



## CREDIT INDUSTRY REFORM - LICENSING IS ON ITS WAY

**It's a busy year for the Credit Industry. Not only does it have to come to terms with the Global Financial Crisis, but we will shortly have additional rafts of federal legislation to deal with in the short term.**

On 27 April 2009 the Federal Government released and has called for submissions on its **Consumer Credit Reform Package** consisting of two draft bills and four draft regulations, including the **National Consumer Credit Protection Bill 2009**. This Bill will replace the State based Uniform Consumer Credit Code. Due to the volume of the proposed changes we will be preparing several articles on these proposals.

### WHO, WHEN & WHAT - AUSTRALIAN CREDIT LICENCES ('ACL')

#### Who

The Bill requires **all Credit Industry parties** to be **licensed**, unless they are a "credit representative" of a licensee.

Any person or entity engaged in "**credit activities**" will need an ACL or need to be appointed a Credit Representative.

**Credit activities** essentially involve any one of the following:

- Lending money 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.

The provisions are broad and designed to capture anyone involved in consumer credit transactions. Consumer credit is being expanded in the Bill to include loans and leases for residential investment properties.

#### When

The Bill is proposing **registration** of all licensees to occur **within two months** of the Bill passing. A two-phase approach is being adopted, with participants first being registered and then making an application to ASIC for an ACL.

- Parties are required to register with ASIC in the period from **1 November 2009 to 31 December 2009**.
- Licensing applications must be then lodged on or before **30 June 2010** if parties wish to continue to be involved with the provision of consumer credit.

The corollary is that if on the first of January 2010 a person engaging in credit activities is not at least registered with ASIC then they will not be permitted to be involved in credit activities without first obtaining a license. The transitional provisions appear to allow "credit representatives" to continue to operate provided they have been appointed to act on behalf of a principal who itself is registered with/licensed by ASIC.

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License applications by **Banks, Building Societies, Credit Unions** and **holders of Western Australian licences** in Classes A and B will be streamlined. The Government considers the existing licensing regimes for these parties to be sufficiently rigorous to satisfy the new ACL requirements. Employees involved in the provision of credit can be covered by the business' license.

The table below summarises the licensing deadlines proposed in the explanatory memorandum. The deadlines are based on the legislation being passed on 1 November 2009.

1 November 2009 to 31 December 2009	Everyone engaged in credit activities must apply to be registered before 31 December 2009 if they wish to stay in business after that date.
1 January 2010 to 30 June 2010	<p><b>Existing players</b></p> <p>To continue to engage in credit activities you must:</p> <ul style="list-style-type: none"> <li>■ be registered; or</li> <li>■ hold an ACL.</li> </ul> <p>You must complete and lodge your Licence Application by 30 June 2010.</p> <p><b>New Entrants</b> – people first engaging in credit activities on or after 1 January 2010.</p> <p>New Entrants cannot apply for registration, they must apply for and receive an ACL before engaging in credit activities.</p>
1 July 2010 to 30 June 2011	<p>To engage in <b>credit activities</b> you must:</p> <ul style="list-style-type: none"> <li>■ be registered and have applied for a licence (which application has not been rejected); or</li> <li>■ hold an ACL.</li> </ul> <p>If you get notice that your application is rejected — you must cease engaging in credit activities even if this is before 30 June 2011.</p>
1 July 2011 onwards	Licensing to be completed. You must hold an ACL to engage in credit activities.

## What

While most of our clients will need to apply for an ACL, not all persons involved in credit activities will need to apply for a credit license. Many people will act as “credit representatives” for an ACL Licence holder.

While registration is probably imperative by 31 December 2009 a decision as to whether to actually apply for an ACL will depend upon each individual's circumstances.

## Licence Requirements

As to the requirements to obtain a license, the standards and obligations will be similar to those contained in the West Australian Licensing regime, such as:

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- conflicts of interest relating to credit activities;
- training and competency of your organisation and employees;
- internal dispute resolution procedures and membership of an external dispute resolution scheme;
- compensation arrangements (insurance);
- adequacy of arrangements and systems and written plans that documents them; and
- adequacy of resources (including financial, technological and human resources).

**The first critical cut-off date is 31 December 2009** to ensure continued ability to operate in the sphere of provision of consumer credit.

If you wish to learn more or require assistance, please contact our **Banking Services Partners, Craig Green or Richard Williams.**

Subsequent email alerts will expand on the proposed new legislation.

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