



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 101

Does the new credit regime apply?

This information sheet answers frequently asked questions about the application of the new credit regime under the *National Consumer Credit Protection Act 2009* (National Credit Act). It covers:

- credit providers and intermediaries
- referrals
- Australian financial services (AFS) licensing
- commercial and business activities
- pre-existing credit contracts
- investment lending for residential property
- margin lending
- pawn brokers
- debt collectors.

For more detailed guidance on these issues, read ASIC's regulatory guides on credit. See [Where can I get more information?](#) at the end of this information sheet.

Credit providers and intermediaries

How do I know if I need to comply with the new credit regime?

Anyone who engages in credit activities in relation to consumer credit will be affected by the new credit regime.

A 'credit activity' is defined in s6 of the National Credit Act. It includes:

- providing credit by way of a credit contract or consumer lease,
- benefiting from mortgages or guarantees relating to a credit contract or consumer lease, and
- providing credit services in relation to credit contracts and consumer leases.

See [Information Sheet 96 Getting ready for credit \(INFO 96\)](#).

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

Referrals

In what situations is a referral activity caught or exempted? We have arrangements with accountants and other advisers who only refer their clients to us.

There are two issues involved in working out whether someone who refers a consumer to a credit provider or credit service provider needs to be licensed (or a credit representative of a credit licensee).

The first issue is whether the referral activity is caught as a regulated credit activity requiring an Australian credit licence (credit licence). This depends on whether the referral activity relates to a particular loan contract from a particular provider: see [Regulatory Guide 203 Do I need a credit licence? \(RG 203\)](#).

If the referral activity is caught as a regulated credit activity, the second issue is whether the referral activity is exempt under the referral exemption. This is a narrow exemption from licensing requirements for doing referrals if:

- you just inform the consumer that a particular credit licensee or their credit representative is able to provide particular credit activities (e.g. lending, suggesting or assisting) and how to contact them, *and*
- when you do so, you disclose any benefit or commission you will receive.

There are a variety of different relationships and referral models across industry. See [Regulatory Guide 203 Do I need a credit licence? \(RG 203\)](#) for examples and information on a range of possible situations.

Australian financial services (AFS) licensing

To what extent can a financial planner mention credit in a full financial plan without having a credit licence?

If a financial planner is giving generic advice relating to credit, no credit licence is required. However, if the financial planner suggests or assists a consumer in relation to a specific contract from a specific credit provider (including suggesting that the customer remain in a particular contract), then a credit licence is required.

See [Regulatory Guide 203 Do I need a credit licence? \(RG 203\)](#).

Commercial and consumer activities

We do mostly commercial loans, but sometimes there is a small consumer component (e.g. a loan to a director). Does the new credit regime apply to us?

The test for consumer credit remains the same—that is, if the advance is predominantly for personal, domestic or household purposes, the loan is caught. ‘Predominantly’ means more than a 50% consumer component. If it is not predominantly for personal, domestic, or household purposes, the loan is not regulated under the National Credit Act.

Pre-existing credit contracts

We are a credit provider who will not be entering into any new contracts after 1 July 2010. Will we need to be licensed?

The requirements that are expected to apply to credit providers that will have only a closed pool of pre-existing loans at 1 July 2010 are set out in the [Ministerial Press Release of 30 March 2010](#). ASIC will provide information on the requirements, including the notification requirement after the relevant regulations are made (expected in early May). Information will be available on the credit page of ASIC's website: see [Where can I get more information?](#)

Investment lending for residential property

With the new coverage of investment lending for residential property, are loans to property developers caught?

Most property development is done through companies. Loans to companies are not subject to the new credit regime. Only loans to natural persons and strata corporations are caught.

If the loan is to a natural person, and the credit is provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes, then the loan is regulated under the National Credit Act, and the credit provider needs to be registered and licensed. 'Residential property' is defined in the National Credit Act and includes land on which a dwelling is or will be affixed predominantly for residential purposes.

Therefore, a loan to a natural person to buy land and build residential dwellings on it will generally be caught. This is true even if that person borrows on a number of occasions to develop a number of properties.

Margin lending

Is margin lending captured?

Margin lending is covered by different legislation. It is now captured under amendments to Chapter 7 of the *Corporations Act 2001* (which is separate to the National Credit Act). More information on margin lending, such as the new responsible lending requirements, is available on the [margin lending page](#) of ASIC's website.

Pawn brokers

Are pawn brokers captured by the new credit regime?

No. Pawn broking is exempt under the National Credit Act. Pawn broking is exempt because it is not technically credit or a credit service under the Act. It is covered by state-based pawn broking legislation, and also by the unconscionable conduct and misleading and deceptive provisions of the *Australian Securities and Investments Act 2001* (ASIC Act).

Debt collectors

Are debt collectors captured? Do I need to get a credit licence, or can I just be an agent authorised by each credit provider?

Debt collectors are subject to the National Credit Act if they own the debts they collect. There is a current exemption for debt collectors who merely act as an agent of the person who owns the debt and who are regulated under the relevant state laws. They do not need to be licensed or authorised. However, all debt collection activity in relation to credit remains subject to the ASIC Act (including the prohibition against undue harassment or coercion).

Where can I get more information?

- Read [Regulatory Guide 203 *Do I need a credit licence?* \(RG 203\)](#)
- Go to www.asic.gov.au/credit for the latest information on credit and to download copies of the regulatory guides
- Subscribe to ASIC updates on credit at www.asic.gov.au/credit-update
- ASIC Infoline 1300 300 630
- www.asic.gov.au/question.

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.