

BANKING SERVICES ALERT

FURTHER CHANGES TO THE PROPOSED NATIONAL CONSUMER CREDIT PROTECTION LAWS

On 14 August 2009 a draft of the proposed regulations under the new National Consumer Credit Protection (NCCP) package was released. The regulations comprise:

- The main regulations, including those relating to the National Credit Code (NCC);
- Transitional and Consequential regulations;
- Fee regulations
- Regulations relating to the Electronic Transactions Act.

The press release accompanying the draft regulations confirms that additional regulations are currently being drafted and will be released by 31 August 2009 for public consultation.

Comments on the recently released draft regulations may be made by 9 September 2009.

A number of important changes are proposed, including additional exemptions and variations to proposed implementation dates.

In summary, the main changes are:

- Debt Collectors are given a 12 month period of grace from the requirement to be licensed/registered, provided they are registered under applicable State laws.
- The previously announced exemption from registration/licensing for Point of Sale (POS) Retailers has been confirmed, but does not apply where the credit provider is a "related body corporate" of the POS Retailer or an unsolicited approach is made to the debtor (door-to-door sales).
- The NCC will not apply to contracts entered into prior to 29 May 2009 concerning the sale of land or goods by instalments (to maintain consistency with recent State legislation).
- Details have been released of prescribed fees for licensing, annual compliance statements and other matters. The fee structure will be based on the size of the applicant with a minimum payment of \$450.00 and a maximum cap of \$21,000.00 upon lodgment of the licence application and annually thereafter. (Discount applies to ADIs').
- Bring forward the start date for the responsible lending provisions for brokers to 1 January 2010 (previously 1 January 2011).
- The start date of the responsible lending provisions for ADIs' and registered finance companies (RFCs') will remain unchanged at 1 January 2011.
- Make the commencement date for the new amendments to the NCCP 1 July 2010 (previously 1 January 2010).

In summary the new provisions are:

- Extension of the Code to residential investment properties;
- Debit default notices;
- Amendments to business purpose declarations;
- Changes to default notices, and new notices in response to applications for hardship variations and postponements.

The regulations also:

- Set out the standard conditions of licence, in particular, notification requirements to ASIC;
- Confirm various exemptions from registration/licensing for various categories of persons who would otherwise be required to be registered, including:

- Set out the standard conditions of licence, in particular, notification requirements to ASIC;
- Confirm various exemptions from registration/licensing for various categories of persons who would otherwise be required to be registered, including:
 - Receivers, liquidators, administrators under relevant bankruptcy and other legislation
 - Financial counsellors;
 - Third party contractors who merely issue payment notices or transport property belonging to the debtor
 - Retailers providing POS credit assistance
 - Lawyers
 - Debt collectors (for 12 months)
 - Registered tax agents
 - Persons merely passing on factual information
 - Clerks and Cashiers
 - Other specified persons

The bringing forward of implementation of certain responsible lending provisions by 12 months to 1 January 2010 for everyone except ADI's and RFC's is a major change.

However, it does appear that it is only the unsuitability of loan contract provisions which will apply from 1 January 2010, not all the responsible lending provisions. Other responsible lending provisions still come into effect from 1 January 2011, such as disclosure requirements, commissions, fees and charges. All we have at this time is the Minister's media release of 14 August 2009 detailing the changes to the responsible lending provisions.

Note however that in order to make an assessment as to whether or not a loan is unsuitable, it will still require a person providing credit assistance to conduct a full and comprehensive assessment of a prospective borrower's financial circumstances.

No doubt there will be further changes and refinements following the consultation period. The proposed changes to electronic contracting will also need close examination.

The next steps in the reform process are likely to be

- Release of further additional regulations
- Release of further drafts of the NCCP Bill following the recent consultation process.

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