

[Skip to main content](#)

Chapter 1 LEARNER BOOKLET Legislation, Regulations and Policies

Note:

Disclaimer: The International Institute of Technology (IIT) and all contributing authors have used reasonable care and skill in compiling the content of this material. However, IIT or contributing authors make no warranty as to the accuracy or completeness of any information in these materials. These materials are not intended to be advice, whether legal or professional. All names, figures, solutions and scenarios are fictitious and have been established for training purposes only. You should not act solely on the basis of the information contained in these materials as parts may be generalised and the application of exercises, examples and case studies may vary from organisation to organisation and may apply differently to different people and circumstances. Further, as laws change frequently, all students, readers, viewers and users are advised to undertake their own research or to seek professional advice to keep abreast of any reforms and developments in the law.

**The copyright to this book is held by the International Institute of Technology Pty Ltd. Apart from any fair dealing for the purposes of study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission from the company.

Please note due to the ever changing operating environment for Financial advisers, rates and figures provided in the course work are subject to change some every quarter, therefore it is imperative that you complete your own research so that you are familiar with the current rates or figures which may not necessarily be reflected in the coursework at the time of you undertaking your studies.

Site: [IIT eLearning Platform](#)

Course: Principles of Finance and Mortgage Broking Management (New) (DIPLOMA)

Book: Chapter 1 LEARNER BOOKLET Legislation, Regulations and Policies

Printed by: Arie Boles

Date: Monday, 21 August 2023, 5:18 PM

Table of contents

- [1. Section Outline](#)
- [2. Introduction](#)
- [3. Australian Financial System Government Agencies](#)
- [4. Mortgage Broking Legislation](#)
- [5. National Consumer Credit Protection \(National Credit Act\) Act 2009](#)
- [6. Industry Professional Associations](#)
- [7. Industry Codes of Practice and Ethics](#)
- [8. Australian Financial Complaints Authority](#)
- [9. Australian Credit License \(ACL\)](#)
- [10. Responsible Lending Conduct](#)
- [11. Environmental and Sustainable Provisions](#)
- [12. Bibliography](#)

1. Section Outline

The National Consumer Credit Reform Package and the subsequent introduction and implementation of the *National Consumer Credit Protection Act 1999*, has created a greater need for the Finance/ Mortgage Broker to gain a broader understanding of the breath and interrelationships of legislative, regulatory and policy requirements effecting financial products.

This topic introduces each of these elements and their relationships and also considers a range of other compliance issues that will support Finance/Mortgage Brokers at an organisational level.

Learning Outcomes

After completing this section you should be able to:

- identify changes and implication of laws, regulations, and rules;
- understand relevant industry and professional codes;
- understand client handling procedures;
- identify relevant regulations pertaining to the Finance/Mortgage Broking Industry;
- identify relevant finance/mortgage broking associations;
- understand general obligations of a Finance/Mortgage Broker;
- outline the requirements for the Australian Credit License.

Please note due to the ever changing operating environment for Financial advisers, rates and figures provided in the course work are subject to change some every quarter, therefore it is imperative that you complete your own research so that you are familiar with the current rates or figures which may not necessarily be reflected in the coursework at the time of you undertaking your studies.

2. Introduction

Finance/Mortgage Broking as a profession, commenced in the mid-1960s with brokers arranging lease and business finance for businesses and business clients in the equipment and chattel area. The specialist mortgage broker came into existence approximately 12 years ago with the advent of low-interest rates.

Over the last seven years, there has been a drastic change in the housing market and a subsequent rise in the consumer decision to use a Finance/Mortgage Broker when considering their lending options. Low-interest rates, the first home buyers grant and a broader desire for the consumer to own their own home has resulted in a steady increase in where consumers look to for financial and lending advice. During this period there has been increased recognition at both a State and Federal level of the potential needs for finance and mortgage brokers to be covered by some form of regulatory regime.

There is overwhelming evidence that the consumer benefits greatly from the increasing range of borrowing opportunities which have been made accessible through the growing finance and mortgage broking sector. As consumers continue to turn toward mortgage and finance brokers to assist in their borrowing needs, there is the need for a regulatory regime to be established which governs the activities of finance and mortgage brokers that has national consistency.

Intermediary between the Consumer and the Lender

A Finance/Mortgage Broker acts as an intermediary between the consumer and the lender and advises consumers and/or businesses about the suitability of a particular credit/loan product or to meet that business or consumers particular needs and desired outcomes. The advice element is about the loan or structure to facilitate the purchase or refinance of a property or plant and equipment, whether it is a residential home, a farm, or an investment property, etc. It may be for business or debtor finance. The Finance/Mortgage Broker is not advising about the merits, or otherwise, of investing in real property as opposed to any other form of property. Such investment advice, more often, comes from financial planners, accountants, tax advisers, lawyers, real estate agents and property developers/vendors. To provide this type of advice, the Diploma of Financial Planning – offered by International institute of Technology – is a mandatory requirement in order to be compliant with Regulatory Guide 146.

The Finance/Mortgage Broker comes late to the transaction, after the decision, to purchase or to invest in a property, to refinance or increase the debt on a property or purchase plant and equipment or arrange business finance or the like is made. Their role is to choose the most appropriate loan product or structure of the loan facility to facilitate the funding arrangements.

The need for the product is not created by the Finance/Mortgage Broker. The advice component is confined to the characteristics and attributes of a home loan or loan facility and its suitability for a particular individual or company and transaction, comparing it with similar products in the market.

Nevertheless, because there is generally a choice of loan facilities or loan products that could be suitable, the broker will make a clear recommendation as to the most suitable. This clearly puts Finance/Mortgage Brokers within functional definition of giving advice on credit/loan products only. They provide advice on finance products of various lenders and implicitly or explicitly advise the consumer or business owner or representative on the suitability or appropriateness of a financial product for that consumer's personal or business circumstances.

Ultimately it is the lender that approves and provides the actual finance for the loan to the borrower. However, responsible Finance/Mortgage Brokers will be helping clients understand the consequences of debt, over-exposure and risk. Brokers earn commissions in exchange for bringing borrowers and lenders together. Usually, the broker's commission is paid indirectly by the buyer, in the form of closing costs or additional loan points. The Finance/Mortgage Broker receives payment when the loan is closed.

3. Australian Financial System Government Agencies

There are four independent Commonwealth Government agencies that oversee the Australian Financial System, these are:

- Australian Securities and Investments Commission (ASIC)
- Australian Prudential Regulation Authority (APRA).
- Australian Competition and Consumer Commission (ACCC)
- Reserve Bank of Australia (RBA)

Collectively they form the Council of Financial Regulators, whose purpose is to provide advice to the Australian Government on the adequacy of Australia's financial regulatory arrangements.

Of these four, APRA, ASIC and the RBA work together to ensure a co-ordinated, national approach to the resolution of issues regarding the stability of the financial system.

Australian Securities and Investments Commission (ASIC)

ASIC is an independent Commonwealth Government body set-up under and administering the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*. Most of their activities are carried out under the *Corporations Act 2001*, which includes:

- the monitoring and promotion of market integrity;
- protection of consumers, investors and creditors;
- regulating Australian companies, financial markets and financial services organisations, including those who deal and advise in investments, superannuation, insurance, deposit-taking and credit;
- promoting participation in the financial system by investors and consumers;
- providing information to the public about companies; and
- responsibility for monitoring compliance with industry codes of practice.

ASIC regulates Australian companies, financial market, financial services, organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit in three key areas:

Consumer credit regulator

ASIC license and regulate people and businesses engaging in consumer credit activities^[1] (including banks, credit unions, finance companies, and mortgage and finance brokers). ASIC ensure that licensees meet the standards (including their responsibilities to consumers) that are set out in the *National Consumer Credit Protection Act 2009*.

Markets regulator

Assess how effectively authorised financial markets are complying with their legal obligations to operate fair, orderly and transparent markets. ASIC also advise the Minister about authorising new markets. On 1 August 2010, ASIC assumed responsibility for the supervision of trading on Australia's domestic licensed equity, derivatives and futures markets.

Financial services regulator

ASIC license and monitor financial services businesses to ensure that they operate efficiently, honestly and fairly. These businesses typically deal in superannuation, managed funds, shares and company securities, derivatives, and insurance.

ASIC administers the following legislation (or relevant parts of it), as well as relevant regulations made under it:

- Corporations Act 2001
- Australian Securities and Investments Commission Act 2001
- Insurance Contracts Act 1984
- National Consumer Credit Protection Act 2009

Other regulators also administer some parts of these Acts. For example, parts of the last Act dealing with prudential regulation are administered by the Australian Prudential Regulation Authority (APRA).

Australian Prudential Regulation Authority (APRA)

APRA is the prudential regulator of the Australian financial services industry. The prudential regulation focuses on the quality of a business's systems for identifying, measuring and managing the various risks in its business.

It supervises deposit-taking businesses (banks, credit unions and building societies), general insurance, reinsurance companies, friendly societies, life insurance, and superannuation funds (excluding self-managed funds). Most countries have established prudential supervisory agencies to ensure risks taken by financial businesses are within reasonable bounds so that businesses are well placed to meet their obligations.

APRA was established on 1 July 1998, under the *Australian Prudential Regulation Authority Act 1998* (APRA Act) "To enhance public confidence in Australia's finance institutions through a framework of prudential regulation which balance financial safety, efficiency, competition, contestability and competitive neutrality." (APRA 2010) For the 2010/11 financial year, its operating expenditure was \$118.3 million and an operating deficit from ordinary activities of \$11.11 million (APRA 2011). As a consequence, total reserves decreased to \$31.3 million.

APRA is funded primarily by levies collected from the businesses it supervises (which hold approximately \$3.6 trillion in assets for 22 million Australian depositors, policyholders and superannuation fund members), with a contribution from interest earnings, fees for services and miscellaneous cost offsets. Levies are raised according to the *Financial Institutions Supervisory Levies Collection Act 1998* and six other Acts applying to the regulated industries. Included in revenue in 2010/11 was \$9 million of a Special Appropriation from the Government to deal with the global financial crisis.

APRA promotes safety and soundness in business behaviour and risk management on the part of the businesses it supervises. It establishes and enforces prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by the businesses it supervises are met within a stable, efficient and competitive financial system.

APRA promotes financial stability by requiring businesses it supervises to manage risk prudently so as to minimise the likelihood of financial losses to depositors, insurance policyholders and superannuation fund members.

APRA's work falls into four main areas:

- establishing prudential standards to be observed by supervised financial business's;
- assessing new licence applications;
- assessing the financial soundness of supervised businesses; and
- where necessary, carrying out remediation, crisis response and enforcement.

A banking business cannot operate in Australia without the authorisation of APRA. In order to obtain an APRA licence to operate in Australia, applicants are required to present a submission addressing APRA's licensing criteria. APRA-licensed banking businesses are known as an 'Authorised Deposit-Taking Institution' (ADIs) which are authorised under the Section 66 of the *Banking Act 1959* to take deposits from customers. ADIs include banks, building societies and credit unions. All ADIs are subject to the same Prudential Standards but the use of the names 'bank', 'building society' and 'credit union' are subject to businesses meeting a certain criteria. A full list of businesses regulated by APRA can be viewed on APRA's web site at <http://www.apra.gov.au/adi/ADIList.cfm>.

APRA also has responsibility for administering the ADIs Financial Claims Scheme arrangements, which provide depositors in a failed deposit-taking business with timely access to their deposit funds (up to \$250,000 per depositor), and eligible policyholders and other claimants with access to funds to meet insurance claims in the event of the failure of a general insurer.

APRA conducts stress-testing to better understand the vulnerabilities facing individual institutions and industries and the potential for systemic threats. When the global financial crisis first struck, APRA conducted a range of stress tests on individual ADIs to determine their resilience in the face of a sharp decline in access to, and the cost of, offshore wholesale funding and the continued absence of securitisation markets. Once the potential severity of the crisis became clearer, APRA focused on identifying potential weaknesses in the capital position of individual ADIs as well as capital adequacy and availability for the Australian banking system as a whole. APRA undertook a further series of stress-tests of ADIs based on the information it had on their lending portfolios. This involved a number of internally generated scenarios based on expected default rates, underlying profit generation, dividend payout expectations and capital availability. Where weaknesses were identified, APRA addressed these with the ADIs concerned.

Reserve Bank of Australia (RBA)

The Reserve Bank of Australia (RBA) is Australia's central bank, acting as the Banker to the Government of Australia. It conducts monetary policy, works to maintain a strong financial system and issues the nation's currency. As well as being a policy-making body, the RBA provides specialised banking and registry services to a range of government agencies and to a number of overseas central banks and official institutions. It also manages Australia's gold and foreign exchange reserves.

The RBA came into being on 14 January 1960 as Australia's central bank and banknote-issuing authority, when the *Reserve Bank Act 1959* removed the central banking functions from the Commonwealth Bank of Australia to it. It is currently governed by the *Reserve Bank Act 1959*, which was approved by Parliament. The RBA Board's duty stated in the Act, within its outlined boundaries, is to ensure that the Bank's monetary and banking policy is used to help the Australian population. This should be accomplished through consultation with the Government and so in the RBA Board's opinion that its powers are used to help with:

- the stability of the currency of Australia;
- the maintenance of full employment in Australia, and
- the economic prosperity and welfare of the people of Australia.

In practice the RBA concentrates on the first objective, i.e., to control inflation through monetary policy. The current objective is a policy of inflation targeting aimed at maintaining the annual inflation rate at between '2–3 per cent, on average, over the cycle'. This target was first set in 1993 by the then Reserve Bank Governor Bernie Fraser and was then formalised in 1996 by the Treasurer, Peter Costello, and incoming Reserve Bank Governor, Ian McFarlane.

The main transactional banking services provided by the RBA to various Australian Government agencies include:

- bank account facilities;
- deposit and cheque processing services;
- the processing and distribution of bulk electronic direct credit and direct debit transactions, including welfare, Medicare, salaries and vendor payments;
- overseas payment services including by cheque, electronic funds transfer (wires) or direct entry;
- various paper based and electronic collection services;
- document printing services where agencies can electronically request the Reserve Bank to issue cheques and electronic documents on their behalf, and
- cheque reconciliation, repository and verification services including a system that can assist in the identification of cheque fraud.

The RBA also regulates systems for settling accounts between other banks involving such regular transactions as check clearance and electronic transfer of funds; it settles transactions from the Government Securities market, as well. It is also responsible for the printing, issuance and termination of Australia's banknotes through its subsidiary Note Printing Australia in Melbourne; the Royal Australian Mint in Canberra produces the Australian coins.

The information provided by the RBA to government, business and community includes financial statistics, e.g., interest rates, exchange rates, credit growth and a range of publications on its operations and research.

Australian Competition and Consumer Commission (ACCC)

The ACCC promotes competition and fair trade in the market place to benefit consumers, businesses and the community. It also regulates national infrastructure services. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws. The ACCC administers the *Competition and Consumer Act 2010* which replaced the *Trade Practices Act 1974* (Cth), and has standing to take action in the Federal Court to enforce its provision.

The *Competition and Consumer Act 2010* (Cth) contains a broad range of provisions, such as provisions on price-fixing cartels, misuse of market power, and misleading or deceptive conduct.

The restrictive trade practices, or anti-trust, provisions in the *Competition and Consumer Act 2010* (Cth) are aimed at deterring practices by firms which are anti-competitive in that they restrict free competition. This part of the act is enforced by the ACCC through litigation in the Federal Court, and the seeking of pecuniary penalties of up to \$10 million from corporations and \$500,000 from individuals. The ACCC is the only national agency dealing with competition matters and also the only agency with the responsibility for enforcing the *Competition and Consumer Act 2010* (Cth) and the State and Territory application legislation. It also reviews mergers.

The ACCC, in conjunction with State and Territory Offices of Fair Trading, is responsible for developing and enforcing mandatory consumer product safety standards except where the product falls into the jurisdiction of one of the specialist regulators.

[1] Home loans, personal loans, credit cards, consumer leases, pre-arranged overdrafts and line of credit accounts, among other products and services

4. Mortgage Broking Legislation

Insurance Act 1973

The legislative purpose of the *Insurance Act 1973* is to protect the interests of policyholders and prospective policyholders under insurance policies (issues by general insurers and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry.

This Act requires minimum levels of capital and solvency for companies wanting to enter the insurance market and for insurers in the market. The Australian Prudential Regulation Authority (APRA) is charged with the general administration of the Act and has the power pursuant to the Act, to investigate a general insurer, freeze its assets or direct it to take specific action.

Under s25A of the *Insurance Act 1973*, APRA can disqualify a person if it is satisfied that the person is not a fit and proper person to be or to act as someone referred to in paragraph 24(1)(a), (b) or (c) of the Act.

Competition and Consumer Act 2010 (Cth)

The *Competition and Consumer Act 2010* (which replaced the *Trades Practices Act 1974*) provides for protection of consumers and prevents some restrictive trade practices of companies. It is the key competition law in Australia. It is administered by the Australian Competition and Consumer Commission (ACCC) and also gives some rights for private action.

Provisions in the Act as it applies to the Finance and Mortgage Broking industry cover:

- Unconscionable Conduct (Part 2-2) – also used in Contract Law – describes a defence against the enforcement of a contract based on the presence of terms that are excessively unfair to one party;
- Misleading or Deceptive Conduct (Chapter 2 part 2-1) allows both individuals and the ACCC to take action against corporations who engage in conduct that is misleading or deceptive, or likely to mislead or deceive; and
- Other Unfair Practices (division 5 as well in section 3-1 and 4-1) which prohibits a range of other unfair practices including bait advertising (advertising a product that is not reasonably available), and certain misrepresentations (e.g. a misrepresentation as to price).

Insurance Contracts Act 1984

Applies to most insurance contracts with an Australian connection and is intended to ensure that a fair balance is struck between the interests of the insurer and the insured so that the provisions included in such contracts, and the practices of insurers in relation to such contracts, operate fairly, and for related purposes.

Some of the key elements within this Act are:

- The Duty of the Utmost Good Faith (Part II)
- Insurable Interests (Part III)
- The Duty of Disclosure (Part IV Division 1)
- Misrepresentations (Part IV Division 2)
- Remedies for non-Disclosure and Misrepresentation (Part IV Division 2)

The prudential aspects of general and life insurance (solvency, etc.) are regulated by the Australian Prudential Regulatory Authority (APRA). Matters relating to advice or disclosure of insurance products sold are regulated by the Australian Securities and Investments Commission (ASIC). The Australian Competition and Consumer Commission (ACCC) also have a regulatory role with respect to competition law.

Fair Trading (Victoria) Act 1999

This Act works to increase business and consumer confidence, which should result in improved economic performance. Fair Trading's key activities include maintaining fair trading legislation, regulating trader behaviour and providing access to appropriate redress mechanisms for consumers, licensing certain business and industries, investigating complaints, and providing access to information, advice and education on fair trading matters for business and consumers.

The Act incorporates parts of the *Competition and Consumer Act 2010* which deal with misleading and deceptive conduct and provides a greater range of sanctions against unfair practices.

The main purposes of this Act are to:

- promote and encourage fair trading practices and a competitive and fair market
- protect consumers;
- regulate trade practices;
- provide for statutory conditions and warranties in consumer contracts;
- provide for the regulation of unfair terms in consumer contracts;

- provide for the safety of goods or services supplied in trade or commerce and for the information which must be provided with goods or services supplied in trade or commerce;
- regulate off-business-premises sales and lay-by sales;
- provide for codes of practice;
- provide for the powers and functions of the Director of Consumer Affairs Victoria including powers to conciliate disputes under this Act and powers to carry out investigations into alleged breaches of this Act;
- repeal the *Consumer Affairs Act 1972*, the *Ministry of Consumer Act 1973*, the *Fair Trading Act 1985* and the *Market Court Act 1978*.

The Act identifies a range of matters including the supply of goods and services, or terms in consumer contracts, that would constitute 'unfair practices' against a consumer such as:

- Unconscionable conduct.
- Unconscionable conduct in relation to business transactions
- Misleading or deceptive conduct
- Misleading conduct in relation to services
- False representations
- Bait advertising
- Referral selling
- Mock auctions
- Harassment and coercion
- Offering gifts and prizes

Unlike the *Trade Practices Act 1974* (Cth), the *Fair Trading (Victoria) Act 1999* applies to individuals as well as corporations. Each State controls its own version the Act: *ACT Fair Trading Act 1992*; *NSW Fair Trading Act 1987*; *NT Consumer Affairs and Fair Trading Act*; *QLD Fair Trading Act 1989*; *SA Fair Trading Act 1987*; *TAS Fair Trading Act 1990*; *WA Fair Trading Act 1987*.

Privacy

With the increase in sophistication of the business environment, predominately due to the efficiency of computer systems, the peril of collaborated information pertaining to a person became an issue that needed to be addressed. The Australian Federal Privacy Act of 1988 authorised the implementation of eleven principles developed by the Organisation for Economic Cooperation and Development (OECD) in 1980. The Act was extended in December of 2000 via the Privacy Amendment (private sector) Act to include most private organisations and set out how organisations should use, keep and disclose personal information. The act was amended again via the Privacy Amendment (Enhancing Privacy Protection) Act 2012.

The Australian Information Commissioner represents the Office of the Australian Information Commissioner (OAIC) and may issue guidelines such as the Australian Privacy Principles guidelines (APP guidelines) regarding acts or practices that may have an impact on the privacy of individuals. The Commissioner's authority comes from the Privacy Act 1988 as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012. The APP guidelines may be updated from time to time, including to take account of changes in the Privacy Act or other legislation, determinations made under s 52 of the Privacy Act and relevant tribunal and court decisions. The APP guidelines applied from the 12th of March 2014 and replaced the National Privacy Principles (NPPs) and the Information Privacy Principles (IPPs) (except for ACT Government agencies, who will continue to be covered by the IPPs).

According to Australian Privacy Principle A.7 - The APPs are structured to reflect the personal information lifecycle. They are grouped into five parts:

- Part 1 — Consideration of personal information privacy (APPs 1 and 2)
- Part 2 — Collection of personal information (APPs 3, 4 and 5)
- Part 3 — Dealing with personal information (APPs 6, 7, 8 and 9)
- Part 4 — Integrity of personal information (APPs 10 and 11)
- Part 5 — Access to, and correction of, personal information (APPs 12 and 13).

Since being implemented on the 12th of March 2014 privacy legislation has extended the information available on consumer credit reports to include more detailed account status information including the particular account type, credit offering e.g. credit card and whether the credit is revolving or not. Other extended information includes credit limits; the date the account was opened and if relevant closed. Repayment histories can now include details with a financial services organisation inclusive of the credit provider's details and whether payment obligations have been met up to 24 months of commitments. Previously, consumer credit reports in Australia have only been allowed to include identity details, credit enquiries and negative data such as defaults, court judgments and bankruptcies.

Mortgage Brokers must be particularly diligent in how they obtain, handle and transmit the sensitive information of their clients. Failure to do so can result in serious consequences, including a term in gaol.

Corporations Act 2001 (Cth)

This Act is the principal legislation regulating companies, financial products and services and for other purposes in Australia and gives statutory force to many Common Law principles. It regulates matters such as the formation and operation of companies (in conjunction with a constitution that may be adopted by a company), duties of officers, take-overs and fund-raising. At several thousand pages in length, across 5 volumes, it is considered to be the largest corporations' statute in the world.

'Financial Services and Markets' (Vol. 4, Ch 7) regulates the way in which insurers and insurance agents and brokers carry on business and how they deal with the people they do business with and intend to do business with.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

In practical terms, money laundering is the process whereby criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities, thereby avoiding prosecution, conviction and confiscation of the criminal funds. The various stages to achieve this are termed placement, layering and integration. In the past, it was applied only to financial transactions related to organized crime. Today its definition is often expanded by government and international regulators to mean any financial transaction which generates an asset or a value as the result of an illegal act, which may involve actions such as tax evasion or false accounting.

Terrorist Financing includes the financing of terrorist acts and of terrorists and terrorist organisations. It involves a person providing or collecting funds where the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.

Providers of financial services such as: banks, building societies, credit unions and other ADIs; debit card and stored value card issuers; providers of loan, lease and hire-purchase finance; debt factors; designated remittance dealers, financial services intermediaries, etc., need to establish, maintain and implement applicable customer identification procedures to verify a customer's identity before providing a designated service.

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) require those providing certain financial services to:

- identify their customers before providing certain services;
- report certain transactions; and
- report suspicious matters.

The persons who provide these services are referred to as 'Reporting Entities' (REs) and the recipients of those services are referred to as 'customers'. REs will need to retain copies of customer (client) records for seven years. A record includes a copy of the fund application form and all client identification documents provided. The ACL Licensee is ultimately responsible for retaining these documents. Therefore, any information completed by their accredited brokers is to be forwarded to them for safe-keeping.

Finance/Mortgage Brokers wishing to act as an accredited broker of an ACL Licensee will need to complete and submit an accreditation document supplied by the ACL Licensee and provide the following supporting documents to complement their accreditation request:

- Copy of Driver's License for all Proprietors/Directors (Verified by Justice of Peace, Solicitor, Police Officer, Clerk of Court, Sheriff, Office of Defence Force only);
- Certificate of Business Registration;
- Certificate of ABN Registration; and
- Deposit Slip or Bank Statement to confirm bank account for funds receipt at settlement.

Since it is the ACL Licensees that are the prime bodies targeted by the AML/CTF Act, they need to comply with the AML/CTF rules developed by the Australian Transaction Reports and Analysis Centre (AUSTRAC). The ACL Licensees then need to comply further by getting their accredited brokers to complete various tasks. Failure to do so by the accredited brokers will not necessarily mean they will be in breach of the legislation but it will most likely mean they will invalidate their accreditation with that ACL Licensee and the ACL Licensee will be liable. In essence, the ACL Licensee will usually require the following evidence from accredited brokers:

- risk identification (including re-identification of existing customers where necessary);
- mitigation systems and measures;
- a customer due diligence program;
- an AML/CTF risk awareness training program for not only the accredited brokers but their employees;
- due diligence program issued by the ACL Licensee in relation to their accredited brokers. Accredited brokers would then need to comply with a similar program associated with the hiring of their employees;
- having to occasionally be audited by the ACL Licensee to ensure that the functions necessary for the ACL Licensee to comply with the AML/CTF Act are adequately working.

The requirements issued by the ACL Licensee will be largely governed by the program issued by AUSTRAC. They will mainly be designed to identify "suspicious matters" (s41). The AML/CTF Act sets out in excess of 20 factors that a RE must take into account, some of which include:

- The customer's transaction history;
- The customer's asset level and income source;
- The identity or location of any beneficiary of the transaction;
- Any explanation by the customer as to the purpose of or the circumstance surrounding the transaction;
- Whether any element or disguise is involved in any transaction; and

- The customer's demeanour or behaviour.

Many of these requirements can be satisfied by checking an appropriate box on an ACL Licensees' AML/CTF checklist. The accredited brokers will have to ask standardised questions, complete and execute the checklist and state that they did not have any "reasonable grounds for suspicion" (s42(5)).

Under the AML/CTF Act, accredited brokers must ensure all clients have been identified (including business, companies and Trusts and their owners, directors and trustees) sufficiently to ensure the identity of the applicant. This identification must include at least one piece of photo identification that may be either a current State Drivers/Boat Operator or Shooters Licence, or a current Passport. If a passport is presented, they must include a secondary item that states their current residential address.

Should a situation arise where an accredited broker believes fraudulent activity is being conducted during the course of an application for finance by any applicant, the broker must immediately report this to the ACL Licensee.

Unless an exemption applies under the AML/CTF Act, a RE will be required to establish, maintain and implement procedures to report physical and electronic threshold transactions (over \$10,000 or any other amount specified) to the Australian Transaction Reports and Analysis Centre (AUSTRAC).

5. National Consumer Credit Protection (National Credit Act) Act 2009

Resulting from the National Consumer Protection Reform Package, consumer credit, formerly regulated by each of the States and Territories^[1] were transferred to Commonwealth control under ASIC. This came about due to enhancements to the *National Consumer Credit Protection (National Credit Act) Act 2009* (NCA Act), a key change being the commencement of the Consumer Credit Reforms on 1 July 2010. (Contracts or other instruments made before the commencement of the NCA Act are subject to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.)

The National Credit Reform Package marks Phase One of the reform of credit in Australia and includes:

- a licensing regime for all providers of consumer credit and services.
- responsible lending conduct requirements.
- sanctions and enforcement powers for the Australian Securities and Investments Commission (ASIC) as the regulator of the regime.

Under these reforms, ASIC is now responsible for regulating the NCA Act for consumer credit and finance broking. The NCA Act requires providers of consumer credit activities regulated by the Act to be registered with ASIC for such credit activities, or hold a license, known as the 'Australian Credit License' (ACL), to engage in particular credit activities, or authorised as a representative of another registered person or licensee to undertake such activities.

As a result, home loans, personal loans, credit cards, consumer leases, pre-arranged overdrafts and line of credit accounts, among other products and services, are now regulated under the *National Consumer Credit Protection Act 2009* (NCCP Act) and administered by ASIC. This Act created a new credit licensing system for Australia known as the 'Australian Credit Licence' (ACL).

The Federal Government will further reform the credit industry (Stage 2) by amending the *National Consumer Credit Protection Act 2009*. Those proposals are as follows:

- Enhancements to specific conduct obligations to stem unfavourable lending practices, such as a review of credit card limit extension offers; and other fringe lending issues as they arise.
- Regulation of the provision of credit for small businesses.
- Regulation of investment loans other than margin loans and mortgages for residential investment properties.
- Reform of mandatory comparison rates and default notices.
- Enhancements to the regulation and tailored disclosure of reverse mortgages.
- Examination of remaining existing State and Territory reform projects.

There are six credit activities defined under the Act, these being:

1) Credit Contracts

The person is a credit provider, carries on the business of providing credit person performs the obligations, or exercises the rights, of a credit provider in relation to a credit contract or proposed credit contract (whether the person does so as the credit provider or on behalf of the credit provider).

2) Credit Service

The person provides a credit service.

3) Consumer Leases

The person is a lessor under a consumer lease, carries on the business of providing consumer leases or the person performs the obligations, or exercises the rights, of a lessor in relation to a consumer lease or proposed consumer lease (whether the person does so as the lessor or on behalf of the lessor).

4) Mortgages

The person is a mortgagee under a mortgage or performs the obligations, or exercises the rights, of a mortgagee in relation to a mortgage or proposed mortgage (whether the person does so as the mortgagee or on behalf of the mortgagee).

5) Guarantees

The person is the beneficiary of a guarantee or the obligations, or exercises the rights, of another person who is a beneficiary of a guarantee or proposed guarantee, in relation to the guarantee or proposed guarantee (whether the person does so on the person's own behalf or on behalf of the other person).

6) Prescribed Activities

The person engages in an activity prescribed by the regulations in relation to credit, being credit the provision of which the National Credit Code applies to, or would apply to if the credit were provided.

The NCCP Act requires that all businesses engaged in a credit activity (e.g., Mortgage Brokers, Lenders, Mortgage Providers, Financial Intermediaries) must have registered, and applied for, an Australian Credit Licence by 31 December 2010.

If a business is engaged in a credit activity (i.e., credit contracts, credit services, consumer leases, mortgages and/or guarantees) with consumers and the credit is predominantly for personal, domestic or household purposes, or residential investment purposes, that business will be unable to operate without an Australian Credit Licence or being authorised under an Australian Credit Licence from 1 July 2011.

Credit licensees and unlicensed COI (Carried Over Instrument) Lenders need to do all things necessary to ensure that they engage in their credit activities in a way that meets all of the elements of the phrase 'efficiently, honestly and fairly'.

Part of the Consumer Reform Protection Package, the NCA Act identifies the need for Financial Services Mortgage Broking licensees to meet the 'fit and proper' test or a subset of these key people (responsible managers) must comply with the organisational competence obligation in s47(1)(f) of the NCA Act and the training of their representative(s).

Competence and Training

There are five obligations to be met in order to satisfy this compliance:

1) **Organisational competence.**

This is the minimum level of education and experience for key people to ensure consistent quality across the industry. Key people should have at least two years relevant problem-free experience and hold, at a minimum, the Certificate IV in Finance and Mortgage Broking qualification by 20 June 2012.

2) **Qualification and experience requirements by key people in the business.**

Key people or their representative(s) have the appropriate qualifications or experience to engage in credit activities efficiently, honestly and fairly: s47(1)(a).

3) **On-going training for key people and their representatives.**

Appropriate initial and on-going training are embedded in the licensee's recruitment and training systems.

4) **Representative training.**

Representatives who provide mortgage broking services need to have at least a Certificate IV in Finance and Mortgage Broking. These representatives also need to undertake 30 hours of continuing professional development per year.

5) **Tier 1 training requirements for representatives.**

The Tier 1 education level is broadly equivalent to the 'Diploma' level under the Australian Qualifications Framework.

Contract Law

In Law, a Contract is a legally binding agreement between two or more parties which, if it contains the elements of a valid legal agreement, is enforceable by law or by 'binding arbitration' (a legal technique for a form of alternative dispute resolution [ADR] outside the courts).

A legally enforceable contract is an exchange of promises with specific legal remedies for breach. These can include compensatory remedy, whereby the defaulting party is required to pay monies that would otherwise have been exchanged were the contract honoured, or an Equitable remedy such as 'Specific Performance', in which the person who entered into the contract is required to carry-out the specific action they have reneged upon.

Australian Contract Law is based on the inherited English Common Law regarding contract, with specific statutory modifications of principles in some areas. Australian Contract Law has developed through the decisions of Australian courts, especially since the 1980s, and various pieces of legislation passed by the Parliament of Australia and by the various States and Territories.

Common Law

Also known as Case Law, or Precedent, Common Law is developed by Judges through decisions of Courts and similar tribunals rather than through legislative statutes or executive branch action. All of the States and Territories of Australia that are self-governing are separate jurisdictions, and have their own system of Courts and Parliaments. The systems of laws in each State are influential on each other, but not binding. Laws passed by the Parliament of Australia apply to the whole of Australia.

Legal matters addressed through the Court System may be:

- Negligence and pure economic loss (negligent misstatement)
- Misrepresentations
- Breach of contract
- Fiduciary duties (relating to or based on a trust)
- Fraudulent misrepresentations

It should be noted that Professional Indemnity Insurance is compulsory for all operatives in the industry.

Trust Law

Trust Law is under the jurisdiction of State governments, and the legislation often interacts with Corporations Law and Family Tax Law. Equity still regulates Trust Law to a significant extent, and Australian law has often followed English developments.

There are a variety of Trusts recognised and used in Australia, including Unit Trusts, Discretionary Trusts and Hybrid Trusts. A Discretionary Trust is often known as a 'Family Trust'. Testamentary Trusts are also sometimes used.

Family Trusts are often used to distribute income to beneficiaries in an attempt to achieve the most desirable tax outcomes available to the members of the Trust. Discretionary or 'Family' Trusts also protect assets when individual members become insolvent or bankrupt. Asset protection also extends to other types of liabilities.

National Consumer Credit Protection Reform Package

Introduced on 1st of July 2009, the reforms had significant consequences for a wide range of participants in the credit industry, including credit providers, finance brokers, other intermediaries and mortgage managers.

Under the reforms, the existing state-based Uniform Consumer Credit Code (UCCC) was replaced with a new National Credit Code (NCC). The new regulation also involved the introduction of a licensing regime for credit providers, finance brokers, other intermediaries and mortgage managers.

National Credit Code

The National Credit Code (NCC) is contained in Schedule 1 to the *National Consumer Credit Protection Act 2009*. The NCC specifies at Section 5(1) that:

“[t]his Code applies to the provision of credit (and to the credit contract and related matters) if when the credit contract is entered into or (in the case of pre-contractual obligations) is proposed to be entered into:

- a) the debtor is a natural person or a strata corporation; and
- b) the credit is provided or intended to be provided wholly or predominantly:
 - i. for personal, domestic or household purposes; or
 - ii. to purchase, renovate or improve residential property for investment purposes; or
 - iii. to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and
- c) a charge is or may be made for providing the credit; and
- d) the credit provider provides the credit in the course of a business of providing credit carried on in this jurisdiction or as part of or incidentally to any other business of the credit provider carried on in this jurisdiction.”

Credit providers will need to:

- register with the Australian Securities and Investments Commission (ASIC) and obtain a licence within a specified timeframe;
- comply with on-going conduct obligations and licensing conditions;
- comply with new responsible lending requirements that prohibit providing or arranging loans unsuitable for a consumer's needs, or that a consumer does not have the capacity to repay;
- make certain disclosures to consumers, including in relation to commissions;
- be aware of ASIC's wide-ranging powers to enforce the licensing regime and take action against licensees; and
- note the significant criminal and civil penalties that may be imposed for licensee misconduct.

The National Credit Code also requires lenders to make changes to their documentation and procedures for:

- loans for investment in residential property;
- business purpose declarations and enquiries into loan purpose;
- default notices and other standard form notices;
- applications for hardship variations; and
- applications to negotiate a postponement of enforcement proceedings

Licensees have an obligation to retain financial records for seven years.

Mortgage brokers are required to fully disclose all details of the home loan transactions including any monetary or non-monetary benefits they receive from various parties involved. They must make the client aware of their capacity – whether as an agent of the lender, or as an independent broker receiving a commission for their referral of the client to a lender, or otherwise. Any commercial relationship of the representative and his/her organisation to products and/or services mentioned in the plan should also be disclosed so there is no relationship conflict.

Provisions of credit specifically excluded by the National Credit Code are identified in Section 6(6) as being:

- Short term credit
- Credit without express prior agreement

- Credit for which only account charge payable
- Joint credit and debit facilities
- Bill facilities
- Insurance premiums by instalments
- Pawnbrokers
- Trustees of estates
- Employee loans
- Margin loans.

[1] *Consumer Credit (New South Wales) Act 1995; Consumer Credit (Victoria) Act 1995; Consumer Credit (Queensland) Act 1994; Consumer Credit (Western Australia) Act 1996; Consumer Credit (South Australia) Act 1995; Consumer Credit (Tasmania) Act 1996; Consumer Credit (Northern Territory) Act 1995; Consumer Credit (Australian Capital Territory) Code, and Consumer Credit (Australian Capital Territory) Regulations.*

6. Industry Professional Associations

The majority of the financial professionals operating in mortgage broking industry are members of either the FBAA or MFAA. These professional bodies and some others are reviewed below. There are also other associations and industry networks such as:

- Australian Lease Brokers Association
- Australian Finance Conference
- Australian Finance Group
- Institute of Financial Services
- Preferred Broker Network

Finance Brokers Association of Australia Ltd (FBAA)

The activities of the FBAA originally commenced in 1992 in response to the growing incidence of bad publicity of the profession and to become a voice for Finance/Mortgage Brokers. A National Association representing over 9,500 finance and mortgage loan writers throughout Australia. The FBAA is an unlisted company, limited by guarantee, and is run by an elected Board of Directors supported by a National Executive comprising all States and Territory Presidents and a Secretariat. Its head office is in Brisbane, Queensland.

Membership comprises practicing Finance/Mortgage Brokers, senior individuals involved directly in the Finance/Mortgage Broking industry and some lenders. The organisation represents a range of companies and single operators throughout Australia and their main function is to represent members and the interests of their clients, primarily, the consumer. Its membership is largely made-up of persons carrying-on the business of a general finance broker, mortgage broker, mortgage originator, mortgage manager or equipment finance broker and includes independently-owned businesses operated under a franchise agreement or sub-contract agreement with an aggregator and/or banks and financiers.

Members act for a range of different consumers/borrowers and provide representation for the total range of lending institutions throughout Australia, including:

- Banks;
- Building societies;
- Non-bank financial institutions;
- Mortgage managers;
- Finance companies;
- Institutional lenders; and
- Private lenders.

Members' activities cover the total range of lending products ranging from consumer to commercial transactions including:

- Personal loans and credit cards;
- Mortgage secured loans for house purchase, construction and re-finance;
- Low-Documents and No-Documents loans
- Domestic banking facilities;
- Uniform consumer credit code regulated transactions;
- Plant, equipment, chattel leasing facilities and novated leases;
- Bill-of-Sale and chattel mortgage facilities;
- Industrial, commercial mortgage secured loans;
- Banking facilities including overdraft, term loans, fully-drawn advance, commercial bill facilities;
- Development finance;
- Business finance, and
- Debtor finance and factoring

Categories of Membership of the FBAA are:

Accredited Member

Available to an approved individual, company or partnership carrying on the business of a general finance broker, mortgage originator, mortgage manager, or equipment finance broker and includes independently-owned businesses operated under a franchise agreement or sub-contract arrangement with an aggregator.

Accredited Member – Branch Office

Available to branches of Accredited Members. This category offers Accredited Members one-vote- per-State in States where a Branch Office is located at State Council meetings. No vote is available at National Council meetings for a Branch Office member.

Associate Member

FBAA Associate Membership is available to approved employees and exclusive sub-contractors of Accredited Members and includes retired members wishing to remain involved in, and informed of, the FBAA's activities.

Corporate Member

Available to approved non-broking entities associated with the finance industry and includes Credit Providers (Banks, Building Societies, and Credit Unions) Mortgage Insurers, Mortgage Managers, Fund Managers, Trustee Companies, etc.

Special Recognition

(i.e., Industry Platinum/Gold/Silver/Bronze Class) is available to FBAA Corporate Members associated with the finance industry who wish to support and work with the FBAA in its aims and objectives throughout the entire year.

Affiliate Member

Available to approved individuals and entities not covered by the Corporate Membership category and includes Government agencies, suppliers, other Associations and anyone wanting to remain informed of the FBAA's activities.

Life Member

This membership category is granted to a person who has been appointed as such by the Directors from time-to-time for meritorious service to the FBAA and who has served in a senior administrative position for a period of 5-years.

Fellow

This membership category is granted to a person who has been appointed as such by the Directors from time-to-time for meritorious service to the FBAA.

Mortgage and Financing Association of Australia (MFAA)

MFAA is a peak national body providing service and representation to over 13,000 Professional Credit Advisers (mortgage and finance brokers, mortgage managers and aggregators) to assist them to develop, foster, and promote the mortgage and finance industry in Australia. MFAA states that it represents around 45 per cent of the loan writers in Australia and around 75 per cent of the mortgage brokers, lenders and managers.

The Mortgage and Finance Association of Australia (MFAA) is a professional organisation established to ensure the orderly and ethical working of the mortgage industry in Australia and New Zealand. The MFAA website includes information on how to find a lender, an accredited mortgage consultant and professional ancillary services such as lawyers, valuers, real estate agents. The association has previously been known as the Mortgage Industry Association of Australia (MIAA), the Mortgage Industry Association of Australasia and the Mortgage Bankers Association.

The MIAA also provides access for consumers to a modern and effective dispute resolution system. MFAA requires its members to have internal dispute resolution (IDR) procedures in place to address and try to resolve customer complaints within a reasonable time. The MFAA has a set of Disciplinary Rules to deal with complaints of alleged misconduct against an MFAA member. The MFAA can only take action if a complaint or dispute is against an MFAA member. Complaints relating to compensation are handled by the Australian Financial Complaints Authority.

The MFAA's minimum membership criteria for accreditation to be a loan writer member, is either the Accredited Mortgage Consultant (AMC) or Accredited Finance Consultant (AFC).

Senior Australians Equity Release Association of Lenders (Sequal)

With the increasing popularity of Equity Release and Reverse Mortgages, the Senior Australians Equity Release Association (SEQUAL) is a self-regulatory Association established in January 1995 as not-for-profit association supported by Australia's leading providers of Equity Release products. Set up by lenders themselves as the peak industry body for the Australian Senior's Equity release market, its promotion of ethical behaviour by reverse mortgage product providers and help to protect the interests of consumers, SEQUAL has received positive feedback from respected seniors and Government organisations.

Whilst, the option of accessing the equity in consumer property during retirement has been available since the late 1980s, the recent attention and popularity of such products is attracting many more Equity Release products into the market. The options provided by SEQUAL members are structured to adhere to a strict Code of Conduct designed to protect the consumer.

SEQUAL has established an Industry Accreditation protocol in order to raise Professional Standards above the Minimum Education Requirements imposed by legislation and Industry Association Membership. To give effect to this protocol, SEQUAL has developed the educational standards required for market practitioners to achieve the designation of Reverse Mortgage Consultant (RMC).

The primary objectives of SEQUAL are:

- To provide members with a forum for collaboratively and ethically developing the Equity Release market in Australia, with particular regard for issues previously experienced both overseas and in Australia
- To provide a transparent Code of Conduct by which members of SEQUAL are expected to comply, for the protection of consumers
- To provide a central body for lobbying industry stakeholders and Government bodies
- To provide a central source of information to consumers on the product category, including the sources of independent information that are available on Equity Release options, and access to SEQUAL members.

In order to maintain Industry Accreditation as a Reverse Mortgage Consultant, RMCs are required to accumulate an annual minimum of fifteen SEQUAL CPD Activity Points (CPD Points). RMC's are expected to accumulate their CPD Points across a range of competencies which include: Product & Process, Client Management, Business Development, Ethics & Regulatory Compliance, etc.

The Australian Bureau of Statistics (ABS) estimates that between 1999 and 2031, the population aged 60 years and over will double. According to recent data, over 2.6 million Australians, or 13 per cent of the population, are over the age of 65. These factors have given rise to a number of financial products targeting the 'grey dollar'.

Mortgage Broking is developing as a profession and with increased immigration inter alia focused on achieving economic targets not only will opportunities increase but so too will the expectations. Professional membership and behaviour is important to sustain the mortgage broking and finance broking privileged position of trust. It is essential that education communicates this responsibility to new and developing professionals. Of course this does not guarantee ethical and legal behaviour but it is an important contributing factor. Other factors that are important to sustain the industry are the collective ability to respond to challenges both locally and internationally. Local examples are responses to regulatory challenges and threats such as the suggestion to eliminate terminating fees, and international examples include the subprime crises and global implications from the Global Financial Crisis. Mortgage and Finance Broking as a collective, needs to have a greater voice in the media to elevate and sustain the profession.

7. Industry Codes of Practice and Ethics

A Code of Practice recognizes that the primary responsibility of a finance broker is to the client. However, in regard to some types of credit facilities, the finance broker may also act as a limited agent of the credit provider and therefore may act for both parties and have a responsibility and duty of care to both parties.

A Code of Practice or Ethics sets out the responsibilities or principles of participating Finance/Mortgage Brokers when providing services, and also requires them to establish an internal process for resolving disputes with Clients, Credit Providers and others. These Codes do not create legal rights for Clients. Any breach of a Code by a Finance/Mortgage Broker may give rise to binding orders or sanctions being imposed on the Finance Broker under the Code and may result in suspension or termination of membership from an Association, however, no additional monetary penalties may be imposed.

MFAA Code of Practice

The Mortgage and Finance Association of Australia (MFAA) Code of Practice is intended to promote good relations between Finance Brokers that are Members of the MFAA and Clients, Credit Providers and others involved in the finance industry. It also promotes efficiency in transactions by describing standards of good practice and the level of service to be expected from Finance Brokers.

The objectives of the Code are to:

- promote and establish professional standards between consumers and MFAA Members and between Members in the Mortgage & Finance Industry;
- promote commitment by MFAA Members to compliance with laws and regulations in the spirit of those laws and regulations;
- promote the maintenance of the high public standing of MFAA Membership accreditation;
- promote ethical and fair business;
- promote education and professional programs for Members.

Breaches of these principles are dealt with through the MFAA disciplinary rules. In severe cases members can be expelled from the Association.

MFAA Code on Alternative Forms of Remuneration

The Code is an adjunct to the MFAA Code of Practice and is to be read in conjunction with, and is underpinned by the principles in, that document. It recognises the requirements of the MFAA Code of Practice and the NSW Consumer Credit Administration (Finance Brokers) Regulations, 2004 for loan writers to disclose (monetary) commissions and the Regulations' requirement for disclosure of "any interest or relationships of the finance broker that can be reasonably expected to influence the finance broker's recommendation – for example benefits comprising tickets to sporting events, holiday offers, or the provision of services."

Disclosure

Loan writers must disclose in writing to the consumer all material alternative forms of remuneration paid by a lender or credit provider to the loan writer that can be reasonably expected to influence the loan writer's recommendation. "Material" means any benefit which exceeds \$300 in value.

Types of Benefits

The benefits listed below, and benefits of a similar nature, are alternative forms of remuneration which, subject to Clause 1 of the Code, must be disclosed in writing to the consumer.

- Sponsorship of seminars, conferences and functions;
- Gifts;
- Payment for office rental;
- Accommodation and entertainment;
- Travel;
- Cash payments and/or goods;
- Computer hardware and software costs, and
- Competitions in which a broker/loan writer might be eligible to win a prize subject to achieving certain volume-related targets.

Benefits to Broker Groups

The Code recognises that benefits may be given to broker groups of the following or similar nature:

- Bonus commissions that are volume or product specific
- Generally these would be an additional component of commission, a percentage of which may or may not be passed onto the broker/loan writer, if a specific group target is achieved.
- In such cases, an individual broker/loan writer may have no control over the reaching of group targets therefore such payments may have no influence over the broker/loan writer's recommendation.
- Sponsorship of group conferences, seminars, training or other events
- All payments made for sponsorship of group conferences, seminars, training or other events must be included in a register. However such payments are not considered to be payments 'that can be reasonably expected to influence the broker/loan writer's recommendation.'

A register should be maintained by the broker group containing details of such payments or benefits including name of payee, amount and purpose of payment and kept at the group's office for seven years.

Senior Australians Equity Release Association of Lenders (Sequal)

The SEQUAL code of conduct sets a minimum level of ethics and consumer protection. It covers members' dealings with borrowers, borrowers' families and borrowers' advisers. The body's members must abide by its code of conduct. Failure to comply could result in a lender being expelled from SEQUAL membership.

Code of Conduct

Each Member of SEQUAL agrees its equity release product(s) will adhere to, and be measured against the following Code of Conduct in dealing with Senior Australians, their families and advisers. As a minimum, Members of SEQUAL shall:

- 1) Treat all Customers with respect and dignity.
- 2) Participate in an ASIC-approved External Dispute Resolution Scheme.
- 3) Ensure that all products carry a clear and transparent 'no negative equity' or 'non-recourse' guarantee. That is, the Customer(s) will never owe more than the net realisable value of their property, provided the terms and conditions of the loan have been met.
- 4) Strongly encourage Customer(s) to discuss the transaction with family members and to seek independent financial advice from a qualified financial adviser.
- 5) Strongly encourage Customer(s) to discuss the transaction with Centrelink to ensure they fully understand the impact, if any, on their Centrelink entitlements.
- 6) Ensure that the Customer(s) obtains independent legal advice performed by the solicitor of their choice. Prior to the completion of the transaction, the Customer(s) or their solicitor will be provided with full details of the benefits the Customer(s) will receive, and the obligations they are entering into.
- 7) Clearly and accurately identify all costs to the Customer(s) that are associated with the transaction.
- 8) Not assert or imply to a Customer(s) that the Customer(s) is obligated to purchase any other product or service offered by the Member or any other company in order to enter into an equity release product.
- 9) Provide in writing, a fair and complete package of equity release documents, covering the benefits and obligations of the product. This will include making available to the Customer(s) and their advisers a tool illustrating the potential effect of future house values, interest rates and the impact of any capitalisation of interest where applicable.
- 10) Ensure that all contracts are written to comply with Australian Consumer Law and the consumer protection provisions of any other relevant Legislation, Regulation or Code and ensure compliance, where applicable, with all Guidelines issued by SEQUAL.

General Insurance Code of Practice

Developed in concert with consumers, business and the insurance industry, the Code is the general insurance industry's commitment to be open, fair and honest in all its dealings with customers. The Code is designed to raise the insurer's service standards for consumers and covers all general insurance products except: workers' compensation; marine insurance; medical indemnity insurance, and compulsory third party insurance (even if driver protection cover is linked to it).

The General Insurance Code of Practice is a self-regulatory code that binds all general insurers who are signatories to it. It has been approved by ASIC pursuant to s 1101A of the *Corporations Act 2001*(Cth).

The key areas in the code concern:

- Buying insurance
- Insurance claims
- Responding to catastrophes and disasters
- Information and education
- Complaints handling procedures

- Code monitoring and enforcement

The Code does not apply to life and health insurance products issued by life insurers or registered health insurers, nor does it cover re-insurance.

General Professional Conduct

In the course of a broker's activities, many basic professional skills underpin the work at hand. A broker needs sufficient literacy skills to be able to read and understand a variety of texts and to write, edit and proofread documents, ensuring clarity of meaning, accuracy and consistency of information. They also must apply research and data collection skills to monitor and evaluate risks, as well as holding problem-solving skills to appropriately address identified risks. This is in addition to even more basic skills and abilities to operate the relevant technologies such as computer, software and communications equipment required in the course of their work. Professional conduct involves updating competencies where necessary to stay in touch with matters of comprehension and functionality.

Implementing Complex Loan Structures

When implementing complex loan structures, there is a flow of process that leads a broker from the early stages of taking instructions through to the completion of the mortgage arrangement for and with the client. A step-by-step checklist in greater detail can be found in the Appendix, but below is something of an overview and summary of implementation actions, including the planning and timing issues that a mortgage broker should consider:

ORGANISING IMPLEMENTATION ACTIONS

- “ Review special or complex features of the client's situation for implications in implementation including:
 - o high asset
 - o income or expenditure requirements
 - o complex taxation
 - o the complex nature of the securities to be taken
 - o forms of security to be taken for complex transactions
 - o any other legal or complex issues
- “ Prioritise implementation actions and plan timing for each action
- “ Confirm that the activities are consistent with the client's needs and specifications
- “ Clearly explain to the client which implementation actions they are required to take
- “ Obtain client's written agreement to actions
- “ Establish implementation records
- “ Carry out implementation actions with timing and priority for the client's maximum advantage

ESTABLISHING APPROPRIATE PROCEDURES FOR IMPLEMENTATION

- “ Identify and brief personnel to implement each action for the loan structure
- “ Complete internal and external documentation requirements
- “ Coordinate implementation actions that depend on or involve actions by other professional such as accountants and lawyers
- “ Establish monitoring procedures for critical implementation timing and priorities

UNDERTAKING AND/OR SUPERVISING IMPLEMENTATION

- “ Brief client on actions to be undertaken and provide assistance where needed
- “ Issue instructions to internal and external personnel as per loan structure
- “ Maintain consultation and monitoring with other professionals where joint implementation action is required and make checks and follow-ups on lodgement of documentation to ensure plan timings are met
- “ Obtain and process fees and charges according to organisation and legislative requirements
- “ Debrief client and address any of their concerns

8. Australian Financial Complaints Authority

The Australian Financial Complaints Authority is the external dispute resolution scheme (EDR scheme) approved by the Australian Securities and Investments Commission (ASIC).

The Australian Financial Complaints Authority provides consumers and members with an alternative to legal proceeding for resolving their disputes. The broad aim of the The Australian Financial Complaints Authority is to provide independent and prompt resolution of disputes in accordance with:

- Relevant legal requirements.
- The Mortgage & Finance Association of Australia (MFAA, formerly MIAA) Code of Practice and other recognized Codes of Practice.
- Good practice in the credit industry.
- Fairness in all the circumstances.

The Australian Financial Complaints Authority's decision is binding on a member only if the consumer accepts the decision. The Australian Financial Complaints Authority is the decision-maker and the person who can make:

- any decision allowed for under the Rules, including a review of whether a complaint is within CIOs jurisdiction;
- any order allowed for under the Rules;
- a determination, and
- a binding award.

9. Australian Credit License (ACL)

The NCCP Act creates a nationally uniform approach to regulating certain credit activities by requiring that all businesses offering regulated credit activities be licensed by holding an Australian Credit Licence. Operating without a licence is prohibited by the Act. There are also a wide variety of penalties created by the Act for non-compliance with the obligations imposed upon licensees. The Act also requires mandatory membership of an external dispute resolution (EDR) body by all providers of client credit and credit-related brokering services and advice.

The National Credit Code largely replicates the requirements of the old Credit Codes (the client credit codes of each State and Territory that adopted the Uniform Consumer Credit Code). However, it also includes some additional requirements. These new requirements relate to:

- application of the National Credit Code to credit for the purchase, renovation or improvement of residential investment properties
- introduction of direct debit default notices
- amendments to business purpose declarations
- amendments to default notices
- new notices in response to application for hardship variations and postponements

Broadly, the licenses cover three areas of activities: credit activities, credit services and credit providers. Under the National Credit Code, you are either a 'credit provider' or a 'provider of credit services'. Credit Unions, Banks, Mortgagees and General Lenders are all examples of a 'credit provider'. Financial Advisers, Finance Brokers and Mortgage Managers are all examples of a 'provider of credit services'.

If you act as an intermediary between a lender and a client, with the aim of obtaining credit for the client, you will need to have a credit licence. Under the regulations, you do not need to deal directly with the client to be an intermediary. As long as your role was to secure a credit contract or client lease for a client with a credit provider, you will need to obtain a credit licence. Common examples of intermediaries include Finance Brokers and Mortgage Managers.

You will need an Australian Credit Licence only where the credit is:

- provided to a client or strata corporation
- provided predominantly for personal, household or domestic purposes or residential property investment, and
- provided for products that are for business purposes

You will not need a credit licence if you are:

- an authorised credit representative acting on behalf of somebody who has an Australian Credit Licence, or
- an employee or director of somebody who has an Australian Credit Licence

Basic requirements for obtaining an Australian Credit Licence are:

- You must provide a summary of your business description.
- You must comply with the legislation and the requirements of the regulatory guides. The regulatory guides relevant to obtaining and maintaining a licence are: 204, 205, 206, 207, 209, 210 and 165.
- You must be a member of the Australian Financial Complaints Authority which is the external dispute resolution scheme.
- You must register any business name(s) you wish to use.
- You must nominate Responsible Managers who have adequate education and experience. Each Responsible Manager must obtain a criminal history check and a credit history report.
- You must have in place suitable compensation arrangements (i.e., personal indemnity insurance). Refer RG 210 for further information.
- You must pay the licensing fee which is non-refundable.[\[1\]](#)
- You must have a written plan in place when your licence is granted setting out your compliance arrangements (refer RG 204 for further information).

Obligations of Licensee

A licensee must:

- ensure that credit activities authorised by the ACL licensee are engaged in efficiently, honestly and fairly
- have in place adequate arrangements to ensure clients of the ACL licensee are not disadvantaged by any conflict of interest that may arise in relation to credit activities engaged in by the licensee or its representatives
- comply with the conditions on the ACL licence and the relevant credit legislation and taking reasonable steps to ensure representatives do likewise
- comply with the credit legislation
- take reasonable steps to ensure that ACL licensee representatives comply with the credit legislation
- maintain the competence to engage in the credit activities authorised by the ACL licence

- ensure that its representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence
- be a member of an ASIC approved external dispute resolution scheme and having a dispute resolution procedures that complies with standards and requirements made or approved by ASIC
- be a member of an approved external dispute resolution scheme
- having adequate compensation arrangements in accordance with Section 48 of the National Credit Act (i.e., for loss or damage suffered because of a breach of the *National Credit Act* by an ACL licensee or representative)
- have adequate arrangements and systems to ensure compliance with its obligations under this section, and a written plan that documents those arrangements and systems
- unless the licensee is a body regulated by APRA, have available adequate resources (including financial, technological and human resources) to engage in the credit activities authorised by the ACL and have adequate risk management systems, and comply with any other obligations that are prescribed by the regulations

Mortgage Broker Representative

A representative will be providing mortgage broking services when they give credit assistance in relation to a credit product where the credit is secured by real property (mortgage broking services).

Because home loans are the largest loan most consumers will take on, and poor decisions and advice can jeopardise ownership of the family home, representatives assisting a client with these loan-related decisions should be adequately trained to provide this assistance. To this end, the representative will need to have at least a Certificate IV in Finance and Mortgage Broking, as this qualification is identified as being specifically relevant to the Mortgage Broking industry.

Unlicensed COI Lender

If a credit provider ceased to offer new credit contracts or consumer leases before 1 July 2010 but continued to be a lender or lessor in relation to credit contracts or leases entered into before 1 July 2010, they become a carried over instrument lender (COI Lender). Persons assigned a contract or carried over instrument on or after 1 July 2010, are not a COI Lender and accordingly must obtain a credit licence prior to the assignment.

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.

Aggregators

An Australian Credit License holder must align with an aggregator which will provide infrastructure, support and access to their panel of lenders. Examples of aggregators include AFG, Connective, Echoice, Val and Plan which will be detailed.

Professional Lenders Association Network of Australia (PLAN Australia)

PLAN Australia was established in 1999 in Victoria and, representing more than 2,000 brokers, is one of the largest finance broker aggregation groups in Australia. PLAN Australia is fully- owned and supported by Advantedge Financial Services. As a mortgage aggregator, they provide members access to a broad range of lenders. PLAN Australia was the first professional body to mandate a minimum educational standard (Certificate IV in Finance or Banking) as a membership certification requirement for each of member and their Loan-writing staff.

Professional Lenders Association Network of Australia (PLAN Australia) Code of Ethics

The Professional Lenders Association Network of Australia code of ethics outlines the minimum ethical standards to be maintained. By adhering to this Code of Ethics the Association and its membership believes that they will safeguard the reputation and standing of the Association and its members by providing consumers with a high level of confidence and trust in the mortgage broking and finance planning industry and thereby raise the profile and business of all Australian mortgage brokers and finance planners:

1) To act with honesty and integrity at all times.

This will extend to representations made in advertising, commissions received, all communications, advice provided and customer applications. This will ensure that the best interests of both the client and financial institution are always upheld.

2) To comply with all laws and regulations relating to the mortgage industry.

To maintain a current understanding of and adherence to all laws and regulations as they pertain to the finance industry.

3) Conflicts of Interest.

In each professional assignment undertaken, a member must both be and be seen to be free of any interest which is incompatible with the best interests of the client. This will extend to both product advice and commissions received. Substantiation of any recommendation will be freely provided to the client.

4) To maintain confidentiality at all times.

Through adherence to the above, professional conduct will be maintained at all times.

[1] ASIC have set the non-refundable fees for applicants from \$450–\$21,000. It is expected most applicants will pay the \$450 fee, however applicants must check what the fee will be prior to lodgement of the application. ASIC will not process an application until the fee has been paid.

10. Responsible Lending Conduct

The National Consumer Credit Protection Act 2009 (National Credit Act) contains responsible lending obligations for credit licensees. These conduct obligations apply to both credit providers (i.e., lenders, such as banks, credit unions and finance companies) and credit assistance providers (e.g., mortgage and finance brokers).

Credit licensees must comply with the responsible lending conduct obligations in Ch 3 of the National Credit Act. The key concept is that credit licensees must not enter into a credit contract with a client, suggest a credit contract to a client or assist a client to apply for a credit contract if the credit contract is unsuitable for them. Refer Regulatory Guide 209 for key compliance information.

The primary obligation is to conduct an assessment that the credit contract or lease is 'not unsuitable' for the client. A contract will be unsuitable where either:

- it does not meet the client's requirements and objectives, or
- the client will be unable to meet the repayments, either at all or only with substantial hardship

In undertaking the assessment, credit licensees must:

- make reasonable inquiries about both the client's requirements and objectives and their financial situation, and
- take reasonable steps to verify the client's financial situation.

Therefore, credit licensees must make a preliminary assessment (if you are providing credit assistance) or a final assessment (if you are the credit provider) about whether the credit contract is 'not unsuitable' for the client (based on the inquiries and verification of information made).

The responsible lending obligations also apply when credit licensees:

- suggest, assist with, or provide a new credit contract or lease to a client;
- increase the limit on a particular credit contract, suggest that a client increase the limit, or assist a client to increase the limit, or
- suggest to a client that they remain in a particular credit contract or consumer lease.

This means that the responsible lending obligations do not just apply to new credit contracts – the obligations also apply where a client increases a particular credit contract or consumer lease or remains in a particular credit contract or consumer lease. In addition, if the client requests it, credit licensees must be able to provide the client with a written copy of the preliminary assessment or final assessment (as relevant).

Within the broad class of either credit providers or credit assistance providers, different business models or differences in the services provided may mean that different or additional steps are required in order to ensure compliance with the responsible lending obligations; refer RG 209.19–RG 209.23 for further information.

Under the National Credit Act, credit licensees must, if requested, provide free-of-charge to the client, a copy of the assessment that the credit contract is 'not unsuitable' for the client. In practice, this means that credit licensees must keep a record of the assessment in a form that allows them to provide the assessment to a client promptly and in writing.

The written assessment must be concise and easy for clients to understand, and include reference to the relevant factual information provided by the client that credit licensees used to assess the credit contract as 'not unsuitable'.

Credit licensees should ensure that the written assessment provides to clients will:

- assist client in understanding that the credit contract has been assessed as 'not unsuitable' for them, and
- assist credit licensees in demonstrating compliance with the responsible lending obligations.

Credit licensees should also ensure that the client has the opportunity to check the factual basis on which the assessment was made (as stated by the credit licensee in the written assessment) so that, if it is inaccurate, the client can raise the matter with credit licensee. This means that the assessment should include a record of the financial information obtained, and the requirements and objectives communicated by the client.

Credit licensees are not expected to disclose the commercially sensitive lending criteria on which the credit decisions are based. Only the information that specifically relates to the statutory concepts of 'requirements and objectives', 'capacity to repay' and 'reasonable inquiries' should appear in the written assessment.

Credit licensees are not required to give the client a copy of the assessment if:

- the credit licensee is a credit provider and the transaction does not go ahead, or
- the credit licensee is a credit assistance provider and does not provide credit assistance to the client.

Under Sections 29–185 of the *National Consumer Credit Protection Act 2009*, Credit Licensees or Advisers who break the regulations face stringent penalties. These range from a loss of Licence, to fines (between \$1,100–\$220,000) or 3 months–2 years imprisonment, or both, for each regulatory breach.

11. Environmental and Sustainable Provisions

Environmental sustainability has become a new 'catchphrase' in the workplace and is now identified as an integral part of business planning and promoted as a business opportunity.

We are encouraged to become more and more cognizant in our business systems and policies, of the effect we are having on our ecology and health with our workplace practices and choices, and to plan and implement environmental and energy efficiency policies and procedures. Paper recycling is just one small practice in an organization's internal framework, but now sustainability initiatives, such as the following, are becoming more prevalent in internal standards, guidelines and approaches and awareness of environmental issues:

- carbon trading
- ecological foot-printing
- green office program
- green purchasing
- Greenhouse Challenge Plus
- life cycle analyses
- product stewardship
- supply chain management
- sustainability covenants and compacts
- triple bottom line reporting, (which encompasses goals of sustainability for People, Planet and Profit) in social, economic and environmental arenas.

Work planning in organizational frameworks is now to incorporate and support triple bottom line principles. It therefore falls to the financial services industry (and indeed, to all industries) to identify sustainability issues where they arise, incorporating principles, practices and available tools and techniques of sustainability management relevant to the context of the financial services industry, which of course takes some degree of planning skills to implement.

Information on environmental or sustainability policies, strategies and impacts on industry is obtained and analysed from a range of sources legislation, regulations and codes of practice applicable to industry and organizations including:

- Corporations Act, Section 169 (Director's Statement on environment)
- Trade Practices Act Section 52 – Green marketing
- Australian Standard Greenhouse Gases Parts 1 and 3
- Department of Climate Change – National Greenhouse Reporting Act
- National Environment Protection Council guidelines
- Greenhouse Gas Protocol
- Global Reporting Initiative (GRI)
- Triple bottom line reporting
- integrated approach to sustainability which includes environmental, economic and social aspects, or a specific approach that focuses on each aspect individually
- investigating particular business and market context of the financial services industry and organizations
- meeting relevant laws, by laws and regulations or best practice to support compliance in environmental performance and sustainability as required at each level:
 - o International
 - o Commonwealth
 - o State or Territory
 - o Industry
 - o organisation

Relevant documents and reports that could impact on work effectiveness and compliance are to be read, understood, analysed, checked, evaluated and organized to meet customer and organization requirements, with any implications being raised and discussed with appropriate persons in the organizational framework. Naturally, such information is to be presented in a format appropriate for the audience, depending on the context in which it is presented or considered.

12. Bibliography

- Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Commonwealth of Australia, 2006.
- Australian Competition and Consumer Commission, 'ACCC proposes to allow self-regulation for mortgage industry association ', ACCC, viewed 10 November, 2010, <<http://www.accc.gov.au/content/index.phpml/itemId/407949/fromItemId/378016>>.
- Australian Securities and Investments Commission, *New Credit Laws and Book up: What you need to know*, ASIC, June 2010.
- Australian Securities and Investments Commission, *Regulatory Guide 205: Applying for and varying a Credit Licence*, ASIC, June 2010.
- Australian Securities and Investments Commission, *Regulatory Guide 205: Credit licensing: General Conduct Obligations*, ASIC, June 2010.
- Australian Securities and Investments Commission, *Regulatory Guide 206, Credit licensing: Competence and Training*, ASIC, June 2010.
- Australian Securities and Investments Commission, *RIS-RG206 ASIC Implementation of the National Credit Act: Training and Competence of Credit Licensees*, ASIC, December 2009.
- Australian Securities and Investments Commission, *Regulatory Guide 207, Credit licensing: Financial Requirements*, ASIC, June 2010.
- Australian Securities and Investments Commission, *Regulatory Guide 209, Credit licensing: Responsible lending conduct*, ASIC, June 2010.
- Allens Arthur Robinson, *Focus: National Consumer Credit Protection Reform Package introduced 1 July 2009*, viewed 26 October, 2010, <<http://www.aar.com.au/pubs/baf/fobafjul09.htm>>.
- Australian Prudential Regulation Authority, *Protecting Australia's Depositors, Insurance Policyholders and Superannuation Fund Members*, Commonwealth of Australia, 2010.
- Australian Prudential Regulation Authority, *Annual Report 2010*, Commonwealth of Australia, 2010.
- Australian Prudential Regulation Authority, *Annual Report 2011*, Commonwealth of Australia, 2011.
- Berrigan Doube Lawyers Group, *Australian Credit Licensing: A New Regime*, viewed 12 November 2010, <<http://www.bdlg.com.au/index.php/Commercial-Business-Law/australian-credit-licensing-a-new-regime.html>>.
- Brookfield, *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, viewed 27 October 2010, <<http://www.brookfieldmultiplexcapital.com/investment-funds/for-advisers/anti-money-laundering-and-counter-terrorism-financing-act-2006/>>.
- Corrs Chambers Westgarth, *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*, viewed 27 October 2010, <http://www.corrs.com.au/corrs/website/web.nsf/Content/Pub_InBrief_AntiMoneyLaunderingandCounterTerrorismFinancingBill2006>.
- Fair Trading Act 1999*, Parliament of Victoria, 1999
- Finance Brokers Association of Australia Ltd, *Code of Practice & Disputes resolution Service*, viewed 26 October 2010, <http://www.financebrokers.com.au/code_of_practice/introduction_2>.
- Finance Brokers Association of Australia, *Submission on Anti-money Laundering and Counter Terrorism Revised Exposure Draft ("The Revised Bill")*, FBAA, 2006.
- Finance Brokers Association of Australia, *Submission on Australian Government Productivity Commission Draft Report of Review of Australia's Consumer Policy Framework*, FBAA, 2008
- ICA, *2006 General Insurance Code of Practice*, Insurance Council of Australia, Sydney.
- Insurance Contracts Act 1984*, Commonwealth of Australia.
- Insurance Act 1973*, Commonwealth of Australia.
- Lavan Legal, *The National Consumer Credit Protection reform package – licensing*, viewed 26 October, 2010, <<http://www.lavanlegal.com.au/go/publications/the-national-consumer-credit-protection-reform-package-licensing>>.
- Legal Access Services Pty Ltd, *National Privacy Principles*, viewed 27 October 2010, <<https://www.freelegalaccess.com/content.aspx?id=auprivprinciples>>.
- Legal Services Australia, *Australian Credit Licences*, viewed 12 November 2010, <<http://www.legallawyers.com.au/banking-and-finance-law/australian-credit-licences/>>.
- MFAA, *Mortgage & Finance Association of Australia Code of Practice*, v22.07.2010, Mortgage & Finance Association of Australia, New South Wales.
- MFAA, *Mortgage & Finance Association of Australia Alternative Forms of Remuneration*, v01.02.2007, Mortgage & Finance Association of Australia, New South Wales
- Mortgage & Finance Association of Australia, *Mission and Objectives*, viewed 26 October 2010, <<http://www.mfaa.com.au/default.asp?menuid=480>>.
- National Consumer Credit Protection Act 2009 (National Credit Act)*, Commonwealth of Australia.
- National Consumer Credit Protection Act 2009 (Transitional and Consequential Provisions)*, Commonwealth of Australia.

National Consumer Credit Protection Regulations 2010, Office of Legislative Drafting and Publishing, Attorney-General's Department, Canberra, October 2010.

Paul Agnew, *Anti-Money Laundering and Counter-Terrorism Financing Laws – Impact on Brokers, Mortgage Settlements Australia*, 21 September 2006, viewed 12 November 2010, <<http://www.mortgagesettlements.com.au/downloads/>>.

Privacy Amendment Act 2000 (Private Sector), Commonwealth of Australia.

Privacy Act 1988 Act, No. 119 of 1988 as amended, Commonwealth of Australia, 2010.

Professional Lenders Association Network of Australia (PLAN Australia), *Our Company*, viewed 26 October 2010, <<http://www.planaustralia.com.au/ourcompany/index.htm>>

Reserve Bank of Australia, *Banking Services*, viewed 11 November 2010, <<http://www.rba.gov.au/fin-services/banking.html>>.

Senior Australians Equity Release Association of Lenders (SEQUAL), *Code of Conduct*, viewed 10 November 2010, <<http://www.sequal.com.au/content/view/21/38/>>.

Status Compliance & Risk Management Consultants, *The National Consumer Credit Protection Act & Australian Credit Licence registration, application and licensing*, viewed 27 October, <<http://www.satus.com.au/acl.html>>.