

National Consumer Credit Reform Package Australian Credit Licence Regime - Timetable for Commencement Extended

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On 17 September 2009 it was announced that the timetable for implementation of the Australian Credit Licence Regime was extended. The new timetable is as follows:

Legislation Requirements	Old Timetable	New Timetable
Register with ASIC	1 November 2009 to 31 December 2009	1 April 2010 to 30 June 2010
Requirement for persons engaged in consumer credit activities to hold a licence	From 1 January 2010	1 July 2010 to 31 December 2010
All registered persons to have applied for a licence	30 June 2010	31 December 2010
All Registrations cancelled (ie all persons engaged in credit activities to be licensed)	30 June 2011	30 June 2011
Responsible Lending Requirement that non-ADIs and non-RFCs cannot arrange credit that is unsuitable (Timetable for ADIs and RFCs is still 1 January 2011)	1 January 2010	1 July 2010
Other responsible lending requirements (eg disclosure requirements, credit guides and quotes)	1 January 2011	1 January 2011

The Federal Government's National Consumer Credit Protection Reform Package when enacted as law will require all lenders, mortgage managers, finance brokers engaged in consumer credit or leasing and intermediaries to be licensed.

When the bill for the package is enacted, licensing will be a staged process. As noted, it was to start with registration with ASIC by 1 January 2010. This has now been changed to 1 April 2010.

You will require a licence if you:

- provide, arrange or procure finance for natural persons or strata corporations wholly or predominately for personal, domestic or household purposes or for the purpose of purchasing, renovating, improving or refinancing residential investment property;
- provide, arrange or procure consumer leases; or
- perform obligations or exercise rights in relation to either of the above.

Steps to take if you require a licence:

1. Register with ASIC before 1 April 2010 any time until 30 June 2010. The applicant can be a natural person, body corporate, trustee or partnership and will have to be a member of an external dispute resolution scheme approved by ASIC.

2. Once registered, you have until 30 December 2010 to apply for a licence. After 1 July 2010 you cannot undertake consumer credit activities if you did not register with ASIC before that date.

Forms to register and apply for a licence will be available electronically from ASIC and will be able to be lodged electronically.

If your organisation has a licence do you need to have a licence?

If you engage in credit activities which require a licence on behalf of a licensee and your conduct is within the authority of the licensee and you are either:

- an employee or a director of the licensee or of a related body corporate of the licensee; or
- a credit representative of the licensee,

you do not need to have a licence.

A "credit representative" is a person formally appointed to act on behalf of a licensee in writing. The representative can only engage in the same activities as the licensee. It is intended under the legislation to require the licensee as part of their obligations to make relevant enquiries into the credit representative's backgrounds both before appointing a person as a credit representative and while they continue to act. Generally credit representatives will not in turn be able to authorise other persons to act as credit representatives for them or for the licensee. The exception to this is where a company is appointed to act as a credit representative. It may then in turn appoint natural persons to engage in credit activities on its behalf.

Under the legislation brokers are regarded as agents of borrowers and cannot be appointed as credit representatives of lenders.

If a licensee appoints a person as a credit representative, the licensee must notify ASIC within 15 business days of appointment. The notice to ASIC must include information specified in the legislation. There are also obligations to notify ASIC within 10 business days of any changes or revocation of the authorisation.

The bill for the reform package is currently before the Commonwealth Parliament for consideration and if passed the requirements relating to the Australian Credit Licence will become operative in accordance with the timetable set out above.

Do you need assistance in understanding if you need to apply for an Australian Credit Licence or applying for an Australian Credit Licence? Contact:

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