



Redfern Legal Centre

Help your clients with payday loans



Will Dwyer

Credit, Debt & Consumer Solicitor
Redfern Legal Centre

Acknowledgement of Country

Help your clients with payday loans

1. *National Consumer Credit Protection Act 2009 and National Credit Code*
2. Responsible Lending
3. Unjust Agreements
4. Financial Hardship, Complaints, Dispute Resolution and Remedies
5. Questions, where to get legal advice.

RESOURCES: www.rlc.org.au/training/resources/payday

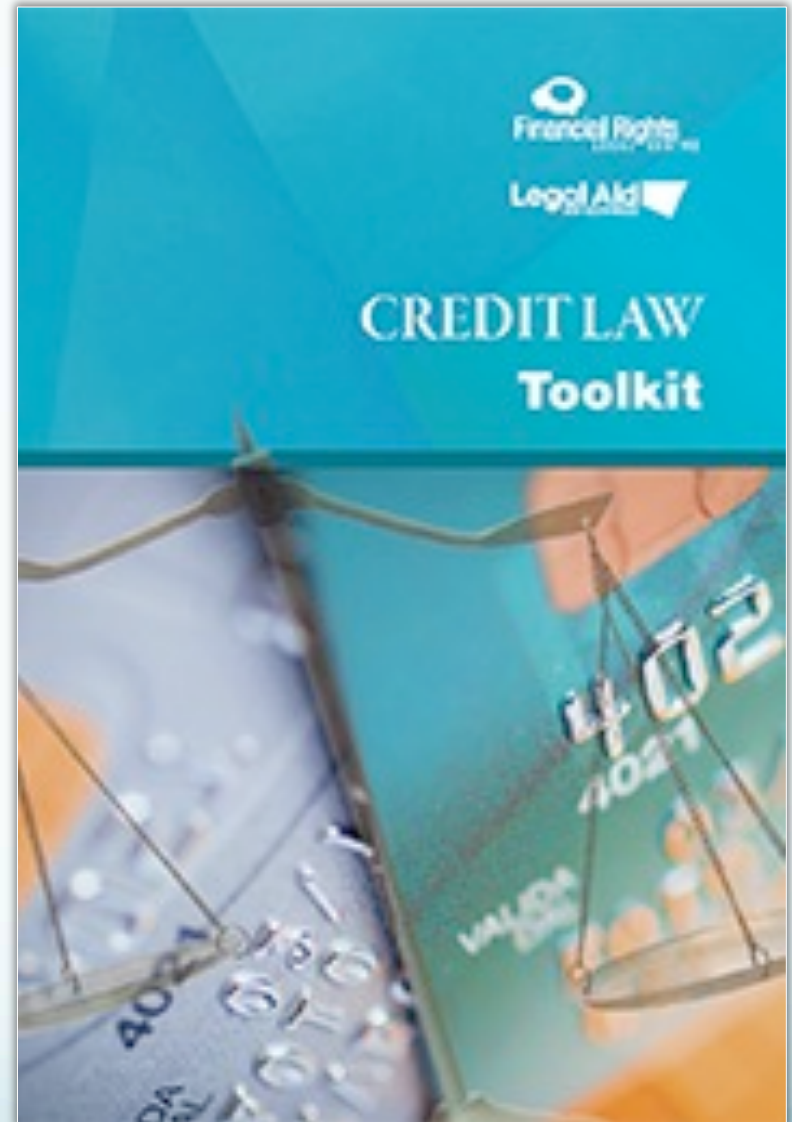
National Consumer Credit Protection Act 2009 (Cth)

- General provisions which apply to all credit facilities
- Includes *National Credit Code* (NCC) regulations
- Small Amount Credit Contract (“SACC”) specific provisions
- 20% establishment fee; 4% monthly fee; 48% interest
- Financial Rights / Legal Aid “Credit Law Toolkit”

Credit Law Toolkit

- Comprehensive guide to the credit law
- by Legal Aid NSW & Financial Rights Legal Centre

[http://lacextra.legalaid.nsw.gov.au/
PublicationsResourcesService/PublicationImprints/Files/
725.pdf](http://lacextra.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/725.pdf)



ALL LINKS ARE AT: www.rlc.org.au/training/resources/payday

Credit & Debt Hotline

1800 007 007



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Responsible lending

- *Assessment of suitability*
- *Reasonable Inquiries*
- A credit facility must be assessed as *not unsuitable*

Responsible lending: Suitability

- The consumer could not comply with the consumer's financial obligations under the contract, or only with substantial hardship
- The loan will not meet the consumer's requirements and objectives

Unsuitable loans and “substantial hardship” #1

The credit provider has failed to make reasonable inquiries as to the consumer's actual living expenses or financial affairs

- Miscalculated basic living expenses – rent, utilities, energy, transport, groceries etc., other existing liabilities, hardship or previous SACCs
- Evidence of the actual costs incurred by the consumer at the time of application

Unsuitable loans and “substantial hardship” #2

- The credit provider has failed to verify, or take into account, the information obtained through “reasonable inquiries”
- The credit provider has failed to apply a proper benchmark, such as the Henderson Poverty Index, in the assessment of suitability

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Unjust Agreements

- Sections 76 and 78 National Credit Code
- A credit contract can reopened by a court if considered “unjust” in the circumstances of the case and in the public interest.

Unjust Agreements: Factors

- Relative bargaining positions of the parties
- Whether contract subject to negotiation
- Whether consumer was reasonably able to protect their own interests because of age, physical or mental condition
- Whether unfair tactics were used
- Whether credit provider knew, or should have known, that consumer could not repay loan without substantial hardship

Unjust agreements / Unconscionability #1

ASIC Act 2001 (Cth)

- Mirrors protections under the Australian Consumer Law in relation to financial services.
 - Uncertainty about whether ACL applies to SACCs or consumer leases.
- Unconscionable conduct
- Unfair contract terms
- Misleading and deceptive conduct / False and misleading representations

Unjust agreements / Unconscionability #2

ASIC Regulatory Guide 205: Credit licensing: general conduct obligations

- Engage in credit activities with “honesty, fairness”
- Licensing conditions, representatives, training

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Financial Hardship: Initial complaints

- Request loan documents & assessment
- If client is experiencing financial hardship re: a SACC, it is likely that the loan was unsuitable from the beginning.
- Where loan deemed unsuitable, consumer not liable to pay interest and fees.
 - Still generally liable to repay principal amount borrowed
- Can otherwise negotiate “hardship” arrangements with loan provider to change repayments obligations, interest and fees
- Can similarly negotiate with debt collection agents for unpaid / outstanding SACC debts – waiver of unrecoverable debts.

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External Dispute Resolution

- All credit licensees must be registered with an EDR scheme
- Unable to resolve complaint directly with SACC provider
- **Credit & Investments Ombudsman**
- **Financial Ombudsman Service**
 - Listed complaint contacts
 - Direct email, phone number for head of complaints / resolutions
- Cost incentive to resolve and reduce number of complaints – industry funded – you complain & they pay

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Questions?

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This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

Free confidential legal advice

- Most community legal centres
http://www.legalanswers.sl.nsw.gov.au/advice/about_clcs.html
- Legal Aid
www.legalaid.nsw.gov.au/contact-us/legal-aid-nsw-offices
- Financial Rights Legal Service
<http://financialrights.org.au>

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Enquiries:

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Our law training topics

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