

Credit Licence Exempted Referrals

Introduction

Credit activities are a regulated activity under legislation and regulated by the Australian Securities and Investment Commission (ASIC). Generally to conduct credit activities or credit assistance an Australian Credit Licence (ACL) is required.

There are however exemptions to requiring an ACL for some credit referral activities under the National Consumer Credit Protection Regulations 2010. Where companies refer clients to a credit licensee or credit representative as an incidental part of their ordinary business, they do not need to be licensed or authorised.

In order to operate within the exemption, a number of obligations must be met by the referring party and the credit licenced company.

Types of Referrals

There are two types of referrals that are exempted under the regulations; a “Downstream Referral” and “Upstream Referrals.”

Downstream Referral

A “downstream” referral is where the referrer gives the consumer the credit provider's details and the **client makes the contact** with the lender. In order to meet the exemption requirements the referrers may only:

- Inform the potential client that the credit licensee or credit representative can provide a particular type of service; and;
- Give the potential client the credit licensee's or credit representative's contact details, and;
- The referrer must tell the potential client about any fees, commission or other benefits that the referrer (or anyone associated with them) will receive for making the referral.

A downstream referral can be provided in a number of ways with the client specifically making contact. This contact can be via a weblink provided by the credit provider or referrer that the customer can complete in order to make contact.

Where commission or referral payments or other benefits are provided, this information needs to be provided in the same form as the information and contact details are provided by the referrer. For example if the referral is provided orally, it is enough to simply tell the person about the remuneration.

Upstream Referral

An “upstream referral” is where the **referrer provides** the potential client's name and contact details to a credit licensee or credit representative (or a credit provider) and the credit licensee or credit representative makes the contact with the potential client. Any person who has been banned from engaging in credit activities under any State/Territory or the Commonwealth is prohibited from making upstream referrals. In order to meet the exemption requirements the referrers may only:

- Make the referral incidentally to another business they are carrying on, or;
- Is a representative of the credit licensee to whom they are referring the customer.

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In discussions with possible customers there are limitations in what unlicensed referrers can do (or not do) in generating an 'upstream referral.'

- They can only tell the consumer that the credit provider can provide a particular type of credit product or service,
 - That is, a referrer can tell a client that Community First offers 'loans for solar' or 'solar loans' but not 'a solar loan' or 'a fixed rate mortgage'
- Obtain the consumer's consent to pass their name, contact details and the purpose for which the credit is sought (if known) to the ACL licensee or credit representative;
- Not charge a fee to the consumer for the referral;
- Tell the consumer what commissions or other benefits they (or their associates) will receive for the referral;

Importantly, upstream referrals cannot be generated from a temporary business premises (such as a temporary stall in a shopping centre) or non-standard business premises (i.e. somewhere where a consumer would not normally expect to be contacted about the purchase of goods or services, for example, 'door-to-door')

Upstream Referral - Time Limits

Upstream referrals must be passed within 5 business days of obtaining consent. After this time, consent must be obtained again. A credit provider must make contact within 10 business days of receiving the referral. After this time, they must not contact the consumer.

Upstream Referrals - Credit Provider Obligations

The credit provider is obligated to inform the client words to the effect at first opportunity:

"I am contacting you because we have been provided with your contact details by _____. Can you confirm that you agreed with to have us contact you?"

If a commission or a financial benefit may be given to the referrer, the ACL licensee or credit representative must then say:

"Before we continue, I would like to let you know that if you take up any of our products or services, _____ may receive the following financial benefits . Are you happy to continue this discussion?"

This disclaimer must be provided first before engaging in any further discussions and can be provided verbally or via email/letter.

Product Information

Unless licenced, referrers should avoid providing specific product, repayment or credit information to clients. Doing so may result in ASIC determining the referrers activities are not exempted credit activities. Any factual or product information provided should be via Community First branded materials or clients directed to Community First website.

Referrer should not suggest the customer take any particular product, amount or finance structure.

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Where can I find out more?

[National Consumer Credit Protection Regulations – Regulation 25 \(Activities exempt from requiring a licence\)](#)

[National Consumer Credit Protection Regulations – Regulation 9AB \(Conditions for Licensee – referrals\)](#)

[Do I need a Credit Licence – ASIC Regulatory Guide 203](#)

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Referral Process

