

Australian Securities and Investments Commission
National Consumer Credit Protection Act 2009 — Paragraphs 109(1)(a) and (c)
– Paragraph 163(1)(c)

Enabling provisions

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under:
 - (a) paragraphs 109(1)(a) and (c) of the *National Consumer Credit Protection Act 2009* (the *National Credit Act*); and
 - (b) paragraph 163(1)(c) of the National Credit Act.

Title

2. This instrument is ASIC Instrument [11-0690].

Commencement and cessation

3. This instrument:
 - (a) commences on 8 July 2011; and
 - (b) ceases to have effect on 1 September 2011.

Exemptions

4. Rent to Own (Aust) Pty Ltd ACN 066 878 091 (the *unlicensed lender*) is exempt from subsections 29(1) and (2) of the National Credit Act.

Note : Subsection 29(4) of the National Credit Act may provide a defence to a person who engages in a credit activity on behalf of another person that is exempt from subsection 29(1) and (2) of the National Credit Act in relation to the credit activity under subsection 109(1)(a) of the National Credit Act.

Declarations

5. The provisions to which Part 2-6 of the National Credit Act applies:
 - (a) apply in relation to the unlicensed lender as if Chapter 2 of the National Credit Act applied; and
 - (b) apply in relation to the unlicensed lender as if those provisions were omitted, modified or varied as set out in Schedule 1.
6. The provisions to which Part 3-7 of the National Credit Act applies:
 - (a) apply in relation to the unlicensed lender as if section 132 and section 155 of the National Credit Act applied; and
 - (b) apply in relation to the unlicensed lender as if those provisions were omitted, modified or varied as set out in Schedule 2.

Where this instrument applies

7. Subject to paragraph 8, this instrument applies in relation to credit activities specified in items 1, 3, 4 and 5 of the table in subsection 6(1) of the National Credit Act engaged in by the unlicensed lender in relation to a back end contract.
8. The exemption in paragraph 4 applies for so long as the unlicensed lender complies with the condition in paragraph 9.
9. The unlicensed lender must not engage in a restricted activity in relation to a back end contract unless:
 - (a) the lender has appointed, in writing, a licensee as the lender's representative to engage in the activity on behalf of the lender; and
 - (b) the lender has lodged with ASIC a written notice that sets out:
 - (i) the name and Australian credit licence number of the licensee; and
 - (ii) a description of the activities the licensee will engage in on behalf of the lender.

Interpretation

10. In this instrument:

back end contract means a credit contract, consumer lease, mortgage or guarantee entered into between 1 July 2010 and 14 June 2011 under which the unlicensed lender is the credit provider, lessor, mortgagee or beneficiary.

restricted activity means a credit activity specified in subitem 1(c), 3(c), 4(b) or 5(b) of the table in subsection 6(1) of the National Credit Act that is engaged in by:

- (a) demanding and receiving payment from:
 - (i) a debtor under, or a guarantor in relation to, a credit contract; or
 - (ii) a lessee under, or a guarantor in relation to, a consumer lease; or

- (b) exercising rights in relation to property secured by a mortgage or goods hired under a consumer lease.

(For the purposes of paragraph (a), and for the avoidance of doubt, a restricted activity does not include merely receiving payment from a debtor or a lessee.)

Dated this 8th day of July 2011

A handwritten signature in black ink, appearing to read 'F. Natoli', written in a cursive style.

Signed by Felicity Natoli
as a delegate of the Australian Securities and Investments Commission

SCHEDULE 1 – MODIFICATIONS TO CHAPTER 2**1. Subsection 5(1), after definition of *tribunal****insert***“*unlicensed lender*”** means a credit provider or lessor who:

- (a) was a credit provider or lessor that was registered to engage in credit activities; and
- (b) was a credit provider or lessor in relation to a credit contract or consumer lease immediately before its registration was cancelled; and
- (c) from the time at which its registration was cancelled, has been the credit provider or lessor in relation to the credit contract or consumer lease on a continuous basis; and
- (d) is exempt from the requirement to hold a licence under this Act under paragraph 109(1)(a).”

2. Chapter 2, heading*substitute***“Chapter 2- Unlicensed lenders”****3. Subsection 31(1)***omit* “A licensee”*insert* “An unlicensed lender”**4. Sections 32***omit***5. Part 2-2, heading***substitute***“Part 2-2 – Obligations of unlicensed lenders”****6. Part 2-2, Divisions 1 to 4***omit***7. Part 2-2, Division 5, heading***substitute* “Division 5 - General obligations”**8. Section 47, heading***substitute* “General conduct obligations of unlicensed lender”**9. Subsection 47(1)***substitute***“An unlicensed lender must:**

- (a) do all things necessary to ensure that the credit activities engaged in by the unlicensed lender are engaged in efficiently, honestly and fairly; and
- (b) comply with the credit legislation; and
- (c) take reasonable steps to ensure that its representatives comply with the credit legislation; and
- (d) have an internal dispute resolution procedure that:
 - (i) complies with standards and requirements specified in ASIC Class Order [CO 10/250] or any instrument that replaces that Class Order; and
 - (ii) covers disputes in relation to the credit activities engaged in by the unlicensed lender or its representatives; and
- (e) be a member of an approved external dispute resolution scheme specified in ASIC Class Order [CO 10/249] or any instrument that replaces that Class Order; and
- (f) have compensation arrangements in accordance with section 48.”

- 10. Subsection 47(2), including subsection heading**
omit
- 11. Subsection 47(3), including subsection heading**
omit
- 12. Subsection 48(1)**
 - (a) *omit* "A licensee"
insert "An unlicensed lender"
 - (b) *omit* "the licensee"
insert "the unlicensed lender".
- 13. Subsections 48(2) to (4), including subsection heading**
omit
- 14. Subsection 49(1), subsection heading**
omit "licensee"
insert "unlicensed lender"
- 15. Subsection 49(1)**
 - (a) *omit* "a licensee"
insert "an unlicensed lender"
 - (b) *omit each mention of* "the licensee"
insert "the unlicensed lender".
- 16. Subsection 49(2)**
 - (a) *omit each mention of* "licensees"
insert "unlicensed lenders"
 - (b) *omit* "each licensee"
insert "each unlicensed lender".
- 17. Subsection 49(3), subsection heading**
omit "licensee"
insert "unlicensed lender"
- 18. Subsection 49(3)**
 - (a) *omit* "a licensee"
insert "an unlicensed lender"
 - (b) *omit* "the licensee"
insert "the unlicensed lender".
- 19. Subsection 49(5), subsection heading**
omit "licensee"
insert "unlicensed lender"
- 20. Subsection 49(5)**
omit each mention of "licensee"
insert "unlicensed lender".
- 21. Subsection 49(6)**
omit "licensee"
insert "unlicensed lender".
- 22. Section 50**
omit

23. Subsection 51(1)

- (a) *omit each mention of* "a licensee"
insert "an unlicensed lender"
- (b) *omit each mention of* "the licensee"
insert "the unlicensed lender"

24. Section 52

omit

25. Section 53

Substitute

"Where a person that has been an unlicensed lender ceased to be an unlicensed lender by reason that it has ceased to be a credit provider or lessor under any credit contracts or consumer leases, the person must, within 15 business days, lodge with ASIC a notice that it is no longer an unlicensed lender."

26. Part 2-2, Division 6

omit

27. Part 2-3, heading

substitute "Part 2-3 – Representatives of unlicensed lenders"

28. Part 2-3, Divisions 1 and 2

omit

29. Section 73, heading

omit "licensee"

insert "unlicensed lender"

30. Section 73

- (a) *omit each mention of* "a licensee"
insert "an unlicensed lender"
- (b) *omit each mention of* "the licensee"
insert "the unlicensed lender"
- (c) *omit each mention of* "A licensee"
insert "An unlicensed lender"

31. Part 2-3, Division 4, heading

omit "licensees"

insert "unlicensed lender"

32. Section 74

omit "a licensee"

insert "an unlicensed lender"

33. Section 75, heading

omit "licensee"

insert "unlicensed lender"

34. Section 75

- (a) *omit* "one licensee"
insert "one unlicensed lender"
- (b) *omit each mention of* "the licensee"
insert "the unlicensed lender"

35. Section 76, including heading*Omit***36. Section 77**

- (a) *omit* "a licensee"
insert "an unlicensed lender"
- (b) *omit* "the licensee"
insert "the unlicensed lender"

37. Subsection 78(1)

- (a) *omit* "a licensee"
insert "an unlicensed lender"
- (b) *omit* "the licensee"
insert "the unlicensed lender"

38. Subsection 78(2)*substitute*

"The unlicensed lender and the representative are jointly and severally liable to the client in relation to those remedies."

39. Subsection 78(3)

- (a) *omit* "a licensee"
insert "an unlicensed lender"
- (b) *omit* "the licensee"
insert "the unlicensed lender"

40. Subsection 78(4)

- (a) *omit* "a licensee"
insert "an unlicensed lender"
- (b) *omit* "the licensee"
insert "the unlicensed lender"

41. Subsection 78(5)*omit* ", 76"**42. Subsection 78(6)***substitute*

"However, subsection (5) does not apply to the extent that the agreement provides for a representative of an unlicensed lender to indemnify the lender for a liability of the lender in relation to the representative."

43. Subsection 78(7)

omit "A licensee"
insert "An unlicensed lender"

44. Part 2-4*omit***45. Part 2-5, Division 1***omit***46. Part 2-5, Division 2, heading**

omit "licensees"
insert "unlicensed lenders"

47. Section 88

- (a) *omit each mention of* "A licensee"
insert "An unlicensed lender"
- (b) *omit each mention of* "the licensee"
insert "the unlicensed lender"

48. Subsection 88(2)

- omit*
"; and
- (c) any trust account statement or trust account report required under section 100."
insert
"

49. Subsection 90(2)

- omit* "licensee"
- insert* "unlicensed lender"

50. Section 91

- omit* "licensee"
- insert* "unlicensed lender"

51. Section 92

- omit each mention of* "licensee"
- insert* "unlicensed lender"

52. Section 93

- omit*

53. Section 94

- omit* "licensee"
- insert* "unlicensed lender"

54. Subsection 95(1)

- omit* "A licensee"
- insert* "An unlicensed lender"

55. Subsection 96(2)

- (a) *omit* "a licensee"
insert "an unlicensed lender"
- (b) *omit* "the licensee"
insert "the unlicensed lender"

56. Part 2-5, Division 3

- omit*

57. Subsection 102(1), including heading

- Substitute*
"Auditor is entitled to access and assistance etc. from unlicensed lender"
- (1) An auditor (the **auditor**) who prepares an audit report required under subsection 49(3) in relation to an unlicensed lender as a right of access at all reasonable times to the financial records other credit books of the lender for purposes relating to the audit report."

58. Subsections 102(2) and (3)

omit each mention of "licensee"

insert "unlicensed lender"

59. Section 103

omit each mention of "licensee"

insert "unlicensed lender"

60. Paragraph 104(1)(b)

omit "licensee"

insert "unlicensed lender"

61. Paragraph 104(2)(a)

omit "licensee to meet the licensee's obligations as a licensee; or"

insert "unlicensed lender to meet its obligations under section 47; or"

62. Paragraph 104(2)(b)

substitute "(b) constitutes or may constitute a contravention of section 47 or Division 2; or"

63. Section 105

omit each mention of "licensee"

insert "unlicensed lender"

64. Section 106

omit

SCHEDULE 2 – MODIFICATIONS TO SECTIONS 132 AND 155

- 1. Subsection 132(1)**
omit
- 2. Subsection 132(2)**
omit each mention of “licensee”
insert “unlicensed lender”
- 3. Subsection 132(3)**
omit
- 4. Subsection 132(4)**
omit each mention of “licensee”
insert “unlicensed lender”
- 5. Subsections 132(5) and (6)**
omit
- 6. Subsection 155(1)**
omit
- 7. Subsection 155(2)**
omit each mention of “licensee”
insert “unlicensed lender”
- 8. Subsection 155(3)**
omit
- 9. Subsection 155(4)**
omit each mention of “licensee”
insert “unlicensed lender”
- 10. Subsections 155(5) and (6)**
omit