



***CreditWise***

*legal and compliance services*

# NCCCP Credit Licensing Application Guide

# Index

<b>ASIC's expectations</b>	<b>3</b>
<b>Business Model &amp; Relationships</b>	<b>4</b>
<b>Competency &amp; Responsible Managers</b>	<b>5</b>
<b>Compliance Arrangements</b>	<b>6</b>
<b>Conflicts of Interest</b>	<b>7</b>
<b>Compensation Arrangements</b>	<b>8</b>
<b>EDR Membership</b>	<b>9</b>
<b>Resource Adequacy</b>	<b>10</b>
<b>Business Summary</b>	<b>11</b>
<b>Application Lodgement &amp; Timelines</b>	<b>12</b>



# ASIC's Requirements

Applying for a credit licence is an exciting time. But it requires the applicant to be “regulator ready” – ASIC’s term for ensuring the business model and its regulatory obligations are clearly identified and documented.

Any business seeking a licence needs to be well prepared before lodging the application. In assessing your application, ASIC will consider whether you:

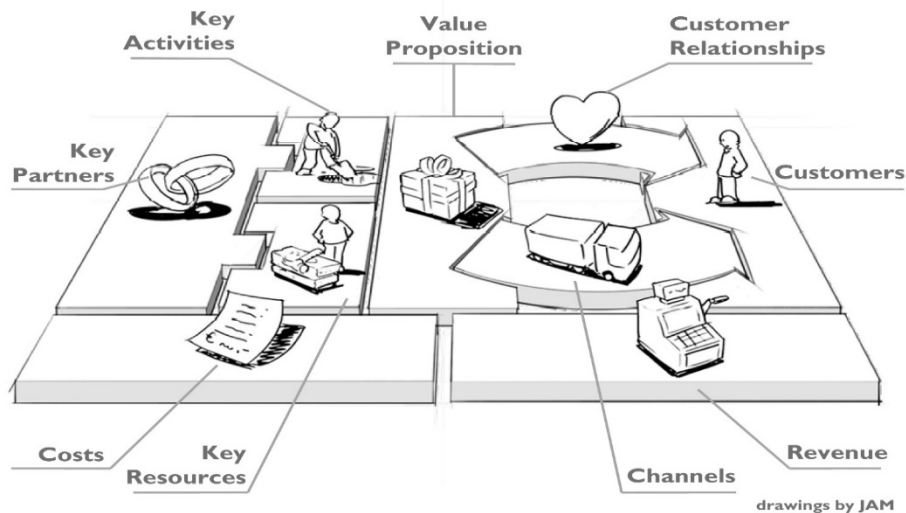
- can comply with the general conduct obligations, which aim to ensure that you operate your credit business properly
- are a fit and proper person to engage in credit activities

ASIC will also consider whether certain people who are responsible for managing your credit business are fit and proper people to perform that role.



This Guide provides a high level overview of what is required before you lodge your licence application. It is not a substitute for legal advice, as the National Consumer Credit Protection (NCCP) Act is very complex.

# Business Model & Relationships



Anyone involved in the consumer credit lifecycle must hold an Australian Credit Licence (ACL), unless an exemption applies.

There are two broad categories of credit activities for which a licence is required:

- providing consumer credit or consumer leases, and/or managing obligations under those contracts; and
- credit services, which include assisting consumer to source finance and/or acting as an intermediary between the consumer and the financier.

Brokers, lenders and lessors are the main groups who need to hold an ACL if involved in consumer finance.

While many more groups are involved in the credit process in some way, they may not need to hold a licence if they take the benefit of an exemption.

## Exemptions

Some of the more common exemptions are:

- Related body corporates
- Point of sale introducers
- Referrers
- Authorised Credit Representatives (ACR)
- State/Territory regulated debt collectors and repossession agents

Anyone taking the benefit of an exemption must comply with strict criteria.

**A failure to meet the exemption requirements will mean the business is breaching the NCCP obligation to hold a licence.**

## Competency & Responsible Managers



In deciding whether to grant an Australian Credit Licence, ASIC assesses what is called “organisational competence”.

To assess organisational competence, ASIC looks at the qualifications and experience of the people in a business who are required to meet the ‘fit and proper’ test, in particular, Responsible Managers.

Responsible Managers are those who have responsibility for day to day credit activities. ASIC looks at their qualifications and experience to ensure they have the necessary managerial and operational expertise to ensure the business is run honestly, efficiently and fairly.

At a minimum, responsible managers must have at least two years’ relevant problem-free experience and either:

- credit industry qualifications to at least the Certificate IV level; or
- another general relevant higher level qualification (e.g. a diploma or university degree).

For those who provide third-party home loan credit assistance (e.g. brokers), responsible managers must hold at least a Certificate IV in Finance and Mortgage Broking.

All Responsible Managers must have a minimum of two (2) years problem free, current experience in the relevant area e.g. broking or credit providing. Without this, the licence will not be granted.

# Compliance Arrangements

ASIC will ask a range of questions to obtain your confirmation you have, or will have, adequate compliance arrangements and systems, including whether:

- you have a written plan that documents your arrangements and systems;
- the arrangements specify how often compliance with procedures is monitored and reported on; and
- there are internal people who will be responsible for ongoing monitoring and reporting.

If you indicate compliance arrangements and systems will not be in place, you will not be able to continue with the application because you will not meet the minimum requirements to be granted a credit licence.



## Licensing Obligations

**Compliance with all licensing obligations must be documented, covering:**

- Honest, efficient and fair conduct
- Competency
- Compensation arrangements
- Conflicts of interest
- Dispute resolution
- Human Resource adequacy
- Financial resource adequacy
- Technological resource adequacy
- Documentation & systems



# Conflicts of Interest

The NCCP Act prohibits licensees having conflicts of interest that result in 'client' disadvantage. The relevant s 47(1) licensing provision reads as follows:

A licensee must:

(b) have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives



You will need to assess all your business arrangements, particularly those involving remuneration arrangements, including commissions, to ensure staff or representatives do not favour the achievement of incentive targets that result in the customer's disadvantage.

Some areas where this may occur are sales targets where the customer is upsold, interest rate setting where the commission paid is linked to that rate and collections targets that discourage hardship arrangements. There are many more potential conflicted issues.

# Compensation Arrangements



Under s48(1) of the National Consumer Credit Protection Act 2009 (National Credit Act), an ACL holder must have adequate compensation arrangements in place for consumers who suffer loss or damage suffered because of non-compliance with the Act.

Generally, professional indemnity (PI) insurance is required. There is an exemption, however, for:

- (a) a credit provider whose sole business is lending and that only provides credit services in relation to its own credit contracts or consumer leases (e.g. lenders & lessors);
- (b) an Authorised Deposit-taking Institution (e.g. a bank or credit union), general insurance company or life insurance company regulated by APRA that also undertakes credit activities; and
- (c) a subsidiary of an APRA-regulated institution that has an ASIC approved guarantee, from the parent company.

While the exemption from PI applies, these ACL holders are still obliged to have a compensation scheme in place. They can choose self-insurance, a corporate group guarantee or any other arrangement that can fund potential compensation claims.



## External Dispute Resolution



Before ASIC can grant you a credit licence, you must demonstrate you have a dispute resolution system in place that includes:

- Internal Dispute Resolution policies & procedures; and
- Membership of one, or more, ASIC approved External Dispute Resolution Scheme(s)

### Internal dispute resolution

ASIC will ask if you have an internal dispute resolution system, and whether it meets, the requirements set out in ASIC's Regulatory Guide on Dispute Resolution. It will also ask:

- who is responsible for internal dispute resolution;
- whether your procedures are, or will be, documented and available to clients; and
- whether the procedures specify, or will specify, that information about unresolved complaints must be provided to your EDR scheme.

### External dispute resolution

You must also be a member of an External Dispute Resolution (EDR) Scheme.

If you are not a member of an EDR scheme, you will not be granted a credit licence until you have become a member.

# Resource Adequacy

Before ASIC can grant you a credit licence, you must demonstrate that you have adequate human, technological and financial resources to operate your business and manage compliance obligations.



## Human Resource Adequacy

You need to demonstrate you have enough people to:

- Comply with all your obligations
- Manage monitoring and supervision requirements and
- Meet current and future operational needs

## Financial Resource Adequacy

You need to demonstrate you:

- Are solvent and will remain that way
- Plan and monitor cash flows to ensure solvency
- Document and monitor your financial position



## Technological Resource Adequacy

You need to demonstrate your IT resources enable you to:

- Comply with all your obligations
- Maintain records and data integrity
- Protect information & other records *and*
- Meet current and future operational needs

## Business Summary

In lodging your application, you must upload a document that summarises how your business will operate.

It needs to cover all your licensing obligations, including:

- ✓ Business model
  - ✓ How customers come to you
  - ✓ Referrers
  - ✓ Authorised Credit Representatives
  - ✓ Office arrangements
  - ✓ Supervision arrangements etc
- ✓ Directors and Responsible Managers' details
  - ✓ Education & relevant Experience
- ✓ Credit activities
  - ✓ broking, lending, intermediary etc
- ✓ Marketing/Advertising approach
- ✓ Application process
- ✓ Responsible lending criteria
- ✓ Remuneration structure – fees, commissions etc
- ✓ Compensation arrangements
- ✓ Resource adequacy
  - ✓ Human Resources
  - ✓ Financial
  - ✓ Technological
- ✓ Outsourcing arrangements, including advisors

# Application Lodgement & Timelines

Before you lodge your ACL application, do:

- Check your business details are correct & match ASIC's records
- Document your compliance policies and procedures
- Ensure responsible managers are appropriately qualified and experienced
- Join an EDR scheme
- Take out Insurance or other compensation
- Undertake police and bankruptcy checks on directors, company secretaries and responsible managers
- Ensure the resumes of your directors, company secretaries and responsible managers are up to date and available during the application process
- Ensure your business summary is comprehensive and accurately describes your business operations

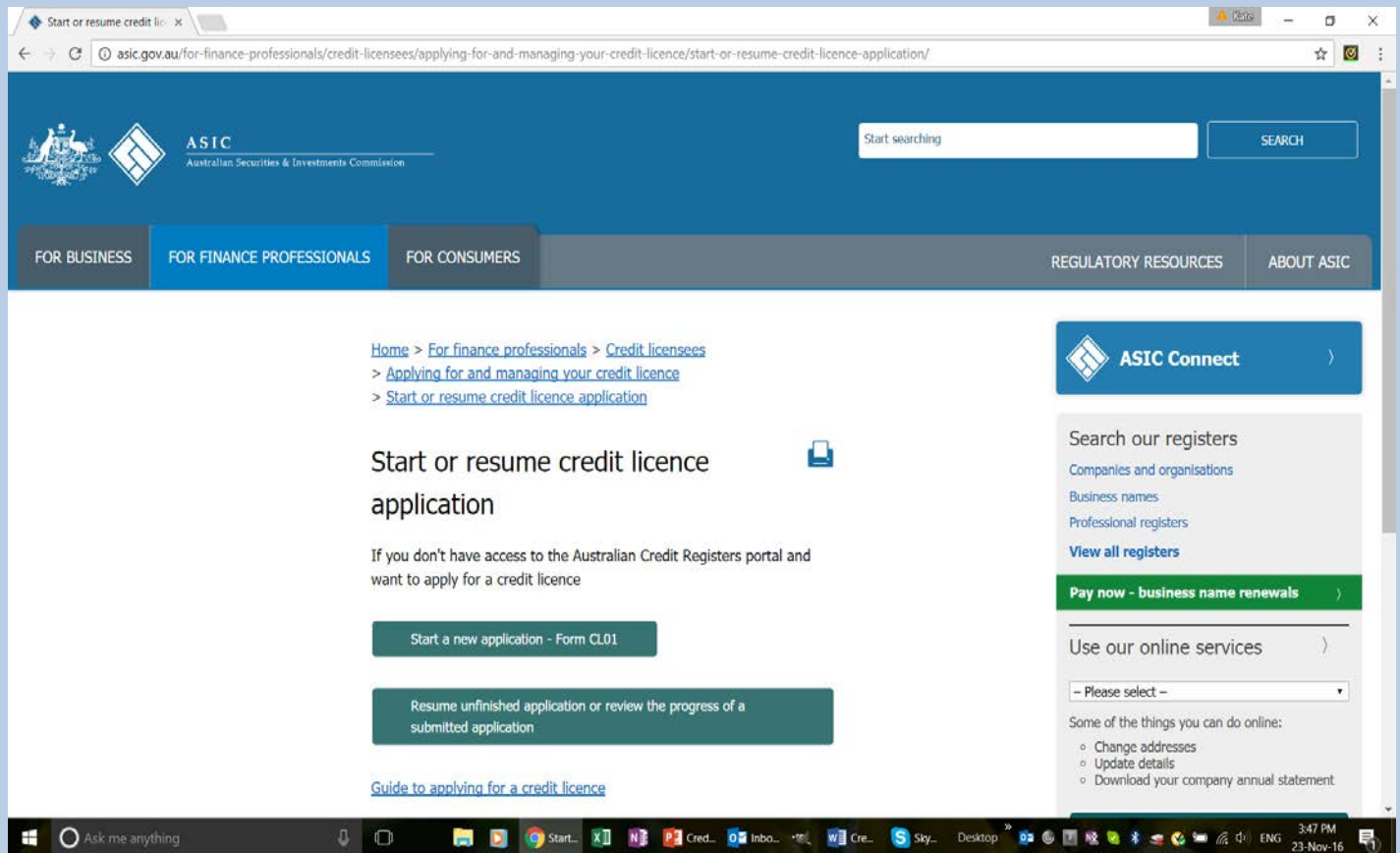
You will not be able to proceed with your licence application if these requirements are not met.

## Application assessment & approval

ASIC's assessment and approval process is slow, taking a minimum of 60 days but often a month or two longer. You can minimise the delay by ensuring your application is comprehensive and ASIC receives all the information it requires at the time the application is submitted.

ASIC will ask for any additional information it requires during the process. You will be asked to agree to the licence and its conditions once ASIC agrees to grant it. You cannot trade, however, before ASIC gives final approval and provides you with the licence.





Start or resume credit licence application

If you don't have access to the Australian Credit Registers portal and want to apply for a credit licence

Start a new application - Form CL01

Resume unfinished application or review the progress of a submitted application

[Guide to applying for a credit licence](#)

ASIC Connect

Search our registers

- Companies and organisations
- Business names
- Professional registers

[View all registers](#)

[Pay now - business name renewals](#)

Use our online services

— Please select —

Some of the things you can do online:

- Change addresses
- Update details
- Download your company annual statement

If you require assistance in obtaining, or maintaining, your Australian Credit Licence, CreditWise Pty Ltd, an incorporated legal practice, is well placed to assist you.

Please contact:

**Steve Edwards, director and lawyer, on 0414232562 or email - [Steve.Edwards@creditwise.com.au](mailto:Steve.Edwards@creditwise.com.au)**

**Kate Keating, director and compliance/training manager, on 0405604359 or email – [Kate.Keating@creditwise.com.au](mailto:Kate.Keating@creditwise.com.au)**

