credit-related broking services to obtain a licence from ASIC will be a key feature of the new regime. The licensing process will be coordinated online, supported by a telephone and email service.

The National Consumer Credit Protection Bill will require anyone who engages in certain credit activities to register with ASIC between 1 November and 31 December this year.

After this, those who have registered will have six months to apply for an Australian Credit Licence (ACL), between 1 January and 30 June 2010. New entrants to the credit market will have to apply for an ACL from 1 January 2010.

Also from that date, under a revised timetable released by the Government, the requirement not to arrange or provide credit that is unsuitable will apply to:

- credit providers (other than Authorised Deposit-taking Institutions (ADIs) and Registered Finance Companies (RFCs)) and intermediaries, including mortgage brokers from 1 January 2010;
- ADIs and RFCs from 1 January 2011.

Other responsible lending obligations (including disclosure requirements, such as upfront disclosure of broker fees and charges) will come into effect on 1 January 2011.

The new laws will see changes (or additions to existing Uniform Consumer Credit Code requirements) such as:

- application to credit for residential investment properties;
- introduction of debit default notices;
- amendments to business purpose declarations;
- amendments to default notices; and
- new notices in response to application for hardship variations.

Point-of-sale retailers (including car dealerships and retail outlets) are exempted from the first phase of the reforms to enable further consultation for 12 months.

Recent developments

As part of ASIC's extensive consultation process, the policy proposals on implementing the responsible lending obligations for credit licensees were recently released.

ASIC's Consultation Paper [115] Responsible lending (CP 115) explains how ASIC proposes to implement the responsible lending obligations as they apply to credit licensees.

The responsible lending obligations are a key consumer protection

feature of the new credit regime. Our proposals aim to give credit licensees guidance about our expectations, while still allowing businesses flexibility in deciding how they will meet the obligations.

Under the responsible lending obligations, licensees will have to conduct reasonable inquiries about a consumer and assess that a credit product is 'not unsuitable' for the consumer before offering or providing the credit product. It is imperative that new borrowers receive quality advice and don't acquire a debt they are unable to service.

How to find out more

ASIC has a website and subscription service dedicated to the implementation and transition to the credit regime.

ASIC will continue to publish information on its website about the new regulatory framework including the legislation, licensing process, general obligations and the timeframe in which the changes will take effect. After the legislation has been passed by the Parliament, ASIC will release regulatory guides, taking into account comments received on relevant consultation papers.

To receive information from ASIC about the National Consumer Credit Protection reforms, subscribe to the ASIC Credit Reform. To view this information and subscribe for regular updates, visit www.asic.gov.au/credit.