



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 109

Credit licensee offences: Prohibited dealings and unlawful authorisations

This information sheet answers frequently asked questions on the operation of some offences under the *National Consumer Credit Protection Act 2009* (National Credit Act). It covers offences relating to:

- prohibited dealings with unlicensed persons; and
- unlawful authorisation of credit representatives.

For more detailed guidance on when a person will need to be licensed, or may be covered by an exemption from the licensing requirements, read ASIC's regulatory guides on credit licensing, particularly [Regulatory Guide 203, *Do I need a credit licence?* \(RG 203\)](#).

How do the offences operate?

The offences operate in conjunction with the Commonwealth Criminal Code established under the *Commonwealth Criminal Code Act 1995*. The Criminal Code sets out the basis for interpreting criminal offence provisions in Commonwealth legislation.

Prohibited dealings with unlicensed persons

Credit licensees are prohibited from conducting business with unlicensed persons when engaging in credit activity: s31 of the National Credit Act. For example, if you are a licensed lender, you are not permitted to conduct business with a mortgage broker who is not licensed.

You may commit an offence if you are 'reckless' as to whether your credit activity involves conducting business with unlicensed persons. This is not an offence of strict liability.

Among other things, the offence does not apply if you are dealing with an exempt person or a person acting as a credit representative for a licensee or exempt person: see, generally, s29 of the National Credit Act.

What are the criminal penalties for non-compliance?

The National Credit Act imposes a maximum criminal financial penalty of \$22,000 for an individual, \$110,000 for a corporation, and a maximum jail term of two years for breaching these provisions.

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

Unlawful authorisation of credit representatives

Credit licensees are prohibited from authorising a credit representative if the authorisation would have no effect: see s69 of the National Credit Act. Credit licensees are also required to vary or revoke authorisations that cease to have effect: see s70 of the National Credit Act.

For example, an authorisation may not have effect, or may cease to have effect, if the credit representative:

- has a banning order in force against them, or they are not a member of an external dispute resolution (EDR) scheme (see s64(5) of the National Credit Act);
- is authorised by another credit licensee who has not given their consent to your authorisation (see s66 of the National Credit Act); or
- already holds a licence authorising them to engage in the credit activity or is registered to engage in the credit activity (see s67 of the National Credit Act).

You may commit an offence if you are 'reckless' as to whether your authorisation of a credit representative is of no effect. This is not an offence of strict liability.

What are the criminal penalties for non-compliance?

The National Credit Act imposes a maximum criminal financial penalty of \$11,000 for an individual, \$55,000 for a corporation, and a maximum jail term of two years for breaching these provisions.

How to comply with the law

As a credit licensee, what steps can I take to ensure I comply with the law?

A credit licensee is expected to take reasonable steps to meet its legal obligations. You must decide what is appropriate in your circumstances and in the context of your business. This could include:

- checking the relevant ASIC credit registers before you commence a business relationship with another licensee or authorise a credit representative, including the ASIC register of banned persons;
- requiring your credit representative to notify you of any changes in its status relating to its registration or authorisation;
- checking ASIC registers at intervals appropriate to good risk management. The appropriate interval might vary with the circumstances (e.g. the degree of transience of representatives and licensees in that area of the industry);
- checking ASIC registers or checking with other relevant licensees if you are put on notice of an issue relating to another licensee or your credit representative; and
- requesting to view written authorisations.

What are ASIC credit registers?

ASIC maintains credit registers that contain details of registered persons, credit licensees, credit representatives and banned persons. These credit registers are available on [ASIC's website](#). ASIC's registers do not contain details of people who are:

- a representative of a credit licensee as an employee or director; or
- exempt from the requirement to be licensed.

To what extent can you rely on ASIC credit registers?

In general, you are entitled to rely on ASIC registers in good faith unless you have been put on notice that the information contained in them may not be correct or may be out of date.

For example, a person may be authorised as a credit representative, but they may not appear on the register. This is due to the time it may take for a licensee to report the authorisation to ASIC, and for the authorisation to be placed on the register.

In those circumstances, you may need to take other steps to confirm a credit representative's status and the scope of their authorisation (e.g. by requesting a copy of a written authorisation or confirming the authorisation with the relevant credit licensee).

Where can I get more information?

- Go to www.comlaw.gov.au for the Commonwealth Criminal Code.
- Go to <http://www.ag.gov.au> for the [Commonwealth guide to framing offences](#).
- Read [Regulatory Guide 203 Do I need a licence? \(RG 203\)](#).
- 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.fido.gov.au for credit information and resources for consumers.
- 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.