

Attachment 2 to CP 282: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Credit (Financial Counselling Agencies) Instrument 2017/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2017

[DRAFT ONLY—NOT FOR SIGNATURE]

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Credit (Financial Counselling Agencies) Instrument 2017/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under paragraphs 109(3)(a) and 109(3)(d) of the *National Consumer Credit Protection Act 2009*.

4 Definitions

In this instrument:

Act means the *National Consumer Credit Protection Act 2009*.

associate has the same meaning as in sections 10 to 17 of the *Corporations Act 2001*.

rural financial counselling service means a counselling and advocacy service provided predominantly for the purposes of assisting primary producers and rural small business in financial difficulty.

rural financial counselling service provider means each of:

- (a) a body that is funded in whole or in part by the Commonwealth through the Department of Agriculture and Water Resources to provide a rural financial counselling service;
- (b) the Rural Financial Counselling Service Queensland that is funded in whole or in part by the State of Queensland through the Department of Employment, Economic Development and Innovation to provide a rural financial counselling service.

Part 2—Exemption

5 Licensing relief for rural financial counselling agencies

Exemption

- (1) A rural financial counselling service provider does not have to comply with subsections 29(1) and (2) of the Act in relation to the provision of credit assistance to a person (the **consumer**).

Note: Subsection 29(4) of the Act may provide a defence to a person who engages in a credit activity on behalf of a rural financial counselling service provider that is exempt from subsection 29(1) and (2) of the Act in relation to the credit activity under paragraph 109(3)(a) of the Act.

Where the exemption applies

- (2) The exemption in subsection (1) applies where all of the following are satisfied:
- (a) the credit assistance is provided to the consumer as part of a rural financial counselling service;
 - (b) 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 the rural financial counselling service;
 - (c) no remuneration (whether by way of commission or otherwise) is payable to, or for the benefit of, the rural financial counselling service provider, its representatives or associates by any person in relation to any action by or on behalf of the consumer arising from either the credit assistance or any other aspect of the rural financial counselling service;
 - (d) the rural financial counselling service provider takes all reasonable steps to ensure that each representative who provides the credit assistance on its behalf has undertaken appropriate training to ensure that they have adequate skills, knowledge and experience to satisfactorily provide the credit assistance and any other aspect of the rural financial counselling service;
 - (e) the rural financial counselling service provider:
 - (i) does not engage in any credit activity for which the provider would be required to hold an Australian credit licence, other than a credit activity (**exempt credit activity**):
 - (A) referred to in subsection (1); and
 - (B) in relation to which paragraphs (a) to (d) are satisfied; and

- (ii) takes all reasonable steps to ensure that none of its representatives engage in a credit activity for which the representative would be required to hold an Australian credit licence, other than an exempt credit activity.

Part 3—Declaration

6 Licensing relief for financial counselling agencies

The provisions to which Part 2-6 of the Act applies apply in relation to a person engaging in a credit activity as if subregulation 20(5) of the *National Consumer Credit Protection Regulations 2010* were modified or varied by:

- (a) in paragraphs 20(5)(b), (c) and (d), after “is payable to”, omitting “or on behalf of” and substituting “or for the benefit of”; and
- (b) in paragraph 20(5)(e), after “financial counselling service”, inserting “, other than fees or charges (if any) that are payable on behalf of the client by the Commonwealth, a State or a Territory”.