



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 203

Do I need a credit licence?

December 2009

About this guide

This guide is for people who may engage in credit activities as defined in the *National Consumer Credit Protection Act 2009*.

It gives guidance to help you decide whether you need to obtain an Australian credit licence (credit licence).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued on 1 December 2009 and is based on the credit legislation and regulations as at 1 December 2009.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

At the date of issue of this guide:

- the National Credit Act and the Transitional Act have not been given Royal Assent; and
- the regulations proposed to be made under those Acts are in exposure draft form and therefore subject to change before being made final.

Once the regulations are made final, we will update our guidance if necessary.

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A Overview

Key points

If you engage in credit activities for the first time from 1 July 2010, you will generally need an Australian credit licence (credit licence) or an authorisation from a licensee before commencing business.

If you currently engage in credit activities and want to continue to do so from 1 July 2010, you need to be registered with ASIC by the end of 30 June 2010, and apply for a credit licence between 1 July 2010 and 31 December 2010, or become a representative of a licensee.

'Credit activity' is defined in the National Credit Act and includes activity relating to credit contracts, consumer leases, related mortgages and guarantees, and credit services.

The national licensing scheme does not apply to all businesses engaged in credit activities: there are additional criteria in the legislation relevant to whether the regime applies to your business.

Not everyone engaging in credit activities regulated under the National Credit Act will need a credit licence. If you are authorised to engage in credit activity on behalf of a licensee, you will not need a credit licence for those activities. Your credit activities may also be exempt from the licensing requirements under regulations or you may be exempted by ASIC.

- RG 203.1 A national licensing scheme for those who engage in credit activities in relation to consumers will commence on 1 July 2010 under the *National Consumer Credit Protection Act 2009* (National Credit Act).

Registration and licensing

- RG 203.2 If you currently engage in credit activities under state or territory credit laws, you may need to be registered with ASIC by the end of 30 June 2010 if you want to continue engaging in credit activities from 1 July 2010. To ensure you are registered by this date, you will need to lodge your application for registration by 18 June 2010. You can apply for registration from 1 April 2010.

Note: The registration period formally closes on 30 June 2010, but we will be processing a large number of registration applications. If you wait until late in the registration period to apply, there is a risk that we won't make a decision on your application in time for you to continue business from 1 July 2010.

- RG 203.3 Registration allows you and your representatives to engage in credit activities until you are granted a licence, but you will need to apply for a credit licence between 1 July 2010 and 31 December 2010.

- RG 203.4 If you are registered you may only *continue* to engage in credit activities from 1 January 2011 if you have applied for a credit licence by the end of 31 December 2010.
- RG 203.5 If you wish to engage in credit activities *for the first time* from 1 July 2010, you must first apply for and receive a credit licence. You can only apply for a credit licence from 1 July 2010. Generally, you will not need to register with ASIC.

Note: For guidance on the transition to the new national licensing scheme and how to register with ASIC, see Regulatory Guide RG 202 *Credit registration and transition* (RG 202). For more guidance on the obligations of credit licensees, see Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205). RG 205 will be published later in December 2009.

If I engage in credit activities do I need to be licensed?

- RG 203.6 The National Credit Act requires people to be licensed who engage in certain types of credit activities. Section B explains these credit activities. The National Credit Act also excludes some activities from being regulated as credit activities: see Table 2 (Appendix 2).

Does the national licensing scheme apply to my business?

- RG 203.7 The National Credit Act contains additional criteria for the requirement to hold a credit licence. These include:
- (a) the credit activity is provided to a consumer, and
 - (b) you carry on a business in Australia.

Who does not need to be licensed?

- RG 203.8 You do not need to hold a credit licence if:
- (a) you are an authorised credit representative, or sub-authorised employee of an authorised credit representative, acting on behalf of a licensed principal (unless you are also engaging in credit activities on your own behalf);
 - (b) you are an employee or director of a licensed principal, engaging in credit activities on your principal's behalf;
 - (c) your credit activities are exempt under the National Credit Act or associated regulations; or
 - (d) ASIC grants you an exemption from the licensing requirement.

Note: For more information, see Section D.

Key roles and exemptions

- RG 203.9 Table 1 (Appendix 1) provides an overview of some key roles in relation to credit activities and indicates whether you will need to hold a credit licence to perform these activities.
- RG 203.10 Table 2 (Appendix 2) provides examples of credit activities that are exempt from regulation under the National Credit Act. For types of credit not covered by the National Credit Code, see RG 203.76–RG 203.77.

B If I engage in credit activities do I need to be licensed?

Key points

The National Credit Act requires people to be licensed who engage in the following credit activities:

- providing credit under a credit contract or consumer lease;
- benefiting from mortgages or guarantees relating to a credit contract;
- providing credit services in relation to a credit contract or consumer lease; and
- providing other prescribed credit activities.

There are two broad categories of people engaged in credit activities who need to be licensed:

- credit providers (i.e. lenders and lessors); and
- providers of credit services, including intermediaries.

Credit activities regulated under the National Credit Act

RG 203.11 The National Credit Act requires people to be licensed who engage in the following credit activities:

- (a) providing credit by way of a credit contract or consumer lease;
- (b) benefiting from mortgages or guarantees relating to a credit contract; and
- (c) providing credit services in relation to a credit contract or consumer lease.

Note 1: 'Credit activity' is defined in s6. All section references in this guide relate to the National Credit Act unless specified as relating to the National Credit Code (the Code).

Note 2: 'Credit contract' is defined in s4 of the Code. 'Consumer lease' is defined in Part 11 of the Code. 'Credit service' is defined in s7.

RG 203.12 To decide whether the credit activities you engage in are regulated under the National Credit Act, and whether you need a credit licence, you need to understand what is meant by 'credit'. Not all credit is regulated under the Act. Only credit that is covered by the National Credit Code (set out as Schedule 1 to the Act) is regulated under the Act. Therefore, if the credit activities you engage in relate to credit covered by the National Credit Code, you may need to hold a credit licence.

Note 1: You will not need to hold a credit licence if you do not meet the additional licence criteria set out in Section C. See also Section D for guidance on categories of people who do not need to hold a credit licence.

Note 2: The National Credit Code, which is contained in Schedule 1 of the National Credit Act, largely replicates the UCCC, which was enacted in uniform state legislation in 1996. However, the National Credit Code has been extended in a number of areas, such as an increased threshold for access to hardship variations, the addition of mortgages relating to residential investment property and the incorporation of a jurisdictional test instead of a residency requirement. For more information about amendments to the UCCC in the National Credit Code, see Ch 8 of the Explanatory Memorandum to the National Consumer Credit Protection Bill 2009 (Explanatory Memorandum).

What is 'credit'?

RG 203.13 Only credit that is covered by the National Credit Code is regulated under the National Credit Act.

RG 203.14 Under the National Credit Code, credit is provided if:

- (a) the payment of a debt owed by a consumer (such as a borrower, guarantor or lessee) to a credit provider is deferred; or
- (b) the consumer incurs a deferred debt to the credit provider.

Note: See s3 of the Code. The definition of 'credit' in the National Credit Act incorporates the definition in s3 of the Code.

RG 203.15 The National Credit Code applies only to credit that is:

- (a) provided to a natural person or strata corporation;
- (b) provided wholly or predominantly for:
 - (i) personal, household or domestic purposes, or
 - (ii) residential investment;
- (c) charged for, or may be charged for, by the lender; and
- (d) provided in the course of carrying on a business of providing credit in Australia or as part of, or incidental to, any other business carried on in Australia.

Note 1: For more information about the tests in the National Credit Code, see Section C.

Note 2: For a full definition of credit covered by the National Credit Code, see s5 of the Code.

RG 203.16 Some types of credit are excluded from regulation under the National Credit Code. These are listed in Table 2 (Appendix 2) and explained in more detail in Section D.

Note: For more exemptions from the National Credit Code, see Ch 7 of the National Credit Regulations.

What are ‘credit activities’?

RG 203.17 Under the National Credit Act there are different types of credit activity, including:

- (a) providing credit under a credit contract;
- (b) securing obligations under a credit contract by way of mortgages or a related guarantee;
- (c) benefiting from guarantees of obligations under a credit contract;
- (d) providing credit under a consumer lease;
- (e) providing credit services in connection with a credit contract or a consumer lease; and
- (f) other credit activities prescribed in the National Credit Regulations.

Note 1: ‘Credit activity’ is defined in s6.

Note 2: For more information on the definition of ‘credit contract’ and ‘consumer lease’, see RG 203.20–RG 203.28 respectively.

Who needs to be licensed?

RG 203.18 There are two broad categories of people engaged in credit activities who need to be licensed:

- (a) credit providers (i.e. lenders and lessors); and
- (b) providers of credit services, including intermediaries.

Credit providers

RG 203.19 This category covers:

- (a) lenders under a credit contract;
- (b) lessors under a consumer lease;
- (c) lenders or their representatives in relation to mortgages; and
- (d) beneficiaries of guarantees or their representatives in relation to guarantees.

Note: The activities relating to mortgages or guarantees are relevant to the licensing requirement where the mortgage manager is taken to secure or guarantee obligations under a credit contract. For more information on the kinds of credit activities regulated under the National Credit Act, see Table 1 (Appendix 1).

What is a 'credit contract'?

RG 203.20 A credit contract is a contract under which credit is or may be provided. The credit must be credit that is covered by the National Credit Code. Common types of credit contracts include personal loans, credit cards, pay day loans and housing loans.

Note: 'Credit contract' is defined in s4 of the Code.

Providing credit under a credit contract

RG 203.21 Under the National Credit Code, 'credit provider' means a person who provides credit or who intends to provide credit. When we use the term 'lender', we mean a 'credit provider' as defined in the National Credit Act. You are also a lender if you are assigned the rights of a lender under the credit contract.

Note: For a definition of 'credit provider', see s5.

RG 203.22 Some common types of lender include banks, credit unions, building societies, finance companies and vendors offering sales contracts by instalment (i.e. hire purchase agreements). An individual may also be a lender.

RG 203.23 You are a lender under the National Credit Act if you are a party to a credit contract (other than the borrower).

Note: For more information about debt collectors, see RG 203.54 and reg 20.

RG 203.24 This licensing requirement also applies to conduct you engage in before entering into a contract with a consumer while carrying on your business. You may therefore need a credit licence to advertise your lending facility or to negotiate a credit contract.

What is a 'consumer lease'?

RG 203.25 Consumer leases are regulated under Part 11 of the National Credit Code. A consumer lease is a contract for the hire of goods which is entered into by a consumer and under which the consumer does not have a right or option to purchase the goods. For a consumer lease to be regulated by the National Credit Code:

- (a) the goods must be wholly or predominantly hired for personal, domestic or household purposes and the lease entered into by a natural person or strata corporation;
- (b) the fees and charges payable under the consumer lease must exceed the cash price of the goods;
- (c) the lessor must hire the goods in the course of a business carried on in Australia; and

- (d) the borrower must not have a right or option to purchase the goods.

Note: See s169–171 of the Code. If condition (d) is not met, the lease may still be regulated as a credit contract under the National Credit Act.

RG 203.26 An example of a consumer lease is a rental agreement for furniture or white goods where ownership of the furniture or white goods never passes to the consumer. In contrast, a lease containing a right or option to purchase the goods, such as a hire purchase contract, is regulated as a credit contract not a consumer lease.

RG 203.27 Businesses often use leases to hire goods such as cars, and plant and equipment. The National Credit Act does not regulate such leases because they are for business purposes.

RG 203.28 Short-term, indefinite and employment leases are also excluded from the definition of a consumer lease. Examples of employment leases are:

- (a) leases novated to an employer; and
- (b) leases paid by salary sacrifice.

Note: See s171 of the Code.

Providing credit under a consumer lease

RG 203.29 Lessors who provide consumer leases engage in credit activity under the National Credit Act. You may be providing consumer leases if you:

- (a) provide funds for consumer leases; or
- (b) are named on the consumer lease contract (originally or as a legal assignee).

RG 203.30 If you are carrying on a business of providing consumer leases, you are engaging in credit activity under the National Credit Act. Pre-contractual conduct you engage in falls within the definition of carrying on a business of consumer leasing. An example of such pre-contractual conduct is advertising your services.

Note: For more information on carrying on a business in Australia, see RG 203.58–RG 203.60.

Carried over instruments

RG 203.31 In general the requirements to:

- (a) be registered; or
- (b) hold a credit licence,

do not apply to credit activities (other than providing credit services) that are engaged in by or on behalf of credit providers or lessors after 1 July 2010 in relation to carried over instruments.

Note: A 'carried over instrument' is a contract or other instrument that was made and in force, and to which an old Credit Code applied, immediately before 1 July 2010: see RG 202.12.

RG 203.32 This means that if a person only engages in these credit activities in relation to carried over instruments, they do not have to apply for either registration or a credit licence.

RG 203.33 However, people who engage in credit activities in relation to carried over instruments may be registered or granted a credit licence. The Transitional Act and associated regulations have special provisions for the registration and licensing of people who engage in these credit activities.

Note 1: For more details of the special registration and licensing provisions in relation to carried over instruments, see Divs 1 and 3 of Part 3 of the Transitional Regulations.

Note 2: For more guidance on credit registration and transition, see RG 202.

Assignees of rights of lenders and lessors

RG 203.34 If you receive, by legal assignment, the rights of a lender or *lessor*, you will be regarded as a credit provider under the National Credit Act and you will be required to hold a credit licence: see s10. Legal assignment of a debt to a debt collector is an example of this.

RG 203.35 *The definition of assignment under the National Credit Act does not extend to equitable assignment under which the consumer has no notice of the assignment.*

Mortgages and guarantees relating to credit contracts

RG 203.36 You may be engaged in credit activities, even if you are not a lender or lessor under a consumer lease.

RG 203.37 A mortgagee engages in credit activities if the mortgage is covered by the National Credit Code. A mortgage will be covered by the National Credit Code if:

- (a) it secures obligations under a credit contract, which is itself covered by the National Credit Code, or a related guarantee; and
- (b) the borrower is a natural person or a strata corporation.

Note: The National Credit Code defines mortgages to which it applies in s7 and 204 of the Code.

- RG 203.38 A beneficiary of a guarantee engages in credit activities if the guarantee is covered by the National Credit Code. A guarantee is regulated under the National Credit Code if:
- (a) it guarantees obligations under a credit contract, which is itself covered by the National Credit Code; and
 - (b) the guarantor (i.e. the person who gives the guarantee) is a natural person or a strata corporation.

Note: See s5 of the National Credit Act and s8 of the Code.

Providers of credit services

- RG 203.39 Providing a credit service is another type of credit activity. You are providing a credit service if you:
- (a) give credit assistance to a consumer; or
 - (b) act as an intermediary between a lender and a consumer (in relation to a credit contract) or between a lessor and a consumer (in relation to a consumer lease).

Note: See s7.

- RG 203.40 These credit activities are not mutually exclusive: you can provide credit assistance and act as an intermediary simultaneously.

Note: See s8.

Provision of credit assistance

- RG 203.41 You are giving credit assistance to a consumer if you:
- (a) suggest that the consumer:
 - (i) apply for a particular credit contract with a particular lender, or apply for a particular consumer lease with a particular lessor;
 - (ii) apply for an increase to their credit limit on a particular credit contract; or
 - (iii) remain in their current credit contract or consumer lease; or
 - (b) assist the consumer to:
 - (i) apply for a particular credit contract with a particular lender, or apply for a particular consumer lease with a particular lessor; or
 - (ii) apply for an increase to their credit limit on a particular credit contract.

Note: 'Credit assistance' is defined in s8 and covers 'suggesting' and 'assisting'. 'Acts as an intermediary' is defined in s9. See also paras 2.33–2.43 of the Explanatory Memorandum.

RG 203.42 The term ‘suggest’ is not defined in the National Credit Act. We consider that it involves proposing the idea to, or introducing into the mind of, a consumer that they:

- (a) apply for;
- (b) apply for an increase in; or
- (c) remain in,

a particular credit contract with a particular credit provider.

RG 203.43 ‘Suggesting’ can extend to offering a consumer advice or making a recommendation that they:

- (a) apply for;
- (b) apply for an increase in; or
- (c) remain in,

a particular credit contract with a particular credit provider.

The following example illustrates that ‘suggesting’ will be credit assistance in some circumstances, while in other circumstances it will not be credit assistance.

Example 1: Borrowing to finance residential property

A suggestion to a consumer that they consider borrowing in order to finance residential property, but not referring to a particular lender or specific credit product, would not be ‘credit assistance’ under s8.

However, a suggestion that a consumer approach a particular finance company or bank about a specific product would be credit assistance, even if the person making the suggestion does not arrange or help with setting up the credit contract.

If the suggestion is to approach a particular credit provider who offers a very limited range of credit products, then it may still be credit assistance even though it does not mention the credit products specifically, given the limited choice of products available with that provider. In contrast, a suggestion to approach a range of specific lenders, all carrying a wide range of credit products, would not be credit assistance unless the suggestion related to specific credit products offered by those lenders.

Note: Full disclosure of benefits, such as commissions, received by the adviser from the credit provider may provide a basis for an exemption where the information constitutes a mere referral to a credit licensee or representative: see reg 26(2).

Financial planners

RG 203.44 Financial planners will often provide budgeting and debt management advice when providing personal financial advice. This may involve considering particular credit products or providers. This advice will not always be credit assistance even though a particular course of action may be suggested. The following examples illustrate different situations in which financial advice may or may not be credit assistance.

Example 2: Debt management

A consumer approaches a financial planner for advice about managing their debts after becoming redundant. The financial planner suggests that the consumer pay off the loan with the highest interest rate first. This advice is not credit assistance, even if the specific loan is identifiable as a particular credit product.

Alternatively, if a financial planner suggests to a consumer seeking advice about debt management that they approach their lender to discuss renegotiating a loan on the basis of hardship, then this would not be credit assistance (see s72 of the Code).

A suggestion or advice to a consumer that they make extra payments to pay off their loans faster or that they repay more than the minimum monthly payment on their credit cards would not be credit assistance. If the consumer has only one loan or credit card, such a suggestion or advice is still not credit assistance, even though it relates to a particular loan or credit card.

However, if a financial planner suggests that a consumer consolidate their credit cards to a specific card with a low interest rate, then this would be credit assistance. In contrast, a suggestion that a consumer review their multiple credit cards, consider cancelling them all, and then find the cheapest card suitable to the consumer's needs would not be credit assistance.

Note: Advice to a consumer that they pay off existing debts is not 'suggesting' under the National Credit Act because it does not suggest that the consumer apply for a new credit contract, apply for an increase under an existing credit contract or remain in an existing credit contract.

Example 3: Advice about existing mortgages

If a financial adviser prepares a financial plan which presupposes the continuation of the existing home loan, it is not credit assistance. However, if the adviser positively advises the client to continue in the current home loan then that is credit assistance.

A consumer asks their financial planner for advice about their existing home loan. The financial planner suggests that the home loan may not be the best product for the consumer that is available in the market at that time and suggests that the consumer look at some other mortgage products and, if necessary, consult a mortgage broker for advice. This is not credit assistance as the advice is generic in nature, and is not about specific credit products or providers. Moreover, information about market interest rates and desirable features of home loans would not be credit assistance if the financial planner does not relate these to specific products in the market.

If it is apparent that a consumer has a home loan with an interest rate set well above market rates, then advising the consumer of this and recommending the consumer make sure they have the most suitable home loan by consulting a licensed broker or licensed comparison website would not be credit assistance.

Example 4: Salary packaging

A consumer approaches their financial adviser for advice about salary packaging in circumstances where their employer has a default arrangement with a particular credit provider. The consumer wants to know if they should use the default credit provider or use another credit provider. The financial adviser is not providing a credit service if they only provide information to the effect that different arrangements carry different features, and refers the consumer to a licensed broker for further advice. However, if the adviser explains the different features or draws comparisons between them, then that is likely to be credit assistance.

Note: Employment leases are classed as credit that is not covered by the National Credit Code (s171 of the Code), so if the salary package consists entirely of an employment lease, then advice about it will not be credit assistance: see RG 203.28.

- RG 203.45 If you are a financial planner and your advice amounts to credit assistance under the National Credit Act, you will need to hold a credit licence or to be covered by a principal's credit licence (unless you are otherwise exempt under the National Credit Act). If you are not licensed or covered by a principal's credit licence, it is important that you make it clear, when discussing different types of credit products such as loans or credit cards, that you are not recommending a particular loan or credit card and you are not licensed to advise on particular credit products.

Other types of credit assistance

- RG 203.46 You are also providing credit assistance if you assist a consumer to:
- (a) apply for credit relating to a particular credit contract or consumer lease; or
 - (b) apply for an increase to the credit limit on a particular credit contract.

Note 2: Some types of credit assistance are excluded from the licensing regime. These are set out in Part 2-4 of the National Credit Regulations.

- RG 203.47 You do not need to deal directly with a consumer in order to provide credit assistance. For instance, if you deal with an immediate relative acting on a consumer's behalf, or if you deal with another intermediary, you are still assisting the consumer: see s8.

Acting as an intermediary

- RG 203.48 You are acting as an intermediary under the National Credit Act if you act as an intermediary between a lender or lessor and a consumer with the aim of obtaining credit or a consumer lease for the consumer.

- RG 203.49 Intermediaries can include:
- (a) finance brokers who, after recommending a particular credit contract, arrange the credit with a credit provider;
 - (b) mortgage managers, if they are involved in arranging the credit; and

- (c) aggregators, where they act as a conduit between a broker and a credit provider in arranging the credit.

Note: 'Intermediary' is defined in s9.

RG 203.50 You do not need to deal directly with a consumer to be an intermediary. There may be a chain of intermediaries between the consumer and the lender or lessor. The vital element is that your role, wholly or partially, is to secure a credit contract or consumer lease for a consumer with a credit provider or lessor.

Note: For examples of intermediary activity, see para 2.43 of the Explanatory Memorandum.

Other prescribed or exempt activities

Prescribed activities

RG 203.51 The National Credit Regulations may prescribe certain other credit-related activities as 'credit activities' under the National Credit Act. At the date of publication, no such activities have been prescribed.

Specific exemptions

RG 203.52 Some types of credit activity have been excluded from the licensing regime and the definition of 'credit activity' in the National Credit Act. An overview of the exemptions is set out in Table 2 (Appendix 2).

Note: For more information, see Part 2-4 of the National Credit Regulations.

RG 203.53 Certain categories of people or organisations are exempt from the licensing requirement in certain circumstances, which are set out in the National Credit Regulations. These categories include:

- (a) a receiver, receiver and manager, provisional liquidator or liquidator;
- (b) a lawyer;
- (c) a registered tax agent; or
- (d) a point-of-sale retailer.

Note: To check whether you are covered by one of the exemptions, see Part 2-4 of the National Credit Regulations.

RG 203.54 Debt collectors who are licensed under state or territory law, and collect a debt as the lender's agent, are, on the whole, exempt from the new regulatory regime until 1 April 2011—that is, 12 months after the credit legislation commences. Until that time, the Australian Government will consult further with the state and territory governments and industry.

Note: Debt collectors will need to be licensed if they are legally assigned a debt, which they may then collect.

C Additional licensing criteria under the National Credit Act

Key points

Not all credit activity is regulated by the National Credit Act. The Act sets certain additional licensing criteria for the requirement to hold a credit licence. These are:

- the credit activity must be provided to a consumer; and
- you must be carrying on a business in Australia.

RG 203.55 You will not need to hold a credit licence unless you also meet the following criteria.

Criterion 1: The credit activity must be provided to a consumer for specific purposes

RG 203.56 The licensing regime applies only to credit provided to a consumer for specific purposes, which are set out in the National Credit Code. For the National Credit Code to apply, you must be providing (or intending to provide) credit to a consumer wholly or predominantly:

- (a) for personal, household or domestic purposes; or
- (b) in the case of credit contracts only, to purchase, renovate or improve residential property for investment purposes, or to refinance such credit.

Investment by a consumer is not a personal, domestic or household purpose under the National Credit Code. However, if the investment is in residential property, then the credit is covered by the National Credit Code.

Note 1: The situation is slightly different for consumer leases, which are a special form of credit covered by the National Credit Code. These have unique requirements in addition to the requirement that the goods are hired wholly or predominantly for personal, domestic or household purposes: see RG 203.25–RG 203.30 and Part 11 of the Code.

Note 2: A ‘consumer’ means a natural person or strata corporation: see s5.

Meaning of ‘predominantly’

RG 203.57 The purpose for which the credit is obtained is defined as ‘predominantly’ for that purpose if it is the purpose for which more than half of the credit is intended to be used. If the credit is to be used to obtain goods or services, the

purpose for which the goods or services are intended to be most used is the predominant purpose: see s5 of the Code.

Criterion 2: You must be carrying on a business in Australia

RG 203.58 You need to hold a credit licence if you carry on a business of providing credit in Australia. The National Credit Act states that a business is being carried on in this jurisdiction (i.e. Australia) if, in the course of carrying on the business, you engage in conduct that:

- (a) is intended to induce people in this jurisdiction to use the goods or services the person provides; or
- (b) is likely to have that effect.

You do not need to have a physical presence in Australia but may use the internet or intermediaries to offer consumer credit to persons in Australia: see para 8.17 of the Explanatory Memorandum.

RG 203.59 In relation to credit provision, the National Credit Code applies to credit contracts where, among other matters:

the credit provider provides the credit in the course of a business of providing credit carried on in this jurisdiction or as part of or incidentally to any other business of the credit provider carried on in this jurisdiction: s5 of the Code.

RG 203.60 In relation to credit assistance and intermediaries, the National Credit Act states that a provider of credit assistance or an intermediary comes within the scope of the Act if the relevant credit activity occurs:

... in the course of, as part of, or incidentally to, a business carried on in this jurisdiction...: s8 and 9.

Note 1: A similar test applies under the *Corporations Act 2001*. We have published guidance about this in Regulatory Guide 121 *Doing financial services business in Australia* (RG 121) at RG 121.41–RG 121.50. This guidance may be useful for deciding whether you are carrying on a business in Australia for the purposes of the National Credit Act.

Note 2: Foreign entities may apply for a credit licence but must meet additional requirements regarding the appointment of a local agent for legal processes: see reg 8.

D Who does not need to be licensed

Key points

You generally do not need to hold a credit licence if you are a representative of a licensed principal and you engage in authorised credit activities on their behalf. The main categories of such representatives are:

- employees and directors of the licensee or a related party of the licensee; and
- credit representatives (and their employees) authorised by the licensee or a related party of the licensee.

A person or class of persons may be exempt from the licensing requirements.

Certain types of credit are excluded from the National Credit Code.

Authorised persons and credit representatives

RG 203.61 A licensee may authorise a third party to engage in credit activities on their behalf. These authorised people are referred to as ‘credit representatives’: see s29(3) and 64.

RG 203.62 A licensee who appoints a credit representative, or who has employees or directors who engage in credit activities on their behalf, is referred to as a ‘principal’: see s29(3).

RG 203.63 You do not need to hold a credit licence to engage in credit activities if:

- (a) you are an authorised credit representative or an employee or director of a licensee or one of its related bodies corporate;
- (b) you engage in credit activities on behalf of the licensee; and
- (c) the licensee holds a credit licence authorising the credit activities that you are engaging in.

Note: See s29(3).

Employees and directors

RG 203.64 An employee or director of a licensee or a related party of the licensee is a representative of the licensee when:

- (a) in the case of an employee, their conduct relating to credit activities is within the scope of their employment; or

- (b) in the case of a director, their conduct relating to credit activities is within the scope of their duties as a director.

Authorised credit representatives and representatives

RG 203.65 Principals who are licensees must authorise their credit representatives in writing and the scope of the authorisation must be within the scope of the principal's credit licence: see RG 203.71–RG 203.73 and s64 and 65.

RG 203.66 Licensees are obliged to ensure that their representatives are competent to engage in all of their authorised credit activities: see s47 (e.g. they should be able to meet the relevant training requirements).

Note: For more guidance see Regulatory Guide RG 206 *Credit licensing: Competence and training* (RG 206) and RG 205 *Credit licensing: General conduct obligations* (RG 205). These two guides will be published in December 2009.

RG 203.67 A credit representative may be a body corporate. If this is the case, the credit representative may sub-authorise a natural person to be a credit representative. The natural person will still be regarded as a credit representative of the licensee, who must give their written consent to the sub-authorisation. No other form of sub-authorisation is permitted under the National Credit Act: see s65.

RG 203.68 A credit representative may be authorised to engage in credit activities on behalf of more than one principal, if all the principals consent.

RG 203.69 An Australian financial services (AFS) licensee may be the credit representative of a credit licensee, and a credit licensee may be the authorised representative of an AFS licensee.

Note: See para 2.161 of the Explanatory Memorandum.

RG 203.70 However, during the transition to the national credit licensing regime, when people may be registered to engage in credit activities before obtaining a credit licence, a registered person will not be able to be authorised as a credit representative. This is because registration will not be confined by conditions to particular types of credit activity, and a credit representative may not act as a representative for activities they are authorised to engage in as a principal.

Note: For more guidance on credit registration and transition, see RG 202.

Ineffective authorisation

RG 203.71 The authorisation to act as a credit representative must be in writing. The National Credit Act sets out circumstances where an authorisation will be ineffective. This includes where the person who is being authorised:

- (a) is subject to a banning order or disqualification under the Act in relation to the credit activity;
- (b) is not a member of an approved external dispute resolution scheme;
- (c) is banned from engaging in credit activities under a state or territory law; or
- (d) is a natural person who has been convicted of serious fraud within the past 10 years.

Note: See s64.

RG 203.72 An authorisation is also void if it covers activities beyond those covered by the licensee's licence.

RG 203.73 Activities carried out under an ineffective authorisation are not covered by the principal's licence.

Exemptions and modifications

RG 203.74 A person or class of persons may be exempt from the licensing requirements under the National Credit Act, National Credit Regulations or an ASIC instrument. The regulations or an ASIC instrument may also modify the application of the Act to a person or class of persons: see s110.

RG 203.75 Certain types of credit activities are exempt from the licensing regime in the National Credit Act: see RG 203.76–RG 203.77.

Note: For more guidance on how ASIC intends to exercise its exemption and modification powers under the National Credit Act, see Regulatory Guide 51 *Applications for relief* (RG 51).

Types of credit not covered by the National Credit Code

RG 203.76 Some types of credit are not covered by the National Credit Code, and therefore activities in relation to them do not trigger the licensing requirement in the National Credit Act. These types of credit are listed in more detail in Table 2 (Appendix 2). They include:

- (a) short-term credit (less than 62 days and meeting other specific criteria relating to fees, charges and interest rates);
- (b) credit without express prior agreement (e.g. when a savings account falls into debit);
- (c) credit for which only an account charge is payable;
- (d) joint credit and debit facilities (e.g. where both credit and debit facilities are available to the extent that the contract or any amount payable or other matter arising out of it relates only to the debit facility);

- (e) bill facilities (e.g. credit provided by an authorised deposit-taking institution);
- (f) insurance premiums payable by instalment;
- (g) credit provided by pawnbrokers;
- (h) credit provided by a trustee of a deceased person's estate;
- (i) employee loans; and
- (j) margin loans.

Note: See s6 of the Code. Some of these types of credit are regulated under other relevant legislation—for example, margin lending is regulated under Ch 7 of the *Corporations Act 2001*.

RG 203.77 Other types of credit may also be excluded from the National Credit Code and National Credit Act by regulations or by an exemption granted by ASIC. Chapter 7 of the National Credit Regulations lists the types of credit that are exempt from the operation of the National Credit Code and are therefore exempt under the National Credit Act.

Appendix 1

Table 1: Do I need an Australian credit licence?

Who you are	Situation where you need to hold a credit licence
<p>Lender under a credit contract See RG 203.21–RG 203.24</p> <p>For example, a bank, credit union, building society or finance company</p>	<p>You need a credit licence if you are a lender and provide credit under a credit contract where:</p> <ul style="list-style-type: none"> the borrower is a natural person or strata corporation; the credit is wholly or predominantly for personal, domestic or household purposes, or relates to a residential investment property; and a charge is made for the credit. <p>Note 1: The licensing requirement will continue as long as a lender is a party to a credit contract.</p> <p>Note 2: The licensing requirement also applies to any other person who performs obligations or exercises rights in relation to a credit contract.</p> <p>Note 3: A streamlining process is available for authorised deposit-taking institutions. We will be publishing more information on streamlining in a regulatory guide.</p>
<p>Lessor under a consumer lease See RG 203.29–RG 203.30</p> <p>For example, a company that leases furniture or electrical appliances to a consumer for their personal use</p>	<p>You need a credit licence if you obtain money under a consumer lease where:</p> <ul style="list-style-type: none"> the goods are hired wholly or substantially for personal, domestic or household purposes; a charge is made for the credit; and the charge, together with any other amount payable under the consumer lease, exceeds the cash price of the goods. <p>Note 1: The licensing requirement will continue as long as a lender is a party to a consumer lease.</p> <p>Note 2: The licensing requirement also applies to any other person who performs obligations or exercises rights in relation to a consumer lease.</p>
<p>Assignees of a lender, lessor, mortgagee or beneficiary of a guarantee See RG 203.34–RG 203.35</p> <p>For example, a lender's mortgage insurer or a debt buyer</p>	<p>You need a credit licence if you are exercising the rights of a lender, lessor, mortgagee, or beneficiary of a guarantee following an assignment to you—this includes where you have been assigned those rights indirectly (i.e. not by the original party to the contract).</p>
<p>Mortgagee See RG 203.36–RG 203.37</p> <p>For example, a bank, credit union, building society or finance company</p>	<p>You need a credit licence if you are entitled to the benefit of a mortgage that:</p> <ul style="list-style-type: none"> secures obligations under a credit contract or related guarantee covered by the National Credit Code; and is taken out by a natural person or strata corporation. <p>Note: The licensing requirement also applies to any other person who performs obligations or exercises rights in respect of a mortgage.</p>
<p>Mortgage manager</p>	<p>You need a credit licence if you manage mortgages that:</p> <ul style="list-style-type: none"> secure obligations under a credit contract or related guarantee covered by the National Credit Code; and are taken out by a natural person or strata corporation.

Who you are	Situation where you need to hold a credit licence
<p>Beneficiary of a guarantee See RG 203.38</p>	<p>You need a credit licence if you are taking the benefit of a guarantee that:</p> <ul style="list-style-type: none"> • guarantees obligations of a debtor under a credit contract covered by the National Credit Code; and • is given by a natural person or strata corporation. <p>Note: The licensing requirement also applies to any other person who performs obligations or exercises rights in respect of a guarantee.</p>
<p>Financial adviser or finance broker See RG 203.41–RG 203.45</p> <p>For example, a financial adviser suggesting that a client fix their variable rate mortgage</p>	<p>You need a credit licence if you suggest that the consumer:</p> <ul style="list-style-type: none"> • apply for a particular credit contract or consumer lease with a particular lender or lessor; • apply for an increase to the credit limit of a particular credit contract with a particular lender; or • remain in their current credit contract.
<p>Finance broker or similar intermediary See RG 203.48–RG 203.49</p>	<p>You need a credit licence if you assist the consumer to:</p> <ul style="list-style-type: none"> • apply for a particular credit contract or consumer lease with a particular lender or lessor; • apply for an increase to the credit limit of a particular credit contract with a particular lender; or • remain in their current credit contract. <p>Note: You are providing assistance even when you provide assistance to the consumer's agent and not directly to the consumer.</p>
<p>Other types of intermediary See RG 203.50</p>	<p>You need a credit licence if you:</p> <ul style="list-style-type: none"> • are an intermediary in the 'chain' between consumer and lender under a credit contract, or a lessor under a consumer lease, even if you have no direct contact with the consumer; and • your role is wholly or partially aimed at obtaining credit or a consumer lease for the consumer. <p>Note: This category includes aggregators and originators.</p>

Appendix 2

Table 2: Exemptions under the National Credit Act and National Credit Regulations

Who you are	Exemption for
Credit representative See s29(3)	Credit activities undertaken on behalf of a licensee and which the licensee has authorised you to engage in on their behalf. For more information, see Section D.
Employee or director See s29(3)	Credit activities undertaken on behalf of a licensee where the activity is within the scope of your authority as an employee or director. For more information, see Section D.
Point-of-sale retailer See reg 23	Credit services or goods you supply as a point-of-sale retailer. However, the exemption does not apply where the item being supplied is an interest in land
Corporate and personal insolvency practitioner See reg 20(3)	Credit activities you engage in as <ul style="list-style-type: none"> • an official receiver or trustee under the <i>Bankruptcy Act 1966</i>; • a receiver, receiver and manager, provisional liquidator or liquidator; or • an administrator of a company or deed of company arrangement.
Financial counselling agency See reg 29(5)	Credit activities you engage in where you are a financial counselling agency and you or your associates do not receive any remuneration (whether by commission or otherwise) in relation to the financial counselling service.
Third parties See reg 22	Credit activities undertaken by a person who: <ul style="list-style-type: none"> • sells or transports property of a borrower or guarantor on behalf of a lender; or • gives or sends a notice to a borrower or guarantor on behalf of a lender.
Securitisation entity See reg 24	Credit activities undertaken by a person who is a securitisation entity, if the entity meets the requirements set out in the regulation.
Lawyer See reg 25(2)-(4)	Credit activities you engage in as a lawyer because you: <ul style="list-style-type: none"> • provide credit assistance in your professional capacity as a lawyer (e.g. providing legal advice on credit contracts); or • engage in credit activities on the instructions of your client.
Registered tax agent See reg 25(5)	Credit activities you engage in as a registered tax agent.

Who you are	Exemption for
<p>Passing on factual information in response to a request See reg 25(8)</p>	<p>Credit activities you engage in when a consumer requests factual information from you about the cost or estimated likely cost of a credit contract or consumer lease or the terms and conditions of a credit contract or consumer lease and you respond to that request. You must be able to have complied with the request by giving the consumer equivalent information about one or more other credit contracts or consumer leases.</p>
<p>Clerks and cashiers See reg 24(7)</p>	<p>Credit activities you engage in as a clerk or cashier in the ordinary course of your activities as a clerk or cashier.</p>
<p>State licensed debt collector, repossession agents, etc. See reg 21</p>	<p>Credit activities such as demanding or receiving payments from borrowers under credit contracts and enforcing rights in relation to taking possession of property secured by a mortgage. The activities must be engaged in by a state regulated debt collector or repossession agent on behalf of a licensee or person authorised to engage in the credit activity. Such persons are exempt from the National Credit Act until 1 July 2011.</p>
<p>Referrals See reg 26(2)</p>	<p>Referral to a credit licensee, provided the person makes a full disclosure of benefits, such as commissions, they receive from the credit provider where the information constitutes a mere referral of the consumer to a credit licensee or representative.</p>

Note: For types of credit not covered by the National Credit Code, see RG 203.76–RG 203.77.

Key terms

Term	Meaning in this document
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act
consumer lease	A consumer lease to which the National Credit Code applies Note: See s169–171 of the National Credit Code
credit	Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit assistance	Has the meaning given in s8 of the National Credit Act
credit contract	Has the meaning given in s4 of the National Credit Code
credit legislation	Has the meaning given in s5 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee or registered person under s64(2) or s65(2) of the National Credit Act
credit service	Has the meaning given in s7 of the National Credit Act
lender	A credit provider
lessor	A lessor under a consumer lease
National Credit Act	Either: <ul style="list-style-type: none"> • <i>National Consumer Credit Protection Act 2009</i>; or • before Royal Assent is given to that Act—the National Consumer Credit Protection Bill 2009
National Credit Code (or the Code)	National Credit Code at Schedule 1 of the National Credit Act
National Credit Regulations	Either: <ul style="list-style-type: none"> • National Consumer Credit Protection Regulations 2010; or • before these regulations are made final—Exposure Draft National Consumer Credit Protection Regulations released by Treasury in November 2009

Term	Meaning in this document
reg 8 (for example)	A regulation of the National Credit Regulations (in this example, numbered 8)
RG 148 (for example)	An ASIC regulatory guide (in this example, numbered 148)
s35 (for example)	A section of the National Credit Act (in this example, numbered 35), unless otherwise specified
Transitional Act	Either: <ul style="list-style-type: none"> • <i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>; or • before Royal Assent is given to that Act—National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009
Transitional Regulations	Either: <ul style="list-style-type: none"> • National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010; or • before these regulations are made final—Exposure Draft National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations released by Treasury in November 2009

Related information

Headnotes

Australian credit licence, credit activities, credit assistance, credit licensee, credit provider, credit representative, National Credit Code, registered persons, registration period, representative

Regulatory guides

RG 51 *Applications for relief*

RG 121 *Doing financial services business in Australia*

RG 202 *Credit registration and transition*

RG 205 *Credit licensing: General conduct obligations*

RG 206 *Credit licensing: Competence and training*

Information sheets

INFO 96 *Getting ready for credit*

Legislation

Australian Securities and Investments Commission Act 2001

Corporations Act 2001, Part 7.6 Div 8

National Credit Act, s5, 6, 7, 8, 9, 10, 29(3), 64, 65, 110; National Credit Code, Part 11, s3, 4, 5, 6, 7, 8, 169–171, 204; National Credit Regulations, Ch 7, Part 2-4, regs 8, 20, 20(3), 21, 22, 23, 24, 24(7), 25(5), 25(8), 26(2), 29(5); Transitional Act; Transitional Regulations, Part 3 Divs 1 & 3