ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 146

Responsible lending disclosure obligations: Overview for credit licensees and representatives

This information sheet sets out your credit disclosure obligations under Ch 3 of the *National Consumer Credit Protection Act 2009* (National Credit Act) and related regulations. It covers:

- what your obligations are
- the different types of disclosure documents that you may have to give to consumers
- the circumstances that trigger a requirement to give those disclosure documents
- special requirements and exemptions that apply to some entities, or licensees that engage in credit activities through those entities
- the type of information that needs to be included in the disclosure documents, and
- instances where these documents can be combined.

Responsible lending disclosure obligations

What are the responsible lending disclosure obligations?

The responsible lending disclosure obligations are set out in Ch 3 of the National Credit Act and in the National Consumer Credit Protection Regulations 2010, as amended by the National Consumer Credit Protection (Amendment) Regulations 2011 (No. 4) (National Credit Regulations).

These are obligations to give certain documents to consumers to supply them with information they need to understand the credit activities that you provide.

You must give these documents to ensure that consumers have access to information that will help them make decisions about dealing with you, understand their rights if they do deal with you and understand the contracts that are being offered to them.

These obligations start on **2 October 2011**.

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

Who do these obligations apply to?

These obligations apply to most holders of Australian credit licences (credit licensees) and credit representatives. This includes:

- credit providers and lessors, including assignees
- credit assistance providers, like mortgage and finance brokers, but also including:
  - product designers
  - mortgage managers, and
  - franchisees
- credit representatives, including some franchisees, and
- debt collectors.

A **product designer** is a credit licensee who is not the credit provider or lessor but, under a written agreement with the credit provider or lessor, largely controls the terms on which the credit contract or lease is designed and altered (i.e. creating the policy for its use, including the eligibility criteria for consumers): see reg 26 of the National Credit Regulations for more information.

A **mortgage manager** is a credit licensee who manages credit contracts or leases 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 for more information.

A **franchisee** can engage in credit activities either as a credit representative of its franchisor or under its own licence.

You may also be involved in meeting the disclosure obligations as the agent of another person (e.g. a credit representative may provide a quote on behalf of a credit licensee).

Some of these obligations also apply to **exempt special purpose funding entities** that do not hold a credit licence. An exempt special purpose funding entity is a type of credit funding entity that is established to raise or receive funds from investors and act either as a credit provider or lessor (including by way of legal assignment of rights), and that is exempt from holding a credit licence in certain circumstances: reg 3 of the National Credit Regulations.

A special purpose funding entity is defined in item 3.4, Sch 3, National Credit Regulations.

See 'Exempt special purpose funding entities' below for more details.

Do the obligations apply to intermediaries?

If you are a credit licensee or a credit representative but you only engage in credit activities by acting as an intermediary (i.e. you do not provide credit assistance), these obligations will not apply to you.

Which disclosure documents do I have to give?

Depending on what you do and how you do it, you may need to provide some or all of the following four documents.

Credit guide

A credit guide provides preliminary information about you to a consumer. The time at which you have to provide a credit guide will depend on what type of entity you are and what credit activities you engage in, but will generally be before you engage in credit activities with the consumer.

Quote

A quote tells the consumer the estimated cost to them of using your services, if you charge the consumer a fee. Before you provide credit assistance, you must give a quote to a consumer, the consumer must have accepted the quote by signing and dating the quote and you must give the consumer a copy of the accepted quote.

Proposal document

A proposal document sets out the costs to the consumer of using your services, including any commissions you may receive. You have to give a proposal document at the same time you provide credit assistance to a consumer.

Written assessment

This is a preliminary or final written assessment that a credit contract or consumer lease is 'not unsuitable' for the consumer. You are required to give a free copy of the written assessment to the consumer if they ask you for one within seven years of entering into the credit contract (if you are a credit provider) or of the date of the quote (if you are a credit assistance provider).

You are not required to give a written assessment to a consumer if the credit contract or consumer lease is not entered into or the credit limit is not increased (if you are a credit provider), or if you do not provide credit assistance (if you are a credit assistance provider).

Table 1 sets out a general overview of the different types of disclosure documents you may need to give, depending on what type of entity you are.

Table 1: What credit disclosure documents do I need to provide?

I am a:	Credit guide	Quote	Proposal document	Written assessment
Credit provider, assignee or lessor	YES (see s126, 127 and 149)	N/A	N/A	YES (Final assessment: see s132 and 155)
Credit assistance provider	YES (see s113 and 136)	YES (see s114 and 137)	YES (see s121 and 144)	YES (Preliminary assessment: see s120 and 143)
Credit representative	YES (see s158)	N/A	N/A	N/A
Debt collector (if a licensee or credit representative)	YES (see s160)	N/A	N/A	N/A

Note: All references in this table are to the National Credit Act.

There are some exemptions that may apply in certain situations: see Table 2.

Are there any special rules or exemptions I need to know?

For some entities there are special rules that affect whether you need to give some of these disclosure documents and what information needs to be included in the document: see Table 2, Table 3 and Table 4 for more details.

Exempt special purpose funding entities

If you are a credit provider or lessor that is an exempt special purpose funding entity, you do not need to provide your own credit guide to consumers but you are responsible for ensuring that the licensee who is your representative gives their credit guide to consumers: items 3.26, 3.37 and 3.38, Sch 3, National Credit Regulations.

Exempt special purpose funding entities are responsible for giving a written assessment if one is requested by a consumer: items 3.32 and 3.43, Sch 3, National Credit Regulations.

Exemptions

Table 2 sets out when certain entities do not need to provide credit disclosure documents.

Table 2: Exemptions from providing credit disclosure documents

Entity	Exemptions that apply
Credit provider or lessor	You are exempt from giving a **credit guide** to the consumer if you have already provided a credit guide to them in the last 12 months and your external dispute resolution (EDR) scheme details have not changed: reg 28P(2).
All credit assistance providers	You are exempt from giving a **credit guide** to the consumer if you have already provided a credit guide to them in the last 12 months and your EDR scheme details have not changed: reg 28P(2). You are exempt from giving a **quote** to the consumer if, before you provide credit assistance to them, you: • disclose in your credit guide that you do not impose fees or charges, or • do not intend to impose fees or charges and your proposal document includes a statement that no fee or charge has been imposed: reg 28C.
Product designer (credit assistance provider)	You are exempt from giving a **credit guide** if the credit provider or lessor has disclosed your relationship with them in their credit guide: reg 28P(4).
Credit assistance provider with shared responsibility for credit contracts **(ADI franchisees or branded arrangements)**	You will have 'shared responsibility' for credit contracts if: • you are an ADI that is a licensee and engage in conduct under an agreement with the credit provider, or a credit representative of the credit provider • the credit provider is also an ADI that holds a credit licence • the agreement allows the credit provider to use your name or words or logos associated with you, and • you provide credit assistance in relation to credit contracts connected with this agreement, and give the credit provider details of the consumer and information to enable the credit provider to complete an assessment of whether the credit contract is unsuitable for the consumer: reg 28Q. You are exempt from the requirement to give a **written assessment**: reg 28Q. You are also exempt from giving a **proposal document** if: • the consumer does not have to pay a fee or charge • you tell the consumer at the time (or as soon as reasonably practical) in writing that a fee or charge is not payable, and • if the credit contract is a credit card contract, information on commissions is given to the consumer in writing no more than 15 days before you would have been required to give a proposal document, either as a reasonable estimate of the total amount you are likely to receive or, as required, in the credit contract: reg 28R.
Credit representative	You are exempt from giving a **credit guide** to the consumer if you have already provided a credit guide to them in the last 12 months and your EDR scheme details have not changed: reg 28P(2).

Entity	Exemptions that apply
Franchisee (credit representative)	You are exempt from giving a **credit guide** if: • you are authorised by a credit licensee or their representative to act on the licensee's behalf • you are a franchisee, or an employee or director of a franchisee, under a franchisee agreement with the licensee • under the franchise agreement you are subject to, and required to comply with, the policies of the licensee, and • the credit guide of the licensee explains that the licensee takes responsibility for credit activities engaged in by you: reg 28P(1).
Debt collector (if a licensee or a credit representative)	You are exempt from giving a **credit guide** to the consumer if you have already provided a credit guide to them in the last 12 months and your EDR scheme details have not changed: reg 28P(2). You are exempt from giving a **credit guide** as a debt collector if: • you have already given the consumer a credit guide as a credit assistance provider or a credit representative, and • the credit guide relates to the same credit contract that you are authorised by the credit provider or lessor to collect payments for: reg 28P(3).

Note: All references in this table are to the National Credit Regulations.

When do I have to give a written assessment?

The amount of time you have to give the written assessment will depend on when the client's request is made:

- for credit providers or lessors (other than assignees)—if the consumer asks you for a copy within two years of the start of the contract, the written assessment must be given within seven business days; after two years it must be given within 21 business days (s132 and 155)
- for assignees—if the consumer asks you for a copy within two years of the start of the contract, the written assessment must be given within 15 business days; after two years it must be given within 25 business days (reg 27), and
- for credit assistance providers—if the consumer asks you for a copy within two years of the date of the quote, the written assessment must be given within seven business days; after two years it must be given within 21 business days (s120 and 143).

How do I give the disclosure document?

Regulation 28L sets out the ways for giving credit disclosure documents.

These documents can be given to a consumer personally or, if the consumer consents, can be sent electronically or made available for retrieval in an electronic format.

Content of disclosure documents

What information do I have to include in a credit guide?

You must generally include:

- your name, contact details and Australian credit licence number or credit representative number, and
- information about your procedure for resolving disputes with a consumer, including contact details to access:
  - your internal dispute resolution (IDR) procedure, and

- the EDR scheme of which you are a member.

There are also additional obligations, depending on the type of entity you are: see Table 3.

Table 3: Additional credit guide content requirements

Entity	Content for all entities of this type	Special requirements that only apply in certain circumstances
Credit provider or lessor	Your credit guide does not need to include fees, charges and commissions. You must disclose information about your obligation to not enter a consumer into an unsuitable credit contract or lease and how the consumer can request a copy of the written assessment.	If you will enter a credit contract or consumer lease as a result of credit assistance provided by a **mortgage manager** or **product designer**, you must also disclose your relationship with them: reg 26B.
Assignee	Your credit guide does not need to include fees, charges and commissions.	
Credit assistance provider	You must describe the commissions, fees and charges that may be payable. However, you do not have to disclose how the commissions, fees and charges are calculated, or provide specific figures, if you: • disclose how the consumer can request such information, and • make it available on request (reg 27). You must list the six credit providers or lessors you conduct the most business with. You must also disclose whether commissions to third-party referrers will be paid and make a statement on volume bonus arrangements: regs 26A(1) and 26A(2).	If you are a **product designer**, you must also disclose: • your relationship with the credit provider or lessor, and • any fee you will charge a consumer for providing the credit service (reg 26A(5)). If you are a **mortgage manager**, you must also disclose your relationship with the credit provider or lessor (or their agent): reg 26A(4). If you provide credit assistance for **credit card contracts**, you are exempt from disclosing all commissions and how to work them out. Instead, you can disclose the maximum commission payable on entering the credit contract and a reasonable estimate of any additional commission payable during the life of the contract (or factors contributing to the amount of the additional commission): reg 27(3).

Entity	Content for all entities of this type	Special requirements that only apply in certain circumstances
Credit representative	You must describe the commissions, fees and charges that may be payable. However, you do not have to disclose how the commissions, fees and charges are calculated, or provide specific figures, if you: • disclose how the consumer can request such information, and • make it available on request (reg 27B). You must disclose whether commissions to third-party referrers will be paid and make a statement on volume bonus arrangements: reg 27A. You must list the six credit providers or lessors you conduct the most business with: reg 27A.	You do not have to disclose your EDR details if you are exempt from belonging to an EDR scheme: reg 28.
Debt collector (if a licensee or a credit representative)	Your credit guide does not need to include fees, charges and commissions.	

Note: All references in this table are to the National Credit Regulations.

What information do I include in a quote?

You must include information about the credit assistance and other services that are covered by the quote, and the maximum amount the consumer is expected to pay for the services (particularly fees and charges), as set out in the National Credit Regulations: reg 28.

What information do I include in a proposal document?

You must include the total amount of any fees and charges the consumer has to pay for the credit contract or consumer lease and a reasonable estimate of commissions, as set out in the National Credit Regulations: regs 28E, 28G and 28H.

You must also disclose payments to third-party referrers and make a statement on volume bonus arrangements.

You do not need to disclose a reasonable estimate of commissions if you are a product designer or mortgage manager and certain conditions are met (based on how the commission is calculated): see Table 4.

Table 4: Additional proposal document content requirements

Entity	Special requirements that only apply in certain circumstances
All credit assistance providers	You do not need to include information about fees and charges if: • the fee or charge was disclosed in the quote and the amount has not changed • the quote was given no more than 30 days ago, and • the proposal document refers to the quote for disclosure of fees and charges (reg 28F). Trail commissions do not need to be disclosed if reasonable estimates are included: reg 28H(5).

Entity	Special requirements that only apply in certain circumstances
Product designer	You do not need to disclose commissions if the commission is worked out based on the net profit from operating a pool of funds from which credit contracts or consumer leases are provided: reg 28H(4).
Mortgage manager	You do not need to include information about a commission worked out on the difference between the interest rate charged to the mortgage manager by the credit provider or lessor if: • you provided credit assistance to the consumer for a managed contract • you told the consumer about the written agreement with the credit provider, lessor or third party and were not acting for the consumer in relation to the managed contract • the maximum cost of the managed contract at the time you provide credit assistance and the interest rate to be charged are published on the credit provider's or lessor's website, and • you can increase the interest rate above the published rate (reg 28H(2)).

Note: All references in this table are to the National Credit Regulations.

What information do I include in a written assessment?

We have provided guidance in Section C of Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209) on:

- what you need to take into account when assessing whether a particular credit contract or consumer lease is unsuitable for a particular consumer, and
- what you should include in your written assessment.

How do I describe my fees, charges and commissions?

How fees, charges and commissions need to be set out or described in your disclosure document is set out in the National Credit Regulations: regs 28D (fees and charges described in a quote), 28E (fees and charges described in a proposal document) and 28G (commissions described in a proposal document).

Can I combine disclosure documents?

Yes. You can combine two or more disclosure documents into a single document if all the other requirements of the National Credit Act and National Credit Regulations are met, including the timing requirements. This may include combining documents that are required to be provided by one or more credit licensees or credit representatives. For example:

- you may combine a credit licensee's credit guide with a credit guide of a credit representative if the relevant information for both parties is included, or
- if you are a credit assistance provider, you may combine a credit guide with a quote as long as the relevant legal requirements are met, including:
  - that the combined document is provided as soon as practicable after it becomes apparent to you that you are likely to provide credit assistance to a consumer, and
  - you do not provide credit assistance until the consumer accepts the combined document by signing and dating the quote.

If you are both a credit licensee and an Australian financial services (AFS) licensee, you may combine documents covering information relating to both your credit activities and financial services. Further information can be found in information sheet 134 *Complying with your obligations if you are both a credit licensee and an AFS licensee* (INFO 134).

It may not be possible or useful to a consumer to combine documents in all circumstances.

What if I don't meet my disclosure obligations?

A failure to meet your disclosure obligations is a breach of the law. There are significant criminal and civil penalties for credit licensees and credit representatives who fail to meet their disclosure obligations. We may also take administrative action by suspending, cancelling or imposing conditions on your credit licence or issuing an infringement notice.

Where can I get more information?

- Go to www.comlaw.gov.au to read the National Credit Act and National Credit Regulations
- Read Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209)
- Read INFO 134 *Complying with your obligations if you are both a credit licensee and an AFS licensee*
- Go to www.asic.gov.au/credit for the latest information on credit and to download copies of regulatory guides
- Subscribe to ASIC updates on credit at www.asic.gov.au/credit-update
- Go to www.moneysmart.gov.au for credit information and resources for consumers
- Contact ASIC on 1300 300 630

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. Omission of any matter on this information sheet will not relieve a company or its officers from any penalty incurred by failing to comply with the statutory obligations of the National Credit Act.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.