



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 204

# Applying for and varying a credit licence

December 2009

### **About this guide**

This guide is for people who want to apply for a credit licence that authorises them to engage in credit activities.

This guide explains how to make an application for a credit licence using the online application. It also explains how to apply for a variation of a credit licence if your business changes after you are granted a licence.

This guide also provides a roadmap to other guidance that is useful for credit licensees and applicants for credit licences.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued on 18 December 2009 and is based on legislation and regulations as at 18 December 2009.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

At the date of issue of this guide, the regulations proposed to be made under the National Credit Act and the Transitional Act are in exposure draft form and therefore subject to change before being made final. Once the regulations are made final, we will update our guidance if necessary.

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## A Overview

### Key points

Your first step is to decide whether you need a credit licence. You should read Regulatory Guide 203 *Do I need a credit licence?* (RG 203) to help you make this decision: RG 204.5–RG 204.11.

If you need a credit licence you should apply online at [www.asic.gov.au](http://www.asic.gov.au).

The information you will be asked to provide in your application will be tailored depending on whether you are a 'standard' applicant, a 'streamlined' applicant, an AFS licensee and/or a body regulated by APRA.

We will only grant you a credit licence if you meet the requirements in the National Credit Act.

If we refuse your application, you cannot engage in credit activities.

If there are changes to your business after your credit licence is granted, you may need to apply for a variation of your licence.

- RG 204.1 If you engage in credit activities from 1 July 2010, you need to either be:
- (a) authorised to engage in those activities under an Australian credit licence (credit licence) or registration; or
  - (b) exempt from the requirement to be licensed or registered.
- RG 204.2 Registration is a temporary authorisation to engage in credit activities that allows a smooth transition from regulation of the credit industry under state and territory legislation to the new national credit licensing regime under the *National Consumer Credit Protection Act 2009* (National Credit Act).
- RG 204.3 If you engage in credit activities before the National Credit Act commences, you will first need to register to make sure you can continue to engage in these activities between 1 July 2010 and the date that you obtain a credit licence. For more information on registration, see Regulatory Guide 202 *Credit registration and transition* (RG 202).
- RG 204.4 This guide provides you with information to help you to make an application for a credit licence.

### Do I need a credit licence?

- RG 204.5 A credit licence authorises you and your representatives to engage in the credit activities that are specified in the licence.

## Who needs to be licensed?

- RG 204.6 Most people who engage in credit activities will need to be covered by a credit licence, either as a credit licensee or as a representative of a credit licensee (after the transition period for the new national credit licensing regime has ended).
- RG 204.7 When you are deciding whether you need to apply for a credit licence, you should think about:
- (a) whether your business will involve engaging in credit activities; and
  - (b) whether any exemptions from the licensing requirements cover the credit activities that you will engage in.
- RG 204.8 This guide does not contain guidance on whether you will need a credit licence. For more information on the types of credit activities that are regulated under the new licensing regime and the people and activities that are exempt, see RG 203.

## Representatives of credit licensees or people who are covered by an exemption

- RG 204.9 If you engage in credit activities on behalf of another person (i.e. a principal) who either has a credit licence or is exempt from the requirement to hold a credit licence, you may be able to rely on your principal's credit licence or exemption.
- RG 204.10 You will be a 'representative' of another person if you are:
- (a) an employee or director of the person, or of a related body corporate of the person; or
  - (b) if the person is a credit licensee, you are authorised by them as a 'credit representative' under s64 or 65 of the National Credit Act.
- RG 204.11 If you only engage in credit activities as another person's representative you will not need to get your own credit licence. Before you decide to apply for a licence, you should think about whether your credit business will operate under another person's licence or exemption.

## How do I apply for a credit licence?

- RG 204.12 To get a credit licence, you must complete an application (Form CL01 *Application for an Australian credit licence*), lodge it with us and pay the application fee.
- RG 204.13 You are not automatically entitled to a credit licence. You will need to meet the requirements for a credit licensee, which include:

- (a) being able to comply with the general conduct obligations of credit licensees under the National Credit Act, which aim to ensure that you operate your credit business properly; and
- (b) being a ‘fit and proper’ person to engage in credit activities.

We have published guidance on complying with the general conduct obligations: see Table 3 in Section B.

### **Where do I get an application?**

RG 204.14 The application is an online form that can be accessed in several ways:

- (a) if you are already registered to engage in credit activities, you can access the application form through the Credit Portal, [www.asic.gov.au/credit](http://www.asic.gov.au/credit);
- (b) if you are an Australian financial services (AFS) licensee, you can access the application through the Licensees Portal, [www.asic.gov.au/licensees](http://www.asic.gov.au/licensees);
- (c) for other applicants—you can access the application by going to our website at [www.asic.gov.au/forms](http://www.asic.gov.au/forms).

RG 204.15 If you can’t apply online (e.g. because you don’t have access to the internet), you can ask us to approve lodgement of a paper application. However, we will only do this in limited circumstances. You will also pay a higher application fee if you lodge a paper application: see Table 4 in Section B.

RG 204.16 More detailed information about the process for making an application using our online credit licensing system is set out in Section B.

### **What is the application fee?**

RG 204.17 The fee that is payable on lodgement of your application will depend on the total amount of credit you have provided or referred to a credit provider and the value of property you have leased to consumers in the financial year before the application is made. For more information on how the application fee is calculated, see Table 4 in Section B.

## **What questions will I be asked?**

RG 204.18 You are not automatically entitled to a credit licence. You will only be granted a credit licence if you meet the requirements set out in the National Credit Act. The online application is designed to obtain information to satisfy these requirements.

**Table 1: The questions you will be asked and where to find our guidance on answering them**

Relevant part of the application	What you will be asked	Where to look in this guide
<b>You and your business</b> A1–A7	You will be asked questions about who you are and the types of credit activities you propose to engage in under the credit licence.	Section C
<b>Compliance with your obligations</b> B1 B2–B7	<p>You will be asked questions to confirm that you will comply with the obligations that you will have under the National Credit Act if the credit licence is granted.</p> <p>You will be asked to identify each of the people who are involved in the management of your credit business. In the online application, these people are called your ‘fit and proper people’.</p> <p>You will be asked to indicate which of these people you rely on to demonstrate that you are competent to engage in credit activities. These people are called you ‘responsible managers’.</p> <p>You will be asked for details about your compliance arrangements, your representatives, the adequacy of your resources and the dispute resolution, risk management and compensation systems that you have in place.</p>	Section D
<b>Supporting information</b>	<p>To support your application, you will be asked to provide more detailed information about:</p> <ul style="list-style-type: none"> <li>• the past conduct of each of your ‘fit and proper people’;</li> <li>• the experience and qualifications of your responsible managers; and</li> <li>• what your credit business will involve and how it will be operated.</li> </ul>	Section E
<b>Statements and declarations</b>	<p>You will make a statement about your past conduct, and that of each of your ‘fit and proper people’.</p> <p>You will declare that if you are granted a credit licence you will comply with your obligations as a credit licensee.</p> <p>You will also make standard declarations about the reliability of the information provided in your application.</p>	Section F

RG 204.19 We will assess the information that you provide in your application to decide whether you meet the licensing requirements. If we consider that we need more information about you or your proposed business before we make a decision, we will contact you.

RG 204.20 You can minimise the amount of time that we will need to spend on your application by:

- (a) properly describing the credit activities that you propose to engage in;
- (b) providing all the information that we ask for; and
- (c) if we contact you with any queries about your application, or to ask you for more information, promptly responding to those queries.

## Streamlined applicants

- RG 204.21 The National Credit Act and associated regulations allow a streamlined application process for:
- (a) ADIs;
  - (b) general insurers registered with APRA under the *Insurance Act 1973* that are included on the Register of General Insurers and Authorised NOHCs persons and that:
    - (i) offer mortgage insurance products; and
    - (ii) engage in credit activities only as an assignee in relation to providing those mortgage insurance products (lenders mortgage insurers); and
  - (c) people who are authorised to engage in credit activities under a law of a state or territory that:
    - (i) requires compliance with certain types of requirement (including requirements to comply with the law and to ensure that people they supervise also comply with the law); and
    - (ii) requires the person to demonstrate that they are a ‘fit and proper person’, and deem people who are not a ‘fit and proper person’ to be ineligible to engage in credit activities.
- RG 204.22 We will apply the streamlined application process if you:
- (a) are an ADI or lenders mortgage insurer;
  - (b) hold an ‘A’ or ‘B’ class licence under the *Finance Brokers Control Act 1975* (WA) at the time that you lodge your application for a credit licence; or
  - (c) held an ‘A’ or ‘B’ class licence under the *Finance Brokers Control Act 1975* (WA) at the time the state licensing scheme stopped operating.
- RG 204.23 If you are a streamlined applicant, you will be asked to provide less information than standard applicants. We have explained which questions and supporting documents will be asked of streamlined applicants in Sections C, D and E.

### How do we assess streamlined applicants?

- RG 204.24 For ADIs and lenders mortgage insurers, the requirements in s37 of the National Credit Act do not apply. This means that we will not need to form a view on whether an applicant that is an ADI or lenders mortgage insurer:
- (a) is likely to contravene the general conduct obligations if a licence is granted; and
  - (b) is not a fit and proper person to engage in credit activities.



- RG 204.25 ADIs and lenders mortgage insurers will need to make a statement that they will comply with the general conduct obligations if they are granted a credit licence: see RG 204.318(c).
- RG 204.26 For applicants who are entitled to streamline because they hold an ‘A’ or ‘B’ class licence under the *Finance Brokers Control Act 1975* (WA), the requirement in s37(1)(b) of the National Credit Act (i.e. the requirement that ASIC has no reason to believe that the applicant is likely to contravene the general conduct obligations if a licence is granted) only applies to the extent that ASIC must consider whether it has reason to believe that that applicant is likely to contravene:
- (a) the obligation to be a member of an approved external dispute resolution (EDR) scheme; and
  - (b) the obligation to maintain adequate compensation arrangements.
- RG 204.27 Applicants who are entitled to streamline because they hold an ‘A’ or ‘B’ class licence under the *Finance Brokers Control Act 1975* (WA) will also need to make a statement that they will comply with the general conduct obligations if they are granted a credit licence: see RG 204.318(c).
- RG 204.28 To make the required written statement about compliance with the general conduct obligations, we consider that streamlined applicants still need to have arrangements and systems for compliance with the obligations in place at the time that their application is made. As a part of the required statement, streamlined applicants will be asked some questions in the online application to confirm that they will comply with the general conduct obligations.
- RG 204.29 We must still refuse to grant a credit licence to a streamlined applicant if:
- (a) the applicant has not given a statement that they will comply with the general conduct obligations (if the licence is granted);
  - (b) a banning order or disqualification order under Part 2-4 of the National Credit Act is in force against the applicant in relation to a credit activity that would be covered by the licence; or
  - (c) an order under the *Crimes (Criminal Organisations Control) Act 2009* (NSW) or the *Serious and Organised Crime (Control) Act 2008* (SA) is in force against the applicant, or if the applicant is:
    - (i) a company—a director, secretary or senior manager of the applicant; or
    - (ii) a partnership or multiple trustee—a partner or trustee,who would perform duties in relation to the credit activities to be authorised by the licence (see National Credit Act, s40).
- RG 204.30 Streamlined applicants will be asked to identify all of the people who are involved in the management of their credit business, and for some basic

information about the roles and experience of those people, so that we can check that the applicant is not a person who is excluded from being granted a credit licence by s40 of the National Credit Act.

### **Credit contracts made before 1 July 2010**

RG 204.31 In general the requirement to hold a credit licence does not apply to people who engage in credit activities (other than providing credit services) relating to contracts and other instruments made before 1 July 2010 that are still in force as at 1 July 2010 (carried over instruments).

RG 204.32 However, if you engage in credit activities in relation to carried over instruments, you may be granted a credit licence. The *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act) and associated regulations have special provisions for the licensing of people who only engage in these types of credit activities.

Note: For details of the special provisions for the licensing of people who engage in credit activities in relation to carried over instruments, see Part 3, Div 1 of the Transitional Regulations.

RG 204.33 If you only engage in credit activities (other than providing credit services) in relation to carried over instruments, and you apply for a credit licence, we will grant you a credit licence that authorises you to engage in those credit activities, unless you are a person who cannot be granted a licence by reason of s40 of the National Credit Act.

RG 204.34 We will assess your application in a similar way to streamlined applications. We have explained which questions and supporting documents will be asked of streamlined applicants in Sections C, D and E.

RG 204.35 If you only apply for a credit licence on the basis of engaging in credit activities (other than providing credit services) that relate to carried over instruments, your licence will contain a condition that you are only authorised to engage in those credit activities. This means that you cannot change your business after you are granted a licence to engage in credit activities in relation to other credit contracts or consumer leases, unless we agree to vary your licence to remove this condition.

## **What if my application is refused?**

RG 204.36 If we refuse your application for a credit licence, you cannot engage in credit activities. We will give you reasons for our decision to refuse your application, and notify you of your rights to have that decision reviewed.

RG 204.37 More detailed information about your rights if we refuse your application is set out in Section G.

## What if my business changes?

- RG 204.38 If your business, or the people who manage your business, changes after your credit licence is granted, you may need to apply for a variation of your licence.
- RG 204.39 More detailed information about how to make an application to vary your licence is set out in Section H.

## B How do I apply for a credit licence?

### Key points

The credit licence application is an online application available on our website, including through online portals that we have established for the credit industry and AFS licensees: see RG 204.43–RG 204.60.

You will be able to complete the online application quickly and easily if you go through the steps in Table 2 before you start your application.

The application fee is calculated by reference to the total amount of credit you have provided or referred to a credit provider and the value of property you have leased to consumers in the financial year before the application is made: see RG 204.61–RG 204.67 and Table 4.

RG 204.40 To get a credit licence, you must complete an application (Form CL01 *Application for an Australian credit licence*), lodge it with us and pay the application fee.

RG 204.41 You are not automatically entitled to a credit licence. You will need to meet the requirements for a credit licensee, which include:

- (a) being able to comply with the general conduct obligations under the National Credit Act, which aim to ensure that you operate your credit business properly; and
- (b) being a fit and proper person to engage in credit activities.

## What do I need to do before I start my online application?

**Table 2: Steps to take before starting an application for a credit licence**

Steps	Explanation
1 Think about the types of credit activities you will engage in as part of your business	You need to apply for authorisations on your credit licence that are appropriate for your business. See Section C for an explanation of the authorisations that you can apply for.
2 Read our guidance on the general conduct obligations of credit licensees and prepare your arrangements and systems to meet those obligations	If you are granted a credit licence, you must meet the general conduct obligations of credit licensees from day one. You will need to confirm in your application that you have arrangements and systems in place to ensure your compliance with these obligations. For where to find our guidance on the general conduct obligations, see Table 3.

Steps	Explanation
<p>3 Do any background checks on your 'fit and proper people' to allow you to provide the supporting information and make the required statements about their past conduct: see Sections E and F</p>	<p>Most applicants will need to provide copies of a criminal history check, bankruptcy check and credit history report for each of the people who will manage their credit business. These checks can take a while to be completed. You should ask for these checks to be made at least six weeks before you plan to lodge your online application.</p> <p>If you are a streamlined applicant, you don't need to provide copies of these checks, but you still need to be satisfied about the past conduct of the people who manage your business. You may need to ask for new checks to be completed if the information that you have about these people is out-of-date.</p>
<p>4 Make sure all people who will need to make a declaration will be able to authorise you or your lodging agent to make those declarations on their behalf: see Section F</p>	<p>Each person who makes a declaration takes responsibility for the information contained in the application. Review the information to make sure it is complete, accurate and true.</p> <p>The declarations are taken to be made by each of the people referred to in the declarations when the application is submitted. These people need to authorise the person who physically submits the application (by pressing the 'submit' button) to make those declarations on their behalf.</p>
<p>5 If you are a company or AFS licensee, make sure your details on ASIC's registers are correct</p>	<p>Some information will be pre-filled in your application from the Australian Company Register and the AFS Licensees Register. You cannot complete your online application until these registers are up-to-date. To update your details, lodge Form 484 <i>Change to company details</i> or Form FS20 <i>Change of details for an Australian financial services licence</i> (as appropriate).</p> <p>Changes will be processed more quickly if you lodge these notifications electronically.</p>

- RG 204.42 When you are thinking about whether you will be able to comply with the obligations of credit licensees under the National Credit Act, you need to:
- (a) read our guidance on the general conduct obligations and how you can demonstrate that you will meet those obligations;
  - (b) look at the arrangements and systems that you use, or plan to use, in your credit business. Think about whether these arrangements and systems will be adequate to meet your obligations as described in our guidance; and
  - (c) look at any written plans that you already have that document your arrangements and systems. Think about whether these written plans demonstrate that your arrangements and systems are adequate. If you do not have any written plans, you should prepare some.

**Table 3: Where to find our guidance on the general conduct obligations of credit licensees**

Types of obligation	General conduct obligation	Where to find our guidance
<b>Your broad compliance obligations</b>	Engaging in credit activities efficiently, honestly and fairly	Section C of Regulatory Guide 205 <i>Credit licensing: General conduct obligations</i> (RG 205)
	Complying with the conditions on your licence	INFO 97 <i>Guidance for small credit businesses</i>
	Complying with the credit legislation	
<b>Your internal systems</b>	Risk management systems (if you are not regulated by APRA)	Section D of RG 205
	Arrangements for ensuring that clients are not disadvantaged by conflicts of interest	Section D of RG 205
	Dispute resolution system	Regulatory Guide 165 <i>Licensing: Internal and external dispute resolution</i> (RG 165) Note: An updated version of RG 165 (as outlined in Consultation Paper 112 <i>Dispute resolution requirements for consumer credit and margin lending</i> (CP 112)) will be released in early 2010.
<b>Your people</b>	Ensuring your representatives comply with the credit legislation	Section E of RG 205
	Ensuring your representatives are adequately trained and are competent	Regulatory Guide 206 <i>Credit licensing: Competence and training</i> (RG 206)
	Maintaining the competence to engage in credit activities	RG 206
<b>Your resources</b>	Adequate human and technological resources (if you are not regulated by APRA)	Section F of RG 205
	Adequate financial resources (if you are not regulated by APRA)	RG 207 <i>Credit licensing: Financial requirements</i> (RG 207)
<b>Compensation</b>	Have compensation arrangements in place	Consultation Paper 125 <i>Compensation requirements for credit licensees: Further consultation</i> Note: We will release our final policy on compensation and insurance arrangements for credit licensees in early 2010.

## How do I start my online licence application?

RG 204.43 The online licence application can be accessed from different parts of the ASIC website ([www.asic.gov.au](http://www.asic.gov.au)), depending on whether you are:

- (a) already registered to engaged in credit activities;

- (b) an AFS licensee registered for online access; or
- (c) a new applicant who has not previously lodged electronic documents with us.

### **I am a registered person**

RG 204.44 You can access the online licence application via the Credit Portal at [www.asic.gov.au/credit](http://www.asic.gov.au/credit).

Note: The Credit Portal, credit licence application and associated web pages are not yet available as at the date of issue of this guide.

RG 204.45 You will need your user name, password and credit registration number to log in to the Credit Portal. If you have forgotten your password, you can generate a new one after your identity has been verified using the security question and answer that you nominated in your registration application. If you have forgotten your user name, we will send it to you by email if you click on 'Forgotten user name' and enter your credit registration number.

RG 204.46 Once you have entered the Credit Portal, go to the 'Start new transaction' page and select 'Start a credit licence application'. The licence application will appear in your 'Current transactions' list.

### **I am an AFS licensee**

RG 204.47 If you are already registered for online access, you can access the online application via the Licensees Portal at [www.asic.gov.au/licensees](http://www.asic.gov.au/licensees).

Note: The credit licence application and associated web pages are not yet available as at the date of issue of this guide.

RG 204.48 You will need your user name, password and AFS licence number to log in to the Licensees Portal. If you have forgotten your password, you can generate a new one after your identity has been verified using the security question and answer that you nominated when you registered for online access. If you have forgotten your user name, we will send it to you by email if you click on 'Forgotten user name' and enter your AFS licence number.

RG 204.49 Once you have entered the Licensees Portal, go to the 'Start new transaction' page and select 'Start a credit licence application'. The licence application will appear in your 'Current transactions' list.

### **I am a new applicant**

RG 204.50 To find the online licence application on our website go to [www.asic.gov.au/credit](http://www.asic.gov.au/credit) and click on 'Start a new application for an Australian credit licence'. Before you start your application you must read the ASIC Electronic Lodgement Protocol and agree to be bound by its terms

and conditions. This protocol covers your responsibilities and ours when you lodge documents with us online.

Note: The credit licence application and associated web pages are not yet available as at the date of issue of this guide.

## Using the credit licensing system

### Controlling access to your online licence application

- RG 204.51 You will be asked to select a user name and password so that you can control access to your licence application. Your user name must have a minimum of six characters and your password a minimum of six characters (including at least one numeric character). Both your user name and password are case-sensitive, so remember whether you have used upper or lower case.
- RG 204.52 You will also be asked to enter a security question and answer. The security question and answer will be used to verify your identity if you forget your password and need to generate a new one. You should choose a question that only you know the answer to and that has nothing to do with your password. We suggest that the security question be a question for which there is only one answer, and that the answer be one or two words. You must remember the format of the security answer as the validation of the answer is case- and space-sensitive. If you do not provide the answer as originally entered, a new password will not be generated.
- RG 204.53 The credit licensing system will generate a reference number for your application and ask you to make a note of it. The security of your application reference number, user name and password is your responsibility.

### Saving and resuming your application

- RG 204.54 Once you have started your licence application, you can save it and resume it as many times as you like before you submit it. You will need your user name, password and reference number to resume your application at a later time. If you forget your password, you can generate a new one after your identity has been verified using your security questions and answer. However, if you forget your user name or reference number you will not be able to resume your application—you will need to start again.
- RG 204.55 The online licence application is designed so that you cannot progress to the next screen until you have completed the screen you are on, although you can go back to a completed screen to amend it. Your application is automatically saved to the ASIC server every time you hit 'Next'. If you are disconnected from the internet or you close out of the application, you will have saved all information up until the question you were last entering.



### **Pre-filled information**

- RG 204.56 If you are an AFS licensee or a company, the credit licensing system will access other registers maintained by ASIC (e.g. the AFS Licensees Register and the Australian Company Register) to pre-fill some information. You need to check the pre-filled information to ensure it is up-to-date. If it is incorrect, you will need to update that information in the other registers before you can complete your online licence application. To do that, you need to lodge the appropriate notification: see Table 2. You will not be able to resume your online application until this information has been updated.

## **What happens to the information I send to ASIC?**

- RG 204.57 The information you enter in your online application is protected by industry-standard encryption and stored on a secure server at ASIC.
- RG 204.58 The application lodged by you is not available to the public. If you are granted a credit licence, some basic information about your business will be uploaded to the Australian Credit Register, which will be available to the public on our website. See the privacy statement on our website for more information.

## **What if I can't apply online?**

- RG 204.59 We expect all applications for a credit licence to be made online. If you will not be able to apply online, you will need to ask us to approve your use of a paper application. We will only do this in unusual circumstances where you have demonstrated that it is impossible to complete the application online. If you think you will not be able to apply online, phone our Client Contact Centre on 1300 300 630.
- RG 204.60 It will take longer to process paper applications because we have to enter your data into the credit licensing system. The application fee is also higher if you lodge a paper application.

## **What is the application fee?**

- RG 204.61 The prescribed fee for a credit licence application depends on the total amount of credit you have provided or referred to a credit provider and the value of property you have leased to consumers in the financial year before the application is made.
- RG 204.62 To determine the application fee that is payable, you will need to add together:

- (a) the total amount of credit advanced by you in the financial year before the application is made;
- (b) the total value of credit in applications submitted to credit providers by you or your representatives in the financial year before the application is made; and
- (c) the total amount of rent payable by consumers under consumer leases entered into by you in the financial year before the application is made,

and refer to the scale set out in Table 2.

RG 204.63 You should only include in your calculation amounts that relate to a provision of credit that is covered by the National Credit Act and National Credit Code. For example, if you have made loans to small business that are not covered by the National Credit Code, you should not include the amount of those loans in your calculation.

RG 204.64 The amount of one or more of the parts of the calculation may be zero. If you did not operate to provide credit or credit services in the financial year before the application is made (i.e. you will be operating a new 'start up' business), the sum that you calculate will be zero. If this is the case, you will need to select the range of 'Less than \$100 million (if you are a natural person) or 'Less than \$200 million' (if you are another type of applicant): see Table 4.

**Table 4: Application fee for a credit licence**

Range of credit referred and advanced and the value of property rented to consumers in the previous financial year	Fee for electronic lodgement	Fee for non-electronic lodgement
Less than \$100 million Note: This range is only available to natural person applicants	\$450	\$565
Less than \$200 million Note: This is the lowest range available to an applicant that is a company, partnership or multiple trustee. Note: This range can also be selected by a natural person applicant if the total of the amount of credit referred and advanced and the value of property rented to consumers in the previous financial year was \$100 million or more but less than \$200 million.	\$1,000	\$1,250
\$200 million or more but less than \$600 million	\$4,000	\$5,000
\$600 million or more but less than \$1,000 million	\$8,000	\$10,000
\$1,000 million or more but less than \$1,400 million	\$12,000	\$15,000
\$1,400 million or more but less than \$1,800 million	\$16,000	\$20,000
\$1,800 million or more but less than \$2100 million	\$20,000	\$25,000
\$2,100 million or more	\$21,000	\$26,250

- RG 204.65 If you are a streamlined applicant, the application fee payable by you will be discounted to 90% of the amount shown in Table 4.
- RG 204.66 The credit licensing system will calculate the application fee and give you a payment advice when you submit your application.
- RG 204.67 Failure to pay the fee will not prevent your application from being accepted for lodgement. However, until you have paid the application fee, we will not grant you a credit licence.

### **Will I be reimbursed if I withdraw my application?**

- RG 204.68 The application fee is payable upon lodgement of your application.
- RG 204.69 Your online application is not lodged at the time that you submit it. We must receive the transmissions and accept the application for lodgement. Once accepted, the fee will not be reimbursed if you withdraw your application.
- RG 204.70 We do not intend to refuse lodgement of applications that are not complete—instead, we will ask you for any missing information during the assessment process. This means that you will need to be sure that you want to make your application at the time that you submit it.

## C What questions will I be asked about my proposed credit business?

### Key points

In part A of your online licence application, you will be asked for information to identify yourself and the type of applicant you are: see RG 204.73–RG 204.117.

You will also be asked:

- to select the authorisation(s) that you want on your licence (see RG 204.122–RG 204.146);
- for a general description of your proposed business activities—some applicants will be asked additional questions if their proposed business activities involve additional requirements (see RG 204.147–RG 204.169); and
- how many representatives you propose to have if you are granted a licence (see RG 204.170–RG 204.178).

- RG 204.71 You will be asked questions about:
- (a) yourself (e.g. what type of entity you are, your contact details);
  - (b) your proposed credit business; and
  - (c) the types of credit activities that you will engage in if the credit licence is granted.

RG 204.72 All applicants will be asked these questions.

## A1 Applicant and contact details

### Details of the applicant

- RG 204.73 You will be asked to provide information that identifies you. The way you will be asked for this information will depend on how you start your application.
- RG 204.74 If you start your application from the Credit Portal or Licensees Portal, details of your name, any identifying numbers (i.e. your AFS licence number, ABN, ACN or ARBN) and your entity type will be pre-filled.
- RG 204.75 If you start your application from the website, you will be asked if you are a registered person and, if so, to enter your credit registration number. If you do this, the credit licensing system will generate details of your name, any

identifying numbers (i.e. your AFS licence number, ABN, ACN or ARBN) and your entity type.

**If you are not a registered person**

RG 204.76 If you are not a registered person (and are not completing your application through the Licensees Portal), you will need to enter the following information.

*Entity type*

RG 204.77 Unless your details have been pre-filled, you need to select whether you are a:

- (a) company;
- (b) partnership;
- (c) multiple trustee; or
- (d) natural person.

RG 204.78 A multiple trustee is a notional person that consists of two or more trustees of a single trust. As it is the notional person who is licensed (and not each trustee) the trustees of the trust can change from time to time without affecting the licence.

RG 204.79 A person who is a sole trustee of a trust cannot apply as a multiple trustee—the application should be made under the appropriate entity type for that person (company, partnership or natural person).

RG 204.80 The credit licensing system will tailor the application to the type of entity that you have selected.

*AFS licence number, ABN, ACN or ARBN (if any) or name of applicant*

RG 204.81 Unless your details have been pre-filled, you will be asked to provide your AFS licence number, ABN, ACN or ARBN, if you have one.

RG 204.82 If you do not have one of these identifying numbers, you will need to enter your full name. If you are:

- (a) a partnership—you should enter your firm name (and not simply a list of each of the partners). You will be required to provide the details of each partner in a different part of the application; or
- (b) a multiple trustee—you should enter your name as ‘The trustees of [name of trust]’. You will be required to provide the details of each trustee in a different part of the application.

RG 204.83 If you enter an AFS licence number, ABN, ACN or ARBN, the credit licensing system will check whether an entity with that identifying number is a credit representative. If you are a credit representative a message will be displayed to remind you that you cannot be authorised as a credit

representative for the same type of credit activities that are covered by your credit licence. If your credit licence is granted, any authorisations you have to engage in the same types of credit activities as a credit representative will cease to have effect.

- RG 204.84 If you are a company or an AFS licensee, the credit registration system will also access other registers maintained by ASIC to pre-fill parts of the online licence application. You will need to review all pre-filled information to ensure that it is up-to-date. If it is incorrect, you will need to update that information in the other registers before you can complete your online licence application. To do that, you need to lodge the appropriate notification: see Table 2. You will not be able to resume your online licence application until this information has been updated.
- RG 204.85 The ABN entity types that will be accepted are: Australian Private Company, Australian Public Company, Individual/Sole Trader, Family Partnership, Limited Partnership, Other Partnership and Other Incorporated Entity.
- RG 204.86 If you do not have an ABN, you can obtain one by:
- (a) applying electronically via [www.business.gov.au](http://www.business.gov.au);
  - (b) phoning the Business Infoline on 13 28 66 to ask for a registration package; or
  - (c) speaking to your tax agent.

### **Regulation by, or registration with, APRA**

- RG 204.87 You must indicate whether you are a body regulated by APRA, or one that is registered with APRA under the *Financial Sector (Collection of Data) Act 2001*, and what type of regulated or registered body you are.
- RG 204.88 This question affects the assessment process, and helps to inform ASIC about the types of entities that are operating in the credit industry.
- RG 204.89 If you are a body regulated by APRA, not all of the licensee obligations under the National Credit Act apply and you will not be asked some questions in the application that relate to those obligations.
- RG 204.90 If you are an ADI or a registrable corporation under the *Financial Sector (Collection of Data) Act 2001*, some provisions of the National Credit Act (the responsible lending conduct requirements) will have a delayed commencement for you.
- Note: For more information on the commencement of the responsible lending provisions, see Section F of RG 202.
- RG 204.91 If you are an ADI or a lenders mortgage insurer, you will also have the benefit of the streamlined application process. See RG 204.21–RG 204.30 for information on streamlining.

### Applicants that are part of a group

- RG 204.92 You must indicate whether you are part of a group of companies that is applying for more than one credit licence, and provide the names of any other applicants in the group.
- RG 204.93 We will endeavour to assess together all credit licence applications that are made by applicants from the same group, to ensure that these applications are dealt with efficiently and consistently.

### Lodging agents

- RG 204.94 You need to indicate whether you are lodging the application on behalf of an applicant. If you are, you will need to make an additional declaration before you submit the application: see Section F.

### Details of prior registration and licensing

- RG 204.95 We expect that all people who were registered or licensed as credit providers or brokers under state or territory legislation immediately before 1 July 2010 will have registered with ASIC.
- RG 204.96 If you are a registered person, we will pre-fill the application with the details of your prior registration and licences that you included in your earlier application for registration with ASIC.
- RG 204.97 You will need to review this information and update it to remove any registration or licence that has lapsed as at the date of your credit licence application. You do not need to remove a registration or licence that has only lapsed because the state or territory registration or licensing scheme has ended.
- RG 204.98 If you have a Class 'A' or 'B' Finance Brokers Licence under the *Finance Brokers Control Act 1975* (WA) that has the status 'Retained', you will be treated as a streamlined applicant. The remainder of the application will be tailored to reduce the amount of information that you must provide.

## A2 Principal business address

- RG 204.99 You will be asked to enter your principal business address. If you are granted a licence, this information will be included in the Australian Credit Register.
- RG 204.100 This information will be pre-filled for:
- (a) registered persons that are not AFS licensees or companies—from the principal business address listed in the Australian Credit Register;

- (b) AFS licensees—from the principal business address listed in the AFS Licensees Register; and
- (c) companies—from the principal place of business address listed in the Australian Company Register.

- RG 204.101 If there has been a change to your principal business address, you need to notify us of that change by lodging Form CS02 *Notification of changes to registration details*, Form FS20 *Change of details for an Australian financial services licence* or Form 484 *Change to company details* (as appropriate), and the change must be recorded in those other registers, before you can complete the online application.
- RG 204.102 Your online application will be saved and you can resume it from this question after this information has been updated.

### **Use of an alternative address in the public register**

- RG 204.103 If your principal business address is your residential address, and you are concerned that publication of your residential address on the public register will put at risk your safety or the safety of your family, you can nominate an alternative address to be included in the register. The alternative address must be an address within Australia at which you can be served with documents. This must be a street address and not a post office box.
- RG 204.104 You will not be able to nominate an alternative address if you are a company or an AFS licensee, because the details of your principal business address are already publicly available through other registers we maintain.
- RG 204.105 If an alternative address is recorded in the public register, you will need to notify us within 10 days of any changes to that address. You must also notify us within 14 days if there are any changes to your residential address. You can do this by lodging Form CL20 *Notification of change to credit licence details*.

## **A3 Contact details**

- RG 204.106 The contact person can be you, one of your officers or employees, or another person who is preparing the application on your behalf.
- RG 204.107 During the application process we will direct any questions and correspondence about your application to this contact person.
- RG 204.108 If you are granted a licence, any general correspondence will be sent to this contact person by email. Any formal correspondence will be sent to your principal business address.



- RG 204.109 If you are a registered person, this question will be pre-filled with the details that you provided in your registration application. You can change this pre-filled information.
- RG 204.110 The details of this person will not be included in the public register of credit licensees. However, if you are granted a licence you will need to keep the details of your contact person (including their email address) up-to-date by lodging Form CL20 *Notification of change to credit licence details*. This will assist us when we communicate with you in the future.

## A4 Business names

- RG 204.111 You will be asked to enter any registered business name, the state or territory in which that name is registered and the registration number. If you are granted a licence, this information will be included in the Australian Credit Register.
- RG 204.112 If you are a registered person or an AFS licensee, this question will be pre-filled with the details of business names listed in the Australian Credit Register or the AFS Licensees Register. These pre-filled details cannot be removed. If these registered business names are no longer current, you will need to notify us of that change by lodging Form CS02 or Form FS20 (as appropriate), and the change must be recorded in those other registers, before you can complete the online application.
- RG 204.113 Your online licence application will be saved and you can resume it from this question after this information has been updated.
- RG 204.114 If you have additional registered business names that apply to your credit activities, you can add the details of additional names.
- RG 204.115 A registered business name is a trading name under which a person carries on business or trades. For example: Roxy Cafe, Hollingdale & Page.
- RG 204.116 Registered business names are issued by the state or territory in which the business or trade is carried out. Each registered business name has an individual number but the format and length vary according to the state or territory of issue. The state of registration precedes the number. For example: 'NSW E6882145', 'QLD BN2027148' or 'SA 0341685J'.
- RG 204.117 If you need to look up your business name details, you can do a business name search by clicking the link in the online application. For full information on registered business names, contact the appropriate state or territory authority.

## A5 Delayed licence commencement

- RG 204.118 During the transition period, we will allow you to request a delay to the commencement of your Australian credit licence (if it is granted). This is to give you additional time to make sure that your business systems and processes will be in place before you start to engage in credit activities under your credit licence.
- RG 204.119 The delayed commencement date must be within three months of the date that you prepare your online application.
- RG 204.120 If we decide to grant a licence with a delayed commencement, we will issue a credit licence that specifies the date on which it will take effect (the effective date).
- RG 204.121 If you are already a registered person, you can continue to engage in credit activities under your registration until the effective date. From the effective date, you will engage in credit activities under your credit licence. You must therefore comply with all of your obligations as a credit licensee from that date.

## A6 Authorisations

- RG 204.122 You will be asked to select the authorisation that covers the types of credit activities you want to engage in.
- RG 204.123 You can choose:
- (a) engage in credit activities other than as a credit provider or lessor;
  - (b) engage in credit activities as a credit provider or lessor; or
  - (c) engage in all credit activities.
- RG 204.124 You should only choose the authorisation that is necessary to cover the credit activities that you propose to engage in if you are granted a licence.
- RG 204.125 You should not choose an authorisation that covers credit activities that you do not propose to engage in 'just in case' your business changes. If your business changes after you are granted a licence, you should apply for a variation to your licence. See Section H for more information on varying your credit licence.
- RG 204.126 We will check the authorisation you have selected against the information you include in your application about your intended business activities (i.e. your 'Details of business activities' and the supporting document 'Summary business description'). If the selected authorisation does not seem to be appropriate for the description you have provided, we will contact you. This may cause a delay in our assessment.

RG 204.127 We will take into account the authorisation you select when we assess the information in your application about your competence to engage in the credit activities that will be covered by the licence (if granted). If we consider that you are not competent to engage in credit activities covered by the authorisation that you select, we may refuse your application or decide to grant a licence with a different authorisation.

## What do the authorisations cover?

### Engage in credit activities other than as a credit provider or lessor

RG 204.128 This authorisation covers:

- (a) the provision of credit services (including providing credit assistance and acting as an intermediary) in relation to a credit contract or consumer lease where you are not the credit provider or lessor; and
- (b) performing the obligations or exercising the rights of a credit provider, mortgagee, beneficiary of a guarantee or a lessor in relation to:
  - (i) a credit contract;
  - (ii) a mortgage that secures obligations under a credit contract;
  - (iii) a guarantee that guarantees obligations under a credit contract; or
  - (iv) a consumer lease,

where you are not the credit provider or lessor.

RG 204.129 We expect that this authorisation will be appropriate for all non-credit providers. For example, we expect that you will need to select this authorisation if you are:

- (a) a mortgage broker, finance broker, financial planner or advisor or other type of intermediary between the consumer and credit provider;
- (b) a mortgage manager who manages a credit contract on behalf of a credit provider (but who has not been assigned any rights under the contract); or
- (c) an aggregator.

### Engage in credit activities as a credit provider or lessor

RG 204.130 This authorisation covers:

- (a) carrying on a business of providing credit to which the National Credit Code applies or providing consumer leases;
- (b) being a credit provider under a credit contract or a lessor under a consumer lease;
- (c) performing the obligations or exercising the rights of a credit provider, mortgagee, beneficiary of a guarantee or a lessor in relation to:

- (i) a credit contract;
- (ii) a mortgage that secures obligations under a credit contract;
- (iii) a guarantee that guarantees obligations under a credit contract; or
- (iv) a consumer lease,

where you are the credit provider or lessor; and

- (d) providing credit assistance to a consumer in relation to a credit contract or consumer lease where you are the credit provider or lessor.

RG 204.131 You may be carrying on a business of providing credit or consumer leases if you engage in pre-contractual conduct for the purpose of entering credit contracts or consumer leases as a credit provider or lessor.

RG 204.132 You will be the credit provider or lessor where you are either:

- (a) the original credit provider or lessor; or
- (b) a person to whom the rights of another credit provider or lessor have been assigned or passed by law.

RG 204.133 An original credit provider or lessor is a person who provides credit under a credit contract or consumer lease that is the initial holder of rights under the credit contract or consumer lease (i.e. a person who has not become a credit provider or lessor by being assigned rights under the credit contract or consumer lease). Assignment of rights means that those rights have been transferred. You will not be an assignee merely because you exercise rights on behalf of another person.

RG 204.134 We expect that this authorisation will be appropriate for most credit providers and lessors. For example, we expect that you will need to select this authorisation if you are:

- (a) an ADI (a bank, credit union or building society);
- (b) a responsible entity of a managed investment scheme that provides credit, such as a mortgage scheme; or
- (c) a seller of goods or real property by instalments.

RG 204.135 We also expect that this authorisation will be appropriate for applicants who are credit providers because they are a lenders mortgage insurer or an assignee of debts for the purpose of collecting those debts (assignee debt collector). However, because lenders mortgage insurers and assignee debt collectors engage in credit activities in a limited capacity, we may limit the usual 'credit provider' authorisation if the applicant asks us to. For more information on who is a lenders mortgage insurer and an assignee debt collector, and the additional questions that these types of applicants will be asked, see RG 204.139–RG 204.142 and RG 204.151–RG 204.155.

**Engage in all credit activities**

- RG 204.136 There may be some credit providers or lessors who will also provide credit services, or perform obligations and exercise rights, in relation to credit contracts or consumer leases that are provided by other licensees. These credit providers or lessors should select this authorisation.
- RG 204.137 For example, some ADIs may engage in credit activities in relation to credit contracts or consumer leases that are provided by other licensees.

**What do I select if I am a streamlined applicant?****ADI**

- RG 204.138 You may select either ‘Engage in credit activities as a credit provider or lessor’ or ‘Engage in all credit activities’ as appropriate.

**Lenders mortgage insurer**

- RG 204.139 A lenders mortgage insurer is a person who:
- (a) is authorised by APRA as a general insurer under s12 of the *Insurance Act 1973*;
  - (b) is included on the Register of General Insurers and Authorised NOHCs maintained by APRA;
  - (c) offers a lenders mortgage insurance product; and
  - (d) engages in credit activities as an assignee in relation to providing the mortgage insurance product.
- RG 204.140 You are not entitled to a streamlined application process unless you engage in credit activities only as an assignee in relation to lenders mortgage insurance products provided by you (i.e. you only engage in credit activities as a credit provider by reason of assignment of the rights of a credit provider under a lenders mortgage insurance product): see reg 8(7) of the National Credit Regulations. You will only be given the benefit of the full streamlined process if you select ‘Engage in credit activities as a credit provider or lessor’.
- RG 204.141 If you select one of the other authorisations, we will contact you to check whether you want to engage in credit activities other than as a lenders mortgage insurer. If you:
- (a) do not want to engage in credit activities other than as a lenders mortgage insurer—we will assess you as a streamlined applicant (see RG 204.24–RG 204.25 for an explanation of the benefits of this process); or

- (b) want to engage in credit activities other than as a lenders mortgage insurer—we will assess you as a streamlined applicant in relation to credit activities covered by the ‘Engage in credit activities as a credit provider or lessor’ authorisation, and as a standard applicant for the additional credit activities. We may need to ask you to provide documents that support your application (see Section E for a description of the supporting documents that are required for standard applicants).

RG 204.142 This means that if you want to engage in credit activities other than as a lenders mortgage insurer that is assigned the rights of a credit provider, in making our decision we may take into account whether there is any reason to believe that:

- (a) you are likely to contravene the general conduct obligations; or
- (b) you are not a fit and proper person,

in relation to the additional credit activities.

**Holder of an ‘A’ or ‘B’ class licence under the *Finance Brokers Control Act 1975 (WA)***

RG 204.143 Under this category of streamlining, you are only entitled to a streamlined application process to the extent that you apply for a licence to engage in credit activities of a kind that you were authorised to engage in under the *Finance Brokers Control Act 1975 (WA)*.

RG 204.144 Accordingly, you will only be given the benefit of the full streamlined process if you select ‘Engage in credit activities other than as a credit provider or lessor’.

RG 204.145 If you select one of the other authorisations, we will contact you to check whether you want to engage in credit activities as a credit provider. If you:

- (a) do not want to engage in credit activities as a credit provider—we will assess you as a streamlined applicant (see RG 204.26–RG 204.27 for an explanation of the benefits of this process); or
- (b) want to engage in credit activities as a credit provider—we will assess you as a streamlined applicant in relation to credit activities covered by the ‘Engage in credit activities other than as a credit provider or lessor’ authorisation, and as a standard applicant for the additional credit activities. We may need to ask you to provide documents that support your application (see Section E for a description of the supporting documents that are required for standard applicants).

RG 204.146 This means that if you want to engage in credit activities as a credit provider, in making our decision we may take into account whether there is any reason to believe that:

- (a) you are likely to contravene the general conduct obligations; or

- (b) you are not a fit and proper person,
- in relation to the additional credit activities.

## A7 Details of business activities

- RG 204.147 You will be asked to answer a group of questions that are designed to provide a description of the size and nature of your business activities.
- RG 204.148 All applicants will be asked to answer these questions because they help to provide an overview of the size and nature of the credit industry, and will help ASIC develop procedures for later surveillance of the credit industry.
- RG 204.149 You will be asked to select the activities that best describe the business you intend to engage in if a credit licence is granted, and the types of credit contracts and consumer leases that those activities will relate to.
- RG 204.150 We will check whether the authorisations you selected at question A6 are appropriate to the business activities that you select. If they are not, we will contact you to clarify what sort of activities you intend to engage in and ensure that you have applied for the correct authorisations.

### Lenders mortgage insurers

- RG 204.151 If you select the business description ‘lenders mortgage insurer’, you will be asked whether you will engage in credit activities only as an assignee in relation to mortgage insurance products provided by you. If you answer ‘yes’:
- (a) you will be treated as a streamlined applicant (if you have selected the ‘Engage in credit activities as a credit provider or lessor’ authorisation at question A6), and the remainder of the application will be tailored to reduce the amount of information that you must provide; and
  - (b) you will be asked whether you want the authorisation on your licence (if it is granted) to be limited to only cover credit activities engaged in by you as an assignee in relation to mortgage insurance products provided by you.
- RG 204.152 If you answer ‘no’:
- (a) we will contact you to check whether you want to engage in credit activities other than as a lenders mortgage insurer. See RG 204.139–RG 204.142 for more information on how we will deal with your application if you are not entitled to the full streamlined application process; and
  - (b) your licence (if it is granted) will contain the full authorisation to ‘Engage in credit activities as a credit provider or lessor’.

## Assignee debt collectors

- RG 204.153 An ‘assignee debt collector’ is a person to whom the rights of a credit provider, lessor, mortgagee or beneficiary of a guarantee to collect a debt owing under a credit contract or consumer lease by:
- (a) demanding and receiving payments from borrowers or guarantors under credit contracts, or lessees under consumer leases; and
  - (b) enforcing rights in relation to taking possession of property secured by a mortgage or goods hired under a consumer lease,

have been assigned or passed by law.

Note: A person who engages in credit activities in the course of collecting debts on behalf of a credit provider or lessor (rather than as person who has become a credit provider by assignment) may be covered by the exemption from the requirement to hold a credit licence in reg 21 of the National Credit Regulations. If a person who is covered by reg 21 in relation to some credit activities also engages in credit activities as an assignee debt collector, they will still need to hold a credit licence for their conduct as an assignee debt collector.

- RG 204.154 If you select the business description ‘assignee of debts’, you will be asked whether you will engage in credit activities only as an assignee debt collector.
- RG 204.155 If you answer ‘yes’, you will be asked whether you want the authorisation on your licence (if it is granted) to be limited to only cover credit activities engaged in by you as an assignee debt collector. If you answer ‘no’, your licence (if it is granted) will contain the full authorisation to ‘Engage in credit activities as a credit provider or lessor’.

## Carried over instruments

- RG 204.156 You will be asked whether your application is made on the basis that you will only engage in credit activities (other than providing credit services) in relation to carried over instruments. If you answer ‘yes’ to this question, the authorisation on your credit licence (if granted) will be expressed to be limited to engaging in credit activities (other than providing credit services) in relation to carried over instruments.

Note: A ‘carried over instrument’ is a contract or other instrument that was made and in force, and to which an old Credit Code applied, immediately before 1 July 2010. For more information on what carried over instruments are, and special licensing provisions that apply to people who engage in credit activities in relation to carried over instruments, see RG 204.31–RG 204.35.

- RG 204.157 You should answer ‘no’ to this question if you intend to provide credit services in relation to carried over instruments (for example, if you will provide credit assistance by suggesting that a consumer remain in a particular credit contract or consumer lease).



- RG 204.158 We expect that the limited authorisation condition would only be appropriate for the licences of a small number of people who are in the process of winding up their loan books, and who will not be entering any new credit contracts or consumer leases.
- RG 204.159 If your credit licence is granted on the basis that you will only engage in credit activities (other than providing credit services) in relation to carried over instruments, you will not be able to change your business after you are licensed, to engage in credit activities in relation to other credit contracts or consumer leases, unless we agree to vary your licence to remove this condition.

### **Information for credit licence fee calculation**

- RG 204.160 You will be asked to calculate the total amount of credit you have referred or advanced and the value of property you have rented to consumers in the financial year before the application is made. You will need to add together:
- (a) the total amount of credit advanced by you in the preceding financial year; and
  - (b) the total value of credit in applications submitted to credit providers by you or your representatives in the preceding financial year; and
  - (c) the total amount of rent payable by consumers under consumer leases entered into by you in the preceding financial year.
- RG 204.161 For more information on what amounts you need to take into account when you make your calculation, see RG 204.61–RG 204.64.
- RG 204.162 You will then need to select from the list in the online application the appropriate range that covers the total sum that you have calculated. For more information on the ranges that you will be asked to select from, and the effect that this will have on the application fee, see Table 4.

### **Will you be an ‘original credit provider’ or ‘act as an intermediary’?**

- RG 204.163 If you selected the authorisations to either ‘Engage in credit activities as a credit provider or lessor’ or ‘Engage in all credit activities’, you will be asked whether you intend to provide credit as an ‘original credit provider’.
- RG 204.164 You are an original credit provider if you are the person who provides credit under a credit contract and who is the initial holder of rights under the credit contract (i.e. you have not become a credit provider because you have been assigned rights under the credit contract).
- RG 204.165 If you selected the authorisations to either ‘Engage in credit activities other than as a credit provider or lessor’ or ‘Engage in all credit activities’, you

will be asked whether you intend to ‘act as an intermediary’ between a credit provider and a consumer for the purpose of securing credit for the consumer.

RG 204.166 You will ‘act as an intermediary’ if you are a person who takes part in the process of securing the provision of credit for a consumer under a credit contract or consumer lease by preparing or passing on information as the result of a request from the consumer or another intermediary. You may be an intermediary even if you do not have face-to-face contact with the consumer. Innovations in credit product design mean that a consumer may pass through a number of hands between the first person they deal with and the credit provider, and may be uncertain as to the roles and functions of all of these different people. The definition of ‘acts as an intermediary’ is intended to cover all of these people.

RG 204.167 For example, you will be acting as an intermediary if you are:

- (a) a finance broker that arranges a particular credit contract with a credit provider;
- (b) an aggregator that acts as a conduit between an individual broker and a credit provider; or
- (c) a mortgage manager that is involved in arranging a credit contract (in addition to managing the credit contract once it has been provided).

RG 204.168 For more information on what is meant by acting as an intermediary, see RG 203.

RG 204.169 If you answer ‘yes’ to either of these questions, you will be asked to indicate:

- (a) an estimate of the amount of credit that you are likely to provide, or secure for consumers, in your first 12 months of operation (if you are granted a credit licence);

Note: You may take part in the process of securing the provision of credit for a consumer under a credit contract or consumer lease even if you only have a minor role in referring or passing on information between the consumer and the credit provider: see RG 203.

- (b) your intended distribution model (i.e. employee sales representatives, independent or franchisee sales representatives, related companies);
- (c) how you will most often receive, or arrange, credit applications (e.g. over the counter, home visits, telephone, mail, internet);
- (d) whether you intend to cross-sell financial products, other than credit contracts or consumer leases, to your client base, or refer your clients to the issuers of other financial products (e.g. you may sell insurance products to your clients); and
- (e) if you do cross-sell, whether you will receive commissions or other payments.

## Representatives

### Numbers of representatives

- RG 204.170 You will be asked how many representatives you have who will engage in credit activities.
- RG 204.171 'Representatives' includes your employees and directors, employees and directors of related bodies corporate and credit representatives.
- RG 204.172 In many businesses there will be representatives who do not engage in credit activities (e.g. a receptionist may be an employee of a business that engages in credit activities but they may not themselves engage in credit activities).
- RG 204.173 To answer this question you will need to select, from the range provided, the appropriate number of representatives you have who will engage in credit activities. If you are:
- (a) a registered person—the number of representatives that you need to select will be the number of your representatives engaging in credit activities at the time you lodge your application; or
  - (b) not a registered person—the number of representatives that you need to select will be the number of representatives engaging in credit activities that you reasonably expect to have when you start to engage in credit activities (if the licence is granted).
- RG 204.174 If you have part-time representatives (e.g. they are part time employees), they should be counted as an appropriate fraction of a full-time representative.

### Estimated numbers of credit representatives

- RG 204.175 You will be asked how many credit representatives you expect to authorise in the first 12 months of operation under your credit licence (if it is granted).
- RG 204.176 'Credit representatives' are people who are authorised under s64 or 65 of the National Credit Act to engage in credit activities on your behalf.
- RG 204.177 If you indicate that you expect to have one or more credit representatives, you will also be asked where they will be located (i.e. particular states or territories, Australia-wide or overseas).
- RG 204.178 Your answer to this question will also trigger a later question about your processes for ensuring that these people are members of an approved EDR scheme.

### **Money held in trust**

- RG 204.179 You will be asked whether you are likely to receive money for or on behalf of another person in the course of providing credit services. If you select 'yes', you will be asked whether you will hold this money in a trust account with an Australian ADI.
- RG 204.180 Credit licensees that receive money for or on behalf of another person in the course of providing credit services have obligations under Division 3 of Part 2-5 of the National Credit Act to maintain a trust account.
- RG 204.181 This question requires an indication of whether you expect to receive and hold money for consumers. Not all people who have an authorisation covering credit services will do this.
- RG 204.182 Credit providers who also select the authorisation to 'Engage in all credit activities' may provide credit services, other than in their capacity as a credit provider, for the purpose of this question and the trust account obligations.

## D What questions will I be asked about compliance with the general conduct obligations?

### Key points

In part B of your online licence application, you will be asked a series of questions to confirm whether you have arrangements and systems to comply with the obligations that you will have as a credit licensee: see RG 204.183–RG 204.184.

You will be asked to:

- identify the people involved in the management of your business (your ‘fit and proper people’); and
- specify which of those people you will rely on to demonstrate that you are competent to engage in credit activities (your ‘responsible managers’): see RG 204.192–RG 204.233.

For standard applicants, this information is used to assess your competence to engage in the credit activities that are covered by the authorisation you have selected, and whether you are a fit and proper person to engage in credit activities: see RG 204.191.

For streamlined applicants, this information is part of the statement you are required to make about whether you will comply with your obligations as a credit licensee if you are granted a licence. The information about your ‘fit and proper people’ will also enable us to check whether you are a person who is excluded from being licensed by s40 of the National Credit Act: see RG 204.190.

## Do you have arrangements and systems for compliance with the general conduct obligations?

RG 204.183 Each of the questions in this part of the application is designed to obtain your confirmation that your arrangements and systems for compliance with the general conduct obligations are adequate, having regard to the nature, scale and complexity of your business, rather than asking for detailed information about your arrangements and systems.

RG 204.184 To give this confirmation you need to have developed your arrangements and systems, and the written plans to document those arrangements and systems, before you start your application.

Note: For more detailed guidance on what we consider to be ‘adequate’ arrangements and systems for compliance with the general conduct obligations, see the regulatory

guides referred to in Table 3. In considering whether your arrangements and systems are adequate, you need to take into account the nature, scale and complexity of your credit activities.

- RG 204.185 You will not be asked in the online application for any further information to demonstrate the adequacy of your arrangements and systems. However, you will be required to give a declaration that if you are granted a credit licence you will comply with the general conduct obligations. See Section F for further information about the declarations that you will make when you submit the application.
- RG 204.186 During our assessment of your application, if we are concerned about your ability to comply with any of the general conduct obligations, we may ask you to provide additional information (such as a copy of your written plans that document your arrangements and systems).
- RG 204.187 You will need to have adequate arrangements and systems, and written plans that document them, to make the declaration required in the application and be prepared for any request by us for additional information during the assessment of your application.

### **AFS licensees**

- RG 204.188 Applicants who are AFS licensees will be asked fewer questions in this part of the application. This is because AFS licensees have already demonstrated that they have adequate arrangements for compliance with their obligations as AFS licensees, and we expect that they will comply with their general conduct obligations as credit licensees by maintaining the same types of arrangements. AFS licensees will be asked some questions where the arrangements referred to are specific to the general conduct obligations of credit licensees.

### **Bodies regulated by APRA**

- RG 204.189 Some of the general conduct obligations do not apply to bodies regulated by APRA. Accordingly, applicants that are bodies regulated by APRA will not be asked any questions in relation to these obligations.

### **Streamlined applicants**

- RG 204.190 If you are a streamlined applicant, your answers to these questions will form part of your required statement that you will comply with your obligations under the National Credit Act if you are granted a credit licence. However, we will not refuse your application on the basis that your answers give us reason to believe that you will not comply with your obligations.

## B1 Fit and proper person to engage in credit activities

RG 204.191 Before we can grant you a credit licence, we must be satisfied that you are a fit and proper person to engage in the credit activities that will be covered by that licence.

### What is meant by 'fit and proper'?

RG 204.192 You must be a 'fit and proper person' to engage in credit activities. In determining whether you meet this requirement, we will have regard to whether each of the people involved in managing your credit business are 'fit and proper people' to perform that role.

RG 204.193 To be a 'fit and proper person' to engage in credit activities means that the person :

- (a) is competent to operate a credit business (as demonstrated by the person's knowledge, skills and experience);
- (b) has the attributes of good character, diligence, honesty, integrity and judgement;
- (c) is not disqualified by law from performing their role in your credit business; and
- (d) either has no conflict of interest in performing their role in your credit business, or any conflict that exists will not create a material risk that the person will fail to properly perform their role in your credit business.

Note: These criteria for determining whether a person is a fit and proper person are consistent with the criteria set out for responsible persons of ADIs in Prudential Standard APS 520 *Fit and Proper*.

RG 204.194 To demonstrate that you have these attributes, you will need to:

- (a) identify the people involved in the management of your business (your 'fit and proper people');
- (b) specify which of those people you will rely on to demonstrate that you are competent to engage in credit activities (your 'responsible managers'); and
- (c) provide us with information about each of those people, their role in your credit business and their past conduct, and, if they will be responsible managers, their knowledge and experience.

RG 204.195 Standard applicants will be required to provide some additional documents about each of their 'fit and proper people' to support the application. More information on these documents is set out in Section E.

RG 204.196 For streamlined applicants, we will not take this information into account when we assess your application, except to check whether:

- (a) a banning order or disqualification order under Part 2-4 of the National Credit Act is in force against the applicant; or
- (b) an order under the *Crimes (Criminal Organisations Control) Act 2009* (NSW) or the *Serious and Organised Crime (Control) Act 2008* (SA) is in force against the applicant or, if the applicant is:
  - (i) a company—a director, secretary or senior manager of the applicant; or
  - (ii) a partnership or multiple trustee—a partner or trustee, who would perform duties in relation to the credit activities to be authorised by the licence.

RG 204.197 When we consider whether you are a fit and proper person, we are also required to take into account whether you, or any of your ‘fit and proper people’, have been the subject of specified regulatory outcomes: see s37(2) of the National Credit Act. You will be required to make a statement about whether you or any of your ‘fit and proper people’ have been the subject of these regulatory outcomes: see Section F.

RG 204.198 If you or one or more of the people involved in your credit business have been subject to one of these outcomes, this will not necessarily be grounds for refusing your application for a credit licence. However, we will need to consider the matter to decide whether it impacts on whether you are a fit and proper person to engage in credit activities. For example, if a responsible manager has been convicted of serious fraud, the circumstances of the offence may show such a disregard for the interests of other people, or so great an abuse of their confidence or trust, that we will conclude that their involvement in your business means that you are not a fit and proper person to engage in credit activities.

RG 204.199 If you or one or more of the people involved in your credit business have been subject to one of these outcomes, you will be asked to provide an explanation of the matter to help us make this decision.

### **Who are your ‘fit and proper people’?**

RG 204.200 Your ‘fit and proper people’ are:

- (a) if you are a company—your directors and company secretaries, and any senior managers who will perform duties in relation to credit;
- (b) if you are a partnership or a multiple trustee:
  - (i) the partners or trustees who will perform duties in relation to credit; and
  - (ii) if a partner or trustee is a body corporate—the directors and company secretaries of the partner or trustee; or



- (c) if you are a natural person—you.

### **Details of your ‘fit and proper people’**

- RG 204.201 The way the list of people is presented when you first enter this part of your online application will depend on whether ASIC already holds information about your people.
- RG 204.202 If you are a company or registered person, the credit licensing system will access the Australian Company Register and the Australian Credit Register to pre-fill this information.

### **Company applicants**

- RG 204.203 When you first enter this part of the application you will see a screen (the main screen) that lists:
- (a) the name and date and place of birth details of each officeholder of the applicant; and
  - (b) the ‘status’ of each person (which shows whether you have completed all of the information required to be included in the application for this person).
- RG 204.204 For company applicants the pre-filled information about each listed person has been accessed from the Australian Company Register. If the pre-filled information is not correct, you will need to update that register by lodging a Form 484 before you can complete your online application.
- RG 204.205 ASIC does not have details of your senior managers, so these people are not pre-filled in your online application. You will need to click on ‘Add a senior manager’ and enter the requested information for that person on the displayed page. You will need to do this for each senior manager who will perform duties in relation to credit.
- RG 204.206 You will need to decide who your senior managers are. A ‘senior manager’ is a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of your business, or who has the capacity to significantly affect your financial standing. Senior managers are likely to be involved in setting the policies and procedures to be followed by your representatives who have direct contact with consumers. They are also likely to be responsible for ensuring that your representatives comply with the law.
- RG 204.207 When you first enter this part of the application, the ‘Status’ column will show as ‘Not complete’ for each of the people who are listed. You will need to click on the ‘Edit’ button, which will display a new screen that asks for the following information about this person:
- (a) a description of the person’s role in your business (you can select one of the listed roles);

- (b) the person's job title;
- (c) a description of the industry category that best describes the person's area of experience (you can select one of the listed categories);
- (d) whether you rely on the person to demonstrate that you are competent to engage in credit activities (i.e. whether they are a responsible manager); and
- (e) whether the person is currently completing a mentoring program with the Mortgage and Finance Association of Australia (this question will only be asked if you select 'finance broker' or 'mortgage broker' in question A7).

RG 204.208 If you indicate that the person is a responsible manager, you will be asked to provide information about the person's qualifications and experience later in the application.

RG 204.209 If you indicate that the person is completing a relevant mentoring programme, a condition may be included in your credit licence (if it is granted) that requires completion of that mentoring programme.

Note: For more information about the requirements for representatives of mortgage brokers and finance brokers that are completing mentoring programs, see RG 206.

RG 204.210 When you have entered this information, click 'Next' and you will be returned to the main screen.

RG 204.211 You will need to repeat this for each person who is listed.

RG 204.212 When you have completed the required information for all of your listed people, click 'Next' and you will continue with your application.

### **Partnership and multiple trustee applicants**

RG 204.213 When you first enter this part of the online application you will see a screen (the main screen) that lists:

- (a) the name and date and place of birth details of each partner or trustee; and
- (b) if any partner or trustee is a company:
  - (i) the name and ACN of the company; and
  - (ii) the name and date and place of birth details of each officeholder of the company; and
- (c) the 'status' of the listed people (which shows whether you have completed all of the information required to be included in the application for this person).

- RG 204.214 The main screen first lists each partner or trustee who is a natural person. It then lists each body corporate partner or trustee, and the directors and secretaries of that body corporate.
- RG 204.215 If you are a registered person, this information will be pre-filled from the information in the Australian Credit Register. Information about the officeholders of each body corporate partner or trustee will be pre-filled from the Australian Company Register.
- RG 204.216 For body corporate partners and trustees, and their officeholders, the pre-filled information has been accessed from the Australian Company Register. If the pre-filled information is not correct, that register must be updated by lodging a Form 484 before you can complete your online application.
- RG 204.217 If you click on 'Remove' for any of the body corporate partners or trustees, each officeholder of that body corporate will also be removed.
- RG 204.218 If you are a new applicant, no people will be listed when you first enter the main screen. You will have to add all of your 'fit and proper people'.
- RG 204.219 You can add a partner or trustee that is a natural person or a body corporate. You will need to click on the appropriate 'Add' link, and enter the requested information for that person or body corporate on the displayed page. You will need to do this for each partner or trustee who will perform duties in relation to credit.
- RG 204.220 If you add a body corporate partner or trustee, you will only need to enter its ABN, ACN or ARBN. The credit licensing system will access the Australian Company Register to pre-fill the details of officeholders. You will need to click on 'Complete' to provide the additional information for each of those officeholders.
- RG 204.221 The 'Status' column will initially show as 'Not complete' for each person. You will need to click on the 'Edit' button, and this will display a new screen that asks for the following information about this person:
- (a) a description of the person's role in your business (you can select one of the listed roles);
  - (b) the person's job title;
  - (c) a description of the industry category that best describes the person's area of experience (you can select one of the listed categories);
  - (d) whether you rely on the person to demonstrate that you are competent to engage in credit activities (i.e. whether they are a responsible manager); and
  - (e) whether the person is currently completing a mentoring program with the Mortgage and Finance Association of Australia (this question will

only be asked if you select 'finance broker' or 'mortgage broker' in question A7).

RG 204.222 If you indicate that the person is a responsible manager, you will be asked to provide information about the person's qualifications and experience later in the application.

RG 204.223 If you indicate that the person is completing a relevant mentoring programme, a condition may be included in your credit licence (if it is granted) that requires completion of that mentoring programme.

Note: For more information about the requirements for representatives of mortgage brokers and finance brokers that are completing mentoring programs, see RG 206.

RG 204.224 When you have entered this information, click 'Next' and you will be returned to the main screen.

RG 204.225 You will need to repeat this for each person who is listed.

RG 204.226 When you have completed all of your people, click 'Next' and you will continue to the next part of the application.

### **Natural person applicants**

RG 204.227 When you first enter this part of the online application, you will see a screen that contains your name and date and place of birth details.

RG 204.228 The 'Status' column will show as 'Not complete'. You will need to click on the 'Edit' button, and this will display a new screen that asks for the following information:

- (a) a description of your role in your business (you should select 'individual applicant or partner');
- (b) your job title;
- (c) a description of the industry category that best describes your area of experience (you can select one of the listed categories);
- (d) whether you will be a responsible manager (you should select 'yes');  
and
- (e) whether you are currently completing a mentoring program with the Mortgage and Finance Association of Australia (this question will only be asked if you select 'finance broker' or 'mortgage broker' in question A7).

RG 204.229 When you have entered this information, click 'Next' and you will continue with your application.

## Responsible managers

RG 204.230 You must identify at least one person as a responsible manager. We will assess the knowledge and skills of your responsible managers to determine whether you are competent to engage in the credit activities for which you have applied.

Note: For further information on the role of responsible managers and how we will assess your organisational competence by looking at the knowledge and skills of your responsible managers, see RG 206.

## Key person licence condition

RG 204.231 If we consider that you are dependent on the expertise of a small number of people to be competent to engage in credit activities, we are likely to include a condition on your credit licence (if it is granted) that specifies that these people are ‘key people’ to your business.

RG 204.232 If we put this condition on your credit licence, you will have to:

- (a) notify us if your key people (or any of them) leave or are about to leave your business; and
- (b) nominate another suitably qualified person to take over from them.

RG 204.233 You cannot change your key people unless you have varied your credit licence. For more information on making an application to vary your credit licence, see Section H.

## B2 Compliance arrangements

### Compliance arrangements

RG 204.234 Before we can grant you a credit licence, you must demonstrate that you have processes in place to adequately monitor compliance with your licence conditions and credit legislation.

RG 204.235 For more information on what we think is required for compliance arrangements to be adequate, see Section B and C of RG 205. Your processes should be appropriate to the nature, scale and complexity of your business.

RG 204.236 You will be asked a group of questions that are designed to obtain your confirmation that you have in place, and will maintain, adequate compliance arrangements and systems, including whether:

- (a) you have a written plan that documents your arrangements and systems;
- (b) the arrangements specify how often compliance with procedures is monitored and reported on; and

- (c) there are people internal to your business responsible for ongoing monitoring and reporting.

RG 204.237 If you indicate that you do not have in place arrangements and systems to ensure compliance with the obligations, you will not be able to continue with the application because you would not meet the minimum requirements to be granted a credit licence.

### **Conflicts management**

RG 204.238 Before we can grant you a credit licence, you must demonstrate that you have arrangements in place to ensure that your clients will not be disadvantaged by any conflicts of interest that arise in relation to your credit activities.

RG 204.239 For more information on what we think is required for conflicts management arrangements to be adequate, see Section D of RG 205. Your arrangements should be appropriate to the nature, scale and complexity of your business.

RG 204.240 You will be asked to confirm that you have in place adequate conflicts management arrangements and systems.

RG 204.241 If you indicate that you do not have in place arrangements and systems to ensure clients will not be disadvantaged by conflicts of interest that may arise wholly or partly in relation to your credit activities, you will not be able to continue with the application because you would not meet the minimum requirements to be granted a credit licence.

### **Outsourcing**

RG 204.242 You will also be asked whether any functions of your business will be outsourced when you engage in credit activities. If you answer 'yes', you will be asked to select the types of functions that will be outsourced.

RG 204.243 You should only answer 'yes' to this question if you will be outsourcing parts of your business that relate to the provision of credit activities.

RG 204.244 If you outsource your functions as a credit licensee to other entities, you will still be responsible for complying with all of your licensee obligations in relation to those functions. For example, if you outsource the training of your representatives, you will still be responsible for ensuring that your representatives are competent and adequately trained.

RG 204.245 If you outsource any of your functions as a credit licensee, we expect that you will have appropriate processes in place to ensure that you:

- (a) have taken due skill and care in choosing a suitable service provider;
- (b) will monitor their ongoing performance; and

- (c) can deal effectively with any breaches of the outsourcing agreement or actions that lead, or might lead, to a breach of your licensee obligations.

RG 204.246 If you intend to outsource any of your functions as a credit licensee, you will also need to provide some information in the 'Summary business description' about who will perform these functions and in what location. For more information on the 'Summary business description', see Section E.

### B3 Supervising and training representatives

RG 204.247 Before we can grant you a credit licence, you must demonstrate that you have adequate arrangements to:

- (a) supervise and monitor the activities of any representatives and ensure that any breaches are identified and remedied; and
- (b) ensure that any representatives are adequately trained, and are competent, to engage in the credit activities covered by your credit licence.

RG 204.248 For guidance on what ASIC considers adequate training, see RG 206. Your arrangements should be appropriate to the nature, scale and complexity of your business.

RG 204.249 You will be asked a group of questions that are designed to obtain your confirmation that you have arrangements to ensure that your representatives will be adequately trained and competent, and that you will supervise and monitor your representatives, including whether you:

- (a) have a written policy that details the minimum training requirements;
- (b) maintain a training register;
- (c) have a documented process for monitoring and supervising all representatives (including credit representatives);
- (d) undertake certain checks during your recruitment process for representatives;
- (e) will ensure mortgage broking representatives will have a minimum of Certificate IV in Financial Services (Finance/Mortgage Broking); and
- (f) have processes to ensure credit representatives are members of an approved EDR scheme.

RG 204.250 If you are an AFS licensee, the online application will only display questions that are specific to the credit licensing regime. We have limited the questions that are asked because you have already demonstrated that you have adequate arrangements in relation to the training and supervision of your representatives in your AFS licence application. We expect that, if you are granted a credit licence, you will comply with your obligations under the

National Credit Act by maintaining the same types of arrangements in relation to representatives that engage in credit activities on your behalf.

## B4 Adequacy of resources

- RG 204.251 Before we can grant you a credit licence, you must demonstrate that you have adequate financial, human and information technology (IT) resources to engage in credit activities and to carry out supervisory arrangements (unless you are a body regulated by APRA).
- RG 204.252 For guidance on what ASIC considers to be adequate resources, see Section F of RG 205 (for human and IT resources) and RG 207 (for financial resources). Your resources should be appropriate to the nature, scale and complexity of your business.
- RG 204.253 Unless you are a body regulated by APRA, you will be asked a group of questions that are designed to obtain your confirmation that you have:
- (a) a written plan that documents your measures for ensuring that your financial resources are adequate and monitoring your financial resources to ensure that they continue to be adequate;
  - (b) a business planning process that includes consideration of the employees and other representatives that you need to engage in your credit business; and
  - (c) IT systems to support your business processes.
- RG 204.254 If you are an AFS licensee, the online application will only ask for confirmation about your business planning process. We have limited the questions that are asked because you have already demonstrated that you have arrangements for maintaining adequate financial resources and IT resources to conduct a financial services business in your AFS licence application. We expect that, if you are granted a credit licence, you will comply with your obligations under the National Credit Act by maintaining the same types of arrangements in relation to your credit activities.
- RG 204.255 If you indicate that you do not have in place a written plan that set out measures to ensure your financial resources are adequate, or that you do not have IT systems to support your business processes, you will not be able to continue with the application because you would not meet the minimum requirements to be granted a credit licence.



## B5 Dispute resolution and hardship applications

- RG 204.256 Before we can grant you a credit licence, you must demonstrate that you have a dispute resolution system in place that comprises:
- (a) internal dispute resolution procedures that meet ASIC's approved standards and requirements set out in RG 165; and
  - (b) membership of one or more ASIC-approved EDR schemes that can deal with complaints about the credit activities that you will engage in under your credit licence. Contact details for the approved EDR schemes for credit are in Table 5.

### Internal dispute resolution

- RG 204.257 You will be asked a group of questions that are designed to obtain your confirmation that you have an internal dispute resolution system in place, and that it meets the requirements set out in RG 165, including:
- (a) the role of the person responsible for internal dispute resolution;
  - (b) whether your internal dispute resolution procedures meet the requirements in RG 165;
  - (c) whether your procedures are documented, and available to clients; and
  - (d) whether the procedures specify that information about unresolved complaints must be provided to your EDR scheme.
- RG 204.258 You will also be asked whether you have procedures for receiving and assessing requests to vary credit contracts on the grounds of hardship (if you intend to provide credit). You require separate procedures for these types of applications because they are generally of an urgent nature.
- RG 204.259 If you are an AFS licensee, the online application will only display questions about hardship application procedures. We have limited the questions that are asked because you have already demonstrated that you have appropriate internal dispute resolution arrangements in relation to your financial services business. We expect that, if you are granted a credit licence, you will comply with your obligations under the National Credit Act by maintaining the same types of arrangements in relation to your credit activities.
- RG 204.260 If you indicate that you do not have in place internal dispute resolution systems or procedures for dealing with hardship applications, you will not be able to continue with the application because you would not meet the minimum requirements to be granted a credit licence.

### External dispute resolution

- RG 204.261 You will be asked to enter the details of the EDR scheme or schemes of which you are a member, including your membership number and the date

your membership commenced. If your EDR scheme does not provide membership numbers, you should leave this field blank. If you do not have a formal commencement date, you should enter the date you first became a member of the EDR scheme, or were first covered by the EDR scheme.

RG 204.262 If you are not a member of an EDR scheme, you can still continue with the application. However, you will not be granted a credit licence until you have become a member of an approved EDR scheme.

**Table 5: Approved EDR schemes**

EDR scheme	Contact details
Financial Ombudsman Service Ltd	<p>Address: GPO Box 3 Melbourne Vic 3001</p> <p>Phone: 1300 780 808 03 9613 7366</p> <p>Email: info@fos.org.au (administration) membership@fos.org.au (membership enquiries)</p> <p>Website: www.fos.org.au</p>
Credit Ombudsman Service Ltd	<p>Address: Level 7, 287 Elizabeth Street Sydney NSW PO Box A252 Sydney South NSW 1235</p> <p>Phone: 1800 138 422 02 9273 8400</p> <p>Email: info@cosl.com.au</p> <p>Website: www.cosl.com.au</p>

## B6 Risk management

RG 204.263 Before we can grant you a credit licence, you must demonstrate that you have adequate risk management systems (unless you are a body regulated by APRA).

RG 204.264 For guidance on what ASIC considers to be adequate risk management systems, see Section D of RG 205. Your systems should be appropriate to the nature, scale and complexity of your business.

RG 204.265 Unless you are a body regulated by APRA, you will be asked a group of questions that are designed to obtain your confirmation that you have adequate systems in place, including whether:

- (a) you have documented processes to identify, evaluate, treat and communicate risks in your business, and to monitor and report on risk management issues;
- (b) you have assessed the risks associated with your business and the probability of those risks occurring; and
- (c) relevant representatives are provided with risk management training.

RG 204.266 If you indicate that your risk management processes do not include the identification, analysis, evaluation, treatment and communication of risks associated with your credit business, you will not be able to continue with the application because you would not meet the minimum requirements to be granted a credit licence.

## B7 Compensation arrangements

RG 204.267 As a credit licensee, you will need to have arrangements in place for compensating your clients for loss they suffer if you breach your obligations under the National Credit Act.

RG 204.268 For most applicants, the way to comply with this obligation is to have adequate professional indemnity (PI) insurance cover.

RG 204.269 Some applicants (i.e. general insurance companies, life insurance companies and ADIs) are exempt from the obligation to hold PI insurance cover. Related bodies corporate of these entities may also be exempt if they hold a guarantee that has been approved by ASIC.

Note: See reg 12(3) of the National Credit Regulations for details of licensees that are exempt from the requirement to hold PI insurance cover.

RG 204.270 In addition, if an applicant will (if granted a licence) be a licensee that is only authorised to engage in certain credit activities as a credit provider, they will be exempt from the obligation to hold PI insurance cover.

Note: See reg 12(3)(c) of the National Credit Regulations.

RG 204.271 For information on our approach to compensation and insurance arrangements, including what features your PI insurance cover must have to be 'adequate', see the draft regulatory guide attached to Consultation Paper 125 *Compensation requirements for credit licensees: Further consultation* (CP 125).

Note: We will release our final guidance on compensation and insurance arrangements for credit licensees in early 2010.

RG 204.272 You do not need to have your compensation arrangements in place at the time that you make your application for a credit licence. However, we cannot grant you a credit licence until you confirm that you have adequate

compensation arrangements in place. You should therefore start to organise your PI insurance cover, or apply to us for approval of an alternative arrangement or a guarantee, before making your application. It can take several weeks, or longer, to obtain PI insurance cover, or for us to assess whether your alternative compensation arrangements or guarantee are adequate.

### **Professional indemnity insurance**

- RG 204.273 If you indicate that you have professional indemnity (PI) insurance that complies with ASIC's policy, you will continue to the next part of the application.
- RG 204.274 You do not need to provide any further details about your PI insurance cover in the online application. If we consider that you should be granted a credit licence, we will give you a decision in principle and a draft of the credit licence that we propose to grant.
- RG 204.275 However, before we can make a final decision to grant the credit licence, you will be asked to:
- (a) answer a questionnaire that asks for information about the insurer, the type and level of your cover, the scope of the cover and whether it has the features set out in our guidance on compensation and insurance arrangements for credit licensee; and
  - (b) provide a copy of the Certificate of Currency for your PI insurance policy.
- RG 204.276 If you indicate that you do not have PI insurance that complies with ASIC's policy, you will be asked whether you have a process in place to ensure that you will have such insurance cover when your credit licence takes effect. If you answer 'yes', you will not be asked any further questions about your compensation arrangements in the online application. However, you will need to provide the information described in RG 204.275 before we can make a final decision to grant a credit licence.

### **Exempt licensees and alternative compensation arrangements**

#### **Exempt licensees that do not require ASIC approval**

- RG 204.277 If you indicate that you are an exempt licensee because you are a general insurance company, life insurance company, or an ADI, you will not be asked for any more information about your compensation arrangements either in your online application or before your credit licence is issued.

**Exempt licensees that require ASIC approval**

- RG 204.278 If you indicate that you will only engage in credit activities (other than providing credit services) as a credit provider, you will not be asked for any more information in your online application about your compensation arrangements. If we agree to grant you a credit licence that only authorises you to engage in these limited credit activities, we can still choose to impose a condition on your licence that requires you to hold PI insurance cover.
- RG 204.279 If you select either 'ASIC approved guarantee' or 'ASIC approved alternative arrangements' as the reason for not having PI insurance cover, you will be asked in your online application whether ASIC's approval has been obtained. You do not need to have obtained our approval before you make your licence application. However, your credit licence will not be granted until either we have approved the alternative arrangements or guarantee, or you have obtained adequate PI insurance cover.

**How to obtain approval of alternative compensation arrangements or a guarantee from an APRA-regulated entity**

- RG 204.280 If you want to apply for ASIC approval of alternative arrangements, or a guarantee from a related body corporate that is a general insurance company, life insurance company or ADI, you will need to apply in writing to [applications@asic.gov.au](mailto:applications@asic.gov.au).
- RG 204.281 In deciding whether to approve alternative arrangements, we will consider the same factors used to assess the adequacy of PI insurance.

## E What supporting information will I need to provide?

### Key points

You will be asked for some additional information about each of your 'fit and proper people' and your responsible managers: see RG 204.282–RG 204.309.

You will also be asked for a written summary that describes your proposed business activities: see RG 204.310–RG 204.311.

If you are a streamlined applicant, you will not be asked for all of this information: see Table 6.

- RG 204.282 You will be asked to provide additional information that we need to assess:
- (a) the size and nature of your proposed business, and how your business will be operated;
  - (b) whether you are competent to engage in the credit activities that will be covered by the credit licence you have applied for; and
  - (c) whether you are a fit and proper person to engage in those credit activities.

**Table 6: Supporting information**

Type of information	Required documents	Applicants that must provide this information
Information about each of your 'fit and proper people'	Statement of Personal Information	Standard applicants only (i.e. not streamlined applicants)
	Particulars of any outcomes of concern listed in the Statement of Personal Information	Standard applicants only This information is only required if a 'yes' answer is given to a question in the Statement of Personal Information
	Criminal history check (not more than 12 months old)	Standard applicants only
	Bankruptcy check (not more than 12 months old), or a statutory declaration for overseas people	Standard applicants only
	Credit history report (not more than 3 months old)	Standard applicants only

Type of information	Required documents	Applicants that must provide this information
Additional information about your responsible managers	Educational qualifications	All applicants (i.e. including streamlined applicants)
	Previous employers where experience relevant to the application was gained	All applicants
Overview of your proposed business	Summary business description	Standard applicants only

## Information about each of your ‘fit and proper people’

- RG 204.283 When you enter this part of the online application, you will see a screen (the main screen) that lists:
- the name and date and place of birth details of each of the ‘fit and proper people’ listed in question B1; and
  - the ‘status’ of each person (which means whether you have completed all of the information required to be included in this part of the application for this person).
- RG 204.284 When you first enter this part of the application, the status for each person will be shown as ‘Not complete’. To complete the supporting information for each person, you need to click on the ‘Edit’ button next to their name. This will take you through a series of screens, which will cover the supporting information listed in Table 6. When you have completed each of these screens and clicked on ‘Next’, you will be returned to the main screen.
- RG 204.285 You do not have to complete all of the required information for a listed person at the same time. You can return to the information for any of the listed people at any time before you submit the application by clicking on the edit button.
- RG 204.286 Once you have completed the required information for each of the listed people, you can click on the ‘Next’ button and will be taken to the next part of the application.

### Statement of Personal Information

- RG 204.287 Each of the ‘fit and proper people’ must give a statement about whether they have been subject to certain events within the last 10 years, whether in Australia or overseas. These events are matters that may affect whether they have the attributes of a fit and proper person to be involved in your credit business, and include:

- (a) refusal or restriction of authorisations required by law for a trade, business or profession; disciplinary action or investigations that may result in disciplinary action; licence cancellations;
- (b) reprimand or disqualification or removal by a professional or regulatory body or EDR scheme in matters relating to the person's honesty, integrity or business conduct; claims against PI insurance in relation to advice given by the person; refusal of PI insurance; denial of accreditation by a lender, mortgage manager or mortgage insurer;
- (c) use of different names to those in the application;
- (d) administrative, civil or criminal proceedings or enforcement action, which were determined adversely to the person; and
- (e) declaration of bankruptcy or insolvency; involvement in the management of any companies or businesses that have had an external administrator appointed, or entered a compromise or scheme of arrangement with creditors, or been declared insolvent.

RG 204.288 If the person answers 'yes' to any of these events, you will be advised that you will need to provide an explanation of each matter. If the person has been subject to:

- (a) a judgement against them in proceedings;
- (b) a declaration of bankruptcy or insolvency; or
- (c) a deed of arrangement, assignment or a composition under Part X of the *Bankruptcy Act 1966*,

you must also provide specified documents or information about those matters. For more information, see RG 204.309.

## Additional information about your responsible managers

RG 204.289 For each person you have identified as a responsible manager, you will be asked for additional information to demonstrate that they have adequate knowledge and experience for you to be competent to engage in the credit activities to be authorised by your credit licence.

### Educational qualifications

RG 204.290 You will be asked for details of the educational qualifications of each person that are relevant to their responsibilities in your credit business. You need to enter the name of the educational institution, the name of the course and the year of completion of the course.



## Previous employers

- RG 204.291 You will be asked for details of the previous employers of each person. You only have to include details of employment that you consider is relevant to your credit business and application.

## Providing additional documents

### Background checks

- RG 204.292 For each of your ‘fit and proper people’, you will be required to provide:
- (a) a criminal history check that is no more than 12 months old;
  - (b) a bankruptcy check that is no more than 12 months old; and
  - (c) a credit history report that is no more than three months old.
- RG 204.293 You are not required to send us original documents. However, you must keep the original documents and give them to us if we ask for them.

### Criminal history check

#### *AFP criminal history check*

- RG 204.294 Criminal history checks can take up to six weeks or more to obtain, so apply for them early.
- RG 204.295 The check you need is called a ‘Name Check—ASIC Licensing’. We will not accept other police documents or police checks, such as those for applications for firearms licences.
- RG 204.296 You can get a form from the Australian Federal Police (AFP) or download one from [www.afp.gov.au](http://www.afp.gov.au). Make sure you select the special form to request a check for ASIC purposes. This check will not include convictions that are ‘spent’ or ‘quashed’: see the definition of ‘spent conviction’ in Part VIIC of the *Crimes Act 1914*. You are not obliged to disclose a spent conviction to us.
- RG 204.297 Carefully read the instructions before completing the form. The AFP will return any forms that are incomplete. You need to pay a fee to the AFP when you apply for the check.
- RG 204.298 Send your form and cheque or money order to:
- Australian Federal Police
  - Criminal History Branch
  - Locked Bag No. 1
  - WESTON ACT 2611

*Overseas criminal history checks*

- RG 204.299 If a person has never lived in Australia or has only recently arrived, an Australian criminal history check will not be relevant. In this situation, you must provide us with a criminal history check, no more than 12 months old, from the countries in which the person has lived in the last 10 years.
- RG 204.300 The criminal history check must be obtained from a national government authority in the relevant country. If this is not possible, you must provide a criminal history check issued by a state or provincial authority for each state or province where the person has lived over the last 10 years.
- RG 204.301 If authorities in the relevant country do not provide criminal history checks, you must provide a statutory declaration declaring that the person has no criminal history and detailing the attempts you have made to obtain a criminal history check from the relevant authorities. If the person is still overseas at the time you lodge your licence application, the statutory declaration must be notarised and registered at an Australian Consulate in the country where the person lives. If the person is living in Australia at the time the statutory declaration is made, the declaration must be signed and witnessed by a solicitor, justice of the peace, notary or other equivalently qualified person.

**Bankruptcy check***ITSA Bankruptcy check*

- RG 204.302 The Insolvency and Trustee Service Australia (ITSA) maintains the National Personal Insolvency Index (NPII), which contains information on proceedings and administrations under the *Bankruptcy Act 1966*. ITSA do not perform searches of the NPII for the general public, so you will need to request a bankruptcy check through an Index Search Agent who has been authorised by ITSA. Go to the ITSA website at [www.itsa.gov.au](http://www.itsa.gov.au) for more information about the Search Agents. A fee applies to bankruptcy checks.
- RG 204.303 The bankruptcy checks you provide to us must be no more than 12 months old. You should send us a certified copy of the bankruptcy check and retain the original.

*Statutory declaration for overseas people*

- RG 204.304 If a person has never lived in Australia or has only recently arrived, an ITSA bankruptcy check will not be relevant. In this situation, you must provide us with a statutory declaration declaring that your person has never been bankrupt.
- RG 204.305 If the person is still overseas at the time you lodge your licence application, the statutory declaration must be notarised and registered at an Australian

Consulate in the country where the person lives. If the person is living in Australia at the time the statutory declaration is made, the declaration must be signed and witnessed by a solicitor, justice of the peace, notary or other equivalently qualified person.

### **Credit history report**

- RG 204.306 You are required to provide a credit history report that is not more than three months old. The age of acceptable credit history reports is less than for the other background checks because credit histories are generally subject to more frequent change, and they can be obtained more quickly and for no charge.
- RG 204.307 Credit history reports are available online from Veda (Baycorp Advantage/Credit Advantage) at [www.mycreditfile.com.au](http://www.mycreditfile.com.au).
- RG 204.308 Personal credit files can be obtained within about 10 working days free of charge. As credit files contain private information, you will need to arrange for your 'fit and proper people' to obtain their own credit history report.

### **Other information about your 'fit and proper people'**

- RG 204.309 If a 'yes' answer was given to any question in the Statement of Personal Information, you must also provide:
- (a) a document that sets out a full explanation of each matter. If you want, this explanation can include any mitigating circumstances and any comments that you may have on whether:
    - (i) the matter affects whether the person is a fit and proper person to be involved in your credit business; or
    - (ii) the person's involvement in your credit business will affect whether you are a fit and proper person to engage in credit activities;
  - (b) if the matter involves a judgement in administrative, civil or criminal proceedings, a copy of the judgement and an indication of whether it has been satisfied;
  - (c) if the matter involves a declaration of bankruptcy or insolvency, the date of the declaration and district in which it was made and the bankruptcy number; and
  - (d) if the matter involves a deed of arrangement, assignment or acceptance by creditors of a composition under Part X of the *Bankruptcy Act 1966*, the date of the deed of arrangement, assignment or the special resolution accepting the composition, and the district in which it was made; the name and address of the trustee of the deed of arrangement, assignment or composition; and the identifying number for the deed of

arrangement, assignment or composition in the office of the Register of Bankruptcy.

### **Summary business description**

RG 204.310 You must provide a document that describes your proposed business.

RG 204.311 This document is an overview of what your business will involve and how you will operate it in practice. Details that should be provided include:

- (a) the credit activities that you will engage in (which may be all or only some of those that are covered by the authorisations you have applied for);
- (b) the types of credit products to which your activities will relate (e.g. home loans, secured personal loans, unsecured loans, credit cards);
- (c) how you will assess applications for credit (e.g. whether you will provide 'low' or 'no' document loans);
- (d) your distribution model (e.g. whether you will rely on consumers to approach your business at branch offices, or will visit consumers at their own premises, or promote and provide credit products or credit services through telephone calls, the mail or the internet);
- (e) your remuneration structure (e.g. whether you receive commissions for your credit services, or up-front fees);
- (f) how many offices you will have, how geographically diverse your business is and how you supervise your representatives if they are located away from your main offices; and
- (g) if you will outsource functions, who you will outsource your functions to, where the outsourced service provider is located and how you have decided on them as an appropriate person to provide these functions for you.

## F What statements and declarations will I need to make?

### Key points

You must make a statement about your past conduct and that of your 'fit and proper people': see RG 204.312—**Error! Reference source not found.**

You must also make declarations that you will comply with your obligations as a credit licensee if you are granted a licence, and that the information in your application is complete, accurate and true: see RG 204.318–RG 204.323.

### Required statement about past conduct or history

RG 204.312 Your application must contain a statement declaring that none of the people listed in the statement has been the subject of any of the specified orders or outcomes that affect ASIC's ability to licence you. The people listed in the statement are you, as the applicant, and:

- (a) if you are a company, each director, secretary and senior manager;
- (b) if you are a partnership, each partner; or
- (c) if you are a multiple trustee, each trustee,

who would perform duties in relation to the credit activities to be authorised by the credit licence.

### Statement to be made by standard applicants

RG 204.313 The statement that you must be able to make in relation to each person is that:

- (a) the person's registration or licence under the credit legislation or their AFS licence has never been suspended or cancelled;
- (b) a banning order or disqualification order under Part 2-4 of the National Credit Act or Div 8 of Part 7.6 of the *Corporations Act 2001* (Corporations Act) has never been made against the person;
- (c) an order under the *Crimes (Criminal Organisations Control) Act 2009* (NSW) or the *Serious and Organised Crime (Control) Act 2008* (SA) has never been made against the person;
- (d) the person has never been banned from engaging in a credit activity under a law of a state or territory (whether as a result of a licence or

registration being suspended or cancelled, or as a result of injunctions or other orders of a court);

- (e) the person has never been insolvent (this statement is not required for multiple trustees, but it must be true for each individual trustee that makes up the multiple trustee);
- (f) the person has never been disqualified from managing corporations under Part 2D.6 of the Corporations Act; and
- (g) the person has no criminal convictions within the last 10 years.

RG 204.314 Each of these statements is relevant to whether you are a fit and proper person to engage in credit activities.

RG 204.315 If you cannot agree that each of these statements is true for you and each of the people referred to above, you will need to provide an explanation of why you cannot make the statements. This explanation may include any mitigating circumstances and any comments you have on why you consider that this does not impact on whether you are a fit and proper person to engage in the credit activities that will be authorised by your credit licence (if a licence is granted).

### Statement to be made by streamlined applicants

RG 204.316 The statement that you must be able to make in relation to each person is that:

- (a) a banning order or disqualification order under Part 2-4 of the National Credit Act or Div 8 of Part 7-6 of the Corporations Act is not in force against the person; and
- (b) an order under the *Crimes (Criminal Organisations Control) Act 2009* (NSW) or the *Serious and Organised Crime (Control) Act 2008* (SA) is not in force against the person.

RG 204.317 If you cannot agree that each of these statements is true for you and each of the people referred to above, you will need to provide an explanation of why you cannot make the statements. This explanation may include any comments you have on why you consider that the orders would not result in you being excluded from being granted a credit licence by s40 of the National Credit Act.

## Declarations

RG 204.318 To complete the application, declarations must be made that:

- (a) the application is submitted under the terms and conditions of the ASIC Electronic Lodgement Protocol, including that a signed copy of the application will be maintained by the applicant;

- (b) the information included in the application is complete, accurate and true, to the knowledge of the person who is making the declaration; and
- (c) if the licence is granted, the applicant will comply with its obligations as a credit licensee.

RG 204.319 These declarations must be made by:

- (a) you, as the applicant; and
- (b) if you are:
  - (i) a company, each director and secretary;
  - (ii) a partnership, each partner; or
  - (iii) a multiple trustee, each trustee.

RG 204.320 If the application is submitted by a lodging agent, an additional declaration will be displayed that:

- (a) under cl 16.2 of the ASIC Electronic Lodgement Protocol the person is authorised to submit the application on behalf of the applicant; and
- (b) the person is authorised by each of the people referred to in the main declarations to make those declarations on their behalf.

RG 204.321 Each of these declarations will be taken to have been made by each person when you click on the 'Submit' button. You should ensure that:

- (a) you provide the person who is completing the application on your behalf with all information necessary to complete the application;
- (b) you review the application to ensure that the information in it is complete, accurate and true; and
- (c) each relevant person has authorised the person who prepares and submits the application to make these declarations on their behalf.

RG 204.322 You should review your application carefully before you, or your lodging agent, submit it. Make sure your answers are correct. Once your application has been submitted you will not be able to change your answers.

RG 204.323 If you include a false or misleading statement in, or omit a material matter from, your application, we can refuse your application. It is also a criminal offence to make false or misleading statements in, or omit a material matter from, your application.

## G What if my application is refused?

### Key points

We may refuse your application if we consider you do not meet the minimum requirements for the granting of a credit licence: see RG 204.324–RG 204.326.

Before we make a decision to refuse to grant you a credit licence, we will offer you a hearing: see RG 204.327–RG 204.329.

You can apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a licence: see RG 204.330.

- RG 204.324 When we assess your application, we may form the view that you do not meet all of the requirements in:
- (a) s37 of the National Credit Act (for standard applicants); or
  - (b) s38 of the National Credit Act (for ADIs);
  - (c) reg 8(5) of the National Credit Regulations (for lenders mortgage insurers); or
  - (d) reg 8(1) and 8(3) of the National Credit Regulations (for holders of ‘A’ or ‘B’ class licences under the *Finance Brokers Control Act 1975* (WA)).
- RG 204.325 If we have concerns about whether you meet the requirements, we will contact you to check on whether you have any more information that will address those concerns. If you do not, we may refuse to grant you a credit licence.
- RG 204.326 We must refuse your application (i.e. we have no discretion to grant you a credit licence) if:
- (a) a banning order or disqualification order under Part 2-4 of the National Credit Act or Div 8 of Part 7.6 of the Corporations Act is in force against you; or
  - (b) an order under the *Crimes (Criminal Organisations Control) Act 2009* (NSW) or the *Serious and Organised Crime (Control) Act 2008* (SA) is in force against you or one of your ‘fit and proper people’.
- RG 204.327 Before we can refuse to grant you a credit licence, we must offer you a hearing.
- RG 204.328 If the ASIC staff member who assesses your application thinks that there are grounds to refuse your application, they will refer it to an ASIC ‘delegate’,



who is an impartial person authorised to make the final decision on your application.

- RG 204.329 If the delegate thinks that there are grounds to refuse your application, they will send you a letter explaining their concerns, and inviting you to appear at a hearing and/or make submissions. This will give you an opportunity to further explain why you believe you should be granted a credit licence.
- RG 204.330 If, after considering any submissions, the delegate decides not to grant you a credit licence, they will send you a further letter setting out their decision and reasons why. They will also tell you how to apply to the Administrative Appeals Tribunal for a review if you are unhappy with the final decision.

## H How do I vary my credit licence?

### Key points

You can apply to vary the authorisations and other conditions on your credit licence: see RG 204.331–RG 204.332.

The variation application is an online application: see RG 204.333–RG 204.338.

The variation application includes similar questions to the credit licence application: see RG 204.339–RG 204.357.

If we decide that your variation application should be refused, we will not offer you a hearing before making this decision. However, a decision to refuse your application can be reviewed: see RG 204.358–RG 204.360.

- RG 204.331 You may need to apply for a variation of your credit licence if:
- (a) your business changes (e.g. you want to engage in credit activities that are not authorised under your existing credit licence); or
  - (b) you want to change one of the conditions on your licence (e.g. if you have a ‘key person’ condition on your credit licence and a person who is specified in the condition leaves your business).
- RG 204.332 To vary your credit licence, you need to complete and lodge Form CL03 *Vary authorisations or conditions of an Australian credit licence*. You are not automatically entitled to a variation of your licence.

### Where do I get a variation application form?

- RG 204.333 The application to vary a credit licence must be completed and lodged online.
- RG 204.334 Form CL03 can be accessed through the Credit Portal or, if you are an AFS licensee, through the Licensees Portal.
- RG 204.335 To access the Credit Portal or Licensees Portal, you will need the user name and password you selected when you applied for your credit licence or AFS licence. If you have forgotten your user name or password, or you need extra ones for staff, apply for them online via our website.
- RG 204.336 If you cannot access the Credit or Licensees Portals, phone our Client Contact Centre on 1300 300 630.

- RG 204.337 For more information on how to access and use the credit licensing system, see Section B.
- RG 204.338 The streamlined application process does not apply to variation applications.

## What questions will I be asked?

- RG 204.339 When you apply to vary your credit licence, you will be asked whether you want to vary:
- (a) the authorisations on your licence;
  - (b) one or more of the other conditions on your licence; or
  - (c) both.

### Variation of authorisations

- RG 204.340 The online variation application will be pre-filled with your current authorisations. You will be asked to make changes to these authorisations (i.e. by de-selecting authorisations that you do not want, or selecting any additional authorisations that you want). For more information on selecting authorisations, see Section C.
- RG 204.341 Because we need to assess your capacity to engage in the credit activities covered by the authorisations you have applied for, you will be asked for the same information as in the licence application.
- RG 204.342 Where possible, the online variation application will be pre-filled with information already held by ASIC (i.e. the information that you provided in your licence application). You will need to review this information and update it as appropriate for your variation application.
- RG 204.343 For more detailed information on the questions that you will be asked and supporting information that you will need to provide, see Sections C, D and E.

### Details of your 'fit and proper people'

- RG 204.344 The online variation application will be pre-filled with the details of your 'fit and proper people' that we already hold. This means that your variation application will be pre-filled with:
- (a) the people that you listed in your licence application; and
  - (b) if you are a company, any current directors and secretaries that have been appointed since your credit licence was granted.
- RG 204.345 For the people that were listed in your licence application (about whom we already hold information that is relevant to our decision) you can:

- (a) rely on the information that you previously provided to us and that is pre-filled in your variation application;
- (b) click on 'Edit' to update the information (for example, if the person has changed their name, or has new experience that you want to refer to); or
- (c) if the person is no longer a director or secretary, remove them from your list of 'fit and proper people' by clicking on 'Remove'. You will not be able to remove a person if they are a current officeholder on the Australian Company Register (you must first lodge Form 484 *Change to company details* to make any necessary changes to your officeholders).

RG 204.346 New 'fit and proper people' who were not listed in your licence application (i.e. new officeholders that are pre-filled from the Australian Company Register and any people that you add to the list using the 'Add' function) will be listed with the status of 'Incomplete'. You will need to click on 'Edit' to provide details about these people.

RG 204.347 See RG 204.201–RG 204.229 for more details about the information you will be asked to provide, and how to complete this part of the application.

#### **Supporting information about your 'fit and proper people'**

RG 204.348 The people that were listed in your licence application (about whom we therefore already hold information that is relevant to our decision) will be listed with a status of 'Complete'. You can either:

- (a) rely on the information that you previously provided to us and that is pre-filled in your variation application; or
- (b) click on 'Edit' to update the information.

RG 204.349 For each new person you will need to:

- (a) complete the Statement of Personal Information;
- (b) provide any additional information to explain matters identified in the Statement of Personal Information;
- (c) provide background checks; and
- (d) if the person is identified as a responsible manager, complete details of their educational qualifications and previous employers.

RG 204.350 For more information on completing the Statement of Personal Information and providing supporting documents, see Section E.

#### **Other supporting information**

RG 204.351 You will also need to provide a 'Summary business description' that describes how your business will operate if you are granted the

authorisations you have applied for. See RG 204.310–RG 204.311 for more information about what you will need to include in this document.

### **Variation of other licence conditions**

- RG 204.352 The variation application will be pre-filled with the current conditions on your credit licence. You should select each of the conditions that you are applying to vary.
- RG 204.353 You will then be asked to provide reasons why you consider each of these conditions should be varied. You should include all of your submissions in support of your application. If you do not have enough room for your submissions, you can provide a document that sets out your submissions.

### **Changes to key people**

- RG 204.354 If you apply to change the ‘key people’ named on your credit licence, you will need to:
- (a) identify:
    - (i) any key person who has left, or is leaving, your business; and
    - (ii) each responsible manager that you wish to rely on instead;
  - (b) provide an explanation of why there needs to be a change to your key people; and
  - (c) provide reasons why the change to your key people should be allowed. This should include your explanation of whether each responsible manager that you wish to rely on has sufficient knowledge and skills to replace the key person, and is a fit and proper person to engage in credit activities.
- RG 204.355 If you are applying to change this condition, you will also be presented with questions that ask for details of your ‘fit and proper people’ and supporting information about those people.
- RG 204.356 If you have previously provided us with information about each responsible manager that you wish to rely on, you can rely on this information (which will be pre-filled in your variation application). However, you should review this information and update it as appropriate for your variation application. We may decide to refuse your variation application if:
- (a) the information that you have previously provided is out-of-date; or
  - (b) we otherwise consider that it does not demonstrate that you have the capacity to engage in the credit activities that are, or would be, covered by your credit licence if the variation were granted.

RG 204.357 If you have not previously provided us with details of each responsible manager that you wish to rely on, you will need to provide the details and supporting information that is requested.

## **What if my variation application is refused?**

RG 204.358 We may refuse your variation application if we do not believe you have the capacity to engage in the additional credit activities you have asked to be authorised for, or we think that your request to change your other (non-authorisation) conditions is not appropriate.

RG 204.359 If we refuse to grant the variation to your credit licence, we will write to you and explain the reasons why. We will also tell you how to apply to the Administrative Appeals Tribunal for a review of our decision. Under the National Credit Act we are not required to offer you a hearing or an opportunity to make submissions if we refuse to grant a variation to your credit licence.

RG 204.360 If we refuse your variation application, your current credit licence will still be valid.

## Key terms

Term	Meaning in this document
ADI	Has the meaning given in s5 of the National Credit Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
AFS Licensees Register	The register of financial services licensees maintained by ASIC
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Australian Company Register	The register of companies maintained by ASIC
Australian Credit Register	The registers of registered persons, credit licensees and credit representatives maintained by ASIC
carried over instrument	Has the meaning given in s4 of the Transitional Act
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act.
consumer lease	A consumer lease to which the National Credit Code applies Note: See s169–171 of the National Credit Code.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
credit activity (or activities)	Has the meaning given in s6 of the National Credit Act
credit assistance	Has the meaning given in s8 of the National Credit Act
credit legislation	Has the meaning given in s5 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit provider	Has the meaning given in s5 of the National Credit Act

Term	Meaning in this document
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee or registered person under s64(2) or 65(2) of the National Credit Act
credit service	Has the meaning given in s7 of the National Credit Act
EDR scheme	An external dispute resolution scheme approved by ASIC under RG 139
fit and proper people	In relation to a credit licensee or an applicant for a credit licence, means the following people: <ul style="list-style-type: none"> <li>• where the licensee or applicant is a single natural person, the licensee or applicant;</li> <li>• where the licensee or applicant is a body corporate, each director and secretary of the body corporate, and each senior manager of the body corporate who would perform duties in relation to the credit activities to be authorised by the licence;</li> <li>• where the licensee or applicant is a partnership or the trustees of a trust, each partner or trustee</li> </ul>
general conduct obligations	The obligations under s47(1) of the National Credit Act
lessor	A lessor under a consumer lease
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Schedule 1 of the National Credit Act
National Credit Regulations	Either: <ul style="list-style-type: none"> <li>• National Consumer Credit Protection Regulations 2010; or</li> <li>• before these regulations are made final—Exposure Draft National Consumer Credit Protection Regulations released by Treasury in November 2009</li> </ul>
old Credit Code	Has the meaning given in s4 of the Transitional Act
person	Has the meaning given in s5 of the National Credit Act
PI insurance	Professional indemnity insurance
reg 8 (for example)	A regulation of the National Credit Regulations (in this example numbered 8)
registered	Registered to engage in credit activities under item 12 of Schedule 2 of the Transitional Act
registration	Registration to engage in credit activities granted under item 12 of Schedule 2 of the Transitional Act
representative	Has the meaning given in s5 of the National Credit Act



Term	Meaning in this document
responsible managers	<p>A credit licensee's responsible managers will be the following people or a subset of these people that have been identified as people that the licensee relies on to demonstrate competence to engage in credit activities:</p> <ul style="list-style-type: none"> <li>• where the licensee is a single natural person, the licensee;</li> <li>• where the licensee is a body corporate, each director, secretary or senior manager of the body corporate who would perform duties in relation to the credit activities to be authorised by the licence;</li> <li>• where the licensee is a partnership or the trustees of a trust, each partner or trustee who would perform duties in relation to the credit activities to be authorised by the licence</li> </ul>
RG 166 (for example)	An ASIC regulatory guide (in this example numbered 166)
s35 (for example)	A section of the National Credit Act (in this example numbered 35), unless otherwise specified
senior manager	Has the same meaning as in s9 of the Corporations Act
transition period	The period for transition from regulation under existing state and territory credit laws to regulation under the new national credit licensing regime, which starts on 1 July 2010 and ends at the end of 30 June 2011
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>
Transitional Regulations	<p>Either:</p> <ul style="list-style-type: none"> <li>• National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010; or</li> <li>• before these regulations are made final—Exposure Draft National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations released by Treasury in November 2009</li> </ul>
you	Applicant for a credit licence

## Related information

### Headnotes

Australian Credit Register, carried over instrument, credit activities, credit licence, credit licensee, Credit Portal, credit representative, credit registration system, EDR scheme, National Credit Code, online application, registered persons, registered principal, registration period, representative

### Regulatory guides

RG 165 *Licensing: Internal and external dispute resolution*

RG 203 *Do I need a credit licence?*

RG 205 *Credit licensing: General conduct obligations*

RG 206 *Credit licensing: Competence and training*

RG 207 *Credit licensing: Financial requirements*

RG 208 *How ASIC charges fees for credit relief applications*

### Information sheets

INFO 97 *Guidance for small credit businesses*

### Legislation

*Bankruptcy Act 1966*, Part X

Corporations Act, Part 2D.6, Part 7.6 Div 8

*Crimes Act 1914*, Part VIIC

*Crimes (Criminal Organisations Control) Act 2009* (NSW)

*Finance Brokers Control Act 1975* (WA)

*Financial Sector (Collection of Data) Act 2001*

*Insurance Act 1973*

National Credit Act, Part 2-4, Part 2-5 Div 3, s37, 38, 40, 64, 65; National Credit Code; National Credit Regulations, regs 8(1), (3) & (5), 12(3), 12(3)(c), 21; Transitional Act; Transitional Regulations, Part 3 Div 1

*Serious and Organised Crime (Control) Act 2008* (SA)

## **Consultation papers and reports**

CP 112 *Dispute resolution requirements for consumer credit and margin lending*

CP 125 *Compensation requirements for credit licensees: Further consultation*

## **ASIC forms**

CL01 *Application for an Australian credit licence*

CL03 *Vary authorisations or conditions of an Australian credit licence*

CL20 *Notification of change to credit licence details*

CS02 *Notification of changes to registration details*

484 *Change to company details*

FS20 *Change of details for an Australian financial services licence*