



National Consumer Credit Protection (Transitional and Consequential Provisions) Amendment Regulations 2010 (No. 3)¹

Select Legislative Instrument 2010 No. 139

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

Dated 15 June 2010

QUENTIN BRYCE

Governor-General

By Her Excellency's Command

CHRIS BOWEN

Minister for Financial Services, Superannuation and Corporate
Law

1 Name of Regulations

These Regulations are the *National Consumer Credit Protection (Transitional and Consequential Provisions) Amendment Regulations 2010 (No. 3)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*

Schedule 1 amends the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*.

Schedule 1 Amendments

(regulation 3)

[1] **Subregulation 3 (1), definition of *authorised contact***
omit

[2] **Subregulation 3 (1), after definition of *credit card***
insert

exempt special purpose funding entity has the meaning given by subregulation 3 (1) of the National Credit Regulations.

[3] Subregulation 3 (1), after definition of *financial counselling service*

insert

inappropriate person has the meaning given by subregulation 3 (1) of the National Credit Regulations.

[4] Subregulation 3 (1), after definition of *registered debt agreement administrator*

insert

servicing agreement has the meaning given by section 5 of the National Credit Act, as modified by item 3.4 of Schedule 3 to the National Credit Regulations.

special purpose funding entity has the meaning given by section 5 of the National Credit Act, as modified by item 3.4 of Schedule 3 to the National Credit Regulations.

[5] After regulation 10

insert

10A The conditions on the registration — special purpose funding entity

- (1) For subitem 14 (7) of Schedule 2 to the Act, the registration is subject to the conditions set out in this regulation if the registered person is a party to a servicing agreement with a special purpose funding entity.
- (2) The registered person must notify ASIC, in an approved form, that the registered person is a party to a servicing agreement with a special purpose funding entity.
- (3) For subregulation (2):
 - (a) if the servicing agreement was entered into before 1 July 2010, the registered person must notify ASIC no later than 30 business days after 1 July 2010; and

- (b) if the servicing agreement was entered into on or after 1 July 2010, the registered person must notify ASIC no later than 20 business days after the servicing agreement was entered into.
- (4) If the registered person ceases to be a party to a servicing agreement with a special purpose funding entity:
 - (a) the registered person must notify ASIC, in an approved form, that the registered person has ceased to be a party to the servicing agreement with the entity; and
 - (b) the registered person must notify ASIC not later than 15 business days after the registered person ceases to be a party.
- (5) The registered person:
 - (a) must notify ASIC, in an approved form, of any action by a natural person in a position to control or influence the special purpose funding entity that has or may have the effect of directing the licensee to act inconsistently with:
 - (i) the conditions imposed on the registered person's registration; or
 - (ii) the credit legislation; and
 - (b) must notify ASIC no later than 15 business days after the action occurs.

[6] Paragraph 11 (11) (b)

omit each mention of

licensee or a registered person

insert

licensee, registered person or exempt special purpose funding entity

[7] Sub-subparagraph 11 (12) (a) (i) (B)

after

lessor

insert

or an exempt special purpose funding entity that is a credit provider or lessor

[8] Subregulation 12 (3)

omit each mention of

licensee or a registered person

insert

licensee, registered person or exempt special purpose funding entity

[9] Subregulation 13 (3)

omit each mention of

licensee or a registered person

insert

licensee, registered person or exempt special purpose funding entity

[10] Regulation 14, heading

substitute

**14 Persons exempt from requiring registration —
suppliers of goods or services**

[11] Subregulation 14 (3B)

omit each mention of

licensee or registered person

insert

licensee, registered person or exempt special purpose
funding entity

[12] Regulation 14A, heading

substitute

**14A Persons exempt from requiring registration —
suppliers of goods or services with branded or co-
branded credit card**

[13] Subparagraph 14A (3) (a) (iii)

substitute

(iii) engaging in a credit activity on behalf of the supplier
of goods or services; and

[14] Paragraphs 14A (4) (a) and (5) (a)

omit

licensee or registered person;

insert

licensee, registered person or exempt special purpose
funding entity;

[15] Subregulation 14A (6)

substitute

- (6) The person is exempted if the person engages in credit activities on the premises of the supplier.

[16] Regulation 14B

substitute

14B Persons exempt from requiring registration — fund raising special purpose entity

- (1) For paragraph 42 (a) of Schedule 2 to the Act, this regulation applies in relation to a fund raising special purpose entity if:
- (a) it engages in a credit activity; and
 - (b) it is party to a servicing agreement; and
 - (c) it is a member of an approved external dispute resolution scheme; and
 - (d) if it is a body corporate — no director or secretary of the body corporate is an inappropriate person; and
 - (e) if it is a trust — no trustee of the trust is an inappropriate person.
- (2) The fund raising special purpose entity is exempted from:
- (a) items 4 and 6 of Schedule 2 to the Act; and
 - (b) definitions in the Act, as they apply to references in the provision mentioned in paragraph (a); and
 - (c) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) and (b).

Note Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during the specified period unless the person is registered or holds a licence authorising the person to engage in the credit activity.

That item also provides that it is a defence if the person is a credit representative of the person who is registered or holds a licence authorising the person to engage in the credit activity.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during the specified period unless the person:

- (a) is registered and has applied for a licence authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

That item also provides that it is a defence if the person is a credit representative of a person who:

- (a) is registered and has applied for a licence authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (3) The fund raising special purpose entity is exempted only to the extent that it is engaging in the specified credit activity.

Note 1 If the fund raising special purpose entity also engages in a credit activity that is not the subject of an exemption under the Act or the Transitional Act, it is not exempted in relation to that credit activity.

Note 2 Under section 109 (3) of the Act, ASIC may declare that instruments made under Chapter 2 of the Act apply in relation to a credit activity (other than an exempt credit activity in relation to a specified credit contract, mortgage, guarantee or consumer lease), or a class of persons or credit activities as if specified provisions were omitted, modified or varied as specified in the declaration.

14C Persons exempt from requiring registration — securitisation entity

- (1) For paragraph 110 (a) of the Act, this regulation applies in relation to a securitisation entity if:
 - (a) it engages in a credit activity; and
 - (b) it is party to a servicing agreement; and
 - (c) on and after 1 October 2010, it is a member of an approved external dispute resolution scheme; and
 - (d) if it is a body corporate — no director or secretary of the body corporate is an inappropriate person; and
 - (e) if it is a trust — no trustee of the trust is an inappropriate person.
- (2) The securitisation entity is exempted from:
 - (a) items 4 and 6 of Schedule 2 to the Act; and

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- (b) definitions in the Act, as they apply to references in the provision mentioned in paragraph (a); and
 - (c) instruments made for the purpose of any of the provisions mentioned in paragraphs (a) and (b).

Note Item 4 of Schedule 2 to the Act provides that a person must not engage in a credit activity during the specified period unless the person is registered or holds a licence authorising the person to engage in the credit activity.

That item also provides that it is a defence if the person is a credit representative of the person who is registered or holds a licence authorising the person to engage in the credit activity.

Item 6 of Schedule 2 to the Act provides that a person must not engage in a credit activity during the specified period unless the person:

- (a) is registered and has applied for a licence authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

That item also provides that it is a defence if the person is a credit representative of a person who:

- (a) is registered and has applied for a licence authorising the person to engage in the credit activity; or
- (b) holds a licence authorising the person to engage in the credit activity.

- (3) The securitisation entity is exempted only to the extent that it is engaging in the specified credit activity.

Note 1 If the fund raising special purpose entity also engages in a credit activity that is not the subject of an exemption under the Act or the Transitional Act, it is not exempted in relation to that credit activity.

Note 2 Under section 109 (3) of the Act, ASIC may declare that instruments made under Chapter 2 of the Act apply in relation to a credit activity (other than an exempt credit activity in relation to a specified credit contract, mortgage, guarantee or consumer lease), or a class of persons or credit activities as if specified provisions were omitted, modified or varied as specified in the declaration.

[17] Subparagraph 15 (6) (b) (ii)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[18] Sub-subparagraph 15 (6) (d) (i) (A)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[19] Sub-subparagraph 15 (6) (d) (i) (B)

omit

person 2; or

insert

person 2; and

[20] After sub-subparagraph 15 (6) (d) (i) (B)

insert

(C) if person 2 is an exempt special purpose funding entity — person 1 gives the consumer the licence number of the licensee who is party to the servicing agreement with the entity; or

[21] Subparagraph 15 (7) (b) (ii)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[22] Sub-subparagraph 15 (7) (d) (i) (A)

omit

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[23] Sub-subparagraph 15 (7) (d) (i) (B)

omit

person 2; or

insert

person 2; and

[24] After sub-subparagraph 15 (7) (d) (i) (B)

insert

(C) if person 2 is an exempt special purpose funding entity — person 1 gives the consumer the licence number of the licensee who is party to the servicing agreement with the entity; or

[25] Paragraphs 15 (8) (a) and (b)

omit each mention of

licensee or a registered person;

insert

licensee, registered person or exempt special purpose funding entity;

[26] After subregulation 16B

insert

16BA Modification of item 4 of Schedule 2 to the Act

Item 4 of Schedule 2 to the Act applies to the registered person as if it were modified by omitting subitem (4).

16BB Modification of item 6 of Schedule 2 to the Act

Item 6 of Schedule 2 to the Act applies to the registered person as if it were modified by omitting subitem (4).

[27] Part 4, Division 2, Subdivision 2.2

omit

[28] Regulation 32

omit

other than

insert

not including

[29] Regulation 32

before

credit activity

insert

a

[30] Regulation 32

omit

mortgagor

insert

mortgagee

[31] Regulation 33

omit

For subitem 18 (2)

insert

(1) For subitem 18 (2)

[32] Regulation 33

omit

mortgagor

insert

mortgagee

[33] Regulation 33

insert

- (2) For paragraph 110 (c) of the National Credit Act, section 29 of the Act applies as if it were modified by adding the following subsection after subsection (4):
- (5) For the purposes of subsections (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 has notified ASIC in accordance with subitem 19A(2) of Schedule 2 to the Act as modified by ASIC Class Order [CO 10/381].

[34] Regulation 34

omit

mortgagor

insert

mortgagee

[35] Regulation 35

omit

For subitem 20 (2)

insert

- (1) For subitem 20 (2)

[36] Subregulation 35 (1)

omit

mortgagor

insert

mortgagee

[37] Regulation 35

insert

- (2) For paragraph 42 (c) of Schedule 2 to the Act, item 4 of that Schedule applies as if it were modified by adding the following subitem after subitem (4):
- (5) 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 has notified ASIC in accordance with subitem 19A(2) of Schedule 2 to the Act as modified by ASIC Class Order [CO 10/381].
- (2) For paragraph 42 (c) of Schedule 2 to the Act, item 6 of that Schedule applies as if they were modified by adding the following subitem after subitem (4):
- (5) 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 has notified ASIC in accordance with subitem 19A(2) of Schedule 2 to the Act as modified by ASIC Class Order [CO 10/381].

[38] Paragraph 36 (1) (a)

omit

credit provider, lessor, mortgagor or beneficiary of a guarantee

insert

credit provider or lessor

[39] After regulation 36

insert

37 Application of Chapter 3 of National Credit Act — licensee or registered person in relation to carried over instrument

- (1) For subitem 18 (2) of Schedule 1 to the Act, Chapter 3 of the National Credit Act applies:
 - (a) to a licensee or registered person; and
 - (b) in relation to a credit activity engaged in in relation to a carried over instrument.
- (2) Chapter 3 applies as if:
 - (a) all references to a licensee were references to a licensee or registered person; and
 - (b) all references to licensees were references to licensees or registered persons.

38 Application of Parts 3-2 and 3-7 of the National Credit Act — unlicensed carried over instrument lender

- (1) For subitem 18 (2) of Schedule 1 to the Act, Parts 3-2 and Part 3-7 of the National Credit Act apply to an unlicensed carried over instrument lender if the lender:
 - (a) engages in the credit activity of being a credit provider under a credit contract; and
 - (b) engages in the credit activity in relation to a carried over instrument.

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- (2) Part 3-2 applies as if:
- (a) all references to a licensee were references to an unlicensed carried over instrument lender; and
 - (b) all references to licensees were references to unlicensed carried over instrument lenders.
- (3) Part 3-7 applies as if all references to this Chapter were references to Part 3-2.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.