



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 203

Do I need a credit licence?

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About this guide

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

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

About ASIC regulatory documents

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

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

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- describing the principles underlying ASIC's approach
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Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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

Document history

This version was issued in May 2013 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 203, issued on 1 December 2009, reissued 7 June 2010.

Disclaimer

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

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

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A Overview

Key points

If you engage in credit activities you will generally need an Australian credit licence (credit licence) or an authorisation from a credit licensee before commencing business.

'Credit activity' is defined in the *National Consumer Credit Protection Act 2009* (National Credit Act) and includes activities relating to the provision of credit contracts and consumer leases, securing payment obligations by related mortgages and guarantees, and the provision of credit services. You will only be engaging in credit activities if your activities are in relation to credit contracts or consumer leases to which the National Credit Code applies.

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

National licensing regime

- RG 203.1 Since 1 July 2010 a national licensing scheme has applied for people who engage in credit activities in relation to consumers under the National Credit Act.
- RG 203.2 If you are involved in the provision of credit or consumer leases to consumers, you need to be aware of whether you need to be licensed. It is an offence under s29 of the National Credit Act to engage in credit activities while unlicensed. If you hold a licence to engage in credit activities, you also need to be aware of whether any other person with whom you conduct business needs to be licensed. It is an offence under s31 of the National Credit Act for a licensee to conduct business with unlicensed persons.

Note: All section references in this guide relate to the National Credit Act unless specified as relating the National Credit Code. The Code is contained in Sch 1 of the National Credit Act.

Am I engaging in credit activities for which I need to be licensed?

- RG 203.3 If you engage in credit activities regulated by the National Credit Act from 1 July 2010, you will generally need to be licensed.

RG 203.4 To decide whether you engage in credit activities for which you may need to be licensed, you will need to consider:

- (a) whether your activities relate to a type of credit or consumer lease to which the National Credit Code applies; and
- (b) if the National Credit Code does apply to the credit or consumer lease, whether your activities are the types of credit activities specified in the National Credit Act.

Note: The National Credit Code largely replicates the Uniform Consumer Credit Code (UCCC), which was enacted in uniform state legislation in 1996. However, the National Credit Code has been extended in a number of areas. For more information about amendments to the UCCC in the National Credit Code, see Ch 8 of the Explanatory Memorandum to the National Consumer Credit Protection Bill 2009 (Explanatory Memorandum).

RG 203.5 For more information on what credit contracts and consumer leases are covered by the National Credit Code, see Section B. For more information on what credit activities are covered by the National Credit Act, see Section C.

Note: The Australian Government has released an Exposure Draft of the National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill 2012. The Exposure Draft includes reforms to the definition of credit contracts and consumer leases to which the National Credit Code applies. This guide does not reflect the amendments proposed in the Exposure Draft.

RG 203.6 Table 1 (Appendix 1) provides an overview of some common roles in the credit industry and indicates whether you will generally need to hold a credit licence to perform these roles. Table 2 (Appendix 2) sets out types of credit contracts and consumer leases that are specifically excluded from the application of the National Credit Code.

Who does not need to be licensed?

RG 203.7 You do not need to hold a credit licence if:

- (a) you are an authorised credit representative acting on behalf of a licensed principal (unless you are also engaging in credit activities on your own behalf);
- (b) you are an employee or director of a licensed principal, or of a related body corporate of a licensed principal, engaging in credit activities on your principal's behalf;
- (c) your credit activities are exempt under the National Credit Act or associated regulations; or
- (d) we grant you an exemption from the licensing requirement.

- RG 203.8 For more information on exemptions, see Section D. Licensing exemptions under the National Credit Act and associated regulations are outlined in Table 3 (Appendix 3). Exemptions given by ASIC are published on our website at www.asic.gov.au.
- RG 203.9 Certain credit providers and lessors who engage in credit activities in relation to a credit contract, consumer lease, mortgage or guarantee entered into before 1 July 2010 do not need to be licensed. However, they still need to comply with a modified statutory regime: see Section D.

B What credit contracts and consumer leases are covered by the National Credit Code?

Key points

To decide whether you engage in credit activities for which you may need to be licensed, you will need to consider:

- whether the credit contract or consumer lease that you provide, or provide services in relation to, is covered by the National Credit Code; and
- whether your activities in relation to that credit contract or consumer lease are the types of credit activities specified in the National Credit Act.

RG 203.10 Whether the licensing requirements apply will depend on whether your activities relate to a type of credit or consumer lease to which the National Credit Code applies. If the Code does not apply to a particular provision of credit or consumer lease, your activities are not ‘credit activities’ and the licensing requirements will not apply.

RG 203.11 Some types of credit and consumer leases are specifically excluded from the application of the National Credit Code. These exclusions are outlined in Table 2 (Appendix 2).

What is ‘credit’?

RG 203.12 Under the National Credit Code, credit is provided if under a contract:

- (a) the payment of a debt owed by a consumer to a credit provider is deferred; or
- (b) a consumer incurs a deferred debt to a credit provider.

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

RG 203.13 The National Credit Code applies only to credit that is:

- (a) provided to a natural person or strata corporation (i.e. a consumer);
- (b) provided wholly or predominantly for:
 - (i) personal, household or domestic purposes; or
 - (ii) residential property investment;

Note: See RG 203.21 for the definition of ‘predominantly’.

- (c) charged for, or may be charged for, by the credit provider; and
- (d) provided in the course of carrying on a business of providing credit in this jurisdiction (i.e. Australia) or as part of, or incidental to, any other business of the credit provider carried on in this jurisdiction.

Note: For the definition of ‘this jurisdiction’, see s204 of the National Credit Code, which incorporates the definition in s21 of the National Credit Act. In s21, ‘this jurisdiction’ is defined as the geographical area consisting of each referring state and each territory (including their coastal seas). Where all of the states are referring states (i.e. states that have referred credit matters to the Commonwealth Parliament), ‘this jurisdiction’ therefore consists of the whole of Australia. As all of the states are referring states, ‘this jurisdiction’ currently consists of the whole of Australia. For the remainder of this guide, we refer to ‘Australia’ instead of ‘this jurisdiction’ where possible.

RG 203.14 For a full definition of credit covered by the National Credit Code, see s5 of the Code.

What is a ‘credit contract’?

RG 203.15 A credit contract is a contract under which credit is or may be provided. The credit must be credit that is covered by the National Credit Code. Common types of credit contracts include personal loans, credit cards, small-amount loans, housing loans (including for residential investment property) and contracts for sale of goods or land by instalments.

Note: ‘Credit contract’ is defined in s4 of the National Credit Code. Sections 10–12 of the Code apply when deciding whether a contract for sale of goods or land by instalments is a credit contract.

What is a ‘consumer lease’?

RG 203.16 Under the National Credit Code, a consumer lease is a contract for the hire of goods that is entered into by a natural person or strata corporation (i.e. a consumer) and under which the consumer does not have a right or obligation to purchase the goods. For a consumer lease to be regulated under the National Credit Code:

- (a) the goods must be wholly or predominantly hired for personal, domestic or household purposes;
- (b) the fees and charges payable under the consumer lease must exceed the cash price of the goods;
- (c) the lessor must hire out the goods in the course of carrying on a business of hiring out goods carried on in Australia or as part of, or incidentally to, any other business of the lessor carried on in Australia; and

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

Note: See s169–171 of the National Credit Code. If the condition in RG 203.16(d) is not met, the contract may be a contract for sale of goods by instalments, and so regulated as a credit contract.

- RG 203.17 An example of a consumer lease is a rental agreement for furniture or whitegoods where ownership of the furniture or whitegoods never passes to the consumer. In contrast, a lease containing a right or obligation to purchase the goods, such as a hire-purchase agreement, is regulated as a credit contract, not a consumer lease.

What is the purpose for which the credit or consumer lease is provided?

- RG 203.18 If the credit is provided or goods are hired wholly or predominantly for business or investment purposes (other than investment in residential property), the National Credit Code will not apply.

- RG 203.19 For example:

- (a) businesses often use leases to hire goods such as cars, plant and equipment.
- (b) a person may obtain credit to use in a business, such as to purchase equipment to be used in the business.

The National Credit Code and the National Credit Act do not apply to such leases and credit, even if the lessee or borrower is a natural person, because they are for business purposes.

- RG 203.20 Credit that is obtained by a consumer for the purpose of an investment (e.g. the purchase of shares or interests in managed investment schemes) is generally not covered by the National Credit Code, unless the investment is in residential property.

Meaning of ‘predominantly’

- RG 203.21 Credit is defined as provided ‘predominantly’ for a particular purpose if more than half of the credit is intended to be used for that purpose.

Note: See s5(4)(a) of the National Credit Code.

Example 1: Credit to purchase a number of goods

A person obtains a personal loan of \$20,000. They intend to use \$15,000 to purchase household goods, and \$5,000 to purchase shares as an investment. As more than 50% of the credit is intended to be used for a personal, domestic or household purpose, the National Credit Code will apply to this provision of credit.

- RG 203.22 If the credit is to be used to obtain goods or services that will be used for several purposes, the purpose for which the goods or services are intended to be most used is the predominant purpose.

Note: See s5(4)(b) of the National Credit Code.

Example 2: Credit to purchase a car for both personal and business use

A person who has a small courier business obtains credit for the purpose of purchasing a car that is to be used both in the person's business and for their own personal use. The person intends to use the car mostly (more than 50% of the time) for the courier business. The National Credit Code will not apply to the provision of this credit.

Is the credit provider or lessor carrying on a business in Australia?

- RG 203.23 The National Credit Code will only apply to a provision of credit or consumer lease if the credit provider or lessor provides the credit or hires out goods:

- (a) in the course of a business of providing credit or hiring out goods carried on in Australia; or
- (b) as part of, or incidentally to, any other business of the credit provider or lessor carried on in Australia.

Note: For the definition of 'carried on in this jurisdiction', see s204 of the National Credit Code, which incorporates the definition in s12 of the National Credit Act. This definition also applies Div 3 of Pt 1.2 of the *Corporations Act 2001* (Corporations Act) for the purpose of working out whether a business is carried on in this jurisdiction. We have published guidance about this in Regulatory Guide 121 *Doing financial services business in Australia* (RG 121) at RG 121.41–RG 121.50. This guidance may be useful for deciding whether you, or the credit provider or lessor who provides the credit or hires the goods in relation to which you engage in activities, are carrying on a business in Australia for the purpose of the National Credit Code and the National Credit Act.

- RG 203.24 This means that the National Credit Code may apply to a credit contract or consumer lease even if the credit provider or lessor does not regularly provide credit or hire out goods. It is sufficient that the credit provider or lessor carries on some other business in Australia, and provides credit or hires out goods as part of, or incidentally to, that other business.

Example 3: Store owner providing 'book up' arrangements

The owner of a general store offers a customer a 'book up' arrangement to pay for goods purchased at the store. Under this arrangement, the customer receives the goods now and pays for them later. The store owner charges the customer a fee to use this arrangement. The store owner operates a business in Australia—the operation of the general store. The credit that is provided under the book up arrangement is provided as part of, or incidentally to, the business of operating the general store. The book up arrangement will be a provision of credit to which the National Credit Code applies, even if the store owner only occasionally provides such arrangements.

Example 4: Vendor of land under instalment contract

A land owner enters a contract for sale of land by instalments, which involves a provision of credit. The landowner is a natural person and is only selling one parcel of land. The landowner also runs a real estate business, but is selling their own land as a private individual. The landowner is unlikely to be considered to be carrying on a business of providing credit. Although the landowner carries on another business, this contract is not entered as part of or incidentally to that business. Accordingly, the National Credit Code is not likely to apply to this contract. However, if the landowner subdivided their land and sold a number of parcels of land using instalment contracts that involve the provision of credit, they are more likely to be considered to be carrying on a business of providing credit.

- RG 203.25 A credit provider or lessor will be carrying on a business in Australia if, in the course of carrying on the business, they engage in conduct that:
- (a) is intended to induce people in Australia to use the goods or services the credit provider or lessor provides; or
 - (b) is likely to have that effect.

- RG 203.26 A credit provider or lessor does not need to have a physical presence in Australia to be treated as carrying on a business in Australia. It is sufficient, for example, if the credit provider or lessor uses the internet or intermediaries to provide credit or hire out goods to consumers in Australia: see para 8.17 of the Explanatory Memorandum.

Note: Foreign entities may apply for a credit licence but must meet additional requirements regarding the appointment of a local agent for legal processes: see reg 8 of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations).

- RG 203.27 If one, but not all, of the borrowers or lessees in a particular credit contract or consumer lease is in Australia, then the business is carried on in Australia and the provision of credit or the consumer lease is subject to the National Credit Code.

- RG 203.28 The National Credit Code and National Credit Act apply to acts and omissions taking place outside Australia if those acts or omissions relate to credit contracts or consumer leases to which the Code applies. An example of this is the operation of an off-shore back-office that deals with credit contracts or consumer leases to which the National Credit Code applies.
- RG 203.29 Credit or consumer leases provided in the course of a business carried on outside Australia will not necessarily be subject to the National Credit Code, even if the credit provider or lessor also carries on a business in Australia. For example, a person may operate a business in Australia and also provide credit outside Australia that has no connection to that business. In this case, the National Credit Code may not apply because the person does not provide credit in the course of, as part of, or incidentally to a business carried on in Australia.

Exclusions from the National Credit Code

- RG 203.30 Some types of credit and consumer leases are excluded (either wholly or partially) from the application of the National Credit Code. The licensing requirements do not apply to activities in relation to these types of credit and consumer leases: see Table 2 (Appendix 2).

Note: For exclusions from the National Credit Code, see s6 (credit) and s171 (consumer leases) of the Code, and associated regulations. We may also exclude a provision of credit or a consumer lease from the Code: see s6(14) and (17) and s171(4) and (6).

- RG 203.31 If an exclusion from the National Credit Code ceases to apply because of a change to the terms of an existing contract, you should consider whether you need to be licensed before engaging in credit activities in relation to that contract.

C Am I engaging in credit activities for which I need to be licensed?

Key points

There are two broad categories of credit activities for which you may need to be licensed:

- activities relating to the provision of a credit contract or consumer lease, and securing obligations under contract contracts; and
- credit services.

Credit activities covered by these broad categories are:

- providing credit under a credit contract;
- being a lessor under a consumer lease;
- benefiting from mortgages or guarantees relating to a credit contract;
- exercising the rights or performing the obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee;
- suggesting a consumer apply for a credit contract or consumer lease, or an increase to a credit limit;
- assisting a consumer to apply for a credit contract or consumer lease, or an increase to a credit limit;
- acting as an intermediary to secure provision of a credit contract or consumer lease for a consumer; and
- providing other prescribed credit activities.

What is a credit activity?

RG 203.32 There are two broad categories of credit activities for which you may need to be licensed:

- (a) activities relating to the provision of a credit contract or consumer lease, and securing obligations under contract contracts—these types of credit activities are outlined in more detail in RG 203.33–RG 203.56; and
- (b) credit services—these type of credit activities are outlined in more detail in RG 203.57–RG 203.78.

Note 1: The full list of activities that are ‘credit activities’ is set out in the table in s6.

Note 2: The definitions of ‘credit contract’ and ‘consumer lease’ incorporate the definitions of these terms in s4 and Pt 11 of the National Credit Code. The terms ‘credit contract’ and ‘consumer lease’ used in the National Credit Act therefore only cover those credit contracts and consumer leases to which the National Credit Code applies. For more information, see Section B.

Credit activities relating to the provision of credit contracts and consumer leases

- RG 203.33 This category generally covers:
- (a) providing credit under a credit contract;
 - (b) being a lessor under a consumer lease;
 - (c) benefiting from mortgages or guarantees relating to a credit contract; and
 - (d) exercising the rights or performing the obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee (either as, or on behalf of, the credit provider, lessor, mortgagee or beneficiary).

Providing credit under a credit contract

- RG 203.34 Credit providers engage in credit activities by being ‘a credit provider under a credit contract’, and by ‘carrying on a business of providing credit to which the National Credit Code applies’.
- RG 203.35 Note: See the definition of ‘credit activity’ in items (1)(a) and (b) of the table in s6. A ‘credit provider’ is a person who provides credit or who intends to provide credit.
- Note: For a definition of ‘credit provider’, see s5, which incorporates the definition in s204 of the National Credit Code.
- RG 203.36 Some common types of credit provider include banks, credit unions, building societies, finance companies, small-amount lenders and vendors offering sales contracts by instalment (e.g. hire-purchase agreements). A credit provider may be an individual.
- RG 203.37 You are also a credit provider if you are legally assigned the rights of a credit provider under a credit contract: see s10. This is because you become the person to whom the debt under the credit contract is legally owed, and can take action to recover payment in your own name and without the agreement of the original credit provider.
- RG 203.38 An example is when a credit provider sells a debt to a third-party debt collector. If the debt is legally assigned to the debt collector, the assignee becomes the person who legally owns the debt and to whom the consumer must make repayments. The assignee debt collector is now the credit provider, and so needs to be licensed. The original credit provider would no longer be considered the credit provider because the debt is no longer legally owed to them. For more information about assignment of rights of a credit provider, see RG 203.53–RG 203.55.
- RG 203.39 Once you have entered a credit contract as a credit provider, you will continue to be the credit provider under that contract for so long as you are

the person to whom the debt is legally owed. This means you will still be engaging in credit activities as a credit provider if you receive or are entitled to receive payments under an existing credit contract, even if you do not enter any new credit contracts.

- RG 203.40 If you wish to cease being a credit provider, you may need to sell your existing loan book and novate, or legally assign your rights under, your existing credit contracts. If you assign your rights under existing credit contracts in order to cease engaging in credit activities for which you need to be licensed, you should make sure that:
- (a) the assignment of the debt under the credit contract is a legal assignment;
 - (b) you do not continue to be the mortgagee or beneficiary of a guarantee that secures or guarantees obligations under the credit contract; and
 - (c) there is no possibility that the debt could be reassigned to you (e.g. if the assignment entitles the assignee to reassign the debt to you in specified circumstances).
- RG 203.41 Conduct you engage in before entering into a contract with a consumer may be the credit activity of ‘carrying on a business of providing credit’. You may therefore need a credit licence to advertise your lending facility or to negotiate a credit contract.

Providing consumer leases

- RG 203.42 Lessors engage in credit activities by being ‘a lessor under a consumer lease’, and by ‘carrying on a business of providing consumer leases to which the National Credit Code applies’.

Note: See the definition of ‘credit activity’ in items (3)(a) and (b) of the table in s6.

- RG 203.43 A lessor is a person who hires goods to another person. You are also a lessor if you are legally assigned the rights of a lessor under a consumer lease: see s10. This is because you become the person to whom the payments under the consumer lease and the right to return of the goods at the end of the lease are legally owed, and you can take action to recover payment or return of the goods in your own name and without the agreement of the original lessor.

Note: For a definition of ‘lessor’, see s5, which incorporates the definition in s204 of the National Credit Code.

- RG 203.44 Conduct you engage in before entering into a consumer lease with a consumer may be the credit activity of ‘carrying on a business of providing consumer leases’. You may therefore need a credit licence to advertise your services or to negotiate a consumer lease.

Benefitting from mortgages and guarantees relating to credit contracts

RG 203.45 The performance by a consumer of the payment obligations under a credit contract may be secured using a mortgage or guarantee.

Note: 'Mortgage' is defined in s204 of the National Credit Code, and includes:

- any interest in, or power over, property securing obligations of a debtor or guarantor;
- a credit provider's title to land or goods subject to a sale by instalments; and
- a mortgage taken to have been entered under s9(3) of the National Credit Code (where the credit contract is a goods lease under which the hirer has a right or obligation to purchase the goods).

RG 203.46 A mortgagee (generally the credit provider) engages in credit activities if the mortgage is covered by the National Credit Code. A mortgage will be covered by the National Credit Code if:

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

Note 1: See item 4(a) in the table in s6.

Note 2: The National Credit Code defines mortgages to which it applies in s7 and 204 of the Code. 'Mortgagee' is defined in s5 of the National Credit Act.

RG 203.47 A beneficiary of a guarantee (generally the credit provider) engages in credit activities if the guarantee is covered by the National Credit Code. A guarantee is covered by the National Credit Code if:

- (a) it guarantees obligations under a credit contract, which is itself covered by the Code; and
- (b) the guarantor (i.e. the person who gives the guarantee) is a natural person or a strata corporation.

Note 1: See item 5(a) in the table in s6.

Note 2: The National Credit Code defines the guarantees to which it applies in s8 and 204 of the Code. 'Beneficiary of a guarantee' is defined in s5 of the National Credit Act.

RG 203.48 If you receive, by legal assignment, the rights of a mortgagee or beneficiary of a guarantee, you will be regarded as the mortgagee or beneficiary of the guarantee and required to hold a credit licence: see s10.

RG 203.49 A mortgagee or beneficiary of a guarantee may be someone other than the credit provider. For example, where a person legally assigns a debt but only equitably assigns rights under the mortgage that secures repayment of the debt, the person will continue to be the mortgagee but will no longer be the

credit provider. In this case, both the mortgagee and the credit provider will need a credit licence.

Performing obligations or exercising rights of a credit provider, lessor, mortgagee or beneficiary of a guarantee

- RG 203.50 Credit providers, lessors, mortgagees and beneficiaries of guarantees have:
- (a) contractual obligations (e.g. the obligation to provide credit on request by the consumer under a continuing credit contract);
 - (b) statutory obligations (e.g. the responsible lending obligations in Ch 3 of the National Credit Act and obligations under the National Credit Code); and
 - (c) contractual rights (e.g. the right to repayment of a debt and to take action to recover repayment of the debt, and the right to determine the interest charge on a debt).

- RG 203.51 The performance of these obligations, and exercise of these rights, is a credit activity. You will engage in this credit activity whether you:
- (a) are the credit provider, lessor, mortgagee or beneficiary and perform the obligations or exercise the rights yourself; or
 - (b) perform the obligations or exercise the rights on behalf of the credit provider, lessor, mortgagee or beneficiary (i.e. as their agent).

Note: See items 1(c), 3(c), 4(b) and 5(b) in the table in s6.

- RG 203.52 For example, a person who demands and receives payments owed under a credit contract or enforces rights to take possession of goods secured by a mortgage will engage in this credit activity. If the person is the original credit provider or has been legally assigned the debt, the person will exercise this right on their own behalf and will need a credit licence. If the person has been engaged by the credit provider to collect the payments for them, the person will exercise this right on behalf of the credit provider. In this case, the agent will need to either hold a credit licence, or be authorised by the credit provider to engage in this credit activity on their behalf: see Section D.

Note: Some debt collectors are exempt from the requirement to be licensed: reg 21 of the National Credit Regulations. For more information, see Table 3 (Appendix 3).

Assignees of rights of credit providers, lessors, mortgagees and beneficiaries of guarantees

- RG 203.53 If you receive, by legal assignment, the rights of a credit provider, lessor, mortgagee or beneficiary of a guarantee, you will be regarded as the credit provider, lessor, mortgagee or beneficiary under the National Credit Act: see s10. This is because you become the person to whom a debt or payment is legally owed, and who is entitled to take action to recover payment. You are

required to hold a credit licence if you engage in the credit activities described in paragraphs RG 203.33–RG 203.52.

- RG 203.54 For example, if a credit provider (the original credit provider) sells its loan book to you and legally assigns to you its rights to repayment of the debt, you become the credit provider. The original credit provider ceases to be the credit provider in relation to that credit contract from the time that the assignment takes effect. You will be engaging in credit activities and will need to hold a credit licence.
- RG 203.55 To legally assign a debt or other legal chose in action (i.e. under the common law, a right that is enforceable by an action or a right to take action that can be legally recovered or enforced), the credit provider must meet the requirements of the state and territory conveyancing and property law legislation. Generally, to be legally effective:
- (a) the assignment must be an absolute assignment of an existing debt or other legal chose in action;
 - (b) the assignment must be made by writing; and
 - (c) express written notice of the assignment must be given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim the debt or legal chose in action.
- RG 203.56 If rights of a credit provider, lessor, mortgagee or beneficiary of a guarantee are only equitably assigned to you, you will not be regarded as being a credit provider, lessor, mortgagee or beneficiary. You do not legally own the right to payment, and cannot take action to recover payment, recover the hired goods, or discharge the debt or any mortgage once payment has been received, in your own name or without the agreement of the assignor. In this case:
- (a) the assignor will continue to be the credit provider, lessor, mortgagee or beneficiary of the guarantee and will still need to hold a credit licence; and
 - (b) you may be exercising rights of the credit provider, lessor, mortgagee or beneficiary on behalf of the credit provider, and may also need to hold a credit licence.

Provision of credit services

- RG 203.57 You are providing a credit service if you:
- (a) give credit assistance to a consumer; or
 - (b) act as an intermediary between a credit provider and a consumer (in relation to a credit contract) or between a lessor and a consumer (in relation to a consumer lease).

Note 1: See s7. 'Credit assistance' is defined in s8 and covers 'suggesting' and 'assisting'. 'Acts as an intermediary' is defined in s9. See also paras 2.36–2.43 of the Explanatory Memorandum.

Note 2: Some types of credit services are exempt from the licensing regime. These are set out in Pt 2-4 of the National Credit Regulations. An overview of the licensing exemptions is set out in Table 3 (Appendix 3).

RG 203.58 These credit activities are not mutually exclusive: you can provide credit assistance and act as an intermediary simultaneously.

Provision of credit assistance

RG 203.59 You are giving credit assistance to a consumer if, by dealing directly with a consumer or the consumer's agent in the course of, as part of, or incidentally to a business carried on in Australia, you:

- (a) suggest that the consumer:
 - (i) apply for a particular credit contract with a particular credit provider, or apply for a particular consumer lease with a particular lessor;
 - (ii) apply for an increase to their credit limit on a particular credit contract; or
 - (iii) remain in their current credit contract or consumer lease; or
- (b) assist the consumer to:
 - (i) apply for a particular credit contract with a particular credit provider, or apply for a particular consumer lease with a particular lessor; or
 - (ii) apply for an increase to their credit limit on a particular credit contract.

RG 203.60 To be providing credit assistance, you must be dealing directly with either the consumer or the consumer's agent. For example, if you deal with a relative who is acting on a consumer's behalf, or if you deal with another intermediary who acts for the consumer, you will be assisting the consumer.

RG 203.61 To be providing credit assistance you also need to be dealing with the consumer or their agent in the course of, as part of, or incidentally to a business carried on in Australia.

Note: In this guide we have used 'Australia' where possible rather than the term 'this jurisdiction' (which is used in the legislation). For more information on the meaning of 'this jurisdiction', see the note to RG 203.13.

Suggesting

- RG 203.62 The term ‘suggest’ is not defined in the National Credit Act. We consider that it involves proposing to a consumer, or introducing into their mind, the idea that they should:
- (a) apply for a particular credit contract or consumer lease with a particular credit provider or lessor;
 - (b) apply for an increase in that credit contract or consumer lease; or
 - (c) remain in that credit contract or consumer lease.
- RG 203.63 We consider that ‘suggesting’ can extend to offering a consumer advice or making a recommendation that they follow one of the courses of action in RG 203.62(a)–RG 203.62(c).
- RG 203.64 Whether you are providing credit assistance by making particular suggestions may be affected by the circumstances in which your suggestions are made, including statements made and other conduct engaged in by you in the promotion of your services.
- RG 203.65 The following example illustrates that ‘suggesting’ will be credit assistance in some circumstances, while in other circumstances it will not be credit assistance.

Example 5: Borrowing to finance residential property

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

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

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

Note: Where the information given to the consumer constitutes a mere referral to a credit licensee or representative, the adviser may be able to rely on an exemption if they also disclose any benefits, such as commissions, they may receive for giving the referral: see reg 25(2), 25(2A) and 25(5) of the National Credit Regulations.

Financial and credit advisers

RG 203.66 Financial and credit advisers will often provide budgeting and debt management advice. This can be in the context of providing personal financial advice, but can also be a discrete activity. It may involve considering particular credit products or providers.

Note: The law exempts not-for-profit financial counselling services and registered debt agreement administrators from the requirement to hold a credit licence. Registered debt agreement administrators need to be registered with the Insolvency and Trustee Service Australia. This exemption is not extended to other commercial debt management services: see reg 20 of the National Credit Regulations. We have also given an exemption for rural financial counselling services providers and money management service providers: see Class Order [CO 11/926] *Credit licensing exemptions for NGOs (non-government organisations) providing credit assistance to consumers*. For more information, see Table 3 (Appendix 3).

RG 203.67 This advice will not always be credit assistance, even though a particular course of action may be suggested. The following examples illustrate different situations in which financial advice may or may not be credit assistance.

Note: Providers of financial advice should also consider whether the advice they give is 'personal advice' within the meaning of s766B of the Corporations Act, for which an Australian financial services (AFS) licence may be required. Further information on financial services licensing requirements may be found at www.asic.gov.au.

Example 6: Debt management

A consumer approaches an adviser for advice about managing their debts after becoming redundant. The consumer does not seek advice on whether they should stay in their current credit contracts or not. The adviser suggests that, as a general principle, the consumer pay off the loans with the highest interest rate first. This advice is not credit assistance, even if the specific loans owed by the consumer are identifiable as particular credit products.

If an adviser tells a consumer seeking advice about debt management that they can approach their credit provider to discuss renegotiating a loan on the basis of hardship, then this would not be credit assistance. However, it is credit assistance if the adviser:

- suggests that the consumer remain in the existing credit contract; or
- negotiates a new credit contract with the credit provider on the consumer's behalf.

Note: See s72 of the National Credit Code for more information about changes on the grounds of hardship.

If an adviser suggests to or advises a consumer that they make extra payments to pay off their loans faster, or that they repay more than the minimum monthly payment on their credit cards, this would not be credit assistance. If the consumer has only one loan or credit card, such a

suggestion or advice is still not credit assistance, even though it relates to a particular loan or credit card.

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

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

Example 7: Advice about existing mortgages

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

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

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

Example 8: Salary packaging

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

Note: Employment-related leases are not covered by the National Credit Code (s171 of the Code). If the salary package consists entirely of an employment-related lease, advice about it will not be credit assistance.

- RG 203.68 If you are a financial adviser and your advice amounts to credit assistance under the National Credit Act, you will need to hold a credit licence or be covered by a principal's credit licence (unless you are otherwise exempt under the National Credit Act). If you are not licensed or covered by a principal's credit licence, you will need to ensure that you:
- (a) do not provide credit assistance; and
 - (b) make it clear to the consumer, when discussing different types of credit products, such as loans or credit cards, that you are not recommending a particular loan or credit card and you are not licensed to advise on particular credit products.

Assisting

- RG 203.69 You are also providing credit assistance if you assist a consumer to:
- (a) apply for credit relating to a particular credit contract or consumer lease; or
 - (b) apply for an increase to the credit limit on a particular credit contract.
- RG 203.70 The term 'assist' is not defined in the National Credit Act. We consider that it involves helping the consumer to apply for a particular credit contract or credit limit increase. For example, you may be assisting a consumer to apply for a particular credit product if you help the consumer to:
- (a) negotiate the terms of a credit contract with a particular credit provider; or
 - (b) complete the application form by providing guidance on what information to include in the application.
- RG 203.71 The level of help that you give to the consumer may affect whether you are regarded as 'assisting' the consumer to make an application. For example, if you merely give the consumer the credit provider's application form, you may not be assisting. However, if you also explain questions asked in the form, identify and compile particular information to include in the application, or receive application payments to pass on to the credit provider, you may be providing credit assistance.

Note: A person who is a clerk or cashier and who engages in some of these activities (such as receiving and passing on a payment together with a completed application form) in the ordinary course of their activities as a clerk or cashier may be covered by an exemption from the licensing requirements: see Table 3 (Appendix 3) and RG 203.123–RG 203.126 for more information.

Acting as an intermediary

- RG 203.72 You are acting as an intermediary under the National Credit Act if, in the course of, as part of, or incidentally to a business carried on in Australia, you act as an intermediary between a credit provider or lessor and a consumer for

the purpose of securing a provision of credit or a consumer lease for the consumer.

Note 1: The term ‘acts as an intermediary’ is defined in s9.

Note 2: In this guide we have used ‘Australia’ where possible rather than the term ‘this jurisdiction’ (which is used in the National Credit Act). For more information on the meaning of ‘this jurisdiction’, see the note to RG 203.13.

- RG 203.73 The term ‘intermediary’ is not defined in the National Credit Act. We consider that you may act as an intermediary between a consumer and a credit provider or lessor if you are an intermediate agent or ‘go-between’ who prepares or passes on information. To be engaging in the credit activity of ‘acting as an intermediary’ your role must also be, wholly or partially, engaged in for the purpose of securing a provision of credit or a consumer lease for the consumer.
- RG 203.74 You do not need to deal directly with the consumer or with the credit provider or lessor to be an intermediary. There may be a chain of intermediaries between the consumer and the credit provider or lessor.
- RG 203.75 The definition of ‘acts as an intermediary’ does not require your role to be in relation to a particular credit provider or lessor or a particular credit contract or consumer lease. You can be acting as an intermediary before the consumer has made a decision about what particular credit contract or consumer lease they should apply for.
- RG 203.76 Intermediaries can include:
- (a) persons who refer the consumer to another person who engages in credit activities, if this is done for the purpose of securing a provision of credit or a consumer lease for the consumer;

Note: Some referrers may be able to rely on exemptions from the requirement to be licensed. For more information, see RG 203.116–RG 203.122.
 - (b) finance brokers who, after recommending a particular credit contract, arrange the credit with a credit provider;

Note: In this case, the finance broker is also likely to be providing credit assistance.
 - (c) aggregators, where they act as a conduit between a broker and a credit provider in arranging the credit; and
 - (d) mortgage managers and product designers, if they are involved in arranging the credit.
- RG 203.77 In general, if your activities are only engaged in after a credit contract or consumer lease has been secured by the consumer, you will not be acting as an intermediary because your activities will not be engaged in for the purpose of securing a credit contract or consumer lease for that consumer. For example, if you are involved in looking after the administration of a

credit contract and mortgage for a credit provider, but you are not involved in securing credit for the consumer, you will not be acting as an intermediary (though you are likely to be engaging in other credit activities on behalf of the credit provider).

RG 203.78 However, if your activities in relation to an existing credit contract involve securing a new provision of credit under that contract, you may be acting as an intermediary. For example, a deferral of an amount payable under an existing credit contract can be a further provision of credit. If you negotiate on behalf of a consumer to obtain a change to an existing credit contract that involves a further provision of credit, you may be acting as an intermediary.

Note: Although a deferral or postponement of repayments as part of a hardship variation may involve a new provision of credit under the existing credit contract, it would generally not constitute an increase to a credit limit under that credit contract. However, you may be providing credit assistance if, in the course of discussing with a consumer whether to seek a change to the contract, you suggest that the consumer remain in the contract (e.g. instead of applying for bankruptcy and terminating the contract).

Example 9: Referral by a real estate agent

A real estate agent refers a consumer to a finance broker to arrange finance for the purchase of a house. The agent is paid a 'finder's fee' by the broker. The agent is likely to be acting as an intermediary between the consumer and a credit provider because they gave the referral for the purpose of securing a provision of credit for the consumer. It does not matter that the consumer has not yet made a decision about which credit provider to apply to.

Note: Some referrers may be able to rely on exemptions from the requirement to be licensed. For more information, see RG 203.116–RG 203.122.

Example 10: Comparison website

A website provides comparisons of the rates and features of credit cards and home loans that are available, and refers users of the website to the credit providers for those products by using links to their websites and application forms. The operator of the website may be acting as an intermediary if they provide this information and the referrals for the purpose of securing a provision of credit for the consumer. The operator is more likely to be considered to be giving the information and referrals for this purpose if they receive a benefit based on the consumer applying for the credit card or home loan.

Note: In some circumstances, operators of comparison websites could also be providing credit assistance. For example, the operator of the website may suggest a consumer remain in or apply for a particular credit product if the consumer is able to enter details of a current credit product for comparison with other credit products available in the market, and the comparison identifies the existing product or other particular products as being the best product for the consumer. However, websites that do not enable information to be tailored to a particular consumer (i.e. it is generic information that is available to all consumers, whether or not it can be sorted or filtered by the consumer to some extent by specifying particular parameters) are less likely to be considered credit assistance.

Example 11: Financial adviser giving information to a credit provider

A credit provider asks a consumer's financial adviser to provide information about the consumer's earnings, investments and financial commitments to verify information provided in an application for a personal loan.

If the financial adviser provides factual information to verify the information already supplied to the credit provider by the consumer, they will not be acting as an intermediary. However, if the financial adviser provides additional information to help the consumer's application, such as providing an opinion or statement about the consumer's ability to meet financial obligations under the loan, the adviser is more likely to be acting as an intermediary between the consumer and the credit provider for the purpose of securing a provision of credit for the consumer under the loan.

Providing an opinion or statement about a consumer's ability to meet financial obligations under a particular loan with a particular credit provider may also involve providing credit assistance where the financial adviser is dealing directly with the consumer.

Use of disclaimers

- RG 203.79 Disclaimers can be used to help consumers understand what kinds of credit activities you do, and do not, engage in.
- RG 203.80 However, you should take care that your disclaimer is not misleading. A disclaimer will not, of itself, determine whether your conduct constitutes a particular kind of credit activity.

Example 12: Misleading disclaimer

An operator of a comparison website gives a disclaimer on its website that it does not provide credit assistance. However, the website also includes statements that amount to suggestions to consumers that they apply for, or remain in, particular credit contracts. In these circumstances, the disclaimer is likely to be misleading.

Other prescribed or exempt activities**Prescribed activities**

- RG 203.81 The National Credit Regulations may prescribe certain other credit-related activities as 'credit activities' under the National Credit Act. At the date of publication, no such activities have been prescribed.

Exempt activities

RG 203.82 Some activities engaged in by specified persons are exempt from being credit activities for the purpose of the National Credit Act.

Note: See Pt 2-4, Subdiv 1.2 of the National Credit Regulations. The effect of these exemptions is that the specified activity is not treated as a credit activity under the National Credit Act, including for the licensing requirement. The National Credit Regulations also include exemptions from the licensing requirement only. For more information about exemptions from the licensing requirement, see Section D. An overview of all of the exemptions from the licensing requirement is set out in Table 3 (Appendix 3).

D Who does not need to be licensed?

Key points

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

- employees and directors of the licensee or of a related body corporate of the licensee; and
- credit representatives authorised by the licensee.

Certain credit providers and lessors who engage in credit activities in relation to contracts entered before 1 July 2010 do not need to be licensed.

Certain persons and credit activities are exempt from the licensing requirements.

Representatives

RG 203.83 In some circumstances, if you engage in credit activities on behalf of another person as their ‘representative’ you will not need to be licensed to engage in those activities. If you act on behalf of another person, that person is referred to as your ‘principal’.

Note: See the defences to the prohibition on engaging in credit activities without a licence in s29(3) (for certain representatives of credit licensees) and s29(4) (for representatives of a principal that is exempt from the requirement to hold a licence).

RG 203.84 If your principal is a credit licensee, you do not need to hold a credit licence to engage in credit activities if:

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

Note: See s29(3).

RG 203.85 Licensees are responsible for the conduct of their representatives. Both the representative and the licensee are liable to the consumer in relation to any loss or damage suffered by the consumer as a result of the representative’s conduct.

Note: See Div 4 of Pt 2-3 of the National Credit Act.

RG 203.86 Licensees are obliged to ensure that their representatives are competent to engage in the credit activities authorised by the licence: see s47 (e.g. they should be able to meet the relevant training requirements).

Note: For more guidance, see Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205) and Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).

‘On behalf of’

RG 203.87 You will only be acting as a representative and be able to rely on the defence in s29(3) or 29(4) if you engage in credit activities ‘on behalf of’ a person who is licensed, or exempt from the requirement to be licensed, in relation to those credit activities. If you engage in credit activities on your own behalf (i.e. as a ‘principal’), you cannot rely on these provisions.

RG 203.88 Whether you are acting as a principal or as a representative of someone else will depend on the circumstances of your conduct. The following factors are general indicators that you may be acting as a principal and not as a representative:

- (a) you are named in a loan, consumer lease, mortgage or guarantee as the credit provider or lessor;
- (b) you own the goods that are being leased;
- (c) your conduct is not monitored and supervised by someone else;
- (d) you hold out that you are a principal;
- (e) your conduct is not covered by anyone else’s compensation arrangements (e.g. professional indemnity insurance);
- (f) clients are directed to pay any fees owing for the provision of credit or credit services to you or into an account in your name;
- (g) you receive commissions directly from credit providers or lessors; and
- (h) you have ownership of, access to, or liability for client information.

Note: This is not intended to be an exhaustive list of potentially relevant factors. In determining whether you are acting as a principal, the presence (or absence) of any one or more of the listed factors is not conclusive.

RG 203.89 If you engage in credit activities by lending money or hiring out goods, and you are named in the credit contract as the credit provider or lessor or you are the person who is entitled to repayment under the contract or return of the goods, you will be engaging in credit activities as a principal and not as a representative.

Note: See the decision of the Administrative Appeals Tribunal in *THG Developments v ASIC* [2012] AATA 8.

Example 13: Credit provider under a franchise arrangement

Company A operates a business of providing credit and has established a franchise network. Company A holds a credit licence. Under its franchise agreement with Company A, Franchisee X has the benefit of Company A's branding and systems for accessing potential borrowers, and also to contracts and other documents and systems for compliance with statutory requirements. However, Franchisee X sources loan funds itself and is named as the lender in the credit contract. Franchisee X is the legal owner of the right to be repaid the debt under the credit contract, and so is the credit provider. Franchisee X engages in credit activities on its own behalf, and not on behalf of Company A. It cannot rely on the defence in s29(3). Unless Franchisee X holds its own credit licence (or can rely on an exemption):

- Franchisee X will be engaging in credit activities in contravention of s29; and
- Company A will be conducting business with an unlicensed person in contravention of s31.

RG 203.90 You will not be holding yourself out to be a principal merely by placing your name on your business documentation (such as letterhead, business cards and promotional material) provided:

- (a) the documentation makes it clear that you are acting as a representative of a licensee (and not as a principal); and
- (b) the licensee for whom you act is clearly disclosed.

Note: It is also important to ensure that the documentation is not confusing or misleading to consumers.

Employees and directors

RG 203.91 If you are an employee or director of a licensee or of a related body corporate of a licensee, you are given the authority to engage in credit activities on behalf of the licensee by the terms of your employment or your duties as a director. You do not need to be specifically authorised by the licensee to engage in credit activities on its behalf.

RG 203.92 If you are an employee or director of a licensee, an exempt person, or a related body corporate of a licensee or exempt person, you may be able to rely on the representative defence when:

- (a) in the case of an employee, your conduct relating to credit activities is within the scope of your employment; or
- (b) in the case of a director, your conduct relating to credit activities is within the scope of your duties as a director.

Note: A licensee may still be liable to consumers for the conduct of its directors or employees when they act outside the scope of their duties or employment, because the

director or employee may still be a 'representative' for the purposes of the liability provisions: see Div 4 of Pt 2-4 of the National Credit Act.

- RG 203.93 You can only engage in credit activities that your principal's licence authorises it to engage in, or in relation to which your principal is entitled to rely on an exemption.

Authorised credit representatives

- RG 203.94 A licensee may authorise another person to engage in credit activities on its behalf: see s64. People who are given this type of authorisation are referred to as 'credit representatives'.

Note: If the person would engage in credit activities on their own behalf, and not on behalf of the licensee, the person cannot be authorised by the licensee as a credit representative. See the decision of the Administrative Appeals Tribunal in *THG Developments v ASIC* [2012] AATA 8.

- RG 203.95 A credit representative authorisation must be in writing. The authorisation can cover some or all of the credit activities that are covered by the principal's credit licence: see s64 and 65.
- RG 203.96 A credit representative may be a body corporate. Body corporate credit representatives may sub-authorise a natural person as a credit representative of the licensee: see s65.

Note: Individuals, partnerships and multiple trustees may also be authorised as credit representatives under s64, but these types of entities are not permitted to give a sub-authorisation under s65.

- RG 203.97 Directors and employees of a body corporate credit representative who engage in credit activities on behalf of the licensee will need to also be authorised as credit representatives of the licensee. These individuals may be either authorised directly by the licensee (under s64) or sub-authorised by the body corporate credit representative (under s65). If they are sub-authorised, they do not need to be members of an approved external dispute resolution (EDR) scheme (i.e. it is sufficient that they be covered by the membership of the body corporate): see reg 16 of the National Credit Regulations.
- RG 203.98 The sub-authorised person is a credit representative of the licensee, not the body corporate credit representative that gave the sub-authorisation. The licensee must give their written consent to the sub-authorisation.
- RG 203.99 A credit representative may be authorised to engage in credit activities on behalf of more than one licensee, if all the licensees consent.
- RG 203.100 An AFS licensee may be the credit representative of a credit licensee, and a credit licensee may be the authorised representative of an AFS licensee. However, a person cannot be authorised to engage in a credit activity as a

credit representative if they hold a credit licence that authorises them to engage in that credit activity: see s67.

Ineffective authorisation

RG 203.101 The National Credit Act sets out circumstances where an authorisation will be ineffective. This includes where the person who is being authorised:

- (a) is subject to a banning order or disqualification under the National Credit Act in relation to the credit activity;
- (b) is not a member of an approved EDR scheme;
- (c) is banned from engaging in credit activities under a state or territory law;
- (d) is a natural person who has been convicted of serious fraud within the past 10 years;
- (e) for a sub-authorisation, is a person in relation to whom the licensee has not given a written consent to the authorisation.

Note: See s64(5) and s65(6). A previously valid authorisation can also cease to have effect if one of these circumstances starts to apply to the authorised person.

RG 203.102 An authorisation is also ineffective if:

- (a) it covers activities beyond those covered by the licensee's licence (see s64(3) and s65(3));
- (b) another licensee whose consent is required has not given its consent to the authorisation (see s66); or
- (c) the person being authorised already holds a credit licence that authorises the person to engage in the relevant credit activity (see s67).

RG 203.103 A person who engages in credit activities under an ineffective authorisation will be engaging in unlicensed conduct, except where the person already holds a credit licence that authorises the person to engage in the relevant credit activity.

RG 203.104 A licensee that has given an ineffective authorisation may still be liable to consumers for conduct of the person given the ineffective authorisation, because that person may still be a 'representative' for the purpose of the liability provisions: see Div 4 of Pt 2-4 of the National Credit Act.

Carried over instrument lenders

RG 203.105 The National Credit Act applies differently to you if you are a credit provider or lessor in relation to credit contracts or consumer leases entered into before 1 July 2010, but you have not offered, or been assigned, new

credit contracts or consumer leases since 1 July 2010. If you are in this category, you are a carried over instrument lender (COI lender) and specific rules apply to you.

Note: A 'carried over instrument' is a contract or other instrument that was made and in force, and to which an old Credit Code applied, immediately before 1 July 2010: see the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act), s4.

RG 203.106 If you are a COI lender, you can elect to either:

- (a) be regulated as a credit licensee; or
- (b) not be licensed under the National Credit Act and instead be regulated as an unlicensed COI lender, in which case you will be subject to a modified statutory regime.

RG 203.107 For most people the decision whether to be regulated as an unlicensed COI lender will have been made before 1 July 2010. However, if you have since ceased credit activities in relation to credit contracts or consumer leases entered into after 1 July 2010, but continue to be a COI lender, you may apply to cancel your credit licence. If you do this, you must notify ASIC that you intend to become an unlicensed COI lender and comply with the modified statutory regime.

Note: Class Order [CO 10/381] *Notice lodgement requirement for certain persons who are credit providers or lessors in relation to a carried over instrument* modifies s19A of Sch 2 of the Transitional Act and requires a COI lender to notify ASIC of becoming an unlicensed COI lender. See also Form COI1 *Notice of carried over instruments*.

RG 203.108 If you are a credit provider or lessor and offer new contracts (in addition to your carried over instruments), or have been assigned contracts since 1 July 2010, you are not a COI lender and you need to be licensed in relation to all of your credit activities (including credit activities in relation to your carried over instruments).

RG 203.109 You cannot elect to be regulated as both an unlicensed COI lender in relation to your carried over instruments and as a credit licensee in relation to new contracts.

RG 203.110 The modified statutory regulatory regime for unlicensed COI lenders is set out in Ch 2 of the National Credit Act, as modified by Sch 2 of the National Credit Regulations.

Note: Details of the obligations of unlicensed COI lenders are set out in Information Sheet 110 *Lenders with carried over instruments* (INFO 110), RG 205, RG 206 and Regulatory Guide 207 *Credit licensing: Financial requirements* (RG 207).

Exemptions from the licensing requirement

RG 203.111 Exemptions from the licensing requirement are given under the National Credit Act and National Credit Regulations for:

- (a) specified persons or classes of person; and
- (b) specified credit activities or classes of credit activities.

Note: See s110 of the National Credit Act and Pt 2-4 of the National Credit Regulations.

RG 203.112 An overview of exemptions from the requirement to be licensed is set out in Table 3 (Appendix 3).

RG 203.113 We may also exempt persons or credit activities from the licensing requirement. ASIC instruments giving exemptions from the licensing requirement are published on our website at www.asic.gov.au.

Note: See s109. For more guidance on how ASIC exercises its exemption and declaration powers under the National Credit Act, and information that should be included in an application for an exemption or declaration, see Regulatory Guide 51 *Applications for relief* (RG 51).

RG 203.114 Many of the exemptions from the licensing requirements apply only in limited circumstances. If you intend to rely on an exemption, you should make sure you meet each of the requirements for the exemption.

RG 203.115 The following paragraphs provide some guidance on the circumstances in which you can rely on the exemptions for:

- (a) mere referrals (RG 203.116–RG 203.122);
- (b) clerks and cashiers (RG 203.123–RG 203.126); and
- (c) suppliers of goods and services (RG 203.127–RG 203.134).

Mere referrals

RG 203.116 If you refer a consumer to another person who is licensed or authorised to engage in credit activities and help the consumer to get in contact with that other person, you may be engaging in credit activities by:

- (a) acting as an intermediary to secure a provision of credit or a consumer lease for the consumer; or
- (b) providing credit assistance (e.g. where the other person is only able to provide, or provide credit services in relation to, a single credit contract or consumer lease, your referral could be considered a suggestion that the consumer apply for that credit contract or consumer lease).

RG 203.117 However, you may be exempt from the requirement to be licensed if you only inform the consumer that the other person can provide particular credit activities and:

- (a) give the consumer information about how to contact the other person or arrange for the consumer to do so by using a link from a website (known as a 'downstream referral'); or
- (b) give the other person the consumer's name and contact details and a description of the purpose for which the consumer wants a provision of credit or consumer lease (known as an 'upstream referral').

Note: See the exemptions in reg 25(2) and 25(2A) of the National Credit Regulations for downstream referrals, and reg 25(5) for upstream referrals.

RG 203.118 You cannot rely on these exemptions if you engage in broader activities that are credit activities. For example, if, in addition to informing the consumer that the other person can provide particular credit activities and passing on contact details, you suggest the consumer contact that person to apply for a particular credit contract with a particular credit provider, you will not be able to rely on these exemptions.

RG 203.119 In order to rely on these exemptions you also need to meet a number of requirements that are specified in the exemptions.

Downstream referral

RG 203.120 To rely on an exemption for downstream referrals, you must disclose to the consumer any benefits, such as commissions, you may receive for giving the referral. This disclosure needs to be in the same form as the information about how to contact the licensee or representative.

Example 14: Downstream referral by a real estate agent

A real estate agent that is showing a property to a consumer tells the consumer that they should contact a particular finance broker to arrange a home loan. The agent gives the consumer the contact details for the broker, and tells the consumer that they can also get in touch with the broker directly through a link on the agent's website. The agent tells the consumer that the agent will receive a commission from the broker if the consumer applies for a home loan through the broker. This commission arrangement is also disclosed on the agent's website. This agent's conduct is likely to be covered by the downstream referral exemption. The agent would need to make sure that they give information about their commission arrangement in the same form as the information about how to contact the broker (i.e. if contact information is given in writing, the commission disclosure also needs to be in writing).

Upstream referrals

RG 203.121 To rely on the exemption for upstream referrals, you must:

- (a) have a written referral agreement with the licensee or representative that specifies the conduct you can engage in to which the exemption applies;

Note: Licensees who have written referral agreements have additional licence conditions that require the licensee to keep a register of referrers, and to only contact a consumer as a result of a referral within a specified period of time and in a specified way: see reg 9AB of the National Credit Regulations.

- (b) provide the referral as a matter that is incidental to carrying on another business;
- (c) obtain the consumer's consent to their name and contact details being given to the licensee or representative;
- (d) give the consumer name and contact details to the licensee or representative within five business days; and
- (e) disclose to the consumer any benefits, such as commission, you may receive for giving the referral.

RG 203.122 However, you must not:

- (a) have been banned from engaging in credit activity;
- (b) require the consumer to pay a fee for passing on their name and contact details;
- (c) provide the referral incidentally to the carrying on of another business that is principally making contact with persons for the purpose of giving their names or other details to another person; or
- (d) conduct a business as part of which you contact persons face-to-face from non-standard business premises (e.g. a temporary or open booth or stall set up in a shopping centre).

Example 15: Upstream referral by a real estate agent

Instead of passing on the finance broker's contact details to the consumer, the real estate agent in Example 14 collects the consumer's name and contact details and passes these details on to the broker (with whom the agent has a referral agreement). The consumer has agreed to the agent passing this information on, and the agent does so within five business days. The agent has told the consumer that they are paid a commission by the broker if the consumer applies for a home loan through the broker. The referral for credit assistance in relation to a home loan is a matter that is incidental to the agent carrying on its real estate business, and may be covered by the upstream referral exemption.

However, the exemption would not apply if the agent failed to, for example:

- disclose the commission to the consumer at the time they told the consumer they can pass on the consumer's details to a broker who can provide credit assistance; or
- pass on the consumer's details within five business days.

In these circumstances, the agent could be engaging in unlicensed conduct if it proceeded to pass on the consumer's details to the broker.

Example 16: Real estate agent using non-standard business premises

A real estate agent engaged to sell residential investment properties off the plan sets up temporary stalls in shopping centres and airport lounges. The agent tells consumers that come to these stalls that he can put them in touch with a credit provider that can provide residential property investment loans, and passes on their details to the credit provider. Even if all of the other requirements of the upstream referral exemption are met, this agent will not be covered by the exemption because he has contacted the consumers face-to-face from non-standard business premises.

Clerks and cashiers

RG 203.123 People employed as clerks and cashiers may engage in conduct that is a credit activity, in particular by assisting a consumer to apply for a credit contract or consumer lease or by acting as an intermediary between a consumer and a credit provider or lessor.

RG 203.124 However, you will not be engaging in a credit activity for which you need to be licensed or authorised if you are a clerk or cashier and you engage in the activity in the ordinary course of your activities as a clerk or cashier.

Note: See the exemption in reg 24(9) of the National Credit Regulations.

RG 203.125 Activities ordinarily engaged in by clerks and cashiers may include:

- (a) posting, handing out or otherwise distributing or displaying documents, such as credit guides and key facts sheets;
- (b) answering routine questions from consumers by giving factual information, such as current interest rates and fees and charges on particular credit contracts or consumer leases;
- (c) receiving payments (e.g. upfront application fees) and issuing receipts;
- (d) performing the routine or administrative functions of receiving loan or lease documentation, passing documentation on to the consumer to be signed, returning signed documentation to the prospective credit provider or lessor and processing completed documents.

Note: This is not intended to be a definitive list of activities that are ordinarily engaged in by clerks and cashiers.

RG 203.126 This exemption will not apply if you are employed as a clerk or cashier but you engage in activities that are not ordinarily engaged in by clerks and cashiers. For example, if you assist the consumer to complete an application form by explaining particular terms of the loan documentation or advising what information the consumer should include in the application, you may not be covered by this exemption.

Example 17: Clerk of a finance broker

A consumer is given credit assistance by a finance broker, who is a credit representative of an aggregator (the licensee). While the consumer is completing the application form, the broker asks their clerk to help the consumer complete the application. The clerk helps the consumer to complete the application by showing the consumer where to sign the application, taking photocopies of supporting documents, taking receipt of the upfront application fees that are to be passed on to the prospective credit provider and sending the completed application form and application fees to the aggregator and the prospective credit provider. These activities are likely to be covered by the exemption, and the clerk would not need to be licensed or authorised by the licensee to engage in these activities.

While a consumer is completing an application form, the consumer asks the clerk what information they should include about their current expenses and liabilities. Answering questions of this kind is not in the ordinary course of activities of a clerk. If the clerk answered this question for the consumer, instead of asking the broker to provide an answer, the exemption would not apply. The clerk would need to be authorised as a credit representative of the aggregator (the licensee) to engage in this conduct.

Note: If the employer of the clerk is a licensee, the clerk may be able to rely on the representative defence in s29(3) if their activities were within the scope of their employment.

Suppliers of goods or services

RG 203.127 If you are a supplier of goods or services, you may engage in credit activities in the course of the sale or supply of the goods or services. For example, when a consumer enters your business premises to obtain goods you may:

- (a) suggest that the consumer enter a credit contract to pay for those goods, or a consumer lease to hire the goods;
- (b) assist the consumer to complete the application form; and
- (c) perform obligations or exercise rights of the credit provider or lessor on their behalf.

RG 203.128 However, you will not be required to hold a licence to engage in these credit activities if:

- (a) your credit activities are in relation to credit contracts, continuing credit contracts or consumer leases:
 - (i) provided by a linked credit provider or lessor; and
 - (ii) that will wholly or predominantly be used to pay for the goods or services supplied by you, or that will initially be used for this purpose in the case of a continuing credit contract; or
- (b) your credit activities are in relation to a continuing credit contract under which a credit card is provided where:

- (i) the continuing credit contract is provided by a linked credit provider; and
- (ii) the credit card is branded or co-branded by you.

Note: See regs 23 and 23A of the National Credit Regulations. These exemptions can also cover a related body corporate of the supplier of goods or services, and any person who engages in credit activities primarily on the supplier's premises with the agreement of the supplier (for reg 23), or who engages in credit activities on the supplier's behalf and on the supplier's premises (for reg 23A).

RG 203.129 Although you do not need to be licensed, you will still be engaging in credit activities on behalf of the linked credit provider or lessor. That credit provider or lessor must be licensed or an exempt special purpose funding entity, and will be responsible for your conduct that is engaged in on their behalf.

Note: 'Linked credit provider' and 'linked lessor' are defined in regs 25B and 25C of the National Credit Regulations. These definitions include, for example, a credit provider with whom the supplier has arrangements relating to the provision of credit to the supplier's customers for payment for the goods or services.

Example 18: Supplier of goods arranging a credit contract

A sales assistant employed by a supplier of electrical goods suggests to a consumer who wants to buy a computer that the consumer enter a credit contract to pay for the computer. The supplier has an arrangement with a licensed credit provider under which:

- the supplier can make an offer to the consumer on behalf of the credit provider; and
- documents in relation to the provision of credit (including an application, the offer and the credit contract) can be signed on the premises of the supplier.

The sales assistant helps the consumer apply for a provision of credit by explaining what information needs to be included in the application and entering into an online form information provided by the consumer. If the credit provider approves the provision of credit, the sales assistant prints out a credit contract to be signed by the consumer. The consumer also signs a direct debit request to authorise payments to the credit provider. The sales assistant returns all documents to the credit provider, and gives the consumer the computer.

Both the sales assistant and the supplier are likely to be covered by the exemption in reg 23, and so will not need to be licensed to engage in credit services, or to perform obligations and exercise rights of the credit provider on the credit provider's behalf.

Example 19: Co-branded credit card

A sales assistant at a department store that supplies household furnishings suggests to a consumer that they obtain a credit card that is branded by the store. The credit available under the credit card contract can be used to pay for goods sold at the department store, but also in other retail outlets. The sales assistant obtains details from the consumer to complete an application online with the credit provider, and, if approved by the credit provider, prints out and passes on an offer of a continuing credit contract, gives it to the consumer to sign, and returns the signed documents to the credit provider.

After receiving the credit card, the consumer decides not to purchase any furnishings from the department store immediately, and instead first uses the card to pay for goods in another store.

As the credit initially provided to the consumer (on the first use of the card) is not to pay for goods supplied by the supplier, the sales assistant and the supplier would not be covered by the exemption in reg 23. However, they will be covered by the exemption in reg 23A.

- RG 203.130 You cannot rely on these exemptions where you supply an interest in land. For example, these exemptions will not apply if you are a property developer arranging loans to finance the sale of units or town houses.

Note: See definition of 'services' in reg 25D of the National Credit Regulations.

- RG 203.131 You also cannot rely on these exemptions where either:
- (a) you supply goods or services to the consumer as the result of unsolicited contact with the consumer (for the exemption in reg 23); or
 - (b) you engage in credit activities other than from your business premises (for the exemption in reg 23A).

- RG 203.132 A supply of goods or services will be the result of unsolicited contact if your first personal contact with the consumer about the goods or services is in business premises that are located in premises used by consumers for purposes other than being contacted about the supply of goods or services (e.g. in passageways or areas used by consumers to walk from one place to another).

- RG 203.133 For example, if your first contact with the consumer is by approaching the consumer as they pass by a temporary or open booth or stall that has been set up in or around a shopping centre or retail precinct (including in airports), the supply of goods or services would result from unsolicited contact, and so you would not be able to rely on the exemption for any credit services provided in relation to credit to pay for those goods or services.

- RG 203.134 A supply of goods or services will also be the result of unsolicited contact if it results from an unsolicited meeting or telephone call to the consumer—for

example, where the goods or services are being provided as a result of door-to-door canvassing.

RG 203.135 Contact with the consumer will be authorised by the consumer, and therefore not unsolicited contact, where it is the result of:

- (a) posting to, or leaving at a residential address, written promotional material about goods or services;
- (b) contact in relation to the possible return of goods supplied to the consumer or the provision of replacement goods to the consumer; or
- (c) contact that results from a consumer providing their contact details for the sole purpose of being contacted about the supply of goods or services, provided the contact is made within three months of the consumer providing their contact details

Example 20: Unsolicited contact by a supplier of goods

The supplier of computers in Example 18 sets up a temporary booth in the shopping centre in which the supplier's store is located to give the supplier more access to passing shoppers. The supplier directs any consumers who come to the booth to the store to complete the transaction.

This supplier may not be covered by the exemption in reg 23 because its first contact with consumers in relation to the supply of computers is from non-standard business premises, and is therefore considered to be unsolicited contact. If the supplier wants to engage in credit activities in relation to the supply of computers in these circumstances, it will need to be licensed or authorised by a licensee.

Appendix 1: When you need a credit licence

Table 1: Common roles in the credit industry—Do I need an Australian credit licence?

Who you are	Situation where you need to hold a credit licence
<p>Credit provider under a credit contract</p> <p>See RG 203.34–RG 203.41; RG 203.50–RG 203.52</p> <p>For example, a bank, credit union, building society or finance company</p>	<p>You need a credit licence if you provide credit under a credit contract where:</p> <ul style="list-style-type: none"> • the borrower is a natural person or strata corporation; • the credit is wholly or predominantly for personal, domestic or household purposes, or relates to a residential investment property; and • a charge is made for the credit. <p>Note 1: The licensing requirement will continue as long as you are the legal owner of the debt under the contract. If you legally assign the debt to another person, the assignee will be regarded as the person who provides credit, and who needs to be licensed, from the time the assignment takes effect. Following the legal assignment, you will no longer be considered the credit provider for that credit contract.</p> <p>Note 2: The licensing requirement also applies to any other person who performs obligations or exercises rights on your behalf in relation to the credit contract.</p>
<p>Lessor under a consumer lease</p> <p>See RG 203.42–RG 203.44; RG 203.50–RG 203.52</p> <p>For example, a company that leases furniture or electrical appliances to a consumer for their personal use</p>	<p>You need a credit licence if you are a lessor under a consumer lease where:</p> <ul style="list-style-type: none"> • the goods are hired wholly or substantially for personal, domestic or household purposes; • a charge is made for hiring the goods; and • the charge, together with any other amount payable under the consumer lease, exceeds the cash price of the goods. <p>Note 1: The licensing requirement will continue as long as you are the legal owner of the rights to payment and return of the goods under the lease. If you legally assign your rights under the lease to another person, the assignee will be regarded as the lessor, and the person who needs to be licensed, from the time the assignment takes effect. Following the legal assignment, you will no longer be considered the lessor for that consumer lease.</p> <p>Note 2: The licensing requirement also applies to any other person who performs obligations or exercises rights on your behalf in relation to the consumer lease.</p>
<p>Mortgagee</p> <p>See RG 203.45–RG 203.49; RG 203.50–RG 203.52</p> <p>For example, a bank, credit union, building society or finance company</p>	<p>You need a credit licence if you are entitled to the benefit of a mortgage that:</p> <ul style="list-style-type: none"> • secures obligations under a credit contract or related guarantee covered by the National Credit Code; and • is taken out by a natural person or strata corporation. <p>Note 1: The licensing requirement also applies to any other person who performs obligations or exercises rights on your behalf in respect of the mortgage.</p> <p>Note 2: You may be entitled to the benefit of a mortgage even if you are not the credit provider under the credit contract. For example, if you have legally assigned a debt under a credit contract to another person but only equitably assigned rights under the mortgage that secures repayment of the debt, you will continue to be the mortgagee (but not the credit provider).</p>

Who you are	Situation where you need to hold a credit licence
<p>Beneficiary of a guarantee</p> <p>See RG 203.47; RG 203.50–RG 203.52</p>	<p>You need a credit licence if you are taking the benefit of a guarantee that:</p> <ul style="list-style-type: none"> • guarantees obligations of a debtor under a credit contract covered by the National Credit Code; and • is given by a natural person or strata corporation. <p>Note: The licensing requirement also applies to any other person who performs obligations or exercises rights on your behalf in respect of the guarantee.</p>
<p>Assignees of a credit provider, lessor, mortgagee or beneficiary of a guarantee</p> <p>See RG 203.53–RG 203.56; RG 203.50–RG 203.52</p>	<p>You need a credit licence if you are, and you are exercising the rights of, a credit provider, lessor, mortgagee, or beneficiary of a guarantee following a legal assignment to you—this includes where you have been assigned those rights by a previous assignee, and not by the original party to the contract.</p>
<p>For example, a debt buyer</p>	<p>If you are only equitably assigned rights, you will not become the credit provider, lessor, mortgagee, or beneficiary of a guarantee. The person who equitably assigned their rights to you will continue to be the credit provider, lessor, mortgagee, or beneficiary of a guarantee under the equitably assigned contract. However, you are likely to be exercising rights of the credit provider, lessor, mortgagee, or beneficiary of a guarantee, and so may need to be licensed to engage in that credit activity.</p>
<p>Mortgage manager</p>	<p>A mortgage manager manages credit contracts or consumer leases, and the day-to-day relationship with the consumer, on behalf of a credit provider or lessor (or their agent) under the mortgage manager’s brand: see reg 26 of the National Credit Regulations. You need a credit licence if you:</p> <ul style="list-style-type: none"> • deal directly with the consumer or the consumer’s agent and assist the consumer to apply for the credit contract or consumer lease; • act as an intermediary between the consumer and the credit provider or lessor to arrange for the credit contract and mortgage or consumer lease to be entered; or • perform obligations, or exercise rights, of the credit provider and mortgagee or lessor on their behalf (e.g. in relation to collecting repayments).
<p>Product designer</p>	<p>A product designer operates by agreement with credit providers and lessors, and manages a pool of funds from which credit contracts or consumer leases are provided and is responsible for creating the policy for use of the credit contracts or leases, including eligibility requirements: see reg 26 of the National Credit Regulations. You need a credit licence if you:</p> <ul style="list-style-type: none"> • deal directly with a consumer or the consumer’s agent and assist the consumer to apply for the particular credit contract or consumer lease that you have designed; or • act as an intermediary between the consumer and credit provider or lessor to secure the provision of credit or consumer lease for the consumer.

Who you are	Situation where you need to hold a credit licence
<p>Lenders mortgage insurer</p>	<p>Lenders mortgage insurers generally take action to recover outstanding debts under a credit contract by taking action in the name of the lender under the doctrine of subrogation (and not as the legal owner of the debt). You will need a licence because when you take action to recover repayments from a consumer, you exercise rights, or perform obligations, of the credit provider as if you were the credit provider.</p> <p>Note: Some insurers may also be legally assigned a debt to enable the insurer to recover any shortfall following a default and payment by the insurer to the lender. In this case, the insurer may become the credit provider.</p>
<p>Debt management service See RG 203.66–RG 203.67</p>	<p>You need a credit licence if you provide debt management advice that amounts to credit services, and that is not covered by the exemptions for financial counsellors, rural financial counselling services providers and money management service providers.</p>
<p>Financial adviser, finance broker or similar intermediary See RG 203.66–RG 203.68; RG 203.72–RG 203.78</p> <p>For example, a financial adviser suggesting that a client apply to their current credit provider for a fixed rate home loan to replace their existing variable rate loan</p>	<p>You need a credit licence if you:</p> <ul style="list-style-type: none"> • provide credit assistance by either: <ul style="list-style-type: none"> – suggesting the consumer apply for or remain in a particular credit contract or lease, or apply to increase their credit limit under a particular credit contract; or – assisting the consumer to make an application for a particular credit contract or increase to their credit limit under a particular credit contract; or • act as an intermediary between the consumer and the credit provider or lessor. <p>Note: You may be providing credit assistance even if you deal directly with the consumer's agent rather than the consumer.</p>
<p>Comparison websites See RG 203.72–RG 203.78</p>	<p>You need a credit licence if you:</p> <ul style="list-style-type: none"> • act as an intermediary by referring consumers to credit providers or lessors for the purpose of securing a provision of credit or a consumer lease to the consumer, and you are not covered by the exemption for mere referral conduct; or • provide credit assistance to a consumer by providing results that are tailored to information provided by the consumer about their financial circumstances and need (e.g. by enabling the consumer to provide information about an existing credit contract or consumer lease, comparing the rates and features of that product with other available products and suggesting the consumer either remain in that product or apply for a different product).
<p>Other types of intermediary See RG 203.72–RG 203.78</p> <p>For example, referrers and aggregators.</p>	<p>You need a credit licence if you:</p> <ul style="list-style-type: none"> • are an intermediary in the 'chain' between consumer and lender under a credit contract, or a lessor under a consumer lease, even if you have no direct contact with the consumer; and • your role is wholly or partially aimed at obtaining credit or a consumer lease for the consumer.

Who you are	Situation where you need to hold a credit licence
Franchisors and franchisees	<p>A franchise for providing credit or consumer leases could be set up in a number of ways, which will affect which persons will engage in credit activities and need to hold a credit licence. For example:</p> <ul style="list-style-type: none"> • where the franchisor provides a business model, systems and branding to a franchisee, but the franchisee is recorded in loan or lease documentation as the credit provider or lessor: <ul style="list-style-type: none"> – the franchisee will be engaging in credit activities as the credit provider or lessor, and will be required to hold a credit licence; and – the franchisor will not be the credit provider or lessor (though it may still be engaging in some other credit activities, such as by exercising rights of the franchisee on its behalf); or • where the franchisor is recorded in loan or lease documentation as the credit provider or lessor, and the franchisee arranges for those contracts to be entered by the franchisor, enters the contracts on behalf of the franchisor, or manages the collection of repayments on those contracts on behalf of the franchisor: <ul style="list-style-type: none"> – the franchisor will be engaging in credit activities as the credit provider or lessor, and will be required to hold a credit licence; and – the franchisee will be engaging in credit activities by exercising the rights of the franchisor on its behalf, and may also be providing credit services to consumers. The franchisee will need to either hold a credit licence, or be authorised by the franchisor as a credit representative.

Appendix 2: Credit and consumer leases excluded from regulation

Table 2: Types of credit, mortgages, guarantee and consumer leases to which the National Credit Code does not apply

Type of credit, consumer lease, mortgage or guarantee	Circumstances when excluded from regulation
<p>Short term credit See s6(1) (Code)</p>	<p>Period for which credit is provided does not exceed 62 days and credit fees and charges and interest charges do not exceed the specified maximum amount—that is:</p> <ul style="list-style-type: none"> • credit fees and charges do not exceed 5% of the amount of credit; and • the interest charges that may be imposed or provided for do not exceed an amount equal to the amount payable if the annual percentage rate were 24% per annum.
<p>Short term credit by authorised deposit-taking institutions (ADIs) See reg 58</p>	<p>Period for which credit is provided does not exceed 62 days</p>
<p>Credit without express prior agreement See s6(4) (Code)</p>	<p>For example, where a cheque account is overdrawn but there is no express overdraft facility, or when a savings account falls into debit</p>
<p>Credit under a continuing credit contract for which only an account charge is payable See s6(5) (Code) and reg 51</p>	<p>The only charge payable is a periodic or other fixed charge that does not vary according to the amount of credit provided. The charge cannot exceed a maximum amount of \$200 in the 12-month period after the contract is made, or \$125 for any subsequent 12-month period</p>
<p>Joint credit and debit facilities See s6(6) (Code)</p>	<p>Where both credit and debit facilities are available under a credit contract, the National Credit Code does not apply to the contract to the extent that the contract or any amount payable or other matter arising out of it relates only to the debit facility</p>
<p>Credit under bill facilities See s6(7) (Code)</p>	<p>Credit that arises out of a facility under which credit is provided by an ADI by drawing, discounting or endorsing a bill of exchange or promissory note.</p>
<p>Insurance premiums by instalments See s6(8) (Code)</p>	<p>Credit that is provided by an insurer for the purpose of paying insurance premiums to the insurer by instalments, where the insured has no liability to make further payments under the contract if the contract is cancelled by the insured (i.e. if the insurance contract is cancelled the insured does not have to pay any instalments that would have become payable after the date of cancellation).</p>

Type of credit, consumer lease, mortgage or guarantee	Circumstances when excluded from regulation
<p>Credit provided by pawnbrokers</p> <p>See s6(9) (Code) and related licensing exemption in reg 25(3)</p>	<p>Credit that is provided by pawnbrokers on the security of pawned or pledged goods as long as the pawnbroker's only recourse, if the debtor is in default, is against the goods provided as security.</p> <p>Note: This is only a partial exclusion—unjust transaction provisions (s76–81 (Code)) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Trustees of estates</p> <p>See s 6(10) (Code)</p>	<p>Credit that is provided by the trustee of an estate of a deceased person by way of an advance to a beneficiary or prospective beneficiary of the estate.</p> <p>Note: This is only a partial exclusion—unjust transaction provisions (s76–81 (Code)) continue to apply.</p>
<p>Employee loans</p> <p>See s6(11) (Code) and related licensing exemption in reg 25(3)</p>	<p>Credit provided by an employer or a related body corporate of the employer to an employee or former employee. If the credit provider is in the business of providing credit, the exclusion only applies where the credit that is provided is on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to persons who are not employees or former employees.</p> <p>Note: This is only a partial exclusion—Pt 1, Pt 4, Div 3 of Pt 5, Divs 4 and 5 of Pt 7 and Pts 12, 13 and 14 (Code) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Director loans</p> <p>See reg 63 and related licensing exemption in reg 25(3)</p>	<p>Credit provided by a credit provider or a related body corporate of the credit provider to a director of the credit provider. If the credit provider is in the business of providing credit, the exclusion only applies where the credit that is provided is on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to persons who are not directors.</p> <p>Note: This is only a partial exclusion—Pt 1, Pt 4, Div 3 of Pt 5, Divs 4 and 5 of Pt 7 and Pts 12, 13 and 14 (Code) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Margin loans</p> <p>See s6(12) (Code)</p>	<p>Credit provided by way of a margin loan.</p> <p>Note: Margin loans are regulated as financial products under the Corporations Act.</p>
<p>Small amounts</p> <p>See reg 52 and related licensing exemption in reg 25(3)</p>	<p>Credit provided where the amount of credit does not at any time exceed \$50, no insurance is financed under the contract, no mortgage or guarantee is taken by the credit provider and the annual percentage rate does not exceed the maximum rate that would apply if the National Credit Code applied to the contract. This exclusion does not apply to a continuing credit contract.</p> <p>Note: This is only a partial exclusion—Div 3 of Pt 4 and Pt 5 (Code) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>GIO Finance Limited's No Interest Loan Scheme</p> <p>See reg 53</p>	<p>Credit provided under this scheme.</p>

Type of credit, consumer lease, mortgage or guarantee	Circumstances when excluded from regulation
<p>Queensland Government Rental Purchase Plan Scheme</p> <p>See reg 54 and related licensing exemption in reg 25(3)</p>	<p>Credit provided under this scheme.</p> <p>Note: This is a partial exclusion only—unjust transaction provisions (s76–81 (Code)) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Partnership loans</p> <p>See reg 55 and related licensing exemption in reg 25(3)</p>	<p>Credit provided by a firm or a related body corporate of a firm to a partner of the firm. If the credit provider is in the business of providing credit, the exclusion only applies where the credit that is provided is on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to persons who are not partners of the firm</p> <p>Note: This is a partial exclusion only—Pt 1, Div 3 of Pt 4, Divs 4 and 5 of Pt 5 and Pt 7 (Code) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Student loans</p> <p>See reg 56 and related licensing exemption in reg 25(3)</p>	<p>Credit provided by a higher educational institution or an association of students to a student on grounds of hardship or an emergency. The student and any guarantor must be given information about fees and charges and the terms and conditions for the provision of credit before the contract is entered or the guarantee is signed.</p> <p>Note: This is a partial exclusion only—s61(1) (Code) and unjust transaction provisions continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Loans for conservation of heritage items</p> <p>See reg 57</p>	<p>Credit provided under specified state legislation</p>
<p>Estate administrators</p> <p>See reg 59</p>	<p>Credit provided to a person's estate by a public official or public body authorised by a law or court to administer that person's estate.</p> <p>Note: This is a partial exclusion only—unjust transaction provisions (s76–81 (Code)) continue to apply.</p>
<p>Credit under <i>Aged Care Act 1997</i></p> <p>See reg 60 and related licensing exemption in reg 25(3)</p>	<p>Credit provided by an approved provider under the <i>Aged Care Act 1997</i> where the provision of credit is made and regulated under that Act.</p> <p>Note: This is a partial exclusion only—hardship provisions and unjust transaction provisions (s72–81 (Code)) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Firefighters Benefit Fund of WA Inc</p> <p>See reg 61 and related licensing exemption in reg 25(3)</p>	<p>Credit provided by the Fund to a member of the Fund at a fixed annual percentage rate.</p> <p>Note: This is a partial exclusion only—Div 3 of Pt 2, Div 3 of Pt 4 and Divs 1 and 2 of Pt 5 (Code) continue to apply. See reg 25(3) for licensing exemption.</p>
<p>Charge card contracts</p> <p>See reg 62</p>	<p>Credit provided by specified entities under charge card contracts. One of the requirements for a contract to be a charge card contract is that the provision of an advance of credit be limited to a total period not exceeding 62 days.</p>

Type of credit, consumer lease, mortgage or guarantee	Circumstances when excluded from regulation
Indigenous Business Australia See reg 65A	Credit provided by Indigenous Business Australia. Note: This is a partial exclusion only—unjust transaction provisions (s76–81 (Code)) continue to apply.
Specified mortgages See reg 64	Mortgages relating to certain types of goods (perishable goods, livestock, primary product and food stuffs), a banker's right to combine accounts and liens or charges arising by operation of any Act, law or custom.
Specified guarantees See reg 65	A guarantee by the supplier under a tied loan contract or tied continuing loan contract.
Short-term or indefinite leases See s171(1) (Code)	Consumer leases with a fixed period of four months or less, or for an indefinite period.
Employment-related leases See s171(2) (Code)	Consumer leases under which goods are hired by an employee in connection with the employee's remuneration or other employment benefits. Examples of employment-related leases are leases novated to an employer and paid under salary sacrifice arrangements with the employer.
Leases to directors See reg 102	Consumer leases under which goods are hired by a director of the lessor in connection with the director's remuneration or other financial benefits derived from acting as a director.

Appendix 3: Roles with licensing exemptions

Table 3: Exemptions under the National Credit Act, National Credit Regulations and ASIC class orders

Who you are	Exemption for
Credit representative See s29(3)	Credit activities undertaken on behalf of a licensee and which the licensee has authorised you to engage in on their behalf. For more information, see Section D.
Employee or director See s29(3), s29(4)	Credit activities undertaken on behalf of a licensee or a person who is covered by an exemption from the licensing requirement, where the activity is within the scope of your authority as an employee or director of the licensee, the exempt person or a related body corporate of the licensee or exempt person. For more information, see Section D.
Related body corporate See reg 20(6)	Credit activities undertaken by you on behalf of a licensee that is a related body corporate, where those credit activities are engaged in only because your employees and directors are engaging in credit activities on behalf of the licensee. For more information, see Section D.
Corporate and personal insolvency practitioners and personal representatives of deceased persons See reg 20(3)	Credit activities you engage in for the purpose of a position under which you act on behalf of or by 'standing in the shoes of' an insolvent or deceased person or entity (who may be either a licensee or a consumer), for example where you are: <ul style="list-style-type: none"> • an official receiver or trustee under the <i>Bankruptcy Act 1966</i>; • a receiver, receiver and manager, provisional liquidator or liquidator; • an administrator of a company or deed of company arrangement; • an administrator of a bankrupt estate or in winding up a body corporate or partnership; • the Public Trustee; or • a personal representative of a deceased person. If you are a personal representative of a deceased licensee, the exemption only applies for a limited period (at most six months from the death of the licensee).
Financial counselling agency See reg 20(5)	Credit activities you engage in as part of a financial counselling service, provided you or your associates do not receive any remuneration (whether by commission or otherwise) in relation to the financial counselling service and no fees or charges are payable for this service. To rely on this exemption, persons who engage in credit activities for the agency need to be members, or be eligible to be members, of a financial counselling association (as defined in Class Order [CO 03/1063] <i>Licensing relief for financial counselling agencies</i>) and have been appropriately trained to engage in the activities.

Who you are	Exemption for
<p>Rural financial counselling services providers and money management service providers</p> <p>See [CO 11/926]</p>	<p>If you are an organisation of this kind, you may provide credit assistance in the course of your role, but the provision of credit assistance must not be your core business. You do not need to be licensed provided the credit assistance is provided as part of your rural financial counselling service or money management service and:</p> <ul style="list-style-type: none"> • no fees or charges (however described) are payable by or on behalf of the consumer in relation to the credit assistance or any other aspect of your service; • you do not receive any remuneration (whether by commission or otherwise) in relation to your services; • neither you nor your representatives engage in any other credit activities for which you would need to be licensed; and • your representatives are appropriately trained.
<p>Public authorities and local government authorities</p> <p>See reg 20(7)</p>	<p>If you are a public body or authority or local government body or authority constituted under legislation, you are exempt from the licensing requirement for any credit activities you engage in.</p>
<p>Person authorised by or licensed under other legislation</p> <p>See reg 20(8)</p>	<p>If you are authorised by, or licensed or registered under, other legislation to engage in particular credit activities, you are exempt from the licensing requirement for those particular credit activities. You can only rely on this exemption if the other legislation, licence or registration gives a positive authorisation to engage in particular credit activities. You cannot rely on this exemption if you have an authorisation to engage in wider activities that may or may not involve credit activities, but does not specifically refer to conduct that is a credit activity.</p>
<p>Organisations with an incidental member benefit of eligibility for offers of credit</p> <p>See reg 20(11)</p>	<p>Credit services that you provide to your members in relation to particular credit contracts or consumer leases that they are eligible to apply for as an incidental benefit of being your member. The exemption cannot be relied on where access to credit is the sole or primary purpose for membership, or where the credit that will be provided is predominantly for payment of services, goods or benefits provided by you. You may provide credit assistance and act as an intermediary for this particular credit contract, but you cannot engage in other credit activities.</p> <p>For example, you may rely on this exemption if you are a club, and your members are eligible to apply for a particular credit card that has been negotiated by you with a particular credit provider. However, you cannot rely on the exemption if the club does not provide other goods or services and the sole purpose for joining the club is to obtain this credit card, or the credit card is to be used mostly for making payments to you for the goods or services you provide to your members.</p>
<p>Charities and other advisers about credit programs for low income consumers</p> <p>See reg 20(12)</p>	<p>Credit services about credit contracts or consumer leases offered by ADIs (if you are not a charitable body) or other licensees or exempt special purpose funding entities (if you are a charitable body) that are offered as part of a program for certain low income consumers. You can only rely on this exemption if you do not receive any payment for the service from the client or anyone related to the client.</p>

Who you are	Exemption for
<p>Persons performing certain statutory obligations of credit providers</p> <p>See reg 20(13)</p>	<p>Performing statutory obligations on behalf of a credit provider, lessor, mortgagee or the beneficiary of a guarantee under the <i>Privacy Act 1988</i> or the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>.</p>
<p>State or territory licensed debt collector, repossession agents, etc.</p> <p>See reg 21</p>	<p>Credit activities such as demanding or receiving payments from borrowers under credit contracts and enforcing rights in relation to taking possession of property secured by a mortgage. The activities must be engaged in by a state or territory regulated debt collector or repossession agent on behalf of a licensee or person authorised to engage in the credit activity.</p>
<p>Third parties</p> <p>See reg 22</p>	<p>Credit activities undertaken by a person who:</p> <ul style="list-style-type: none"> • sells or transports property of a borrower, lessor, mortgagor or guarantor on behalf of a licensee or exempt special purpose funding entity; or • gives or sends a notice to a borrower, lessor, mortgagor or guarantor on behalf of a licensee or exempt special purpose funding entity. <p>Note: Although you do not need to be licensed, you will still be engaging in credit activities on behalf of the licensee or exempt special purpose funding entity, which will be responsible for your conduct that is engaged in on their behalf.</p>
<p>Supplier of goods or services (e.g. point-of-sale retailer)</p> <p>See reg 23</p>	<p>Credit activities engaged in by you as a supplier of goods or services in relation to credit contracts, continuing credit contracts or consumer leases to pay for goods or services supplied by you.</p> <p>There are a number of limitations on the circumstances in which this exemption can be relied on. For more information, see Section D.</p> <p>Note: Although you do not need to be licensed, you will still be engaging in credit activities on behalf of a linked credit provider or lessor. That credit provider or lessor will still need to be licensed (or an exempt special purpose funding entity), and will be responsible for your conduct that is engaged in on their behalf.</p>
<p>Suppliers of goods or services with branded or co-branded credit cards</p> <p>See reg 23A</p>	<p>Credit activities engaged in by you as a supplier of goods or services in relation to continuing credit contracts under which a credit card is branded or co-branded by you.</p> <p>There are a number of limitations on the circumstances in which this exemption can be relied on. For more information, see Section D.</p> <p>Note: Although you do not need to be licensed, you will still be engaging in credit activities on behalf of the linked credit provider or lessor. That credit provider or lessor will still need to be licensed (or an exempt special purpose funding entity), and will be responsible for your conduct that is engaged in on their behalf.</p>

Who you are	Exemption for
<p>Special purpose funding entities</p> <p>See reg 23B (for fund raising special purpose entities) and reg 23C (for securitisation entities)</p>	<p>You are not required to be licensed to engage in any credit activities that you engage in as a credit provider or lessor if:</p> <ul style="list-style-type: none"> • you are a party to a servicing agreement with a licensee who acts on your behalf in relation to the credit contracts or consumer leases you enter; • none of your officeholders are an 'inappropriate person' (i.e. have not been the subject of a regulatory outcome that would affect their or your fitness and propriety to engage in credit activities); and • you are a member of an approved EDR scheme. <p>Note: Although you do not need to be licensed, you will need to comply with other provisions of Ch 2 and Ch 3 of the National Credit Act as modified by reg 25G and Sch 3 to the National Credit Regulations. Under these modified provisions, the licensee who is a party to the servicing agreement is your representative, and you are responsible for conduct of the licensee on your behalf.</p>
<p>Employment agencies</p> <p>See reg 23D</p>	<p>If you provide temporary staff and locums to licensees or representatives of licensees, and in doing so engage in a credit activity, you are exempt from the licensing requirement in relation to that credit activity.</p> <p>Note: The temporary staff and locums are not, themselves, covered by this exemption. However, regs 25H and 25I of the National Credit Regulations modify the provisions of Ch 2 to enable these types of staff to be treated as credit representatives (in the case of temporary staff) or as employees (in the case of locums) of the licensee on whose behalf they engage in credit activities.</p>
<p>Lawyer</p> <p>See reg 24(2)–(4)</p>	<p>Credit activities you engage in as a lawyer because you:</p> <ul style="list-style-type: none"> • provide credit assistance in your professional capacity and in the ordinary course of your activities as a lawyer (e.g. providing legal advice on credit contracts, consumer leases or mortgages and assisting a consumer in applying for a credit contract or consumer lease by completing a document on the client's instructions); or • engage in other types of credit activities on the instructions of your client and in your professional capacity and in the ordinary course of your activities as a lawyer. Your client could be either the consumer or the credit provider. <p>You cannot rely on this exemption if you hold out or advertise that you are able to provide credit services.</p>
<p>Registered tax agent</p> <p>See reg 24(5)</p>	<p>Credit activities you engage in as a registered tax agent in the ordinary course of your activities as a tax agent. However, your activities must not involve providing a certificate or assessment about whether a consumer will be able to meet their financial obligations under a credit contract or consumer lease.</p> <p>For example, you will be covered by this exemption where you provide a statement of financial position to assist a client in applying for finance, but express no view as to whether the consumer can meet the repayments.</p>

Who you are	Exemption for
<p>Passing on prepared documents</p> <p>See regs 24(6) and 24(7)</p>	<p>Credit activities you engage in when you:</p> <ul style="list-style-type: none"> • pass on, publish or distribute a document that was provided, and the content approved, by a licensee or exempt special purpose funding entity; or • allow a licensee or exempt special purpose funding entity to use your business name, logo or trademark in relation to passing on, publishing or distributing a document, or a credit product offered by, or credit activity engaged in by, the licensee or exempt entity. <p>For example, if you merely distribute a brochure prepared by a licensee or exempt special purpose funding entity you will not need to be licensed.</p> <p>If you have some control over the content of the brochure, you will not need to be licensed if you have advised the consumer who the licensee is for the purpose of the credit activity.</p>
<p>Passing on factual information in response to a request</p> <p>See reg 24(8)</p>	<p>Credit activities you engage in when, in response to a request from a consumer, you give the consumer factual information about the cost or estimated likely cost of a credit contract or consumer lease or the terms and conditions of a credit contract or consumer lease. Provision of this kind of information could amount to a suggestion to apply for that particular credit contract or consumer lease if you could have complied with the request by giving the consumer equivalent information about one or more other credit contracts or consumer leases, but you elect not to do so.</p>
<p>Clerks and cashiers</p> <p>See reg 24(9)</p>	<p>Credit activities you engage in as a clerk or cashier in the ordinary course of your activities as a clerk or cashier.</p> <p>For more information, see Section D.</p>
<p>Referrer—‘downstream’ referrals</p> <p>See reg 25(2) and 25(2A)</p>	<p>Referral of a consumer to a credit licensee or representative by informing the consumer that the licensee or representative can provide particular credit activities and:</p> <ul style="list-style-type: none"> • giving the consumer information about how to contact them; or • arranging for the consumer to contact the licensee or representative through a link that can be access from a website. <p>For more information, see Section D.</p>
<p>Referrer—‘upstream’ referrals</p> <p>See reg 25(5)</p>	<p>Referral of a consumer to a credit licensee or representative by:</p> <ul style="list-style-type: none"> • informing the consumer that the licensee or representative can provide particular credit activities; and • giving the licensee or representative the consumer’s name and contact details within five business days of informing the consumer, and a short description of the purpose for which the consumer wants a provision of credit or a consumer lease. <p>For more information, see Section D.</p>

Note: For types of credit and consumer leases not covered by the National Credit Code, see Table 2 (Appendix 2).

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution—has the meaning given in s5 of the National Credit Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
carried over instrument	Has the meaning given in s4 of the Transitional Act
COI lender	A person who was a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 and who remains the credit provider or lessor on or after 1 July 2010
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act
consumer lease	A consumer lease to which the National Credit Code applies Note: See s169–171 of the National Credit Code
Corporations Act	<i>Corporations Act 2001</i>
credit	Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit assistance	Has the meaning given in s8 of the National Credit Act
credit contract	Has the meaning given in s4 of the National Credit Code
credit legislation	Has the meaning given in s5 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act

Term	Meaning in this document
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee or registered person under s64(2) or s65(2) of the National Credit Act
credit service	Has the meaning given in s7 of the National Credit Act
EDR scheme	An external dispute resolution scheme approved by ASIC under the National Credit Act (see s11(1)(a)) in accordance with our requirements in RG 139
Explanatory Memorandum	Explanatory Memorandum to the National Consumer Credit Protection Bill 2009
legal chose in action	Under the common law, a right that is enforceable by an action or the right to take action that can be recovered or enforced in a court of law (as opposed to in equity). A debt is an example of a legal chose in action.
lessor	Has the meaning given in s5 of the National Credit Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code (or the Code)	National Credit Code at Sch 1 of the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010
novation	An agreement discharging a contract and entering into a new one, usually on the same terms but with one of the parties being different
reg 8 (for example)	A regulation of the National Credit Regulations (in this example, numbered 8)
representative	Has the meaning given in s5 of the National Credit Act
RG 148 (for example)	An ASIC regulatory guide (in this example, numbered 148)
s35 (for example)	A section of the National Credit Act (in this example, numbered 35), unless otherwise specified
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>
unlicensed COI lender	Has the meaning given in s5 of the National Credit Act, as modified by item 2.4 of Sch 2 of the National Credit Regulations

Related information

Headnotes

Australian credit licence, carried over instrument, COI lender, credit activities, credit assistance, credit licensee, credit provider, credit representative, National Credit Act, National Credit Code, registered persons, registration period, representative, unlicensed COI lender

Class orders and pro formas

[CO 03/1063] *Licensing relief for financial counselling agencies*

[CO 10/381] *Notice lodgement requirement for certain persons who are credit providers or lessors in relation to a carried over instrument*

[CO 11/926] *Credit licensing exemptions for NGOs (non-government organisations) providing credit assistance to consumers*

PF 224 *Australian credit licence conditions*

Regulatory guides

RG 51 *Applications for relief*

RG 121 *Doing financial services business in Australia*

RG 205 *Credit licensing: General conduct obligations*

RG 206 *Credit licensing: Competence and training*

RG 207 *Credit licensing: Financial requirements*

RG 209 *Credit licensing: Responsible lending conduct*

Information sheets

INFO 110 *Lenders with carried over instruments*

Legislation

Aged Care Act 1997

Anti-Money Laundering and Counter-Terrorism Act 2006

Bankruptcy Act 1966

Corporations Act, Div 3 of Pt 1.2, s766B

Explanatory Memorandum, Ch 8, paras 2.33–2.43, 8.17

Exposure Draft of the National Consumer Credit Protection Amendment
(Credit Reform Phase 2) Bill 2012

National Credit Act, Ch 2, Ch 3, Div 4 of Pt 2-3, Pt 2-4, s5, 6, 7, 8, 9, 10, 12, 21, 29, 31, 47, 61(1), 64, 65, 66, 67, 109, 110; National Credit Code, Pt 1, Div 3 of Pt 2, Pt 4, Divs 1–5 of Pt 5, Divs 4–5 of Pt 7, Pt 11, Pt 12, Pt 13, Pt 14, s3, 4, 5, 6, 7, 8, 10–12, 40, 72, 76–81, 169–171, 204; National Credit Regulations, Ch 7, Pt 2-4, regs 8, 16, 20, 21, 22, 23, 23A, 23B, 23C, 23D, 24(2)–(4), 24(5), 24(8), 24(9), 25(2), 25(2A), 25(3), 25(5), 25(8), 25D, 25G, 26, 29(5), 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 65A, 102, Sch 2, Sch 3; Transitional Act, s4, s19A of Sch 2

Privacy Act 1988

Cases

THG Developments v ASIC [2012] AATA 8

ASIC forms

COI1 *Notice of carried over instruments*