

National Consumer Credit Compliance Checklist

This checklist has been developed by Langes+ lawyers to assist credit businesses prepare for National Consumer Credit.

Langes+ are specialist advisers to financial services providers. Whether you are a credit union, bank, building society, lender or broker, we can assist you with your compliance with National Consumer Credit. For further information and contact details, go to www.langes.com.au

WARNING: This checklist is not legal advice. It is a high level summary, and may not include all of the things that you need to do to comply. Requirements will vary depending on the nature of your credit business. You should obtain legal advice on your own circumstances.

In this checklist we refer to documents where you can get further guidance. They are listed below with the abbreviations used for them in the checklist. You can use the hyperlinks to access these documents.

Abbreviation	Document
ASIC CP 112	ASIC Consultation Paper CP 112 – Dispute resolution requirements for consumer credit and margin lending
ASIC CP 115	ASIC Consultation Paper CP 115 – Responsible lending
ASIC CP 125	ASIC Consultation Paper CP 125 – Compensation requirements for credit licensees: Further consultation
ASIC RG 202	ASIC Regulatory Guide RG 202 – Credit registration and transition
ASIC RG 203	ASIC Regulatory Guide RG 203 – Do I need a credit licence?
ASIC RG 204	ASIC Regulatory Guide RG 204 – Applying for and varying a credit licence
ASIC RG 205	ASIC Regulatory Guide RG 205 – Credit licensing: General conduct obligations
ASIC RG 206	ASIC Regulatory Guide RG 206 – Credit licensing: Competence and training
ASIC RG 207	ASIC Regulatory Guide RG 207 – Credit licensing: Financial requirements
NCCPA	National Consumer Credit Protection Act 2009 (Cth)
NCCPR	National Consumer Credit Protection Regulations 2010 (Cth) (draft only at time of publication)

If you are a small credit business, see also ASIC's information page for small credit businesses, [ASIC INFO97](#)

#	Requirements	Further guidance	Requirements completed
1.	Are you affected?		
1.1	Do you engage in credit activities? <ul style="list-style-type: none"> • Lender under a consumer credit contract • Lessor under a consumer lease • Assignee of lender, lessor, mortgagee or beneficiary of a guarantee • Mortgagee • Mortgage manager • Beneficiary of a guarantee • Financial adviser (advising in relation to consumer credit) • Finance broker • Other intermediary such as an aggregator • Debt collector 	NCCPA ASIC RG 203	<input type="checkbox"/>
1.2	Do you qualify for any exemptions? For example - <ul style="list-style-type: none"> • Credit representative • Employee or director • Point of sale retailer (other than interests in land) • Corporate and personal insolvency practitioner • Financial counselling agency • Person who transports property or sends notices for lender • Securitisation entity • Lawyer • Registered tax agent • Passing on information in response to a request • Clerks and cashiers • State licensed debt collector, repossession agent (exempt only until 1 July 2011) 	NCCPA NCCPR ASIC RG 203	<input type="checkbox"/>
1.3	Will you be a credit representative rather than a licensee? <ul style="list-style-type: none"> • Who will appoint you? • Terms of appointment – what will you be required to do? • Become a member of an ASIC approved EDR scheme. 	NCCPA NCCPR ASIC RG 203	<input type="checkbox"/>
1.4	If you will be a licensee, will you need to appoint credit representatives? <ul style="list-style-type: none"> • Who will your credit representatives be? • Appoint your credit representatives. • Notify them to ASIC. • Review or develop your agreements with credit representatives to cover matters such as liability and indemnification. 	NCCPA NCCPR ASIC RG 203	<input type="checkbox"/>

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	<ul style="list-style-type: none"> Implement monitoring and supervision and training programs for credit representatives (see 4.9 and 4.11 below). 		
2. Your registration application			
2.1	Set up user name and password for online registration and your later licence application.	ASIC RG 202	<input type="checkbox"/>
2.2	Make sure your ASIC details are up-to-date.	ASIC RG 202	<input type="checkbox"/>
2.3	Be a member of an ASIC approved EDR scheme.	ASIC RG 202	<input type="checkbox"/>
2.4	Do background checks on responsible managers.	ASIC RG 202	<input type="checkbox"/>
2.5	Authorisation from persons making declarations to the person making the application.	ASIC RG 202	<input type="checkbox"/>
2.6	Decide what types of credit activities you will engage in if registered.	ASIC RG 202	<input type="checkbox"/>
2.7	Complete all information on registration application.	ASIC RG 202	<input type="checkbox"/>
2.8	Get legal sign-off on your registration application.	ASIC RG 202	<input type="checkbox"/>
2.9	Lodge your registration application by 30 June 2010 (and as early as possible - if your application is lodged too late, ASIC may not have enough time to process your application before 1 July 2010).	ASIC RG 202	<input type="checkbox"/>
2.10	Keep a copy of your application and any supporting documentation.	ASIC RG 202	<input type="checkbox"/>
2.11	Comply with your general conduct obligations as a registrant (see 4.1, 4.3, 4.6).	ASIC RG 202 ASIC RG 205	<input type="checkbox"/>
3. Your licence application			
3.1	Will you be eligible for streamlined application? (ADI, lenders mortgage insurers, A or B class WA licensed brokers). If so, you will be asked to provide less information than standard applicants.	ASIC RG 204	<input type="checkbox"/>
3.2	Do you currently hold an Australian Financial Services Licence (AFSL)? If so you will also have to answer less questions than standard applicants.	ASIC RG 204	<input type="checkbox"/>

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3.3	Make sure your ASIC details are up-to-date.	ASIC RG 204	<input type="checkbox"/>
3.4	Be a member of an ASIC approved EDR scheme.	ASIC RG 204	<input type="checkbox"/>
3.5	Do background checks on responsible managers.	ASIC RG 204	<input type="checkbox"/>
3.6	Authorisation from persons making declarations to the person making the application.	ASIC RG 204	<input type="checkbox"/>
3.7	Complete all questions on licence application and prepare supporting documentation.		<input type="checkbox"/>
	<p>Information about your business -</p> <ul style="list-style-type: none"> • A1 – Applicant and contact details. • A2 – Principal business address. • A3 – Contact details. • A4 – Business names. • A5 – Delayed licence commencement (nominate a date within 3 months of when you prepare your application as the date when you want your licence to commence). • A6 – Authorisations – select the type of credit activities you engage in to be covered by the licence. You can choose one of these: <ul style="list-style-type: none"> ○ Credit activities other than credit provider or lessor. ○ Credit activities as a credit provider or lessor. ○ All credit activities. • A7 – Details of business activities. <p>Information about your general conduct obligations – You will need to have documentation that supports that you meet all of these requirements, although you will not need to submit such documentation with your application. The documentation will need to reflect actual, implemented measures in your business. Note that the following items cover matters that you must continue to comply with under your Australian Credit Licence (see section 4 below).</p> <ul style="list-style-type: none"> • B1 – Fit and proper to engage in credit activities. • B2 – Compliance arrangements. • B3 – Supervising and training representatives. 	<p>ASIC RG 204</p> <p>ASIC RG 204 ASIC RG 206</p> <p>ASIC RG 204 ASIC RG 205</p> <p>ASIC RG 204 ASIC RG 205 ASIC RG 206</p>	

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	<ul style="list-style-type: none"> B4 – Adequacy of resources.* 	ASIC RG 204 ASIC RG 207	
	<ul style="list-style-type: none"> B5 – Dispute resolution and hardship applications. 	ASIC RG 204 ASIC CP 112	
	<ul style="list-style-type: none"> B6 – Risk management.* 	ASIC RG 204 ASIC RG 205	
	<ul style="list-style-type: none"> B7 – Compensation arrangements (includes PI insurance). 	ASIC RG 204 ASIC CP 125	
	*Not applicable to APRA regulated entities.		
	<p>Supporting information to be provided –</p> <ul style="list-style-type: none"> Information about fit and proper people: statement of personal information, particulars of any outcomes of concern listed in the statement of personal information, criminal history check, bankruptcy check, credit history report. Additional information about responsible managers: educational qualifications and relevant prior employers. Summary business description. 	ASIC RG 204	
3.8	Get legal sign-off on your licence application.	ASIC RG 204	<input type="checkbox"/>
3.9	Complete statements and declarations.	ASIC RG 204	<input type="checkbox"/>
3.10	Lodge your licence application by 31 December 2010 (and as early as possible, once all your compliance measures are in place).	ASIC RG 204	<input type="checkbox"/>
3.11	Pay licence application fee.	ASIC RG 204	<input type="checkbox"/>
3.12	Keep a copy of your application and any supporting documentation.	ASIC RG 204	<input type="checkbox"/>
4.	Your general conduct obligations as a licensee		
4.1	Efficiency, honesty and fairness - You must do all things necessary to ensure that the credit activities authorised by your licence are engaged in efficiently, honestly and fairly.	ASIC RG 205	<input type="checkbox"/>
4.2	Licence conditions - You must comply with the conditions on the licence.	ASIC RG 205	<input type="checkbox"/>

#	Requirements	Further guidance	Requirements completed
4.3	Credit legislation - You must comply with the credit legislation.	ASIC RG 205	<input type="checkbox"/>
4.4	Other obligations - You must comply with any other obligations that are prescribed by the regulations.	ASIC RG 205	<input type="checkbox"/>
4.5	Compliance systems - You must have adequate arrangements and systems to ensure compliance with your general conduct obligations under section 47 of the National Consumer Credit Protection Act, and a written plan that documents those arrangements and systems.	ASIC RG 205	<input type="checkbox"/>
4.6	Conflicts of interest - You must have in place adequate arrangements to ensure that your clients are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by you or your representatives.	ASIC RG 205	<input type="checkbox"/>
4.7	IDR - You must have an internal dispute resolution procedure that complies with standards and requirements made or approved by ASIC in accordance with the regulations, and which covers disputes in relation to the credit activities engaged in by you or your representatives.	ASIC CP 112	<input type="checkbox"/>
4.8	EDR - You must be a member of an approved external dispute resolution scheme.	ASIC CP 112	<input type="checkbox"/>
4.9	Compliance by representatives - You must take reasonable steps to ensure that your representatives comply with the credit legislation.	ASIC RG 205	<input type="checkbox"/>
4.10	Organisational competence - You must maintain the competence to engage in the credit activities authorised by the licence.	ASIC RG 206	<input type="checkbox"/>
4.11	Training and individual competence - You must ensure that your representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence.	ASIC RG 206	<input type="checkbox"/>
4.12	Risk management systems – You must have adequate risk management systems. (Not applicable to APRA regulated entities).	ASIC RG 205	<input type="checkbox"/>
4.13	Adequate resources - You must have available adequate resources (including financial, technological and human resources) to engage in the credit activities authorised by the licence and to carry out supervisory arrangements. (Not applicable to APRA regulated entities).	ASIC RG 207	<input type="checkbox"/>

#	Requirements	Further guidance	Requirements completed
4.14	Compensation arrangements - You must have adequate arrangements for compensating persons for loss or damage suffered because of a contravention of the National Credit Act by you or your representatives.	ASIC CP 125	<input type="checkbox"/>
5. Your other specific obligations as a licensee			
5.1	Maintain financial records in required form with required content.	NCCPA	<input type="checkbox"/>
5.2	Maintain trust accounts where money held on trust.	NCCPA	<input type="checkbox"/>
5.3	Comply with audit requirements.	NCCPA	<input type="checkbox"/>
5.4	Comply with ASIC notices, information requests.	NCCPA	<input type="checkbox"/>
5.5	Annual compliance certificate.	NCCPA	<input type="checkbox"/>
5.6	Do not deal with unlicensed (or unregistered) persons unless they are representatives (directors, employees or credit representatives) of a licensed or registered person, acting within the authority of their principal.	NCCPA	<input type="checkbox"/>
5.7	Your ACL number must be disclosed in documents prescribed by the regulations. (Note this only applies from 1 July 2012. If you have an AFSL, your ACL number will be the same). This will include responsible lending documents (see section 7 below), printed ads subject to the NCC, and any documents required to be created, produced, given or published by a provision of the NCC (e.g. pre-contractual statements, copy of contract, notices of variation, etc.).	NCCPA NCCPR	<input type="checkbox"/>
6. National Credit Code changes			
6.1	Amend your business purpose declaration.	NCCPA NCCPR	<input type="checkbox"/>
6.2	Amend your policies and procedures to include residential investment properties as regulated contracts in your records.	NCCPA NCCPR	<input type="checkbox"/>
6.3	Review your forms of mortgage to see if they cover goods that cannot be mortgaged under the National Credit Code.	NCCPA NCCPR	<input type="checkbox"/>
6.4	Review your loan processes to ensure that mortgages over such goods are not accepted.	NCCPA NCCPR	<input type="checkbox"/>

#	Requirements	Further guidance	Requirements completed
6.5	Amend your default notices.	NCCPA NCCPR	<input type="checkbox"/>
6.6	Introduce the new direct debit default notice.	NCCPA NCCPR	<input type="checkbox"/>
6.7	Amend your hardship process and your process for postponement of enforcement to include the new higher limits.	NCCPA NCCPR	<input type="checkbox"/>
6.8	Amend your hardship process and your process for postponement of enforcement to include the new response notices.	NCCPA NCCPR	<input type="checkbox"/>
6.9	New wording for notices when mortgaged goods are surrendered or taken into possession.	NCCPA NCCPR	<input type="checkbox"/>
6.10	Identify any new documents where comparison rate warning may need to be included. Revise marketing policies and procedures to capture this new requirement.	NCCPA NCCPR	<input type="checkbox"/>
6.11	Amend documents and procedures to update references from Consumer Credit Code to National Credit Code, including new section numbers where required.	NCCPA NCCPR	<input type="checkbox"/>
6.12	Amend your credit contract and guarantee forms to update warning.	NCCPR	<input type="checkbox"/>
6.13	Introduce new information statements ("Things you should know about your proposed credit contract", etc.) and other notices to replace UCCC information statements and notices.	NCCPR	<input type="checkbox"/>
6.14	Newspaper notifications of changes to rates and fees must be in national newspapers only.	NCCPA	<input type="checkbox"/>
7. Responsible lending			
7.1	Develop a credit guide and process for providing it to applicants.	NCCPA ASIC CP115	<input type="checkbox"/>
7.2	Develop a suitability assessment document that can be given to the applicant, and a process for providing it to applicants.	NCCPA ASIC CP115	<input type="checkbox"/>
7.3	If you are a credit assistance provider, develop a form of credit quote and credit proposal disclosure document, and process for providing them to applicants.	NCCPA ASIC CP115	<input type="checkbox"/>
7.4	If you are a credit assistance provider, do not profit from third party fees.	NCCPA ASIC CP115	<input type="checkbox"/>

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7.5	Process for making reasonable enquiries of the applicant's financial situation and requirements and objectives.	NCCPA ASIC CP115	<input type="checkbox"/>
7.6	Process for taking reasonable steps to verify the applicant's financial situation.	NCCPA ASIC CP115	<input type="checkbox"/>
7.7	Process for assessing if the credit contract will be unsuitable for the applicant if the contract is entered into.	NCCPA ASIC CP115	<input type="checkbox"/>

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