

EXPOSURE DRAFT

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Inserts for
**Financial Regulator Reform (No. 1) Bill
2019: (Licensing)**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	The day after this Act receives the Royal Assent.	

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Schedule 1—Amendments relating to licensing

Part 1—Australian financial services licences

Corporations Act 2001

1 Section 9 (definition of *responsible officer*)

Repeal the definition.

2 At the end of subsection 912C(1)

Add:

; or (c) for the purposes of considering whether the requirement in section 913BA (fit and proper person test) is satisfied in relation to the licensee and the licence—any matters mentioned in section 913BB in relation to a person mentioned in a paragraph of subsection 913BA(1).

3 After section 912D

Insert:

912DA Obligation to notify ASIC of change in control

- (1) If an entity starts to control, or stops controlling, a financial services licensee, the licensee must lodge a notification with ASIC:
- (a) in the prescribed form; and
 - (b) before the end of 30 business days after the day the entity starts to control, or stops controlling, the financial services licensee.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

- (2) An offence based on subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

4 Paragraphs 913B(1)(c) and (ca)

Repeal the paragraphs, substitute:

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- 1 (c) the requirement in section 913BA (fit and proper person test)
2 is satisfied in relation to the applicant and the licence applied
3 for; and

4 **5 Subsections 913B(2), (3) and (4)**

5 Repeal the subsections, substitute:

- 6 (2) However, ASIC must refuse to grant the Australian financial
7 services licence if ASIC is satisfied that:
8 (a) the application for the licence, or any information, audit
9 report or statement lodged with ASIC in accordance with
10 subsection (3), was false in a material particular or materially
11 misleading; or
12 (b) there was an omission of a material matter from the
13 application or the information, audit report or statement.

14 *ASIC may request information etc. from applicant*

- 15 (3) ASIC may give a written notice to the applicant requesting the
16 applicant to lodge with ASIC, within the time specified in the
17 notice, any of the following:
18 (a) information specified in the notice in relation to any matters
19 that ASIC may or must have regard to in deciding whether to
20 grant the licence;
21 (b) an audit report, prepared by a suitably qualified person
22 specified in the notice, in relation to matters that ASIC may
23 or must have regard to in deciding whether to grant the
24 licence;
25 (c) if ASIC proposes to grant the applicant a licence—a
26 statement that either:
27 (i) informs ASIC of any material changes in any
28 information provided to ASIC in, or in connection with,
29 the application; or
30 (ii) confirms that there have been no such changes.
- 31 (4) To avoid doubt:
32 (a) a notice under subsection (3), and the information, audit
33 report or statement requested in the notice, may relate to any
34 person mentioned in section 913BA in relation to the
35 applicant and the licence applied for; and
36 (b) subsection (4A) applies in relation to such a request even if
37 the applicant is unable to comply with the request.

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1 (4A) If the applicant does not lodge with ASIC the information, audit
2 report or statement requested by ASIC in a notice under
3 subsection (3) within the specified time, the applicant is taken to
4 have withdrawn the application.

5 (4B) ASIC may, by written notice to the applicant:
6 (a) withdraw a request under subsection (3); or
7 (b) extend the time specified in the request.

8 (4C) To avoid doubt, subsection (5) does not apply to an application that
9 is taken to have been withdrawn under subsection (4A).

10 (4D) The regulations may make provision in relation to audit reports that
11 applicants may be requested to lodge under paragraph (3)(b).

12 *Applicant must be given hearing before refusal of licence*

13 **6 Subsection 913B(5)**

14 Omit “However,”.

15 **7 After section 913B**

16 Insert:

17 **913BA Fit and proper person test**

18 (1) For the purposes of paragraph 913B(1)(c), subsection 914B(2) and
19 paragraph 915C(1)(b), the requirement in this section is satisfied in
20 relation to a person (the *first person*) and a licence, or a proposed
21 licence, if ASIC is satisfied that there is no reason to believe any of
22 the following:

- 23 (a) that the first person is not a fit and proper person to provide
24 the financial services covered by the licence;
- 25 (b) if the first person is a body corporate—that an officer of the
26 first body is not a fit and proper person to perform one or
27 more functions as an officer of an entity that provides the
28 financial services covered by the licence;
- 29 (c) if the first person is a partnership or the multiple trustees of a
30 trust:
31 (i) that any of the partners or trustees are not fit and proper
32 persons to provide the financial services covered by the
33 licence; or

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- 1 (ii) that any of the senior managers of the partnership or the
2 trust are not fit and proper persons to perform one or
3 more functions as an officer of an entity that provides
4 the financial services covered by the licence;
- 5 (d) that any person who controls the first person is not a fit and
6 proper person to control a person that provides the financial
7 services covered by the licence;
- 8 (e) if a controller mentioned in paragraph (d) is a body
9 corporate—that an officer of the controller is not a fit and
10 proper person to perform one or more functions as an officer
11 of an entity that controls an entity that provides the financial
12 services covered by the licence;
- 13 (f) if a controller mentioned in paragraph (d) is a partnership or
14 the multiple trustees of a trust:
- 15 (i) that any of the partners or trustees are not fit and proper
16 persons to control an entity that provides the financial
17 services covered by the licence; or
- 18 (ii) that any of the senior managers of the partnership or the
19 trust are not fit and proper persons to perform one or
20 more functions as an officer of an entity that controls an
21 entity that provides the financial services covered by the
22 licence.
- 23 (2) In considering whether a person is fit and proper for a purpose
24 mentioned in subsection (1), ASIC must have regard to the matters
25 in section 913BB.

26 **913BB Matters to which ASIC must have regard**

- 27 For the purposes of applying a paragraph of subsection 913BA(1)
28 to a person, ASIC must have regard to the following matters
29 (subject to Part VIIC of the *Crimes Act 1914*):
- 30 (a) whether any of the following of the person has ever been
31 suspended or cancelled:
- 32 (i) an Australian financial services licence;
- 33 (ii) an Australian credit licence, or a registration under the
34 Transitional Act, within the meaning of the *National*
35 *Consumer Credit Protection Act 2009*;
- 36 (b) whether any of the following has ever been made against the
37 person:
- 38 (i) a banning order, or a disqualification order under
39 Subdivision B of Division 8 of this Part;
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- 1 (ii) a banning order, or a disqualification order, under
2 Part 2-4 of the *National Consumer Credit Protection*
3 *Act 2009*;
- 4 (c) if the person is an individual—whether the person has ever
5 been disqualified from managing corporations under
6 Part 2D.6 of this Act;
- 7 (d) whether the person has ever been banned from engaging in a
8 credit activity (within the meaning of the *National Consumer*
9 *Credit Protection Act 2009*) under a law of a State or
10 Territory;
- 11 (e) whether the person has ever been linked to a refusal or failure
12 to give effect to a determination made by AFCA;
- 13 (f) if the person is an individual—whether the person has ever
14 been an insolvent under administration;
- 15 (g) if the person is a body corporate—whether the body
16 corporate has ever been a Chapter 5 body corporate;
- 17 (h) if the person is a partnership—whether a creditor’s petition or
18 a debtor’s petition has ever been presented against the
19 partnership under Division 2 or 3 of Part IV of the
20 *Bankruptcy Act 1966*;
- 21 (i) if the person is the multiple trustees of a trust:
22 (i) whether a trustee who is an individual has ever been an
23 insolvent under administration; and
24 (ii) whether a trustee that is a body corporate has ever been
25 a Chapter 5 body corporate;
- 26 (j) whether, in the last 10 years, the person has been convicted
27 of an offence;
- 28 (k) any relevant information given to ASIC by a State or
29 Territory, or an authority of a State or Territory, in relation to
30 the person;
- 31 (l) any other matter prescribed by the regulations;
- 32 (m) any other matter ASIC considers relevant.
- 33 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain
34 circumstances, relieve persons from the requirement to disclose spent
35 convictions and require persons aware of such convictions to disregard
36 them.

8 Subsection 914A(1)

After “this section”, insert “and section 914B”.

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9 At the end of Subdivision B of Division 4 of Part 7.6

Add:

914B ASIC may request information etc. in relation to an application for conditions to be varied

- (1) This section applies if a financial services licensee applies under paragraph 914A(2)(b) for ASIC to:
- (a) impose conditions, or additional conditions, on the licence; or
 - (b) vary or revoke conditions imposed on the licence.

However, this section does not apply in relation to a power to which paragraph 914A(5)(a) applies.

- (2) Without limiting ASIC's power to refuse to grant the application, ASIC may refuse to grant the application if the requirement in section 913BA (fit and proper person test) is not satisfied in relation to the applicant and the licence as proposed to be varied.

ASIC may request information etc. from applicant

- (3) ASIC may give a written notice to the applicant requesting the applicant to lodge with ASIC, within the time specified in the notice, any of the following:
- (a) information specified in the notice in relation to any matters that ASIC must have regard to for the purposes of deciding whether the requirement in section 913BA is satisfied as mentioned in subsection (2) of this section;
 - (b) an audit report, prepared by a suitably qualified person specified in the notice, in relation to matters that ASIC must have regard to for the purposes of deciding whether the requirement in section 913BA is satisfied as mentioned in subsection (2) of this section;
 - (c) if ASIC proposes to grant the application—a statement that either:
 - (i) informs ASIC of any material changes in any information provided to ASIC in, or in connection with, the application; or
 - (ii) confirms that there have been no such changes.
- (4) To avoid doubt:
- (a) a notice under subsection (3), and the information, audit report or statement requested in the notice, may relate to any

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1 person mentioned in section 913BA in relation to the
2 applicant and the licence as proposed to be varied; and
3 (b) subsection (5) applies in relation to such a request even if the
4 applicant is unable to comply with the request.

5 (5) If the applicant does not lodge with ASIC the information, audit
6 report or statement requested by ASIC in a notice under
7 subsection (3) within the specified time, the applicant is taken to
8 have withdrawn the application. ASIC may, by written notice to
9 the applicant:

- 10 (a) withdraw the request; or
11 (b) extend the time specified in the request.

12 (6) To avoid doubt, subsection (8) does not apply to an application that
13 is taken to have been withdrawn under subsection (5).

14 (7) The regulations may make provision in relation to audit reports that
15 applicants may be requested to lodge under paragraph (3)(b).

16 *Applicant must be given hearing before refusal of application*

17 (8) ASIC may only refuse to grant the application after giving the
18 applicant an opportunity:

- 19 (a) to appear, or be represented, at a hearing before ASIC that
20 takes place in private; and
21 (b) to make submissions to ASIC in relation to the matter.

22 **10 Subsection 915B(1) (heading)**

23 Omit “a natural person”, substitute “an individual”.

24 **11 Subsection 915B(1)**

25 Omit “a natural person”, substitute “an individual”.

26 **12 After subsection 915B(1)**

27 Insert:

28 (1A) ASIC may also cancel an Australian financial services licence held
29 by an individual, by giving written notice to the individual, if the
30 individual does not provide a financial service covered by the
31 licence before the end of 6 months after the licence is granted.

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13 After paragraph 915B(2)(b)

Insert:

(ba) an officer of the partnership becomes an insolvent under administration; or

14 After subsection 915B(2)

Insert:

(2A) ASIC may also cancel an Australian financial services licence held by a partnership, by giving written notice to the partnership, if the partnership does not provide a financial service covered by the licence before the end of 6 months after the licence is granted.

15 Subsection 915B(3)

Omit “if the body”, substitute “if”.

16 Paragraph 915B(3)(a)

Before “ceases”, insert “the body”.

17 Paragraph 915B(3)(b)

Before “becomes”, insert “the body”.

18 After paragraph 915B(3)(b)

Insert:

(ba) an officer of the body becomes an insolvent under administration; or

19 Paragraphs 915B(3)(c), (caa) and (ca)

Before “is”, insert “the body”.

20 Paragraph 915B(3)(d)

Before “lodges”, insert “the body”.

21 Paragraph 915B(3)(e)

Before “is liable”, insert “the body”.

22 After subsection 915B(3)

Insert:

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1 (3A) ASIC may also cancel an Australian financial services licence held
2 by a body corporate, by giving written notice to the body, if the
3 body does not provide a financial service covered by the licence
4 before the end of 6 months after the licence is granted.

5 **23 Paragraph 915B(4)(b)**

6 Omit “a natural person”, substitute “an individual”.

7 **24 After paragraph 915B(4)(c)**

8 Insert:

9 (ca) an officer of a trustee becomes an insolvent under
10 administration; or

11 **25 Subsection 915B(4) (note 1)**

12 Omit “Note 1”, substitute “Note”.

13 **26 Subsection 915B(4) (note 2)**

14 Repeal the note.

15 **27 At the end of section 915B**

16 Add:

17 (4A) ASIC may also cancel an Australian financial services licence held
18 by the trustees of a trust, by giving written notice to the trustees, if
19 the trustees of the trust do not provide a financial service covered
20 by the licence before the end of 6 months after the licence is
21 granted.

22 **28 Paragraph 915C(1)(b)**

23 Repeal the paragraph, substitute:

24 (b) the requirement in section 913BA (fit and proper person test)
25 is not satisfied in relation to the licensee and the licence;

26 **29 At the end of subsection 915C(1)**

27 Add:

28 ; (f) the application for the licence:

29 (i) was false in a material particular or materially
30 misleading; or

31 (ii) omitted a material matter;

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- 1 (g) any information, audit report or statement lodged with ASIC
2 in accordance with a request under subsection 913B(3) in
3 relation to the application for the licence:
4 (i) was false in a material particular or materially
5 misleading; or
6 (ii) omitted a material matter;
7 (h) an application made by the licensee under
8 paragraph 914A(2)(b) in relation to the licence:
9 (i) was false in a material particular or materially
10 misleading; or
11 (ii) omitted a material matter;
12 (i) any information, audit report or statement lodged with ASIC
13 in accordance with a request under subsection 914B(3) in
14 relation to an application made by the licensee under
15 paragraph 914A(2)(b) in relation to the licence:
16 (i) was false in a material particular or materially
17 misleading; or
18 (ii) omitted a material matter.

30 Subsection 915C(2)

19 Repeal the subsection.
20

31 In the appropriate position in Chapter 10

21 Insert:
22

23 Part 10.40—Transitional provisions relating to the 24 Financial Regulator Reform (No. 1) Act 25 2019 26

27 1665 Definitions

28 In this Part:

29 *amending part* means Part 1 of Schedule 1 to the *Financial*
30 *Regulator Reform (No. 1) Act 2019*.

31 *commencement day* means the day the amending part commences.

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1666 Application—existing financial services licensee

- 1
- 2 (1) Subject to this section, the amendments made by the amending part
3 apply on and after the commencement day to a financial services
4 licensee whose licence was granted before, on or after the
5 commencement day.
- 6 (2) The reference in paragraph 915C(1)(g), as inserted by the
7 amending part, to information lodged with ASIC in accordance
8 with a request under subsection 913B(3) in relation to an
9 application for a licence includes information provided in
10 accordance with paragraph 913B(1)(ca) before the commencement
11 day.
- 12 (3) Section 912DA, as inserted by the amending part, applies in
13 relation to an entity starting to control, or stopping controlling, the
14 licensee on or after the commencement day.
- 15 (4) In relation to an Australian financial services licence in force
16 immediately before the commencement day, the period of 6
17 months referred to in subsection 915B(1A), (2A), (3A) or (4A), as
18 inserted by the amending part, begins at the start of the
19 commencement day.

20 1667 Application—applications made before commencement

- 21 (1) The following applications made before the commencement day,
22 and not yet granted or refused at the start of the commencement
23 day, are to be dealt with, on and after the commencement day, in
24 accordance with this Act as amended by the amending part:
- 25 (a) an application under section 913A for an Australian financial
26 services licence;
- 27 (b) an application under paragraph 914A(2)(b) for conditions on
28 an Australian financial services licence to be imposed, varied
29 or revoked.
- 30 (2) A request for information under paragraph 913B(1)(ca) that was
31 made before the commencement day and that has not, at the start of
32 the commencement day, been complied with is taken, on and after
33 the commencement day, to be a request for information under
34 paragraph 913B(3)(a) as amended by the amending part.

35 32 Schedule 3

36 Insert:

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Subsection 912DA(1)

30 penalty units

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1 **Part 2—Australian credit licences**

2 *National Consumer Credit Protection Act 2009*

3 **33 Paragraphs 37(1)(c) and (d)**

4 Repeal the paragraphs, substitute:

- 5 (c) the requirement in section 37A (fit and proper person test) is
6 satisfied in relation to the applicant and the licence applied
7 for; and

8 **34 Subsections 37(2) and (3)**

9 Repeal the subsections, substitute:

10 *False, misleading or incomplete information*

11 (2) ASIC must refuse to grant the licence if ASIC is satisfied that:

- 12 (a) the application for the licence, or any information, audit
13 report or statement lodged with ASIC in accordance with
14 subsection (4), was false in a material particular or materially
15 misleading; or
16 (b) there was an omission of a material matter from the
17 application or the information, audit report or statement.

18 **35 Subsection 37(4) (heading)**

19 Omit “*or audit report*”, substitute “*etc.*”.

20 **36 Subsection 37(4)**

21 Omit “either or both”, substitute “any”.

22 **37 Paragraph 37(4)(a)**

23 Omit “additional”.

24 **38 At the end of subsection 37(4)**

25 Add:

- 26 ; (c) if ASIC proposes to grant the applicant a licence—a
27 statement that either:
28 (i) informs ASIC of any material changes in any
29 information provided to ASIC in, or in connection with,
30 the application; or
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(ii) confirms that there have been no such changes.

39 Subsection 37(5)

Repeal the subsection, substitute:

(5) To avoid doubt:

- (a) a notice under subsection (4), and the information, audit report or statement requested in the notice, may relate to any person mentioned in section 37A in relation to the applicant and the licence applied for; and
- (b) subsection (6) applies in relation to such a request even if the applicant is unable to comply with the request.

(6) If the applicant does not lodge with ASIC the information, audit report or statement requested by ASIC in a notice under subsection (4) within the specified time, the applicant is taken to have withdrawn the application.

(7) ASIC may, by written notice to the applicant:

- (a) withdraw a request under subsection (4); or
- (b) extend the time specified in the request.

(8) To avoid doubt, section 41 does not apply to an application that is taken to have been withdrawn under subsection (6) of this section.

40 After section 37

Insert:

37A Fit and proper person test

- (1) For the purposes of paragraph 37(1)(c), subsection 46A(2) and paragraph 55(1)(c), the requirement in this section is satisfied in relation to a person (the *first person*) and a licence, or a proposed licence, if ASIC is satisfied that there is no reason to believe any of the following:
 - (a) that the first person is not a fit and proper person to engage in the credit activities authorised by the licence;
 - (b) if the first person is a body corporate—that an officer (within the meaning of the *Corporations Act 2001*) of the first person is not a fit and proper person to perform one or more functions as an officer of an entity that engages in the credit activities authorised by the licence;

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- 1 (c) if the first person is a partnership or the multiple trustees of a
2 trust:
3 (i) that any of the partners or trustees are not fit and proper
4 persons to engage in the credit activities authorised by
5 the licence; or
6 (ii) that any of the senior managers of the partnership or the
7 trust are not fit and proper persons to perform one or
8 more functions as an officer (within the meaning of the
9 *Corporations Act 2001*) of an entity that engages in the
10 credit activities authorised by the licence;
11 (d) that any person who controls the first person is not a fit and
12 proper person to control a person that engages in the credit
13 activities authorised by the licence;
14 (e) if a controller mentioned in paragraph (d) is a body
15 corporate—that an officer (within the meaning of the
16 *Corporations Act 2001*) of the controller is not a fit and
17 proper person to perform one or more functions as an officer
18 of an entity that controls a person that engages in the credit
19 activities authorised by the licence;
20 (f) if a controller mentioned in paragraph (d) is a partnership or
21 the multiple trustees of a trust:
22 (i) that any of the partners or trustees are not fit and proper
23 persons to control an entity that engages in the credit
24 activities authorised by the licence; or
25 (ii) that any of the senior managers of the partnership or the
26 trust are not fit and proper persons to perform one or
27 more functions as an officer (within the meaning of the
28 *Corporations Act 2001*) of an entity that controls a
29 person that engages in the credit activities authorised by
30 the licence.
31 (2) In considering whether a person is fit and proper for a purpose
32 mentioned in subsection (1), ASIC must have regard to the matters
33 in section 37B.

34 **37B Matters to which ASIC must have regard**

35 For the purposes of applying a paragraph of subsection 37A(1) to a
36 person, ASIC must have regard to the following matters (subject to
37 Part VIIC of the *Crimes Act 1914*):

- 38 (a) whether any of the following of the person has ever been
39 suspended or cancelled:
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- 1 (i) a licence, or a registration under the Transitional Act;
2 (ii) an Australian financial services licence;
3 (b) whether any of the following has ever been made against the
4 person:
5 (i) a banning order, or a disqualification order under
6 Part 2-4;
7 (ii) a banning order, or a disqualification order, under
8 Division 8 of Part 7.6 of the *Corporations Act 2001*;
9 (c) if the person is a natural person—whether the person has ever
10 been disqualified from managing corporations under
11 Part 2D.6 of the *Corporations Act 2001*;
12 (d) whether the person has ever been banned from engaging in a
13 credit activity under a law of a State or Territory;
14 (e) whether the person has ever been linked to a refusal or failure
15 to give effect to a determination made by AFCA (as defined
16 in section 910C of the *Corporations Act 2001*);
17 (f) if the person is not the multiple trustees of a trust—whether
18 the person has ever been insolvent;
19 (g) if the person is the multiple trustees of a trust—whether a
20 trustee of the trust has ever been insolvent;
21 (h) whether, in the last 10 years, the person has been convicted
22 of an offence;
23 (i) any relevant information given to ASIC by a State or
24 Territory, or an authority of a State or Territory, in relation to
25 the person;
26 (j) any other matter prescribed by the regulations;
27 (k) any other matter ASIC considers relevant.

28 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain
29 circumstances, relieve persons from the requirement to disclose spent
30 convictions and require persons aware of such convictions to disregard
31 them.

41 Subsection 45(1)

32 Before “ASIC may”, insert “Subject to section 46A,”.
33

42 At the end of Division 4 of Part 2-2

34 Add:
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1 46A ASIC may request information etc. in relation to an application 2 for conditions to be varied

- 3 (1) This section applies if a licensee applies under paragraph 45(2)(b)
4 for ASIC to:
5 (a) impose conditions, or additional conditions, on the licence; or
6 (b) vary or revoke conditions imposed on the licence.

7 However, this section does not apply in relation to a power to
8 which paragraph 46(2)(a) applies.

- 9 (2) ASIC must not grant the application unless the requirement in
10 section 37A (fit and proper person test) is satisfied in relation to the
11 applicant and the licence as proposed to be varied.

12 *ASIC may request information etc. from applicant*

- 13 (3) ASIC may give a written notice to the applicant requesting the
14 applicant to lodge with ASIC, within the time specified in the
15 notice, any of the following:
16 (a) information specified in the notice in relation to any matters
17 that ASIC must have regard to for the purposes of deciding
18 whether the requirement in section 37A is satisfied as
19 mentioned in subsection (2) of this section;
20 (b) an audit report, prepared by a suitably qualified person
21 specified in the notice, in relation to matters that ASIC must
22 have regard to for the purposes of deciding whether the
23 requirement in section 37A is satisfied as mentioned in
24 subsection (2) of this section;
25 (c) if ASIC proposes to grant the application—a statement that
26 either:
27 (i) informs ASIC of any material changes in any
28 information provided to ASIC in, or in connection with,
29 the application; or
30 (ii) confirms that there have been no such changes.

- 31 (4) To avoid doubt:
32 (a) a notice under subsection (3), and the information, audit
33 report or statement requested in the notice, may relate to any
34 person mentioned in section 37A in relation to the applicant
35 and the licence as proposed to be varied; and
36 (b) subsection (5) applies in relation to such a request even if the
37 applicant is unable to comply with the request.
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- 1 (5) If the applicant does not lodge with ASIC the information, audit
2 report or statement requested by ASIC in a notice under
3 subsection (3) within the specified time, the applicant is taken to
4 have withdrawn the application. ASIC may, by written notice to
5 the applicant:
6 (a) withdraw the request; or
7 (b) extend the time specified in the request.
- 8 (6) To avoid doubt, subsection (7) does not apply to an application that
9 is taken to have been withdrawn under subsection (5).

10 *Applicant must be given hearing before refusal of application*

- 11 (7) ASIC may only refuse to grant the application after giving the
12 applicant an opportunity:
13 (a) to appear, or be represented, at a hearing before ASIC that
14 takes place in private; and
15 (b) to make submissions to ASIC in relation to the matter.

16 **43 Subsection 49(1)**

17 Omit all the words after “containing specified information”, substitute:

18 about:

- 19 (a) the credit activities engaged in by the licensee or its
20 representatives; or
21 (b) for the purposes of considering whether the requirement in
22 section 37A (fit and proper person test) is satisfied in relation
23 to the licensee and the licence—any matters mentioned in
24 section 37B in relation to a person mentioned in a paragraph
25 of subsection 37A(1).

26 **44 At the end of Division 5 of Part 2-2**

27 Add:

28 **53A Obligation to notify ASIC of change in control**

29 *Requirement to notify ASIC of change in control*

- 30 (1) If an entity starts to control, or stops controlling, a licensee, the
31 licensee must lodge a notification with ASIC:
32 (a) in the approved form; and

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(b) before the end of 30 business days after the day the entity starts to control, or stops controlling, the licensee.

Strict liability offence

(2) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1) to lodge a notification with ASIC; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 30 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

45 Paragraph 54(1)(b)

Omit “does not engage, or ceases to engage,” substitute “ceases to engage”.

46 Subparagraphs 54(1)(c)(ii) and (iii)

Omit “who performs duties in relation to credit activities”.

47 After subsection 54(1)

Insert:

- (1A) ASIC may cancel a licensee’s licence if the licensee does not engage in the credit activities authorised by the licence before the end of 6 months after the licence is granted.

48 Paragraph 55(1)(c)

Repeal the paragraph, substitute:

- (c) the requirement in section 37A (fit and proper person test) is not satisfied in relation to the licensee and the licence; or

49 At the end of subsection 55(1)

Add:

- ; or (e) any information, audit report or statement lodged with ASIC in accordance with a request under subsection 37(4) in relation to the application for the licence:

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-
- 1 (i) was false in a material particular or materially
2 misleading; or
3 (ii) omitted a material matter; or
4 (f) an application made by the licensee under paragraph 45(2)(b)
5 in relation to the licence:
6 (i) was false in a material particular or materially
7 misleading; or
8 (ii) omitted a material matter; or
9 (g) any information, audit report or statement lodged with ASIC
10 in accordance with a request under subsection 46A(3) in
11 relation to an application made by the licensee under
12 paragraph 45(2)(b) in relation to the licence:
13 (i) was false in a material particular or materially
14 misleading; or
15 (ii) omitted a material matter.

50 Subsections 55(2) and (3)

16 Repeal the subsections.
17

51 Paragraph 106(b)

18 After “subsection 37(4)”, insert “or 46A(3)”.
19

52 After subparagraph 243(1)(c)(i)

20 Insert:
21

- 22 (ia) section 46A (which deals with when ASIC may grant an
23 application for a variation of the conditions on a
24 licence); or

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

53 In the appropriate position

25
26
27 Insert:
28

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Schedule 10—Application and transitional provisions for the Financial Regulator Reform (No. 1) Act 2019

1 Definitions

In this Schedule:

amending part means Part 2 of Schedule 1 to the *Financial Regulator Reform (No. 1) Act 2019*.

commencement day means the day the amending part commences.

2 Application—existing licensee

- (1) Subject to this item, the amendments made by the amending part apply on and after the commencement day to a licensee whose licence was granted before, on or after the commencement day.
- (2) The reference in paragraph 55(1)(e) of the National Credit Act, as inserted by the amending part, to information, an audit report or a statement lodged with ASIC in accordance with a request under subsection 37(4) of that Act in relation to an application for a licence includes such information provided in accordance with such a request before the commencement day.
- (3) Section 53A of the National Credit Act, as inserted by the amending part, applies in relation to an entity starting to control, or stopping controlling, the licensee on or after the commencement day.
- (4) In relation to a licence in force immediately before the commencement day, the period of 6 months referred to in subsection 54(1A) of the National Credit Act, as inserted by the amending part, begins at the start of the commencement day.

3 Application—applications made before commencement

The following applications made before the commencement day, and not yet granted or refused at the start of the commencement day, are to be dealt with, on and after the commencement day, in accordance with the National Credit Act as amended by the amending part:

- (a) an application under section 36 of the National Credit Act for a licence;

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(b) an application under paragraph 45(2)(b) of the National
Credit Act for conditions on a licence to be imposed, varied
or revoked.