



# National Consumer Credit Protection Amendment Regulation 2012 (No. )<sup>1</sup>

Select Legislative Instrument 2012 No.

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *National Consumer Credit Protection Act 2009*.

Dated 2012

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]  
Assistant Treasurer

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**DRAFT ONLY**

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**1 Name of regulation**

This regulation is the *National Consumer Credit Protection Amendment Regulation 2012 (No. )*.

**2 Commencement**

This regulation commences on the day after it is registered.

**3 Amendment of *National Consumer Credit Protection Regulations 2010***

Schedule 1 amends the *National Consumer Credit Protection Regulations 2010*.

**Schedule 1 Amendments**

(section 3)

**[1] Subregulation 3 (1), definition of exempt special purpose funding entity**

*substitute*

*exempt special purpose funding entity* means a special purpose funding entity that:

- (a) is engaging in a credit activity; and
- (b) is exempted under regulation 23B from the requirement to hold a licence or permit.

**[2] Chapter 2, heading**

*substitute*

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## Chapter 2 Licenses or permits for engaging in credit activities

[3] Chapter 2, Part 2-1, heading  
*substitute*

### Part 2-1 Australian credit licences and permits

[4] Bulk amendments

Provision	after each mention of	insert
regulation 7, heading	licence	or permit
paragraph 7 (1) (b)	licence	or permit
regulation 8, heading	licence	or permit
subregulations 8 (1) to (3) and (5)	licence	or permit
paragraph 8 (5) (b)	licensee	or permit holder
subregulation 8 (6)	licence	or permit
subregulation 8 (6)	licensee	or permit holder
regulation 9, heading	licence	or permit
paragraph 9 (2) (a)	licensees	or permit holders
subregulation 9 (2)	licensee	or permit holder

**[5] After subregulation 9 (5)**

*insert*

- (5A) A permit holder must ensure that, before the permit holder authorises a person to engage in a credit activity on the permit holder's behalf, reasonable inquiries are made to establish:
- (a) the person's identity; and
  - (b) whether the person has already been allocated a permit number by ASIC.

**[6] Bulk amendments**

Provision	after each mention of	insert
subregulation 9 (10) and (11)	licensee	or permit holder
subregulation 9 (11) and (12)	licensee's	or permit holder's
subregulation 9 (13)	licensee	or permit holder
subregulation 9 (13)	licence	or permit
subregulation 9 (14)	licensee	or permit holder
paragraph 9 (14) (b)	licence	or permit

**[7] Regulation 9AA**

*substitute*

**9AA Conditions on licence or permit—special purpose funding entity**

- (1) This regulation is:
- (a) made for subsection 45 (7) of the Act, and
  - (b) prescribes the conditions that a licence or permit is subject to if the licensee or permit holder enters into a servicing agreement with a special purpose funding entity.

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- (2) The licensee or permit holder must lodge with ASIC a notice, in an approved form, that states:
    - (a) in the case of a special purpose funding entity that is a credit activity investor—the licensee or permit holder has, for the first time, entered into a service agreement with a credit activity investor; or
    - (b) in any other case—the licensee or permit holder has entered into a servicing agreement with the special purpose funding entity.
  - (3) The notice must be lodged within 20 business days after the licensee or permit holder enters into the agreement.
  - (4) The licensee or permit holder must establish and maintain a written record of the following information in relation to the servicing agreement:
    - (a) the name, address and phone number of the special purpose funding entity;
    - (b) the date when the agreement starts;
    - (c) the date when the agreement ends;
    - (d) the details of any action by an individual who is in a position to control or influence the special purpose funding entity that has or may have the effect of directing the licensee or permit holder to act inconsistently with:
      - (i) the conditions of the licence or permit; or
      - (ii) the credit legislation.
  - (5) The licensee or permit holder must enter the information in the record within:
    - (a) for the information mentioned in paragraph (4) (a) and (b)—10 business days after the agreement starts; or
    - (b) for the information mentioned in paragraph (4) (c)—15 days after the agreement ends; or
    - (c) for the information mentioned in paragraph (4) (d)—15 days after the action by the individual.
  - (6) ASIC may:
    - (a) inspect the record; and
    - (b) make copies of, or take extracts from, the record.

**[8] Bulk amendments**

Provision	after each mention of	insert
regulation 9AA, heading	licence	or permit
subregulation 9AA (1)	licence	or permit
subregulations 9AA (1) to (5)	licensee	or permit holder
subregulation 9AA (5)	conditions	or permit holder's permit conditions
regulation 9AB, heading	licensee	or permit holder
subregulations 9AB (1) to (7)	licensee	or permit holder
regulation 10, heading	licensees	or permit holders
subregulation 10 (5)	licensee	or permit holder
regulation 11, heading	licensees	or permit holders
paragraph 11 (1) (b)	licensee	or permit holder
regulation 13, heading	licensees	or permit holders
regulation 13, heading	licence	or permit
subregulation 13 (1), note, paragraph (a)	licence	or permit
subregulation 13 (2)	licensee	or permit holder
subregulation 13 (2)	licensees	or permit holders
Subdivision 1.1, heading	licensed	or holding permit
regulation 20, heading	licence	or permit
subregulation 20 (1), note	licence	or permit
paragraphs 20 (3) (h) and (i)	licensee	or permit holder
paragraph 20 (4) (a)	licensee	or permit holder
paragraph 20 (4) (c)	estate	or permit holder's estate
paragraph 20 (6) (a)	licensee	or permit holder

paragraph 20 (8) (b)	licence	or permit
subregulation 20 (8)	licence	, permit
paragraphs 20 (11) (b) and (d)	licensee	, permit holder
regulation 21, heading	licence	or permit
subregulation 21 (1), note	licence	or permit
paragraph 21 (3) (a)	licensee	, permit holder
subparagraph 21 (4) (c) (i)	licence	, permit
sub-subparagraph 21 (4) (c) (ii) (A)	licence	, permit
paragraph 21 (4) (d)	registered person	, a permit holder
regulation 22, heading	licence	or permit
subregulation 22 (1), note	licence	or permit
subregulation 22 (3)	licensee	or permit holder
regulation 23, heading	licence	or permit
subregulation 23 (1), note	licence	or permit
subregulation 23 (5), definition of <i>relevant credit provider</i> , paragraph (a)	licensee	, permit holder
subregulation 23 (5), definition of <i>relevant lessor</i> , paragraph (a)	licensee	, permit holder
subregulation 23 (5), definition of <i>relevant mortgagee</i> , paragraph (a)	licensee	, permit holder
subregulation 23 (5), definition of <i>relevant beneficiary</i> , paragraph (a)	licensee	, permit holder
regulation 23A, heading	licence	or permit
subregulation 23A (1), note	licence	or permit
paragraphs 23A (4) (a) and (5) (a)	licensee	, permit holder

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**[9] Regulations 23B and 23C**

*substitute*

**23B Persons exempt from requiring licence or permit—  
special purpose funding entity**

- (1) This regulation is made for paragraph 110 (a) of the Act.
- (2) This regulation exempts certain persons who are engaging in a credit activity from:
  - (a) section 29 of the Act; and
  - (b) definitions in the Act, as they apply to references in section 29 of the Act; and
  - (c) instruments made for section 29 of the Act.
- (3) A person is exempted if:
  - (a) the person is:
    - (i) a special purpose funding entity; and
    - (ii) a party to a servicing agreement; and
    - (iii) a member of an approved external dispute resolution scheme; and
  - (b) none of the following persons is an inappropriate person:
    - (i) if the person is an individual—the person;
    - (ii) if the person is a body corporate—the directors or secretary of the body corporate;
    - (iii) if the person is a partnership—the partners of the partnership;
    - (iv) if the person is a trust—the trustees of the trust.
- (4) However, a person who is exempted in relation to a particular credit activity is exempted only to the extent that the person is engaging in that particular credit activity.

*Note* If the person also engages in a credit activity that is not the subject of an exemption under the Act, the person is not exempted in relation to that credit activity.



**[10] Bulk amendments**

Provision	after each mention of	insert
regulation 23D, heading	licence	or permit
subregulation 23D (1), note	licence	or permit
paragraphs 23D (3) (a) and (b)	licensee	, permit holder
subparagraph 24 (6) (b) (ii)	licensee	, permit holder
paragraph 24 (6) (c)	licence	or permit
sub-subparagraph 24 (6) (d) (i) (A)	licensee	, permit holder
sub-subparagraph 24 (6) (d) (i) (B)	licensee	or permit holder
sub-subparagraphs 24 (6) (d) (i) (B) and (C)	number	or permit number
sub-subparagraph 24 (6) (d) (i) (C)	licensee	or permit holder
subparagraph 24 (6) (d) (ii)	licensee	, permit holder
subparagraph 24 (7) (b) (ii)	licensee	, permit holder
paragraph 24 (7) (c)	licence	or permit
sub-subparagraphs 24 (7) (d) (i) (A) and (B)	licensee	, permit holder
sub-subparagraphs 24 (7) (d) (i) (B) and (C)	number	or permit number
sub-subparagraph 24 (7) (d) (i) (C)	licensee	or permit holder
subparagraph 24 (7) (d) (ii)	licensee	, permit holder
paragraphs 24 (8) (a) and (b)	licensee	, permit holder
regulation 25, heading	licence	or permit
subregulation 25 (1), note	licence	or permit
paragraph 25 (2) (a)	licensee	, permit holder
paragraphs 25 (2A) (a), (4) (b), (e) and (f), and (5) (a)	licensee	, permit holder
sub-subparagraph 25 (5) (b) (ii) (B)	licensee	, permit holder

paragraph 25 (5) (c), (f) and (g)	licensee	, permit holder
paragraph 25G (1) (b)	licensee	, permit holder
subregulation 25G (2)	licensee	, permit holder
paragraphs 25H (1) (a), (b), (d) and (f)	licensee	, permit holder
paragraph 25I (1) (a)	licensee	, permit holder
subregulation 25I (2)	licensee	, permit holder

**[11] After regulation 25L**

*insert*

**25M Modifications—permits**

- (1) This regulation is made for paragraph 110 (c) of the Act in relation to the provisions of the Act to which Part 2–6 of the Act applies.
- (2) Those provisions, as modified in Schedule 4A, apply to engaging in credit activities in relation to:
  - (a) a small business credit contract; or
  - (b) a small business consumer lease.

**[12] Regulation 28N**

*omit*

**[13] After subregulation 29 (4)**

*insert*

- (4A) For subsection 213 (2) of the Act, ASIC must include the following details for each permit holder included in a credit register of permit holders:
  - (a) the permit holder's name (including the permit holder's principal business name, if any);
  - (b) the principal business address of the permit holder;

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- (c) the date on which the permit holder's name was entered on the credit register as a permit holder;
  - (d) the number allocated to the permit holder by ASIC;
  - (e) if the permit holder has an ABN — the ABN;
  - (f) details of any conditions on the permit holder's permit, including details of the credit activities or classes of credit activities that the permit holder is authorised to engage in;
  - (g) the name of the approved external dispute resolution scheme of which the permit holder is a member;
  - (h) any other information that ASIC believes should be included in the register.

**[14] Subregulation 29 (5)**

*omit*

and (4) (b)

*insert*

, (4) (b) and (4A) (b)

**[15] After regulation 58**

*insert*

**58A Small business credit contracts—exemption from Code**

- (1) This regulation is made for subsection 6 (13) of the Code.
- (2) The Code does not apply to the provision of credit of more than \$5 million under a small business credit contract.

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[16] **Schedule 3, before item 3.1**

*insert*

**3.1A Section 5**

*insert*

***credit activity investor*** means a person who:

- (a) is one of the following:
  - (i) an individual;
  - (ii) a body corporate with 4 or less shareholders who are individuals;
  - (iii) a partnership with 4 or less partners who are individuals;
  - (iv) a trust with 4 or less beneficiaries and 4 or less trustees who are individuals; and
- (b) engages in a credit activity (other than by providing a credit service) as:
  - (i) a credit provider; or
  - (ii) a lessor; or
  - (iii) a mortgagee; or
  - (iv) the beneficiary of a guarantee; and
- (c) engages in the credit activity only by way of an intermediary, in accordance with a servicing agreement between the person and the intermediary; and
- (d) is not otherwise in the business of providing credit.

[17] **Schedule 3, item 3.4, definition of *special purpose funding entity***

*substitute*

***special purpose funding entity*** means:

- (a) a credit activity investor; or
- (b) a fund raising special purpose entity; or
- (c) a securitisation entity.

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[18] **After Schedule 4**

*insert*

**Schedule 4A Modifications—permits**

(regulation 25M)

**4A.1 Subsection 5 (1)**

*insert*

*permit* means a permit granted under section 37.

**4A.2 Subsection 5 (1)**

*insert*

*permit holder* means a person who holds a permit.

**4A.3 Chapter 2, heading**

*substitute*

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## **Chapter 2    Permits for engaging in credit activities in relation to small business credit contracts**

**4A.4    Chapter 2, Part 2–1, Divisions 1 and 2**

*substitute*

**Part 2–1            Requirement to hold a permit**

**Division 1            Introduction**

**27            Guide to this Part**

This Part is about permitting persons to engage in credit activities in relation to a small business credit contract.

Division 2 prohibits a person from engaging in those credit activities without a permit. However, the prohibition does not apply to employees and directors of permit holders or related bodies corporate of permit holders.

Division 3 deals with other prohibitions relating to the requirement to hold a permit and to credit activities. These prohibitions relate to holding out and advertising, conducting business with persons who do not hold a permit, charging fees for conduct that requires a permit, and giving misleading information.

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**28 Application of this Part**

In this Part, a reference to a credit activity is a reference to a credit activity in relation to:

- (a) a small business credit contract; or
- (b) a small business consumer lease.

**Division 2 Engaging in credit activities without a permit**

**29 Prohibition on engaging in credit activities without a permit**

*Prohibition on engaging in credit activities without a permit*

- (1) A person must not engage in a credit activity unless the person holds a permit.

Civil penalty: 2,000 penalty units.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 200 penalty units, or 2 years imprisonment, or both.

*Defences*

- (3) For subsections (1) and (2), it is a defence if:
- (a) the person engages in the credit activity on behalf of another person (the *principal*); and

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- (b) the person is an employee or director of the principal or of a related body corporate of the principal; and
  - (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
  - (d) the principal holds a permit.

*Note* For subsections (2), a defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3 (3) of the *Criminal Code*.

- (4) For subsections (1) and (2), it is a defence if:
  - (a) the person engages in the credit activity on behalf of another person (the *principal*); and
  - (b) the person is a representative of the principal; and
  - (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
  - (d) the principal is exempted from subsections (1) and (2) under paragraph 109 (1) (a), 109 (3) (a) or 110 (a).

*Note* For subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3 (3) of the *Criminal Code*.



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**4A.5 Chapter 2, Part 2–1, Division 3, heading**  
*substitute*

**Division 3 Other prohibitions relating to the  
requirement to be hold a permit**

**4A.6 Regulations 30 and 31**  
*substitute*

**30 Prohibitions on holding out and advertising etc.**

*Prohibitions on holding out and advertising etc.*

- (1) A person must not hold out:
- (a) that the person holds a permit; or
  - (b) that the person holds a permit allowing the person to engage in a particular credit activity; or
  - (c) that a credit activity engaged in by the person or by someone else is exempt from a requirement to hold a permit; or
  - (d) that, in engaging in a credit activity, the person acts on behalf of another person; or
  - (e) that conduct, or proposed conduct, of the person is within the authority of a permit holder;
- if that is not the case.

Civil penalty: 2,000 penalty units.

- (2) A person must not hold out or advertise that the person engages or is able to engage in a credit activity if the person would, if the person engaged in the credit activity, contravene section 29 (which deals with the requirement to hold a permit).

Civil penalty: 2,000 penalty units.

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*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units, or 1 year imprisonment, or both.

**31 Prohibition on conducting business with person who does not hold a permit**

*Prohibition on conducting business with persons without permits*

- (1) A permit holder must not:
- (a) engage in a credit activity; and
  - (b) in the course of engaging in that credit activity, conduct business with another person who is engaging in a credit activity;

if, by engaging in the credit activity, the other person contravenes section 29 (which deals with the requirement to hold a permit).

Civil penalty: 2,000 penalty units.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 200 penalty units, or 2 years imprisonment, or both.

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**4A.7 Chapter 2, Part 2–2, Divisions 1 to 4**  
*substitute*

**Part 2–2 Permits**

**Division 1 Introduction**

**34 Guide to this Part**

This Part is about permits.

Division 2 explains what a permit is and the credit activities that are allowed by the permit.

Division 3 is about how to get a permit, including how to apply for it and when ASIC may grant or refuse to grant it.

Division 4 is about the conditions that may be imposed on a permit.

Division 5 is about conduct obligations of permit holders.

Division 6 is about the suspension, cancellation or variation of a permit.

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## Division 2 Permits

### 35 Permits

- (1) A permit allows the permit holder to engage in particular credit activities in relation to a small business credit contract.
- (2) The credit activities that the permit holder is *permitted* to engage in are those credit activities specified in a condition of the permit as the credit activities that the permit holder is permitted to engage in.

## Division 3 How to get a permit

### 36 Applying for a permit

- (1) A person may apply for a permit by lodging an application with ASIC.
- (2) The application must be in the approved form.

### 37 When a permit may be granted—applicants other than ADIs

#### *When ASIC must grant a permit*

- (1) ASIC must grant a person (the *applicant*) a permit if and only if the applicant has applied for the grant of a permit in accordance with section 36.
- (2) The application must state that the applicant is a member of an approved external dispute resolution scheme; and
- (3) Also, the application must make the statement set out in subsection (2) in relation to:
  - (a) for an applicant that is an individual:
    - (i) the applicant; and

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- (ii) if the applicant was a director or secretary of a body corporate in the 7 years immediately before the application is made—the body corporate; or
  - (b) for an applicant that is a body corporate:
    - (i) each director or secretary of the body corporate who is to perform duties in relation to the credit activities that are to be allowed by the permit;
    - (ii) if a director or secretary of the body corporate was a director or secretary of a body corporate in the 7 years immediately before the application is made—the body corporate; or
  - (c) for an applicant that is a partnership or the trustee of a trust:
    - (i) each partner or trustee who is to perform duties in relation to the credit activities that are to be allowed by the permit;
    - (ii) if a partner or a trustee of the partnership or trust was a director or secretary of a body corporate in the 7 years immediately before the application is made—the body corporate.
- (4) For subregulation (3), the statement is that:
- (a) a banning order or disqualification order under Part 2–4 is not in force against the person; and
  - (b) a banning order or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is not in force against the person; and
  - (c) the person is not banned from engaging in a credit activity under a law of a State or Territory; and
  - (d) if the person is or has been a licensee or permit holder, or is or has been registered—the person’s licence, permit or registration is neither suspended nor cancelled; and

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- (e) an Australian financial services licence of the person is neither suspended, nor has been cancelled within the last 7 years, under:
- (i) paragraph 915B (1) (d) or subparagraph 915B (4) (b) (iii) of the *Corporations Act 2001* (which deals with suspension or cancellation because of mental or physical incapacity); or
  - (ii) section 915C of the *Corporations Act 2001* (which deals with suspension or cancellation after offering a hearing); and
- (f) if the person is not the trustee of a trust—the person is not insolvent; and
- (g) if the person is an individual:
- (i) the person is not disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; and
  - (ii) the person has not been convicted of serious fraud within 10 years before the application is made; and
  - (iii) a prescribed State or Territory order is not in force against the person.
- (5) For paragraph (2) (c), a reference to a credit activity in the definitions of *banned from engaging in a credit activity under a law of a State or Territory* and *State or Territory credit licence* in subsection 5 (1) includes a reference to an activity that would be a credit activity if the National Credit Code had applied from 1 April 2010.

*ASIC may refuse to grant a permit in certain circumstances*

- (6) Despite subsection (1), ASIC may refuse to grant a permit to a person if ASIC has reason to believe that:
- (a) the application is false in a material particular or materially misleading; or
  - (b) there is an omission of a material matter from the application.

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*Notice of decision on application*

- (7) ASIC must give the applicant written notice of:
- (a) ASIC's decision on the application; and
  - (b) if the decision is to grant a permit to the applicant—the day on which the applicant becomes a permit holder; and
  - (c) if the decision is not to grant a permit to the applicant—the reasons for the decision.

*When applicant becomes a permit holder*

- (8) The applicant becomes a permit holder when ASIC enters the applicant's name on a credit register as a permit holder.

**38 When a permit may be granted—ADIs**

If:

- (a) an ADI applies under section 36 for a permit; and
- (b) the application includes a statement (in accordance with the requirements of the approved form) to the effect that the ADI will, if granted the permit, comply with its obligations as a permit holder;

then ASIC must grant the ADI a permit allowing the ADI to engage in credit activities that equate (as closely as possible) to the credit activities in relation to which the application was made.

*Note* ASIC must not grant a permit to a person contrary to a banning order or disqualification order, or if a prescribed State or Territory order is in force against the person or certain representatives of the person (see section 40).

**39 Regulations may prescribe streamlined process for other applicants**

Despite sections 36 and 37, the regulations may provide that:

- (a) some or all of sections 36 and 37 do not apply in relation to particular classes of applicants; and
- (b) alternative processes apply to applications for permits by, and the grant of permits to, those classes of applicants.

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**40 Permits must not be granted to certain applicants**

*Banning or disqualification order in force against person*

- (1) Despite subsection 37 (1) and section 38, ASIC must not grant a permit that allows a person to engage in a credit activity if a banning order or disqualification order under Part 2–4 is in force against the person in relation to that credit activity.

*Prescribed State or Territory order in force against person etc.*

- (2) Despite subsection 37 (1) and section 38, ASIC must not grant a permit to a person if:
- (a) the person is an individual against whom a prescribed State or Territory order is in force; or
  - (b) the person is a body corporate, and a prescribed State or Territory order is in force against a director, secretary or senior manager of the body corporate who would perform duties in relation to the credit activities to be allowed by the permit; or
  - (c) the person is a partnership or the trustee of a trust, and a prescribed State or Territory order is in force against a partner or trustee who would perform duties in relation to the credit activities to be allowed by the permit.

**41 Applicant must be given hearing before refusal of permit**

ASIC may only refuse to grant a permit after giving the person who applied for the permit an opportunity:

- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
- (b) to make submissions to ASIC in relation to the refusal.

**42 Notice of grant or refusal of permit and date of effect**

- (1) ASIC must give a person (the *applicant*) who has applied for a permit written notice of:
- (a) ASIC's decision on the application; and



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- (b) if the decision is to grant the applicant a permit—the day on which the permit takes effect; and
  - (c) if the decision is not to grant the applicant a permit—the reasons for the decision.
- (2) The permit comes into force on the day specified in the notice, which must not be before the day on which the decision to grant the permit was made.

#### **43 Permit numbers**

- (1) ASIC must allocate each permit a unique permit number when it is granted.
- (2) If:
  - (a) a person is granted a permit; and
  - (b) the person holds an Australian financial services licence; then the permit number that ASIC gives to the permit held by that person must be the same number as the person's Australian financial services permit number.
- (3) ASIC must give the permit holder written notice of the permit number.

#### **44 Basis on which permit is granted**

A permit granted under this Division is granted on the basis that:

- (a) conditions on the permit may be imposed, varied or revoked under Division 4; and
- (b) the permit may be suspended, cancelled or varied under Division 6; and
- (c) the permit may be cancelled, revoked, terminated or varied by or under later legislation; and
- (d) no compensation is payable if:
  - (i) conditions on the permit are imposed, varied or revoked as referred to in paragraph (a); or
  - (ii) the permit is suspended, cancelled, varied, revoked or terminated as referred to in paragraphs (b) to (c).

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## Division 4                      Conditions on permits

### 45                      The conditions on permits

*ASIC may impose, vary or revoke conditions on permits*

- (1) ASIC may, at any time:
  - (a) impose conditions, or additional conditions, on a person's permit; and
  - (b) vary or revoke conditions imposed on a person's permit.
- (2) ASIC may do so:
  - (a) on its own initiative; or
  - (b) if the permit holder lodges an application with ASIC for the imposition, variation or revocation.
- (3) The application must be in the approved form.

*Notice and effect of imposition, variation or revocation of conditions*

- (4) ASIC must give the permit holder written notice of the imposition, variation or revocation of the conditions. The imposition, variation or revocation of the conditions comes into force on the day specified in the notice, which must not be before the day on which the decision to impose, vary or revoke the conditions was made.

*ASIC must give the permit holder a hearing*

- (5) Despite subsection (1), ASIC may only impose conditions or additional conditions, or vary or revoke the conditions, on the permit after giving the permit holder an opportunity:
  - (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
  - (b) to make submissions to ASIC in relation to the conditions.This subsection does not apply to ASIC imposing conditions when a person is granted the permit.

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*Condition in relation to permitted credit activities*

- (6) ASIC must ensure that the permit is subject to a condition that specifies the credit activities or classes of credit activities that the permit holder is allowed to engage in.

**46 Permit conditions—special procedures for APRA-regulated bodies**

*Special procedures for APRA-regulated bodies (other than ADIs)*

- (1) If the permit holder, or a related body corporate, is a body (the **APRA body**) regulated by APRA (other than an ADI), then the following provisions apply:
- (a) ASIC cannot:
- (i) impose, vary or revoke a condition on the permit that, in ASIC's opinion, has or would have the result of preventing the APRA body from being able to carry on all or any of its usual activities (being activities in relation to which APRA has regulatory or supervisory responsibilities); or
  - (ii) vary a condition so that it would, in ASIC's opinion, become a condition that would have a result as described in subparagraph (i);
- unless ASIC has first consulted APRA about the proposed action;
- (b) if ASIC imposes, varies or revokes a condition on the permit and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

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*Special procedures for ADIs*

- (2) If the permit holder, or a related body corporate, is an ADI, then the following provisions apply:
- (a) subject to paragraphs (b) and (c), the powers that ASIC would otherwise have under section 45:
    - (i) to impose, vary or revoke a condition on the permit that, in ASIC's opinion, has or would have the result of preventing the ADI from being able to carry on all or any of its banking business (within the meaning of the *Banking Act 1959*); or
    - (ii) to vary a condition so that it would, in ASIC's opinion, become a condition that would have a result as described in subparagraph (i);are instead powers of the Minister;
  - (b) the following provisions apply in relation to a power to which paragraph (a) applies:
    - (i) the procedures for the exercise of the power are the same as would apply if ASIC could exercise the power, except that the Minister must not exercise the power unless he or she has first considered advice from ASIC on the proposed action, being advice given after ASIC has consulted APRA about the proposed action;
    - (ii) ASIC (rather than the Minister) must still conduct any hearing required under paragraph 45 (5) (a) and receive any submissions under paragraph 45 (5) (b);
  - (c) if ASIC imposes, varies or revokes a condition on the permit and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

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**4A.8 Chapter 2, Part 2–2, Division 5, heading**

*substitute*

**Division 5 Obligations of permit holders**

**4A.9 Regulation 47**

*substitute*

**47 Obligations of permit holders**

A permit holder must be a member of an approved external dispute resolution scheme.

**4A.10 Regulations 49 to 53**

*substitute*

**49 Obligation to provide a statement or obtain an audit report if directed by ASIC**

*Notice to permit holder to provide a statement*

- (1) ASIC may give a permit holder a written notice directing the permit holder to lodge with ASIC a written statement containing specified information about the credit activities engaged in by the permit holder or its representatives.
- (2) Notices under subsection (1):
  - (a) may be given at any time; and
  - (b) may be given to one or more particular permit holders, or to each permit holder in one or more classes of permit holder, or to all permit holders; and
  - (c) may require all the same information, or may contain differences as to the information they require; and
  - (d) may require a statement containing information to be given on a periodic basis, or each time a particular event or circumstance occurs, without ASIC having to give a further written notice.

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*Notice to permit holder to obtain an audit report*

- (3) ASIC may also give a permit holder a written notice directing the permit holder to obtain an audit report, prepared by a suitably qualified person specified in the notice, on a statement, or on each statement in a class of statements, under subsection (1) before the statement is given to ASIC.
- (4) A notice under subsection (3) is not a legislative instrument.

*Notice must specify day by which permit holder must comply*

- (5) A notice given under this section must specify the day by which the permit holder must comply with the notice (which must be a reasonable period after the notice is given). ASIC may extend the day by giving a written notice to the permit holder.

*Requirement to comply with notice*

- (6) The permit holder must comply with a notice given under this section within the time specified in the notice.

Civil penalty: 2,000 penalty units.

*Offence*

- (7) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (6); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

*Strict liability offence*

- (8) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (6); and

- 
- (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

- (9) Subsection (8) is an offence of strict liability.

*Note* For strict liability, see section 6.1 of the *Criminal Code*.

## **50 Obligation to give ASIC information required by the regulations**

*Regulations may require permit holder to give information*

- (1) The regulations may require a permit holder, or each permit holder in a class of permit holders, to give ASIC specified information about the credit activities engaged in by the permit holder or its representatives.

*Requirement to comply with regulations*

- (2) If regulations under subsection (1) require a permit holder to give ASIC information, the permit holder must give ASIC that information.

Civil penalty: 2,000 penalty units.

*Offence*

- (3) A person commits an offence if:
  - (a) the person is subject to a requirement to give ASIC information under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

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*Strict liability offence*

- (4) A person commits an offence if:
- (a) the person is subject to a requirement to give ASIC information under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

- (5) Subsection (4) is an offence of strict liability.

*Note* For strict liability, see section 6.1 of the *Criminal Code*.

**51      **Obligation to provide ASIC with assistance if reasonably requested****

*Requirement to provide assistance*

- (1) If ASIC, or a person authorised by ASIC, reasonably requests assistance from a permit holder in relation to whether the permit holder and its representatives are complying with the credit legislation, the permit holder must give ASIC or the authorised person the requested assistance.

Civil penalty: 2,000 penalty units.

- (2) If the request is in writing, it is not a legislative instrument.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement to give ASIC or an authorised person assistance under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.



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*Assistance may include showing ASIC credit books etc.*

- (4) The assistance referred to in subsection (1) may include showing ASIC the person's credit books or giving ASIC other information.

## **52 Obligation to cite permit number**

*When this section applies*

- (1) This section applies on or after the day that is 2 years after the day when the *National Consumer Credit Protection Amendment (Credit Reform Phase 2) Act 2012* receives the Royal Assent.

*Requirement to include permit number in documents*

- (2) Whenever a permit holder identifies itself in a document of a kind prescribed by regulation 13 (1), the permit holder must:
- (a) include either of the following in the document:
- (i) the permit holder's permit number;
  - (ii) if the permit holder is also an Australian Credit Licensee—the permit holder's Australian Credit License number; and
- (b) identify in the document that the number is:
- (i) the permit holder's permit number; or
  - (ii) the permit holder's Australian Credit License number.

Civil penalty: 2,000 penalty units.

*Strict liability offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2) to include and identify a permit number in a document; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

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Criminal penalty: 10 penalty units.

- (4) Subsection (3) is an offence of strict liability.

*Note* For strict liability, see section 6.1 of the *Criminal Code*.

### **53 Obligation to lodge annual compliance certificate**

#### *Requirement to lodge compliance certificate*

- (1) A permit holder must, no later than 45 days after the permit holder's permit anniversary in each year, lodge a written compliance certificate with ASIC in accordance with this section. ASIC may extend the day by giving a written notice to the permit holder.

Civil penalty: 2,000 penalty units.

#### *Compliance certificate*

- (2) The compliance certificate must confirm that the permit holder continues to be a member of an approved external dispute resolution scheme.

#### *Who must sign compliance certificate*

- (3) The compliance certificate must be signed by:
- (a) if the permit holder is a single individual—the authority holder; or
  - (b) if the permit holder is a body corporate—a person of a kind prescribed by the regulations; or
  - (c) if the permit holder is a partnership or the trustees of a trust—a partner or trustee who performs duties in relation to credit activities.

#### *Requirement to ensure compliance certificate is lodged*

- (4) Each person by whom the compliance certificate may be signed under subsection (3) must ensure that the permit holder lodges the compliance certificate with ASIC in accordance with this section.

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Civil penalty: 2,000 penalty units.

*Strict liability offence*

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (4); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the requirement.

Criminal penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

*Meaning of permit anniversary*

- (7) *Permit anniversary* of a permit holder means the anniversary of the day on which the permit holder's permit came into force under section 42.

**4A.11 Chapter 2, Part 2–2, Division 6**

*substitute*

**Division 6 When a permit can be suspended,  
cancelled or varied**

**54 Suspension or cancellation without hearing**

- (1) ASIC may suspend or cancel a permit holder's permit if:
- (aa) the permit holder stops being a member of an approved external dispute resolution scheme; or
  - (a) the permit holder lodges with ASIC an application for the suspension or cancellation; or
  - (b) the permit holder does not engage, or ceases to engage, in credit activities; or
  - (c) a banning order or disqualification order under Part 2–4 is in force against the permit holder; or

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- (d) a banning order or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is in force against the permit holder; or
  - (e) the permit holder is banned from engaging in a credit activity under a law of a State or Territory; or
  - (f) an Australian financial services licence of the permit holder is suspended, or has been cancelled within the last 7 years, under:
    - (i) paragraph 915B (1) (d) or subparagraph 915B (4) (b) (iii) of the *Corporations Act 2001* (which deals with suspension or cancellation because of mental or physical incapacity); or
    - (ii) section 915C of the *Corporations Act 2001* (which deals with suspension or cancellation after offering a hearing); or
  - (fa) an Australian credit licence of the permit holder is suspended, or has been cancelled within the last 7 years, under:
    - (i) subparagraph 54 (2) (b) (ii) of the Act (which deals with suspension or cancellation because of mental or physical incapacity); or
    - (ii) section 55 of the Act (which deals with suspension or cancellation after offering a hearing);
  - (g) if the permit holder is not the trustee of a trust—the permit holder is insolvent; or
  - (h) the permit holder is an individual and:
    - (i) is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or
    - (ii) is convicted of serious fraud; or
    - (iii) is incapable of managing his or her affairs because of physical or mental incapacity; or
    - (iv) a prescribed State or Territory order is in force against the permit holder; or

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- (i) the permit holder is not an individual and a prescribed State or Territory order is in force against any of the following persons:
    - (i) if the permit holder is a body corporate—a director or secretary of the body corporate who performs duties in relation to credit activities;
    - (ii) if the permit holder is a partnership or the trustee of a trust—a partner or trustee who performs duties in relation to credit activities;
    - (iii) a body corporate of which the permit holder was formerly a director or secretary;
    - (iv) a trust of which the permit holder was formerly a trustee.
  - (1A) For paragraph (1) (e), a reference to a credit activity in the definitions of *banned from engaging in a credit activity under a law of a State or Territory* and *State or Territory credit licence* in subsection 5 (1) includes a reference to an activity that would be a credit activity if the National Credit Code had applied from 1 April 2010.
  - (2) An application for suspension or cancellation of a permit must be in the approved form.

## **55 Suspension or cancellation after offering a hearing**

- (1) ASIC may suspend or cancel a permit holder's authority (subject to complying with subsection (4)) if:
  - (a) the permit holder:
    - (i) has not complied with the credit legislation; or
    - (ii) has not taken reasonable steps to ensure the permit holder's representative complies with the credit legislation; or
    - (iii) has not complied with a condition of the permit; or
  - (b) ASIC has reason to believe that the permit holder is not a fit and proper person to engage in credit activities; or
  - (c) the application for the permit:
    - (i) was false in a material particular or materially misleading; or

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- (ii) omitted a material matter.
- (2) For the purposes of paragraph (1) (b), ASIC must (subject to Part VIIC of the *Crimes Act 1914*) have regard to the following:
- (a) if the person is an individual—the matters set out in paragraphs 37 (2) (a) to (f) and subparagraph 37 (2) (g) (i) in relation to the person;
  - (b) if the person is not an individual:
    - (i) the matters set out in paragraphs 37 (2) (a) to (f) in relation to the person; and
    - (ii) whether ASIC has reason to believe that any of the persons referred to in paragraph 37 (2) (h) in relation to the person is not a fit and proper person to engage in credit activities;
  - (c) any criminal conviction of the person, within 10 years before the permit is proposed to be suspended or cancelled;
  - (d) any other matter ASIC considers relevant;
  - (e) any other matter prescribed by the regulations.

*Note* Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (3) ASIC must (subject to Part VIIC of the *Crimes Act 1914*), in considering whether it has reason to believe that a person referred to in subparagraph (2) (b) (ii) is not a fit and proper person to engage in credit activities, have regard to the matters set out in paragraphs (2) (a), (c), (d) and (e) in relation to the person.
- (4) ASIC may only suspend or cancel a permit holder's permit under this section after giving the permit holder an opportunity:
- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
  - (b) to make submissions to ASIC on the matter.

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**56 Suspension and cancellation—special procedures for APRA-regulated bodies**

*Special procedures for APRA-regulated bodies (other than ADIs)*

- (1) If a permit holder, or a related body corporate, is a body (the *APRA body*) regulated by APRA (other than an ADI), then the following provisions apply:
  - (a) ASIC cannot suspend or cancel the permit holder's permit if doing so would, in ASIC's opinion, have the result of preventing the APRA body from being able to carry on all or any of its usual activities (being activities in relation to which APRA has regulatory or supervisory responsibilities), unless ASIC has first consulted APRA about the proposed action;
  - (b) if ASIC suspends or cancels the permit holder's permit and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

*Special procedures for ADIs*

- (2) If:
  - (a) a permit holder is an ADI; or
  - (b) a related body corporate of a permit holder is an ADI, and cancellation or suspension of the permit holder's permit would, in ASIC's opinion, have the result of preventing the ADI from being able to carry on all or any of its banking business (within the meaning of the *Banking Act 1959*);then the following provisions have effect:
  - (c) subject to paragraph (d), the powers that ASIC would otherwise have under this Division to cancel or suspend the permit holder's permit, or to revoke a suspension to which this subsection applied, are instead powers of the Minister;

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- (d) the procedures for the exercise of a power to which paragraph (c) applies are the same as would apply if ASIC could exercise the power, except that the Minister must not exercise the power unless he or she has first considered advice from ASIC on the proposed action, being advice given after ASIC has consulted APRA about the proposed action;
  - (e) ASIC (rather than the Minister) must still conduct any hearing required under paragraph 24 (3) (a) and receive any submissions under paragraph 24 (3) (b).

**57 Varying permits**

ASIC may vary a person's permit to take account of a change in the person's name.

*Note* The conditions on the permit can be varied under section 45.

**58 Effect of suspension**

- (1) A suspended permit has no effect while it remains suspended.
- (2) Subsection (1) has effect subject to section 62 (which deals with the continued effect of some suspended or cancelled permits).

**59 Revocation of suspension**

ASIC may at any time revoke the suspension of a permit.

**60 Date of effect, notice and publication of variation, cancellation or suspension etc.**

- (1) ASIC must give a permit holder written notice of a variation, suspension, revocation of a suspension, or cancellation of the permit holder's permit.
- (2) A variation, suspension, revocation of a suspension, or cancellation of a permit comes into force when the written notice of that action is given to the permit holder.



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- (3) As soon as practicable after the notice is given to the permit holder, ASIC must publish a notice of the action on ASIC's website. The notice must state when the action took effect.

**61 Statement of reasons**

A notice of suspension or cancellation given to a permit holder must be accompanied by a statement of reasons for the action taken.

**62 ASIC may allow permit to continue in force**

- (1) If ASIC gives a written notice of suspension or cancellation to a permit holder, ASIC may include terms in the notice specifying that the permit continues in force as though the suspension or cancellation had not happened for specified provisions of this Act in relation to specified matters, a specified period, or both.
- (2) If ASIC includes terms in a notice under subsection (1), the permit continues in force in accordance with the terms of the notice.