



Getting a Credit Licence

June 2010

Until now, we have heard a lot about the new credit laws and the effect that they will have on mortgage brokers and mortgage managers. Registration and responsible lending have been the main centres of attention.

But come 1 July, if you intend to apply for a credit licence, so you need to start thinking about what is required and how to prepare for licensing.

Preparation for Licensing

As a credit licensee, you will need to have the organisational competency that you require to offer the credit services that you provide as well as documented business systems, i.e. policies and procedures for key aspects of your business.

ASIC has the power to check on this during the licence application process. The extent to which ASIC will check, will depend on its assessment of the risk associated with your business having regard to your size, the complexity of the services you offer and the like.

Because ASIC can check, well advised licence applicants will document and implement these business systems in advance.

What systems are required?

In addition to meeting the minimum training standard of a Certificate IV in Financial Services (Mortgage Broking) by 30 June 2014), undertaking 20 hours of continuing professional development per year and complying with the responsible lending obligations, the new credit laws impose a considerable number of other obligations on mortgage brokers and managers who will hold credit licences

The overriding obligation is to do all things necessary to ensure that your credit services are provided in efficiently, honestly and fairly. This is a wide ranging requirement and encompasses more than the way that you deal with customers. It extends to the way you run your business.

The areas of your business that this affects include the following

- **Resources Adequacy** - You need to have adequate financial, technological and human resources to engage in the credit activities covered by your licence and to carry out supervisory arrangements on an ongoing basis. ASIC sees this as crucial to your ability to demonstrate that you have the capacity to carry on your credit business in full compliance with the law and to supervise your representatives.
- **Financial Requirements** - You need to have adequate financial resources to be able to meet all debts as and when they become due and payable and to engage in credit activities in compliance with the credit laws and your licence.
- **Monitoring and Supervision** . You will need to monitor and supervise your staff and credit representatives so that you know whether they are complying with the credit legislation and your licence conditions. This includes undertaking appropriate background checks, keeping track of who your representatives are, ensuring that they act within the scope of what you have authorised

them to do and having a system to respond to any compliance failures, including remedying any breaches.

While this all sounds very formal, remember that in a small business, much of this is done in the usual course of the business as new employees are taken on and are trained, mentored and supervised until they become competent at providing mortgage services in the manner that you expect.

- **Conflicts of Interest** . You will need to ensure that your clients are not disadvantaged by any conflict of interest that may arise from your credit services. This is a strong requirement. According to ASIC, an important element will be a comprehensive product list which is thoroughly researched and reasonably representative of the products that are available on the market.
- **Complaints and Disputes** - You must have an internal dispute resolution system available for your clients and belong to an external dispute resolution system such as FOS or COSL.
- **Compensation** . You will need to have adequate arrangements for compensating consumers for loss or damage suffered because of breaches of the credit laws. This involves having professional indemnity insurance with an APRA regulated insurer and a minimum coverage requirement of \$2million per claim and in for all claims.
- **Risk Management** . You need a risk management system which will identify and evaluate the risks faced by your business (focusing on risks that adversely affect consumers or the market), establish controls which are designed to manage or mitigate those risks and then fully implement and monitor those controls to ensure they are effective. They must deal with the risk that financial resources will not be adequate.
- **Compliance Plan** . You need to have a documented plan to demonstrate how you will comply with all of these obligations.

As we said earlier, ASIC will expect you to have documented procedures or arrangements for ensuring that, as far as reasonably practicable, you comply with these obligations. The extent to which you need to document your procedures and comply with these obligations will depend on the nature, scale and complexity of your business. They will be different for each licensee and may need to change as your business develops.

Documenting all these procedures can be a significant task. Gold Seal's Client Service Handbook, Management Manual and Compliance Plan which is available for \$550 including GST will provide you with all the material you need to understand your obligations and have your procedures documented.

These save intending licensees many hours of work in researching the obligations and putting together the compliance systems that are needed to demonstrate compliance. For more information, call 02 8353 6600 or email info@goldseal.ne.au.

Licence Application

The Licence Application will be in 2 parts. It will be a lot simpler than an application for an AFS licence. As part of my role on the Business Advisory Committee to ASIC's Licensing Division, I have had the opportunity of reviewing the application and while there are some questions on which some applicants may need guidance, I can confirm that it is a lot simpler.

In part this is because the nature of the authorisations that you need to apply for are so much simpler than for the AFS regime.

Remember that ADIs, registered general insurers and WA brokers will be entitled to streamlining and will be asked for considerably less information than other applicants. To a lesser extent, so will current AFS licence holders.

So what will you need to do?

Online Application - Firstly, you will need to complete an Online Application Form which can be accessed via the Credit Portal on the ASIC website. This form will ask you questions about yourself, your proposed credit business and the types of credit activities that you will engage in. It will also ask about the arrangements and systems that you have in place to comply with the general conduct obligations described earlier.

These questions will not ask for detailed information about these systems, instead they ask you to confirm that you have adequate arrangements in place in these areas, having regard to the nature, scale and complexity of your business:

You will also have to declare that you will comply with the general conduct obligations if you are granted a credit licence.

Remember that if any of your answers to these questions give ASIC any cause for concern, they can ask you to provide additional information, which is most likely to be a copy of your documented policies and procedures. This is why it is important that you document these systems and put them in place before you complete your application. Otherwise your answers to the questions could be incorrect and you may not be able to respond to ASIC's requests for additional information in the time provided.

Fit and Proper Persons - ASIC will need to ensure that the licensee is fit and proper to engage in the credit activities covered by the licence. This means that the people who are involved in the management of the business must be:

- Competent to operate a credit business (as demonstrated by their knowledge, skills and experience);
- Have the attributes of good character, diligence, honesty, integrity and judgement;
- Are not disqualified by law from performing their role in the credit business; and
- Either have no conflict of interest in performing their role in the credit business, or any conflict that exists will not create a material risk that the person will fail to properly perform their role.

To demonstrate that you have these attributes, you will need to identify the directors and senior managers in your business (who are your fit and proper people) and you will be asked for information about their role in your business and their past conduct.

You will also need to specify on which of these you will rely to demonstrate that you are competent to engage in the credit activities. These people will be called your +Responsible Managers+ and you will be asked for further information about their knowledge and experience.

If you are dependent on only a small number of people, ASIC may impose a key person condition on your licence which will require you to tell ASIC if that person leaves the business and nominate another suitably qualified person to replace them.

Business Description You will need to provide a Business Description which provides an overview of the business applying for the credit licence. This Description will need to include information about:

- The credit activities in which you will engage;
- The types of credit products to which your activities will relate (e.g. home loans, secured personal loans, unsecured loans, credit cards);
- Your distribution model (e.g. whether you will rely on consumers to approach your business at branch offices, will visit consumers at their own premises, or promote and provide credit services through telephone calls, the mail or the internet);
- Your remuneration structure (e.g. whether you receive commissions for your credit services, or up-front fees);

- How many offices you will have, how geographically diverse your business is and how you supervise your representatives if they are located away from your main offices; and
- If you will outsource functions, to whom you will outsource, where they are located and how you have decided they were appropriate to provide these functions for you.

Being the only ~~the~~ ~~hand~~ document that you need to supply, we find that the Business Description is a very important document. ASIC uses it (as well as the answers to the Online Application) to assess the extent of the risk associated with your application.

If it is well prepared, we find that the application usually progresses more smoothly, with less additional requests for information. It can be well worth the investment of time to carefully prepare the Business Description . or even have someone who is experienced in preparing these to do it for you.

Statement of Personal Information For each ~~fit~~ and proper person you will need to provide ASIC with a Statement of Personal Information about the person as well as a criminal history check, bankruptcy check and credit history report. For Responsible Managers, you must also provide details of their educational qualifications and their previous employers where their experience relevant to the application was gained.

Declarations . You will also need to make certain declarations regarding your fit and proper people, in other words that they have never been the subject of a banning order or regulatory activity of various types.

Once ASIC is satisfied with the application, it issues a draft licence to enable you to review the licence conditions.

Once you confirm that the licence conditions are acceptable, ASIC will grant your licence and the brave new world will begin!

Claire Wivell Plater
Director

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About Gold Seal

Gold Seal is a leading provider of compliance, risk management, legal, human resource, training and education services to financial services intermediaries. We have specialist expertise in obtaining Credit and AFS Licenses

Contact us

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