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# Update Summary

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**UPDATE 15**

**MARCH 2014**

## **NATIONAL CREDIT REGULATION**

**ASIC and Gadens Lawyers, Sydney**

### **Highlights**

- Commentary has been updated in chapters 5, 7, 9, 15, 17, 18 and 27.
- Cross-references have been added from the *National Consumer Credit Protection Regulations 2010* (Cth) to the *National Consumer Credit Protection Act 2009* (Cth).
- Amendments to the extracts of the *Competition and Consumer Act 2010* (Cth) and the *Credit (Commonwealth Powers) Act 2010* (NSW).
- New ASIC Material including Executive Summaries, Regulatory Guides, Class Orders and Reports.

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## COMMENTARY

### Chapter 5: Pre-NCCP regulation (including continuing regulation)

#### [5.2010] State unique provisions – Introduction

Commentary has been inserted to reflect that National Consumer Credit Protection Act 2009 (NCCP) interest rate caps have now commenced and to discuss developments with debt collection regulation.

### Chapter 7: Transition from UCCC to NCC

#### [7.2010] NCC changes to the UCCC

Existing commentary has been amended to acknowledge the passage of time under the transition and to clarify default procedures and relevant Forms applicable.

### Chapter 9: Registration and licensing

#### [9.1550] What is credit assistance?

Existing commentary has been amended to outline the changes introduced by the updating of Regulatory Guide 165: Licensing: Internal and external dispute resolution.

### Chapter 15: Responsible lending – unsuitable loans

#### [15.1550] ASIC Report 365: Hybrid securities

New commentary has been inserted regarding the publication by ASIC of Report 365: *Hybrid securities*. According to the media release which accompanied the publication:

ASIC today released Report 365 *Hybrid securities* (REP 365) which discusses recent offers of hybrids in Australia.

There has been more than \$18 billion of hybrids issued by banks and corporates since November 2011. There were approximately 75,000 investors in hybrid securities last year, two thirds of whom were self-managed superannuation funds (source: Investment Trends).

ASIC has reviewed the selling methods and sales processes of issuers and brokers. REP 365 discusses the findings of the review in detail.

'Investor education is critical while those distributing these products need also to do the right thing,' ASIC Commissioner John Price said.

'We have responded to the increased issuance and popularity of hybrids by working with issuers and their advisers, as gatekeepers, to help improve prospectus disclosure and ensure selling messages are not misleading.

'But there is more work to be done and we will investigate any reports of misconduct (e.g., misleading promotion or inappropriate comparisons with other products), crackdown on misleading ads, and consider what names or labels hybrid products are given to ensure they do not confuse investors.'

#### **[15.2010] Summary of RG 209: Responsible lending conduct and**

#### **[17.1270] Summary of RG 209: Providing a copy of the assessment**

Existing commentary has been amended to outline the changes introduced by the updating of Regulatory Guide **209**: Responsible lending conduct.

### **Chapter 18: Enhancement Act**

Commentary throughout the chapter has been amended to reflect regulations promulgated for reverse mortgages and the ASIC Class Order addressing small amount contracts and interest rate caps (SACCs).

### **Chapter 27: Other laws applying to the finance industry**

#### **[27.1010] Other legislation and regulation**

The table identifying key requirements under relevant legislation has been amended in light of recent legislative activity.

## **LEGISLATION**

### **National Consumer Credit Protection Act 2009**

Comprehensive cross-references have been added from the *National Consumer Credit Protection Regulations 2010* (Cth) to the *National Consumer Credit Protection Act 2009* (Cth).

### **Competition and Consumer Act 2010 (extracts)**

The extracts of the *Competition and Consumer Act 2010* (Cth) have been amended by the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Cth). For our purposes, the amending Act inserted Ch 6, being application and transitional provisions relating to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*.

### **Credit (Commonwealth Powers) Act 2010 (NSW)**

The *Credit (Commonwealth Powers) Act 2010* (NSW) has been amended recently by the:

National Credit Regulation

- *Civil and Administrative Legislation (Repeal and Amendment) Act 2013* (NSW) which commenced on 1 January 2014; and
- *Statute Law (Miscellaneous Provisions) Act (No 2) 2013* (NSW) which commenced on 3 January 2014.

## **ASIC MATERIALS**

### **ASIC Executive summaries**

The balance of the summaries for 2013 and the first for 2014 have been included.

### **Regulatory Guides**

#### **[RG 234] Advertising financial products and services (including credit): Good practice Guidance**

This guide is for promoters of financial products, financial advice services, credit products and credit services, and publishers of advertising for these products. It contains good practice guidance to help promoters comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct.

### **Class orders**

The following Class Orders have been published with this update:

- 10/517: Internal dispute resolution (credit – unlicensed COI lenders) and
- 13/818: Certain small amount credit contracts.

### **Reports**

#### **[REP 365] Hybrid securities**

This report which has been reproduced discusses offers of hybrid securities in the Australian market since the global financial crisis, and in particular, the extensive issuance from November 2011 to June 2013.

## **PUBLIC CONSULTATION ON CONSUMER CREDIT REGULATIONS**

Subscribers are advised that, on 7 February 2014, the Assistant Treasurer, Senator the Hon Sinodinos AO, released for public consultation draft regulations to enhance consumer protection for those who may need to borrow “payday” loans. According to the Media Release which accompanied the publication:

Some lenders have been attempting to circumvent the cap on what can be charged on these loans as well as the licensing and responsible lending requirements. The draft regulations clarify the law to prevent providers from being able to circumvent the cap on costs and responsible lending obligations.

They also make clear boundaries between the small amount and medium amount credit contracts. Industry is uncertain that the wording of the law gives effect to this and the amendment will ensure that the small amount lending cap is consistently applied.

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