



Draft National Consumer Credit Protection Bill 2009

The Federal Government released the draft National Consumer Credit Protection Bill 2009 on 27 April 2009. The Bill seeks to implement new national responsible lending laws for all consumer credit in Australia. The Bill is in line with the Government's National Consumer Credit Plan – a two-phase action plan that followed the release of the Financial Services and Credit Reform Green Paper in June 2008.

Industry participants affected

The Bill applies to persons and entities engaged in 'credit activity' and includes credit lenders, providers of consumer leases and those that provide credit services such as finance brokers and intermediaries who play a role in securing credit for consumers or assist consumers in relation to credit contracts.

Key features

The key features of the Bill include:

- a new regime that will replace current State and Territory laws;
- a national mandatory licensing regime, akin to the current AFS licensing process;
- responsible lending obligations and compulsory dispute resolution mechanism;
- extending protection to investment loans.

ASIC will become the sole, national regulator for consumer credit lending and finance broking.

Licensing regime

The Bill creates the Australian Credit License (**ACL**). All persons or entities engaged in the following credit activities will need to hold an ACL:

- lending or collecting money due under a credit contract;
- acting as a broker or intermediary (such as an aggregator or mortgage manager);
- providing assistance to a consumer about a specific credit product.

ACL holders will be subject to a range of general obligations, similar to the obligations currently required of AFSL holders, including:

- doing all things necessary to ensure that the credit activities are engaged in efficiently, honestly and fairly;
- having in place arrangements to ensure clients of the licensee are not disadvantaged by any conflict of interest that may arise in the course of conducting the credit activities;
- ensuring that representatives are adequately trained;
- implementing a compliant internal dispute resolution procedure;
- becoming a member of an approved dispute resolution scheme;
- having in place compliant compensation arrangements.

The ACL regime will be implemented in two phases. Initially, anyone engaging in credit activities will be required to register with ASIC and subsequently any persons or entities engaged in credit activities will be required to hold an ACL.

Parties or entities will be required to register with ASIC between 1 November 2009 and 31 December 2009. These registered entities will have 6 months to apply for an ACL (between 1 January 2010 and 30 June 2010). By 1 July 2011 any person or entity engaged in credit activity must hold an ACL (and the registration system will be cancelled).

Responsible lending obligations

ACL holders will be required to meet responsible lending conduct obligations when they enter consumers into consumer credit contracts or where they suggest a credit contract to a consumer to apply for a credit contract.

The responsible lending obligations include the following requirements for licensees:

- assess a consumer's capacity to repay a credit contract or credit proposal;
- ensure that the credit contract is suitable for the credit purpose or the consumer's objectives, financial circumstances and needs;
- disclosure of key details about the credit lender, broker or adviser before providing any credit services;
- ascertain and disclose fees payable by the consumer and commissions receivable by the service provider for any services to be provided or credit contracts proposed or entered into prior to the provision of the service or the credit.

Looking forward

The licensing and ongoing compliance obligations arising from the new national responsible lending laws will have extensive repercussions for the consumer credit industry.

Comments in response to the draft Bill have been sought by 22 May 2009. The public exposure period ends on 29 May and it is anticipated that the Bill will be introduced into Parliament in June 2009.

We are continuing to monitor developments in this area.

Links

[Click here to view the draft National Consumer Credit Protection Bill 2009.](#)

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If you have any questions about the Bill please contact a member of our corporate and regulatory team – Kathryn Rigney, Director (t: 9231 7027, e: krigney@ypol.com.au), Bianca Bates, Senior Associate (t: 9231 7012, e: bbates@ypol.com.au) or Isla Chisholm, Solicitor (t: 9231 7028, e: ichisholm@ypol.com.au).

We have considerable experience in AFS licensing and will be able to provide assistance in applying for an ACL when the requirements are finalised.

On 1 September 2007, three of the leading insurance and commercial litigators of DLA Phillips Fox joined forces with the established and respected insurance and commercial litigation specialist, Yeldham Lloyd Associates to create our firm.

On 5 May 2008 we enhanced our capability and commitment to the insurance and reinsurance industry with the addition of a specialist corporate and regulatory team.

We are a specialist incorporated legal practice. We are focused on insurance, reinsurance and commercial litigation.

Our directors are recognised locally and internationally as among the best in their fields. They are supported by an experienced and talented team.

We are accessible, straightforward and responsive. We are about providing the best legal service at a reasonable cost.

For more information on our firm please visit www.ypol.com.au

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