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Update Summary

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UPDATE 16

AUGUST 2014

NATIONAL CREDIT REGULATION

ASIC and Gadens Lawyers, Sydney

Highlights

- Cross-references have been added from the *National Consumer Credit Protection Regulations 2010* (Cth) to the *National Consumer Credit Protection Act 2009* (Cth).
- New ASIC Material including Executive Summaries, Regulatory Guides, Class Orders and Reports.

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LEGISLATION

National Consumer Credit Protection Act 2009

The *National Consumer Credit Protection Act 2009* (Cth) (NCCPA) has had minor amendments made by the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (Cth) (the amending Act). The relevant amendments were consequent upon the commencement of Sch 10, item 35 on 1 July 2014.

According to the Explanatory Memorandum that accompanied the Bill, the amending Act amends approximately 250 Acts across the Commonwealth to support the implementation of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act). The later Act, in turn, replaced the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act) as the primary financial legislation of the Commonwealth from 1 July 2014.

National Consumer Credit Protection Regulations 2010

The *National Consumer Credit Protection Regulations 2010* (Cth) has been amended by the *National Consumer Credit Protection Amendment (Small Amount Credit Contracts) Regulation 2014* (Cth), being SLI 89 of 2014 which commenced on 18 June 2014. The amending instrument supports the reforms introduced by the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Cth). Pursuant to the Explanatory Statement that accompanied the instrument, the amendments:

- clarify the boundaries between small amount and medium amount credit contracts, to ensure that the small amount lending cap applies to contracts where the consumer receives a maximum amount of \$2,000 in their hand, with prescribed fees and charges not included in this;
- confirm that credit providers and third parties cannot rely on the provision for short-term credit in the Credit Act which provides that the National Credit Code (Schedule 1 to the Credit Act) does not apply to the provision of short-term credit contracts. Some credit providers are using these provisions to justify remaining unlicensed while levying fees and charges in excess of the cap on costs for small amount credit contracts. The Regulation ensures that where short-term credit is provided to consumers, no additional amount can be charged above five per cent of the amount of credit, and interest is capped at 24 per cent;
- ensure that credit providers (other than authorised deposit-taking institutions) are only able to charge, for continuing credit contracts, an initial fee of \$200, and \$125 per annum in any subsequent years, per client, regardless of the number of continuing credit contracts the client enters into; and
- address avoidance practices where people establish both a credit provider and brokerage/management arm to their business, in which the broker only arranges credit with the related credit provider, in order to charge brokerage fees that are not included in the calculation of the amount payable under the cap. This has the effect of prohibiting persons who provide a service to a

debtor in relation to a small amount credit contract from receiving payments for services they arrange in relation to a small amount credit contract.

As a result of this amendment, cross references have been updated in the *National Consumer Credit Protection Act 2009* (Cth) and the Code.

Cross references have also been added or amended pursuant to ASIC:

- updating RG 206 Credit licensing: Competence and training; and
- updating RG 96 Debt collection guideline for collectors and creditors (joint publication with ACCC).

Crimes Act 1914 (extracts)

Section 85ZZ(2) of the *Crimes Act 1914* (Cth) has had minor amendments made by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth), which commenced in March 2014.

ASIC MATERIALS

ASIC Executive summaries

The ASIC Executive summaries for February 2014 – June 2014 have been included.

Regulatory Guides

- **[RG 96]** Debt collection guideline for collectors and creditors (joint publication with ACCC) was reissued July 2014 and has been reproduced;
- **[RG 139]** Approval and oversight of external; dispute resolution schemes was reissued June 2013 and has been reproduced;
- **[RG 165]** Licensing: Internal and external dispute resolution was reissued June 2013 and has been reproduced; and
- **[CO 14/41]** Extension of transitional credit hardship provisions, issued February 2014 has also been reproduced.