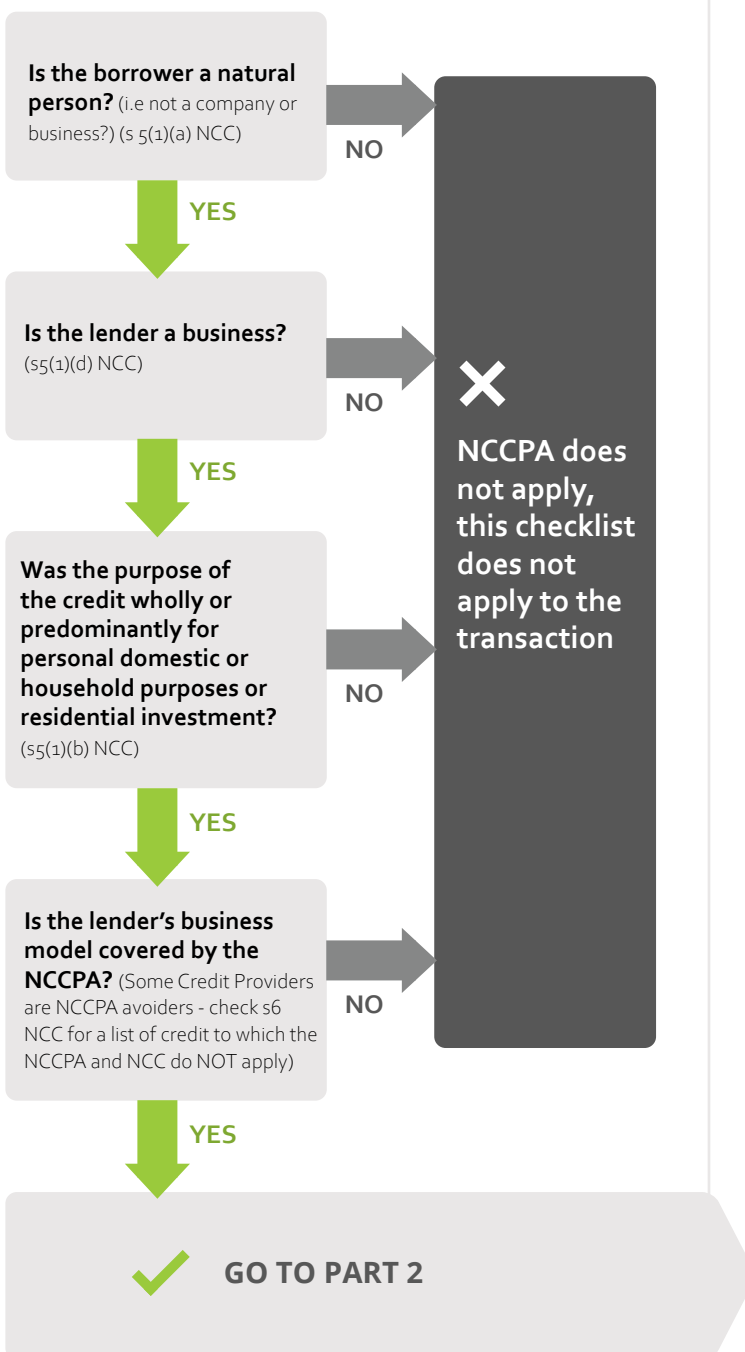


# National Consumer Credit Protection Act 2009 Checklist

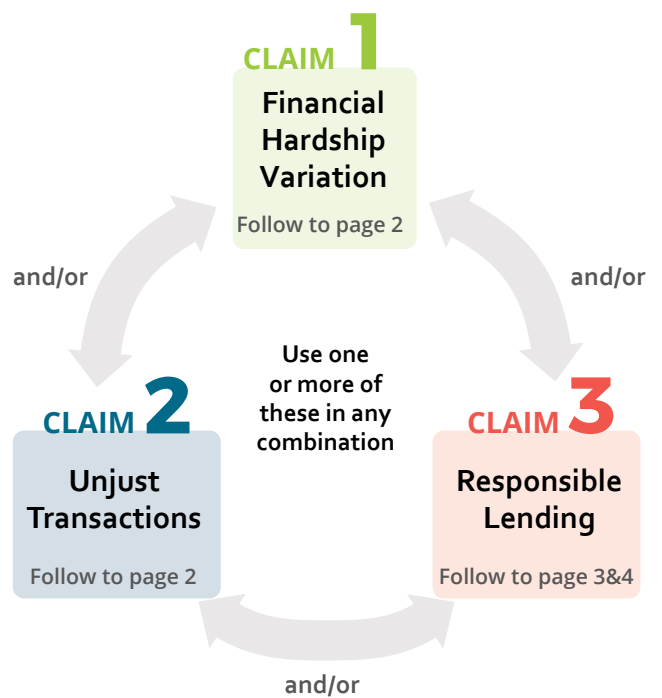
## PART 1

### Does the NCCPA apply?



## PART 2

### Claims you can make using the NCCPA




GO TO CLAIMS 

## CLAIM 1 Financial Hardship Variation s.72 NCC (Credit), s.177B (Consumer Leases)

General conduct required

The client is currently experiencing hardship and wants a payment plan or moratorium

 Remedy if successful

If successful, client will have longer to pay debt and may be able to reduce it or waive it (medium remedy)

## CLAIM 2 Unjust Transaction s.76 NCC

General conduct required

Serious misconduct by lender or broker; difficult to prove

### How to identify an unjust transaction

#### Ticks here may suggest the contract is unjust

Did the client have:

- low education level
- limited English literacy
- relevant poor mental health or addiction
- misunderstanding/no understanding of effect of contract
- no benefit from the transaction
- pressure applied to them by someone else

Did the lender:

- know that the client was affected by disadvantage
- mislead the client (including by not answering questions)
- act in bad faith or unfairly
- fail to assess affordability


#### Ticks here may suggest the contract is NOT unjust

Did the client have:

- an independent advice from a lawyer or accountant that they understood
- a clear understanding of the effect of the contract and willingness to agree
- negotiations about the contract before signing
- an active role in falsifying information in the application

Was the contract:

- reasonable (i.e. similar to others in the mainstream market)
- affordable for the client
- very clear and easy to understand

 Remedy if successful

The contract can be reopened and renegotiated.

## CLAIM 3 Responsible Lending

ss.115-120 NCCP Act (Broker), ss.128-132 NCCP Act (Credit Provider), ss. 151-155 NCCP Act (Consumer Leases)

General conduct required

**Credit was unaffordable at the time of contracting or did not meet the borrowers' requirements and objectives**

### Your client's capacity to pay

- Did your client obtain the loan when they were having difficulty repaying bills and other necessary expenses?
- Has your client had difficulty making the payments?
- Have they fallen behind on bills for essential services or had to go without basic necessities to make the loan repayments?

If the answer is yes to any of these question, it is definitely worth getting the loan documents.

### Overall Assessment

If the above answers indicate that there are grounds to complain about the lender's conduct you may want to consider making a complaint to the lender.

If you feel more information is needed, you can ask the lender for all the loan and assessment documentation it can record.

It is helpful to also ask your client for their bank statements from the time of the loan (obtain these from the client or their bank).

Now you have the documents from the time of the loan(s), use them to work out your client's ability to afford the loan at the time it was entered.

**At the time of the loan, your client's after tax income was** **\$**  
per wk / fn / mth


**LESS your client's fixed and regular expenses** **\$**  
(rent/mortgage, bills, other debt repayments, etc)\*  
per wk / fn / mth

**LESS repayments on the loan** **\$**  
per wk / fn / mth

**Amount client was left to live on (if any)** **\$**  
per wk / fn / mth

\* You can get an idea of the amount your client needed for basic living expenses by looking at the Henderson Poverty Index (HPI) for the relevant quarter as at the time of the loan.

**If your client could not live on what is left without substantial hardship taking into account unexpected expenses then lender may have breached the credit law by lending irresponsibly.**

 Remedy if successful

**If successful can recover fees interest and charges - would likely still have to pay principal**

CONTINUE 



## Responsible Lending (General laws at s 127-133 NCCPA) Some useful extra rules

### Type of contract

#### Reverse Mortgages

(s133DB, NCCPA; regs 28HA, 28LC NCCPR – introduced 18 September 2012)

(see also SEQUAL code and Mortgage and Finance Association of Australia code)

### Extra requirements

#### ▶▶ Disclosure:

- projection of indebtedness before lending
- a reverse mortgage information statement (this must also be on their website (s133DC))

#### ▶▶ Make inquiries about future need (reg28HA) including:

- aged care accommodation and
- their preference to leave equity in their estate

#### ▶▶ Loan is presumed unsuitable (reg 28LC) if:

- Youngest borrower is 55 years or under – 15% loan-to-value ratio
- Youngest borrower is over 55 years old – 15% plus 1% for every year older than 55 years old

#### ▶▶ No negative equity:

- Borrower CAN'T owe more than the market value of their secured property when sold (ss 86A -86E)

#### Credit Cards

(ss 133(3AA), 160F NCCPA)

ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753 – introduced 1 January 2019;

#### ▶▶ Credit Card is presumed unaffordable if the client could not repay an amount equal to the credit limit of the credit card within 3 years

#### Small Amount Credit Contracts (SACC)

(A SACC is a loan for \$2,000 or less AND the loan term is between 16 days and one year. If the transaction involves 'pawned' goods or security, it is NOT a SACC)

(ss118(3A), 117(1A), ss 127-133 of the NCCPA) Reg 28S, NCCPR

#### ▶▶ Lender must review 90 days of client's bank statements before lending (s 117(1A))

#### ▶▶ Presumed unsuitable if client

- has had two or more SACCs in the last 90 days (s118(3A))
- Was in default under another SACC at the time of entering into this SACC (s118(3A))
- Income source is 50% or more from Centrelink and they would be paying 20% or more of their income to pay off SACCs (reg 28S)