



ASIC
Australian Securities &
Investments Commission

[PF 224]

Pro Forma 224

Australian credit licence conditions

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Pro Forma 224 [PF 224] sets out the standard licence conditions that, subject to individual circumstances, will usually be applied to a licence authorising a person to engage in credit activities under an Australian credit licence (credit licence). The prescribed conditions under reg 9 of the National Consumer Credit Protection Regulations 2010 will apply in addition to the conditions outlined in this pro forma but will not appear on the credit licence.

Australian Securities and Investments Commission

National Consumer Credit Protection Act 2009—section 45

Authorisation—General

(This condition expressly authorises the type of credit activities a licensee can engage in. A licensee may have either or both of these authorisations. This authorisation condition will not be imposed on licensees for whom limited authorisations are specified.)

- 1 This licence authorises the licensee to engage in credit activities:
- (a) other than as a credit provider, by:
 - (i) providing a credit service where the licensee is not or will not be:
 - (A) where the service relates to a credit contract or proposed credit contract—the credit provider under the contract; or
 - (B) where the service relates to a consumer lease or proposed consumer lease—the lessor; and/or
 - (ii) performing the obligations or exercising the rights of a credit provider in relation to a credit contract or proposed credit contract under which the licensee is not or will not be the credit provider; and/or
 - (iii) performing the obligations or exercising the rights of a mortgagee in relation to a mortgage or proposed mortgage that secures or will secure obligations under a credit contract under which the licensee is not the credit provider; and/or
 - (iv) performing the obligations or exercising the rights of a beneficiary under a guarantee or proposed guarantee that guarantees obligations under a credit contract under which the licensee is not the credit provider; and/or
 - (v) performing the obligations or exercising the rights of a lessor in relation to a consumer lease or proposed consumer lease where the licensee is not or will not be the lessor; and/or
 - (b) as a credit provider, by:
 - (i) carrying on a business of providing credit being credit the provision of which the National Credit Code applies to; and/or
 - (ii) being a credit provider under a credit contract; and/or
 - (iii) performing the obligations or exercising the rights of a credit provider in relation to a credit contract or proposed credit contract as the credit provider; and/or
 - (iv) providing credit assistance to a consumer that relates to a credit contract or proposed credit contract under which the licensee is or will be the credit provider; and/or

- (v) being a mortgagee under a mortgage that secures or will secure obligations under a credit contract under which the licensee is the credit provider; and/or
- (vi) performing the obligations or exercising the rights of a mortgagee in relation to a mortgage or proposed mortgage that secures or will secure obligations under a credit contract under which the licensee is the credit provider; and/or
- (vii) being a beneficiary under a guarantee that guarantees obligations under a credit contract under which the licensee is the credit provider; and/or
- (viii) performing the obligations or exercising the rights of a beneficiary under a guarantee or proposed guarantee that guarantees obligations under a credit contract under which the licensee is the credit provider; and/or
- (ix) carrying on a business of providing consumer leases; and/or
- (x) being a lessor under a consumer lease; and/or
- (xi) providing credit assistance to a consumer in relation to a consumer lease or proposed consumer lease for which the licensee is the lessor; and/or
- (xii) performing the obligations or exercising the rights of a lessor in relation to a consumer lease as the lessor.

Limited authorisation—Certain licensees that rely on streamlined application process

(This condition expressly authorises the type of credit activities a licensee can engage in. This authorisation will be imposed on certain licensees who indicate in the licence application that they will only engage in credit activities that entitle them to the benefit of the streamlined application process.)

- 2 This licence authorises the licensee to engage in credit activities as a credit provider by:
- (a) carrying on a business of providing credit being credit the provision of which the National Credit Code applies to; and/or
 - (b) being a credit provider under a credit contract; and/or
 - (c) performing the obligations or exercising the rights of a credit provider in relation to a credit contract or proposed credit contract as the credit provider; and/or
 - (d) providing credit assistance to a consumer that relates to a credit contract or proposed credit contract under which the licensee is or will be the credit provider; and/or

- (e) being a mortgagee under a mortgage that secures or will secure obligations under a credit contract under which the licensee is the credit provider; and/or
- (f) performing the obligations or exercising the rights of a mortgagee in relation to a mortgage or proposed mortgage that secures or will secure obligations under a credit contract under which the licensee is the credit provider; and/or
- (g) being a beneficiary under a guarantee that guarantees obligations under a credit contract under which the licensee is the credit provider; and/or
- (h) performing the obligations or exercising the rights of a beneficiary under a guarantee or proposed guarantee that guarantees obligations under a credit contract under which the licensee is the credit provider,

limited to [*select appropriate type of credit activities from the following*]:

- (i) credit activities engaged in by the licensee as:
 - (i) an assignee in relation to providing lenders mortgage insurance products; or
 - (ii) a credit provider under the doctrine of subrogation in relation to providing lenders mortgage insurance products; or
- (j) credit activities engaged in by the licensee in accordance with the terms and conditions of:
 - (i) a life policy within the meaning of the *Life Insurance Act 1995* that was entered into before 1 July 2010 by the licensee; or
 - (ii) a document issued or given by the licensee in relation to a life policy within the meaning of the *Life Insurance Act 1995* that was entered into before 1 July 2010 by the licensee.

Limited authorisation—Assignee debt collectors

(This condition expressly authorises the type of credit activities a licensee can engage in. This authorisation will be imposed on all licensees who indicate in the licence application that they will only engage in credit activities as assignee debt collectors.)

- 3 This licence authorises the licensee to engage in credit activities as a credit provider by:
- (a) carrying on a business of providing credit being credit the provision of which the National Credit Code applies to; and/or
 - (b) being a credit provider under a credit contract; and/or
 - (c) performing the obligations or exercising the rights of a credit provider in relation to a credit contract or proposed credit contract as the credit provider; and/or

- (d) providing credit assistance to a consumer that relates to a credit contract or proposed credit contract under which the licensee is or will be the credit provider; and/or
- (e) being a mortgagee under a mortgage that secures or will secure obligations under a credit contract under which the licensee is the credit provider; and/or
- (f) performing the obligations or exercising the rights of a mortgagee in relation to a mortgage or proposed mortgage that secures or will secure obligations under a credit contract under which the licensee is the credit provider; and/or
- (g) being a beneficiary under a guarantee that guarantees obligations under a credit contract under which the licensee is the credit provider; and/or
- (h) performing the obligations or exercising the rights of a beneficiary under a guarantee or proposed guarantee that guarantees obligations under a credit contract under which the licensee is the credit provider; and/or
- (i) carrying on a business of providing consumer leases; and/or
- (j) being a lessor under a consumer lease; and/or
- (k) providing credit assistance to a consumer in relation to a consumer lease or proposed consumer lease for which the licensee is the lessor; and/or
- (l) performing the obligations or exercising the rights of a lessor in relation to a consumer lease as the lessor,

limited to:

- (m) credit activities engaged in by the licensee:
 - (i) as an assignee of the rights of a credit provider, lessor, mortgagee or beneficiary of a guarantee under a credit contract, consumer lease, mortgage or guarantee; and
 - (ii) for the purpose of demanding and receiving payments in accordance with, and enforcing the terms and conditions of, a credit contract, consumer lease, mortgage or guarantee that has been assigned to the licensee.

Key person requirements

(This condition is imposed at ASIC's discretion having regard to various issues, including organisational structure of the licensee, the education and experience of responsible managers and the organisational competencies of the licensee.)

4 If any of the following people cease to be officers of the licensee or to perform duties on behalf of the licensee with respect to its credit business:

- (a) *[insert name of key person]*; and
- (b) *[insert name of key person]*,

the licensee must, within five business days after that event:

- (c) notify ASIC in writing that the person ceased to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its credit business, and the date on which this occurred; and
- (d) lodge with ASIC an application for variation of this condition that includes the following:
 - (i) the name and address of each person that the licensee proposes to rely on as a replacement key person;
 - (ii) the date on which that person commenced, or will commence, duties on behalf of the licensee with respect to its credit business; and
 - (iii) the educational qualifications and experience of that person; or
 - (iv) if the licensee is not proposing to rely on any replacement key person, a detailed description of how the licensee will continue to comply with the Act and the conditions of the licence.

Notification to current or former representative's clients

(This condition is imposed on all licensees.)

5

If:

- (a) ASIC makes a banning order against a current or former representative of the licensee under Division 2 of Part 2-4 of Chapter 2 of the Act; or
- (b) the court makes an order disqualifying a person who is a current or former representative of the licensee under Division 3 of Part 2-4 of Chapter 2 of the Act,

the licensee must, if instructed by ASIC, take all reasonable steps to provide the following information in writing to any person in relation to whom the representative engaged in a credit activity on behalf of the licensee within a period of three years before the order was made:

- (c) the name of the representative;
- (d) if the representative is a credit representative, the credit representative number allocated to the representative by ASIC;
- (e) the terms of the order; and
- (f) contact details of the licensee for dealing with enquiries and complaints regarding the banning or disqualification or the conduct of the representative.

Continuing professional development requirements for responsible managers

(This condition is imposed on all licensees. This condition relates to Regulatory Guide 206 Credit licensing: Competence and training (RG 206).)

- 6 The licensee must ensure that:
- (a) each responsible manager of the licensee undertakes at least 20 hours of continuing professional development in each calendar year in which they perform the role of responsible manager for the licensee;
 - (b) the continuing professional development activities that are undertaken by each responsible manager are relevant to the role of the responsible manager with the licensee and include both:
 - (i) activities dealing with product and industry developments related to credit; and
 - (ii) compliance training on regulatory requirements applying to credit activities; and
 - (c) a record of the continuing professional development activities undertaken by each responsible manager is maintained for each calendar year in which they perform the role of responsible manager for the licensee.

Training requirements for responsible managers

(These conditions are imposed on licensees that are authorised to provide credit services on the basis that they will provide third-party home loan credit assistance. These conditions relate to Regulatory Guide 206 Credit licensing: Competence and training (RG 206).)

- 7 The licensee must ensure that each responsible manager of the licensee that has responsibilities in relation to the provision of third-party home loan credit assistance:
- (a) has successfully completed a Certificate IV in Finance and Mortgage Broking; and
 - (b) has two years of relevant problem-free experience.

Training requirements for representatives

(These conditions are imposed on licensees that are authorised to provide credit services on the basis that they will provide third-party home loan credit assistance. These conditions relate to Regulatory Guide 206 Credit licensing: Competence and training (RG 206).)

- 8 The licensee must ensure that each representative of the licensee that provides third-party home loan credit assistance has successfully completed a Certificate IV in Finance and Mortgage Broking.

Body regulated by APRA

(This condition is imposed on all licensees that are bodies regulated by the Australian Prudential Regulation Authority.)

- 9 If the licensee ceases to be a body regulated by the Australian Prudential Regulation Authority (APRA), the licensee must, within 10 business days of the date on which it ceased to be a body regulated by APRA, notify ASIC in writing of:
- (a) the date on which the licensee ceased to be a body regulated by APRA; and
 - (b) the reasons why the licensee is no longer a body regulated by APRA.

Professional indemnity compensation requirements

(This condition is imposed on all licensees except those that are exempt licensees under reg 12(3) of the National Consumer Credit Protection Regulations 2010. This condition may also be imposed, at ASIC's discretion under paragraph (c)(ii) of the definition of 'exempt licensee' in reg 12(3) of the National Consumer Credit Protection Regulations 2010, on licensees that are authorised to engage in credit activities as a credit provider—other than licensees who are authorised deposit-taking institutions, life insurance companies or general insurance companies—who would otherwise be exempt licensees.)

- 10 The licensee must maintain a professional indemnity insurance policy that it has assessed as being adequate in terms of its amount, scope and other terms and conditions in accordance with the requirements set out in Regulatory Guide 210 *Compensation and insurance arrangements for credit licensees* (RG 210), Section B.

Professional indemnity insurance requirements—Exempt licensees

(This condition is imposed on all licensees that are exempt licensees under paragraphs (a) or (b) of the definition of 'exempt licensee' in reg 12(3) of the National Consumer Credit Protection Regulations 2010.)

- 11 The licensee must be:
- (a) a general insurance company authorised by APRA under section 12 of the *Insurance Act 1973*, and included on the Register of General Insurers and Authorised NOHCs;
 - (b) a life insurance company registered with APRA under section 21 of the *Life Insurance Act 1995*;
 - (c) an authorised deposit-taking institution; or
 - (d) a person that is related (within the meaning of section 50 of the *Corporations Act 2001*) to a company or institution referred to in paragraphs (a) to (c) of this condition and that holds a guarantee from that company or institution that is approved by ASIC.

- 12 If the licensee can no longer meet, or has breached, condition 11 of this licence, the licensee must lodge with ASIC an application to vary this licence to remove condition 11, within three business days of the date on which it becomes aware that it can no longer meet, or has breached, that condition.

External dispute resolution requirements

(This condition is imposed on all licensees.)

- 13 If the licensee ceases, or becomes aware that it will cease, to be a member of the Australian Financial Complaints Authority (AFCA), the licensee must, within three business days of the date the licensee's membership ceased or the licensee became aware that its membership would cease, notify ASIC in writing of the reasons the licensee's membership of AFCA ceased or will cease (including circumstances where AFCA is no longer operating, failure by the licensee to renew its membership or where AFCA has terminated the licensee's membership).

Record-keeping requirements

(This condition is imposed on all licensees.)

- 14 The licensee must either:
- (a) keep a record of all material that forms the basis of an assessment of whether a credit contract or consumer lease will be unsuitable for a consumer in a form that will enable the licensee to give the consumer a written copy of the assessment if a request is made under section 120, 132, 143 or 155 of the Act; or
 - (b) if the licensee is a credit provider or lessor, but (for a particular credit contract or consumer lease) is not the original credit provider or lessor, either:
 - (i) obtain a written copy of the assessment of whether the credit contract or consumer lease will be unsuitable for the consumer from the original credit provider or a person (a previous assignee) to whom the rights of the original credit provider or lessor have previously been assigned or passed by law, and keep a written copy of the assessment; or
 - (ii) have in place written arrangements with the original credit provider or lessor, or a previous assignee, that require the original credit provider or lessor, or the previous assignee, to:
 - (A) keep a record of all material that forms the basis of an assessment of whether a credit contract or consumer lease will be unsuitable for a consumer in a form that will enable the licensee to give the consumer a written copy of the assessment if a request is made under section 132 or 155 of the Act; and

- (B) upon request by the licensee, provide the licensee with a written copy of the assessment, or suitable information to enable the licensee to prepare a written copy of the assessment, within a period of time that will enable the licensee to give the consumer a written copy of the assessment if a request is made under section 132 or 155 of the Act.

Terms and definitions

(These paragraphs are included in all licences to clarify the interpretation of legal references, terms and headings used in the licence.)

In this licence references to sections, Parts and Divisions are references to provisions of the *National Consumer Credit Protection Act 2009* (the Act) unless otherwise specified.

Headings contained in this licence are for ease of reference only and do not affect interpretation.

Terms used in this licence have the same meaning as is given to them in the Act (including, if relevant, the meaning given in the National Credit Code in Schedule 1 to the Act) and the following terms have the following meanings:

(These definitions are imposed if the licensee is authorised to provide credit services on the basis that it will provide third-party home loan credit assistance.)

problem-free experience means experience that has not been marred by significant non-compliance issues as described in Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206) Section B (as at the date of this licence)

third-party home loan credit assistance means home loan credit assistance where the credit assistance relates to credit secured by real property and neither the licensee nor its representatives will be the credit provider.