



National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

No. 135, 2009

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Schedule(s)	3
Part 2—Dictionary	4
4 Dictionary	4
5 Meaning of <i>corresponds</i>	8
Part 3—Other matters	10
6 Regulations may deal with transitional matters	10
7 Acquisition of property	11
Schedule 1—Transition from the old Credit Codes to the National Credit Act	12
Part 1—Introduction	12
Part 2—Transition from the old Credit Codes to the new Credit Code	13
Division 1—Object of this Part	13
Division 1A—Application of the new Credit Code	13
Division 2—Treatment of contracts or other instruments made before commencement	14
Division 3—Treatment of court and tribunal proceedings and orders	15
Division 4—General transitional provisions relating to other things done etc. under the old Credit Code	19
Part 3—Application of the National Credit Act (other than the new Credit Code) and Schedule 2 to this Act	27
Division 1—Application of the National Credit Act (other than Chapter 3 and the new Credit Code)	27
Division 2—Application of Chapter 3 of the National Credit Act	28
Division 3—Application of Schedule 2 to this Act	29
Part 4—Transitional provisions relating to ASIC	30

Schedule 2—Registration of persons to engage in credit activities	32
Part 1—Introduction	32
Part 2—Transitional prohibitions relating to credit activities	34
Division 1—Prohibition that applies only from commencement to 31 December 2010, or later prescribed day	34
Division 2—Prohibition that applies only from 1 January 2011, or later prescribed day, to the transition end day	35
Division 3—Application of Division 3 of Part 2-1 of the National Credit Act in relation to registered persons and this Schedule	37
Part 3—Registration of persons who engage in credit activities	39
Division 1—How to become registered	39
Division 2—The conditions on the registration	42
Division 3—Obligations of registered persons	44
Division 4—When registrations can be suspended, cancelled or varied	48
Part 4—Application of other provisions of the National Credit Act in relation to registered persons and this Schedule	55
Part 5—Exemptions and modifications relating to this Schedule	61
Part 6—Regulations relating to infringement notices	64
Schedule 3—Consequential amendments	65
<i>Australian Securities and Investments Commission Act 2001</i>	65
<i>Corporations Act 2001</i>	65



National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

No. 135, 2009

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

[Assented to 15 December 2009]

The Parliament of Australia enacts:

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

No. 135, 2009 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Consumer Credit Protection (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.	15 December 2009
2. Schedule 1, items 1 to 21	At the same time as section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.	1 April 2010
2A. Schedule 1, item 22	The day this Act receives the Royal Assent.	15 December 2009
2B. Schedule 1, item 23	At the same time as section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.	1 April 2010
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.	1 April 2010 (paragraph (b) applies)

2 *National Consumer Credit Protection (Transitional and Consequential Provisions) Act*
2009 *No. 135, 2009*

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 3	At the same time as section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.	1 April 2010

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.

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.

Part 2—Dictionary

4 Dictionary

(1) In this Act:

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.

carried over instrument means a contract or other instrument that:

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

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:

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

Chapter 3 start day: see subitem 19(1) of Schedule 1 to this Act.

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:

- (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.

commencement means the start of 1 July 2010, or a later day prescribed by the regulations.

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

corresponds: see section 5.

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

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

interlocutory application means an application that:

- (a) is made during the course of proceedings; and
- (b) is for an order that is incidental to the principal object of those proceedings, including, for example:
 - (i) an order about the conduct of those proceedings; or
 - (ii) an order assisting a party to those proceedings to present their case in those proceedings; or
 - (iii) an order protecting or otherwise dealing with property that is the subject matter of those proceedings;but not including an order making a final determination of existing rights or liabilities.

interlocutory order means:

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

interlocutory proceedings means proceedings:

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

liability includes a duty or obligation.

made includes issued, given or published.

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

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

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

old Credit Code means the following:

-
- (a) for New South Wales—the Consumer Credit (New South Wales) Code, and the Consumer Credit (New South Wales) Regulations, within the meaning of the *Consumer Credit (New South Wales) Act 1995* of New South Wales, as in force from time to time before commencement;
 - (b) for Victoria—the Consumer Credit (Victoria) Code, and the Consumer Credit (Victoria) Regulations, within the meaning of the *Consumer Credit (Victoria) Act 1995* of Victoria, as in force from time to time before commencement;
 - (c) for Queensland—the Consumer Credit (Queensland) Code, and the Consumer Credit (Queensland) Regulations, within the meaning of the *Consumer Credit (Queensland) Act 1994* of Queensland, as in force from time to time before commencement;
 - (d) for Western Australia—the Consumer Credit (Western Australia) Code, and the Consumer Credit (Western Australia) Code Regulations, within the meaning of the *Consumer Credit (Western Australia) Act 1996* of Western Australia, as in force from time to time before commencement;
 - (e) for South Australia—the Consumer Credit (South Australia) Code, and the Consumer Credit (South Australia) Regulations, within the meaning of the *Consumer Credit (South Australia) Act 1995* of South Australia, as in force from time to time before commencement;
 - (f) for Tasmania—the Consumer Credit (Tasmania) Code, and the Consumer Credit (Tasmania) Regulations, within the meaning of the *Consumer Credit (Tasmania) Act 1996* of Tasmania, as in force from time to time before commencement;
 - (g) for the Australian Capital Territory—the Consumer Credit (Australian Capital Territory) Code, and the Consumer Credit (Australian Capital Territory) Regulations, within the meaning of the *Consumer Credit Act 1995* of the Australian Capital Territory, as in force from time to time before commencement;
 - (h) for the Northern Territory—the Consumer Credit (Northern Territory) Code, and the Consumer Credit (Northern Territory) Regulations, within the meaning of the *Consumer Credit (Northern Territory) Act 1995* of the Northern Territory

Territory, as in force from time to time before commencement.

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

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

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

primary proceedings means proceedings other than interlocutory proceedings.

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

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

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

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

registrable corporation has the same meaning as in section 7 of the *Financial Sector (Collection of Data) Act 2001*.

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

representative of a person means:

- (a) if the person is a registered person:
 - (i) a credit representative of the registered person; or
 - (ii) an employee or director of the registered person; or
 - (iii) an employee or director of a related body corporate of the registered person; or
 - (iv) any other person acting on behalf of the registered person; or
- (b) in any other case:

-
- (i) an employee or director of the person; or
 - (ii) an employee or director of a related body corporate of the person; or
 - (iii) any other person acting on behalf of the person.

right includes an interest or status.

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

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

this Act includes instruments made under this Act.

transition end day means 30 June 2011, or a later day prescribed by the regulations.

tribunal means tribunal in Australia.

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

5 Meaning of *corresponds*

- (1) A provision (the **old provision**) of the old Credit Code of a referring State or a Territory **corresponds** to a provision (the **new provision**) of the new Credit Code (and vice versa) if:
 - (a) the old provision and the new provision are substantially the same, unless the regulations specify that the 2 provisions do not correspond; or
 - (b) the regulations specify that the 2 provisions correspond.

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

- (2) For the purposes of paragraph (1)(a), differences of all or any of the following kinds are not sufficient to mean that 2 provisions are not substantially the same:
 - (a) differences in the numbering of the provisions;

-
- (b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references) or of style;
 - (c) the fact that:
 - (i) the old provision allowed a tribunal to exercise powers but the new provision only allows a court to do so; or
 - (ii) the old provision allowed proceedings to be brought in a tribunal but the new provision only allows proceedings to be brought in a court; or
 - (iii) the old provision allowed or required a particular agency to exercise powers or perform functions but the new provision allows or requires ASIC to do so;
 - (d) other differences that are attributable to the fact that the new Credit Code applies as a Commonwealth law;
 - (e) other differences of a kind prescribed by the regulations.
- (3) Subsection (2) is not intended to otherwise limit the circumstances in which 2 provisions are, for the purposes of paragraph (1)(a), substantially the same.
- (4) The regulations may provide that a specified provision of the old Credit Code of a referring State or a Territory does, or does not, correspond to a specified provision of the new Credit Code.

Part 3—Other matters

6 Regulations may deal with transitional matters

- (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.
- (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.
- (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.
- (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;

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

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

7 Acquisition of property

- (1) A provision of this Act does not apply, and is taken never to have applied, to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms.
- (2) In subsection (1), *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.

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.

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

Division 1—Object of this Part

2 Object of this Part

- (1) The object of this Part is to provide for a smooth transition from the regime provided for in the old Credit Code of a referring State or Territory to the regime provided for in the new Credit Code, so that natural persons, bodies corporate and other bodies are, to the greatest extent possible, put in the same position immediately after commencement as they would have been if:
- (a) that old Credit Code had, from time to time when it was in force, been valid Commonwealth legislation applying in that State or Territory; and
 - (b) the new Credit Code (to the extent it contains provisions that correspond to provisions of the old Credit Code as in force immediately before commencement) were a continuation of that old Credit Code as so applying.

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

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

Division 1A—Application of the new Credit Code

2A Application of the new Credit Code

- (1) The new Credit Code applies from commencement.

Note: The new Credit Code does not apply before commencement. It also does not apply in relation to contracts or other instruments that were made before commencement, unless they are carried over instruments (see item 3).

- (2) Subitem (1) is subject to subitem 3(2).

Division 2—Treatment of contracts or other instruments made before commencement

3 Application of the new Credit Code to contracts or other instruments made before commencement

- (1) The new Credit Code does not apply in relation to a contract or other instrument that was made before commencement.
- (2) Despite subitem (1), the new Credit Code applies in relation to a carried over instrument.
- (3) Despite subitem (2), sections 5, 13 and 172 of the new Credit Code do not apply in relation to a carried over instrument. Instead, sections 6, 11 and 150 of the old Credit Code of a referring State or a Territory, as in force immediately before commencement, apply from commencement in relation to a carried over instrument as if those provisions respectively were sections 5, 13 and 172 of the new Credit Code.
- (4) Despite subitem (2), subsections 6(2) and 50(2), (3), (4), (5) and (8) of the new Credit Code do not apply in relation to a carried over instrument.
- (5) Despite subitem (2), subsection 72(5) of the new Credit Code does not apply in relation to a carried over instrument. Instead, the following provision applies from commencement in relation to a carried over instrument as if the provision were subsection 72(5) of the new Credit Code:

Application

- (5) This section and sections 73 to 75 do not apply to a credit contract under which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for the purchase of new dwellings in New South Wales as set out in the Table of Housing Finance Commitments in the most recent publication entitled *Housing Finance, Australia*, as published from time to time by the Australian Bureau of Statistics.
- (6) Despite subitem (2), subsection 94(4) of the new Credit Code does not apply in relation to a carried over instrument. Instead, the following provision applies from commencement in relation to a carried over

instrument as if the provision were subsection 94(4) of the new Credit Code:

- (4) This Division does not apply to a credit contract in respect of which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for the purchase of new dwellings in New South Wales as set out in the Table of Housing Finance Commitments in the most recent publication entitled *Housing Finance, Australia*, as published from time to time by the Australian Bureau of Statistics.

Division 3—Treatment of court and tribunal proceedings and orders

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

- (1) This item applies to proceedings (the *old proceedings*) in relation to which the following paragraphs are satisfied:
 - (a) the proceedings were brought in a court before commencement in relation to a carried over instrument;
 - (b) the proceedings were brought in relation to a provision (the *old provision*) of the old Credit Code of a referring State or a Territory;
 - (c) the proceedings were not enforcement proceedings, or appeal or review proceedings, in relation to an order of a court;
 - (d) the proceedings had not been concluded or terminated before commencement;
 - (e) either:
 - (i) if the proceedings are primary proceedings—no final determination of any of the existing rights or liabilities at issue in the proceedings had been made before commencement; or
 - (ii) if the proceedings are interlocutory proceedings—this item applies to the primary proceedings to which the interlocutory proceedings relate.

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

- (2) Proceedings (the *new proceedings*) equivalent to the old proceedings are, on commencement, taken to have been brought in the same court,

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

exercising federal jurisdiction under the provision of the new Credit Code that corresponds to the old provision.

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

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

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

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

- (4) The following provisions apply in relation to the new proceeding:
- (a) the parties to the new proceedings are the same as the parties to the old proceedings;
 - (b) subject to subitems (5) and (6) and to any order to the contrary made by the court, the court must deal with the new proceedings as if the steps that had been taken for the purposes of the old proceedings before commencement had been taken for the purposes of the new proceedings.

- (5) If:
- (a) an interlocutory order was made before commencement for the purpose of, or in relation to, the old proceedings; and
 - (b) that interlocutory order was in force immediately before commencement;

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

- (6) The court may make orders doing all or any of the following:
- (a) cancelling or varying rights or liabilities that a person has because of subitem (5);
 - (b) substituting other rights or liabilities for rights or liabilities a person has because of subitem (5);
 - (c) adding rights or liabilities to the rights or liabilities a person has because of subitem (5);
-

- (d) enforcing, or otherwise dealing with conduct contrary to, a right or liability a person has because of subitem (5) in the same way as it could enforce, or deal with, the right, liability or conduct if the right or liability had arisen under or because of an order made by the court in the exercise of federal jurisdiction under the new Credit Code.

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

- (1) A reference in the new Credit Code to the bringing of proceedings, or the taking of a step in proceedings, in a court under or in relation to a provision of the new Credit Code includes a reference to the bringing of proceedings, or the taking of the equivalent step in proceedings, in a court before commencement, in relation to a carried over instrument, under or in relation to the corresponding provision of the old Credit Code of a referring State or a Territory.

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

- (2) A reference in the new Credit Code to an order made by a court under or in relation to a provision of the new Credit Code includes a reference to an order made by a court before commencement, in relation to a carried over instrument, under or in relation to the corresponding provision of the old Credit Code of a referring State or a Territory.

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

- (3) Nothing in subitem (2) is taken to produce a result that would:
 - (a) make a person liable, under the new Credit Code, to any penalty (whether civil or criminal) provided for in an order referred to in subitem (2); or
 - (b) enable enforcement proceedings, or appeal or review proceedings, in relation to such an order to be taken in a court under the new Credit Code; or
 - (c) enable proceedings by way of appeal, or other review, of such an order to be taken in a court under the new Credit Code.
- (4) If, after commencement, an order referred to in subitem (2) is varied or set aside on appeal or review, subitem (2) applies, or is taken to have

applied, from the time from which the variation or setting aside takes or took effect, as if:

- (a) if the order is varied—the order had been made as so varied;
or
 - (b) if the order is set aside—the order had not been made.
- (5) Despite, subitems (1) and (2), the regulations may provide that subitem (1) or (2) does not apply in relation to a particular reference or class of references in the new Credit Code.

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

- (1) The new Credit Code does not apply in relation to:
- (a) proceedings that are brought in a tribunal under the old Credit Code of a referring State or a Territory before or after commencement; or
 - (b) orders that are made by a tribunal under the old Credit Code of a referring State or a Territory before or after commencement; or
 - (c) rights or liabilities arising in relation to proceedings that are brought in, or orders that are made by, a tribunal under the old Credit Code of a referring State or a Territory before or after commencement.
- (2) This Act and the National Credit Act are not intended to exclude or limit the operation of a law of a referring State or a Territory relating to:
- (a) proceedings that are brought in a tribunal under the old Credit Code of a referring State or a Territory before or after commencement; or
 - (b) orders that are made by a tribunal under the old Credit Code of a referring State or a Territory before or after commencement; or
 - (c) rights or liabilities arising in relation to proceedings that are brought in, or orders that are made by, a tribunal under the old Credit Code of a referring State or a Territory before or after commencement.

7 Interlocutory proceedings

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

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

8 Limitations on scope of this Division

- (1) This Division has effect subject to Divisions 2 and 3 (which deal with matters in more specific terms).
- (2) This Division does not apply in relation to:
 - (aa) a contract or other instrument that is not a carried over instrument; or
 - (a) an order made by a court or tribunal before commencement; or
 - (b) a right or liability under an order made by a court or tribunal before commencement; or
 - (c) proceedings brought (including appeal, review or enforcement proceedings) in a court or tribunal before commencement, or a step in such proceedings; or
 - (d) a right to:
 - (i) appeal to a court or tribunal against an order made by a court or tribunal before commencement; or
 - (ii) apply to a court or tribunal for review of such an order; or
 - (iii) bring appeal or review proceedings, or enforcement proceedings, in relation to such an order.

Note: Division 3 deals with orders and proceedings made or begun in courts or tribunals before commencement, and with related matters.

- (3) Despite paragraph (2)(c), items 11 and 12 apply to any right or liability to which proceedings to which item 4 applies relate.
- (4) Except as mentioned in subitems (1) to (3), Divisions 2 and 3, and regulations made under section 6, do not limit this Division.

9 Provisions of this Division may have an overlapping effect

- (1) This Division deals at a broad level with concepts and matters in a way that is intended to achieve the object of this Part as set out in item 2.
- (2) Some of the provisions of this Division will (depending on the situation) have an effect that overlaps or interacts to some extent with the effect of other provisions of this Division. This is intended, and the provisions of this Division should be not be regarded as dealing with mutually exclusive situations.

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

- (1) A thing that:
 - (a) was done before commencement by, under, or for the purposes of, a carried over provision of the old Credit Code of a referring State or a Territory; and
 - (b) had an ongoing significance (see subitems (3) and (4)) immediately before commencement for the purposes of that Code;has effect (and may be dealt with) after commencement, for the purposes of the new Credit Code, as if it were done by, under, or for the purposes of, the corresponding provision of the new Credit Code.

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

- (2) Without limiting subitem (1), examples of things done include:
 - (a) the making of an instrument or order (but not including the making of an order by a court or tribunal); and
 - (b) the making of an application or claim (but not including the making of an application or claim to a court or tribunal); and
 - (c) the granting of an application or claim (but not including the granting of an application or claim by a court or tribunal); and
 - (d) the making of an appointment or delegation; and
 - (e) the commencement of a procedure or the taking of a step in a procedure (but not including the bringing of proceedings in a court or tribunal); and
 - (f) requiring a person to do, or not to do, something (but not including a requirement contained in an order made by a court or tribunal); and
 - (g) the giving of a notice or document.

- (3) A thing done by, under, or for the purposes of, a carried over provision of the old Credit Code of a referring State or a Territory had an ***ongoing significance*** immediately before commencement for the purposes of that Code if:
- (a) if the thing done was the making of an instrument or order—the instrument or order was still in force immediately before commencement; or
 - (b) if the thing done was the making of an application or claim—the application or claim had not been decided, and had not otherwise ceased to have effect, before commencement; or
 - (c) if the thing done was the granting of an application or claim—the thing granted had not been revoked, and had not otherwise ceased to have effect, before commencement; or
 - (d) if the thing done was the making of an appointment or delegation—the appointment or delegation had not been revoked, and had not otherwise ceased to have effect, before commencement; or
 - (e) if the thing done was the commencement of a procedure or the taking of a step in a procedure—the procedure was still in progress immediately before commencement or was otherwise still having an effect; or
 - (f) if the thing done was requiring a person to do, or not to do something—the requirement was still in force immediately before commencement; or
 - (g) if the thing done was the giving of a notice or document, or the doing of some other thing—the notice or document (or the giving of the notice or document), or the thing (or the doing of the thing), had an ongoing effect or significance immediately before commencement for the purposes of the old Credit Code of the State or Territory.
- (4) Despite subitem (3), the regulations may provide that a specified thing done under, or for the purposes of, a carried over provision of the old Credit Code of a referring State or a Territory did, or did not, have an ongoing significance immediately before commencement for the purposes of that Code.

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

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) This item applies in relation to a right or liability (the *old right or liability*), whether civil or criminal, that:
- (a) was acquired, accrued or incurred under a carried over provision of the old Credit Code of a referring State or a Territory; and
 - (b) was in existence immediately before commencement.

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

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

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

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

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

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

- (1) This item applies in relation to a right or liability (the *old right or liability*), whether civil or criminal, that:
- (a) was acquired, accrued or incurred under a provision of the old Credit Code of a referring State or a Territory that was no longer in force immediately before commencement; and
 - (b) was in existence immediately before commencement.

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

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

- (a) the provision of the old Credit Code (with such modifications (if any) as are necessary) under which the old right or liability was acquired, accrued or incurred; and
- (b) the other provisions of the old Credit Code (with such modifications (if any) as are necessary) that applied in relation to the old right or liability;

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

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

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

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

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

13 Old Credit Code time limits etc.

- (1) An old Credit Code time limit (see subitem (2)):
 - (a) the starting point of which:
 - (i) was known or had been determined before commencement (whether that starting point occurred or would occur before, on or after commencement); or
 - (ii) would have become known, or have been determined, after commencement if the old Credit Code of the referring State or the Territory had continued to apply (whether that starting point would have occurred before, on or after commencement); and
 - (b) that had not ended at or before commencement;

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

- (2) An *old Credit Code time limit* includes:
- (a) a period for the doing of a thing specified or determined under the old Credit Code of a referring State or a Territory; or
 - (b) a period specified or determined under a provision of the old Credit Code of a referring State or a Territory as the duration of a particular instrument or status.
- (3) If:
- (a) under the old Credit Code of a referring State or a Territory, a process, a status of a person or body, or an instrument, commenced from a particular time before commencement; and
 - (b) that process, status or instrument is continued after commencement for the purposes of the new Credit Code by a provision of this Schedule;
- that process, status or instrument as so continued is still taken to have commenced from the time referred to in paragraph (a).
- (4) If an old Credit Code time limit related to an old right or liability, the same time limit applies in relation to the substituted right or liability.

14 Preservation of significance etc. of events or circumstances

- (1) An event, circumstance or other thing:
- (a) that occurred or arose before commencement under or as mentioned in a provision of the old Credit Code of a referring State or a Territory; and
 - (b) that had a particular significance, status or effect for the purposes of a carried over provision of that Code (including because of an interpretive provision);
- has that same significance, status and effect after commencement for the purposes of the provision of the new Credit Code that corresponds to that carried over provision.

- (2) Without limiting subitem (1), an event, circumstance or other thing had a particular significance for the purposes of a carried over provision of the old Credit Code of a referring State or a Territory if:
- (a) the carried over provision created an obligation in relation to the event, circumstance or thing (whenever it arose); or
 - (b) the carried over provision provided for the event, circumstance or thing to be dealt with in a particular way; or
 - (c) the carried over provision stated that the event, circumstance or thing (whenever it arose) was to be disregarded for the purposes of that provision or was not covered by that provision.

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

- (1) A reference in the new Credit Code to an event, circumstance or thing of a particular kind that happens or arises, or that has happened or arisen, is taken to include a reference to an event, circumstance or thing of that kind that happened or arose at a time before commencement, unless a contrary intention is expressed.
- (2) The fact that the provision uses only the present tense in referring to an event, circumstance or thing is not, of itself, to be regarded as an expression of a contrary intention.
- (3) Nothing in subitem (1) is taken to produce a result that a right or liability exists under a provision of the new Credit Code that relates solely to events, circumstances or things that occurred before commencement.

Note: Instead, an equivalent right or liability will be created by item 11 or 12.

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

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

If:

- (a) a law of a referring State or a Territory had effect before commencement:
 - (i) to take or deem something to have happened or to be the case, or to have a particular effect, under or for the
-

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

purposes of the old Credit Code of that State or Territory (or a provision of that Code); or

- (ii) to give something an effect for the purposes of the old Credit Code of that State or Territory (or a provision of that Code) that it would not otherwise have had; and
- (b) that effect was continuing immediately before commencement;

this Part applies as if that thing had actually happened or were actually the case, or as if that thing actually had that other effect.

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

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

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

Division 1—Application of the National Credit Act (other than Chapter 3 and the new Credit Code)

17A Application of the National Credit Act (other than Chapter 3 and the new Credit Code)

- (1) The National Credit Act (other than Chapter 3 and the new Credit Code) applies from commencement.

Note 1: The National Credit Act does not apply before commencement. However, see subitem (2), which provides that regulations made under section 329 of the National Credit Act may apply before commencement.

Note 2: See item 19 for the application of Chapter 3 (which deals with responsible lending conduct) of the National Credit Act.

Note 3: See items 2A and 3 for the application of the new Credit Code.

Note 4: Generally, the National Credit Act (other than the new Credit Code) does not apply to contracts or other instruments made before commencement. However, see item 18 for exceptions to this.

- (2) Despite subitem (1), regulations made under section 329 of the National Credit Act may apply on and after the day section 3 of the National Credit Act commences.

18 Treatment of contracts or other instruments made before commencement

- (1) The National Credit Act (other than Chapter 3 and the new Credit Code) does not apply in relation to a contract or other instrument that was made before commencement.

Note 1: See item 19 for the application of Chapter 3 (which deals with responsible lending conduct) of the National Credit Act.

Note 2: See items 2A and 3 for the application of the new Credit Code.

- (2) Despite subitem (1), the regulations may provide for the application of all or specified provisions of the National Credit Act to a person (including the licensing of that person) in relation to credit activities

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

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

engaged in on or after commencement in relation to a carried over instrument.

- (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 carried over instrument.
- (4) Despite subitem (1), regulations made under section 329 of the National Credit Act for the purposes of section 330 of that Act or the new Credit Code may make provision in relation to proceedings brought after commencement in relation to a carried over instrument.

Division 2—Application of Chapter 3 of the National Credit Act

19 Application of Chapter 3 of the National Credit Act

When all of Chapter 3 (responsible lending conduct) applies to all licensees

- (1) Chapter 3 (which deals with responsible lending conduct) of the National Credit Act applies on and after the day (the **Chapter 3 start day**) that is 1 January 2011, or a later day prescribed by the regulations.

Note: Chapter 3 of the National Credit Act does not apply before the Chapter 3 start day. However, under subitem (2), certain provisions of Chapter 3 apply before then to some licensees (and registered persons because of item 36 of Schedule 2 to this Act).

When certain provisions of Chapter 3 apply earlier for some licensees

- (2) Despite subitem (1), sections 112, 115, 116, 117, 118, 119, 122, 123, 124, 128, 129, 130, 131, 133, 135, 138, 139, 140, 141, 142, 145, 146, 147, 151, 152, 153, 154, 156, 162, 163 and 164 (which deal with the main responsible lending conduct rules) of the National Credit Act apply in relation to conduct engaged in by a licensee in the period that:
 - (a) starts on commencement; and
 - (b) ends immediately before the Chapter 3 start day;if:
 - (c) the licensee is neither an ADI nor a registrable corporation; and

- (d) the conduct is engaged in in relation to a contract or other instrument made on or after commencement.

Application of Chapter 3 in relation to contracts or other instruments

- (3) Chapter 3 of the National Credit Act does not apply in relation to a contract or other instrument that was made before commencement.
- Note: Chapter 3 of the National Credit Act applies in relation to contracts or other instruments made on or after commencement, but see subitem (4) for exceptions to this.
- (4) Despite subitem (3), sections 120, 132, 143 and 155 of the National Credit Act do not apply in relation to a contract or other instrument that was made before the Chapter 3 start day.
- (5) This item is subject to subitem 18(2) (which deals with regulations that provide for the application to a person of the National Credit Act).

Division 3—Application of Schedule 2 to this Act

20 Application of Schedule 2 to this Act in relation to contracts or other instruments

- (1) Schedule 2 to this Act (which deals with registration) does not apply in relation to a contract or other instrument that was made before commencement.
- Note 1: Schedule 2 applies in relation to contracts or other instruments made on or after commencement.
- Note 2: Schedule 2 applies from the time it commences (see item 3 of the commencement table in section 2). However, some provisions of Schedule 2 expressly provide that parts of Schedule 2 apply from a later time.
- (2) Despite subitem (1), the regulations may provide for the application of all or specified provisions of Schedule 2 to a person (including the registration of that person) in relation to credit activities engaged in on or after commencement in relation to a carried over instrument.

Part 4—Transitional provisions relating to ASIC

21 Regulations about ASIC’s approach during the transitional period

The regulations may provide for the approach ASIC must take in the administration of this Act or the National Credit Act during the period that:

- (a) starts on the day section 3 of the National Credit Act commences; and
- (b) ends on 30 June 2011, or a later day prescribed by the regulations.

22 Regulations about transfer of information etc. to ASIC

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

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

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

- (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.
- (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:
 - (a) is not subject to any directions in the performance of such functions or the exercise of such powers; and
 - (b) is not under a duty to perform such functions or exercise such powers.
- (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.

- (4) In this item:
appeal, review or enforcement proceedings means:
 (a) appeal or review proceedings; or
 (b) enforcement proceedings;
in relation to an order made by a court.

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

Schedule 2—Registration of persons to engage in credit activities

Part 1—Introduction

1 Guide to this Schedule

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 2—Transitional prohibitions relating to credit activities

Division 1—Prohibition that applies only from commencement to 31 December 2010, or later prescribed day

3 Application of this Division

This Division applies during the period that:

- (a) starts on commencement; and
- (b) ends on 31 December 2010, or a later day prescribed by the regulations.

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

Prohibition on engaging in credit activities if not registered or licensed

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

Civil penalty: 2,000 penalty units.

Offence

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

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

Defences

- (3) For the purposes of subitems (1) and (2), it is a defence if:

- (a) the person engages in the credit activity on behalf of another person (the *principal*); and
- (b) the person is:
 - (i) an employee or director of the principal or of a related body corporate of the principal; or
 - (ii) a credit representative of the principal; and
- (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
- (d) the principal is registered to engage in the credit activity, or holds a licence authorising the principal to engage in the credit activity.

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

- (4) For the purposes of subitems (1) and (2), it is a defence if:
 - (a) the person engages in the credit activity on behalf of another person (the *principal*); and
 - (b) the person is a representative of the principal; and
 - (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
 - (d) the principal is exempted from subitems (1) and (2) under paragraph 41(1)(a), 41(3)(a) or 42(a).

Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the matter in subitem (4): see subsection 13.3(3) of the *Criminal Code*.

Division 2—Prohibition that applies only from 1 January 2011, or later prescribed day, to the transition end day

5 Application of this Division

This Division applies during the period that:

- (a) starts immediately after the end of the period referred to in item 3; and
- (b) ends on the transition end day.

6 Prohibition on engaging in credit activities in certain circumstances during the period

Prohibition on engaging in credit activities in certain circumstances

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

Civil penalty: 2,000 penalty units.

Offence

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

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

Defences

- (3) For the purposes of subitems (1) and (2), it is a defence if:
- (a) the person engages in the credit activity on behalf of another person (the *principal*); and
 - (b) the person is:
 - (i) an employee or director of the principal or of a related body corporate of the principal; or
 - (ii) a credit representative of the principal; and
 - (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
 - (d) the principal:
 - (i) is registered to engage in the credit activity, and has applied for a licence authorising the principal to engage in the credit activity in accordance with section 36 of the National Credit Act; or

- (ii) holds a licence authorising the principal to engage in the credit activity.

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

- (4) For the purposes of subitems (1) and (2), it is a defence if:
 - (a) the person engages in the credit activity on behalf of another person (the *principal*); and
 - (b) the person is a representative of the principal; and
 - (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
 - (d) the principal is exempted from subitems (1) and (2) under paragraph 41(1)(a), 41(3)(a) or 42(a).

Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the matter in subitem (4): see subsection 13.3(3) of the *Criminal Code*.

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

7 Application of this Division

This Division applies during the period that:

- (a) starts at commencement; and
- (b) ends on the transition end day.

8 Application of section 30 of the National Credit Act

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

- (a) the reference in paragraph 30(1)(a) of the National Credit Act to a person holding a licence were a reference to a person holding a licence or being registered; and
 - (b) the reference in paragraph 30(1)(b) of the National Credit Act to a person holding a licence authorising the person to engage in a particular credit activity were a reference to a person holding a licence authorising the person to engage in a particular credit activity, or being registered to engage in a particular credit activity; and
 - (c) the reference in paragraph 30(1)(c) of the National Credit Act to a requirement to hold a licence were a reference to a requirement to hold a licence or be registered; and
-

- (d) the reference in paragraph 30(1)(e) of the National Credit Act to a licensee were a reference to a licensee or registered person; and
- (e) the reference in subsection 30(2) of the National Credit Act to contravening section 29 of the National Credit Act were a reference to contravening section 29 of the National Credit Act or item 4 or 6 of this Schedule.

9 Application of section 31 of the National Credit Act

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

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

10 Application of section 32 of the National Credit Act

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

Part 3—Registration of persons who engage in credit activities

Division 1—How to become registered

11 Applying to be registered

- (1) A person may apply to be registered by lodging an application with ASIC.
- (2) The application must be lodged during the period that:
 - (a) starts on 1 April 2010, or a later day prescribed by the regulations; and
 - (b) ends on 30 June 2010, or a later day prescribed by the regulations.
- (3) The application must be in the approved form.

12 When a person may be registered

When ASIC must register a person

- (1) ASIC must register a person (the *applicant*) if (and must not register the applicant unless):
 - (a) the applicant has applied to be registered in accordance with item 11; and
 - (b) the application makes a statement that the applicant is a member of an approved external dispute resolution scheme; and
 - (c) the application makes the statement set out in subitem (2) in relation to each of the following persons:
 - (i) the applicant;
 - (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;
 - (iii) if the applicant is a partnership or the trustees of a trust—each partner or trustee who would perform duties

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

- (2) For the purposes of paragraph (1)(c), the statement is that:
- (a) a banning order or disqualification order under Part 2-4 of the National Credit Act is not in force against the person; and
 - (b) a banning order or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is not in force against the person; and
 - (c) the person is not banned from engaging in a credit activity under a law of a State or Territory; and
 - (d) if the person is or has been registered—the person’s registration is neither suspended nor cancelled; and
 - (e) an Australian financial services licence of the person is neither suspended, nor has been cancelled within the last 7 years, under:
 - (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii) of the *Corporations Act 2001* (which deals with suspension or cancellation because of mental or physical incapacity); or
 - (ii) section 915C of the *Corporations Act 2001* (which deals with suspension or cancellation after offering a hearing); and
 - (f) if the person is not the trustees of a trust—the person is not insolvent; and
 - (g) if the person is a natural person:
 - (i) the person is not disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; and
 - (ii) the person has not been convicted, within 10 years before the application is made, of serious fraud; and
 - (iii) a prescribed State or Territory order is not in force against the person.
- (2A) For the purposes of paragraph (2)(c), a reference to a credit activity in the definitions of ***banned from engaging in a credit activity under a law of a State or Territory*** and ***State or Territory credit licence*** in subsection 5(1) of the National Credit Act (as those definitions apply for the purposes of this Act because of subsection 4(2) of this Act) includes a reference to an activity that would be a credit activity if the
-

new Credit Code had applied from the day section 3 of the National Credit Act commences.

ASIC may refuse to register a person in certain circumstances

- (3) Despite subitem (1), ASIC may refuse to register a person if ASIC has reason to believe that:
- (a) the application is false in a material particular or materially misleading; or
 - (b) there is an omission of a material matter from the application.

Notice of decision on application

- (4) ASIC must give the applicant written notice of:
- (a) ASIC's decision on the application; and
 - (b) if the decision is to register the applicant—the day on which the applicant becomes registered; and
 - (c) if the decision is not to register the applicant—the reasons for the decision.

When applicant becomes registered

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

13 Basis on which a person is registered

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

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

- (ii) the registration is suspended, cancelled, varied, revoked or terminated as referred to in paragraphs (b) to (e).

Division 2—The conditions on the registration

14 The conditions on the registration

ASIC may impose, vary or revoke conditions on registrations

- (1) ASIC may, at any time:
 - (a) impose conditions, or additional conditions, on a person's registration; and
 - (b) vary or revoke conditions imposed on a person's registration.
- (2) ASIC may do so:
 - (a) on its own initiative; or
 - (b) if the registered person lodges an application with ASIC for the imposition, variation or revocation.
- (3) The application must be in the approved form.

Notice and effect of imposition, variation or revocation of conditions

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

ASIC must give the registered person a hearing

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

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

Condition in relation to credit activities authorised

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

Regulations may prescribe conditions

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

15 Registration conditions—special procedures for APRA-regulated bodies

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

- (1) If the registered person, or a related body corporate, is a body (the **APRA body**) regulated by APRA (other than an ADI), then the following provisions apply:
- (a) ASIC cannot:
 - (i) impose, vary or revoke a condition on the registration that, in ASIC's opinion, has or would have the result of preventing the APRA body from being able to carry on all or any of its usual activities (being activities in relation to which APRA has regulatory or supervisory responsibilities); or
 - (ii) vary a condition so that it would, in ASIC's opinion, become a condition that would have a result as described in subparagraph (i);unless ASIC has first consulted APRA about the proposed action;
 - (b) if ASIC imposes, varies or revokes a condition on the registration and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

Special procedures for ADIs

- (2) If the registered person, or a related body corporate, is an ADI, then the following provisions apply:
- (a) subject to paragraphs (b) and (c), the powers that ASIC would otherwise have under item 14:

- (i) to impose, vary or revoke a condition on the registration that, in ASIC's opinion, has or would have the result of preventing the ADI from being able to carry on all or any of its banking business (within the meaning of the *Banking Act 1959*); or
 - (ii) to vary a condition so that it would, in ASIC's opinion, become a condition that would have a result as described in subparagraph (i);
- are instead powers of the Minister;
- (b) the following provisions apply in relation to a power to which paragraph (a) applies:
 - (i) the procedures for the exercise of the power are the same as would apply if ASIC could exercise the power, except that the Minister must not exercise the power unless he or she has first considered advice from ASIC on the proposed action, being advice given after ASIC has consulted APRA about the proposed action;
 - (ii) ASIC (rather than the Minister) must still conduct any hearing required under paragraph 14(5)(a) and receive any submissions under paragraph 14(5)(b);
 - (c) if ASIC imposes, varies or revokes a condition on the registration and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

Division 3—Obligations of registered persons

15A Application of this Division

This Division (other than subitem 16(1)) applies during the period that:

- (a) starts on commencement; and
- (b) ends on the transition end day.

16 General conduct obligations of registered persons

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

- (1) During the period that:
 - (a) starts at the same time as the start of the period referred to in subitem 11(2); and

(b) ends on the transition end day;
a registered person must be a member of an approved external dispute resolution scheme.

Other general conduct obligations of registered persons

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

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

Notice to registered person to provide a statement

- (1) ASIC may give a registered person a written notice directing the registered person to lodge with ASIC a written statement containing specified information about the credit activities engaged in by the registered person or its representatives.
- (2) Notices under subitem (1):
- (a) may be given at any time; and
 - (b) may be given to one or more particular registered persons, or to each registered person in one or more classes of registered persons, or to all registered persons; and
 - (c) may require all the same information, or may contain differences as to the information they require; and
 - (d) may require a statement containing information to be provided on a periodic basis, or each time a particular event

or circumstance occurs, without ASIC having to give a further written notice.

Notice to registered person to obtain an audit report

- (3) ASIC may also give a registered person a written notice directing the registered person to obtain an audit report, prepared by a suitably qualified person specified in the notice, on a statement, or each statement in a class of statements, under subitem (1) before the statement is given to ASIC.
- (4) A notice under subitem (3) is not a legislative instrument.

Notice must specify day by which registered person must comply

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

Requirement to comply with notice

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

Civil penalty: 2,000 penalty units.

Offence

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

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

Strict liability offence

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

Criminal penalty: 10 penalty units.

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

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

18 Obligation to give ASIC information required by the regulations

Regulations may require registered person to give information

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

Requirement to comply with regulations

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

Civil penalty: 2,000 penalty units.

Offence

(3) A person commits an offence if:

- (a) the person is subject to a requirement to give ASIC information under subitem (2); and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

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

Strict liability offence

(4) A person commits an offence if:

- (a) the person is subject to a requirement to give ASIC information under subitem (2); and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

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

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

19 Obligation to provide ASIC with assistance if reasonably requested

Requirement to provide assistance

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

Civil penalty: 2,000 penalty units.

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

Offence

(3) A person commits an offence if:

- (a) the person is subject to a requirement to give ASIC or an authorised person assistance under subitem (1); and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

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

Assistance may include showing ASIC credit books etc.

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

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

20 Cancellation because of grant or refusal of licence

If:

- (a) a person is registered; and
- (b) the person applies for a licence under section 36 of the National Credit Act; and

(c) ASIC grants, or refuses to grant, the person the licence;
then the person's registration is cancelled.

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

21 Cancellation of all registrations on transition end day

The registration of every registered person is cancelled at the end of the transition end day.

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

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

23 Suspension or cancellation without hearing

- (1) ASIC may suspend or cancel a registered person's registration if:
 - (a) the registered person lodges with ASIC an application for the suspension or cancellation; or
 - (b) the registered person does not engage, or ceases to engage, in credit activities; or
 - (c) a banning order or disqualification order under Part 2-4 of the National Credit Act is in force against the registered person; or
 - (d) a banning order or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is in force against the registered person; or
 - (e) the registered person is banned from engaging in a credit activity under a law of a State or Territory; or
 - (f) an Australian financial services licence of the registered person is suspended, or has been cancelled within the last 7 years, under:

- (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii) of the *Corporations Act 2001* (which deals with suspension or cancellation because of mental or physical incapacity); or
 - (ii) section 915C of the *Corporations Act 2001* (which deals with suspension or cancellation after offering a hearing); or
 - (g) if the registered person is not the trustees of a trust—the registered person is insolvent; or
 - (h) the registered person is a single natural person and:
 - (i) is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or
 - (ii) is convicted of serious fraud; or
 - (iii) is incapable of managing his or her affairs because of physical or mental incapacity; or
 - (iv) a prescribed State or Territory order is in force against the registered person; or
 - (i) the registered person is not a single natural person and a prescribed State or Territory order is in force against any of the following persons:
 - (i) if the registered person is a body corporate—a director or secretary of the body corporate who performs duties in relation to credit activities;
 - (ii) if the registered person is a partnership or the trustees of a trust—a partner or trustee who performs duties in relation to credit activities.
- (1A) For the purposes of paragraph (1)(e), a reference to a credit activity in the definitions of ***banned from engaging in a credit activity under a law of a State or Territory*** and ***State or Territory credit licence*** in subsection 5(1) of the National Credit Act (as those definitions apply for the purposes of this Act because of subsection 4(2) of this Act) includes a reference to an activity that would be a credit activity if the new Credit Code had applied from the day section 3 of the National Credit Act commences.
- (2) An application for suspension or cancellation of a registration must be in the approved form.

24 Suspension or cancellation after offering a hearing

- (1) ASIC may suspend or cancel a registered person's registration (subject to complying with subitem (3)) if:
- (a) the registered person has contravened an obligation under item 16 (which deals with general conduct obligations of registered persons); or
 - (b) ASIC has reason to believe that the registered person is likely to contravene an obligation under that item; or
 - (c) the application for the registration:
 - (i) was false in a material particular or materially misleading; or
 - (ii) omitted a material matter; or
 - (d) if the registered person is not a single natural person—any of the matters set out in subitem (2) applies to any of the following persons:
 - (i) if the registered person is a body corporate—a director or secretary of the body corporate who performs duties in relation to credit activities;
 - (ii) if the registered person is a partnership or the trustees of a trust—a partner or trustee who performs duties in relation to credit activities.
- (2) For the purposes of paragraph (1)(d), the matters are the following:
- (a) a banning order or disqualification order under Part 2-4 of the National Credit Act is in force against the person;
 - (b) a banning order or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is in force against the person;
 - (c) the person is banned from engaging in a credit activity under a law of a State or Territory;
 - (d) an Australian financial services licence of the person is suspended, or has been cancelled within the last 7 years, under:
 - (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii) of the *Corporations Act 2001* (which deals with suspension or cancellation because of mental or physical incapacity); or
 - (ii) section 915C of the *Corporations Act 2001* (which deals with suspension or cancellation after offering a hearing);
 - (e) the person is insolvent;

Schedule 2 Registration of persons to engage in credit activities

Part 3 Registration of persons who engage in credit activities

- (f) the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
 - (g) the person is convicted of serious fraud;
 - (h) the person is incapable of managing his or her affairs because of physical or mental incapacity.
- (2A) For the purposes of paragraph (2)(c), a reference to a credit activity in the definitions of ***banned from engaging in a credit activity under a law of a State or Territory*** and ***State or Territory credit licence*** in subsection 5(1) of the National Credit Act (as those definitions apply for the purposes of this Act because of subsection 4(2) of this Act) includes a reference to an activity that would be a credit activity if the new Credit Code had applied from the day section 3 of the National Credit Act commences.
- (3) ASIC may only suspend or cancel a person's registration under this item after giving the person an opportunity:
- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
 - (b) to make submissions to ASIC on the matter.

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

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

- (1) If a registered person, or a related body corporate, is a body (the **APRA body**) regulated by APRA (other than an ADI), then the following provisions apply:
- (a) ASIC cannot suspend or cancel the registered person's registration if doing so would, in ASIC's opinion, have the result of preventing the APRA body from being able to carry on all or any of its usual activities (being activities in relation to which APRA has regulatory or supervisory responsibilities), unless ASIC has first consulted APRA about the proposed action;
 - (b) if ASIC suspends or cancels the registered person's registration and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

Special procedures for ADIs

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

then the following provisions have effect:

- (c) subject to paragraph (d), the powers that ASIC would otherwise have under this Division to cancel or suspend the registered person's registration, or to revoke a suspension to which this subitem applied, are instead powers of the Minister;
- (d) the procedures for the exercise of a power to which paragraph (c) applies are the same as would apply if ASIC could exercise the power, except that the Minister must not exercise the power unless he or she has first considered advice from ASIC on the proposed action, being advice given after ASIC has consulted APRA about the proposed action;
- (e) ASIC (rather than the Minister) must still conduct any hearing required under paragraph 24(3)(a) and receive any submissions under paragraph 24(3)(b).

26 Varying registrations

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

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

27 Effect of suspension

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

28 Revocation of suspension

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

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

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

30 Statement of reasons

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

31 ASIC may allow registration to continue in force

- (1) If ASIC gives a written notice of suspension or cancellation to a registered person, ASIC may include in the notice terms specifying that the registration continues in force as though the suspension or cancellation had not happened for the purposes of specified provisions of this Schedule in relation to specified matters, a specified period, or both.
- (2) If ASIC includes terms in a notice under subitem (1), the registration continues in force in accordance with the terms of the notice.

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

32 Application of this Part

This Part (other than items 32A, 36 and 39) applies during the period that:

- (a) starts at commencement; and
- (b) ends on the transition end day.

32A Application of sections 64 and 65 of the National Credit Act before commencement

- (1) This item applies during the period that:
 - (a) starts at the same time as the start of the period referred to in subitem 11(2); and
 - (b) ends immediately before commencement.
- (2) Sections 64 and 65 (which deal with the authorisation of credit representatives) of the National Credit Act apply during the period as if:
 - (a) all references to a licensee were references to a registered person; and
 - (b) all references to a licensee's licence were references to a registered person's registration.
- (3) An authorisation of a credit representative that is given under section 64 or 65 of the National Credit Act (as those sections apply because of subitem (2)) during the period is taken not to be given until commencement.
- (4) Despite subitem (3), a body corporate that has been authorised as a credit representative under subsection 64(1) of the National Credit Act (as it applies because of subitem (2)) during the period may authorise natural persons as credit representatives under subsection 65(1) of the National Credit Act (as it applies because of subitem (2)) during the period.

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

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

Application of Part 2-3 of National Credit Act

- (1) Part 2-3 (which deals with credit representatives and other representatives of licensees) of the National Credit Act applies as if:
- (a) all references to a licensee were references to a registered person or licensee; and
 - (b) all references to licensees were references to registered persons or licensees; and
 - (c) all references to a licensee's licence were references to a registered person's registration or licensee's licence; and
 - (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.

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

- (2) If:
- (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) or item 32A); and
 - (b) the registered person is granted a licence under the National Credit Act; and
 - (c) at the time the licence is granted, the authorisation of the credit representative is in force;

then the authorisation of the credit representative under subsection 64(1) or 65(1) of the National Credit Act (as those subsections apply because of subitem (1) or item 32A) is taken to have been an authorisation of the credit representative as a credit representative of the licensee under subsection 64(1) or 65(1) of the National Credit Act (as those subsections apply otherwise than because of subitem (1) or item 32A).

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

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

- (a) the references in paragraph 80(1)(a) and (5)(a) of the National Credit Act to a licence were references to a registration or licence; and
- (b) the reference in paragraph 80(5)(b) of the National Credit Act to section 54 of the National Credit Act were a reference to section 54 of the National Credit Act or item 23 of this Schedule; and
- (c) the reference in paragraph 86(1)(a) of the National Credit Act to a licence were a reference to a registration or licence.

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

- (1) Division 2 of Part 2-5 (which deals with financial records of licensees) of the National Credit Act applies as if all references to a licensee were references to a registered person or licensee.
- (2) Division 4 of Part 2-5 (which deals with matters relating to audit reports) of the National Credit Act applies as if:
 - (a) all references to a licensee were references to a registered person or a licensee; and
 - (b) the reference in paragraph 102(1)(a) of the National Credit Act to an audit report required under subsection 49(3) of the National Credit Act in relation to a licensee were a reference to an audit report required under subsection 49(3) of that Act in relation to a licensee, or an audit report required under subitem 17(3) of this Schedule in relation to a registered person; and
 - (c) the reference in paragraph 106(a) of the National Credit Act to audit reports referred to in subsection 102(1) of the National Credit Act included a reference to the audit reports required under subitem 17(3) of this Schedule.

36 Application of Chapter 3 of the National Credit Act

When all of Chapter 3 (responsible lending conduct) applies to all registered persons

- (1) Chapter 3 (which deals with responsible lending conduct) of the National Credit Act applies during the period that:
 - (a) starts on the Chapter 3 start day; and
 - (b) ends on the transition end day;
-

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

as if:

- (c) all references to a licensee were references to a registered person or licensee; and
- (d) all references to licensees were references to registered persons or licensees.

Note: The Chapter 3 start day is 1 January 2011 (or later prescribed day). That day is when Chapter 3 of the National Credit Act starts to apply. However, under subitem (2) of this item, certain provisions of Chapter 3 apply before then to some registered persons.

When certain provisions of Chapter 3 apply earlier for some registered persons

- (2) Despite subitem (1), sections 112, 115, 116, 117, 118, 119, 122, 123, 124, 128, 129, 130, 131, 133, 135, 138, 139, 140, 141, 142, 145, 146, 147, 151, 152, 153, 154, 156, 162, 163 and 164 (which deal with the main responsible lending conduct rules) of the National Credit Act apply, in relation to a registered person who is neither an ADI nor a registrable corporation, during the period referred to in subitem 19(2) of Schedule 1 as if:
 - (a) all references to a licensee were references to a registered person or licensee; and
 - (b) all references to licensees were references to registered persons or licensees.

Note: The period referred to in subitem 19(2) of Schedule 1 starts on commencement and ends immediately before the Chapter 3 start day.

Some provisions of Chapter 3 never apply to registered persons

- (3) Despite subitem (1), the following provisions of Chapter 3 of the National Credit Act do not apply in relation to registered persons:
 - (a) paragraphs 113(2)(d), 126(2)(d), 127(2)(d), 136(2)(d), 149(2)(d), 150(2)(d) and 160(3)(d) (which deal with including Australian credit licence numbers in credit guides);
 - (b) subparagraphs 113(2)(h)(i), 126(2)(e)(i), 127(2)(e)(i), 136(2)(h)(i), 149(2)(e)(i), 150(2)(e)(i) and 160(3)(f)(i) (which deal with including information about internal dispute resolution procedures in credit guides).

Application of Chapter 3 in relation to contracts or other instruments

- (4) Despite subitem 20(1) of Schedule 1, sections 120, 132, 143 and 155 of the National Credit Act do not apply in relation to a contract or other instrument that was made before the Chapter 3 start day.

Note: Subitem 20(1) of Schedule 1 provides that this Schedule applies in relation to contracts or other instruments made after commencement. However, sections 120, 132, 143 and 155 of the National Credit Act, which apply in relation to registered persons because of subitem (1) of this item, do not apply in relation to contracts or other instruments made before the Chapter 3 start day.

- (5) This item is subject to subitem 20(2) of Schedule 1 (which deals with regulations that provide for the application of this Schedule in relation to contracts or other instruments made before commencement).

37 Application of Chapter 4 of the National Credit Act

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

38 Application of Chapter 5 of the National Credit Act

- (1) Chapter 5 (which deals with administration) of the National Credit Act applies as if all references to “this Act” were references to “this Act and Schedule 2 to the Transitional Act”.
- (2) Section 243 (which deals with qualified privilege for information given to ASIC) of the National Credit Act applies as if:
- (a) the reference in subparagraph 243(1)(c)(i) to section 37 of the National Credit Act were a reference to section 37 of that Act or item 12 of this Schedule; 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

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

39 Application of Chapter 7 of the National Credit Act

- (1) Chapter 7 (which deals with miscellaneous matters) of the National Credit Act, other than sections 327, 329 and 331, applies during the period that:
 - (a) starts on the day section 3 of the National Credit Act commences; and
 - (b) ends on the transition end day;as if all references to “this Act” were references to “this Act and Schedule 2 to the Transitional Act”.
- (2) Section 327 of the National Credit Act applies to a decision made by ASIC under this Schedule (other than subitem 41(3)) that is made during the period referred to in subitem (1) of this item in the same way as it applies to a decision made by ASIC under the National Credit Act on or after commencement.

Part 5—Exemptions and modifications relating to this Schedule

40 Provisions to which this Part applies

The provisions to which this Part applies are:

- (a) Divisions 1 and 2 of Part 2 (which deal with requirements to be registered etc. to engage in credit activities); and
- (b) Part 3 (which deals with the registration of persons to engage in credit activities); and
- (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
- (d) instruments made for the purposes of any of the provisions referred to in paragraphs (a) to (c).

41 Exemptions and modifications by ASIC

Exemptions and modifications

- (1) ASIC may:
 - (a) exempt:
 - (i) a person; or
 - (ii) a person and all of the person's credit representatives; from all or specified provisions to which this Part applies; or
 - (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
 - (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.
- (2) An exemption or declaration under subitem (1) is not a legislative instrument.
- (3) ASIC may, by legislative instrument:

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

Conditions on exemptions

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

Publication of exemptions and declarations

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

Special rules in relation to offences

- (6) If conduct of a person would not have constituted an offence if a particular declaration under paragraph (1)(c) or (3)(d) had not been made, that conduct does not constitute an offence unless, before the conduct occurred:
 - (a) the text of the declaration was published by ASIC on its website; or
 - (b) ASIC gave written notice setting out the text of the declaration to the person;(in addition to complying with the requirements of the *Legislative Instruments Act 2003* if the declaration is made under subitem (3)).
- (7) In a prosecution for an offence to which subitem (6) applies, the prosecution must prove that paragraph (6)(a) or (b) was complied with before the conduct occurred.

42 Exemptions and modifications by the regulations

The regulations may:

- (a) exempt a person or class of persons from all or specified provisions to which this Part applies; or
- (b) exempt a credit activity or a class of credit activities from all or specified provisions to which this Part applies; or
- (c) provide that the provisions to which this Part applies apply as if specified provisions were omitted, modified or varied as specified in the regulations.

Part 6—Regulations relating to infringement notices

43 Regulations—infringement notices

Infringement notices for civil penalties

- (1) The regulations may provide for a person who is alleged to have contravened a civil penalty provision in this Schedule to pay a penalty to the Commonwealth as an alternative to civil proceedings.
- (2) The penalty must not exceed one-fourtieth of the maximum penalty that a court could impose on the person for contravention of that provision.

Infringement notices for offences

- (3) The regulations may provide for a person who is alleged to have committed an offence against this Schedule that is stated to be an offence of strict liability to pay a penalty to the Commonwealth as an alternative to prosecution.
- (4) The penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for that offence.

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).

*[Minister's second reading speech made in—
House of Representatives on 25 June 2009
Senate on 7 September 2009]*

(146/09)

66 *National Consumer Credit Protection (Transitional and Consequential Provisions) Act*
2009 *No. 135, 2009*