

Simplifying access to credit – a win for lenders!

As Australia continues to recover from the COVID-19 pandemic, the Morrison Government announced proposed changes to access credit. The proposed changes, outlined below, seek to simplify the system between consumers and lenders, making access to credit easier for consumers and small businesses.

Background

- More than a decade ago, in 2009, the Rudd Labor Government introduced the *National Consumer Credit Protection Act 2009 (NCC)* to regulate lenders providing credit contracts, replacing prior state based consumer credit codes. The NCC introduced comprehensive **responsible lending obligations** on lenders following the shock of the global financial crisis.
- The Government, on Friday, 25 September 2020 announced that it intends to simplify and improve the credit application process for borrowers and lenders, resulting in an overhaul of the NCC and corresponding regulations. The proposed reforms are part of the Government's economic recovery plan out of COVID-19 which will aim to achieve a timely and efficient flow of credit while maintaining strong consumer protections, particularly for vulnerable consumers.
- Changes are expected to commence from 1 March 2021, subject to consultation with key stakeholders and the passing of legislation.

Responsible lending obligations

The NCC currently imposes on lenders before entering into credit contracts the following obligations¹, to:

1. assess whether a credit contract is unsuitable for a consumer and to not provide or increase the credit limit on an unsuitable credit contract;
2. make reasonable inquiries into a consumer's requirements and objectives; and
3. inquire and verify a consumer's financial situation.

¹ The below list is non-exhaustive



Proposed changes

The proposed changes include:

- removal of certain responsible lending obligations from the NCC and as a result the removal of ASIC to enforce responsible lending laws for lenders. This will not apply to higher risk products, such as small amount credit contracts and consumer leases, which will instead have further obligations imposed;
- application of APRA's lending standards for authorised deposit taking institutions (**ADI**) to non-ADI's; and
- the requirement that debt management firms hold an Australian credit licence and meet obligations imposed on credit licensees when representing consumers, who are often vulnerable, in disputes with financial services firms (commencing from 1 April 2021).



Access to credit after the reform

Eased blanket regulations and procedures will allow a lender to assess an individual borrower with the information they provide without a need for stringent information verification processes. The liability of a lender will reduce, as the onus will shift to the borrower to provide accurate information in their credit application. Through this, the Government will replace the practice of 'lender beware' with the principle of 'borrower responsibility'.

Existing frameworks and strengthened regulations in other areas of law will provide for the continued protection of consumers and businesses.

Stay tuned for the specific legislative amendments to outline the tangible impact on lender obligations.



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