

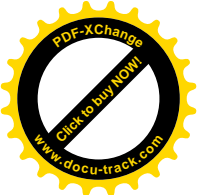
1 May 2009

**“IN CONFIDENCE”**

**Confidential Submission to Australian  
Government**

**Federal Treasury**

**Re: *National Consumer Credit Protection Bill 2009***



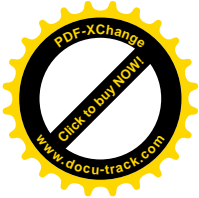
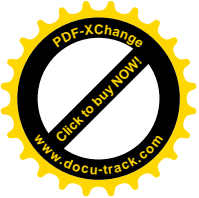
**This submission is made by the Institute in the interests of  
Members, the Australian Consumer, Government and all  
Stakeholders**

**Contacts regarding this submission:-**

**John Bracey - AIPD President**

**Alan P Crothers - AIPD Director OHS / Training**

**[www.aipd.com.au](http://www.aipd.com.au)**



Extract from Minister's website  
re: *National Consumer Credit Protection Bill 2009*



SENATOR THE HON NICK SHERRY  
MINISTER FOR SUPERANNUATION & CORPORATE LAW



To make the transition as smooth as possible with minimal disruption in the market, licensing will be **implemented in two phases**. Anyone who engages in credit activities will need to **register online with ASIC between 1 November 2009 and 31 December 2009**.

On becoming registered, a person must meet a range of obligations – they will be required to act efficiently, honestly and fairly, to comply with the law, including responsible lending conduct obligations and to become a member of an ASIC-approved External Dispute Resolution (or EDR) Scheme.

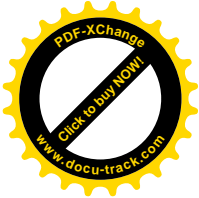
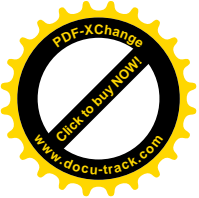
They will then **have six months to apply for an Australian Credit Licence**, between 1 January 2010 and 30 June 2010. To qualify for an Australian Credit Licence, applicants must demonstrate to ASIC that they have the necessary organisational capacity, competencies and skills.

The national credit laws will also include **enhanced ASIC enforcement powers** to support consumer protections in several key ways. This includes:

- **criminal penalties** for licensee misconduct with possible imprisonment for up to 5 years for those who lend contrary to the responsible lending requirements,
- **civil penalties** for licensee misconduct to enable ASIC to impose heavy fines of up to \$220,000 for an individual and \$1.1 million for a corporation,
- **infringement notices** (or fines) to enable ASIC to quickly act to penalise certain breaches of the law; and
- **consumer remedies**, which will enable consumers to seek redress for their loss and damage as a result of misconduct by a licensee, or when their credit is provided unlawfully.

## Main issues cited by AIPD for consideration

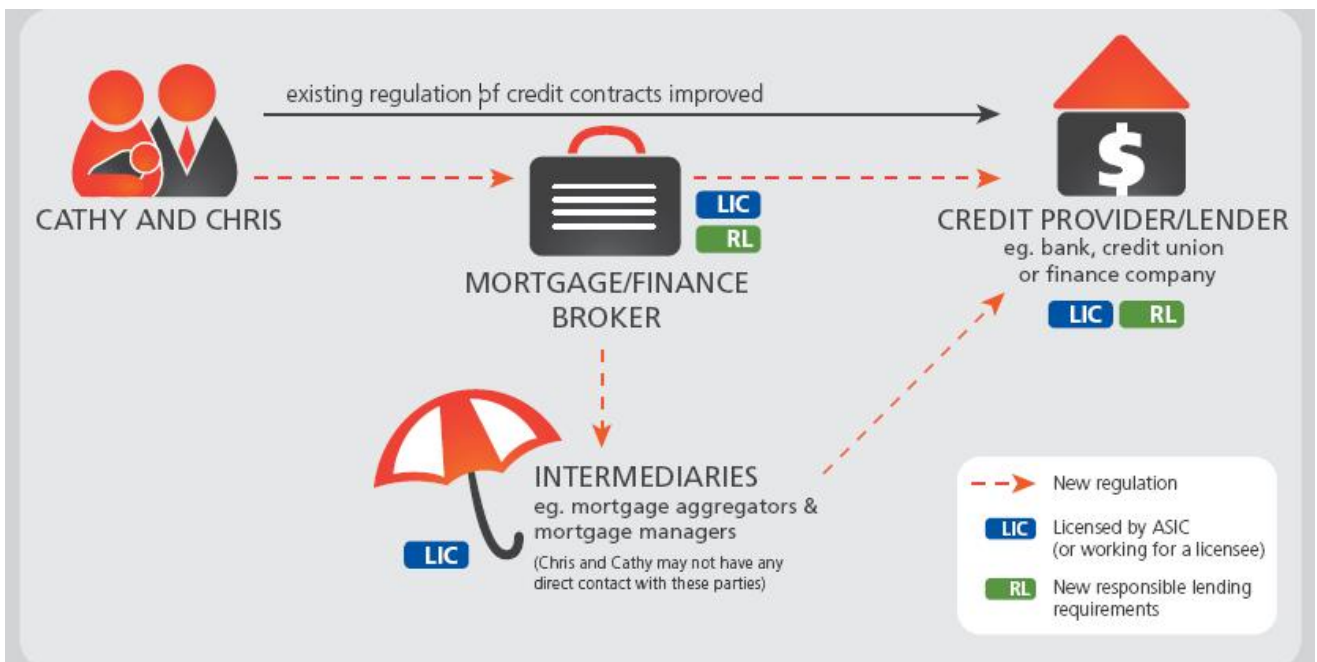
- **Extend provision of new Act to cover ALL activities of the Credit Providing Process from Point of Sale to Contract completion.** At present the Draft Bill addresses the integrity of the credit offer and deals with the proper disclosure of information, integrity and compliance standards assurance relating to the Licensed Credit Provider, but does not suitably address the conduct of the Credit Provider to contract completion.
- **Specifically, we submit that the Draft Bill provisions should be extended to cover the Mercantile processes** (Debt Management, Debt Collection, Repossession of Property & issue of Court Process) of the Licensed Credit Provider, Further that these are included as reportable functions and form part of the disclosure requirements when applying for a Licence with the ASIC.



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- Transparency of the Credit Provider's operating standards and assurance of quality systems and legal compliance should be extended to cover their mercantile policy, mercantile activities, investigation processes and education and training standards of personnel in these fields;
  - Mercantile and investigation services in Australia are essentially poorly regulated (notwithstanding legislation in some States) and grossly inadequate and inconsistent, yet such services are an integral component of the Credit Providing Process and not addressed in the new Draft Bill. The obligation of compliance and quality operating standards should be placed upon the Licensed Credit Provider to ensure their mercantile personnel and investigation personnel (internal and external), meet industry professional standards, Codes of Practice; ensure personnel are suitably trained; and hold the required national (AQF) qualifications and meet all legal requirements in the interest of the Australian consumer.
  - Such Credit Provider activities are presently not addressed in current Financial Services legislation or current State mercantile/investigation licensing regimes. Specific provisions in the new Act and Regulations would provide immediate improvement and uniformity in standards in these activities - nationally. This has never been achieved before by government or the private sector.
  - To achieve such important compliance in operating standards in the Credit Provider's mercantile activities would appear to be readily achievable by a simple addition to the current Draft Bill, and incorporating the required Standards in the Compliance and Licensing Provisions.

## # Purchase of Credit Transaction Process as described by Minister in Consumer Credit Information Brochure

(Note: No provision for Mercantile / Debt Collection process, Repossession of Goods in this Scheme or in the Draft Bill)



## AIPD Proposal of Process

(Note: Specific inclusion of the Mercantile / Debt Collection process, repossession of goods in the Scheme for compliance of Credit Licensees and the benefit of consumers and Government).

Inclusion of these important roles in the current Draft Bill as a part of the Licensed Credit Providers 'operational standards' requirements should be mandatory in the Licensee's obligations under the new Act and any Regulations and be clearly denoted in any 'Operational Plan' document supporting any application to ASIC for the proposed Federal Credit Providers Licence.

The obligation of quality standards cannot just cover the sale of the credit to a consumer but also must reflect and include the Credit Provider's (Licensee's) commitment to the entire process - from Point of Sale to the Completion of the Contract.

Debt management and Debt collection process standards and Repossession of Property Standards need to be met by the Licensee as it is foreseeable and realistic that often consumers will fail (resultant from a plethora of reasons) to



meet their contractual commitments. Failure of the Credit Provider to disclose such standards may be viewed as a material non-disclosure and can lead to possible unconscionable conduct by the Credit Provider's debt management / collection staff and/or externally engaged Mercantile Agents.

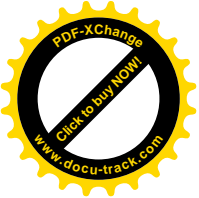
Most Credit Providers in Australia (*except NSW where qualifications are required under state CAPI Licensing*), fail to hold the appropriate national qualifications under AQF for mercantile activities and fail to meet industry 'best practice' compliance standards. Within the new Draft legislation, the Federal Government has an obligation to the consumer to ensure [the consumer](#) is:

- 1) made aware of the Credit Provider's standards, including their debt collection standards and policy as part of the proposed 'Credit Guide' requirement by the Licensee (or approved Agent), at point of sale;
- 2) protected from the possibility of unfair, unacceptable or inappropriate debt collection processes that are sometimes applied currently by Credit Providers; and to ensure uniformity across Australia, the use of formally qualified personnel, meeting **Australian** educational and industry practice standards. Presently many Credit Providers utilise unqualified contracted personnel (and firms) from overseas to avoid Australian laws;
- 3) privy to the Standards of application by which the new '*National Consumer Credit Protection Bill 2009* requires Licensed Credit Providers to meet and operate.

This information should be available to the consumer at the point of sale and form part of the 'Credit Guide' proposed in the Draft legislation. The consumer may then fully consider the Credit Provider's offer of credit, allowing the consumer to make an informed decision on becoming involved with a particular Credit Provider.

Failure to include the debt collection process as part of the Credit Provider's minimum operational standards in any Licensing regime is logically incomplete. This is also unfortunately, an omission in the present Financial Services industry legislation and requires rectification.

As intended in the Draft Bill, the consumer must be able to secure satisfaction that the Credit Provider is credible and any Licensee under the new Act and Regulations, meets specific national standards **in all areas of the Credit Provision activity - not just certain parts.** The new Bill must include '*holistic credibility*' and a compliance framework that covers all areas of the credit process, not just the sale. We are of the view that it is gravely important to the consumer that they are assured they will not be treated unfairly or inappropriately by the Credit Provider's internal debt management staff or external agents, should they be unable to meet the contract repayments and become subjected to the Credit Provider's mercantile processes.

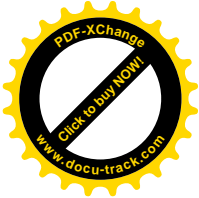
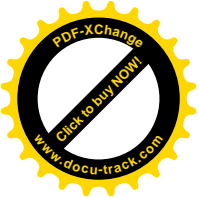


To date, no such disclosure of operating standards or assurance provision in regard to the debt management process applied by the Credit Provider exists in any law in Australia for the information or benefit of the consumer. This integral part of the credit / lending / financial services process is not transparent and needs to be under the new Act.

The mercantile process cannot be excluded from the ***National Consumer Credit Protection Bill 2009*** and the same requirements of integrity should be applied in accordance with the other roles already addressed in the Draft Act.

Specifically in the mercantile/debt management processes, we submit that under the new ***National Consumer Credit Protection Bill 2009 (AND Regulations where appropriate):-***

1. **ALL** debt management/debt collection staff and all external mercantile agents **MUST** be suitably trained and at least hold industry qualifications in order to engage in their function within the credit provision process; such training to include the holding of minimum qualifications under the AQF, (i.e. **Certificate III in Financial Services (Mercantile) FNS30404** qualification, which is part of the **Financial Services Training Package**) as well as meeting the industry Code of Practice and further internal training provided by the employer in accordance with OH&S law. This course is also funded or partly funded in several States and a formal requirement in NSW CAPI Licensing. The qualification needs to be applied nationally for all persons involved in the debt management and collection process, including repossessions, whether working for a credit provider internally or externally.
2. ALL personnel involved in the Credit Provider's operational system (as per Draft Bill requirements, must be suitably qualified) and also be a participant to an accepted Dispute Resolution Scheme (DRS) / EDR Scheme. This should include external mercantile / debt collection agents. *Refer:- **National Code of Practice for Investigators & Mercantile Agents in Australia** [www.aipd.com.au](http://www.aipd.com.au) ) This Code provides a three (3) tier DRS process, catering for all stakeholders in relation to settlement of complaints and disputes as well as a compliance mechanism for mercantile providers. None of this is included in the current Draft Bill.*
3. Mercantile activities form part of the Credit Providers product and is an 'after sales' activity. Such activities also form part of the Financial Services industry yet notwithstanding the diligent requirement in this industry for those licensed to 'sell' finance and insurance' being required to hold the AQTF qualification Certificate IV in Financial Services, be a member of an industry body and comply with compulsory CPD requirements to maintain a Financial Services License, there is nothing at all applied to the opposite end of the contract process – specifically, personnel engaging in mercantile and investigation processes for the Credit Provider, against their customer.



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Whilst the previously revised Financial Services Industry legislation failed to include these extremely important functions as part of the Financial Services licensing process, the new ***National Consumer Credit Protection Bill 2009*** can readily rectify this omission by including the recommended minimum qualification standards for all persons involved in the debt management, debt collection and repossession and investigation processes. This would be consistent with the Draft Bill's requirements at ***Division 5 - ^LIC170 (1) (g)***

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## TIMELINES

The above is readily achievable within the published timeframes of the new Licensing requirements. The AQF qualification Certificate III in Financial Services (Mercantile) FNS30404 has been available since May 2006 and is even currently partly funded in NSW and Qld via the State Training Authority Schemes. Traineeships are also available.

Training funding in these areas for new applicants of the proposed Federal Credit Providers Licence may also be assisted via the DEST, DEEWR PPP Scheme and also encouraged to be included in other State/Territory VET funding Schemes on the basis of current deficiency and 'great need' for persons to be suitably qualified, in the interests of the consumer and all stakeholders in the Credit Provider and Financial Services Industry.

Many persons already working in debt collection roles in the Financial Services Industry may secure the qualification affordably and expediently via RPL process under the DEST national training scheme.

## COMPLIANCE

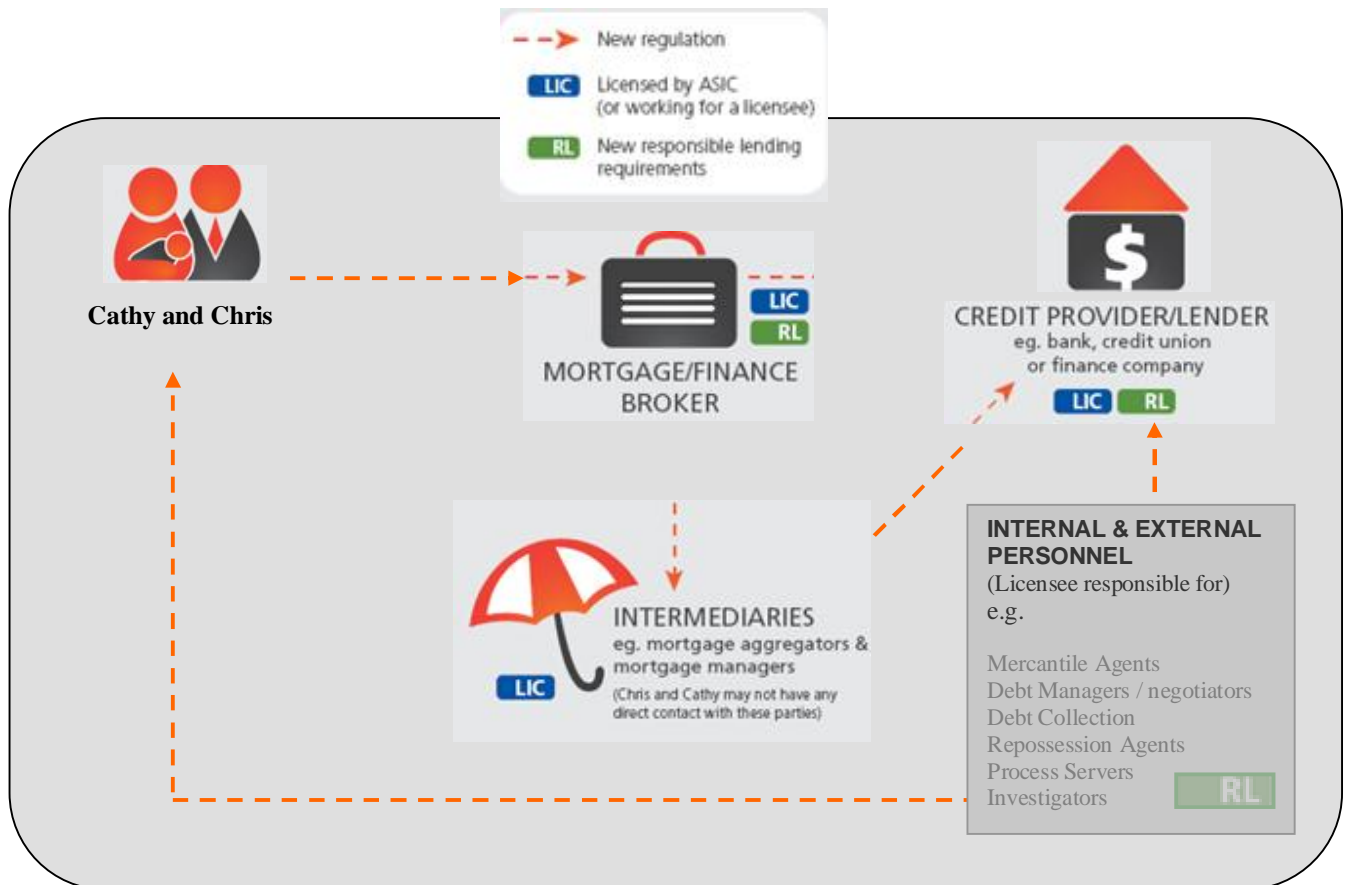
Under the *National Consumer Credit Protection Bill 2009* the applied standards to personnel involved in the debt management and debt collection processes of the credit provision process would be markedly improved, in the interest of the consumer and government and such standards improved expediently on a national basis. This has never been achieved before in Australia and would be a major application of due diligence by the Federal Government on behalf of the Australian consumers. No other legislation has been capable of such improvement and compliance in relation to these activities.

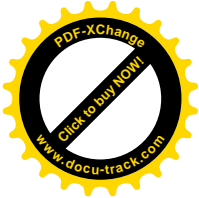
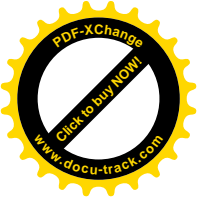
Failure for Credit Providers to ensure optimum standards of application in these areas to consumers would mean a potential loss of the Credit Provider's licence. Therefore the Credit Provider is likely to ensure that such important personnel are qualified, suitably trained and operate with transparency and integrity and that no 'stand-over' or inappropriate or unreasonable actions are perpetrated against the consumer in relation to recovery of monies or negotiating a repayment scheme or repossession of property. **Current Financial Services legislation and State/Territory based Commercial Agent Licensing regimes fail the consumer miserably in relation to these activities.**



## AIPD Proposal of Process

(Addition of responsibility of Credit Provider for their mercantile activities)





## Suggestive relating of Sections under Draft Bill for consideration

<b>Division 3—Trust accounts of credit service licensees</b>	<b>81</b>
^LIC382	When this Division applies..... 81
^LIC385	Obligation for credit service licensees to maintain trust account ..... 81
^LIC390	Obligations in relation to trust account money..... 82
^LIC392	Obligation to give trust account statement and trust account audit report..... 83
^LIC395	Time of giving trust account statement and trust account audit report..... 84

**External Debt Collectors should be included in the Trust Account Provisions and ensure they are qualified – Regulations to allow for minimum qualifications in accordance with Australian Qualifications Framework (AQF) :- presently being (Certificate III in Financial Services (Mercantile) FNS30404) and also hold AQF AQTF FNS unit qualification FNSCONV503A *Establish, manage and administer trust accounts***

**Chapter 2** Licensing of persons who engage in credit activities

**Part 2-2** Australian credit licences

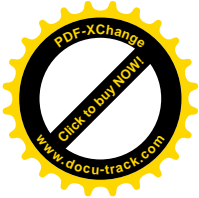
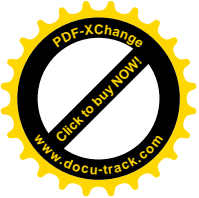
**Division 3** How to get an Australian credit licence

**Section ^LIC156**

- (a) the matters set out in paragraphs (2)(a) to (g); and
  - (b) any other matter ASIC considers relevant;
- in relation to that person.

*ASIC may request information or audit report from applicant*

- (4) ASIC may give a written notice to a person who has applied for a licence requesting the person to provide, within the time specified in the notice, either or both of the following:
  - (a) additional information specified in the notice in relation to any matters that ASIC may have regard to in deciding whether to grant the licence;



## **^LIC155 When a licence may be granted—applicants other than ADIs**

*When ASIC must grant a licence*

- (1) ASIC must grant a person (other than an ADI) a licence if:
  - (a) the person has applied for the licence in accordance with section ^LIC150; and
  - (b) ASIC has no reason to believe that the person is likely to contravene the obligations that will apply under section ^LIC170 if the licence is granted; and
  - (c) ASIC has no reason to believe that the person is not a fit and proper person to engage in credit activities; and
  - (d) the person has provided ASIC with any additional information or audit report requested by ASIC under subsection (4); and
  - (e) the person meets any other requirements prescribed by the regulations.

## **^LIC161 Australian credit licence numbers**

- (1) ASIC must allocate each licence a unique Australian credit licence number when it is granted.
- (2) If a person who is granted a licence holds an Australian financial services licence, the Australian credit licence number that ASIC gives to the licence held by that person must be the same number as that person's Australian financial services licence number.
- (3) ASIC must give the licensee written notice of the Australian credit licence number.

### **Chapter 2 Licensing of persons who engage in credit activities**

#### **Part 2-2 Australian credit licences**

#### **Division 3 How to get an Australian credit licence**

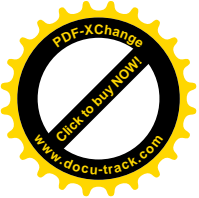
#### **Section ^LIC156**

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- in relation to that person.

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  - (a) additional information specified in the notice in relation to any matters that ASIC may have regard to in deciding whether to grant the licence;



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**Mercantile activities should be included in licensing requirements.** Credit Provider applicants to provide evidence to show they have a quality process in place to satisfy standards and operational compliance. (Details of their Customer Default Process and supporting details of staff qualification standards, SOP's., actions relating to debt management, debt collection, repossession activities, monies held in trust.

Credit Provider Applicants should be required to submit a “Customer Default Plan” including therein their ‘Mercantile Plan’

Under the Licence, the Licensee has obligations and responsibility for their mercantile operations, whether using internal staff or external staff.

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#### **Division 4—Other definitions**

##### **<sup>^</sup>DEF10 Meaning of *approved external dispute resolution scheme***

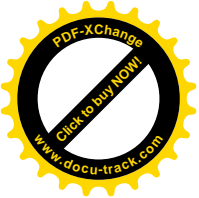
- (1) A person is a member of an *approved external dispute resolution scheme* if the person is a member of one or more external dispute resolution schemes that:
  - (a) is, or are, approved by ASIC in accordance with the regulations; and
  - (b) covers, or together cover, disputes in relation to the credit activities engaged in by the person or its representatives.
- (2) Regulations made for the purpose of paragraph (1)(a) may also deal with the variation or revocation of approvals given by ASIC.

##### *Regulations in relation to internal dispute resolution procedures*

- (3) Regulations made for the purposes of paragraph (1)(h) may also deal with the variation or revocation of:
  - (a) standards or requirements made by ASIC; or
  - (b) approvals given by ASIC.

**Suggest AIPD discussions with Treasury & ASIC re: adopting National Code of Practice for Investigators & Mercantile Agents in Australia 2008 and its DRS Resolution Scheme. Register Code, compulsory Certification and / or DRS (EDR) option for Mercantile and Investigative operators. This will allow for industry based management and compliance before referral to ASIC and using ASIC resources unnecessarily.**

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## Division 4—Conditions on an Australian credit licence

### <sup>^</sup>LIC165 The conditions on the licence

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

- (1) ASIC may, at any time:
  - (a) impose conditions, or additional conditions, on a licence; and
  - (b) vary or revoke conditions imposed on a licence.
- (2) ASIC may do so:
  - (a) on its own initiative; or
  - (b) if the licensee lodges an application with ASIC for the imposition, variation or revocation.

*Condition in relation to credit activities authorised*

- (6) ASIC must ensure that the licence is subject to a condition that specifies the credit activities or classes of credit activities that the licensee is authorised to engage in.

*Regulations may prescribe conditions*

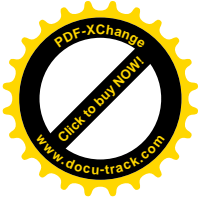
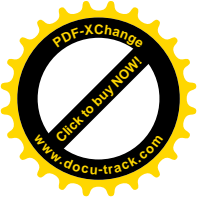
- (7) The licence is subject to such other conditions as are prescribed by the regulations. However, ASIC cannot vary or revoke those conditions.

**Mercantile activities should be included in licensing requirements. Credit Provider applicants to provide evidence to show they have a quality process in place to satisfy the required standards and operational compliance. (Details of their Customer Default Process and supporting details of staff qualification standards, SOP's., actions relating to debt management, debt collection, repossession activities, investigators and monies held in trust).**

**Credit Provider Applicants should be required to submit a “Customer Default Plan” including therein their ‘Mercantile Plan’.**

**Under the Licence, the Licensee has obligations and responsibility for their mercantile operations, whether using internal staff or external staff.**

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## Division 5—Obligations of licensees

### <sup>^</sup>LIC170 General conduct obligations of licensees

#### *General conduct obligations*

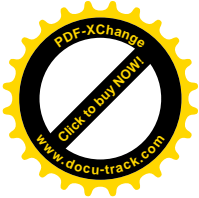
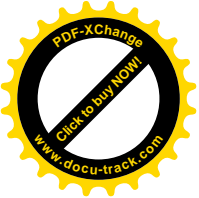
- (1) A licensee must:
  - (a) do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly; and
  - (b) have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives; and
  - (c) comply with the conditions on the licence; and
  - (d) comply with the credit legislation; and
  - (e) take reasonable steps to ensure that its representatives comply with the credit legislation; and
  - (f) maintain the competence to engage in the credit activities authorised by the licence; and
  - (g) ensure that its representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence; and
  - (h) have an internal dispute resolution procedure that:
    - (i) complies with standards and requirements made or approved by ASIC in accordance with the regulations; and
    - (ii) covers disputes in relation to the credit activities engaged in by the licensee or its representatives; and
  - (i) be a member of an approved external dispute resolution scheme; and
  - (j) have compensation arrangements in accordance with section <sup>^</sup>LIC175; and
  - (k) have adequate arrangements and systems to ensure compliance with its obligations under this section, and a written plan that documents those arrangements and systems; and

Extend to **ALL** Credit Provider functions – must include **Debt Management personnel & Debt Collection personnel, agents and Repossession Agents and Investigators**

(All Mercantile Activities as well as Investigators – internal or external)

(g) ensure that its representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence; and

(k) have adequate arrangements and systems to ensure compliance with its obligations under this section, and a written plan that documents those arrangements and systems; and



- (l) unless the licensee is a body regulated by APRA:
  - (i) 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; and
  - (ii) have adequate risk management systems; and
- (m) comply with any other obligations that are prescribed by the regulations.

**Mercantile activities should be included in ASIC licensing requirements.** Credit Provider applicants to provide evidence to show they have a quality process in place to satisfy the required standards and operational compliance. (Details of their Customer Default Process and supporting details of staff qualification standards, SOP's., actions relating to debt management, debt collection, repossession and investigation activities, and monies held in trust.

Credit Provider Applicants should be required to submit a “Customer Default Plan” including therein their ‘Mercantile Plan’ AS PART OF THEIR WRITTEN PLAN as identified above at *Division 5, ^LIC170., (1), (k)*.

Under the Licence, the Licensee has obligations and responsibility for their mercantile operations and investigators, whether using internal staff or external staff.

## EXPOSURE DRAFT

Responsible lending conduct Chapter 3  
Debt collectors Part 3-4  
Guide to this Part Division 1

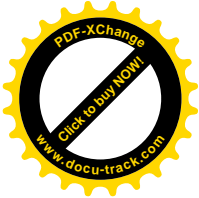
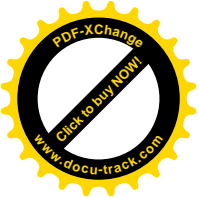
Section ^R400

- 1 **Part 3-4—Debt collectors**
- 2 **Division 1—Guide to this Part**
- 3 **^R400 Guide to this Part**

- 4
- 5
- 6
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- 8
- 9

This Part has rules that apply to a person who is authorised to collect repayments from a debtor on the credit provider’s behalf. These rules are aimed at better informing consumers.

Division 2 requires the person to give the person’s credit guide to the consumer. The credit guide has information about the person.



Section ^R430

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1 **Division 2—Credit guide of debt collectors**

2 **^R430 Credit guide of debt collectors**

3 *Requirement to give credit guide*

4 (1) A person who is a licensee or credit representative must, as soon as  
5 practicable after it becomes authorised by a credit provider to  
6 collect, on the credit provider's behalf, repayments made by a  
7 debtor under a credit contract, give the debtor the person's credit  
8 guide in accordance with subsection (2).

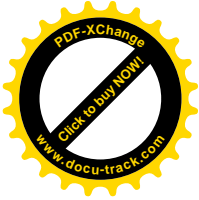
9 Civil penalty: 2,000 penalty units.

- 10 (2) The person's credit guide must be in writing and contain the  
11 following:
- 12 (a) the person's name and contact details;
  - 13 (b) if the person is a licensee—the person's licence number;
  - 14 (c) the name of the approved external dispute resolution scheme  
15 of which the person is a member and information about a  
16 consumer's rights under that scheme;
  - 17 (d) if the person is a licensee—information about:
    - 18 (i) the kind of compensation arrangements the person has  
19 in place; and
    - 20 (ii) whether those arrangements satisfy the requirements for  
21 compensation arrangements under section ^LIC175.

**No suitable references to Debt Collection standards and compliance, EDR (DRS) Scheme or complaint provision regarding debt management or debt collection process to consumer.**

**Suggest AIPD discussions with Treasury & ASIC re: adopting National Code of Practice for Investigators & Mercantile Agents in Australia 2008 and consideration of its DRS Resolution Scheme. Register Code, compulsory Certification and / or DRS (EDR) option for Mercantile and Investigative operators. This will allow for industry based management and compliance before referral to ASIC and using ASIC resources unnecessarily. If membership of an ASIC authorised industry association/representative body and the issue of a Practising Certificate are mandatory,(consistent with most other professional, legal and quasi-legal vocations), this will allow the ability to police the compliance of the mercantile and investigative activities within the Financial Services and Credit Provider industry. See AIPD web site [www.aipd.com.au](http://www.aipd.com.au) for National Code of Practice for Investigators and Mercantile Agents in Australia 2008.**





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## REFERENCES TO NATIONAL CREDIT CODE

# EXPOSURE DRAFT

Schedule 1 National Credit Code

Part 2 Credit contracts

Division 1 Negotiating and making credit contracts

Section <sup>14</sup>

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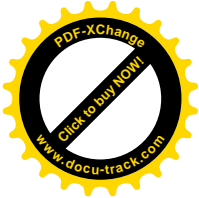
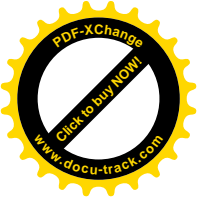
1 <sup>14</sup> Precontractual disclosure

### No references to Default Process in the Pre-contractual Disclosure Information

Suggest addition to Pre-contractual Disclosure Information - perhaps after "Default rate" information re: Default Process Summary to inform a consumer (potential customer) of the Credit Providers Collection Default & Collection Process, standards and compliance requirements.

#### *Default rate*

- (11) The contract document must contain:
- (a) if the contract is a contract under which a default rate of interest may be charged when payments are in default—a statement to that effect and the default rate and how it is to be applied; and



#### **^144 False or misleading representations**

- (1) A person must not make a false or misleading representation in relation to a matter that is material to entry into a credit contract or a related transaction or in attempting to induce another person to enter into a credit contract or related transaction.

Criminal penalty: 50 penalty units.

- (2) It is a defence to prosecution for an offence against this section if a person charged proves that he or she reasonably believed that the representation was not false or misleading.

*Civil effect*

- (3) A person who suffers loss as a result of a contravention by another person of this section may recover the amount of the loss from that other person or any other person involved in the contravention.

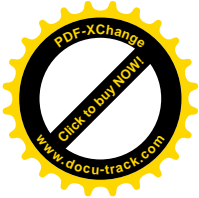
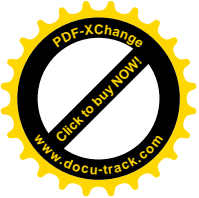
#### **^145 Harassment**

A credit provider or supplier must not harass a person in attempting to get that person to apply for credit or to enter into a credit contract or a related transaction.

Criminal penalty: 100 penalty units.

No references or provisions re: Harassment or False or Misleading Representations by Credit Provider in relation to the Credit Providers debt management or debt collection, investigation and/or repossession activities.

Suggest provision be included for Credit Provider, their debt collector or agent - *not permitted to unduly harass a debtor*; and requirements in the Regulations for Reasonable Representation standards not to be breached (R'R's set by ASIC). Also set penalties for breaches thereof by Credit Provider, debt collector, investigator or agent and joint breach provisions.



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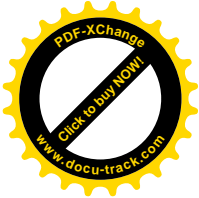
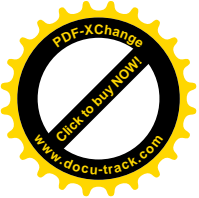
### **^163 Copies of contracts and other documents**

- (1) A credit provider must in accordance with this section, at the written request of a debtor, mortgagor or guarantor, provide to the debtor, mortgagor or guarantor a copy of:
  - (a) the credit contract, mortgage or guarantee; or
  - (b) any credit-related insurance contract in the credit provider's possession; or
  - (c) a notice previously given to the debtor, mortgagor or guarantor under this Code.
  
- (2) The copy must be provided:
  - (a) within 14 days, if the original came into existence one year or less before the request is given; or
  - (b) within 30 days, if the original came into existence more than one year before the request is given.

Note: Section ^173 provides for the date on which notice is taken to be given.

**Suggest inclusion of requirement for Credit Provider to supply in the above disclosure material, a Summary of 'Default Process' so the consumer is aware of what to expect in the event of a minor default, repeated default, serious default; and references to the Credit Provider's policy on utilisation of personnel in this regard (e.g. their disclosure of use of internal personnel/external personnel for these activities and that they are qualified and meet national and industry standards);**

**Further, when in the case of engagement of an external agent, a requirement for the Credit Provider to formally advise the debtor in writing as to the identity, engagement and confirmation of the authorisation of the agent. This to be in ^163 advice as well as a compliance requirement for the Credit Provider, covered in the Regulations.**



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## Part 13—Principal definitions

### <sup>^</sup>186A Principal definitions

(1) In this Code:

#### Suggest inclusion of:-

**“debt management personnel”** - suitably qualified person or firm employed, authorised or instructed by the Credit Provider to engage in specified debt management. Assistance, debt mitigation and debt collection duties on behalf of the Licensee; *(Assuming that a Credit Provider is interpreted as a person or legal entity that sells goods on credit to clients.)*

**“debt collector”** – suitably qualified person or firm employed, authorised or instructed by the Credit Provider to engage in specified debt collection duties on behalf of the Licensee; *(Assuming that a Credit Provider is interpreted as a person or legal entity that sells goods on credit to clients.)*

**“debt collection personnel”** – suitably qualified person or persons or firm employed, authorised or instructed by the Credit Provider to engage in specified debt collection duties on behalf of the Licensee; *(Assuming that a Credit Provider is interpreted as a person or legal entity that sells goods on credit to clients.)*

**“mercantile agent”** - suitably qualified person or firm employed, authorised or instructed by the Credit Provider to engage in specified mercantile duties on behalf of the Licensee. Mercantile duties include debt collection, repossession of property, and issue of court process; *(Assuming that a Credit Provider is interpreted as a person or legal entity that sells goods on credit to clients.)*

**“investigator”** - suitably qualified person or firm employed, authorised or instructed by the Credit Provider to engage in specified investigative duties on behalf of the Licensee, intermediary or agent, but only in relation to a debtor matter relating to the Credit Contract.



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