

# ALERT

26 July 2013

## Changes to the *National Consumer Credit Protection Act 2009* (Cth)

The *National Consumer Credit Protection Act 2009* (Cth) came into force just over three years ago on 1 April 2010. The Act is designed to protect consumers who take out loans by imposing a range of obligations on providers of credit. Since 1 March 2013, a new series of amendments to the Act has been implemented under the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Act 2012* (Cth).

Under the amending Act, new changes to hardship processes will apply to credit contracts entered into on or after 1 March 2013. Provisions dealing with reverse mortgages also came into effect on that date as well as prohibitions on suggesting increases to short term and small amount contracts. The amending Act also introduced a cap on the costs that may be charged under credit contracts entered into on or after 1 July 2013.

### Credit Reform Phase 2

The Australian Government proposed additional reforms when it released an exposure draft of the National Consumer Protection Amendment (Credit Reform Phase 2) Bill 2012 in late 2012. The draft Bill proposes to extend the application of the *National Consumer Credit Protection Act 2009* (Cth) to investment loans. At present, the law only applies to investment loans that are entered into in relation to residential property. It will also regulate short-term and indefinite term consumer leases. Finally, Schedule 2 of the draft Bill attempts to regulate small business credit contracts.

### Small business credit

To the relief of many in Australia's business community, Treasury has announced that Schedule 2 and the regulation of small business credit contracts has been deferred and will not be legislated in the life of the current Parliament.

Schedule 2 would require a provider of credit under a small business credit contract to obtain a permit from ASIC. At present, a permit is only required for the provision of credit to individuals for personal, domestic or household purposes or investment in residential property.

A 'small business' is defined as a business with 20 or fewer employees or fewer than 100 employees if the business includes manufacturing. Contracts for amounts of over \$5 million are excluded from regulation.

Responsible lending obligations would also be extended to small business credit contracts. These obligations include providing a disclosure statement before entering into, or increasing the credit limit of, a small business contract.

More stringent obligations would apply to a "protected small business credit contract". The provider will be required to make prescribed inquiries



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and a prohibition on entering into, or increasing the credit limit of, the contract if it is unsuitable for the consumer. A 'protected small business credit contract' is defined as a small business contract where

- the predominant use of the credit is to refinance the liability under an existing small business credit contract;
- the borrower has defaulted in respect of the repayments due under that contract (although it is not clear what obligations apply if the re-financing creditor is not aware of defaults); and
- the credit contract is secured by a mortgage over residential property.

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### For further information please contact:

**Elpis Korosidis**, Partner and Head of  
Banking & Finance

Phone (direct) **+61 3 9608 2115**

Mobile **+61 400 598 926**

Email [e.korosidis@cornwalls.com.au](mailto:e.korosidis@cornwalls.com.au)