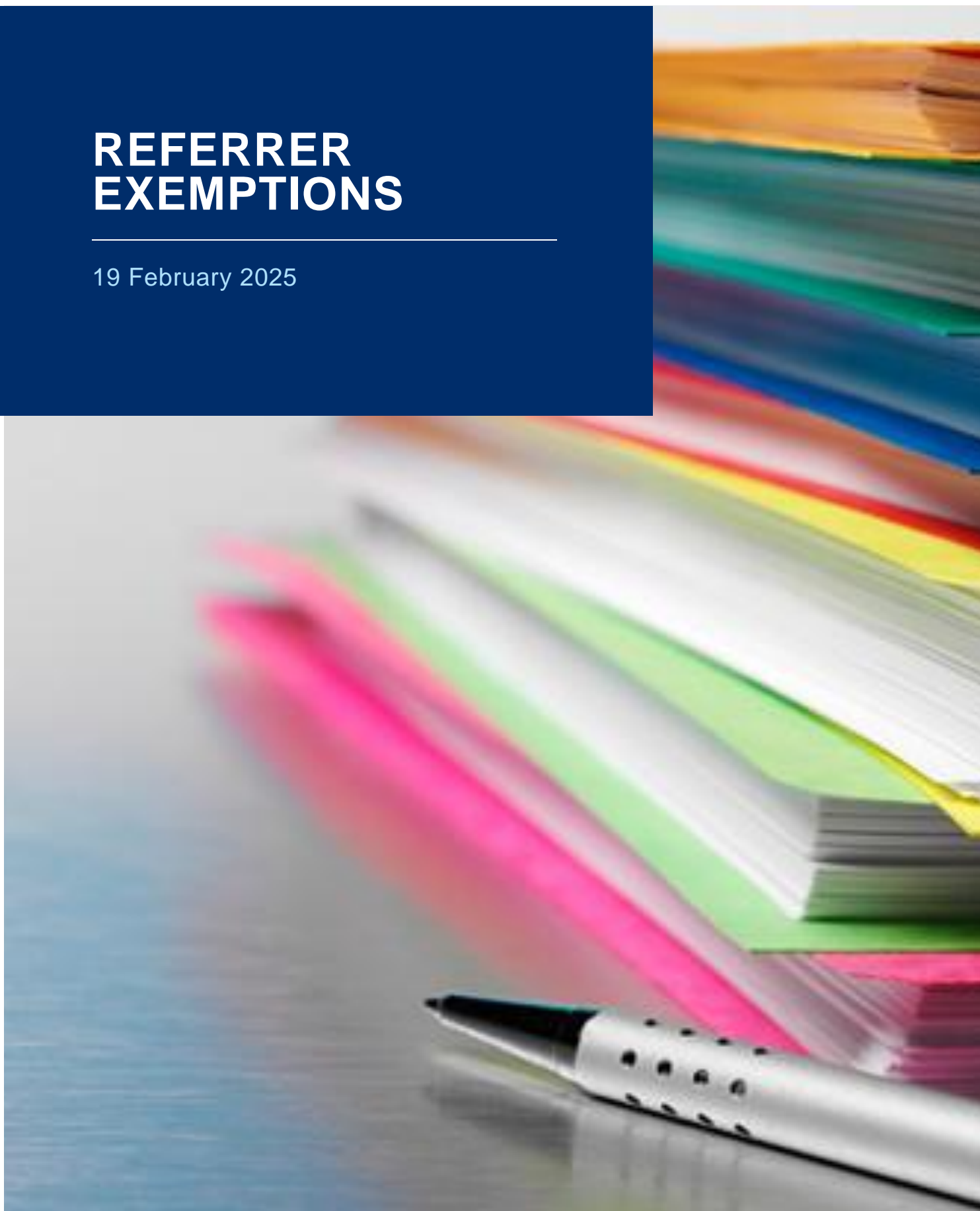


REFERRER EXEMPTIONS

19 February 2025



MFAA REFERENCE 30572876.4

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Referrers, websites and real estate agents

Summary

Activity	What's required?
Advertisements and brochures, including web advertising.	This is not a referral. No special referral requirements apply. Must include ACL number.
Non business-related referrals – eg a private person refers a customer.	No special requirements apply as referrals that are not made as part of, or incidentally to, a business is not regulated. If the referrer will receive a commission, the arrangement needs to be structured carefully so the arrangement does not comprise prohibited pyramid or referral selling.
Clerk and Cashiers 'tick and flick'	Usually, clerks and cashiers would not receive commission. The arrangement is normally incidental to some other activity (eg tick a box on application for insurance to be contacted regarding credit). See reg 24(9).
Provide broker's or lender's details to consumer, but do not provide consumer's contact details to broker or lender. Referral made incidental to a business conducted by the referrer.	Referrer must disclose any commission to be paid to referrer – see reg 25(2).
Provide consumer's contact details to broker or lender. The referral must be made incidentally to a business conducted by the referrer, and not as a material part of that business.	Must be a referral agreement and must disclose any commission to be paid to referrer - see reg 25(5). Licensees need to keep a register of these referrals. Licensees must say or write prescribed words when making first contact with the consumer.
Website referrals. This can occur as part of a business – ie need not be incidental to a business.	Requires commission disclosure - see reg 25(2A).
Distribute documents (eg handing out flyers)	No special requirements. See reg 24(6). This can be letterboxed. Must include ACL number if advertising credit services.

Introduction

Many lenders and brokers receive business through referrals and websites. These business sources will not need to be licensed or appointed as a credit representative so long as certain conditions are satisfied.

Referrers need to be considered in four categories:

- non business related referrers;
- business related referrers who **do not** provide customer contact details to lenders/brokers;
- business related referrers who **do** provide customer contact details to lenders/brokers; and.
- website referrers.

Why are referrers potentially regulated?

A business needs to be licensed or appointed as a credit representative if it is providing a '**credit service**'.

A credit service occurs if a person **as part of, or incidentally to, a business** either:

- provides **credit assistance** (ie suggests that a consumer applies for a particular credit contract or lease with a particular financier); or
- acts as an **intermediary** between a consumer and a financier (see ss 8 and 9 NCCP Act).

Most referrers are probably not providing **credit assistance** because:

- if the referral is to a broker, the referrer is unlikely to have suggested a particular credit contract or lease or a particular financier; or
- if the referral is to a financier, the referrer will usually not recommend a particular credit contract or lease.

Although referrers are not providing credit assistance, it is likely that they are acting as intermediaries, and so will be required to be licensed or appointed as a credit representative unless they fit within one of the exemptions – see below.

Advertisements

Advertisements are not classified as referrals, so there is no need to comply with a referral exemption. Advertisers may need to adhere to other NCCP requirements such as comparison rates and disclosure of ACL number.

Non business referrers

Occasional referrals by customers, friends, or relations do not amount to 'credit activities'. This is because such referrals are not 'part of, or incidental to, a business' as required by s.9 and 10 – see above. Accordingly, non-business referrals by 'friends' can occur without requiring any special authorisation or following any special procedures.

Business related referrers

There are four exemptions:

- where the consumer's details are not given to the broker/financier – reg25(2);
- where the consumer's details are given to the broker/financier – reg25(5);
- where the referrer gives the consumer access to a computer to contact the broker/financier – reg 25(2A); and
- where the referrer simply hands out documents – reg 25(6).

First exemption – consumer's contact details not given to the broker/financier

Regulation 25(2) exempts a referral if the referrer:

1. informs the customer that the broker/financier can provide a particular type or class of credit services;
2. gives the customer the lender's or broker's contact details; and
3. discloses to the customer any benefits or commissions the referrer may receive at the same time and in the same format as the broker's/financier's contact details were provided.

If the referrer gives the customer access to a website to contact the lender or broker, reg 25(2A) applies which imposes the same conditions as reg 25(2).

Second exemption – consumer's contact details given to broker/financier

Regulations 9AB and 25(5) exempt a referral where the referrer provides the consumer's contact details to a broker/financier if all the following conditions are met.

1. The activity engaged in by the referrer consists **only** of the referrer:
 - (a) informing the consumer that the broker/financier is able to provide the service; and
 - (b) providing the broker/financier with the consumer's name, contact details and a short description of the purpose for which the consumer may want the loan or lease.
2. The referrer is not banned from engaging in credit activities.
3. The referrer discloses to the consumer any benefits that may be received by the referrer, including commission.
4. The referrer does not charge the consumer a fee.
5. The consumer has consented to the referrer giving the consumer's name to the broker/financier.

6. The referrer makes the referral incidental to a business that is not principally making contact with persons for the purposes of giving their names or details to other persons (i.e. not a call centre). This means call centres conducting marketing activities may need to be licensed or appointed as a credit representative.
7. The broker/financier must have an agreement with the referrer (which can be created by a written offer and acceptance by conduct – eg by referring a loan) which specifies the conduct in which the referrer can engage. See pro forma agreement below.
 - Conduct a due diligence check on the referrer prior to entering into an agreement. Use the Referrer Due Diligence Checklist, see appendix.
8. The referrer must give the information to the broker/lender within five business days after informing the consumer that the broker/lender is able to provide the service.
9. The referrer must not conduct business by contacting people face to face from non-standard, or temporary, business premises (eg. a stall in a shopping mall).
10. The licensee must keep a register of referrers including the date and the means by which the agreement with the referrer was entered into and the date of commencement of the referrals. It will be sufficient if the licensee has access to the register – eg. an aggregator's credit representative may each maintain their own register. See example of a register below.
11. The broker/financier must contact the consumer within 10 business days of receiving the referral.
12. If the broker/financier contacts the consumer in person, the broker/financier must begin the discussion with the consumer (after the broker/financier has identified itself) by statements to the following effect:

I am contacting you because we have been provided with your contact details by [name of referrer]. Can you confirm that you agreed with [name of referrer] to have us contact you?

If a payment of commission may be given to the referrer:

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

13. If the broker/financier contacts the consumer by letter or email, the letter or email must contain statements to the following effect at the start of the letter or email:
 - (a) the broker/financier is contacting the consumer as a result of being provided with their contact details by the referrer (identifying the referrer by name); and
 - (b) the referrer may receive a financial benefit or payment.

Example Referrer Agreement

If you refer potential borrowers to [name of broker/financier] (us/we), you will be deemed to have agreed to the terms set out in this document.

You must:

- only engage in credit activities as a referrer incidentally to another business you are carrying on;
- not charge a fee to the consumer for the referral;
- only inform the consumer that we are able to arrange loans and leases but not specify any particular product, and not provide any recommendations or advice concerning loans or leases;
- inform the consumer of any commissions or other benefits you may receive;
- obtain the consent of the consumer to pass their name, contact details and a short description of the purpose for which the consumer may want the credit or lease; and
- pass the consumer's contact details to us within five business days of informing the consumer that we are able to arrange loans and leases but not any specified particular product.

Example Referrer Register

Referrer business name	Contact name	Contact details (address, phone, email etc.)	Date agreement entered into	How agreement was made (e.g., formal agreement, email, notification etc.)	Date referrals to commence	Date agreement ended

Third exemption – consumer given access to a computer to contact the broker/financier

Regulation 25(2A) provides for an exemption when Referrer (R) tells Customer (C):

- that a licensee or credit representative (ACL) can provide credit services;
- how to contact ACL;
- R allows C to contact ACL by a link that can be accessed from a website provided by or on behalf of R; and
- any benefits, including commission, received by R are disclosed in the same form as the information about how to contact ACL.

Importantly, r25(2A) can apply whether or not the referral is made 'incidental' to a business conducted by the referrer.

Fourth exemption – handing out documents

Regulation 25(6) exempts a credit activity consisting only of a person passing on, publishing, distributing or otherwise disseminating documents provided by the licensee. The person handing out the document must inform

the borrower that the person who prepared the document is licensed and provide details of the licence number. This information will usually be in the document handed out.

To fit within this exemption, it is also necessary that a reasonable person would not consider that the person handing out the document is a licensed person.

Websites

The classification of a website will depend on the function it performs. The most usual functions are described below.

- A website which provides a link to a licensee's web site or other information system. This is a form of advertisement even if it is paid for by a fee calculated by reference to the business derived. This does not comprise a referral and there is no exemption required.
- A website which collects data about customers which is then passed to a licensee or credit representative. This is a type of referral under which the referrer provides the customer's contact details and so is covered by regs 9AB and 25(5) – see above.
- A website which collects data and provides some other information or assistance in relation to credit. This probably amounts to a credit activity and the owner of the site will need to be licensed or appointed as a credit representative.

Referrals by real estate agents

Real estate agents can be a good source of leads and will often want to rely on the exemption allowing them to provide contact details.

The prohibition on providing a referral from 'non-standard business premises' has the potential to make it hard to comply with the exemption.

This restriction is not relevant to the first type of referral (ie where the consumer's details are not given to the broker/lender). Accordingly, agents can distribute flyers and other information about the broker/lender at on-site inspections. Indeed, if the activity stops short of an actual referral, reg 25(2) will not be relevant – the agent is merely handing out or making available advertising material.

The restriction will not be breached if the referral is made when the customer is at the agent's office. This will include permanent or semi-permanent offices at exhibition villages and large developments.

When an agent collects names of consumers at on-site inspections, there is an implied consent for the agent to follow up the consumer. If the agent does this from standard business premises (but not using an outsourced call centre), the agent may enquire whether the consumer consents to a referral. If the consumer consents and the other conditions of reg 25(5) have been complied with, the agent can then provide the consumer's contact details to the broker/financier. This requires a follow up call which may be an additional step to pre-regulation practices.

If the business which conducts the real estate business is licensed or is a credit representative, the agency division may provide the consumer's details to the broker division. In this case there is no relevant referral as there is only one business involved (ie one legal entity).

Penalties

A licensee who receives referrals from businesses which should be licensed, but are not, will be in breach of s 31 of the NCCP Act. Section 31 prohibits licensees from engaging in a credit activity with another person who should be licensed or be a credit representative but is not. The penalties that may be imposed upon licensees who breach this section are significant.

Appendix

Referrer Due Diligence Checklist

The MFAA recommends for any party with which you plan to have a referral relationship:

- ☐ To meet either face to face or virtually.
- ☐ In relation to a company, confirming company, directorships and shareholder details through an ASIC company search.
- ☐ In relation to an individual, ensure the person you are transacting with is not banned or disqualified through a search of:
 - ☐ the ASIC Banned or Disqualified Persons register
 - ☐ MFAA Disciplinary Register
 - ☐ Disciplinary or expelled member registers of other industry association(s)
- ☐ If the individual you are transacting with is holding out that they have (or they are required to have) a particular license for example an Australian Credit License or an Australian Financial Services License, confirm this through a search of the ASIC Professional register.
 - If the person that you are transacting with holds an active AFSL or ACL clarify and document why they are using you as a referrer for the transaction and ensure the response is plausible under the circumstances, including that the referrer will be receiving less remuneration for the referral.
- ☐ Confirm the authenticity and ensure the veracity of the person or business you propose to conduct business, for example by:
 - ☐ Confirming the referrer has a business website
 - ☐ Conducting searches of social media sites as well as online reviews
 - ☐ Conducting media article searches for any adverse content
- ☐ Ensure that your referrer will engage in the following activity ONLY:
 - ☐ Informs the consumer that the broker is able to provide the service and obtain the consumer's consent to pass on their details
 - ☐ Discloses to the consumer any benefits that may be received by the referrer, including commission
 - ☐ Does not charge the consumer a fee
 - ☐ Within 5 days, provides you (the broker) with the consumer's name, contact details and short description of the purpose for which the consumer may want the loan or lease
 - ☐ Makes the referral incidental to its primary line of business and does not conduct business by contacting people face-to face from non-standard, or temporary, business premises (e.g. a stall in a shopping mall)
- ☐ Ensure that you have a referral agreement in place with your referrer whether or not a fee is paid. Refer to your licensee, or if you hold your own licence, obtain independent legal advice around contracts and agreements.
- ☐ If you are a licensee, make sure that you keep a referral register.
 - If you are an appointed credit representative, provide your licensee with the referrer details (to add to the licensee's register) or provide your licensee with access to your register.
- ☐ Retain evidence of relevant checks to show that they have been completed.

Document Record

Document #	Revision Date	Revision Description	New Document #
30572878.3	19 February 2025	Added information relating to conducting due diligence on a referrer, including a checklist added to the appendix. Added an example of a referrer register.	30572878.4



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